

**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 Provide for	)	Case No. 14-1297-EL-SSO
a Standard Service Offer Pursuant to R.C.	)	
4928.143 in the Form of and Electric Security	)	
Plan.	)	

---

**REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY BY THE  
ENVIRONMENTAL LAW & POLICY CENTER**

---

**I. INTRODUCTION**

The Public Utilities Commission of Ohio (“Commission” or “PUCO”) should grant the motion filed by Environmental Law & Policy Center (“ELPC”), seeking to compel a discovery response from Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). FirstEnergy has failed to provide an adequate answer to ELPC Discovery Set 2, Interrogatory 5, which seeks important information regarding whether FirstEnergy considered the reliability and resource diversity issues it claims to be driving the Economic Stability Program proposal in its Electric Security Plan (“ESP”) application, when it eliminated its energy efficiency (“EE”) and peak demand reduction (“PDR”) programs in Case No. 12-2190-EL-POR. FirstEnergy’s response cuts off ELPC’s ability to seek a full response based on deposition testimony that does not address the interrogatory posed and that comes from a witness who apparently lacks relevant factual knowledge. The Commission must require FirstEnergy to answer Interrogatory 5 as posed by ELPC without further evasion.

## **II. ARGUMENT**

### **A. The Moul Deposition Testimony Does Not Constitute an Adequate Response to ELPC Interrogatory 5.**

Interrogatory 5 specifically asks about the relationship between FirstEnergy's consideration of EE and PDR resources in this case and its treatment of EE and PDR programs in Case No. 12-2190-EL-POR:

Given the concerns articulated in the Moul Testimony from page 7, line 3 through page 8, line 21, explain why FirstEnergy filed an application to amend its portfolio plan to eliminate certain energy efficiency and peak demand reduction programs from its portfolio plan in Case No. 12-2190-EL-POR.<sup>1</sup>

FirstEnergy's memorandum contra ELPC's motion to compel principally focuses on the argument that it fully responded to Interrogatory 5 through deposition testimony by Mr. Moul to the effect that energy efficiency and peak demand reduction programs cannot "address any of these purposes [of resource diversity discussed in his direct testimony] . . . because demand reduction and energy efficiency don't produce a single megawatt."<sup>2</sup> As already discussed in ELPC's original motion to compel, this testimony does not constitute an adequate answer to Interrogatory 5.<sup>3</sup>

Fundamentally, it is not clear from this testimony how Mr. Moul's view of the potential role of EE and PDR resources in this proceeding relates to FirstEnergy's rationale for reducing its offering of EE and PDR programs in Case No. 12-2190-EL-POR – exactly the information sought by Interrogatory 5. Indeed, FirstEnergy itself asserted in its memorandum contra that "Mr. Moul stated that there was no connection between his testimony regarding the need for generation resource diversity, and the reasons as to why the Companies chose to amend their

---

<sup>1</sup> ELPC Mot. to Compel, Attachment A at 8 (Feb. 24, 2015).

<sup>2</sup> Moul Dep. at 151:14-18 (Jan. 15, 2015) (cited in FirstEnergy Mem. Contra at 3, 6 (Mar. 10, 2015)).

<sup>3</sup> ELPC Mot. to Compel at 9-10 (Feb. 24, 2015).

EE/PDR programs in a completely unrelated proceeding.”<sup>4</sup> This statement is an over-reading of Mr. Moul’s deposition at best, given that he never provided any testimony specifically regarding FirstEnergy’s amendment of its EE and PDR plan in Case No. 12-2190-EL-POR. Moreover, FirstEnergy has never suggested that he has any knowledge regarding that case (particularly as an employee of FirstEnergy Solutions Corp. rather than the FirstEnergy distribution utilities). But in any case, even if this description of Mr. Moul’s testimony were accurate, it would merely highlight the need for FirstEnergy to provide a response to Interrogatory 5 from someone who *does* have knowledge about its “reasons as to why the Companies chose to amend their EE/PDR programs” and whether they are consistent with Mr. Moul’s testimony regarding the “need for generation resource diversity.”

**B. Mr. Moul’s Testimony Does Not Establish That Interrogatory 5 Seeks Irrelevant Information.**

Mr. Moul’s testimony does not show, as FirstEnergy suggests, that Interrogatory 5 seeks information that “is irrelevant and not likely to lead to the discovery of admissible evidence.”<sup>5</sup> ELPC explained in its motion to compel that it seeks information regarding the connection between FirstEnergy’s treatment of EE and PDR resources in this case and in Case No. 12-2190-EL-POR in order to investigate potential discrepancies in FirstEnergy’s views or at least establish that FirstEnergy has taken a consistent position on this issue across various proceedings.<sup>6</sup> FirstEnergy does nothing to explain why that information would not be potentially relevant, simply reiterating the substantive view that EE and PDR resources cannot be used to address resource diversity concerns.<sup>7</sup> ELPC is prepared to litigate the merits of FirstEnergy’s

---

<sup>4</sup> First Energy Mem. Contra at 5.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> ELPC Mot. to Compel at 7-9.

