

**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.)	

**NATURAL RESOURCES DEFENSE COUNCIL’S INITIAL COMMENTS IN
RESPONSE TO LEI’S AUDIT REPORT**

Natural Resources Defense Council (“NRDC”) hereby submits these initial comments on “Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company,” prepared by, London Economics International LLC, dated September 16, 2020 (“Audit Report”).

As explained more fully in the comments below, the Commission should take action now to restore faith in its ability to regulate the utilities by disallowing OVEC costs based on the original conclusions of the auditor. First, the auditor correctly concluded the OVEC contract does not benefit Ohio customers. Accordingly, the Commission should disallow Ohio Power’s share of all OVEC costs that PJM exceed market value. Second, both in this proceeding and in any future OVEC-related cases, the Commission should disallow costs all costs associated “must run” commitment decisions where OVEC suffers as net loss over a week or a month. Third, the Commission should impose a capital recovery cap of \$0 related to the avoidable environmental compliance spending. To protect Ohio customers from imprudent costs incurred by Ohio Power Company, and to restore faith in this Commission, the Commission must disallow recovery for these OVEC costs.

I. The Audit was Not “Independent” as Intended by Commission Order.

The Audit Report is required by the original Order populating the Purchase Power Agreement Rider (“PPA Rider”). The PPA Rider collects costs from customers for the operation of OVEC under the guise of OVEC providing customers a hedge against market volatility.¹ Additionally, the Commission reaffirmed the audit requirement in AEP’s most recent Electric Security Plan Case.²

The PPA Rider Case Order stated that the auditor, who may be the Commission or an independent third-third party auditor, shall “review the accuracy and appropriateness of the rider’s accounting and the prudence of AEP Ohio’s decision and actions as set forth in the stipulation.”³ The Commission stated that the PPA Rider Audit would not be inadequate or illusory when it approved the PPA Rider.⁴ In support of both the PPA Rider and the protection afford by the audit process, then Commission Chairman Asim Haque stated that market forces were always changing and while the projections at the time showed it was unlikely OVEC would provide a credit for customers in the near future, Chairman Haque expected to see credits from the PPA Rider after a “period of charges”.⁵ Without these credits Chairman Haque recognized the the PPA Rider would act as a somewhat illusory insurance policy.⁶

Chairman Haque went on to state that the PPA Rider “should not be perceived as a blank check, and consumers should not be treated like a trust account.”⁷ And on the ultimate question

¹ *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (PPA Rider Case), Opinion and Order at pp.87-90 (Mar. 31, 2016).

² *In re Ohio Power Co.*, Case No. 16-1852-EL-SSO, et al., Opinion and Order at ¶ 53 (Apr. 25, 2018).

³ PPA Rider Case, Opinion and Order at p. 90.

⁴ PPA Rider Case, Opinion and Order at p. 88.

⁵ PPA Rider Case, Opinion and Order, Concurring Opinion of Chairman Haque at p. 4.

⁶ *Id.*

⁷ *Id.* at p. 5.

of whether the period of charges will be worth the ultimate value of the Rider as a hedge

Chairman Haque stated,

Surely, it is fair to ask how much all of this will cost. Much of these costs will be determined in future proceedings before the Commission, and so we will find out if the perceived present benefits are actually worth the costs. That question, however, sheds light on the very difficult balance between a current financial impact to ratepayers, and future benefits (and even savings) for those same ratepayers after this initial investment. I save this conundrum for another day, however.⁸

Fast forward over four years later and the Audit Report ordered by the Commission concludes that “keeping [OVEC] running does not seem to be in the best interest of ratepayers.”⁹ This conclusion demonstrates that, thus far, the PPA Rider is the type of illusory insurance policy warned by the parties that opposed it. Yet, this conclusion is not found anywhere in the Audit Report filed in this docket. Neither are references to the House Bill 6 scandal and federal investigation that the Auditor included with reference to the OVEC charges codified by House Bill 6.¹⁰

These connections and conclusions were eliminated at the behest of Commission Staff.¹¹ The Staff member requesting there deletion characterized the deletion as softening the tone and intensity of the language, as well as reducing the subjectivity in the details provided relating to the House Bill 6 scandal and investigation.¹² These types of edits are unacceptable and undermine the credibility of the audit.

