

In the Matter of the Review of the :
Reconciliation Rider of Duke Energy : Case No. 20-0167-EL-RDR
Ohio, Inc. :

On October 27, 2021, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion for Subpoenas Duces Tecum for Auditor, PUCO Staff and PUCO-Designated Representative Making or Contributing to the Audit Report to Attend and Testify at the Evidentiary Hearing. OCC's Motion seeks to subpoena Staff personnel who did not oversee the audit performed for this proceeding. Perhaps more significant, the independent Auditor for this case, Marie Fagan of London Economics International, will be made available to testify, and OCC can ask questions about the contents of the audit report for this proceeding and any conclusions made therein at that time. The Staff of the Public Utilities Commission of Ohio ("Staff") opposes OCC's Motion for the reasons addressed herein.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Kyle Kern

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

MEMORANDUM IN SUPPORT

Through its Motion, OCC seeks to bring facts that have not been established as relevant into the record. In addition, OCC seeks to subpoena Staff personnel who has not been involved on this case. To this end, OCC includes discussion of emails discovered through a public records request in its Motion.¹ However, these messages clearly pertain to the Ohio Power Company (“Ohio Power”) (Case Nos. 18-1004-EL-RDR and 18-759-EL-RDR) audit proceeding.² This is evident by simply reading the subject lines of the messages, which are clearly labeled as pertaining to the Ohio Power audit case.³

It should also be noted that OCC and Ohio Manufacturers’ Association Energy Group (“OMAEG”) filed a Motion to Consolidate the Duke Energy Ohio, Inc. (“Duke”) and Ohio Power Audit cases on July 8, 2021.⁴ OCC and OMAEG ultimately withdrew the request to consolidate the cases.⁵ The Duke and Ohio Power audit dockets are separate – they involve separate utilities, separate attorney examiners, and separate procedural schedules have been issued. Further, Ohio Power is not a party to this case. Duke is not a party to the Ohio Power proceeding. It would be prejudicial to admit evidence or testimony that relates to the audit of a utility that is not a party that case. In addition, and for purposes of clarity of the record, information pertaining to the Ohio Power audit proceeding should not be permitted in this case, and vice versa.

¹ See OCC Motion at 2.

² See Case Nos. 18-1004-EL-RDR and 18-1759-EL-RDR.

³ The subject line of the emails in question clearly states: “RE: Draft AEP Ohio OVEC Audit.”

⁴ See OCC and OMAEG Motion to Consolidate (July 8, 2021).

⁵ See OCC and OMAEG Reply Memorandum at (July 30, 2021).

OCC specifically mentions Staff member Mahila Christopher in its Motion.⁶ Unfortunately, OCC erroneously concludes that Ms. Christopher “appears to be part of the PUCO Staff who made or contributed to the audit by overseeing the audit.”⁷ Ms. Christopher was not part of the PUCO Staff who made or contributed to the audit by overseeing the audit. The communication Ms. Christopher sent to the Auditor (attached by OCC to its Motion) does not relate to this case, nor has OCC established its relevancy.

The independent Auditor for this proceeding, Marie Fagan, will be available to testify for this case, and thus, the first point of OCC’s Motion is moot. In fact, Ms. Fagan filed testimony in this docket on October 26, 2021. But more importantly, Ms. Fagan is the appropriate witness for OCC to cross-examine for *this* proceeding. To this end, OCC contends that “‘Ms. Christopher sent an email to Ms. Fagan suggesting that she remove her conclusion that ‘keeping the plants running does not seem to be in the best interests of the ratepayers.’” While Ms. Christopher’s email is clearly marked as a communication relating to the Ohio Power audit case, OCC can certainly ask Ms. Fagan why certain conclusions were or were not made in the audit report for this proceeding involving Duke.

OCC also seeks to subpoena “[t]he person or persons identified in Ms. Christopher’s email as ‘PUCO Admin’ made or contributed to the audit by (according to the email) providing ‘final acquiescence’ ‘regarding the overall tone of the draft report.’” Again, Staff takes issue with this request for the same reasons expressed above, that is,

⁶ See Motion at 2-5.

⁷ Id. at 3.

Ms. Christopher's emails clearly pertain to the Ohio Power audit proceeding. Regardless, in the interest of transparency, Staff is willing to voluntarily produce this additional Staff member, if necessary, as they were the Staff lead in the Duke OVEC audit proceeding. However, any cross-examination should naturally be limited to questions pertaining to this proceeding—not Ohio Power's audit proceeding.

For the reasons explained above, OCC's Motion should be denied. Ms. Fagan, the independent auditor for this case, is the appropriate witness to discuss the contents of the audit report and the conclusions made therein and has already filed testimony in this case. Ms. Christopher did not contribute to the audit report for this case, and Staff will voluntarily produce the relevant Staff witness, if necessary.

Finally, Staff requests that the currently scheduled evidentiary hearing date of November 9, 2021, be continued until such time that the issues addressed in OCC's Motion for Subpoenas are ruled upon. Additional time is necessary if Staff is to present a witness not currently scheduled or anticipated to testify.

Respectfully submitted,

Dave Yost
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John H. Jones
Section Chief

/s/ Kyle Kern

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Memorandum Contra**, on behalf of the Staff of the Public Utilities Commission of Ohio, has been served upon the below-named counsel via electronic mail, this 3rd day of November, 2021.

/s/ Kyle L. Kern

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Summary: Memorandum Contra To The Motion For Subpoenas Duces Tecum For Auditor, PUCO Staff, And PUCO-Designated Representative Making Or Contributing To The Audit Report To Attend And Testify At The Evidentiary Hearing, And Request For Continuance Of Hearing electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO