

**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)	Case No. 14-1297-EL-SSO
a Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of and Electric Security)	
Plan.)	

**MOTION TO COMPEL DISCOVERY BY THE
ENVIRONMENTAL LAW & POLICY CENTER**

Pursuant to Ohio Adm. Code 4901-1-12, 4901-1-14, and 4901-1-23, the Environmental Law & Policy Center (“ELPC”), an intervenor in the above captioned proceedings before the Public Utilities Commission of Ohio (“PUCO” or “Commission”), hereby files this motion to compel discovery responses from Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). As explained in the attached memorandum in support, ELPC served limited discovery requests on FirstEnergy seeking information centrally related to important issues in this proceeding. FirstEnergy has refused to answer one of ELPC’s principal interrogatories, and has not offered any proper objections to that discovery request that would excuse FirstEnergy from its obligation under Ohio Admin. Code 4901-1-16(B) to provide the information sought. Therefore, ELPC respectfully requests an order compelling FirstEnergy to respond to the interrogatory at issue.

Respectfully submitted,

Date: February 24, 2015

/s/ Madeline Fleisher
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**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY BY THE
ENVIRONMENTAL LAW & POLICY CENTER**

I. INTRODUCTION

The Environmental Law & Policy Center (“ELPC”), an intervenor in the above-captioned case, timely served Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) with discovery requests that seek information relevant to important issues raised by FirstEnergy’s Electric Security Plan (“ESP”) application. While ELPC has been willing to accept FirstEnergy’s narrow responses to some of its requests, FirstEnergy has refused to respond to one of ELPC’s principal interrogatories, despite ELPC’s reasonable efforts to resolve the parties’ differences. This request is well within the bounds of permissible discovery under Commission rules allowing a party to “obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.”¹ Accordingly, ELPC has filed this motion to compel to respectfully request an order requiring FirstEnergy to respond to the request at issue.

II. BACKGROUND

FirstEnergy’s ESP application includes a proposal for an “Economic Security Plan,” centered on a proposed power purchase agreement (“PPA”) between FirstEnergy and its affiliate

¹ Ohio Admin. Code 4901-1-16(B).

FirstEnergy Solutions (“FES”). Under the proposed PPA, FirstEnergy would purchase the output from the W.H. Sammis Plant (“Sammis”) and the Davis-Besse Power Station (“Davis-Besse”), along with FES’s entitlement to generation from the Ohio Valley Electric Corporation (“OVEC”), paying FES’s costs associated with these plants along with a return on equity for the Sammis and Davis-Besse plants.² FirstEnergy seeks approval by the Public Utilities Commission of Ohio (“PUCO” or “Commission”) of a Retail Rate Stability Rider (“Rider RRS”) that would obligate FirstEnergy’s customers to fund this PPA. According to the testimony of FirstEnergy witness Donald Moul,³ the benefits of the proposed PPA and Rider RRS include “supporting resource diversity” in order to mitigate overreliance on resources such as natural gas and renewables.⁴ Mr. Moul asserts that preserving resource diversity will achieve purposes such as “mitigat[ing] price volatility,” “avoid[ing] potential catastrophic issues with a single class of generation,” “protect[ing] against interruptions in fuel supply for a given class of generating assets,” and offering (in the form of Davis-Besse, a nuclear plant) “a zero-carbon resource that will play a significant role in the state’s future efforts to meet U.S. Environmental Protection Agency . . . carbon reduction standards.”⁵

ELPC served FirstEnergy with a Second Set of Interrogatories and Requests for Production regarding its ESP application on December 8, 2014.⁶ These requests included Interrogatory 5, which seeks information regarding FirstEnergy’s decision to eliminate a number

² Ruberto Test. at 3 (Aug. 4, 2014).

³ Mr. Moul is in fact an employee of FirstEnergy Solutions Corp., an unregulated generation affiliate of the FirstEnergy distribution utilities, but his testimony has been offered in this proceeding on behalf of FirstEnergy.

⁴ Moul Test. at 7-8 (Aug. 4, 2014).

⁵ *Id.*; see also Strah Test. at 2 (Aug. 4, 2014) (“[Resource] diversity is necessary to make sure there is sufficient power when the availability of certain types of fuel (i.e., natural gas) is limited – thus possibly limiting the availability of power from such limited fuel-fired facilities.”).

⁶ Attachment A (public copy).

of its energy efficiency (“EE”) and peak demand reduction (“PDR”) programs in a separate PUCO proceeding contemporaneous with its ESP application:

Given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8, line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR.⁷

In light of FirstEnergy’s asserted position that the proposed PPA would provide resource diversity to prevent adverse consequences from overreliance on particular types of generation to meet demand, this request sought information regarding whether FirstEnergy had considered the whether the continuation of its EE and PDR programs to manage customer load and demand could likewise help its customers avoid exposure to the potential risks of particular generation sources outlined in Mr. Moul’s testimony, such as price volatility, interruptions in fuel supply, and carbon pollution.

FirstEnergy provided its response to these requests via email on December 29, 2014.⁸

Among its responses, FirstEnergy refused to answer Interrogatory 5, stating:

Response: Objection. This request is argumentative, overbroad, unduly burdensome, vague and ambiguous and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.⁹

After receiving these responses, ELPC contacted FirstEnergy attorney Carrie Dunn in order to obtain some explanation of the substance of these objections and explore whether they could be resolved.¹⁰ FirstEnergy responded with an email sent January 12, 2015, elaborating on its original objections.¹¹ With respect to Interrogatory 5, FirstEnergy stated as follows:

⁷ Attachment A at 8 (ELPC Set 2-INT 5).

⁸ Attachment B.

⁹ Attachment B at 5.

¹⁰ ELPC’s communications with FirstEnergy also concerned other discovery responses, but those are not the subject of this Motion to Compel.

¹¹ Attachment C.

Mr. Moul's testimony does not discuss any concerns and any statement he makes relating to resource diversity are not related to the Companies' exercise of authority in S.B. 310 to amend their energy efficiency plans. Moreover, the plants are not owned by the Companies. The reasons why the Companies included or didn't include certain things in their portfolio plan in another case has nothing to do with the Companies' proposed ESP here.¹²

ELPC reviewed FirstEnergy's email and responded by letter on January 23, 2015.¹³ In this letter, ELPC noted the broad scope of discovery allowed under the Commission's rules, reaching "any matter, not privileged, which is relevant to the subject matter of the proceeding."¹⁴ ELPC attempted to address any confusion about the content and scope of Interrogatory 5, and to clarify why it is well within that permissible scope:

In this proceeding, FirstEnergy bears the burden of demonstrating that its proposed ESP, including the Economic Stability Plan described in the ESP application, "is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code" – i.e., the market rate offer. O.R.C. 4928.143(C)(1). In its initial application, FirstEnergy represented that its proposed ESP should be approved under this standard because it would "address retail price volatility, expected increases in prices, and reliability challenges." FirstEnergy ESP Application at 1. More specifically, in Mr. Moul's testimony, FirstEnergy asserted that the Economic Stability Program would "support[] resource diversity" by preventing the closure of the Sammis, Davis-Besse, and OVEC plants. Moul Test. at 6. According to Mr. Moul, resource diversity is valuable in addressing retail price volatility, price increases, and reliability challenges for a number of reasons described on pages 7 and 8 of his testimony. ELPC Set 2, Interrogatory 5 is therefore reasonably calculated to determine whether FirstEnergy has placed similar weight on the importance of resource diversity in deciding to eliminate most of its energy efficiency and peak demand reduction programs in Case No. 12-2190-EL-POR. That information would be directly relevant to the Commission's consideration in this case as to whether any value that the Economic Stability Program provides with respect to resource diversity is worth the significant economic risks that the proposed program would impose on FirstEnergy's customers.¹⁵

¹² Attachment C at 1.

