

**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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**SIERRA CLUB'S MOTION TO QUASH THE SUBPOENA  
OR MOTION TO MODIFY THE SCOPE OF THE SUBPOENA  
AND FOR A PROTECTIVE ORDER**

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Sierra Club moves the Public Utilities Commission of Ohio pursuant to O.A.C. 4901-1-25(C) and O.A.C. 4901-1-12 for an order quashing or limiting the scope of Ohio Consumers' Counsel's subpoena *duces tecum* compelling Sierra Club to produce a witness(es) who has knowledge and expertise regarding the Joint Stipulation and Recommendation ("Joint Stipulation") filed on December 15, 2015. The basis for Sierra Club's Motion to Quash or Motion to Modify the Scope of the Subpoena and Issue a Protective Order is set forth in the attached memorandum, which is incorporated herein by reference.

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Sierra Club moves the Public Utilities Commission of Ohio ("Commission") pursuant to O.A.C. 4901-1-25(C) and O.A.C. 4901-1-12 for an order quashing or limiting the scope of Ohio Consumers' Counsel's ("OCC") subpoena *duces tecum* compelling Sierra Club to produce a witness(es) who has knowledge and expertise regarding the Joint Stipulation and Recommendation ("Joint Stipulation") filed on December 15, 2015. The subpoena requires Sierra Club to produce a witness(es) for cross-examination at the hearing scheduled for January 4, 2016. The witness must have familiarity with the Joint Stipulation (as a whole), and the specific terms and conditions within the Stipulation. Sierra Club respectfully moves to quash the subpoena *duces tecum* because it is unreasonable and oppressive as it seeks information that is duplicative, is about confidential settlement negotiations that is not likely to lead to admissible evidence, is protected by attorney-client and work product privilege, and impinges on Sierra Club's First Amendment rights. If OCC can identify an area of questioning that does not impinge on Sierra Club's rights and privileges, Sierra Club moves the Commission to Modify the Scope of the Subpoena and Issue a Protective

Order that prohibits OCC from asking questions about Sierra Club's rationale for signing the Joint Stipulation (in whole and its position on various positions) and broad questions about the settlement negotiation process.

## **INTRODUCTION**

On December 20, 2013, AEP Ohio filed an Application in its most recent Electric Security Plan ("ESP") proceeding (Case Nos. 13-2385-EL-SSO et al.) seeking the establishment of a Power Purchase Agreement ("PPA") Rider and the inclusion in the PPA Rider of the net impacts of AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by the Ohio Valley Electric Corporation's ("OVEC PPA"). On February 25, 2015, the Commission issued an Opinion and Order approving the PPA Rider on a placeholder basis (Case Nos. 13-2385-EL-SSO et al., Opinion and Order, at pages 25-27 (February 25, 2015) (the *ESP III Order*)). On October 3, 2014, AEP Ohio filed an Application in this proceeding – and on May 15, 2015, AEP Ohio filed an Amended Application in this proceeding – seeking inclusion of a new affiliate power purchase agreement between AEP Ohio and AEP Generation Resources, Inc. ("Affiliated PPA"), as well as the net impacts of the OVEC PPA, in the PPA Rider. An evidentiary hearing was held in this proceeding, starting on September 28, 2015 and ending on November 3, 2015, with the parties sponsoring and examining thirty-seven witnesses. Sierra Club submitted testimony and supplemental testimony on AEP Ohio's Amended Application. Sierra Club's expert witness was deposed twice prior to testifying at the hearing.

On December 1, 2015, a meeting was held with all parties to the case in which AEP Ohio presented a framework for a possible Joint Stipulation. At the December 1, 2015 meeting, AEP Ohio also invited all parties that were interested in discussing settlement further to participate in break-out negotiations that were more tailored to individual entities' concerns with the Joint

Stipulation. Subsequent settlement meetings with all parties were held on December 3, 9, 10, and 14, 2015.

On December 14, 2015, AEP Ohio and nine other Signatory Parties entered into a Joint Stipulation and Recommendation (“Joint Stipulation”) that proposes to resolve all of the issues raised in this proceeding. The Joint Stipulation is based, in part, upon a proposal by AEP Ohio to sign a revised affiliate power purchase agreement between AEP Ohio and AEP Generation Resources, Inc. (“Revised Affiliate PPA”). Sierra Club was one of the Signatory Parties to the Joint Stipulation.

On December 17, 2015, Ohio Consumers’ Counsel served written discovery on Sierra Club with requests for admissions, interrogatories, and requests for production of documents. *See* Att. 1. The discovery questions sought broad and vague information about the settlement process, specific questions about the settlement process, Sierra Club’s definition of certain terms, and Sierra Club’s rationale for entering into the Joint Stipulation and agreeing not to oppose or abstain from various provisions in the Joint Stipulation. Many of the questions dealt with this last category: Sierra Club’s rationale. *See e.g.*, Att. 1 (There are 20 questions that ask “why” Sierra Club agreed to certain provisions.)

Sierra Club responded to these discovery requests on December 23, 2015. *See* Att. 2. Sierra Club answered specific questions about the settlement process that were reasonably calculated to lead to the discovery of admissible evidence: Sierra Club noted that it had not carried out certain analyses about particular provisions of the stipulation, and provided a copy of the bilateral agreement entered into by Sierra Club and AEP Generation Resources. *See* Att. 2 at Responses to RFA-1, INT-2, INT-4, INT-5, INT-6, INT-7, INT-11, INT-12, INT-25, INT-26, INT-35, INT-36, INT-58, and RPD-3. Sierra Club objected to vague and broad questions about the settlement negotiations as these were part of the settlement negotiation process subject to O.A.C. 4901-1-26

and the questions were not likely to lead to the discovery of admissible information. *See* Att. 2 at Sierra Club's responses to INT-2, INT-3, INT-53 – INT-57, INT-59. Sierra Club also responded to all questions that sought how Sierra Club defined certain terms in the Joint Stipulation. *See* Att. 2 at Sierra Club's responses to INT-9, INT-21, INT-22, INT-32, and INT-43. Sierra Club objected to all questions about its rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions as this was protected by attorney-client and work product privilege and impinged on Sierra Club's First Amendment rights and privileges.

On December 23, 2015, Ohio Consumers' Counsel filed a notice to take the deposition(s) of Sierra Club employee(s) with knowledge and expertise in three areas: (1) AEP Ohio's proposed revised PPA and its inclusion in the power purchase agreement rider; (2) the Joint Stipulation filed on December 15, 2015; and (3) Sierra Club's position regarding the Joint Stipulation. *See* Att. 3. On December 29, 2015, Sierra Club filed a letter in this docket stating that Sierra Club did not intend to produce a witness for deposition as OCC's request was unreasonable and oppressive as it seeks information that is duplicative, about confidential settlement negotiations that is not likely to lead to admissible evidence, that is protected by attorney-client privilege, and impinges on Sierra Club's First Amendment rights. *See* Att. 4.

On December 29, 2015, OCC served Sierra Club with a subpoena *duces tecum* compelling Sierra Club to produce a witness(es) who has knowledge and expertise regarding the Joint Stipulation and Recommendation ("Joint Stipulation") filed on December 15, 2015. *See* Att. 5. The subpoena requires Sierra Club to produce a witness(es) for cross-examination at the hearing scheduled for January 4, 2016. The witness must have familiarity with the Joint Stipulation (as a whole), and the specific terms and conditions within the Stipulation.

On December 24, 2015, counsel for Sierra Club, Kristin A. Henry, and counsel for OCC, William Michael, met and conferred by telephone in a good-faith effort to resolve their dispute over

the scope of the Notice of Deposition and Sierra Club's responses to OCC's First Set of Discovery Requests. *See* Henry Decl. Counsel had subsequent communications via electronic mail on December 28, 2015 and December 29, 2015, in an attempt to resolve their dispute. *Id.* Counsel were unable to come to any agreement on any limitation on the scope of the deposition/subpoena or written discovery requests that would resolve these concerns. *Id.*

Sierra Club respectfully moves the Commission to quash the subpoena (or modify the scope of subpoena and issue a protective order if OCC can identify a non-protected area for inquiry) as it is unreasonable and oppressive since it (1) seeks information that is protected by attorney-client and work product privilege; (2) would chill Sierra Club's First Amendment rights of association; (3) concerns confidential settlement negotiations and is not likely to lead to admissible evidence; and (4) seeks information that is duplicative.

### **Argument**

O.A.C. 4901-1-25(C) authorizes the Commission to quash a subpoena "if it is unreasonable or oppressive," which may include (among other things) forbidding discovery into certain matters, or limiting the scope of disclosure or discovery to certain matters. The Commission must quash OCC's Notice of Deposition because it has failed to identify a topic that is not subject to discovery protections.

#### **I. The Commission Should Quash the Subpoena since it is Oppressive and Unreasonable as it Seeks Information that is Protected from Disclosure under Attorney-Client and Work Product Privilege.**

The Commission should quash the subpoena because privileged matters, including attorney-client and work product privilege, are protected from discovery. OCC intends to probe Sierra Club's rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions in the Joint Stipulation. Sierra Club's rationale for signing the Joint Stipulation and including various footnotes is based on confidential communications with its attorneys. The clients'

rationale and attorney advice are inextricably connected. Since there is no way to parse out Sierra Club's rationale for certain decisions from attorney communications and advice, the Commission must issue an order to quash the subpoena.

Commission rules permit discovery of "any matter, not privileged, which is relevant to the subject matter of the proceeding." O.A.C. 4901-1-16(B) (emphasis added). The Commission protects privileged matters from discovery. *See, e.g., In the Matter of the Complaint of LEEMar Steel Company, Inc. v. Ohio Bell Telephone Company*, Case No 84-360-TP-CSS, Entry at 8 (Sept. 11, 1984). This protection is consistent with the Ohio and Federal Rules of Civil Procedure. *See* Ohio R. Civ. P. 26; Fed. R. Civ. P. 26(b)(1) and (5).

"The attorney-client privilege is one of the oldest recognized privileges for confidential communications." *Swidler & Berlin v. United States*, 524 U.S. 399, 403, (1998). The attorney-client privilege serves to shield confidential communications between a lawyer and client from disclosure either through discovery or at trial. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The attorney-client privilege encourages "full and frank communication between attorneys and their clients and thereby promotes broader public interests in the observance of law and the administration of justice." *Swidler*, 524 U.S. at 403. "The privilege recognizes that sound legal advice or advocacy serves the public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *Upjohn*, 449 U.S. at 389; *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653 (2003). Although exercise of the privilege may occasionally result in the suppression of relevant evidence, these concerns are outweighed by the importance of preserving confidentiality in the attorney-client relationship. "The privilege is given on grounds of public policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from the suppression of relevant evidence."

