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**

REPLY COMMENTS OF OHIO POWER COMPANY

Pursuant to the Attorney Examiner's October 5, 2021 Entry, Ohio Power Company ("AEP Ohio" or the "Company") hereby files the following Reply Comments in response to the Initial Comments filed on November 12, 2021 by the Office of the Ohio Consumers' Counsel (OCC), jointly by Ohio Manufacturers' Association Energy Group and The Kroger Co. (OMAEG/Kroger), and by the Natural Resources Defense Council (NRDC). These Reply Comments supplement the Initial Comments filed by AEP Ohio on September 15, 2021 regarding the Audit Report issued by London Economics International LLC (LEI or the Auditor) addressing costs associated with AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by the Ohio Valley Electric Corporation (OVEC) for the period of January 1, 2018 through December 31, 2019.

Despite Intervenors' insistence to the contrary, the Audit Report was intended to examine the costs of the OVEC Inter-Company Power Agreement (ICPA) in comparison to revenues from the sale of power and to ensure that accounting procedures accurately and properly allocate revenues to ratepayers. Under the test for prudency set forth by established Commission

precedent, the Audit Report reveals that the costs incurred by the ICPA were prudently incurred. The Audit Report, after completing a robust investigation and obtaining responses to extensive data requests, did not make any recommendations for exclusions or disallowances based on imprudence. Rather than accept the Audit results, Intervenors substitute their judgment for that of the Auditor, attempt to force the Auditor to support a position it already concluded was erroneous, and attempt to inject irrelevant H.B 6 rhetoric into this Audit proceeding.

I. The Commission should reject improper attempts by Intervenors to malign the Auditor as not being independent and modify the Audit Report by forcibly reinserting language that was intentionally removed by the Auditor in finalizing its report

OCC initially cries foul over an email exchange between the Auditor and Staff to facilitate finalizing the draft Audit Report.[1] And Intervenors, as a group, make unfounded claims regarding the purpose and scope of the audit that are not supported by the Commission's original directive. For example, several Intervenors object to Staff's involvement in the final draft of the Audit Report and discuss an email from Staff to LEI.[2] Those parties even attack a Staff member for suggesting the report be revised to remove a sentence which said: "[t]herefore, keeping the plants running does not seem to be in the best interests of the ratepayers."[3]

Staff's recommendation to eliminate the sentence was correct because the scope of the audit was limited by the Commission to a narrow prudency review. The Auditor responded by saying that it had already intended to delete that sentence and that it was an oversight that the statement had not already been removed.[4] In creating its own false narrative, OCC (at 5) steadfastly goes on to mischaracterize the deleted sentence as the Auditor's "penultimate

[1] OCC Comments at 2-6.
[2] OCC Comments at 2 and Att. A; NRDC Comments at 2 and Att. A; OMAEG/Kroger Comments at 5.
[3] *Id.*
[4] OCC Comments at Att. A.

conclusion" – even though the Auditor said it was included by mistake and intentionally removed the statement from the Audit Report. NRDC also wrongly concludes that the question of whether to keep the plants running is the "very conclusion the audit was designed to determine," and therefore it was inappropriate to omit this sentence from the final draft.[5]

In reality, because the Auditor intentionally removed the statement and decided not to include it in the Audit Report, it cannot be referred to as a conclusion or attributed to the Auditor in this proceeding. More importantly, based on the language within the Commission's original directive to Staff to issue a request for proposal, it would have been improper not to remove the sentence. In its January 15, 2020 Entry, the Commission directed Staff to issue a request for proposal for audit services to assist the Commission "with the prudency and performance audit of the Power Purchase Agreement Rider."[6] Specifically, the Commission defined the scope of the auditor's investigation to ensure:

- "the prudency of unit scheduling and bidding of energy into PJM administered wholesale markets, including day ahead and real time energy markets, and shall ensure that accounting procedures accurately and properly allocate revenues to ratepayers;"[7]

- "the prudency of bidding behavior in PJM administered capacity markets, including the annual Base Residual Auction (BRA), and ensure that accounting procedures accurately and properly allocate revenues to ratepayers;"[8] and

- "that all of OVEC's fuel (i.e., coal) and variable operations and maintenance (O&M) related expenses were prudently incurred and properly allocated to AEP Ohio. The auditor's investigation shall include a comparison between incurred fuel costs and market prices to evaluate the reasonableness of fuel expenses during the audit period."[9]

Nowhere in the Commission's directive does it indicate that the scope of the audit includes a recommendation as to whether and when OVEC should retire or that AEP Ohio should try to

[5] NRDC Comments at 3.
[6] Entry at 1 (Jan. 15, 2020).
[7] *Id.*, Request for Proposal ("RFP") at 5.
[8] *Id.*
[9] *Id.*, RFP at 6.

breach/terminate the ICPA contract. Even if a retirement determination was within the scope of the audit as envisioned by the Commission, that determination has significant financial consequences and would require extensive information far beyond what was provided to LEI. Thus, Staff correctly requested the sentence be removed as outside the scope of the audit.

Further, the Audit Report itself is a report by Staff. As such, Staff controls what the Audit Report includes. In the request for proposal, the Commission clearly stated that "[t]he PUCO Staff will oversee the project" and that "Staff personnel shall be informed of all correspondence between the auditor and AEP Ohio and/or OVEC."[10] This oversight is made even more clear in the Commission's instruction that "copies of a draft of the final audit report shall be sent to the Commission Staff at least ten days prior to the due date of the final audit report."[11] If the Commission did not intend for Staff to review and make suggestions to the language included in the Audit Report, such an instruction would not have been included in its directive.[12]

OCC argues that Staff's recommendation disturbs LEI's "independence," even setting forth an abstract definition of "independence" as "without being affected by influences."[13] The Commission does not provide auditors with the unilateral ability to make policy decisions for Ohio.[14] Those decisions are, by statute, left to the discretion of the Commission. In completing

[10] *Id.*, RFP at 4.
[11] *Id.*, RFP at 9.
[12] In another example, Rule 4901:1-35-08 sets forth the procedures by which an Electric Distribution Utility may propose a competitive bidding process for its standard service offer. The rule includes a stringent requirement that the bidding process be overseen by "an independent third party to design an open, fair, and transparent competitive solicitation; to administer the bidding process, and to oversee the entire procedure." Based on this corollary, it is clear that if the Commission intended for the auditor to be strictly independent, completely without input or oversight from Staff, the rule or directive could have stated as such. Here, it states the opposite, and requires Staff's involvement.
[13] OCC Comments at 5.
[14] *See, e.g.*, Entry, RFP at 4-7, *In Re Annual Application of Columbia Gas of Ohio, Inc.*, Case No. 20-0049-GA-RDR (Jan 29, 2020) (granting the same oversight to Staff using identical language).

the audit, LEI worked for the Commission, under the oversight of Staff, and thus the Commission can limit the Auditor's review as the Commission sees fit.

OCC argues that LEI's discretion is unlimited because it was intended to determine whether "the Company's actions were in the best interest of retail ratepayers."[15] The Staff decision to remove the sentence at issue is completely consistent with this goal. AEP Ohio is a separate entity from OVEC, without the ability to dictate OVEC's actions. This audit was intended to evaluate whether AEP Ohio's actions were appropriate, not whether the Commission's decision to approve the PPA Rider was a good one.

More to the point of OCC's attack on Staff and the Auditor, it is completely appropriate for the subject of an audit to be granted an opportunity to review the audit report for factual inaccuracies and confidentiality concerns. As a related matter, some Intervenors object to the fact that AEP Ohio was provided with the ability to review the Audit Report before it was made available to the general public.[16] They fail to recognize that it is common practice for an independent auditor to share a preliminary draft with the entity who is subject to an audit report before it is issued – inside and outside of the utility industry. This review allows things like confidentiality concerns or discrepancies and factual inaccuracies to be corrected before the report is finalized, saving time for all parties concerned. There is no reason, nor has any Intervenor provided a reason, to change this longstanding audit practice. In sum, the audit was independently completed under the oversight of Staff, as set forth in the Commission's directive.

Also regarding the draft audit report review process, OCC purports to quote a communication from AEP Ohio counsel but completely omits the content of the comment and

[15] *Id.* at 6.
[16] *See* OMAEG/Kroger Comments at 5 ("Disturbingly, AEP Ohio officials are also included in email exchanges with the Auditor . . . .").

thus entirely mischaracterizes it.[17] Of course, the Company's comment was not to convey that it was "glad" but to convey in substance why the sentence should be deleted. The excerpted part of the Company's comment was to convey that the original sentence was properly deleted because it was "beyond the scope of the audit" and to explain that the prudence issues "involved in the audit relate to AEP Ohio's implementation of the ICPA and not the existence of it."[18] While OCC would like to avoid those legitimate assertions and conclusions and rely instead on hyperbole and innuendo, the Commission should not engage in such nonsense.

As an additional tactic supporting OCC's campaign to attack the Staff and its Auditor, OCC has twice filed pleadings in these cases attempting to subpoena and depose the Auditor and Staff.[19] Of course, through these extraordinary attempts to bypass Commission procedures, the OCC is seeking to enforce its own twisted narrative on Staff and the Auditor – even though it is and always has been a fundamental tenet of Commission proceedings that the discovery process does not apply to Staff or Staff Auditors.[20]

Frankly, this whole situation demonstrates why OCC should not be permitted to insert itself into the Commission audit process and obtain documents that are properly considered confidential under R.C. 4901.16; OCC improperly seeks to take over the role of auditor, regulator, and adjudicator. Whatever the circumstances are with respect to disclosure of draft audit reports, the reasons for specific edits or the removal or addition of specific statements or conclusions from a preliminary draft should not be fodder for cross-examination or arguments in

[17] *See* OCC Comments at 4 (quoting the Company's comment simply as "Glad you are deleting that sentence…").
[18] Email from Steven T. Nourse to Marie Fagan dated September 11, 2020.
[19] *See* Joint Notice to Take Depositions of the PUCO Auditor (Mar. 17, 2021); Motion for Subpoenas for Auditor and Staff (Dec. 1, 2021).
[20] *See* Rule 4901-1-16(I); Ohio Rev. Code 4901.13.

the proceeding; preliminary drafts are not relevant and should not be admissible because only the final Audit Report is filed and only that version is fair game for adjudication.

Of course, the thematic purpose of OCC and Intervenors is to continually challenge OVEC cost recovery. In this regard, they have repeatedly and consistently opposed creation of AEP Ohio's PPA Rider since its inception. They opposed it in the PPA Rider proceeding, then they filed rehearing and appeal to unsuccessfully challenge it. So, their "lack of independence" and H.B 6 rhetoric is clearly additional white noise here since the PPA Rider predated the enactment of that legislation as does the audit period in this proceeding – not to mention that OVEC-related costs have been recovered in AEP Ohio's rates for many years prior to that. In reality, Intervenors' current positions merely reflect their latest (untimely and procedurally flawed) attempt to completely overturn OVEC cost recovery, notwithstanding that the Commission has approved it multiple times, the Supreme Court of Ohio has affirmed the recovery, and the General Assembly has subsequently codified it.

II. The misguided notion advanced by Intervenors that any costs above market price should be excluded as imprudent generally conflicts with the Commission's decision to adopt the OVEC-only PPA Rider as a financial hedge for customers

OCC and NRDC argue that the Commission should disallow any PPA Rider costs that are "above market."[21] These arguments should be rejected as improper attempts to relitigate the Commission's approval of the Stipulation in Case No. 14-1963-EL-RDR and its inclusion of the ICPA in the PPA Rider. Indeed, if Intervenors' position in this regard were adopted, it would completely eviscerate the purpose and effect of the PPA Rider as a financial hedge that captures the market-cost differential.

[21] OCC Comments at 8; NRDC Comments at 5-8.

A. The Commission approved the inclusion of the ICPA in the PPA Rider with the full understanding that, as a financial hedge, the ICPA could sometimes result in net costs

Because OCC and NRDC so blatantly disregard the Commission's settled determinations in Case No. 14-1963-EL-RDR, and because that case involved complex procedural issues, it is important to review the history of that case. The Stipulation in the PPA case provided that "the net credits *or costs* of AEP Ohio's contractual entitlement to a share of the electrical output of generating units owned by OVEC should be reflected in AEP Ohio's retail rates by including the OVEC [ICPA] net costs in the PPA Rider, as proposed in AEP Ohio's Amended Application."[22] The Stipulation also provided that "the net credits or costs of a Revised Affiliate PPA" should be included in the PPA Rider.[23] In its initial Opinion and Order, the Commission approved the Stipulation as a package.[24] The Commission found, among other things, that "customers will benefit from the PPA rider as a financial hedging mechanism," and that the "PPA proposal will facilitate fuel supply diversity."[25]

In approving the PPA Rider, the Commission clearly contemplated that the PPA Rider could result in a net charge to customers. Although the Commission credited AEP Ohio's projection that the PPA rider would result in a net credit to customers over its eight-year term, the Commission acknowledged that "the projections presented in these cases are simply predictions of future market prices and costs" and that "even the most reliable projections may

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[22] Joint Stipulation & Recommendation ¶ III.A.2, *In re 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 Nos. 14-1693-EL-RDR et seq. (Dec. 14, 2015) (emphasis added).
[23] *Id.* ¶ III.A.1.
[24] Opinion & Order at 77, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016) ("We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing their issues before the Commission, while also, at times, avoiding the considerable time and expense associated with the litigation of a fully contested case. We, therefore, reaffirm that the stipulation offered by the signatory parties in these proceedings must be viewed as a whole." (citations omitted)).
[25] *Id.* at 83.

be proven wrong in the future, particularly over an eight-year timeframe."[26] To mitigate a potential charge to customers, the Commission modified the stipulation to require that AEP Ohio "limit customer rate increases related to the PPA rider at five percent of the June 1, 2015 SSO rate plan . . . through May 31, 2018."[27] This limit on near-term rate increases supplemented a commitment AEP Ohio had already made in the Stipulation to guarantee certain credits in the last four years of the PPA Rider.[28] These limits on PPA Rider rate increases would not have been necessary if the intent of the PPA Rider was to serve only as a credit to customers.

After the Commission's Opinion and Order, a FERC opinion was issued that resulted in the Revised Affiliate PPA no longer being in effect.[29] AEP Ohio then sought rehearing of the Opinion and Order advocating, among other things, that "only the [ICPA] should be included in the PPA rider."[30] The Commission approved this "OVEC only" version of the PPA Rider.[31] The Commission reiterated its previous findings that the PPA Rider will provide "rate stability and financial hedging benefits" and cited a desire to preserve "the stipulation's many other provisions addressing grid modernization, renewable energy sources, and retail competition."[32] In approving the "OVEC only" PPA Rider, the Commission once again expressly recognized that the rider may result in a net charge to customers.[33]

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[26] *Id.* at 81.
[27] *Id.*
[28] Joint Stipulation & Recommendation ¶ III.A.3, *In re 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 Nos. 14-1693-EL-RDR et seq. (Dec. 14, 2015) (emphasis added).
[29] *Elec. Power Supply Ass'n v. AEP Generation Res., Inc.*, Docket No. EL16-33-000, 155 FERC ¶ 61,102, ¶ 64 (Apr. 27, 2016).
[30] Second Entry on Reh'g at 23, *In re 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 Nos. 14-1693-EL-RDR et seq. (Nov. 3, 2016).
[31] *Id.* at 32.
[32] *Id.* at 28, 31.
[33] *See id.* (explaining that AEP Ohio is required "to fund ratepayer credits of up to $15 million over four years, if the actual revenues under the PPA rider are at a level that would otherwise impose a charge or provide a credit that is less than the amount of the credit commitment").

After reviewing the history of the PPA Rider proceeding, it should be clear that OCC and NRDC are improperly relitigating the Commission's approval of the Stipulation and ICPA in that case. As noted above, the Stipulation expressly contemplated the inclusion of both the "net credits *or costs*" of the ICPA in the PPA Rider, and the Commission expressly approved this in both its initial Opinion and Order and in its Second Entry on Rehearing.[34] Moreover, the Commission approved the OVEC-only PPA Rider (along with numerous other terms of the Stipulation) with the clear understanding that the PPA Rider would sometimes result in net costs to customers. The Commission explained that one goal of the PPA Rider was to serve as a hedge that stabilizes retail rates.[35] This stabilization effect comes from the fact that the PPA Rider operates countercyclically to market rates – it results in net credits when market rates are high, and results in net costs when market rates are low.

OCC's claims about a "competitive bidding process" (OCC Comments at 6-7) are another improper attempt to relitigate Case No. 14-1693-EL-RDR and should be rejected. As the Commission and OCC are aware, AEP Ohio has had an entitlement to a share of the output of the OVEC plant for many years. In Case No. 14-1963-EL-RDR, AEP Ohio and the Signatory Parties requested that AEP Ohio's OVEC entitlement be reflected in AEP Ohio's rates through the PPA Rider. The Commission agreed. Any concerns about the ICPA being subject to "competitive bidding" could have – and should have – been raised in that case. The Commission has already found that the inclusion of the ICPA in AEP Ohio's rates is reasonable, and this annual audit proceeding is not an appropriate forum to relitigate that issue. As relevant here, moreover, OVEC uses competitive bidding processes where appropriate (*e.g.*, in coal

[34] *See, e.g.*, *id.* at 31.
[35] *See, e.g.*, *id.* at 28.

procurement, *see* Audit Report at 59) and OCC raises no objections concerning these competitive processes.

Disallowing the recovery of the ICPA when it results in net costs is directly at odds with the Commission's prior approval of the ICPA and would improperly upset the Stipulation package that AEP Ohio and all other signatory parties agreed to in Case No. 14-1963-EL-RDR. Stated differently, since OVEC output does not serve retail load in Ohio (but is required to be liquidated into the PJM Market), the PPA Rider would not serve as a financial hedge and would literally have no purpose if it were limited to passing through market prices. Of course, legally the time for rehearing has long expired. Indeed, as referenced above, Intervenors already unsuccessfully pursued rehearing the PPA Rider cases[36] and unsuccessfully challenged the Commission's decision before the Supreme Court of Ohio.[37] This audit proceeding is not the place to argue legal or policy arguments[38] against the PPA Rider but is, instead, limited solely to the accuracy and prudency of the charges, not whether those charges should be in place or not. The untimely requests that the Commission reconsider its past decision should be rejected.

B. NRDC's passing citation to a recent Michigan decision is inapposite on numerous grounds, the most important being that the Commission has already approved the inclusion of the ICPA in AEP Ohio's rates

NRDC's half-hearted attempt to impose a standard from another jurisdiction does not aid its argument. In a footnote, NRDC cites to a recent decision of the Michigan Public Service

[36] *See, e.g.*, Fifth Entry on Reh'g, *In re 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 Nos. 14-1693-EL-RDR et seq. (Apr. 5, 2017) ("Initially, we note that OCCs arguments against AEP Ohio's proposed OVEC-only PPA rider were fully considered by the Commission in the Second Entry on Rehearing. …ultimately, the Commission found, following a thorough review of the parties' arguments, that AEP Ohio's request for approval of an OVEC-only PPA rider, in conjunction with implementation of the stipulation's other provisions, should be granted.").

[37] *In re Application of Ohio Power Co.*, 155 Ohio St. 3d 326, 2018-Ohio-4698.

[38] Several Intervenors claim that the PPA rider should no longer be in place for policy reasons. OCC Comments at 6; NRDC Comments at 5.

Commission (MPSC) that applied a Michigan-specific affiliate pricing rule to the OVEC entitlement of Indiana Michigan Power Company (I&M), an AEP utility subsidiary.[39] That ruling is inapposite for several reasons. As an initial matter, the decision is based on the Michigan Code of Conduct, Mich. Admin. Code R. 460.10108(4).[40] This is a provision of Michigan law that does not apply in Ohio, and NRDC does not cite any comparable provision of Ohio law. As discussed above, application of this so-called "inverse pricing" concept is simply irreconcilable with the financial hedge structure of the PPA Rider already adopted by the Commission.

More importantly, the Michigan case is distinguishable because AEP Ohio, unlike I&M, has already presented the ICPA to the Commission for approval, and the Commission approved the inclusion of the ICPA in AEP Ohio's rates. A key premise in the MPSC's decision is that the ICPA "has never been presented to the [MPSC] for approval."[41] Here, however, the ICPA was presented to the Commission in Case No. 14-1963-EL-RDR, and in that case the Commission thoroughly evaluated the ICPA and determined that it was appropriate for AEP Ohio to include its OVEC entitlement in retail rates.[42] To accept NRDC's argument at this stage and apply the Michigan affiliate pricing rule would fundamentally upend the Commission's order adopting the Stipulation that AEP Ohio and many other parties signed. The Commission should reject NRDC's argument.

[39] NRDC Comments at 5 (citing Order, *In re Application of Indiana Michigan Power Company for Approval to Implement a Power Supply Cost Recovery Plan for the 12 Months Ending December 31, 2021*, MPSC Case No. U-20804 (Nov. 18, 2021) ("MPSC Order")).
[40] *See* MPSC Order at 22.
[41] *Id.* at 17.
[42] *See, e.g.*, Second Entry on Reh'g at 28, *In re 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 Nos. 14-1693-EL-RDR et seq. (Nov. 3, 2016).

C. Contrary to OCC's claim, the OVEC ICPA is subject to FERC's jurisdiction and constitutes a FERC filed rate under the Federal Power Act

Equally unavailing is the OCC's argument that the ICPA "avoids FERC's jurisdiction."[43] OCC's argument about FERC's jurisdiction is difficult to follow. Insofar as OCC is claiming that the ICPA is not subject to FERC's jurisdiction, OCC is manifestly wrong. Pursuant to FERC's rules, the ICPA was filed and accepted at FERC without objection, and therefore it constitutes the FERC-jurisdictional filed rate under 16 U.S.C. § 824d.[44] When a utility files a new rate schedule or tariff (such as the ICPA) with FERC, it becomes the FERC-jurisdictional filed rate unless FERC affirmatively rejects the rate schedule or tariff. Where, as here, no party objects, FERC "accepts" the tariff or rate schedule "for filing," which means it goes into effect as the FERC-jurisdictional filed rate under the Federal Power Act, 6 U.S.C. § 824d(c)-(e) (Federal Power Act Section 205. Therefore, the ICPA does not "avoid" FERC's jurisdiction but rather is completely subject to FERC's jurisdiction, and under FERC's regulations the ICPA constitutes a filed rate under the Federal Power Act.[45]

III. OVEC's offering of the plants on a "must run" basis in PJM energy markets is not cause for any disallowance, and no action by AEP Ohio under the ICPA can be considered imprudent in this regard

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[43] OCC Comments at 7.

[44] When the ICPA was filed at FERC, neither OCC nor any other party filed objections under FERC's procedures, and therefore the ICPA became "accepted for filing." *See* Letter from Penny S. Murrell, Director Division of Electric Power Regulation – Central to Brian Chisling, Counsel for OVEC and IKEC, FERC Docket Nos. ER11-3181-000 et seq. (May 23, 2011). All FERC documents cited are available on FERC's electronic docket, https://elibrary.ferc.gov.

[45] FERC's acceptance of the ICPA should be distinguished from FERC's treatment of the Affiliate PPA. Unlike the ICPA, which was uncontested at FERC, certain parties *did* object to the Affiliate PPA and filed a complaint case at FERC. In that case, FERC held that the Affiliate PPA – which was an entirely new bilateral contract between AEP Ohio and AEP Generation Resources, Inc. – was subject to certain FERC standards applicable to affiliate agreements entered into at market-based rates. *See Elec. Power Supply Ass'n v. AEP Generation Res., Inc.*, Docket No. EL16-33-000, 155 FERC ¶ 61,102, ¶ 64 (Apr. 27, 2016) (holding that the Affiliate PPA must be submitted to FERC "under section 205 of the [Federal Power Act] for analysis under the *Edgar* and *Allegheny* standards"). By contrast, in filing the ICPA at FERC, OVEC explained that the ICPA "represents the continuation of a 50-plus year arrangement that does not raise affiliate abuse or competitive concerns." *See* Letter from Brian E. Chisling, Counsel for OVEC and IKEK, to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, FERC Docket Nos. ER11-3181-000 et seq., at 6 (Mar. 23, 2011). FERC then accepted the uncontested ICPA filing without applying the FERC standards applicable to affiliate agreements entered into at market-based rates.

Several parties argue that OVEC's actions in offering the plants on a "must run" basis in PJM energy markets are grounds for a disallowance.[46] These arguments should be rejected because they misapprehend the standard of review and are founded on a fundamental misunderstanding of the economics of offering the OVEC plants in the PJM energy market. Intervenors seek to conduct simple mathematical comparisons of OVEC costs versus costs over a day, week, or month, and then claim the decision to run the plants should be evaluated by whether that figure is positive or negative. This analysis assumes clairvoyance and fails to account for unavoidable variable costs, the unique operative characteristics of coal plants, and the needs of OVEC's other owners for baseload power year-round.

