





during the 2018-2019 period and to determine whether the utility's actions were in the best interest of retail ratepayers.<sup>3</sup> The auditor investigated issues such as: how OVEC bills utilities; how OVEC operates its coal plants and bids the output into the PJM Day-Ahead Energy Market; OVEC's environmental compliance spending; the power plant performance of the two units, capital expenditures, OVEC's fuel and operation and maintenance related expenses, and OVEC's capital budgeting process.<sup>4</sup>

As the actual operator of the plants, OVEC has this complete information. The Office of the Ohio Consumers' Counsel ("OCC") needs this information from OVEC to determine whether the costs and sales flowing through the RR were prudent and the utility's actions were in the best interest of retail ratepayers.

To protect consumers, OCC moves the PUCO to issue a subpoena *duces tecum* to OVEC. OVEC is required to designate one or more of its officers, agents, employees, or other duly authorized persons to testify on its behalf at deposition upon oral examination. OVEC's designee(s) shall be cross examined on matters known or reasonably available to OVEC, as described in OCC's Memorandum in Support.

The subpoena requires the OVEC designee(s) to appear at OCC's offices on July 27, 2023 at 10:00 a.m. to be subject to cross examination by OCC, day to day, until cross-examination is completed. The subpoena also requires OVEC to produce certain documents to OCC by July 20, 2023.

---

<sup>3</sup> Entry (Mar. 11, 2020).

<sup>4</sup> Audit Report (Oct. 7, 2020).

OCC requests an expedited ruling on its motion under O.A.C. 4901-1-12(C). OCC contacted parties to this case to determine if any party objected to the issuance of an expedited ruling without the filing of memoranda. OCC is unable to certify that no party has any objection to the issuance of an expedited ruling.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers' Counsel

*/s/ John Finnigan*  
William J. Michael (0070921)  
Counsel of Record – 20-165-EL-RDR  
John Finnigan (0018689)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Michael]: (614) 466-1291  
Telephone [Finnigan]: (614) 466-9585  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

**TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
II. LAW AND ARGUMENT .....	2
A. Issuing subpoenas to facilitate parties’ discovery is within the PUCO’s authority where, as here, the subpoenas seek information reasonably calculated to lead to the discovery of admissible evidence. ....	2
B. Under O.A.C. 4901-1-25, OCC is entitled to seek a subpoena <i>duces tecum</i> to command a designated representative(s) of OVEC to produce documents, attend and give testimony at deposition and at the evidentiary hearing. ....	4
C. An expedited ruling is requested.....	5
III. CONCLUSION.....	6



deposition.<sup>7</sup> DP&L filed a motion to quash on November 19, 2021.<sup>8</sup> DP&L, AEP and Duke Energy filed a joint motion to quash on December 1, 2021.<sup>9</sup> OVEC filed a motion to quash on December 13, 2021.<sup>10</sup> In an AEP case where OCC had filed the same motion for subpoena, and AEP and OVEC filed motions to quash the subpoena duces tecum against OVEC, the Attorney Examiner issued an Entry denying the motions to quash as to the information requested by OCC during the audit period.<sup>11</sup> In the present case, the Attorney Examiner issued an Entry on April 14, 2023 denying the motions to quash for mootness.<sup>12</sup> At that time the Attorney Examiner advised the parties that OCC would need to issue a new motion for subpoena to obtain a subpoena of OVEC.<sup>13</sup>

The Attorney Examiner's April 14, 2023 Entry also scheduled an evidentiary hearing for August 22, 2023. OCC therefore seeks a subpoena duces tecum to obtain needed information from OVEC.

## **II. LAW AND ARGUMENT**

### **A. Issuing subpoenas to facilitate parties' discovery is within the PUCO's authority where, as here, the subpoenas seek information reasonably calculated to lead to the discovery of admissible evidence.**

The PUCO's subpoena power, which facilitates parties' ability to conduct discovery, is

---

<sup>7</sup> Motion for Subpoena Duces Tecum (Nov. 9, 2021).

<sup>8</sup> Motion to Quash (Nov. 19, 2021).

<sup>9</sup> Motion to Quash (Dec. 1, 2021).

<sup>10</sup> Motion to Quash (Dec. 13, 2021).

<sup>11</sup> *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR and 18-1759-EL-RDR, Entry (Dec. 21, 2021).

<sup>12</sup> Entry (Apr. 14, 2023).