¹³ Attachment D.

¹⁴ Ohio Admin. Code 4901-1-16(B) (cited in Attachment D at 1).

¹⁵ Attachment D at 2.

ELPC also sought some explanation of FirstEnergy’s proffered objections regarding “overbreadth, burden, vagueness, or ambiguity,” since FirstEnergy’s January 12 email had not elaborated on those alleged issues.¹⁶

FirstEnergy responded to ELPC’s January 23 letter with a letter dated January 30, 2015.¹⁷ This letter reiterated FirstEnergy’s objections to Interrogatory 5 on relevance grounds.¹⁸ Despite asserting that Interrogatory 5 sought information not relevant to the ESP proceeding, FirstEnergy went on to contend that the deposition testimony of its witness Mr. Moul “that he did not believe demand response addresses any of the purposes served by resource diversity” and “did not consider his testimony related to resource diversity to have anything to do with energy efficiency or peak demand reduction” did constitute a response to ELPC’s query.¹⁹

After receiving this letter, ELPC attorney Madeline Fleisher contacted FirstEnergy counsel Carrie Dunn by telephone on February 2, 2015. During that call, the parties discussed FirstEnergy’s continuing objections regarding Interrogatory 5 and whether they could be resolved. FirstEnergy followed up with an email on February 4, 2015, attaching a letter supplementing its response to one of ELPC’s interrogatories but declining to alter its objections to Interrogatory 5.²⁰ Having been unsuccessful in these efforts to resolve this dispute, ELPC now files this Motion to Compel FirstEnergy to provide a response to Interrogatory 5.

III. ARGUMENT

FirstEnergy has cited the need to promote “resource diversity” – and thereby mitigate price volatility, interruptions in fuel supply and other reliability challenges, and carbon pollution

¹⁶ *Id.*

¹⁷ Attachment E.

¹⁸ Attachment E at 1-2.

¹⁹ Attachment E at 2.

²⁰ Attachment F.

– as a primary justification for its proposed Economic Stability Program. ELPC’s Interrogatory 5 seeks to discover relevant information regarding whether FirstEnergy has acted consistently with this apparent concern about the sources of electricity *supply* in Ohio in its approach to managing electricity *demand* through its EE and PDR programs.²¹ Although Senate Bill (“S.B.”) 310, enacted in 2014, lowered the EE and PDR targets that FirstEnergy must meet through those programs, that law did not prohibit FirstEnergy from keeping in place or expanding its EE and PDR programs as one means of addressing the concerns articulated in its application under the umbrella of resource diversity. Moreover, FirstEnergy’s apparent disagreement with ELPC that demand management or efficiency are potential tools for addressing these resource diversity concerns is not a proper relevance objection; rather, this position constitutes a substantive argument about the merits of FirstEnergy’s proposed ESP that should be left to the parties’ briefing before the Commission, rather than imported into a discovery dispute. This Motion to Compel accordingly seeks an order requiring FirstEnergy to explain whether, given its concerns about resource diversity in this context, it considered those concerns when it decided to eliminate a number of its EE and PDR programs.

A. ELPC’s Discovery Request Lies Within the Broad Scope of Discovery Permitted by the Commission.

ELPC’s discovery request seeks relevant information that ELPC is entitled to under the Commission’s rules. Ohio Admin. Code 4901-1-16(B) provides that a party to a PUCO proceeding “may obtain discovery of *any* matter, not privileged, which is relevant to the subject

²¹ Although FirstEnergy indicated it had objections to Interrogatory 5 on the basis of “overbreadth, burden, vagueness, or ambiguity” in addition to relevance, FirstEnergy has never provided any detail regarding those objections in response to ELPC’s request. *See* Attachment D at 2. Therefore, this Motion to Compel addresses only FirstEnergy’s relevance objection.

matter of the proceeding.”²² The Ohio Supreme Court has explained that Ohio Adm. Code 4901-1-16(B) “is similar to Civ. R. [Federal Rule of Civil Procedure] 26(B)(1), which . . . has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.”²³ Similarly, the Commission itself has noted that its “rules are designed to allow broad discovery of material that is relevant to the proceeding in question and to allow the parties to prepare thoroughly and adequately for hearing.”²⁴ This approach is consistent with Ohio Revised Code 4903.082, which mandates that “[a]ll parties and intervenors shall be granted ample rights of discovery.” The broad scope of Ohio Admin. Code 4901-1-16(B) applies regardless of whether “the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”²⁵ Here, ELPC seeks such relevant information, and FirstEnergy must provide it.

Foremost, FirstEnergy’s statement that its actions in Case No. 12-2190-EL-POR constitute an “exercise of authority in S.B. 310 to amend their energy efficiency plans” does not mean that those actions are irrelevant to this case.²⁶ S.B. 310 did authorize FirstEnergy to amend its EE and PDR portfolio plan in light of reduced EE and PDR benchmarks for future years.²⁷ However, the law in no way restricted FirstEnergy’s discretion to utilize EE and PDR programs to address the type of “resource diversity” problems that FirstEnergy asserts as a justification for

²² Ohio Admin. Code 4901-1-16(B) (emphasis added).

²³ *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 83.

²⁴ In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan, Case Nos. 08-920-EL-SSO *et al.*, 2008 Ohio PUC LEXIS 609, at 5 (Oct. 1, 2008).

²⁵ Ohio Admin. Code 4901-1-16(B).

²⁶ Attachment E at 1.

²⁷ S.B. 310, Section 6(A)(2).

its Economic Stability Program.²⁸ Indeed, the Stipulation proposed by FirstEnergy and other signatory parties on December 22, 2014, includes certain demand response programs that FirstEnergy witness Eileen Mikkelsen testified would “provide enhanced system reliability” – one of the issues that Mr. Moul included in his discussion of resource diversity.²⁹ Accordingly, FirstEnergy could have considered its articulated resource diversity concerns in determining whether to cut back on its EE and PDR programs, and ELPC simply seeks to discover whether it did in fact do so.

