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

JOINT POST-HEARING BRIEF OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.

Kimberly W. Bojko (0069402) (Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

Angela Paul Whitfield (0068774)
Jonathan Wygonski (0100680)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
paul@carpenterlipps.com
wygonski@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

TABLE OF CONTENTS

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

JOINT POST-HEARING BRIEF OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.

I. INTRODUCTION

In 2019, Duke Energy Ohio (Duke) charged Ohio ratepayers more than $24 million[1] to subsidize two uneconomic, aging Ohio Valley Electric Corporation (OVEC) dirty coal plants, located in Ohio and Indiana.[2] Duke passed the costs for these plants on to customers through its Price Stabilization Rider (Rider PSR). On average, a loss of $2 million per month by the OVEC plants was passed on to Duke Energy customers in 2019.[3] Simply stated,

> Rider PSR imposes unreasonable costs that should be disallowed;…collects costs that do not result from wholesale energy or capacity market transactions [that] should be disallowed; and…collects costs from customers that are not a financial hedge and are not a rate stabilization charge, and thus, should be disallowed.[4]

In this proceeding, the Public Utilities Commission of Ohio (Commission) ordered a prudency and performance review of the costs related to OVEC that were passed on to customers in 2019. Through the prudency and performance review, the Commission has an obligation to determine whether Duke's customers are paying just and reasonable costs that were prudently

---

[1] See Staff Ex. 1, Audit of the Price Stabilization Rider of Duke Energy Ohio at Figure 8, Column I (Public Version) (Oct. 15, 2020) (Public Audit Report).

[2] Tr. Vol. III at 275 (Cross Examination of Swez).

[3] *Id.* at 249.

[4] OMAEG Ex. 1, Direct Testimony of John Seryak at 4 (Oct. 27, 2021) (Public Version) (Seryak Public Testimony).

incurred, and whether actions taken were in customers' bests interest. The Commission also has a responsiblity to protect customers from the payment of unjust and unreasonable subsidies or imprudently incurred costs, and to prevent any actions that are not in customers' best interests.

When the Commission originally approved Rider PSR, the Commission repeatedly stated that Rider PSR was to benefit customers "by serving as a cyclical hedge against generation costs."[5] At the time, the Commission noted that while "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."[6] Unfortunately for customers, Rider PSR has proven to be an unreasonable and unjust subsidy, costing Ohio ratepayers far more than the up to $18 million per year or approximately $77 million over the term of the ESP that Duke predicted.[7] On average, Duke passed a loss of $2 million per month to its customers through Rider PSR in 2019, for a total cost to customers of approximately $24 million in 2019 alone.[8]

Rider PSR has proven not to be a true hedge, and as such has not provided benefits for customers. Instead, customers have paid and continue to pay for OVEC's poor, imprudent business decisions and Duke's failure, as a co-sponsor of OVEC, to exercise proper oversight responsibilities of OVEC and ensure that prudent decisions are made, and to make prudent business decisions themselves.

---

[5] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 60 (Dec. 19, 2018); *see also id.* at 98-99, 102, 107-09.

[6] *Id.* at 102.

[7] *See id.* at 103 (Dec. 19, 2018) ("By Duke's estimate…the rider will be a net cost to customers of $77 million over the term of the ESP. Duke projected an impact on customer rates of $18 million per year.").

[8] Tr. Vol. III at 249 (Cross Examination of Swez).

Pursuant to a request for proposal (RFP) issued by Commission Staff,[9] London Economics International, LLC (LEI or the Auditor) filed a prudency and performance audit (Audit Report) in the above-captioned case.[10] The Audit Report failed to make several key conclusions regarding Duke's oversight of and decisions regarding the OVEC plants and the costs passed through Rider PSR.

