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 Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of An Electric Security Plan	)))))))	**Case No. 14-1297-EL-SSO**

MOTION OF FIRSTENERGY SOLUTIONS CORP. TO QUASH THE SUBPOENA DUCES TECUM OF SIERRA CLUB AND MOTION OF FIRSTENERGY SOLUTIONS CORP. FOR A PROTECTIVE ORDER

Pursuant to Rule 4901-1-25(C), O.A.C., FirstEnergy Solutions Corp. ("FES") respectfully moves the Commission to quash Sierra Club's Subpoena Duces Tecum Directed to FirstEnergy Solutions Corp., dated November 25, 2014 (the "Subpoena"). As demonstrated in the attached Memorandum in Support, the Subpoena is overbroad, oppressive, unduly burdensome, seeks information which is protected by the attorney-client privilege and/or work-product doctrine, and further seeks irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. As such, it should be quashed. In the alternative, should the Commission decide to grant the Subpoena, in whole or in part, FES respectfully requests five business days from the date of the Commission's order to comply with the Subpoena. Further, in the event that the Commission requires FES to produce documents related to the Subpoena or to make one of its employees available for deposition, pursuant to Rule 4901-1-24(D), FES respectfully moves for a protective order to safeguard the highly competitively sensitive nature of the information requested in the Subpoena.

Date: December 8, 2014

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

I. INTRODUCTION

On November 25, 2014, Sierra Club moved for the Subpoena. The Subpoena contains a series of overbroad and unduly burdensome requests directed to FES that are related to a proposed purchased power transaction between FES and Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the "Companies"). Even though, as discussed below, Sierra Club has narrowed the focus of the Subpoena, most, if not all, of the information still sought by Sierra Club would be extremely burdensome to compile, and produce, is privileged, is irrelevant or has already been produced by the Companies to Sierra Club in response to Sierra Club's prior discovery requests. Moreover, Sierra Club still asks for much of this large, privileged and irrelevant production in an insufficient twelve days. Further still, the Subpoena continues to seek almost immediate depositions of unidentified, and unnecessary persons. As demonstrated below, the Commission thus should grant FES's Motion to Quash those portions of the Subpoena still at issue between the parties. Notably, a good amount of the information that is the subject of the Subpoena is highly confidential and competitively sensitive in nature. As such, to the extent FES is required to produce such

information, or to make an employee available for deposition regarding such information, the Commission should grant FES's motion for a protective order.

II. OVERVIEW AND RELEVANT FACTS

On August 4, 2014, the Companies filed their Application for their fourth electric security plan, Powering Ohio's Progress ("ESP IV"). One component of ESP IV is the Economic Stability Program. *See* Case No. 14-1297-EL-SSO, Application at 9 (Aug. 4, 2014). As explained in the Companies' Application, the Economic Stability Program "will act as a retail rate stability mechanism against increasing market prices and price volatility for all retail customers over the longer term." *Id.* The Economic Stability Program includes a detailed description of a proposed purchased power transaction between the Companies and FES whereby the Companies would purchase all of the generation output of certain assets owned by FES. *See* Case No. 14-1297-EL-SSO, Direct Testimony of Jay A. Ruberto at 3 (Aug. 4, 2014). In turn, the Companies would "offer this output into the PJM markets, and net 100% of the revenues against costs, with the differences being passed along to customers through [proposed] Rider RRS." *Id.*

As part of their Application, the Companies included highly confidential and competitively sensitive forecasting, pricing and cost information belonging to FES (the "Proprietary Data") which is related to FES's internal business operations and those generating assets, including the W.H Sammis plant, that would be supplying the power under the proposed purchased power transaction. Several intervenors, including Sierra Club, have entered into protective agreements with the Companies and have had full access to the Proprietary Data for the past few months. Several of the Companies' witnesses discuss the proposed purchased power transaction in detail in their direct testimony. Given that they have proffered direct testimony, these witnesses will be available for deposition and will testify at the hearing in this proceeding.

Notwithstanding its full access to the Proprietary Data and its ability to depose and cross-examine the above-mentioned witnesses, on November 25, 2014, Sierra Club moved for the Subpoena. The Subpoena originally sought to have FES provide an unnamed employee to be deposed, on December 10, 2014, over six extremely broad-ranging topics, including:

> 1. Total projected revenues for the June 1, 2016 to May 31, 2031 period for each unit of the W.H. Sammis plant, to the extent available, and the plant as a whole, including, without limitation:
>
> a. energy market revenue forecasts;
> b. capacity market revenue forecasts;
> c. ancillary services revenue forecasts;
> d. outage schedules and forecasts;
> e. load forecasts;
> f. all supporting inputs, work papers, and other documents used in developing the forecasts set forth in (a)-(e) above; and
> g. all other information relevant to projected revenues.
>
> 2. Total projected costs for the June 1, 2016 to May 31, 2031 period for each unit of the W.H. Sammis plant, to the extent available, and the plant as a whole, including, without limitation:
>
> a. projected capital expenditures;
> b. projected non-fuel variable costs;
> c. projected fixed costs;
> d. projected operation and maintenance costs;
> e. projected fuel costs;
> f. projected labor costs;
> g. all supporting inputs, work papers, and other documents used in developing the projected costs set forth in (a)-(f) above;
> h. a listing of each and every capital project currently planned for the Sammis plant, including (1) the scheduled timeframe for the of the scope of work being planned; and i. all other information relevant to projected costs.
>
> 3. Communications with shareholders and/or financial institutions regarding cost, revenue, or market projections or forecasts as they pertain to the W.H. Sammis plant.
>
> 4. Communications with shareholders and/or financial institutions regarding the proposed "power purchase agreement" between FES and Ohio Edison Company, Cleveland Electric Company, and Toledo Edison Company.
>
> 5. Documents reflecting evaluation of terms of the proposed "power purchase agreement" between FES and Ohio Edison Company, Cleveland

Electric Company, and Toledo Edison Company, including any draft contract or term sheets.

6. Any analysis performed by or on behalf of FES assessing compliance with, or compliance costs associated with, the following environmental regulations:

a. Section 316(b) of the Clean Water Act;
b. Section 316(a) of the Clean Water Act;
c. Clean Water Act effluent limitation guidelines;
d. Clean Air Interstate Rule;
e. Cross State Air Pollution Rule;
f. Ozone NAAQS;
g. PM2.5 NAAQS;
h. Coal Combustion Waste rules; and
i. Clean Air Act Section 111(d) greenhouse gas regulations for existing generation units.

Subpoena at 1-2. Further, the Subpoena originally required FES, by December 8, 2015, to produce "all documents within its possession custody, or control that are relevant to the above-described topics" going back to June 4, 2012. *Id.* at 3.

On December 4, 2014, in a letter to counsel for Sierra Club, FES objected to the overbroad, unduly burdensome, and oppressive nature of the Subpoena. *See* attached Letter to Sierra Club from FES, dated December 4, 2014 ("FES Letter"). Nonetheless, in an effort to accommodate Sierra Club, FES offered to produce additional materials related to Topic 1 (Projected Revenues for W. H. Sammis) and Topic 2 (Projected Costs for W.H. Sammis), subject to the Protective Agreement currently in effect between Sierra Club and the Companies. *Id.* at 2. Specifically, with regard to Topic 1, FES offered to produce its forecasts and revenues for the plants at issue in this case as requested by Sierra Club, along with the electronic inputs used for these forecasts from its model run. *Id.* With regard to Topic 2, again subject to the Companies' protective agreement, FES further offered to provide its forecast of projected costs for the relevant period, but objected to the overbroad remainder of those requests. *Id.*

In a letter dated December 5, 2014, Sierra Club accepted the Companies' proposal for Topics 1 and 2 and Sierra Club agreed to narrow its requests regarding those Topics accordingly. *See* attached Letter from Sierra Club to FES, dated December 5, 2014, at 3-4 ("Sierra Club Letter"). Further, Sierra Club agreed to drop their requests only for Topics 3 and 4. *See id.* at 2. Sierra Club, however, continued to insist that FES provide documents and witnesses regarding Topics 5 and 6. *See id.* at 4-5. While offering to move its requested deposition date back to December 18, 2014, Sierra Club demanded that documents responsive to Topic 5 be produced by December 12, 2015 and documents response to Topic 6 be produced by December 8, 2014. *See id.* at 2, 3, 5. FES was left with no alternative but to file its Motion to Quash.

III. LAW AND ARGUMENT

A. Motion To Quash

1. The Commission and Ohio Courts routinely grant motions to quash subpoenas that are overbroad, unduly burdensome or otherwise unreasonable.

The Commission routinely grants motions to quash where the subpoenas at issue are overbroad, unduly burdensome or otherwise unreasonable. For example, in *In the Matter of the Application of Champaign Wind, LLC, for a Certificate to Construct a Wind-Powered Electric Generating Facility in Champaign County, Ohio*, Case No. 12-160-EL-BGN, 2013 Ohio PUC LEXIS 110 (May 28, 2013), an intervenor's subpoenas to a non-party were quashed because that request for information was "extraordinarily overbroad" and "it would be unreasonable to force a nonparty to expend its time and resources toward a request that is unlimited in scope." *Id.* at *19. Likewise, the Commission quashed the subpoena related to blade shear incidents as similarly overbroad. The Commission further noted that the intervenor had failed to show how it would suffer an "undue hardship" in the absence of the subpoenaed information. *Id.* at *20. *See also, In the Matter of the Complaint of the Ohio Consumers' Counsel, Stand Energy*

Corporation, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation v. Interstate Gas Supply, Inc., Case No. 10-2395-GA-CSS, 2011 Ohio PUC LEXIS 1202 at *4-5 (Nov. 2, 2011) (granting motion to quash because subpoena was unreasonable); *In the Matter of the Complaint of Buckeye Energy Brokers, Inc., v. Palmer Energy Company*, Case No. 10-693-EL-CSS, 2011 Ohio PUC LEXIS 406 (Mar. 30, 2011) (granting motion to quash).

Ohio courts similarly routinely grant motions to quash subpoenas that are overbroad or unduly burdensome. *See, e.g., Hoerig v. Tiffin Scenic Studios, Inc.*, 3rd Dist. Seneca No. 13-11-18, 2011-Ohio-6103, ¶ 24 (affirming trial court's decision to quash a subpoena because the cost to an employer of returning the witness to testify constituted an undue burden); *Wright v. Perioperative Med. Consultants*, 1st Dist. Hamilton No. C-060586, 2007-Ohio-3090, ¶¶ 11, 18 (reversing trial court and holding that motions to quash should have been granted because, among other reasons, the subpoenas were unduly burdensome); *Martin v. Budd*, 128 Ohio App. 3d 115, 120 (Ohio Ct. App., Summit County 1998) (holding that trial court's failure to grant a motion to quash a subpoena duces tecum was an abuse of discretion because the subpoena created an undue burden and because the plaintiff failed to show a substantial need for the requested information); *Eitel v. Eitel*, 1996 Ohio App. LEXIS 3821, 12-13 (Ohio Ct. App., Pickaway County Aug. 23, 1996) (affirming trial court's decision to quash subpoenas that were unreasonable, oppressive, unduly burdensome and that would not lead to relevant testimony); *Knoop v. Knoop*, 2007-Ohio-5178, ¶27 (Ohio Ct. App., Montgomery County Sept. 28, 2007) (affirming granting of motion to quash subpoena that sought irrelevant material and was unduly burdensome); *Shopco Group v. Springdale*, 64 Ohio App. 3d 373, 375-376 (Ohio Ct. App., Hamilton County 1989) (reversing trial court decision that failed to quash subpoena which sought irrelevant material).

Ohio courts require a subpoenaing party to show that it has a substantial need for the materials subpoenaed that does not impose an undue burden on the subpoenaed party even if those materials are relevant. *See Eitel* at *12-13 (holding that a "motion to quash shall be granted unless the party issuing the subpoena shows a substantial need for the testimony that cannot be otherwise met without undue hardship"); *see also* Civ.R. 45 (C)(3)(d). Specifically, the subpoenaing party must also demonstrate that the subpoenaed materials, even if relevant, are not reasonably available from "other sources." *Martin* at 119. A subpoena cannot simply be used as a "fishing expedition." *Id. See also*, *Hoerig* at ¶¶24, 32 (holding that even if subpoenaing party "had a substantial need" for subpoenaed material "the facts could have been otherwise presented without undue hardship" because other sources were available for the information); *Wright* at ¶18 ("Placing the onus on a nonparty to provide discovery that is either privileged or available elsewhere would abrogate [the statutory privilege covering medical records] and would be unduly burdensome under Civ.R. 45(C)(3)(d).").

2. Application to the instant matter.

Here, under the Commission's and Ohio case law, Topics 5 and 6 of the Subpoena are overbroad, unduly burdensome and seek the disclosure of privileged material. Therefore, Topics 5 and 6 of the Subpoena should be quashed. Sierra Club has failed to demonstrate that it has a substantial need for the remaining subpoenaed material, which, even if relevant (although it is not), does not impose an undue burden on FES, a non-party to this proceeding. To begin, Sierra Club has failed to show that the material it seeks is not available from other sources; specifically, those witnesses to this proceeding that are testifying on behalf of the Companies regarding the proposed purchased power transaction. For example, Company witness Paul Harden has provided direct testimony related to compliance with various environmental regulations regarding the generating assets, including the W.H. Sammis plant, involved in the proposed

transaction. *See* Case No. 14-1297-EL-SSO, Direct Testimony of Paul A. Harden at 9-12 (Aug. 4, 2014).

Nowhere in the Subpoena does Sierra Club discuss, or even reference, Mr. Harden's testimony. Instead, Sierra Club, in the Subpoena, simply states that "in order to more fully develop the record in this case" it seeks to have FES provide an unidentified employee for deposition related to a subject addressed in Mr. Harden's testimony, i.e., compliance with environmental regulations related to the W.H. Sammis plant. Subpoena at 2. Likewise, in its letter, Sierra Club simply reiterates that it seeks to depose someone who can "speak on behalf of FES." Sierra Club Letter at 3. Nowhere is the need for this unduly burdensome and oppressive request substantiated further.

Under the case law noted above, Sierra Club's requests under Topic 5 and 6, even if relevant (which they are not), impose an undue burden on FES in the absence of a demonstrated substantial need on the part of Sierra Club. *See Martin* at 119; *Wright* at ¶18; *Hoerig* at ¶32. Indeed, given the extreme breadth and wide ranging nature of Sierra Club's remaining requests, the Subpoena borders on a "fishing expedition" with regard to those Topics. *Martin* at 119. At the very least, the Subpoena, even if limited to Topics 5 and 6, is premature given that Sierra Club has yet to depose any of the several Company witnesses who have proffered testimony on the proposed purchased power transaction.

Indeed, in neither the Subpoena nor its letter, does Sierra Club ever adequately explain why deposing the Companies' witnesses who have proffered testimony on the subject matter encompassed in the Subpoena is not sufficient. Following *Champaign Wind,* Sierra Club has failed to identify any "undue hardship" that it will suffer in the absence of its compressed production and deposition schedule. *Champaign Wind* at *20. Likewise, Sierra Club has also

failed to identify any "undue hardship" that it will suffer if it is not able to depose an employee of FES, especially when the witnesses to be presented by the Companies are readily available. *Id.* As it stands, the only hardship here would be suffered by FES.

Further, Topics 5 and 6 of the Subpoena, given their wide breadth, apparently unlimited scope, and implication of the work-product doctrine and attorney-client privileges, are beset by their own particular problems. In what follows, these problems are detailed in turn.

Topic 5 (Evaluation of the terms of the proposed purchased power agreement and draft contract or term sheets): Much of the materials sought in Topic 5 were prepared by counsel for FES, or under the direction of counsel, in anticipation of litigation or otherwise comprise confidential attorney-client communications. As such, these materials are protected under either the work-product doctrine or the attorney-client privilege and therefore are not subject to production to Sierra Club. *See, e.g.*, *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO, 2013 Ohio PUC LEXIS 193 at *17-18 (Sept. 4, 2013) (holding that certain analyses of distribution and transmission rates were prepared in anticipation of litigation and were therefore protected under the work-product doctrine and that the analyses also contained confidential attorney-client communications); *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, 2010 Ohio PUC LEXIS 303 at *25 (Mar. 22, 2010) (holding that "edits to drafts of the application were the result of the advice of counsel; therefore, the drafts would be protected by the work product doctrine and attorney-client privilege"). To the extent that the Subpoena calls for communications between FES and the Companies regarding the proposed purchased power transaction, the Companies have already produced or identified

this material in the privilege log that they provided in their response to Sierra Club Set 1-RPD-49 (response to public version attached). In its letter, Sierra Club claims that the reference to Sierra Club Set 1-RPD-49 indicates that FES has "misunderstood the information being sought in the subpoena" regarding Topic 5. Sierra Club Letter at 4. Sierra Club states that it is "seeking documents concerning *FES's* evaluation of the proposed transaction." *Id.* (original emphasis).

Sierra Club's conclusory claim that such information is "plainly relevant" to this proceeding falls flat. *Id.* Indeed, FES's internal communications about the proposed transaction, and any related "evaluation," are wholly irrelevant to this case.[1] To the extent terms were discussed or considered by the Companies, that information has been produced or identified in the Companies' privilege log. (*See* Companies' response to Sierra Club Set 1- RPD-49.) To the extent that there are documents that describe the Companies' consideration of the proposed transaction, those too have either been produced or identified in the Companies' privilege log. Further, the Companies have only requested Commission approval of Rider RRS, not the proposed transaction with FES. While the Companies due diligence in evaluating the proposed transaction may be relevant, what FES thought of the transaction is of absolutely no relevance to the question of the reasonableness of the proposed Rider RRS or its effect on the Companies and their customers. And, again, any "evaluation" on the part of FES regarding the proposed transaction implicates both the work-product doctrine and the attorney client-privilege. Hence, such "evaluations" are protected and not subject to production to Sierra Club in any event. Accordingly, Topic 5 of the Subpoena should be quashed.[2]

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[1] Sierra Club's claim that the proposed purchased power transaction "would cost ratepayers hundreds of millions of dollars over the next several years" is simply false. Sierra Club Letter at 4.

[2] To the extent that the Commission should determine that any information responsive to Topic 5 not already produced by the Companies should be produced by FES, then FES requests the opportunity to produce a privilege log and to be heard on its privilege objection.

Topic 6 (Any analysis performed regarding compliance with various environmental regulations): For Topic 6, Sierra Club requests "any analysis performed by or on behalf of FES assessing compliance with, or compliance costs associated with" a variety of environmental regulations, most of which are not yet even in effect. Subpoena at 3. This request is problematic for a number of reasons. First, FES does not have any documents responding to some of these requests because the regulations they invoke are merely proposed and are still evolving. These proposed regulations are fluid in nature and are continuously undergoing substantive changes as part of notice-and-comment process. Thus, FES likely will not have any information related to them until they actually go into effect. FES does not have documents responding to other requests because the regulations they cite have been replaced with a different rule.

Indeed, Sierra Club has already been provided with all of FES's relevant written analyses for the W. H. Sammis plant regarding the regulations listed under Topic 6. In their responses to SC Set 2-INT-61; SC Set-RPD-12 Attachment 2 Competitively Sensitive Confidential and SC Set 2-INT-72(b), the Companies have provided Sierra Club with what reasonably available relevant information there is regarding this topic (responses to public versions attached). While the Companies objected to SC Set 2-INT-61 on the grounds that this request is designed to seek information outside the Companies' possession, custody or control, the Companies did in fact produce all documents that FES has that respond to these requests. To the extent Sierra Club seeks additional information in this regard, it should depose those witnesses of the Companies who have proffered testimony regarding the proposed purchased power transaction.

Second, even if FES had any additional information that was relevant to these requests, which it does not, the requests are overbroad, unreasonable, and seek information that is either

irrelevant or not likely to lead to the discovery of admissible evidence. On their face, the requests contained under Topic 6 conceivably would require FES to produce any and all information regarding its potential compliance with a host of wide-ranging environmental regulations, many of which, as noted, have yet to take effect. Any such speculative "analyses" would be far removed from the issues that pertain to the instant proceeding. *See e.g., Eitel* at *12-13 (affirming trial court's decision to quash subpoenas that were unreasonable, oppressive, unduly burdensome and that would not lead to relevant testimony).

Third, Sierra Club has provided no definition of the term "analysis," beyond stating in its letter, that the term is "commonly understood." Sierra Club Letter at 5. Not so. In the absence of a formal definition, this request could readily encompass anything from an informal email discussion between FES employees to formal written reports produced by an external consultant. Hence, contrary to Sierra Club's claim, the request *is* inherently vague. And, as with Topic 5, this set of requests also potentially implicates information protected by the work-product doctrine or the attorney-client privilege. Given the above, Topic 6 should be quashed accordingly.

B. Motion For Protective Order

Much like the Proprietary Data that was filed with the Companies' Application, and granted protection in a recent Entry in this proceeding, the information that is the subject of the Subpoena is highly competitively sensitive in nature and proprietary to FES. It thereby warrants protection as a trade secret. Further, even though the dispute between the parties has been narrowed to Topics 5 and 6 of the Subpoena, out of an abundance of caution, FES seeks protection of all the information originally requested by Sierra Club. As demonstrated below, FES has at all times safeguarded this information. Moreover, the public disclosure of this

information would cause competitive harm to FES and place FES at a severe competitive disadvantage.

Pursuant to Rule 4901-1-24(A)(7), the Commission may issue an order to protect trade secrets from public disclosure. *See* Rule 4901-1-24(A)(7). Under Ohio law, the determination of trade secret status is made pursuant to Section 1333.61(D). In pertinent part, Section 1333.61(D) provides that a "trade secret" is:

> Information . . . that satisfies both of the following:
>
> (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
>
> (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

R.C. 1333.61(D).

Here, the information sought in the Subpoena readily satisfies both prongs of Section 1333.61(D). Specifically, Topic 1 seeks a broad range of projected revenue information for the W.H. Sammis plant from 2016 to 2031, including energy market revenue forecasts, capacity market revenue forecasts, ancillary services revenue forecasts, and load forecasts, as well as information related to FES's proprietary forecasting models. *See* Subpoena at 1. Topic 2 similarly seeks projected costs information for the W.H. Sammis plant from 2016 to 2031, including projected capital expenditures, non-variable fuel-costs, fixed costs, O&M costs, fuel costs and labor costs. *See* Subpoena at 1-2. Topic 6 seeks detailed analyses regarding FES's efforts to comply with a host of environmental regulations. *Id.* at 2.

Pursuant to Section 1333.61(D)(1), this information bears "independent economic value." Its public disclosure would place FES at a severe competitive disadvantage and would cause

grievous economic harm to FES.[3] Access to this information by a competitor would provide a window into almost every aspect of FES's internal business operations related to its generation assets. Further, FES has at all times safeguarded the information related to these topics and access to this information is restricted and not publicly available. FES has thereby made reasonable efforts to maintain its secrecy.

Moreover, the Commission routinely grants protection to cost, pricing, and forecasting information like the information sought in the Subpoena and protects trade secrets that are contained in deposition transcripts or exhibits from public disclosure. *See, e.g.*, *In the Matter of the Fuel Adjustment Clause of Columbus Southern Power Company and Ohio Power Company and Related Matters for 2010*, Case No. 10-268-EL-FAC, 2014 Ohio PUC LEXIS 104 at *20-21(May 14, 2014) (granting trade secret protection to "competitive cost and financial information" related to coal inventories and contracts); *In the Matter of the Application of Duke Energy Ohio, Inc. to Adjust Rider DR-IM and Rider AU for 2010 SmartGrid Costs and Mid-Deployment Review*, Case No. 10-2326-GE-RDR, 2012 Ohio PUC LEXIS 89 at *2-7 (Jan. 25, 2012) (granting protection to growth projections and other forecasting information pursuant to Section 1333.61); *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, 2011 Ohio PUC LEXIS 1253 (Nov. 18, 2011) (granting trade secret protection to, among other things, the volume of customer load related to generation rates as well as other price and cost information); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 08-709-EL-AIR, 2009 Ohio PUC LEXIS 989 at *3-4

[3] Topics 3, 4 and 5 request all "communications" between FES and its "shareholders," financial institutions or the Companies, as well as draft term sheets regarding the proposed purchased power transaction. It is quite possible that trade secret information related to Topics 1, 2 and 6 would fall under these Topics as well.

(Nov. 13, 2009) (granting protection to deposition transcripts and exhibits that contained trade secrets).

Importantly, the highly competitively sensitive information that is the subject of the Subpoena is on all fours with the Proprietary Data that was filed with the Companies' ESP Application. The Proprietary Data includes "forecasted revenue, cost and revenue requirements data for specific [FES] generating plants" and "reflects the output of proprietary modeling software." Case No. 14-1297-EL-SSO, Motion for Protective Order of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company at 6 (Aug. 4, 2014). In an Entry, dated December 1, 2014, the Attorney Examiner in this proceeding found that the Proprietary Data warranted trade secret protection pursuant to Section 1333.61(D). *See* Case No. 14-1297-EL-SSO, Entry at 10-12. Given that the information at issue here is closely related with the Proprietary Data, that information warrants identical protection as a trade secret.

FES therefore requests that its production in response to the Subpoena be treated under the terms and conditions of the Protective Agreement already in place between Sierra Club and the Companies. This agreement has already been approved by both Sierra Club and the Attorney Examiner in this proceeding, and ensures that FES's confidential data is treated appropriately.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant FES's Motion to Quash with regard to Topics 5 and 6 of Sierra Club's subpoena. In the alternative, should the Commission decide to grant the Subpoena, in whole or in part, FES respectfully requests at least five business days from the date of the Commission's order to comply with the Subpoena. Further, to the extent FES is required to produce information that is the subject matter of the Subpoena, the Commission should issue a protective order accordingly.

Date: December 8, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served on this 8th day of December, 2014 via email on the following parties:

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December 4, 2014

Christopher J. Allwein
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callwein@wamenergylaw.com

Re: Case No. 14-1297-EL-SSO

Dear Christopher:

FirstEnergy Solutions Corp. ("FES") has received your subpoena in the above captioned matter. I am writing pursuant to OAC 4901-1-24 and 4901-1-25 to address deficiencies in that subpoena. If the parties are unable to reach mutually acceptable resolutions to these deficiencies, then FES intends to file a motion to quash the subpoena and to seek a protective order. Please consider this letter to be FES's attempt to resolve this dispute without the need for that motion.

I. Confidentiality

The subpoena seeks confidential trade secret business information belonging to FES. Sierra Club has entered into a protective agreement in this proceeding which provides protections for FES's trade secret information. FES is only willing to produce confidential information in response to this subpoena if Sierra Club is willing to agree that all documents and deposition testimony will be treated in accordance with that protective agreement.

II. Time for Production

The subpoena was served on November 26, 2014, and requests responsive documents to be produced on December 8, 2014 with a deposition on December 10, 2014. This arbitrary deadline does not provide sufficient or reasonable time for FES to collect the documents and information requested by Sierra Club. FES is willing to produce responsive documents within 10 days of the parties reaching an agreement as to the scope of the production.

In addition to the timing for collecting documents, the subpoena also requests the deposition of unidentified FES employees. It is unclear why Sierra Club is seeking to depose unidentified FES employees when it could simply depose witnesses already testifying in this case. If Sierra Club is seeking to depose those individuals at this time, then they will be made available for a deposition in Akron, Ohio, at a mutually agreeable time after the responsive documents have

been produced. Please also note that these individuals will be made available as witnesses in support of the ESP as well as in response to this subpoena. This means that other parties may ask questions after Sierra Club, and that this will be the only time these individuals will be made available for deposition in this case.

III. Topic 1

Topic 1(a) - (e) requests that FES provide a wide variety of information regarding projected revenues for the Sammis plant by unit for the period from 2016 through 2031. FES will provide the most recent revenue forecasts in its possession for the Sammis plant for the relevant period.

Topic 1(f) seeks "all supporting inputs, work papers, and other documents used in developing the forecasts set forth in (a)-(e) above." FES will produce the electronic inputs from its model run. The remainder of the request is overbroad and unduly burdensome, because it assumes that FES has the obligation to create forecasts and workpapers as if it were a party to this proceeding. FES has no obligation to create this information in response to your request. Similarly, the demand that FES provide all "supporting inputs" for its forecast is also overbroad and unduly burdensome. FES's forecasts must take a wide array of factors into account, including, by way of example, contracts with vendors, the condition of its equipment, and expectations for commodity prices. As FES is already providing the forecasts which compile all of this information, it would be unduly burdensome to request that FES compile all of the source data for those forecasts in response to this subpoena. Sierra Club must agree to withdraw this request.

Topic 1(g) seeks "all other information relevant to projected revenues." This request is vague, ambiguous, overbroad, and unduly burdensome. FES is not able to determine what information would be responsive to this request, or to identify a witness competent to testify in response to this request. Sierra Club must agree to withdraw this request.

IV. Topic 2

Topic 2(a) through (f) requests information on FES's cost forecasts for the Sammis plant by unit for the period from 2016 through 2031. FES will provide the cost forecasts from its modeling in its possession for the relevant period.

Topic 2(g) seeks "all supporting inputs, work papers, and other documents used in developing the projected costs set forth in (a)-(f) above." *See* the response to Topic 1(f) above (addressing the identical question regarding revenues). Sierra Club must agree to withdraw this request.

Topic 2(h) requests "a listing of each and every capital project currently planned for the Sammis plant, including (1) the scheduled timeframe for the project, (2) the predicted cost of the project, and (3) a description of the scope of work being planned." This information has been previously produced by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") as SC Set 2-INT-72(b), Competitively Sensitive Confidential Attachment 1.

Topic 2(i) requests "all other information relevant to projected costs." *See* the response to Topic 1(g) above (addressing the identical question regarding revenues). Sierra Club must agree to withdraw this request.

V. Topics 3 and 4

Topics 3 and 4 ask for all communications between FES and either shareholders or financial institutions regarding a variety of topics. These requests are overbroad, unduly burdensome, and seek information that is irrelevant and not reasonably likely to lead to the discovery of admissible evidence. FES has hundreds of employees. There is no reasonable way for FES to examine the records of all of these employees to determine if any of them have responsive communications. In addition, it is unclear what you mean by "shareholders." Moreover, it is unclear what possible relevance there is to communications between two non-parties to this proceeding. Communications between FES and either shareholders or financial institutions have no relationship to any issue in this case. In an effort to resolve this dispute amicably, you are advised that FirstEnergy Corp.'s communications with shareholder and financial institutions can be found on FirstEnergy Corp.'s website at this address: http://investors.firstenergycorp.com/presentations.aspx?iid=4056944. This website contains numerous SEC filings and presentations that reference the proposed ESP. You are further advised that FES has searched the communications of the FES employees who negotiated with the EDU team and no responsive documents have been located.

VI. Topic 5

Topic 5 requests "Documents reflecting evaluation of terms of the proposed 'power purchase agreement' between FES and Ohio Edison Company, Cleveland Electric Company [sic], and Toledo Edison Company, including any draft contract or term sheets." The Companies have identified information in their privilege log in response to Sierra Club Set 1-RPD-49, which is hereby incorporated by reference. As these communications are protected by the attorney client privilege and/or work product doctrines as stated in that log, FES will not be responding to this request.

VII. Topic 6

Topic 6 requests "[a]ny analysis performed by or on behalf of FES assessing compliance with, or compliance costs associated with," a series of environmental regulations, most of which are proposed or potential regulations. FES objects to this request as vague and ambiguous because Sierra Club has failed to define what it means by "analysis." This phrase could reference anything from formal written studies and cost estimates to any FES employee's general awareness of the regulation. There is no way for FES to accurately respond to such an ambiguous request.

FES also objects because the request is overbroad and unduly burdensome, and seeks information which is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. The request asks for a wide array of information from FES which would be

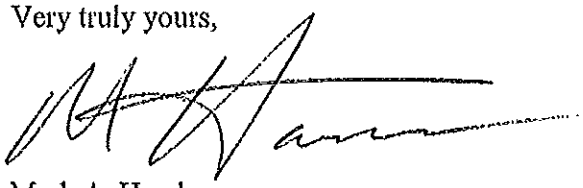
extremely burdensome to compile. For example, this topic could be read to request FES physical plant evaluations for its entire fleet and cost calculations for units which have nothing to do with this proceeding. This information has nothing to do with the issues in this case. In addition, the request potentially seeks information which is protected by the attorney-client privilege and/or the attorney work product doctrine.

FES has reviewed Sammis's compliance with all existing and proposed regulations listed in Topic 6. This is demonstrated by information responsive to this request which the Companies have previously provided. *See* SC Set 2-INT-61; SC-Set 1-RPD-12 Attachment 2 Competitively Sensitive Confidential. FES does not have written compliance cost estimates for the Sammis facility specific to individual environmental regulations that are not already reflected in the capital budget previously provided to Sierra Club or in Attachment JJL-1. *See* SC Set 2-INT-72(b), Competitively Sensitive Confidential Attachment 1. Accordingly, Sierra Club has been provided with all FES's relevant documents for the Sammis plant regarding these regulations. To the extent Sierra Club wants additional information, it may question the individuals identified above in depositions.

VIII. Conclusion

Please confirm that Sierra Club accepts FES's position on each of the foregoing issues by 12 p.m. on December 5, 2014. If I have not received a response by that time, FES intends to file a motion to quash the subpoena and to seek a protective order.

Very truly yours,



Mark A. Hayden

SIERRA CLUB
FOUNDED 1892

December 5, 2014

By E-Mail

Mark. A. Hayden
Associate General Counsel
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haydenm@firstenergycorp.com

RE: Sierra Club response to your December 4, 2014 letter; Case No. 14-1297-EL-SSO

Dear Mr. Hayden:

Sierra Club has received your letter dated December 4, 2014. We do not see much risk that a motion to quash the subpoena would be granted because the information sought in the subpoena is both relevant and important to core issues in this proceeding.

For example, the relevance of FES's cost and revenue projections, including inputs, (Topics 1 and 2) is obvious. In this proceeding, the Companies seek to tie their ratepayers to the economic fortunes of FES's generating plants through a "proposed transaction" with FES, and an accompanying Retail Rate Stability Rider. Because the economics of these plants are squarely at issue in this proceeding, the cost and revenue information sought in this subpoena is plainly relevant. For these same reasons, it is clear that FES's assessments of environmental compliance, and the costs of such compliance (Topic 5), are relevant to this proceeding, as is FES's evaluation of its proposed transaction with the Companies (Topic 6). All of this information is critical to the Commission's consideration of the Companies' application in this proceeding.

Nor do we see much risk that the Commission would find the production deadline in the subpoena "arbitrary." The production deadline on December 8, 2014, a full 12 days after the expedited subpoena was served, is not "arbitrary." Sierra Club learned of the underlying problem—the Companies claiming lack of custody over documents that are critical to this case—in discovery. Sierra Club has diligently pursued discovery of relevant information throughout this proceeding. Sierra Club and other parties need the documents required by the subpoena far

enough in advance of the deadline for intervenor testimony so that the information can be reviewed and properly used. That deadline is currently set for December 22, 2014.

Nevertheless, in the interest of time, and in the hope of resolving these issues amicably, we are willing to compromise on several issues regarding this subpoena. First, we will agree to significantly limit the scope of subpoena as described below. Second, we will compromise on the deadline for production of documents responsive to Topic 5. We must, however, insist that FES comply with the subpoena as limited here. If you do not agree to comply with our limited subpoena, you should file your motion to quash by December 8, 2014 so that this issue can be promptly resolved.

I. Confidentiality

We agree that any information that qualifies as "confidential trade secret business information" under the protective order in this proceeding will be protected when you produce it to Sierra Club.

