

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MOTION TO STRIKE
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In the FirstEnergy Utilities' latest bid for secrecy at the PUCO, they want to keep secret from the public the contract for the auditor (Oxford) that was hired to audit the infamous FirstEnergy/PUCO distribution modernization rider (DMR). But, while seeking secrecy under O.A.C. 4901-1-24, FirstEnergy oddly violated that rule by not including the sworn affidavit of counsel that the rule requires. Having failed to provide the sworn affidavit with supporting information under oath, FirstEnergy's motion should be stricken.

The grounds for this Motion to Strike are described more fully in the attached Memorandum in Support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Maureen R. Willis

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MEMORANDUM IN SUPPORT

Recently, the PUCO admonished parties to seek to resolve discovery disputes between themselves without the need for PUCO intervention. Before a party files a motion for protection from discovery, it must have “exhausted all other reasonable means of resolving any differences with the party seeking discovery.”¹ Somewhat unique among rules, the rule requires an affidavit of counsel setting forth the efforts that have been made to resolve the differences.²

Under the FirstEnergy protective agreement that FirstEnergy required OCC to sign to obtain (allegedly) confidential documents, OCC has a right to dispute a claim of confidentiality. On April 22, 2022, OCC advised the FirstEnergy Utilities of its disputing of the confidentiality claim regarding the Oxford contract.³

While the protective agreement allows the FirstEnergy Utilities five business days to seek protection, during that period the FirstEnergy Utilities did not engage with OCC to attempt to resolve the issues. Instead, on the fifth business day (April 29, 2022) the

¹ O.A.C. 4901-1-24(B).

² O.A.C. 4901-1-24(B)(3).

³ See Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company’s Motion for a Protective Order, Exhibit A (Apr. 29, 2022).

FirstEnergy Utilities filed a motion for protection.⁴ In its Motion, FirstEnergy seeks to keep secret virtually the entirety of the substance of the Oxford contract. But the Motion is missing the required affidavit of counsel attesting to resolution efforts. The Motion couldn't have included such an affidavit under oath because there were no such efforts undertaken.

The FirstEnergy Utilities have violated the Ohio Administrative Code for claiming secrecy. Because the FirstEnergy Utilities did not comply with the PUCO's rules, their motion for protection should be stricken.

Respectfully submitted,

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Ohio Consumers' Counsel

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⁴ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Strike was served on the persons stated below via electric transmission this 16th day of May 2022.

/s/ Maureen R. Willis

Maureen R. Willis
Senior Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Motion Motion to Strike by Office of the Ohio Consumers' Counsel
electronically filed by Ms. Alana M. Noward on behalf of Willis, Maureen R.