For example, the Audit Report did not contain *any* quantitative analysis from either the Auditor or Duke to determine the impact of the OVEC units' "must-run" commitment status on Duke's customers. In fact, Duke, as a co-sponsor of OVEC with oversight responsibilities, made no effort during the audit period to evaluate or reconsider how OVEC could have operated to reduce subsidies paid by customers through Rider PSR. Additionally, the Audit Report failed to address whether or not fuel purchases charged to customers were imprudent, despite recommending that OVEC make changes to coal forecasts, procurement, and inventory management, as well as perform a coal procurement audit.[11]

Lastly, the Audit Report failed to find that keeping the OVEC plants running is in the best interest of customers. In fact, the evidence demonstrates that the opposite is true and that keeping the OVEC plants running is *not* in the best interest of customers. Despite previously concluding in a simultaneous audit in another case that keeping the OVEC plants running was *not* in the best interest of customers, which was ultimately removed from the final audit after a discussion with Staff,[12] the auditor failed to make a similar conclusion in this audit proceeding. Although the Auditor failed to make this specific recommendation in the Duke final audit, the Commission

[9] *See* OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3 (Feb. 13, 2020).

[10] *See* Staff Ex. 1, Public Audit Report.

[11] *Id.* at 71, 76.

[12] Tr. Vol. II at 208-11, 241 (Cross Examination of Fagan), *comparing with In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case Nos. 18-1004-EL-RDR (AEP Audit Case).

should nonetheless consider this evidence, and determine that it is imprudent and not in the best interests of customers to keep the OVEC plants running. Additionally, when reaching this determination, the Commission should consider whether the audit was truly an independent audit.

Despite failing to make several key findings, the Audit Report nonetheless demonstrates that the costs flowing through Rider PSR during the audit period were imprudent and that all actions taken were not in the best interests of customers. Therefore, based on the record evidence presented by the parties at the evidentiary hearing in this case, the Ohio Manufacturers' Association Energy Group (OMAEG) and The Kroger Co. (Kroger) respectfully request that the Commission protect customers by disallowing all costs collected from customers through Rider PSR during the audit period. At a minimum, the Commission should disallow all costs passed through Rider PSR resulting from OVEC's imprudent must-run commitment strategy, that are unrelated to the intended function as a rate stabilization charge, that are a result of imprudent coal purchases, and that are otherwise the result of imprudent decision-making.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 13, 2020, the Commission directed the Staff of the Commission to issue a request for proposal for audit services to assist the Commission with its prudency and performance audit of Duke's Rider PSR for the audit period running from January 1, 2019 through December 31, 2019.[13] LEI filed the Audit Report on October 21, 2020.[14]

Dr. Marie Fagan served as the main point of contact with Staff and Duke as the lead author of the Audit Report.[15] Dr. Fagan testified that she also performed the AEP OVEC Audit regarding

---

[13] OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3 at ¶ 1 (Feb. 13, 2020).

[14] Staff Ex. 1, Public Audit Report.

[15] Tr. Vol. II at 19 (Direct Examination of Fagan) ("I led the project. I reviewed all the materials that were not prepared by myself. I prepared much of the material myself, and I was the main point of contact with our client, the Public 17 Utilities Commission Staff.").

similar issues, and provided testimony in that proceeding.[16] The Auditor explained in the Duke hearing that she conducted both audits simultaneously, and at one point, the auditor considered performing joint site visits.[17] According to the auditor, "all the drafting was simultaneous" between the two audit reports.[18]

On November 25, 2020, the Commission issued an Entry directing interested parties to intervene and file initial comments by December 18, 2020 and file reply comments by January 8, 2021.[19] OMAEG and Kroger intervened in the above-captioned proceeding on December 18, 2020, and filed joint reply comments on January 8, 2021.

On May 25, 2022, an evidentiary hearing commenced in the above-captioned proceeding. Upon the conclusion of the hearing, the Attorney Examiner directed parties to file initial post-hearing briefs by July 29, 2022 and post-hearing reply briefs by August 19, 2022, respectively.[20] In accordance with the Attorney Examiner's directive, OMAEG and Kroger hereby jointly submit their Post-Hearing Brief.

III. ARGUMENT

A. Duke Bears the Burden of Proof in Demonstrating that Costs Passed through Rider PSR were Just, Reasonable, and Prudently Incurred, and that all Actions Taken were in the Best Interests of Customers.

Duke bears the burden of proof in this proceeding to demonstrate that all costs passed through Rider PSR were just, reasonable, and prudently incurred, and that all actions taken were in the best interests of customers. When the Commission initially approved Duke's Rider PSR, it

[16] Tr. Vol. II at 184-86 (Cross Examination of Fagan).

