

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**JOINT REPLY IN SUPPORT OF THE OHIO CONSUMERS' COUNSEL AND OHIO
MANUFACTURERS' ASSOCIATION ENERGY GROUP'S JOINT MOTION FOR A
CONSOLIDATED HEARING
BY NATURAL RESOURCES DEFENSE COUNCIL AND OHIO PARTNERS FOR
AFFORDABLE ENERGY**

I. Introduction

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 ("Joint Motion") in the above-captioned dockets. OCC and OMAEG specifically asked that the Commission have one evidentiary hearing for both the Duke Energy Ohio, Inc. ("Duke") and Ohio Power Company ("AEP") Power Purchase Agreement Rider and Reconciliation Rider proceedings (Case Nos. 20-167-EL-RDR, 18-1004-EL-RDR, and 18-759-EL-RDR respectively), given that the same auditor, London Economics International, LLC ("London Economics" or "LEI") issued reports in both cases.

On July 23, 2021, AEP and Duke filed a Memorandum Contra to the Joint Motion. On July 26, 2021, Staff filed Motion for Leave to file a Memorandum Contra since Staff, due to

technical difficulties, missed the filing July 23 filing deadline for Memorandum Contra in the AEP cases (though it served the pleading to the parties on July 23.) Currently, no party has opposed Staff's Motion and neither Natural Resources Defense Council ("NRDC") nor Ohio Partners for Affordable Energy ("OPAE") intend to do so. This Reply will address the Memorandum Contra as if it were timely filed.

NRDC and OPAE support OCC and OMAEG's request for a hearing in these cases, whether individually or in a consolidated manner.

II. Argument

At the outset, it should be noted that Staff did not oppose the request for hearing in these cases rather Staff opposed the consolidation of the hearings.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."). NRDC and OPAE are indifferent as to the need to consolidate the three cases for purposes of a hearing. Neither NRDC nor OPAE is a party to Case No. 20-167-EL-RDR at this time. However, NRDC and OPAE support the request for a hearing in Case No. 18-1004-EL-RDR et al. and, in the event of consolidation, Case No. 20-167-EL-RDR. The remainder of this Reply will be dedicated to responding to AEP's Memorandum Contra as that is the case in which both NRDC and OPAE are currently parties.

¹ Pub. Util. Comm. Case No. 18-1004-EL-RDR et al., Staff Memorandum in Support of Memorandum Contra aka Exhibit A to Staff's Motion for Leave to File Instantly Staff's Memorandum Contra to the Joint Motion at p. 1 (July 26, 2021).

A. A hearing was clearly intended as part of the annual prudency review established pursuant to the Commission’s March 31, 2016, Opinion and Order in Case No. 14-1693-EL-SSO et al.

In its Memorandum Contra, AEP noted that the Commission rejected arguments that the annual audits of the PPA Rider would be “inadequate or illusory” citing to the Opinion and Order in Case No. 14-1693-EL-SSO.² AEP further states that the Commission established a process which allows for intervenor participation and the creation of a procedural schedule but does not “categorically require a hearing”.³ AEP is correct that there is not an express requirement for a hearing in the Opinion and Order. However, a review of the Opinion and Order does reveal the intention that a hearing would be held as part of the annual prudency review process.

In the Opinion and Order, the Commission stated:

[The Commission] disagree[s] with claims that the annual prudency review is inadequate or illusory. The annual review provided for under the stipulation is **intended to address Staff’s recommendations** (Staff Ex. 1 at 17-18; Co. Ex. 52 at 2), and the Commission has always provided for the periodic review and reconciliation of riders created under an ESP.⁴

The Commission stated the review was intended to address Staff’s recommendations and cited to Staff Ex. 1 at 17-18. Staff Exhibit 1 was the Direct Testimony of Hisham M. Choueiki.⁵ In Staff Exhibit 1 at pages 17-18, Witness Choueiki recommends for “rigorous review of the expanded PPA Rider” which states, in relevant part:

As a result, if the Commission believed that certain future fixed cost components or variable cost components were not prudent, the Commission would have to file at FERC challenging these cost components, and the burden of proof would be on the Commission to demonstrate its case. A method to mitigate this concern would be for the Company and AEPGR to accept that all future cost components (fixed

² AEP Memorandum Contra at p. 4.

³ Id. at pp. 4-5.

⁴ Pub. Util. Comm. Case No. 14-1693-EL-SSO et al., Opinion and Order at p. 88 (March 31, 2016). (Emphasis added).

⁵ Pub. Util. Comm. Case No. 14-1693-EL-SSO et al., Composite Index Volumes I-XXI at p. 34 (Nov. 11, 2016).

and variable) will be audited annually by Staff (or by an outside consultant representing Staff) and for the Company and AEPGR to accept a Commission's finding to the extent there is a disagreement between the Company or AEPGR and Staff **and a hearing is conducted**.⁶

Reading the express language of the Opinion, which states the annual prudency review is intended to address Staff's recommendations, in conjunction with the express language of Staff's recommendations (as cited in the Opinion), which include a recommendation to hold a hearing as part of the prudency review, it is clear a hearing was expected as part of the annual prudency review.

The expectation the prudency review would include an evidentiary hearing is logically consistent with the Commission's later statement that AEP will bear the burden of proof in demonstrating the prudency of all costs and sales during the review.⁷ The phrase "bear the burden of proof in demonstrating the prudency" implies that there will be a hearing where AEP will have the opportunity to prove its burden. Conversely, other intervenors will have the opportunity to challenge the evidence AEP uses to attempt to prove its burden.

It is clear from the Opinion and Order and the testimony cited in the Opinion and Order that the annual prudency review was always intended to include an evidentiary hearing where AEP would be afforded the opportunity to prove the prudency of the PPA Rider expenses. NRDC and OPAE respectfully request that the Commission, in line with its decision in Case No. 14-1693-EL-SSO, grant OCC and OMAEG's Joint Motion and schedule a hearing in Case No. 18-1004-EL-RDR and 18-1759-EL-RDR.

⁶ Pub. Util. Comm. Case No. 14-1693-EL-SSO et al., Staff Exhibit 1 at pp. 17-18 (Oct. 9, 2015). (Emphasis added).

⁷ Pub. Util. Comm. Case No. 14-1693-EL-SSO et al., Opinion and Order at p. 89 (March 31, 2016).

III. Conclusion

For the foregoing reasons, OPAE respectfully request OCC and OMAEG's Joint Motion be granted.

/s/Robert Dove

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CERTIFICATE OF SERVICE

I certify that this *Reply in Support* filed by Natural Resources Defense Council and Ohio Partners for Affordable Energy was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on July 30, 2021. The PUCO's e-filing system will electronically serve notice of the filing of this document on the parties subscribed to these proceedings.

/s/ Robert Dove
Robert Dove

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

Summary: Text Joint Reply in Support of Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group's Joint Motion For a Consolidated Hearing electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council and Ohio Partners for Affordable Energy