

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**MEMORANDUM CONTRA OF PJM INTERCONNECTION  
TO OHIO EDISON COMPANY,  
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY,  
AND THE TOLEDO EDISON COMPANY’S MOTION TO STRIKE PORTIONS OF  
THE BRIEF FOR AMICUS CURIAE PJM INTERCONNECTION, L.L.C.**

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PJM Interconnection, L.L.C., (“PJM”) files this Memorandum Contra to respond to the motion made by Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FE”) to strike portions of PJM’s Amicus Brief filed in this proceeding. Specifically, FE seeks to strike the portion of PJM’s Amicus Brief which makes reference to a published statement referenced in an article of *The Plain Dealer*, dated August 30, 2015, which was attributed to PUCO Chair Andre Porter, arguing that the referenced news article is not in the evidentiary record in the case and constitutes hearsay.<sup>1</sup>

Generally speaking, an Amicus Brief filed on behalf of a non-party offers information that bears on the case at hand and is typically not strictly bound by prevailing rules of evidence since the determination on whether to admit the information lies solely within the discretion of the adjudicator. Importantly, the Commission here is permitted to take judicial notice of any facts that is not subject to reasonable dispute at any stage of the proceeding, including facts

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<sup>1</sup> FE seeks to strike the sentence beginning on page 3 of PJM’s Amicus Brief, and related footnote 2, which states: “Moreover, since the Commission has stated that the PJM marketplace remains the primary vehicle it intends to utilize to attract and incent new generation resources, how the Commission implements this provision is critically important to whether those Ohio-specific goals can be achieved.” (footnote omitted).

outside of the record in a case, and as such, if the Commission chooses, it could take judicial notice of the cited statement for whatever purposes it deems necessary in the determination of the case at hand.<sup>2</sup>

As such, it follows that there simply is no basis upon which the Commission should entertain FE's Motion to Strike as it does not cite to any prevailing rule that would require the Commission to disregard the statement. PJM's selected reference to the widely-published *The Plain Dealer* article and highlighted statement of Chair Porter was intended to highlight relevant Ohio regulatory policy that may be of some help to the Commission in its determination of the case at hand – the purpose of an Amicus Brief in the first instances. Moreover, as to FE's hearsay assertions, it should be noted that the quoted statement was not proffered to rebut any witness or prove the statement one way or the other; it was offered as a reasonable opinion that has not been disputed by any party in this proceeding.

FE's reliance upon the cited cases of *In the Matter of the Complaint of the City of Reynoldsburg Ohio*<sup>3</sup>, and *In the Matter of FAF, Inc.*<sup>4</sup>, are inapposite the Commission's ultimate determination on FE's Motion to Strike as those cases spoke to the admission of record evidence presented by parties to the respective cases, and are not dispositive of how the Commission has viewed extra-record evidence offered in an Amicus Brief of a non-party.

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<sup>2</sup> See, e.g., *Canton Storage and Transfer Co., et al., v. Pub. Util. Comm.*, 72 Ohio St. 3d 1 (1995).

<sup>3</sup> *In the Matter of the Complaint of the City of Reynoldsburg, Ohio, Complainant*, PUCO Case No. 08-846-EL-CSS, 2011 WL 1428237 (Opinion and Order dated April 5, 2011).

<sup>4</sup> *In the Matter of FAF, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, PUCO Case No. 06-786-TR-CVF, 2006 WL 3932766 (Opinion and Order dated November 21, 2006).

## **Conclusion**

For the foregoing reasons, the Commission should deny FE's Motion to Strike.

Respectfully submitted,

**/s/ Evelyn R. Robinson**

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Memoranda Contra of PJM Interconnection to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Motion to Strike Portions of the Brief for Amicus Curiae PJM Interconnection, L.L.C. was served this 11<sup>th</sup> day of March, 2016 via electronic mail upon the individuals listed.

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Summary: Memorandum Memorandum Contra of PJM Interconnection to Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company's Motion to Strike Portions of the Brief For Amicus Curiae PJM Interconnection, L.L.C. electronically filed by Mrs. Denise M Schuhart on behalf of Robinson, Evelyn R. and PJM Interconnection, L.L.C.