[17] OMAEG Ex. 7, Email from Dr. Fagan (Aug. 4, 2020).

[18] Tr. Vol. II at 219 (Cross Examination of Fagan).

[19] Entry at ¶ 6 (Nov. 25, 2020).

[20] Tr. Vol. IV at 697.

provided for prudency and performance reviews, which would be conducted similar to audits for other Ohio electric distribution utilities that have a similar OVEC rider.

The Commission initially authorized Duke to begin collecting OVEC costs through Rider PSR in a consolidated case, which addressed, among other things, Duke's electric security plan (ESP) and base distribution rates. In that consolidated case, the Commission adopted the following language from a global stipulation filed by the parties. The Commission noted that:

> The Signatory Parties recommend that the Commission approach the determination of prudently incurred costs and the reasonableness of the generation revenue for all three jurisdictional EDUs, Duke, The Dayton Power and Light Company, and AEP Ohio, in a uniform manner, pursuant to controlling law, which affords parties of interest with due process.[21]

As acknowledged by the signatory parties in Duke's consolidated ESP and rate case, the Commission had previously approved an OVEC rider for another Ohio electric distribution utility, AEP Ohio.[22] In that Opinion and Order, the Commission held that "consistent with Commission precedent, [the utility] will bear the burden of proof in demonstrating the prudency of all costs and sales during the review, as well as that such actions were in the best interest of retail ratepayers."[23]

Therefore, consistent with Commission precedent, including Case Nos. 14-1693-EL-RDR, et al., and pursuant to the Opinion and Order adopting the global stipulation in Duke's consolidated distribution rate case and electric security plan case,[24] Duke bears the burden of proof of establishing that costs passed through Rider PSR were just, reasonable, and prudently incurred,

---

[21] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018).

[22] *See In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR, et al., Opinion and Order (Mar. 31, 2016).

[23] *Id.* at 89.

[24] *See* OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018).

and that actions taken were in the best interests of ratepayers. Duke also bears the burden of proof in demonstrating the prudency of all costs and sales flowing through Rider PSR, and to demonstrate that Duke made reasonable efforts to transfer its contractual entitlement under the Inter-Company Power Agreement (ICPA).[25] As demonstrated below, Duke failed to meet that burden in this proceeding, and the Commission should disallow all costs passed through Rider PSR during the audit period.

B. The Commission Should Disallow All Costs Passed Through Rider PSR During the Audit Period Because Duke Failed to Demonstrate that Such Costs Were Prudently Incurred.

The purpose of the Audit Report in this proceeding is "to establish the prudency of all costs and sales flowing through the PSR and to demonstrate that the Company made reasonable efforts to transfer its contractual entitlement under the ICPA."[26] The Audit Report filed in the above-captioned proceeding did not establish the prudency of these costs, or that Duke made reasonable efforts to transfer its contractual entitlement. At times, the Audit Report fails to reach the requisite conclusions, or even perform the underlying, thorough analysis necessary to reach those conclusions. For example, the Audit Report failed to address how various factors, such as the OVEC facilities' "must-run" commitment strategy or OVEC's fuel procurement process, resulted in higher costs to customers. The Audit Report also failed to analyze actions that could have been taken to limit the costs passed through Rider PSR.

Overall, the Audit Report is devoid of the requisite analysis to demonstrate that Rider PSR costs were just, reasonable, and prudently-incurred, and that all actions taken were in customers' best interests. Since Duke bears the burden of proving these findings, and has not presented

---

[25] OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 4 (Feb. 13, 2020).

[26] *Id*.

sufficient evidence beyond the Audit Report to meet that burden, the Commission should disallow $24 million of costs passed on to customers in 2019.

1. The Audit Report Failed to Make Several Key Findings to Demonstrate that the Costs Passed Through the Rider PSR in 2019 were Unreasonable and Imprudent and that Actions Taken During this Period were not in Customers' Best Interests.