More concretely, there are a number of potential answers to ELPC’s Interrogatory 5 that might be relevant to determining how FirstEnergy’s views regarding resource diversity as expressed here relate its concurrent decision to cut back on its EE and PDR programs, in order to determine whether those views justify the Commission’s approval of the proposed Economic Stability Program. For example, it may be that FirstEnergy simply did not consider the potential role of EE and PDR programs in addressing price volatility, system reliability, carbon pollution, and other such “resource diversity” issues delineated by Mr. Moul when it decided to eliminate many of those programs. If so, that information is important to the merits of ELPC’s arguments about whether FirstEnergy’s Economic Stability Program is the result of a thorough assessment of the options available to address FirstEnergy’s purported concerns. It could also be that FirstEnergy reduced its EE and PDR program portfolio for other reasons despite believing that EE and PDR programs could help to address resource diversity and system reliability issues. That response would directly bear on the credibility of FirstEnergy’s position that customer subsidies for coal and nuclear plants through the Economic Stability Program represent an appropriate way to ensure system reliability.

²⁸ Indeed, the

²⁹ Mikkelsen Supp. Test. at 11:7-8 (Dec. 22, 2014).

Finally, it might be that, as suggested by its objections and Mr. Moul's deposition testimony, FirstEnergy deliberately cut back on its EE and PDR programs based in part on a view that those programs do not aid resource diversity. That scenario would be relevant to evaluating the demand response provisions included in the proposed Stipulation as well as the testimony of intervenor witnesses who have proposed that FirstEnergy failed to appropriately consider EE and PDR in proposing the ESP.³⁰ In all of these cases, even if FirstEnergy and ELPC disagree substantively about the role of EE and PDR in accomplishing the purposes of "resource diversity," a comparison of FirstEnergy's position on that issue here and in Case No. 12-2190-EL-POR is certainly potentially relevant information.

B. The Moul Deposition Testimony Does Not Constitute an Adequate Response to Interrogatory 5.

FirstEnergy's January 30, 2015 letter appears to proffer the deposition testimony of Mr. Moul as a substantive response to ELPC's discovery request.³¹ However, that deposition testimony is not sufficient to answer Interrogatory 5. Foremost, there is no indication that Mr. Moul had any role in FirstEnergy's amendment of its EE and PDR portfolio plan (and that seems unlikely to be the case since he is in fact an employee of FirstEnergy Solutions Corp.). Therefore it is not clear that there is any basis for him to address FirstEnergy's decisionmaking regarding its EE and PDR programs in his testimony. Additionally, as outlined above, it may be

³⁰ See, e.g., Roberto Test. at 19-20 (Dec. 22, 2014).

³¹ Attachment E at 2 ("Mr. Moul was asked during his deposition several questions about resource diversity from both Sierra Club and ELPC. See Deposition of Donald Moul at pp. 91-94; 150-152. Mr. Moul specifically testified that he did not believe demand response addresses any of the purposes served by resource diversity. Mr. Moul did not consider his testimony related to resource diversity to have anything to do with energy efficiency or peak demand reduction. Given that ELPC Set 2-INT-5 is contingent on Mr. Moul's testimony, and he has given further testimony on what he believes "resource diversity" to mean, the Companies consider ELPC Set 2-INT-5 to be asked and answered on this topic.").

that Mr. Moul’s testimony regarding the role of EE and PDR in addressing “resource diversity” issues is not consistent or not relevant to FirstEnergy’s rationale for the elimination of most of its EE and PDR programs; Interrogatory 5 is aimed at determining if that is the case. Therefore, in order to adequately answer Interrogatory 5, FirstEnergy must offer some additional response.

IV. CONCLUSION

For the reasons set forth above, ELPC requests that the Commission grant its Motion to Compel and require FirstEnergy to provide a response to Interrogatory 5 within five days of the Commission’s ruling on this Motion.

Respectfully submitted,

/s/ Madeline Fleisher

Madeline Fleisher

Staff Attorney

Environmental Law & Policy Center

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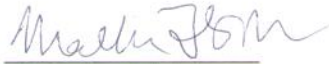
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AFFIDAVIT OF MADELINE FLEISHER

I, Madeline Fleisher, swear that the facts set forth in the foregoing Memorandum in Support of Motion to Compel Discovery by the Environmental Law & Policy Center ("ELPC") regarding ELPC's efforts to resolve its differences with FirstEnergy regarding the discovery at issue are true to the best of my knowledge.



Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center

Sworn to before me and subscribed in my presence on 24 February, 2015, in Columbus, OH.


Notary Public

SUSAN PAUGH
NOTARY PUBLIC, STATE OF OHIO
FAIRFIELD COUNTY
My Commission Expires 10/2/2019

Attachment A

**BEFORE
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Edison Company, The Cleveland Electric)	
Illuminating Company and The Toledo)	
Edison Company for Authority to Provide for)	Case No. 14-1297-EL-SSO
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4928.143 in the Form of and Electric Security)	
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**ENVIRONMENTAL LAW & POLICY CENTER’S SECOND SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY**

The Environmental Law & Policy Center (“ELPC”), in the above captioned proceedings before the Public Utilities Commission of Ohio (“PUCO” or “Commission”), submits the following Interrogatories and Requests for Production of Documents pursuant to Ohio Administrative Code § 4901-1-16 through O.A.C. § 4901-1-20, and in accordance with the Ohio Rules of Civil Procedure 26, 33, and 34, for response from the FirstEnergy Ohio utilities of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). All responses should be provided to ELPC by electronic transmission at the following address:

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Additionally, all responses should be consistent with the instructions set forth below. Definitions are provided below that are used in ELPC’s discovery.

DEFINITIONS

As used herein the following definitions apply:

1. “Document” or “Documentation” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, work papers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and

electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.

3. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
4. “You,” and “Your,” or “Yourself” refer to the party that is the subject of this discovery request, and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
5. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
6. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
7. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto

and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
- 8. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 9. The term "e.g." connotes illustration by example, not limitation.
 - 10. "OE" means Ohio Edison Company, "CEI" means The Cleveland Electric Illuminating Company and "TE" means The Toledo Edison Company.
 - 11. "FirstEnergy" and "the Companies" means OE, CEI, and TE collectively.

INSTRUCTIONS FOR ANSWERING

- 1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.

2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
 - a. Microsoft Excel worksheet files on compact disk;
 - b. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - c. ASCII text diskette files;
 - d. and such other magnetic media files as your organization(s) may use.

7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
9. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must (a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, (b) identify all persons to whom the information has already been revealed, and (c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

ELPC Set 2-INT-1:

Refer to FirstEnergy Application pages 11-12, paragraph 7. What actions has FirstEnergy taken to promote Experimental Real Time Pricing and Experimental Critical Peak Pricing to its customers?

