

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio for Authority to Establish a) Case No. 14-841-EL-SSO
Standard Service Offer Pursuant to)
Section 4928.143, Revised Code, in the)
Form of an Electric Security Plan,)
Accounting Modifications and Tariffs for)
Generation Service.)

In the Matter of the Application of Duke)
Energy Ohio for Authority to Amend its) Case No. 14-842-EL-ATA
Certified Supplier Tariff, P.U.C.O.)
No. 20.)

**MOTION FOR SUBPOENA DUCES TECUM
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

The Ohio Consumers' Counsel ("OCC") respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or an attorney examiner to issue a subpoena compelling the attendance of the following persons at the hearing in this proceeding, scheduled to begin on Wednesday, October 22, 2014, at 10:00 a.m., at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215.

Said persons shall appear at 10:00 a.m. on October 22, 2014 and shall make themselves available from day to day during the hearing to provide testimony when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. The persons requested to attend and give testimony are:

1. Charles Whitlock, President, Duke Energy Corporation -
Midwest Commercial Generation
2. Bryan Dougherty, Financial Forecasting Manager, Duke
Energy Business Services
3. Ben Zhang, Vice President, Commercial Analytics, Duke
Energy Corporation – Midwest Commercial Generation
4. Ken Jennings, Director, Market Policy and RTO Services,
Duke Energy Commercial Enterprises
5. Person(s) with knowledge of and expertise regarding:
 - a. Duke's requests (including requests for consent) to
sell or transfer its interest in Ohio Valley Electric
Corporation ("OVEC") under the terms of the Inter-
Company Power Agreement ("ICPA") including
communications made or received by Duke Energy

Ohio¹ in this process² and documents related to Sponsoring Companies' responses to Duke's request to sell or transfer its interest.

- b. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of Duke's share of the capacity and energy from OVEC to Duke's retail customers for the duration of Duke Energy Ohio's entitlement, including persons familiar with assumptions, calculations, and workpapers underlying such estimates.³
- c. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, of the net cost or benefit to customers and projected rate impacts of the Price Stabilization Rider, including persons

¹ References to Duke Energy Ohio as used in this Motion for Subpoena include any person or entity acting on behalf of Duke Energy Ohio.

² It is OCC's understanding that Charles Whitlock will be able to testify on this subject matter. OCC is issuing this corporate subpoena in the event that Mr. Whitlock lacks the necessary knowledge and expertise to testify regarding this subject.

³ It is OCC's understanding that, pursuant to OCC's Notices of Deposition issued on July 28, 2014 and September 17, 2014, Bryan Dougherty, Ben Zhang, and Ken Jennings were produced to respond to OCC's request for corporate deponents on these same matters. OCC is issuing this corporate subpoena in the event that the identified witnesses lack the necessary knowledge and expertise to testify regarding this subject.

familiar with assumptions, calculations, and
workpapers underlying such estimates.⁴

The subpoena also compels the witnesses to bring with them, and provide
to OCC at 9:30 a.m. on October 22, 2014:

- (1) All documents relating to responses to discovery that were
authored by the witness or were provided to OCC with input from
the witness;
- (2) To the extent the witness is testifying to the matters described in
paragraph 5(a) above, all documents relating to such matters,
including:
 - a. All documents related to Duke's request(s) (including
requests for consent) to sell or transfer ownership⁵ of all or
part of its OVEC interest to an affiliate or third party since
January 1, 2012;
 - b. All documents related to OVEC Board Meeting minutes
(including resolutions) that pertain to consideration of
Duke's sale or transfer its ownership shares of OVEC to an
affiliate or third party, since January 1, 2012;

⁴ It is OCC's understanding that, pursuant to OCC's Notices of Deposition issued on July 28, 2014 and September 17, 2014, Bryan Dougherty, Ben Zhang, and Ken Jennings were produced to respond to OCC's request for corporate deponents on these same matters.. OCC is issuing this corporate subpoena in the event that the identified witnesses lack the necessary knowledge and expertise to testify regarding this subject.

⁵ "Ownership" or "ownership shares" as used here includes all rights, title , interests, and obligations as used in Section 9.18 (and its subsections) of the ICPA.

