

**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	)	

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**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**

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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.<sup>1</sup> 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.

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<sup>1</sup> 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

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ATTORNEYS FOR OHIO EDISON  
COMPANY, THE CLEVELAND ELECTRIC  
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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

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 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. :  
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## 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.  
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## VOLUME XXVII

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 23  
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 25

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<p>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,</p>	<p>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</p>
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<p>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,</p>	<p>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.</p>

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

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**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