

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**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,

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**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,

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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

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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 Manufactures' Association Energy Group electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO