BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company. | ))) | Case No. 20-165-EL-RDR |

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INITIAL COMMENTS

BY

THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL

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INITIAL COMMENTS

BY

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# I. INTRODUCTION

The PUCO ordered a prudence audit of the charges that 526,000 customers of The Dayton Power and Light Company (“DP&L”) have paid to subsidize DP&L’s interest in two coal power plants, one in Ohio and the other in Indiana (the OVEC power plants).[[1]](#footnote-2) Because these polluting old plants are uneconomic, DP&L’s customers pay a subsidy if the costs for the two coal plants exceed any revenues DP&L derives from bidding the power produced by the plants and selling the plants’ capacity into PJM markets. DP&L’s customers pay an amount based on DP&L’s ownership share (currently 4.9%) of the plants. To minimize charges to consumers, therefore, it is essential that the two power plants be operated prudently and efficiently and that DP&L act prudently and reasonably in requiring OVEC to bid its energy and capacity into the competitive PJM markets.

The PUCO engaged an outside auditor, Vantage Energy Consulting, LLC (“Vantage” or “Auditor”), to audit the OVEC subsidy charge for the period of November 1, 2018 through December 31, 2019 (“Audit Period”). The Auditor submitted a Final Report (“Audit Report”) on October 7, 2020. As stated in the Audit Report, the purpose of the audit is to “establish the prudency of all the costs and sales flowing through the Reconciliation Rider (“OVEC subsidy charge”) and to demonstrate that the Company’s [DP&L’s] actions were in the best interest of its retail ratepayers.”[[2]](#footnote-3) As ordered by the PUCO, the scope of the Audit Report includes the following: disposition of energy and capacity, fuel and variable expenses, capital expenses, environmental compliance, power plant performance, and utility industry perspective.[[3]](#footnote-4)

The PUCO approved DP&L’s OVEC subsidy charge in Case Nos. 16-395-EL-SSO et al. In approving the OVEC subsidy charge, customers were forced to pay a subsidy to DP&L starting November 1, 2017.[[4]](#footnote-5) Based on DP&L’s own filings with the PUCO, the OVEC subsidy charge has been a significant cost burden on DP&L’s customers. Out of the 26 months during the period of November 2017 to December 2019, DP&L has lost money in 23 months.[[5]](#footnote-6) See Attachment 1. DP&L’s customers have paid approximately $18.7 million in subsidies to DP&L for its share of the OVEC power plants through the OVEC subsidy charge in the same period. During the Audit Period of November 1, 2018 through December 31, 2019, the OVEC subsidy paid by DP&L’s customers is approximately $11.1 million.

OCC and the many others who objected to the OVEC subsidies warned that customers would be forced to pay above-market costs and that customers would not benefit from these plants in any way, shape, or form. There is no doubt that customers will not likely get any benefits from the OVEC entitlement owned by its monopoly distribution utility, DP&L, in the foreseeable future. This makes the annual prudency audit of the OVEC subsidy charge even more important to help minimize the costs to the customers.

The Attorney Examiner allowed parties to provide comments on the Audit Report.[[6]](#footnote-7) The Office of the Ohio Consumers’ Counsel (“OCC”) respectfully requests that the PUCO consider the following consumer-protection comments and recommendations regarding the findings of the Auditor and relevant information and charges to consumers under the OVEC subsidy charge.

# II. CONSUMER PROTECTION RECOMMENDATIONS

## Consumer protection requires that DP&L meet the burden of proof regarding prudency.

When the PUCO approved the OVEC subsidy charge, it ordered that the charge would be subject to audit and updates.[[7]](#footnote-8) The audit process is not described in detail. But the audit of DP&L’s OVEC subsidy charge should be comparable to the two other electric utilities that have a similar OVEC subsidy.

The PUCO has approached the annual audit as more than just an exercise in checking the accuracy of the mathematics or the accounting records. For example, the PUCO’s order in AEP Ohio’s electric security plan case (the first case in which an OVEC subsidy was approved) held that AEP Ohio would bear the burden of proof in the annual prudence reviews (audit). The PUCO’s order states: “AEP Ohio 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 ratepayers.”[[8]](#footnote-9) 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.”[[9]](#footnote-10) The Settlement involving Duke’s OVEC subsidy approved by the PUCO acknowledge that all of the electric utilities’ OVEC subsidies should be treated the same:

The Stipulating Parties acknowledge that two other Ohio electric distribution utilities are Sponsoring Parties pursuant to the ICPA 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.[[10]](#footnote-11)

The annual audit of the OVEC subsidy charge is an examination of the prudency and reasonableness for all matters related to the OVEC subsidy.[[11]](#footnote-12) Consistent with the PUCO ruling that the standards for the prudence review shall be the same for all three utilities, DP&L has the burden of proof to show that all actions and decisions related to the OVEC plants were prudent and in consumers’ best interests.

B. The PUCO should protect DP&L’s customers by disallowing any additional costs DP&L might incur if it purchased FirstEnergy Solutions’ OVEC share, which was not in the best interests of customers.

DP&L co-owns OVEC with several other entities. One of the co-owners, FirstEnergy Solutions, filed for bankruptcy on March 31, 2018. After FirstEnergy Solutions filed for bankruptcy, it stopped buying its share (or “entitlement”) of OVEC’s electricity and capacity. As a result, each of the OVEC co-owners received the opportunity to buy part of FirstEnergy Solutions’ entitlement to OVEC’s output. As part of the settlement dated May 18, 2020, for Energy Harbor (formerly FirstEnergy Solutions) to exit bankruptcy, the OVEC obligation was assumed by Energy Harbor effective June 1, 2020.

The Audit Report did not indicate if DP&L had made such a purchase. The Audit Report did not conclude that DP&L declined to make such a purchase, either. At this time, OCC is waiting on the discovery response from DP&L about whether it voluntarily increased its purchase of energy available from FirstEnergy Solution’s entitlement during the audit period and if any such additional costs of the purchase were passed along to DP&L’s customers.

One of the OVEC owners, Duke Energy of Ohio, Inc. (“Duke”), did voluntarily buy a portion of the FirstEnergy Solutions’ entitlement during 2019. This has increased the OVEC subsidy paid by Duke’s customers by approximately $700,000.[[12]](#footnote-13) Consequently, if DP&L also purchased its share of FirstEnergy Solutions’ entitlement, DP&L’s customers may be paying unnecessary or imprudent costs incurred by DP&L.

There is no evidence that DP&L, or any of the OVEC owners, is required to purchase the additional FirstEnergy Solutions entitlement. Given the history of the OVEC subsidy charge as shown in Attachment 1, it is abundantly clear that the proceeds from the disposition of energy and capacity of OVEC power plants rarely exceeded the costs of the OVEC entitlement. So, any such voluntary purchase by DP&L of FirstEnergy Solutions’ OVEC entitlement would only further increase the OVEC subsidy charge paid by DP&L’s customers. This is imprudent and would not benefit DP&L’s retail customers. If DP&L did purchase some or all of FirstEnergy Solutions’ OVEC entitlement, the PUCO should protect consumers by denying DP&L collection of any resulting additional charges during the audit period.

C. To protect consumers, the PUCO should disallow DP&L’s request to collect OVEC costs from customers because OVEC’s commitment of the plants into PJM as must-run units was not prudent.

The Audit Report recognizes that the multiple ownership stakes and interested parties in OVEC makes it even more complex to manage the plants and prudently bid them into competitive regional power markets like PJM.[[13]](#footnote-14) Vantage did not address whether OVEC’s disposition of the plants into the PJM real-time and day-ahead energy markets was prudent. This is a major issue that Vantage overlooked.

But the Audit Report’s recognition that the power plants were committed to the PJM market as “must-run units” indicates that OVEC’s disposition of the plants’ into PJM was not done on an economic basis. Therefore, the auditor should have found the disposition of the plants into PJM to have been imprudent and unreasonable. This is because much of the time throughout the year, the plants’ variable operating costs exceeded the revenues from the PJM energy market.[[14]](#footnote-15) As detailed in OCC’s comments regarding the audit report of Duke’s OVEC subsidy, OVEC currently operates the plants (except one unit) as “must-run” units in the PJM energy markets – meaning that the plants are designated to run at all times, except when shut down for scheduled maintenance or unexpected outages.[[15]](#footnote-16)

