**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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 |

**INITIAL COMMENTS**

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# I. INTRODUCTION

Tainted House Bill 6 allow AES, AEP and Duke to collect coal plant subsidy charges from consumers related to old Ohio Valley Electric Corporation (“OVEC”) coal plants. Under H.B. 6, consumers are stuck paying AES, AEP and Duke for a ten-year period through 2030, subject to a prudence review by the Public Utilities Commission of Ohio (“PUCO”).[[1]](#footnote-2)

The OVEC-related subsidies paid to AES, AEP and Duke have cost consumers hundreds of millions of dollars in the past and are estimated to cost consumers hundreds of millions of dollars more in the future. We know of the past costs through a pending case where AES seeks to collect $28.9 million in OVEC coal plant subsidy charges for 2014-2017.[[2]](#footnote-3) With AES’s 4.9% share in OVEC, this means that the total OVEC losses during this period were about $600 million. AEP’s 19.93% share for 2014-2017 resulted in about $360 million in losses paid to AES, AEP and Duke’s 9% share equated to losses of about $54 million for 2014-2017. It has also been reported that the coal plant subsidy charge to consumers was $400 million from 2017 through mid-2023.[[3]](#footnote-4) Projected costs to consumers through 2030 shows that consumers can be expected to pay $450 million more by 2030.[[4]](#footnote-5) The total coal plant subsidy charge paid to AES, AEP and Duke by consumers for approximately 16 years would then amount to an astounding $1.293 billion.

# II. STATEMENT OF FACTS

The present case involves the Coal Plant Subsidy Charge to consumers for calendar year 2020. In 2021, the PUCO engaged London Economics International LLC as an independent auditor to assist with the prudency and reasonableness audit. The PUCO-approved auditor filed a separate audit report for AES, AEP and Duke in December 2021. The purpose of the audit was to “to establish the prudency of all the costs and sales flowing through the LGR Rider, and to investigate whether [AES, AEP and Duke’s] actions were in the best interest of its retail consumers.”[[5]](#footnote-6) The Attorney Examiner allowed parties to provide comments on the Audit Reports.

The PUCO should disallow AES, AEP and Duke’s coal plant subsidy charges that are deemed imprudent and require AES, AEP and Duke to credit consumers for all amounts deemed imprudent. This includes the added cost associated with committing the plants as must-run units, paying above-market prices for coal purchases, and failure to comply with the Coal Combustion Residuals rule following the EPA’s proposed decision

to deny the request to continue coal ash waste disposal permit from OVEC’s Clifty Creek plant at two unlined surface impoundment sites.

# III. STANDARD OF REVIEW

The PUCO should follow the same type of prudence review as used prior to House Bill 6. When the PUCO approved the Settlement that initially established Duke’s Coal Plant Subsidy Charge, it ordered that the rider would be subject to an annual prudency review.[[6]](#footnote-7) The Settlement does not describe the prudency review process in detail. Instead, the Settlement notes that AES and AEP have a similar OVEC rider, and that the PUCO would approach the prudency determination for AES, AEP and Duke in a similar manner. The Settlement states:

The Stipulating Parties acknowledge that two other Ohio electric distribution utilities are Sponsoring Parties pursuant to the ICPA [OVEC agreement] and, as such, the Signatory Parties recommend that the Commission approach the determination of prudently incurred costs and the reasonableness of the generation revenue for all three jurisdictional electric distribution utilities in a uniform manner, pursuant to controlling law, which affords parties of interest with due process.[[7]](#footnote-8)

Then-PUCO Chairman Asim Haque also stated in a concurring opinion, “This [approval of mechanism to collect OVEC costs] should not be perceived as a blank check, and consumers should not be treated like a trust account.”[[8]](#footnote-9)

The first utility Coal Plant Subsidy Charge to undergo PUCO review was AEP’s. The PUCO’s order in AEP’s Energy Security Plan case ruled that the utility has the burden of proof in the annual prudence reviews. The PUCO declared that: “AEP will bear the burden of proof in demonstrating the prudency of all costs and sales during the review, as well as that such actions were in the best interest of retail consumers.”[[9]](#footnote-10) Likewise, the PUCO ruled that “[r]etail cost recovery may be disallowed as a result of the annual prudency review if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues.”[[10]](#footnote-11)

Accordingly, consistent with the PUCO ruling that the standards for the prudence review shall be the same for all three utilities, AEP, Duke and AES each have the burden of proof to show that all actions related to the OVEC plants were prudent and in consumers’ best interests.

# IV. CONSUMER PROTECTION RECOMMENDATIONS

## The PUCO should disallow AES, AEP and Duke’s above-market coal plant subsidy charges which the PUCO-approved auditor should identify through an hour-by-hour dispatch analysis because OVEC’s commitment of the plants into PJM as must-run units was not prudent and added needless costs to customers.

A prudent decision is defined as:

One which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made. The standard contemplates a retrospective, factual inquiry, without the use of hindsight judgment, into the decisionmaking process of the utility's management.[[11]](#footnote-12)

The PUCO adopted an even higher standard for the prudence review in the coal plant subsidy charge cases—AES, AEP and Duke have the burden of proof to establish that the plants were operated “in the best interest of retail consumers.”[[12]](#footnote-13)

In 2020, the OVEC units were mostly self-scheduled (also referred to as “must run”) rather than committed economically by PJM. This means that the units’ operations were dictated by OVEC on behalf of AES, AEP and Duke, regardless of whether it made economic sense to operate at the time. (In contrast, the practice of “economic commitment” calls units to run strictly on the basis of minimizing system costs: calling the least expensive units to run and be available for further dispatch if needed while letting more expensive units sit idle if not needed.) The more the OVEC units operated in 2020, the greater the above-market electricity prices AES, AEP and Duke’s consumers had to pay. While consumers were credited with the PJM energy revenue from the OVEC units, this only results in a net energy benefit to customers if those energy revenues exceed the energy costs. This self-scheduling of its units—bypassing PJM economic commitment process—harmed AES, AEP and Duke’s consumers because the plants remained in operation throughout the year during lengthy time periods when much less costly electricity could have been purchased from the PJM wholesale market.

PJM receives bids from generators for their energy costs to run at different levels of capacity at each hour of the day. PJM then commits and dispatches the units based on these bids in an optimal manner: “generation is economically dispatched to meet the demand across the entire RTO at the lowest cost.”[[13]](#footnote-14) Self-scheduled (“must run”) units like OVEC, however, indicate to PJM when they are going to operate regardless of the market price and thus choose to bypass the economically efficient optimization process.[[14]](#footnote-15) As a practice, self-scheduling is highly problematic for consumers for two key reasons:

1) If the units are operating when the energy price (or locational marginal price (LMP) is lower than the units’ energy costs then consumers are paying OVEC an unnecessary above-market premium subsidy for the benefit of AES, AEP and Duke; and

2) By opting out of economic commitment from PJM, the OVEC units forgo the collection of “make whole” payments that would compensate them if

they were market-committed by PJM and did not recover their energy costs for that day, thus foregoing revenue which could have been earned for AES, AEP and Duke to offset the amount of the coal plant subsidy charge.[[15]](#footnote-16)

The OVEC units exemplify the problems with self-scheduling because in most hours that they operate, they are uneconomic. As stated in the PUCO-approved Audit Report for Duke Ohio, the energy cost of the OVEC units was $25.61 per MWh in 2020, whereas the PJM energy price for the Duke Ohio PJM hub was $21.35 per MWh on average—thus the OVEC units were 20 percent more costly than the market energy price (i.e. the marginal cost of generating energy).[[16]](#footnote-17) The PUCO-approved auditor also found that the OVEC energy charge was higher than the Duke hub LMP “for most months in 2020.”[[17]](#footnote-18)