The Audit Report shows that not all costs passed through Rider PSR to customers during the 2019 audit period met the Commission's requirement to be just, reasonable, and prudently incurred. Likewise, the Audit Report shows that not all of the actions taken were in the bests interests of customers. Despite raising significant concerns with decisions and actions taken related to the OVEC plants, and the costs passed through to customers, large sections of the Audit Report lack the requisite analysis or conclusions to meet Duke's burden in this case.

The Audit Report states that "LEI's analysis shows that at this time the OVEC plants cost customers more than the cost of energy and capacity that could be bought on the PJM wholesale markets."[27] Despite this, the Auditor still does not reach the conclusion that the costs passed through Rider PSR were unjust, unreasonable, or imprudently incurred, as in the Auditor's opinion, "there may be other considerations, such as providing employment at the plants, or the plants' contributions to fuel diversity in the State, that outweigh the impact on ratepayers, which the Ohio legislature takes into consideration."[28] Rather, the Audit Report seems to base its ultimate conclusion off of these "other considerations," but the Audit Report is altogether devoid of substantive discussion on these "other considerations." Nor did the RFP issued in this proceeding

[27] Staff Ex. 1, Public Audit Report at 9.

[28] *Id*.

instruct the Auditor to factor or rely upon any of these purported "other considerations" into its prudency and performance review of the OVEC plants.[29]

For example, the Audit Report found that both coal plants had more employees than the average coal plant in PJM.[30] However, the Auditor stated it was outside the scope of the audit to determine whether considerations of employment potentially outweigh the inflated costs of energy and capacity at the facilities.[31] Moreover, at the evidentiary hearing, Dr. Fagan did not know whether the Amended and Restated ICPA would require the OVEC plants to remain open regardless of whether customers pay Rider PSR.[32] Nor did Dr. Fagan know whether there would be any job loss at the plants if customers stopped paying Rider PSR.[33]

Furthermore, the Auditor did not know whether considerations for fuel diversity should outweigh Rider PSR's rate impacts to customers.[34] She simply was raising the issue for "context;" however, the Auditor did not research or study Ohio's fuel diversity during the audit period.[35] In fact, data from the U.S. Energy Information Administration (EIA) demonstrated that closing coal-fueled facilities would contribute to Ohio's fuel diversity more so than maintaining them. Growth in use of resources other than coal have primarily driven increases in Ohio's fuel diversity over the past two decades; as the share of coal-fueled plants decreases.[36] This indicates that Ohio's utility-scale energy sources for electricity generation have significantly diversified over the last

---

[29] *See* OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 4 (Feb. 13, 2020).

[30] Staff Ex. 1, Public Audit Report at 98; Tr. Vol. II at 156 (Cross Examination of Fagan).

[31] Tr. Vol. II at 33 (Cross Examination of Fagan).

[32] *Id*. at 154-55.

[33] *Id.* at 155.

[34] *Id.* at 33-34.

[35] *Id.* at 157-58.

[36] OMAEG Ex. 5, EIA's Ohio State Energy Profile; Tr. Vol. II at 160-62 (Cross Examination of Fagan).

two decades, and retaining coal operations for the sole purpose of having diversity of resources is unnecessary and imprudent.

Furthermore, the Auditor failed to make final conclusions as required by the Commission's Orders establishing the Rider PSR audit[37] and the RFP issued in this case.[38] LEI declined to state whether certain costs passed through to customers through Rider PSR were just, reasonable, or prudently incurred, or whether the actions taken to incur those costs were in customers' best interests. Instead of making these important, required determinations, the Auditor merely stated that "the processes, procedures, and oversight were *mostly adequate* and consistent with good utility practice, given that the ICPA is in place and customers will be charged for the cost of the plants until at least May 2024."[39] The Auditor seems to base its conclusion that the practices related to OVEC were *mostly adequate* on the premise that customers will be forced to pay the costs of the OVEC plants through May 2024 no matter what.

However, as Dr. Fagan noted at the evidentiary hearing, the RFP did not direct the Auditor to consider the prudency of costs subject to the ICPA.[40] The Auditor also failed to consider whether its findings or recommendations would change if the ICPA did not exist and if customers were not forced to pay Rider PSR.[41]

Indeed, the Auditor was not even willing to make an affirmative statement that the practices associated with OVEC were prudent. At the evidentiary hearing, Dr. Fagan testified that

---

[37] *See* OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018).

[38] *See* OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 4 (Feb. 13, 2020).

[39] Staff Ex. 1, Public Audit Report at 9 (emphasis added).

[40] Tr. Vol. II at 96-97 (Cross Examination of Fagan).

[41] *Id.* at 138-39.

overall, charges passed through to customers were "more on the prudent side."[42] However, the RFP did not direct the Auditor to determine whether costs were more on the prudent side; it tasked the Auditor with ensuring that all of the costs and sales flowing through Rider PSR were prudently incurred.[43]

As Dr. Fagan noted at the evidentiary hearing, the Auditor failed to perform a significant amount of analysis necessary to reach a determination as to whether costs passed through Rider PSR were just, reasonable, and prudently incurred, or whether the actions taken were in the best interests of customers. For example, the Auditor failed to perform a review for conflicts of interest between Duke and its affiliates.[44] The Auditor did not consider whether the actions taken regarding the operations of OVEC were in the best interests of customers, or whether those actions were in the best interests of some third party.[45]

The Auditor also failed to perform certain analysis regarding the uneconomic nature of the plants. At the hearing, Dr. Fagan did not know if Duke performed any analysis of the potential benefits to customers from switching to an economic dispatch strategy or a seasonal commitment strategy.[46] Nor did LEI examine whether the uneconomic nature of the OVEC plants is likely to change going forward.[47] LEI also did not attempt to quantify impacts to customers' PSR charges based on outages caused by the baffle wall at Clifty Creek Unit 6.[48]

[42] Tr. Vol. II at 32 (Cross Examination of Fagan).

[43] *Id.* at 24.

[44] *Id.* at 80-83.

[45] *Id*.

[46] *Id.* at 169.

[47] *Id.* at 144.

[48] *Id.* at 152-53.

Despite mentioning in the Audit Report that some utilities argue that a self-commitment strategy is useful to avoid high startup and shutdown costs,[49] the Auditor did not attempt to quantify these costs. The Auditor did not perform any analysis of what the actual startup or shutdown costs for the OVEC plants would be.[50] Dr. Fagan could not identify these costs at the evidentiary hearing.[51]

Furthermore, the RFP directed the Auditor to ensure that all fuel costs were prudently incurred,[52] and the Auditor found that the OVEC units purchased coal that "exceeded inventory requirements."[53] Despite this finding, the Auditor did not attempt to quantify the cost of excess coal purchases to Duke's customers.[54] Nor did the Auditor conduct a fuel procurement audit during the audit period.[55]

Dr. Fagan's testimony at the evidentiary hearing reveals that the analysis performed by the Auditor, and the conclusions the Auditor reached based on this analysis, falls significantly short of the standard established by the Commission.[56] Based on the Audit Report, Duke is unable to satisfy its burden of proof in the above-captioned proceeding to demonstrate the prudency of all costs passed through Rider PSR. A finding of "more on the prudent side" is insufficient. As

---

[49] Staff Ex. 1, Public Audit Report at 17-18.

[50] Tr. Vol. II at 177.

[51] *Id*.

[52] OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 6 (Feb. 13, 2020) ("The auditor shall ensure that all OVEC's fuel (i.e., coal) and variable operations and maintenance (O&M) related expenses were prudently incurred and properly allocated to Duke. The auditor's investigation shall include a comparison between incurred fuel costs and market prices to evaluate the reasonableness of fuel expenses during the audit period.").

[53] Tr. Vol. II at 149 (Cross Examination of Fagan).

[54] *Id*.

[55] *Id.* at 150-51; Staff Ex. 1, Public Audit Report at 71.

[56] *See* OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal (Feb. 13, 2020); OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018).

explained above, the RFP and, underlying orders, and directives contained therein expressly set forth that the purpose of the annual prudency audit is to "establish the prudency of all costs and sales flowing through the PSR and to demonstrate that the Company made reasonable efforts to transfer its contractual entitlement under the ICPA."[57] Therefore, the limited finding of "more on the prudent side," based on a lack of critical analysis of multiple costs, cannot satisfy this burden. As such, the Audit Report fails to conclude that all of the OVEC costs passed on to customers were prudent, and therefore, should be disallowed.

