

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)
Approval of Ohio Power Company's) Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power)
Purchase Agreement for Inclusion in the)
Power Purchase Agreement Rider.)

In the Matter of the Application of Ohio)
Power Company for Approval of Certain) Case No. 14-1694-EL-AAM
Accounting Authority.)

**MOTION TO COMPEL RESPONSE TO DISCOVERY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Outside Counsel for the Office of the Ohio
Consumers' Counsel

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In this case where Ohio Power Company ("Ohio Power") is seeking to require its 1.4 million customers to guarantee the profits of power plants operating in a competitive market, the Office of the Ohio Consumers' Counsel ("OCC") seeks to enforce discovery law and rules to obtain the information needed to present the consumer perspective on these important issues. OCC, on behalf of Ohio Power's residential utility consumers, moves¹ the Public Utilities Commission of Ohio ("PUCO"), the legal director, the deputy legal director, or an attorney examiner for an order compelling Ohio Power to fully respond to OCC Request for Production of Documents ("RPD") 1-010, which is attached hereto as OCC Exhibit 1.

As demonstrated in the attached Memorandum in Support, Ohio Power responded to RPD 1-010 with a litany of meritless objections.

¹ See Ohio Adm. Code 4901-1-12 and 4901-1-23.

OCC files this Motion to Compel with the reasons supporting this motion set forth in the attached Memorandum in Support. OCC's Motion to compel should be granted, for the reasons set forth below.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OCC has sought (several times) to obtain communications related to this proceeding between Ohio Power and the PUCO, PUCO Staff, and/or the PUCO's Attorneys General.² Ohio Power unilaterally decided to limit the documents it would produce and asserted a litany of rote objections.³ Although Ohio Power claims that RPD 1-010 is "unduly burdensome" to respond to, it does not explain what efforts would be necessary to respond. Ohio Power also asserts an objection that the request is vague even though OCC defines the only term even conceivably needing definition. Further, Ohio Power objects to the request as overbroad. But OCC's request is limited to communications (a defined term) "related to this proceeding." One is left to guess how

² See OCC RPD 0-010.

³ See Ohio Power's response to OCC RPD 1-010.

communications related to this proceeding could possibly be overbroad. Lastly, Ohio Power half-heartedly relies on a statute (R.C. 4903.16) that is clearly inapplicable.⁴

Ohio Power's "response" is incomplete and insufficient. Its response is contrary to the PUCO's rules.⁵ The Attorney Examiner should overrule the objections to RPD 1-010 and order Ohio Power to immediately provide a complete response.

II. STANDARD OF REVIEW

According to the PUCO, "the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."⁶ The PUCO's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings."⁷ These rules are intended to assure full and reasonable discovery, consistent with the statutory discovery rights of parties under R.C. 4903.082.

Specifically, R.C. 4903.082 states that the OCC and "[a]ll parties and intervenors shall be granted ample rights of discovery." Therefore the OCC, a party and intervenor, is entitled to timely and complete responses to its discovery inquiries. Additionally, R.C. 4903.082 directs the Commission to ensure that parties are allowed "full and reasonable discovery" under its rules.

⁴ Importantly, Ohio Power does not assert that the requested documents are irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. See Ohio Power's response to RPD 1-010.

⁵ See Ohio Adm. Code 4901-1-16; 4901-1-20; see also Ohio Civil Rules 26 and 34.

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

⁷ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76.

Accordingly, the Commission has adopted Ohio Adm. Code 4901-1-16(B) that provides:

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

The PUCO's discovery rule is similar to Ohio Civ. R.26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.⁸

This scope of discovery is applicable to written requests for production of documents. Written requests may seek to inspect and copy any designated documents which are in the possession, custody, or control of a party, under Ohio Adm. Code 4901-1-20. Requests for production may also request a party to produce for inspection and copying any tangible things which are in the possession, custody or control of a party. And requests for production may seek to permit entry for the purposes of inspecting the property or any designated object or operation thereon. Each request must be responded to and shall state that inspection or related activities will be permitted as requested unless the request is objected to. In such a case the reason for the objection must be stated.

