

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MOTION TO STRIKE
PORTIONS OF THE REPLY BRIEF OF NORTHEAST OHIO PUBLIC ENERGY
COUNCIL**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully move to strike the following portions of the Reply Brief of Northeast Ohio Public Energy Council (“NOPEC”):

1. Page 7, footnote 14.
2. Attachment 1 (Law 360 article attached to NOPEC’s Reply Brief).

The Commission should strike this material from NOPEC’s reply brief because NOPEC discussed and quoted an article from Law 360 that is not in the record in this case and that is inadmissible hearsay. For these reasons and those set forth in the attached memorandum in support, the Commission should grant this motion and strike the portions listed above of NOPEC’s reply brief.

Respectfully Submitted,

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**MEMORANDUM OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY, AND THE TOLEDO EDISON COMPANY IN SUPPORT
OF MOTION TO STRIKE PORTIONS OF THE REPLY BRIEF OF NORTHEAST
OHIO PUBLIC ENERGY COUNCIL**

In NOPEC’s reply brief, it improperly relies on a website news article that is not in the evidentiary record in this case. That news article also is inadmissible hearsay regarding a U.S. Supreme Court oral argument. Accordingly, the Commission should strike NOPEC’s references to the news article from its reply brief.

On Page 7 of its reply brief in footnote 14, NOPEC relies on a Law 360 article dated February 24, 2016. NOPEC also attaches this article to its reply brief. NOPEC states that this article is support for speculation as to where the U.S. Supreme Court’s sympathies may lie.¹ NOPEC’s reliance on this news article is utterly inappropriate. The article is not part of the record in this case, and the Commission has rejected prior efforts of parties to include information in a brief that is not part of the record. *See, e.g., In the Matter of FAF, Inc., Notice of Apparent Violation and Intent to Assess Forfeiture*, PUCO Case No. 06-786-TR-CVF, Opinion and Order at 3 (Nov. 21, 2006). If allowed to remain in NOPEC’s reply brief, the

¹ NOPEC Reply Brief, p. 7 fn. 14.

Companies would be prejudiced as they would have no opportunity to refute the multiple levels of speculation that NOPEC seeks to introduce into the record.

The news article also is inadmissible hearsay, as are the quotations contained in the news article. *See In the Matter of the Complaint of the City of Reynoldsburg, Ohio*, PUCO Case No. 08-846-EL-CSS, Opinion and Order at 28 (Apr. 5, 2011) (granting motion to strike portions of reply brief that discussed and attached newspaper article and holding “[t]he newspaper article in question is hearsay and consistent with Commission precedent and the Rules of Evidence should not be considered as part of the record in this case”). Thus, the article should in no way be used as evidence of what the U.S. Supreme Court may or may not decide in the future.

Accordingly, the Commission should strike the discussion of the Law 360 article from page 7, footnote 14, of NOPEC’s reply brief and also should strike the Law 360 article attached to NOPEC’s reply brief.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that this Motion to Strike was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 4th day of March, 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/ N. Trevor Alexander
One of Attorneys for the Companies

This foregoing document was electronically filed with the Public Utilities

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in

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

Summary: Motion to Strike NOPEC Post-Hearing Reply Brief electronically filed by Mr. Nathaniel Trevor Alexander on behalf of Ohio Edison Company and The Cleveland Illuminating Company and The Toledo Edison Company