

**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 IN SUPPORT OF
MOTION TO STRIKE PORTIONS OF THE REPLY BRIEF OF OFFICE OF THE
OHIO CONSUMERS’ COUNSEL AND NORTHWEST OHIO AGGREGATION
COALITION**

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) respectfully moved on March 4, 2016, to strike portions of the Reply Brief of Office of the Ohio Consumers’ Counsel and Northwest Ohio Aggregation Coalition (“OCC/NOAC”) that included testimony of Dr. Choueiki and Dr. Hill the Hearing Examiner had previously excluded from the record. In response, OCC/NOAC claim the testimony at issue either is record evidence or is proper under O.A.C. 4901-1-15(F). OCC/NOAC’s arguments lack merit.

First, OCC/NOAC cannot rely on O.A.C. 4901-1-15(F) to justify their use of Dr. Choueiki’s testimony offered in prior proceedings. O.A.C. 4901-1-15(F) permits a party to address the propriety of a ruling “by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the commission’s opinion and order.” OCC/NOAC do not use Dr. Choueiki’s prior testimony on page 1 of their Reply Brief to discuss the propriety of the Attorney Examiner’s ruling, either as a distinct issue or otherwise. Instead, OCC/NOAC use his prior testimony solely for the proposition that “granting a PPA Rider is a

move in the opposite direction.” OCC/NOAC’s intent is to present Dr. Choueiki’s former opinion, not to present OCC/NOAC’s opinion of the Attorney Examiner’s ruling. OCC/NOAC’s use of Dr. Choueiki’s prior testimony has nothing to do with the propriety of the Attorney Examiner’s ruling.¹ To the contrary, OCC/NOAC’s use of Dr. Choueiki’s testimony is clearly made in defiance of the Attorney Examiner’s ruling. Dr. Choueiki’s prior testimony is not record evidence, and OCC/NOAC cannot rely upon that testimony in their Reply Brief.

OCC/NOAC argue in the alternative that their quotation from Dr. Choueiki’s prior testimony should not be stricken because Dr. Choueiki provided somewhat similar testimony on cross examination in this proceeding.² Yet OCC/NOAC did not quote from or cite to Dr. Choueiki’s testimony in this proceeding; they quoted Dr. Choueiki’s testimony from previous proceedings that the Attorney Examiner specifically found had “no probative weight” and was “unduly prejudicial, confusing, and misleading.” Hearing Tr. Vol. XXX at 6327. Thus, regardless of what other testimony Dr. Choueiki submitted in this proceeding, the non-record evidence quoted by OCC/NOAC must be stricken.

Second, OCC/NOAC offer no valid reason why their discussion of OMAEG witness Hill’s hearsay testimony on pages 81-82 of their Reply Brief should not be stricken. O.A.C. 4901-1-15(F) provide them no relief. OCC/NOAC included a discrete argument in their Initial Brief objecting to the Attorney Examiner’s ruling granting the Companies’ motion to strike Dr.

¹ Thus, OCC/NOAC find no support in the Commission’s decision in a different matter not to strike proffered evidence included in an initial brief to support an O.A.C. 4901-1-15(F) argument. OCC/NOAC Memo. Contra, p. 3 (citing *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010*, Case No. 10-268-EL-FAC, Opinion and Order at 7-8 (May 14, 2014)).

² OCC/NOAC Memo. Contra, pp. 4-5.

Hill's re-direct testimony as beyond the scope of cross examination.³ In stark contrast, OCC/NOAC's use of Dr. Hill's stricken testimony in their Reply Brief is for the singular purpose of arguing that the "parties to the Stipulations did not represent diverse interests."⁴ Nowhere in the Reply Brief do OCC/NOAC contest the propriety of the Attorney Examiner's decision that Dr. Hill's testimony was beyond the scope of re-direct. Thus, the Commission should strike OCC/NOAC's use of Dr. Hill's testimony in their Reply Brief.

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

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
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

³ OCC/NOAC Initial Brief, pp. 46-49.

⁴ See OCC/NOAC Reply Brief, p. 81.

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 24th 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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Case No(s). 14-1297-EL-SSO

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