RESPONSE:

ELPC Set 2-INT-2:

Is FirstEnergy aware of any instances where a generation company has refused to enter into a Reliability Must Run agreement with PJM after a determination by PJM that such an agreement was necessary to address reliability concerns? If so, provide the name of the generation unit involved.

RESPONSE:

ELPC Set 2-INT 3:

Refer to the Moul Testimony from page 7, line 3 through page 8, line 21. Has FirstEnergy performed any analysis relating to the role that energy efficiency or peak demand reduction measures could play in addressing the issues listed by Mr. Moul?

RESPONSE:

ELPC Set 2-INT 4: If the answer to ELPC Set 2-INT 3 is no, why hasn't FirstEnergy performed such an analysis?

RESPONSE:

ELPC Set 2-INT 5: Given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8, line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR.

RESPONSE:

ELPC Set 2-INT 6: If the PUCO does not approve the Economic Stability Program, how will that affect the “financial viability” of FirstEnergy Solutions, as that term is used in Ohio Administrative Code 4901:1-37-04(B)(2)?

RESPONSE:

ELPC Set 2-INT 7: Under the terms contained in the Term Sheet provided in response to IEU Set 1-INT 25, would FirstEnergy be liable for any debts or liabilities of FirstEnergy Solutions?

RESPONSE:

ELPC Set 2-INT 8: Has FirstEnergy received any customer communications since January 1, 2009, relating to concerns about price volatility?

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

ELPC Set 2-RPD-3:

Provide all documents that You relied upon in answering the above interrogatories.

ELPC Set 2-RPD-4:

Provide any analyses identified in response to ELPC Set 2-INT 3.

ELPC Set 2-RPD-5:

Provide all written testimony that FirstEnergy or FirstEnergy Solutions provided to the Ohio General Assembly regarding Senate Bill 221, enacted by the 127th General Assembly, relating to Electric Security Plans or Corporate Separation Plans.

ELPC Set 2-RPD-6:

Provide any communications from January 1, 2009 to the present between FirstEnergy and the Federal Energy Regulatory Commission relating to reliability concerns regarding the ATSI and AEP-Dayton Hubs.

ELPC Set 2-RPD-7:

[REDACTED]

[REDACTED]

[REDACTED]

ELPC Set 2-RPD-8:

Provide any communications identified in response to ELPC Set 2-INT-8.

Sincerely,

/s/ Madeline Fleisher
Madeline Fleisher
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
P: 614-488-3301
F: 614-487-7510
mfleisher@elpc.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing First Set of Requests for Production of Documents to FirstEnergy submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon the following Parties of Record, on December 8, 2014.

/s/ Madeline Fleisher

Madeline Fleisher

burkj@firstenergycorp.com cdunn@firstenergycorp.com jlang@calfee.com talexander@calfee.com dakutik@jonesday.com cmooney@ohiopartners.org drinebolt@ohiopartners.org tdoughtery@theoec.org joseph.clark@directenergy.com ghull@eckertseamans.com sam@mwncmh.com fdarr@mwncmh.com mpritchard@mwncmh.com mkurtz@BKLawfirm.com kboehm@BKLawfirm.com jkylercohn@BKLawfirm.com larry.sauer@occ.state.oh.us kevin.moore@occ.state.oh.us joliker@igsenergy.com mswhite@igsenergy.com myurick@taftlaw.com zkravitz@taftlaw.com schmidt@sppgrp.com ricks@ohanet.org tobrien@bricker.com stnourse@aep.com mjsatterwhite@aep.com yalami@aep.com callwein@wamenergylaw.com jfinnigan@edf.org wttpmlc@aol.com mkl@bbrslaw.com gas@bbrslaw.com oik@bbrslaw.com	cynthia.brady@exeloncorp.com david.fein@exeloncorp.com lael.campbell@exeloncorp.com christopher.miller@icemiller.com gregory.dunn@icemiller.com jeremy.grayem@icemiller.com BarthRoyer@aol.com athompson@taftlaw.com Marilyn@wflawfirm.com blanghenry@city.cleveland.oh.us hmadorsky@city.cleveland.oh.us kryan@city.cleveland.oh.us selisar@mwncmh.com ccunningham@akronohio.gov bojko@carpenterlipps.com allison@carpenterlipps.com hussey@carpenterlipps.com gkrassen@bricker.com dstinson@bricker.com dborchers@bricker.com asonderman@keglerbrown.com jscheaf@mcdonaldhopkins.com mitch.dutton@fpl.com matt@matthewcoxlaw.com todonnell@dickinsonwright.com amy.spiller@duke-energy.com jeanne.kingery@duke-energy.com jeffrey.mayes@monitoringanalytics.com todd@wamenergylaw.com sechler@carpenterlipps.com gpoulos@enernoc.com mhpetricoff@vorys.com glpetrucci@vorys.com thomas.mcnamee@puc.state.oh.us
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Attachment B

ELPC Set 2
Witness: Meghan Jurica

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

ELPC Set 2– Refer to FirstEnergy Application pages 11-12, paragraph 7. What actions has FirstEnergy
INT-1 taken to promote Experimental Real Time Pricing and Experimental Critical Peak Pricing to
its customers?

Response: See Response to NUCOR Set 1, INT-26.

ELPC Set 2
Witness: Steven Strah
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

ELPC Set 2– Is FirstEnergy aware of any instances where a generation company has refused to enter
INT-2 into a Reliability Must Run agreement with PJM after a determination by PJM that such an
agreement was necessary to address reliability concerns? If so, provide the name of the
generation unit involved.

Response: Objection. This request is overbroad and unduly burdensome in requesting the “awareness”
of the Companies as a whole, and also vague and ambiguous in its reference to “a generation
company.” The request further seeks information that is neither relevant nor reasonably
calculated to lead to the discovery of admissible evidence.

ELPC Set 2
Witness: Steven Strah
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

ELPC Set 2– Refer to the Moul Testimony from page 7, line 3 through page 8, line 21. Has FirstEnergy
INT-3 performed any analysis relating to the role that energy efficiency or peak demand reduction
measures could play in addressing the issues listed by Mr. Moul?

Response: Objection. This request is overbroad, unduly burdensome, vague and ambiguous. Subject
to and without waiving the foregoing objections, the Companies are aware that demand
response resources contributed to an increase in price volatility during the Polar Vortex and
that demand response is proposed as a building block in the U.S. EPA's "Clean Power Plan".

ELPC Set 2
Witness: Steven Strah
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

ELPC Set 2– If the answer to ELPC Set 2-INT 3 is no, why hasn't FirstEnergy performed such an
INT-4 analysis?

Response: Objection. This request is overbroad, unduly burdensome and vague and ambiguous. Moreover, this response also calls for an improper narrative response. *See Penn Cent. Transp. Co. v. Armco Steel Corp.*, 271 N.E.2d 877 (Montgomery Co., 1971) (improper use of discovery device or interrogatory to require detailed narrative response). Subject to and without waiving the foregoing objections, not applicable.