A. No party identifies any action of AEP Ohio under the ICPA that is imprudent

The Commission must focus its prudence review primarily on *AEP Ohio's* actions and reject other parties' invitations to review actions that *OVEC* takes which AEP Ohio, under the FERC-jurisdictional ICPA, cannot control. For example, OCC argues that the Commission should "disallow any costs collected by AEP that result from *OVEC's* imprudent practices in managing the plants."[47] Of course, AEP Ohio disagrees with the characterization of OVEC's actions during the audit period as being imprudent. The question here, however, must focus on what actions AEP Ohio took. In articulating the scope of the annual review process in the PPA Case, the Commission made clear that question is whether "*the Company's* actions were in the best interest of retail ratepayers."[48] The Commission further explained that "Staff, or another auditor selected by the Commission, will review the accuracy and appropriateness of the rider's

[46] *See* OCC Comments at 11-16; OMA/Kroger Comments at 3-4; NRDC Comments at 6-7.
[47] OCC Comments at 12 (emphasis added).
[48] Second Entry on Reh'g at 70-71, *In re 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 Nos. 14-1693-EL-RDR et seq. (Nov. 3, 2016) (emphasis added).

accounting and the prudency of *AEP Ohio's* decisions and actions as set forth in the stipulation."[49]

To show imprudence with respect to the "must run" issue or any other issue, Intervenors must identify an action taken by AEP Ohio, not OVEC, with respect to that issue, and neither OCC nor any other party has done so. As the Auditor correctly notes, AEP Ohio is one of several OVEC Sponsoring Companies under the ICPA, and OVEC maintains an independent Energy Scheduling Department that handles PJM energy market participation for all OVEC companies.[50] AEP Ohio and the other Sponsoring Companies participate in an OVEC operating committee that reviews policies and offers input to OVEC.[51] "In order to reach a decision, OVEC Operating Committee must receive at least two-thirds of the affirmative vote from the members."[52] Under the ICPA, all AEP Sponsoring Companies (including AEP Ohio) together have a single vote on the Operating Committee.

The Auditor found no imprudence with respect to AEP Ohio's actions under the ICPA. The Auditor reviewed Operating Committee records and found that "AEP Ohio is well represented in OVEC Operating Committee's meetings with active engagement."[53] The Auditor further concluded that "the processes, procedures, and oversight were mostly adequate and consistent with good utility practice."[54] Intervenors' complaints do not target these AEP Ohio actions but rather focus on the actions OVEC took in the PJM energy market. That improperly

[49] Opinion & Order at 90, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016) (emphasis added).
[50] *See* Audit Report at 40.
[51] *Id.* at 45.
[52] *Id.*
[53] *Id.* at 46.
[54] *Id.* at 9.

imputes OVEC's actions to AEP Ohio and is at odds with the stated purpose of this annual review proceeding – the purpose is to review AEP Ohio's actions.

B. OCC's alternative proposal on the "must run" issue misunderstands the economics of offering the OVEC plants in the PJM market and, if adopted, could lead to additional costs and lost revenue

OCC's overly simplistic alternative proposal on the "must run" issue – "don't run the plant when the plant's variable operating costs exceed the PJM market price"[55] – shows that OCC does not understand the PJM markets or the economics of operating the OVEC plants. OCC's argument here is recycled (in many cases verbatim) from OCC's comments in a recent audit proceeding for Duke Energy Ohio.[56] As it did in the Duke proceeding, OCC's argument here conflates several concepts, including unit commitment, dispatch, and economic dispatch. OCC also improperly cites third-party reports addressing situations outside of PJM to suggest that OVEC's "must run" commitment is somehow unusual, when in reality numerous reputable sources have stated that a large percentage of the units in PJM are offered with a "must run" commitment.[57]

Most importantly, OCC's argument fails to understand the economics of operating the OVEC plants and could lead to higher net costs flowing through the PPA Rider. In short, the reason OVEC units are offered on a "must run" basis is because the eleven OVEC units – as with similar coal-fired generating facilities – have relatively higher start-up costs compared to some other forms of generation in PJM, and they cannot be turned on and off quickly. OVEC offers

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[55] OCC Comments at 13

[56] *In re Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR.

[57] *See, e.g.*, A Review of the Commitment and Dispatch of Coal Generators in MISO by Potomac Economics at 3, available at www.potomaceconomics.com/wp-content/uploads/2020/09/CoalDispatch-Study_9-30-20.pdf; PJM Response to 2017 Market Monitor Report at 6, available at https://www.pjm.com/-/media/library/reports-notices/state-of-the-market/20180511-pjms-responseto-the-2017-state-of-the-market-report.ashx; 2018 PJM Market Monitor Report at 19, available at https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018/2018q2-som-pjmsec4.pdf).

the units on a "must run" basis in the PJM day-ahead energy markets so that the units are online and available to earn revenues. If OVEC were to offer the units on an "economic" basis (this is the only other option available in PJM other than "outage" and "emergency"), PJM may not call for the units to run even when it would be economic to do so, or the units may be cycled on and off at too great a frequency. These outcomes could lead to economic loses compared to a must-run strategy.

OVEC cannot simply "run the plant when the plant's variable operating costs exceed the PJM market price," as OCC suggests. It's not that simple. Instead, whether to offer the units on a "must run" or "economic" basis depends on numerous, complicated factors related to the nature of these plants and forecasts of PJM market prices. For example, OCC and the other Intervenors' analyses fail to consider unavoidable variable costs such as OVEC's contractual requirements to take certain amounts of coal.[58] Were OVEC to simply not run as requested by Intervenors, then OVEC would be subject to contractual costs under these agreements which are ignored by Intervenors. Another factor that must be considered is that increased fluctuation in operation from an "economic" commitment would increase stress on the plants' equipment, which would thus severely depreciate its assets. Moreover, Intervenors' analysis fails to take into account the needs of OVEC's other owners for baseload power year-round. As AEP Ohio is not the sole owner of OVEC, its needs are not the only ones which OVEC's dispatch must serve. As one of many purchasers under the ICPA and the owner of only 19% of the output of OVEC, AEP Ohio cannot unilaterally dictate a generation strategy for OVEC.

