

**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. 18-1656-EL-ATA
Edison Company for Approval of a Tariff	)	
Change.	)	

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**MOTION TO STRIKE FIRSTENERGY’S LATE-FILED MEMORANDUM CONTRA  
BY  
OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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Office of the Ohio Consumers’ Counsel (“OCC”) filed a consumer protection Motion on September 10, 2020.<sup>1</sup> Any memorandum contra to that Motion was due by 5:30 p.m. on September 25, 2020.<sup>2</sup> FirstEnergy filed a memorandum contra the Motion at 11:29 p.m. on September 25, without any explanation for why it was filed late.<sup>3</sup> And FirstEnergy did not seek leave to file its Memorandum Contra out-of-time. The PUCO should, accordingly, strike FirstEnergy’s pleading and not consider it when ruling on OCC’s Motion.

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<sup>1</sup> Motion to Reject FirstEnergy’s July 31, 2020 Revised Tariff Updates to the Tax Savings Adjustment Rider (Sept. 10, 2020) (the “Motion”).

<sup>2</sup> Ohio Adm. Code 4901-1-12(B)(1) (memorandum contra due fifteen days after motion); Ohio Adm. Code 4901-1-02(D)(4) (electronic filings made after 5:30 p.m. are deemed filed at 7:30 a.m. on the next business day).

<sup>3</sup> Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Motion to Reject Tariff of the Office of the Ohio Consumers’ Counsel (the “Memorandum Contra”).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumer's Counsel

*/s/ Christopher Healey*

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**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**

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OCC filed its Motion on September 10, 2020. Under Ohio Adm. Code 4901-1-12(B), any memorandum contra was due 15 days later on September 25, 2020. And under Ohio Adm. Code 4901-1-02(D)(4), an electronic filing made after 5:30 p.m. shall be deemed filed at 7:30 a.m. on the next business day.

FirstEnergy filed its Memorandum Contra at 11:29 p.m. on September 25. Because it was filed after 5:30 p.m., it was deemed filed at 7:30 a.m. on September 28. Thus, it was filed 18 days after OCC’s Motion and was not timely under Ohio Adm. Code 4901-1-12(B).

The PUCO should strike the Memorandum Contra. Under Ohio Adm. Code 4901-1-13(A), an extension “of time to file pleadings or other papers may be granted upon motion of any party for good cause shown.” FirstEnergy did not file such a motion for an extension—it simply filed its memorandum contra late, without explanation. Thus, good cause has not been shown. In similar situations, the PUCO has refused to consider documents e-filed after 5:30 p.m. on the date they are due.<sup>4</sup> It should do the same here.

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<sup>4</sup> See, e.g., *In re the Procurement of Standard Service Offer Generation as Part of the Fourth Elec. Sec. Plan for Customers of [FirstEnergy]*, Case No. 16-776-EL-UNC, Entry on Rehearing (Sept. 9, 2020) (denying parties request that their filing be deemed timely even though it was filed after 5:30 p.m. on the due date).

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumer's Counsel

/s/ Christopher Healey

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Strike was served on the persons stated below via electronic transmission this 30th day of September 2020.

/s/ Christopher Healey

Christopher Healey

Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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**Case No(s). 18-1656-EL-ATA**

Summary: Motion Motion to Strike FirstEnergy's Late-Filed Memorandum Contra by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.