

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Political and Charitable Spending by)	
Ohio Edison Company, The Cleveland)	Case No. 20-1502-EL-UNC
Electric Illuminating Company, and The)	
Toledo Edison Company.)	

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMER’S COUNSEL’S MOTION FOR AN IN
CAMERA HEARING REGARDING THE FIFTH AND SEVENTH SETS OF
DISCOVERY**

The Office of the Ohio Consumers’ Counsel (“OCC”), along with its motion to compel certain responses to the Fifth and Seventh Sets of Discovery (“Set 5” and “Set 7”), requested that the Commission conduct an *in camera* hearing to examine the validity of the Companies’ privilege claims. Because the Companies have not produced the documents at issue because of other objections to OCC’s discovery that have yet to be resolved, the Companies have provided no privilege log and there is nothing to review *in camera*. Therefore, OCC’s request is premature and should be denied.

All the discovery requests that remain at issue in Sets 5 and 7 are improper for a variety of independent reasons,¹ and the Companies have not argued that certain discovery requests are improper *solely* because those requests seek privileged information. Indeed, all requests at issue in Sets 5 and 7 seek information outside the scope of this proceeding—regardless of privilege. Therefore, at this juncture, the Companies have not withheld any documents solely on privilege grounds and there is nothing to review at an *in camera* hearing. Alternatively, were the

¹ See Case No. 20-1502-EL-UNC, Memorandum Contra OCC Motion to Compel Responses to the Fifth and Seventh Sets of Discovery (July 9, 2021).

Commission to grant OCC's motion to compel responses to Sets 5 and 7, and were there any responsive, privileged documents, the Companies would submit a detailed privilege log sufficient to show why each document withheld is protected from disclosure, thus obviating the need for an *in camera* inspection.²

But as it stands, the Companies are under “no duty to respond to discovery to the extent it becomes overbroad” or is otherwise improper.³ While it is the disclosing party’s “duty to show that the requested documents are privileged,” “the disclosing party has no duty to respond to discovery requests that exceed the confines of” permissible discovery.⁴ It would make little sense—and would impose an undue burden—for the Companies to conduct a premature review and produce privileged documents for *in camera* inspection if those documents are outside the scope of this proceeding. And it would likewise be an undue drain on the Commission’s and parties’ resources.

For these reasons, OCC’s request for an *in camera* review should be denied.

² See, e.g., *Guy v. United Healthcare Corp.*, 154 F.R.D. 172, 176 (S.D. Ohio 1993) (declining to entertain an *in camera* review once defendant prepared a privilege log); *Dowkin v. Honolulu Police Dep’t*, No. CV 10-00087 LEK-RLP, 2015 WL 13812182, at *4 (D. Haw. Mar. 31, 2015); see also Case No. 20-1502-EL-UNC, Memorandum Contra OCC Motion for In Camera Hearing on the Sixth Set of Discovery (July 14, 2021).

³ *Piatt v. Miller*, 2010-Ohio-1363, ¶ 27 (Ohio Ct. App. 2010).

⁴ *Piatt*, 2010-Ohio-1363, ¶ 29.

Dated: July 14, 2021

Respectfully submitted,

/s/ Ryan A. Doringo

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On behalf of the Companies

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 14, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

/s/ Ryan A. Doringo
Attorney for the Companies

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Case No(s). 20-1502-EL-UNC

Summary: Memorandum Contra the Office of the Ohio Consumer's Counsel's Motion for In Camera Hearing on the Fifth and Seventh Sets of Discovery electronically filed by Ryan A Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company