

**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)	

**JOINT COMMENTS OF
THE KROGER CO.
AND
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

On January 15, 2020, the Public Utilities Commission of Ohio (Commission) directed the Staff of the Commission to issue a request for proposal for audit services to assist the Commission with its prudence and performance audit of Ohio Power Company's (AEP Ohio) Power Purchase Agreement Rider (Rider PPA) for the period of January 1, 2018 through December 31, 2019.¹ Through Rider PPA, customers subsidized AEP Ohio's ownership interest in two 60-plus year-old coal plants (one of which is located in Indiana) operated by the Ohio Valley Electric Corporation (OVEC). When the Commission authorized AEP Ohio to recover OVEC costs through Rider PPA it stated, "consistent with Commission precedent, AEP Ohio will bear the burden of proof in demonstrating the prudence of all costs and sales during the review, as well as that such actions

¹ Entry at ¶ 1 (January 15, 2020).

were in the best interest of retail ratepayers.”² It has become clear that AEP Ohio cannot meet its burden.

On September 16, 2020, London Economics International LLC (LEI or the Auditor) submitted the prudency and performance report (Audit Report) regarding Rider PPA and AEP Ohio’s oversight responsibilities of the OVEC plants. Thereafter, the Commission granted The Kroger Co.’s (Kroger) and the Ohio Manufacturers’ Association Energy Group’s (OMAEG) interventions in the above-captioned proceeding.³ On October 5, 2021, the Commission directed stakeholders to file comments and reply comments by November 12, 2021 and December 3, 2021, respectively, and ordered that an evidentiary hearing will commence on January 12, 2022.⁴ In accordance with the Commission’s directive, Kroger and OMAEG hereby file joint comments on the Audit Report.

The Commission should disallow OVEC costs recovered through Rider PPA during the audit period because of the plants’ imprudent must-run strategy, unless AEP Ohio can affirmatively demonstrate through a retroactive hourly economic dispatch simulation that such a strategy was in fact prudent. Accordingly, Kroger and OMAEG recommend that the Commission require AEP Ohio to provide an economic dispatch model of OVEC’s operations during the audit period.

In order to protect customers and promote transparency, it is also imperative that the Audit Report’s original conclusion be restored to recognize that operating OVEC is not in the best interest of customers. Moreover, the Commission should ensure the Auditor’s statement

² See *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 89 (March 31, 2016).

³ Entry at ¶ 15 (September 10, 2021).

⁴ Entry at ¶ 24 (October 5, 2021)

referencing coal purchases after April 2019 is consistent with such references in the Duke Energy Ohio, Inc. (Duke) OVEC audit report,⁵ and should conclude that excessive coal purchases at above-market pricing were imprudent and costs related to such purchases should be disallowed.

Finally, to ensure transparency, the Commission should deem all OVEC coal purchasing information included in the Audit Report non-confidential as that information is already publicly available and is not confidential. Accordingly, the Commission should file the confidential Audit Report in the public docket, unredacted.

II. JOINT COMMENTS

A. A Retroactive Hourly Economic Dispatch Simulation is Necessary for the Commission's Prudency Review.

The findings in the Audit Report make it clear that the Commission should address whether it was prudent and in customers' best interest for OVEC to have utilized a must-run strategy instead of an economic dispatch strategy. A must-run strategy means that the units operate at a specific level at all times, except for unplanned outages or force majeure events.⁶ Alternatively, economic dispatch is "the short-term determination of the optimal output of generation facilities, to meet the system load, at the lowest possible cost, subject to transmission and operational constraints."⁷

The Audit Report recommends that OVEC should reconsider its must-run strategy because a must-run strategy could result in financial losses and "there are times during which the PJM DA prices does not cover the variable cost of running the plants."⁸ It is counterintuitive to operate plants as must-run units when their variable operating costs exceed the PJM market price, but that

⁵ See *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR, Audit Report at 76.