ELPC Set 2
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

ELPC Set 2– Given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8,
INT-5 line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate
certain energy efficiency and peak demand reduction programs from its portfolio plan in
Case No. 12-2190-EL-POR.

Response: Objection. This request is argumentative, overbroad, unduly burdensome, vague and
ambiguous and seeks information that is neither relevant nor reasonably calculated to lead
to the discovery of admissible evidence.

ELPC Set 2
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

ELPC Set 2– If the PUCO does not approve the Economic Stability Program, how will that affect the
INT-6 “financial viability” of FirstEnergy Solutions, as that term is used in Ohio Administrative
Code 4901:1-37-04(B)(2)?

Response: Objection. The request is vague and ambiguous, calls for speculation and is
argumentative. The request also seeks information that is neither relevant nor
reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2
Witness: Jay A. Ruberto
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

ELPC Set 2– Under the terms contained in the Term Sheet provided in response to IEU Set 1-INT 25,
INT-7 would FirstEnergy be liable for any debts or liabilities of FirstEnergy Solutions?

Response: Objection. This request is vague and ambiguous in its use of “liable for any debts or liabilities” Subject to and without waiving the foregoing objections, the Companies state as follows: No.

ELPC Set 2
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

ELPC Set 2– Has FirstEnergy received any customer communications since January 1, 2009, relating to
INT-8 concerns about price volatility?

Response: Objection. This request is overly broad and unduly burdensome, vague and ambiguous and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, to the extent that this request seeks information pertaining to individuals or entities who have filed public comments in this proceeding, see Case Documents and Public Comments docketed on the PUCO's website at Case No. 14-1297-EL-SSO.

ELPC Set 2

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

ELPC Set 2– Provide all documents that You relied upon in answering the above interrogatories.
RPD-3

Response: Not applicable.

ELPC Set 2

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

ELPC Set 2– Provide any analyses identified in response to ELPC Set 2-INT 3.
RPD-4

Response: Not applicable.

ELPC Set 2

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

ELPC Set 2– Provide all written testimony that FirstEnergy or FirstEnergy Solutions provided to the Ohio
RPD-5 General Assembly regarding Senate Bill 221, enacted by the 127th General Assembly,
relating to Electric Security Plans or Corporate Separation Plans.

Response: Objection. This request is overbroad, unduly burdensome and seeks information that is
neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2

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

ELPC Set 2– Provide any communications from January 1, 2009 to the present between FirstEnergy and
RPD-6 the Federal Energy Regulatory Commission relating to reliability concerns regarding the
ATSI and AEP-Dayton Hubs.

Response: Objection. This request is overbroad and unduly burdensome. Moreover, the request is vague and ambiguous without enough information from which to form a response. The request further seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2

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

ELPC Set 2– Refer to FirstEnergy's Response to SC Set 2-INT-61, which states: "The Companies deny
RPD-7 that they failed to analyze or study compliance with these proposed or potential
environmental regulations." Provide any such analyses or studies underlying FirstEnergy's
denial.

Response: Objection. This request is vague and ambiguous because it does not define "analyses" or
"studies." Subject to and without waiving the foregoing objections, see the Companies'
responses to SC Set 4-INT-109(a)(i) and to SC Set 4-RPD-90 - Competitively Sensitive
Confidential. See also IEU Set 2-RPD-2 Attachment 1 - Competitively Sensitive Confidential,
PUCO DR-26 Attachment 1 - Competitively Sensitive Confidential, SC Set 2-INT-72(b)
Attachment 1 – Competitively Sensitive Confidential and IGS Set 1-INT-3 Attachment 1 –
Competitively Sensitive Confidential.

ELPC Set 2

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

ELPC Set 2– Provide any communications identified in response to ELPC Set 2-INT-8.
RPD-8

Response: See Response to ELPC Set 2-INT-8.

Attachment C

**RE: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO -
- ELPC Set 2**

Dunn, Carrie M [cdunn@firstenergycorp.com]

Sent: Monday, January 12, 2015 4:41 PM

To: Madeline Fleisher

Dear Madeline:

It is my understanding that ELPC has concerns with the Companies' responses to ELPC Set 2 INTs 5 and 6 and to ELPC Set 2 RPD 5 and 6. Please allow this email to address those concerns.

ELPC Set 2 INT 5 asked "given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8, line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR." Mr. Moul's testimony does not discuss any concerns and any statement he makes relating to resource diversity are not related to the Companies' exercise of authority in S.B. 310 to amend their energy efficiency plans. Moreover, the plants are not owned by the Companies. The reasons why the Companies included or didn't include certain things in their portfolio plan in another case has nothing to do with the Companies' proposed ESP here. Therefore, the Companies properly objected to this request on the basis that the request is argumentative, overbroad, unduly burdensome, vague and ambiguous and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2 INT 6 asked "If the PUCO does not approve the Economic Stability Program, how will that affect the "financial viability" of FirstEnergy Solutions, as that term is used in Ohio Administrative Code 4901:1-37-04(B)(2)?" As an initial matter, the reference to OAC 4901:1-37-04(B)(2) is wrong because there is no -04(B)(2). Thus, we objected that the request is vague and ambiguous because it can't be answered as written. Assuming, ELPC means OAC 4901:1-37-04(C)(2), the reference to that rule (as we have revised it) makes no sense. The rule prohibits agreements that would maintain the financial viability of the affiliate. No such agreement has been proposed here. The Companies are not offering to be a guarantor of First Energy Solutions' ("FES") financial viability. But more to the point, ELPC's question asks us to assume that the proposed ESP is rejected and thus (we further assume) that the proposed transaction does not go forward. By reference to the rule (as we have revised it), however, it appears that ELPC then wants the Companies to assume even further that another agreement is entered into. Disregarding the reference to the rule and yet still further assuming that what ELPC really wants to ask is whether disapproval of the proposed ESP and the consequent discontinuation of negotiation on a proposed transaction would adversely affect FES financially, that question is also beyond the scope of inquiry in this case. The issues in this case have nothing to do with the financial health of FES. Thus, the Companies properly objected to this request on the basis that the is vague and ambiguous, calls for speculation and is argumentative and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2 RPD 5 requested "all written testimony that FirstEnergy or FirstEnergy Solutions provided to the Ohio General Assembly regarding Senate Bill 221, enacted by the 127th General Assembly, relating to Electric Security Plans or Corporate Separation Plans." This request is overbroad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. SB 221 was enacted. The law is the law. What the view of Companies or any employee was about proposals considered prior to the enactment of the law has no bearing on any issue in this case. Further, the Companies would not have in their possession any documents provided to the Ohio General Assembly from FirstEnergy Solutions. Last, we assume that this information is publicly available. Thus, the Companies properly objected to this request on the basis that the request is overbroad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

ELPC Set 2 RPD 6 requested "any communications from January 1, 2009 to the present between FirstEnergy and the Federal Energy Regulatory Commission relating to reliability concerns regarding the ATSI and AEP-Dayton Hubs." Asking the Companies to search through five years of communications that anyone may have had with a regulator is a monumental task. Further, once we would gather such communication, your requests asks us to try to attempt to discern which ones may relate to "reliability concerns," which could mean almost anything. It is also unclear to us how such communications could be relevant to this case. Thus, the Companies properly objected to this request on the basis that the request is overbroad and unduly burdensome, vague and ambiguous without enough information from which to form a response and

seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.


