

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Reconciliation Rider of)	Case No. 20-167-EL-RDR
Duke Energy Ohio, Inc.)	

**DUKE ENERGY OHIO, INC.'S
MOTION TO STRIKE SPECIFIC INTERVENOR PRE-FILED TESTIMONY**

Pursuant to Ohio Adm.Code 4901-1-12, Ohio Adm.Code 4901-1-27(B)(4) and (B)(7)(b) and (d), Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) respectfully moves for an order striking certain pre-filed testimony on behalf of the Office of the Ohio Consumers' Counsel (OCC) and Ohio Manufacturers' Association Energy Group (OMAEG). As outlined below, testimony from OCC witnesses Glick and Haugh, and OMAEG witness Seryak relies upon: matters that are outside the scope of and irrelevant to the underlying proceeding; information developed after the subject audit period; and/or expert opinions or other improper evidence from third parties. Additionally, each witness offers improper expert testimony representing a collateral attack on the Commission's authorization of Rider PSR. The testimony to be struck and the grounds for this motion are more fully described in the attached Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

According to the Public Utility Commission of Ohio's (Commission) procedural rules, Attorney Examiners are empowered with the authority to "[r]ule on objections, procedural motions, and other procedural matters" as well as the ability to "[t]ake such actions as are necessary to . . . [p]revent the presentation of irrelevant or cumulative evidence." Ohio Administrative Code (OAC) 4901-1-27(B)(4) and (7)(b). In light of the Commission's unique ability to manage its docket and the actions before it, Duke Energy Ohio asks that the Attorney Examiners charged with evaluating the underlying matter exercise their authority as it relates to the pre-filed testimony of the OCC and OMAEG in this matter. Particularly, the Company seeks to strike particular testimony from OCC witnesses Haugh and Glick, and OMAEG witness Seryak, filed October 26, 2021 and October 27, 2021, respectively.

A review of the above-identified intervenors' testimony reveals that OCC and OMAEG intend to offer dozens of pages of evidence and testimony exhibits that relate to irrelevant matters outside the scope of this proceeding, including, *inter alia*: AEP Ohio's PPA Rider Audit proceeding (nearly every facet and aspect of that proceeding, with nearly zero changes to pre-filed testimony from the AEP Audit); the Commission's well-settled decision to authorize Rider PSR (in the first place); Legacy Generation Resource (LGR) Rider charges after the audit period; OVEC's future environmental compliance pursuant to US EPA rulemaking; whether the Rider PSR and or the LGR Rider should be terminated now; and the Company's decision to seek PSR Rider recovery in 2017. The intervenors' witnesses also rely on, and in several instances attach to their testimony, numerous categories of improper hearsay materials, including reports, forecasts, and policies, including other information that pertains to the AEP Ohio PPA Rider, expert

testimony from third parties in other proceedings, and other citations and attachments not proper for the Commission's consideration in the underlying matter. The Attorney Examiners in the underlying case should act to limit consideration of the listed irrelevant topics—thus keeping the actual Audit before them as the central focus of the underlying proceeding. Moreover, the intervenor testimony that relies on hearsay and information developed after the audit period is improper and should be struck from the above-identified witnesses' pre-filed testimony.

By their pre-filed testimony, it has become evident that OCC and OMAEG, as intervening parties in both the underlying case and the AEP PPA Audit, Case Nos. 18-1004-EL-RDR and 18-759-EL-RDR (the AEP Audit), are seeking to conflate the audit of Duke Energy Ohio's Rider PSR and that of AEP Ohio. OCC and OMAEG can have but few goals: to achieve multiple bites at the OVEC apple, to relitigate their attempts in the AEP Audit, or to add murkiness to these distinct and separate proceedings following OCC and OMAEG's failed attempt at consolidation. *See* March 4, 2022 Order in Case No. 20-0167-EL-RDR (setting the underlying hearing on Rider PSR alone). The Attorney Examiners should not take the bait. Duke Energy Ohio's Audit of Rider PSR should be considered on its merits and the record developed in the underlying case. *Not* the AEP Audit. The dozens of pages of testimony, particularly from OCC witnesses Glick and Haugh, that solely address the AEP PPA Audit should be stricken.

The Company highlights the various improper excerpts from the pre-filed testimony of Haugh, Glick, and Seryak, in turn, below.

II. LAW AND ARGUMENT

A. Pre-Filed Testimony of Michael Haugh on Behalf of OCC

The Pre-Filed Testimony of OCC witness Michael Haugh (Haugh Testimony) contains both attachments and written testimony that should be stricken. The Haugh Testimony is objectionable and improper for three main reasons.

First, Haugh spends nearly five pages of his testimony recounting details from the AEP Audit, including opining on the AEP draft Audit Report, attaching hearsay communications between the Auditor, AEP, and Staff, and wholesale adopting his testimony from the AEP Audit in the underlying case. All of this testimony is improper, irrelevant, prejudicial, and must be stricken. Second, Haugh relies on information from both before and after the Audit period to opine that Rider PSR charges should be denied outright. Haugh argues that Duke Energy Ohio did not “perform any competitive bidding process *before* selecting the OVEC plants as an economic hedge for the SSO” (prior to incorporating Rider PSR into its ESP IV) and also relies on evidence of the OVEC plants’ performance between 2019 and 2020. (Emphasis added). Each of these portions of testimony require the Commission to review information, actions, or decisions outside the relevant Audit period and should be stricken. Finally, Haugh offers generic testimony on air pollution that is well outside the scope of his stated or demonstrated expertise, irrelevant to the underlying case or Audit, and should be stricken.

