

**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.)

**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 EVIDENTIARY HEARING
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Bruce Weston (0016973)
Ohio Consumers' Counsel

Christopher Healey (0086027)
Counsel of Record
William Michael (0070921)
John Finnigan (0018689)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [Michael]: (614) 466-1291
Telephone [Finnigan]: (614) 466-9585
christopher.healey@occ.ohio.gov
william.michael@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

December 1, 2021

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the Power)
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This case concerns consumers paying a lot of money (projected to be over \$1 billion in utility subsidies through 2030) for two outmoded, polluting 1950's-era coal plants owned by the Ohio Valley Electric Corporation ("OVEC"), with one of the plants not even located in Ohio. Under the terms of the Inter-Company Power Agreement among OVEC's owners, Ohio electric utilities receive 23.83% of the electricity produced by OVEC (Ohio Power – 19.93%, Duke – 9% and AES – 4.9%).¹ Codifying these OVEC subsidies was a key part of H.B. 6 ("likely the largest bribery, money-laundering scheme ever perpetrated against the people in the state of Ohio"), according to former U.S. Attorney David DeVillers).²

The utilities told the Public Utilities Commission of Ohio ("PUCO") and Legislature how OVEC electricity would *benefit* consumers (providing a "hedge"). But FirstEnergy Solutions

¹ Ohio Valley Electric Corporation Annual Report – 2020 at 1.

² Pelzer, J., *Ohio House Speaker Larry Householder, allies got more than \$60 million in FirstEnergy bribes to pass HB6, feds claim* Cleveland.com (July 21, 2020).

asked the U.S. Bankruptcy Court for approval to *cancel* its contract for a 4.85% share of OVEC's electricity, because it expected to *lose* \$268 million.³ FirstEnergy Solutions told the Bankruptcy Court: "The [OVEC contract] constitute[s] a very small and insignificant part of [FirstEnergy Solutions'] overall business *but impose[s] a very significant financial burden...*"⁴

The PUCO should closely scrutinize whether the OVEC plants were operated prudently before requiring consumers to pay this "very significant financial burden." In this regard, the PUCO hired auditors to determine whether "the Company's actions were in the best interest of retail ratepayers."⁵ Recently obtained emails show that PUCO Staff asked the so-called "independent" auditor to remove its key finding that "*keeping the plants running does not seem to be in the best interests of the ratepayers.*" (See Attachment A).

To protect consumers, the Office of the Ohio Consumers' Counsel ("OCC") moves the PUCO to issue subpoenas *duces tecum* to the following persons to appear and testify at the upcoming evidentiary hearing, as if upon cross-examination, consistent with O.A.C. 4901-1-28(E). Under this rule, an audit report is deemed admitted into evidence when filed in the case

³ *In re FirstEnergy Solutions Bankruptcy*, Case No. 18-50757, Declaration of Kevin T. Wardell at 8 (N.D. Ohio Bankr. Ct.) (Apr. 1, 2018).

⁴ *Id.* at 2 (Emphasis added). The U.S. Bankruptcy Court initially ruled that FirstEnergy Solutions could reject the OVEC contract. But the Sixth Circuit Court of Appeals, in appeals including by OCC, overturned the ruling and remanded the case because the Bankruptcy Court failed to consider whether rejection of the contract was in the public interest. *In re FirstEnergy Solutions Corp.*, Case No. 18-3787 (6th Cir.) (Dec. 12, 2019). Following remand, certain parties reached a settlement where FirstEnergy Solutions (now known as Energy Harbor) agreed to pay OVEC \$32.5 million in damages and to drop its attempt to cancel the contract. *In re Pleasants Corp.* Case No. 18-50757, Reorganized Debtors' Motion to Approve Stipulation Between Energy Harbor LLC and Ohio Valley Electric Corporation Regarding Certain Energy Contracts and Related Claims (N.D. Ohio Bankr. Ct) (May 18, 2020).

⁵ *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR, Entry, Attachment: Request for Proposal No. RA20-PPA-1: An Independent Audit of the Power Purchase Agreement Rider of Ohio Power Company at 4 (Jan. 15, 2020).

and “any person making or contributing to the report may be subpoenaed to testify at the hearing.”

OCC seeks subpoenas for the following persons to testify at the evidentiary hearing related to the filed Audit report, under O.A.C. 4901-1-28(E):

- (1) Marie Fagan, Chief Economist of London Economics International LLC (“LEI”) – a person who made or contributed to the AEP/OVEC audit report;
- (2) PUCO Staff member Mahila Christopher, who made or contributed to the audit report by overseeing the audit. Ms. Christopher sent an email to Ms. Fagan suggesting that she *remove* from the audit report a conclusion that “keeping the plants running does not seem to be in the best interests of the ratepayers;” and
- (3) the PUCO, to designate the person or persons referred to in Ms. Christopher’s email as “PUCO Admin” and who, according to the email made or contributed to the audit by providing “final acquiescence” “regarding the overall tone of the draft report.”

The motion is based on the accompanying memorandum in support.

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

Office of the Ohio Consumers' Counsel

65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [Michael]: (614) 466-1291
Telephone [Finnigan]: (614) 466-9585
christopher.healey@occ.ohio.gov
william.michael@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

OVEC owns and operates two 1950's-era coal plants. The Ohio utilities receive 23.83% of the electricity produced by OVEC.⁶ The OVEC plants' outdated technology is inefficient, so their cost to produce electricity greatly exceeds the PJM market price for electricity. Unfortunately, the PUCO and then the Ohio Legislature awarded generous subsidies to AEP, Duke and AES at the expense of their consumers.⁷

The PUCO required annual audits of the utilities' OVEC costs. The PUCO's audit of AEP/OVEC covers 2018-2019, while the other two audits (Duke/OVEC and DP&L/OVEC) cover 2019. The PUCO selected London Economics International LLC ("LEI") to audit AEP/OVEC and Duke/OVEC.⁸ LEI filed the AEP/OVEC audit report on September 16, 2020.⁹

⁶ See footnote 1, *supra*.

⁷ See footnote 2, *supra*.

⁸ *In the Matter of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR, Entry at ¶ 17 (Apr. 8, 2020); *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR, Entry at ¶ 16 (Mar. 11, 2020).

⁹ *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR, Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company Prepared for Public Utilities Commission of Ohio (Sept. 16, 2020).

Certain members of the PUCO Staff made or contributed to the audit report with LEI. OCC made a public records request asking for audit-related documents. In response, the PUCO produced, among other documents, emails showing that a Staff employee (Mahila Christopher) “contributed to” the audit reports (*See Attachment A*).

The PUCO’s stated purpose for the audits was for the auditor to determine whether “the Company’s actions were in the best interest of retail ratepayers.”¹⁰ The emails show the auditor sent PUCO Staff a draft of the AEP/OVEC audit report. Ms. Christopher then emailed Ms. Fagan, the LEI auditor. Ms. Christopher “suggested” that Ms. Fagan dial back the “tone and intensity” and to delete certain language. The email stated:

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.”*
* * *

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.

Marie Fagan, for the auditor (LEI), responded by saying:

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

¹⁰ *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR Entry, Attachment: Request for Proposal No. RA20-PPA-1: An Independent Audit of the Power Purchase Agreement Rider of Ohio Power Company at 4 (Jan. 15, 2020).

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.

Following this exchange, the final version of the AEP/OVEC audit report does not contain either sentence to the effect that “keeping the plants running does not seem to be in the best interests of the ratepayers.”

II. LAW AND ARGUMENT

- A. The Ohio Administrative Code allows OCC to obtain subpoenas for persons who “made or contributed” to the audit report that is the subject of the hearing. These persons include Marie Fagan, Mahila Christopher and the person(s) identified as “PUCO Admin.”**

O.A.C. 4901-1-28(E) creates a right for parties to obtain subpoenas for testimony at hearing for any person who “makes or contributes” to a report of investigation involved in the case. The rule provides:

Unless otherwise ordered by the commission, in all other cases in which the commission orders an investigation to be performed by Staff and the filing of a report, the report shall be deemed admitted into evidence at the time it is filed with commission***If a hearing is scheduled in the case in which the report is filed, any person making or contributing to the report may be subpoenaed to testify at the hearing in accordance with paragraph (A) of rule 4901-1-25 of the administrative Code.***

OCC’s motion for subpoenas *duces tecum* meets these requirements. The persons OCC is subpoenaing are persons making or contributing to the report and possess relevant information for the hearings, as follows:

- Ms. Fagan of LEI prepared the AEP/OVEC audit report. She made or contributed to the audit report.
- Mahila Christopher of the PUCO Staff made or contributed to the audit report by, among other things, sending Ms. Fagan (LEI) an email suggesting the removal of a key sentence

from the audit report to the effect that “running the plants was not in the best interests of the ratepayers.”

- The 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.”

Here, the PUCO selected LEI to perform the AEP/OVEC audit reports. The Entry states that “[a]ny conclusions, results, or recommendations formulated by the auditor may be examined by any participant to this proceeding.”¹¹ LEI prepared the audit reports and the report was filed. Marie Fagan of LEI was the principal author. OCC has a right to a subpoena to compel Ms. Fagan to testify at the hearing, consistent with O.A.C. 4901-1-28(E).

