BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

INITIAL POST-HEARING BRIEF OF DUKE ENERGY OHIO, INC.

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I. INTRODUCTION

The Ohio Valley Electric Corporation (OVEC) was formed in 1952 during the Cold War to help the United States government enrich uranium in Southern Ohio. The public utilities and power cooperatives that surrounded this part of the Ohio Valley came together to form OVEC, which built two large electric generating facilities, Clifty Creek and Kyger Creek Stations, along with a long span of high-voltage transmission lines. Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company), along with the other owners of OVEC, are parties to the Amended and Restated Inter-Company Power Agreement (ICPA). Duke Energy Ohio owns nine percent stock in OVEC. The ICPA, which is Federal Energy Regulatory Commission-approved (FERC), sets forth the various contracting parties' rights and obligations about capacity, generation, and the costs thereof. Duke Energy Ohio is one of many co-sponsoring companies under the ICPA (the Sponsoring Companies). The ICPA represents a long-term compact among OVEC's utility counterparties to pay all of OVEC's costs and to be entitled to utilize the power and energy from OVEC.

In its Fourth Electric Security Plan Case (ESP IV),[1] the Commission authorized Duke Energy Ohio to recover or credit the net proceeds of selling OVEC energy, capacity, and ancillary services into the PJM Interconnection, L.L.C. (PJM) marketplace via a Price Stabilization Rider, also known as Rider PSR. Duke Energy Ohio is authorized, through Rider PSR, to provide customers the net benefit of all revenues accruing to the Company as a result of its ownership interest and contractual entitlement in OVEC, as well as to collect the net charge or credit from Duke Energy Ohio's share of the cost for OVEC units less market revenues received for liquidating the output into the market.

As part of its approval, Rider PSR is subject to quarterly filings, that started with the first

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[1] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, et al. Opinion and Order, pp. 45-47 (December 19, 2018) (ESP IV Order).

billing cycle of April 2019. Additionally, the Commission provided for an annual audit to establish the prudency of all costs and revenues flowing through the PSR and to demonstrate that the Company made reasonable efforts to transfer its entitlement under the ICPA.

The present proceeding was initiated pursuant to the February 13, 2020, Entry of the Public Utilities Commission of Ohio (Commission) that, among other things, commenced the prudency and performance audit of the Price Stabilization Rider of Duke Energy Ohio through December 31, 2019. London Economic International, LLC (LEI or the Auditor) was selected to perform the Audit. The LEI Audit Report found that Duke Energy Ohio has prudently managed its participation in OVEC and its entitlements. The Auditor confirmed that Duke Energy Ohio is actively engaged in management of its entitlements and that the Company's processes, procedures, and oversight were "mostly adequate and consistent with good utility practice." The Auditor found that the Company's Rider PSR true-up process was timely and accurate. Also, LEI found that the Company's strategy of creating a process for OVEC to continually evaluate its commitment/offer strategy as between Must-Run and Economic commitment offers, as well as to utilize near-term demand and price forecasts to formulate energy offers, was prudent. The Auditor determined that the Company's capacity offers were also formulated prudently.

With respect to OVEC itself, the Auditor found that OVEC complied with environmental requirements and that its management of emissions allowance inventories was reasonable and prudent, that OVEC's coal solicitation evaluations were prudent, and that OVEC was able to secure competitive transportation costs to ship coal to its two plants. Further, the Auditor concluded that OVEC's capital projects were generally completed within budget and that the projects selected for further examination were planned and completed on a prudent basis.

Based almost entirely on the fact that the Rider PSR turned out to produce a customer charge, intervenors the Ohio Consumers Counsel (OCC) and Ohio Manufacturers' Association – Energy Group (OMA-EG) (collectively the Intervening Parties or Intervenors) improperly ask the Commission to exclude all charges associated with Rider PSR for the 2019 Audit period as imprudent. The Intervening Parties base this recommendation on various arguments, which can generally be boiled down to two issues: (1) the Intervening Parties' opposition to the approval and population of Rider PSR by the Commission, and (2) hindsight arguments related to unit commitment decisions made during the Audit period. Consistent with the Commission's Request for Proposal (RFP) to conduct the Audit in this case, the scope of this Audit Report should focus on the Company's actions in implementing the ICPA during the audit period and should be based upon a prudence standard that reviews facts and circumstance known at the time. The Audit Report did not make any findings of imprudence. Instead, LEI concluded that the processes, procedures, and oversight employed by the Company and by OVEC were "mostly adequate and consistent with good utility practice."

II. BACKGROUND

A. <u>OVEC and the Inter-Company Power Agreement</u>

OVEC was formed in 1952 by investor-owned utilities and their parent companies to provide power to the uranium enrichment facility under construction at that time by the Atomic Energy Commission (USAEC) near Portsmouth, Ohio.[2] To serve the needs of the uranium enrichment facility, OVEC constructed two coal-fired power plants: Kyger Creek Power Plant at Cheshire, Ohio (generating capacity of 1,086 MW) and Clifty Creek Power Plant at Madison, Indiana (generating capacity of 1,304 MW).[3] The two generating stations began operating in 1955

[2] *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc., Case No. 20-167-EL-RDR*, Audit of the Price Stabilization Rider of Duke Energy Ohio Final Report (Audit Report or Audit), (Oct. 21, 2020) at 11.
[3] *Id.*

and 1956, respectively.[4]

Duke Energy Ohio is one of many co-sponsoring companies of the OVEC corporation under the ICPA (Sponsoring Companies). The ICPA represents a long-term compact among OVEC's utility counterparties to pay OVEC's costs and to be entitled to utilize the power and energy from OVEC.[5] OVEC, the DOE (USAEC's successor), and the Sponsoring Companies entered into power agreements to ensure the availability of power to the uranium enrichment plant. As part of these agreements, OVEC and the Sponsoring Companies signed the first ICPA in 1953.[6] The ICPA, as amended and approved by FERC over the years, sets forth the terms and conditions governing the rights of the Sponsoring Companies to receive available power from the generation stations and the obligations of the sponsoring companies to pay for the available power that was not utilized by DOE.[7] Under the ICPA, Duke Energy Ohio is entitled to nine percent of OVEC's power and capacity, and responsible for the same share of OVEC's costs.[8] The terms of the entitlement and responsibility for OVEC's costs are set out in the ICPA and highlighted below. Duke Energy Ohio's nine percent share is referred to in the ICPA as the Power Participation Ratio (PPR).[9]

After a nearly fifty-year relationship with OVEC, on September 29, 2000, DOE informed OVEC of its cancellation of the power agreement between DOE and OVEC (the DOE Power Agreement).[10] On April 30, 2003, the DOE Power Agreement was terminated.[11] Since the

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[4] *Id.*
[5] *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc., Case No. 20-167-EL-RDR*, Entry Regarding Request for Proposal (RFP Entry), (Feb. 13, 2020) at 3.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] OMA-EG Ex. 10, Amended Inter-Company Power Agreement (Amended ICPA) § 1.0117 at 5.
[10] RFP Entry at 3.
[11] *Id.*

termination of the DOE Power Agreement, OVEC's entire generating capacity has been available to the Sponsoring Companies under the terms of the ICPA.[12]

Following the termination of the DOE Power Agreement, the Sponsoring Companies and OVEC entered an amended contract, the Amended and Restated Inter-Company Power Agreement (the Amended ICPA).[13] On March 23, 2011, OVEC filed its most recent Amended and Restated ICPA with the FERC.[14] The Amended ICPA is the version currently in effect today. The Amended ICPA was filed with FERC without objection or comment from other parties or stakeholders.[15] Pursuant to 16 U.S.C. § 824d, the ICPA represents the FERC-jurisdictional rate associated with OVEC. The current ICPA participants include, *inter alia*, AEP Ohio, Dayton Power and Light, and Duke Energy Ohio. As previously stated, under the ICPA, "the Sponsoring Companies collectively shall be entitled to take from [OVEC] and [OVEC] shall be obligated to supply to the Sponsoring Companies any and all available power and available energy" in accordance with their power participation ratio.[16]

Section 4 of the ICPA describes the members' entitlement to available power and energy supply from OVEC.[17] Section 5 of the ICPA describes charges to the Sponsoring Companies.[18] Specifically, Section 5.02 sets forth how the energy charge will be calculated, while Section 5.03 sets forth how the capacity charge will be calculated.[19] Section 9.05 of the ICPA establishes an Operating Committee consisting of one member from OVEC and one member from each

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[12] *Id.*
[13] *Id.*
[14] *See* Amended ICPA, OMA-EG Ex. 10.
[15] *Id.*
[16] *Id.* at 6.
[17] *Id.*
[18] *Id.* at 7.
[19] *Id.* at 8.

Sponsoring Company and its affiliates.[20] During the audit period this equated to a total of nine members – one non-voting OVEC member and eight from the parent companies of the Sponsoring Parties.[21] For its part, and as testified to by Company Witness, John Swez, Duke Energy Ohio has a single member on the Operating Committee.[22] This member represents 12.5% of the voting authority of the Operating Committee.

Pursuant to Section 9.05 of the ICPA, the Operating Committee establishes "scheduling, operating, testing and maintenance procedures of [OVEC]."[23] This includes establishing procedures for: (1) scheduling delivery of available energy, (2) power and energy accounting, (3) scheduling firm and non-firm transmission service, and (4) minimum generation output.[24] The Operating Committee has also adopted Operating Procedures, which set forth decisions on unit commitment practices (Section E), minimum generation output (Section F), and energy scheduling (Section E).[25] Any adoption or modification of OVEC's governing procedures by the Operating Committee must be approved by at least two-thirds of the members of the Operating Committee.[26]

B. <u>Procedural Background</u>

The Commission approved the establishment of a non-bypassable rider associated with Duke Energy Ohio's interest in OVEC, the Price Stabilization Rider ("PSR").[27] This approval was sought as part of Duke Energy Ohio's Third Electric Security Plan, by Opinion and Order of April 2, 2015 in Case No. 14-841-EL-SSO, *et al.* (ESP III). The Commission authorized Duke

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[20] *Id.* at 4.
[21] *Id.*
[22] Direct Testimony of John D. Swez (Direct Testimony of Swez) at 6:2-7.
[23] Amended ICPA at 46.
[24] *Id.*
[25] *Id.* at 4.
[26] *Id.*
[27] *In re the Application of Duke Energy Ohio for Authority to Establish a Std. Serv. Offer in the Form of an Electric Security Plan*, Case No. 14-841-EL-SSO, et al. (ESP III Case), Opinion and Order (April 2, 2015).

Energy Ohio to establish a placeholder rider, Rider PSR, that would protect retail customers "from price volatility in the wholesale market."[28] The Commission authorized Duke "to establish a placeholder PSR, at an initial rate of zero, for the term of the ESP"[29] and found that "the PSR constitutes a rate stability charge related to limitations on customer shopping for retail electric generation service and may, therefore, be authorized pursuant to R.C. 4928.143(B)(2)(d)."[30]

The Commission noted in ESP III that its "decision not to approve, at this time. Duke's recovery of any costs, including OVEC costs, through the PSR is based solely on the record in these proceedings, and does not preclude Duke from seeking recovery of its OVEC costs in a future filing."[31] Indeed, the Commission further authorized Duke Energy Ohio to institute a subsequent action for purposes of establishing initial tariff amounts applicable to Rider PSR, and contemplated that "[a]ll of the implementation details with respect to the placeholder PSR [would] be determined by the Commission in that future proceeding."[32]

Although Rider PSR was set to zero by Opinion and Order in ESP III, it was designed to allow Duke Energy Ohio to pass the costs and benefits of its participation in the ICPA to Duke Energy Ohio's customers. Duke Energy Ohio's ESP III was originally set to be effective through May 31, 2018. On March 31, 2017, the Company filed an Application to establish initial tariff amounts applicable to the Price Stabilization Rider.[33] The Rider PSR Application proposed to include in Rider PSR the "net costs associated with [the Company's] contractual entitlement in OVEC . . . [s]pecifically, the full benefit of all revenues resulting from the Company's participation

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[28] *Id.* at 46-47.
[29] *Id.* at 47.
[30] *Id.*
[31] *Id.* at 48.
[32] *Id.* at 47.
[33] *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Amend Rider PSR*, Case No. 17-873-EL-ATA, Application of Duke Energy Ohio, Inc. (March 31, 2017).

in the wholesale markets, with its contractual entitlement in OVEC, less all costs incurred under the ICPA," both of which would flow to customers through a nonbypassable rider.[34] The Company's 2017 PSR Application was eventually consolidated into the Company's Fourth Electric Security Plan (ESP IV) for further consideration.[35]

In December 2018, as part of the resolution of Duke ESP IV, consolidated Case Nos. 17-1263-EL-SSO, *et al.*,[36] the Commission authorized Duke Energy Ohio, via approval of a litigated Stipulation, to recover or credit the net proceeds of selling OVEC energy, capacity, and ancillary services into the PJM marketplace via the Rider PSR mechanism.[37] For the Intervening Parties' part, OCC opposed the ESP IV Stipulation, and OMA-EG signed on to the Stipulation, but withheld their support for Rider PSR, agreeing not to oppose it as part of the Stipulation package.[38]