The key citations to this objectionable testimony and reasoning behind its disallowance are highlighted below.

1. ***The AEP Audit is not relevant to the Commission’s consideration of the underlying matter and represents improper hearsay evidence; reference to and incorporation of that Audit proceeding must be stricken.***

Much of Haugh’s pre-filed testimony—indeed nearly five pages—consists of Haugh quoting from and incorporating the AEP Audit into the underlying proceedings in an attempt to both equate and conflate these proceedings. This aspect of Haugh’s testimony is irrelevant and inadmissible, in addition to being and relying upon hearsay offered for the truth of the matter asserted.

For example, Haugh incorporates into his testimony emails and the draft report from the AEP Audit, with only a mere parenthetical giving nod to the fact that the AEP proceeding is a separate and distinct proceeding from the one currently before the Commission. In fact, none of the exchanges Haugh recounts in his pre-filed testimony in Q&A's 20 and 21 actually *occurred in the underlying case*: “She [the Auditor] initially wrote in her draft report (in the AEP case) that “keeping the plants running does not seem to be in the best interests of the ratepayers” and “LEI’s analysis shows that the OVEC contract overall is not in the best interest of AEP Ohio ratepayers.” But she deleted these statements from her final report at the suggestion of the PUCO Staff.” Haugh Pre-Filed Testimony, 14:8-12. Haugh goes on to quote for nearly two pages of his testimony an email exchange between the Audit staff, PUCO Staff, and AEP Ohio. Again, none of these exchanges, and subsequently Haugh’s testimony, are relevant to the underlying matter nor appropriate for inclusion and consideration. Moreover, this entire exchange is clearly hearsay offered for the truth of the matter asserted—with no exception to save its inadmissibility.

Haugh intentionally conflates the AEP Audit and underlying proceeding even further, by referring to “the filed audit report” and “the draft audit report” throughout Q&A 20 and 21 of his testimony, without any clarifying language as to *which* audit report or draft he is in fact referring to – AEP Ohio or Duke Energy Ohio. As a prime example, Haugh states on page 15, lines 1-4: “OCC obtained *emails* between the *Staff* and *auditor* through a public records request . . . [t]he *emails* show that the *auditor* originally addressed this point from the RFP by writing in her *draft report* that . . .” (Emphasis added.) Here, Haugh is clearly referring to Staff in the AEP Ohio case, the Auditor in the AEP Ohio case, the draft audit report in the AEP Ohio case, emails from the AEP Ohio case, and so on. None of this information, or that discussed elsewhere in Q&A 20, deals with Duke Energy Ohio, or the case at hand. Not the Staff in the PSR Audit, not

communications referring to or discussing Duke Energy Ohio, not the Duke Energy Ohio draft audit report (which notably did not contain the language which OCC finds so objectionable), or any other element to do with the underlying PSR Audit proceeding. However, nearly all of Q&A 20 and 21 deal with the AEP Audit, with Haugh attempting to adopt his analysis from the AEP Audit case in the underlying matter, wholesale.

Haugh is not shy about his and OCC's intention to conflate the two cases, stating numerous times in this portion of his testimony: "the Duke and AEP cases are virtually identical." Haugh 14:17-18. This is no mistake. At one point, OCC and OMAEG moved to consolidate the hearings on AEP Ohio's and Duke Energy Ohio's OVEC-related rider charges, arguing that the cases were "overlapping," presented "[t]he same or similar issues," involved the same auditor, and "would likely [share] the same witnesses." (Joint Motion for a Consolidated Hearing at 8 (July 8, 2021).). After Duke Energy Ohio, AEP Ohio, and Staff opposed the consolidation, OCC and OMAEG withdrew their motion. However, as Duke Energy Ohio argued in its opposition to consolidation, the scope of the underlying proceeding should comprise Duke Energy Ohio's activities regarding management of its own interests in OVEC vis-à-vis the market. Duke Energy Ohio does not control AEP's strategy, AEP and Duke Energy Ohio participate independently in the OVEC management process, and Duke Energy Ohio would have no direct knowledge of AEP's management of its OVEC interests. The situations of AEP and Duke Energy Ohio are far from identical.

It is clear from Mr. Haugh's pre-filed testimony that OCC has chosen simply to introduce audit findings and testimony and communications from the AEP Ohio Audit in the underlying proceeding, whether or not the cases were actually consolidated. Haugh goes so far as to attach an entire email back and forth from the AEP Audit proceedings to his testimony as an exhibit

(MPH-3). Not only does this back and forth have nothing to do with, nor reference Duke Energy Ohio, it is inadmissible hearsay obviously offered for the truth of the matter asserted. This is further highlighted by the fact that Haugh goes on to rely upon this exchange, chapter and verse, to develop nearly five pages of the crux of his pre-filed testimony. *See* Evid.R. 801(C) (defining “hearsay” as “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted”) and Evid.R. 802 (stating that “[h]earsay is not admissible”). There is no hearsay exception that allows OCC (or any other party for that matter) to adopt and use the email communications in Attachment MPH-3 in these proceedings and against Duke Energy Ohio. Likewise, all testimony referring to or discussing MPH-3 should be struck.

