

**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. 23-301-EL-SSO
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)	

**COMPANIES’ MEMORANDUM CONTRA THE OFFICE OF THE OHIO
CONSUMERS’ COUNSEL’S MOTION TO COMPEL**

A. Introduction

OCC’s “Motion to Compel Discovery on Utility Side Deals” fails to raise an actual discovery dispute over OCC Set 01-RFP-005 (“RFP 5”) and should be denied. The Companies more than fully answered OCC’s question, by explaining that the Companies have no side agreements related to ESP V, as contemplated by R.C. 4928.145, and no other documents which they reasonably believe are “relevant to the proceeding.”

B. Argument

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“the Companies”) fully answered RFP 5, stating definitively that they have no side agreements. In other words, the Companies have no agreement, either directly or through an affiliate, which would have the effect of preventing or resolving litigation of any issue in ESP V. This answer directly and fully addresses the purpose of RFP 5 to determine whether there are any utility side agreements in this case.

In addition to confirming there are no side agreements, the Companies’ answer responded to the exact wording of OCC’s RFP 5, which asks the Companies to provide every contract between

the Companies or any affiliate and “a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding.” After confirming there are no side agreements, the Companies’ answer explains that they have no “other documents which they reasonably believe are ‘relevant to the proceeding.’” Therefore, the Companies more than fully answered OCC’s question, by explaining that the Companies have:

1. no side agreements related to ESP V, as contemplated by R.C. 4928.145, and
2. no other documents which they reasonably believe are “relevant to the proceeding.”

OCC’s motion disregards the Companies’ answer. OCC incorrectly asserts that the Companies have side agreements in ESP V but are not disclosing them because the Companies believe the side agreements are not relevant. OCC Supporting Memo at 4. As explained above, the Companies answered, without qualification, that they have no side agreements related to ESP V. Indeed, the way OCC mischaracterizes the Companies’ answer makes no sense. There is no such thing as an ESP V side agreement that is irrelevant to ESP V. Certainly, any side agreement resolving or preventing litigation of an issue in ESP V would necessarily be “relevant to the proceeding.” The documents OCC accuses the Companies of withholding cannot exist.

OCC’s motion demands the Companies prepare a log of every “side deal” with parties to this proceeding. *See, e.g.*, OCC Supporting Memo at 1-2, 5. However, in the meet-and-confer, OCC requested a log of all “contracts” – not just “side deals” – entered into by the Companies or an affiliate, with no limitation of the counterparties listed in RFP 5, i.e., any “party to this proceeding, consumer, electric services company, or political subdivision.” The proposed “contract log” is unduly burdensome. In the ordinary course of business, and independent from ESP V, the Companies, or their affiliates, such as ATSI, enter into countless contracts with counterparties that may be a “party to the proceeding, consumer, electric services company, or

political subdivision.” Potential contracts with parties to this proceeding may include, as an illustration and without limitation, contracts for electric service, line extension agreements, payment agreements, supplier coordination agreements, reasonable arrangements, protective agreements, collective bargaining agreements, and vendor contracts. If the inquiry were expanded to include non-parties as contemplated by RFP 5, e.g., political subdivisions, it would expand even further to include municipal franchise agreements, right-of-way agreements, and so on. None of these contracts are relevant to this proceeding and would be unduly burdensome to identify.

OCC’s proposed contract log also exceeds the permissible boundaries of discovery under OAC 4901-1-16(B) because it necessarily requires logging of irrelevant documents. OCC wants the Companies to log all contracts, without regard to relevance, and for the Commission and OCC to review the log and determine each document’s relevance. This even exceeds the scope of OCC’s RFP 5 which, consistent with OAC 4901-1-16 and R.C. 4928.145, requested only copies of documents “relevant to the proceeding.” For these reasons, a log of “contracts” would be unduly burdensome and seek irrelevant information, and any such OCC recommendation should be rejected.

C. Conclusion

OCC has asked the Companies to produce side agreements related to ESP V. The Companies answered that they do not have any such side agreements. The Companies have further answered that they do not have other contracts relevant to this case. There is no failure or refusal to answer, nor any evasive or incomplete answer. OCC has no basis to move to compel. For the reasons explained above, there is no discovery dispute regarding RFP 5 and OCC’s motion to compel should be denied.

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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 (“PUCO”) on this 26th day of June 2023. 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: Memorandum Contra The Office of the Ohio Consumers' Counsel's
Motion to Compel electronically filed by Mr. N. Trevor Alexander on behalf of Ohio
Edison Company and The Cleveland Illuminating Company and The Toledo Edison
Company.