In Ohio Adm. Code 4901-1-23, the PUCO provided the procedure for parties to obtain the enforcement of these discovery rights, guaranteed by law and rule. Ohio Adm. Code 4901-1-23(A) and (B) provide for the PUCO to compel a party to answer discovery

⁸ *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

when the party has failed to do so, including when answers are evasive or incomplete. Ohio Adm. Code 4901-1-23(C) details the technical requirements for a motion to compel, all of which are met in this OCC pleading.

The motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon; a brief explanation of how the information sought is relevant; and responses to objections raised by the party from whom the discovery is sought.⁹ Copies of the discovery requests and the responses are to be attached.¹⁰ Finally, Rule 4901-1-23, subsection (C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

The OCC has detailed in the attached affidavit, consistent with Rule 4901-1-23(C)(3), the efforts which it undertook to resolve differences between it and Ohio Power. At this point it is clear that there is no resolution. OCC seeks responses to RPD 1-010 and is unable to obtain the response without the PUCO compelling such a result.

III. ARGUMENT

A. The documents OCC seeks are relevant and reasonably calculated to lead to the discovery of admissible evidence.

Communications between Ohio Power and the PUCO, the PUCO Staff, and/or the PUCO's Attorneys General "related to" this proceeding are relevant and reasonably calculated to lead to the discovery of admissible evidence. Ohio Power does not object to the contrary. Accordingly, there is no dispute about the relevancy of the documents requested.

⁹ See Ohio Adm. Code 4901-1-23(C)(1).

¹⁰ Ohio Adm. Code 4901-1-23(C)(2).

B. Ohio Power's numerous objections should be overruled.

Ohio Power asserts a litany of objections that, as addressed individually below, should be overruled. Addressing each objection – their lack of merit and Ohio Power's own lack of faith in them – should be done in light of the fact that Ohio Power unilaterally decided to produce some, but not all, responsive documents. Nothing in the Civil Rules, the PUCO's rules, or precedent authorizes a party to pick and choose what non-privileged, responsive documents it will produce. To the contrary, as explained above, a party is directed to produce all non-privileged, responsive documents within the broad scope of permissible discovery.¹¹

1. Ohio Power's objection to the request as vague must fail because the only conceivable term needing definition is defined.

There can be no doubt about the meaning of “the Company”, “the Commission”, “the PUCO Staff”, or “the PUCO's Attorney General”. Ohio Power has been involved in PUCO proceedings for a long time, and such phrases are used routinely. The only term even conceivably needing definition is “communications.” And OCC defined that term.¹² Further, the communications sought are limited to those “related to this proceeding”. The parties to the communications are clearly identified. There is no vagueness in RPD1-010, and there is no merit to Ohio Power's vagueness objection.

¹¹ See Section II, *supra*.

¹² See OCC's First Set of Discovery Requests at 4 (attached, in relevant part, as Exhibit 2).

2. Ohio Power's objection based on undue burden should be overruled because Ohio Power has failed to establish undue burden and should have moved for protection if the discovery was truly burdensome.

Ohio Power claims that there is an undue burden to respond to RPD 1-010. But Ohio Power has failed to explain how responding to RPD 1-010 would be unduly burdensome. Federal case law¹³ has held that, when a party objects to a discovery request based on oppressiveness or undue burden, that party must show specifically how, despite the broad and liberal construction afforded discovery rules, each discovery request is overly broad, burdensome, or oppressive.¹⁴ In objecting, the party must submit affidavits or offer evidence revealing the nature of the burden.¹⁵ General objections without specific support may result in waiver of the objection.¹⁶

Here, Ohio Power has failed to specifically show how the request for production is unduly burdensome. Because the burden falls upon the party resisting discovery to clarify and explain its objections and to provide support¹⁷ and Ohio Power has failed to do so, the PUCO should overrule this objection.

If RPD 1-010 were truly burdensome, Ohio Power has a remedy. Where a party finds that compliance with a discovery request would be burdensome or costly, the party may seek a protective order under Ohio Adm. Code 4901-1-24(B). Such a filing requires

¹³ Federal case law is instructive where, as here, Ohio's rule is similar to the federal rules. Ohio Adm. Code 4901-1-24 allows a protective order to limit discovery to protect against "undue burden and expense." C.R.26(c) similarly allows a protective order to limit discovery to protect against "undue burden and expense." Cf. *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 14-15 (Mar. 17, 1987), where the Commission opined that a motion for protective order on discovery must be "specific and detailed as to the reasons why providing the responses to matters...will be unduly burdensome."