Similarly, the PJM energy price for the AEP PJM zone was $20.92 per MWh on average—thus the OVEC units were 22 percent more costly than that zone’s energy.[[18]](#footnote-19) The PUCO-approved auditor also found that the OVEC energy charge was higher than the AEP LMP “for all months in 2020.”[[19]](#footnote-20) The PJM energy price for the AES Ohio PJM zone was $19.55 per MWh on average which was 31 percent higher than that zone’s energy.[[20]](#footnote-21) Thus, OVEC did not operate the plants economically or efficiently. Consumers would have been much better off if OVEC had not operated its plants at all in 2020.

A review of the AES, AEP and Duke’s LMPs, on a plant-wide basis, shows that the Clifty Creek and Kyger Creek were operating for 98 and 97 percent of all hours in 2020, respectively.[[21]](#footnote-22) During 84 to 88 percent of those operating hours, the units’ energy costs were higher than AES, AEP and Duke’s zonal energy prices.[[22]](#footnote-23) Despite this, the units were still self-scheduled for nearly the entire year, with the exception a brief period of extremely low energy prices at the height of the Covid-19 pandemic – as reported by the PUCO-approved auditor.[[23]](#footnote-24) Ultimately, the PUCO-approved auditor recommends that “ideally” the units should be “committed based on economics all or most of the time.”[[24]](#footnote-25) OVEC did not follow this recommendation in its operation of the plants.

The PUCO-approved auditor hedged this recommendation by stating that “coal plants are not designed” for economic commitment by discussing the potential risks of turning on and off frequently.[[25]](#footnote-26) But coal unit owners can include such costs into their bids and allow PJM to consider those costs when making the commitment decision. If for some reason the units must run for safety issues, then they can do so for a brief period; but the default for OVEC has been to force its units to operate regardless of their economics—which has a direct and unjustified impact on consumer bills. If OVEC is to conduct any self-scheduling going forward, the PUCO should require written documentation of the reasoning, so that stakeholders can review the merits of those decisions. For purposes of this case, AES, AEP and Duke’s consumers should not pay for any excess costs associated with the imprudent self-scheduling of these units, which could be demonstrated by requiring the PUCO-approved auditor to perform an hour-by-hour dispatch analysis for the entire year.

The imprudency of AES, AEP and Duke’s coal plant subsidy charges is also indicated in a recent ruling by the Michigan Public Service Commission (“MPSC”). In that case, the MPSC disallowed $1.347 million in 2020 power supply costs associated with the OVEC units that Indiana Michigan Power (I&M), a subsidiary of AEP, was requesting.[[26]](#footnote-27) This disallowance level was developed from the Attorney General comparing the costs of the OVEC contract ($65.46 per MWh) that were incurred with two other long-term power transactions in Michigan that were lower cost.[[27]](#footnote-28)

The MPSC ultimately agreed with this comparison, admonishing I&M because it “stubbornly refused to provide any other meaningful basis for comparison” to support collection of the OVEC units’ costs.[[28]](#footnote-29) I&M also “does not challenge” the accuracy of the Attorney General’s cost comparison.[[29]](#footnote-30) The MPSC had previously stated its position that long-term contracts need to be re-evaluated after signing because the existence of the contract does not “absolve a utility from monitoring and responding to market conditions.”[[30]](#footnote-31)

The costs at issue in the Michigan case were the same costs at issue in the present case – OVEC costs for calendar year 2020. I&M is AEP’s Indiana and Michigan affiliate, which owns a share of OVEC. It would be unjust if the PUCO would find the OVEC

costs prudent for AES, AEP and Duke in the present case, given that MPSC found the same OVEC costs imprudent for the same time period – calendar year 2020.