In Ohio, the attorney-client privilege is governed by statute, R.C. 2317.02(A), and in cases that are not addressed in R.C. 2317.02(A), by common law. *See, e.g., State v. McDermott*, 72 Ohio St.3d 570, 574 (1995). The Ohio Supreme Court has held that this statute, though providing a testimonial privilege, also protects the communications during the discovery process. *Jackson v. Greger*, 110 Ohio St.3d 488 at ¶7, footnote 1 (2006). Under the attorney-client privilege, “(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived.” *Reed v. Baxter*, 134 F.3d 351, 355–356 (6<sup>th</sup> Cir. 1998); *Perfection Corp. v. Travelers Cas. & Sur. Co.*, 153 Ohio App.3d 28, 2003-Ohio-2750, 790 N.E.2d 817, ¶ 12.

The work product privilege stems from a U.S. Supreme Court case, *Hickman v. Taylor*, 329 U.S. 495 (1947), which held:

Proper preparation of a client’s case demands that [the attorney] assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference. . . . This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways—aptly though roughly termed by the Circuit Court of Appeals in this case (citation omitted) as the ‘Work product of the lawyer.’ Were such materials open to opposing counsel on mere demand, much of what is now would remain unwritten. An attorney’s thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.

*Id.* at 510.

The Ohio and Federal Rules of Civil Procedure, from which the Commission discovery provisions are derived, recognize the work product privilege. *See* Fed. R. Civ. P. 26; OH R. Civ. P. 26. Both the Ohio and Federal Rules of Civil Procedure protect from disclosure trial preparation



materials and the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation. *See* Fed. R. Civ. P. 26(B)(3); OH R. Civ. P. 26(B)(3).

The party claiming the privilege (either attorney-client or work product) has the burden of establishing the preliminary facts necessary to support its exercise of the privilege. *See, e.g., Accord State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St. 3d 10, 18, (2011). Once that party establishes facts necessary to support a claim of privilege, the opponent of the claim of privilege has the burden of proof to establish good cause for the disclosure of such information. *Schiff v. Dickson*, 2013-Ohio-5253, ¶ 28, 4 N.E.3d 433, 441; *see also Grace v. Mastruserio*, 182 Ohio App.3d 243, 2007-Ohio-3942, 912 N.E.2d 608, ¶ 28 (1st Dist.). For attorney-client privileged material, good cause means a prima facie showing of fraud, bad faith, or criminal misconduct. *Id.*; *see also* R.C. 2317.02(A)(2). For work product, it means “a showing of substantial need, that the information is important in the preparation of the party's case, and that there is an inability or difficulty in obtaining the information without undue hardship.” *Schiff v. Dickson*, 2013-Ohio-5253, ¶ 28, 4 N.E.3d 433, 441; *see also Mastruserio*, 182 Ohio App.3d 243, at ¶ 30.

OCC wants to probe Sierra Club's rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions in the Joint Stipulation. Sierra Club's rationale for each of these decisions is based on confidential communications between attorneys and client in which the attorneys shared their thoughts on relevant facts, legal theories, and strategies so that their client could make an informed decision. *See* Kanfer Decl. at ¶ 7. These communications also include mental impressions, conclusions, opinions, or legal theories of Sierra Club's attorneys concerning the case. *See* Kanfer Decl. at ¶ 7. There is no way to parse out Sierra Club's rationale for certain decisions from attorney communications, attorney advice, and attorney work product; the two are inextricably connected. *See* Kanfer Decl. at ¶ 7. In order for an attorney to appropriately represent her client she must be able to share relevant facts, legal theories, strategies, opinions, and mental

impressions without fear that an opposing party can demand them at will. *See, e.g., Hickman*, 329 U.S. at 510.

Because Sierra Club has made a *prima facie* showing that the information sought by OCC is protected attorney-client communication and protected by the work product privilege, the burden thus shifts to OCC to demonstrate good cause for not honoring the privilege. *Schiff*, 2013-Ohio-5253 at ¶ 28. In order for OCC to obtain access to this information it would need to show good cause to defeat both privileges by demonstrating: (1) fraud, bad faith, or criminal misconduct; and (2) a showing of substantial need, that the information is important in the preparation of the party's case, and that there is an inability or difficulty in obtaining the information without undue hardship. There are no substantial allegations of fraud or illegal conduct on the part of Sierra Club and OCC cannot make that showing. There is thus insufficient cause to invade the sanctity of the attorney-client relationship. The Commission should thus quash OCC's subpoena as oppressive and unreasonable.

Moreover, OCC also cannot demonstrate a substantial need for the information that is important in the preparation of its case and that there is an inability or difficulty in obtaining the information without undue hardship. Sierra Club's rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions in no way materially impacts OCC's ability to challenge the Joint Stipulation as inconsistent with the law. OCC can offer nothing more than the remote possibility that examination of the attorney work product material may possibly lead to information that may support its case. That is simply not sufficient to discard the sacredness of the attorney-client or work product privileges. *See, e.g., Schiff*, 2013-Ohio-5253 at ¶ 32. This is yet another reason for the Commission to quash OCC's subpoena as oppressive and unreasonable.

**II. The Commission Should Quash the Subpoena since it is Oppressive and Unreasonable as it Impinges on Sierra Club's First Amendment Protected Rights of Association.**

Sierra Club is a national environmental group “dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.” Kanfer Decl. at ¶ 4. One of Sierra Club’s main goals in Ohio is to “achieve a healthy and clean energy future for Ohio.” *Id.* Sierra Club as an organization made strategic organizational decisions based on advice of counsel and other staff members about whether to join the Joint Stipulation and certain provisions. *Id.* at ¶¶ 7-9. All of these decisions and the rationale behind each decision are based on Sierra Club’s strategy that it believes best advances its advocacy efforts. *Id.* at ¶ 8.

The Commission must quash OCC’s attempts to force disclosure of Sierra Club’s rationale for signing the Joint Stipulation and including certain footnotes because OCC cannot demonstrate any need for such information that would justify infringing upon the First Amendment rights of Sierra Club.<sup>1</sup> As the Kanfer declaration demonstrates, allowing OCC to probe Sierra Club’s strategy would discourage individuals from participating in initiative campaigns and mute the exchange of ideas within those campaigns; which would in turn discourage people from joining or working with Sierra Club. Kanfer Dec. at *Id.* at ¶¶ 6-14. OCC’s discovery does not provide any justification for this intrusion into the private campaign strategy of Sierra Club.

The Supreme Court has held that “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460, 462 (1958). The right to associate includes the right to communicate. “Implicit in the right to associate with others . . . is the right to exchange ideas and formulate strategy and messages, and to do so in private.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1162

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<sup>1</sup> If the Commission finds that Sierra Club’s rationale for signing the Joint Stipulation, including agreeing not to oppose or abstain from various provisions, is protected by either the attorney-client or work product privilege, there is no need for the Commission to address Sierra Club’s First Amendment claim.

(9th Cir. 2010). State actions, including the enforcement of subpoenas, which have the effect of curtailing these freedoms are “subject to the closest scrutiny.” *See Patterson*, 357 U.S. at 460-61. It is “immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters.” *Id.*

Federal courts have routinely held that the forced disclosure of a private group’s communications infringes on First Amendment associational and free speech rights by deterring participation in political and civic activities and deterring the free flow of information within the group.<sup>2</sup> *See Perry*, 591 F.3d at 1157, 1162-63 (citing *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963)); *City of Greenville v. Syngenta Crop Prot., Inc.*, Nos. 11-mc-10; 11-mc-1031; and 11-mc-1032, 2011 U.S. Dist. LEXIS 124453, \*16-24 (C.D. Ill. Oct. 27, 2011) (applying *Perry*); *Federal Elec. Comm’n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 388 (D.C. Cir. 1981). In *Perry*, for example, the Ninth Circuit Court of Appeals directed the district court to enter a protective order denying access to the internal campaign strategy and advertising communications of a citizen group that had sponsored a ballot initiative regarding same-sex marriage. 591 F.3d at 1152. The group argued that disclosure of their internal strategy documents “would burden political association rights by discouraging individuals from participating in initiative campaigns and by muting the exchange of ideas within those campaigns.” *Id.* at 1153. The court agreed, holding that “[c]ompelled disclosures concerning protected First Amendment political associations have a profound chilling effect on the exercise of political rights.” *Id.* at 1156.

Courts have applied a two-part framework for evaluating whether compelled disclosure of private communications would chill First Amendment rights. First,

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<sup>2</sup> The Commission’s rules provide parameters around discovery and other evidentiary issues. However, as the Commission is aware, it is sometimes helpful to consider other state or federal authorities in order to clarify the appropriate interpretation. Although the Commission is not bound to follow those rules or holdings, the Commission has found other rules and holdings instructive. *See, e.g., In re: Complaint of SG Food Inc. et al v. First Energy Corp. et al*, Case No. 04-028-EL-CSS, Entry at pg. 29 (March 2006).

The party asserting the privilege must demonstrate . . . a prima facie showing of arguable first amendment infringement. This prima facie showing requires appellants to demonstrate that enforcement of the discovery requests will result in  
(1) harassment, membership withdrawal, or discouragement of new members, or  
(2) other consequences which objectively suggest an impact on, or “chilling” of, the members’ associational rights.

*Id.* at 1160 (citations and internal quotations omitted). If the party asserting a First Amendment privilege makes a prima facie showing of infringement, the burden shifts to the party that has requested discovery to “demonstrate the information is necessary to their case and cannot be secured by other means that are less likely to affect First Amendment rights.” *City of Greenville*, 2011 U.S. Dist. LEXIS 124453 at \*23 (citing *Perry*, 591 F.3d at 1161). To make this showing, the requesting party must show that the information is “highly relevant to the claims or defenses in the litigation—a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1).” *Perry*, 591 F.3d at 1161.

In this case, the chilling impact of OCC’s requested discovery is clear: disclosure of Sierra Club’s rationale and strategy for signing the Joint Stipulation would significantly affect the long-term ability of Sierra Club staff members to communicate openly and frankly about priority campaigns. Meanwhile, OCC cannot meet its burden of establishing that the information it seeks is necessary to its case and cannot be secured by other means that are less likely to infringe upon Sierra Club’s First Amendment rights. Sierra Club’s rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions in no way materially impacts OCC’s ability to challenge the Joint Stipulation as inconsistent with the law. OCC can offer nothing more than the remote possibility that examination of the attorney work product material may possibly lead to information that may support its case. That is simply not a sufficient basis to infringe on the First Amendment rights at issue here. The Commission should therefore quash OCC’s Notice of Deposition or limit OCC’s request to prohibit questions regarding Sierra Club’s rationale and strategy.

**A. OCC's Request Chills the First Amendment Rights of the Sierra Club and Its Members.**

Nachy Kanfer, Deputy Director for the Eastern Region of Sierra Club's Beyond Coal Campaign, has filed a declaration with this Motion that establishes a prima facie case of First Amendment infringement. *See Perry*, 591 F.3d at 1161. The declaration describes Sierra Club's activities and how mandatory disclosure of Sierra Club's communications, strategy, and decision-making, including as relates to filing or settling litigation, would negatively impact the way the group conducts its business. Specifically, the declaration attests that compelled disclosure would:

(1) Inhibit the Sierra Club's staff members' free exchange of ideas. Mr. Kanfer stated, "if Sierra Club volunteer members and staff are unable to discuss with me our advocacy work frankly out of a fear that their communications would be disclosed because of a lawsuit or administrative action that may or may not be directly related to those communications, then Sierra Club's ability to advocate effectively will be harmed." Kanfer Dec. at ¶ 12. Mr. Kanfer stated that disclosure would "it will affect what I feel comfortable saying" in the future and "would make my job of communicating with staff and volunteers and enlisting staff and volunteers for our environmental campaigns extremely difficult." Kanfer Dec. at ¶ 11.

(2) Threaten the loss of group members. Mr. Kanfer stated that he is concerned that disclosing internal Sierra Club campaign strategy would lead to people questioning whether they should continue to participate as staff or volunteer members of Sierra Club. Sierra Club staff and members would limit or stop participating in campaign strategy discussions if the content of those communications would be subject to disclosure. Kanfer Dec. at ¶ 13.

This declaration demonstrates that granting OCC's request would have a chilling effect on Sierra Club's campaigns and internal communications, making the prima facie showing of First Amendment infringement required under *Perry* and other cases. *Perry*, 591 F.3d at 1161. In *City of Greenville*, for example, trade associations moving to quash subpoenas calling for the disclosure of

their internal communications submitted declarations attesting the disclosure would make their members “reluctant to communicate freely with each other,” and in one case asserting that a member “would have to seriously reconsider his membership” in one of the groups. 2011 U.S. Dist. LEXIS 124453, \*19-20.

The fundamental issue is what will happen in the future if documents are disclosed. The Movants must present evidence of a reasonable probability of a chilling effect on the members’ First Amendment rights. Declarations from association members, employees, and agents setting forth the impact of disclosure on their future behavior are sufficient to meet this burden. *See e.g., Perry*, 591 F.3d at 1163; *Dole*, 950 F.2d at 1458-60.

*City of Greenville*, 2011 WL 5118601, at \*8 (cited in *NRDC v. Illinois Power Resources*, No. 13-cv-1181 slip op. at 15 (C.D. Ill. May 12, 2015)). Forcing Sierra Club to disclose its rationale and strategy behind campaign decisions would dampen the group’s free exchange of ideas.

**B. OCC Cannot Show That It is Necessary to Compel the Disclosure of Sierra Club’s Campaign Strategy.**

Because Sierra Club has made a prima facie showing of First Amendment infringement in this case, the burden thus shifts to OCC to demonstrate that the documents are necessary to its case. *Perry*, 591 F.3d at 1161; *City of Greenville*, 2011 U.S. Dist. LEXIS 124453 at \*23. OCC cannot make that showing. Under the strictest of scrutiny, OCC would have to demonstrate that the information is necessary to its case and cannot be secured by other means that are less likely to affect First Amendment rights. *City of Greenville*, 2011 U.S. Dist. LEXIS 124453 at \*23 (citing *Perry*, 591 F.3d at 1161). It is not necessary for OCC to determine why Sierra Club, just one of nine parties to a Joint Stipulation, signed the agreement in order for OCC to legally challenge the Joint Stipulation under state law. Therefore, there is no compelling interest to justify the chilling of First Amendment rights. This Commission should quash the subpoena as it is oppressive and unreasonable since it infringes on Sierra Club’s First Amendment rights.

**III. The Commission Should Quash the Subpoena Since it is Oppressive and Unreasonable as it Seeks Vague and Broad Information about Settlement Meetings, which is Entitled to Confidentiality Unless Otherwise Admissible.**

Sierra Club is not asserting a blanket settlement privilege, which the Ohio Supreme Court in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St. 3d 300 (2006) found does not exist. In fact, Sierra Club responded to OCC discovery requests that were reasonably calculated to lead to the discovery of admissible evidence relevant to the Commission's consideration of the proposed stipulation. Sierra Club told OCC that it had not carried out certain analyses about particular provisions of the stipulation and provided a copy of the bilateral agreement entered into by Sierra Club and AEP Generation Resources. *See* Att. 2. Sierra Club is, however, moving the Commission to quash or limit the scope of the subpoena with a protective order that prohibits OCC from asking broad questions about all of the details of the settlement negotiations.

OCC wants to know every detail about the settlement negotiations that occurred between Sierra Club and AEP Ohio. For instance, OCC wants to know the name of every person that participated in the settlement meetings with Sierra Club, how many times Sierra Club spoke with AEP Ohio, who attended those meetings, what dates those discussions took place, who attended those meetings, and the length of those discussions. *See* Att. 2 at Sierra Club's responses to INT-2, INT-3, INT-53 – INT-57, INT-59.

The Commission's rules generally do not permit the admission of evidence related to settlement negotiations. O.A.C. 4901-1-26 states that "[e]vidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another valid purpose." The information sought by OCC about the settlement negotiations may be discoverable if the information sought is reasonably calculated to lead to the discovery of admissible evidence.



O.A.C. 4901-1-16. OCC's broad and vague questions about every detail of the settlement negotiations do not meet that test.

The Commission's decision in *In re Vectren*, 2007 WL 738508, 05-1444-GA-UNC (Mar. 7, 2007) is directly on point. In *Vectren*, the Commission denied OCC's third application for an interlocutory appeal because the Commission's discovery rulings did not raise a "new or novel question of interpretation, law, or policy" that were "a departure from past precedent." The Commission had denied OCC's motion to compel discovery for detailed information regarding settlement negotiations between the signatory parties to the January Stipulation as these requests were not likely to lead to the discovery of admissible evidence. The Commission did grant OCC's motion to compel with regard to its request for any agreements between the parties besides the Stipulation. The Commission found:

Instead of relying upon the absolute settlement privilege recognized by *Goodyear*, the attorney examiners determined, in denying the motion to compel [], that the matters sought to be discovered were not reasonably calculated to lead to the discovery of admissible evidence. This was due to the broad nature of the discovery requests, which went beyond the side agreements addressed by the Court in *Ohio Consumers' Counsel* and sought all details of the settlement negotiations, including the underlying discussions of the settlement negotiations themselves.

The Commission's procedural rules generally do not permit the admission of evidence related to settlement negotiations. . . . However, the discovery requests, on their face, cannot be construed to be reasonably calculated to lead to admissible evidence, and OCC failed to demonstrate, in its motion to compel or on the record at the discovery conference, that these broad discovery requests were reasonably calculated to lead to the discovery of admissible evidence. OCC's argument on this issue simply consisted of asserting, in its motion to compel, that the information sought to be discovered was relevant to the first prong of the Commission's three-prong test for the consideration of stipulations. The attorney examiners determined that this assertion alone was not sufficient to support a finding that the discovery request was reasonably calculated to lead to the discovery of admissible evidence.

In contrast, the attorney examiner notes that OCC's motion to compel was granted where the specific discovery request appeared reasonably calculated to lead to the discovery of admissible evidence even though the discovery request touched upon settlement matters. Specifically, the attorney examiners granted the motion to compel with respect to Request for Admission No. 13 of the first set of discovery, which sought discovery on any agreements entered into by [parties] or Staff separate

from the April Stipulation. The attorney examiners determined that this particular discovery request was reasonably calculated to lead to the discovery of admissible evidence relevant to the Commission's consideration of the proposed stipulation. Further, this ruling was consistent with the Court's decision regarding the discovery of side agreements in *Ohio Consumers' Counsel*.

As in *Vectren*, OCC's intent to probe to ask broad questions that seek all of the details of the settlement negotiations is not reasonably calculated to lead to the discovery of admissible evidence. Sierra Club has already answered all of OCC's specific questions that were likely to lead to the discovery of admissible evidence, including the production of a bilateral agreement between Sierra Club and AEP Generation Resources and that it had not carried out certain analyses about particular provisions of the stipulation. *See* Att. 2 at Sierra Club's responses to INT-2, INT-3, INT-53 – INT-57, INT-59 and RPD-3. The Commission should thus quash the subpoena as unreasonable and oppressive.<sup>3</sup>

#### **IV. The Commission Should Quash the Subpoena since it is Oppressive and Unreasonable as it is Duplicative.**

The Commission should quash the subpoena as oppressive and unreasonable since it is duplicative. Sierra Club submitted Direct and Supplemental Testimony at an earlier stage of this proceeding. Sierra Club's expert witness was deposed twice and testified at the earlier proceeding. Sierra Club has not presented, and does not intend to present, any testimony or witness in support of the Joint Stipulation. *See* Kanfer Decl. at ¶ 6. Sierra Club's position regarding the Stipulation is self-evident from the document itself. Moreover, AEP Ohio Witness William Allen has already submitted pre-filed testimony regarding the Joint Stipulation and intends to testify on January 4, 2016 regarding the Joint Stipulation. The Commission should thus quash the motion as duplicative.

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<sup>3</sup> The Ohio Supreme Court's ruling in *Time Warner v. PUC*, 75 Ohio St. 3d 229 (1996), does not change this conclusion. In *Time Warner* the Supreme Court was concerned about a partial Stipulation which arose when an entire costumer class was excluded from negotiations. No such exclusion occurred here. There were five settlement meetings in which all parties to the case, including OCC, were invited to join. AEP Ohio invited all parties that were interested in discussing settlement further to also participate in break-out negotiations. This is consistent with the *Time Warner* holding which stated, "[w]e would not create a requirement that all parties participate in all settlement meetings." *Time Warner*, 75 Ohio St. 3d 229, 233 n. 2 (1996).

## **Conclusion**

For the foregoing reasons, Sierra Club respectfully requests that the Commission quash the subpoena as it is unreasonable and oppressive as it seeks information that is protected by attorney-client and work product privilege, impinges on Sierra Club's First Amendment rights, is about confidential settlement negotiations that is not likely to lead to admissible evidence, and is duplicative. If OCC can identify an area of questioning that does not impinge on Sierra Club's rights and privileges, Sierra Club moves the Commission to Modify the Scope of the Subpoena and Issue a Protective Order that prohibits OCC from asking questions about Sierra Club's rationale for signing the Joint Stipulation (in whole and its position on various provisions) and broad questions about the settlement negotiation process.

Dated: December 31, 2015

Respectfully submitted,

/s/ Kristin A. Henry  
Kristin Henry (Counsel of Record)  
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San Francisco, CA 94105  
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Attorneys for Sierra Club

## CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Sierra Club's Motion to Quash the Subpoena or Motion to Modify the Scope of the Subpoena and for a Protective Order upon the following parties via electronic mail.

Date: December 31, 2015

/s/ Kristin A. Henry

Kristin A. Henry

### PERSONS SERVED

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**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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**NAHALIEL ("NACHY") KANFER DECLARATION**

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I, Nahaliel ("Nachy") Kanfer, declare as follows:

1. My name is Nachy Kanfer, and I am of legal age and competent to give this declaration. All information herein is based on my own personal knowledge unless otherwise indicated.
2. I live at 1130 Belvedere Street, Cincinnati Ohio 45202. I have lived at that address since September, 2014.
3. I am an employee of Sierra Club and have been since May, 2008. I am the Deputy Director (Eastern Region) for Sierra Club's Beyond Coal Campaign. In that role, I am responsible for ensuring that all of Sierra Club's state-based teams in the Eastern Region successfully execute on Sierra Club's goals. I supervise six employees who each manage project teams of five to ten staff throughout the thirteen states in the campaign's Eastern Region. I regularly interact with dozens of employees and numerous volunteers during the course of my job.
4. Sierra Club is a national non-profit organization with 64 chapters and over 625,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club's concerns in Ohio include working to achieve a healthy and clean energy future for Ohio. The Ohio Chapter of Sierra Club has over 17,000 members in Ohio.
5. In order to achieve these goals, Sierra Club employs campaign staff and empowers volunteer members to fight for the health of their communities, build partnerships, promote clean energy jobs, and demonstrate broad public support for meaningful action to address a clean energy future, and the climate crisis.

6. I was part of the team that participated in the settlement negotiations with AEP Ohio and part of the team that made the decision to sign the Joint Stipulation. Sierra Club has not presented, and does not intend to present, any testimony or witness in support of the Joint Stipulation.
7. Sierra Club's decision to sign the Joint Stipulation, and Sierra Club's related decision to abstain from or not oppose certain provisions in the Joint Stipulation, is based on conversations that Sierra Club's negotiation team, including myself, had with our attorneys. These conversations consisted of confidential communications where our attorneys provided advice in a legal capacity regarding the Joint Stipulation. This advice included our attorneys' thoughts on relevant facts, legal theories, and strategies so that we could make an informed decision. During these conversations, our attorneys also shared with me their mental impressions, opinions, and conclusions regarding continued litigation. There is no way for Sierra Club to divulge its rationale for signing the Joint Stipulation and agreeing not to oppose or abstain from certain provisions in the Joint Stipulation without revealing these confidential communications with our attorneys.
8. Whenever Sierra Club makes an important decision related to litigation, our decision-making process requires consultation with several internal stakeholders, including staff who report to me, staff in other departments, and volunteer members. It is through this open exchange of ideas that Sierra Club is able to craft a strategy that it believes best advances its advocacy efforts.
9. As part of Sierra Club's decision-making process for signing the Joint Stipulation, I consulted with my staff, as well as volunteer members and staff in other departments.
10. If Sierra Club is forced to disclose the rationale behind its campaign decisions such as why it signed this Joint Stipulation, it would interfere with my ability to do my core job of directing the Beyond Coal Campaign for Sierra Club, including but not limited to campaign planning, developing campaign strategy, and recruiting and training leaders to participate in Sierra Club advocacy campaigns.
11. If Sierra Club is forced to disclose the strategy that it employs in making campaign decisions, including the rationale for a specific litigation-related decision, it would impair Sierra Club's ability to pursue campaigns to protect the environment. If I am constantly worried that my communications with campaign participants, including my professional and volunteer colleagues, could be forced into the public record as a result of a lawsuit or administrative action, it will affect what I feel comfortable saying. This would make my job of communicating with staff and volunteers and enlisting staff and volunteers for our environmental campaigns extremely difficult.
12. Similarly, if Sierra Club volunteer members and staff are unable to discuss with me our advocacy work frankly out of a fear that their communications would be disclosed because of a lawsuit or administrative action that may or may not be directly related to those communications, then Sierra Club's ability to advocate effectively will be harmed.

13. Further, I am concerned that volunteer members and staff might become afraid to participate in future environmental campaigns based on the fear that their communications could be disclosed and made public during the course of a lawsuit or administrative action. The volunteer leaders with whom I work are good-natured, everyday people who join Sierra Club in order to make a difference in their community. Many volunteers, while they feel very passionate about protecting the environment, are averse to controversy. They are not attorneys, and they do not feel comfortable being involved in controversial legal proceedings. That concern, were it to become widespread, would chill Sierra Club's participation in the political process and hinder its ability to achieve its goals. It would threaten Sierra Club's and its members' ability to pursue their full constitutional rights to educate and communicate to the public about crucial environmental issues, recruit volunteer members and leaders, build partnerships across communities, and ultimately protect and restore the quality of the natural environment.
14. Further, I am concerned that granting OCC's subpoena in this case would harm Sierra Club's ability to participate in future proceedings. OCC is of course free to disagree with any particular Sierra Club decision or to take a litigation position opposing Sierra Club's position. But if OCC is permitted to express its displeasure with Sierra Club's position through demanding burdensome discovery, that would chill Sierra Club's ability to participate in advocacy campaigns. For the reasons mentioned above, it would have a negative impact on Sierra Club's ability to participate in future Commission proceedings. This in turn would deprive the Commission, and other parties, of the benefit of Sierra Club's perspective and expertise on important matters facing Ohio ratepayers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2015



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Nahaliel Kanfer



**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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**KRISTIN A. HENRY DECLARATION**

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I, Kristin A. Henry, declare as follows:

1. My name is Kristin A. Henry, and I am of legal age and competent to give this declaration. All information herein is based on my own personal knowledge unless otherwise indicated.
2. I am a Senior Attorney for Sierra Club.
3. I am counsel of record in the above captioned cases.
4. On December 24, 2015, I spoke with counsel for Ohio Consumers' Counsel ("OCC"), William Michael, by telephone in a good faith effort to resolve our dispute over the scope of the Notice of Deposition that was served on Sierra Club on December 23, 2015 and the validity of Sierra Club's responses to OCC's First Set of Discovery Requests.
5. On December 27, 2015, pacific time (December 28, 2015, eastern time), I sent Mr. Michael a subsequent communication via electronic mail. On December 29, 2015, Mr. Michael sent me a communication via electronic mail, which I responded to later that same day. Each of these electronic mails was sent in an attempt to resolve our dispute.
6. On December 29, 2015, I filed a letter in this docket stating that Sierra Club did not intend to produce a witness for deposition as OCC's request was unreasonable and oppressive as it seeks information that is duplicative, about confidential settlement negotiations that is not likely to lead to admissible evidence, that is protected by attorney-client privilege, and impinges on Sierra Club's First Amendment rights. I noted that Sierra Club was not at that time filing a motion for a protective order from the Commission for two reasons. First, pursuant to O.A.C. 4901-1-24(B), Sierra Club could not seek a protective order from the Commission until it "has exhausted all other reasonable means of resolving any differences

with the party seeking discovery.” Since conversation with OCC counsel William Michael was still ongoing, those efforts had not yet been exhausted. Second, I noted that Sierra Club had only been served with a Notice of Deposition and not a subpoena. I said that if Sierra Club was served with a subpoena and it had exhausted efforts to resolve the differences regarding the scope of discovery, Sierra Club would at that time file either a Motion to Quash or a Motion for a Protective Order.

7. On December 29, 2015, OCC served Sierra Club with a subpoena *duces tecum* compelling Sierra Club to produce a witness(es) who has knowledge and expertise regarding the Joint Stipulation and Recommendation (“Joint Stipulation”) filed on December 15, 2015. The subpoena requires Sierra Club to produce a witness(es) for cross-examination at the hearing scheduled for January 4, 2016. The witness must have familiarity with the Joint Stipulation (as a whole), and the specific terms and conditions within the Stipulation.
8. On December 31, 2015, Mr. Michael sent me a communication via electronic mail that we were at an impasse and could not resolve our dispute. Counsel were thus unable to come to any agreement on any limitation on the scope of the discovery that would resolve these concerns.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2015

/s/Kristin Henry  
Kristin A. Henry

# **Attachment 1**

**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	)	Case No. 14-1694-EL-AAM
Power Company for Approval of Certain	)	
Accounting Authority.	)	

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**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
REQUESTS FOR ADMISSION, INTERROGATORIES, AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
PROPOUNDED UPON THE SIERRA CLUB**

**FIRST SET FOR  
THE JOINT STIPULATION AND RECOMMENDATION**

**DECEMBER 17, 2015**

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The Office of the Ohio Consumers' Counsel, in the above-captioned proceedings before the Public Utilities Commission of Ohio ("PUCO" or "Commission"), submits the following Requests for Admission, Interrogatories and Requests for Production of Documents pursuant to Sections 4901-1-19, 4901-1-20 and 4901-1-22 of the Ohio Adm. Code for response from the Sierra Club ("Sierra Club") within the time periods for discovery provided by the PUCO (including any of its authorized representatives). An electronic, non-pdf (e.g., Excel) response should be provided to the Office of the Ohio Consumers' Counsel at the following addresses:

William J. Michael, Counsel of Record  
Kevin F. Moore  
Jodi Bair  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone [Michael]: (614) 466-1291  
Telephone [Moore]: (614) 387-2965  
Telephone [Bair]: (614) 466-9559  
[William.michael@occ.ohio.gov](mailto:William.michael@occ.ohio.gov)  
[Kevin.moore@occ.ohio.gov](mailto:Kevin.moore@occ.ohio.gov)  
[jodi.bair@occ.ohio.gov](mailto:jodi.bair@occ.ohio.gov)

Additionally, Sierra Club must follow the instructions provided herein in responding to the inquiries. Definitions are provided below that are used in the Office of the Ohio Consumers' Counsel's 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, work sheets, books, magazines,

notebooks, diaries, calendars, appointment books, registers, charts, tables, papers, agreements, contracts, purchase orders, checks and drafts, acknowledgments, invoices, authorizations, budgets, analyses, projections, transcripts, minutes of meetings of any kind, telegrams, drafts, instructions, announcements, schedules, price lists, electronic copies, reports, studies, statistics, forecasts, decisions, and orders, intra-office and inter-office communications, correspondence, financial data, summaries or records of conversations or interviews, statements, returns, diaries, workpapers, maps, graphs, sketches, summaries or reports of investigations or negotiations, opinions or reports of consultants, brochures, bulletins, pamphlets, articles, advertisements, circulars, press releases, graphic records or representations or publications of any kind (including microfilm, videotape and records, however produced or reproduced), electronic (including e-mail), mechanical and electrical records of any kind and computer produced interpretations thereof (including, without limitation, tapes, tape cassettes, disks and records), other data compilations (including, source codes, object codes, program documentation, computer programs, computer printouts, cards, tapes, disks and recordings used in automated data processing together with the programming instructions and other material necessary to translate, understand or use the same), all drafts, prints, issues, alterations, modifications, changes, amendments, and mechanical or electric sound recordings and transcripts to the foregoing. A request for discovery concerning documents addressing, relating or referring to, or discussing a specified matter encompasses documents having a factual, contextual, or logical 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 stamps, 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 any present or former director, officer, agent, contractor, consultant, advisor, employee, partner, or joint venturer of such party.
6. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

7. Words expressing the masculine gender shall be deemed to express the feminine and neuter genders; those expressing the past tense shall be deemed to express the present tense; and vice versa.
8. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.
9. “Identify,” or “the Identity of,” or “Identified” means as follows:
  - A. When used in reference to an individual, to state his full name and present or last known position and business affiliation, and his position and business affiliation at the time in question;
  - B. When used in reference to a commercial or governmental entity, to state its full name, type of entity (e.g., corporation, partnership, single proprietorship), and its present or last known address;
  - C. When used in reference to a document, to state the date, author, title, type of document (e.g., letter, memorandum, photograph, tape recording, etc.), general subject matter of the document, and its present or last known location and custodian;
  - D. When used in reference to a communication, to state the type of communication (i.e., letter, personal conversation, etc.), the date thereof, and the parties thereto and the parties thereto and, in the case of a conversation, to state the substance, place, and approximate time thereof, and identity of other persons in the presence of each party thereto;



- E. When used in reference to an act, to state the substance of the act, the date, time, and place of performance, and the identity of the actor and all other persons present.
  - F. When used in reference to a place, to state the name of the location and provide the name of a contact person at the location (including that person's telephone number), state the address, and state a defining physical location (for example: a room number, file cabinet, and/or file designation).
10. The terms "PUCO" and "Commission" refer to the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General's Office), and offices.
  11. The term "e.g." connotes illustration by example, not limitation.
  12. "OCC" means the Office of the Ohio Consumers' Counsel.
  13. "AEP Ohio" and "Company" means Ohio Power Company.
  14. "AEPGR" means AEP Generation Resources, Inc.
  15. "AEPSC" means American Electric Power Service Corporation.
  16. "AEP" means American Electric Power, Inc., the parent of AEP Ohio, AEPGR, and AEPSC.
  17. "ESP" means Electric Security Plan.
  18. "ESP III" means Case Nos. 13-2385-EL-SSO et al.
  19. "PPA" means Power Purchase Agreement.
  20. "OVEC" means Ohio Valley Electric Corporation.
  21. "FERC" means the Federal Energy Regulatory Commission.

- 22. “Application” means the document, labeled as such, filed in the above-captioned case on October 3, 2014.
- 23. “Amended Application” means the document, labeled as such, filed in the above-captioned proceeding on May 15, 2015.
- 24. “PPA Units” are those generation facilities for which the Company will receive entitlement of all power output for AEPGR’s ownership, under the proposed Power Purchase and Sales Agreement.
- 25. “Proceeding” means the above-captioned case.
- 26. “Rule 4901:X-XX-XX” means the Chapter 4901 rule contained within the Ohio Administrative Code
- 27. “Stipulation” means the Joint Stipulation and Recommendation filed with the Public Utilities Commission of Ohio in Case No. 14-1693-EL-RDR et al., on December 14, 2015.
- 28. “OPAE” means the Ohio Partners for Affordable Energy.

### **INSTRUCTIONS FOR ANSWERING**

1. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.
2. Where an interrogatory calls for an answer in more than one part, each part should be separate in the answer so that the answer is clearly understandable.
3. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them.
4. If any answer requires more space than provided, continue the answer on the reverse side of the page or on an added page.
5. Your organization(s) is requested to produce responsive materials and information within its physical control or custody, as well as that physically controlled or possessed by any other person acting or purporting to act on your behalf, whether as an officer, director, employee, agent, independent contractor, attorney, consultant, witness, or otherwise.
6. Where these requests seek quantitative or computational information (e.g., models, analyses, databases, and formulas) stored by your organization(s) or its consultants in computer-readable form, in addition to providing hard copy (if an electronic response is not otherwise provided as requested), you are requested to produce such computer-readable information, in order of preference:
  - A. Microsoft Excel worksheet files on compact disk;

- B. other Microsoft Windows or Excel compatible worksheet or database diskette files;
  - C. ASCII text diskette files; and
  - D. such other magnetic media files as your organization(s) may use.
7. Conversion from the units of measurement used by your organization(s) in the ordinary course of business need not be made in your response (e.g., data requested in kWh may be provided in mWh or gWh) as long as the unit measure is made clear.
8. Unless otherwise indicated, the following requests shall require you to furnish information and tangible materials pertaining to, in existence, or in effect for the whole or any part of the period from January 1, 2000 through and including the date of your response.
9. Responses must be complete when made, and must be supplemented with subsequently acquired information at the time such information is available.
10. In the event that a claim of privilege is invoked as the reason for not responding to discovery, the nature of the information with respect to which privilege is claimed shall be set forth in responses together with the type of privilege claimed and a statement of all circumstances upon which the respondent to discovery will rely to support such a claim of privilege (i.e. provide a privilege log). Respondent to the discovery must a) identify (see definition) the individual, entity, act, communication, and/or document that is the subject of the withheld information based upon the privilege claim, b) identify all persons to whom the information has already been revealed, and c) provide the basis upon which the information is being withheld and the reason that the information is not provided in discovery.

## **REQUESTS FOR ADMISSION**

RFA-1. Admit or deny that charges to Residential Utility customers authorized under the Stipulation will increase from the charges to these customers under AEP Ohio's filed a) Application, and b) Amended Application.

**RESPONSE:**

RFA-2. Admit or deny that Sierra Club supports and/or approves of the Stipulation.

**RESPONSE:**

RFA-3. Admit or deny that Sierra Club agrees with and/or supports Section L of the Stipulation.

**RESPONSE:**

RFA-4. Admit or deny that Sierra Club agrees with and/or supports Section K of the Stipulation.

**RESPONSE:**

RFA-5. Admit or deny that Sierra Club agrees with and/or supports Section K of the Stipulation.

**RESPONSE:**

## **INTERROGATORIES**

In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

INT-1. Identify the person(s) who prepared or assisted in the preparation of responses to these discovery requests, indicating, for each person, the discovery request to which he or she assisted in responding.

**RESPONSE:**

INT-2. Identify all experts, consultants, and/or outside counsel retained or employed by Sierra Club that assisted in reviewing and/or analyzing the Stipulation in this matter.

**RESPONSE:**

INT-3. Please identify any individuals who participated on behalf of Sierra Club in discussions with AEP Ohio which resulted in the Stipulation.

**RESPONSE:**

INT-4. Did Sierra Club conduct or direct anyone to conduct any analysis of the Stipulation?

**RESPONSE:**

INT-5. If the answer to INT-4 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

INT-6. Did Sierra Club conduct or direct anyone to conduct a bill impact analysis regarding how the Stipulation will affect Residential Utility customers?

**RESPONSE:**

INT-7. If the answer to INT-6 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

INT-8. Please identify the exact provision(s) in the Stipulation associated with the following footnotes:

- a. footnote 1;
- b. footnote 2;
- c. footnote 3;
- d. footnote 14; and
- e. footnote 18.

**RESPONSE:**

INT-9. Please define the word “oppose” as it is used in the following:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**



INT-10. Explain why Sierra Club agreed not to oppose the following provisions of the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

INT-11. Did Sierra Club conduct or direct anyone to conduct any analysis of the following provision(s) the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

INT-12. If the answer to INT-11 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

INT-13. Is Sierra Club participating in the following provisions of the Stipulation?

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

INT-14. If the response to INT-13 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-15. If the response to INT-13 is positive, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-16. If the response to INT-13 is negative, why is Sierra Club not participating in the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-17. Does Sierra Club agree, approve of and/or support the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

INT-18. If the response to INT-17 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-19. If the response to INT-17 is positive, why is Sierra Club not participating in the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-20. Please identify the exact provision(s) in the Stipulation associated with the following footnotes:

- a. footnote 4;
- b. footnote 5;
- c. footnote 6;
- d. footnote 7; and
- e. footnote 15.

**RESPONSE:**

INT-21. In reference to the Stipulation, please define the word “oppose” as it is used in the following:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

INT-22. In reference to the Stipulation, please define the word “participate” as it is used in the following:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

INT-23. Explain why Sierra Club agreed not to oppose the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 1.

**RESPONSE:**

INT-24. Explain why Sierra Club agreed not to participate in the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

INT-25. Did Sierra Club conduct or direct anyone to conduct any analysis of the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

INT-26. If the answer to INT-25 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

INT-27. Does Sierra Club agree, approve of and/or support the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

INT-28. If the response to INT-27 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-29. If the response to INT-27 is negative, why did Sierra Club agree to not participate in the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-30. If the response to INT-27 is positive, why did Sierra Club agree to not participate in the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-31. Please identify the exact provision(s) in the Stipulation associated with footnote 16.

**RESPONSE:**

INT-32. Please define the word “support” as it is used in footnote 16 of the Stipulation.

**RESPONSE:**

INT-33. Explain why Sierra Club agreed to not be obligated to support footnote 16 of the Stipulation.

**RESPONSE:**

INT-34. Is Sierra Club “participating” in the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**



INT-35. Did Sierra Club conduct or direct anyone to conduct any analysis of the provision(s) associated footnote 16 of the Stipulation?

