**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to Ohio Revised Code Section 4928.143 in the Form of an Electric Security Plan.  In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Amend Tariffs, including its Certified Supplier Tariff, P.U.C.O. No. 20 and to Implement New Tariffs.  In the Matter of the Application of Duke Energy Ohio, Inc., for Accounting Authority, including any Necessary Deferrals. | )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No. 24-278-EL-SSO  Case No. 24-279-EL-ATA  Case No. 24-280-EL-AAM |

**MOTION FOR SUBPOENA *DUCES TECUM* FOR DESIGNATED REPRESENTATIVE OF OHIO DEPARTMENT OF TRANSPORTATION TO ATTEND AND TESTIFY AT DEPOSITION**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

To protect Ohio consumers, the Office of the Ohio Consumers’ Counsel (“OCC”) moves the PUCO to issue a subpoena *duces tecum* to the Ohio Department of Transportation (“ODOT”). ODOT should designate one or more of its officers, agents, employees, or other duly authorized persons to produce documents and present themselves for deposition. The deposition is scheduled to commence at 10:00 a.m. on October 15, 2024 at OCC’s office at 65 East State Street, Suite 700, Columbus, Ohio 43215 or such other date and time and at a location to be agreed upon between OCC and ODOT. ODOT’s designee(s) shall be made to produce documents and be deposed on matters known or reasonably available to ODOT regarding:

1. Communications between the Ohio Department of Transportation and Duke Energy regarding the impact of the Brent Spence Bridge Replacement Project on the West End Substation;
2. Communications between the Ohio Department of Transportation and Duke Energy regarding the relocation of the West End Substation;
3. Communications between the Ohio Department of Transportation and Duke Energy regarding the expected date when the West End Substation will cease operation; and
4. Communications between the Ohio Department of Transportation and Duke Energy regarding any request by Duke Energy for reimbursement for the cost of relocating the West End Substation.

This case concerns Duke’s proposed Electric Security Plan V (“ESP V”). Duke’s proposal will increase rates on an annual basis ranging from 1.7% at the outset, resulting in a final increase of 6.19% to 7.87% by the conclusion of the proposed ESP V.[[1]](#footnote-2) These charges are brought about through various riders, such as the Infrastructure Modernization Rider (“Rider IMR”). Under Rider IMR, Duke proposes to charge consumers $74.5 million each year from 2025-2028.[[2]](#footnote-3) A large portion of Rider IMR’s funding will go toward the replacement and upgrading of West End Substation in Cincinnati, Ohio.[[3]](#footnote-4) This substation falls within the region affected by the heavy construction of the Brent Spence Bridge Replacement Project.

OCC seeks a subpoena for a designee(s) of ODOT to produce documents and be deposed on the record regarding the Brent Spence Bridge Replacement Project. This information will serve to better assess and understand the potential impact the Brent Spence Bridge Replacement Project may have upon Duke’s West End Substation replacement.

The subpoena should require ODOT’s designee(s) to produce certain documents and to appear and present themselves for deposition on the record regarding the Brent Spence Bridge Replacement Project, its timetable, work schedule, and potential impact on Duke’s West End Substation and its replacement.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

John Finnigan (0018689)

Counsel of Record

John R. Varanese (0044176)

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

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(willing to accept service by e-mail)

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**MEMORANDUM IN SUPPORT**

# INTRODUCTION

Duke Energy filed its application for its fifth electric security plan on April 1, 2024. As described above, Rider IMR is a program under Duke’s proposed ESP V that will be used to fund the replacement of Duke’s West End Substation in Cincinnati. Meanwhile, ODOT is undertaking its Brent Spence Bridge Replacement Project in nearby proximity to Duke’s West End Substation.

It is essential to understand the impact such a large infrastructure project could have on the West End Substation replacement project. The impact could affect timetables and logistical concerns, potentially complicating or raising costs. These impacts must be understood in order to fully evaluate Duke’s proposed ESP V, particularly Rider IMR and the West End Substation replacement project.

# LAW AND ARGUMENT

The PUCO’s subpoena power is grounded in Ohio law and rules. Attorney Examiners are authorized to issue subpoenas.[[4]](#footnote-5) “A party may \*\*\* in a subpoena name a corporation, partnership, association, government agency, or municipal corporation and designate with reasonable particularity the matters on which examination is requested”[[5]](#footnote-6) and “[a] subpoena may require a person, other than a member of the commission staff, to attend and give testimony at a deposition, and to produce designated books, papers, documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code.”[[6]](#footnote-7) Further, “[t]he attendance of witnesses and production of documents may be compelled by subpoena as provided in rule 4901-1-25 of the Administrative Code.”[[7]](#footnote-8)

Subpoenas issued by the PUCO for production of documents and deposition are limited by the scope of discovery of proceedings before the PUCO.[[8]](#footnote-9) The scope of discovery in proceedings before the PUCO includes any information “which is relevant to the subject matter of the proceeding” so long as “the information sought appears reasonably related to the discovery of admissible evidence.”[[9]](#footnote-10)

In the instant matter, OCC requests the PUCO to issue a subpoena compelling ODOT to present a designee(s) and produce documents at a deposition. The scope and focus of the deposition will be the Brent Spence Bridge Replacement Project, its timetable, work schedule, and potential impact on Duke’s West End Substation and its replacement. This information is relevant to Duke’s ESP V as the Rider IMR costs provide the funding for the West End Substation replacement, and it is possible that the heavy infrastructure work of the Brent Spence Bridge Replacement Project could impact Duke’s West End Substation replacement due to the relative proximity of the two projects. Any impact ODOT’s infrastructure project could have upon Duke’s substation replacement must be known, acknowledged, and understood within the context of Rider IMR, its applicability and suitability to the West End Substation replacement, and its costs to customers. As this information is relevant to fully assessing Duke’s Rider IMR and proposed ESP V, OCC is entitled to a subpoena directed to ODOT for production of documents and deposition regarding the Brent Spence Bridge Replacement Project.

# CONCLUSION

For the reasons explained above, the PUCO should grant OCC’s motion and issue a subpoena *duces tecum* to ODOT. The PUCO should require ODOT to designate one or more of its officers, agents, employees, or other duly authorized persons to produce documents and present themselves for deposition in this case.

Respectfully submitted,

Maureen R. Willis (0020847)

Ohio Consumers’ Counsel

*/s/ John Finnigan*

John Finnigan (0018689)

Counsel of Record

John R. Varanese (0044176)

Thomas J. Brodbeck (0093920)

Assistant Consumers’ Counsel

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(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Subpoena *Duces Tecum* for Designated Representative of Ohio Department of Transportation to Attend and Testify at Deposition has been served electronically upon those persons listed below this 18th day of September 2024.

*/s/ John Finnigan* John Finnigan

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |
| --- | --- |
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STATE OF OHIO

PUBLIC UTILITIES COMMISSION

180 E. EAST BROAD STREET

COLUMBUS OHIO 43266-0573

Michael DeWine

GOVERNOR

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THE PUBLIC UTILITIES COMMISSION OF OHIO

SUBPOENA *DUCES TECUM*

TO: Ohio Department of Transportation

1980 W. Broad St.

Columbus, Ohio 43223

Upon application of the Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Department of Transportation is directed to provide, as a witness(es) to testify at a deposition, the person(s) with knowledge of the Brent Spence Bridge Replacement Project, its timetable, work schedule, and potential impact on Duke’s West End Substation and its replacement.

The designated Ohio Department of Transportation witness(es) shall appear and be deposed regarding this matter at 10:00 a.m. on October 15, 2024 at OCC’s office at 65 East State Street, Suite 700, Columbus, Ohio 43215 or such other date and time and at a location to be agreed upon between OCC and ODOT regarding the following topics:

1. Communications between the Ohio Department of Transportation and Duke Energy regarding the impact of the Brent Spence Bridge Replacement Project on the West End Substation;
2. Communications between the Ohio Department of Transportation and Duke Energy regarding the relocation of the West End Substation;
3. Communications between the Ohio Department of Transportation and Duke Energy regarding the expected date when the West End Substation will cease operation; and
4. Communications between the Ohio Department of Transportation and Duke Energy regarding any request by Duke Energy for reimbursement for the cost of relocating the West End Substation.

The designated Ohio Department of Transportation witness(es) shall produce the following documents to OCC three business days before the deposition date:

1. Copies of all communications between the Ohio Department of Transportation and Duke Energy regarding the impact of the Brent Spence Bridge Replacement Project on the West End Substation;
2. Copies of all communications between the Ohio Department of Transportation and Duke Energy regarding the relocation of the West End Substation;
3. Communications between the Ohio Department of Transportation and Duke Energy regarding the expected date when the West End Substation will cease operation;
4. Communications between the Ohio Department of Transportation and Duke Energy regarding any request by Duke Energy for reimbursement for the cost of relocating the West End Substation;
5. A representative map showing the present location of the existing Brent Spence Bridge in relation to the present location of the West End Substation;
6. A representative map showing the planned location of the new Brent Spence Bridge in relation to the present location of the West End Substation; and
7. A representative map showing the area of the present location of the West End Substation that will be occupied by construction equipment for the Brent Spence Bridge Replacement Project while the project is in progress.

Ohio Department of Transportation’s witness(es) is/are requested to appear at the beginning of the deposition and be available day-to-day to testify as a witness(es), as on cross-examination by OCC.

Dated at Columbus, Ohio, this ­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024.

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Administrative Law Judge

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.

1. Direct Testimony of Duke Witness James E. Ziokowski (April 1, 2024), Attachment JEZ-3 at 2. This may understate the actual amount of the increase because it appears that Duke included the commodity cost in its calculation. [↑](#footnote-ref-2)
2. Direct Testimony of Duke Witness Sarah E. Lawler (April 1, 2024) at 9. [↑](#footnote-ref-3)
3. Direct Testimony of Duke Witness Amy Spiller (April 1, 2024) at 15. [↑](#footnote-ref-4)
4. R.C. 4901.18. [↑](#footnote-ref-5)
5. O.A.C. 4901-1-21(F). [↑](#footnote-ref-6)
6. O.A.C. 4901-1-25(D). [↑](#footnote-ref-7)
7. O.A.C. 4901-1-25(A). [↑](#footnote-ref-8)
8. O.A.C. 4901-1-25. [↑](#footnote-ref-9)
9. OA.C. 4901-1-16(B). [↑](#footnote-ref-10)