

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Review of Ohio)
Edison Company, The Cleveland Electric)
Illuminating Company, and The Toledo) Case No. 17-974-EL-UNC
Edison Company's Compliance with R.C.)
4928.17 and Ohio Adm. Code Chapter)
4901:1-37.)**

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY'S REPLY IN SUPPORT OF
THEIR MOTION FOR A PARTIAL PROTECTIVE ORDER ON
OCC'S NOTICE TO TAKE DEPOSITION OF ROBERT MATTIUZ AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

I. INTRODUCTION

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's (collectively, the "Companies") Motion for a Partial Protective Order ("Motion")¹ properly seeks to limit the Office of the Ohio Consumers' Counsel's ("OCC") untimely and overbroad requests for the production of documents.² And contrary to OCC's unsupported claims,³ the Affidavit attached to the Companies' Motion⁴ describes the Companies' attempts to negotiate "a means to resolve the dispute without Commission intervention" and conveys their willingness to "consider a narrowly tailored proposal from OCC."⁵ Any assertion

¹ Case No. 17-0974-EL-UNC, Motion for a Partial Protective Order (May 9, 2022) ("Motion" or "Mot." and "Mem.").

² Mot. at Exhibit A, Notice to Take the Deposition of Robert Mattiuz and Request for Production of Documents ("Notice," where individual document requests are referred to as "OCC Request No.").

³ Case No. 17-0974-EL-UNC, Memorandum Contra to the FirstEnergy Utilities' Motion for a Protective Order, at 1-3 (May 24, 2022) ("OCC Mem.").

⁴ *See also*, Mot. at 1-2.

⁵ Mot. at Exhibit B, ¶ 6. Accordingly, any argument that the Companies' Motion is "defective" should be rejected.

that the Companies “do not want to produce the documents”⁶ ignores the Companies’ stated objections.

Regardless, OCC’s counterarguments to the Companies’ Motion are without merit. OCC’s “legal rights” have not been denied—OCC had until November 24, 2021 to request additional documents in this proceeding. It did not. It cannot now use O.A.C. 4901-1-25 to demand documents responsive to seventeen irrelevant and overbroad discovery requests, particularly in light of the Attorney Examiners’ April 7 Entry denying intervenors’ request to reopen discovery.

For the reasons stated in the Companies’ memorandum in support of their Motion for a Partial Protective Order, and those explained below, the Companies respectfully request that the Commission grant their Motion and issue an order stating that the Companies are not required to produce documents in response to OCC’s Notice.

II. ARGUMENT

A. O.A.C. 4901-1-25 Does Not Permit OCC To Serve Untimely Discovery Requests.

OCC claims the Attorney Examiners “did not deny parties their right to ask for documents to be produced at depositions.”⁷ OCC misstates the Attorney Examiners’ rulings and the applicable procedural rules. Document discovery closed in November of last year.⁸ The Attorney Examiners “did not extend the discovery deadline when the hearing was previously continued, in part, because no party requested such an extension.”⁹ And Intervenors’ “generalized assertion” they needed “more time for case preparation” was rejected precisely because Intervenors failed to

⁶ OCC Mem. at 1, 2.

⁷ OCC Mem. at 4.

⁸ See Case No. 17-974-EL-UNC, Entry, at ¶ 24(a) (Oct. 12, 2021).

⁹ Case No. 17-974-EL-UNC, Entry, at ¶ 27 (Apr. 7, 2022).

“identif[y] any line of inquiry or specific type of documents” that would be “beneficial to discovery before the hearing.”¹⁰

Yet OCC asserts it is still allowed to request documents consistent with O.A.C. 4901-1-25(A) and (D). Setting aside that O.A.C. 4901-1-25 applies to subpoenas, whereas OCC has noticed the deposition of a party under O.A.C. 4901-1-21, OCC cannot ignore the discovery deadline.¹¹ Reading as much into O.A.C. 4901-1-25(C) undermines the rule’s protections from “unreasonable or oppressive” subpoenas, as well as the Attorney Examiners’ ability to manage the procedural schedule. Nothing in O.A.C. 4901-1-21(E), which does apply to party deposition notices, permits a party to override a document discovery deadline. Therefore, OCC is without grounds to demand the documents it now seeks.

B. OCC’S Document Requests Are Irrelevant And Overly Burdensome.

OCC’s argument that it is “granted ample rights of discovery” does not save its Notice. O.A.C. Rule 4901-1-16 limits the scope of discovery to non-privileged matters that are “relevant to the subject matter of the proceeding” or reasonably calculated to lead to the discovery of admissible evidence,¹² and which are “proportional to the needs of the case.”¹³ OCC’s document requests, even if timely, are irrelevant and unduly burdensome and should be stricken consistent with O.A.C. 4901-1-24.¹⁴ OCC’s Memorandum all but proves this point.

