

**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.)

**REPLY COMMENTS TO PROTECT CONSUMERS FROM AEP'S COAL PLANT CHARGES
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Office of the Ohio Consumers’ Counsel (“OCC”) submits the following consumer protection reply comments.

II. RECOMMENDATIONS

A. To protect consumers, the PUCO should restore the Auditor’s original recommendations that the OVEC plants are “not in the best interests of the ratepayers.”

OCC recommended in its initial comments that the PUCO should restore to London Economics International LLC’s (“LEI”) audit report the two sentences containing the auditor’s original recommendations. The LEI recommendations were that the Ohio Valley Electric Corporation (“OVEC”) plants are “not in the best interests of the ratepayers.”¹

AEP did not address this issue in its initial comments. OCC notes, however, that when the auditor originally deleted the sentences, Mr. Nourse sent this email: “Glad you are deleting

¹ OCC Initial Comments at 2-6 (Nov. 12, 2021).

that sentence....”² So AEP presumably opposes OCC’s recommendation due to the favorable response to the edit. Other intervenors, however, support OCC’s recommendation.

The Kroger Co. and the Ohio Manufacturers’ Association Energy Group (“Kroger/OMAEG”) noted that the PUCO’s prudence review was meant to determine whether running the plants was “in the best interests of retail ratepayers.” Kroger/OMAEG assert that the sentences should be restored because they went to the auditor’s ultimate conclusion on this issue.³ The Natural Resources Defense Council (“NRDC”) noted that the PUCO “should either reinstate the auditor’s original conclusion or order a new audit devoid of substantive interference by the PUCO’s Staff in the auditor’s conclusions.”⁴

B. To protect consumers, the PUCO should disallow all OVEC costs collected by AEP because the costs are above the PJM market price, the consumer protection of competitive bidding was not used, and AEP failed to demonstrate that the costs were reasonable.

OCC recommended that the PUCO should disallow all costs collected by AEP because the costs are above the PJM market price and AEP failed to demonstrate that the costs were reasonable.⁵ NRDC made the same recommendation, noting that “such a remedy is a standard one for inter-affiliate transactions, such as OVEC sales and payments.”⁶ NRDC cites a recent order by the Michigan Public Service Commission (“MPSC”) warning AEP

² Email from Steven T. Nourse to Marie Fagan and Edward J. Locigno dated September 11, 2020.

³ Kroger/OMAEG Initial Comments at 5-6 (Nov. 12, 2021).

⁴ NRDC Initial Comments at 5 (Nov. 12, 2021).

⁵ *Id.* at 6-8.

⁶ NRDC Initial Comments at 5 (Nov. 12, 2021), citing *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 December 31, 2021*, Case No. U-20804, Order at 20 (Mich. Pub. Serv. Comm.) (Nov. 18, 2021)..

that it will likely disallow future OVEC costs.⁷ This NRDC recommendation and the OCC recommendation should be adopted.

In its initial comments, OCC cited a FERC ruling that disallowed AEP's request to recover above-market OVEC costs.⁸ The MPSC order is additional authority for the proposition that AEP should not be allowed to collect any OVEC costs above PJM market prices from consumers.

When the PUCO allowed AEP to charge consumers for OVEC losses, Chair Haque stated that the OVEC rider "should not be perceived as a blank check, and consumers should not be treated like a trust account."⁹ He also stated that the so-called "hedge" provided by the OVEC plants would be illusory (and therefore unjust and unreasonable) if consumers will not receive any bill credits under the OVEC charge mechanism:

After a period of charges, I expect to see credits from the PPA riders. I'm not going to give definitive timelines, but that is my expectation. If this mechanism is truly a hedge, wherein consumers will pay when market prices are low, but will be credited money back when market prices are high, then *what exactly is the point of the hedge if ratepayers never experience the credits? If ratepayers never experience the credits, then the PPA rider mechanism would then act as a somewhat illusory insurance policy.*¹⁰

Commissioner Trombold, along with Commissioner Haque, fully expected the OVEC charge to be a net credit to consumers over the life of the charge:

The PPA mechanism proposed by the Company is designed to operate as a financial hedge against such price volatility, wherein consumers pay more when market prices are low but pay less when

⁷ *Id.*

⁸ *Electric Power Supply Ass'n v. AEP Generation Resources, Inc. and Ohio Power Company*, 155 FERC ¶ 61,102 at ¶ 8 (Order granting complaint) (April 27, 2016). See OCC Initial Comments at 7 (Nov. 12, 2021).