The PUCO-approved auditor also estimated that the all-in cost of the OVEC plants is substantially higher than the costs of building and operating a new combined cycle gas turbine (“CCGT”) in PJM. The costs reported by OVEC are $67 per MWh, compared to a range of between $35.90 and $42.20 per MWh for building and operating a new CCGT.[[31]](#footnote-32) The PUCO-approved auditor’s own estimate of OVEC units’ costs is $65.19 per MWh for the audit period ($39.59 per MWh in demand charges and $25.61 per MWh in energy charges).[[32]](#footnote-33) It would be cheaper to build nearly twice as much efficient, low-cost new gas capacity than to continue forcing consumers to pay above-market prices for the old and inefficient OVEC units.

Despite these exorbitant costs, the PUCO-approved auditor offers an ambivalent recommendation for OVEC’s continued operation for AES, AEP and Duke:

The current ICPA does not expire until June 30, 2040. AEP customers could be locked into paying a premium for energy and capacity from the OVEC plants for up to another 20 years, though market prices could change in the future, and the premium could become a discount.[[33]](#footnote-34)

The current ICPA does not expire until June 30, 2040. AES Ohio’s customers could be locked into paying a premium for energy and capacity from the OVEC plants in future years, though market prices could change in the future, so it is possible that the premium could become a discount.

Commission may wish to re-examine the role of Component D, which appears to LEI to be a return to capital.[[34]](#footnote-35)

DEO’s customers could be locked into paying a premium for energy and capacity from the OVEC plants in future years, though market prices could change in the future, so it is possible that the premium could become a discount.[[35]](#footnote-36)

The PUCO-approved auditor’s recommendations are somewhat meaningless in that they describe all power supply contracts made in a wholesale market. These comments are therefore irrelevant in determining whether it is prudent for OVEC to continue operating the plants. Moreover, OCC has seen no recent evidence that the OVEC units provide a discount of any sort to AES, AEP and Duke’s consumers; rather, the OVEC units increase consumer costs. OCC recommends that the PUCO order its auditor to perform an hour-by-hour dispatch analysis for 2020, and require AES, AEP and Duke to credit consumers for the full amount that the coal plant subsidy charge was above market prices.

## To protect consumers, the PUCO should disallow unreasonable and imprudent above-market coal costs and require AES, AEP and Duke to credit consumers $12.6 million for such above-market coal costs.

The PUCO-approved auditor’s 2021 Audit Reports noted that Clifty Creek was paying above-market prices for coal.[[36]](#footnote-37) In fact, OVEC paid substantially higher prices for coal purchased for the Clifty Creek unit that was supplied from Resource Fuels compared to other coal suppliers. The evidence in this case suggests that OVEC’s $12.6 million in above-market charges to consumers through the Coal Plant Subsidy Charge in 2020 were imprudently incurred and should be disallowed. Further examination of contract terms would be necessary to determine the full extent of OVEC’s imprudency.

According to 2020 EIA-Form 923, OVEC purchased coal sourced from River View Mine in Kentucky for the Clifty Creek unit through two separate suppliers: Resource Fuels and Alliance Coal. The coal purchased through Resource Fuels was at a higher price than the coal purchased through Alliance Coal, despite having the same average heat content and coming from the same mine. Specifically, Resource Fuels supplied 1,016,071 short tons of coal to the Clifty Creek Unit for $60.1 million ($2.57 per MMBtu) and, in contrast, Alliance Fuels supplied 1,249,160 short tons of coal for $59 million ($2.03 per MMBtu). On a per MMBtu basis, OVEC paid $0.54 more per MMBtu for coal purchased from Resource Fuels as compared to coal from the same mine with the same heat content purchased from Alliance Coal (*see* Table 1).

Table 1. 2020 Clifty Creek coal purchases

 *Data Source: U.S. EIA. 2020. EIA Form-923 [Page 5. Fuel Receipts and Costs].*

If OVEC had paid the same per MMBtu price for coal from Resource Fuels as it did for Alliance Coal in 2020, the total cost for coal supplied from Resource Fuels would have been $47.5 million compared to $60.1 million (a difference of $12.6 million). The PUCO should require AES, AEP and Duke to credit consumers for this full $12.6 million amount for paying above-market coal costs.

