

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Company, and The Toledo Edison Company)	Case No. 14-1297-EL-SSO
for Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. 4928.143 in the Form of)	
An Electric Security Plan)	

**SIERRA CLUB’S MOTION FOR A SUBPOENA DUCES TECUM
DIRECTED TO
FIRSTENERGY SOLUTIONS CORP.**

Pursuant to O.A.C. § 4901-1-25, Sierra Club respectfully moves the Public Utilities Commission of Ohio (the “Commission”), any commissioner, the legal director, the deputy legal director, or any attorney examiner to issue a subpoena duces tecum directed to FirstEnergy Solutions Corp. (“FES”) that compels FES to produce a person(s) to attend and give deposition testimony upon oral examination at a location of Sierra Club’s and FES’s mutual agreement on April 21, 2015, at 9:00 a.m. ET. This subpoena compels FES to produce documents to Sierra Club covering the same topics by April 14, 2015, at 5:00 p.m. ET. *See* O.A.C. § 4901-1-25(D). Because Sierra Club seeks expedited treatment, this motion and the subpoena were presented to the attorney examiner in person. *See id.* § 4901-1-25(A)(2). The executed subpoena is attached hereto as Exhibit A.¹

¹ Sierra Club is willing to negotiate the time and location of the deposition(s) with FES, so long as FES agrees to produce all responsive documents by April 14, 2015 at 5:00 p.m. ET.

As described in the enclosed subpoena, Sierra Club requests that the Commission order FES to produce a person (or persons) with knowledge and expertise regarding the following topics, all of which are relevant to this proceeding:

1. All projections for any years 2014 through 2031 prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present of any of the following for the W.H. Sammis, Davis-Besse, Kyger Creek, and/or Clifty Creek plants (collectively, the "Plants"):
 - a. Annual energy market revenue;
 - b. annual capacity market revenue;
 - c. annual ancillary services revenue;
 - d. outage schedules and forecasts;
 - e. capacity factor;
 - f. forced outage rate;
 - g. availability;
 - h. heat rate;
 - i. all modeling input and output files, work papers, and other documents used in developing the projections set forth in (a)-(h) above; and
 - j. all other documents that were reviewed or otherwise relied on in developing the projections set forth in (a)-(h) above.

This topic seeks unit-level information, forecasts, and projections wherever available, as well as information, forecasts, and projections for each plant as a whole. The information being sought in this request includes both short-term and long-term projections and forecasts.

2. All projections for any years 2014 through 2031 prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present, of any of the following for any of the Plants:
 - a. Annual capital expenditures;
 - b. non-fuel variable costs;
 - c. fixed costs;
 - d. operation and maintenance costs;
 - e. fuel costs;
 - f. labor costs;
 - g. all modeling input and output files, work papers, and other documents used in developing the projected costs set forth in (a)-(f) above; and
 - h. all other documents that were reviewed or otherwise relied on in developing the projected costs set forth in (a)-(f) above.

This topic seeks unit-level information, forecasts, and projections wherever available, as well as information, forecasts, and projections for

each plant as a whole. The information being sought in this request includes both short-term and long-term projections and forecasts.

3. All profit and loss statements for any or all of the Plants (or units thereof) that were prepared by, sent or received by, or reviewed by FES between January 1, 2014 and the present.
This topic seeks unit-level statements wherever available, as well as statements for each plant as a whole.
4. All projections prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present of the following:
 - a. Natural gas prices;
 - b. Coal prices;
 - c. Market energy prices;
 - d. Capacity prices; or
 - e. Carbon prices.
5. All communications with shareholders, current or potential investors, ratings agencies, investment banks, or financial institutions regarding any of the following:
 - a. The current financial condition and/or profitability of the Plants;
 - b. The future financial condition and/or profitability of the Plants;
 - c. Projected future costs and revenues at the Plants;
 - d. Possible retirement of any of the Plants, or any unit thereof; and
 - e. Market price projections or forecasts.
6. All studies, analyses, or assessments that were prepared by, sent or received by, or reviewed by FES concerning the possible retirement of any of the Plants (or any unit of a plant). This request includes, but is not limited to,
 - a. Any studies, analyses, or assessments concerning the impact that any retirement would have on electric prices;
 - b. Any studies, analyses, or assessments concerning the economic impact of any retirement;
 - c. Any studies, analyses, or assessments concerning the impact that any retirement would have on electric supply diversity; and
 - d. Any studies, analyses, or assessments concerning the need for any Plant (or any unit of a plant), in light of reliability concerns.
7. Any FES communications, analyses, or other documents regarding whether any of the Plants (or units thereof) would be retired if the

proposed purchase power agreement between FES and the Companies is not executed.