⁹ *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, Concurring Opinion of Commissioner Asim Z. Haque at 5 (Mar. 31, 2016).

¹⁰ *Id.* 4 (Emphasis added).

market prices are high. Based on the forecasts submitted by the Company and evidence in the record, *it is my clear expectation, just as it is Commissioner Haque's, that the PPA rider approved today will result in a credit (i.e. benefit) to ratepayers over the next eight years.*¹¹

AEP asserted that “[n]either the Auditor nor the intervenors can selectively challenge individual components nor the ICPA payment terms approved by the FERC.”¹² AEP’s position that the PUCO cannot modify its prior order is just wrong. The Ohio Supreme Court rejected this argument when AEP tried to raise it in another case:

The commission is entitled to modify a prior order, provided that it explains the change and the new regulatory course is permissible.

We have instructed the commission to ‘respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.’ This does not mean, however, that the commission may never revisit a particular decision, only that if the commission does change course, it must explain why. ‘When the commission has made a lawful order, it is bound by certain institutional constraints to justify that change before such order may be changed or modified.’ The court has not set the explanatory hurdle very high. In a case in which the commission did not follow its earlier precedent, we said that if the commission had put ‘[a] few simple sentences’ in its order to explain why the earlier case was no longer controlling, it would have been sufficient.¹³

The PUCO could easily supply “a few simple sentences” to reverse its earlier order allowing AEP to collect the OVEC charges. Commissioners Trombold and Haque expressly noted that the PUCO’s approval of the OVEC charge was predicated on an expectation. That expectation, per AEP’s representation in the underlying case, was that the OVEC charge would

¹¹ *Id.*, Concurring Opinion of Commissioner M. Beth Trombold at 2 (Emphasis added).

¹² AEP Initial Comments at 3 (Nov. 12, 2021).

¹³ *In re Application of Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056 at ¶ 16 (Citations omitted).

result in a net credit to consumers over the life of the rider. Consumers have yet to see anything but additional charges on their bills, not credits.

Moreover, subsequent events have completely changed this outlook, as discussed more fully below.

1. The PUCO should disallow AEP's charges for OVEC costs in excess of PJM market prices because the costs are imprudent.

The independent auditor's draft report stated that the OVEC charge was "not in the best interest of ratepayers." The auditor reached this conclusion because "the OVEC plants cost more than they earn."¹⁴ The auditor identified a serious flaw in AEP's original OVEC projections that projected a net credit over the life of the charge – AEP's projection was based on a levelized cost of entry of \$96.53/MWh.¹⁵ The auditor noted that the true levelized cost of entry was only \$50.00/MWh, indicating that the OVEC plants "are not viable" in a competitive context (*i.e.*, will not result in a net credit for consumers).¹⁶

Given the auditor's analysis that AEP's projection of a net credit is based on a flawed assumption, it is now apparent that the OVEC charge will not be a net credit to consumers. The PUCO should disallow any above-market OVEC costs.

2. The PUCO should disallow AEP's charges for OVEC costs in excess of PJM market prices due to actual OVEC losses in 2019 being substantially higher than projected.

OVEC's actual results in 2019 were far worse than expected. When seeking approval for the OVEC riders, the utilities under-estimated the charges. For example, Duke projected that its OVEC charge costs would be \$18 million above PJM market prices when the PUCO approved

¹⁴ Audit Report at 31 (Sept. 16, 2020).

¹⁵ *Id.* at 21.

¹⁶ *Id.*

the charge. But in fact, Duke's OVEC charge costs were \$24.6 million above PJM market prices.¹⁷ This is more than 130% above the estimate that Duke had provided just one year earlier.

