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**FIRSTENERGY CORP.**  
76 South Main Street  
Akron, OH 44308-1890  
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Fax: (330) 384-3875

**PUCO**

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**To:** PUCO Docketing **Date:** July 10, 2008  
**Firm:** **From:** Kathy J. Kolich, Esquire  
**Fax #:** 614/466-0313 **Pages:** 28 (including cover page)

**Subject:** Re: Case No. 08-428-EL-CSS  
Ohio Edison Company's Motion to Compel Discovery or in the  
Alternative to Dismiss the Instant Action and Memorandum in  
Support of Motion to Compel Discovery

**Comments:** Following is the Motion regarding the above case. The original and the required number of copies will be sent via overnight mail for delivery Friday, July 11, 2008. Please call me if you have any questions. Thank you.

**IF YOU DO NOT RECEIVE ALL OF THE PAGES MENTIONED ABOVE,  
PLEASE CALL CONFIRMATION NO. 330/384-4580 or 330/384-5801.**

The information contained in this facsimile transmission is confidential and privileged pursuant to the attorney-client privilege and the work product doctrine. Disclosure to anyone other than the named recipient or an authorized agent thereof is strictly prohibited. If this transmission was received in error, please immediately notify us by telephone, and return the transmission to the above address via U. S. Mail. Thank you.

**FirstEnergy**76 South Main Street  
Akron, Ohio 44308Kathy J. Kolich  
Senior Attorney330-384-4580  
Fax: 330-384-3875*Via Federal Express  
and Facsimile (614-466-0313)*

July 10, 2008

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

PUCO  
2008 JUL 10 PM 4:45  
RECEIVED-COMMERCIAL DIV

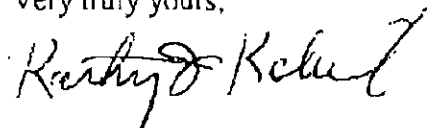
Dear Ms. Jenkins:

*Re: Ohio Edison Company's Motion to Compel Discovery or in the  
Alternative to Dismiss the Instant Action and Memorandum in  
Support of Motion to Compel Discovery  
Case No. 08-428-EL-CSS*

Enclosed for filing, please find the original and twelve (12) copies of *Ohio Edison Company's Motion to Compel Discovery or in the Alternative to Dismiss the Instant Action and Memorandum in Support of Motion to Compel Discovery* regarding the above-referenced case. Please file the enclosed *Motion*, time-stamping the two extras and returning them to me in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Very truly yours,

kag  
Enclosures

cc: Parties of Record

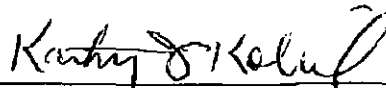
BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant,	)	
	)	
Complainant,	)	
	)	
vs.	)	CASE NO. 08-428-EL-CSS
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	

**OHIO EDISON COMPANY'S MOTION TO COMPEL DISCOVERY OR IN THE  
ALTERNATIVE TO DISMISS THE INSTANT ACTION**

Pursuant to Section 4901-J-23 of the Ohio Administrative Code, Respondent, Ohio Edison Company, for the reasons more fully discussed in the attached memorandum in support, respectfully moves this Commission to issue an Order compelling Complainant to participate in the discovery process and, if Complainant fails to comply with said order by July 24, 2008 or some other date deemed appropriate by the Commission, to dismiss the instant action.

Respectfully submitted,



Kathy J. Kolich (Reg. No. 0038855)  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
Phone: 330-384-4580  
Fax: 330-384-3875

On behalf of Ohio Edison Company

## MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY

### I. BACKGROUND

On or about April 2, 2008, Complainant, Thomas E. Merchant, filed a complaint against Ohio Edison Company ("Company"). Pursuant to Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code, the Company, on June 6, 2008, served upon Complainant the Company's first set of interrogatories, request for production of documents and request for access to Complainant's premises. (Exhibit A.) Complainant notified Company counsel that he would not allow access to his premises, resulting in a teleconference on June 20, 2008 with the attorney examiner assigned to this matter. During said teleconference, Complainant objected to the request for access to his premises, but not to any of the interrogatories or requests for production of documents. The attorney examiner ruled that the Company was entitled to access, yet Complainant refuses to comply with the directive.<sup>1</sup> (Exhibit B.) On June 24, 2008, a settlement conference was held in which the parties could not come to an agreement. During said settlement conference, the issue of responses to the Company's discovery was addressed. Complainant assured Company counsel that said responses would be received no later than June 30, 2008. (Exhibit D.) As of July 10, 2008, no responses have been received. On or about July 2, 2008 a notice of deposition was served upon Complainant (Exhibit C.) As a convenience to Complainant, counsel for the Company scheduled the deposition in Youngstown, rather than at the Company's headquarters in Akron, Ohio. As more fully explained on the attached affidavit of counsel (Exhibit D), counsel left no less than four voicemails between July 1, 2008 and July 9, 2008 asking Complainant to confirm

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<sup>1</sup> This refusal is the basis of the Company's initial motion to dismiss that was filed in the instant action on or about July 3, 2008.

that the date, time and location of the deposition was acceptable. Complainant failed to respond to any of counsel's messages. (Exhibit D.) On June 10, 2008, Complainant failed to appear for his deposition without any notice to Company counsel. Company counsel attempted to contact Complainant via counsel's mobile telephone, but the call would not go through. Counsel made the same attempt on several different telephones and the call went to Complainant's voice mail each time.<sup>2</sup> Id. Again, counsel for the Company left voice mails that were not returned. Id. The deposition was obviously cancelled and this motion to compel ensues.

For the reasons more fully discussed below, the Company asks this Commission to compel Complainant to participate in the discovery process no later than July 24, 2008, or another date deemed appropriate by this Commission, with said Order compelling Complainant to (i) respond to the Company's interrogatories; (ii) submit documents requested for production; (iii) reschedule the deposition on a mutually agreeable date; and (iv) grant Company's counsel access to Complainant's premises on a mutually agreeable date. If such order of the Commission is not adhered to in the time frame set forth by the Commission, the Company asks that the instant action be dismissed pursuant to Section 4901-1-23(F)(4) of the Ohio Administrative Code.

## II. ARGUMENT

Section 4901-1-23(A) of the Ohio Administrative Code provides in pertinent part:

(A) Any party, upon reasonable notice ... may move for an order compelling discovery with respect to:

(1) Any failure of a party to answer an interrogatory served under rule 4901-1-19 of the Administrative Code;

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<sup>2</sup> Counsel for the Company had her mobile telephone checked diagnostically with her cell phone provider. No problems were discovered and counsel for the Company has not experienced difficulty with any other telephone number. It appears that Complainant has blocked Company counsel's cell phone number. (Exhibit D.)

(2) Any failure of a party to produce a document or tangible thing or permit entry upon land or other property as requested under rule 4901-1-20 of the Administrative Code;

(3) Any failure of a deponent to appear or to answer a question propounded under rule 4901-1-21 of the Administrative Code;

\* \* \*

As explained above, Complainant has failed to adhere to any of said rules, totally refusing to participate in the discovery process, thereby precluding the Company from properly preparing its defense to Complainant's outrageous claims. Accordingly, a Commission Order compelling Complainant to respond to the Company's interrogatories, produce the documents requested, reschedule the deposition at a mutually convenient time and provide access to Complainant's premises is proper and in accordance with Section 4901-1-23(A) of the Ohio Administrative Code.

In order for the Company to properly prepare for the evidentiary hearing, Company asks that Complainant be ordered to comply with said order no later than July 24, 2008 or such other date as the Commission deems appropriate. If Complainant fails to comply with said Order within the specified timeframe, the Company asks that the instant action be dismissed pursuant to Section 4901-1-23(F)(4) of the Ohio Administrative Code, which provides in pertinent part:

(F) If any party or person disobeys an order of the commission compelling discovery, the commission may:

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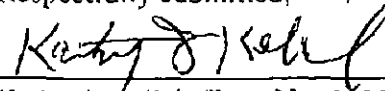
(4) Dismiss the pending proceeding, if such proceeding was initiated by [a] ... complaint filed by the disobedient party, unless such a dismissal would unjustly prejudice any other party.

The complaint was initiated by Complainant, and except for the Company, there are no other parties to this proceeding to be prejudiced by said dismissal. Accordingly dismissal is an appropriate remedy if Complainant fails to abide by the Commission's order.<sup>3</sup>

### III. SUMMARY

In sum, Complainant has ignored a Commission directive to provide access to his premises and has simply refused to abide by the procedural rules surrounding the discovery process. Based on the foregoing, there are sufficient grounds on which to order Complainant to adhere to the discovery rules. And if Complainant fails to so adhere, this matter should be dismissed with prejudice consistent with Section 4901-1-23(F)(4) of the Ohio Administrative Code.

Respectfully submitted,



Kathy J. Kolich (Reg. No. 0038855)

Senior Attorney

FirstEnergy Service Company

76 South Main Street

Akron, Ohio 44308

Phone: 330-384-4580

Fax: 330-384-3875

On behalf of Ohio Edison Company

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<sup>3</sup> The Company currently has pending another motion to dismiss that was filed with the Commission on July 3, 2008, based on Complainant's failure to abide by a Commission directive. The Company submits that the rationale set forth in the memorandum in support of the initial motion to dismiss is sufficient grounds for immediate dismissal without the need to consider these latest antics by Complainant.

**CERTIFICATE OF SERVICE**

**THIS IS TO CERTIFY** that a copy of the foregoing motion to Compel Discovery and related memorandum in support of said motion was served upon Thomas E. Merchant, 508 Brookfield Ave. SE, Masury, Ohio 44438, by regular U.S. Mail, postage prepaid, and by email to Thomasmerchant@hotmail.com this 10<sup>th</sup> day of July, 2008.

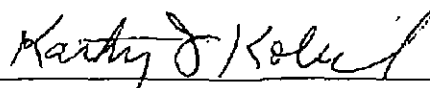
  
Kathy J. Kolich, Esquire



Exhibit A

**FirstEnergy**76 South Main Street  
Akron, Ohio 44308Kathy J. Kolich  
Senior Attorney330-384-4580  
Fax: 330-384-3875

June 6, 2008

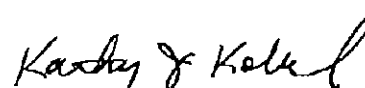
Thomas E. Merchant  
808 Brookfield Avenue S.E.  
Masury, OH 44438*Re: PUCO Complaint Case No. 08-428-EL-CSS - Discovery*

Dear Mr. Merchant:

Enclosed are some questions that I would like you to answer for me, along with several requests for copies of certain documents. If you have an objection to any of these questions or request for documents, please call me at 330-384-4580 to discuss your concerns. Otherwise, pursuant to Commission rule (which can be found in the Ohio Administrative Code at 4901-1-19), you are to provide me with responses no later than 20 days from the date you receive this request, unless the Commission instructs otherwise.

Thank you in advance for your cooperation in this matter.

Regards,

kag  
Enclosure

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant	)	
	)	
Complainant	)	
	)	
vs.	)	Case No. 08-428-EL-CSS
	)	
Ohio Edison Company	)	
	)	
Respondent	)	
	)	

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OHIO EDISON COMPANY'S  
FIRST SET OF INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS AND REQUEST FOR ACCESS TO  
THE PREMISES PROPOUNDED UPON THOMAS E. MERCHANT

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Pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code ("O.A.C."), Ohio Edison Company ("Ohio Edison" or "Company") requests Thomas E. Merchant ("Merchant") to answer the following interrogatories in writing and under oath and to serve the answers and the documents responsive to the request for production of documents on counsel for the Company within twenty days or the time fixed by the Attorney Examiner in this case.

INSTRUCTIONS

1. The basis of each objection, if any, to any of these interrogatories or requests for production shall be stated specifically, including a statement of facts relied on for any claim of privilege.

2. If Merchant claims any form of privilege as a ground for not completely answering any interrogatory, state the nature of the privilege and the general subject of the information withheld.
3. For any document that Merchant declines to produce because of a claim of privilege or any other reason, the following information should be provided: the date, author, and type of document; the name of each person to whom the document was sent or shown; a summary of the contents of the document; and a detailed description of the grounds for the claim of privilege or other reason for not producing the document.
4. If any requested document is or may be lost, destroyed, or otherwise unavailable, state for each such document all bases for Merchant's belief that such document is or may be unavailable.
5. These interrogatories and requests for production of documents shall be deemed to be continuing so as to require, in accordance with Rule 4901-1-16, O.A.C., supplementation of the responses up to and through the time of hearing in this case.
6. For each response to these interrogatories and requests for production of documents, state the name and the title of the person responsible for preparing the response.
7. As used in these interrogatories and requests for production of documents, any reference to the masculine, feminine, or neuter shall be construed to include the other two, and the singular shall be construed to include the plural, and vice versa, as necessary to give these discovery requests their broadest possible meaning.
8. Your responses to these interrogatories and requests for production of documents should be delivered via either U.S. first class mail, postage prepaid, or e-mail to

Kathy J. Kolich, Senior Attorney, FirstEnergy Corp., 76 South Main Street, 15<sup>th</sup>  
Floor, Legal Dept., Akron, OH 44308. E-mail address: [kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com).

### DEFINITIONS

1. "Company" refers to Ohio Edison Company.
2. "Complaint" means the complaint filed in this proceeding by Merchant on or about April 2, 2008 in Case No. 08-428-EL-CSS.
3. "Document" includes, without limitation, any and all writings (including, without limitation, studies, analyses, memoranda, reports, letters, e-mails, and notes of meetings or conversations), drawings, graphs, charts, photographs, photocopies, records, correspondence, and data compilations in whatever form maintained, that are in the possession and control of Merchant, or its officers, directors, employees, or agents.
4. "Identify," when used in reference to a person, means to state the full name, business affiliation, business address, telephone number, e-mail address, position and title of that person.
5. "Identify," when used in reference to a document, means to:
  - a. State the type of document (e.g., letter, report, chart, etc.);
  - b. State the date of the document
  - c. State the title, heading, or other designation and any other information that would facilitate the identification of the document;
  - d. Identify the person or persons who prepared or signed the document
  - e. Identify the person or persons to whom the document was sent;
  - f. Describe the general subject matter and contents of the document
  - g. Identify the custodian of the document;
  - h. State the current location of the document.

6. "Meeting" is used herein in its broadest possible sense and means any gathering of at least two persons during which communication takes place, including, without limitation, any session in which communications or discussions occur.
7. "Securities" includes any and all stocks, bonds, Certificates of Deposit, or other financial investments.
8. "You" and "Your" refer to Merchant.

### INTERROGATORIES

1. Identify each person you intend to call as a witness at the hearing in this proceeding, with a summary of the subject matter on which the witness will testify and the facts and opinions the witness is expected to render.
2. Identify any and all exhibits that you intend to introduce at hearing in this proceeding.
3. Do You own the property located at 808 Brookfield Avenue, S.E., Masury, OH 44438?  
  
(a) If the answer to Interrogatory No. 3 is in the negative, please identify the owner of said property.

4. Do You own any real estate, either as sole owner or as a partial owner?

(a) If the answer to Interrogatory No. 4 is in the affirmative, please identify each property by address, along with Your percentage ownership.

5. Please identify any and all bank accounts held by You, including the name of the bank and the account number.

6. Do You own any Securities?

(a) If the answer to Interrogatory No. 6 is in the affirmative, please identify each Security by account number and broker or other dealer.

7. Please identify all of Your sources of income.
8. Please identify by name and telephone number any and all individuals residing at 808 Brookfield Ave. S.E., Masurey, OH 44438.
9. How many dogs referred to in the first paragraph on page 5 of the Complaint live with You?
10. Please indicate by date each time service was cut at the pole referenced in the Complaint under numbered Paragraph 3(a) on page 1 of the Complaint.
11. Please explain Your rationale for believing that usage will dramatically decrease as assumed at the bottom of Page 1 of the Complaint.

12. Please describe the location of the floodlight on the building at 808 Brookfield Avenue, S.E. referred to in unnumbered Paragraph 3 on Page 2 of the Complaint.
13. If You know, please identify the Ohio Edison field representative referred to in the last paragraph on page 2 of the Complaint.
14. If You know, please identify the "black man" referred to at the top of Page 3 of the Complaint.
15. Are the vehicles listed in the first paragraph on page 5 of the Complaint the only vehicles that have been parked at 808 Brookfield Avenue, S.E.?
- (a) If the answer to Interrogatory No. 15 is negative, please provide a comprehensive list of vehicles that have been parked at such location.



**REQUEST FOR PRODUCTION OF DOCUMENTS**

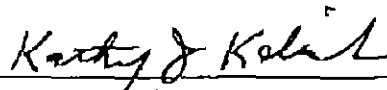
1. Please provide copies of any and all exhibits identified in Interrogatory No. 2.
2. Please provide a copy of your most recent tax return
3. Please provide a copy of your most recent bank statement for any and all banks identified in Interrogatory No. 5.
4. Please provide a copy of your most recent Securities statement for any and all Securities identified in Interrogatory No. 6.
5. Please provide a recent copy of a pay stub or other proof of any and all sources of income received during 2008 as identified in Interrogatory No. 7.
6. If possible, please provide a picture of the floodlight described in Interrogatory No. 12.

**REQUEST FOR ACCESS TO THE PREMISES**

Pursuant to Section 4901-1-20 of the Ohio Administrative Code, Counsel for the Company requests access to the premises located at 808 Brookfield Avenue S.E., Masury, Ohio 44438. Please call counsel at 330-384-4580 to arrange a mutually convenient time.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Ohio Edison's First Set of Interrogatories and Request for Production of Documents and Request for Access to the Premises was served by first class U. S. mail, postage prepaid, to Thomas E. Merchant, 808 Brookfield Avenue S.E., Masury, OH 44438, and by email at Thomasmerchant@hotmail.com on this 6<sup>th</sup> day of June, 2008.



Kathy J. Kolich  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

T: 330-384-4580  
F: 330-384-3875  
Kjkolich@firstenergycorp.com

ATTORNEY FOR  
OHIO EDISON COMPANY

## EXHIBIT B



"Thomas E. Merchant"  
<thomasemerchant@hotmail.com>

06/20/2008 03:59 PM

To: Greta See <greta.see@puc.state.oh.us>

cc: <kjkolich@firstenergycorp.com>

Subject: Request for Ohio Edison to Enter My Property....

Dear Miss See:

As we discussed both sides of the issue regarding the above subject matter, I **WILL NOT** permit anyone entry into my residence/property located at 808 Brookfield Avenue, SE Masury, OH 44438. Should there be a problem, I will not hesitate to call the police or to file criminal charges for harassment. I stand by my position that this is just another game the company is trying to play. Ohio Edison has already inspected by building and it was determined by their representative that I met the qualifications necessary for residential service.

Thomas E. Merchant

Earn cashback on your purchases with Live Search - the search that pays you back! [Learn More](#)

Exhibit C

**FirstEnergy**

RECEIVED-DOCKETING DIV

76 South Main Street  
Akron, Ohio 44308Kathy J. Kolich  
Senior Attorney

2008 JUL -2 AM 10:17

330-384-4580  
Fax: 330-384-3875

PUCO

Via Federal Express  
and Facsimile (614-466-0313)

July 1, 2008

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

Dear Ms. Jenkins:

*Re: Notice to take the Deposition of Thomas E. Merchant  
Upon Oral Examination and Request for Production  
of Documents  
Case No. 08-428-EL-CSS*

Enclosed for filing, please find the original and twelve (12) copies of the *Notice to take the Deposition of Thomas E. Merchant Upon Oral Examination and Request for Production of Documents* regarding the above-referenced case. Please file the enclosed *Notice*, time-stamping the two extras and returning them to me in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Very truly yours,

*Kathy J. Kolich*kag  
Enclosures

cc: Parties of Record

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant,	)	
Complainant,	)	
v.	)	Case No. 08-428-EL-CSS
Ohio Edison Company,	)	
Respondent.	)	

