BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018.	))))	Case No. 18-1004-EL-RDR
In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2019.	)))	Case No. 18-1759-EL-RDR

NATURAL RESOURCES DEFENSE COUNCIL'S REPLY COMMENTS IN RESPONSE TO LEI'S AUDIT REPORT

Natural Resources Defense Council ("NRDC") hereby submits these reply 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"). In its comments, Ohio Power Company ("AEP Ohio") expresses surprisingly strong disagreements with an audit report that it helped edit, and NRDC offers three points.

First, AEP Ohio's reference to FERC "approval" of Inter-Company Power Agreement ("ICPA") terms and rates is misleading. The Federal Energy Regulatory Commission ("FERC") itself explicitly disclaimed any such approval when it accepted the Ohio Valley Electric Corporation ("OVEC") owners' business decision to bind themselves for 30 years to operate two merchant power plants.

Second, AEP Ohio's protests using forecasting to move away from reliance on Must-Run operation where to do so will result in foreseeable losses, but offers no justification for its current OVEC energy market bidding strategy, which is apparently indifferent to persistent losses. There is no evidence that AEP Ohio has even attempted to improve OVEC's bidding strategy. The Commission should disallow AEP Ohio's share of the losses that OVEC suffered through its Must-

Run bidding strategy, as all of those losses should have been avoided if AEP Ohio had been concerned with its customers' interests.

Third, in its comments, AEP Ohio states that it does not pre-approve capital spending at OVEC plants. This failure is damaging to customers who, absent protection from this Commission, will ultimately have to pay for the capital spending at the OVEC plants. The Commission should follow through on the Auditor's recommendation to cap recovery associated with capital spending.

I. AEP Ohio's Reference to the Contract Being "FERC-approved" is Misleading, and the Commission Should Disallow Costs to Protect Customers.

AEP Ohio asserts that, "Neither the Auditor nor the intervenors can selectively challenge individual components or the ICPA payment terms approved by the FERC." AEP Ohio Comments at 3. However, the ICPA has never been "approved" by FERC. In accepting OVEC's filing of the 2011 ICPA extension (two months after receiving OVEC's request), FERC stated in no uncertain terms that its acceptance

> [D]oes not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents[.]

See FERC Letter Order, Doc. # 20110523-3028, attached as Exhibit 1. FERC has not expressed an opinion as to the reasonableness of the ICPA's rates or issued any order that would preclude this Commission from disallowing imprudent or unreasonable costs that are passed on to Ohio ratepayers through the *retail* PPA rider.

At issue in this proceeding, is what ICPA costs AEP Ohio may pass on to captive ratepayers through the PPA Rider. The auditor found, and NRDC will present additional evidence to show, that the ICPA includes unreasonable costs that, pursuant to this Commission's earlier Order, cannot be included in AEP's rates. AEP Ohio, by entering into an inter-affiliate agreement with a 30-year term without the approval of either FERC or this Commission, properly bears the risk that

its shareholders, and not Ohio ratepayers, must absorb unreasonable wholesale costs associated with that inter-affiliate agreement.

II. The Commission Should Disallow Net Energy Margins Associated with Self-Scheduling OVEC units.

The auditor found that OVEC's used a Must-Run offer strategy and did not consider when energy market prices exceed the variable costs of operation at the plant when making operational considerations. Audit Report at 10, 53-54. The auditor recommended that OVEC consider utilizing market forecasts and committing its units with an "economic" or "reserve shutdown" status at times when the plant costs more to run than it is likely to make in PJM market revenue. *See* Audit Report at 54; *see also* Audit Report at 22-23.

AEP Ohio rejects this recommendation, on two grounds: First, AEP Ohio disavows authority over commitment decisions at the OVEC units, insisting that unanimous approval is required to alter this practice and that AEP Ohio lacks exclusive control over these decisions. AEP Ohio Comments at 4. Second, AEP Ohio attempts to defend OVEC's Must-Run decisions on the merits, asserting that "a Must-Run offer produces the most value for the OVEC units." AEP Ohio Comments at 5. Neither argument has merit.

AEP Ohio is disingenuous about the degree of agency it has with respect to commitment decisions at the OVEC units. As the largest equity holder and Sponsor with the largest share in the ICPA, AEP is well-positioned to introduce new commitment strategies and to advocate for their adoption. There is no evidence that AEP has attempted to wield its significant leverage within OVEC to improve the units' economic performance within the PJM market by avoiding uneconomic commitment decisions. Further, there is no evidence that other OVEC owners prefer economically irrational decision-making with respect to the PJM energy market. The audit record merely shows inattention to customers' interests.

Moreover, as discussed above, the terms of the ICPA were never approved either by FERC or this Commission. If AEP Ohio agreed to a wholesale contract that left it without the meaningful ability to reduce energy when market rates fall below generation costs, AEP Ohio—and not Ohio ratepayers—must bear that risk. The Commission already made this clear in ordering the instant audit: "Retail cost recovery may be disallowed as a result of the annual prudency review if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues….AEP Ohio will bear the burden of proof in demonstrating that bidding behavior is prudent and in the best interest of retail ratepayers."[1]

AEP has not met that burden. AEP claims that, "a Must-Run offer produces the most value for the OVEC units" and then cites a hodgepodge of reasons why this might be the case: cycling costs, risks, and unspecified "other parameters." It may be true that keeping units online when "out of the money" is more economic due to cycling costs for *certain* time frames (e.g., a weekend), but OVEC should be able to identify *some period*—whether that is a week or a ten days—over which it is reasonable to forecast the unit's net revenue and make commitment choices accordingly.[2] Further, to the extent AEP Ohio is now arguing that the OVEC units are technically incapable of cycling, these plants are even more worthless to customers than previously known.