<sup>7</sup> FirstEnergy Mem. Contra at 7.

position on this issue, but in the meantime, we have a right under Ohio Admin. Code 4901-1-16(B) to seek discovery calculated to determine whether FirstEnergy has applied the same substantive views in other circumstances.

**C. FirstEnergy’s Other Objections Are Unfounded.**

FirstEnergy also asserts that Interrogatory 5 is argumentative, has been mischaracterized by ELPC, and is vague.<sup>8</sup> None of these objections holds water.

FirstEnergy contends that Interrogatory 5 is argumentative because it “assumes some sort of inconsistency between Mr. Moul’s statements regarding the need for resource diversity in a generation fleet and the Companies’ actions in following Senate Bill 310 regarding the amendment of EE/PDR programs.”<sup>9</sup> That is not an assumption contained in the interrogatory; ELPC is in fact trying to find out whether there is any such inconsistency. That ELPC might use such an inconsistency as the basis for arguments on the merits does not render Interrogatory 5 itself argumentative.

FirstEnergy’s assertion that ELPC has mischaracterized Interrogatory 5 is simply untrue. FirstEnergy cites the statement from the Motion to Compel that “there are a number of potential answers to ELPC’s Interrogatory 5 that might be relevant to determining how FirstEnergy’s views regarding resource diversity as expressed here relate its concurrent decision to cut back on its EE and PDR programs.”<sup>10</sup> According to FirstEnergy, that summary discussion of Interrogatory 5 constitutes an attempt to “divorce[] ELPC Set 2-INT-5 from the direct testimony of Mr. Moul.”<sup>11</sup> It is difficult to understand what FirstEnergy means, given that the quoted excerpt directly references the “resource diversity” issues discussed by Mr. Moul in his

---

<sup>8</sup> FirstEnergy Mem. Contra at 8-9.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> FirstEnergy Mem. Contra at 9 (citing ELPC Mot. to Compel at 8).

<sup>11</sup> FirstEnergy Mem. Contra at 9.

testimony. Regardless, ELPC has never tried to expand Interrogatory 5 beyond its original scope, and the instant Motion to Compel simply seeks the requested response as to how Mr. Moul's testimony regarding resource diversity relates to FirstEnergy's decisionmaking in Case No. 12-2190-EL-POR.

Finally, Interrogatory 5 is not vague in its reference to the "concerns articulated in the Moul testimony." That language is accompanied by a citation to specific portions of Mr. Moul's direct testimony regarding resource diversity justifications for FirstEnergy's proposed Economic Stability Program. Any confusion on FirstEnergy's part appears to come from its belief that Mr. Moul's "deposition testimony on the very subject" of resource diversity should suffice as a response to Interrogatory 5. But as discussed above, that testimony on EE and PDR resources as part of resource diversity does not speak to FirstEnergy's actions regarding its EE and PDR programs in Case No. 12-2190-EL-POR. FirstEnergy must provide that additional information in order to adequately answer Interrogatory 5.

### **III. CONCLUSION**

For the reasons set forth above, ELPC requests that the Commission grant its Motion to Compel.

Date: March 17, 2015

Respectfully submitted,

/s/ Madeline Fleisher  
Madeline Fleisher  
Staff Attorney  
Environmental Law & Policy Center  
21 W. Broad St., Suite 500  
Columbus, OH 43215  
P: 614-670-5586  
F: 614-487-7510  
mfleisher@elpc.org

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon the following Parties of Record, this March 17, 2015.