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OHIO EDISON COMPANY'S  
NOTICE TO TAKE THE DEPOSITION OF THOMAS E. MERCHANT  
UPON ORAL EXAMINATION AND REQUEST FOR PRODUCTION OF  
DOCUMENTS

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I. Pursuant to Rule 4901-1-21 of the Ohio Administrative Code, Ohio Edison Company ("Ohio Edison") gives notice to all parties of record, and to the Public Utilities Commission of Ohio ("Commission"), that the oral deposition of Thomas E. Merchant will take place on Thursday, July 10, 2008 starting at 10:30 a.m. in the External Relations Conference Room (2<sup>nd</sup> floor) at the offices of Ohio Edison Company's Youngstown Service Building located at 730 South Avenue, Youngstown, OH 44502. The deposition will be taken upon oral examination before an officer authorized by the law to take depositions and will continue from day to day (excluding holidays and weekends) until completed.

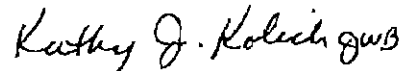
Pursuant to Rule 4901-1-21 (E) and Rule 4901-1-20 of the Ohio Administrative Code, the witness is requested to produce on the day of deposition (i) any and all documents that reference, relate to, or support the testimony intended by the witness to be given in this proceeding; (ii) any and all documents pertaining to Mr. Merchant's involvement, either current or past, in Win-Lei Sterling Property Management Group of

OH, the Win-Lei Sterling Property Management Group of PA, the Win-Lei Sterling Group, the Win-Lei Sterling Property Management Conglomerate and Josh and Sarah Kirland and Company, including without limitation documents filed with any State at the time the entity was created, and any documents involving Mr. Merchant's ownership in said entities; and (iii) copies of a recent utility bill for natural gas service, cable service, internet service, water service, sewer service and telephone and/or cellular service.

II. Any and all questions related to this notice should be directed to Kathy J. Kolich at 330-384-4580 or by email at [kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com).

Date: July 1, 2008

Respectfully submitted



Kathy J. Kolich  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

330-384-4580 - Telephone  
330-384-3875 - Fax

[kjkolich@firstenergycorp.com](mailto:kjkolich@firstenergycorp.com)  
Attorney for Ohio Edison Company

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing notice to take the deposition of Thomas E. Merchant was served by first class mail, postage prepaid, this 1<sup>st</sup> day of July, 2008, upon Thomas E. Merchant, 808 Brookfield Avenue, S.E., Masury, OH 44438.

Kathy J. Kolich *gmb*  
Kathy J. Kolich

## EXHIBIT D

BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO

Thomas E. Merchant,	)	
	)	
Complainant,	)	
	)	
vs.	)	CASE NO. 08-428-EL-CSS
	)	
Ohio Edison Company,	)	
	)	
Respondent.	)	

## AFFIDAVIT OF COUNSEL

STATE OF OHIO     )  
                              ) ss.:  
SUMMIT COUNTY    )

Pursuant to Section 4901-1-23(C)(3) of the Ohio Administrative Code, I, Kathy J. Kolich, being duly sworn, depose and say that the following statements contained herein are true as I verily believe:

1. I am a senior attorney employed by FirstEnergy Service Company.
2. As part of my duties, I represent FirstEnergy's public utilities before the Ohio and Pennsylvania public utility commissions. I am currently representing Ohio Edison Company (hereinafter, "Company") in the Complaint Case of *Merchant v. Ohio Edison Company*, (PUCO Case No. 08-428-EL-CSS) before the Public Utilities Commission of Ohio.
3. On June 6, 2008, I served upon Complainant via first class U.S. mail the Company's First Set of Interrogatories, Request for Production of Documents, and Request for Access to Complainant's Premises. (Exhibit A to the



Memorandum in Support of Motion to Compel Discovery.) I also sent these same discovery requests via email, along with the applicable sections of the Ohio Administrative Code governing such discovery requests. (Exhibit I to this Affidavit.)