Eliminating the very conclusion the audit was designed to determine, whether or not the AEP’s decision related to OVEC are prudently incurred and consistent with the Stipulation, is

⁸ Id. at p.6

⁹ Attachment A. Emails between Commission Staff and staff of London Economics.

¹⁰ Id.

¹¹ Id.

¹² Id.

not merely softening the tone and intensity of the audit it is hiding the auditor's conclusion. What is the point of an audit if the conclusions of the auditor are not included in the audit? An audit without the auditor's conclusions is the very type of illusory and inadequate protection the Commission stated would not occur in the audit process. These audits are the time to determine whether the costs outweigh the benefits for the purported hedging mechanism. The decision to eliminate the auditor's conclusion that the PPA Rider is a bad deal for customers only serves to punt that determination further down the road.

It must be noted, that these recommendations, to eliminate the conclusion that OVEC represents a bad deal and to remove reference to the House Bill 6 federal bribery investigation due to claims of "subjectivity", from Commission Staff came while the Commission was chaired by Samuel Randazzo. Former Chair Randazzo was appointed to his position on February 4, 2019.¹³

In a Deferred Prosecution Agreement with the United States Government, FirstEnergy agreed to a Stipulated Statement of Facts. In that Statement, FirstEnergy admitted it "paid \$4.3 million dollars to Public Official B through his consulting company in return for Public Official B performing official action in his capacity as PUCO Chairman to further FirstEnergy Corp.'s interests."¹⁴ Though Public Official B is not identified by name in the Deferred Prosecution Agreement the Agreement states "[o]n February 4, 2019, Public Official B's selection as the Chairman of the PUCO was announced."

¹³ <https://www.cleveland.com/business/2019/02/governor-dewine-appoints-utility-lawyer-sam-randazzo-to-chair-puco.html>

¹⁴ Deferred Prosecution Agreement at p. 17.
<https://www.documentcloud.org/documents/21014669-firstenergy-dpa-sof#document/p35/a2063007> (last accessed November 12, 2021).

The facts outlined above, along with Commission Staff's request to eliminate the auditor's conclusion from the Audit Report, under the guise of softening the tone, call into question the legitimacy and completeness of the Audit Report. As a result, the Commission should either reinstate the auditor's original conclusion or order a new audit devoid of substantive interference by the Commission's Staff in the auditor's conclusions.

II. Commission Should Disallow Costs that Exceed Market Value.

Due to the diligent advocacy of the OCC, it is known that the original conclusion of the auditor was that the OVEC plants are not in the interest of customers. This should be unsurprising to the Commission because in all of the AEP, Duke, and DP&L bailout proceedings, no utility was ever able to prepare a forecast shoring that the plants had positive value for customers (when excluding sunk costs). The Commission should therefore disallow Ohio Power Company's share of the overall net margin incurred during the review period. Specifically, the Commission should disallow Ohio Power's share of the calculation: total OVEC revenues (PJM energy, capacity, and ancillary services) minus total OVEC costs (energy, demand, and any other charges). Such a remedy is a standard one for inter-affiliate transactions, such as OVEC sales and payments.¹⁵ This remedy would also save Ohio customers money and begin to restore trust in the work of this Commission.

¹⁵ In the matter of the application of INDIANA MICHIGAN POWER COMPANY for approval to implement a power supply cost recovery plan for the twelve months ending with December 31, 2020, Case No. U-20529, Order dated May 13, 2021, pp. 16-17 (holding that the Michigan Code of Conduct for affiliate transaction applies to the ICPA and requiring a market price cap on sales from OVEC to Indiana Michigan Power).

III. Commission Should Disallow Costs Associated with Imprudent Self-Scheduling of OVEC Units.

The Audit Report shows that OVEC's owners made "must run" commitment decisions for Clifty Creek and Kyger Creek during the review period that consistently harmed customers. The Audit Report finds that OVEC's coal units are consistently bid into PJM energy market as "must run" at all non-outage times regardless of market energy prices.¹⁶ The Auditor "examined seven months chosen at random,"¹⁷ and found that in four of those months OVEC incurred significant losses in the PJM energy market. This means that if the plants had not operated at all in those four months, customers would have been better off because PJM energy revenues were lower than the marginal cost of production (primarily fuel cost) during those months (even assuming customers were still paying the demand charge regardless).¹⁸

Despite finding significant imprudent activity during most of the months studied at random, the Auditor does not appear to have examined other months. The Audit Report recommends that OVEC "re-consider" its strategy of running the plants regardless of market price.¹⁹ But the Commission has a broader obligation to protect customers from imprudent decision making, and it is unlikely that a mere recommendation of this Commission would have an impact on the OVEC

¹⁶ Audit Report at 21, 44. Of the 11 OVEC coal units, only Clifty Creek unit 6 is not consistently self-scheduled. *Id.* This is presumably attributable to the fact that Clifty Creek unit 6 lacks air pollution controls and is not capable of operating without violating permit requirements.

¹⁷ Audit Report at 53.

¹⁸ Audit Report at 53 ("Because the OVEC plants are offered into the PJM DA market as "must run," there are times during which the PJM DA prices does not cover the variable cost of running the plants.").

¹⁹ AEP Report at 9 ("Markets can change, so LEI recommends that OVEC re-consider its "must-run" offer strategy (offering energy irrespective of the day ahead market price, discussed in more detail in Section 5) and utilize near-term (one week to one month) demand and price forecasts to formulate offers.")

owners. Instead, the Commission should disallow Ohio Power's share of the net variable negative margin associated with the months of self-scheduling. Because the Auditor only looked at a small number of months at issue, Commission Staff should calculate Ohio Power's share of this self-scheduling disallowance starting from a thorough review of all months during the review period. The Commission also state its intention to disallow costs associated with imprudent self-scheduling in any future OVEC proceedings. By imposing a disallowance on Ohio Power and the other Ohio utilities, the Commission is very likely to change OVEC's bidding strategy, and, even if not, will have protected Ohio customers from the OVEC owners reckless indifference to PJM energy market losses.

Further, the Commission should remove confidential protections for Figure 26. In Figure 26, the Audit Report compares overall monthly OVEC energy revenues to overall OVEC energy costs. Most, if not all of this information, is publicly available. While OVEC has legitimate reasons to protect the confidentiality of its actual daily incremental bids into the PJM market, the aggregated information provided in Figure 26 is not only public already but, even if it were not, could not be legitimately protected as a trade secret. The fact that OVEC's owners have recklessly lost vast sums of customers money in the energy market is evidence of their imprudent actions, but is not itself a trade secret.

IV. Commission Should Impose a Cap of \$0 on Avoidable Environmental Compliance Capital Spending.

The Commission should impose a cap of \$0 for avoidable environmental compliance spending. Having studied the ownership and regulatory situation at OVEC, the Audit Report finds that that a cap on capital spending "would be prudent:" "Under such circumstances, a cap or ceiling on annual expenditures would be prudent, to prevent over-investment. LEI

recommends the Commission consider implementing such a cap.”²⁰ This is correct and not merely a hypothetical problem.

Both Clifty Creek and Kyger Creek face significant compliance costs associated with U.S. EPA’s coal ash and surface water discharge requirements. Most of these costs could be avoided by a 2028 retirement of these plants. But because the OVEC owners have a strong incentive to continue to invest capital in the OVEC plants, as the Auditor Report concludes, there is no incentive for OVEC to avoid incurring this capital spending.

Regardless of the OVEC owners’ decisions on whether to over-invest in these plants, Ohio customers should not pay these costs, which a utility with any concern for its customers would avoid. Accordingly, the Commission should adopt the recommendation of the Audit Report and impose a price cap of \$0 on all environmental capital spending that could be avoided by a 2028 or earlier retirement of the coal plants.

V. Conclusion

For the foregoing reasons, the Commission should protect Ohio customers by disallowing the specified OVEC costs from customers’ bills.

Dated: November 12, 2021

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)
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²⁰ Audit Report at 92.

Megan Wachspress (appearance pro hac
vice)

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Attorneys for NRDC

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on November 12, 2021.

/s/ Robert Dove
Robert Dove

From: Marie Fagan
To: Christopher, Mahila
Cc: Windle, Rodney
Subject: RE: Draft AEP Ohio OVEC Audit
Date: Tuesday, September 8, 2020 3:42:14 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image007.png

Okay, thanks v much for the head start

From: mahila.christopher@puco.ohio.gov <mahila.christopher@puco.ohio.gov>
Sent: Tuesday, September 8, 2020 2:59 PM
To: Marie Fagan <marie@londoneconomics.com>
Cc: rodney.windle@puco.ohio.gov
Subject: RE: Draft AEP Ohio OVEC Audit

Hi Marie,
Please find attached Staff's initial comments on LEI's latest draft of the AEP Ohio, 2018-2019 PPA rider audit final report. This may help you get a head start on Staff's editorial suggestions. The comments can be discussed further at tomorrow's meeting.

**If you could please note that Staff still needs final acquiescence from PUCO Admin. regarding the overall tone of the draft report!

Staff's main observation regarding the tone of the draft is the following:

- Milder tone and intensity of language would be recommended such as the language on page 10, para 3: "Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers"
- Reduced subjectivity and level of detail/specifics would be required such as the language on page 26, para 2: "HB 6 also provides subsidies for two large nuclear power plants in Ohio, and for that reason is the center of a federal bribery investigation. First Energy Corporation and the company's political action committee, and Generation Now, a 501 (c) (4) non-profit group are charged with paying \$60 million to advocate for the passage of HB 6. The case has led to federal charges against Ohio House Speaker Larry Householder and four associates."

I am attaching a redlined Word version of the draft for your perusal/review. If you could, please take a look and incorporate Staff's comments as far as possible? Please let me know of any questions, comments, and concerns.

Thank you

Mahila Christopher
Public Utilities Commission of Ohio
Office of the Federal Energy Advocate
Utility Specialist
(614) 728-6954
www.PUCO.ohio.gov


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From: Christopher, Mahila
Sent: Tuesday, September 8, 2020 1:09 PM
To: Marie Fagan <marie@londoneconomics.com>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: RE: Draft AEP Ohio OVEC Audit

Hi Marie-

As per the RFP, the Final Report is due to be filed on the 16th of September:

1. Audit Proposals Due February 28, 2020
2. Award Audit March 11, 2020
3. Audit Conducted March 11, 2020 through September 1,
4. 2020 Draft Audit Report Presented to Staff September 1, 2020
5. Final Audit Report Filed with Commission September 16, 2020

Should Staff reach our edits to LEI by 2:00pm today, would it be possible for LEI to send an updated draft to the Company tomorrow?

Thank you

Mahila Christopher
Public Utilities Commission of Ohio
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This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

From: Marie Fagan <marie@londoneconomics.com>
Sent: Tuesday, September 8, 2020 12:29 PM
To: Christopher, Mahila <mahila.christopher@puco.ohio.gov>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: RE: Draft AEP Ohio OVEC Audit

Okay, will do. Once we have your comments I'll have a good idea of how long it will take to address them, but I would guess we can complete it by the end of the week in any case, and likely sooner than that. So that means we can get the draft to Ed by this Friday 11th or maybe a day or so sooner, at least in electronic format. I think that the week that Ed wants for AEP Ohio review is reasonable, which means that they would get their review back to us by about Sept 18.th We would then address their comments (again, that should take a day or so, unless comments are extensive). Then we would provide you with the final report including workpapers the week of Sept. 21.

Best,
Marie

From: mahila.christopher@puco.ohio.gov <mahila.christopher@puco.ohio.gov>
Sent: Tuesday, September 8, 2020 9:32 AM

To: Marie Fagan <marie@londoneconomics.com>
Cc: rodney.windle@puco.ohio.gov
Subject: FW: Draft AEP Ohio OVEC Audit
Importance: High

Hi Marie,
Staff should be able to communicate our comments on the draft by tomorrow's meeting.
If you could, please assess Edward's question based on this and let me know if you have any concerns with his request for a week to review the draft for confidentiality and factual inaccuracies?

Thank you

Mahila Christopher
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This message and any response to it may constitute a public record and thus may be publicly available to anyone who requests it.

From: Edward J Locigno <ejlocigno@aep.com>
Sent: Tuesday, September 8, 2020 9:19 AM
To: Marie Fagan <marie@londoneconomics.com>
Cc: Andrea E Moore <aemoore@aep.com>; Christopher, Mahila <mahila.christopher@puco.ohio.gov>; Shelli A Sloan <sasloan@aep.com>; Steven T Nourse <stnourse@aep.com>
Subject: RE: Draft AEP Ohio OVEC Audit
Importance: High

Mahila/Marie

When can we expect the report to review for confidentiality and factual inaccuracies? We need a solid week really at least to review it. Please let me know. Thank you!



EDWARD J LOCIGNO | REGULATORY ANALYSIS & CASE MGR
EJLOCIGNO@AEP.COM | D:614.716.3495 | C:614.619.9460
1 RIVERSIDE PLAZA, COLUMBUS, OH 43215

From: Marie Fagan <marie@londoneconomics.com>
Sent: Wednesday, September 2, 2020 3:09 PM
To: Edward J Locigno <ejlocigno@aep.com>
Cc: Andrea E Moore <aemoore@aep.com>
Subject: [EXTERNAL] Draft AEP Ohio OVEC Audit

This is an **EXTERNAL** email. **STOP. THINK** before you **CLICK** links or **OPEN** attachments. If suspicious please click the '**Report to Incidents**' button in Outlook or forward to incidents@aep.com from a mobile device.

Dear Ed,
This is to confirm that LEI provided the draft OVEC audit report to the Commission Staff. The process now, as I understand it, is that Staff will review, and after that we will provide it to AEP Ohio for redacting. At that time, we can talk about a secure way to provide it to you, perhaps uploading to the data room.
Thank you for all your help with the audit.
Best,
Marie



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London Economics International, LLC ("LEI") is an economic and financial consulting company with two decades of experience advising both private and public entities in energy and infrastructure markets. LEI publishes bi-annual market reviews of all US and Canadian regional power markets available at www.londoneconomicspress.com.

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From: Christopher, Mahila
To: Marie Fagan
Cc: Windle, Rodney
Subject: RE: an edit needed for AEP Ohio OVEC final audit report
Date: Friday, September 11, 2020 1:58:00 PM
Attachments: [image003.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Hi Marie,
Thank you for the heads up. Staff would recommend that you share this proposed edit with the Company as well.

Let me know if you have any questions.

Mahila Christopher

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From: Marie Fagan <marie@londoneconomics.com>
Sent: Friday, September 11, 2020 12:17 PM
To: Christopher, Mahila <mahila.christopher@puco.ohio.gov>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: an edit needed for AEP Ohio OVEC final audit report

Hi Mahila,
I just realized there was an edit I wanted to make to page 10, where we said "However, LEI's analysis shows that the OVEC contract overall is not in the best interest of AEP Ohio ratepayers." that I missed in the last version of the report. I'll edit it when we get the version back from AEP Ohio next week-- I'll delete that sentence and tinker with the rest of the paragraph so it reads smoothly.
Best,
Marie



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London Economics International, LLC ("LEI") is an economic and financial consulting company with two decades of experience advising both private and public entities in energy and infrastructure markets. LEI publishes bi-annual market reviews of all US and Canadian regional power markets available at www.londoneconomicspress.com.

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Commission of Ohio Docketing Information System on**

11/12/2021 4:16:20 PM

in

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

Summary: Comments on London Economic International's Audit Report
electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense
Council