

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify Rider PSR.)))	Case No. 17-0872-EL-RDR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Amend Rider PSR.)))	Case No. 17-0873-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.)))	Case No. 17-0874-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)))	Case No. 17-0032-EL-AIR
In the Matter of the application of Duke Energy Ohio, Inc., for Tariff Approval.))	Case No. 17-0033-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods.)))	Case No. 17-0034-EL-AAM
In the Matter of the Application of Duke Energy Ohio, Inc. 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.)))))))))	Case No. 17-1263-EL-SSO
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Amend Its Certified Supplier Tariff, P.U.C.O. No. 20.)))	Case No. 17-1264-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Vegetation Management Costs.)))	Case No. 17-1265-EL-AAM

**SIERRA CLUB’S MOTION FOR A SUBPOENA DUCES
TECUM DIRECTED TO
OHIO VALLEY ELECTRIC CORPORATION**

Under Ohio Administrative Code § 4901-1-25, Sierra Club respectfully moves the Public Utilities Commission of Ohio (the “Commission”), any commissioner, the legal director, the deputy legal director, or any attorney examiner to issue a subpoena duces tecum directed to Ohio Valley Electric Corporation (“OVEC”) that compels OVEC to produce a person (or persons) to attend and give deposition testimony upon oral examination at a location of Sierra Club’s and OVEC’s mutual agreement on June 13, 2018 at 9:00 a.m. ET. This subpoena compels OVEC to produce documents to Sierra Club covering the same topics by June 6, 2018 at 5 p.m. ET. *See* Ohio Admin. Code § 4901-1-25(D). Because Sierra Club seeks expedited treatment, this motion and the subpoena were presented to the attorney examiner in person. *See* Ohio Admin. Code § 4901-1-25(A)(2). The executed subpoena is attached as Exhibit A. Sierra Club is willing to negotiate the date, time, and location of the deposition(s) with OVEC, so long as the deposition(s) can be completed at least three business days before the intervenor testimony deadline that is set for June 20, 2018.

As described in the enclosed subpoena, Sierra Club requests that the Commission order OVEC to produce a person (or persons) with knowledge and expertise regarding the following topics, all of which are relevant to this proceeding:

1. Total actual and/or projected costs for each of the OVEC units for the period January 1, 2018 to May 31, 2025 for each of the Clifty Creek and Kyger Creek units, and the plants as a whole, including, without limitation:
 - a. Capital expenditures;
 - b. Non-fuel variable costs;
 - c. Fixed costs;
 - d. Operation and Maintenance costs;
 - e. Fuel costs; and
 - f. Labor costs.
2. Total actual and/or projected charges to Duke Energy Ohio or, if not available for Duke Energy Ohio, all Sponsoring Companies under the Inter-Company Power Agreement for the January 1, 2018 to May 31, 2025 period.
3. Any analysis that supports OVEC's statements in its "Complaint Or, In The Alternative, Request for Declaratory Order," filed with FERC on March 26, 2018, including:
 - a. The statement that a bankruptcy court's grant of FirstEnergy Solutions' motion for rejection of the Inter-Company Power Agreement would cause an increase in costs for remaining Sponsoring Companies of "hundreds of millions of dollars over the remaining life of the contract."
 - b. The statement that a new Sponsoring Company could be located to replace FirstEnergy Solutions at a "discount."
4. Any analysis performed by or on behalf of OVEC assessing compliance with, or compliance costs associated with, the following environmental requirements:
 - a. Coal Combustion Residuals Rule (40 C.F.R. Part 257);
 - b. Steam Electric Effluent Limitations Guidelines (40 C.F.R. Part 423);
 - c. Cross State Air Pollution Rule;
 - d. Ozone NAAQS;
 - e. Section 316(a) of the Clean Water Act; and
 - f. Section 316(b) of the Clean Water Act.

In addition to a witness (or witnesses), OVEC must provide all documents within its possession, custody, or control that are relevant to these topics. *See* Ohio Admin. Code § 4901-1-25(D). The date range for documents and information responsive to the subpoena is January 1, 2016 through the date of OVEC's response.

Each of these topics is relevant to the Commission's decision in this case. Duke Energy Ohio ("Duke") has put the projected economic value of its contract with OVEC at the heart of this proceeding. In response to discovery questions propounded to Duke by Sierra Club, Duke has averred that it does not have possession, custody, or control of documents related to certain OVEC information or has otherwise failed to produce adequate information about OVEC. Accordingly, obtaining this information and these documents is necessary for the development of an adequate record in this case. As further explained in the Memorandum in Support, Sierra Club respectfully requests that this motion be granted.

Dated: May 22, 2018

Respectfully submitted,

/s/ Tony Mendoza

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**MEMORANDUM IN SUPPORT OF
SIERRA CLUB’S MOTION FOR A SUBPOENA DUCES TECUM
DIRECTED TO
OHIO VALLEY ELECTRIC CORPORATION**

The Ohio Valley Electric Corporation (“OVEC”) operates two 1950s-built coal-burning plants, Clifty Creek in Madison, Indiana and Kyger Creek in Cheshire, Ohio, as well as a transmission system to connect its plants to the networks of various utilities. Duke Energy Ohio (“Duke”) and other utilities own shares of OVEC, with their rights and obligations generally governed by an Inter-Company Power Agreement (“ICPA”). In this proceeding, Duke seeks approval of, as relevant here, a “Price Stabilization Rider” (“Rider PSR”) that, if approved, would require Duke’s customers to pay the net costs or receive the net revenues of Duke’s 9% ownership share in OVEC through May 2025.¹ Projected costs for OVEC are, therefore, necessary for the Commission’s consider of Rider PSR, including information that is relevant to projecting OVEC costs, such as environmental compliance information.

Sierra Club’s subpoena also seeks information about the economic impact on OVEC of FirstEnergy Solutions’ potential exit from the ICPA. In a complaint filed before the Federal Energy Regulatory (“FERC”), OVEC has stated that the a bankruptcy court’s decision to grant a request by FirstEnergy Solutions to “reject” the ICPA would increase costs for other OVEC owners, such as Duke, by “hundreds of millions of dollars over the

¹ See Stipulation and Recommendation, dated April 13, 2018, pages 18-20.

remaining life of the contract.”² The risk of this increase in costs is plainly relevant to the Commission’s decision in this proceeding as Duke could charge those costs to its customers under Rider PSR.

Sierra Club has propounded discovery questions to Duke seeking information relevant to the projected OVEC costs and ICPA charges. In response, Duke has provided some relevant cost information. But Duke has repeatedly averred that certain cost and planning information related to OVEC is not in its possession.³ Duke’s response to Sierra Club POD-01-007, which sought environmental compliance information similar to subpoena Topic #4 herein, is representative on this issue (omitting Duke’s other objections):

[] Duke Energy Ohio is not in possession and control of OVEC information and particularly, information on an OVEC-unit basis. Duke Energy Ohio does not operate OVEC. Objecting further, this Interrogatory should more appropriately be directed to OVEC.

Sierra Club takes Duke at its word that this and other related discovery requests should be directed to OVEC, which indisputably is the operator of the OVEC units. To the

² “Complaint Or, In The Alternative, Request for Declaratory Order,” page 2, filed by OVEC before FERC on March 26, 2018.

³ As of today, Duke has responded to at least 17 Sierra Club discovery requests by stating that it lacks possession, custody, or control for OVEC cost or other OVEC-specific information. See Duke’s response SC-INT-01-01, SC-INT-01-02, SC-INT-01-03, SC-INT-01-04, SC-INT-01-05, SC-INT-01-07, SC-INT-01-11, SC-INT-01-13, SC-INT-01-14, SC-INT-01-16, SC-INT-01-18, SC-INT-01-19, SC-INT-01-20, SC-POD-01-07, SC-POD-01-08, SC-POD-01-14, and SC-POD-01-15.

extent that Duke does not have the requested information, OVEC is best placed to provide it.⁴

OVEC should be required to provide the requested information as described in the executed subpoena attached to Sierra Club's motion. The significant economic consequences of the Rider PSR for Duke's customers—essentially the costs and benefits of owning Duke's share of two large coal-burning plants through May 2025—mean that the Commission, customers, and interested parties are entitled to adequate information to forecast costs and risks for OVEC. In order to develop an adequate record in this case, Sierra Club seeks to depose persons(s) from OVEC and receive relevant documents from OVEC. Sierra Club respectfully asks that the Commission grant this motion.

Respectfully submitted,

/s/ Tony Mendoza

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⁴ To be clear, unlike the other Topics, Sierra Club has not sought information related to subpoena Topic #3 from Duke because doing so would have been futile given that Duke is not likely to have possession of OVEC's own analysis that supported OVEC's March 26, 2018 FERC filing.

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Attorneys for Sierra Club

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Sierra Club's Motion for Subpoena Duces Tecum Directed to Ohio Valley Electric Corporation has been served upon the following parties via electronic mail on May 22, 2018.

/s/ Tony Mendoza

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Case No. 17-0032-EL-AIR et al.

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Case No. 17-1263-EL-SSO et al.

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**BEFORE
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SUBPOENA DUCES TECUM

TO: Ohio Valley Electric Corporation
c/o Statutory Agent
THE PRENTICE-HALL CORPORATION SYSTEM, INC.
50 WEST BROAD STREET SUITE 1330
COLUMBUS, OH 43215

Upon application of Sierra Club, Ohio Valley Electric Corporation (“OVEC”) is hereby required to provide a person(s) with knowledge and expertise on the following topics:

1. Total actual and/or projected costs for each of the OVEC units for the period January 1, 2018 to May 31, 2025 for each of the Clifty Creek and Kyger Creek units, and the plants as a whole, including, without limitation:
 - a. Capital expenditures;
 - b. Non-fuel variable costs;
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3. Any analysis that supports OVEC’s statements in its “Complaint Or, In The Alternative, Request for Declaratory Order,” filed with FERC on March 26, 2018, including:
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 - b. The statement that a new Sponsoring Company could be located to replace FirstEnergy Solutions at a “discount.”
4. Any analysis performed by or on behalf of OVEC assessing compliance with, or compliance costs associated with, the following environmental requirements:

EXHIBIT A

- a. Coal Combustion Residuals Rule (40 C.F.R. Part 257);
- b. Steam Electric Effluent Limitations Guidelines (40 C.F.R. Part 423);
- c. Cross State Air Pollution Rule;
- d. Ozone NAAQS;
- e. Section 316(a) of the Clean Water Act; and
- f. Section 316(b) of the Clean Water Act.

This persons(s) is required to attend and give deposition testimony upon oral examination at a location of Sierra Club's and OVEC's mutual agreement on June 13, 2018 at 9:00 a.m. ET. The deponent(s) is required to attend from day-to-day until the deposition(s) is completed. Such persons(s) will be deposed and will be subject to cross examination by Sierra Club in the above-captioned proceeding.

In addition to a witness (or witnesses), OVEC must provide all documents within its possession, custody, or control that are relevant to the above-described topics. *See* Ohio Admin. Code § 4901-1-25(D). The date range for documents and information responsive to the subpoena is January 1, 2016 through the date of OVEC's response. OVEC is required to produce documents to Sierra Club covering these same topics to be received by June 8, 2018 at 5 p.m. Sierra Club's contact person for this subpoena is Tony Mendoza, Staff Attorney, tony.mendoza@sierraclub.org, (415) 977-5589, 2101 Webster St., 13th Floor, Oakland, CA 94612.

A handwritten signature in black ink, appearing to be 'D. J. [unclear]', is written over a horizontal line.

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.

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Case No(s). 17-0873-EL-ATA, 17-0872-EL-RDR, 17-0874-EL-AAM, 17-1263-EL-SSO, 17-1264-EL-ATA,

Summary: Motion for Subpoena Duces Tecum to Ohio Valley Electric Corporation
electronically filed by Mr. Richard C. Sahli on behalf of Sierra Club