

**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.)	

**MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIRONMENTAL LAW & POLICY CENTER**

Pursuant to Ohio Adm. Code 4901-1-12, 4901-1-14, and 4901-1-23, the Environmental Law & Policy Center (“ELPC”), an intervenor in the above captioned proceedings before the Public Utilities Commission of Ohio (“PUCO” or “Commission”), hereby files this motion to compel discovery responses from Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). As explained in the attached memorandum in support, ELPC served limited discovery requests on FirstEnergy seeking information related to important issues raised by the Third Supplemental Stipulation filed in this case on December 1, 2015. FirstEnergy has refused to answer two of ELPC’s requests for production of documents regarding a key provision of the Third Supplemental Stipulation, and has not offered any proper objections to those discovery requests that would excuse FirstEnergy from its obligation under Ohio Admin. Code 4901-1-16(B) to provide the documents sought. Therefore, ELPC respectfully requests an order compelling FirstEnergy to respond to the request for production of documents at issue. ELPC also seeks an expedited ruling on this motion in order to ensure production of any relevant documents before the hearing scheduled for January 14, 2015.

Respectfully submitted,

Date: December 29, 2015

/s/ Madeline Fleisher

Madeline Fleisher

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Environmental Law & Policy Center

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**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY AND FOR
AN EXPEDITED RULING BY THE
ENVIRONMENTAL LAW & POLICY CENTER**

I. INTRODUCTION

The Environmental Law & Policy Center (“ELPC”), an intervenor in the above-captioned case, timely served Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”) with discovery requests that seek information relevant to important issues raised by the Third Supplemental Stipulation filed in this case on December 1, 2015. While ELPC has been willing to accept FirstEnergy’s narrow responses to some of its requests, FirstEnergy has refused to respond to two of ELPC’s principal requests for production of documents, despite ELPC’s reasonable efforts to resolve the parties’ differences. This request is well within the bounds of permissible discovery under Commission rules allowing a party to “obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.” Ohio Admin. Code 4901-1-16(B). Accordingly, ELPC has filed this motion to compel to respectfully request an order requiring FirstEnergy to respond to the requests at issue, and for expedited consideration to allow resolution of this matter before the hearing scheduled for January 14, 2015.

II. BACKGROUND

Section V.D. of the Third Supplemental Stipulation provides that FirstEnergy will, within ninety days of filing of the Stipulation (by February 29, 2016), “file a grid modernization business plan” addressing issues including “Advanced Metering Infrastructure, Distribution Automation Circuit Reconfiguration, and VOLT/VAR.” Third Supplemental Stipulation, § V.D.1, V.D.2. Witness Eileen Mikkelsen describes this grid modernization provision, along with other aspects of the Third Supplemental Stipulation, as part of a package of provisions that “will benefit customers and are in the public interest.” Mikkelsen Fifth Supplemental Testimony at 10:13 (Dec. 1, 2015).

ELPC timely served a Sixth Set of Interrogatories and Requests for Production of Documents regarding the Third Supplemental Stipulation on FirstEnergy on December 11, 2015, in accordance with the Attorney Examiners’ Entry of December 9, 2015. These requests included two requests for production of documents focused on determining what benefits to customers and the public interest might, in fact, result from the grid modernization plan to be filed by FirstEnergy under Section V.D. ELPC Set 6, Request for Production of Documents (“RPD”) 4 asked FirstEnergy to “produce any documents relating to any studies or analyses performed by the Companies or at their direction regarding potential deployment of VOLT/VAR technology in their service territories.” Attachment A at 13. ELPC Set 6, RPD 5 asked FirstEnergy to “produce any documents relating to the ‘grid modernization business plan’ contemplated in this provision.” *Id.* While ELPC believes grid modernization may provide benefits to utility customers, ELPC made these requests in order to allow for analysis of FirstEnergy’s views of the potential benefits and costs of grid modernization that would assist the Commission in determining the value of FirstEnergy’s commitment to file a grid modernization plan.

In its responses provided on Friday, December 18, 2015, FirstEnergy refused to provide any documents responsive to either of these requests. With respect to ELPC Set 6, RPD 4, FirstEnergy objected that:

This request is overly broad and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks information that is beyond the scope of the Third Supplemental Stipulation and Recommendation, the Fifth Supplemental Testimony of Eileen Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry.

Attachment B at 30. With respect to ELPC Set 6, RPD 5, FirstEnergy objected that "This request is overbroad and unduly burdensome and seeks information protected by the attorney client and work product privileges. Moreover, this request is premature as the business plan is incomplete." *Id.* at 31.

ELPC responded to FirstEnergy regarding this aspect of the discovery on Monday, December 21, 2015. ELPC sought to clarify that ELPC Set 6, RPD 5 sought "[d]iscovery regarding the potential contents" of the grid modernization business plan to be filed pursuant to the Third Supplemental Stipulation. Attachment C at 2. For example, ELPC noted that this request would encompass documents regarding FirstEnergy's ongoing Conservation Voltage Reduction study (an application of VOLT/VAR technology), currently underway as part of its current energy efficiency portfolio plan. *Id.*; *see* Case No. 12-2190-EL-POR, Ohio Edison Company Energy Efficiency & Peak Demand Reduction Program Portfolio (July 31, 2012) at 64; Tr. XXXIV at 7026:7-10 (Mikkelsen hearing testimony noting ongoing Conservation Voltage Reduction and VOLT/VAR studies being conducted by FirstEnergy).

FirstEnergy replied via email on December 23, 2015. Attachment D. That email asserted that the filing of the grid modernization plan "has not occurred and there is currently no grid modernization business plan. ELPC's [sic] request on its face presumes that the grid

modernization business plan exists today. It does not.” *Id.* at 1. Additionally, FirstEnergy stated that:

[A]s Ms. Mikkelsen indicated in her deposition, the work related to the grid modernization business plan will be performed to prepare that filing at the direction of counsel. Indeed, no decisions have been made as to what will be included in the grid modernization business plan. For example, you are correct that the Companies are undertaking a study on conservation voltage reduction. However, whether that will be included in the business plan has not been decided and therefore, that document is not responsive to ELPC’s request.

Id. Based on that apparent view that ELPC’s request sought documents that had not yet been prepared (or documents that were being prepared at the direction of counsel), FirstEnergy continued to refuse to respond to ELPC’s request for documents relating to the grid modernization plan.

ELPC attempted to provide additional clarification via an email that same day. Attachment E. ELPC referred FirstEnergy to the Definitions section of ELPC’s discovery requests providing that “[a] request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents.” Attachment A at 3. ELPC explained that its request for documents “relating to” the grid modernization plan:

is not conditioned on whether conservation voltage reduction measures will ultimately be included in the grid modernization plan, but rather seeks any documents with a “nexus” to the plan in that they involve measures encompassed within the specified topics of the business plan and that may therefore be considered for inclusion in the business plan.

Attachment E at 1. ELPC also noted that similar documents from ongoing studies regarding conservation voltage reduction or VOLT/VAR deployment would also be within the scope of ELPC Set 6, RPD 4, seeking “any documents relating to any studies or analyses performed by

the Companies or at their direction regarding potential deployment of VOLT/VAR technology in their service territories.” *Id.* As this email explained, “[i]f FirstEnergy contends that documents relating to the contemplated grid modernization business plan are not discoverable, then ELPC’s remaining route to obtain relevant information regarding that aspect of the Third Supplemental Stipulation is to seek documents relating to the topics to be addressed by the business plan, which is what this request does.” *Id.*

Given the short schedule in this phase of the proceeding and the winter holidays, ELPC sought a response to this email by the morning of December 24, 2015. FirstEnergy did not provide any such response and still has not done so as of the date of the filing of this motion. Having been unsuccessful in these efforts to resolve this dispute, ELPC now files this Motion to Compel FirstEnergy to provide a response to RPDs 4 and 5.

III. ARGUMENT

FirstEnergy’s proposed Third Supplemental Stipulation contemplates the filing of a grid modernization business plan in just two months, and asserts that such a filing will provide benefits to customers and the public. ELPC seeks discovery relevant to testing FirstEnergy’s position on this point, in the form of documents regarding FirstEnergy’s study of potential grid modernization measures to date. It is undisputed that such documents exist, as acknowledged in FirstEnergy’s December 23 email referencing its Conservation Voltage Reduction study. FirstEnergy has no valid grounds to withhold those documents. Accordingly, this Motion to Compel seeks an order requiring FirstEnergy to produce all such non-privileged documents by January 11, 2015, to ensure that they can be used in the hearing scheduled for January 14, 2015.

ELPC’s discovery request seeks relevant information that ELPC is entitled to under the Commission’s rules. Ohio Admin. Code 4901-1-16(B) provides that a party to a PUCO

proceeding “may obtain discovery of *any* matter, not privileged, which is relevant to the subject matter of the proceeding.” Ohio Admin. Code 4901-1-16(B) (emphasis added). The Commission has noted that its “rules are designed to allow broad discovery of material that is relevant to the proceeding in question and to allow the parties to prepare thoroughly and adequately for hearing.” *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case Nos. 08-920-EL-SSO *et al.*, Entry (Oct.1, 2008) at 3.

ELPC seeks documents that are relevant and thus within the scope of Rule 4901-1-16(B). Documents such as those relating to the results to date of FirstEnergy’s Conservation Voltage Reduction and VOLT/VAR studies may provide important information as to whether FirstEnergy’s filing will actually present a proposal for significant steps toward grid modernization that benefits FirstEnergy ratepayers. ELPC generally supports the deployment of technologies such as Volt/VAR that can provide significant energy savings for customers. However, the Third Supplemental Stipulation requires FirstEnergy to file a plan that “address[es]” measures such as Volt/VAR without providing for any particular substantive commitment. Third Supplemental Stipulation, Section V.D.2.b. Information shedding light on FirstEnergy’s view of the extent of cost-effective Volt/VAR deployment available in its service territory is therefore vital for the Commission to evaluate the potential for Section V.D to actually lead to benefits for ratepayers and the public interest.

IV. CONCLUSION

ELPC seeks documents relating to the potential substance of a filing that FirstEnergy has committed to make in just two months pursuant to Section V.D of the Third Supplemental Stipulation. These documents are centrally relevant to evaluating FirstEnergy’s assertion that this aspect of the Stipulation will benefit ratepayers and the public interest. ELPC therefore requests

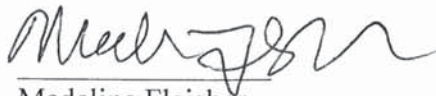
that the Commission grant its Motion to Compel and require FirstEnergy to provide a response to ELPC Set 6, Requests for Production 4 and 5 by January 11, 2015.

Respectfully submitted,

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AFFIDAVIT OF MADELINE FLEISHER

I, Madeline Fleisher, swear that the facts set forth in the foregoing Memorandum in Support of Motion to Compel Discovery by the Environmental Law & Policy Center ("ELPC") regarding ELPC's efforts to resolve its differences with FirstEnergy regarding the discovery at issue are true to the best of my knowledge.



Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center

Sworn to before me and subscribed in my presence on December 29, 2015, in Columbus, OH.



Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Compel, Memorandum in Support, and Affidavit of Madeline Fleisher, submitted on behalf of the Environmental Law & Policy Center, was served by electronic mail upon the following Parties of Record, on December 29, 2015.

/s/ Madeline Fleisher
Madeline Fleisher

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MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIROMENTAL LAW & POLICY CENTER

29 December 2015

Attachment A

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**ENVIRONMENTAL LAW & POLICY CENTER’S SIXTH SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO
OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY AND THE TOLEDO EDISON COMPANY**

The Environmental Law & Policy Center (“ELPC”), in the above captioned proceedings before the Public Utilities Commission of Ohio (“PUCO” or “Commission”), submits the following Sixth Set of Interrogatories and Requests for Production of Documents pursuant to Ohio Administrative Code § 4901-1-16 through O.A.C. § 4901-1-20, and in accordance with the Ohio Rules of Civil Procedure 26, 33, and 34, for response from the FirstEnergy Ohio utilities of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, “FirstEnergy” or “Companies”). All responses should be provided to ELPC by electronic transmission at the following address:

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Additionally, all responses should be consistent with the instructions set forth below. Definitions are provided below that are used in ELPC’s discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punch cards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers, work sheets, books, magazines, notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, work papers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including,

without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamps, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.

4. “You,” and “Your,” or “Yourself” refer to the party that is the subject of this discovery request, and any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
5. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.
6. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
7. “Identify,” or “the identity of,” or “identified” means as follows:
 - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
 - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
 - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
 - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance,

place, and approximate time thereof, and identity of other persons in the presence of each party thereto;

- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
 - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
- 8. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
 - 9. The term "e.g." connotes illustration by example, not limitation.
 - 10. "OE" means Ohio Edison Company, "CEI" means The Cleveland Electric Illuminating Company and "TE" means The Toledo Edison Company.
 - 11. "FirstEnergy" and "the Companies" means OE, CEI, and TE collectively.
 - 12. "Third Supplemental Stipulation" means the Third Supplemental Stipulation and Recommendation filed in this proceeding on December 1, 2015.
 - 13. "PPA Plants" means the W.H. Sammis Power Plant located in Stratton, Ohio; the Davis-Besse Nuclear Power Station located in Oak Harbor, Ohio; the Kyger Creek Power Plant in Cheshire, Ohio; and the Clifty Creek Power Plant in Madison, Indiana.

