

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Establish a ) Case No. 14-841-EL-SSO  
Standard Service Offer Pursuant to )  
Section 4928.143, Revised Code, in the )  
Form of an Electric Security Plan, )  
Accounting Modifications and Tariffs for )  
Generation Service. )

In the Matter of the Application of Duke )  
Energy Ohio for Authority to Amend its ) Case No. 14-842-EL-ATA  
Certified Supplier Tariff, P.U.C.O. )  
No. 20. )

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MOTION FOR SUBPOENA DUCES TECUM

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This proceeding involves Duke Energy Ohio's ("Duke" or "Utility") request for the Public Utilities Commission of Ohio ("PUCO" or "Commission") to require customers to guarantee profits on uneconomic generating units that are supposed to be deregulated. The Ohio Consumers' Counsel ("OCC")<sup>1</sup> respectfully moves the Commission, any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena compelling the Ohio Valley Electric Corporation ("OVEC") to produce a witness/witnesses to attend and give testimony at a deposition at the Offices of the Ohio Consumers' Counsel beginning October 6, 2014, or such other time that is mutually agreed upon by OCC and Counsel for OVEC.

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<sup>1</sup> Pursuant to Rule 4901-1-25 (D), Ohio Adm. Code.

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By this Motion, OCC is requesting that OVEC be ordered to produce OVEC's records custodian to testify regarding any documents<sup>2</sup> pertaining to requests for consent of a sale or transfer of a Sponsoring Company's interest in OVEC under the Amended and Restated Inter-Company Power Agreement Dated as of September 10, 2010 ("ICPA") since January 1, 2012, any and all written communications made or received pertaining to such requests, and any documents showing actions taken by any Sponsoring Company or OVEC regarding such requests for consent since January 1, 2012. OVEC's witness(es) shall attend and give testimony subject to oral examination as on cross-examination. Such witnesses shall bring with them the documents regarding which they shall provide testimony, including all documents within OVEC's possession, custody, or control related to: (i) A Sponsoring company or companies' request(s) for consent to sell or transfer ownership<sup>3</sup> of all or a

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<sup>2</sup> This includes any and all electronic communications of any type and any document of any type. For further reference, the definition of "document" 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.

<sup>3</sup> "Ownership" or "ownership shares" as used here includes all rights, title, interests, and obligations as used in Section 9.18 (and its subsections) of the ICPA.

portion of its OVEC ownership interest to an affiliate or third party since January 1, 2012; (ii) all OVEC Board Meeting minutes (including resolutions) that pertain to the issue of sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (iii) all committee or subcommittee meeting minutes pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party since January 1, 2012; (iv) all communications between OVEC (including OVEC's Board of Directors) and sponsoring companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (v) all communications between and among Sponsoring Companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (vi) any record of a vote or poll that occurred among the Sponsoring Companies pertaining to a Sponsoring Company's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012. Such documents should also be produced, and delivered to OCC at least two hour prior to his/her deposition, consistent with Ohio Adm. Code Rule 4901-1-25 (D).

The grounds for this Motion are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

BRUCE J. WESTON  
OHIO CONSUMERS' COUNSEL

  
Maureen R. Grady, Counsel of Record

Joseph P. Serio  
Edmund "Tad" Berger  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

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**MEMORANDUM IN SUPPORT**

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In this proceeding Duke Energy Ohio ("Duke") is seeking to charge its customers, through its proposed Price Stabilization Rider, the difference between the market value of its interest in Ohio Valley Electric Corporation ("OVEC") and its 9% share of OVEC costs for the duration of its OVEC entitlement, which is currently through 2040. Duke claims that this relief is necessitated by Duke's inability to sell or transfer its OVEC ownership interest to an affiliate or third party under the terms of the OVEC Inter-Company Power Agreement ("ICPA").

OCC has served discovery and taken several depositions inquiring into what actions have been taken to transfer Duke's interest in its OVEC assets to an affiliate or third party. OCC has taken the deposition of Duke's representative on the OVEC Board, Mr. Chuck Whitlock. OCC has also taken the deposition of OVEC's Chief Financial Officer, Jonathan Brodt. Based on these depositions, it appears that there may be documentation pertaining to the information requested in the Motion for Subpoena that will help to determine whether good faith efforts were taken to transfer Duke's OVEC ownership interest to an affiliate or third party.

In order to fully develop the record in this matter, the OCC intends to depose OVEC's records custodian as on cross-examination regarding the available documentation and is requesting a subpoena duces tecum for such documentation. OCC respectfully requests that its Motion for Subpoena herein be granted.

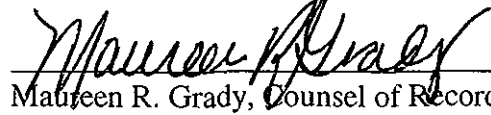
Each OVEC deponent shall bring with them all documents within OVEC's possession, custody, or control related to: (i) A Sponsoring company or companies' request(s) for consent to sell or transfer ownership<sup>4</sup> of all or a portion of any Sponsoring Company's OVEC ownership interest to an affiliate or third party since January 1, 2012; (ii) all OVEC Board Meeting minutes (including resolutions) that pertain to the issue of sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (iii) all committee or subcommittee meeting minutes pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party since January 1, 2012; (iv) all communications between OVEC (including OVEC's Board of Directors) and sponsoring companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (v) all communications between and among Sponsoring Companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (vi) any record of a vote or poll that occurred among the Sponsoring Companies pertaining to a Sponsoring Company's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012. Such documents should also be produced, and delivered to OCC at least two hour prior to his/her deposition, consistent with Ohio Adm. Code Rule 4901-1-25 (D).

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<sup>4</sup> "Ownership" or "ownership shares" as used here includes all rights, title, interests, and obligations as used in Section 9.18 (and its subsections) of the ICPA.

Respectfully submitted,

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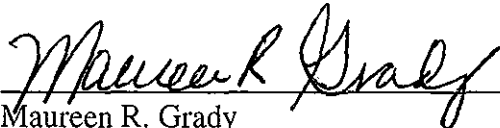
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion for Subpoena, filed this date in the above-captioned proceeding pursuant to Rule 4901-1-25(B), Ohio Admin. Code, was served via electronic transmission, this the 22nd day of September, 2014.

  
Maureen R. Grady  
Assistant Consumers' Counsel

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STATE OF OHIO  
PUBLIC UTILITIES COMMISSION  
180 EAST BROAD STREET  
COLUMBUS, OHIO 43266-0573

John Kasich  
GOVERNOR



THE PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA

**TO:** The Prentice-Hall Corporation System, Inc.  
Statutory Agent of the Ohio Valley Electric Corporation  
50 West Broad Street, Suite 1800  
Columbus, Ohio 43215

Upon application of Counsel for the Ohio Consumers' Counsel, you are hereby required to produce OVEC's records custodian to testify regarding any documents<sup>5</sup> pertaining to requests for

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<sup>5</sup> This includes any and all electronic communications of any type and any document of any type. For further reference, the definition of "document" 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.

consent of a sale or transfer of a Sponsoring Company's interest in OVEC under the ICPA since January 1, 2012, any and all written communications made or received, and any documents showing actions taken by any Sponsoring Company or OVEC regarding such requests for consent since January 1, 2012. Such witnesses will be deposed and will be subject to cross examination by the Ohio Consumers' Counsel in the proceeding entitled "In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service."

The depositions will take place at the offices of the Ohio Consumers' Counsel, 10 W. Broad St., Suite 1800, Columbus, Ohio 43215, on the 30<sup>th</sup> day of September, 2014 at 10 o'clock, a.m., or such other time that is mutually agreed upon by OCC and Counsel for OVEC.

Each OVEC deponent shall bring with them all documents within OVEC's possession, custody, or control related to: (i) A Sponsoring company or companies' request(s) for consent to sell or transfer ownership<sup>6</sup> of all or a portion of its OVEC ownership interest to an affiliate or third party since January 1, 2012; (ii) all OVEC Board Meeting minutes (including resolutions) that pertain to the issue of sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (iii) all committee or subcommittee meeting minutes pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party since January 1, 2012; (iv) all communications between OVEC (including OVEC's Board of Directors) and sponsoring companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (v) all communications between and among Sponsoring Companies pertaining to the sale or transfer of ownership shares of OVEC to an affiliate or third party, since January 1, 2012; (vi) any record of a vote or poll that occurred among the Sponsoring Companies pertaining to a Sponsoring Company's request to sell or transfer its ownership shares of OVEC to an affiliate or third party, since January 1, 2012. Such documents should also be produced, and delivered to OCC at least two hour prior to his/her deposition, consistent with Ohio Adm. Code Rule 4901-1-25 (D).

Dated at Columbus, Ohio, this 22<sup>nd</sup> day of September, 2014.



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**NOTICE:** Witness fees for attending under this subpoena are to be paid by the party at whose instance the witness is summoned, and every copy of this summons for the witness must contain a copy of this notice.

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