

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S MOTION TO STRIKE  
PORTIONS OF THE INITIAL BRIEF OF THE  
RETAIL ENERGY SUPPLY ASSOCIATION**

---

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully move to strike the following portions of the Initial Brief of the Retail Energy Supply Association (“RESA”):

Page 28, Line 18 starting with the words “The Commission” and continuing through to Line 21 ending with the word “direction” and including Footnote 89.

The Commission should strike this material from RESA’s brief because RESA quoted testimony that the Attorney Examiner excluded from the record. For this reason and those set forth in the attached memorandum in support, which is incorporated herein, the Commission should grant this motion and strike the material listed above from RESA’s brief.

Date: February 26, 2016

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  
burkj@firstenergycorp.com  
cdunn@firstenergycorp.com

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

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

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY IN SUPPORT  
OF MOTION TO STRIKE PORTIONS OF THE INITIAL BRIEF OF THE  
RETAIL ENERGY SUPPLY ASSOCIATION**

---

**I. INTRODUCTION**

On page 28 of its Brief, RESA quoted and discussed testimony that the Attorney Examiner excluded from the record in this case. To state the obvious: excluded testimony is not part of the record; it should have no bearing on the Commission's consideration of the parties' positions in this case; and it should not remain in RESA's brief disguised as "support" for its arguments. Accordingly, the Commission should enforce the Attorney Examiner's rulings that excluded the testimony by striking it from RESA's brief.

**II. EXCLUDED TESTIMONY MAY NOT BE RELIED UPON IN A POST-  
HEARING BRIEF**

On page 28 of its brief, RESA quoted from testimony that the Attorney Examiner excluded from the record, i.e., Staff Witness Choueiki's testimony from a previous proceeding. (RESA Br. at 28). Indeed, the Attorney Examiner denied multiple attempts made by another intervening party (OCC) to introduce Dr. Choueiki's prior testimony into evidence. The Attorney Examiner sustained objections to OCC's counsel's cross examination of Dr. Choueiki regarding his prior testimony. (*E.g.*, Hearing Tr. Vol. XXX at 6223-6224). The Attorney

Examiner also denied that party's attempt to move copies of Dr. Choueiki's prior testimony into evidence. He explained, "At this time we will deny admission of the exhibits. . . . [A] change in staff position following the direction of the Commission has no probative weight. It is unduly prejudicial, confusing, and misleading, and these exhibits will not be admitted at this time." (*Id.* at 6324). And, for the same reasons, the Attorney Examiner denied OCC's request for administrative notice of the testimony. (*Id.*)

RESA's reliance on the excluded testimony in its brief disregards these rulings. It should be beyond any possible question that excluded evidence cannot be relied upon in post-hearing briefs and argument. RESA's failure to observe that basic rule requires that portions of its brief be stricken. Specifically, the Commission should strike Page 28, Line 18 starting with the words "The Commission" and continuing through to Line 21 ending with the word "direction" and including Footnote 89.

### III. CONCLUSION

For the foregoing reasons, the Commission should grant the Companies' motion to strike.

Date: February 26, 2016

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  
burkj@firstenergycorp.com  
cdunn@firstenergycorp.com

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing motion was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 26th day of February, 2016. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties. Further, a courtesy copy has been served upon parties via electronic mail.

/s/ David A. Kutik

David A. Kutik

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

**Commission of Ohio Docketing Information System on**

**2/26/2016 4:50:41 PM**

**in**

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

Summary: Motion to Strike Portions of the Initial Brief of RESA electronically filed by MR. DAVID A KUTIK on behalf of The Cleveland Electric Illuminating Company and The Toledo Edison Company and Ohio Edison Company