⁶ See *The Value of Economic Dispatch, A Report to Congress Pursuant to Section 1234 of The Energy Policy Act of 2005*, U.S. DEPT. OF ENERGY, at 9 (November 7, 2005).

⁷ See PJM Glossary, https://www.pjm.com/Glossary#index_E.

⁸ Audit report at 52-53.

is precisely what OVEC did at times in 2018 and 2019.⁹ Therefore, the prudent action for AEP Ohio would have been to not allow OVEC to operate the plants when their variable operating costs exceeded the PJM market price.

The Audit Report also notes that “the OVEC units are not offered as “reliability must-run units” but “simply as must-run units.”¹⁰ This means that OVEC’s must-run strategy is unnecessary for grid reliability. Additionally, the Audit Report states that “others have begun shifting away from self-committing and towards economic dispatch...”¹¹ Clearly, the sponsoring companies, including AEP Ohio, could have decided for OVEC to follow an economic dispatch strategy without impacting reliability, saved money, and reduced the amount of Rider PPA charges to customers in 2018 and 2019.

Despite the impact that the must-run strategy had on customers’ Rider PPA charges, the Audit Report did not provide a simulation or otherwise calculate how much money OVEC would have saved in 2018 and 2019 from using an economic dispatch strategy as opposed to a must-run strategy. Thus, it is currently unknown how much customers could have saved during the audit period if the OVEC units were operated on an economic dispatch basis. AEP Ohio and OVEC also failed to provide any such analysis.

Accordingly, as part of the prudency review in the above-referenced proceeding, the Commission should order AEP Ohio to produce a retroactive analysis of OVEC’s hourly operations as if it had operated as an economic dispatch unit for parties to review, for the years in consideration. If AEP Ohio cannot do so, an automatic and full refund of Rider PPA charges from 2018 and 2019 should be ordered.

⁹ *Id.*

¹⁰ *Id.* at 21 (internal quotation marks omitted).

¹¹ *Id.* at 21-22.

B. The Final Audit Report Should Be Revised to Include the Independent Auditor’s Conclusion that “keeping the plants running does not seem to be in the best interests of ratepayers.”

As mentioned above, the Commission previously ordered that AEP Ohio shall bear the burden of proof in demonstrating that the OVEC-related costs it recovers through Rider PPA are prudent and in the best interest of customers.¹² Despite the Commission’s order, e-mails obtained through document requests show that a Commission Staff member directed the independent Auditor in this proceeding to use a “milder tone and intensity” in the Audit Report and to remove the conclusory statement in a draft report that stated: “*keeping the [OVEC] plants running does not seem to be in the best interest of ratepayers.*”¹³ In the final Audit Report filed with the Commission, the Auditor instead stated: “LEI’s analysis shows at this time that the OVEC plants cost customers more than the cost of energy and capacity....”¹⁴ Disturbingly, AEP Ohio officials are also included in email exchanges with the Auditor, which encouraged the Auditor to make similar language changes.¹⁵

The Commission Staff member also encouraged the Auditor to remove language regarding Am. Sub. H.B. 6 (H.B. 6), the scandal-ridden law that ultimately expanded the OVEC subsidies. The draft report included two additional sentences regarding H.B. 6: “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

¹² See *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 89 (March 31, 2016).

¹³ See Attachment A; Attachment B.

¹⁴ Audit Report at 9.

¹⁵ See Attachment C.

led to federal charges against Ohio House Speaker Larry Householder and four associates.”¹⁶ This language does not appear in the final version of the Audit Report.

