

**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	)	
Edison Company for Authority to	)	Case No. 23-301-EL-SSO
Establish a Standard Service Offer	)	
Pursuant to R.C. 4928.143 in the Form of	)	
an Electric Security Plan.	)	

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**MOTION TO COMPEL DISCOVERY ON UTILITY SIDE DEALS  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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June 9, 2023

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The Office of the Ohio Consumers’ Counsel (“OCC”) files this Motion to Compel as part of its investigation of the FirstEnergy Utilities’ proposed Electric Security Plan for their two million customers. The FirstEnergy Utilities refused to provide information that will enable OCC to determine whether the FirstEnergy Utilities have complied with their obligations under Ohio law (R.C. 4928.145). That law requires utilities to provide copies of relevant agreements they or their affiliates have with parties to electric security plan proceedings. Given that the FirstEnergy Utilities are under investigation<sup>1</sup> for potentially violating R.C. 4928.145 for not disclosing to OCC a “side agreement” during their previous electric security plan (ESP IV), it is all the more important that the matter be pursued in this electric security plan proceeding.

Accordingly, OCC moves the PUCO for an order compelling the FirstEnergy Utilities to respond to OCC’s Request for Production No. 01-RPD-005 by identifying all

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<sup>1</sup> *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-RDR, Entry (Dec. 15, 2021).

the side deals it has with the parties to this case, and not just those that they consider “relevant.” To date, the FirstEnergy Utilities have refused to identify all the side deals they have with parties to this proceeding, insisting that only they can determine which of the side deals are “relevant” to the ESP proceeding.

Once the PUCO orders the FirstEnergy Utilities to identify all of the side deals (as OCC is requesting), and not just those that they believe are “relevant,” OCC and the PUCO can determine whether further examination is warranted, such as an in-camera process. An *in-camera* process may be necessary to determine whether the documents identified pertain to side dealing that is relevant to this proceeding and thus should be produced to OCC in discovery.

The affidavit at Attachment 2 describes the efforts of OCC to resolve differences between it and the FirstEnergy Utilities, consistent with O.A.C. 4901-1-23(C)(3). The FirstEnergy Utilities and OCC were unable to reach a mutually satisfactory resolution to this discovery dispute. This Motion is based on the accompanying Memorandum in Support.

Respectfully submitted,

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/s/ John Finnigan

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On April 19, 2023, OCC moved to intervene in this proceeding. OCC served its First Set of Discovery on May 5, 2023, including the following request for production of documents:

RPD-01-005. Please provide copies of every contract or agreement that is between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding.

Subject to objections, the FirstEnergy Utilities responded that “[t]he Companies have no such side agreements, or other documents which they believe are ‘relevant to the proceeding’”<sup>2</sup> During a meet-and-confer to discuss the FirstEnergy Utilities’ discovery responses, counsel for OCC proposed that the FirstEnergy Utilities produce a log, similar to a privilege log, of side deals the FirstEnergy Utilities and their affiliates have with parties to this case. This was intended to enable OCC to determine whether the FirstEnergy Utilities have complied with their obligations under Ohio law (R.C. 4928.145) to provide copies of relevant agreements they or their affiliates have with

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<sup>2</sup> Attachment 1, OCC 01-RPD-005.

parties to this proceeding. Counsel for the FirstEnergy Utilities rejected OCC's proposal.<sup>3</sup> No compromise was reached.

## II. ARGUMENT

### A. The information OCC seeks is within the permissible scope of discovery.

The FirstEnergy Utilities claim that OCC's discovery is not relevant and/or not reasonably calculated to lead to the discovery of admissible evidence.<sup>4</sup> As the objecting parties, they have the burden to establish that the requested information is not relevant and/or would not reasonably lead to the discovery of admissible evidence.<sup>5</sup> They failed that burden. And their objections are wrong.

"The policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."<sup>6</sup> The PUCO's rules on discovery "*do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources*; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."<sup>7</sup> The rules are also intended to "minimize commission intervention in the discovery process."<sup>8</sup> These rules are intended to facilitate full and

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<sup>3</sup> See Attachment 2.

<sup>4</sup> Attachment 1.

<sup>5</sup> *State ex rel. Fisher v. Rose Chevrolet, Inc.*, (C.A. 1992), 82 Ohio App.3d 520, 523.

<sup>6</sup> *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (March 17, 1987).

<sup>7</sup> *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76. (Emphasis added.)

<sup>8</sup> O.A.C. 4901-1-16(A).

reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.” *See OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789. The discovery statute was effective in 1983 as part of a more comprehensive regulatory reform. R.C. 4903.082 was intended to protect discovery rights for parties in PUCO cases.

