

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 14-1297-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Authority to Provide for)
a Standard Service Offer Pursuant to R.C.)
4928.143 in the Form of an Electric Security)
Plan)

**SUPPLEMENT TO OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY’S REQUEST
FOR CERTIFICATION AND APPLICATION FOR REVIEW OF AN
INTERLOCUTORY APPEAL OF THE ATTORNEY EXAMINERS’ ORAL RULINGS**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, “the Companies”) file the attached Exhibit D to supplement their Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners’ Oral Rulings and Memorandum in Support (the “Interlocutory Appeal”). Specifically, the Companies attach as Exhibit D a portion of Hearing Tr. Vol. XXVII in Case Number 14-1297-EL-SSO.¹ Exhibit D contains the Attorney Examiners’ ruling with respect to the Companies’ motion to strike portions of the Second Supplemental Testimony of Edward Hill and a portion of EWH Supplemental Attachment A to that testimony, as discussed in the Interlocutory Appeal. The Companies’ motion to strike begins at Hearing Tr. Vol. XXVII at 5489:15, and the Attorney Examiners’ decision concludes at Hearing Tr. Vol. XXVII at 5491:22.

¹ Because this portion of the record was not available as of the filing of the Interlocutory Appeal, the Companies indicated their intention to file the attached exhibit in footnote 1 of the Interlocutory Appeal.

Date: October 15, 2015

Respectfully submitted,

/s/ David A. Kutik

James W. Burk (0043808)
Counsel of Record
Carrie M. Dunn (0076952)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5861
Fax: (330) 384-8375
Email: burkj@firstenergycorp.com
Email: cdunn@firstenergycorp.com

David A. Kutik (0006418)
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Fax: (216) 579-0212
Email: dakutik@jonesday.com

James F. Lang (0059668)
N. Trevor Alexander (0080713)
CALFEE, HALTER & GRISWOLD LLP
The Calfee Building
1405 East Sixth Street
Cleveland, OH 44114
Telephone: (216) 622-8200
Fax: (216) 241-0816
Email: jlang@calfee.com
Email: talexander@calfee.com

ATTORNEYS FOR OHIO EDISON
COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE
TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 15th day of October, 2015. The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

Association of Independent Colleges and Universities of Ohio, Buckeye Association Of School Administrators, Buckeye Wind LLC, Citizens Coalition, City Of Akron, City Of Cleveland, Constellation NewEnergy Inc., Council Of Smaller Enterprises, Direct Energy Services LLC, Duke Energy Ohio Inc., Dynegy Inc., Energy Professionals of Ohio, EnerNOC Inc., Environmental Law & Policy Center, Exelon Generation Company, LLC, Hardin Wind LLC, IBEW Local 245, IGS Energy, Industrial Energy Users Of Ohio, Kroger Co., Mid-Atlantic Renewable Energy Coalition, Monitoring Analytics LLC, MSC, Nextera Energy Resources, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, Nucor Steel Marion, Inc., Ohio Advanced Energy Economy, Ohio Association Of School Business, Ohio Consumers Counsel, Ohio Energy Group, Inc., Ohio Environmental Counsel, Ohio Hospital Association, Ohio Manufacturers' Association, Ohio Power Company, Ohio Partners For Affordable Energy, Ohio School Boards Association, Ohio Schools Council, PJM Power Providers Group, Power4Schools, Retail Energy Supply Association, Sierra Club, The Cleveland Municipal School District, The Electric Power Supply Association, Wal-Mart Stores East, LP, and Sam's East, Inc.

/s/ David A. Kutik

David A. Kutik

Exhibit D

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

PROCEEDINGS

before Mr. Gregory Price, Ms. Mandy Chiles, and
Ms. Megan Addison, Attorney Examiners, at the Public
Utilities Commission of Ohio, 180 East Broad Street,
Room 11-A, Columbus, Ohio, called at 1:00 p.m. on
Tuesday, October 13, 2015.

VOLUME XXVII

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

1 APPEARANCES: (Continued)
2 Bricker & Eckler, LLP
By Mr. Dane Stinson
and Mr. Dylan Borchers
100 South Third Street
Columbus, Ohio 43215-4291
3 Bricker & Eckler, LLP
By Mr. Glenn S. Krassen
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114
4 On behalf of the Northeast Ohio Public
Energy Council, Ohio Schools Council, and
Power for the Schools.
5 Earthjustice
By Mr. Shannon Fisk
Northeast Office
1617 John F. Kennedy Boulevard, Suite 1675
Philadelphia, Pennsylvania 19103
6 Earthjustice
By Mr. Michael Soules
1625 Massachusetts Avenue NW, Suite 702
Washington, D.C. 20036
Sierra Club Environmental Law Program
Mr. Tony Mendoza
85 Second Street, 2nd Floor
San Francisco, California 94105
7 Richard Sahli Law Office, LLC
By Mr. Richard C. Sahli
981 Pinewood Lane
Columbus, Ohio 43230-3662
8 On behalf of the Sierra Club.
McNees, Wallace & Nurick LLC
By Mr. Frank P. Darr
and Mr. Samuel C. Randazzo
21 East State Street, 17th Floor
Columbus, Ohio 43215
9 On behalf of the Industrial Energy Users
of Ohio.

1 APPEARANCES:
2 FirstEnergy Corp.
By Mr. James W. Burk
and Ms. Carrie M. Dunn
76 South Main Street
Akron, Ohio 44308
3 Calfee, Halter & Griswold LLP
By Mr. James Lang
and Mr. N. Trevor Alexander
The Calfee Building
1405 East Sixth Street
Cleveland, Ohio 44114
4 Jones Day
By Mr. David A. Kutik
901 Lakeside Avenue
Cleveland, Ohio 44114
5 On behalf of the Applicants.
Bruce J. Weston, Consumers' Counsel
By Mr. Larry Sauer
Ms. Maureen R. Grady Willis
Mr. William J. Michael
Mr. Kevin F. Moore
Mr. Ajay K. Kumar
Assistant Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
6 On behalf of the Residential Consumers of
Ohio Edison Company, The Cleveland
Electric Illuminating Company, and The
Toledo Edison Company.
7 Ohio Partners for Affordable Energy
By Ms. Colleen L. Mooney
231 West Lima Street
Findlay, Ohio 45840
8 On behalf of the Ohio Partners for
Affordable Energy.

1 APPEARANCES: (Continued)
2 IGS Energy
By Mr. Joseph Olikar
6100 Emerald Parkway
Dublin, Ohio 43016
3 On behalf of IGS Energy.
4 Taft, Stettinius & Hollister LLP
By Mr. Mark S. Yurick
and Mr. Devin D. Parram
65 East State Street, Suite 1000
Columbus, Ohio 43215
5 On behalf of The Kroger Company.
6 Vorys, Sater, Seymour & Pease, LLP
By Mr. M. Howard Petricoff
Ms. Gretchen Petrucci
Mr. Stephen M. Howard
and Mr. Michael J. Settineri
52 East Gay Street
Columbus, Ohio 43215
7 On behalf of Retail Energy Supply
Association, PJM Power Providers Group,
Electric Power Supply Association,
Constellation NewEnergy, and Exelon
Generation, LLC.
8 Mike DeWine, Ohio Attorney General
By Mr. William L. Wright,
Section Chief
Mr. Thomas G. Lindgren
Mr. Thomas W. McNamee
Mr. Steven L. Beeler
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
9 On behalf of the Staff of the PUCO.

Page 5488

1 what he heard somebody say in a newspaper article.
 2 If Mr. Jones disagrees with what the Plain Dealer
 3 published, he certainly could come to this Commission
 4 and explain how he was misquoted.
 5 MS. DUNN: Thank you, your Honor. Moving
 6 forward, your Honor?
 7 EXAMINER PRICE: Okay.
 8 MS. DUNN: Page 25, lines 15 to 18, going
 9 on to page 26, lines 1 to 3, as well as footnote 41
 10 and attachment EWH-supplemental Attachment A at 8183,
 11 this is classic hearsay on hearsay. This is a
 12 newspaper article by John Funk reporting what
 13 Mr. Jones allegedly said.
 14 It's different from the article in
 15 footnote 40 and also historically the Commission --
 16 this Bench has struck newspaper articles quoting what
 17 certain executives may or may not have said. And for
 18 that reason, this is hearsay and should be stricken.
 19 EXAMINER PRICE: For the reasons we set
 20 forth I think around day 4 of this proceeding, we
 21 cited a number of articles of cases explaining why
 22 newspaper articles are hearsay within hearsay, we'll
 23 grant -- we will strike this for those same reasons.
 24 MS. DUNN: Thank you, your Honor.
 25 MS. BOJKO: Clarification, your Honor,