Given the above, if you would care to reply, we would of course consider what you'd have to say to see if a further discussion might prove useful and if we can work together to resolve whatever remaining issues you might have.


Thank you,

Carrie Dunn

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

 Madeline Fleisher [mailto:MFleisher@elpc.org]

 Monday, January 12, 2015 12:40 PM

 Dunn, Carrie M

 RE: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 2

Hi Carrie,

I hope you had a good weekend. I just wanted to touch base and see when this week you'll be available to discuss this issue, and if you had any other questions about ELPC's concerns.

Thanks,
Madeline

Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
mfleisher@elpc.org
Office: 614-488-3301
Cell: 857-636-0371

From: Madeline Fleisher
Sent: Thursday, January 08, 2015 10:28 PM
To: Dunn, Carrie M
Subject: RE: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 2

I'm specifically concerned with Interrogatories 5 and 6 and RPDs 5 and 6.

Madeline

From: Dunn, Carrie M [cdunn@firstenergycorp.com]
Sent: Thursday, January 08, 2015 11:09 AM
To: Madeline Fleisher
Subject: Re: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 2

Do you have specific requests?

On Jan 8, 2015, at 12:03 PM, "Madeline Fleisher" <MFleisher@elpc.org> wrote:

Dear Carrie,

I wanted to see if I could set up a time to talk with you (or whoever else from your end would be appropriate) about the responses to ELPC's second set of discovery requests. I was disappointed to see that we didn't get substantive answers to some of the requests and am hoping we can work out the issues you specified in your objections. Let me know what timing would work on your end – generally Monday, Tuesday, and Friday are my best days next week.

Thanks,
 Madeline

Madeline Fleisher
 Staff Attorney
 Environmental Law & Policy Center
 1207 Grandview Avenue, Suite 201
 Columbus, OH 43212
mfleisher@elpc.org
 Office: 614-488-3301
 Cell: 857-636-0371

t. 614.488.3301

From: Sweeney, Karen A. [mailto:ksweeney@firstenergycorp.com]
Sent: Monday, December 29, 2014 4:03 PM
To: William.wright@puc.state.oh.us; mkurtz@BKLlawfirm.com; kboehm@BKLlawfirm.com; jkylercohn@BKLlawfirm.com; sam@mwncmh.com; fdarr@mwncmh.com; mpritchard@mwncmh.com; stnourse@aep.com; mjsatterwhite@aep.com; yalami@aep.com; cmooney@ohiopartners.org; Larry.sauer@occ.ohio.gov; Kevin.moore@occ.ohio.gov; callwein@wamenergylaw.com; joseph.clark@directenergy.com; ghull@eckertseamans.com; joliker@igsenergy.com; mswhite@igsenergy.com; myurick@taftlaw.com; schmidt@sppgrp.com; ricks@ohanet.org; tobrien@bricker.com; bojko@carpenterlipps.com; allison@carpenterlipps.com; hussey@carpenterlipps.com; mkl@bbrslaw.com; gas@bbrslaw.com; ojk@bbrslaw.com; wtpmlc@aol.com; barthroyer@aol.com; athompson@taftlaw.com; Christopher.miller@icemiller.com; Gregory.dunn@icemiller.com; Jeremy.grayem@icemiller.com; lhawrot@spilmanlaw.com; dwilliamson@spilmanlaw.com; blanghenry@city.cleveland.oh.us; hmadorsky@city.cleveland.oh.us; kryan@city.cleveland.oh.us; meissnerjoseph@yahoo.com; mdortch@kravitzllc.com; rparsons@kravitzllc.com; tdougherty@theoec.org; jfinnigan@edf.org; lesliekovacic@toledo.oh.gov; trhayslaw@gmail.com; marilyn@wflawfirm.com; matt@matthewcoxlaw.com; gkrassen@bricker.com; dstinson@bricker.com; dborchers@bricker.com; Madeline Fleisher; mitch.dutton@fpl.com; gthomas@gtpowergroup.com;

laurac@chappelleconsulting.net; stheodore@epsa.org; mhpetricoff@vorys.com;
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toddm@wamenergylaw.com; Jeffrey.mayes@monitoringanalytics.com;
Cynthia.brady@exeloncorp.com; lael.campbell@exeloncorp.com; david.fein@exeloncorp.com;
sechler@carpenterlipps.com; gpoulos@enernoc.com; asonderman@keglerbrown.com;
msoules@earthjustice.org; tony.mendoza@sierraclub.org; sfisk@earthjustice.org;
mjsettineri@vorys.com; glpetrucci@vorys.com; dparram@taftlaw.com;
Maeve.Tibbetts@monitoringanalytics.com; FE14-1297-EL-SSO@puc.state.oh.us

Cc: Singleton, Tamera J.; Davis, Nancy E.; Burk, James W.; Ridmann, William R.; Mikkelsen, Eileen M.; Biltz, Justin T; calfee.com, jlang (calfee.com); calfee.com, talexander (calfee.com); dakutik@jonesday.com; mtharvey@jonesday.com; Bingaman, Bradley A; Yeboah, Ebony L; Dunn, Carrie M; Endris, Robert M; Hayden, Mark A.; Knipe, Brian J

Subject: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 2

RE: Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") Discovery Responses associated with PUCO Case No.14-1297-EL-SSO

Enclosed herein are the Companies' Discovery Response associated with P.U.C.O. Case No. 14-1297-EL-SSO. More specifically:

1. Response to - ELPC Set 2

Karen A. Sweeney
Rates & Regulatory Affairs-Ohio
FirstEnergy Service Company
Phone: (330) 761-7889
ksweeney@firstenergycorp.com

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Attachment D



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

Via Electronic Mail

January 23, 2015

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

Dear Ms. Dunn,

I write in response to your email of January 12, 2015, in which you offered further explanation of FirstEnergy's objections to answering Interrogatories 5 and 6 and Requests for Production 5 and 6 in the second set of discovery served by the Environmental Law & Policy Center ("ELPC").

As a reminder, the rules of the Public Utilities Commission of Ohio allow "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." Ohio Admin. Code 4901-1-16(B). Your objections fail to show that ELPC's requests do not fall within this broad permissible scope.

ELPC Set 2, Interrogatory 5

You objected to this interrogatory, which seeks information regarding FirstEnergy's filing "of an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR," on the grounds that it is "argumentative, overbroad, unduly burdensome, vague and ambiguous and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence." However, ELPC properly posed and tailored this interrogatory in order to obtain relevant information regarding FirstEnergy's proffered justification for approval of its Electric Security Plan ("ESP").

