

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)	Case No. 18-1656-EL-ATA
Edison Company for Approval of a Tariff)	
Change.)	

**MEMORANDUM CONTRA OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING COMPANY, AND THE TOLEDO
EDISON COMPANY TO MOTION TO STRIKE OF THE OFFICE OF THE
OHIO CONSUMERS' COUNSEL**

The Office of the Ohio Consumers' Counsel's ("OCC") Motion to Strike the Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company ("Companies") should be denied. As noted in the Companies' Motion for Leave to File Out of Time, Counsel's filing of the Companies' Memorandum Contra by 5:30 on September 25, 2020 was caused by home Internet problems.¹ As explained below, OCC's Motion fails to distinguish Commission discretion regarding non-statutorily-mandated deadlines. Further, it also fails to identify any prejudice from Commission acceptance of the Companies' Memorandum Contra.

I. Argument

OCC's Motion to Strike notes that the Companies' Memorandum Contra was filed after the 5:30 p.m. cutoff on Friday, September 25, 2020 without having filed a motion for extension, and argues on that basis alone that it should be stricken from the record.² To support its argument, OCC cites to the Commission's recent Entry denying a Motion for Waiver in the Companies' SSO Procurement case.³ However, there are two important differences distinguishing the SSO Procurement case from this one, making it inappropriate as support for OCC's argument.

¹ The Companies filed their Motion for Leave to File Out of Time on October 5, 2020.

² OCC Motion to Strike, Memorandum at p. 1.

³ *Id.* (citing to Entry on Rehearing (Sept. 9, 2020) in Case No. 16-776-EL-UNC).

First, the deadline involved in the Companies' SSO Procurement case involved the statutory deadline for filing an application for rehearing where the Joint Parties sought to change the effective date of the filing in contravention of Section 4903.10, Ohio Revised Code. The Commission explicitly noted therein the distinction between a statute-based deadline that the Supreme Court of Ohio has held that "time is of the essence," and extension of non-statutorily based deadlines such as the one at issue in this case.⁴ Here, OCC seeks to strictly enforce the rule-based time to file opposition to a motion, making it unlike the case it cites in support.

Second, the Commission further specifically noted in the SSO Procurement case cited by OCC that the Joint Parties were not prejudiced by the Commission's decision not to extend the due date via waiver. In that case the Commission found that the issues raised by Joint Parties were also raised by several other parties.⁵ OCC is similarly and demonstrably not prejudiced by a Commission decision to accept the Companies' Memorandum Contra because it filed its Reply two days earlier than what the deadline would have been had the Companies' Motion been filed before 5:30 p.m. on September 25, 2020. Indeed, a Reply is not procedurally appropriate if there is no Memorandum Contra, yet OCC filed its Reply before its Motion to Strike could be responded to or ruled upon by the Commission.⁶

II. Conclusion

Because the deadline at issue was set by Commission rule, not by statute, and OCC is not prejudiced, the Companies respectfully request that the Commission deny OCC's Motion to Strike and accept the Companies' Memorandum Contra.

⁴ Entry on Rehearing, Case No. 16-776-EL-UNC, at para. 24, 25: ("We also note that the Supreme Court of Ohio has long held that time is of the essence with respect to the filing of an application for rehearing, and if such application is filed out of time, the Commission has no jurisdiction to entertain it...unlike the above cases that primarily extended non-statutorily-mandated deadlines....").

⁵ *Id.* at para. 27 ("Further, we find that the Joint Parties are not prejudiced by this decision since the substance of the arguments submitted by them in their joint application for rehearing has been addressed by the other parties' arguments in their applications for rehearing.").

⁶ See OCC's Reply, September 30, 2020, fn 4 ("OCC is filing a motion to strike FirstEnergy's memorandum contra concurrently.")

Respectfully submitted,

/s/ Robert M. Endris

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TOLEDO EDISON COMPANY

CERTIFICATE OF SERVICE

A copy of the foregoing *Memorandum Contra* on this 13th day of October, 2020 has been filed with the Commission's Docketing Division and is available to all parties of record.

/s/ Robert M. Endris

Robert M. Endris

One of the Attorneys for the Companies

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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company electronically filed by Mr Robert M Endris on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company