14. “Grid Modernization” means advanced metering infrastructure, distribution automation circuit reconfiguration, VOLT/VAR, distributed generation, net metering tariffs, and any other technologies or efforts encompassed by the term as used in Section V.D of the Third Supplemental Stipulation.

INSTRUCTIONS FOR ANSWERING

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in

computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:

- a. Microsoft Excel worksheet files on compact disk;
 - b. other Microsoft Windows or Excel compatible worksheet or database diskette files;
 - c. ASCII text diskette files;
 - d. and such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response; e.g., data requested in kWh may be provided in mWh or gWh as long as the unit measure is made clear.
8. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
9. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must (a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, (b) identify all persons to whom the information has already been revealed, and (c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

INTERROGATORIES

ELPC Set 6 INT-1:

Define “the State’s long term resource adequacy needs” as used on pages 3 and 9 of the Third Supplemental Stipulation.

RESPONSE:

ELPC Set 6 INT-2:

PJM’s Enhanced Liaison Committee (Capacity Performance) tabulated hours that would have triggered performance assessments in its file titled “Performance Assessment Hours for 2011-2014” (3-23-2015; <https://www.pjm.com/~media/committees-groups/committees/elc/postings/performance-assessment-hours-2011-2014-xls.ashx>). Please provide the operational status of each unit at the PPA Plants during these flagged hours.

RESPONSE:

ELPC Set 6 INT-3:

Please identify all riders that would continue for the eight year term of the ESP as proposed in the Third Supplemental Stipulation (including riders that would be subject to a four-year review under R.C. 4928.143(E)).

ELPC Set 6 INT-4:

Does the Third Supplemental Stipulation or the PPA Agreement constrain FirstEnergy Solutions from selling or transferring the PPA Units? If so, identify the relevant provision(s) of either document.

RESPONSE:

ELPC Set 6 INT-5:

Explain how FE determined the appropriate amounts for each of the proposed credits in Section V.B.2 of the Third Supplemental Stipulation.

RESPONSE:

ELPC Set 6 INT-6:

Explain why FE proposes starting the credits under Section V.B.2 of the Third Supplemental Stipulation in Year 5 of the proposed ESP.

RESPONSE:

ELPC Set 6 INT-7:

Provide the net present value of the credits under Section V.B.2 of the Third Supplemental Stipulation.

RESPONSE:

ELPC Set 6 INT-8:

Refer to Section V.B.3.a of the Third Supplemental Stipulation. For Commission review of costs related to capacity obligations for the PPA Units, would the review be based on “the facts and circumstances known at the time” that the Companies bid into the capacity performance market, or at the time the Companies received capacity revenues? Please explain.

RESPONSE:

ELPC Set 6 INT-9:

Refer to section V.B.3.a of the Third Supplemental Stipulation, stating that “the calculation of Rider RRS will be based on the sale of power into PJM.”

- a) Does this sentence restrict the Companies from selling power from the PPA Units through bilateral contracts?
- b) If not, would the revenues from such contracts flow through Rider RRS?
- c) Do the Companies intend to explore the possibility of selling power from the PPA Units through bilateral contracts? If no, why not?

ELPC Set 6 INT-10:

Refer to Section V.B.3.b of the Third Supplemental Stipulation.

- a) What would be the Company’s criteria be for determining what constitutes a reasonable Staff request?
- b) What would be the Commission’s process for determination of a reasonable Staff request?
- c) Would a Staff motion to compel be necessary to obtain a response from the Companies if the Companies believed a request was unreasonable?

RESPONSE:

ELPC Set 6 INT-11:

Refer to Section V.B.3.b of the Third Supplemental Stipulation.

- a) Will intervening parties have access to FES fleet information provided to Staff pursuant to this provision?
- b) What treatment will be required for information provided by the Companies under the Critical Energy Infrastructure Information designation?
- c) What types of information do the Companies currently designate Critical Energy Infrastructure Information?

RESPONSE:

ELPC Set 6 INT-12:

If Rider RRS is invalidated, does the Commission have the authority to order the Companies to refund to customers the money collected under the rider to that point? If yes, under what statutory provision, rule, or legal precedent?

ELPC Set 6 INT-13:

Refer to Section V.D.1 of the Third Supplemental Stipulation, why does FE believe it is appropriate to include commitments on Grid Modernization in this stipulation?

RESPONSE:

ELPC Set 6 INT-14:

Refer to Section V.D.1 of the Third Supplemental Stipulation. With respect to the proffered examples of Advanced Metering Infrastructure, Distribution Automation Circuit Reconfiguration, VOLT/VAR, removal of barriers distributed generation, and net metering tariffs, please answer the following:

- a) Identify the potential benefits of including each of these elements in the Third Supplemental Stipulation.
- b) Does FirstEnergy view all of these different elements as needing to be done together as part of grid modernization?
- c) Is FirstEnergy currently making its best efforts to remove barriers for distributed generation?
- d) Does FirstEnergy believe it is currently obligated to remove barriers for distributed generation? Please explain.
- e) Is FirstEnergy currently consulting with PUCO Staff on net-metering? If not, why not? If yes, please describe those discussions.
- f) How much does FirstEnergy project that the grid modernization plan will cost?
- g) Please outline the benefits to customers from grid modernization, including dollar savings.

RESPONSE:

ELPC Set 6 INT-15:

Does Section V.D.2.b of the Third Supplemental Stipulation obligate the Companies to propose any specific “future initiative” with respect to the examples identified in Section V.D.1.? Identify any existing “barriers for distributed generation” in the Companies’ service territories.

RESPONSE:

ELPC Set 6 INT-16:

Refer to Section V.D.3 of the Third Supplemental Stipulation. Please explain why the Companies believe a return on equity for grid modernization projections equal to the ATSI ROE plus a fifty basis point adder is appropriate.

RESPONSE:

ELPC Set 6 INT-17:

Refer to Section V.D.3 of the Third Supplemental Stipulation. Do the Companies believe that approving the settlement in this docket sets the return on equity for the future proceeding related to Grid Modernization?

RESPONSE:

ELPC Set 6 INT-18:

Why does FirstEnergy believe the costs of Grid Modernization should be recovered in Rider AMI?

RESPONSE:

ELPC Set 6 INT-19:

Identify the return on equity earned by the Companies for any previous Grid Modernization projects.

RESPONSE:

ELPC Set 6 INT-20:

Refer to Section V.E.1 of the Third Supplemental Stipulation.

- a) Does this stipulation commit FirstEnergy to the “CO2 reduction goal” of 90% below 2005 levels by 2045?
- b) If the answer to (a) is yes, how would the Commission enforce that provision?
- c) If the answer to (a) is yes, what would the penalty be for not achieving those reductions?

RESPONSE:

ELPC Set 6 INT-21:

Refer to Section V.E.1 of the Third Supplemental Stipulation.