Intervenors also fail to acknowledge that there is nothing new or unusual about OVEC offering into PJM's day-ahead energy market on a "must run" basis. The previous PPA Rider

[58] OVEC's coal procurement strategy and contracts were thoroughly reviewed by the Auditor in this proceeding. *See* Audit Report at 54-75.

audit for AEP Ohio (Case No. 18-1003-EL-RDR, covering June 1, 2016 through December 31, 2017) expressly noted that OVEC offers into PJM's day-ahead energy market on a "must run" basis.[59] As with the Auditor here, the auditor of the 2016-2017 audit found nothing imprudent about this. To the contrary, the auditor found that "OVEC's operations of the Clifty Creek and Kyger Creek Power Plants appears to be prudent," and that OVEC "offers the plants into the PJM markets in a manner that would be expected."[60] OCC and OMAEG/Kroger filed initial and reply comments in Case No. 18-1003-EL-RDR and did not even mention the plants' "must run" commitments, let alone raise the slightest concern with their prudence.

OCC is wrong that the Audit Report in this proceeding "identified a problem" in the OVEC plants' "must run" commitment policy.[61] The Audit Report never called the "must run" commitment a "problem," nor did the Auditor conclude that the must-run commitment policy was imprudent. Instead, the Auditor reviewed OVEC's current "must run" policy and did *not* find that it was imprudent. The Auditor merely recommended that OVEC "carefully consider when and whether the must-run offer strategy is optimal."[62]

C. OMAEG/Kroger's proposal for a "Retroactive Hourly Economic Dispatch Simulation" is meritless

OMAEG/Kroger complain that "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."[63] AEP Ohio does not understand what OMAEG/Kroger are suggesting. A "retroactive simulation" is a contradiction, and OMAEG/Kroger provide scant detail regarding exactly what this retroactive simulation would

[59] Audit Report at 12, *In re Review of Power Purchase Agreement Rider of Ohio Power Company*, Case No. 18-1003-EL-RDR (Jan. 11, 2019).
[60] *Id.* at 19.
[61] OCC Comments at 12.
[62] Audit Report at 53.
[63] OMA/Kroger Comments at 4.

model and how it would do so. OMAEG/Kroger do not explain how such an analysis would even be possible due to all the factors (e.g., unavoidable variable costs, operating characteristics, baseload needs) discussed above.

Moreover, what OMAEG/Kroger are suggesting is contrary to the prudence standard applicable here. The PPA Stipulation provided that, in determining the reasonableness of the "costs and revenues included in the PPA Rider," the Commission must judge AEP Ohio's actions "in light of the facts and circumstances known at the time such costs were committed and market revenues were received."[64] The "retroactive analysis" proposed by OMAEG/Kroger is exactly the kind of after-the-fact second-guessing this provision was meant to avoid.

IV. The Commission should reject the additional arguments claiming imprudence during the audit period

A. The Commission should reject the notion that off-peak net costs and revenues should be considered imprudent and disallowed

OCC suggests that the Commission should disallow any net OVEC costs that were incurred by running during the off-peak shoulder months.[65] OCC seemingly argues that limiting operation of the OVEC plants seasonally during the peak months is the only way to ensure that the OVEC plants are "operated in the same manner as a competitive operator would run the plants."[66] OCC's support for this notion is based upon an EIA article and a very limited number of examples taken out of context. The Commission should deny OCC's recommendations, which suffer from numerous problems.

OCC seeks to impose a standard of review that is not consistent with the Order approving the PPA Rider. It is true that AEP Ohio "bear[s] the burden of proof in demonstrating the

[64] Joint Stipulation & Recommendation ¶ III.A.2 n.6, *In re 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 Nos. 14-1693-EL-RDR et seq. (Dec. 14, 2015) (emphasis added).
[65] OCC Comments at 8.
[66] *Id.*

prudency of all costs and sales during the review [of the PPA Rider], as well as that such actions were in the best interest of retail ratepayers."[67] Per the Stipulation that was approved by the Commission, prudency means that "actions taken by the Company when selling the output from generation units included in the PPA Rider into the PJM market were ***not unreasonable***."[68] The Commission did not establish a requirement limiting OVEC operation to the peak months, nor is seasonal operation an established practice that would demand that year-round operation is unreasonable.

OCC cites to an EIA article and other materials out of context to support their argument that there is a "growing trend," of coal plants operating seasonally and thereby the only prudent management practice.[69] The EIA article at issue, however, indicates that plant owners are merely "***evaluating*** new operating models, such as seasonal operation."[70] The EIA goes on to cite only four coal plants that have announced such plans in 2020 – the same four cited by OCC.[71] One of those was the Dolet Hills Power Station in Louisiana that was operated by AEP Ohio's affiliate – Southwestern Electric Power Company ("SWEPCO"). OCC makes the bold declaration that "SWEPCO switched the Dolet Hills coal plant in Louisiana to seasonal operation in 2019 ***to reduce costs***."[72] Not only does this statement read words into the SWEPCO FERC Form 1 that do not exist, it also overlooks the fact that Dolet Hills went to seasonal operation in large part due to limited availability of lignite coal, resulting from the closure of Dolet Hills

[67] Opinion & Order at 89, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016).
[68] Joint Stipulation & Recommendation ¶ III.A.5, *In re 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 Nos. 14-1693-EL-RDR et seq. (Dec. 14, 2015) (emphasis added).
[69] OCC Comments at 8.
[70] EIA, "As U.S. Coal-Fired Capacity and Utilization Decline, Operators Consider Seasonal Operation," available at https://www.eia.gov/todayinenergy/detail.php?id=44976 (last accessed December 3, 2021) (emphasis added).
[71] *Id.*; *see also* OCC Comments at 10.
[72] OCC Comments at 10 (emphasis added).

Lignite Company, which provided Dolet Hills Power Station with 100% of its fuel supply.[73] Tellingly, OCC failed to cite the EIA conclusion that "***[w]hether or not seasonal operation sufficiently improves the economics of coal plants remains to be seen***.."[74] The EIA article went on to point out that "[i]n 2018, owners of a plant in Wisconsin and a plant in Texas switched to seasonal operation. However, the practice lasted for less than a year because both facilities were completely shut down shortly thereafter."[75] Moreover, in early January 2020, SWEPCO also announced its intent to retire of Dolet Hills early, just over a year after switching to a seasonal dispatch model.[76] Nevertheless, seasonal operation does not relieve a generating facility of its capacity market obligations and OVEC is already committed through May 31, 2023.

