

**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)	
Edison Company for Authority to)	Case No. 12-1230-EL-SSO
Establish a Standard Service Offer)	
Pursuant to R.C. § 4928.143 in the Form)	
of an Electric Security Plan.)	

**JOINT MOTION TO STRIKE FIRSTENERGY’S REPLY
BY
ENVIRONMENTAL LAW AND POLICY CENTER
NATURAL RESOURCES DEFENSE COUNCIL
NORTHEAST OHIO PUBLIC ENERGY COUNCIL
NORTHWEST OHIO AGGREGATION COALITION
OFFICE OF THE OHIO CONSUMERS’ COUNSEL
SIERRA CLUB**

The undersigned public advocates move the Public Utilities Commission of Ohio (“Commission” or “PUCO”) to strike the Reply to Movant’s Memorandum Contra Motion for Waivers filed in this docket by Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “FirstEnergy” or the “Companies”) on April 18, 2012. The Joint Motion (“Joint Motion to Strike”¹) is made because FirstEnergy’s Reply violates Ohio Adm. Code 4901-1-12(C), which prohibits the filing of a reply to a memorandum contra by a party asking for expedited consideration of its original motion (FirstEnergy’s Motion for Waiver of Rules) unless requested by the Commission, the legal director, the deputy legal director or the attorney

¹ Joint Motion to Strike is made consistent with the Ohio Adm. Code 4901-1-12.

examiner. No such request was made in this proceeding. This motion should be granted for the reasons more fully explained in the attached memorandum in support.

Respectfully submitted,

/s/ Robert Kelter

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
Phone: 312-795-3734
Fax: 312-795-3730
rkelter@elpc.org

Environmental Law and Policy Center

/s/ Christopher J. Allwein

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212
Phone: 614-429-3092
Fax: 614-670-8896
callwein@wamenergylaw.com

**Natural Resources Defense Council, and
Sierra Club**

/s/ Glenn Krassen

Glenn Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
mwarnock@bricker.com

**Attorneys for the Northeast Ohio Public
Energy Council**

/s/ Leslie A. Kovacik

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo, Ohio 43604-1219
leslie.kovacik@toledo.oh.gov

**Counsel on behalf of the Northwest Ohio
Aggregation Coalition**

/s/ Thomas R. Hays

Thomas R. Hays
John Borell
Lucas County Prosecutors Office
700 Adams Street Suite 251
Toledo, Ohio 43604
trhayslaw@gmail.com
jaborell@co.lucas.oh.us

**Counsel on behalf of the Northwest Ohio
Aggregation Coalition**

BRUCE J. WESTON

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record

Terry L. Etter

Melissa Yost

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

614-466-1312 (Telephone-Sauer)

614-466-7964 (Telephone-Etter)

614-466-1291 (Telephone-Yost)

sauer@occ.state.oh.us

etter@occ.state.oh.us

yost@occ.state.oh.us

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On April 13, 2012, FirstEnergy filed with the PUCO a two year extension of its electric security plan (“ESP 3”). The FirstEnergy filing included an application (“Application”) and attached to its Application was a Stipulation and Recommendation (“Stipulation”). In addition, FirstEnergy filed a Motion for Waiver of Rules (“Waiver Motion”), and asked for expedited consideration of the motion.²

On April 17, 2012, the undersigned filed a Joint Motion to Bifurcate Issues (“Joint Motion”) and Joint Memorandum Contra FirstEnergy’s Waiver Motion (“Joint Memorandum Contra”). On April 16, 2012, a Memorandum Contra FirstEnergy’s Waiver Motion was filed by Direct Energy Services, LLC, Direct Energy Business, LLC and IGS Energy, Inc (“CRES Memorandum Contra”).

On April 18, 2012, FirstEnergy filed a combined Memorandum Contra Joint Motion to Bifurcate the Issues and a Reply to the Joint Memorandum Contra and the CRES Memorandum Contra (“Reply”). Although FirstEnergy was allowed to file the

² FirstEnergy Motion for Waivers at 2 (April 13, 2012).

memorandum contra the Joint Motion,³ because the Companies had asked for an expedited ruling on their original Waiver Motion, their reply to the Joint Memorandum Contra is prohibited by Adm. Code 4901-1-12(C). The Reply pleading is not provided for in the Commission's Rules, and thus FirstEnergy's Reply – section II.B of the combined pleading – should be stricken.

II. ARGUMENT

FirstEnergy's Reply should be stricken. FirstEnergy filed its Waiver Motion and asked for expedited consideration.⁴ In those circumstances, the Commission rules preclude the filing of a reply to subsequent memoranda contra. The Ohio Administrative Code states:

Any motion may include a specific request for an expedited ruling.* * *, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. **No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.**⁵

Neither the Commission nor the legal director nor the deputy legal director nor the attorney examiner requested the Companies to file a reply. Thus, because there is no provision in the Commission's Rules for FirstEnergy's Reply pleading, the Commission should grant the Joint Motion to Strike.

Commission precedent supports the Joint Motion to Strike. In a 2004 case involving an investigation into long-term solutions concerning disconnection of gas and

³ Ohio Adm. Code 4901-1-12(B)(1).

⁴ Waiver Motion at 2.

⁵ Ohio Adm. Code 4901-1-12(C) (emphasis added).

electric service in winter emergencies (“Disconnection Investigation”), OCC had a Reply pleading stricken under similar circumstances. In the Disconnection Investigation Case, Ohio Partners for Affordable Energy (“OPAE”) filed a Motion for Clarification and asked for expedited consideration (“OPAE Motion”).⁶ OCC filed a Motion in Support of the OPAE Motion, and did not request expedited consideration.⁷ AEP filed a Memorandum Contra to the OPAE Motion.⁸ OCC filed a reply to AEP’s Memorandum Contra,⁹ and AEP moved to strike arguing that the Commission Rules preclude a reply pleading.¹⁰

On November 23, 2004, the Commission issued an Entry granting AEP’s Motion to Strike OCC’s reply pleading despite the fact that in its Motion in Support of OPAE’s Motion, OCC did not ask for expedited consideration.¹¹ Nevertheless, the Commission found that Ohio Adm. Code 4901-1-12(C) did not provide for a Reply in that circumstance.

In this proceeding, FirstEnergy’s Reply is a direct violation of Ohio Adm. Code 4901-1-12(C). Therefore, the Commission should follow its precedent and grant the Joint Motion to Strike in this case.

The Commission’s Rule provides for a reply pleading on expedited motions only when specifically requested by Commission, the legal director, the deputy legal director

⁶ *In the Matter of the Investigation into Long-Term Solutions Concerning Disconnection of Gas and Electric Service in Winter Emergencies*, Case No. 04-1503-GE-UNC, OPAE Motion (October 27, 2004).

⁷ Id., OCC Motion in Support (October 28, 2004).

⁸ Id., AEP Memorandum Contra (November 2, 2004).

⁹ Id., OCC Reply to AEP Memorandum Contra. (November 9, 2004).

¹⁰ Id., AEP Motion to Strike at 2. (November 12, 2004).

¹¹ Id., Entry at 10 (November 23, 2004).

or the attorney examiner. Neither the Attorney Examiner nor the Commission has, upon its own motion or by motion of a party, waived any requirement, standard, or rule, or prescribed different practices or procedures to be followed in this proceeding.¹²

Therefore, the Commission should grant the Joint Motion to Strike.

FirstEnergy asked for the expedited consideration, and because of the request for expedition, intervenors had only a limited time to respond. In fairness to the parties, if the Companies wanted the opportunity to reply to memoranda contra filed in opposition to their Waiver Motion, then they should not have requested expedited consideration. The rules prohibit FirstEnergy from filing a response and the Commission should grant the Joint Motion to Strike FirstEnergy's Reply.

III. CONCLUSION

FirstEnergy's Reply violates Ohio Adm. Code 4901-1-12(C). FirstEnergy had asked for expedited consideration of its Waiver Motion, and no additional pleadings outside of those permitted by rule were authorized or contemplated. For the reasons set forth above, the Commission should grant the Joint Motion to Strike FirstEnergy's Reply.

Respectfully submitted,

/s/ Robert Kelter

Robert Kelter
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1600
Chicago, IL 60601
Phone: 312-795-3734
Fax: 312-795-3730
rkelter@elpc.org

Environmental Law and Policy Center

¹² See Ohio Adm. Code 4901-1-38(B).

/s/ Christopher J. Allwein_____

Christopher J. Allwein
Williams Allwein & Moser, L.L.C.
1373 Grandview Ave., Suite 212
Columbus, Ohio 43212
Phone: 614-429-3092
Fax: 614-670-8896
callwein@wamenergylaw.com

**Natural Resources Defense Council, and
Sierra Club**

/s/ Glenn Krassen_____

Glenn Krassen
Bricker & Eckler LLP
1001 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Telephone: (614) 227-2300
Facsimile: (614) 227-2390
mwarnock@bricker.com

**Attorneys for the Northeast Ohio Public
Energy Council**

/s/ Leslie A. Kovacik_____

Leslie A. Kovacik
City of Toledo
420 Madison Ave., Suite 100
Toledo, Ohio 43604-1219
leslie.kovacik@toledo.oh.gov

**Counsel on behalf of the Northwest Ohio
Aggregation Coalition**

/s/ Thomas R. Hays

Thomas R. Hays

John Borell

Lucas County Prosecutors Office

700 Adams Street Suite 251

Toledo, Ohio 43604

trhayslaw@gmail.com

jaborell@co.lucas.oh.us

**Counsel on behalf of the Northwest Ohio
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BRUCE J. WESTON

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record

Terry L. Etter

Melissa Yost

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

614-466-1312 (Telephone-Sauer)

614-466-7964 (Telephone-Etter)

614-466-1291 (Telephone-Yost)

sauer@occ.state.oh.us

etter@occ.state.oh.us

yost@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the persons listed below, electronically, this 23rd day of April 2012.

/s/ Larry S. Sauer

Larry S. Sauer

Assistant Consumers' Counsel

SERVICE LIST

Thomas.mcnamee@puc.state.oh.us
burkj@firstenergycorp.com
haydenm@firstenergycorp.com
korkosza@firstenergycorp.com
elmiller@firstenergycorp.com
cmooney2@columbus.rr.com
jmclark@vectren.com
Asim.haque@icemiller.com
jlang@calfee.com
lmcbride@calfee.com
vparisi@igsenergy.com
mswhite@igsenergy.com
mhpetricoff@vssp.com
Randall.Griffin@DPLINC.com
Judi.sobecki@dplinc.com

dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkyler@BKLawfirm.com
lmcalister@bricker.com
tsiwo@bricker.com
rkelter@elpc.org
callwein@wamenergylaw.com
gkrassen@bricker.com
mwarnock@bricker.com
leslie.kovacik@toledo.oh.gov
trhayslaw@gmail.com
jaborell@co.lucas.oh.us
mdortch@kravitzllc.com
amy.spiller@duke-energy.com

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Summary: Motion Joint Motion to Strike FirstEnergy's Reply by the Environmental Law and Policy Center, Natural Resources Defense Council, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Office of the Ohio Consumers' Counsel and the Sierra Club

electronically filed by Ms. Deb J. Bingham on behalf of Sauer, Larry S.