In approving Rider PSR, as set forth in the Stipulation, the Commission presciently found that: "[T]he PSR has the potential to act as a hedge against volatile rates . . . [and that] energy prices fluctuated over the past six years by a range of 49 percent, which [was] attributed to, among other things, variations in weather conditions, natural gas price volatility, and regulatory changes . . . [acknowledging that] Staff witness Donlon confirmed the volatility of the markets and commented that such fluctuations make forecasting especially difficult."[39] In light of current events that are causing a spike in energy prices, the Commission's acknowledgement of the volatility in market pricing is accurate and telling. And we have seen these principles play out in

[34] *Id.* at 5.
[35] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al*., Entry on Consolidation (May 9, 2018).
[36] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al*., Opinion and Order at 45-47 (December 19, 2018) (ESP IV Order).
[37] *Id.*
[38] *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 17-32-EL-AIR, *et al*., Stipulation and Recommendation (ESP IV Stipulation) (April 13, 2018) at 18.
[39] ESP IV Order at ¶ 282.

real time in the case of OVEC. As further explained by Company witness Mr. John Swez on cross examination, "[t]he price of power changes[,] [t]he price of power in 2019 [the Audit period] averaged $27 approximately a megawatt-hour. In 2022, it's over $100 a megawatt-hour for July[,] . . . these things change, and they will change over time."[40]

Additionally, in its ESP IV holding, the Commission took note of the "ruling by the Supreme Court of Ohio regarding AEP Ohio's similar OVEC-related rider. *In re Application of Ohio Power Co*.[.]"[41] And the Commission likewise found that "[s]imilarly, here, the Stipulation proposes a rider that is nearly identical to AEP Ohio's rider. Like AEP Ohio's rider, the PSR was authorized, in the ESP [III] Case, pursuant to R.C. 4928.143(B) as a limitation on customer shopping. Further, both riders propose to credit or charge customers based on the EDU's net costs associated with its contractual entitlement in OVEC" and that "[t]he Supreme Court of Ohio has affirmed the Commission's finding that an OVEC-related PPA has worth as a financial hedge in the OVEC Supreme Court Case [and] [a]lthough the PSR currently projects to be a loss, the volatility of the markets, particularly in times of extreme weather conditions, contrasted with the stability of OVEC's operating costs gives the PSR significant value as a hedge."[42]

Moreover, the Commission found in ESP IV that the "Stipulation provides additional protections for consumers that were not available in ESP [III]" including "limitations related to forced outages at OVEC's generating plants; limitations related to capacity performance assessments from PJM; provisions for annual prudency reviews; a requirement to continue to pursue transferring the Company's entitlement in OVEC; and a requirement that no carrying costs shall be included in the rider."[43] The Commission determined that Rider PSR was a "major

[40] Hearing Transcript Vol. III at 328:9-13.
[41] ESP IV Order at ¶ 266.
[42] *Id.* at ¶ 282.
[43] *Id.* at ¶ 283.

component of an inimitable and comprehensive stipulation" and that its "ultimate consideration is the settlement as a total package."[44]

OCC filed multiple motions for rehearing regarding ESP IV.[45] On rehearing, OCC, among other parties to ESP IV, broadly challenged Rider PSR, arguing that it was preempted by federal law and that there was insufficient record evidence supporting the establishment of Rider PSR in ESP III, where Rider PSR was approved but not populated.[46] After thorough consideration, the Commission rejected all of OCC's arguments on rehearing related to Rider PSR.[47] The Commission found that, regarding federal preemption, it had "thoroughly discussed those issues in the Opinion and Order" and OCC presented "no new information aside from referring back to its initial post-hearing brief in ESP IV."[48] The Commission also found that Rider PSR was properly established in Duke Energy Ohio's ESP III, holding that, like Rider PPA (the AEP Rider), "Rider PSR was authorized under R.C. 4928.143(B) as a limitation on customer shopping and the Supreme Court of Ohio held that R.C. 4928.143(B) provides that an ESP may include a charge '[n]otwithstanding any other provision of Title XLIX of the Revised Code to the contrary.'"[49] Moreover, the Commission found that, because Rider PSR was determined in the Opinion and Order in ESP IV as "properly established in the ESP [III] Case," OCC was attempting to

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[44] *Id.*
[45] *See* ESP IV, Application for Rehearing of the Office of the Ohio Consumers' Counsel (January 18, 2019); Second Application for Rehearing of the Office of the Ohio Consumers' Counsel (August 16, 2019); Third Application for Rehearing and Memorandum in Support of the Office of the Ohio Consumers' Counsel (Oct. 11, 2019).
[46] ESP IV, Application for Rehearing of the Office of the Ohio Consumers' Counsel (January 18, 2019) at 3.
[47] ESP IV, Second Entry on Rehearing (June 27, 2019) at ¶ 10.
[48] *Id.* at ¶ 13.
[49] ESP IV, Second Entry on Rehearing (June 27, 2019) at ¶ 13; *see also In re Application of Ohio Power Co.*, 155 Ohio St.3d 326, 2018-Ohio-4698 at ¶¶ 18-19 (finding that OMAEG and OCC did "not demonstrate[ ] that the commission's findings are against the manifest weight of the evidence or clearly unsupported by the record" holding that "the PPA Rider was designed to act as a financial hedge against market volatility, particularly during extreme weather conditions").

"relitigate" the ESP III case in ESP IV.[50]

OCC ultimately filed an appeal of the Commission's approval of the ESP IV Stipulation to the Ohio Supreme Court challenging, among other things, the population of Rider PSR.[51] Such appeal was ultimately dismissed at the request of OCC.[52] As the present case demonstrates, however, OCC has continued to oppose Rider PSR at every opportunity, whether or not its arguments have been successful.

Rider PSR was extended through the term of ESP IV (effective through May 31, 2024) and became operational. As a result, Duke Energy Ohio began billing rider PSR in April of 2019. Since that time, the Ohio legislature defined a legacy generation resource ("LGR") in a way which encompassed the OVEC generation plants (RC 4928.01(A)(41)).[53] On January 1, 2020, Rider LGR replaced Rider PSR, and LGR is the rider currently in place for consideration of future OVEC-related benefit/recovery.[54]

C. <u>The Rider PSR Prudence Audit: Scope and Process</u>

1. <u>Establishment of a prudency audit for Rider PSR.</u>

Rider PSR is subject to quarterly filings, that started with the first billing cycle of April 2019.[55] Additionally, as set forth in the Commission-approved Stipulation and Recommendation, "[r]ecovery under Rider PSR shall be subject to the following conditions: . . . The Company shall be subject to an annual prudency review of its practices relating to liquidating its contractual

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[50] *Id.*
[51] ESP IV, Supreme Court Case No. 19-1269, Notice of Appeal of the Office of the Ohio Consumers' Counsel (Sept. 16, 2019).
[52] *Interstate Gas Supply, Inc., et al., v. The Public Utilities Commission of Ohio*, Ohio Supreme Court Case No. 2019-1269, Application for Dismissal of Appeal by Appellant the Office of the Ohio Consumers' Counsel (March 10, 2020) ("In light of rulings by this Court, OCC has decided not to pursue further action in this case as a party.") citing *In re Ohio Power Co.*, 2020-Ohio-143 (2020).
[53] Audit Report at 7.
[54] *Id.*
[55] *Id.*

entitlements under the ICPA in the wholesale market."[56] This annual audit was established to evaluate the prudency of all costs and sales flowing through the PSR and to demonstrate that the Company made reasonable efforts to transfer its entitlement under the ICPA, as agreed to by the Company in the ESP IV Stipulation.[57] The rate design for Rider PSR was approved in the ESP IV Stipulation,[58] thus the annual audit is merely to confirm that Duke Energy Ohio has prudently managed its participation and entitlements with regard to OVEC.