Page 5489

1 line 15 on page 25 through page 26, line 3, is that
 2 correct?
 3 EXAMINER PRICE: Yes.
 4 MS. BOJKO: And then the accompanying
 5 footnote 41?
 6 EXAMINER PRICE: Yes.
 7 MS. BOJKO: Thank you.
 8 MS. DUNN: Moving forward, your Honor?
 9 EXAMINER PRICE: And just to be clear,
 10 the article attached in EH supplemental attachment is
 11 also stricken.
 12 MS. DUNN: Thank you, your Honor.
 13 EXAMINER PRICE: None of which should be
 14 construed as a commentary on Mr. Funk's reliability.
 15 MS. DUNN: Understood. Moving forward,
 16 your Honor, to page 28, lines 17 to 18, also moving
 17 to page 29, lines 1 to 3 and the entirety of footnote
 18 45 including EWH Supplement A, pages 84 to 93.
 19 The reason is that the entirety of those
 20 statements is based on hearsay as well as legislative
 21 testimony that is not relevant to this case. Looking
 22 at Ms. Vespoli's testimony, it relates to Senate Bill
 23 58 which is a bill that never came to see the light
 24 of day.
 25 As your Honor's ruled on Day 3 of this,

Page 5490

1 page 516 to 517 of which I have copies, if necessary,
 2 your Honor sustained an objection on the basis of
 3 relevance when ELPC asked Ms. Mikkelsen a question on
 4 Senate Bill 58.
 5 This testimony also falls within your
 6 relevance rulings on Day 4. It does not go to any
 7 issues in this case. And, again, it involves a piece
 8 of legislation that never became law. In addition,
 9 your Honor, the affidavit brought on Thursday for the
 10 first time purporting to authenticate the document
 11 does not meet the rules under Rule 901 or 902 of the
 12 Rules of Evidence for authentication. It's an
 13 affidavit from an individual who is not here about
 14 what she was or was not told by individuals at the
 15 Ohio Senate.
 16 In addition, it's a late-filed exhibit
 17 curing something that he did not have a basis for at
 18 the time of his testimony. Your Honor, I do have a
 19 couple of questions I could ask Dr. Hill if you would
 20 like on that issue.
 21 EXAMINER PRICE: No. That won't be
 22 necessary.
 23 MS. DUNN: And then just to finish
 24 footnote 45, there are two newspaper articles in
 25 there as well which serves as the basis for the

Page 5491

1 statements, and for all of those reasons, this
 2 portion should be stricken.
 3 EXAMINER PRICE: We are going to grant in
 4 part and deny in part the motion to strike. We will
 5 grant the motion to strike with respect to the
 6 newspaper articles that are cited in footnote 45. We
 7 will deny the motion to strike -- the remainder of
 8 the motion to strike.
 9 He doesn't have this testimony in there
 10 with respect to construing his statement. It's not
 11 necessarily the case, but it is solely with respect
 12 to the company's position on Senate Bill 58.
 13 Ms. Vespoli makes a number of factual claims as
 14 opposed to the ruling on Day 4, her testimony was
 15 under the current statutory framework. It is more
 16 recent in time, and it is under this more recent
 17 economic situation than we are talking about in 2007.
 18 So we will deny the motion to strike on
 19 those grounds; however, the newspaper articles that
 20 are referenced will also be stricken, not just the
 21 reference to them but their existence in the
 22 Attachment A.
 23 MS. DUNN: Your Honor, that completes my
 24 motions to strike. Thank you very much.
 25 EXAMINER PRICE: Thank you.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/15/2015 4:58:17 PM

in

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

Summary: Motion Supplement to Companies' Request for Certification and Application for Review of an Interlocutory Appeal of the Attorney Examiners' Oral Rulings electronically filed by MR. DAVID A KUTIK on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company