

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio )  
Edison Company, The Cleveland Electric ) Case No. 14-1297-EL-SSO  
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 )

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**MEMORANDUM CONTRA OHIO EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY'S  
REQUEST FOR CERTIFICATION AND APPLICATION FOR REVIEW OF AN  
INTERLOCUTORY APPEAL OF THE ATTORNEY EXAMINERS' ORAL RULINGS**

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**I. INTRODUCTION**

On August 4, 2014, Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies") filed an application to establish a standard service offer ("SSO"), in the form of a fourth electric security plan ("ESP") entitled Powering Ohio's Progress ("ESP IV"), to provide generation service pricing for the period June 1, 2016 through May 31, 2019. During the evidentiary hearing before the Public Utilities Commission of Ohio ("the Commission"), the Companies moved to strike portions of the second supplemental testimony of Ohio Manufacturers' Association Energy Group ("OMAEG") witness Dr. Edward Hill and portions of the Supplemental Testimony of IGS Energy ("IGS") witness Matthew White. Specifically, the Companies sought to strike portions of the testimony that referenced prior testimony of Leila Vespoli, the current Executive Vice President, Markets and Chief Legal Officer of FirstEnergy Corp. The Companies' motions to strike were denied by the Attorney Examiners during the evidentiary hearing and the Companies submitted this

Interlocutory Appeal to request that the appeal be certified to the Commission and for the Commission to reverse the Attorney Examiners' rulings.

OMAEG hereby files its memorandum contra the Companies' request to certify its Interlocutory Appeal. The Companies' request to limit valuable information that should be provided to the Commission, specifically as it relates to relevant testimony that was made by an executive of FirstEnergy Corp., should be denied. The Companies' tactics to threaten the full development and equitable resolution of factual issues by excluding testimony of a current executive on relevant issues pending before the Commission is telling. Notably, the Companies rely on a technical legal argument in their attempt to limit the admission of this testimony into the record.

The Companies' appeal fails to show that the Attorney Examiners' procedural rulings issued during an evidentiary hearing on the admissibility of relevant evidence deviate from past precedent, or otherwise present a new or novel question of interpretation, law, or policy in accordance with the requirements of the Ohio Administrative Code. Further, the Companies have not, and cannot, demonstrate that they will be unduly prejudiced absent an immediate reversal by the Commission. Therefore, the Companies' appeal should not be certified. Alternatively, if the appeal is certified, it should be denied.

## **II. BACKGROUND**

A hearing on the ESP proposed in the Companies' Application commenced on August 31, 2015 and continues to date. Dr. Edward Hill filed direct testimony on behalf of OMAEG on December 22, 2014, in accordance with the prescribed procedural schedule

established by the Attorney Examiners.<sup>1</sup> Mr. Hill subsequently filed supplemental testimony on behalf of OMAEG on May 11, 2015, which also met all of the requirements and procedural schedule established by the Attorney Examiners.<sup>2</sup> Finally, Dr. Hill filed second supplemental testimony on behalf of OMAEG on August 10, 2015, also in accordance with the Attorney Examiners' established requirements and procedural schedule.<sup>3</sup> Attached to Dr. Hill's second supplemental testimony was EWH Supplemental Attachment A, which included testimony of Ms. Leila Vespoli, who at the time of the relevant testimony was Executive Vice President and General Counsel of FirstEnergy Corp., before the Senate Public Utilities Committee of the Ohio Senate on April 9, 2013.

During the proceeding on October 13, 2015, the Companies moved to strike the portion of Dr. Hill's Supplemental Attachment A to Dr. Hill's Second Supplemental Testimony containing Ms. Vespoli's testimony before the Senate Public Utilities Committee, and associated testimony. The Attorney Examiners properly denied the motion to strike, finding the testimony of Ms. Vespoli relevant to the issues in the hearing. The Companies have now filed a request for certification and application for review of an Interlocutory Appeal of the Attorney Examiners' ruling.

### **III. STANDARD OF REVIEW**

Rule 4901-1-15, Ohio Administrative Code, governs interlocutory appeals taken from a ruling issued by an attorney examiner. The rule provides that an "immediate

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<sup>1</sup> Entry (October 6, 2014) (modifying the procedural schedule, in part, to require the filing of testimony on behalf of intervening parties by December 22, 2014).

<sup>2</sup> Entry (May 1, 2015) (certification of an interlocutory appeal and modifying the procedural schedule).

<sup>3</sup> Entry (July 2, 2014) (setting a modified procedural schedule).

interlocutory appeal to the commission” may be taken of a ruling in only one of four circumstances involving that ruling:

- (1) Grants a motion to compel discovery or denied a motion for protective order;
- (2) Denies a motion to intervene, terminates a party’s right to participate in a proceeding, or requires intervenors to consolidate their examination of witnesses or presentation of testimony;
- (3) Refuses to quash a subpoena; or
- (4) Requires the production of documents or testimony over an objection based on privilege.<sup>4</sup>

Absent one of the aforementioned rulings, an interlocutory appeal may proceed only after certification. Certification, as instructed by the Commission, requires a demonstration of two criteria. Specifically, the legal director, deputy legal director, attorney examiner, or presiding hearing officer shall not certify such an appeal unless he or she finds that:

- (1) The appeal presents a new or novel question of interpretation, law, or policy, or is taken from a ruling which represents a departure from past precedent; and
- (2) An immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties, should the commission ultimately reverse the ruling in question.<sup>5</sup>

If the request for certification does not meet both of these requirements, the request should be denied.<sup>6</sup>

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<sup>4</sup> O.A.C. 4901-1-15(A) (1)-(4).

<sup>5</sup> O.A.C. 4901-1-15(B).

<sup>6</sup> See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Entry at 7 (October 1, 2008) (“[i]n order to certify an interlocutory appeal to the Commission, both requirements must be met”; *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of an Alternative Form of Regulation*, Case No. 11-5515-GA-ALT, Entry at 7 (May 18, 2012); *In the Matter of the Ohio Edison Company, the Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143m Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Entry at 5 (June 21, 2012); *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust Rider DR-IM and Rider AU for 2013 Grid Modernization Costs*, Case No. 14-1051-GE-RDR, Entry at 7 (February 5, 2015).

#### IV. ARGUMENT

##### **1. Ms. Vespoli's Testimony Is Not Hearsay And Is An Admission By A Party-Opponent.**

The Ohio Rules of Evidence prohibit the admission of evidence that is hearsay unless the evidence is otherwise admissible by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly, by the rules of evidence, or by other rules prescribed by the Supreme Court of Ohio.<sup>7</sup> Ohio R. Evid. 801(D)(2) provides that a statement is not hearsay if:

The statement is offered against a party and is (a) the party's own statement, in either an individual or a representative capacity, or (b) a statement of which the party has manifested an adoption or belief in its truth, or (c) a statement by a person authorized by the party to make a statement concerning the subject, or (d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

At the time of the testimony, Ms. Vespoli was a representative and agent of the Companies in her role as the Executive Vice President and General Counsel. She provided her testimony before the Senate Public Utilities Committee within the scope of her employment. Her testimony clearly meets part (c) of Ohio R. Evid. 801(D)(2) as an admission by a party-opponent.

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<sup>7</sup> Ohio R. Evid. 802.

## **2. Ms. Vespoli's Testimony Was Properly Authenticated.**

Ohio R. Evid. 901 states that authentication or identification of a document is a condition precedent to the *admissibility* of the document as evidence. Specifically, the rule provides that authentication or identification is satisfied “by evidence sufficient to support a finding that the matter in question is what its proponent claims.”<sup>8</sup> As acknowledged by the Companies in their Memorandum in Support, some evidence is self-authenticating and does not require additional extrinsic evidence to provide its identification or authenticity.<sup>9</sup>

Specific to public records, Ohio R. Evid. 1005 permits the contents of a document authorized to be recorded or filed and actually recorded or filed to be proved by copy, certified in accordance with Ohio R. Evid. 902 or “testified to be correct by a witness who has compared it with the original.”<sup>10</sup> Further, the rule states that if a copy complying with the aforementioned certification, “cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.”<sup>11</sup>

The Attorney Examiners’ ruling at issue in this case relates to the testimony of Ms. Vespoli as Executive Vice President and General Counsel of FirstEnergy Corp. That testimony was provided before the Senate Public Utilities Committee, a committee within the public office of the Ohio Senate, on April 9, 2013. It is a public record. Dr. Hill’s second supplemental testimony was filed August 10, 2015 and included Ms. Vespoli’s testimony as an attachment to his own testimony. While OMAEG believes Ms. Vespoli’s

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<sup>8</sup> Ohio R. Evid. 901(A).

<sup>9</sup> See Memorandum in Support of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners’ Oral Rulings at 7.

<sup>10</sup> Ohio R. Evid. 1005.

<sup>11</sup> Id.

testimony is self-authenticating as a public record under Ohio R. Evid. 902(4), OMAEG exercised reasonable diligence in attempting to obtain a certified copy of Ms. Vespoli's testimony from both the Ohio Historical Society and the Ohio Senate Clerk's office in order to provide further evidence of its authenticity if deemed necessary by the Attorney Examiners. OMAEG was informed by the Ohio Historical Society that the office does stamp legislative records to indicate they are true and authentic copies; however, they had not yet received the Ohio Senate records from April 2013. OMAEG subsequently spoke with the Deputy Legal Counsel at the Ohio Senate, who stated that the Ohio Senate does not certify records for these purposes and the position of the Ohio Senate is that the documents are self-authenticating. OMAEG produced an affidavit attesting to these conversations and the position of the Ohio Senate that the legislative testimony of Ms. Vespoli was self-authenticating, and provided email correspondence from the Deputy Legal Counsel at the Ohio Senate, providing the originally submitted testimony to the Senate.<sup>12</sup> The affidavit was brought to the hearing by Dr. Hill to provide further evidence that the document attached to Dr. Hill's testimony was a copy of the original document and the witness to the affidavit was also present at the hearing in the event the Companies wished to question that witness. This clearly satisfies the "reasonable diligence" standard required by Rule 1005.

Further, to the extent necessary, the additional authentication of Ms. Vespoli's testimony was completed prior to the admission of Dr. Hill's second supplemental testimony and attachments into the evidentiary record. As noted previously, Ohio R. Evid. 901(A) requires that authentication or identification of a document is a "condition

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<sup>12</sup> See attached affidavit and email from the Ohio Senate Deputy Legal Counsel's office marked as Attachment A.

precedent” to admissibility. Therefore, the Companies’ argument that the ruling permitted OMAEG to cure evidentiary defects is inapposite. Regardless of whether the attached testimony of Ms. Vespoli was self-authenticating, the affidavit attesting to its authentication and the witness to the affidavit were both provided and available for the Companies’ review and questioning at the proceeding and *prior to* the evidence being admitted into the record. Therefore, Ms. Vespoli’s testimony was properly authenticated on direct examination and the Attorney Examiners’ ruling to deny the motion to strike was proper.

**3. The Ruling Does Not Present a New or Novel Question of Interpretation, Law, Or Policy.**

While the Companies seemingly relied solely on their argument that the Attorney Examiners’ ruling is contrary to Commission precedent, the ruling also did not present a new or novel question of interpretation, law or policy established in Rule 4901-1-15(B), Ohio Administrative Code.

Interpretation and application of evidentiary rulings and determinations during the course of the evidentiary hearing are not new or novel issues. The Attorney Examiners continuously issue oral rulings on issues of relevancy, hearsay, and authenticity multiple times during an evidentiary hearing. The Commission has found that implementation of its “procedural rules delineated in Chapter 4901-1, Ohio Administrative Code, are routine matters with which the Commission and its attorney examiners have had extensive experience in Commission proceedings.”<sup>13</sup> Therefore, the

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<sup>13</sup> *In the Matter of the Application of P.H. Glatfelter Company for Certification as an Eligible Ohio renewable Energy Resource Generating Facility*, Case No. 09-730-EL-REN, Entry at 3 (October 15, 2009). See also, *In the*



issue raised by the Companies is not a new or novel question of interpretation, law, or policy.

#### **4. The Ruling Is Not Contrary to Commission Precedent.**

The Companies claim that the Attorney Examiners' ruling is contrary to prior Commission precedent. In making their argument, the Companies cite to a portion of the hearing transcript during which the Attorney Examiner asks intervenors: "Can you show me an examiner's entry where it say you get to miss the filing deadlines to [cure] defects?" (Tr. Vol. XXV at 5028:25 – 5029:2).<sup>14</sup> Although the Companies state no response was provided to that question, the Companies failed to read the remainder of the hearing transcript, which clearly shows that the intervenors subsequently made oral arguments to the Attorney Examiners regarding why the prefiled documents did not contain defects. (Tr. Vol. XXV at 5028:24 through 5032:6). Specifically, the intervenors stated that the testimony of Ms. Vespoli is a self-authenticated document as a public record produced by a public entity. (Tr. Vol. XXV at 5029:9-12). Ms. Vespoli testified on April 9, 2013 before the Ohio Senate Public Utilities Committee, a public entity. Her testimony was recorded and retained by the government body, the Ohio Senate. It is a public record. Nonetheless, assuming arguendo, that Ms. Vespoli's testimony was not self-authenticating, a copy of her testimony was certified as correct through an affidavit stating that the document was a true and accurate copy of her testimony. Dr. Hill not only had a copy of that affidavit with him at the hearing, but the witness of the affidavit

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*Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider Dr-IM and Rider Au for 2013 SmartGrid Costs*, Case No. 14-1051-GE-RDR, Entry at 6 (February 5, 2015).

<sup>14</sup> Hearing Transcript citations indicate a reference to the transcripts of the hearing in this proceeding, Case No. 14-1297-EL-SSO.

was present as well. The Attorney Examiners clearly agreed that Ms. Vespoli's testimony was properly authenticated, as well as relevant, when they denied the motion to strike and admitted the testimony into the record.

While the Companies included examples from this proceeding in which the Attorney Examiners have sustained objections and excluded evidence for failure to properly authenticate certain documents,<sup>15</sup> there are other instances where the Attorney Examiners denied motions to strike.<sup>16</sup> Ms. Vespoli's testimony can be distinguished from the examples cited by the Companies because her testimony is a public record, is self-authenticating, and was appropriately verified (and further authenticated) prior to being admitted into the record.

Given that the Companies cannot meet the requirements established in Rule 4901-1-15(B)(1), Ohio Administrative Code, its request for certification fails as a matter of law.

**5. If the Commission Accepts the Companies' Appeal, It Should Dismiss the Appeal Because the Companies Have Failed To Show Any Prejudice from the Attorney Examiner's Ruling.**

Even if the Interlocutory Appeal is certified, the Commission has the discretion to dismiss the Interlocutory Appeal if a party has failed to show prejudice from the ruling, Rule 4901-1-15(B)(2), Ohio Administrative Code. The Commission should

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<sup>15</sup> See Memorandum in Support of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners' Oral Rulings at 8.

<sup>16</sup> See, e.g., Tr. Vol. XIX at 3690: 11-15 where the Attorney Examiners' denied a motion to strike two exhibits submitted by the Companies stating: "We believe the Commission needs the full record of or regarding the final Clean Power Plan and this information had been beneficial in their ultimate decision in the proceeding."

exercise its discretion in this case and dismiss the appeal given that the Companies have suffered no prejudicial effect from the rulings.

The Companies have failed to provide any evidence demonstrating that they have in fact suffered or will suffer undue prejudice or expense due to the Attorney Examiners' rulings. The argument that the Companies will be forced to spend substantial resources responding to the arguments contained in Dr. Hill's second supplemental testimony is both exaggerated and misplaced. OMAEG provided the Companies a copy of Dr. Hill's second supplemental testimony on August 10, 2015, with Ms. Vespoli's testimony attached, in accordance with the filing requirements established by Rule 4901-1-29, Ohio Administrative Code. Rule 4901-1-29, Ohio Administrative Code, states:

- (A) Except as otherwise provided in this rule, all expert testimony to be offered in commission proceedings, except testimony to be offered by the commission staff, shall be reduced to writing, filed with the commission, and served upon all parties prior to the time such testimony is to be offered.
- (B) Notwithstanding paragraph (A) of this rule, the presiding hearing officer may, in his or her discretion, permit an expert witness to present additional oral testimony at the hearing, provided that: such testimony could not, with reasonable diligence, have been filed and served within the time limits established by the commission or the presiding hearing officer or the presentation of such testimony will not unduly delay the proceeding or unjustly prejudice any other party.

