

**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 )**

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

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On February 26, 2016, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully moved to strike portions of the Brief for Amicus Curiae PJM Interconnection, L.L.C. (“PJM”) that discuss and quote a news article from *The Plain Dealer*.

PJM argues that a non-party filing an amicus brief is not subject to prevailing rules of evidence. PJM offers no law in support of its position. Indeed, while the Commission is not bound by Ohio’s Rules of Evidence, the Commission has repeatedly adhered to the Rules as is shown by the cases cited in the Companies’ Motion to Strike.<sup>1</sup> Pursuant to the Rules of Evidence, the quotes contained within the news article are hearsay and unauthenticated. The Commission should, therefore, strike PJM’s discussion of *The Plain Dealer* article from PJM’s brief.

PJM further argues that the Commission is permitted to take administrative notice of facts outside of the record in a case. PJM cites *Canton Storage & Transfer Co.*, 72 Ohio St. 3d 1 (1995), to support this claim. However, in *Canton Storage & Transfer Co.*, the Commission did

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<sup>1</sup> See *In the Matter of the Complaint of the City of Reynoldsburg, Ohio*, PUCO Case No. 08-846-EL-CSS, 2011 WL 1428237 (Opinion and Order dated Apr. 5, 2011); *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, at 3).

not expressly take administrative notice of facts outside of the record. Rather, the Commission merely relied on testimony outside of the record, which the Ohio Supreme Court found to be improper. The case also did not involve purported “facts” contained in an amicus brief or any other type of brief. Further, “[t]he Commission has an obligation to rely on the evidence admitted into the record, not any party’s brief, to justify its conclusions.” *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained With the Rate Schedules of Vectren Energy Delivery of Ohio, Inc. and Related Matters*, PUCO Case No. 02-220-GA-GCR, 2005 Ohio PUC LEXIS 311 (Opinion and Order dated June 14, 2005, at 10). It would be inherently unfair and prejudicial to the Companies to consider evidence outside of the record in this case. Accordingly, the Commission should strike PJM’s discussion of *The Plain Dealer* article from Page 4, Line 13 beginning with the word “Moreover” and continuing through Line 15 ending with the word “resources” and including Footnote 2 from PJM’s brief.

Finally, PJM claims that the cases cited by the Companies in the Motion to Strike are inapposite as the cited cases spoke to the admission of record evidence presented by parties rather than extra-record evidence presented by a non-party in an amicus brief. However, *In the Matter of FAF, Inc.*, cited by the Companies’ in the Motion to Strike, did involve extra-record evidence.<sup>2</sup> The Commission in that case found that “[t]he affidavit attached to FAF’s brief, and also filed separately after the hearing on October 24, 2006, was not in the case record that was submitted at hearing, nor was it a late-filed exhibit agreed upon by the parties.”<sup>3</sup> The Commission further stated that “[d]ocuments that are not part of the record, and that were not designated a late-filed exhibit at hearing, cannot be attached to a brief, or filed after a hearing, and thereby be made a part of the record.”<sup>4</sup> While neither case cited by the Companies involved

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<sup>2</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, at 3).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

an amicus brief filed by a non-party, PJM offers no reason why the legal principles in the cited cases should not apply in this case. The Commission should, therefore, strike the portions of PJM's brief that discuss *The Plain Dealer* article as hearsay and not part of the record in this case.

For the foregoing reasons, the Commission should grant the Companies' Motion to Strike.

Respectfully Submitted,

/s/ James W. Burk

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**CERTIFICATE OF SERVICE**

I certify that this Reply in Support of Motion to Strike was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 18th 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/ James F. Lang

One of Attorneys for the Companies

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Summary: Reply In Support of Motion to Strike Portions of Amicus Brief of PJM  
Interconnection electronically filed by Mr. James F Lang on behalf of Ohio Edison Company  
and The Cleveland Electric Illuminating Company and The Toledo Edison Company