The PUCO has ruled that parties may subpoena PUCO Staff to testify at hearings.¹² Ms. Christopher and the person or persons identified in her email as “PUCO Admin” made or contributed to the report because they made suggestions that Ms. Fagan “dial back the tone or intensity” of the report and remove certain substantive information. Ms. Christopher’s email to Ms. Fagan asked her to accept the edits to the audit report that Staff was proposing. The auditor followed Ms. Christopher’s instructions and deleted this information. Ms. Christopher’s email further reveals that she was in contact with a person or persons identified in her email as “PUCO Admin” and that she would need final acquiescence from such person(s) on the final version of the audit report. As such, Ms. Christopher and the person or persons identified as “PUCO

¹¹ *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR, Entry at ¶ 14 (Mar. 11, 2020).

¹² *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Pub. Util. Comm. No. 06-685-AU-ORD, 2006 Ohio PUC LEXIS 746, *79-80 (December 6, 2006) (denying proposed change to O.A.C. 4901-1-28 because “Staff may be subpoenaed to testify at a hearing, but not for a deposition.”); *see also In re Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, 3 N.E.3d 173, ¶ 19 (noting that the parties could have requested that seven staff members who contributed to a report testify at a Power Sitting Board hearing).

Admin” made or contributed to the audit report and can be subpoenaed to testify at hearing under Ohio rule.

III. CONCLUSION

OCC respectfully requests the PUCO to grant this motion for subpoena for the reasons discussed.

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

Office of the Ohio Consumers’ Counsel
65 East State Street, Suite 700
Columbus, Ohio 43215
Telephone [Healey]: (614) 466-9571
Telephone [Michael]: (614) 466-1291
Telephone [Finnigan]: (614) 466-9585
christopher.healey@occ.ohio.gov
william.michael@occ.ohio.gov
john.finnigan@occ.ohio.gov
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion was served upon the persons listed below by electronic transmission this 1st day of December 2021.

/s/ John Finnigan

John Finnigan

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

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

stnourse@aep.com
mpritchard@mcneelaw.com
rglover@mcneelaw.com
megan.wachpress@sierraclub.org
bojko@carpenterlipps.com
donadio@carpenterlipps.com
paul@carpenterlipps.com

Attorney Examiners:

sarah.parrot@puco.ohio.gov
greta.see@puco.ohio.gov

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


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

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
Office of the Federal Energy Advocate
Utility Specialist
(614) 728-6954
www.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.

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

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



Marie N. Fagan, PhD
Chief Economist
London Economics International
717 Atlantic Ave, Suite 1 A | Boston, MA | 02111
Direct: 1-617-933-7205
Cell 1-617-599-9308
www.londoneconomics.com

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

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

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



Marie N. Fagan, PhD
Chief Economist
London Economics International
717 Atlantic Ave, Suite 1 A | Boston, MA | 02111
Direct: 1-617-933-7205
Cell: 1-617-599-9308
www.londoneconomics.com

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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STATE OF OHIO

PUBLIC UTILITIES COMMISSION
180 E. EAST BROAD STREET
COLUMBUS OHIO 43266-0573

Michael DeWine
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

TO: Marie Fagan
Chief Economist
London Economics International, LLC
717 Atlantic Avenue
Suite 1A
Boston, MS 02111

c/o Thomas Lindgren
Principal Assistant Attorney General
Ohio Attorney General
Public Utilities Section
80 East Broad Street, Sixth Floor
Columbus, Ohio 43215-3793

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Marie Fagan is hereby requested to appear and testify at an evidentiary hearing on January 12, 2022, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio ("PUCO"), 180 East Broad Street, 11th floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

The hearing is for cases pending before the PUCO styled: *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case No. 18-1004-EL-RDR and *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019*, Case No. 18-1759-EL-RDR. The hearing will commence on January 12, 2022 at 10:00 a.m. pursuant to an Entry dated October 5, 2021.

Marie Fagan is requested to appear at the beginning of the hearing and be available day-to-day to testify. Marie Fagan is further requested to produce a copy of all documents and things described below:

- All draft audit reports in this case or in Case No. 18-1004-EL-RDR and Case No. 18-1759-EL-RDR containing any statement to the effect that running the OVEC plants was not in the best interest of ratepayers.

- All documents and communications between Marie Fagan **and** either the PUCO, or AEP relating to any statement in the AEP draft audit report to the effect that running the OVEC plants was not in the best interest of ratepayers.
- All documents and communications between Marie Fagan **and** any other LEI employee relating to any statement in the AEP draft audit report to the effect that running the OVEC plants was not in the best interest of retail ratepayers.

Definitions

For purposes of this subpoena duces tecum, the following definitions apply:

1. “Document” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control or in the possession, custody or control of London Economics International, LLC regardless of where located; including any kind of electronic, printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: emails, text messages, social media postings, notes, slides, reports, memoranda, workpapers, notebooks, diaries, calendars, appointment books, transcripts, minutes of meetings of any kind,
2. “Communication” shall mean any transmission of information by electronic, oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, emails, text messages, social media posting, telephone conversations, letters, telegrams, and personal conversations.