Notably, the underlying proceeding does not offer an opportunity to litigate whether it is prudent or otherwise desirable for OVEC to continue to operate its facilities or whether it is reasonable for Rider PSR to have been approved in the first place.

By February 13, 2020 Entry, the Commission directed Commission Staff to issue an RFP to audit Rider PSR for the period of January 1, 2019 through December 31, 2019.[59] The RFP Entry provided that Staff and the Commission were to "select and solely direct the work of the auditor" and "review and approve payment invoices submitted by the auditor."[60] The RFP Entry also stated that the Auditor "will execute its duties pursuant to the Commission's statutory authority to investigate and acquire records, contracts, reports, and other documentation" under various provisions in the Revised Code.[61] The RFP reinforced that Staff would oversee the project, be informed of correspondence between the Auditor and the Company, and be given advance notice of interviews and meetings.[62] The RFP additionally provided detail regarding how the Auditor should keep Staff informed during the investigation, stating that "[a]t the midpoint of the

[56] ESP IV Stipulation at 19.
[57] *Id.*
[58] *Id.* at 18.
[59] RFP Entry at ¶ 1.
[60] *Id.* at ¶ 11.
[61] *Id*. ¶ 13.
[62] *Id*. at 10.

audit activities, the auditor selected will provide a progress report to Staff. This report will briefly describe progress made on required audit activities, as well as initial/tentative findings and conclusions on issues investigated to date."[63] The RFP went on to provide that the draft audit report should be send to Staff at least 10 days prior to the due date.[64] The RFP indicated that proposals should be sent to Rodney Windle, who was the Staff member that oversaw the audit and provided testimony at the hearing.[65]

2. ***Scope of the Audit investigation.***

The RFP for the audit of Rider PSR for 2019 included a "Scope of Investigation" section, which listed six categories for the auditor to review:

- Disposition of Energy and Capacity: This category required the auditor to review the prudency of OVEC's "unit scheduling," "bidding behavior and/or participation" in PJM's energy, capacity, ancillary services, and other markets; and [whether] accounting procedures accurately and properly allocate revenues to ratepayers[.]"[66]

- Fuel and Variable Cost Expenses: This category required the auditor to review whether "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"; and "a comparison between incurred fuel costs and market prices to evaluate the reasonableness of fuel expenses during the audit period."[67]

- Capital Expenses: This category required the auditor to review whether "any fixed costs incurred by OVEC are properly allocated to AEP Ohio, including depreciation, debt service, and plant maintenance expenses"; whether "only prudently incurred costs are included for recovery"; and whether "any and all costs that have been deemed to be ineligible for recovery by the Commission have been appropriately excluded."[68]

- Environmental Compliance: This category required the auditor to consider "(1) compliance with existing environmental regulations, and (2) preparation for compliance with any proposed or newly enacted environmental regulations[,]" and "at least the following environmental compliance related issues: "the impact that

[63] *Id*. at 8.
[64] *Id.*
[65] *Id.* at 13.
[66] *Id*. at 5, § III.A.1.
[67] *Id*. at 6, § III.A.2.
[68] *Id*. at 6, § III.A.3.

compliance activities had on OVEC's fuel procurement strategy, as well as the type and cost of fuel that was actually purchased;" "overall emission allowance management strategy, including any emission allowance transactions in which OVEC participated;" and "methods used to analyze compliance options and develop overall mitigation strategies."[69]

- Power Plant Performance: This category required the auditor to review "significant plant outages or other degradations observed in the operating availability, equivalent availability, or capacity factors of OVEC's generating plants and their impact on ratepayers"; and "an on-site investigation of at least one of OVEC's generating stations" with attention to, at a minimum, "fuel handling and quality control (i.e., weighing, sampling, scale calibrations, etc.), inventory surveying methodologies and results, performance monitoring (i.e., heat rate), and maintenance."[70]

- Utility Industry Perspective: This category required the auditor to "discuss[ ] the current dynamics of the PJM wholesale markets in which OVEC operates, and the impact that changing market dynamics have on OVEC's operations and practices."[71]

By Entry dated April 8, 2020, London Economics International was selected as the auditor.[72]

Dr. Marie Fagan, Chief Economist at LEI, was the project manager for the Audit and she "led the project . . . reviewed all the materials . . . prepared much of the material [herself], [and] was the main point of contact with . . . the Public Utilities Commission Staff."[73] Dr. Fagan testified that she understood that the RFP's "Scope of Investigation" "was to examine the prudency and -- of the costs that flow through the rider and there's specific areas of that that the scope of work [as set forth in the RFP] required."[74] Notably absent from the Auditor's description of her understanding of the Scope of Work for the RFP, and the description of the Scope of Work itself, was the decision of the Commission to allow the population of Rider PSR. Indeed, Dr. Fagan

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[69] *Id*. at 6, § III.A.4.
[70] *Id*. at 6, § III.A.5.
[71] *Id*. at 7, § III.A.6.
[72] ESP IV, Entry Selecting London International Economics LLC to Conduct the Audit Services Necessary to Assist the Commission with the Prudency and Performance Audit of the Price Stabilization Rider of Duke Energy Ohio, Inc. (April 8, 2020).
[73] Hearing Transcript Vol. II at 19:13-17.
[74] *Id.* at 23:1-5.

herself testified that the approval of Rider PSR,[75] the continued population of Rider PSR through the term of the Amended ICPA,[76] questions raised by the Intervening Parties regarding conflicts associated with the Company's OVEC interest,[77] dispatching decisions made by PJM,[78] and the question of, for example, how many people are employed by OVEC,[79] were all outside the scope of the prudency audit LEI was asked to perform.