First, the “context” OCC presents shows exactly why their document requests are irrelevant to the Companies’ compliance with Ohio corporate separation rules. Inquiries related to “charges

¹⁰ *Id.* (emphasis added).

¹¹ *See* Mem. at 2-4.

¹² O.A.C. 4901-1-16(B).

¹³ Ohio Civ. R. 26(B)(1).

¹⁴ O.A.C. 4901-1-24(A)(1).

or allocations for political and charitable spending to the FirstEnergy Utilities”¹⁵ or “work on legislation during 2017 through 2019 for H.B. 6, S.B. 128, H.B. 178 and H.B. 381”¹⁶ have nothing to do with this case. Indeed, with respect to H.B. 6, whether the “cost[s] of any political or charitable spending in support of Am. Sub. H.B. 6, or the subsequent referendum effort, were . . . included, directly or indirectly, in any rates or charges paid by ratepayers in this state,” is exactly the scope of the Commission audit ordered in Case No. 20-1502-EL-UNC.¹⁷

Second, as OCC acknowledges, FERC documents, though irrelevant,¹⁸ are already within their possession.¹⁹ Thus asking the Commission to “require the production of these documents at the deposition”²⁰ unnecessarily burdens the Companies, especially where OCC has not identified any deficiencies in the FERC productions. OCC has no basis to ask the Companies to *reproduce* thousands of documents during Mr. Mattiuz’s deposition when it has not completed its review of the hundreds of thousands of documents produced in this and other proceedings.²¹

Third, OCC’s characterizations of the Companies’ scope objections miss the mark. The Companies point to specific requests and terms which render OCC’s Notice vague, ambiguous, and overbroad.²² And with respect to Ms. Yeboah-Amankwah, OCC indicates she was

¹⁵ OCC Request Nos. 15-17.

¹⁶ OCC Request No. 11. Moreover, S.B. 128, H.B. 178, and H.B. 381 are irrelevant to this and any other proceeding against the Companies, including Case No. 20-1502-EL-UNC.

¹⁷ Case No. 20-1502-EL-UNC, Entry, at ¶ 14 (Mar. 9, 2022); *id.*, Entry, at ¶ 5 (Sept. 15, 2020).

¹⁸ OCC repeats its incorrect assertion that “[t]he utilities (unlike FirstEnergy Corp.) did not claim the [FERC] information was not relevant to the proceeding.” OCC Mem. at 8. Such a statement is directly at odds with the briefings in this matter and Case No. 20-1502.

¹⁹ OCC Mem. at 7-8.

²⁰ OCC Mem. at 8.

²¹ Case No. 20-1502, Hr’g. Tr. at 14:22-15:13 (Apr. 20, 2022). Nor has OCC provided any update to the Attorney Examiners concerning the status of its review of documents produced by the Companies and FirstEnergy Corp. despite being expressly asked to do so. *See* Case No. 17-974-EL-UNC, Entry, at ¶ 30 (Apr. 7, 2022); *id.*, Joint Discovery Status Report by Office of the Ohio Consumers’ Counsel and Northeast Ohio Public Energy Council (May 10, 2022).

²² Mem. at 4-6.

“responsible for corporate separation compliance during *most* of the time-period being investigated here,”²³ but requests, for example, all records in her possession or control over a four year period,²⁴ all communications between Ms. Yeboah-Amankwah and Mr. Mattiuz since January 1, 2019 without limitation to corporate separation matters,²⁵ and all documents Ms. Yeboah-Amankwah may have taken with her from FirstEnergy Corp. irrespective of their relevance to the Companies. The Companies’ Motion sufficiently states their objections—objections which are further justified by OCC’s inability to tailor their requests to Ms. Yeboah-Amankwah’s tenure as the Companies’ Compliance Officer and this corporate separation case.

The Companies remain willing to put forth Mr. Mattiuz for deposition. But as it stands, OCC’s untimely, irrelevant, and overbroad requests for documents should be rejected.

III. CONCLUSION

For all the reasons stated in the Companies’ Motion for a Partial Protective Order and memorandum in support, and explained further here, the Companies ask that the Commission grant their Motion and issue an order stating that the Companies are not required to produce documents in response to OCC’s Notice.

²³ OCC Mem. at 8.

²⁴ OCC Request No. 1.

²⁵ OCC Request No. 9.

Dated: May 31, 2022

Respectfully submitted,

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On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 31, 2022. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Shalini B. Goyal

Attorney for the Companies

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Summary: Reply in Support of the Companies' Motion for a Partial Protective Order on OCC's Notice to Take Deposition of Robert Mattiuz and Request for Production of Documents electronically filed by Mrs. Shalini B. Goyal on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company