

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

PCC AIRFOILS, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. 16-2213-EL-CSS
)	
THE CLEVELAND ELECTRIC)	
ILLUMINATING COMPANY,)	
)	
Respondent.)	
)	

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY’S
MEMORANDUM CONTRA PCC AIRFOILS’ REQUEST FOR JUDICIAL NOTICE**

I. INTRODUCTION

More than five months after the close of its own case, PCC Airfoils, LLC (“PCC Airfoils”) now asks the Public Utilities Commission of Ohio (“Commission”) to take administrative notice of an entire different proceeding (*I. Schumann & Company, LLC, v. The Cleveland Electric Illuminating Company*, Case No. 17-0473-EL-CSS, hereinafter “Schumann Proceeding”) in hopes of bolstering its unsubstantiated claim that The Cleveland Electric Illuminating Company (“CEI”) wrongfully denied its demand for sub-transmission service. In making its request, PCC Airfoils neither attempts to identify any rule or precedent allowing for such action to be taken nor even attempts to explain how any of the evidence from the Schumann Proceeding is relevant to its case. Rather, PCC Airfoils broadly requests that the Commission take notice of evidence from the Schumann Proceeding “to the extent relevant.” While the Commission certainly is capable of making this determination when properly presented with evidence, it should decline to do so here. PCC Airfoils’ request for administrative notice is improper at this stage of the proceeding and, to the extent PCC Airfoils did vaguely attempt to identify and characterize evidence it believes should

be considered, seeks notice of evidence from the Schumann Proceeding that is not relevant to this case. Accordingly, the Commission should deny PCC Airfoils' request.

II. ARGUMENT

A. Administrative Notice Of Information Outside The Evidentiary Record Is Improper At This Stage Of The Proceeding.

PCC Airfoils' request that the Commission take administrative notice of information outside the evidentiary record in this proceeding is inconsistent with Commission precedent and the Ohio Rules of Evidence. The Commission has previously held that it "may take administrative notice of facts outside the record of a case if the complaining parties have had an opportunity to prepare and respond to the evidence and they are not prejudiced by its introduction."¹ Here, CEI has not had the opportunity to respond to the information (including raising appropriate objections) of which PCC Airfoils seeks administrative notice in the context of this proceeding and, accordingly, is prejudiced by administrative notice of any such information.

To begin, PCC Airfoils has not even identified specific pieces of information which it would like the Commission to take administrative notice of but has instead requested that the Commission take administrative notice of the Schumann Proceeding "to the extent relevant in this case."² Clearly, CEI cannot respond to information when it does not even know to what information it is supposed to respond. Further, CEI is prejudiced regardless whether it presented evidence in the Schumann Proceeding related to the information because it did not have the opportunity to respond to the information in the context of this proceeding. Under Commission precedent, therefore, the Commission should reject PCC Airfoils' request.

¹ *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 a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan*, Case No. 14-1297-EL-SSO, Fifth Entry on Rehearing, p. 172 (Oct. 12, 2016).

² See PCC Airfoils Request for Judicial Notice (Oct. 25, 2017).

Moreover, PCC Airfoils' request runs contrary to the Ohio Rules of Evidence pertaining to judicial notice. While the Commission is not bound to follow the Ohio Rules of Evidence, they are instructive when making evidentiary determinations.³ Ohio R. Evid. 201 governs "the judicial notice of adjudicative facts; i.e. the facts of the case."⁴ For judicial notice to be taken, the fact to be noticed must not be subject to reasonable dispute "in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."⁵ Here, PCC Airfoils' request meets neither of these criteria. To begin, as discussed above, PCC Airfoils has not identified the specific information for which it is seeking administrative notice. Accordingly, it cannot be determined whether any of the facts are subject to reasonable dispute. More importantly, however, much of the information that PCC Airfoils presumably seeks to have admitted from the Schumann Proceeding was disputed in that proceeding as well.⁶ As such, PCC Airfoils' request also does not meet the standard provided by the Ohio Rules of Evidence and should be rejected by the Commission.

B. PCC Airfoils' Vague Request That The Commission Take Notice Of Certain Emails Both Mischaracterizes The Evidence Presented In The Schumann Proceeding And Seeks Administrative Notice Of Evidence Not Relevant To This Proceeding.

In its request to the Commission, PCC Airfoils makes vague reference to emails introduced as evidence in the Schumann Proceeding in an attempt to convince the Commission

³ See *In the Matter of the Complaint of S.G. Foods, Inc., Pak Yan Lui, and John Summers v. FirstEnergy Corp., American Transmission Systems, Inc., Ohio Edison Company, The Cleveland Electric Illuminating Company*, Case No. 04-28-EL-CSS, Entry on Rehearing at ¶ 14, (Apr. 26, 2006).

⁴ Ohio R. Evid. 201(A).

⁵ Ohio R. Evid. 201(B).

⁶ See generally *In the Matter of the Complaint of I.Schumann & Company, LLC v. The Cleveland Electric Illuminating Company*, Case No. 17-0473-EL-CSS ("Schumann Proceeding"), The Cleveland Electric Illuminating Company's Initial Post-Hearing Brief (Sept. 15, 2017); see also Schumann Proceeding, The Cleveland Electric Illuminating Company's Post-Hearing Reply Brief (October 10, 2017).

that it should, at a minimum, take notice of this information. According to PCC Airfoils, these emails relate to “CEI’s consideration of the financial effect on CEI rather than the financial effect on its customer.”⁷ The record in the Schumann Proceeding, however, demonstrates that CEI did not consider revenues when determining whether to grant the customer’s request for connection to CEI’s sub-transmission system. Rather, CEI’s determination was based on the loading of the substation transformer and feeder and whether there had been any adverse effects on the distribution system resulting from the customer’s load.⁸ PCC Airfoils’ suggestion that non-identified emails indicate CEI considered the financial effect on CEI when making its determination related to the customer in the Schumann Proceeding is incorrect and mischaracterizes the evidence in that proceeding. Moreover, PCC Airfoils has failed to explain how these non-identified emails pertaining to another customer’s request are relevant to this proceeding. In short, PCC Airfoils is requesting the Commission take administrative notice of information which it has both failed to explain the relevance of and mischaracterized. The Commission should reject this request.

III. CONCLUSION

PCC Airfoils’ request is improper, vague, deficient, and mischaracterizes evidence. In making its request, PCC Airfoils does not identify any rule or precedent allowing for administrative notice to be taken under these circumstances. Indeed, administrative notice is improper in these circumstances under both Commission precedent and the Ohio Rules of Evidence. Moreover, PCC Airfoils mischaracterizes the vague and limited information which it attempts to identify as relevant from the Schumann Proceeding and fails to even attempt to explain

⁷ PCC Airfoils Request for Judicial Notice (October 25, 2017).

⁸ See Direct Testimony of Jean Becks on Behalf of The Cleveland Electric Illuminating Company, 6:22 – 7:8.

how the information is relevant to this proceeding. Accordingly, the Commission should reject PCC Airfoils' request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing The Cleveland Electric Illuminating Company's Memorandum Contra PCC Airfoils' Request for Judicial Notice was served by electronic mail upon the following on this 9th day of November, 2017.

David W.T. Carroll
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/s/ Joshua R. Eckert
An Attorney for The Cleveland
Electric Illuminating Company

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11/9/2017 2:46:44 PM

in

Case No(s). 16-2213-EL-CSS

Summary: Memorandum --The Cleveland Electric Illuminating Company's Memorandum
Contra PCC Airfoils' Request for Judicial Notice electronically filed by Mr. Joshua R. Eckert on
behalf of The Cleveland Electric Illuminating Company