In response, a Commission spokesperson publicly stated that “unnecessary items [that] were not germane to the purposes of the audit” were removed.¹⁷ However, the Commission, in its own words establishing the prudence review of Rider PPA, directly stated that “the best interest of retail ratepayers”¹⁸ is part of how prudence is demonstrated. Serving the best interests of customers is in fact the purpose of a public utility and the stated purpose of the prudence audit in the first place. The Commission Staff should not have directed the independent Auditor to modify the language in the Audit Report when doing so substantively changed the ultimate conclusion: that it is not in the best interest of customers to subsidize the aging and uneconomic OVEC plants. Nor should AEP Ohio, the utility subject to the prudence review, be able to suggest substantive edits to the Audit Report before it was made public or before other parties to the case had an opportunity to review such modifications. It is important to remember that customers are funding the OVEC subsidy, and the prudence review is to protect those customers.

Accordingly, Kroger and OMAEG recommend that the Audit Report be restored to include the original conclusion: “Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers.”¹⁹ The Commission should rely on this conclusion by the independent Auditor to find that continuing to operate the OVEC plants is an imprudent business decision and

¹⁶ See Attachment A.

¹⁷ Jeremy Pelzer, *PUCO Staffer Pushed to Soften Criticism of Coal-Plant Customer Charges in State-Commissioned Audit*, CLEVELAND.COM (October 22, 2021), <https://www.cleveland.com/open/2021/10/puco-staffer-pushed-to-soften-criticism-of-coal-plant-customer-charges-in-state-commissioned-audit.html>.

¹⁸ See *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 89 (March 31, 2016).

¹⁹ See Attachment A; Attachment B.

any costs associated with such are unjust, unreasonable, and imprudent. Thus, any costs collected from customers related to AEP Ohio's imprudent business operations of OVEC should be disallowed and refunded to customers.

C. Section 6.2.4 of the LEI Audit Report Should Identify April 2019 as a Key Month in Which OVEC Coal Inventories Changed Consistent with the Duke OVEC Audit Report and Should Find that Excessive Purchases at Above-Market Pricing are Imprudent.

LEI conducted audits of Duke's Price Stabilization Rider and AEP Ohio's Rider PPA, both of which recover subsidies associated with the utilities' entitlement to the OVEC electricity output. Part of the AEP Ohio Audit Report focuses on the prudence of coal purchasing decisions, payment prices, stockpile amounts, and other related issues. In the Duke audit report, in Section 6.2.4, LEI explicitly calls attention to the date of April 2019 as a point in time that coal inventory changed, stating: "The number of days of coal on hand for 2019 was far higher than targeted, *after April 2019*."²⁰

The AEP Ohio Audit Report uses different language, with the closest statement being "...but in 2019, the inventory levels in both power plants were substantially higher than the inventory targets."²¹

While LEI drew attention to the month of April 2019 in the Duke audit report, it did not do so in the AEP Ohio Audit Report. The emphasis on April 2019 should also be referenced in the AEP Ohio Audit Report to question the prudence of the coal purchases after April 2019. While the AEP Ohio Audit Report states that "management may have taken delivery of coal which was known not to be needed"²² and that some of its coal contract prices were more expensive than

²⁰ *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR, Audit Report at 76 (emphasis added).

²¹ Audit Report at 75.

²² *Id.*

others, and at above market pricing,²³ the details of this information are redacted in the Audit Report and the Auditor did not opine on the prudence of such purchases.

The Auditor's concern over coal inventory levels, with April 2019 being a key month in which inventory levels changed, and pricing purchases should be publicly stated in the AEP Ohio Audit Report as it is in the Duke audit report. The Commission should also conclude that the excessive coal purchases and pricing were imprudent and costs related to such should be disallowed.

D. OVEC's Coal Suppliers, Purchases, and Purchase Prices are Already Public Information and the Information Should be Made Publicly Available in the Audit Report.