**RESPONSE:**

INT-36. If the answer to INT-35 is affirmative, please provide the following:

- e. The name of the individual(s) that conducted the analysis;
- f. The date of the analysis;
- g. A description of the analysis; and
- h. And, the results of the analysis.

**RESPONSE:**

INT-37. Does Sierra Club agree, approve of and/or support the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**

INT-38. If the response to INT-37 is negative, why did Sierra Club not agree to oppose footnote 16 of the Stipulation?

**RESPONSE:**

INT-39. If the response to INT-37 is positive, why did Sierra Club agree to not be obligated to support footnote 16 of the Stipulation?

**RESPONSE:**

INT-40. Does Sierra Club disagree, disapprove of and/or not support the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**

INT-41. If the response to INT-40 is positive, why did Sierra Club not agree to oppose footnote 16 of the Stipulation?

**RESPONSE:**

INT-42. If the response to INT-40 is negative, why did Sierra Club agree to not be obligated to support footnote 16 of the Stipulation?

**RESPONSE:**

INT-43. Please define the word “oppose” as it is used in the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

INT-44. Explain why Sierra Club agreed not to oppose the provision(s) associated with footnote 17 of the Stipulation.

**RESPONSE:**

INT-45. Explain why Sierra Club agreed not to be obligated to support the reasonableness of the provision(s) associated with footnote 17 of the Stipulation.

**RESPONSE:**

INT-46. Did Sierra Club conduct or direct anyone to conduct any analysis of the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

INT-47. If the answer to INT-46 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

INT-48. Does Sierra Club agree, approve of and/or support the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

INT-49. If the response to INT-48 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-50. If the response to INT-48 is negative, why did Sierra Club agree to sign the Stipulation?

**RESPONSE:**

INT-51. Does Sierra Club disagree, disapprove of and/or not support the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

INT-52. If the response to INT-51 is positive, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

INT-53. Please identify all persons that participated in negotiations and/or conversations related to the Stipulation on behalf of Sierra Club.

**RESPONSE:**

INT-54. Please identify how many times Sierra Club, or a representative on behalf of Sierra Club, had discussions, communications, and/or meetings with AEP Ohio regarding terms of the Stipulation.

**RESPONSE:**

INT-55. Please identify the dates of each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

INT-56. Please identify all persons in attendance at each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

INT-57. Please identify the length of time of each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

INT-58. For AEP Ohio how much will Residential electric utility customers' bills increase under the terms of the Stipulation for each of the following years:

- a. 2016;
- b. 2017;
- c. 2018;
- d. 2019;
- e. 2020;
- f. 2021;
- g. 2022;
- h. 2023; and
- i. 2024?

**RESPONSE:**

INT-59. When did Sierra Club first enter into negotiations with AEP Ohio in this proceeding?

**RESPONSE:**

INT-60. Does Sierra Club believe that all portions of the Application that are not addressed by the Stipulation should be approved by the PUCO as originally proposed by AEP Ohio?

**RESPONSE:**

## **REQUESTS FOR PRODUCTION OF DOCUMENTS**

- RPD-1. Please provide a copy of any documents, contracts, agreements, and/or communications requested to be identified in OCC-INT. Nos. 01-60.
- RPD-2. Please provide all documents referred to/or used to respond to the requests for admission and/or interrogatories in this set of discovery.
- RPD-3. Please provide a copy of all agreements between AEP Ohio and Sierra Club relating to the Stipulation.
- RPD-4. Please provide all documents relied upon to support the statement in Section L of the Stipulation: “The Signatory Parties agree that the Stipulation preserves and advances the positive results of the MRO v. ESP test under R.C. 4928.143(C) as found in the *ESP III Order*.”

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Ohio Consumers' Counsel's Requests for Admissions, Interrogatories and Requests for Production of Documents Propounded Upon Sierra Club, First Set for the Joint Stipulation and Recommendation*, was served upon the persons listed below via electronic transmission this 17 day of December, 2015.

/s/ Kevin F. Moore

Kevin F. Moore

Assistant Consumers' Counsel

## **SERVICE LIST**

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## **Attachment 2**

**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	)	Case No. 14-1694-EL-AAM
Power Company for Approval of Certain	)	
Accounting Authority.	)	

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**SIERRA CLUB'S RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL'S  
FIRST SET REQUESTS FOR ADMISSION, INTERROGATORIES, AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED UPON SIERRA CLUB**

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Sierra Club hereby submits its responses and objections to the Ohio Consumers' Counsel's ("OCC") First Set of Requests for Admission, Interrogatories, and Requests for Production of Documents Propounded Upon Sierra Club.

**GENERAL OBJECTIONS**

- A. Sierra Club objects to requests for information that are not relevant to the above-referenced proceedings. O.A.C. 4901-1-16(B).
- B. Sierra Club objects to requests for information that are not "reasonably calculated to lead to the discovery of admissible evidence." O.A.C. 4901-1-16(B).
- C. Sierra Club objects to requests for information that are protected by the First Amendment to the United States Constitution and/or the Bill of Rights to the Ohio Constitution.
- D. Sierra Club objects to requests for information that are overly broad, unduly burdensome, oppressive, and calculated to take Sierra Club and its staff away

- from normal work activities, and require them to expend significant resources to provide complete and accurate answers to OCC's request for information, which are only of marginal value to OCC.
- E. Sierra Club reserves all of its evidentiary objections or other objections to the introduction or use of any response at any hearing in this action.
  - F. Sierra Club does not, by any response to any Request, waive any objections to that Request.
  - G. Sierra Club does not admit to the validity of any legal or factual contention asserted or assumed in the text of any Request.
  - H. Sierra Club reserves the right to assert additional objections as appropriate, and to amend or supplement these objections and responses as appropriate.
  - I. The foregoing general objections shall apply to each of the following Interrogatories and Requests whether or not restated in the response to any particular response.

### **REQUESTS FOR ADMISSION**

- RFA-1. Admit or deny that charges to Residential Utility customers authorized under the Stipulation will increase from the charges to these customers under AEP Ohio's filed a) Application, and b) Amended Application.

#### **RESPONSE:**

Sierra Club objects to this Request to the extent it seeks information that is protected by attorney-client privilege and work-product doctrine. Subject to and without waiving such objections, Sierra Club performed no such analysis.

Respondent: Tony Mendoza, Sierra Club Counsel

RFA-2. Admit or deny that Sierra Club supports and/or approves of the  
Stipulation.

**RESPONSE:**

The Joint Stipulation speaks for itself; Sierra Club agrees not to oppose the Stipulation.

Respondent: Tony Mendoza, Sierra Club Counsel

RFA-3. Admit or deny that Sierra Club agrees with and/or supports Section L of the  
Stipulation.

**RESPONSE:**

The Joint Stipulation, including Section L, speaks for itself; Sierra Club agrees not to oppose Section L of the Stipulation.

Respondent: Tony Mendoza, Sierra Club Counsel

RFA-4. Admit or deny that Sierra Club agrees with and/or supports Section K of the  
Stipulation.

**RESPONSE:**

The Joint Stipulation, including Section K, speaks for itself; Sierra Club agrees not to oppose Section K of the Stipulation.

Respondent: Tony Mendoza, Sierra Club Counsel

RFA-5. Admit or deny that Sierra Club agrees with and/or supports Section K of the  
Stipulation.

**RESPONSE:**

See Response to SC-RFA-4.

Respondent: Tony Mendoza, Sierra Club Counsel

### **INTERROGATORIES**

In accordance with Ohio Adm. Code 4901-1-16(D)(5), OCC is specifically requesting that all responses be supplemented with subsequently acquired information at the time such information is available.

INT-1. Identify the person(s) who prepared or assisted in the preparation of responses to these discovery requests, indicating, for each person, the discovery request to which he or she assisted in responding.

#### **RESPONSE:**

Counsel for the Sierra Club Tony Mendoza prepared these responses and counsel for Sierra Club Kristin Henry and Shannon Fisk reviewed these responses.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-2. Identify all experts, consultants, and/or outside counsel retained or employed by Sierra Club that assisted in reviewing and/or analyzing the Stipulation in this matter.

#### **RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, because information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges. Subject to and without waiving these objections, no expert or consultant assisted Sierra Club in reviewing or analyzing the Stipulation.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-3. Please identify any individuals who participated on behalf of Sierra Club in discussions with AEP Ohio which resulted in the Stipulation.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club objects to this request as overly broad, vague, and not calculated to lead to the discovery of relevant information. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Subject to and without waiving such objections, Sierra Club counsel and staff participated in discussions with AEP Ohio regarding the Stipulation.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-4. Did Sierra Club conduct or direct anyone to conduct any analysis of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges. Subject to and without waiving these objections,. Sierra Club counsel and staff reviewed the Stipulation. No formal analysis was conducted or requested by Sierra Club.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-5. If the answer to INT-4 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

Please see response to SC-INT-4.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-6. Did Sierra Club conduct or direct anyone to conduct a bill impact analysis regarding how the Stipulation will affect Residential Utility customers?

**RESPONSE:**

Sierra Club objects as this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Subject to and without waiving such objections, no such an analysis was conducted or requested by Sierra Club.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-7. If the answer to INT-6 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

Please see response to SC-INT-6.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-8. Please identify the exact provision(s) in the Stipulation associated with the following footnotes:

- a. footnote 1;
- b. footnote 2;
- c. footnote 3;
- d. footnote 14; and
- e. footnote 18.

**RESPONSE:**

The Joint Stipulation and the meanings of the referenced footnotes speak for themselves.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-9. Please define the word “oppose” as it is used in the following:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.



**RESPONSE:**

Sierra Club understands the word “oppose” in these referenced footnotes to have the standard American English definition.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-10. Explain why Sierra Club agreed not to oppose the following provisions of the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, because information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-11. Did Sierra Club conduct or direct anyone to conduct any analysis of the following provision(s) the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;

- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges. Subject to and without waiving these objections, Sierra Club performed no specific analysis related to the referenced footnotes.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-12. If the answer to INT-11 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

Please see response to SC-INT-11.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-13. Is Sierra Club participating in the following provisions of the Stipulation?

- a. Provisions associated with footnote 1;

- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

The Joint Stipulation speaks for itself.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-14. If the response to INT-13 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, because information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-15. If the response to INT-13 is positive, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, as information related

to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-16. If the response to INT-13 is negative, why is Sierra Club not participating in the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B), in part, because as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-17. Does Sierra Club agree, approve of and/or support the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 1;
- b. Provisions associated with footnote 2;
- c. Provisions associated with footnote 3;
- d. Provisions associated with footnote 14; and
- e. Provisions associated with footnote 18.