Accordingly, Duke Energy Ohio moves to strike the following testimony and exhibits from Mr. Haugh’s pre-filed testimony, all of which rely on, reference, or relate to issues or findings in the AEP Audit or to do with AEP Ohio more generally:

Witness	Testimony Citation	Text to be Struck or Modified & Description	Reasoning
OCC Witness Haugh	Attachment MPH-3	Emails between PUCO Staff, Auditor, AEP Ohio in the AEP Audit	Inadmissible hearsay offered for the truth of the matter asserted; irrelevant and prejudicial in the underlying matter; not related to or about Duke Energy Ohio or underlying case.
OCC Witness Haugh	14:5-17:8	All of Q&A 20 which attaches, opines upon, and describes hearsay from MPH-3 and arguments related to AEP Ohio (not Duke Energy Ohio).	This Q&A recounts hearsay testimony from the email communications mentioned in MPH-3. It also conflates the draft and final audit reports in the underlying case and the AEP Audit, and even leads the Commission to believe that the draft report in the underlying matter

			formerly contained language that it clearly did not.
OCC Witness Haugh	17:10-18:11	All of Q&A 21 but for 17:20-18:2 (It is provided for in the RFP . . .”), 18:11-16 (“I also recommend that the PUCO replace the PUCO Staff in this case and in future OVEC audit cases going forward . . .”	Q&A 21 relies upon MPH-3 for its key determination. Indeed, Q21 asks “Do you find it appropriate for PUCO Staff to ask the Auditor to remove the Auditor’s opinion in her draft report that “keeping the plants running does not seem to be in the best interests of the ratepayers?” There was no such reference in the Duke Energy case, either by email or in the Duke Energy Ohio Audit Report draft itself. This is a wholesale adoption of the AEP Audit, and the exchange in MPH-3, which is improper hearsay and irrelevant to the underlying matter.
OCC Witness Haugh	12:14-13:12, including FN’s 13, 14, 15, 16	All reference and citation to AEP Ohio and FERC proceedings in which AEP Ohio was involved: “By collecting these costs from consumers . . . Duke is trying to do indirectly what FERC prohibited AEP Ohio from doing directly . . .”	This testimony references AEP Ohio, relies upon proceedings in which AEP Ohio was involved at FERC, and argues that AEP is trying to “deftly avoid[]” FERC jurisdiction in the Duke Energy Ohio Audit (to which AEP Ohio is not even a party). This testimony was clearly developed for and used in the AEP Audit, and is not relevant to the Duke Energy Ohio proceeding.

2. Haugh improperly relies on information from both before and after the Audit period to opine that Rider PSR charges should be denied.

In his testimony, Haugh offers opinions regarding OVEC-related charges both before and after the audit period. Haugh argues that Duke Energy Ohio did not “perform any competitive bidding process *before* selecting the OVEC plants as an economic hedge for the SSO” (prior to

incorporating Rider PSR into its ESP IV). Haugh 12:8-11. Though he does not reference the specific timeframe in which competitive bidding would have had to occur, this is clearly prior to Duke Energy Ohio seeking authority from the Commission for Rider PSR, as it speaks to the very nature of the Rider mechanism. Haugh also relies on evidence of the OVEC plants' performance between 2019 and 2020 in arguing that the plants' performance has decreased. Haugh 8:6-7. Duke Energy Ohio's recovery of costs related to its ownership interest in OVEC going forward is governed by R.C. 4928.148(A)(1) and subject to review in future audits. *See In re the OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio, Inc., The Dayton Power and Light Company, and AEP Ohio*, Case No. 21-477-EL-RDR, Entry at ¶ 5 (May 5, 2021). Each of these portions of testimony, and others like them, require the Commission to review information, actions, or decisions outside the relevant Audit period and should be stricken.

Witness	Testimony Citation	Text to be Struck or Modified & Description	Reasoning
OCC Witness Haugh	8:6-7	"The plants' performance has decreased significantly over the past decade. The electricity produced has decreased almost 20% from 2019 to 2020." Including the citation in Footnote 5.	This testimony relates to the time period <i>after</i> the underlying audit period in question and should be stricken.
OCC Witness Haugh	12:5-13:17	All of Q18, "Did Duke perform any competitive bidding process before selecting the OVEC plants as an economic hedge for the SSO?"	This Q&A would require the Commission to review actions taken or not taken by the Company prior to the audit period in question and is not relevant to nor within the scope of the underlying audit. Competitive bidding could have only taken place prior to the authorization of Rider PSR.
OCC Witness Haugh	24:2-5	Lines 2 through 5, discussing the fact that Duke Energy Ohio did not conduct a competitive	Lines 2 through 5 on page 24 of Mr. Haugh's testimony further highlight the fact that OCC and Haugh would have

		bidding process prior to selecting the OVEC plants as a hedge.	the Commission evaluate the current audit period according to decisions made prior to Duke Energy Ohio even seeking to include Rider PSR in the ESP IV settlement. This issue has been litigated thoroughly by OCC itself, all the way to the Ohio Supreme Court. It is not appropriate, relevant, or within the scope of the underlying proceeding to allow OCC to second guess the mechanism and creation of Rider PSR via Mr. Haugh's testimony.
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3. Testimony on the topic of air pollution is outside the scope of the underlying audit and Mr. Haugh's stated expertise.

Finally, Haugh offers generic testimony on air pollution that is well outside the scope of his stated or demonstrated expertise, irrelevant to the underlying case or Audit, and should be stricken from his pre-filed testimony. In Q&A 15, Mr. Haugh is asked "Did the OVEC plants cause any pollution in 2019?" Haugh 9:9. He goes on to offer a copy and paste of information from the U.S. EPA Toxic Release Inventory and Air Markets Program public website. Not only does Mr. Haugh provide no context for this testimony, but he is also under qualified to offer expert opinion testimony on air pollution, U.S. EPA air permitting requirements, OVEC air emissions, or any other related topic. Per Haugh's own pre-filed testimony, his background is in business administration and finance, and he has held positions in the "energy industry with experience in wholesale and retail energy trading, risk management, natural gas purchasing and scheduling, and regulatory affairs." Haugh 1:11-16. He is not a scientist, nor a toxicologist, has never worked for or with U.S. EPA or Ohio EPA, and has no background in air emissions or air permitting. None

of Mr. Haugh's stated or implied background makes him qualified to speak on the topic of air emissions, and this is improper expert testimony that should be stricken.

Additionally, the scope of the Audit was not to evaluate or compare pollution caused or not caused by the OVEC plants, and Haugh's inclusion of this testimony is irrelevant and improper in the underlying proceeding—in addition to the fact that he is not the correct individual to opine on such matters. For this reason, Duke Energy Ohio asks that Q&A 15 be stricken from the pre-filed testimony of Mr. Haugh, which spans 9:9 through 10:1, including footnote 10.

B. Pre-Filed Testimony of Devi Glick on Behalf of OCC

Particular pre-filed testimony of OCC Witness Glick should be stricken for three main reasons, some of which overlap with those offered in support of striking portions of OCC Witness Haugh's pre-filed testimony, others of which are unique to Glick.

First, Glick proposes to offer testimony regarding numerous pieces of information from after the underlying audit period, namely 2020 and beyond. Testimony from this timeframe is neither relevant nor appropriate for inclusion in the underlying proceeding. Second, Glick frequently and voluminously challenges the Commission's prior decision to include OVEC in Rider PSR via Duke Energy Ohio's ESP IV Settlement in Case No. 17-1263-EL-SSO. Like Haugh's arguments regarding competitive bidding *prior* to the application for and approval of Rider PSR, Glick's testimony (outlined below) should also be stricken as it relates to matters outside the scope of this proceeding and represents both a re-hashing of the Commission's approval of Rider PSR, and/or reliance upon information beyond the scope of the audit period.

Third, and finally, Glick relies upon testimony and discovery from other proceedings and attaches that testimony to her own. Like Haugh, this includes references to the AEP Audit proceeding and wholesale adoption of those references, but Glick goes further. She attaches

declarations from the First Energy Services bankruptcy proceeding to her testimony in her bid to undermine the Commission's past approval of Rider PSR. This testimony is neither germane to the underlying proceeding, nor within the scope of the PSR Audit. It also represents impermissible hearsay evidence and should be stricken from the Commission's consideration of Glick's testimony.

Accordingly, Duke Energy Ohio moves to strike the following testimony and exhibits identified below.

1. **Glick's review of future recovery of OVEC-related costs and reliance on information from the post-audit period to support her testimony is not proper for consideration under the Rider PSR Audit and should be stricken.**

OCC Witness Devi Glick proposes to offer testimony both addressing the future recovery of OVEC-related costs *and* relying upon information, studies, and opinion established *following* the audit period. These categories of testimony represent a large part of Ms. Glick's testimony, and as a result, the amount of testimony that should be considered for removal is extensive. That does not change the fact, however, that these are not relevant topics for testimony in these proceedings. For example, the LGR Rider charges for 2020 and/or beyond are the subject of a different, pending proceeding, Case No. 21-477-EL-RDR. And Duke Energy Ohio's recovery of prudently incurred costs related to its ownership interest in OVEC going forward is governed by R.C. 4928.148(A)(1) and subject to review in future audits. *See In re the OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio, Inc., The Dayton Power and Light Company, and AEP Ohio*, Case No. 21-477-EL-RDR, Entry at ¶ 5 (May 5, 2021).

Moreover, in other OVEC-related proceedings, the Attorney Examiners have held that OCC was not entitled "to obtain reports, forecasts, policies, and other information that pertains to 2020 and 2021" via discovery, finding those years to be "beyond the period under review in these

proceedings” and thus “such information is not relevant to the subject matter” of OVEC-related audits. Entry & Order, December 23, 2021, Case No. 18-1004-EL-RDR. This subject matter was even subject to a motion for interlocutory appeal, a motion upon which OCC was unsuccessful. *See* January 5, 2022 Entry in Case No. 18-1004-EL-RDR.

Nevertheless, Ms. Glick’s testimony in the underlying case relies heavily upon information and/or studies generated well after the 2019 Audit period and is shaped by her reliance upon and opinions of future OVEC performance. The following entries are but a few examples from her testimony:

- “I reviewed Michigan Public Power Agency (“MPPA”) billing statements from Consumers for J.H. Campbell 3 and calculated the average cost billed for power charged for this unit . . . I find that in 2020, Consumers Energy billed MPPA an average of \$28.87/MWh for power purchased from J.H. Campbell 3 . . .” Glick: 25:9-18.
- Certain aspects of Table 3, page 24: MPAA billing statistics from Consumers Energy for Campbell Unit 3 in 2020; Consumers PPA expense for MVC in 2020; DTE billing statements to MPPA for Bell River Power in 2020; and Indiana Michigan Power: 2021 Integrated Resource Plan, Public Stakeholder Meeting #3A, July 27, 2021, among others.
- “For context, how does the value of CONE compare to the capacity price from PJM’s most recent capacity auction? . . .” Glick: 27:8-14.
- “In future years, the amount by which OVEC’s costs exceed PJM market prices is expected to increase.” Glick: 28:11-14.
- “The PUCO should put Duke on notice that it will not permit Duke to collect CCR-related or ELG-related costs for OVEC from consumers under the Legacy Generation Rider . . .” Glick: 52:7-13.

None of this information is germane to the audit period, nor is it appropriate for the Commission to rely upon in its review of the prudence of 2019 Rider PSR charges. Accordingly, Duke Energy Ohio moves to strike the following testimony relating to actual or likely LGR Rider charges after the audit period and the continued operation of the OVEC units in the future:

Witness	Testimony Citation	Text to be Struck or Modified & Description	Reasoning
OCC Witness Glick	7:7-14	“OVEC will incur significant costs to comply with the U.S. Environmental Protection Agency’s (“EPA”) Coal Combustion Residuals rules (“CCR”) and Effluent Limitation Guideline (“ELG”) rules . . .”	This testimony relates not to the current audit period, but some time in the future, when EPA’s CCR and ELG go into effect in the state of Ohio. Moreover, Glick uses this testimony to state that the PUCO should put Duke Energy Ohio on notice in the future as to OVEC’s spending on capital investments. This is not appropriate nor relevant to the underlying audit period.
OCC Witness Glick	7:25-27	Glick’s recommendations: “3. Going forward, the PUCO should require that Duke provide documentation of the daily unit commitment decisions used for the OVEC plants.”	Glick’s recommendation that the Commission should require daily unit commitment decision documentation is again not relevant to the underlying audit period of 2019, nor the question of whether or not the decisions made by Duke Energy Ohio in the audit period were prudent. This is a future recommendation that is not within the scope of the underlying audit.
OCC Witness Glick	7:28-8:6	Glick’s recommendations: “4. The PUCO should put Duke on notice that it will not permit the Company to develop its next Electric Security Plan (“ESP”), or other . . .”	Likewise, Glick’s recommendation that the Company be “put on notice” as to a future (non-existent) ESP filing is inappropriate, not within the bounds or scope of the Audit, and beyond the description set forth in the

			Audit RFP. Moreover, this is simply Glick and OCC's opinion on how the Commission should proceed on some future, unspecified date, which is not a question for the 2019 Audit.
OCC Witness Glick	8:7-13	Glick's Recommendations: "5. The PUCO should put Duke on notice that it will not permit Duke to collect costs from consumers for OVEC under the Legacy Generation Rider in the future related to the Coal Combustion Residuals rules ("CCR") or Effluent Limitation Guideline ("ELG") compliance unless Duke demonstrates in advance in a transparent and comprehensive manner that any planned investments to comply with EPA's CCR and ELG rules are prudent and reasonable."	This recommendation from Glick is a question solely for the LGR proceeding, which is currently underway. There is no set of facts in which questions related to the LGR are appropriate for consideration under the Rider PSR Audit. This recommendation is not relevant or related to the 2019 Audit.
OCC Witness Glick	8:14-16	Glick's Recommendations: The PUCO should put Duke on notice that it will disallow collection in future cases for OVEC costs . . ."	Again, the collection of OVEC-related costs in future proceedings is not a question related to the 2019 Audit, and is solely a topic for the LGR proceeding, which OCC has already intervened in and can litigate there. This testimony must be struck.
OCC Witness Glick	12:13-14:5	All of Q18, which asks "How long is Duke under contract with OVEC under the OVEC Agreement?" This includes Figure 1, retirement status of current coal capacity by year online, and the citations in FN 12.	The question of how long Duke Energy Ohio is under contract in the ICPA is not a proper topic for consideration in the 2019 Audit period, as it goes beyond the bounds of the audit set forth in the RFP. Moreover, the question of retirement status not relevant to the underlying proceeding and relies upon materials and

			information developed well after the Audit period (2020-2021).
OCC Witness Glick	24:1-25:2	<p>Table 3 (pin cited portions)</p> <p>Cost of similar services:</p> <ul style="list-style-type: none"> • Entire section and footnotes 2 and 3 • Value of CONE & PJM Base Residual Auction • PJM Base Residual Auction row and footnote 5. • Replace resource PPA prices • I&M renewable RFP results and NIPSCO RFP Results • Footnotes 7-8 	All of the information identified herein was generated well after the audit period, namely in 2020 and 2021. Glick expressly seeks to rely upon it as a comparative analysis for energy charges within the audit period, however, it should have no bearing on the Commission's analysis as it does not represent an accurate comparison due to the timeframe being well outside the audit period. These table cites should be stricken.
OCC Witness Glick	25:5-26:4	All of Q26 dealing with the timeframe of 2020, not 2019.	In Q&A 26, Glick admittedly relies upon a comparative analysis that cites only to other evidence and information falling outside the audit period. For example, she cites to billing statements from 2020 for a Michigan Public Power Agency plant. Likewise, she cites to Consumers Energy billing under MPPA in 2020 and purchased power by Consumers for 2020. All of this information is not comparative, falls well outside the audit period, and represents Monday quarter-backing on the part of Glick in raising these prejudicial comparisons. Additionally, none of the evidence cited by Glick in Q&A 26 speaks to whether or not Duke Energy Ohio acted prudently in the 2019 audit period.

OCC Witness Glick	26:12-27:6	Beginning at “The PJM value of CONE for a new combined cycle unit . . .”	The testimony set forth on these lines compares the PJM value of CONE in March 2020 to the OVEC audit period. This information is clearly outside the audit period and not an appropriate mechanism upon which Glick should be able to rely.
OCC Witness Glick	27:8-14	All of Q28: “For context, how does the value of CONE compare to the capacity price from PJM’s most recent capacity auction?”	Again, Glick is comparing present-day capacity prices in 2022 to the audit period of 2019 in an attempt to gain some traction in her testimony. This testimony and these citations fall well outside the audit period and should be stricken.
OCC Witness Glick	27:16-28:9	All of Q30: “Do you expect this effective reset of PJM capacity price trends to continue?”	Here, Glick again cites to future projects and current 2022 trends in an effort to demonstrate imprudence on the part of the Company in the 2019 audit period. This testimony should be struck as it speaks only to future events and trends, and not to any actions taken or not taken by Duke Energy Ohio in the relevant scope of the Audit.
OCC Witness Glick	28:11-14	Q&A30, which discusses “future years” and “the amount by which OVEC’s costs exceed PJM market prices is expected to increase.”	Yet again, the testimony in this citation is outside the bounds or considerations of the 2019 Audit and discusses future years and projections beyond the 2019 timeframe. This does not speak to the reasoning or purpose of the Audit, namely, whether the 2019 actions of Duke Energy Ohio were prudent and/or reasonable. This is simply OCC voicing its displeasure with the existence of Rider PSR.

OCC Witness Glick	49:12-14	“Finally, the Company also did not conduct any analysis on the cost of complying with the EPA’s Coal Combustion Residuals and Effluent Limitation Guideline rules.”	Here, Glick again looks to future environmental compliance to speak to whether or not the Company acted prudently or reasonably during the 2019 audit period. The question of EPA’s CCR and ELG rules, and future compliance therewith, is not germane to the 2019 audit period and should have no bearing on the Commission’s ultimate review.
OCC Witness Glick	51:6-13	“I expect that OVEC will incur substantial costs to comply [with certain environmental regulations] . . . if the plants are allowed to operate beyond 2028.” “ . . . commissions recently rejected AEP’s request for approval to collect costs to comply with the ELG rules . . .”	In this testimony it is clear that Ms. Glick has no intention of reviewing the reasonableness of Duke Energy Ohio’s management of its OVEC-related charges in 2019. This testimony regarding ELG and CCR rule compliance in 2028 clearly has nothing to do with the audit period or 2019 scope. Moreover, Glick’s discussion of AEP operations in Virginia and Kentucky has nothing to do with OVEC, Duke Energy Ohio, or the 2019 audit period. This discussion is also a red herring and has no bearing on the underlying proceeding.
OCC Witness Glick	52:7-13	Q&A61, which asks “Do you have any recommendations regarding OVEC’s environmental compliance practices?” And to which Glick responds, “Yes. The PUCO should put Duke on notice that it will not permit Duke to collect CCR-related or ELG-related costs for OVEC from consumers under the Legacy Generation Rider . . .”	Again, Glick is asking that the Commission comment, put the Company on notice, and address questions she perceives as related to the LGR proceeding. This is improper, does not speak to the 2019 audit period, and clearly irrelevant to the underlying proceeding. This testimony, and testimony like it, must be struck.

OCC Witness Glick	52:15-53:8	“The PUCO should require Duke to conduct or obtain a retirement study for the OVEC plants and file the results with the PUCO by April 1, 2022. Such a study for the OVEC Units would show a reasonable retirement date and provide guidance to the PUCO on whether to approve collection of costs for future investments for environmental compliance”	The question of a reasonable retirement date for OVEC and the “costs for future investments for environmental compliance” are not properly before the Commission at this time via the Rider PSR 2019 audit. This testimony is fully outside the scope and directive of the Auditor’s review and has no bearing on the underlying proceedings. It is simply an opportunity for OCC to foreshadow and advance its arguments regarding the LGR proceeding and has no place in Rider PSR.
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2. Challenges to the Commission’s prior decision to include OVEC in Rider PSR are not a proper topic of testimony in these proceedings.

Throughout her testimony, Glick frequently and voluminously challenges the Commission’s prior decision to include OVEC in Rider PSR via Duke Energy Ohio’s ESP IV Settlement in Case No. 17-1263-EL-SSO. Like Haugh’s arguments regarding competitive bidding *prior* to the application for and approval of Rider PSR, Glick’s testimony (outlined below) should also be stricken as it relates to matters outside the scope of this proceeding and represents both a re-hashing of the Commission’s approval of Rider PSR, and/or reliance upon information beyond the scope of the audit period. Notably, “the Commission fully considered, in the [OVEC Rider cases], OCC’s arguments regarding the rider’s costs.” *Id.* ¶ 19, citing PPA Rider Case, Opinion and Order (Mar. 31, 2016) at 105, Second Entry on Rehearing (Nov. 3, 2016) at ¶¶ 271, 278-280.

This Audit proceeding should not be an opportunity for OCC and other intervenors to relitigate the Commission’s decision to include Rider PSR in the ESP IV settlement. That decision has already been the subject of motions for re-hearing, and OCC already abandoned its appeal of

that issue following the AEP decision in *In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698. OCC should not be given latitude to continue its collateral attack on the origination of Rider PSR via these audit proceedings. Yet, Glick fills dozens of pages of her testimony with argument that the Commission should disallow recovery of all Rider PSR charges because:

- “OVEC’s costs are substantially higher than PJM market prices for the same energy, capacity, and ancillary services during the audit period.” Glick: 15:4-5.
- “[O]ther resources could have been obtained at much lower cost than the OVEC plants . . . [and] I found no evidence that Duke did any competitive bidding process before selecting the OVEC plants as a price hedge for the SSO price.” Glick: 29:12-14.
- “OVEC’s above-market costs in 2019 were . . . larger than forecast by Duke’s expert when the Company obtained the PUCO’s approval in 2018 to collect OVEC costs [under the PSR].” Glick: 6:17-20.

These are but a few examples of Glick and OCC seeking to relitigate the existence of Rider PSR. Along with the citations below, this testimony should be struck from Glick’s expert opinion as improper and outside the scope of the 2019 Audit.

Witness	Testimony Citation	Text to be Struck or Modified & Description	Reasoning
OCC Witness Glick	4:11-16	“In Section 4, I evaluate the costs paid by Duke’s consumers under the Price Stabilization Rider in 2019. I discuss how Duke has paid unreasonable prices, significantly above the market value of energy and capacity in PJM to OVEC, and now seeks to pass on these excess costs to its	Glick’s testimony in Section 4 represents a specific attack upon the creation and utilization of Rider PSR, an issue which has long since been settled by the Commission and even Supreme Court.

		consumers through the Price Stabilization Rider. I present several different metrics that can be used to value the services provided by OVEC.”	
OCC Witness Glick	4:18-5:2	“In Section 5, I review the contemporaneous analysis that Duke conducted at the time the Price Stabilization Rider was approved. I review the cost the Company projected at the time the Price Stabilization Rider was approved versus the actual costs . . .”	Like above, the Commission already determined that the Rider PSR will act as a financial hedge during the 2019 audit period and the Supreme Court already affirmed that the Commission’s decision was lawful and supported by the ESP statute provisions relied upon.
OCC Witness Glick	6:17-20	“OVEC’s above-market costs in 2019 were larger than forecast by Duke’s expert when the Company obtained the PUCO’s approval in 2018 to collect OVEC costs under the Price Stabilization Rider.”	<i>Id.</i>
OCC Witness Glick	7:19-21	The PUCO should disallow the \$24.6 million in above-market energy and 20 capacity prices related to the OVEC plants for 2019 and find that Duke acted imprudently by including these costs in the Price Stabilization Rider.	<i>Id.</i>
OCC Witness Glick	21:10-29:16	Q26-Q32: “I found no evidence that Duke did any competitive bidding process before selecting the OVEC plants as a price hedge for the SSO price. That was imprudent, and the PUCO should disallow the \$24.6	<i>Id.</i> these citations are included elsewhere as well, but essentially, Glick’s Q26 through Q32 represents a full rehashing of the use and population of Rider PSR, an issue which has been squarely decided by the Commission

		million in above market costs.”	and is not an appropriate topic for opinion in the underlying matter.
OCC Witness Glick	30:1-33:11	QA 32- 37, Subsection V. Titled “Duke’s own contemporaneous analysis conducted in 2018 indicated that the Company would pay substantially above market for OVEC power under the [PSR]”	<i>Id.</i>
OCC Witness Glick	49:8-10	There is also no evidence that the Company re-evaluated the prudence of using the OVEC units as a hedge on the SSO price, or that the Company solicited any competitive bids for a PPA to provide an alternative hedge service.	<i>Id.</i> Again, to utilize a competitive bidding process in Rider PSR, as Glick suggests throughout her testimony, the Company would have to reshape the entire structure and contents of the Commission pre-approved Rider PSR. This is a collateral attack on the Rider’s approval and is not proper testimony in the underlying 2019 Audit.