Yet all these years after the 1983 reform law, the FirstEnergy Utilities are nevertheless impeding OCC’s legitimate discovery efforts. The PUCO should not allow the FirstEnergy Utilities to obstruct and delay this process.

O.A.C. 4901-1-16(B) provides for the scope of discovery:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The PUCO’s rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>9</sup> Requests for production may elicit documents within the possession, custody, or control, of the party upon whom the discovery is served, under O.A.C. 4901-1-20.

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<sup>9</sup> *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O’Neill* (1996), 75 Ohio St.3d 1479.

In RPD-01-005, OCC asked for copies of contracts or agreements between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding. OCC is entitled to this information under R.C. 4928.145. Given that the FirstEnergy Utilities are under investigation<sup>10</sup> for potentially violating R.C. 4928.145 for not disclosing to OCC a “side agreement” during their ESP IV case, it is all the more important that the matter be pursued.

The FirstEnergy Utilities responded to RPD-01-005 by stating that they have no side deals *which they believe* are ‘relevant to the proceeding’”<sup>11</sup> But leaving it up to the FirstEnergy Utilities to determine relevancy is unprotective of consumers and appears to undermine the efficacy of R.C. 4928.145. It should be known whether any side deals exist between the FirstEnergy Utilities, their affiliates, and parties to this proceeding, especially if this proceeding turns to settlement discussions and eventually a settlement is filed. The existence of side deals affects whether serious bargaining occurred during settlement negotiations. In *Ohio Consumers’ Counsel v. Pub. Util. Comm.*,<sup>12</sup> the Supreme Court of Ohio ruled that side deals are relevant and discoverable as it relates to the first prong of the PUCO’s settlement test.<sup>13</sup> Even absent a settlement, the existence of side deals between parties is relevant to explore bias or prejudice of witnesses.

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<sup>10</sup> *In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 20-1629-RDR, Entry (Dec. 15, 2021).

<sup>11</sup> Attachment 1, OCC 01-RPD-005 (emphasis added).

<sup>12</sup> 2006-Ohio-5789, 856 N.E.2d 213.

<sup>13</sup> *Id.* at ¶ 84.

Once the FirstEnergy Utilities are ordered to identify all side deals, then OCC and the PUCO can determine whether further examination is warranted, such as an in-camera process. An *in-camera* hearing may be necessary to determine whether the documents identified pertain to side dealing, or prejudice or bias of witnesses, all issues that are relevant to this proceeding.

**B. The FirstEnergy Utilities have failed to justify their claim that OCC's discovery request is overly broad and/or unduly burdensome.**

The FirstEnergy Utilities' objection that it is overly burdensome to respond to OCC's discovery has not been justified. Such objections appear to be conclusory at best. The reality is that OCC's discovery request was narrowly crafted to seek information which it is entitled to obtain under R.C. 4928.145.

When a party objects to discovery based on oppressiveness or undue burden, that party must show specifically how, despite the broad and liberal construction afforded discovery rules, each interrogatory is overly broad, burdensome, or oppressive.<sup>14</sup>

Here, the FirstEnergy Utilities have failed to show (other than by an unsupported conclusory claim) how OCC's request for identification of all side deals it has with the parties in this proceeding is unduly burdensome. The fact that it is allegedly burdensome is telling and leads one to believe there could be many, many side deals with the parties. In any event, the burden falls upon the party resisting discovery to clarify and explain its objections and to provide support<sup>15</sup> The FirstEnergy Utilities have failed to do so. The PUCO should overrule this objection.

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<sup>14</sup> *Trabon Engineering Corp. v. Eaton Manufacturing Co.*, (N.D. Ohio 1964), 37 F.R.D. 51, 54.

<sup>15</sup> *Gulf Oil Corp. v Schlesinger*, (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

**C. The PUCO should require the FirstEnergy Utilities to identify all side deals with parties to this case and, if necessary, engage in an *in camera* process to resolve the FirstEnergy Utilities' claims that they have no "relevant" side deals.**

OCC asks that the FirstEnergy Utilities identify all side deals between them, their affiliates and parties to this proceeding. The information OCC is requesting on all side deals are: (1) the parties to the agreement, along with individuals who reached/signed the agreement; (2) the date of the agreement; (3) the form of the agreement; (4) the terms of the agreement; (5) the subject matter of the agreement; and (6) the amount and type of consideration paid by FirstEnergy or its affiliates. Once all side deals are identified in this manner, there may be a need for an *in camera* review of the side deals, similar to what has been done when documents are withheld from discovery on the basis of privilege.<sup>16</sup> (The PUCO routinely uses these *in camera* reviews to balance the parties' competing interests when a claim of attorney-client privilege is presented.<sup>17</sup>)

**D. OCC undertook reasonable efforts to resolve the discovery dispute.**

As detailed in the Affidavit at Attachment 2, OCC undertook reasonable efforts to resolve this discovery dispute. OCC has exhausted all reasonable means to resolve differences between it and the FirstEnergy Utilities.

### **III. CONCLUSION**

Ohio law provides a fair process for OCC to obtain discoverable information from the FirstEnergy Utilities. The FirstEnergy Utilities failed to provide information about

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<sup>16</sup> See, e.g., *Peyko v. Frederick* (1986), 25 Ohio St.3d 164, 167; *In the Matter of the Application of Ohio Edison, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for Approval of a New Rider and Revision of an Existing Rider*, Case No. 10-176-EL-ATA, Entry at ¶ 18 (Jan. 27, 2011) (recognizing that an *in-camera* inspection of documents is appropriate).

<sup>17</sup> *Id.*

side deals which OCC is entitled to obtain under Ohio law. Accordingly, the PUCO should grant OCC's Motion to Compel discovery responses from the FirstEnergy Utilities.

Respectfully submitted,

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/s/ John Finnigan  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion to Compel Discovery on Utility Side Deals was served on the persons stated below via electronic transmission, this 9<sup>th</sup> day of June 2023.

*/s/ John J. Finnigan*

John J. Finnigan

Assistant Consumers' 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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Provide for a Standard Service Offer	)	
Pursuant to R.C. 4928.143 in the Form of	)	
an Electric Security Plan		

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**OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING  
COMPANY, AND THE TOLEDO EDISON COMPANY’S OBJECTIONS AND  
RESPONSES TO THE FIRST SET OF REQUESTS FOR PRODUCTION OF  
DOCUMENTS BY OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

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Pursuant to Rules 4901-1-16 through 4901-1-22 of the Ohio Administrative Code and in accordance with Ohio Rules of Civil Procedure 26, 33, and 34, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”), hereby submit these Objections and Responses to the First Set of Requests for Production of Documents (the “Requests”) served by the Office of the Ohio Consumers’ Counsel (“OCC”).

**GENERAL OBJECTIONS**

The Companies incorporate the following objections into each response below, as if fully restated therein.

1. These General Objections are incorporated by reference into the Companies’ responses made with respect to each Request. The inclusion of any specific objection to a Request in a response below is not intended, nor shall in any way be deemed, as a waiver of any General Objection or any specific objection made herein or that may be asserted at another date.

2. The Companies object to each Request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or

any other applicable statutory or common law privilege, prohibition, limitation, or immunity from disclosure. Nothing contained in the responses below is intended as a waiver of this objection.

3. The Companies object to each Request to the extent that it seeks information not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. The Companies object to each Request to the extent that it seeks production of information that is confidential business, commercial, or proprietary information belonging to the Companies or third parties.

5. The Companies object to each Request, definition, or instruction to the extent that it purports to impose upon the Companies obligations greater than, or different from, those contained in the Ohio Administrative Code.

6. The Companies object to each Request to the extent it seeks documents or information not in the Companies' possession, custody, or control.

7. The Companies object to each Request that purports to require a detailed, narrative response. Under applicable Commission rules and the Ohio Rules of Civil Procedure, "[a]n interrogatory seeks an admission or seeks information of major significance in the trial or the preparation for trial. It does not contemplate an array of details or outlines of evidence, a function reserved by the rules for deposition." *Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

8. Also, in responding to these Requests, the Companies do not admit the truth, validity, completeness, or merit of any of the requesting party's Definitions, Instructions, Instructions for Answering, Requests, or any subparts thereof as set forth below.

9. The Companies reserve the right to supplement any witness lists provided in response to these Requests as additional witnesses may be identified. The Companies' witnesses may testify to matters within their knowledge and expertise, including without limitation the topics in their prefiled written direct testimony, as well as to additional matters on rebuttal or in prefiled written testimony.

10. A statement that documents will be produced is not intended to suggest that responsive documents exist within the Companies' possession, custody, or control; nor is it intended to suggest that the Companies will search every electronic and paper file within their possession, custody, or control, because that exercise would be unduly burdensome and prohibitively expensive and is not required under the rules. A statement that documents will be produced means that the companies will search for documents in those places where the Companies reasonably anticipate they may be located and, if located and not subject to any privilege, the Companies will make them available for inspection and copying at a mutually agreeable time and place. Where applicable, the Companies will designate documents as confidential or competitively sensitive confidential and will release such documents only to parties with properly executed protective agreements.