- a) Regarding the commitment to file interim reports every five years, what criteria will the Commission use to gauge FirstEnergy's progress?
- b) What action can the Commission take if it is not satisfied with FirstEnergy's progress?

RESPONSE:

ELPC Set 6 INT-22:

What are FirstEnergy Corp.'s current carbon dioxide emission levels?

RESPONSE:

ELPC Set 6 INT-23:

What are the current annual carbon dioxide emission levels from the W.H. Sammis Power Plant?

RESPONSE:

ELPC Set 6 INT-24:

What are the current annual carbon dioxide emission levels from the Kyger Creek Power Plant and the Clifty Creek Power Plant?

RESPONSE:

ELPC Set 6 INT-25:

Refer to Section V.E.2 of the Third Supplemental Stipulation. What will the Companies do to evaluate potential battery resource investments?

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS

ELPC Set 1 RPD-1:

Please provide all documents that You relied upon in answering the above interrogatories.

ELPC Set 1 RPD-2:

Please produce any communications after Oct 1, 2015, between the Companies and any signatory party to the Third Supplemental Stipulation (including Staff) relating to:

- a) The proposed PPA, including but not limited to its terms and duration;
- b) Rider RRS;
- c) Potential “market enhancements” to PJM, as that term is used in Section V.C.1 of the Third Supplemental Stipulation;
- d) Ohio’s “long term resource adequacy needs,” as that term is used in Section V.C.3 of the Third Supplemental Stipulation;
- e) Grid Modernization analyses and efforts, including potential future Grid Modernization initiatives;
- f) FirstEnergy Corp.’s carbon dioxide reduction plans;
- g) Potential battery technology investments;
- h) The Companies’ plans or analyses regarding the implementation of energy efficiency or peak demand reduction programs after December 31, 2016;
- i) The Companies’ energy efficiency program shared savings mechanism;
- j) The Companies’ purchase of renewable energy resources through a power purchase agreement;
- k) The Companies’ lost distribution revenue recovery mechanism;
- l) The Companies’ Delivery Capital Recovery Rider;
- m) The rate design and duration of Rider ELR and Rider EDR(b);
- n) Implementation of Company-funded energy efficiency and demand response programs by the Council of Smaller Enterprises, the Association of Independent Colleges and Universities of Ohio, or the Citizens’ Coalition;
- o) The location of FirstEnergy’s corporate headquarters;
- p) The fourth-year review of the proposed Electric Security Plan under R.C. 4928.143(E).
- q) A PUCO corporate separation audit of FirstEnergy as contemplated in Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 12-13.

ELPC Set 6 RPD-3:

Please produce any documents containing projections of capacity performance charges and bonus payments for the PPA Units under PJM’s Capacity Performance tariff provisions from June 1, 2016 through May 31, 2024, along with any supporting documents.

ELPC Set 6 RPD-4:

Please produce any documents relating to any studies or analyses performed by the Companies or at their direction regarding potential deployment of VOLT/VAR technology in their service territories.

ELPC Set 1 RPD-5:

Refer to Section V.D.2 of the Third Supplemental Stipulation. Please produce any documents relating to the “grid modernization business plan” contemplated in this provision.

ELPC Set 1 RPD-6:

Please provide all documents containing FirstEnergy Corp.'s existing carbon reduction goals and plans.

ELPC Set 1 RPD-7:

Please produce any documents related to potential battery resource investments under Section V.E.2 of the Third Supplemental Stipulation.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Sixth Set of Interrogatories and Requests for Production of Documents to FirstEnergy submitted on behalf of the Environmental Law & Policy Center was served by electronic mail, upon the following Parties of Record, on December 11, 2015.

/s/ Madeline Fleisher
Madeline Fleisher

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MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIROMENTAL LAW & POLICY CENTER

29 December 2015

Attachment B

ELPC SET 6
Witness: Eileen M Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Define “the State’s long term resource adequacy needs” as used on pages 3 and 9 of the
INT-001 Third Supplemental Stipulation.

Response: Objection. The request seeks an improper narrative response. Subject to and without waiving the foregoing objection, “The State’s long term resource adequacy needs” refers to having sufficient, economic generation resources available to meet projected needs in the provision of electric service in the state of Ohio into the future.

ELPC SET 6
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – PJM's Enhanced Liaison Committee (Capacity Performance) tabulated hours that would
INT-002 have triggered performance assessments in its file titled "Performance Assessment Hours
for 2011-2014" (3-23-2015; [https://www.pjm.com/~media/committees-
groups/committees/elc/postings/performance-assessment-hours-2011-2014-xls.ashx](https://www.pjm.com/~media/committees-groups/committees/elc/postings/performance-assessment-hours-2011-2014-xls.ashx)).
Please provide the operational status of each unit at the PPA Plants during these flagged
hours.

Response: Objection. This request is vague and ambiguous in its use of "operational status," overbroad and unduly burdensome, seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony of Eileen M. Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry.

ELPC SET 6
Witness: Eileen M Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Please identify all riders that would continue for the eight year term of the ESP as proposed
INT-003 in the Third Supplemental Stipulation (including riders that would be subject to a four-year review under R.C. 4928.143(E)).

Response: Objection. The request is overbroad and unduly burdensome, and calls for a legal conclusion. The request also mischaracterizes the Third Supplemental Stipulation regarding “riders that would be subject to a four-year review under R.C. 4928.143(E).” Subject to and without waiving the foregoing objections, please refer to Attachment 2 to the Companies’ Application for an overview of the Companies’ riders as originally proposed for the three-year term of ESP IV. Please also refer to the Stipulations and supporting testimony of Companies’ witness Mikkelsen for explanations of riders and tariff provisions that have been modified from the Companies’ original Application. With these modifications, Attachment 2 to the Companies’ Application is applicable to the proposed eight-year term under the Third Supplemental Stipulation.

ELPC SET 6
Witness: Eileen M. Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Does the Third Supplemental Stipulation or the PPA Agreement constrain FirstEnergy
INT-004 Solutions from selling or transferring the PPA Units? If so, identify the relevant provision(s)
of either document.

Response: Objection. This request is vague and ambiguous in its use of “PPA Agreement” and
“constrain.” It also seeks legal conclusions, and seeks information outside the scope of the
Third Supplemental Stipulation, the Fifth Supplemental Testimony of Eileen M. Mikkelsen,
and the Attorney Examiner’s December 9, 2015 Entry. Subject to and without waiving the
foregoing objections, please refer to section V.B.1 the Third Supplemental Stipulation and
the Companies’ response to IEU Set 1-INT-25 – Revised.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Explain how FE determined the appropriate amounts for each of the proposed credits in
INT-005 Section V.B.2 of the Third Supplemental Stipulation.