Dated at Columbus, Ohio, this ___ day of December 2021.

Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

STATE OF OHIO

PUBLIC UTILITIES COMMISSION
180 E. EAST BROAD STREET
COLUMBUS OHIO 43266-0573

Michael DeWine
GOVERNOR



PUBLIC UTILITIES COMMISSION OF OHIO
SUBPOENA DUCES TECUM

TO: Mahila Christopher
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

c/o Thomas Lindgren
Principal Assistant Attorney General
Ohio Attorney General
Public Utilities Section
80 East Broad Street, Sixth Floor
Columbus, Ohio 43215-3793

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), Mahila Christopher is hereby requested to appear and testify at an evidentiary hearing on January 12, 2022, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio ("PUCO"), 180 East Broad Street, 11th floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

The hearing is for cases pending before the PUCO styled: *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case No. 18-1004-EL-RDR and *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019*, Case No. 18-1759-EL-RDR. The hearing will commence on January 12, 2022 at 10:00 a.m. pursuant to an Entry dated October 5, 2021.

Mahila Christopher is requested to appear at the beginning of the hearing and be available day-to-day to testify. Mahila Christopher is further requested to produce a copy of all documents and things described below:

- All documents and communications between Mahila Christopher and the person or persons identified in the attached email as "PUCO Admin" relating to any audit report prepared by London Economics International, LLC for Case Nos. 8-1004-EL-RDR and 18-1759-EL-RDR. The time period covered by this request is August 1, 2020 through the present date.

- All documents and communications between Mahila Christopher and Marie Fagan, PUCO Staff or Commissioners, relating to any statement in a AEP draft audit report to the effect that running the OVEC plants was not in the best interest of retail ratepayers.

Definitions

For purposes of this subpoena duces tecum, the following definitions apply:

1. “Document” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control or in the possession, custody or control of the PUCO regardless of where located; including any kind of electronic, printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: emails, text messages, social media postings, notes, slides, reports, memoranda, workpapers, notebooks, diaries, calendars, appointment books, transcripts, minutes of meetings of any kind,
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Dated at Columbus, Ohio, this ____ day of December 2021.

Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

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SUBPOENA DUCES TECUM

TO: Public Utilities Commission of Ohio
c/o Thomas Lindgren
Principal Assistant Attorney General
Ohio Attorney General
Public Utilities Section
80 East Broad Street, Sixth Floor
Columbus, Ohio 43215-3793

Upon application of the Office of the Ohio Consumers' Counsel ("OCC"), the Public Utilities Commission of Ohio is hereby required to produce the person or persons as its designated representative to testify on the subject areas listed below and to produce the documents listed below at an evidentiary hearing on January 12, 2022, at 10:00 a.m., at the offices of the Public Utilities Commission of Ohio ("PUCO"), 180 East Broad Street, 11th floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

The hearing is for cases pending before the PUCO styled: *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case No. 18-1004-EL-RDR and *In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019*, Case No. 18-1759-EL-RDR. The hearing will commence on January 12, 2022 at 10:00 a.m. pursuant to an Entry dated October 5, 2021 in these cases.

The Public Utilities Commission of Ohio is directed to produce the person or persons identified in the attached email as "PUCO Admin." to testify at the hearing. Such person or persons shall bring a copy of the following documents and things:

- All documents and communications to or from the person or persons identified in the attached email as "PUCO Admin" relating to any audit report or draft audit report prepared by London Economics International, LLC for Case Nos. 18-1004-EL-RDR and 18-1759-EL-RDR. The time period covered by this request is August 1, 2020 through the present date.

Definitions

For purposes of this subpoena duces tecum, the following definitions apply:

1. “Document” when used herein, is used in its customary broad sense, and means all originals of any nature whatsoever, identical copies, and all non-identical copies thereof, pertaining to any medium upon which intelligence or information is recorded in your possession, custody, or control or in the possession, custody or control of London Economics International, LLC regardless of where located; including any kind of electronic, printed, recorded, written, graphic, or photographic matter and things similar to any of the foregoing, regardless of their author or origin. The term specifically includes, without limiting the generality of the following: emails, text messages, social media postings, notes, slides, reports, memoranda, workpapers, notebooks, diaries, calendars, appointment books, transcripts, minutes of meetings of any kind,
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Dated at Columbus, Ohio, this ____ day of December 2021.

Attorney Examiner

NOTICE: If you are not a party or an officer, agent, or employee of a party to this proceeding, then witness fees for attending under this subpoena are to be paid by the party at whose request the witness is summoned. Every copy of this subpoena for the witness must contain this notice.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

12/1/2021 3:31:13 PM

in

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

Summary: Motion 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 Evidentiary Hearing by Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Finnigan, John