11. The objections and responses contained herein and produced in response hereto are not intended to be, nor should they be, construed as waiving the Companies' right to object to these Requests or the information provided in response thereto for any purpose, including but not limited to discovery, motion practice, and hearing.

12. The objections and responses contained herein are not intended to be, nor should they be, construed as a waiver of the Companies' right to object to other discovery involving or relating to the subject matter of these Requests and responses.

13. The Companies object to these Requests to the extent they seek documents or information that is publicly available to, and thus equally accessible by, the requesting party.

14. The Companies object to those Requests that fail to include reasonable time parameters pursuant to which they are to be answered, on the basis that said requests are overly broad, unduly burdensome, expose the Companies to undue expense, and are designed to elicit information that is irrelevant and/or not likely to lead to the discovery of admissible evidence.

15. The Companies object to the definition of “Communication” as overbroad, unduly burdensome, and vague and ambiguous, and the Companies further object to the extent that the definition seeks to impose obligations on the companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and Ohio Rules of Civil Procedure. For example, OCC defines “Communication” to include the transmission or relay of information by “oral” means, and therefore unreasonably purports to require the Companies to describe in detail communications that are not contained in any document.

16. The Companies object to the definition of “Document” and “Documentation” to the extent they seek to impose obligations on the Companies that are broader than, or inconsistent with, those imposed by the rules of the Ohio Administrative Code and the Ohio Rules of Civil Procedure. The Companies construe the term “documents” to be synonymous in meaning and equal in scope to the usage of the term “documents” in Rule 34(A) of the Ohio Rules of Civil Procedure.

17. The Companies object to the definition of “Identify” as overbroad, unduly burdensome, vague, and ambiguous.

18. The Companies object to the definition of “You,” and “Your,” or “Yourself” as overbroad, unduly burdensome, vague, and ambiguous because it unreasonably purports to require

the Companies to provide information on behalf of “any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venture of such party” and is unlimited as to time. The Companies construe the terms “You,” “Your,” and “Yourself” to refer only to the Companies.

19. The Companies object to the definition of “PUCO” and “Commission” as vague and ambiguous because the definition conflates the identity and roll of PUCO Commissioners, Staff, and the Ohio Attorney General’s Office.

**OCC Set 01**  
**Prepared By: Legal**

**Case No. 23-0301-EL-SSO**

**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**

**ANSWERS TO INTERROGATORIES**

**OCC Set 01** Pursuant to O.A.C. 4901-1-16(C), please identify each expert witness that the  
**– INT-001** FirstEnergy Utilities expect to testify at any hearing in this proceeding.

**Response:** See Paragraph 9 of the Companies' application. The Companies will supplement this  
list if additional witnesses are identified.

**OCC Set 01**  
**Prepared By: Legal**

**Case No. 23-0301-EL-SSO**

**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**

**ANSWERS TO INTERROGATORIES**

**OCC Set 01** For each expert witness identified in your response to INT-01-001, please state the  
**– INT-002** subject matter in this case on which the expert is expected to testify.

**Response:** See Paragraph 9 of the Companies' application. The Companies will supplement this  
response if additional witnesses are identified.

**OCC Set 01**  
**As to Objections: Trevor Alexander**

**Case No. 23-0301-EL-SSO**

**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**

**ANSWERS TO INTERROGATORIES**

**OCC Set 01  
– INT-003** Please provide the amount and type of cost charged to the FirstEnergy Utilities for responding to the Department of Justice investigation, any FERC investigation, any SEC investigation or any PUCO investigation or PUCO-ordered audit related to House Bill 6, and the Uniform System of Accounts account number used to record the costs.

**Response:** Objection. This request seeks information that is outside the scope of this proceeding. This request also seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

OCC Set 01

**Case No. 23-0301-EL-SSO**

**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**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 01  
– RFP-001** Please provide copies of all formal and informal requests (*e.g.*, interrogatories, data requests) made to the Company by the Commission, the PUCO Staff, and the PUCO’s Attorneys General in this proceeding, and the Company’s responses to those requests.

**Response:** The Companies have no responsive documents. Going forward, the Companies will serve copies of responses to any formal or informal data requests on parties, subject to execution of a protective agreement in the case of data requests seeking confidential information.

OCC Set 01

**Case No. 23-0301-EL-SSO**

**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**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 01** Please provide copies of all documents and workpapers provided to or by the  
**– RFP-002** Commission, the PUCO Staff, and/or the PUCO’s Attorneys General in connection with this proceeding, including schedules in Excel format.

**Response:** See the Companies’ response to OMAEG Set 01-RFP-005.

OCC Set 01

**Case No. 23-0301-EL-SSO**

**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**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 01** Please provide copies of all discovery received by the Company from other parties  
**– RFP-003** in this proceeding and the Company’s response to that discovery.

**Response:** The Companies served OCC and other parties with responses to OMAEG Set 1. Going forward, the Companies will serve copies of discovery responses on parties, subject to execution of a protective agreement in the case of discovery seeking confidential information.

**OCC Set 01**  
**As to Objections: Trevor Alexander**

**Case No. 23-0301-EL-SSO**

**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**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 01  
– RFP-004** Please provide copies of all Communications (*e.g.*, email, memos) related to this proceeding between the Company and the Commission, the PUCO Staff, and/or the PUCO's Attorneys General.

**Response:** While no settlement discussions have occurred as of May 24, 2023, the Companies object to the extent this Request seeks confidential settlement communications or to the extent this Request seeks information protected by an applicable legal privilege. Subject to the foregoing objections, see OCC Set 1-RFP-004 Attachment 1 and OCC Set 1-RFP-004 Attachment 2.

**OCC Set 01**  
**As to Objections: Trevor Alexander**

**Case No. 23-0301-EL-SSO**

**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**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

**OCC Set 01** Please provide copies of every contract or agreement that is between the utility or  
**– RFP-005** any of its affiliates and a party to the proceeding, consumer, electric services  
company, or political subdivision and that is relevant to the proceeding.

**Response:** The Companies object to this Request on the grounds that it is vague and ambiguous.  
Subject to the foregoing objection, the Companies understand this request to be  
seeking side agreements related to ESP V, as contemplated by R.C. 4928.145. The  
Companies have no such side agreements, or other documents which they reasonably  
believe are “relevant to the proceeding.”

**CERTIFICATE OF SERVICE**

I certify that the forgoing Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company's Objections and Responses to the First Set of Interrogatories and Requests for Production of Documents by OCC was served this 25th day of May 2023 via email upon the following:

[mkurtz@BKLawfirm.com](mailto:mkurtz@BKLawfirm.com)  
[jkylercohn@BKLawfirm.com](mailto:jkylercohn@BKLawfirm.com)

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/s/ N. Trevor Alexander  
*Attorney for Ohio Edison Company, The  
Cleveland Electric Illuminating Company, and  
The Toledo Edison Company*

**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	)	
Edison Company for Authority to	)	Case No. 23-301-EL-SSO
Establish a Standard Service Offer	)	
Pursuant to R.C. 4928.143 in the Form of	)	
an Electric Security Plan.	)	

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**AFFIDAVIT OF JOHN FINNIGAN IN SUPPORT OF MOTION TO COMPEL  
RESPONSE TO FIRST SET OF DISCOVERY**

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I, John Finnigan, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above-captioned case, being first duly sworn, depose and state that, based on knowledge and information, the following efforts have been made to resolve the differences with the FirstEnergy Utilities from whom discovery is sought:

1. OCC served its First Set of Discovery on May 5, 2023.
2. On May 25, 2023, the FirstEnergy Utilities served their objections to OCC's First Set of Discovery. (Attachment 1).
3. In RPD-01-005, OCC asked for copies contracts between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding. The FirstEnergy Utilities made objections and responded that "[t]he Companies have no such side agreements, or other documents which they believe are 'relevant to the proceeding.'"

4. On June 2, 2023, I participated in a meet-and-confer discussion with Mr. Trevor Alexander, one of the FirstEnergy Utilities' attorneys in this case. We discussed the FirstEnergy Utilities' response to RPD-01-005.
5. I stated that OCC was concerned that its interpretation of whether a side deal is "relevant" could differ from FirstEnergy's interpretation. I proposed a way to resolve this discovery dispute by having the FirstEnergy Utilities submit a description of its side deals, which would better enable OCC to determine whether any of the side deals might be relevant to this case. Mr. Alexander rejected this proposal.

STATE OF OHIO )  
 ) SS:  
COUNTY OF FRANKLIN )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies,  
deposes and states the following:

I have caused to be prepared the attached written affidavit for OCC in the above-referenced docket. This affidavit is true and correct to the best of my knowledge, information and belief.

Further affiant sayeth naught.

John Funnigan  
John Funnigan, Affiant

Subscribed, and sworn to me this 9 day of June 2023.

Phil Berach  
Notary Public



**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**6/9/2023 4:39:56 PM**

**in**

**Case No(s). 23-0301-EL-SSO**

Summary: Motion Motion to Compel Discovery on Utility Side Deals by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Finnigan, John.