

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

**MOTION OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY TO STRIKE
PORTIONS OF THE MEMORANDUM IN SUPPORT OF NORTHEAST OHIO PUBLIC
ENERGY COUNCIL’S SECOND APPLICATION FOR REHEARING**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully move to strike the following portions of the Memorandum in Support of Northeast Ohio Public Energy Council’s (“NOPEC”) Second Application for Rehearing, to wit: page 7, beginning with the word “Recent” and continuing through the end of the paragraph with the word “FEC” and footnotes 18 and 19.

The Commission should strike this material from NOPEC’s brief because, to the prejudice of the Companies, it relies on information that is not part of the record. Further, one of the articles relied upon constitutes inadmissible hearsay. For these reasons and those set forth in the attached memorandum in support, which is incorporated herein, the Commission should grant this motion and strike the portions of NOPEC’s brief noted above.

Date: November 25, 2016

Respectfully submitted,

/s/ David A. Kutik

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**MEMORANDUM IN SUPPORT OF THE MOTION OF OHIO EDISON COMPANY,
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OF NORTHEAST OHIO PUBLIC ENERGY COUNCIL’S SECOND APPLICATION
FOR REHEARING**

I. INTRODUCTION

On page 7 of the Memorandum in Support of its Second Application for Rehearing (“NOPEC AFR”), NOPEC cites and comments upon two articles, one published by Moody’s Investor Service (“Moody’s”) and the other published by Cleveland.com.¹ Neither of these articles is in evidence, and NOPEC’s reliance on them in its Application for Rehearing is prejudicial to the Companies, because they have no opportunity to respond. Further, the Cleveland.com article is inadmissible hearsay. The Commission should grant this Motion and strike NOPEC’s improper reliance on these materials from the NOPEC AFR.

II. NOPEC’S RELIANCE ON MATERIALS NOT IN EVIDENCE IS IMPROPER AND PREJUDICIAL

The Commission has now twice stricken discussions of evidence not in the record from intervenor briefs in this proceeding. First, in its March 31, 2016 Opinion and Order, the Commission struck portions of several intervenors’ briefs, finding that “new information should

¹ NOPEC AFR, p. 7 n. 18-19.

not be introduced after the closure of the record.”² Then, in granting the Companies’ motions to strike portions of certain rehearing briefs in the Fifth Entry on Rehearing, the Commission reiterated its holding and stated: “[I]t would be inappropriate to allow [new] information to be considered at this point in the proceeding, as the record is now closed and the Companies would not have opportunity to prepare and respond to that information.”³ The same rule applies here.

The articles cited and discussed by NOPEC are not in evidence, and the Companies have no opportunity to respond to them. NOPEC baldly cites these materials, not even asking the Commission to take administrative notice of them. Of course, the Commission could not properly take administrative notice in any event. Indeed, as noted in the Fifth Entry on Rehearing, “the Commission may take administrative notice of facts outside the record of a case *if the complaining parties have had an opportunity to prepare and respond to the evidence and they are not prejudiced by its introduction.*”⁴

NOPEC claims that these articles demonstrate that “[FirstEnergy Corp.’s] competitive market subsidiaries continue to have a potentially negative impact on [FirstEnergy Corp.]”⁵ If, however, the Companies had the chance to put on evidence in response, they would demonstrate that the Moody’s report cited by NOPEC and other similar reports show that FirstEnergy Corp. is taking aggressive action to shore up its regulated subsidiaries, to protect those subsidiaries’ customers, and to improve its own credit rating. Likewise, the Companies would produce other ratings agency publications pointing to the Commission’s approval of Rider DMR as a factor that will stabilize FirstEnergy Corp.’s credit rating as well as the ratings of its regulated subsidiaries.

² March 31, 2016 Opinion and Order (“March 31 Order”), p. 37.

³ Fifth Entry on Rehearing, pp. 171-72.

⁴ Fifth Entry on Rehearing, p. 172 (emphasis added).

⁵ NOPEC AFR, p. 7.

But the record is closed, and the Commission must protect the integrity of its proceedings by ensuring that parties are not prejudiced by the introduction of new evidence on brief. NOPEC ignores this. The portions of the NOPEC AFR relying on evidence not in the record must be stricken.

III. NOPEC IMPERMISSIBLY RELIES ON INADMISSIBLE HEARSAY

Portions of the NOPEC AFR must also be stricken because they rely on blatant hearsay. Specifically, NOPEC cites and discusses a Cleveland.com article in support of its arguments.⁶ NOPEC's reliance on this article is utterly inappropriate.⁷ As the Commission has recognized on two separate occasions in this proceeding with regard to newspaper articles, NOPEC's discussion of the Cleveland.com article and the information therein is improper and prejudicial.⁸ NOPEC brazenly disregards those rulings, and its reliance on inadmissible hearsay must therefore be stricken from its Application for Rehearing.

IV. CONCLUSION

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

⁶ NOPEC AFR, p. 7 n. 19.

⁷ See, e.g., *In the Matter of the Complaint of the City of Reynoldsburg, Ohio, Complainant*, Case No. 08-846-EL-CSS, 2011 WL 1428237, Opinion and Order (Apr. 5, 2011) (granting motion to strike portions of reply brief that discussed and attached newspaper article and holding "[t]he newspaper article in question is hearsay and consistent with Commission precedent and the Rules of Evidence should not be considered as part of the record in this case").

⁸ March 31 Order, p. 37; Fifth Entry on Rehearing, p. 171.

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/s/ David A. Kutik

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 25th day of November, 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 email.

/s/ David A. Kutik
David A. Kutik

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

Summary: Motion to Strike Portions of NOPEC's Second Application for Rehearing electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company