During 2019, it made no economic sense to run the plants continuously because the plants lost money a great deal of the time. That is, the plants operated at a loss much of the time because their variable operating costs often exceeded the market value of their capacity and energy sold into the market. The prudent course of action is clear – if a plant is losing money so much of the time, don’t run it when the plants’ variable operating costs exceed the PJM market price. This is an obvious recommendation from industry experts who have reviewed the situation.[[16]](#footnote-17) Most utilities operate their plants in an economic manner (i.e. economic dispatch). It is also noted that merchant operators of coal plants routinely dispatched their plants on an economic basis and, as a result, their operations were much more profitable than the coal plants operated by vertically integrated utilities.[[17]](#footnote-18)

 The importance of prudent plant operations and disposition of energy and capacity of the OVEC power plants cannot be overstated, especially when the utility (such as DP&L) has captive monopoly customers absorbing the operating losses (through above-market subsidy charges). As noted earlier, the PUCO placed the burden of proof on utilities to show that the OVEC costs are reasonable. The Ohio utilities, taken together, own a major share of OVEC. The Ohio utilities, including DP&L, should have collectively required the OVEC operating committee to change the practice of running the plants on a “must-run” basis.

D. To protect consumers, the PUCO should require DP&L to provide a report detailing the potential ancillary services that the OVEC plants could provide to PJM, along with the projected annual revenue.

The Audit Report recommends that “DPL[DP&L], through its representation on the OVEC Operating Committee, should investigate and analyze the potential for the Clifty and Kyger Creek Power Plants to participate in the PJM ancillary service markets in order to obtain additional revenue for ratepayers.”[[18]](#footnote-19) We support this recommendation.

DP&L explains that OVEC is continuing to evaluate whether the plants should participate in PJM’s ancillary services markets.[[19]](#footnote-20) In the audit report prepared by another auditor in the annual audit of Duke Energy Ohio’s OVEC subsidy, it notes that OVEC is preparing a study on this subject, and that the report will be completed by the end of 2020.[[20]](#footnote-21) This topic has been debated in past OVEC proceedings, but no data or report has ever produced. It would be prudent for the OVEC owners to evaluate whether the OVEC plants should participate in the ancillary services markets. OCC recommends that: (1) DP&L file such a report in this docket by March 1, 2021; and (2) the OVEC plants should participate in the PJM ancillary services markets to maximize revenues, thus lowering the overall subsidy being charged to captive monopoly consumers.

E. To protect consumers, the PUCO should require DPL to formally document the procedures for the calculation of cost recovery of OVEC capital costs and expenses.

We support the Audit Report’s recommendation that DP&L formally document the procedures for the calculation of cost recovery of OVEC capital costs and expenses.[[21]](#footnote-22) A formal written procedure regarding the process for calculating the OVEC subsidy charge and the Legacy Generation Resource Rider (“LGRR”) is essential. This is because of the transition period (starting January 1, 2020) when the OVEC subsidy charge was replaced by the LGRR, under which the calculation of charges is quite different. The current corona virus pandemic could further complicate the matter when certain personnel may be unavailable or limited for calculating and implementing the LGRR.

All these considerations make a formal written procedure on documenting and calculating all OVEC-related costs billed to DP&L and the charges collected from customers indispensable. Because these process and procedure are already in place, DP&L should be able to produce the formal written documents within a reasonable time.

# III. CONCLUSION

 Given the lack of market discipline for these OVEC power plants whose losses are subsidized by Ohioans, the PUCO should closely scrutinize all subsidy charges to Ohio consumers for the power plants. DP&L has the obligation to prove in this case that the subsidy charges were prudent, that its actions were in the best interests of customers, and that all charges comply with the various limitations set forth in the PUCO Orders approving the OVEC subsidy charge to consumers. As explained above, DP&L did not meet its burden of proof in several respects. OCC respectfully requests that the PUCO disallow the collection of certain OVEC costs from DP&L’s consumers and implement the recommended consumer protection practices as discussed in these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

 I hereby certify that a copy of these Initial Comments were served on the persons stated below via electric transmission this 5th day of January 2021.