LEI conducted its Audit primarily by issuing formal data requests to Duke Energy Ohio. The Auditor also relied on "publicly available data from OVEC annual reports, and other sources of public data[,]" including "industry data from . . . the Energy Information Administration."[80] In addition, LEI "conducted a single 'virtual site visit' to audit the presence and use of environmental control equipment in the plants."[81]

The LEI Audit Report was tasked with determining whether Duke Energy Ohio prudently managed its participation in OVEC and the management of its entitlements. The question of prudency guided the Auditor's evaluation of the actions of Duke Energy Ohio during the Audit period. And the applicable standard for prudence is established by Commission precedent and Supreme Court of Ohio precedent on the subject. In 2021, the Supreme Court of Ohio addressed the question of prudence as part of its decision in *In re Application of Suburban Natural Gas Co.* ("*Suburban*").[82] The Court held that the prudence test examines whether an expenditure "was prudent when it was made."[83] The Court went on to explain that the prudence test "places the risk

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[75] *Id.* at 22:25-23:5.
[76] *Id.*
[77] *Id.* at 77:20-25.
[78] *Id.* at 41:10-22.
[79] *Id.* at 32:18-23.
[80] Audit Report at 9.
[81] *Id.* at 8.
[82] *In re Suburban Nat. Gas Co.*, 2021-Ohio-3224, 166 Ohio St. 3d 176.
[83] *Suburban*, 2021-Ohio-3224 at ¶ 32.

of a failed investment on the customers, who must pay so long as that investment was prudently made."[84] As a result, a proper examination under the prudence test considers only those facts and circumstances known at the time the decision was made.[85]

III. LAW AND ARGUMENT

A. **<u>The LEI Audit Report Confirms that Duke Energy Ohio's Actions with Respect to OVEC were Prudent as the Auditor did not Recommend Any Disallowances.</u>**

The Audit Report confirmed that Duke Energy Ohio has prudently managed its participation in OVEC and prudently managed its entitlements. After propounding approximately 100 data requests, holding an in-depth discussion with Duke Energy Ohio and OVEC personnel, participating in a virtual site visit, and drafting a comprehensive, 118-page audit report, at no point did the Auditor making any findings of imprudence on behalf of Duke Energy Ohio or OVEC. To the contrary, and as testified to by the Auditor, no findings of imprudence were identified in the entire Audit process.[86]

The Auditor confirmed that Duke Energy Ohio is actively engaged in management of its entitlement and that the Company's processes, procedures, and oversight were generally adequate and consistent with good utility practice.[87] The Auditor found the Company's Rider PSR true-up process was timely and accurate.[88] Also, the Auditor found that the Company's strategy of creating a process for OVEC to continually evaluate its commitment/offer strategy as between Must-Run and Economic commitment offers, as well as to utilize near-term demand and price

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[84] *Id.* at ¶ 27.
[85] In AEP's PPA Rider Order, the Commission clarified the OVEC audit review, finding that "[a]ny determination that the costs and revenues included in the PPA Rider are unreasonable shall be made in light of the facts and circumstances known at the time such costs were committed and market revenues were received." *In re Application of Ohio Power Co*., 155 Ohio St.3d 326, 2018-Ohio-4698 at ¶¶ 25.
[86] Hearing Transcript Vol. II at 31:2-11 ("We didn't have any findings of imprudence. We had findings that recommended improvements.").
[87] Audit Report at 9.
[88] *Id.*

forecasts to formulate energy offers, was prudent.[89] Moreover, the Auditor determined the Company's capacity offers were formulated prudently.[90] With respect to OVEC itself, the Auditor found that OVEC complied with environmental requirements and that its management of emissions allowance inventories was reasonable and prudent,[91] that OVEC's coal solicitation evaluations were prudent,[92] and that OVEC was able to secure competitive transportation costs to ship coal to its two plants.[93] Further, LEI concluded that OVEC's capital projects were generally completed within budgets and the projects selected for further examination were planned and completed on a prudent basis.[94]

Overall, LEI found that the "processes, procedures, and oversight" undertaken by Duke Energy Ohio and OVEC during the Audit period "were mostly adequate and consistent with good utility practice[.]"[95] Of the many assessments made by the Auditor in the Audit Report, the Auditor made only a handful of recommendations, the majority of which were either minor or recommendations to be considered on an as "going forward" basis, none of which resulted in a finding of imprudence on behalf of Duke Energy Ohio or OVEC:

- Rider PSR true up process: LEI found the true up process for the PSR Rider to be accurate and timely. LEI recommended only that more recent estimates for annual sales be used in estimating costs for Rider PSR "going forward."[96]

- Disposition of energy and capacity: The Auditor also evaluated OVEC's disposition of energy and capacity during the Audit period. LEI's findings were generally positive as it relates to Duke Energy Ohio's role: finding the Company

[89] *Id.* at 10.
[90] *Id.*
[91] *Id.*
[92] *Id.* at 60.
[93] *Id.* at 68.
[94] *Id*. at 92-93.
[95] *Id.* at 9.
[96] *Id.*

"well positioned in the energy offering process to help OVEC make informed decisions, and therefore, [the Company's] practice is prudent"[97] in the disposition of energy and capacity for OVEC. The Audit Report also took particular note that the Company "independently projects the expected energy market revenues from units operating in the PJM market, the variable costs to operate the unit at the forecasted unit hourly loading, as well as the resulting hourly energy margin, all of which is summarized in the Daily Profit and Loss Analysis report[.]"[98] The Auditor went on to find that "[i]n the event that Duke Energy observes a period in which the units are expected to be out of the money and could potentially be decommitted, DEO informs OVEC, and this option is then discussed in the Operations Committee. . . [for] example, during April 2020, owing to very low market prices from reduced loads because of COVID-19 impacts on customer demand, DEO raised this concern with OVEC [and] OVEC responded by proposing a modification of the Operating Committee process, which was voted on by members of the Operating Committee and approved."[99] The Auditor did note that OVEC's "energy is offered as self-scheduled" and commented that "some of the time, the PJM energy price did not cover fuel and variable cost[.]"[100] The Auditor recommended that OVEC adopt "DEO's strategy of creating a process whereby OVEC re-considers its "must-run" offer strategy . . . and utilize near-term demand and price forecasts to formulate energy offers is prudent."[101] Regarding Duke Energy Ohio's role in the disposition of energy generated by OVEC, namely the must-run offer strategy employed by OVEC during the Audit period, the Auditor found that the Company's "efforts to modify OVEC's must-run strategy" (as recommended by the Auditor) were "prudent" and the Auditor had "no recommendations except to continue doing so."[102] The Auditor did not find that the must-run strategy was imprudent, even during times when PJM energy prices

[97] *Id.* at 45.
[98] *Id*. at 44
[99] *Id.*
[100] *Id*. at 9.
[101] *Id.* at 10.
[102] *Id*. at 54.

did not cover fuel and variable costs. Given the Auditor's opinion of Duke Energy Ohio as poised to assist in this process, given the information it maintained and actions it took to engage in commitment analysis during the Audit period, the Auditor found the Company's actions during the Audit period prudent.[103]

- Fuel and variable cost expenses: Another area in which the Auditor offered recommendations, but did not find imprudence, was related to fuel and variable cost expenses. With regard to coal procurement, the Auditor concluded that "LEI feels the overall coal contracts reflected market awareness and prudency."[104] Given these positive conclusions, LEI's recommendations for improving OVEC's coal procurement processes were minor. LEI suggested that "OVEC re-examine the process" by which it forecasts coal burn and conduct such forecasts "more frequently to reduce the discrepancies between the actual and estimated coal burns in the following periods."[105] LEI also suggested that OVEC attempt to negotiate "more competitive prices" for "good quality" coal for Clifty Creek.[106] And LEI suggested that OVEC audits its own coal procurement annually.[107] With regard to coal inventory management, LEI found that "[c]oal inventories were much higher than target levels in 2019" and hypothesized that those high coal inventories "may indicate a problem with management of contract deliveries versus projected coal burns."[108] LEI acknowledged, however, that the higher-than-target coal levels were "trigg[er]ed by an event which occurred in one month (April) in 2019 and may be an anomaly[.]"[109] In the end, LEI only recommended that OVEC "improve its inventory management processes."[110]

- Capital investment expenses: One of the areas in which LEI offered recommendations was related to OVEC's capital expenses. LEI concluded that

[103] *Id.* at 54.
[104] *Id.* at 71.
[105] *Id.* 76.
[106] *Id.* at 64.
[107] *Id.* at 71.
[108] *Id.* at 10.
[109] *Id.*
[110] *Id*. at 75.

"[t]he process of planning and executing individual capital projects appears to be well-managed."[111] LEI also commented that the lack of a "cap on annual capital expenses . . . could lead to over-investment in the plants" and, for that reason, suggested that "the Commission consider implementing such a cap."[112] Ultimately, LEI found that OVEC's capital projects during the Audit period "were generally completed within or close to the budget, and that the total actual costs did not exceed the total budgeted cost[.]"[113] In fact, after selecting and examining "four projects that had relatively high costs or that had actual costs exceeding planned costs," LEI concluded that "these projects were planned and completed on a prudent and reasonable basis. These projects were necessary for economic or safety purposes, went through cost-benefit analysis . . . and were compared to alternatives in terms of practicality and cost."[114] No finding of imprudence was made by the Auditor.[115]

- Components of fixed cost: The components of fixed costs were billed properly. However, one component of fixed costs, referred to as "Component (D)" in the OVEC bill, is identified by the ICPA as a payment per common share. It is a relatively minor part of the monthly bill to the ICPA participants, though it represents a substantial share of the net profits earned by OVEC. OVEC's capital expenditures are not part of a rate base for which they are allowed a regulated rate of return.[116]

- Environmental compliance activities: Based on LEI's virtual site visit and follow-up data requests, LEI found that OVEC complied with environmental requirements during the audit period and that management of emissions allowance inventories was reasonable and prudent.[117]

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[111] *Id.* at 10.
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.* at 94.
[116] *Id.* at 9-10.
[117] *Id.* at 10.

- Power plant performance: Regarding plant performance for Clifty Creek and Kyger Creek, the Auditor generally found that the plants performed well, with some small exceptions. Plant maintenance costs during outages were budgeted reasonably at Clifty Creek, but the budgeting for Kyger Creek needed to be improved, according to the Auditor.[118] The Auditor recommended that OVEC take action to inspect and fix the technical problems with Clifty Creek Unit 6 to minimize forced outages and the related economic losses.[119] Regarding plant performance, the Auditor did not identify any actions Duke Energy Ohio could have taken during the Audit period that would have prevented any issues with maintenance at Clifty Creek and found that the Company's actions were likewise prudent during the Audit period as it relates to plant performance.[120]

As set forth above, in all areas identified in the RFP as within the Audit scope, assessed by the Audit team, and evaluated in the Audit Report, the Auditor found no instances of imprudence. Any recommendations made by the Auditor were related to fine tuning current practices associated with OVEC's operation. Moreover, none of those recommendations were aimed at Duke Energy Ohio directly. As this Commission is aware, OVEC is a separate corporation and Duke Energy Ohio is one of many co-sponsoring companies under the ICPA in the OVEC corporation, having a nine percent interest. Duke Energy Ohio does not operate OVEC, and its personnel do not participate in OVEC's day-to-day operational decisions. The Company's influence is limited to its nine percent interest and one vote on the Operating Committee. Nonetheless, the LEI Audit Report confirms that Duke Energy Ohio is actively engaged in the management of its entitlement, actively participates in various committees, and continually makes recommendations to the OVEC personnel who are responsible for day-to-day decisions that are aimed at increasing the value of

[118] *Id.*
[119] *Id.*
[120] *Id.*

OVEC to customers. LEI reviewed the Company's processes, procedures, and its oversight and found they were consistent with good utility practice.[121]

B. <u>The Plant Commitment Strategy Employed by OVEC During the Audit Period was Reasonable and Prudent.</u>

The Auditor thoroughly examined OVEC's must-run commitment strategy in great detail. And though the Auditor made recommendations related to commitment strategy by OVEC (as detailed above), she only ultimately found that Duke Energy Ohio's "efforts to modify OVEC's must-run strategy as noted in Section 5.3.4 [were] prudent, and has no recommendations except to continue doing so."[122] The Auditor did not find the use of the must-run strategy during the Audit period imprudent. She did not recommend disallowance of any costs associated with OVEC.[123] Instead, with certain considerations that had *already* been identified by Duke Energy Ohio and brought to OVEC and the Operating Committee's attention, the Auditor found that the commitment strategy was reasonable.[124]

1. <u>Commitment Status versus Dispatch.</u>

As set forth in Company witness John Swez's testimony, "commitment is the decision or act of starting a generator that is off-line or maintaining an on-line generation status for a unit that is already on-line."[125] Put more simply, commitment is the decision to run or not run a unit.[126] OVEC itself determines the unit commitment in PJM. PJM allows for four different commitment status offers: Not Available or Outage, Emergency, Economic, and Must-Run (sometimes referred to as self-scheduled). Focusing on the two commitment statuses at issue in this case, for units that

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[121] *Id.* at 9-10 (*see* § 1.3).
[122] *Id.* at 54.
[123] *Id.*
[124] *Id.*
[125] Direct Testimony of Swez at 7:4-7.
[126] *Id.* at 7:6.

are offered with an Economic commitment status, the decision to turn on or continue running this unit is made by PJM, meaning the PJM unit commitment model may choose the unit to operate, or it may choose not to run the unit at all.[127] For units that are offered with a Must-Run commitment status, the decision to turn on or continue running the unit is made by the owner, and likewise, the owner can choose to run, not run, or change the offer status to Economic to allow PJM to de-commit the units in question.[128]

Dispatch is the process of determining at which output to operate an on-line generating facility, and the movement of the unit to that desired output.[129] Dispatch is the process by which the PJM dispatch model chooses how much energy it will deliver, based upon the unit's commitment status.[130] Units that are must-run will be dispatched at a level that depends upon various factors including the unit's cost.[131] In OVEC's case, the dispatch of the generating units refers to the instructions for the dispatch of the OVEC units from PJM and movement of the unit to the requested setpoint.[132] These dispatch instructions for the OVEC generating units are sent by PJM and received by OVEC every 5-minutes.[133] Unless a unit is required to be at an exact output such as what would be required for an environmental test, the OVEC generators are dispatched based on the units' incremental cost offer between minimum and maximum available output.[134]

2. ***OVEC's commitment strategy during the Audit period was prudent and reasonable.***

For the 2019 Audit period, OVEC was committed as a Must-Run commitment status offer

[127] *Id.* at 8:11-14.
[128] *Id.*
[129] *Id.* at 19:7-9.
[130] *Id.* at 10:11-13.
[131] *Id.* at 8:12-14.
[132] *Id.* at 19:9-11.
[133] *Id.* at 19:11-13.
[134] *Id.* at 19:13-16.

for available units except for Clifty Creek Unit 6, during ozone season.[135] As stated by the Auditor, this commitment strategy was reasonable and prudent given the nature of the units in question and the information evaluated at that time.[136]

For example, as set forth by Company witness Swez in his testimony, with respect to cycling costs, OVEC, as a coal-fired generating station, is not capable of instantaneously turning on and off like a light switch.[137] Shutting off the unit, turning on the unit, and ramping up the unit take time and come with risks and significant costs.[138] As a result, any commitment decision must factor in the cycling timing, risks, and costs.[139] Mr. Swez further clarified at the hearing, stating that "when a power plant has revenues that are greater than its variable costs, there are no benefits . . . [t]here is only downside to switching to an economic strategy . . . [t]he downside would be you would potentially have the unit short cycle meaning it would come offline and have to come back online during a period of time . . . so you are not going to have any benefits . . . [y]ou are only going to have additional costs . . . additional cycling, additional wear and tear, higher forced outage rates, all that from potential cycling."[140] As Mr. Swez explained, it is often more economic to run the unit during periods where it is "out of the money" so that the unit is capable of operations during periods when it is deep "in the money" to maximize potential revenues.[141] Similarly, with respect to other risks, every time a coal-fired unit is shut down, there are risks associated with starting it up again. Units can fail to start due to thermal cycles or other cycling issues, causing potential damage to the units and loss of market revenue.[142] This risk of cycling must also be

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[135] *Id.* at 12:17-20.
[136] Audit Report at 54.
[137] Direct Testimony of Swez at 9:3-5.
[138] *Id.* at 9:5-6.
[139] *Id.* at 9:6-7.
[140] Hearing Transcript Vol. III at 345:2-15.
[141] *Id.*
[142] Direct Testimony of Swez at 9:12-14.

factored into commitment decisions and whether to commit the unit as Economic or Must-Run.[143]

Moreover, as highlighted by witness Swez in his direct testimony, and Figure 29 in the Audit Report, the instances or months where the OVEC units were "out of the money" during the audit period, the margins were slim and nearly break even.[144] In Figure 29, for example, LEI calculates the margin (generating unit revenue minus generating unit variable cost) for each month of 2019.[145] As noted by witness Swez, when the units are "in the money" (revenue greater than variable cost), the difference tends to be quite large ($8.32/MWh in January, 13 $5.05/MWh in March, etc.), but when the units are "out of the money" (revenue less than variable cost), the difference tends to be quite small (-$0.28/MWh in August, -$0.44/MWh in December, etc.).[146] As highlighted by Mr. Swez, the units were "very marginal in these months, meaning that one could have attempted to cycle the units during the time that they were out of the money, but the result would have been the opposite of that which was desired; the units' margin would have been reduced."[147] Mr. Swez noted that this is without consideration of other facts, such as "required unit testing, risk of cycling the unit, PJM impacts of not operating such as the potential for PJM capacity performance penalties, external to PJM sponsor requests" and the like.[148]

Clifty Creek and Kyger Creek, the two OVEC generating facilities, were built in the early to mid-1950s to provide energy to a key piece of infrastructure. They were designed to operate as baseload generation—staying operational for long periods of time. Instantaneous startup and shutdown were not part of the facilities' design, and as highlighted by Mr. Swez, keeping the plants functional in a marginal setting could often serve to avoid a more costly outcome than frequently

[143] *Id.* at 9:14-15.
[144] *Id.* at 13:11-18.
[145] *Id.* at 14:14-18
[146] *Id.* at 13:11-18.
[147] *Id.*
[148] *Id.* at 13:19-22.

cycling the plants.[149] With the current startup cost of an OVEC unit at approximately $22,000/start (cold startup) and $10,000/start (intermediate or hot startup) per unit, with eleven total units and potentially multiple instances of starting/stopping per month, could quickly add up.[150]

Witness Swez put forth testimony that excessive cycling during the Audit period could have resulted in worse customer value and decreased, not increased, returns.[151] And the economic benefit of a must-run commitment strategy was in fact realized during the Audit period. Mr. Swez calculated the approximate energy value of the Duke Energy Ohio share of the units in the PJM energy market.[152] Mr. Swez's calculation showed that the units' total interaction in the PJM energy market caused a positive margin of approximately $33 million in 2019.[153] Thus, given OVEC's low energy costs and revenue from operation of the units in 2019 primarily being greater than the units' variable costs, the OVEC units earned $33 million in total energy margins (revenues greater than variable costs) in the Audit period.[154] Moreover, none of the challenges associated with cycling due to economic commitment for units such as Clifty Creek and Kyger Creek were incurred during the Audit period. Finally, as stated by the Auditor on cross-examination, "[i]n theory if you have power plants and you are paying costs like the demand charges that we discussed in the report, then you're better off producing energy than not at a high level . . . when you have a power plant generally, you want it to operate as much as it could. You don't really want assets, you know, sitting around unused generally."[155]

In sum, the must-run commitment strategy resulted in approximately $33 million of net

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[149] *Id.* at 13:4-7.
[150] *Id.* at 13:22-14:3.
[151] *Id*. at 10:23-11:3.
[152] *Id.* at 14:14-15.
[153] *Id.*
[154] *Id*. at 14:15-18.
[155] Hearing Transcript Vol. II at 35:8-18.

benefits to all customers while avoiding significant lost revenue and maintenance costs that would have been incurred if the plants had been run contrary to their design. This approach was reasonable and prudent, and supported by the Auditor's findings.

C. As Identified in the Audit Report, Duke Energy Ohio Properly Managed its Interest in OVEC to the Best of its Ability.

As highlighted above, and as this Commission knows, OVEC is a separate corporation and Duke Energy Ohio is one of many co-sponsoring companies under the ICPA. Under the ICPA, Duke Energy Ohio has a nine percent interest in OVEC, meaning, Duke Energy Ohio is entitled to nine percent of OVEC's energy and capacity and is responsible for the same share of its costs. No more, no less. Duke Energy Ohio does not operate OVEC, and its personnel do not participate in OVEC's day-to-day operational decisions. OVEC's must-run commitment strategy during the audit period was reasonable, however, even if Duke Energy Ohio had wanted to change the must-run commitment strategy during the audit period, it could not have done so unilaterally. And the purpose of the Audit was to review the prudency of Duke Energy Ohio's actions during the 2019 Audit period.[156] This prudency standard requires focusing on how Duke Energy Ohio managed its interest in OVEC's must-run commitment strategy during the audit period.

OVEC manages and operates the OVEC facilities; Duke Energy Ohio does not operate either the OVEC generating stations or its transmission facilities and Duke Energy Ohio personnel do not participate in OVEC's day-to-day operational decisions.[157] Duke Energy Ohio has one representative and has a 9 percent "vote" on matters that are brought to the Board of Directors.[158] In addition, as testified to by Mr. Swez, Mr. Swez is Duke Energy Ohio's representative on the OVEC Operating Committee, certain decisions, including those regarding procedures for

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[156] RFP Entry at 10.
[157] Direct Testimony of Swez at 5:3-6.
[158] *Id.* at 12:4.

scheduling delivery of available energy, and recommendations as to scheduling, operating, testing and maintenance procedures, and other related matters, are delegated by the Board of Directors to the Operating Committee.[159] The procedures for the scheduling of available energy are set by the Operating Committee.[160] Again, Duke Energy Ohio has only one vote on this committee and pursuant to Section 9.05 of the ICPA, "[t]he decisions of the Operating Committee, including the adoption or modification of any procedure by the Operating Committee pursuant to this Section 9.04, must receive the affirmative vote of at least two-thirds of the members of the Operating Committee present at any meeting."[161] The unanimous approval of the Operating Committee (minus OVEC's representative) is required to change the commitment status and other key determinations.[162] Neither Duke Energy Ohio, nor any of the OVEC sponsors, makes any unit offers to PJM for the OVEC units.[163] OVEC's must-run commitment strategy during the audit period was dictated by the OVEC Operating Procedures. And changes to the must-run commitment, would have required at least a two-thirds vote of the Sponsoring Companies.[164]

However, as the LEI Audit Report explains, Duke Energy Ohio monitors OVEC's offers and, at times, requests a change, as was done during the spring of 2020 due to lower energy prices as a result of the COVID-19 pandemic and its effect on electrical demand.[165] Duke Energy Ohio is actively engaged in the management of its own entitlement percentage, actively participates in various committees, and may make recommendations to the OVEC personnel who are responsible for day-to-day decisions with the goal of increasing the value of OVEC for Duke Energy Ohio's

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[159] *Id.* at 5:13-17.
[160] *Id.* at 5:16-17.
[161] *Id.* at 12:3-5.
[162] *Id.* at 12:7-9.
[163] *Id.* at 7:11-12.
[164] *Id.* at 12:1-5.
[165] Audit Report at 44-45.

customers. Additionally, Duke Energy Ohio, outside of the OVEC Operating Committee, has discussions with OVEC staff on an as-needed basis.[166] Given the structure of the OVEC relationship, the Company's influence in "all actions" is limited to its nine percent interest, and recommendations that it can make to the Operating Committee based upon the Company's management of its own interests. This is the lens through which the Company's actions in the 2019 Audit period should be evaluated, and the burden of proof regarding actions over which it has little or no control (e.g., day-to day operations, fuel contracts, inventory targets, etc.) should not be, and is not, within the Audit scope.

The Audit Report confirms that Duke Energy Ohio is actively engaged in the management of its entitlement, actively participates in various committees, and continually makes recommendations to the OVEC personnel who are responsible for day-to-day decisions that are aimed at increasing the value of OVEC to customers.[167] LEI reviewed the Company's processes, procedures, and its oversight and found they were consistent with good utility practice.[168]

D. The Auditor Found that Duke Energy Ohio's Involvement and Monitoring of Plant Commitment Strategy for OVEC was Prudent and her Recommendation was that the Company Continue, Not Change, its Efforts in this Regard.

The Auditor examined OVEC's employment of a must-run commitment strategy during the 2019 Audit period and determined that the practice was not imprudent and that no disallowances were warranted.[169] The Auditor also discussed at length Duke Energy Ohio's efforts on the Operating Committee to ensure that commitment practices and strategies optimized OVEC's capabilities and outcomes. These efforts were detailed in Section 5.3.4 of the Audit Report as follows:

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[166] *Id.*
[167] *Id.*
[168] *Id.* at 9.
[169] Audit Report at 54.

> Every business day, for each hour for the next 21-day period, DEO independently projects the expected energy market revenues from units operating in the PJM market, the variable costs to operate the unit at the forecasted unit hourly loading, as well as the resulting hourly energy margin, all of which is summarized in the Daily Profit and Loss Analysis report[.] This analysis is mainly used to monitor the expected energy market profitability from commitment of the OVEC units. In the event that Duke Energy observes a period in which the units are expected to be out of the money and could potentially be decommitted, DEO informs OVEC, and this option is then discussed in the Operations Committee. For example, during April 2020, owing to very low market prices from reduced loads because of COVID-19 impacts on customer demand, DEO raised this concern with OVEC. OVEC responded by proposing a modification of the Operating Committee process, which was voted on by members of the Operating Committee and approved. In addition to the process discussed above, with the same plant parameters, unit variable cost, and forecasted PJM energy markets among other inputs, DEO forecasts OVEC unit generation, energy, revenue, variable costs, and energy margin for a longer term basis (up to 5-years) through the GenTrader model.
>
> LEI believes DEO is well positioned in the energy offering process to help OVEC make informed decisions, and therefore, their practice is prudent.[170]

Based on the Auditor's observations and Duke Energy Ohio's description of its Operating Committee involvement, the Auditor ultimately found that Duke Energy Ohio's efforts to "modify OVEC's must-run strategy . . . [were] prudent [and she had] no recommendations except to continue doing so."[171]

IV. CONCLUSION

For all of the reasons provided above, and those identified in the 2019 Audit Report, Duke Energy Ohio respectfully requests that the Commission adopt Duke Energy Ohio's positions as set forth on brief, in testimony, and at the hearing on this matter. Duke Energy Ohio has prudently managed its interests in OVEC for the 2019 Audit period, and disallowance is not warranted.

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[170] *Id.* at 44-45.
[171] *Id*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered by U.S. mail (postage prepaid) or electronic mail, on this 29th day of July, 2022, to the parties listed below.

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