In this proceeding, FirstEnergy bears the burden of demonstrating that its proposed ESP, including the Economic Stability Plan described in the ESP application, “is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code” – *i.e.*, the market rate offer. O.R.C. 4928.143(C)(1). In its initial application, FirstEnergy represented that its proposed ESP should be approved under this standard because it would “address retail price volatility, expected increases in prices, and reliability challenges.” FirstEnergy ESP Application at 1. More specifically, in Mr. Moul’s testimony, FirstEnergy asserted that the Economic Stability Program would “support[] resource diversity” by preventing the closure of the Sammis, Davis-Besse, and OVEC plants. Moul Test. at 6. According to Mr. Moul, resource diversity is valuable in addressing retail price volatility, price increases, and reliability challenges for a number of reasons described on pages 7 and 8 of his testimony. ELPC Set 2, Interrogatory 5 is therefore reasonably calculated to determine whether FirstEnergy has placed similar weight on the importance of resource diversity in deciding to eliminate most of its energy efficiency and peak demand reduction programs in Case No. 12-2190-EL-POR. That information would be directly relevant to the Commission’s consideration in this case as to whether any value that the Economic Stability Program provides with respect to resource diversity is worth the significant economic risks that the proposed program would impose on FirstEnergy’s customers.

Given that you did not articulate any reason why FirstEnergy’s analysis of resource diversity concerns in other circumstances is not relevant to its analysis of resource diversity in this case, I again request that you provide a response to this discovery request. Furthermore, you have not provided any detail to support your objections regarding overbreadth, burden, vagueness, or ambiguity. If you can explain the basis for those objections, I am happy to discuss them further.

ELPC Set 2, Interrogatory 6

Thank you for explaining your confusion regarding the inadvertent typographical error in this request, which was not mentioned in your initial response. The reference to “Ohio Administrative Code 4901:1-37-04(B)(2)” should read “Ohio Administrative Code 4901:1-37-04(C)(2),” which provides that “An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.”

I can also clarify this request to address any confusion you may have regarding its substance. The citation to Ohio Administrative Code 4901:1-37-04(C)(2) was intended to provide a reference for the term “financial viability.” Otherwise, the interrogatory does not depend on that provision and seeks an answer to the question as written: whether disapproval of the Economic Stability Program would affect the “financial viability” of FirstEnergy Solutions. This inquiry is calculated to discover relevant information as to whether the Economic Stability Program – which does involved a proposed draft power purchase agreement between FirstEnergy and FirstEnergy Solutions as described in the testimony of Mr. Ruberto at page 3 – would result in the commitment of funds to maintain the financial viability of FirstEnergy Solutions. This information is directly relevant to whether the Economic Stability Program as proposed in this proceeding is consistent with Ohio Administrative Code 4901:1-37-04(C)(2). Accordingly, I renew my request for a response to ELPC Set 2, Interrogatory 6. To the extent your discussion

of this request in your email is intended as a substantive answer to this interrogatory, I ask that you provide a formal discovery response containing your answer to the interrogatory as I have clarified it here.

ELPC Set 2, Request for Production 5

You objected to this Request for Production, which seeks copies of “all written testimony that FirstEnergy or FirstEnergy Solutions provided to the Ohio General Assembly regarding Senate Bill 221, enacted by the 127th General Assembly, relating to Electric Security Plans or Corporate Separation Plans,” on the basis that it is “overbroad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence” that “the Companies would not have in their possession any documents provided to the Ohio General Assembly from FirstEnergy Solutions”; and that you “assume that this information is publicly available.” However, the requested documents are relevant to the extent that FirstEnergy may seek to present arguments about the General Assembly’s intent in enacting S.B. 221 with respect to regarding allowable provisions in Electric Security Plans or compliance with corporate separation requirements in this proceeding. If FirstEnergy does not intend to make such arguments, then ELPC requests that you so indicate in a formal discovery response. Likewise, if FirstEnergy describes how ELPC can obtain public versions of the requested documents without undue burden, ELPC is willing to pursue such options. Otherwise, you have not provided any detail regarding your objections with respect to overbreadth or undue burden, and therefore I am unable to respond to those objections at this time.

ELPC Set 2, Request for Production 6

As you noted, ELPC Set 2 RPD 6 requests “any communications from January 1, 2009 to the present between FirstEnergy and the Federal Energy Regulatory Commission relating to reliability concerns regarding the ATSI and AEP-Dayton Hubs.” You have indicated that searching for this information would be unduly burdensome. At your convenience, I am willing to discuss whether this request could be narrowed to particular document custodians or databases in order to facilitate a response. I am also willing to discuss how to narrow the scope of the term “reliability concerns” or how to use other limiting terms in conducting such a search. Ultimately, however, the requested documents are immediately relevant to the validity of FirstEnergy’s stated positions that the impact of the proposed Economic Stability Program on reliability is important because (1) “the Companies’ customers would bear a substantial amount of the cost of the transmission enhancements that may become necessary to maintain reliability should any or all of these plants [the Sammis, Davis-Besse, and OVEC plants] retire” and (2) preserving these baseload generation assets promotes plentiful retail supply and retail reliability, which also benefits the Companies’ customers.” Ruberto Test. at 8. ELPC’s request simply seeks information relevant to determining whether FirstEnergy has articulated the same position regarding the importance of keeping the Sammis, Davis-Besse, and OVEC plants open in its communications with federal regulators responsible for maintaining reliability of the electric grid.

Please provide your response regarding these issues by next Friday, January 30. Otherwise, ELPC will pursue a motion to compel in order to ensure timely resolution of our requests prior to the commencement of the scheduled hearing in this matter.

Sincerely,

/s/ Madeline Fleisher
Madeline Fleisher
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Environmental Law & Policy Center
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Attachment E



76 South Main Street
Akron, Ohio 44308

Carrie M. Dunn
Attorney

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

January 30, 2015

Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212

Re: Case No. 14-1297-EL-SSO

Dear Ms. Fleisher:

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 the Environmental Law & Policy Center’s (“ELPC”) letter dated January 23, 2015. Please be aware that the Companies’ failure to address any point raised in your letter does not indicate agreement with that position.

I. ELPC Set 2-INT-5

First, in ELPC’s letter, ELPC states that that ELPC Set 2-INT-5 requests “information regarding FirstEnergy’s filing ‘of an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR.’” This paraphrase of ELPC’s discovery request is not accurate. Specifically, ELPC asked “Given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8, line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR.” Therefore, this question is specifically contingent on Mr. Moul’s testimony, rather than a general question related to “information regarding FirstEnergy’s filing of an application to amend its portfolio plan...” or a general question related to “FirstEnergy’s proffered justification for approval of its Electric Security Plan (“ESP”).” ELPC’s letter improperly attempts to ask a different interrogatory than what was originally posed.

