

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

---

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S MOTION TO STRIKE  
PORTIONS OF THE REPLY BRIEF OF CONSTELLATION NEWENERGY, INC. AND  
EXELON GENERATION COMPANY LLC**

---

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully move to strike the following portions of the Reply Brief of Constellation NewEnergy, Inc. and Exelon Generation Company LLC (“Exelon”):

1. Page 39, Line 15 through Page 40 to the end of the DP&L table.
2. Page 41, the third through sixth lines of the table at the bottom of the page.

The Commission should strike this material from Exelon’s reply brief because Exelon relies on documents from other pending Commission proceedings that are not in the record in this case.

For these reasons and those set forth in the attached memorandum in support, the Commission should grant this motion and strike the portions listed above of Exelon’s reply brief.

Respectfully Submitted,

/s/ James W. Burk

James W. Burk (0043808)  
Counsel of Record  
Carrie M. Dunn (0076952)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
Telephone: (330) 384-5861  
Fax: (330) 384-8375  
burkj@firstenergycorp.com  
cdunn@firstenergycorp.com

David A. Kutik (0006418)  
JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Fax: (216) 579-0212  
dakutik@jonesday.com

James F. Lang (0059668)  
N. Trevor Alexander (0080713)  
CALFEE, HALTER & GRISWOLD LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, OH 44114  
Telephone: (216) 622-8200  
Fax: (216) 241-0816  
jlang@calfee.com  
talexander@calfee.com

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

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

---

**MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY IN SUPPORT  
OF MOTION TO STRIKE PORTIONS OF THE REPLY BRIEF OF CONSTELLATION  
NEWENERGY, INC. AND EXELON GENERATION COMPANY LLC**

---

In Exelon’s reply brief, it attempts to make a “slippery slope” argument by reference to documents submitted in AEP’s PPA Rider proceeding, Case No. 14-1693-EL-RDR, and DP&L’s recently-filed ESP proceeding, Case No. 16-395-EL-SSO.<sup>1</sup> Yet these documents and the information they contain are not in the evidentiary record in this case. Accordingly, the Commission should strike from Exelon’s reply brief its discussion of and references to these documents.

Exelon’s reliance on documents and information submitted in other Commission proceedings is improper and contrary to the Rules of Evidence. This information is not part of the record in this case, and the Commission has rejected prior efforts of parties to include information in a brief that is not part of the record. *See, e.g., In the Matter of FAF, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, PUCO Case No. 06-786-TR-CVF, Opinion and Order at 3 (Nov. 21, 2006). In particular, the Commission has struck from reply briefs non-record evidence that was submitted in other Commission proceedings, finding that it

---

<sup>1</sup> Exelon Reply Brief, pp. 39-41.

would be inappropriate to take administrative notice of the information after post-hearing briefs had been filed. *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, Case No. 08-917-EL-SSO, Order on Remand at 9-10 (Oct. 3, 2011); *In the Matter of the Application of Ohio American Water Company to Increase its Rates for Water and Sewer Services Provided to its Entire Service Area*, Case No. 09-391-WS-AIR, Opinion and Order at 8-9 (May 5, 2010).

If this information is allowed to remain in Exelon's reply brief, the Companies would be prejudiced as they would have no opportunity to rebut or distinguish the information that Exelon seeks to introduce into the record. For example, given that the deadline for filing reply briefs has passed, the Companies have no ability at this time to distinguish their proposal as the only one to include nuclear assets. The Companies also are prejudiced by being unable to rebut Exelon's "slippery slope" argument as ignoring, for example, the Commission's statutory obligation to consider each individual ESP before it, and each stipulation and recommendation submitted to it, pursuant to applicable Ohio laws and regulations. Therefore, the Commission should reject Exelon's improper attempt to introduce this information into the record via its reply brief.

For the foregoing reasons, the Commission should grant the Companies' motion to strike.

Respectfully Submitted,

/s/ James W. Burk  
James W. Burk (0043808)  
Counsel of Record  
Carrie M. Dunn (0076952)  
FIRSTENERGY SERVICE COMPANY  
76 South Main Street  
Akron, OH 44308  
Telephone: (330) 384-5861  
Fax: (330) 384-8375  
burkj@firstenergycorp.com

cdunn@firstenergycorp.com

David A. Kutik (0006418)  
JONES DAY  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Fax: (216) 579-0212  
dakutik@jonesday.com

James F. Lang (0059668)  
N. Trevor Alexander (0080713)  
CALFEE, HALTER & GRISWOLD LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, OH 44114  
Telephone: (216) 622-8200  
Fax: (216) 241-0816  
jlang@calfee.com  
talexander@calfee.com

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

**CERTIFICATE OF SERVICE**

I certify that this Motion to Strike was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 4th day of March, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

/s/ N. Trevor Alexander  
One of Attorneys for the Companies

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

**Commission of Ohio Docketing Information System on**

**3/4/2016 3:45:12 PM**

**in**

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

Summary: Motion to Strike Exelon Post-Hearing Trial Brief electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company