**RESPONSE:**

The Joint Stipulation speaks for itself; Sierra Club agrees not to oppose the referenced provisions.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-18. If the response to INT-17 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-19. If the response to INT-17 is positive, why is Sierra Club not participating in the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, because information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-20. Please identify the exact provision(s) in the Stipulation associated with the following footnotes:

a. footnote 4;

- b. footnote 5;
- c. footnote 6;
- d. footnote 7; and
- e. footnote 15.

**RESPONSE:**

The Joint Stipulation and the referenced footnotes speak for themselves.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-21. In reference to the Stipulation, please define the word “oppose” as it is used in the following:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

Sierra Club understands the word “oppose” in these referenced footnotes to have the standard American English definition.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-22. In reference to the Stipulation, please define the word “participate” as it is used in the following:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

Sierra Club understands the word “participate” in these referenced footnotes to have the standard American English definition.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-23. Explain why Sierra Club agreed not to oppose the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 1.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, because information

related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-24. Explain why Sierra Club agreed not to participate in the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-25. Did Sierra Club conduct or direct anyone to conduct any analysis of the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;
- b. Provisions associated with footnote 5;



- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges. Subject to and without waiving these objections, Sierra Club performed no specific analysis related to the referenced footnotes.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-26. If the answer to INT-25 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

See response to SC-INT-25.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-27. Does Sierra Club agree, approve of and/or support the following provision(s) of the Stipulation:

- a. Provisions associated with footnote 4;

- b. Provisions associated with footnote 5;
- c. Provisions associated with footnote 6;
- d. Provisions associated with footnote 7; and
- e. Provisions associated with footnote 15.

**RESPONSE:**

The Joint Stipulation and Sierra Club's position with respect to the referenced footnotes speaks for themselves.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-28. If the response to INT-27 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-29. If the response to INT-27 is negative, why did Sierra Club agree to not participate in the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-

client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-30. If the response to INT-27 is positive, why did Sierra Club agree to not participate in the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-31. Please identify the exact provision(s) in the Stipulation associated with footnote 16.

**RESPONSE:**

The Joint Stipulation, including footnote 16, speaks for itself.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-32. Please define the word "support" as it is used in footnote 16 of the Stipulation.

**RESPONSE:**

Sierra Club understands the word "support" in these referenced footnotes to have the standard American English definition.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-33. Explain why Sierra Club agreed to not be obligated to support footnote 16 of the Stipulation.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-34. Is Sierra Club “participating” in the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**

The Joint Stipulation, including footnote 16, speaks for itself.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-35. Did Sierra Club conduct or direct anyone to conduct any analysis of the provision(s) associated footnote 16 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-36. If the answer to INT-35 is affirmative, please provide the following:

- e. The name of the individual(s) that conducted the analysis;
- f. The date of the analysis;
- g. A description of the analysis; and
- h. And, the results of the analysis.

**RESPONSE:**

See response to SC-INT-35.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-37. Does Sierra Club agree, approve of and/or support the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**

The Joint Stipulation, including footnote 16, speaks for itself; Sierra Club does not oppose the provision.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-38. If the response to INT-37 is negative, why did Sierra Club not agree to oppose footnote 16 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-

client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-39. If the response to INT-37 is positive, why did Sierra Club agree to not be obligated to support footnote 16 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B), in part, as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-40. Does Sierra Club disagree, disapprove of and/or not support the provision(s) associated with footnote 16 of the Stipulation?

**RESPONSE:**

See Response to INT-37.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-41. If the response to INT-40 is positive, why did Sierra Club not agree to oppose footnote 16 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club

further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-42. If the response to INT-40 is negative, why did Sierra Club agree to not be obligated to support footnote 16 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-43. Please define the word "oppose" as it is used in the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

Sierra Club understands the word "oppose" in these referenced footnote to have the standard American English definition.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-44. Explain why Sierra Club agreed not to oppose the provision(s) associated with footnote 17 of the Stipulation.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-45. Explain why Sierra Club agreed not to be obligated to support the reasonableness of the provision(s) associated with footnote 17 of the Stipulation.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-46. Did Sierra Club conduct or direct anyone to conduct any analysis of the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel



INT-47. If the answer to INT-46 is affirmative, please provide the following:

- a. The name of the individual(s) that conducted the analysis;
- b. The date of the analysis;
- c. A description of the analysis; and
- d. And, the results of the analysis.

**RESPONSE:**

See response to SC-INT-46.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-48. Does Sierra Club agree, approve of and/or support the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

The Joint Stipulation, including footnote 17, speak for itself; Sierra Club agrees not to oppose the provision.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-49. If the response to INT-48 is negative, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-50. If the response to INT-48 is negative, why did Sierra Club agree to sign the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-51. Does Sierra Club disagree, disapprove of and/or not support the provision(s) associated with footnote 17 of the Stipulation?

**RESPONSE:**

See Response to INT-48.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-52. If the response to INT-51 is positive, why did Sierra Club agree to not oppose the associated provision(s) of the Stipulation?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-53. Please identify all persons that participated in negotiations and/or conversations related to the Stipulation on behalf of Sierra Club.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-54. Please identify how many times Sierra Club, or a representative on behalf of Sierra Club, had discussions, communications, and/or meetings with AEP Ohio regarding terms of the Stipulation.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-55. Please identify the dates of each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club

further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-56. Please identify all persons in attendance at each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-57. Please identify the length of time of each discussion, communication, and/or meeting identified in your response to OCC INT-54.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-58. For AEP Ohio how much will Residential electric utility customers' bills increase under the terms of the Stipulation for each of the following years:

- a. 2016;
- b. 2017;
- c. 2018;
- d. 2019;
- e. 2020;
- f. 2021;
- g. 2022;
- h. 2023; and
- i. 2024?

**RESPONSE:**

Sierra Club performed no such analysis.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-59. When did Sierra Club first enter into negotiations with AEP Ohio in this proceeding?

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges.

Respondent: Tony Mendoza, Sierra Club Counsel

INT-60. Does Sierra Club believe that all portions of the Application that are not addressed by the Stipulation should be approved by the PUCO as originally proposed by AEP Ohio?

**RESPONSE:**

Sierra Club objects to this request as overly broad, vague, and not calculated to lead to the discovery of relevant information.

Respondent: Tony Mendoza, Sierra Club Counsel

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

RPD-1. Please provide a copy of any documents, contracts, agreements, and/or communications requested to be identified in OCC-INT. Nos. 01-60.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club’s First Amendment rights and privileges. Subject to and without waiving these objections, there are no responsive documents not subject to privilege or other protections.

Respondent: Tony Mendoza, Sierra Club Counsel

RPD-2. Please provide all documents referred to/or used to respond to the requests for admission and/or interrogatories in this set of discovery.

**RESPONSE:**

Sierra Club objects to this request as it seeks information that is not relevant to and outside the scope of this proceeding and is not “reasonably calculated to lead to the discovery of admissible evidence,” O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club

further objects that this Interrogatory seeks information that is protected by attorney-client privilege and work-product doctrine. Sierra Club also objects to this request as it impinges on Sierra Club's First Amendment rights and privileges. Subject to and without waiving these objections, there are no responsive documents not subject to privilege or other protections.

Respondent: Tony Mendoza, Sierra Club Counsel

RPD-3. Please provide a copy of all agreements between AEP Ohio and Sierra Club relating to the Stipulation.

**RESPONSE:**

Sierra Club is providing a copy of a contract between Sierra Club and AEP Generation Resources, Inc., executed on December 14, 2015.

Respondent: Tony Mendoza, Sierra Club Counsel

RPD-4. Please provide all documents relied upon to support the statement in Section L of the Stipulation: "The Signatory Parties agree that the Stipulation preserves and advances the positive results of the MRO v. ESP test under R.C. 4928.143(C) as found in the *ESP III Order*."

**RESPONSE:**

Sierra Club objects to this Request as it seeks information that is not relevant to and outside the scope of this proceeding and is not "reasonably calculated to lead to the discovery of admissible evidence," O.A.C. 4901-1-16(B) as information related to confidential settlement discussions is not admissible in this proceeding. Sierra Club objects to this request as burdensome, overly broad, vague, and not calculated to lead to the discovery of relevant information. Sierra Club further objects that this Request seeks information that is protected by attorney-client privilege and work-product doctrine. . Subject to and without waiving these objections, there are no responsive documents not subject to privilege or other protections.

Respondent: Tony Mendoza, Sierra Club Counsel

\* \* \*

Dated: December 23, 2015

Respectfully submitted,

/s/ Tony G. Mendoza

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*Attorneys for Sierra Club*



## CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Sierra Club's Response to the Office of the Ohio Consumers' Counsel's 1<sup>st</sup> Set Requests for Admission, Interrogatories, and Requests for Production of Documents Propounded upon Sierra Club to the following parties via electronic mail.

Date: December 23, 2015

/s/ Tony G. Mendoza  
Tony G. Mendoza

## PERSONS SERVED

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## **Attachment 3**

**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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**NOTICE TO TAKE DEPOSITIONS  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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Pursuant to Ohio Adm. Code Rule 4901-1-21(B), please take notice that the Office of the Ohio Consumers' Counsel ("OCC") will take the oral deposition of Sierra Club employees who have knowledge and expertise regarding Ohio Power Company's ("AEP Ohio" or "Utility") proposal to enter into an affiliate power purchase agreement for inclusion in the power purchase agreement rider, the Joint Stipulation and Recommendation ("Joint Stipulation") filed on December 15, 2015 in this case, and Sierra Club's position regarding the Joint Stipulation.

OCC seeks to conduct the deposition of these individual(s) upon oral examination at OCC's offices, 10 W. Broad St., 18<sup>th</sup> Floor, Columbus, Ohio, 43215, at 1 p.m.. beginning on Wednesday, December 30, 2015. These depositions will continue, from day to day, except for holidays and weekends, until completed. Each deponent will appear at

the OCC at the designated time and date with all requested documents (identified below) and remain present until deposed.

The depositions will be taken of the aforementioned deponents on relevant topics within the scope of these proceedings, including but not limited to, AEP Ohio's proposal to enter into an affiliate power purchase agreement for inclusion in the power purchase agreement rider, the Joint Stipulation and Recommendation filed on December 15, 2015 in this case, AEP Ohio's Application filed on October 3, 2014, the evidentiary hearing, Joint Stipulation negotiations, and the settlement process. The depositions will be taken upon oral examination (as upon cross-examination) before an officer authorized by law to take depositions.