AEP Ohio does not even attempt to identify such a time frame in which the costs of cycling

[1] Order in Cause No. 14-1693 at 88-90.

[2] AEP mistakenly refers to the choice to make a unit available or keep it in reserve shutdown based on plant economics and forecasted market as a "dispatch" decision. AEP Ohio Comments at 3-4. This is incorrect terminology. "Dispatch" refers to the amount of energy sold above the plant's minimum once it is *committed* into the PJM market. PJM, not individual generators, control dispatch based on energy market bids; the generator operator determines whether the plant will operate at its minimum load regardless of energy prices by selecting between an Economic or Must-Run *commitment* status.

tend to exceed the savings associated with economic commitment. Nor could they, because as the auditor found, OVEC does not do the kind of weekly forecasting of market conditions that is standard utility practice to assess when multi-day periods of uneconomic operation occur. If AEP takes the position that short-term uneconomic operation is in the medium-term benefit of ratepayers, it must (as part of its burden under the order establishing this audit docket) identify what forecasts and criteria OVEC or AEP use in making this determination on an ongoing basis, and why OVEC's net PJM energy and ancillary market revenues from 2019 reflect reasonable commitment decisions.

Finally, in response to the Auditor's recommendation that AEP reconsider its self-scheduling strategy, AEP suggests such operational decisions are contrary to the ICPA's role as a "hedge" against volatile gas prices. This is a non-sequitur that conflates two different time frames. The ICPA may represent a hedge on a *yearly* or longer basis, by guaranteeing a certain price for power regardless of gas prices (although, as intervenors will introduce evidence to show, the ICPA's energy and demand charges far exceed and are likely to continue to exceed market prices, making it a very bad bet for ratepayers). But the Auditor's concern with the use of Must-Run relates to operational decisions on a weekly or biweekly basis. AEP Ohio is not protecting ratepayers from any downside risk by agreeing to cover the difference between OVEC's costs and market revenue. Especially, when contemporaneous forecasts show OVEC could reduce net losses by simply entering reserve shutdown for a week or two while still remaining available to act as a hedge against increased market prices in the future.

III. AEP Ohio's Commentary on Capital Expenses Confirms that it is Imprudently Supervising OVEC's Capital Expenditures.

In protesting the Auditor's conclusion that customers would be protected by a cap on capital expenditures, AEP Ohio takes the position that the expenditures for the power plants, for

which AEP is the largest owner, are effectively beyond its control. AEP Ohio comments at 7. ("AEP Ohio does not seek pre-approval for the capital investments because that is not practical in terms of the operation and maintenance of a power plant and it is not contemplated in the ICPA.").

No prudent utility would incur significant capital expenditures without a rational pre-determination that such expenditures are reasonable. This is no mere hypothetical problem. Like every coal-burning plant that presently uses wet coal ash handling systems, Kyger Creek and Clifty Creek face significant costs to comply with the U.S. EPA's Coal Combustion Residuals ("CCR") rules and the Effluent Limitation Guidelines ("ELG").

No prudent utility would spend the hundreds of millions of dollars needed to comply with the CCR/ELG Rules without studying alternatives, such as, in this instance, retiring the plants by 2028 to avoid the bulk of retrofit compliance costs. Other regulatory agencies have determined that similar expenditures would be imprudent. For example, AEP affiliate Kentucky Power sought pre-approval for these same costs at its Mitchell plant in West Virginia, but the Kentucky Commission disallowed those costs as unreasonable given that Mitchell is an aging coal plant with limited value to customers.[3] AEP Ohio's statement that it does not review capital costs before they are incurred simply confirms its imprudent oversight of capital spending at both OVEC plants. The Commission should follow through on the Auditor's finding and disallow all costs associated with the CCR/ELG spending.

[3] *In the Matter of: Electronic Application of Kentucky Power Company For Approval of a Certificate of Public Convenience and Necessity For Environmental Project Construction at the Mitchell Generating Station, an Amended Environmental Compliance Plan, and Revised Environmental Surcharge Tariff Sheets,* Docket No. 2021-00004, Order, July 15, 2021 at 22 ("Kentucky Power did not establish that there are no other reasonable alternatives to address the capacity shortfall than to construct the ELG project or that the ELG project is the least-cost alternative.")

IV. Conclusion

For the foregoing reasons, those stated in our Initial Comments, and as further developed in testimony and at the evidentiary hearing, the Commission should protect Ohio customers by disallowing the specified OVEC costs from customers' bills.

Dated: December 3, 2021

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)
Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215-4295
Office: (614) 462-5443
Fax: (614) 464-2634
rdove@keglerbrown.com

Megan Wachspress (appearance pro hac vice)
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster St., 13th Floor
Oakland, CA 94612
Phone: (415) 977-5635
megan.wachspress@sierraclub.org

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 December 3, 2021.

/s/ Robert Dove
Robert Dove

Summary: Reply Comments electronically filed by Mr. Robert Dove on behalf of Natural Resources Defense Council