In any event, despite ELPC’s attempt to tie the Companies’ exercise of authority to amend their energy efficiency and peak demand reduction (“EE/PDR”) portfolio plans to the Companies’ Application for an ESP, the request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. As stated in my e-mail dated January 12, 2015, Mr. Moul’s testimony as it relates to resource diversity is not related to the Companies’ exercise of authority in S.B. 310 to amend their energy efficiency plans. Moreover, the reasons why the Companies included or did not include programs in their portfolio plan in another case has nothing to do with the Companies’ proposed ESP.

Further, Mr. Moul's deposition testimony demonstrates that resource diversity is not related to the Companies' ability to amend their EE/PDR portfolio plans. Mr. Moul was asked during his deposition several questions about resource diversity from both Sierra Club and ELPC. *See* Deposition of Donald Moul at pp. 91-94; 150-152. Mr. Moul specifically testified that he did not believe demand response addresses any of the purposes served by resource diversity. Mr. Moul did not consider his testimony related to resource diversity to have anything to do with energy efficiency or peak demand reduction. Given that ELPC Set 2-INT-5 is contingent on Mr. Moul's testimony, and he has given further testimony on what he believes "resource diversity" to mean, the Companies consider ELPC Set 2-INT-5 to be asked and answered on this topic.

II. ELPC Set 2-INT-6

As it did in the request discussed above, ELPC again misstates the actual question posed to the Companies in an improper attempt to ask a different interrogatory than was originally posed. Although ELPC states that "[t]he citation to Ohio Administrative Code 4901:1-37 was intended to provide a reference for the term 'financial viability'" and that "the interrogatory does not depend on that provision," the actual request as written does in fact depend on this provision. Specifically, ELPC asked "If the PUCO does not approve the Economic Stability Program, how will that affect the "financial viability" of FirstEnergy Solutions, as that term is used in Ohio Administrative Code 4901:1-37-04(B)(2) [sic]?" Therefore, this question is specifically dependent on the use of "financial viability" in Ohio Administrative Code Rule 4901:1-37-04(C)(2) rather than a general question related to "whether the Economic Stability Program...would result in the commitment of funds to maintain the financial viability of FirstEnergy Solutions."

Further, as I indicated in my email dated January 12, 2015, the reference to Rule 4901:1-37-04(C)(2) does not make sense. The rule prohibits agreements that would maintain the financial viability of an affiliate. No such agreement has been proposed here. For that reason alone, the request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Still further, assuming that what ELPC intended to ask was whether disapproval of the proposed ESP would adversely affect FES financially, that question is beyond the scope of inquiry in this case making this request neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Last, as indicated in the Companies' objections, the request also calls for speculation and is argumentative. ELPC's question asks the Companies to assume that the proposed ESP is rejected and then further assume that the proposed transaction does not go forward. Both of these assumptions would require the Companies to speculate on how that would affect the "financial viability of FES," which is improper. For all of those reasons, the Companies properly objected to this request.

III. ELPC Set 2-RPD-5

ELPC Set 2-RPD-5 requests "all written testimony that FirstEnergy or FirstEnergy Solutions provided to the Ohio General Assembly regarding Senate Bill 221, enacted by the 127th General

Assembly relating to Electric Security Plans or Corporate Separation Plans.” As indicated in my email dated January 12, 2015, the request is overbroad and unduly burdensome. As an initial matter, the Companies would not have in their possession any documents provided to the Ohio General Assembly from FES. Moreover, Senate Bill 221 was enacted almost seven years ago. Requiring the Companies to search for records from seven years ago is overly burdensome to the extent such documents have even been retained. Therefore, pursuant to Rule 4901-1-20(D), the Companies advised ELPC that any such documents, to the extent they even still exist, would be publicly available from the General Assembly.

However, even if ELPC remedied the overbroad nature of the request, which it has not, the request still seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In its letter, ELPC states that “the requested documents are relevant to the extent that FirstEnergy may seek to present arguments about the General Assembly’s intent in enacting S.B. 221....” Legislative intent is determined by looking at the plain language of the statute and, if any ambiguity exists, then the *pari materia* rule of construction applies. As indicated in my email dated January 12, 2015, S.B. 221 was enacted. The law is the law. What any representative of the Companies said or did not say in testimony during a hearing before a General Assembly committee regarding S.B. 221, including any proposals considered by the General Assembly prior to enactment of the law, not only has no bearing on this case, it is not relevant to any determination of legislative intent by the Commission in this case. For those reasons, the Companies properly objected to this request.

IV. ELPC Set 2-RPD-6

ELPC Set 2-RPD-6 requests “any communications from January 1, 2009 to the present between FirstEnergy and Federal Energy Regulatory Commission relating to reliability concerns regarding the ATSI and AEP-Dayton Hubs.” Although ELPC indicates its willingness to discuss whether this request could be narrowed, the question remains objectionable on several grounds.

First, ELPC does not remedy the deficient definition of “communications” or “reliability concerns.” Every year there are numerous filings, forms and other submission by a number of entities to FERC where the term “reliability” may have been used. Moreover, the term “reliability concerns” could mean a number of things. For those reasons, the request is overbroad, unduly burdensome, vague and ambiguous.

Second, the request is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The ATSI and AEP-Dayton Hubs are administrative constructs that exist under FERC-jurisdictional Regional Transmission Organization tariffs, and other applicable FERC rules, regulations and orders. As such, any “reliability concerns” about the ATSI or AEP-Dayton Hubs, or about transmission system operations at or within the ATSI, AEP, or Dayton transmission systems, would be addressed in proceedings before the FERC.

Last, to the extent that ELPC is seeking documents that are filed publicly at FERC, ELPC can find those documents at www.ferc.gov. To the extent that ELPC is seeking documents that are filed at FERC but that are non-public, it can make a Freedom of Information Act to request to FERC. For all of those reasons, the Companies properly objected to this request.

I trust that this has resolved ELPC's concerns. 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

Attachment F

ELPC Set 2 Discovery

Dunn, Carrie M [cdunn@firstenergycorp.com]

Sent: Wednesday, February 04, 2015 12:41 PM**To:** Madeline Fleisher**Attachments:** ELPC Set 2 Int 6 Supplemen~1.pdf (22 KB)

Madeline:

Thank you for your call on Monday. The Companies will supplement their response to ELPC Set 2 INT 6. I have attached it. For ELPC Set 2 INT 5, RPD 5 and RPD 6, the Companies will stand by their objections.

If you have any questions, please do not hesitate to contact me.

Carrie

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Compel, Memorandum in Support, and Affidavit of Madeline Fleisher, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail upon the following Parties of Record, on February 24, 2015.

/s/ Madeline Fleisher
Madeline Fleisher

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Summary: Motion Motion to Compel Discovery by the Environmental Law & Policy Center
electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center