Response: The proposed credits in Section V.B.2 of the Third Supplemental Stipulation were agreed upon in settlement negotiations.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Explain why FE proposes starting the credits under Section V.B.2 of the Third
INT-006 Supplemental Stipulation in Year 5 of the proposed ESP.

Response: The starting date of year 5 for credits under Section V.B.2 was agreed upon in settlement negotiations.

ELPC SET 6
As to objections: Carrie M. Dunn
Witness: Eileen M Mikkelsen

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-007**

Provide the net present value of the credits under Section V.B.2 of the Third Supplemental Stipulation.

Response:

Objection: This request is vague and ambiguous, overbroad and unduly burdensome and calls for speculation. Subject to and without waiving the aforementioned objection, the Companies have not performed calculations of this type.

ELPC SET 6
As to objections: Carrie M. Dunn
Witness: Eileen M Mikkelsen

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-008**

Refer to Section V.B.3.a of the Third Supplemental Stipulation. For Commission review of costs related to capacity obligations for the PPA Units, would the review be based on “the facts and circumstances known at the time” that the Companies bid into the capacity performance market, or at the time the Companies received capacity revenues? Please explain.

Response:

Objection: This request is vague and ambiguous, overbroad and unduly burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, the review would be based on “the facts and circumstances known at the time” that the Companies bid into the capacity performance market.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
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Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

Refer to section V.B.3.a of the Third Supplemental Stipulation, stating that “the calculation of Rider RRS will be based on the sale of power into PJM.”

**ELPC Set 6 –
INT-009**

- a) Does this sentence restrict the Companies from selling power from the PPA Units through bilateral contracts?
- b) If not, would the revenues from such contracts flow through Rider RRS?
- c) Do the Companies intend to explore the possibility of selling power from the PPA Units through bilateral contracts? If no, why not?

Response:

Objection. This request seeks information that is outside the scope of the Third Supplemental Stipulation, Fifth Supplemental Testimony of Eileen M. Mikkelsen and Attorney Examiner’s December 9, 2015 Entry. The request also calls for a legal conclusion and is vague and ambiguous in the use of the word “power”. Subject to and without waiving the foregoing objections, a) The sentence sets forth the calculation of Rider RRS b) not applicable, and c) not applicable.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
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Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

Refer to Section V.B.3.b of the Third Supplemental Stipulation.

**ELPC Set 6 –
INT-010**

- a) What would be the Company's criteria be for determining what constitutes a reasonable Staff request?
- b) What would be the Commission's process for determination of a reasonable Staff request?
- c) Would a Staff motion to compel be necessary to obtain a response from the Companies if the Companies believed a request was unreasonable?

Response: Objection. This request is vague and ambiguous, overbroad and calls for speculation. For part b, this request also seeks information that is not in the Companies' possession. Further, for part c, this request mischaracterizes the Third Supplemental Stipulation assumes facts that are not in evidence, calls for speculation and assumes that a motion to compel is procedurally appropriate

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

Refer to Section V.B.3.b of the Third Supplemental Stipulation.

**ELPC Set 6 –
INT-011**

- a. Will intervening parties have access to FES fleet information provided to Staff pursuant to this provision?
- b. What treatment will be required for information provided by the Companies under the Critical Energy Infrastructure Information designation?
- c. What types of information do the Companies currently designate Critical Energy Infrastructure Information?

Response:

- a. No
- b. Objection. This request mischaracterizes the Third Supplemental Stipulation.
- c. Objection. This request is vague and ambiguous, overbroad and unduly burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, this request seeks information that is outside the scope of the Third Supplemental Stipulation, Fifth Supplemental Testimony of Eileen M. Mikkelsen and Attorney Examiner's December 9, 2015 Entry.

ELPC SET 6
As to objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – If Rider RRS is invalidated, does the Commission have the authority to order the
INT-012 Companies to refund to customers the money collected under the rider to that point? If
yes, under what statutory provision, rule, or legal precedent?

Response: Objection. The request is vague and ambiguous as to the term “invalidated” and also calls
for a legal conclusion. Moreover, this request seeks information that is protected by the
attorney client and work product privileges.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Refer to Section V.D.1 of the Third Supplemental Stipulation, why does FE believe it is
INT-013 appropriate to include commitments on Grid Modernization in this stipulation?

Response:

The agreement to include commitments on Grid Modernization in the Third Supplemental Stipulation was part of a negotiated settlement.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

Refer to Section V.D.1 of the Third Supplemental Stipulation. With respect to the proffered examples of Advanced Metering Infrastructure, Distribution Automation Circuit Reconfiguration, VOLT/VAR, removal of barriers distributed generation, and net metering tariffs, please answer the following:

- a) Identify the potential benefits of including each of these elements in the Third Supplemental Stipulation.
- b) Does FirstEnergy view all of these different elements as needing to be done together as part of grid modernization?
- c) Is FirstEnergy currently making its best efforts to remove barriers for distributed generation?
- d) Does FirstEnergy believe it is currently obligated to remove barriers for distributed generation? Please explain.
- e) Is FirstEnergy currently consulting with PUCO Staff on net-metering? If not, why not? If yes, please describe those discussions.
- f) How much does FirstEnergy project that the grid modernization plan will cost?
- g) Please outline the benefits to customers from grid modernization, including dollar savings.

**ELPC Set 6 –
INT-014**

Response:

- a) Objection. This request is vague and ambiguous as to “potential benefits” and “these elements.” Subject to and without waiving these objections, as part of the negotiated settlement the Companies have agreed to file a business case within 90 days of the date of the stipulation. The business case will identify benefits, if any.
- b) Objection. This request is vague and ambiguous as to “different elements” and “needing to be done together”.
- c) Objection. This request is vague and ambiguous as to “best efforts” and mischaracterizes the Third Supplemental Stipulation.
- d) Objection. This request is vague and ambiguous as to “currently obligated to remove barriers”, and calls for a legal conclusion.
- e) Objection. This request is vague and ambiguous as to “consulting with PUCO Staff”. Subject to and without waiving these objections, the Companies have not yet consulted with the Staff pursuant to the Third Supplemental Stipulation and Recommendation.
- f) The Companies’ business case will include an estimate of costs for grid modernization.
- g) The Companies’ business case will include an estimate of benefits to customers.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-015**

Does Section V.D.2.b of the Third Supplemental Stipulation obligate the Companies to propose any specific “future initiative” with respect to the examples identified in Section V.D.1.? Identify any existing “barriers for distributed generation” in the Companies’ service territories.

Response:

Objection. This request is vague and ambiguous, overbroad and unduly burdensome and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, the Plan will address examples identified in V.D.1. To-date, the Companies have not identified any barriers for distributed generation.

ELPC SET 6
Witness: Eileen M Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-016**

Refer to Section V.D.3 of the Third Supplemental Stipulation. Please explain why the Companies believe a return on equity for grid modernization projections equal to the ATSI ROE plus a fifty basis point adder is appropriate.

Response:

Objection. The request is vague and ambiguous as to the term “return on equity for grid modernization projections.” Subject to and without waiving the foregoing objections, the return on equity identified in section V.D.3 of the Third Supplemental Stipulation was negotiated as part of the settlement process.

ELPC SET 6
Witness: Eileen M Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Refer to Section V.D.3 of the Third Supplemental Stipulation. Do the Companies believe
INT-017 that approving the settlement in this docket sets the return on equity for the future
proceeding related to Grid Modernization?

Response: Objection. The request is vague and ambiguous as to the term “the future proceeding
related to Grid Modernization.” Subject to and without waiving the foregoing objections,
Commission approval of the Third Supplemental Stipulation constitutes approval of Rider
AMI, including the return on equity referenced in section V.D.3.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-018**

Why does FirstEnergy believe the costs of Grid Modernization should be recovered in Rider AMI?

Response:

The proposal to recover the costs of Grid Modernization in Rider AMI was part of a negotiated settlement.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-019**

Identify the return on equity earned by the Companies for any previous Grid Modernization projects.

Response:

Objection: The request seeks information that is beyond the scope of the Attorney Examiner's December 9, 2015 Entry. Subject to and without waiving the foregoing objection, and assuming that the request is referencing the Companies' current approved Rider AMI, the Commission approved return on equity for the Smart Grid Modernization Initiative is 10.50%.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-020**

Refer to Section V.E.1 of the Third Supplemental Stipulation.

- a) Does this stipulation commit FirstEnergy to the “CO2 reduction goal” of 90% below 2005 levels by 2045?
- b) If the answer to (a) is yes, how would the Commission enforce that provision?
- c) If the answer to (a) is yes, what would the penalty be for not achieving those reductions?

Response:

Objection. The request mischaracterizes the Third Supplemental Stipulation, which includes no CO₂ reduction goal for the Companies, which own no generation. It also seeks legal conclusions. Subject to and without waiving the foregoing objections, the Third Supplemental Stipulation speaks for itself.

ELPC SET 6
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-021**

Refer to Section V.E.1 of the Third Supplemental Stipulation.

- a) Regarding the commitment to file interim reports every five years, what criteria will the Commission use to gauge FirstEnergy's progress?
- b) What action can the Commission take if it is not satisfied with FirstEnergy's progress?

Response:

Objection. This request is vague and ambiguous, overbroad and unduly burdensome and seeks information that is not in the Companies' possession. Further, the request calls for speculation.

ELPC SET 6
Witness: Eileen M Mikkelsen
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric Illuminating Company and
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Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-022**

What are FirstEnergy Corp.'s current carbon dioxide emission levels?

Response:

Objection. The request is vague and ambiguous. ***Subject to any objections, the requested information is Competitively-Sensitive Confidential*** and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

ELPC SET 6
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
INT-023**

What are the current annual carbon dioxide emission levels from the W.H. Sammis
Power Plant?

Response:

Objection. The request seeks information which is irrelevant and is not reasonably
calculated to lead to the discovery of admissible evidence, and seeks information that is
outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony
of Eileen M. Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry.

ELPC SET 6
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – What are the current annual carbon dioxide emission levels from the Kyger Creek Power
INT-024 Plant and the Clifty Creek Power Plant?

Response: Objection. The request seeks information which is irrelevant and is not reasonably
calculated to lead to the discovery of admissible evidence, and seeks information that is
outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony
of Eileen M. Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

ELPC Set 6 – Refer to Section V.E.2 of the Third Supplemental Stipulation. What will the Companies do
INT-025 to evaluate potential battery resource investments?

Response: The Companies have not identified this information at this time.

ELPC SET 6

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-001**

Please provide all documents that You relied upon in answering the above interrogatories.

Response:

See the Third Supplemental Stipulation and the Companies' Competitively Sensitive Confidential response to OCC Set 17-INT-26.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

Please produce any communications after Oct 1, 2015, between the Companies and any signatory party to the Third Supplemental Stipulation (including Staff) relating to:

- a) The proposed PPA, including but not limited to its terms and duration;
- b) Rider RRS;
- c) Potential “market enhancements” to PJM, as that term is used in Section V.C.1 of the Third Supplemental Stipulation;
- d) Ohio’s “long term resource adequacy needs,” as that term is used in Section V.C.3 of the Third Supplemental Stipulation;
- e) Grid Modernization analyses and efforts, including potential future Grid Modernization initiatives;
- f) FirstEnergy Corp.’s carbon dioxide reduction plans;
- g) Potential battery technology investments;
- h) The Companies’ plans or analyses regarding the implementation of energy efficiency or peak demand reduction programs after December 31, 2016;
- i) The Companies’ energy efficiency program shared savings mechanism;
- j) The Companies’ purchase of renewable energy resources through a power purchase agreement;
- k) The Companies’ lost distribution revenue recovery mechanism;
- l) The Companies’ Delivery Capital Recovery Rider;
- m) The rate design and duration of Rider ELR and Rider EDR(b);
- n) Implementation of Company-funded energy efficiency and demand response programs by the Council of Smaller Enterprises, the Association of Independent Colleges and Universities of Ohio, or the Citizens’ Coalition;
- o) The location of FirstEnergy’s corporate headquarters;
- p) The fourth-year review of the proposed Electric Security Plan under R.C. 4928.143(E).
- q) A PUCO corporate separation audit of FirstEnergy as contemplated in Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 12-13.

ELPC Set 6 –
RPD-002

Response: Objection. This request is vague and ambiguous and overbroad and unduly burdensome. The requested information also is neither relevant nor reasonably calculated lead to the discovery of admissible evidence, particularly since settlement matters are inadmissible. The requested information also seeks confidential settlement information. Moreover, subparts (a) and (b) of this request seek information that is outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony of Eileen M. Mikkelsen and the Attorney Examiner’s December 9, 2015 Entry.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-003**

Please produce any documents containing projections of capacity performance charges and bonus payments for the PPA Units under PJM's Capacity Performance tariff provisions from June 1, 2016 through May 31, 2024, along with any supporting documents.

Response:

Objection. This request is vague and ambiguous, and seeks information that is outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony of Eileen M. Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-004** Please produce any documents relating to any studies or analyses performed by the
Companies or at their direction regarding potential deployment of VOLT/VAR technology in
their service territories.

Response: Objection. This request is overly broad and seeks information that is irrelevant and not
reasonably calculated to lead to the discovery of admissible evidence. The request seeks
information that is beyond the scope of the Third Supplemental Stipulation and
Recommendation, the Fifth Supplemental Testimony of Eileen Mikkelsen, and the Attorney
Examiner's December 9, 2015 Entry.