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

¹⁵ *Roesberg v. Johns-Manville* (D.Pa 1980), 85 F.R.D. 292, 297.

¹⁶ *Id.*, citing *In re Folding Carton Anti-Trust Litigation* (N.D. Ill. 1978), 83 F.R.D. 251, 264.

¹⁷ *Gulf Oil Corp. v. Schlesinger* (E.D.Pa. 1979), 465 F.Supp. 913, 916-917.

the party to present specific and detailed reasons why providing a response to matters will be unduly burdensome.¹⁸ Ohio Power did not seek a protective order.

Additionally, courts have recognized that it is not a valid objection that compiling data through discovery will necessitate large expenditures of time and money.¹⁹ Rather, parties are expected to bear expenses incident to litigation.²⁰

Ohio Power should expect that detailed discovery will be “incident” to seeking hundreds of millions of dollars from Ohio consumers. Here Ohio Power is requesting the authority to collect hundreds of millions of dollars from customers for one charge in the ESP plan – the PPA rider. Given the magnitude of its requested increase, Ohio Power should expect vigorous discovery to be conducted. Ample rights of discovery are afforded parties in PUCO proceedings, by law,²¹ by rule,²² and precedent.²³ Ohio Power’s objection should be overruled.

3. Ohio Power’s objection that the request is overbroad should be overruled.

Ohio Power’s overbroad objection is meritless. OCC seeks a discrete type of document – Communications. OCC has defined the discrete type of document. OCC has identified clearly the parties to the Communications sought. And OCC has defined the

¹⁸ See, e.g., *In the Matter of the Investigation into Perry Nuclear Power Station*, Case No. 85-521-EL-COI, Entry at 16 (Mar. 17, 1987).

¹⁹ *Adelman v. Nordberg Manufacturing Co.* (1947 DC Wis), 6 F.R.D. 383; *Burns v. Imagine Films Entertainment* (1996, WD NY), 164 F.R.D. 589.

²⁰ *Life Music, Inc. v. Broadcast Music, Inc.* (1996, SD NY), 41 F.R.D. 16.

²¹ R.C. 4903.082.

²² Ohio Admn. Code 4901 -1-16 (scope of discovery is wide—reasonably calculated to lead to the discovery of admissible evidence).

²³ See, e.g., *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, 320.

subject matter of the communications sought – those “related to this proceeding.” One could not imagine a more discrete, well-defined type of document sought to be produced.

4. Ohio Power’s half-hearted objection based on R.C. 4901.16 should be overruled since the statute is inapplicable.

Ohio Power objects “to the extent” that OCC’s request conflicts with R.C. 4901.16. Obviously, the qualifier reveals that Ohio Power itself questions the statute’s applicability here. Let the question be resolved – the statute does not apply here. First, it applies to employees and agents of the PUCO.²⁴ OCC’s RPD 1-010 is directed to Ohio Power, not an employee or agent of the PUCO. Second, it applies only to PUCO employees or agents referred to in R.C. 4905.13 and information obtained while such employees or agents are acting in the capacity described in R.C. 4905.13. That statute authorizes the PUCO to establish a system of accounts and, itself or through designated officers or employees, to examine such accounts.²⁵ Here, OCC seeks Communications regarding the PPA Rider, which is what this proceeding is about, not communications about systems of account established by the PUCO or information that the PUCO, its designated officers or employees, learned while examining Ohio Power’s systems of account.

On its face, R.C. 4901.16 is inapplicable and does not support Ohio Power’s objection. It should therefore be overruled.

²⁴ See R.C. 4901.16.

²⁵ See R.C. 4905.13.

C. OCC undertook reasonable efforts to resolve the discovery dispute.

As detailed in the attached affidavit, OCC made reasonable efforts to resolve this discovery dispute.²⁶ Once OCC received the responses and objections, OCC communicated to Ohio Power's counsel its concerns. OCC offered legal authority to back up its view of Ohio Power's responsibilities under the discovery rules. OCC discussed the issues with Ohio Power's counsel. Reasonable efforts to resolve this discovery dispute were undertaken. Those efforts failed, necessitating this motion to compel.

IV. CONCLUSION

When utilities file applications for collections of hundreds of millions of dollars from their customers, they should expect under law, rule, and reason that there will be thorough discovery. The PUCO allows for that discovery under R.C. 4903.082 and Ohio Adm. Code 4901-1-16 and other authority.

Ohio Adm. Code 4901-1-16(B) provides the recipient of discovery the opportunity to prove that the discovery in question will not lead to the discovery of admissible evidence. Ohio Power did not supply that proof. Nor has Ohio Power provided anything but conclusory statements as to the "burden" that will be imposed upon it to answer this one request for production.

It is appropriate and fitting that the PUCO, consistent with its rules and the statutes discussed herein, grant OCC's Motion to Compel. Granting OCC's motion to compel will further the interests of consumers by requiring information to be produced by

²⁶ See also Exhibit 3.

Ohio Power that will enable OCC to further evaluate Ohio Power's proposed PPA rider and its cost to consumers.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ William J. Michael

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Outside Counsel for the Office of the Ohio
Consumers' Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Compel Responses to Discovery by the Office of the Ohio Consumers' Counsel was provided to the persons listed below electronically this 5th day of June 2015.

/s/ William J. Michael
William J. Michael
Assistant Consumers' Counsel

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OHIO POWER COMPANY'S RESPONSES TO
OHIO CONSUMERS' COUNSEL'S DISCOVERY REQUESTS
PUCO CASE NO. 14-1693-EL-RDR
FIRST SET

REQUEST FOR PRODUCTION OF DOCUMENTS

RPD-1-010 Please provide copies of all Communications (e.g. email, memos) related to this proceeding between the Company and the Commission, the PUCO Staff and/or the PUCO's Attorneys General.

RESPONSE

The Company objects to the form of the question as this request is vague, overbroad and/or unduly burdensome. The Company also objects to the extent a response to this request conflicts with RC 4901.16. The Company also objects to a request to identify all communications, to the extent such communications are not documented and cannot be discovered through an interrogatory or request for production. Without waiving the foregoing objection(s) or any general objection the Company may have, the Company states as follows. To the extent required by the Ohio Administrative Code, the Company will serve responses to discovery questions and Staff data requests as they are issued. Confidential responses will be provided after execution of an appropriate protective agreement.

Prepared By: Counsel

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**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON OHIO POWER COMPANY
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

**FIRST SET
(November 7, 2014)**

The Office of The Ohio Consumers' Counsel ("OCC") in the above-captioned proceedings before the Public Utilities Commission of Ohio (hereinafter, "PUCO" or "Commission") submits the following Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-17(E)(1), 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Ohio Power Company ("OPC,") (collectively "AEP Ohio") within a 20-day period and no later than any shorter period required by the Commission or its authorized representative. An electronic response should be provided to the extent possible to the Office of the Ohio Consumers' Counsel ("OCC") at the following address:

Larry S. Sauer, Counsel of Record
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Kyle L. Kern (0084199)
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Additionally, AEP Ohio must follow the instructions provided herein in responding to the inquiries. Note that an instruction has been added to those contained in the first and second sets of discovery.

DEFINITIONS

As used herein the following definitions apply:

1. "Document" or "Documentation" when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control regardless of where located; including any kind of printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: punchcards, printout sheets, movie film, slides, PowerPoint slides, phonograph records, photographs, memoranda, ledgers,

nexus to the matter, as well as documents making explicit or implicit reference thereto in the body of the documents. Originals and duplicates of the same document need not be separately identified or produced; however, drafts of a document or documents differing from one another by initials, interlineations, notations, erasures, file stamp, and the like shall be deemed to be distinct documents requiring separate identification or production. Copies of documents shall be legible.

2. “Communication” shall mean any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, letters, telegrams, and personal conversations. A request seeking the identity of a communication addressing, relating or referring to, or discussing a specified matter encompasses documents having factual, contextual, or logical nexus to the matter, as well as communications in which explicit or implicit reference is made to the matter in the course of the communication.
3. The “substance” of a communication or act includes the essence, purport or meaning of the same, as well as the exact words or actions involved.
4. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.
5. “You,” and “Your,” or “Yourself” refer to the party requested to produce documents and answer interrogatories includes any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party. The Party requested to produce documents and answer interrogatories is Ohio Power.