We cannot agree, however, as your letter seems to request, that every document that you produce is necessarily confidential or that an entire deposition be treated as confidential. Such information must be non-public and be a trade secret or otherwise competitively sensitive for such protections to apply. We do not see this point as an area of serious disagreement, though, and would be pleased to discuss it further at your convenience.

II. Time For Production

The timing of your production is of critical importance given the approaching deadline for intervenor testimony. As explained above, the deadline of Monday, December 8 is not "arbitrary." Indeed, December 8 represents the latest possible date by which intervenors could be reasonably expected to review, evaluate, and provide testimony about the information and documents being sought.

Nor will it be difficult for FES to comply with that production date. First, FES has been involved in the Companies' application since well before it was filed in early August. Second, we seek discrete information which is not difficult to locate, especially given that you appear to have already seen it. Third, FES has now been aware of this subpoena for almost two weeks and must have already collected the information (if not, your response letter would not make sense in some respects).

Accordingly, we insist that you produce documents responsive to Topics 1, 2, and 6 by the deadline set out in the subpoena: 5 p.m. ET on Monday, December 8, 2014. In the interest of compromise, however, we will agree to extend the deadline for your response to Topic 5 until Friday, December 12, 2014. Finally, as described below, we will not require compliance with the subpoena as to Topics 3 and 4 if you agree to the remaining terms described herein.

III. Depositions

You claim that it is "unclear" why Sierra Club seeks to depose unidentified FES personnel. This request should not be surprising given that FES operates the Sammis plant, the economics of which are at the heart of this proceeding—a point which you do not dispute. As you know, and as Sierra Club set out in the motion for a subpoena, the Companies have repeatedly disclaimed knowledge about certain information relevant to projections of cost and revenue for the Sammis plants. Accordingly, we seek to depose a person (or persons) who *do* possess that information.

Your claim, that some of these persons have filed testimony in this proceeding, is irrelevant to the subpoena. We are aware of course that we can depose those persons who have filed testimony on behalf of the Companies and FirstEnergy Corp. We seek to depose a person (or persons) who can speak on behalf of *FES*.

To provide you more time to determine who those persons are, we propose depositions beginning on Thursday, December 18, 2014, at a location of your choice.[1] As you know, PJM Power Providers Group and Electric Power Supply Association have also served a subpoena on FES. Before submitting this letter to you, we attempted to contact counsel for these intervenors to confirm their availability on December 18. We were unable to confirm such availability by the time of submitting this letter. To the extent that PJM Power Providers Group and Electric Power Supply Association cannot participate on December 18, we would propose that each of the interested parties confer to set a mutually agreeable date for deposition(s).

IV. Topics 1 and 2: Revenue and Cost Projections

We are pleased that FES has agreed to provide cost and revenue forecasts, including inputs, for the years described in the subpoena. Although the other information sought in Topics 1 and 2 is relevant to the issues in this proceeding, we are willing, in the interest of compromise, to narrow our request to just the cost and revenue projections, including inputs.

To be sure that there is no ambiguity regarding the scope of our agreement, the revenue projections must include, without limitation, these separately itemized inputs: generation, capacity, energy revenue, and capacity revenue. For the cost projections, these inputs must include, without limitation, these separately itemized inputs: variable O&M (excluding Fuel Costs), Fuel Costs, Fixed O&M, and Emissions Costs. If you produce cost and revenue projections, including these inputs, by December 8, we will not enforce compliance with the remaining sub-parts of Topic 1 and 2 (i.e., work papers and "all other information").

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[1] To the extent your concern about a deposition is based on Sierra Club's inability to identify specific FES personnel in the subpoena, we think that concern is meritless. It is of course a common practice to subpoena a company and require production of person(s) with the relevant knowledge. FES, not Sierra Club, is best positioned to determine who those person(s) are.

V. Topics 3 and 4: Communications with Investors and Shareholders

FES personnel's discussion with investors and shareholders regarding cost and revenue projections are relevant to the Commission's consideration of this case. Sierra Club is aware that someone within FirstEnergy Corporation, perhaps FES personnel, regularly communicates with investor analyst firms (such as UBS) about this proceeding and its expected impacts on the Corporation. We are aware that those communications involve descriptions of the economics of the Sammis plant. In particular, we note that these analysts have observed that the value of FirstEnergy Corporation stock would rise if the proposed transaction were approved. This is most likely the case because the FirstEnergy Corp. or FES person(s) who communicate with these investors have highlighted the poor economic outlook of the Sammis plant over the next decade in the absence of the subsidy that FES is seeking from the Companies' customers.

Nevertheless, in the interest of compromise, we will not insist on your compliance with Topics 3 and 4, if you agree to the remaining terms of the subpoena.

VI. Topic 5: FES's Evaluation of the Proposed Transaction

FES's position with regard to Topic 5 is without merit. That topic requires FES to produce "[d]ocuments reflecting evaluation of terms of the proposed 'power purchase agreement' between FES and Ohio Edison Company, Cleveland Electric Company, and Toledo Edison Company, including any draft contract or term sheets." As an initial matter, FES's reference to SC-RPD-49 demonstrates that the FES has misunderstood the information being sought in the subpoena. Sierra Club is seeking documents concerning *FES*'s evaluation of the proposed transaction, not documents concerning the Companies' evaluation, which was the subject of SC-RPD-49.

The Companies have represented that the proposed transaction between FES and the Companies was the product of arm's-length negotiations between independent teams. *See, e.g.*, Companies' Resp. to SC-INT-73(a) ("Separate EDU and FES teams, each with the responsibility to study and negotiate the potential transaction, independently (and in separate locations) evaluated the proposed transaction based on the interests represented by their team."). Assuming this representation is accurate, the subpoena seeks a separate category of documents than those requested in SC-RPD-49. In other words, although the Companies have produced documents and communications regarding the EDU Team's evaluation and negotiation of the proposed transaction, this subpoena seeks documents and communications concerning FES's evaluation of the transaction. These documents are plainly relevant to this proceeding, where the Companies are seeking approval of a rider and underlying transaction that would cost ratepayers hundreds of millions of dollars over the next several years. FES must therefore withdraw its objections to Topic 5 of the subpoena.[2]

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[2] Moreover, to the extent the subpoena requests documents and communications that were transmitted between FES and the EDU Team, any such documents would not be privileged. Ohio law requires that FES be operated independently of the Companies, such that the communications between these two sets of parties would not be privileged. *See* O.A.C. 4901:1-37-04(A)(1) ("Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function

Although the subpoena requires FES to produce documents responsive to Topic 5 by December 8, in the interests of resolving this issue amicably we are willing to give FES an extension until 5 p.m. on December 12, 2014. Please confirm that FES will provide all documents responsive to Topic 5 no later than December 12.