/s/ Madeline Fleisher  
Madeline Fleisher

## PARTIES SERVED

[burkj@firstenergycorp.com](mailto:burkj@firstenergycorp.com)  
[cdunn@firstenergycorp.com](mailto:cdunn@firstenergycorp.com)  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[talexander@calfee.com](mailto:talexander@calfee.com)  
[dakutik@jonesday.com](mailto:dakutik@jonesday.com)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)  
[drinebolt@ohiopartners.org](mailto:drinebolt@ohiopartners.org)  
[tdoughtery@theoec.org](mailto:tdoughtery@theoec.org)  
[joseph.clark@directenergy.com](mailto:joseph.clark@directenergy.com)  
[ghull@eckertseamans.com](mailto:ghull@eckertseamans.com)  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)  
[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[kboehm@BKLawfirm.com](mailto:kboehm@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)  
[larry.sauer@occ.ohio.gov](mailto:larry.sauer@occ.ohio.gov)  
[kevin.moore@occ.ohio.gov](mailto:kevin.moore@occ.ohio.gov)  
[Michael.schuler@occ.ohio.gov](mailto:Michael.schuler@occ.ohio.gov)  
[joliker@igsenergy.com](mailto:joliker@igsenergy.com)  
[myurick@taftlaw.com](mailto:myurick@taftlaw.com)  
[dparram@taftlaw.com](mailto:dparram@taftlaw.com)  
[schmidt@sppgrp.com](mailto:schmidt@sppgrp.com)  
[ricks@ohanet.org](mailto:ricks@ohanet.org)  
[tobrien@bricker.com](mailto:tobrien@bricker.com)  
[stnourse@aep.com](mailto:stnourse@aep.com)  
[mjsatterwhite@aep.com](mailto:mjsatterwhite@aep.com)  
[yalami@aep.com](mailto:yalami@aep.com)  
[callwein@wamenergylaw.com](mailto:callwein@wamenergylaw.com)  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
[wttpmlc@aol.com](mailto:wttpmlc@aol.com)  
[mkl@bbrslaw.com](mailto:mkl@bbrslaw.com)  
[gas@bbrslaw.com](mailto:gas@bbrslaw.com)  
[ojk@bbrslaw.com](mailto:ojk@bbrslaw.com)

[cynthia.brady@exeloncorp.com](mailto:cynthia.brady@exeloncorp.com)  
[david.fein@exeloncorp.com](mailto:david.fein@exeloncorp.com)  
[lael.campbell@exeloncorp.com](mailto:lael.campbell@exeloncorp.com)  
[christopher.miller@icemiller.com](mailto:christopher.miller@icemiller.com)  
[gregory.dunn@icemiller.com](mailto:gregory.dunn@icemiller.com)  
[jeremy.grayem@icemiller.com](mailto:jeremy.grayem@icemiller.com)  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com)  
[athompson@taftlaw.com](mailto:athompson@taftlaw.com)  
[Marilyn@wflawfirm.com](mailto:Marilyn@wflawfirm.com)  
[blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us)  
[hmadorsky@city.cleveland.oh.us](mailto:hmadorsky@city.cleveland.oh.us)  
[kryan@city.cleveland.oh.us](mailto:kryan@city.cleveland.oh.us)  
[DFolk@akronohio.gov](mailto:DFolk@akronohio.gov)  
[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  
[allison@carpenterlipps.com](mailto:allison@carpenterlipps.com)  
[hussey@carpenterlipps.com](mailto:hussey@carpenterlipps.com)  
[gkrassen@bricker.com](mailto:gkrassen@bricker.com)  
[dstinson@bricker.com](mailto:dstinson@bricker.com)  
[dborchers@bricker.com](mailto:dborchers@bricker.com)  
[mkimbrough@keglerbrown.com](mailto:mkimbrough@keglerbrown.com)  
[mdortch@kravitzllc.com](mailto:mdortch@kravitzllc.com)  
[rparsons@kravitzllc.com](mailto:rparsons@kravitzllc.com)  
[mitch.dutton@fpl.com](mailto:mitch.dutton@fpl.com)  
[matt@matthewcoxlaw.com](mailto:matt@matthewcoxlaw.com)  
[jeffrey.mayes@monitoringanalytics.com](mailto:jeffrey.mayes@monitoringanalytics.com)  
[todd@wamenergylaw.com](mailto:todd@wamenergylaw.com)  
[sechler@carpenterlipps.com](mailto:sechler@carpenterlipps.com)  
[gpoulos@enernoc.com](mailto:gpoulos@enernoc.com)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[thomas.mcnamee@puc.state.oh.us](mailto:thomas.mcnamee@puc.state.oh.us)  
[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)  
[ryan.orourke@puc.state.oh.us](mailto:ryan.orourke@puc.state.oh.us)

[lhawrot@spilmanlaw.com](mailto:lhawrot@spilmanlaw.com)  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[charris@spilmanlaw.com](mailto:charris@spilmanlaw.com)  
[meissnerjoseph@yahoo.com](mailto:meissnerjoseph@yahoo.com)  
[trhayslaw@gmail.com](mailto:trhayslaw@gmail.com)  
[lesliekovacik@toledo.oh.gov](mailto:lesliekovacik@toledo.oh.gov)

[sfisk@earthjustice.org](mailto:sfisk@earthjustice.org)  
[msoules@earthjustice.org](mailto:msoules@earthjustice.org)  
[tony.mendoza@sierraclub.org](mailto:tony.mendoza@sierraclub.org)  
[dwolff@crowell.com](mailto:dwolff@crowell.com)  
[rlehfeldt@crowell.com](mailto:rlehfeldt@crowell.com)  
[todonnell@dickinsonwright.com](mailto:todonnell@dickinsonwright.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/17/2015 5:09:32 PM**

**in**

**Case No(s). 14-1297-EL-SSO**

Summary: Reply Reply in Support of Motion to Compel Discovery by the Environmental Law & Policy Center electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center