Michael, William

From: Steven T Nourse <stnourse@aep.com>
Sent: Thursday, May 28, 2015 10:22 AM
To: Michael, William
Subject: RE: 14-1693
Attachments: IEU RPD-1-002 Supplemental Attachment 1.pdf

Bill:

Per our discussion this morning, here are my responses to your email (see below) – let me know if we need to further discuss.

Thanks.

Steven T. Nourse

Senior Counsel

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We power life's possibilities™

From: Michael, William [mailto:William.Michael@occ.ohio.gov]
Sent: Wednesday, May 27, 2015 10:18 AM
To: Steven T Nourse
Subject: RE: 14-1693

This is an EXTERNAL email. STOP. THINK before you CLICK links or OPEN attachments.

Steve:

Since I did not hear from you yesterday, I wanted to touch base regarding the status of Ohio Power addressing the discovery items I raised in my May 12 email to you. Please let me know that the requested information will be provided soon.

Relatedly, we have not yet received responses to the Second Set of Discovery served May 1. I trust they are forthcoming.

Please contact me with any questions or to discuss.

Regards,

Bill

William J. Michael

Assistant Consumers' Counsel
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614.466.1291

From: Steven T Nourse [<mailto:stnourse@aep.com>]
Sent: Friday, May 22, 2015 9:01 AM
To: Michael, William
Subject: Re: 14-1693

Bill:

I am out of the office today and will plan to call you on Tuesday to discuss.

Thanks,
Steve

On May 22, 2015, at 8:57 AM, Michael, William <William.Michael@occ.ohio.gov> wrote:

This is an EXTERNAL email. STOP. THINK before you CLICK links or OPEN attachments.

Steve:

Since about ten days has gone by since my email, I thought I would follow up on the outstanding discovery items listed below. Please let me know when I can expect to hear from you. And of course, please contact me with any questions or to discuss.

Regards,

Bill

William J. Michael
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
614.466.1291

From: Michael, William
Sent: Tuesday, May 12, 2015 3:32 PM
To: 'stnourse@aep.com'
Subject: 14-1693

Steve:

After fifteen years in private practice and in-house, I now have the privilege of being an Assistant Consumers' Counsel in the Office of the Ohio Consumers' Counsel. I am working on this case and have signed the Protective Agreement.

There are some outstanding items that need addressed in connection with Ohio Power's responses to OCC's First Set of Interrogatories and Requests for Production of Documents. They are described below,

and I trust we can work them out amicably. If after reading this email you have any questions or would like to discuss, please contact me. Otherwise, I look forward to soon receiving the requested clarification and information.

Regards,

Bill

William J. Michael
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
614.466.1291

1. In response to a number of OCC's discovery requests, Ohio Power refers OCC to a "Supplemental Response to IEU-RPD-1-002" and an "Attachment 1" thereto. *See, e.g.*, Responses to Interrogatory Nos. 1-014, 1-015, and 1-016; Response to RPD 1-013. Based on Ohio Power's written response to RPD 1-013, it appears that Attachment 1 in Ohio Power's Supplemental Response to IEU-RPD-1-002 is the entire Power Purchase and Sale Agreement. OCC has received neither the Supplemental Response nor Attachment 1. Please provide the documents.

The supplemental response to IEU RPD 1-002 was served on OCC on November 25, 2014. The attachment that went with that supplemental response is enclosed.

2. In Interrogatory 1-014c, OCC asks "[w]ho (name, job title, employing entity) represented the Company in negotiating the Agreement." Ohio Power responds that an "internal group was . . . assembled to develop the Agreement[]" and "both the Seller and Buyer were represented during this process." Although the response confirms that the Company was represented in negotiating the Agreement, it does not provide the name, job title, and employing entity of who represented the Company in negotiating the Agreement as the Interrogatory asks. Please provide the requested information.

As indicated in the response, Pablo Vegas, President of the Ohio Power Company, was who represented AEP Ohio as the buyer in the negotiations.