OVEC's costs were about \$118 million above PJM market prices in 2018. But by 2019 this amount had more than doubled such that OVEC's costs were about \$237 million above PJM market prices, as shown in Table 2 in Ms. Glick's testimony in the Duke OVEC rider case:¹⁸

Another example of this worsening trend is the updated Runnerstone analysis. Runnerstone's 2020 analysis reported that Ohio utilities collected \$159 million in OVEC subsidies through 2019, and projected that they would collect an additional \$700 million in subsidies through 2030 plus another \$700 million from 2030-2040.¹⁹ When Runnerstone updated this analysis in September 2021, less than one year later, it concluded that the subsidy would double to \$1.4 billion just for the period of 2020-2030.²⁰

This Runnerstone graph shows that the annual increase in the OVEC subsidy has steadily – and substantially – increased since 2016:

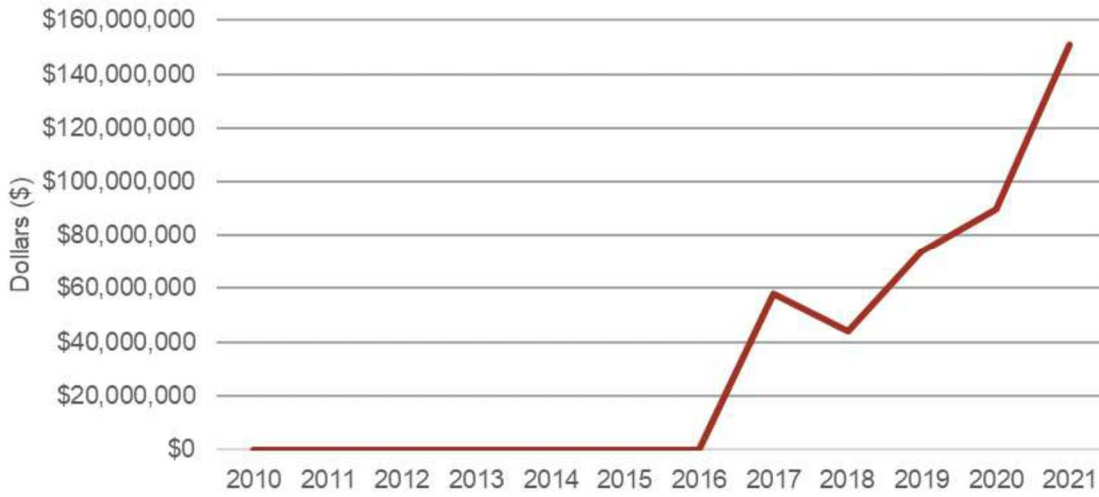
¹⁷ *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR. Testimony of John A. Seryak at 5 (Oct. 27, 2021).

¹⁸ *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR. Testimony of Devi Glick at 17 (Oct. 26, 2021).

¹⁹ Runnerstone, LLC, *Ohio's Costly – and Worsening – OVEC Situation* (Nov. 12, 2020).

²⁰ Runnerstone, LLC, *While HB 6's Remaining Provisions are Debated, Subsidies to Ohio Utilities Double to \$150M Annually for Two Aged Coal Plants* (Sept. 30, 2021).

Figure 1: Annual OVEC Subsidy Collection



The actual performance of the OVEC plants has been much worse than projected. This is a long-term trend that will continue. It is apparent that the OVEC charge will not be a net credit to AEP's consumers. The PUCO should disallow any above-market OVEC costs.

3. The PUCO should disallow AEP's charges for OVEC costs in excess of PJM market prices due to new EPA rules that will substantially increase OVEC's costs.

After the PUCO approved AEP's OVEC charge, the U.S. EPA finalized rules for Coal Combustion Residuals ("CCR") and Effluent Limitation Guidelines ("ELG"). These rules dramatically increased the cost of capital investment needed for environmental compliance. This led many utilities to close their old, inefficient, costly coal plants like the OVEC plants. For example, AEP issued this news release after the EPA finalized these rules:

AEP CCR And ELG Compliance Plans Will Remove Additional 1,633 MW Of Coal-fueled Generation From Company Fleet.

COLUMBUS, Ohio, Nov. 5, 2020 /PRNewswire/ -- American Electric Power's (Nasdaq: [AEP](#)) compliance plans for two recently revised environmental regulations will remove 1,633 megawatts (MW) of coal-fueled generation from its fleet by the end of 2028.