Even if seasonal operation of coal plants was a new trend as suggested by OCC, by its very nature this is a nascent concept that was certainly not an established management practice during the audit period of January 1, 2018, through December 31, 2019.[77] Auditing the PPA Rider based upon a nascent seasonal run concept goes beyond the scope of this audit and would impose a burden of proof beyond that approved by the Commission. The Commission adopted the audit standard set forth in the Stipulation, which established that "any determination that the costs and revenues included in the PPA Rider are unreasonable shall be made in light of the facts and circumstances know at the time such costs were committed and market revenues were

[73] S&P Global Market Intelligence, "SWEPCO, Cleco Eye 2021 Retirement of Dolet Hills Coal Plant in Louisiana, available at https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/swepco-cleco-eye-2021-retirement-of-dolet-hills-coal-plant-in-louisiana-58612640 (last accessed December 3, 2021); *see also*, SWEPCO 2020 FERC Form 1 at p. 123.29.
[74] EIA, "As U.S. Coal-Fired Capacity and Utilization Decline, Operators Consider Seasonal Operation," available at https://www.eia.gov/todayinenergy/detail.php?id=44976 (last accessed December 3, 2021) (emphasis added).
[75] *Id.*
[76] Utility Dive, "SWEPCO Settles with Sierra Club to Plan 650 MW Coal Plant Retirement by 2026," available at https://www.utilitydive.com/news/swepco-settles-with-sierra-club-plan-650-mw-coal-plant-retirement-2026/570099/ (last accessed Dec. 3, 2021).
[77] Entry at 2 (Jan. 15, 2020).

received."[78] Specifically, the approved Stipulation provided that "the Commission would review PPA rider revenues in the audit for the year in which the revenues were included in the rider, while costs would be reviewed in the audit for the year in which the costs were incurred."[79] Again, as EIA pointed out, whether seasonal operation is a prudent operational strategy remains to be seen and half of the plants that employed the strategy met their early demise within a year. Thus it can hardly be stated that operating seasonally in 2018 and 2019 would have been the only "manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues."[80]

OCC's suggestion also ignores the realities of power markets and operating coal baseload power generation plants. OCC's argument assumes that there is no operational need for coal generation in the historically "off-peak" shoulder months. But with dramatic shifts in weather, there is increasing need for generational stability even during the shoulder months. For instance, just recently on October 2, 2019, a Performance Assessment Interval event was triggered in the PJM region related to an unexpected heat wave. Moreover, OCC states that it is not economical for coal plants to operate in the shoulder months "due to lower energy prices,"[81] which ignores the fact that operating year round allows OVEC to participate in the PJM capacity markets, opening up an additional revenue stream that would not otherwise be available. Operating year

[78]Joint Stipulation & Recommendation ¶ III.A.5, *In re 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 Nos. 14-1693-EL-RDR et seq. (Dec. 14, 2015) (emphasis added).
[79] Opinion & Order at 68-69, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016)..
[80] OCC Comments at 9 (citing Opinion & Order at 89, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016)).
[81] OCC Comments at 8.

round also allows OVEC to maximize revenues by taking advantage of off peak weather events that would not otherwise be available to OVEC under a seasonal operation construct.

Finally, as discussed in above in Section III.A, OCC's suggestion to disallow net costs during the off-peak months based upon OVEC's actions obfuscates the purpose of the audit in this case to examine the prudency of ***AEP Ohio's*** actions. As a party contracted to 19.93% of the OVEC output, AEP Ohio alone does not control the actions of OVEC much less have the ability to force OVEC to switch to seasonal operation. Such a measure would, at a minimum, require a two-thirds vote from the OVEC Operating Committee members.

In conclusion, although seasonal operation is something that OVEC can take under consideration going forward, it should certainly not be a basis upon which to disallow net costs that were incurred during 2018 and 2019.

B. The Commission should reject NRDC's suggestion to impose a prospective $0 cap on environmental capital expenditures at OVEC

The Commission should reject NRDC's suggestion to impose a $0 cap on environmental capital expenditures at OVEC in the future.[82] The overly simplistic request from NRDC is unsupported by either a factual record or good public policy. The proper approach to NRDC's request is to address the prudence of specific expenditures on a case-by-case basis in accordance with standard ratemaking principles.

This audit is a prudency audit "for the period spanning January 1, 2018, through December 31, 2019, as contemplated by, and in compliance with, the Commission's orders."[83] The Commission expressly addressed the scope of auditing capital expenses – "[t]he auditor shall ensure that any fixed costs incurred by OVEC are properly allocated to AEP Ohio,

[82] NRDC Comments at pp. 7-8.
[83] Entry, RFP at 4 (Jan. 15, 2020).

including depreciation, debt service, and plant maintenance expenses."[84] The audit is not a prospective look into what costs should or should not be incurred by OVEC in the future; it would be improper if not impossible to judge the prudence of future investments in this proceeding. This is of particular import considering this is an audit of a rider that no longer exists. NRDC is essentially seeking an advisory opinion as a collateral attack on the PPA Rider decisions as referenced above.

Not only does NRDC's suggestion go well beyond the scope of this audit and is contrary to Ohio law, NRDC's suggestion fails to acknowledge the audit report findings and appears to discount the practical realities associated with the OVEC plants. NRDC suggests a $0 cap on "avoidable" capital expenditures, and submits that closure of the plant would relegate any investments as "avoidable."[85] NRDC ignores the auditor's conclusion "that OVEC's environmental equipment configuration is consistent with the industry standard, and therefore, OVEC is well positioned to comply with environmental rules and regulations at federal, state, and local levels."[86] The auditor further found that OVEC's "capital project budget approval process provides a good foundation for capital project planning and implementing."[87] While the auditor made a passing comment to capping capital expenses, it was suggested to prevent "over investment" because "approval of the Commission is not needed for OVEC to engage in capital spending projects."[88] Certainly, making capital investments to comply with federal law would not be considered "over investment," hence, the auditor did not make such a recommendation with respect to environmental compliance expenditures. This is furthered by the fact that there is

[84] *Id.*, RFP at 6.
[85] NRDC Comments at 8 ("Most of these costs could be avoided by a 2028 retirement of these plants.").
[86] Audit Report at 88.
[87] Audit Report at 91.
[88] Audit Report at 92.

no incentive to over-invest when "OVEC is not allowed to earn a return on capital projects."[89] NRDC's proposal flies in the face of the approval of the inclusion of the ICPA in the PPA Rider by suggesting that there should be no capital investment and the plants should be shuttered.

NRDC concedes that the OVEC plants will likely need to make capital expenditures to meet the U.S. EPA's coal ash and surface water discharge requirements.[90] Indeed, OVEC has maintained compliance with USEPA's CCR Rule requirements, and further was required to submit a coal combustion residual rule demonstration application to USEPA by November 30, 2020, in order to outline its future compliance plan. Failure to make the necessary capital investments could result in EPA penalties or fines as well as potential Capacity Performance penalties. Certainly, it is not unreasonable to avoid such penalties when the Commission made clear that Capacity Performance penalties are not considered prudent expenditures.[91] Alternatively, ceasing operations would leave OVEC with little ability to service and pay it's nearly $1 billion in debt,[92] which could lead to more catastrophic issues for OVEC, AEP Ohio, and customers. NRDC has provided no information to indicate that allowing such events to take place would be a prudent management decision at this time.

V. The Commission should not combine this proceeding with other proceedings

Lastly, OMAEG/Kroger ask that factual conclusions from a Duke audit be included by reference in the AEP Ohio's audit report.[93] These audit reports are separate reports and there is

[89] *Id.*
[90] NRDC Comments at p. 8; *see also* Audit Report at 82-83 ("OVEC will have until no later than December 31, 2023, to modify how it manages bottom ash transport wastewater and no later than December 31, 2025, to modify how it manages FGD wastewater.").
[91] Opinion & Order at 87-88, *In re 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 Nos. 14-1693-EL-RDR et seq. (Mar. 31, 2016)..
[92] Ohio Valley Electric Corporation, Annual Report – 2020, at 6, available at https://www.ovec.com/FinancialStatements/AnnualReport-2020-Signed.pdf.
[93] OMAEG/Kroger Comments at 7.

no justification for taking the record from one case and inserting it into another. If OMAEG/Kroger have questions regarding the coal purchases starting in April 2019, they can ask those questions of the Auditor at hearing rather than requiring foreign reports to be introduced. Additionally, OCC repeatedly quotes to language from the Duke audit report and testimony filed by OCC in response to the Duke audit report.[94] That report and its accompanying testimony were not included in the Audit Report in this matter and are thus clearly beyond the scope of this proceeding.

The Commission should also reject the untimely requests of OMAEG/Kroger and NRDC seeking to unredact certain information such as "all coal purchasing information"[95] and "overall monthly OVEC energy revenues to overall OVEC energy costs."[96] The LEI Audit Report was docketed on September 16, 2020. Both Staff and AEP Ohio filed Motions for Protective Order seeking to keep the confidential information in the LEI audit report from being publicly released on September 16, 2020 and September 21, 2020, respectively. No party, including OCC that had already intervened months prior, filed a response to AEP Ohio's Motion for Protective Order. The Commission then granted the unopposed Motions for Protective Order.[97] It is procedurally inappropriate for OMAEG and NRDC to now collaterally attack the Entry that was issued nearly three months ago on Motions that were unopposed.

OMAEG/Kroger also seeks to litigate House Bill 6 related disputes in this proceeding, requesting that "for the sake of transparency, OVEC's coal suppliers, purchase prices, and related information should be unredacted."[98] This is completely inappropriate. As

[94] OCC Comments at 15.
[95] OMAEG/Kroger Comments at 3, 7-8.
[96] NRDC Comments at 7.
[97] Entry at 5 (Sep. 10, 2021).
[98] OMAEG/Kroger Comments at 8.

OMAEG/Kroger point out, the coal suppliers to OVEC are already publicly identified along with the prices paid to those suppliers. If OMAEG/Kroger believe those expenses are imprudent, they can raise those objections at hearing. There is no reason to litigate House Bill 6 issues in this audit proceeding, and therefore the Commission should not combine this proceeding with the Duke matter nor introduce irrelevant House Bill 6 discussions.

CONCLUSION

Intervenors consistently overstate the scope and purpose of the audit and LEI's discretion. Staff's and AEP Ohio's review of the Audit Report for factual inaccuracies was appropriate and consistent with Commission practice. LEI's Audit Report merely investigates the prudency of the Company's ICPA with OVEC, not whether the PPA Rider should exist or whether OVEC should continue to operate. Under the prudency test as set forth by the Commission and the Ohio Supreme Court, the Audit Report reveals that nothing the Company did in procuring power for the 2018-2019 term was imprudent; therefore, the PPA Rider should remain undisturbed. The Company respectfully requests the Commission reject the arguments to limit recovery to a pass-through of current market prices and protect the hedging benefit provided by the already-approved PPA Rider.

Respectfully submitted,

/s/ Steven T. Nourse
Steven T. Nourse (0046705), Counsel of Record
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1608
Fax: (614) 716-2950
Email: stnourse@aep.com

Counsel for Ohio Power Company

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following individuals this 3rd day of December, 2021, via electronic transmission.

/s/ Steven T. Nourse
Steven T. Nourse

EMAIL SERVICE LISTS

Case Nos. 18-1004 and 18-1759

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christopher.healey@occ.ohio.gov
kyle.kem@ohioattomeygeneral.gov
john.finnigan@occ.ohio.gov
Bojko@carpenterlipps.com
laistin.henry@sierraclub.org
kboehm@BKLlawfirm.org
mprltchard@mwncmh.com
Megan.wachspress@sierraclub.org
mkutz@BKLlawfinn.com paul@carpenterlipps.com
RGlover@mcneeslaw.com
rdove@keglerbrown.com
Donadio@cmpenterlipps.com
William.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
Jeanne.kingery@duke-energy.com
Rocco.dascenzo@duke-energy.com
Larisa.vaysman@duke-energy.com
William.michael@occ.ohio.gov
Terry.etter@occ.ohio.gov
Bryce.mckenney@occ.ohio.gov
Steven.beeler@ohioattorneygeneral.gov

Megan.wachspress@sierraclub.org
mkutz@BKLlawfinn.com
paul@carpenterlipps.com
RGlover@mcneeslaw.com
rdove@keglerbrown.com
Donadio@cmpenterlipps.com
William.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
Thomas.Lindgren@OhioAGO.gov
kyle.kem@ohioattomeygeneral.gov
Sarah-Panot@puc.state.oh.us
Greta.See@puc.state.oh.us