4. On or about June 16, 2008, Complainant called me and informed me that he would not provide access to his premises. While he inquired about several interrogatories, he did not object to any of the interrogatories or requests for production of documents.
5. Complainant and I arranged a teleconference with the Attorney Examiner assigned to this matter (Greta See) that was held on June 20, 2008. Again Complainant only objected to the request for access to his premises but not to any of the Company's other discovery requests. After listening to both parties' arguments, Attorney Examiner See ruled that the Company was entitled to access to Complainant's premises. Complainant never filed an interlocutory appeal. Instead I received the email included as Exhibit B to the Memorandum in Support of the Motion to Compel in which Complainant informed Ms. See that he would not adhere to her finding. Given the contents of said email, I have not made any further attempts to gain access to Complainant's premises.
6. On June 25, 2008, the parties met via teleconference for a settlement conference with Attorney Examiner Bojko. During said meeting, I inquired of Complainant as to when I could expect his responses to the Company's

interrogatories and request for production of documents that were due on June 26, 2008. He assured me that I would have them no later than June 30, 2008.

7. I called Complainant on June 30, July 1 and July 2, leaving voice messages in which I inquired as to the whereabouts of the discovery responses.

Complainant did not return any of my calls. As of this date (July 10, 2008) such responses have yet to arrive.

8. On July 1, 2008, I mailed to Complainant via first class mail, a notice of deposition (Exhibit C to the memorandum in support of motion to compel). The deposition was scheduled for July 10, 2008 at 10:30 at Ohio Edison Company's service center in Youngstown, Ohio. On that same date I also called Complainant and left him a message informing him that said notice was coming, that he should call me to confirm his availability and to let me know if the time, date or location was inconvenient. I made no less than four calls between July 1, 2008 and July 9, 2008, leaving a message with the same request. None of these calls were returned by Complainant.

9. On July 10, 2008, I appeared at Ohio Edison's Service Center ready to take the deposition of Complainant that was scheduled at 10:30AM. As of 11:00, Complainant had failed to appear and I attempted to call Complainant on my cell phone. I got a prerecorded message that the call could not be completed as dialed and that I should check the number. I did and repeated the process, receiving the same message.


10. I contacted my cell phone carrier and asked them to try the number. They did and the technician indicated that it rang a long time and then rolled to voice

mail. I asked the carrier to run a diagnostic on my telephone. There was no indication of a problem with my service or my cell phone. Further, I made several other calls from this cell phone that went through without any similar message or problem.


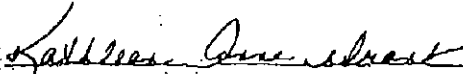
11. I then attempted to call Complainant's number on a telephone located in the conference room in which the deposition was to take place. This call went through without receiving any error message, rolling to Complainant's voice mail. I left him a message asking him if he had planned to attend the deposition and instructed him to call me. I also tried to reach Complainant on several telephones other than my cell phone and all such calls rolled to voice mail. As of the filing of this affidavit, Complainant has not returned my calls.

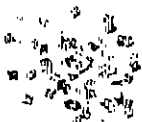
12. While I cannot be sure, given that every telephone that I tried other than my cell phone can get through at least to Complainant's voice mail, and the diagnostic test did not detect a technical problem with my telephone or cellular service, it appears that Complainant has blocked my number from being received when his number is called from my cell phone.

FURTHER AFFIANT SAYETH NAUGHT.

  
Kathy J. Kolich, Esq.

Sworn to and subscribed in my presence this 10<sup>th</sup> day of July, 2008.

  
  
Kathleen A. Grant, Notary Public, State of Ohio  
Resident of Summit county  
My Commission expires November 8, 2009



Kathy J Kolich /FirstEnergy

06/06/2008 03:20 PM

To thomasemerchant@hotmail.com

cc

Subject Requests for Information

## EXHIBIT 1 TO AFFIDAVIT OF COUNSEL

Mr. Merchant, I am attaching what are known as discovery requests in which I ask for certain information. Please read the instructions carefully and provide me with responses within 20 days, unless the hearing examiner rules on my request for a shorter response time. Rules surrounding these discovery requests can be found in the Ohio Administrative Code at Sections 4901-1-19 and 20. For your convenience, I have attached a copy of these rules.

Thank you in advance for your prompt attention to this matter.

Regards,

Kathy J. Kolich  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

330-384-4580 - Telephone  
330-384-3875 - Fax



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