## The PUCO should disallow any costs related to the Clifty Creek plant which were incurred after the U.S. EPA proposed decision to deny any extensions for coal ash pond permits and require AES, AEP and Duke to credit consumers for these amounts.

The PUCO should disallow any further costs related to the Clifty Creek plant due to the circumstances of its imprudent coal ash handling practices. In August 2020, the U.S. EPA published the Coal Combustion Residuals Part A Final Rule that establishes a closure date of April 11, 2021 for unlined surface impoundments receiving coal ash.

Coal Combustion Residuals Part A allows facilities to request an extension for unlined Coal Combustion Residuals surface impoundments to stop receiving coal waste, but the request must have been submitted by November 30, 2020.[[37]](#footnote-38) As part of this request, facilities must demonstrate that there is no alternative capacity for their coal disposal at this time. In total, the EPA reviewed demonstrations from 57 facilities, including Clifty Creek Power Station, which submitted a demonstration to continue receipt of coal ash at two Coal Combustion Residuals surface impoundments, the West Boiler Slag Pond (“WBSP”) and the Landfill Runoff Collection Pond (“LRCP”), past the April 11, 2021 closure deadline set forth in Coal Combustion Residuals Part A Final Rule.[[38]](#footnote-39)

On January 25, 2022, the U.S. EPA issued a proposed denial of alternative closure deadlines for the Clifty Creek Coal Combustion Residuals surface impoundments due to a lack of evidence demonstrating that there is no off-site capacity available and:

[A] failure to meet groundwater monitoring requirements at the facility, failure to meet corrective action requirements, failure of the plans to construct a concrete settling tank to obtain alternative capacity to meet the design requirements in the CCR regulations, and failure to prepare closure plans for the WBSP and LRCP that will ensure closure activities will meet the closure performance standards in the CCR regulations.[[39]](#footnote-40)

According to Indiana-Kentucky Electric Corporation (IKEC), an owned subsidiary of OVEC, the closure of the Clifty Creek surface impoundments would require the facility to shut down:

IKEC then concluded that in order to continue to operate, generate electricity, and ultimately comply with the CCR rule, the ELGs, and the facility’s NPDES permit conditions, the Clifty Creek Power Station must continue to use both the WBSP and the LRCP.[[40]](#footnote-41)

OCC recommends that the PUCO disallow any costs related to the Clifty Creek plant incurred since the date of the EPA’s proposed decision denying the coal ash pond permits, and AES, AEP and Duke should credit consumers with costs collected for the Clifty Creek plant after that date.

## D. If consumers are going to be made to pay AES, Duke, and AEP related to OVEC plants (and they should not), then the subsidy should be for current operational costs and not for future decommissioning costs.

AES, AEP and Duke consumers should not have been required to pay costs for funding a reserve for eventual plant decommissioning. Costs related to depreciation should be included only after a depreciation study is conducted and its methodology and findings made available to stakeholders and the PUCO. The Ohio Supreme Court has stated that “the proper annual rate of depreciation for each class of property will necessarily be based upon the testimony of qualified experts as to the probable length of its useful life.”[[41]](#footnote-42)

These costs are an ongoing issue that should be addressed continually as long as AES, AEP and Duke’s consumers are required to pay for the OVEC units. It is indeed troubling that AES, AEP and Duke’s contract with OVEC expires in 2040 and, while the units have no set retirement date, they are unlikely to last another 17 years. The plants began operation in 1955, during the Eisenhower Administration, making them currently the oldest coal units in PJM and among the oldest in the United States.[[42]](#footnote-43)

# V. CONCLUSION

Then-PUCO Chairman Asim Haque has stated that “This [approval of mechanism to collect OVEC costs] should not be perceived as a blank check, and consumers should not be treated like a trust account.”[[43]](#footnote-44)

The PUCO has said that it will closely scrutinize all subsidy charges to Ohio consumers for the plants. As noted earlier, the PUCO has required that AES, AEP and Duke “will bear the burden of proof in demonstrating the prudency of all costs and sales during the review, as well as that such actions were in the best interest of retail consumers.”[[44]](#footnote-45)

AES, AEP and Duke must prove in this case that the coal plant subsidy charges were prudent, that their actions were in the best interests of consumers, and that all charges comply with the various limitations set forth in the PUCO Orders approving the coal plant subsidy charges. As explained above, AES, AEP and Duke did not meet their burden of proof in several respects. The PUCO should protect consumers by disallowing subsidies paid to AES, AEP and Duke at consumer expense.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Initial Comments was served on the persons stated below via electronic transmission, this 8th day of May 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:

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1. R.C. 4928.148. [↑](#footnote-ref-2)
2. *In re AES Ohio ESP IV,* Case No. 22-900-EL-SSO, Stipulation and Recommendation (April 10, 2023) at 15. [↑](#footnote-ref-3)
3. Runnerstone LLC, *House Bill 6’s Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More* (March 24, 2023) at 5. [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. LEI Audit Reports, p. 7. [↑](#footnote-ref-6)
6. *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, et al., Stipulation and Recommendation (April 13, 2018). [↑](#footnote-ref-7)
7. *Id*. at p. 19. [↑](#footnote-ref-8)
8. *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Purchase Power Agreement*, PUCO Case 14-1693-EL-RDR, Opinion and Order, Concurring Opinion of Chairman Haque at p. 5 (March 31, 2016). [↑](#footnote-ref-9)
9. *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR, Opinion & Order (March 31, 2016) at 89 (the “OVEC Order”) (also stating, “AEP will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail consumers.”) This March 31, 2016 Order related to AEP’s PPA Rider, which, at the time, included more than just OVEC. The rider was subsequently modified to be for OVEC only. *See* Case No. 14-1693-EL-RDR, Second Entry on Rehearing (Nov. 3, 2016). This modification does not impact the burden of proof in this audit proceeding. [↑](#footnote-ref-10)
10. *Id*. [↑](#footnote-ref-11)
11. *Cincinnati v. Pub. Util. Comm*., 67 Ohio St.3d 523, 530, 620 N.E.2d 826, 830 (1993). [↑](#footnote-ref-12)
12. OVEC Order at 89 (also stating, “AEP will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail consumers.”) [↑](#footnote-ref-13)
13. PJM, *Unit Commitment and Dispatch*, Dec. 6, 2016, slide 12. Available at: <https://www.pjm.com/-/media/training/nerc-certifications/markets-exam-materials/mkt-optimization-wkshp/unit-commitment-and-dispatch.ashx>. [↑](#footnote-ref-14)
14. LEI Audit Report on AEP, p. 41. [↑](#footnote-ref-15)
15. PJM, *LMP Calculation and Uplift*, Jan. 29, 2018. Available at: [https://www.pjm.com/-/media/committees-groups/task-forces/epfstf/20180129/20180129-item-07b-lmp-calculation-and-uplift.ashx#:~:text=Make-whole%20payments%3A%20Occur%20when,and%20no-load%20costs).&text=Lost%20opportunity%20cost%3A%20Occurs%20when,point%20is%20not%20profit%20maximizing](https://www.pjm.com/-/media/committees-groups/task-forces/epfstf/20180129/20180129-item-07b-lmp-calculation-and-uplift.ashx%23:~:text=Make-whole%20payments%3A%20Occur%20when,and%20no-load%20costs).&text=Lost%20opportunity%20cost%3A%20Occurs%20when,point%20is%20not%20profit%20maximizing). [↑](#footnote-ref-16)
