

**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 Ohio,)	Case No. 20-167-EL-RDR
Inc.)	

**REPLY MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR A CONSOLIDATED HEARING
TO DETERMINE WHETHER AEP'S AND DUKE'S
OVEC CHARGES TO CUSTOMERS WERE PRUDENT**

**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 the Ohio Manufacturers' Association Energy Group ("OMAEG") filed a Joint Motion requesting that the Public Utilities Commission of Ohio ("PUCO") consolidate the above-referenced cases for purposes of hearing. On July 23, 2021, the PUCO Staff, Ohio Power Company ("AEP") and Duke Energy Ohio, Inc. ("Duke") filed memoranda contra opposing the Joint Motion to consolidate and/or the hearing in these cases. In response to these objections, OCC and OMAEG hereby withdraw their request to consolidate the cases for hearing.

However, OCC and OMAEG also continue to seek an evidentiary hearing in these cases. Staff's memorandum contra appears to support an evidentiary hearing ("Testimony can be

presented, and cross-examination conducted without consolidating these cases.”).¹ Duke also appears to support a hearing. Only AEP appears to oppose this request, but it provides no substantive reasons for not holding an evidentiary hearing.

Instead, AEP downplays the impact of the Ohio Valley Electric Corporation (“OVEC”) subsidies on customers by characterizing the proceeding as merely a “straightforward annual prudency review” and asks the PUCO to avoid “litigious and inefficient procedure” by denying OCC and OMAEG’s Joint Motion for a hearing.² As explained in the Joint Motion, customers have already been charged millions of dollars to prop up the dirty OVEC coal plants (of the two plants one is in Indiana) and are expected to pay an additional \$700 million by 2030.³

Here, evidentiary hearings will give “teeth” to the PUCO’s review of the OVEC subsidies being charged to AEP and Duke consumers. The hearings will ensure that the review does not become a perfunctory proceeding such that these subsidy costs are passed through to consumers without scrutiny. Furthermore, contrary to AEP’s assertions,⁴ the PUCO is more than capable of holding an efficient and fair hearing on the OVEC subsidies. With respect to the PUCO’s ability to manage its own dockets, Supreme Court of Ohio precedent holds:

It is well-settled that pursuant to R.C. 4901.13, the commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay, and eliminate unnecessary duplication of effort.⁵

¹ Staff Memorandum Contra at 3..

² AEP Memorandum Contra at 1.

³ See OCC and OMAEG’s Joint Motion at 1-2.

⁴ AEP Memorandum Contra at 1.

⁵ See *Toledo Coal. for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560, 433 N.E.2d 212, 214 (1982) (Citations omitted).

While AEP and Duke offer no reasons why an evidentiary hearing should not occur, they simply state that the PUCO has discretion to decide whether a hearing is appropriate (AEP: (“[T]he Commission has discretion to decide what is appropriate.”⁶; Duke: “If the Commission decides that a hearing is appropriate, it will schedule one, without the filing of a motion.”).⁷ The PUCO should grant the Joint Motion for an evidentiary hearing for the reasons articulated therein and because no party has provided any argument against it.

The Joint Motion presented the following reasons why an evidentiary hearing is required:

1. Under current conditions, the OVEC plants are expected to lose \$700 million over the next decade and a hearing would allow the PUCO an opportunity to develop a record that it could use to protect consumers by requiring the utilities to mitigate these expected losses.⁸
2. An evidentiary hearing is consistent with the PUCO’s commitment to conduct a “rigorous” and “substantive” review of charges from the OVEC plants.⁹
3. When the PUCO and AEP set forth the due process rights that parties should enjoy in these OVEC Rider cases, they both relied on a Pennsylvania case where an evidentiary hearing was held.¹⁰
4. The Supreme Court of Ohio’s dicta in the first Fuel Adjustment Clause “FAC”) case of the Electric Security Plan (“ESP”) era states that an evidentiary hearing should occur in these cases.¹¹

⁶ AEP Memorandum Contra at 4.

⁷ Duke Memorandum Contra at 2.

⁸ Joint Motion at 1-2.

⁹ Joint Motion, Memorandum in Support at 3.

¹⁰ Joint Motion, Memorandum in Support at 3-6.

¹¹ Joint Motion, Memorandum in Support at 6-7.

5. The PUCO has held an evidentiary hearing in each FAC case in the ESP era following this Supreme Court pronouncement;¹² and

The PUCO must “respect its own precedents in its decisions to assure the predictability, which is essential in all areas of the law, including administrative law.”¹³ Joint Movants respectfully request that the PUCO follow its own precedents, by holding an evidentiary hearing in these cases.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers’ Counsel

/s/ John Finnigan
Christopher Healey (0086027)
Counsel of Record
William Michael (0070921)
John Finnigan (0018689)
Assistant Consumers’ Counsel
18-1004-EL-RDR et al

Angela D. O’Brien (0097579)
Counsel of Record
John Finnigan (0018689)
Assistant Consumers’ Counsel
20-167-EL-RDR

¹² Joint Motion, Memorandum in Support at 7.

¹³ *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 431, 330 N.E.2d 1 (1975), *superseded on other grounds by statute*, as recognized in *Babbitt v. Pub. Util. Comm.*, 59 Ohio St.2d 81, 89, 391 N.E.2d 1376 (1979).

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 [O'Brien]: (614) 466-9531

Telephone [Finnigan]: (614) 466-9585

christopher.healey@occ.ohio.gov

william.michael@occ.ohio.gov

angela.obrien@occ.ohio.gov

john.finnigan@occ.ohio.gov

(willing to accept service by e-mail)

Counsel for the Office of the Ohio Consumers' Counsel

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Thomas V. Donadio (0100027)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

bojko@carpenterlipps.com

donadio@carpenterlipps.com

(willing to accept service by e-mail)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was served on the persons stated below via electric transmission this 30th day of July 2021.

/s/ John Finnigan
John Finnigan (0018689)
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

18-1004-EL-RDR et al

kyle.kern@ohioAGO.gov
thomas.lindgren@ohioAGO.gov
mkurtz@BKLawfirm.com
kboehm@BKLawfirm.com
jkylercohn@BKLawfirm.com

Attorney Examiners:
sarah.parrot@puco.ohio.gov
greta.see@puco.ohio.gov

stnourse@aep.com
mpritchard@mcneeslaw.com
rglover@mcneeslaw.com
rdove@keglerbrown.com
megan.wachpress@sierraclub.org
bojko@carpenterlipps.com
donadio@carpenterlipps.com

20-167-EL-RDR

thomas.lindgren@ohioAGO.gov
kyle.kern@ohioAGO.gov
bojko@carpenterlipps.com
paul@carpenterlipps.com

rocco.dascenzo@duke-energy.com
Jeanne.kingery@duke-energy.com
Larisa.vaysman@duke-energy.com

Attorney Examiners:

Lauren.augostini@puco.ohio.gov
Nicholas.walstra@puco.ohio.gov

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Summary: Reply Reply Memorandum in Support of Joint Motion for a Consolidated Hearing to Determine Whether AEP's and Duke's OVEC Charges to Customers Were Prudent by Office of The Ohio Consumers' Counsel and Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Tracy J Greene on behalf of Finnigan, John