The Duke auditor's mention of April 2019 specifically, and separately AEP Ohio Auditor's mention of above-market coal prices that OVEC paid, would be innocuous in most circumstances. However, April 2019 was not a routine month because that is when the now infamous H.B. 6 was introduced in the Ohio General Assembly. The H.B. 6 federal criminal complaint lists "Company C" as an entity with "interests aligned with Company A" who helped fund dark money groups at the center of the H.B. 6 scandal.²⁴ Company A is now known to be FirstEnergy Corp. "Company C" has been identified in media reports as a Columbus-based coal company.²⁵ For the sake of transparency, OVEC's coal suppliers, purchase prices, and related information should be unredacted and the Commission should transparently assess whether companies listed in the

²³ *Id.* at 63.

²⁴ *United States v. Householder*, Case No. 1:20-MJ-00-526, Complaint at 31, f. 28 (July 17, 2020).

²⁵ Randy Ludlow, *Householder Case: 'Company C' CEO Wayne Boich gave Cash to H.B. 6 'Dark Money Groups'*, COLUMBUS DISPATCH (August 5, 2020), <https://www.dispatch.com/story/news/politics/state/2020/08/05/householder-case-1squo-company-crsquo-ceo-wayne-boich-gave-cash-to-hb-6-1squodark-moneysquo-groups/112806486/>

federal complaint benefitted from above-market, unneeded coal purchases made by OVEC, and paid for by ratepayers, at the same time as H.B.6 was creating subsidies for OVEC.

An additional reason to require that the information be made public is that, since OVEC is a public utility, this information is already publicly available. The names of OVEC’s coal suppliers, how much coal it purchases, and the prices of the purchased coal, are available via the U.S. Energy Information Administration (EIA) 923 and EIA 860 reports.²⁶ Thus, the Audit Report does not need to and should not conceal such data.

For example, according to the publicly available information in EIA-923, OVEC’s Clifty Creek plant’s highest-priced coal purchases in April of 2019 and later months were from Resource Fuels, a Columbus, Ohio based coal company. Executives of Resource Fuels are, according to its business filings, the same as those of “Company C” as identified in media reports. Moreover, based on the publicly available information in EIA-923, OVEC appears to purchase coal from Resource Fuels at considerably higher prices than other coal suppliers, even though the coal appears to be sourced from the same mine and have similar energy content.

Below is a table of the data publicly available in EIA-923 and EIA 860 in Figure 1. Resource Fuels’ coal supply quantity and prices are highlighted in the table.

²⁶ See Form EIA-923 detailed data with previous form data (EIA-906/920); publicly available at <https://www.eia.gov/electricity/data/eia923/>.

YEAR	MONTH	Plant Name	Plant State	Purchase Type	Contract Expiration Date	FUEL GRO UF	Coalmine State	Coalmine Name	SUPPLIER	QUANTIT	Average Heat Content	FUEL_COST
2019	4	Clifty Creek	IN	C	1219	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	57,396.0	22.992	196.4
2019	4	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	47,662.0	22.978	218.7
2019	4	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	85,235.0	23.042	248.8
2019	4	Clifty Creek	IN	C	1221	Coal	KY	RIVEREDGE MINE	RHINO ENERGY	22,192.0	22.812	214.6
2019	5	Clifty Creek	IN	C	1219	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	42,487.0	23.060	195.8
2019	5	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	85,426.0	22.990	249.3
2019	5	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	40,429.0	23.106	217.5
2019	5	Clifty Creek	IN	C	1221	Coal	KY	RIVEREDGE MINE	RHINO ENERGY	30,707.0	22.884	213.9
2019	6	Clifty Creek	IN	C	1221	Coal	KY	RIVEREDGE MINE	RHINO ENERGY	23,058.0	22.724	215.4
2019	6	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	53,930.0	22.988	218.6
2019	6	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	84,932.0	22.990	249.3
2019	6	Clifty Creek	IN	S		Coal	IL	LLC MINE #1	WHITE STALLION COAL,LLC	7,566.0	25.602	211.9
2019	6	Clifty Creek	IN	S		Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	42,090.0	22.956	196.7
2019	7	Clifty Creek	IN	C	320	Coal	IL	LLC MINE #1	WHITE STALLION COAL,LLC	25,929.0	25.558	212.1
2019	7	Clifty Creek	IN	C	1220	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	85,366.0	23.034	248.7
2019	7	Clifty Creek	IN	C	1220	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	10,600.0	23.180	216.1
2019	7	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	34,385.0	23.080	217.6
2019	7	Clifty Creek	IN	C	1221	Coal	KY	RIVEREDGE MINE	RHINO ENERGY	17,121.0	22.834	214.1
2019	7	Clifty Creek	IN	S		Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	15,282.0	23.108	195.3
2019	8	Clifty Creek	IN	C	1220	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	83,762.0	23.020	248.8
2019	8	Clifty Creek	IN	C	1220	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	10,196.0	23.052	215.7
2019	8	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	RHINO ENERGY	16,312.0	22.666	216.2
2019	8	Clifty Creek	IN	C	1221	Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	43,552.0	23.054	209.2
2019	8	Clifty Creek	IN	S		Coal	KY	RIVER VIEW MINE	ALLIANCE COAL	23,971.0	23.032	196.2
2019	8	Clifty Creek	IN	S		Coal	IL	LLC MINE #1	WHITE STALLION COAL,LLC	27,877.0	25.540	216.9
2019	9	Clifty Creek	IN	C	1220	Coal	KY	POPLAR GROVE MINE	GROUP,LLC.	6,778.0	23.980	206.3
2019	9	Clifty Creek	IN	C	1220	Coal	KY	RIVER VIEW MINE	RESOURCE FULES	83,397.0	23.090	248.1

Table 1. Snapshot of Publicly Available Coal Purchasing Data for OVEC's Power Plants

III. CONCLUSION

In order to protect customers and promote trust in Ohio's regulatory processes, Kroger and OMAEG urge the Commission to: require AEP Ohio to provide an economic dispatch model of OVEC's operations during the audit period; restore the original conclusions in the Audit Report stating that operating OVEC is not in the best interest of ratepayers; ensure the Auditor's statements regarding coal purchases after April 2019 is consistent with the Duke audit report; and make transparent all OVEC's coal purchasing information that is already publicly available. The Commission should also find that operating the OVEC plants as must-run units and purchasing excessive coal at above-market prices were imprudent.

Therefore, for the reasons stated herein, Kroger and OMAEG request that the Commission deem the costs associated with OVEC that were collected from customers through Rider PPA during the audit period to be unjust, unreasonable, and imprudent, and therefore, disallowed.

Respectfully submitted,

/s/ Angela Paul Whitfield

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on November 12, 2021 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

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Attachment A

From: Marie Fagan
To: Christopher, Mahila
Cc: Windle, Rodney
Subject: RE: Draft AEP Ohio O&EC 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 [REDACTED]
Sent: Tuesday, September 8, 2020 2:59 PM
To: Marie Fagan [REDACTED]
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
[REDACTED]

mahe@puco.ohio.gov



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

Attachment B

From: Marie Fagan [REDACTED]
Sent: Friday, September 11, 2020 12:17 PM
To: Christopher, Mahila [REDACTED]
Cc: Windle, Rodney [REDACTED]
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.

Attachment C

Edward J Locigno

From: Steven T Nourse
Sent: Friday, September 11, 2020 3:05 PM
To: Marie Fagan; Edward J Locigno
Cc: Andrea E Moore; Shelli A Sloan; Michael W McCulty
Subject: RE: edit proposed to AEP Ohio OVEC audit report

Glad to hear you are deleting that sentence because we had a similar comment – such an observation is beyond the scope of the audit and as a FERC-approved agreement is beyond the scope of the Commission’s authority. The prudence issues involved in the audit relate to AEP Ohio’s implementation of the ICPA and not the existence of it. Thanks



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

Summary: Comments Joint Comments electronically filed by Mrs. Kimberly W.
Bojko on behalf of OMA Energy Group and The Kroger Co.