<sup>13</sup> Transcript of Pre-Hearing Conference of May 18, 2023 at 11 (May 25, 2023).

grounded in Ohio law and rules. Attorney examiners are authorized to issue subpoenas.<sup>14</sup> “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”<sup>15</sup> 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.”<sup>16</sup>

The scope of discovery is defined as follows:

any party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the sought would be inadmissible at the hearing if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence.<sup>17</sup>

The PUCO 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.<sup>18</sup>

Under this standard, there are more than adequate grounds for granting OCC’s motion for subpoena in the interest of consumer protection. The subpoena seeks information directly impacting OVEC’s costs, which DP&L collected from consumers. All of these documents and testimony which OCC seeks are reasonably calculated to lead to the discovery of admissible evidence, as explained below.

---

<sup>14</sup> R.C. 4901.18.

<sup>15</sup> O.A.C. 4901-1-21(F).

<sup>16</sup> O.A.C. 4901-1-25.

<sup>17</sup> O.A.C. 4901-1-16(B) (Emphasis added).

<sup>18</sup> *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.



**B. Under O.A.C. 4901-1-25, OCC is entitled to seek a subpoena *duces tecum* to command a designated representative(s) of OVEC to produce documents, attend and give testimony at deposition and at the evidentiary hearing.**

When initially allowing the utilities to collect OVEC costs, the PUCO required periodic reviews where OVEC's costs would be subject to "rigorous review"<sup>19</sup> to determine whether OVEC and the utilities acted "in the best interest of retail ratepayers" and acting according to the same standards as a competitive merchant operator regarding how the plants are committed into the PJM market.<sup>20</sup> In order to conduct this "rigorous review," a designated representative(s) of OVEC is needed to provide certain information regarding how it operates the plants. Moreover, this information is essential to determine "the prudence of all costs and sales flowing through the [reconciliation rider] and to demonstrate that the Company's actions were in the best interest of retail ratepayers."<sup>21</sup>

OVEC is a public utility subject to the PUCO's jurisdiction.<sup>22</sup> The PUCO has approved motions to subpoena OVEC in other cases where OVEC had relevant information or information which appeared reasonably calculated to lead to the discovery of admissible evidence.<sup>23</sup> As noted above, the Attorney Examiner denied a request of OVEC and AEP to quash a similar subpoena in the audit of AEP's 2018-2019 OVEC costs, to the extent that the subpoena requested

---

<sup>19</sup> *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR Joint Stipulation and Recommendation at 7 (Dec. 14, 2015).

<sup>20</sup> *Id.* (Opinion & Order at 89) (Mar. 31, 2016).

<sup>21</sup> Entry, Attachment at 4 (Jan. 29, 2020).

<sup>22</sup> *See, e.g., In the Matter of the Application of the Ohio Valley Electric Corporation for authority to issue evidence of indebtedness, in the form of long-term securities, to refinance financing arrangements relating to term loans and bonds issued by the Ohio Air Quality Development Authority and the Indiana Finance Authority, to provide credit enhancements, and to enter into interest management agreements*, Case No. 21-642-EL-AIS, Application and Statement (May 21, 2021).

<sup>23</sup> *See, e.g., In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, Sierra Club's Motion for a Subpoena Duces Tecum to Ohio Valley Electric Corporation (May 22, 2018).

information during the audit period.<sup>24</sup> The PUCO should also allow OCC to subpoena OVEC under the circumstances of this case.

OVEC employees prepare the financial forecasts that project whether OVEC's costs will exceed PJM market prices. OVEC employees made the daily unit commitment decisions into the PJM Day-Ahead Energy Market. OVEC employees decide on the environmental compliance strategies to keep the plants in compliance with EPA operating permits. OVEC employees prepare the capital budgets that estimate how much spending will be needed for environmental improvements. OCC is entitled to review OVEC documents and examine an OVEC representative(s) on operational matters, instead of being forced to rely on an auditors' account or DP&L's account of what the OVEC employees did.

OCC therefore seeks a subpoena from a designated representative(s) of OVEC to testify at deposition upon oral examination and to produce certain documents on various topics relating to "the prudence of all costs and sales flowing through the [reconciliation rider] and to demonstrate that the Company's actions were in the best interest of retail ratepayers."<sup>25</sup>

### **C. An expedited ruling is requested**

OCC requests an expedited ruling on its motion under O.A.C. 4901-1-12(C). An expedited ruling is sought in light of the scheduled evidentiary hearing for August 22, 2023<sup>26</sup> OCC seeks the information sought through deposition to prepare its Testimony which is due to be filed on August 15, 2023.<sup>27</sup> OCC contacted parties to this case to determine if any party

---

<sup>24</sup> *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR and 18-1759-EL-RDR, Entry (Dec. 21, 2021).

<sup>25</sup> Entry, Attachment at 4 (Jan. 29, 2020).

<sup>26</sup> Entry (Apr. 14, 2023).

<sup>27</sup> *Id.*

objected to the issuance of an expedited ruling without the filing of memoranda. OCC is unable to certify that no party has any objection to the issuance of an expedited ruling.

### III. CONCLUSION

The PUCO opened this case to review “the prudence of all costs and sales flowing through the [reconciliation rider] and to demonstrate that the Company’s actions were in the best interest of retail ratepayers.”<sup>28</sup> The information OCC seeks from OVEC is needed for a full investigation of these issues. For the protection of consumers, OCC respectfully requests the PUCO grant this Motion for the reasons discussed above.

Respectfully submitted,

Bruce Weston (0016973)  
Ohio Consumers’ Counsel

*/s/ John Finnigan*

William J. Michael (0070921)  
Counsel of Record – 20-165-EL-RDR  
John Finnigan (0018689)  
Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

65 East State Street, Suite 700  
Columbus, Ohio 43215  
Telephone [Michael]: (614) 466-1291  
Telephone [Finnigan]: (614) 466-9585  
[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)  
[john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov)  
(willing to accept service by e-mail)

---

<sup>28</sup> Entry, Attachment at 4 (Jan. 29, 2020).

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Motion for Subpoena Duces Tecum was served upon the persons listed below by electronic transmission this 28th day of June, 2023.

*/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**

[thomas.lindgren@ohioAGO.gov](mailto:thomas.lindgren@ohioAGO.gov)

Attorney Examiners:

[patricia.schabo@puco.ohio.gov](mailto:patricia.schabo@puco.ohio.gov)

[greg.price@puco.ohio.gov](mailto:greg.price@puco.ohio.gov)

[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)

[bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)

[easley@carpenterlipps.com](mailto:easley@carpenterlipps.com)

[jsharkey@ficlaw.com](mailto:jsharkey@ficlaw.com)

[mwatt@ficlaw.com](mailto:mwatt@ficlaw.com)

[christopher.hollon@aes.com](mailto:christopher.hollon@aes.com)

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

Michael DeWine  
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO  
SUBPOENA DUCES TECUM  
FOR DEPOSITION UPON ORAL EXAMINATION

TO:

Ohio Valley Electric Corporation  
c/o The Prentice-Hall Corporation System, Inc.  
3366 Riverside Drive, Suite 103  
Upper Arlington, Ohio 43221

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Valley Electric Corporation ("OVEC") is hereby ordered to designate one or more of its officers, agents, employees, or other persons duly authorized to testify on its behalf, to be subject to deposition upon oral examination on July 27, 2023 at 10:00 a.m. at OCC's office at 65 East State Street, Suite 700, Columbus, Ohio 43215.

OVEC's designee(s) shall be subject to cross-examination by OCC, day-to-day until examination is completed, on the following matters known or reasonably available to OVEC:

- (1) matters related to the documents requested by this subpoena; and
- (2) matters contained in the Vantage Energy Consulting, LLC Audit Report filed in this case on October 7, 2020.

OVEC shall deliver to OCC's office by July 20, 2023, the following documents, all pertaining to the audit of Rider RR expenses charged to consumers that are under review in this case (Nov. 1, 2018 to Dec. 31, 2019):

- (1) The amounts charged to DP&L during the audit period by OVEC for DP&L's share of non-energy costs, including debt service and a return on equity;
- (2) The policies and procedures used by OVEC employees to commit the plants into the PJM Day-Ahead Energy Market during the audit period;
- (3) The policies and procedures in place during the audit period related to operating the plants when OVEC's costs exceed market prices;
- (4) All economic analyses used to decide the unit commitment and dispatch decisions during the audit period for each OVEC unit (i.e., decisions regarding whether to self-schedule a generator in the day-ahead energy market or take them off-line for economic reasons), including all economic analyses to support the \$0 bids into the PJM capacity market;
- (5) The fuel supply contracts for the OVEC units in effect during all or part of the audit period;
- (6) All reports pertaining to instances in the audit period when the coal plants were taken offline;
- (7) All reports on the costs and benefits of switching any of the OVEC units to seasonal operation issued during the audit period;
- (8) All reports on the OVEC fuel cost policies that the coal plants operated under during the audit period;
- (9) All documents containing any requests or recommendations to change the Day-Ahead commitment policies or practices during the audit period;
- (10) Copies of all minutes of the OVEC Operating Committee and Executive Committee held during the audit period.

The documents and deposition relate to the proceeding entitled “In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company, Case No. 20-165-EL-RDR.”

Dated at Columbus, Ohio, this 27th day of June 2023.



\_\_\_\_\_  
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.

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

**6/28/2023 3:42:48 PM**

**in**

**Case No(s). 20-0165-EL-RDR**

Summary: Motion Motion for Subpoena Duces Tecum for Ohio Valley Electric Corporation to Designate a Witness(es) for Deposition Upon Oral Examination and Produce Documents and Request for Expedited Ruling by Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of Finnigan, John.