

**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 REPLY BRIEF IN SUPPORT
OF MOTION TO STRIKE PORTIONS OF THE INITIAL BRIEF OF THE OHIO
MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

On February 26, 2016, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully moved to strike portions of the Initial Brief of the Ohio Manufacturers’ Association Energy Group (“OMAEG”). Specifically, the Companies moved to strike the following portions of OMAEG’s Initial Brief: (1) Dr. Hill’s proffered testimony regarding the Consumer Protection Association; and (2) purported testimony of Leila Vespoli before the House Public Utilities Committee and the Senate Public Utilities Committee. OMAEG argues in its Memorandum Contra that its use of Dr. Hill’s testimony is permitted by O.A.C. 4901-1-15(F). OMAEG further argues that its use of the General Assembly testimony is permissible because it was admitted into the record. OMAEG has failed to show why the Companies’ Motion to Dismiss should not be granted.

A. Dr. Hill’s Testimony Regarding the Consumer Protection Association Should be Stricken.

OMAEG claims that its use of Dr. Hill’s testimony regarding the Consumer Protection Association is part of its proffer and argument under O.A.C. 4901-1-15(F) that the Attorney

Examiner's decision to exclude this testimony from the record was improper.¹ Rule 15(F) permits a party to address the propriety of a ruling "by discussing the matter as a distinct issue in its initial brief." OMAEG did not include a section in its Initial Brief in which it discussed the Attorney Examiner's ruling as a distinct issue. Instead, it used Dr. Hill's volunteered hearsay testimony in its discussion of the first prong of the Commission's three-prong test for approval of a stipulation. It argued that the Consumer Protection Association cannot be a knowledgeable, capable party under that test.² Such an argument is not permitted by Rule 15(F).

Despite OMAEG's violation of both the letter and the spirit of Rule 15(F), the Companies were very precise and conservative in their motions to strike related to Dr. Hill's non-record testimony. Although OMAEG did not include a discrete Rule 15(F) argument in its Initial Brief, it did mix such an argument into its discussion of the stipulation approval test, beginning with the second full paragraph on page 72 of the Initial Brief. The Companies did not move to strike the portions of the brief that discuss the propriety of the Attorney Examiner's ruling. Instead, the Companies moved to strike only those portions of the brief in which OMAEG relies on non-record information to draw a conclusion regarding the propriety of the Consumer Protection Association's participation in the Stipulation.³ The Commission should strike OMAEG's discussion and reference to the information that is not limited to the distinct issue of whether the Attorney Examiner erred regarding the admission of Dr. Hill's re-direct testimony.

¹ OMAEG Memo. Contra, pp. 15-19.

² OMAEG Initial Brief, pp. 71-74.

³ See Companies' Motion to Strike, pp. 3-4.

B. Unauthenticated Evidence Cannot Be Relied Upon.

OMAEG argues that its reliance upon purported testimony of Leila Vespoli included in Exhibit 1 to the Supplemental Testimony of Matthew White (hereinafter “MW Exhibit 1”) and in EWH Supplemental Attachment A is proper because these exhibits were admitted into evidence.⁴ However, they also recognize that the Attorney Examiner’s decisions to admit these exhibits into evidence are the subject of a pending interlocutory appeal.⁵ As discussed at length in the Companies’ brief in support of their interlocutory appeal (which arguments will not repeated here), neither document was properly authenticated. If the Commission grants the Companies’ interlocutory appeal, the Commission also should strike the portions of OMAEG’s Initial Brief relying on these documents.

For the reasons herein and in the Companies’ Motion to Strike, the Commission should grant the Companies’ Motion to Strike Portions of OMAEG’s Initial Brief.

Respectfully Submitted,

/s/ James W. Burk
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

⁴ OMAEG Memo. Contra, pp. 2-5.

⁵ OMAEG Memo. Contra, pp. 3-4.

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 certify that this Reply in Support of Motion to Strike was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 18th 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/ James F. Lang _____
One of Attorneys for the Companies

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Summary: Reply In Support of Motion to Strike Portions of OMAEG Initial Brief electronically filed by Mr. James F Lang on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company