AEP will file compliance plans this month for the U.S. Environmental Protection Agency's (EPA) Coal Combustion Residuals (CCR) rule. Those plans will indicate that the company will retire the Pirkey Plant (580 MW) in Hallsville, Texas, in 2023 and cease using coal at the Welsh Plant (1,053 MW), in Pittsburg, Texas, in 2028.²¹

Given that these new EPA rules will dramatically increase OVEC's costs, it is now apparent that the OVEC charge will not be a net credit to consumers. The PUCO should disallow any AEP charges for above-market OVEC costs.

4. The PUCO should disallow AEP charges for OVEC costs in excess of PJM market prices for reasons similar to the Michigan Public Service Commission's recent "warning" to an AEP affiliate on potential future denial of charges for OVEC.

Another reason to deny AEP charges to consumers for OVEC costs was highlighted in a recent Michigan Public Service Commission ("MPSC") order. This case involved Indiana Michigan Power Company's (an AEP affiliate) fuel adjustment clause. It included costs from the OVEC plants. (Indiana Michigan receives 7.85% of OVEC's output under the Inter-Company Power Agreement.)

In that case, the MPSC reviewed several forecasts showing the OVEC's costs for energy and capacity will exceed PJM market prices. Therefore, the MPSC issued the following warning:

The company is put on notice that the Commission is unlikely to permit the utility to recover these uneconomic costs from its customers in rates, rate schedules, or PSCR factors established in the future without good faith efforts to manage existing contracts such as meaningful attempts to renegotiate contract provisions to ensure continued value for ratepayers."²²

²¹ AEP News Release, *AEP CCR And ELG Compliance Plans Will Remove Additional 1,633 MW of Coal-fueled Generation from Company Fleet* (Nov. 5, 2020).

²² *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 December 31, 2021*, Case No. U-20804, Order at 20 (Mich. Pub. Serv. Comm.) (Nov. 18, 2021).

It appears that AEP made no effort to “renegotiate contract provisions to ensure continued value for ratepayers.” The PUCO should disallow any OVEC costs that exceed PJM market prices.

C. To protect consumers, the PUCO should disallow any costs collected by AEP that result from OVEC’s imprudent practices in managing the plants.

OCC’s initial comments noted that the audit report identified a problem – OVEC operated the plants (except one unit of the multi-unit plants) as “must-run” units in the PJM energy markets²³ during the audit period. NRDC recommended that “the Commission should disallow all costs associated ‘must run’ commitment decisions where OVEC suffers as net loss over a week or a month.”²⁴ Kroger/OMAEG recommended that an hourly economic dispatch simulation should be done to determine the amount of disallowance.²⁵

On this issue, AEP commented:

AEP Ohio does not control the activities of the committee and can only make its own recommendation to the OVEC sponsors. The result sought by this audit recommendation is not under the exclusive control of AEP Ohio.²⁶

AEP’s comment is disingenuous. It is inconsistent with the PUCO’s expectations in the PUCO ruling approving AEP’s OVEC charge, where Commissioner Trombold said:

Based on the forecasts submitted by the Company and evidence in the record, *it is my clear expectation, just as it is Commissioner Haque's, that the PPA rider approved today will result in a credit (i.e. benefit) to ratepayers over the next eight years.*²⁷

²³ *Id.*, Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company Prepared for Public Utilities Commission of Ohio at 44 (Sept. 16, 2020).

²⁴ NRDC Initial Comments at 1 (Nov. 12, 2021).

²⁵ Kroger/OMAEG Initial Comments at 3-4 (Nov. 12, 2021).

²⁶ AEP Initial Comments at 4 (Nov. 12, 2020).

²⁷ *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, Concurring Opinion of Commissioner M. Beth Trombold at 2 (Mar. 31, 2016) (Emphasis added).

AEP sold this bailout as a positive “hedge” for alleged consumer benefits. The benefits are illusory. In reality, it is another example of how utilities win and consumers lose at the PUCO.

III. CONCLUSION

As recommended in OCC’s initial comments and as reinforced by other party’s initial comments as discussed herein, OCC requests that the PUCO restore the auditor’s original conclusion that the OVEC plants are not in the best interest of ratepayers. The PUCO should disallow the entire amount that AEP collected from consumers for OVEC costs in 2018 and 2019. AEP failed to demonstrate that the costs to consumers were reasonable and prudent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Reply Comments was served upon the persons listed below by electronic transmission this 3rd day of December 2021.

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

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