

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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Now comes the Office of the Ohio Consumers' Counsel ("OCC") and, pursuant to Ohio Adm. Code 4901-1-25, hereby respectfully moves the Public Utilities Commission of Ohio ("PUCO"), any commissioner, the legal director, the deputy legal director, or an attorney examiner to issue a subpoena *duces tecum* compelling Sierra Club to produce a witness(es) who has knowledge and expertise regarding the Joint Stipulation and Recommendation ("Stipulation") filed on December 15, 2015 in this case. Such witness(es) shall be familiar with Sierra Club's position regarding the Stipulation (as a whole), and the specific terms and conditions within the Stipulation. In accordance with Ohio Adm. Code 4901-1-25(2)(B) OCC requests expedited treatment of this subpoena.

Sierra Club's witness(es) shall testify and appear at the hearing to be subject to cross-examination on January 4, 2016, at 10:00 a.m., at the offices of the PUCO, 180 East

Broad Street, 11th floor, Hearing Room 11-A, Columbus, Ohio 43215-3793, and attend from day-to-day until the hearing is completed.

The subpoena should also compel the witness(es) to bring with him/her, and provide to OCC at 8:00 a.m. on January 4, 2016, at the offices of the PUCO, pursuant to Ohio Adm. Code Rules 4901-1-25(A) (1) all documents relating to his/her responsibilities with respect to the Stipulation filed in Case Nos. 14-1693-EL-RDR and Case No. 14-1694-EL-AAM; (2) responses to discovery that were authored by the witness(es) or were provided to OCC with input from the witness(es); (3) any documents in Sierra Club's possession that were relied upon to assess the Stipulation. Grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON (Reg. No. 0016973)  
CONSUMERS' COUNSEL

/s/ William J. Michael

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Counsel of Record  
Jodi J. Bair (Reg. No. 0062921)  
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**MEMORANDUM IN SUPPORT**

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In this phase of the proceeding, the PUCO will consider whether the Stipulation is in the public interest and should be adopted. The Attorney Examiner has ruled that a hearing should be held regarding the provisions of the Stipulation.<sup>1</sup> And the Attorney Examiner adopted a procedural schedule allowing for additional discovery to be conducted, including depositions. Under the Attorney Examiner's ruling, OCC is entitled to, inter alia, conduct pre-hearing discovery, including depositions.

The OCC requests a subpoena, pursuant to Ohio Adm. Code 4901-1-25, to command Sierra Club to produce a person(s) to appear at the hearing and provide oral testimony through cross-examination on January 4, 2016 on matters known or reasonably available to Sierra Club regarding the Stipulation in this case. Specifically, OCC requests that Sierra Club be compelled to produce a witness(es) who has knowledge and expertise

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<sup>1</sup> Entry (Dec. 15, 2015).

regarding the Stipulation filed on December 15, 2015 in this case, and Sierra Club's position regarding the Stipulation.

The subpoena should also compel the witness(es) to bring with him/her, and provide to OCC at 8:00 a.m. on January 4, 2016 and at offices of the PUCO, all documents relating to his/her responsibilities with respect to the Stipulation in Case Nos. 14-1693-EL-RDR and Case No. 14-1694-EL-AAM and responses to discovery that were authored by the witness or were provided to OCC with input from the deponent(s). Additionally, the witness(es) shall bring any documents in Sierra Club's possession that Sierra Club relied upon to assess the Stipulation.

The information sought by OCC is central to the determination of whether the Stipulation is in the public interest. When evaluating a Stipulation, the PUCO's review for reasonableness must meet three criteria: (1) it must be a product of serious bargaining among capable, knowledgeable parties; (2) it must, as a package, benefit ratepayers and the public interest; and (3) it must not violate any important regulatory principle or practice.<sup>2</sup> The information from the Sierra Club witness(es) is important because Sierra Club is a signatory party and can speak to each of the three criteria. The PUCO will need this testimony in order to make a determination whether the Stipulation satisfies the three criteria. OCC's Motion for Subpoena *Duces Tecum* should be granted in order to facilitate a full and complete development of the case before the PUCO, including the ultimate record upon which the PUCO will base its decision.

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<sup>2</sup> See *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 1230 (1992) and *AK Steel Corp. v. Pub. Util. Comm.*, 95 Ohio St.3d 81, 82 – 83 (2002).

Respectfully submitted,

BRUCE J. WESTON (Reg. No. 0016973)  
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 for Subpoena Duces Tecum* was provided to the persons listed below, electronically, this 29th day of December, 2015.

/s/ Willian J. Michael

William J. Michael

Assistant Consumers' Counsel

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**STATE OF OHIO  
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John Kasich  
GOVERNOR



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

**TO:** Sierra Club  
c/o Statutory Agent  
National Registered Agents, Inc.  
1300 East Ninth St.  
Cleveland, OH 44114

Upon application of Counsel for the Office of the Ohio Consumers' Counsel ("OCC"), Sierra Club is hereby required to provide a person(s) to appear before the Public Utilities Commission of Ohio as a witness for the Office of the Ohio Consumers' Counsel ("OCC") at hearing and attend day-to-day and submit to oral testimony by cross examination until completed for OCC in the following proceeding:

Case No.: 14-1693-EL-RDR and 14-1694.

Case Title: "In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider and In the Matter of the Application of Ohio Power Company for Approval of Certain Accounting Authority"

The witness(es) is to appear at the offices of the Commission, 180 East Broad Street, Columbus, Ohio on the 4<sup>th</sup> day of January, 2016 at 10:00 a.m. in hearing room 11-A.

The witness(es) shall bring with him/her, all documents relating to his/her responsibilities with respect to the Stipulation in Case Nos. 14-1693-EL-RDR and Case



No. 14-1694-EL-AAM and responses to discovery that were authored by the witness or were provided to OCC with input from the witness(es). Additionally, the witness(es) shall bring any documents in Sierra Club's possession that Sierra Club relied upon to determine whether to sign the Stipulation.

Dated at Columbus, Ohio, this 29th day of December, 2015.

**BY:** Maddy Willey Eples  
**TITLE:** 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**

**12/29/2015 4:04:34 PM**

**in**

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

Summary: Subpoena Motion for Subpoena and Expedited Treatment Duces Tecum by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.