8. Any FES communications, analyses, or other documents regarding the length of the proposed purchase power agreement between FES and the Companies, including whether FES would be able to terminate such agreement before the proposed 15-year term expires and what penalties or liabilities, if any, FES would incur if it were to terminate the agreement before the proposed 15-year term expires.
9. Any internal FES communications regarding the Commission's authority, ability, or permission to review and audit the proposed purchase power agreement between FES and the Companies. This topic includes, but is not limited to, any communications about the Commission's potential review and audit of the Plants' costs and revenues, and the impacts to FES or its shareholders of any finding by the Commission that particular costs are imprudent.
10. Any plans that were prepared by, sent or received by, or reviewed by FES concerning the Plants' compliance with pending or proposed environmental regulations. This topic seeks unit-level information wherever available, as well as information for each plant as a whole.

Each of these topics is relevant to the Commission's decision in this case. These topics are also directly related to the factors that the Commission identified in the February 25, 2015 AEP Ohio Order as factors that it "may balance, but not be bound by, in deciding whether to approve future cost recovery requests associated with PPAs."² The information being sought in this subpoena is within FES's possession, custody, or control, and this information is necessary to ensure that the Commission's review is

² Entry, Case No. 14-1297-EL-SSO, ¶ 4 (Mar. 23, 2015); see *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order, at 25 (Feb. 25, 2015). Sierra Club does not concede that the AEP Ohio Order factors are the appropriate criteria for evaluating the Companies' proposed ESP and Rider RRS. Nonetheless, the Commission's AEP Ohio Order underscores the need to develop a more thorough record concerning the factors listed in that Order.

based on a sufficiently complete record. For these reasons, and those set forth in the accompanying Memorandum, Sierra Club requests that this motion be granted.

March 31, 2015

Respectfully submitted,

/s/ Christopher J. Allwein

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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	
Company, and The Toledo Edison Company)	Case No. 14-1297-EL-SSO
for Authority to Provide for a Standard Service)	
Offer Pursuant to R.C. 4928.143 in the Form of)	
An Electric Security Plan)	

**MEMORANDUM IN SUPPORT OF
SIERRA CLUB'S MOTION FOR A SUBPOENA DUCES
TECUM DIRECTED TO FIRSTENERGY SOLUTIONS CORP.**

In this proceeding, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (the “Companies”) seek approval of an electric security plan, which includes a proposed Retail Rate Stability Rider (“Rider RRS”). If approved, Rider RRS would require the Companies’ customers to bear the risks of ownership of four generating facilities – the W.H. Sammis, Davis-Besse, Kyger Creek, and Clifty Creek plants – owned wholly or partly by the Companies’ deregulated corporate affiliate FirstEnergy Solutions Corp (“FES”). Under this proposal, the Companies would enter into a 15-year purchase power agreement (“PPA”) with FES. The Companies’ customers would be required to pay all of the capital, fixed, and variable costs of FES’s share of the four generating facilities, but would not receive any of the energy from those facilities. Instead, the energy would be sold into the PJM market, and customers would either receive a credit (if revenues from sales exceed costs) or incur a charge (if costs exceed revenues). Given the design of this proposed rider, information about the financial status of these generating plants, including their projected costs and

revenues and the bases for those projections, are of critical importance to the Commission's consideration of this case. Similarly, information about the plants' plans for compliance with pending environmental regulations, and about the proposed PPA between FES and the Companies, is relevant to core issues in this proceeding.

On February 25, 2015, the Commission issued an order in Case No. 13-2385-EL-SSO that affects this proceeding as well.³ In that case, the Commission rejected AEP Ohio's PPA rider proposal, and instead created a placeholder rider with an initial value of zero. The Commission also identified several factors which it found "it may balance, but not be bound by, in deciding whether to approve future cost recovery requests associated with PPAs."⁴

Here, the topics listed in Sierra Club's subpoena are relevant to important issues in this case, and are also directly related to the factors identified in the AEP Ohio Order. Topics 1-7 seek information about the financial status of the generating plants, which is critical to understanding the potential costs and benefits for ratepayers, and the reasonableness of the revenue projections presented in the Companies' Application. These topics also relate to the AEP Ohio Order factors, including "financial need of the generating plant[s]; necessity of the generating facilit[ies], in light of future reliability

³ *In re Ohio Power Co.*, Case No. 13-2385-EL-SSO, et al., Opinion and Order (Feb. 25, 2015) ("AEP Ohio Order").