3. Glick’s testimony relying upon hearsay and irrelevant information from other proceedings should be stricken.

Third, and finally, Glick relies upon testimony and information from other proceedings and attaches that testimony to her own. Like Haugh, this includes the inclusion of references to the AEP Audit proceeding and wholesale adoption of those references, but Glick goes further. She attaches declarations from the First Energy Services bankruptcy proceeding to her testimony in her bid to undermine the Commission’s past approval of Rider PSR. This testimony is neither germane to the underlying proceeding, nor within the scope of the PSR Audit. It also represents impermissible hearsay evidence, offered for the truth of the matter asserted, and should be stricken from the Commission’s consideration of Glick’s testimony.

Glick explains that her analysis relies in part on “information filed with the U.S. Bankruptcy Court when FirstEnergy Solutions [FES] attempted to cancel its obligations under the OVEC Agreement.” Glick also goes so far as to attach two entire declarations from the FES bankruptcy case – an “expert declaration” by Judah Rose of ICF International, and a related declaration from FES’s Vice President, neither of whom are witnesses in this proceeding – to her testimony. Attachments DG-2 and DG-3. She also summarizes, but does not attach, the analysis Rose provided in Duke Energy Ohio’s 2018 PSR case.

Glick’s references to AEP and FES, and her reliance and attachment of documents from the FES proceeding should be stricken. Nothing in the Commission’s rules allows one expert witness to submit another, unaffiliated person’s expert testimony from a different proceeding simply by attaching it to the first witness’s testimony. Under the Ohio Rules of Evidence, the “facts or data . . . upon which an expert bases an opinion or inference may [only] be those perceived by the expert or admitted in evidence at the hearing.” Evid.R. 703. Generally, “[t]he rule requirement of ‘perceived by the expert’ refers to personal knowledge.” (Citations omitted.) *Worthington City Sch. v. ABCO Insulation*, 84 Ohio App. 3d 144, 153, 616 N.E.2d 550 (1992). Even under the Federal Rules of Evidence, which allow experts greater latitude in the information on which they base their opinions, an expert witness cannot simply submit another expert’s testimony into evidence. Federal Rule of Evidence 703 does not “extend[] so far as to allow an expert to testify [at a trial] about the conclusions of other” persons who have not been qualified as expert witnesses in, or appeared at, that trial. *Mike’s Train House, Inc. v. Lionel, L.L.C.*, 472 F.3d 398, 409 (6th Cir.2006), citing *Taylor v. B. Heller & Co.*, 364 F.2d 608, 613 (6th Cir.1966) (other citations omitted).

Accordingly, Duke Energy Ohio seeks to strike the following testimony and exhibits from

Ms. Glick's testimony:

Witness	Testimony Citation	Text to be Struck or Modified & Description	Reasoning
OCC Witness Glick	Page 5:17-20	“(4) the testimony of Judah Rose filed in Case No. 17-1263-EL-SSO, where the PUCO approved Duke’s collection of OVEC costs; and (5) information filed with the U.S. Bankruptcy Court when FirstEnergy Solutions attempted to cancel its obligations under the OVEC Agreement.”	See reasoning above.
OCC Witness Glick	33:13-35:15, including DG-2 and DG-3	Glick spends two pages recounting the FES bankruptcy proceeding, as well as attaching testimony/declarations from that proceeding at DG-2 and DG-3.	<i>Id.</i>
OCC Witness Glick	36:1-8	References to FES bankruptcy proceeding and projections in Rider PSR proceeding in 2018,	<i>Id.</i>
OCC Witness Glick	21:1-8	References to direct testimony of Haugh regarding AEP draft audit report in separate Rider PPA proceeding, and footnotes 17-18.	This reference in Glick’s testimony to Haugh and the AEP draft audit report and communications related to same should be struck for all of the reasons it should also be struck from Haugh’s testimony. Moreover, it is cumulative, redundant, and does not indicate that the “draft audit report” that Glick references in lines 1-8 is that of AEP and not Duke Energy Ohio.

C. Pre-Filed Testimony of John Seryak on Behalf of OMAEG

Finally, certain testimony of OMAEG Witness John Seryak should be struck for one primary reason: much of Seryak's testimony is made up of direct and indirect challenges to the Commission's prior decision to approve Duke Energy Ohio's Rider PSR in Case No. 17-1263-EL-SSO. Seryak opines that in general "Rider PSR imposes unreasonable costs that should be disallowed" and that "Rider PSR collects costs from customers that are not a financial hedge and are not a rate stabilization charge, and thus, should be disallowed." Seryak 4:5-10. Moreover, Seryak argues that "[g]iven that the non-market charges in Rider PSR far exceed the net-revenue credits from wholesale transactions, creating charges to customers, the Commission should disallow all costs collected through Rider PSR." Seryak 6:1-3.

The testimony from Seryak noted above represents a direct challenge to the Commission's prior decision establishing Rider PSR and should be stricken.

III. CONCLUSION

For the reasons provided above, Duke Energy Ohio respectfully requests that the Commission grant its motion to strike the specified portions of the pre-filed testimony of OCC witnesses Devi Glick and Mike Haugh and OMAEG witness John Seryak.

Respectfully submitted,

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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 Duke Energy Ohio, Inc.'s Motion to Strike Specific Intervenor Pre-filed Testimony was sent by, or on behalf of, the undersigned counsel to the following parties of record this 24th day of May, 2022, via e-mail.

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Energy Ohio Inc. and D'Ascenzo, Rocco and Kingery, Jeanne W. and Akhbari,
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