3. In Interrogatory 1-014d, OCC asks "[w]ho (name, job title, employing entity) approved the persons in (c) to represent the Company in negotiating the Agreement." Ohio Power responds by referring OCC to item c. The only individual identified in item c is Mr. Pablo Vegas, President of Ohio Power Company. Just to clarify, did Mr. Vegas approve the persons to represent the Company in negotiating the Agreement?

Correct.

4. In Interrogatory 1-014e, OCC asks "[w]ho (name, job title, employing entity) represented AEPGR in negotiating the Agreement." Ohio Power responds by referring OCC to item c. Although item c confirms that AEPGR was represented in negotiating the Agreement, it does not provide the name, job title, and employing entity of who represented AEPGR in negotiating the Agreement as the Interrogatory asks. Please provide the requested information.

As indicated in the response, Charles Zebula, Executive Vice President of Energy Supply, was who represented AEPGR as the seller in the negotiations.

5. In Interrogatory 1-014f, OCC asks “[w]ho (name, job title, employing entity) approved the persons in (e) to represent AEPGR in negotiating the Agreement.” Ohio Power responds by referring OCC to item c. The only individual identified in item c is Mr. Pablo Vegas, President of Ohio Power Company. Just to clarify, did Mr. Vegas approve the persons to represent AEPGR in negotiating the Agreement?

Correct.

6. In RPD 1-010, OCC asks Ohio Power to produce “copies of all Communications (e.g., email, memos) related to this proceeding between the Company and the Commission, the PUCO Staff and/or the PUCO’s Attorneys General.” Ohio Power responds that it “will serve responses to discovery questions and Staff data requests as they are issued.” By its clear terms, OCC’s RPD is not limited to “responses to discovery questions and Staff data requests.” Further, RPD 1-010 is well within the broad discovery permissible under O.A.C. 4901-1-16. *See In the Matter of the Application of Duke Energy Ohio, Inc.*, 2008 Ohio PUC Lexis 609, *5 (PUCO 2008) (“The Commission’s rules are designed to allow broad discovery of material that is relevant to the proceeding in question and to allow the parties to prepare thoroughly and adequately for hearing.”). Accordingly, please provide the documents requested without limiting production to only “responses to discovery questions and Staff data requests.”

AEP Ohio maintains its objection to this question, as stated in the response.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application Seeking)	
Approval of Ohio Power Company's)	Case No. 14-1693-EL-RDR
Proposal to Enter into an Affiliate Power)	
Purchase Agreement for Inclusion in the)	
Power Purchase Agreement Rider.)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 14-1694-EL-AAM
Accounting Authority.)	

AFFIDAVIT OF WILLIAM J. MICHAEL

I, William J. Michael, attorney for the Office of the Ohio Consumers' Counsel ("OCC") in the above captioned case, being first duly sworn, depose and state that the following efforts have been made to resolve the differences with Ohio Power Company ("Ohio Power") as to the motion to compel responses to OCC Request for Production of Documents 1-010:

1. OCC submitted its first set of discovery to Ohio Power on November 7, 2014.
2. On or about December 2, 2014, Ohio Power served its Objections and Responses to OCC's first set of discovery. In its responses to OCC RFP 1-010, it objected on numerous grounds.
3. On May 12, 2015, OCC by e-mail notified Ohio Power's counsel that there were issues with Ohio Power's responses, including RPD 1-010.

4. On May 22, 2015, OCC sent a second email to Ohio Power's counsel asking when counsel would address the discovery issues. OCC sent another email to Ohio Power's counsel on May 27, 2015.

5. The next day I spoke with Ohio Power's counsel on the telephone. Ohio Power's counsel said that Ohio Power would not produce the documents requested. He confirmed that in an email the same day.

6. Reasonable resolution of this discovery dispute may not be achieved without the PUCO's intervention. OCC therefore files this motion to compel.

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

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

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

Further affiant sayeth naught.



William J. Michael, Affiant

Subscribed and sworn to before me this 5th day of June, 2015.



Notary Public



Debra Jo Bingham, Notary Public
Union County, State of Ohio
My Commission Expires June 13, 2020

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/5/2015 5:23:45 PM

in

Case No(s). 14-1693-EL-RDR, 14-1694-EL-AAM

Summary: Motion Motion to Compel Response to Discovery by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.