⁴ Entry, Case No. 14-1297-EL-SSO, ¶ 4 (Mar. 23, 2015) ("Mar. 23 Entry"); *see* AEP Ohio Order at 25. Sierra Club does not concede that the AEP Ohio Order factors are the appropriate criteria for evaluating the Companies' proposed ESP and Rider RRS. Nonetheless, the Commission's AEP Ohio Order underscores the need to develop a more thorough record concerning the factors listed in that Order.

concerns . . . ; and the impact that a closure of the generating plant[s] would have on electric prices and the resulting effect on economic development within the state.”⁵

Topics 8 and 9 are relevant because they seek information about potential risks to the Companies’ customers. Topic 8 seeks information about whether FES could terminate the proposed PPA early, and if so, what damages it would owe the Companies and their customers. This topic is not only directly relevant to important issues in this case, it also relates to the AEP Ohio Order, in which the Commission expressed concern about early termination of the PPA proposed there.⁶

Topic 9 also seeks information about a potential risk to customers, specifically, the possibility that the Commission’s auditing powers may be limited. Further, Topic 9 relates to the AEP Ohio Order’s admonition that a PPA rider proposal must “provide for rigorous Commission oversight of the rider, including a proposed process for a periodic substantive review and audit.”⁷

Finally, Topic 10 is relevant because its seek information about the generating plants’ future regulatory risks, which could significantly affect customers’ bills if Rider RRS were approved. This topic also relates to the AEP Ohio Order factor seeking a

⁵ Mar. 23 Entry ¶ 4 (citing AEP Ohio Order at 25).

⁶ AEP Ohio Order at 24 (noting that AEP Ohio “seeks to reserve the right to terminate the ESP after two years,” and concluding that “[i]t is, therefore, evident from AEP Ohio’s testimony that the Company has made no offer to ensure that customers receive the alleged long term benefits of the PPA rider or even a commitment or any type of proposal to continue the rider in subsequent ESP proceedings”).

⁷ *Id.* at 25.

description of the plants’ “plan[s] for compliance with pending environmental regulations.”⁸

The need for this subpoena stems from the recent AEP Ohio Order. The Commission’s decision provides guidance on the issues it will consider when evaluating future PPA rider proposals, such as Rider RRS. Most importantly, the Commission identified a set of factors that it stated that it may consider in evaluating such proposals. The Commission’s order has therefore broadened the issues in this case, requiring the need for this subpoena.

Additionally, this information is being sought from FES because no other entity can adequately provide it. Although the Companies have provided some financial information about the generating plants in response to discovery requests, the Companies objected to several requests on grounds that this information is not within their possession, custody, or control, and further indicated that such information is within FES’s possession, custody, or control.⁹ It is critical that the Commission’s review of proposed Rider RRS be based on the most detailed, accurate financial information available. This is especially so given the factors announced in the AEP Ohio Order. FES

⁸ Mar. 23 Entry ¶ 4 (citing AEP Ohio Order at 25).

⁹ For example, the Companies responded to at least ten Sierra Club discovery requests by stating that they lack possession, custody, or control over the requested documents or information, and that such documents and information are within FES’s possession, custody, or control. *See* Resps. to SC-1-INT-16; SC-1-INT-58; SC-2-INT-61; SC-2-INT-70; SC-2-INT-72; SC-2-RPD-68; SC-4-INT-103; SC-4-RPD-79; SC-4-RPD-84; and SC-4-RPD-90. The Companies has made similar objections to discovery requests served by other intervenors.

is best positioned to provide the requested information regarding Sammis, Davis-Besse, and FES's ownership stake in the OVEC plants.

Given the significant economic consequences of Rider RRS for the Companies' customers, the Commission and the parties are entitled to the information being sought in this subpoena. FES should be required to provide that information, and to present a witness (or witnesses) with knowledge and expertise on those topics. Accordingly, Sierra Club respectfully asks that the Commission grant this motion.

March 31, 2015

Respectfully submitted,

/s/ Christopher J. Allwein

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Attorneys for Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Sierra Club's Motion for a Subpoena Duces Tecum Directed to FirstEnergy Solutions Corp. has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on March 31, 2015.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

EXHIBIT A

**In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric)
Company, and The Toledo Edison Company) Case No. 14-1297-EL-SSO
for Authority to Provide for a Standard Service)
Offer Pursuant to R.C. 4928.143 in the Form of)
An Electric Security Plan)**

SUBPOENA DUCES TECUM

TO: FirstEnergy Solutions Corp.
c/o Statutory Agent
CT Corporation System
1300 E. 9th Street
Cleveland, OH 44114-0000

Upon application of Sierra Club, FirstEnergy Solutions Corp. ("FES") is hereby required to provide a person(s) with knowledge and expertise on the following topics:

1. All projections for any years 2014 through 2031 prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present of any of the following for the W.H. Sammis, Davis-Besse, Kyger Creek, and/or Clifty Creek plants (collectively, the "Plants"):
 - a. Annual energy market revenue;
 - b. annual capacity market revenue;
 - c. annual ancillary services revenue;
 - d. outage schedules and forecasts;
 - e. capacity factor;
 - f. forced outage rate;
 - g. availability;
 - h. heat rate;
 - i. all modeling input and output files, work papers, and other documents used in developing the projections set forth in (a)-(h) above; and
 - j. all other documents that were reviewed or otherwise relied on in developing the projections set forth in (a)-(h) above.

This topic seeks unit-level information, forecasts, and projections wherever available, as well as information, forecasts, and projections for each plant as a whole. The information being sought in this request includes both short-term and long-term projections and forecasts.

2. All projections for any years 2014 through 2031 prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present, of any of the following for any of the Plants:
 - a. Annual capital expenditures;
 - b. non-fuel variable costs;
 - c. fixed costs;
 - d. operation and maintenance costs;
 - e. fuel costs;
 - f. labor costs;
 - g. all modeling input and output files, work papers, and other documents used in developing the projected costs set forth in (a)-(f) above; and
 - h. all other documents that were reviewed or otherwise relied on in developing the projected costs set forth in (a)-(f) above.

This topic seeks unit-level information, forecasts, and projections wherever available, as well as information, forecasts, and projections for each plant as a whole. The information being sought in this request includes both short-term and long-term projections and forecasts.

3. All profit and loss statements for any or all of the Plants (or units thereof) that were prepared by, sent or received by, or reviewed by FES between January 1, 2014 and the present.

This topic seeks unit-level statements wherever available, as well as statements for each plant as a whole.

4. All projections prepared by, sent or received by, or reviewed by FES between August 4, 2013, and the present of the following:
 - a. Natural gas prices;
 - b. Coal prices;
 - c. Market energy prices;
 - d. Capacity prices; or
 - e. Carbon prices.

5. All communications with shareholders, current or potential investors, ratings agencies, investment banks, or financial institutions regarding any of the following:
 - a. The current financial condition and/or profitability of the Plants;
 - b. The future financial condition and/or profitability of the Plants;
 - c. Projected future costs and revenues at the Plants;
 - d. Possible retirement of any of the Plants, or any unit thereof; and
 - e. Market price projections or forecasts.

6. All studies, analyses, or assessments that were prepared by, sent or received by, or reviewed by FES concerning the possible retirement of any of the Plants (or any unit of a plant). This request includes, but is not limited to,
 - a. Any studies, analyses, or assessments concerning the impact that any retirement would have on electric prices;
 - b. Any studies, analyses, or assessments concerning the economic impact of any retirement;
 - c. Any studies, analyses, or assessments concerning the impact that any retirement would have on electric supply diversity; and
 - d. Any studies, analyses, or assessments concerning the need for any Plant (or any unit of a plant), in light of reliability concerns.
7. Any FES communications, analyses, or other documents regarding whether any of the Plants (or units thereof) would be retired if the proposed purchase power agreement between FES and the Companies is not executed.
8. Any FES communications, analyses, or other documents regarding the length of the proposed purchase power agreement between FES and the Companies, including whether FES would be able to terminate such agreement before the proposed 15-year term expires and what penalties or liabilities, if any, FES would incur if it were to terminate the agreement before the proposed 15-year term expires.
9. Any internal FES communications regarding the Commission's authority, ability, or permission to review and audit the proposed purchase power agreement between FES and the Companies. This topic includes, but is not limited to, any communications about the Commission's potential review and audit of the Plants' costs and revenues, and the impacts to FES or its shareholders of any finding by the Commission that particular costs are imprudent.
10. Any plans that were prepared by, sent or received by, or reviewed by FES concerning the Plants' compliance with pending or proposed environmental regulations. This topic seeks unit-level information wherever available, as well as information for each plant as a whole.


This person(s) is required to attend and give deposition testimony upon oral examination at a location of Sierra Club's and FES's mutual agreement on April 21, 2015 at 9:00 a.m. ET. The deponent(s) is required to attend from day-to-day until the deposition(s) is completed. Such person(s) will be deposed and will be subject to cross examination by Sierra Club in the above-captioned proceeding.

In addition to a witness (or witnesses), FES must provide all documents within its possession, custody, or control that are relevant to the above-described topics. *See* Ohio Administrative Code § 4901-1-25(D). Unless otherwise indicated, the preceding topics require the production of information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from August 4, 2013, through and including the date of FES's response. In construing these topics:

- The "Companies" refers to the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.
- "And" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of these topics any documents or other information which might be deemed outside their scope by another construction.
- "Relating to," "regarding," or "concerning" means and includes pertaining to, referring to, or having as a subject matter, directly or indirectly, expressly or implied, the subject matter of the specific topic or issue.
- Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

FES is required to produce documents to Sierra Club covering the foregoing topics no later than April 14, 2015, at 5:00 p.m. ET.

Dated at Columbus, Ohio, this 31 day of March, 2015.



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.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

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in

Case No(s). 14-1297-EL-SSO

Summary: Motion for a Subpoena Duces Tecum directed to FirstEnergy Solutions Corporation electronically filed by Mr. Christopher J. Allwein on behalf of SIERRA CLUB