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-005** Refer to Section V.D.2 of the Third Supplemental Stipulation. Please produce any documents relating to the “grid modernization business plan” contemplated in this provision.

Response: Objection. This request is overbroad and unduly burdensome and seeks information protected by the attorney client and work product privileges. Moreover, this request is premature as the business plan is incomplete.

ELPC SET 6

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-006**

Please provide all documents containing FirstEnergy Corp.'s existing carbon reduction goals and plans.

Response:

Objection. This request seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is outside the scope of the Third Supplemental Stipulation, the Fifth Supplemental Testimony of Eileen M. Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry. Subject to and without waiving the foregoing objections, the Companies have no information responsive to this request.

ELPC SET 6

Case No. 14-1297-EL-SSO
Ohio Edison Company, The Cleveland Electric 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

RESPONSES TO REQUEST

**ELPC Set 6 –
RPD-007**

Please produce any documents related to potential battery resource investments under
Section V.E.2 of the Third Supplemental Stipulation.

Response: None.

MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIROMENTAL LAW & POLICY CENTER

29 December 2015

Attachment C

From: Madeline Fleisher
Sent: Monday, December 21, 2015 2:38 PM
To: Dunn, Carrie M
Subject: RE: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 6
Attachments: PUCO 14-1297 - ELPC letter regarding FE Response to ELPC Set 6.pdf

Dear Carrie,

Please find attached a letter regarding FirstEnergy's response to ELPC's Sixth Set of Discovery Requests.

Sincerely,
Madeline

Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
21 W. Broad St., Suite 500
Columbus, OH 43215
mfleisher@elpc.org
Office: 614-670-5586
Cell: 857-636-0371

From: Dunn, Carrie M [<mailto:cdunn@firstenergycorp.com>]
Sent: Friday, December 18, 2015 5:14 PM
To: Thomas.McNamee@puc.state.oh.us; mkurtz@BKLawfirm.com; kboehm@BKLawfirm.com; jkylercohn@BKLawfirm.com; sam@mwncmh.com; fdarr@mwncmh.com; mpritchard@mwncmh.com; stnourse@aep.com; mjsatterwhite@aep.com; yalami@aep.com; cmooney@ohiopartners.org; Larry.sauer@occ.ohio.gov; callwein@keglerbrown.com; ghull@eckertseamans.com; joliker@igsenergy.com; myurick@taftlaw.com; schmidt@sppgrp.com; ricks@ohanet.org; tobrien@bricker.com; bojko@carpenterlipps.com; mkl@smxblaw.com; gas@smxblaw.com; wttplmc@aol.com; barthroyer@aol.com; athompson@taftlaw.com; Christopher.miller@icemiller.com; Gregory.dunn@icemiller.com; Jeremy.grayem@icemiller.com; lhawrot@spilmanlaw.com; dwilliamson@spilmanlaw.com; blanghenry@city.cleveland.oh.us; hmadorsky@city.cleveland.oh.us; kryan@city.cleveland.oh.us; meissnerjoseph@yahoo.com; mdortch@kravitzllc.com; rparsons@kravitzllc.com; tdougherty@theoec.org; jfinnigan@edf.org; lesliekovacik@toledo.oh.gov; trhayslaw@gmail.com; marilyn@wflawfirm.com; matt@matthewcoxlaw.com; gkrassen@bricker.com; dstinson@bricker.com; dborchers@bricker.com; Madeline Fleisher; gthomas@gtpowergroup.com; laurac@chappelleconsulting.net; stheodore@epsa.org; mhpetricoff@vorys.com; mjsettineri@vorys.com; glpetrucci@vorys.com; DFolk@akronohio.gov; Jeffrey.mayes@monitoringanalytics.com; Cynthia.brady@exeloncorp.com; lael.campbell@exeloncorp.com; david.fein@exeloncorp.com; sechler@carpenterlipps.com; gpoulos@enernoc.com; mkimbrough@keglerbrown.com; msoules@earthjustice.org; tony.mendoza@sierraclub.org; sfisk@earthjustice.org; mjsettineri@vorys.com; glpetrucci@vorys.com; dparram@taftlaw.com; Maeve.Tibbetts@monitoringanalytics.com; FE14-1297-EL-SSO@puc.state.oh.us; Michael.Schuler@occ.ohio.gov; twilliams@snhsllaw.com; Maureen.grady@occ.ohio.gov; Rick.Sites@ohiohospitals.org; jennifer.spinosi@directenergy.com; dwilliamson@spilmanlaw.com; charris@spilmanlaw.com
Cc: Sweeney, Karen A.; Singleton, Tamera J.; Davis, Nancy E.; Burk, James W.; Ridmann, William R.; Mikkelsen, Eileen M.; Biltz, Justin T; jlang@calfee.com; talexander@calfee.com; dakutik@jonesday.com; mtharvey@jonesday.com; Bingaman, Bradley A; Yeboah, Ebony L; Dunn, Carrie M; Endris, Robert M; Hayden, Mark A.; Knipe, Brian J
Subject: Discovery Responses Associated with PUCO Case No. 14-1297-EL-SSO - - ELPC Set 6

RE: Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") Discovery Responses associated with PUCO Case No.14-1297-EL-SSO

Enclosed herein are the Companies' Discovery Response associated with P.U.C.O. Case No. 14-1297-EL-SSO. More specifically:

1. Response to – ELPC Set 6

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

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ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

Via Electronic Mail

December 21, 2015

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

Re: PUCO Case No. 14-1297-EL-SSO - FirstEnergy Response to ELPC's Sixth Set of
Discovery Requests

Dear Ms. Dunn,

I am writing you regarding FirstEnergy's responses to ELPC's Sixth Set of Discovery Requests, in particular the response to ELPC Set 6-RPD 5. (Note that this does not necessarily constitute ELPC's exclusive response regarding your answers to these discovery requests.) ELPC Set 6-RPD 5 seeks "any documents relating to the 'grid modernization business plan' contemplated in" Section V.D.2 of the Third Supplemental Stipulation. In response to this request, you asserted undue burden, invoked the attorney client and work product privileges, and then stated that "this request is premature as the business plan is incomplete."

FirstEnergy's final objection, regarding the request being premature, has no legal basis. Ohio Admin. Code 4901-1-16(B) provides that a party "may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding." FirstEnergy has requested that the Commission approve a Third Supplemental Stipulation that includes a provision for filing of a Grid Modernization business plan, asserting that such a provision is one of the benefits of the Stipulation. Mikkelsen Fifth Supp. Test. at 10. Discovery regarding the potential substantive contents of such a business plan is certainly relevant to determining what benefits it might in fact provide to customers, especially since the Third Supplemental Stipulation itself provides no details of what the filing will contain beyond the fact that it will address certain broad subject areas. Moreover, given that FirstEnergy has committed to filing the business plan in just over two months, it seems unlikely that there are no factual documents relating to the topics to be covered in the plan – for example, documents regarding FirstEnergy's Conservation Voltage Reduction study that has been underway for the past several years as part of its current

energy efficiency portfolio plan – that could provide relevant information as to the substantive import of this stipulation provision.

Because of the accelerated timeline in this case, I request an amended response to this discovery request that provides all non-privileged responsive documents as soon as possible, and at the latest by December 28, 2015. ELPC is willing to accept production of documents on a rolling basis in order to expedite this process. If FirstEnergy refuses to amend its response, I request notification of that decision by December 22, 2015, so that ELPC has time to consider any further steps that may be necessary to resolve this issue.

I am happy to discuss this matter further by phone or email if that would be helpful.

Sincerely,

/s/ Madeline Fleisher

Madeline Fleisher

Staff Attorney

Environmental Law & Policy Center

21 W. Broad St., Ste. 500

Columbus, OH 43215

mfleisher@elpc.org

(614) 670-5586

MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIROMENTAL LAW & POLICY CENTER

29 December 2015

Attachment D

From: Dunn, Carrie M <cdunn@firstenergycorp.com>
Sent: Wednesday, December 23, 2015 2:55 PM
To: Madeline Fleisher
Subject: December 21 Correspondence

Madeline:

I am writing in regarding to your December 21 correspondence. In that correspondence, you address the Companies' response to ELPC Set 6 RPD 5 whereby ELPC requested "any documents relating to the 'grid modernization business plan' contemplated" in the Third Supplemental Stipulation. As you know, Section V.D.2 of the Third Supplemental Stipulation provides that the Companies will file the "grid modernization business plan" within 90 days after the filing of the Stipulation. That event has not occurred and there is currently no grid modernization business plan. ELPC's request on its face presumes that the grid modernization business plan exists today. It does not.

Moreover, as Ms. Mikkelsen indicated in her deposition, the work related to the grid modernization business plan will be performed to prepare that filing at the direction of counsel. Indeed, no decisions have been made as to what will be included in the grid modernization business plan. For example, you are correct that the Companies are undertaking a study on conservation voltage reduction. However, whether that will be included in the business plan has not been decided and therefore, that document is not responsive to ELPC's request. Therefore, there are no complete, responsive, and unprivileged documents to produce to ELPC at this time. For all of those reasons, the Companies properly objected to ELPC Set 6 RPD 5's requests and will stand by those objections.

Thank you,

Carrie Dunn

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

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MOTION TO COMPEL DISCOVERY AND FOR AN EXPEDITED RULING BY THE
ENVIROMENTAL LAW & POLICY CENTER

29 December 2015

Attachment E

From: Madeline Fleisher
Sent: Wednesday, December 23, 2015 3:48 PM
To: Dunn, Carrie M
Subject: RE: December 21 Correspondence

Dear Carrie,

I have reviewed your email below, and as I understand it your objection is that documents such as those related to the Companies' ongoing Conservation Voltage Reduction study may not be included in the grid modernization business plan. However, as stated in the Definitions included in ELPC's discovery requests, "[a] request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents." Accordingly, ELPC Set 6 RPD 5 is not conditioned on whether conservation voltage reduction measures will ultimately be included in the grid modernization plan, but rather seeks any documents with a "nexus" to the plan in that they involve measures encompassed within the specified topics of the business plan and that may therefore be considered for inclusion in the business plan. I hope that clarification assists you in understanding the scope of this request.

Should you continue to refuse to provide any documents in response to this request, I would also refer you to ELPC Set 6 RPD 4, which requests "any documents relating to any studies or analyses performed by the Companies or at their direction regarding potential deployment of VOLT/VAR technology in their service territories." You objected to this request on the basis that it "is overly broad and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The request seeks information that is beyond the scope of the Third Supplemental Stipulation and Recommendation, the Fifth Supplemental Testimony of Eileen Mikkelsen, and the Attorney Examiner's December 9, 2015 Entry." If FirstEnergy contends that documents relating to the contemplated grid modernization business plan are not discoverable, then ELPC's remaining route to obtain relevant information regarding that aspect of the Third Supplemental Stipulation is to seek documents relating to the topics to be addressed by the business plan, which is what this request does. That is certainly within the scope of relevant discovery permitted under Commission rules, and would also encompass the type of Conservation Voltage Reduction documents or other VOLT/VAR technology-related documents I referenced in my December 21 letter.

While I would prefer to avoid filing a motion to compel, I believe that ELPC's requests on this matter do seek relevant, non-privileged documents, and if necessary I will request a determination on that issue from the Commission. Please provide me with a response by 10 am tomorrow so that I may act accordingly. I am happy to talk by phone if that would help to resolve this issue, and am available on my cellphone at 857-636-0371.

Madeline Fleisher
Staff Attorney
Environmental Law & Policy Center
21 W. Broad St., Suite 500
Columbus, OH 43215
mfleisher@elpc.org
Office: 614-670-5586
Cell: 857-636-0371

From: Dunn, Carrie M [mailto:cdunn@firstenergycorp.com]
Sent: Wednesday, December 23, 2015 3:55 PM
To: Madeline Fleisher
Subject: December 21 Correspondence

Madeline:

I am writing in regarding to your December 21 correspondence. In that correspondence, you address the Companies' response to ELPC Set 6 RPD 5 whereby ELPC requested "any documents relating to the 'grid modernization business plan' contemplated" in the Third Supplemental Stipulation. As you know, Section V.D.2 of the Third Supplemental Stipulation provides that the Companies will file the "grid modernization business plan" within 90 days after the filing of the Stipulation. That event has not occurred and there is currently no grid modernization business plan. ELPC's request on its face presumes that the grid modernization business plan exists today. It does not.

Moreover, as Ms. Mikkelsen indicated in her deposition, the work related to the grid modernization business plan will be performed to prepare that filing at the direction of counsel. Indeed, no decisions have been made as to what will be included in the grid modernization business plan. For example, you are correct that the Companies are undertaking a study on conservation voltage reduction. However, whether that will be included in the business plan has not been decided and therefore, that document is not responsive to ELPC's request. Therefore, there are no complete, responsive, and unprivileged documents to produce to ELPC at this time. For all of those reasons, the Companies properly objected to ELPC Set 6 RPD 5's requests and will stand by those objections.

Thank you,

Carrie Dunn

Carrie M. Dunn
Attorney
FirstEnergy Service Company
76 S. Main St.
Akron, OH 44308
Tel: 330-761-2352
Fax: 330-384-3875
cdunn@firstenergycorp.com

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

Summary: Motion to Compel Discovery and for an Expedited Ruling, Memorandum in Support, and Affidavit of Madeline Fleisher electronically filed by Madeline Fleisher on behalf of Environmental Law and Policy Center