

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the	:	
Power Purchase Agreement Rider of	:	Case No. 18-1004-EL-RDR
Ohio Power Company for 2018.	:	
	:	
In the Matter of the Review of the	:	Case No. 18-1759-EL-RDR
Power Purchase Agreement Rider of	:	
Ohio Power Company for 2019.	:	
	:	
In the Matter of the Review of the	:	Case No. 20-167-EL-RDR
Reconciliation Rider of Duke Energy	:	
Ohio, Inc.	:	

**MEMORANDUM CONTRA TO THE JOINT MOTION FOR A
CONSOLIDATED HEARING BY OFFICE OF THE OHIO CONSUMERS’
COUNSEL AND OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

On July 8, 2021, the Office of the Ohio Consumers’ Counsel (“OCC”) and Ohio Manufacturers’ Association Energy Group (“OMAEG”) filed a Joint Motion for a Consolidated Hearing in the above-captioned dockets. OCC and OMAEG specifically ask that the Commission have one evidentiary hearing for both the Duke Energy Ohio, Inc. (“Duke”) and Ohio Power Company (“Ohio Power”) Power Purchase Agreement Rider and Reconciliation Rider proceedings (Case Nos. 18-1004-EL-RDR, 18-759-EL-RDR, and 20-167-EL-RDR, respectively), given that the same auditor, London Economics International, LLC (“London Economics” or “LEI”) issued reports in both cases. The Staff for the Commission opposes OCC and OMAEG’s request for the reasons explained in the attached Memorandum.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Kyle L. Kern

Kyle L. Kern

Thomas G. Lindgren

Assistant Attorneys General

Public Utilities Section

30 East Broad Street, 26th Floor

Columbus, Ohio 43215-3414

614.466.4395 (telephone)

866.431.4694 (facsimile)

Kyle.Kern@ohioattorneygeneral.gov

Thomas.Lindgren@ohioattorneygeneral.gov

On Behalf of the Staff of
Public Utilities Commission

MEMORANDUM IN SUPPORT

The Staff opposes the request by OCC and OMAEG. Even though London Economics was selected as the Auditor for both the Duke and Ohio Power proceedings (Case Nos. 18-1004-EL-RDR, 18-1759-EL-RDR and 20-167-El-RDR), Staff has concerns about the clarity of the record by consolidating the audit proceedings for two separate utilities for purposes of the evidentiary hearing. And while Staff acknowledges that there appears to be commonality in some underlying legal issues, consolidating the cases would require all parties to contend with different facts and two separate audit reports, for two separate utilities. By keeping the cases separated, factual determinations may be made more swiftly, and the first case to reach resolution on the legal issue(s) may act as legal precedent for the remaining case. Thus, in the interest of judicial economy, the cases should not be consolidated.

OCC and OMAEG contend that consolidating the cases will facilitate the ‘rigorous’ review promised by the PUCO when it approved AEP’s rider, and that “[a] hearing in these cases will allow for the presentation of expert testimony along with the opportunity for cross-examination.”¹ However, review of these cases can and should be done independently, and remain separate. Testimony can be presented and cross-examination conducted without consolidating the cases. The dockets also have separate attorney examiners. And, even though London Economics is the Auditor for both the

¹ Joint Motion at pages 2-3.

Duke and Ohio Power cases, LEI was retained through two separate RFPs, and it was always contemplated, that if necessary, LEI would testify in two separate proceedings.

It should also be noted that Dayton Power and Light (“DP&L”) also has an audit proceeding (Case No. 20-165-EL-RDR) which OCC and OMAEG did not seek to consolidate - presumably because that case does not share the same Auditor.

Nevertheless, that DP&L case requires a separate hearing. The most logical approach is the current one that the Commission established – keep the dockets separated, by utility.

OCC and OMAEG cite to O.A.C. 4901-1-27(B)(7)(d) in support of their Motion, arguing that the rule allows the PUCO to assure that its hearings are “orderly.” They argue that “[c]onsolidating these particular cases for hearing would be orderly for all concerned.” But OCC and OMAEG do not explain why, or how, keeping these proceedings separate, would somehow affect the Commission’s effectiveness.

For purposes of clarity of the record and judicial economy, the Commission should not consolidate the Duke and Ohio Power cases.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Kyle L. Kern

Kyle L. Kern
Thomas G. Lindgren
Assistant Attorneys General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.466.4395 (telephone)
866.431.4694 (facsimile)
Kyle.Kern@ohioattorneygeneral.gov
Thomas.Lindgren@ohioattorneygeneral.gov

On Behalf of the Staff of
Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Foregoing **Memorandum Contra in Response to Joint Motion for A Consolidated Hearing to Determine Whether AEP's And Duke's Over Charges to Customers Were Prudent by Office of The Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group**, was served via electronic mail upon the following parties of record, this 23rd day of July 2021.

/s/ Kyle L. Kern

Kyle L. Kern

Assistant Attorney General

PARTIES OF RECORD:

Christopher Healey

Counsel of Record

William Michael

John Finnigan

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor

Columbus, Ohio 43215

Telephone [Healey]: 614.466.9571

Telephone [Michael]: 614.466.1291

Telephone [Finnigan]: (614) 466-9585

christopher.healey@occ.ohio.gov

william.michael@occ.ohio.gov

john.finnigan@occ.ohio.gov

Angela Paul Whitfield

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

614.365.4100 (telephone)

paul@carpenterlipps.com

Counsel for The Kroger Co.

Kimberly W. Bojko

Counsel of Record

Thomas V. Donadio

Carpenter Lipps & Leland LLP

280 Plaza, Suite 1300

280 North High St. Columbus, Ohio 43215

614.365.4100 (telephone)

bojko@carpenterlipps.com

donadio@carpenterlipps.com

*Counsel for the Ohio Manufacturers'
Association Energy Group*

Steven T. Nourse

Chief Ohio Regulatory Counsel

Regulatory Services

Telephone: 614.716.1608

Fax: 614.716.2014

stnourse@aep.com

Counsel for Ohio Power Company

Robert Dove

Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215-4295
614.462.5443 (telephone)
614.464.2634 (fax)
rdove@keglerbrown.com

Megan Wachspress

PHV-21978-2021
Sierra Club
2101 Webster Street, Ste. 1300
Oakland, CA 94612
415.977.5635 (telephone)
megan.wachspress@sierraclub.org
1707 Grant St.,
Berkeley, CA 94703

*Counsel for Natural Resources Defense
Council*

Matthew R. Pritchard

Counsel of Record
Rebekah J. Glover
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
614.719.2842 (telephone)
614.469.4653 (fax)
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com

Counsel for Industrial Energy Users-Ohio

Michael L. Kurtz**Kurt J. Boehm****Jody Kyler Cohn**

Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
513.421.2255 (telephone)
513.421.2764 (fax)
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for The Ohio Energy Group

Rocco O. D'Ascenzo

Deputy General Counsel

Jeanne W. Kingery (Counsel of Record)

Associate General Counsel

Larisa M. Vaysman Senior Counsel

Duke Energy Business Services LLC
139 East Fourth Street, 1303 Main
Cincinnati, OH 45202
513.287.4359 (telephone)
Rocco.DAscenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.Vaysman@duke-energy.com

Counsel for Duke Energy Ohio, Inc.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

7/23/2021 5:57:12 PM

in

Case No(s). 18-1004-EL-RDR, 18-1759-EL-RDR, 20-0167-EL-RDR

Summary: Memorandum Contra to the Joint Motion for a Consolidated Hearing by Office of the Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO