

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)
Edison Company, The Cleveland Electric) Case No. 14-1297-EL-SSO
Illuminating Company and The Toledo)
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant R.C.)
4928.143 in the Form of an Electric)
Security Plan.)

**MOTION FOR
SUBPOENA DUCES TECUM**

The Office of the Ohio Consumers' Counsel ("OCC") under Ohio Adm. Code 4901-1-21(B), hereby respectfully moves the Public Utilities Commission of Ohio ("Commission" or "PUCO"), any commissioner, the legal director, the deputy legal director, or the attorney examiner assigned to this case to issue a subpoena duces tecum compelling the Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company ("Utilities") to produce, two hours before the Deposition of Eileen Mikkelsen, the following materials:

- 1) discovery responses to OCC's (and other parties') discovery requests on the Third Supplemental Recommendation and Stipulation;
- 2) documents that she relied upon or referred to in producing her Fifth Supplemental Testimony, including any workpapers that support her Fifth Supplemental Testimony; and

- 3) information in the Companies' possession, custody, or control that pertain to the estimated typical bill impacts to customers that incorporate the provisions of the Third Supplemental Stipulation .

By mutual agreement, Ms. Mikkelsen's deposition is scheduled to begin at 9:30 a.m. on December 22, 2015 at 76 S. Main St., Akron, Ohio 44308. OCC filed and served its Notice To Take Deposition of Ms. Mikkelsen on December 15, 2015. In that notice, OCC requested that the Utilities make the above materials available to OCC two hours before the deposition begins. Subsequently, OCC was advised by Mr. Kutik, one of the Utilities' attorneys that it objected "to any requirement to provide documents before or at the deposition."

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

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Willis

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MEMORANDUM IN SUPPORT

In this phase of the proceeding, the PUCO will consider whether the Third Supplemental Stipulation and Recommendation 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 Third Supplemental Stipulation and its effect on the stipulated electric security plan of the Utilities.¹ And to give parties sufficient time and opportunity to present evidence on the stipulation, 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.

On December 15, 2015, OCC served a Notice of Deposition, requesting Ms. Mikkelsen to attend a deposition (on December 22, 2015 at 10:00 a.m.) at OCC's Office. OCC also asked that the Utilities make available to OCC, two hours prior to the deposition, certain limited materials.² Subsequently, OCC agreed to reschedule Ms. Mikkelsen's

¹ Entry (Dec. 9, 2015).

² Notice of Deposition (Dec. 15, 2015) (Attachment A).

deposition to 9:30 a.m., December 22, 2015, and agreed to depose Ms. Mikkelsen in Akron Ohio, instead of in Columbus. One of the Utilities' Attorneys, Mr. Kutik, however, advised OCC that it objected "to any requirement to provide documents before or at the deposition."³

But, under the PUCO's rules, parties may designate materials to be produced at the deposition.⁴ And the materials OCC designated are reasonably calculated to lead to the discovery of admissible evidence, the standard under the PUCO's rules.⁵ The documents pertain to discovery responses on the Third Supplemental Stipulation and Recommendation, supporting documents pertaining to Ms. Mikkelsen's testimony, and information the Utility has pertaining to bill impacts on customers. These documents are thought to be critical to understanding whether the Third Stipulation is in the public interest. The documents sought may help parties address the implications of adopting the Third Supplemental Stipulation.

The issuance of subpoenas to compel the Utilities to produce the documents requested is necessary because the Utilities' Counsel has indicated it will not voluntarily produce the documents. Otherwise, the discovery rights granted by the Attorney Examiner to parties, including OCC, will be unreasonably diminished.

³ It did claim that "We believe that you will nevertheless have all documents responsive to the notice." This rather cryptic message was not explained .

⁴ See Ohio Admin. Code 4901-1-21(B); 4901-1-25.

⁵ Ohio Admin. Code 4901-1-16.

The PUCO should grant OCC's Motion for Subpoenas and order the documents to be produced two hours prior to the scheduled deposition.

Respectfully submitted,

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OHIO CONSUMERS' COUNSEL

/s/ Maureen R. Willis

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(All Attorneys Will Accept Service Via
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Subpoena Duces Tecum, was served by electronic mail service, as agreed to by the following parties of record, this 18th day of December, 2015

/s/ Maureen R. Willis

Maureen R. Willis
Assistant Consumers' Counsel

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Illuminating Company and The Toledo)
Edison Company for Authority to Provide)
for a Standard Service Offer Pursuant)
R.C. 4928.143 in the Form of an Electric)
Security Plan.)

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

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 deposition of Eileen M. Mikkelsen on December 22, 2015 beginning at 10:00 a.m. The deposition shall be held at Office of the Ohio Consumers' Counsel at 10 W. Broad St., Columbus, Ohio 43215 and will continue from day to day, except for holidays and weekends, until completed.

Ms. Mikkelsen will be deposed on relevant topics within the scope of these proceedings, including but not limited to, the subject matter of her Fifth Supplemental Testimony and her knowledge and expertise on the electric security plan as modified by the Third Supplemental Recommendation and Stipulation. The deposition will be taken upon oral examination (as upon cross-examination) before an officer authorized by law to take depositions.

Under Ohio Adm. Code Rules 4901-1-21(E) and 4901-1-20, Ms. Mikkelsen shall make available to OCC, two hours before the start of the deposition, the following

documents: discovery responses to OCC's (and other parties') discovery requests on the Third Supplemental Recommendation and Stipulation; documents that she relied upon or referred to in producing her Fifth Supplemental Testimony, including any workpapers that support her Fifth Supplemental Testimony; and information in the Companies' possession, custody, or control that pertain to the estimated typical bill impacts to customers that incorporate the provisions of the Third Supplemental Stipulation .

Respectfully submitted,

BRUCE J. WESTON (0016973)
OHIO CONSUMERS' COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice to Take Deposition and Request for Production of Documents was served via electronic service upon the parties this 15th day of December 2015.

/s/ Larry Sauer

Larry Sauer
Assistant Consumers' Counsel

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**STATE OF OHIO
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John Kasich
GOVERNOR



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

TO: The Ohio Edison Company,
the Cleveland Electric Illuminating Company
and the Toledo Edison Company

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James W. Burk
Managing Counsel
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Upon application of Counsel for the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company ("the Utilities"), by its attorney or statutory agent, is hereby required to produce to OCC, two hours prior to the 9:30 a.m. December 22, 2015, deposition of Eileen Mikkelsen, the following documents:

- 1) discovery responses to OCC's (and other parties') discovery requests^{*} on the Third Supplemental Recommendation and Stipulation;
- 2) documents that she relied upon or referred to in producing her Fifth Supplemental Testimony, including any workpapers that support her Fifth Supplemental Testimony; and

** for any discovery requests served by December 15, 2015*

- 3) information in the Companies' possession, custody, or control that pertain to the estimated typical bill impacts to customers that incorporate the provisions of the Third Supplemental Stipulation .

The documents are to be produced in conjunction with the proceeding entitled "In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant R.C. 4928.143 in the Form of an Electric Security Plan."

The documents shall be produced on or before 7:30 a.m. on December 22, 2015 at 76 South Main Street, Akron, Ohio. Counsel for OCC shall be granted access to those documents at that time and location.

Dated at Columbus, Ohio, this 18th day of December, 2015.

BY:



TITLE:

Attorney Examiner

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 14-1297-EL-SSO

Summary: Subpoena Motion for Subpoena Duces Tecum by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.