16. LEI 2020 Audit on Duke Ohio, p. 17. [↑](#footnote-ref-17)
17. *Id*. at p. 49. [↑](#footnote-ref-18)
18. LEI 2020 Audit on AEP, pp. 18, 31. [↑](#footnote-ref-19)
19. *Id*. at p. 47. [↑](#footnote-ref-20)
20. LEI 2020 Audit on AES Ohio, p. 17. [↑](#footnote-ref-21)
21. EPA Clean Air Markets Program Data (“CAMPD”) for hourly generation for OVEC units in 2020 (<https://campd.epa.gov/>). [↑](#footnote-ref-22)
22. *Id*; 2020 hourly Duke Ohio, AEP, and AES Ohio LMPs from PJM Data miner (<https://dataminer2.pjm.com/>). The OVEC zonal LMPs were very similar to the Utilities’ zonal prices. [↑](#footnote-ref-23)
23. LEI 2020 Audit, p. 41. [↑](#footnote-ref-24)
24. *Id*. at p. 10. [↑](#footnote-ref-25)
25. *Id*. at p. 42. [↑](#footnote-ref-26)
26. MI PSC Order, Case No. U-20530, p. 12. Available at: <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/0688y000006ctmIAAQ>. [↑](#footnote-ref-27)
27. *Id*. at p. 8. [↑](#footnote-ref-28)
28. *Id*. at p. 12. [↑](#footnote-ref-29)
29. *Id*. [↑](#footnote-ref-30)
30. MI PSC Order, p. 26. [↑](#footnote-ref-31)
31. LEI Audit Report, pp. 21-22. [↑](#footnote-ref-32)
32. *Id*. at p. 29. [↑](#footnote-ref-33)
33. *Id*. at p. 33. [↑](#footnote-ref-34)
34. *Id*. at p. 29 [↑](#footnote-ref-35)
35. *Id*. at p. 30. [↑](#footnote-ref-36)
36. (1) LEI Audit of the Legacy Generation Resource Rider of Duke Energy Ohio Final Report, Case No. 21-477-EL-RDR, p. 66 (Dec. 15, 2021); (2) *Id*. at p. 57; (3) *Id*. at p. 54. [↑](#footnote-ref-37)
37. U.S. EPA 85 FR 53516, *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure (*August 2020). EPA-HQ-OLEM-2019-0172 and EPA-HQ-OLEM-2018-052, FRL-10013-20-OLEM. Available at:<https://www.federalregister.gov/documents/2020/08/28/2020-16872/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric>. [↑](#footnote-ref-38)
38. U.S. EPA. 2023, “Coal Combustion Residuals (CCR) Part A Implementation.” Available at: <https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation#review>. [↑](#footnote-ref-39)
39. EPA-HQ-OLEM-2021-0587, p. 11. [↑](#footnote-ref-40)
40. EPA-HQ-OLEM-2021-0587, p. 19. [↑](#footnote-ref-41)
41. *Mt. Vernon Tel. Corp. v. Public Utilities Com.,* 163 Ohio St. 381, 389 (1955). [↑](#footnote-ref-42)
42. EIA 860M, Preliminary Monthly Electric Generator Inventory (based on Form EIA-860M as a supplement to Form EIA-860), Available at: <https://www.eia.gov/electricity/data/eia860m/>. [↑](#footnote-ref-43)
43. *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Purchase Power Agreement*, PUCO Case 14-1693-EL-RDR, Opinion and Order, Concurring Opinion of Chairman Haque at p. 5 (March 31, 2016). [↑](#footnote-ref-44)
44. *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR, Opinion & Order (March 31, 2016) at 89 (the “OVEC Order”) (also stating, “AEP will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail consumers.”) This March 31, 2016 Order related to AEP’s PPA Rider, which, at the time, included more than just OVEC. The rider was subsequently modified to be for OVEC only. *See* Case No. 14-1693-EL-RDR, Second Entry on Rehearing (Nov. 3, 2016). This modification does not impact the burden of proof in this audit proceeding. [↑](#footnote-ref-45)