

In the Matter of the OVEC Generation)
Purchase Rider Audits Required by R.C.) Case No. 21-477-EL-RDR
4928.148 for Duke Energy Ohio, Inc., the)
Dayton Power and Light Company, and)
AEP Ohio.)

The Office of the Ohio Consumers' Counsel ("OCC") moves for a subpoena of American Electric Power Company, Inc. ("AEP Inc."). AEP Inc. is the parent company of the Ohio Power Company ("AEP Ohio"), the electric distribution utility serving more than a million Ohioans. For this subpoena, OCC is seeking certain documents (and not deposition testimony), per our broad rights to discovery under Ohio law (R.C. 4903.082) and rule (O.A.C. 4901-1-16(B)) and per a state subpoena rule in O.A.C. 4901-1-25.

According to AEP Inc.’s most recent Form 10-Q that it filed at the U.S. Securities and Exchange Commission (“U.S. SEC”), the U.S. SEC issued two subpoenas to AEP Inc. AEP Inc. disclosed in the Form 10-Q that the U.S. SEC’s subpoenas relate to AEP Inc.’s efforts to support the passage of House Bill 6.¹ This OCC subpoena will require AEP Inc. to provide the U.S. SEC’s subpoenas to OCC.

This case is an investigation of subsidies (at consumer expense) received by AEP Ohio in 2020, per House Bill 6, for the coal power plants of the Ohio Valley Electric Corporation (“OVEC”). These coal plants are owned in part by Ohio electric distribution

¹ AEP, Inc. Form 10-Q at 182 (October 27, 2022).

utilities, including AEP Ohio. House Bill 6 authorized the consumer-funded subsidies for AEP Ohio, AES and Duke that are at issue in this case. Obtaining the U.S. SEC's subpoenas about AEP Inc. and House Bill 6 is reasonably calculated to lead to the discovery of admissible evidence.

This motion should be granted. It is more fully explained in the attached memorandum in support.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ John Finnigan
John Finnigan (0018689)
Counsel of Record
William J. Michael (0070921)
Assistant Consumers' Counsel

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I. INTRODUCTION

In May 2021, AEP received a subpoena from the SEC’s Division of Enforcement seeking various documents, including documents relating to the passage of HB 6 and documents relating to AEP’s policies and financial processes and controls. In August 2022, AEP received a second subpoena from the SEC seeking various additional documents relating to its ongoing inquiry. AEP is cooperating fully with the SEC’s investigation. Although the outcome of the SEC’s investigation cannot be predicted, management does not believe the results of this inquiry will have a material impact on financial condition, results of operations or cash flows.³

² The relevant page is attached to this pleading.

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1. Copies of the May 2021 and August 2022 subpoenas that AEP Inc. received from the U.S. SEC as referenced in AEP, Inc.'s Form 10-Q dated October 27, 2022, at page 182 and
2. Copies of all subpoenas that AEP Inc. (and any other AEP entity) received regarding Ohio House Bill 6 (as enacted in 2019).

II. ARGUMENT

A. The PUCO Attorney Examiner should grant OCC's motion and sign the subpoena per O.A.C. 4901-1-25.

The PUCO Attorney Examiner should grant OCC's motion and sign the subpoena. OCC satisfies the requirements of O.A.C. 4901-1-25 for granting its motion for subpoena. The Attorney Examiner should promptly provide the *signed* subpoena to OCC, as allowed under O.A.C. 4901-1-25(A)(1).

The signing of subpoenas should be performed as a ministerial act.⁴ After that, O.A.C. 4901-1-25 provides an opposing party the opportunity to file a motion to quash the signed subpoena. A subpoena may be quashed if it is unreasonable or oppressive under O.A.C. 4901-1-25(C), neither of which is applicable here.

The PUCO's subpoena power, among other things, facilitates parties' ability to conduct discovery per Ohio law and rules. Attorney examiners have authority to approve a request for a subpoena under R.C. 4901.18. Under O.A.C. 4901-1-25:

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 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,

⁴ See, e.g., *State v. Warner* (1990), 55 Ohio St.3d 31, 34, 564 N.E.2d 18; *State, ex rel. Dawson v. Roberts* (1956), 165 Ohio St. 341, 341, 135 N.E.2d 409.

⁵ O.A.C. 4901-1-21(F).

documents, or other tangible things within the scope of discovery set forth in rule 4901-1-16 of the Administrative Code.

The PUCO therefore has legal authority to issue the subpoena that OCC requests.

B. The PUCO Attorney Examiner should grant OCC's motion and sign the subpoena because OCC has the right to obtain the subpoenaed information as within OCC's broad rights of discovery under R.C. 4903.082 and rule.

O.A.C. 4901-1-16(B) provides for the scope of discovery:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.⁶

The PUCO's rule is similar to Ohio Civ. R. 26 (B)(1), which governs the scope of discovery in civil cases. Civ. R. 26(B) has been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.⁷

The PUCO has ruled that the "The policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side's industry or efforts."⁸ The PUCO's rules on discovery "do not create an additional field of combat to delay trials or to appropriate the Commission's time and resources; they are designed to confine discovery procedures to counsel and to

⁶ R.C. 4901-1-16(B).

⁷ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661 and *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St.3d 1479.

⁸ *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (March 17, 1987).

expedite the administration of the Commission proceedings.”⁹ The rules are also intended to “minimize commission intervention in the discovery process.”¹⁰ These rules are intended to facilitate full and reasonable discovery, consistent with the statutory discovery rights parties are afforded under R.C. 4903.082.

R.C. 4903.082 states that “[a]ll parties and intervenors shall be granted ample rights of discovery.”¹¹ The discovery statute was effective in 1983 as part of a regulatory reform. R.C. 4903.082 protects discovery rights for parties in PUCO cases.

In *In re FirstEnergy Advisors*, the Supreme Court of Ohio recently re-affirmed a party’s broad right to discovery in PUCO cases: “[I]ntervening parties in proceedings before PUCO also have a statutory right to discovery under R.C. 4903.082. And we have construed these provisions as allowing broad discovery of nonprivileged matters.”¹² Requests for production may elicit documents within the possession, custody, or control, of the party upon whom the discovery is served, under O.A.C. 4901-1-20.

Under this standard, OCC’s motion is grounded in law and rule and should be granted. The documents OCC seeks relate to AEP Inc.’s efforts to pass House Bill 6, which authorizes AEP Ohio to collect from consumers the OVEC subsidy costs that are at issue in this case. The subpoenas are reasonably calculated to lead to the discovery of

⁹ *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76 (emphasis added).

¹⁰ O.A.C. 4901-1-16(A).

¹¹ R.C. 4903.082. *See OCC v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789.

¹² *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, 166 Ohio St.3d 519, 529, 2021-Ohio-3630 at 15.

admissible evidence, per O.A.C. 4901-1-16(B), This OCC subpoena directed to AEP Inc. is necessary to obtain the information that was referenced in AEP Inc.'s Form 10-Q.¹³

III. CONCLUSION

The PUCO should grant OCC's motion seeking to subpoena information from AEP Inc. The motion is consistent with the subpoena rule and OCC's lawful rights to discovery.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ John Finnigan
John Finnigan (0018689)
Counsel of Record
William J. Michael (0070921)
Assistant Consumers' Counsel

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¹³ *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-03785 (S.D. Ohio), Order Granting Lead Plaintiff's Motion to Partially Lift the PSLRA Discovery Stay at 7 (2021), quoting *In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*, 2009 WL 4796169, at *2 (S.D.N.Y. November 16, 2009).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below
via electric transmission this 14th day of November 2022.

/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:

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Under O.A.C. 4901-1-25 and upon application of the Office of the Ohio Consumers' Counsel ("OCC"), American Electric Power Company, Inc. is hereby required to produce by December 5, 2022, the following documents at the offices of the Ohio Consumers' Counsel, 65 East State Street, Suite 700, Columbus, Ohio 43215:

1. Copies of the May 2021 and August 2022 subpoenas that AEP Inc. received from the U.S. SEC as referenced in AEP, Inc.'s Form 10-Q dated October 27, 2022, at page 182 and
2. Copies of all subpoenas that AEP Inc. (and any other AEP entity) received regarding Ohio House Bill 6 (as enacted in 2019).

The documents relate to the proceeding entitled "In the Matter of the OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio, Inc., the Dayton Power and Light Company and AEP Ohio, Case No. 21-477-EL-RDR."

Dated at Columbus, Ohio, this _____ day of November 2022.

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.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q**

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For The Quarterly Period Ended **September 30, 2022**

or
☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For The Transition Period from ____ to ____

Commission File Number	Registrants; Address and Telephone Number	States of Incorporation	I.R.S. Employer Identification Nos.
1-3525	AMERICAN ELECTRIC POWER CO INC.	New York	13-4922640
333-221643	AEP TEXAS INC.	Delaware	51-0007707
333-217143	AEP TRANSMISSION COMPANY, LLC	Delaware	46-1125168
1-3457	APPALACHIAN POWER COMPANY	Virginia	54-0124790
1-3570	INDIANA MICHIGAN POWER COMPANY	Indiana	35-0410455
1-6543	OHIO POWER COMPANY	Ohio	31-4271000
0-343	PUBLIC SERVICE COMPANY OF OKLAHOMA	Oklahoma	73-0410895
1-3146	SOUTHWESTERN ELECTRIC POWER COMPANY	Delaware	72-0323455
	1 Riverside Plaza, Columbus, Ohio 43215-2373		
	Telephone (614) 716-1000		

Securities registered pursuant to Section 12(b) of the Act:

Registrant	Title of each class	Trading Symbol	Name of Each Exchange on Which Registered
American Electric Power Company Inc.	Common Stock, \$6.50 par value	AEP	The NASDAQ Stock Market LLC
American Electric Power Company Inc.	6.125% Corporate Units	AEPPZ	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrants (1) have filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrants were required to file such reports), and (2) have been subject to such filing requirements for the past 90 days.

Yes ☒ No ☐

Indicate by check mark whether the registrants have submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrants were required to submit such files).

Yes ☒ No ☐

Indicate by check mark whether American Electric Power Company, Inc. is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large Accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Smaller reporting company ☐ Emerging growth company ☐

Indicate by check mark whether AEP Texas Inc., AEP Transmission Company, LLC, Appalachian Power Company, Indiana Michigan Power Company, Ohio Power Company, Public Service Company of Oklahoma and Southwestern Electric Power Company are large accelerated filers, accelerated filers, non-accelerated filers, smaller reporting companies, or emerging growth companies. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large Accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrants have elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

☐

Indicate by check mark whether the registrants are shell companies (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

AEP Texas Inc., AEP Transmission Company, LLC, Appalachian Power Company, Indiana Michigan Power Company, Ohio Power Company, Public Service Company of Oklahoma and Southwestern Electric Power Company meet the conditions set forth in General Instruction H(1)(a) and (b) of Form 10-Q and are therefore filing this Form 10-Q with the reduced disclosure format specified in General Instruction H(2) to Form 10-Q.

and the plaintiffs in the consolidated action filed an amended complaint. AEP filed a motion to dismiss on May 3, 2022 and briefing on the motion to dismiss has been completed. Discovery remains stayed pending the district court's ruling on the motion to dismiss. The plaintiff in the Ohio state court case advised that they no longer agreed to stay the proceedings, therefore, AEP filed a motion to continue the stays of proceedings on May 20, 2022 and the plaintiff filed an amended complaint on June 2, 2022. On June 15, 2022, the Ohio state court entered an order continuing the stays of that case until the resolution of the consolidated derivative actions pending in Ohio federal district court. The defendants will continue to defend against the claims. Management is unable to determine a range of potential losses that is reasonably possible of occurring.

In March 2021, AEP received a litigation demand letter from counsel representing a purported AEP shareholder. The litigation demand letter is directed to the Board of Directors of AEP and contains factual allegations involving HB 6 that are generally consistent with those in the derivative litigation filed in state and federal court. The letter demands, among other things, that the AEP Board undertake an independent investigation into alleged legal violations by directors and officers, and that, following such investigation, AEP commence a civil action for breaches of fiduciary duty and related claims and take appropriate disciplinary action against those individuals who allegedly harmed the company. The shareholder that sent the letter has since withdrawn the litigation demand, which is now terminated and of no further effect.

In May 2021, AEP received a subpoena from the SEC's Division of Enforcement seeking various documents, including documents relating to the passage of HB 6 and documents relating to AEP's policies and financial processes and controls. In August 2022, AEP received a second subpoena from the SEC seeking various additional documents relating to its ongoing inquiry. AEP is cooperating fully with the SEC's investigation. Although the outcome of the SEC's investigation cannot be predicted, management does not believe the results of this inquiry will have a material impact on financial condition, results of operations or cash flows.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

11/14/2022 12:18:26 PM

in

Case No(s). 21-0477-EL-RDR

Summary: Subpoena Motion for a Subpoena Duces Tecum to American Electric Power Company, Inc. by Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of Finnigan, John