Ms. Vespoli's testimony provided at the hearing on October 13, 2015 as EWH Supplemental Attachment A, marked as evidence as Attachment A to OMAEG Ex. 19, moved into evidence, and admitted into evidence was the same testimony attached to Dr. Hill's prefiled second supplemental testimony on August 10, 2015. There were not "different versions" of the testimony as stated by the Companies and therefore there was

no “unfair surprise.”<sup>17</sup> Rather, Dr. Hill brought an affidavit with Ms. Vespoli’s testimony attesting to the fact that Ms. Vespoli’s testimony attached to Dr. Hill’s testimony was a true and accurate copy. As previously discussed, this affidavit served only to aid in the verification and authentication of the public document (to the extent necessary) when it was provided as part of direct testimony at the evidentiary hearing and moved to be admitted into the record. OMAEG was merely doing its due diligence to respond to anticipated evidentiary objections.

The concerns raised by the Companies on this issue are not prejudicial. The Companies will have to spend no additional resources in responding to Dr. Hill’s testimony, and the testimony of all intervening witnesses to this proceeding. The Companies had the opportunity to cross examine Dr. Hill regarding all of his attachments, including Ms. Vespoli’s testimony, and will have the opportunity to articulate their concerns with the public document and its contents in their post-hearing brief. Contrary to the Companies’ claims, it would be prejudicial to the intervenors, as well as the Commission, if the public testimony of a Senior Executive of FirstEnergy Corp. was not admitted in the record given the critical information contained in the testimony and its relevancy to the current proceeding. This relevancy was acknowledged in the Attorney Examiners’ ruling. (Tr. Vol. XXV 5036:3-7).

Dr. Hill utilizes Ms. Vespoli’s testimony to explain that the Companies took a public position in 2013 that directly contradicts their filings in this proceeding. Ms. Vespoli discusses in her testimony in April 2013 before the Senate Public Utilities

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<sup>17</sup> See Memorandum in Support of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company’s Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners’ Oral Rulings at 11.

Committee the following: whether the Companies' projections and forecasts are accurate related to the growth of electricity in Ohio;<sup>18</sup> whether "[customers] may determine that the long-term payback [of a program] may not justify the up-front costs";<sup>19</sup> whether the proposed stipulations adopting certain energy efficiency and peak demand reduction programs are appropriate; whether the energy efficiency programs are cost-effective;<sup>20</sup> whether customers should be required to pay for certain energy efficiency programs that benefit others;<sup>21</sup> whether the proposal will have a direct effect on competing businesses;<sup>22</sup> and whether businesses and consumers should be permitted to make their own decisions regarding how to meet specific energy needs.<sup>23</sup> In concluding her testimony, Ms. Vespoli states:

"Ultimately, businesses and consumers should be allowed to make their own decision on how to meet their specific energy needs. We cannot afford arbitrary and overly prescriptive requirements that raise electricity prices."<sup>24</sup>

These issues discussed by Ms. Vespoli are directly related to the current proceedings and specifically address the issues pending before the Commission (e.g., whether customers should be required to pay costs associated with purchasing unregulated affiliate generating units through a Retail Rate Stability rider.) As the Attorney Examiners' recognized, relevancy is a critical factor in reviewing the

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<sup>18</sup> Ms. Vespoli states that "[e]lectric demand remains flat, and wholesale power prices are at their lowest levels in 10 years. But the game changer is the new generation supply option. A gas plant fired by shale gas—an abundant resource that we didn't really know existed five years ago." Testimony of Leila Vespoli Before the Senate Public Utilities Committee at 3-4 (April 9, 2013). She also stated that "there is no load growth projected in any Ohio utility service territory between 2007 and 2020" *Id.* at 5.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> Vespoli argues against "costly programs that discourage electric load growth despite low power prices and adequate generation supply." *Id.* at 5.