- c. All OVEC committee or subcommittee meeting minutes pertaining to consideration of Duke's sale or transfer of Duke's ownership shares of OVEC to an affiliate or third party since January 1, 2012;
 - d. All communications between OVEC (including OVEC's Board of Directors) and OVEC sponsoring companies pertaining to consideration of a sale or transfer of Duke's ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
 - e. All communications between and among sponsoring companies pertaining to consideration of Duke's sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
 - f. All documents pertaining to any vote or poll that occurred among the Sponsoring Companies pertaining to Duke's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012.
- (3) To the extent the witness is testifying to the matters set forth in paragraphs 5(b) or 5(c) above, all documents related to the estimates as referenced under paragraphs 5(b) and 5(c) and documents showing assumptions, calculations, and workpapers underlying such estimates that were prepared by the witness or

were prepared under the witness's direction or supervision.

Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record
Joseph P. Serio
Edmund "Tad" Berger
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
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Outside Counsel for the Office of the Ohio
Consumers' Counsel

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In the Matter of the Application of Duke)
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In the Matter of the Application of Duke)
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Certified Supplier Tariff, P.U.C.O.)
No. 20.)

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUBPOENA DUCES TECUM
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In this proceeding Duke Energy Ohio ("Duke") is seeking to charge its customers, through its proposed Price Stabilization Rider ("PSR"), the difference between the market value of its interest in Ohio Valley Electric Corporation ("OVEC") and its 9% share of OVEC costs for the duration of its OVEC entitlement, which is currently through 2040. Under Duke's PSR, Duke is asking that the PUCO require customers to guarantee its profits on its generating units (Duke Energy Ohio's OVEC interest) that are supposed to be no longer regulated but subject to the forces of competition.

In accordance with R.C. 4928.17(A) and the Stipulation in Duke's last ESP proceeding,⁶ Duke was required to transfer its generation assets by the end of 2014. For contractual obligations arising before the signing of the Stipulation, Duke was permitted to retain its interest "but only to the extent that assuming or transferring such obligations is prohibited by the terms of the contract or would result in substantially increased liabilities for Duke Energy Ohio if Duke Energy Ohio were to transfer such obligations to its subsidiary or affiliate." Consequently, Duke was required to make a good faith effort to transfer its interest in OVEC that underlies its claim for the PSR. Since Duke is seeking approval of its PSR in this case, the PUCO should consider whether good faith efforts were made by Duke to sell or transfer its OVEC interest. OCC's requested subpoenas for Mr. Whitlock, Duke's representative on the OVEC Board of Directors and for a witness described under paragraph 5(a) is intended to provide for testimony regarding this subject matter.

The merits of Duke's PSR should also be evaluated, for purposes of the "better in the aggregate test" under R.C. 4928.143(C)(1), based on the estimated net costs or benefits of the proposed PSR, including evaluation of the economic value of capacity and energy from OVEC. OCC's requested subpoenas directed to Mr. Dougherty, Mr. Zhang, and Mr. Jennings, and the corporate subpoenaed witness under paragraph 5(b)

⁶ *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 49028.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service, et al.*, Case No. 11-3549-EL-SSO, Stipulation, pp. 26-27 (October 24, 2011).

and 5(c) are directed to addressing these issues. Each of the named individuals has been deposed by OCC on these subject matters and has provided testimony pertinent to the subject matters discussed here.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Grady

Maureen R. Grady, Counsel of Record
Joseph P. Serio
Edmund "Tad" Berger
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, Suite 1800
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dborchers@bricker.com

Outside Counsel for the Office of the Ohio
Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Subpoena has been served electronically upon those persons listed below this 17th day of October 2014.

/s/ Maureen R. Grady
Maureen R. Grady
Assistant Consumers' Counsel

SERVICE LIST

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**STATE OF OHIO
PUBLIC UTILITIES COMMISSION
180 EAST BROAD STREET
COLUMBUS, OHIO 43266-0573**

John Kasich
GOVERNOR



**THE PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM**

TO: Charles Whitlock
c/o Duke Energy Ohio, Inc.
155 E. Broad St., 21st Fl.
Columbus, Ohio 443215

Upon application of the Office of the Ohio Consumers' Counsel, Charles Whitlock is hereby required to appear on October 22, 2014, beginning at 10:00 a.m. at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215. Mr. Whitlock shall make himself available day-to-day during the hearing to provide testimony when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. Mr. Whitlock will be subject to testifying as if on cross-examination by the Ohio Consumers' Counsel and other parties in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

Mr. Whitlock shall bring with him the following documents and shall provide said documents to OCC at 9:30 a.m. on October 22, 2014:

- (1) Duke's requests (including requests for consent) to sell or transfer its interest in Ohio Valley Electric Corporation ("OVEC") under the terms of the Amended and Restated Inter-Company Power Agreement ("ICPA") including communications made or received by Duke Energy Ohio¹ in this process² and documents related to Sponsoring Companies' responses to Duke's request to sell or transfer its interest;
- (2) All documents relating to responses to discovery that were authored by the witness or were provided to OCC with input from the witness;
- (3) All documents relating to such matters, including:
 - (a) All documents related to Dukes' request(s) for consent to sell or transfer ownership³ of all or part of its OVEC interest to an affiliate or third party since January 1, 2012;
 - (b) All documents related to OVEC Board Meeting minutes (including resolutions) that pertain to consideration of Duke's sale or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
 - (c) All OVEC committee or subcommittee meeting minutes pertaining to consideration of Duke's sale or transfer of Duke's ownership

¹ References to Duke Energy Ohio as used in this Motion for subpoena include any person or entity acting on behalf of Duke Energy Ohio.

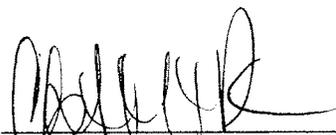
² It is OCC's understanding that Charles Whitlock will be able to testify on this subject matter. OCC is only issuing this corporate subpoena to the extent that Mr. Whitlock lacks the necessary knowledge and expertise to testify on behalf of Duke Energy Ohio, Inc. regarding this subject.

³ "Ownership" or "ownership shares" as used here includes all rights, title, interests, and obligations as used in Section 8.18 (and its subsections) of the ICPA.

shares of OVEC to an affiliate or third party since January 1, 20102;

- (d) All communications between OVEC (including OVEC's Board of Directors) and OVEC sponsoring companies pertaining to consideration of a sale or transfer of Duke's ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
- (e) All communications between and among sponsoring companies pertaining to consideration of Duke's sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
- (f) All documents pertaining to any vote or poll that occurred among the sponsoring companies pertaining to Duke's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012.

Dated at Columbus, Ohio, this 17th day of October, 2014.



Christine Pirik or Nicholas Walstra
Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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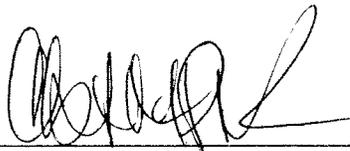
TO: Bryan Dougherty
c/o Duke Energy Ohio, Inc.
155 E. Broad St., 21st Fl.
Columbus, Ohio 443215

Upon application of the Office of the Ohio Consumers' Counsel, Bryan Dougherty is hereby required to appear on October 22, 2014, beginning at 10:00 a.m. at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215. Mr. Dougherty shall make himself available during the hearing to provide testimony from day-to-day when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. Mr. Dougherty will be subject to testifying as if on cross-examination by the Ohio Consumers' Counsel and other parties in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

Mr. Dougherty shall bring with him the following documents and shall provide said documents to OCC at 9:30 a.m. on October 22, 2014:

- (1) All documents relating to responses to discovery in this proceeding that were authored by him or were provided to parties to this proceeding with input from him;
- (2) All documents related to the estimates described in (a) and (b) below and all documents showing assumptions, calculations, and workpapers underlying such estimates, which he prepared or which were prepared under his direction or supervision:
 - a. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement; and
 - b. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, of the net cost or benefit to customers and projected rate impacts of the Price Stabilization Rider.

Dated at Columbus, Ohio, this 17th day of October, 2014.



Christine Pirik or Nicholas Walstra
Attorney Examiner

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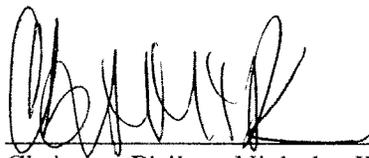
TO: Ben Zhang
c/o Duke Energy Ohio, Inc.
155 E. Broad St., 21st Fl.
Columbus, Ohio 443215

Upon application of the Office of the Ohio Consumers' Counsel, Ben Zhang is hereby required to appear on October 22, 2014, beginning at 10:00 a.m. at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215. Mr. Zhang shall make himself available during the hearing to provide testimony from day-to-day when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. Mr. Zhang will be subject to testifying as if on cross-examination by the Ohio Consumers' Counsel and other parties in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

Mr. Zhang shall bring with him the following documents and shall provide said documents to OCC at 9:30 a.m. on October 22, 2014:

- (1) All documents relating to responses to discovery in this proceeding that were authored by him or were provided to parties to this proceeding with input from him;
- (2) All documents related to the estimates described in (a) and (b) below and all documents showing assumptions, calculations, and workpapers underlying such estimates, which he prepared or which were prepared under his direction or supervision:
 - a. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement; and
 - b. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, of the net cost or benefit to customers and projected rate impacts of the Price Stabilization Rider.

Dated at Columbus, Ohio, this 17th day of October, 2014.



Christine Pirik or Nicholas Walstra
Attorney Examiner

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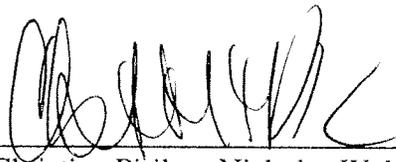
TO: Ken Jennings
c/o Duke Energy Ohio, Inc.
155 E. Broad St., 21st Fl.
Columbus, Ohio 443215

Upon application of the Office of the Ohio Consumers' Counsel, Ken Jennings is hereby required to appear on October 22, 2014, beginning at 10:00 a.m. at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215. Mr. Jennings shall make himself available during the hearing to provide testimony from day-to-day when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. Mr. Jennings will be subject to testifying as if on cross-examination by the Ohio Consumers' Counsel and other parties in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

Mr. Jennings shall bring with him the following documents and shall provide said documents to OCC at 9:30 a.m. on October 22, 2014:

- (1) All documents relating to responses to discovery in this proceeding that were authored by him or were provided to parties to this proceeding with input from him;
- (2) All documents related to the estimates described in (a) and (b) below and all documents showing assumptions, calculations, and workpapers underlying such estimates, which he prepared or which were prepared under his direction or supervision:
 - a. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement; and
 - b. Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, of the net cost or benefit to customers and projected rate impacts of the Price Stabilization Rider.

Dated at Columbus, Ohio, this 17th day of October, 2014.



Christine Pirik or Nicholas Walstra
Attorney Examiner

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TO: Duke Energy Ohio, Inc.
155 E. Broad St., 21st Fl.
Columbus, Ohio 443215

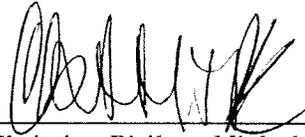
Upon application of the Office of the Ohio Consumers' Counsel, Duke Energy Ohio, Inc. is required to produce person(s) with knowledge and expertise with respect to the subject matters specifically identified below, to appear on October 22, 2014, beginning at 10:00 a.m. at the Offices of the Public Utilities Commission of Ohio, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio, 43215. Such person(s) shall make themselves available during the hearing to provide testimony from day-to-day when called by OCC as a witness concerning Duke Energy Ohio's Electric Security Plan ("ESP") in the above-captioned case. The person(s) subject to this subpoena will be subject to testifying as if on cross-examination by the Ohio Consumers' Counsel and other parties in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

The person(s) subject to this subpoena shall bring with him/her the following documents and shall provide said documents to OCC at 9:30 a.m. on October 22, 2014:

- (1) All documents relating to responses to discovery in this proceeding that were authored by the witness or were provided to parties to this proceeding with input from him;
- (2) All documents related to Duke's request(s) (including requests for consent) to sell or transfer ownership of all or part of its OVEC interest to an affiliate or third party since January 1, 2012;
- (3) All documents related to OVEC Board Meeting minutes (including resolutions) that pertain to consideration of Duke's sale or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
- (4) All OVEC committee or subcommittee meeting minutes pertaining to consideration of Duke's sale or transfer of Duke's ownership shares of OVEC to an affiliate or third party since January 1, 2012;
- (5) All communications between OVEC (including OVEC's Board of Directors) and OVEC sponsoring companies pertaining to consideration of a sale or transfer of Duke's ownership shares of OVEC to an affiliate or third party, since January 1, 2012;

- (6) All communications between and among sponsoring companies pertaining to consideration of Duke's sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012;
- (7) All documents pertaining to any vote or poll that occurred among the sponsoring companies pertaining to Duke's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012.
- (8) All documents related to the estimates described in (9) and (10) below and all documents showing assumptions, calculations, and workpapers underlying such estimates, which he prepared or which were prepared under his direction or supervision:
- (9) Any and all estimates made by Duke Energy Ohio, Inc., or in its possession or control, regarding the economic value of its share of the capacity and energy from OVEC to its retail customers for the duration of Duke Energy Ohio's entitlement; and
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Dated at Columbus, Ohio, this 17th day of October, 2014.



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/17/2014 1:08:59 PM

in

Case No(s). 14-0841-EL-SSO, 14-0842-EL-ATA

Summary: Motion Motion for Subpoena Duces Tecum by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Grady, Maureen R. Ms.