

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Approval of a Tariff Change.))) Case No. 18-1656-EL-ATA))

The Public Utilities Commission of Ohio (“PUCO”) should grant the Office of the Ohio Consumers’ Counsel’s (“OCC”) motion to strike¹ FirstEnergy’s late-filed memorandum contra.² FirstEnergy’s Late Filing was filed six hours after the deadline. And FirstEnergy did not provide any explanation for its lateness or seek leave to file it late until nine days after the Late Filing was filed. And even then, all that FirstEnergy could muster was a claim that the late filing resulted from “internet problems” with no further explanation or information.

In support of the Motion, OCC cited a recent ruling by the PUCO where it refused to consider documents e-filed after 5:30 p.m.³ In its memorandum contra OCC's motion to strike, FirstEnergy attempts to distinguish this precedent from its own case because in the prior case (the "SSO Auction Case"), there was a statutory deadline to file an application for rehearing, whereas here, the deadline was set by PUCO rule only.⁴ This argument fails for a simple reason:

⁴ Memorandum Contra of [FirstEnergy] to Motion to Strike at 2 (Oct. 13, 2020) (the “Memorandum Contra Motion to Strike”).

the 5:30 p.m. cutoff is not statutory in either case. In the SSO Auction Case, the PUCO ruled that its 5:30 p.m. deadline is consistent with the statute and therefore enforceable. But the PUCO did not rule that any statute required filings to be made by 5:30 p.m.⁵ Thus, there is nothing distinguishing the two cases.

FirstEnergy also claims that because OCC was allegedly not prejudiced by FirstEnergy's lateness, the Late Filing should be accepted.⁶ This argument is meritless. OCC was in fact prejudiced by FirstEnergy missing the deadline. FirstEnergy made the filing at 11:29 p.m. on a Friday evening. FirstEnergy's counsel did not serve a copy of its memorandum contra on OCC, so OCC did not even know the filing occurred until it received electronic notice at 8:00 a.m. on the following Monday (September 28).

FirstEnergy claims that OCC cannot have been prejudiced because OCC ultimately filed its reply on Wednesday of that week. The PUCO should give this argument no weight because it puts OCC in an impossible position. According to FirstEnergy, by still filing a reply on time, OCC proved that it was not prejudiced by the lateness of FirstEnergy's Late Filing. But what is the alternative? Should OCC file its reply late, just so it can say that there was prejudice?

The PUCO's timing rules exist so that parties have adequate time to prepare filings. Of course, in some instances, parties like OCC *can* work on shorter deadlines than those proposed by the rules, either by working outside of normal business hours or postponing work on other matters. But that does not mean that the full time allotment was unnecessary or inconsequential. Nor does it mean that the PUCO should routinely allow parties to file their documents late without good cause.

⁵ *In re Procurement of Standard Serv. Offer Generation*, Case No. 16-776-EL-UNC, Entry on Rehearing (Sept. 9, 2020)

⁶ Memorandum Contra at 2.

FirstEnergy has failed to demonstrate good cause for its late filing, as required by Ohio
Adm. Code 4901-1-38(B). Its Late Filing should be struck.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission this 20th day of October 2020.

/s/ Christopher Healey

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

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Summary: Reply Reply in Support of 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.