 */s/ William J. Michael*

 William J. Michael

 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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ATTACHMENT 1

Summary of OVEC Subsidy Charge Paid by DP&L’s Customers

(November 2017 – December 2019)

|  |  |  |
| --- | --- | --- |
| Period | Net Proceeds and Costs | RR Revenue |
| November 2017 | $658,974 | $536,519 |
| December 2018 | $431,793 | $596,082 |
| 2017 Total | $1,090,367 | $1,132,601 |
| January 2018 | ($983,481) | $736,166 |
| February 2018 | $1,261,759 | $679,111 |
| March 2018 | $380,971 | $591,860 |
| April 2018 | $908,204 | $578,933 |
| May 2018 | $986,002 | $556,612 |
| June 2018 | $452,513 | $639,524 |
| July 2018 | ($298,476) | $698,248 |
| August 2018 | $454,993 | $687,541 |
| September 2018 | $565,640 | $679,417 |
| October 2018 | $734,512 | $599,230 |
| 2018 through October | $4,462,637 | $6,446,642 |
| November 2018 | ($37,368) | $681,789 |
| December 2018 | $567,633 | $734,733 |
| 2018 Total | $4,992,902 | $7,863,164 |
| January 2019 | $980,160 | $810,285 |
| February 2019 | $1,136,108 | $827,225 |
| March 2019 | $599,844 | $737,353 |
| April 2019 | $1,660,751 | $674,455 |
| May 2019 | $1,021,636 | $645,711 |
| June 2019 | $1,135,838 | $684,960 |
| July 2019 | $908,266 | $813,861 |
| August 2019 | $1,113,756 | $868,396 |
| September 2019 | $1,077,526 | $789,376 |
| October 2019\* | $1,113,443 | $656,987 |
| November 2019\* | $1,077,526 | $1,054,680 |
| December 2019\* | $780,326 | $1,130,292 |
| 2019 Total  | $12,605,180 | $9,693,581 |
| Audit Period Total | $13,135,445 | $11,110,103 |
| Grant Total | $18,688,849 | $18,689,346 |

Source: PUCO Case No. 19-1776-EL-RDR, Application, Schedule 2 (September 16, 2019).

\*: Forecasted Figures as of September 2019.

1. *See In the Matter of the Review of the Reconciliation Rider of The Dayton Power and Light Company*, PUCO Case No. 20-165-EL-RDR, Entry (March 11, 2020). [↑](#footnote-ref-2)
2. *See* Audit Report at 1. [↑](#footnote-ref-3)
3. *See* Audit Report at 2-3. [↑](#footnote-ref-4)
4. *See* PUCO Case Nos. 16-395-EL-SSO et al, Opinion and Order at 11 (October 20, 2017). [↑](#footnote-ref-5)
5. *See In the Matter of the Application of The Dayton Power and Light Company to Update its Reconciliation Rider*, PUCO Case No. 19-1776-EL-RDR, Application, Schedule 2 (September 16, 2019). [↑](#footnote-ref-6)
6. *See* Entry (November 30, 2020). [↑](#footnote-ref-7)
7. *See* PUCO Case Nos. 16-395-EL-SSO et al, Opinion and Order at 11 (October 20, 2017). [↑](#footnote-ref-8)
8. Case No. 14-1693-EL-RDR, Opinion & Order at 89 (March 31, 2016) (the “OVEC Order”) (also stating, “AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers.”). 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 (November 3, 2016). This modification does not impact the burden of proof in this audit proceeding. [↑](#footnote-ref-9)
9. *Id*. [↑](#footnote-ref-10)
10. *In re* Duke ESP, Case No. 17-1263-EL-SSO (Stipulation and Recommendation at 19) (April 13, 2018). [↑](#footnote-ref-11)
11. *See* Entry (January 29, 2020). [↑](#footnote-ref-12)
12. *See* PUCO Case No. 20-167, OCC Initial Comments at 3-5 (December 18, 2020). [↑](#footnote-ref-13)
13. *See* Audit Report at 9. [↑](#footnote-ref-14)
14. *See* PUCO Case No. 20-167, OCC Initial Comments at 5-11. Those comments are incorporated here. [↑](#footnote-ref-15)
15. *Id*. [↑](#footnote-ref-16)
16. Potomac Economic, A Review of the Commitment and Dispatch of Coal Generators in MISO (September 2020), available at: <https://cdn.misoenergy.org/20201008%20MSC%20Item%2004%20IMM%20Coal%20Dispatch%20Study481336.pdf>. [↑](#footnote-ref-17)
17. *Id*. [↑](#footnote-ref-18)
18. *See* Audit Report at 3 and 12-16. [↑](#footnote-ref-19)
19. *Id*. [↑](#footnote-ref-20)
20. *See* PUCO Case No. 20-167, OCC Initial Comments at 12-13. [↑](#footnote-ref-21)
21. *See* Audit Report at 28. [↑](#footnote-ref-22)