<sup>21</sup> Vespoli states that many businesses are being required to invest in programs that benefit certain stakeholders, which "amounts to an entitlement program that shifts costs from one group of businesses to another." *Id.* at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1-7.

<sup>24</sup> *Id.* at 7.

reasonableness and appropriateness of the admission of the attachments attached to Dr. Hill's testimony and provided on October 13, 2015 as direct expert testimony in the evidentiary hearing.<sup>25</sup>

## V. CONCLUSION

As set forth more fully above, OMAEG respectfully requests that the Commission deny the Companies' request for certification and application for review of the Attorney Examiners' oral rulings regarding the testimony of Ms. Vespoli as an attachment to Dr. Hill's second supplemental testimony.

Respectfully submitted,

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*Counsel for OMAEG*

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<sup>25</sup> Tr. Vol. XXV 5036:3-7; Tr. Vol. XXVII 5491:3-22.

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon the following parties via electronic mail on October 19, 2015.

/s/ Danielle M. Ghiloni  
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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 Edison ) Case No. 14-1297-EL-SSO  
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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**AFFIDAVIT OF MELISSA SCHAUB**

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I, Melissa Schaub, Associate (Ohio Bar admission pending) at Carpenter Lipps & Leland LLP, being first duly sworn, depose and say:

1. On September 25, 2015, I contacted the Ohio Historical Society to determine if they could authenticate copies of legislative testimony given to the Ohio Senate. I spoke with a member of the Archives staff, who indicated that the Ohio Historical Society does stamp legislative records to indicate that the records are true and authentic copies of the legislative records that the Ohio Historical Society received from the Ohio Senate.
2. The Ohio Historical Society Archives employee informed me that the Ohio Historical Society does not yet have Ohio Senate records from April 2013, and that these records would still be at the Ohio Senate.
3. On September 25, 2015, I spoke with someone in the Ohio Senate Clerk's office who indicated that the Ohio Senate still had in its possession legislative records from April 2013, including records of legislative testimony, and that these legislative records had not yet been transferred to the Ohio Historical Society. The clerk on the phone indicated that he believed that the Ohio Senate does not authenticate or certify legislative documents.
4. On October 1, 2015, I spoke with Donn Parsons, Deputy Legal Counsel at the Ohio Senate. He indicated that the Ohio Senate does not certify or authenticate records for third parties, and that the Ohio Senate's position is that the documents are self-authenticating and "speak for themselves."

**Attachment A**

5. On October 1, 2015, I obtained an electronic copy of the testimony presented to the Ohio Senate Public Utilities Committee, submitted by Leila L. Vespoli on April 9, 2013, from Mr. Parsons via electronic correspondence (collectively attached hereto as Attachment A). The cover page of the testimony indicates that Ms. Vespoli is the Executive Vice President and General Counsel of FirstEnergy. The cover page of the testimony also indicates the title of the testimony: "Revisiting Ohio's Energy Efficiency Mandates."
6. I attest that Attachment A attached hereto is a true and accurate copy of the electronic correspondence and testimony that was provided to me electronically by Mr. Parsons, Deputy Legal Counsel at the Ohio Senate, on October 1, 2015.

FURTHER AFFIANT SAYETH NAUGHT.

Date: \_\_\_\_\_

\_\_\_\_\_  
Melissa Schaub

STATE OF OHIO :

COUNTY OF FRANKLIN :

Sworn before me and subscribed in my presence this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

## Melissa Schaub

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**From:** Parsons, Donn [Donn.Parsons@ohiosenate.gov]  
**Sent:** Thursday, October 01, 2015 4:01 PM  
**To:** Melissa Schaub  
**Attachments:** Vespoli Testimony.pdf

Donn Parsons  
Deputy Legal Counsel  
Senate Majority Caucus  
(614)466-8212

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/19/2015 5:23:21 PM**

**in**

**Case No(s). 14-1297-EL-SSO**

Summary: Memorandum Contra Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Request For Certification and Application For Review of an Interlocutory Appeal of the Attorney Examiners' Oral Rulings electronically filed by Mrs. Kimberly W. Bojko on behalf of OMA Energy Group