VII. Topic 6: FES's Evaluation of Environmental Compliance Costs

As explained above, FES's analyses of key environmental regulations, and its determination of the costs of complying with such regulations, is a key issue in this case. The Companies have provided little information and have referred Sierra Club to FES as the custodian of much of this information. This information must be produced.

FES's objections—including its specious suggestion that a commonly understood term like "analysis" is vague—are without merit. Nonetheless, to be clear, we are not seeking, as you suggest, "physical plant evaluations for [FES's] entire fleet and cost calculations for units which have nothing to do with this proceeding." Rather, we are seeking compliance analyses and costs estimates relating to the Sammis, Davis-Besse, and the OVEC plants. Although we believe this clarification to be unnecessary, we trust that this resolves any concerns you have regarding this topic. Please confirm FES's agreement to produce all documents requested in Topic 6.

VIII. Conclusion

Please confirm that you will agree to comply with the subpoena as limited here. Otherwise, file a motion to quash by Monday, December 8, 2014, so that the Commission's consideration of these issues is not unreasonably delayed.

Sincerely,

/s/ Tony G. Mendoza

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independently of each other."). If FES claimed that such communications or documents are privileged, that would demonstrate that the proposed transaction was not the product of arm's-length bargaining.

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Attorneys for Sierra Club

Case No. 14-1297-EL-SSO
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

SC Set 1 – RPD-49

Refer to page 4, lines 3-12 of the Ruberto Testimony.

a. Produce any notes, minutes, communications, or other documents regarding the EDU Team's evaluation or negotiation of the proposed transaction.
b. Produce any communications between any representative of the Companies and any representative of FES regarding the proposed transaction.
c. Produce any communications between FES and its Board of Directors, shareholders, investors, or credit rating agencies regarding the proposed transaction.
d. Produce any notes, minutes, communications, or other documents regarding the EDU Team's assessment of the condition of the plants at issue in the proposed transaction.

Response:

a. Objection. This request seeks information that is protected by the attorney-client and work product privileges. Subject to and without waiving the foregoing objections, see the testimony of Company witness Ruberto, the Companies' response to subpart (b) of this request, and IEU Set 1 INT-25 Attachment 1 and subject to any objections, the requested information is competitively sensitive confidential and will be provided to the requesting party, provided said party has executed a mutually agreeable protective agreement.
b. Objection. This request is overly broad, unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that is protected by the attorney-client and work product privileges. ***Subject to any objections, the requested information is Competitively-Sensitive Confidential*** and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.
c. Objection. This request seeks information that is neither relevant nor reasonably calculated to lead to the discovery admissible evidence. Also, this request seeks information not in the possession, custody or control of the Companies.
d. Objection. This request seeks information that is protected by the attorney-client and work product privileges. Subject to and without waiving the foregoing objections, see the Companies' responses to subparts (a) and (b) of this request.

Sierra Club Set 2
Witness: Paul A. Harden, Jason Lisowski

Case No. 14-1297-EL-SSO
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

RESPONSES TO REQUEST

SC Set 2 – INT-61

This question is Competitively-Sensitive Confidential and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

Response:

Subject to any objections, the requested information is Competitively-Sensitive Confidential and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

Case No. 14-1297-EL-SSO
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

SC Set 1 – RPD-12

For each of the following existing, proposed, or potential regulatory requirements, produce any evaluation of the pollution controls that would be needed, or the estimated costs that would be incurred, to bring each of the Sammis, Kyger Creek, and Clifty Creek coal-fired electric generating units into compliance with the requirement:

a. Section 316(b) of the Clean Water Act
b. Section 316(a) of the Clean Water Act
c. Clean Water Act effluent limitation guidelines
d. Clean Air Interstate Rule
e. Cross State Air Pollution Rule
f. Ozone NAAQS
g. PM2.5 NAAQS
h. Coal Combustion Waste rules
i. Section 111(d) greenhouse gas regulations for existing sources

The timeframe for this request is January 1, 2010, up through and including the date of your response.

Response:

Subject to any objections, the requested information is Confidential and will be provided to the requesting party, provided that said party has executed a mutually agreeable protective agreement.

Sierra Club Set 2
Witness: Paul A. Harden & Jason Lisowski
As to Objections: Carrie M. Dunn

Case No. 14-1297-EL-SSO
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

RESPONSES TO REQUEST

SC Set 2 – INT-72

Refer to your response to SC-INT-10(h)-(i).

a. Describe how costs for environmental and non-environmental capital investments are projected for the Sammis plant.
b. Identify each environmental and non-environmental capital investment or expense projected for the Sammis plant for each of the years 2014 through 2031, and the cost of each such investment or expense.

Response:

a. Sammis capital costs are not projected as categorized in the question. Costs shown in Mr. Lisowski's Attachment JJL-1 are based on plant engineer projections for years with planned capital projects. For the remaining years, or those years without capital projects planned as of August 4, 2014, capital expenditures were projected based on historical capital expenditures.
b. Objection. This request seeks information outside the Companies' possession, custody, or control, including without limitation information within the sole possession of FirstEnergy Solutions Corp. Subject to and without waiving the foregoing objection, the Companies state as follows: see Lisowski Competitively Sensitive Confidential Workpapers, p. 8.

Summary: Motion to Quash The Subpoena Duces Tecum of Sierra Club and Motion of FirstEnergy Solutions Corp. For a Protective Order electronically filed by Mr. Scott J Casto on behalf of FirstEnergy Solutions Corp.