

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of the)
Delivery Capital Recovery Rider of Ohio)
Edison Company, The Cleveland Electric) Case No. 20-1629-EL-RDR
Illuminating Company, and The Toledo)
Edison Company)
)

**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON COMPANY’S RESPONSE TO
REQUEST FOR INTERLOCUTORY APPEAL BY THE OFFICE OF THE OHIO
CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) asks the Attorney Examiners to certify its request to the Commission to reverse the August 27 Attorney Examiner Entry (the “Entry”) setting the comment deadline for October 4, 2021.¹ Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) take no position on OCC’s request.

The Companies do take issue with OCC’s unnecessary and inaccurate accusations that the Companies are using “delay” tactics in responding to discovery.² To the contrary, the Companies have been cooperating and timely responding to OCC’s requests. OCC has served numerous discovery requests in this and other proceedings. Some of these requests seek information outside the boundaries set by the Commission’s rules, and disputes naturally arose. Despite their disagreements, the parties have been collaborating. The Companies have negotiated with OCC in good faith and supplemented several responses OCC claimed were deficient. The Companies have

¹ Case No. 20-1629-EL-RDR, Entry (Aug. 27, 2021).

² See Case No. 20-1629-EL-RDR, OCC Interlocutory Appeal, Memorandum in Support (“OCC Mem.”), at 3 (Sept. 1, 2021).

provided OCC much information, including all of their responses to the auditors' and Staff's data requests (from the original and expanded audit)—and the parties have made good progress. While the Companies understand OCC's need to support its request, the Companies also need to ensure the Commission is presented with information that accurately reflects the facts, regarding the collaboration between the parties and the Companies' efforts in responding to OCC's discovery. For this reason, the record stands to be corrected.

II. ARGUMENT

OCC's support for its request fails to acknowledge the extensive collaboration between the parties to resolve discovery disputes. Following disagreements over the relevance, scope, and timing of certain of OCC's discovery requests, the Companies met with OCC and discussed OCC's concerns with the Companies' responses to certain requests in sets 2 and 3. The Companies voluntarily agreed to supplement their responses to several requests following that conversation. As a result, the Companies' supplemental production included over 300 documents.

OCC's claim that the Companies' responses are "so deficient" is therefore simply untrue. While it is true that the Companies objected to some of OCC's requests, it is for good reason. The Ohio Administrative Code, which is informed by the Ohio Rules of Civil Procedure, places reasonable limits on discovery. Those limits include ensuring that the information sought is "relevant to the subject matter of the proceeding" and require that a party make a "reasonable effort to determine whether the information sought is available from" other sources.³ And parties have

³ See Ohio Adm. Code 4901-1-16.

well-recognized rights in Commission cases to object to overly broad and unduly burdensome discovery requests.⁴

OCC complains that it did not receive “real” answers from the Companies because they have “fought” the release of certain categories of information.⁵ OCC points to its efforts to obtain information regarding FirstEnergy Corp.’s internal investigation and FERC’s confidential audit of FirstEnergy Corp. But OCC’s real grievance is that the Companies continue to object to improper requests that fall outside the bounds of permissible discovery. Asserting a good faith defense to production is not a delay tactic. It’s simply a right, and OCC cannot fault the Companies’ counsel for advocating for their clients. Moreover, OCC’s accusations ignore the fact that not all of its discovery requests fall within the reasonable parameters for discovery in this and other Commission proceedings. Indeed, in other proceedings, the Commission has denied OCC’s motions to compel responses to discovery requests similar to those that remain at issue in this proceeding. For example, last week—prior to this request for an interlocutory appeal—the Commission denied OCC’s motion to compel communications with or documents produced to FERC, as well as denied OCC’s requests that sought information not within the Companies’ possession, custody, or control.⁶ So OCC’s statement that the Companies’ “tactics of delay have

⁴ See, e.g., *In the Matter of the Application of Buckeye Wind LLC for a Certificate to Construct Wind-powered Electric Generation Facilities in Champaign County, Ohio*, Case No. 08-666-EL-BGN, 2009 Ohio PUC LEXIS 931 at *8-12 (Oct. 30, 2009) (denying in part motion to compel because several discovery requests were irrelevant, vague and overly broad); *In the matter of the Application of Middletown Coke Co.*, Case No. 08-281-EL-BGN, 2008 Ohio PUC LEXIS 821 at *3-4 (Nov. 4, 2008) (denying motion to compel and holding that irrelevant material was not subject to discovery); *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, 2003 Ohio PUC LEXIS 392 at *34-35 (Sept. 2, 2003) (acknowledging the general rule that discovery is limited to materials “relevant to the subject matter of the proceeding” and denying motion to compel because “the information sought would not be relevant to the determination of [the present] matter”).

⁵ OCC Mem., at 3.

⁶ Case No. 20-1502-EL-UNC, Hr’g Tr., at 18:6-11, 24:12-18, 31:15-18, 36:23-37:4 (Aug. 31, 2021).

continued despite rulings from the PUCO largely granting OCC's motions to compel" is inaccurate.

The Companies take no position on OCC's challenge to the Attorney Examiners' scheduling Entry, but OCC's accusations against the Companies are unsupported by the facts. The Companies have endeavored—and will continue to endeavor—to work in good faith with OCC on discovery issues.

Dated: September 7, 2021

Respectfully submitted,

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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 September 7, 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

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 20-1629-EL-RDR

Summary: Response to the Office of the Ohio Consumers' Counsel's Request-Interlocutory Appeal, Request for Certification to Commissioners and Application for Review electronically filed by Ryan A Doringo on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company