Pursuant to Ohio Adm. Code Rules 4901-1-21(E) and 4901-1-20, each deponent is requested to produce, two hours prior to his/her deposition, all documents relating to his/her responsibilities with respect to the Joint Stipulation in Case Nos. 14-1693-EL-RDR and Case No. 14-1694-EL-AAM ,and responses to discovery that were authored by the deponent or were provided to OCC with input from the deponent(s). Additionally, the deponent(s) shall bring any documents in Sierra Club's possession that Sierra Club relied upon to determine whether to sign the Joint Stipulation.

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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(willing to accept email service)

**Outside Counsel for the Office of the  
Ohio Consumers' Counsel**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice to Take Depositions and Requests for Production of Documents was served via electronic service upon the parties this 23rd day of December, 2015.

/s/ William J. Michael

William J. Michael

Assistant Consumers' Counsel

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## **Attachment 4**



December 29, 2015

Barcy F. McNeal, Secretary  
Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street, 11th Floor  
Columbus, Ohio 43215

Re: Objection to Notice of Deposition – Case Nos. 14-1693-EL-RDR, et al.

Dear Secretary McNeal:

On December 23, 2015, Ohio Consumers' Counsel ("OCC") filed a notice to take the deposition(s) of Sierra Club employee(s) on December 30, 2015 with knowledge and expertise in three areas: (1) AEP Ohio's proposed revised PPA and its inclusion in the power purchase agreement rider; (2) the Joint Stipulation filed on December 15, 2015; and (3) Sierra Club's position regarding the Joint Stipulation. Sierra Club objects to OCC's Notice as its request is unreasonable and oppressive as it seeks information that is duplicative, about confidential settlement negotiations that is not likely to lead to admissible evidence, that is protected by attorney-client privilege, and impinges on Sierra Club's First Amendment rights. Based on these objections, Sierra Club does not intend to produce a witness for deposition on December 30, 2015.

### **Background**

On December 20, 2013, AEP Ohio filed an Application in its most recent Electric Security Plan ("ESP") proceeding (Case Nos. 13-2385-EL-SSO et al.) seeking the establishment of a Power Purchase Agreement ("PPA") Rider and the inclusion in the PPA Rider of the net impacts of AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by the Ohio Valley Electric Corporation's ("OVEC PPA"). On February 25, 2015, the Commission issued an Opinion and Order approving the PPA Rider on a placeholder basis (Case Nos. 13-2385-EL-SSO et al., Opinion and Order, at pages 25-27 (February 25, 2015) (the *ESP III Order*)). On October 3, 2014, AEP Ohio filed an Application in this proceeding – and on May 15, 2015, AEP Ohio filed an Amended Application in this proceeding – seeking inclusion of a new affiliate power purchase agreement between Ohio Power Company ("AEP Ohio") and AEP Generation Resources, Inc. ("Affiliated PPA"), as well as the net impacts of the OVEC PPA, in the PPA Rider. An evidentiary hearing was held in this proceeding, starting on September 28, 2015 and ending on November 3, 2015, with the parties sponsoring and examining thirty-seven witnesses. Sierra Club submitted testimony and supplemental testimony on AEP Ohio's Amended Application. Sierra Club's expert witness was deposed twice prior to testifying at the hearing.



On December 14, 2015, AEP Ohio and nine other Signatory Parties entered into a Joint Stipulation and Recommendation (“Joint Stipulation”) that proposes to resolve all of the issues raised in this proceeding. The Joint Stipulation is based, in part, upon a proposal by AEP Ohio to sign a revised affiliate power purchase agreement between AEP Ohio and AEP Generation Resources, Inc. (“Revised Affiliate PPA”). Sierra Club was one of the Signatory Parties to the Joint Stipulation.

On December 14, 2015, AEP Ohio submitted the testimony of William Allen describing and supporting the Joint Stipulation. AEP Ohio made William Allen available for deposition on December 23, 2015. No other witness has submitted testimony to support the Stipulation.

On December 17, 2015, OCC served written discovery on Sierra Club asking broad questions about the settlement discussions and about Sierra Club’s rationale for entering into the Joint Stipulation and agreeing not to oppose or abstain from various provisions in the Joint Stipulation. Sierra Club responded to these discovery requests on December 23, 2015.

On December 23, 2015, Ohio Consumers’ Counsel filed a notice to take the deposition(s) of Sierra Club employee(s) on December 30, 2015 with knowledge and expertise in three areas: (1) AEP Ohio’s proposed revised PPA and its inclusion in the power purchase agreement rider; (2) the Joint Stipulation filed on December 15, 2015; and (3) Sierra Club’s position regarding the Joint Stipulation. OCC’s notice was filed pursuant to OAC 4901-1-21(B), which states “[a]ny party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to the deponent, to all parties, and to the commission. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification.”

### **Sierra Club’s Objection’s to OCC’s Deposition Notice**

Sierra Club objects to OCC’s request that Sierra Club present a witness for deposition as the request is unreasonable and oppressive and not likely to lead to the discovery of admissible evidence for at least four reasons.

First, Sierra Club objects that OCC’s Notice of Deposition is duplicative. Sierra Club submitted Direct and Supplemental Testimony at an earlier stage of this proceeding. Sierra Club’s expert witness was deposed twice and testified at the earlier proceeding. Sierra Club has not and does not intend to present any testimony or witness in support of the Joint Stipulation. Sierra Club’s position regarding the Stipulation is self-evidence from the document itself. Moreover, AEP Ohio Witness Allen has already submitted pre-filed testimony, was deposed regarding the Joint Stipulation, and intends to testify on January 4, 2016 regarding the Joint Stipulation.

Second, OCC in its written discovery and during a meet-and-confer conference indicated that it intends to ask questions about the settlement negotiations that went on between Sierra Club and AEP Ohio. While Sierra Club is aware that the state of Ohio does not recognize an absolute settlement privilege, see *Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 300, that is not the reason Sierra Club objects to the Deposition Notice. The Commission’s procedural rules generally do not permit the admission of evidence related to settlement negotiations. See O.A.C. 4901-1-26. The information sought by OCC about the settlement negotiations may be discoverable only if the information sought is reasonably calculated to lead to the discovery of admissible

evidence. O.A.C. 4901-1-16. However, the discovery requests, many of which seek privileged explanations for why Sierra Club decided to footnote out of certain provisions of the Stipulation, cannot be construed to be reasonably calculated to lead to admissible evidence, and OCC cannot cure this problem by simply asserting that the information sought to be discovered is relevant to the prongs of the Commission's three-prong test for the consideration of stipulations. *See, e.g., In re Vectren*, 2007 WL 738508, Case No. 05-1444-GA-UNC (Mar. 7, 2007). Sierra Club has already responded to the OCC discovery requests about the settlement negotiations that could have led to the discovery of admissible information; Sierra Club noted that it had not carried out certain analyses about particular provisions of the stipulation, and provided a copy of the bilateral agreement entered into by Sierra Club and AEP Generation Resources. This is consistent with the holding in *Ohio Consumers Counsel*.

Third, Commission rules permit discovery of "any matter, not privileged, which is relevant to the subject matter of the proceeding." O.A.C. 4901-1-16(B) (emphasis added). The Commission protects privileged matters from discovery. *See, e.g., In the Matter of the Complaint of LEEMar Steel Company, Inc. v. Ohio Bell Telephone Company*, Case No 84-360-TP-CSS (Sept. 11, 1984). The Commission and the state of Ohio recognize both attorney-client and work product privilege. *See, e.g., R.C. 2317.02(A); Jackson v. Greger*, 110 Ohio St.3d 488.

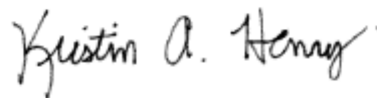
OCC wants to know why Sierra Club signed the Joint Stipulation and why Sierra Club agreed not to oppose or abstain from certain provisions in the Joint Stipulation. Sierra Club's rationale for each of these decisions is based on confidential communications between attorneys and client in which the attorneys shared their thoughts on relevant facts, legal theories, and strategies so that their client could make an informed decision. The two are inextricably connected. There is no way to parse out Sierra Club's rationale for certain decisions from attorney communications and advice. So the rationale for why Sierra Club made certain decisions with regard to the entire Joint Stipulation and its various provisions is protected from discovery.

Finally, OCC's intent to probe Sierra Club's rationale for signing the Joint Stipulation and including various footnotes impinges on Sierra Club's First Amendment privilege on information reflecting advocacy communications and internal strategy deliberations. Disclosure of Sierra Club's rationale for such decisions would infringe on Sierra Club's First Amendment associational and free speech rights by chilling its participation in political and civic activities and deterring the free flow of information within the organization. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1157, 1162-63 (9th Cir. 2010) (citing *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963)); *AFL-CIO v. FEC*, 333 F.3d 168, 176-77 (D.C. Cir. 2003); *City of Greenville v. Syngenta Crop Prot., Inc.*, Case Nos. 11-mc-10; 11-mc-1031; and 11-mc-1032, 2011 WL 5118601, at \*6-10 (C.D. Ill. Oct. 27, 2011).

For the above reasons, Sierra Club does not intend to produce a witness for deposition on December 30, 2015. Sierra Club is not at this time filing a motion for a protective order from the Commission for two reasons. First, pursuant to O.A.C. 4901-1-24(B), Sierra Club cannot seek a protective order from the Commission until it "has exhausted all other reasonable means of resolving any differences with the party seeking discovery." Since December 24, 2015, Sierra Club counsel Kristin Henry has been in conversation with OCC counsel William Michael to determine if the two parties could come to any agreement on limitations on the scope of discovery that would resolve Sierra Club concerns. Those efforts have not been exhausted yet so a motion for a

protective order is premature. Second, Sierra Club has only been served with a Notice of Deposition and not a subpoena. If Sierra Club is served with a subpoena and it has exhausted efforts to resolve the differences regarding the scope of discovery, Sierra Club will file either a Motion to Quash or a Motion for a Protective Order. At this time such a motion is premature.

Best regards,

A handwritten signature in black ink that reads "Kristin A. Henry". The signature is written in a cursive, flowing style.

Kristin Henry  
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## **Attachment 5**

**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  
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**Outside Counsel for the Office of the  
Ohio Consumers' Counsel**

**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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**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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## **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

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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:** Mandy 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**

**12/31/2015 2:30:34 PM**

**in**

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

Summary: Motion to Quash the Subpoena or Motion to Modify the Scope of the Subpoena  
and for a Protective Order

electronically filed by Mr. Tony G. Mendoza on behalf of Sierra Club