

**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.	:	

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

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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. The Staff for the Public Utilities Commission of Ohio (“Staff”) filed a Memorandum Contra OCC and OMAEG’s Motion on Friday, July 23, 2021. Due to unforeseen circumstances, Staff’s Memorandum Contra was filed after the 5:30 p.m. deadline for electronic filings. Staff respectfully requests that for good-cause shown the Commission permit the filing of its Memorandum Contra instant. Staff’s arguments are more fully set forth in the attached memorandum.

Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Kyle L. Kern*

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**On Behalf of the Staff of**  
**Public Utilities Commission of Ohio**

## **MEMORANDUM IN SUPPORT**

Staff's Memorandum Contra OCC and OMAEG's Motion to Consolidate<sup>1</sup> was due on Friday, July 23, 2021. Due to unforeseen and unavoidable circumstances, Staff missed the 5:30 p.m. filing deadline. Staff made every attempt to file electronically prior to 5:30 p.m., but unfortunately was unsuccessful. Staff's Memorandum Contra was filed electronically at 5:58 p.m.<sup>2</sup> It was served on the parties on Friday, July 23, 2021 at 6:05 p.m.<sup>3</sup>

Staff respectfully requests that for good-cause shown the Commission permit the filing of its Memorandum Contra.

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<sup>1</sup> See attached Exhibit A Memorandum Contra.

<sup>2</sup> See attached Exhibit B E-Filing Confirmation.

<sup>3</sup> See attached Exhibit C service email.

Respectfully submitted,

**Dave Yost**  
Ohio Attorney General

**John H. Jones**  
Section Chief

*/s/ Kyle L. Kern*

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**On Behalf of the Staff of**  
**Public Utilities Commission of Ohio**

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Foregoing **Motion for Leave to File**  
**Instanter Staff's Memorandum Contra to The Joint Motion for a Consolidated**  
**Hearing 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 26<sup>th</sup> day of July 2021.

/s/ Kyle L. Kern

**Kyle L. Kern**

Assistant Attorney General

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*Counsel for Duke Energy Ohio, Inc.*

**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.	:	

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

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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*

---

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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.”<sup>1</sup> 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

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<sup>1</sup> 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*

---

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**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 23<sup>rd</sup> day of July 2021.

/s/ Kyle L. Kern

**Kyle L. Kern**

Assistant Attorney General

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*Counsel for Duke Energy Ohio, Inc.*

**Kimberly Naeder**

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**From:** DISSUBSCRIPTION@puc.state.oh.us  
**Sent:** Friday, July 23, 2021 5:58 PM  
**To:** Kimberly Naeder  
**Subject:** E-Filing Confirmation

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Date & Time: 7/23/2021 at 17:57:12.5516250 EST

Case Number(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

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**Kimberly Naeder**

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**Cc:** Kyle Kern; Thomas Lindgren; Tonnetta Scott  
**Subject:** FW: E-Filing Confirmation 18-1004-EL-RDR, 18-1759-EL-RDR, 20-0167-EL-RDR  
**Attachments:** Memo Contra 18-1004-EL-RDR, et al. 07.23.21.pdf

Good Afternoon,

The attached was filed today with the Public Utilities Commission of Ohio.

Thank you,

Kimberly



*Kimberly M. Naeder*

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*\* Please note that, in adherence to best practices brought about in response to COVID-19, the Ohio Attorney General's Office moved to a "remote work" status effective March 18, 2020. All members of the office remain available remotely during normal business hours. Thank you for your patience.*

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**Subject:** E-Filing Confirmation

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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

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Summary: Motion for Leave to File Instant Staff's 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