Accordingly, the Commission should determine that LEI's analysis did not establish that costs flowing through Rider PSR during the audit period satisfy the requisite standard, and thus, should be disallowed in their entirety. Additionally, the Commission should carefully consider how the various aspects of the OVEC plants' operations that were marked for improvement by LEI impacted customers during the audit period, including, but not limited to, the OVEC units' must-run designation.

2. At a Minimum, the Commission Should Disallow All Costs Passed Through Rider PSR During the Audit Period That Are Unrelated to its Intended Function as a Rate Stabilization Charge or That Result From Imprudent Coal Purchases.

The Commission should disallow all charges passed through Rider PSR to customers during the audit period due to a lack of prudency demonstrated in the Audit Report and in record evidence. Furthermore, and, at a minimum, the Commission should disallow all costs passed through Rider PSR during the audit period that are unrelated to the intended function as a financial hedge or are otherwise the result of imprudent decision-making, in order to protect customers.

---

[57] OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 4 (Feb. 13, 2020) (emphasis added).

When the Commission authorized Duke to begin charging customers through Rider PSR, it asserted that Rider PSR would serve as a financial hedge:

> Regarding Rider PSR, Duke maintains that it will benefit ratepayers by serving as a cyclical hedge against generation costs. According to Duke, when generation costs are high. Rider PSR will provide a rate reduction, and, conversely, when generation costs are low. Rider PSR will be an additional cost. The end result, per Duke, is a more consistent and balanced month-to-month bill for customers.[58]

Duke predicted that Rider PSR would cost customers up to $18 million per year, for a net cost of $77 million over the term of Duke's ESP.[59] Despite these exorbitant costs, the Commission found that "the volatility of [energy] 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."[60] Importantly, while the Commission stated that "rate stability is an important consideration," it nevertheless held "that a rate stability proposal must not impose unreasonable costs on customers."[61] Moreover, the Commission previously denied cost recovery through Rider PSR in a prior ESP case when it determined the Rider would likely create costs to customers and "would not provide a sufficiently beneficial financial hedge."[62]

As such, the Commission held that Duke "shall be subject to an annual prudency review of its practices relating to liquidating its contractual entitlements under the ICPA in the wholesale

---

[58] *See* OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 60 (Dec. 19, 2018).

[59] *Id*.

[60] *Id.* at 102.

[61] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 103 (Dec. 19, 2018).

[62] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 26 (Dec. 19, 2018), *citing In the Matter of Application of Duke Energy Ohio, Inc. for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case Nos. 14-841-EL-SSO, et al., Opinion and Order at 46-47 (Apr. 2, 2015); *see also* OMAEG Ex. 1, Seryak Public Testimony at 8.

market," and that customers shall only be charged for prudently incurred costs.[63] In this prudency review, the Commission should exercise its authority to find that Rider PSR is not acting as a financial hedge or rate stability mechanism as proposed and envisioned, and therefore, is unreasonable and is passing on imprudently incurred costs.

The Audit Report demonstrates that Rider PSR collected unreasonable costs from customers far exceeding those required for a financial hedge. The Audit Report established that Duke collected $24,635,143.47 in net costs associated with Duke's contractual entitlement in OVEC in 2019.[64] While the Commission did not explicitly state what would constitute unreasonable Rider PSR charges, as discussed above, the Commission relied on Duke's estimate of $18 million per year in finding that the proposal was not unreasonable.[65] As such, at a minimum, the Commission should exclude from Rider PSR recovery any OVEC costs that exceed Duke's $18 million estimate as those costs are unreasonable.[66] Excessive costs beyond Duke's estimate and what was determined by the Commission to not be unreasonable would have the likely effect of making Rider PSR unreasonable, especially in the aggregate.[67] Duke collected $6.6 million in 2019 over the estimated up to $18 million. If current costs continue, over the life of the ESP, this could create up to $46.2 million in unreasonable, excess costs above the up to $18 million annually

[63] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018) ("Credits or charges shall be based on the difference between prudently incurred costs and the revenues from liquidating Duke's OVEC entitlement in PJM's capacity, energy and ancillary services market.").

[64] Staff Ex. 1, Public Audit Report at 27, Figure 8; *see also* OMAEG Ex. 1, Seryak Public Testimony at 7.

[65] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 103 (Dec. 19, 2018) ("A primary concern of the non-signatory parties is the projected rate impact of the proposed PSR. By Duke's estimate, via Mr. Rose's analysis, the rider will be a net cost to customers of $77 million over the term of the ESP. Duke projected an impact on customer rates of $18 million per year.").

[66] OMAEG Ex. 1, Seryak Public Testimony at 9.

[67] *Id.*

projected by Duke.[68] If Duke collects $24.6 million annually, this amount would also far exceed the projected $77 million for the term of the ESP projected by Duke by approximately $95.2 million.

Additionally, during the audit period, the evidence demonstrates that Duke collected unreasonable costs through Rider PSR including debt payments, which were not included in Duke's capacity bid price.[69] As OMAEG witness Seryak explained in his direct testimony, Duke's decision to not include the full cost of its monthly OVEC demand payment in its capacity bids means that, by definition, those costs are not related to a wholesale market transaction, those costs are not energy or capacity costs, and those costs cannot function as a financial hedge.[70] Furthermore, regardless of whether OVEC is operating or not, sponsoring companies, including Duke, are required to pay the debt obligation.[71] Also, as Duke witness Swez admits, the demand charge is not a cost of energy or capacity.[72] As such, these obligations are a fixed cost that cannot stabilize rates, and should not be passed through Rider PSR.[73] Moreover, the price of a resource's capacity bid should account for operating costs net of energy and ancillary revenue, but not the cost of debt or interest.[74] As witness Seryak stated, "[d]ebt payments related to OVEC should be the responsibility of Duke's shareholders, not Duke's customers."[75] As such, and since "the non-

---

[68] OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 33 (Dec. 19, 2018) ("The term of the ESP shall be from June 1,2018, through May 31, 2025.").

[69] OMAEG Ex. 1, Seryak Public Testimony at 16.

[70] *Id.*

[71] *Id.* at 16-17; Tr. Vol. III at 307 (Cross Examination of Swez); *see also* OMAEG Ex. 10, Inter-Company Power Agreement at Section 8.04.

[72] Tr. Vol. III at 311 (Cross Examination of Swez).

[73] OMAEG Ex. 1, Seryak Public Testimony at 16-17.

[74] *Id.* at 13.

[75] *Id.* at 17.

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, including debt, interest, and shareholder profit."[76]

Duke also passed unreasonable costs through Rider PSR to customers, which resulted from OVEC's imprudent coal purchasing decisions and improper oversight by Duke, a sponsoring company. The Auditor recognized that the OVEC units purchased coal that "exceeded inventory requirements."[77] Additionally, the OVEC units paid above-market prices for coal. "LEI found that for the Clifty Creek plant, the coal purchase prices were about 17% higher than" spot market prices.[78]

Duke witness Swez highlighted the unreasonable and imprudent fuel procurement and inventory management at the OVEC facilities. Although the OVEC units were uneconomical, fuel forecasts were based on the assumption that units would continue running on a must-run basis.[79] Despite being Duke's representative on the OVEC Operating Committee, witness Swez was not familiar with any coal procurement audits performed by Duke or OVEC.[80] Moreover, witness Swez admitted that heightened coal inventory levels represent an increased cost to customers.[81] As such, the Commission should also exclude from recovery all costs resulting from Duke and OVEC's unreasonable and imprudent fuel procurement and inventory management during the audit period.

---

[76] OMAEG Ex. 1, Seryak Public Testimony at 18.

[77] Staff Ex. 1, Public Audit Report at 73-74. Tr. Vol. II at 149 (Cross Examination of Fagan).

[78] Staff Ex. 1, Public Audit Report at 63; Tr. Vol. III at 390 (Cross Examination of Swez).

[79] Tr. Vol. III at 383-84 (Cross Examination of Swez).

[80] *Id.* at 388-89.

[81] *Id.* at 387.

3. At a Minimum, the Commission Should Disallow All Costs Passed Through Rider PSR Resulting from OVEC's Imprudent Must-Run Strategy During the Audit Period.

As discussed above, the record evidence demonstrates that the Commission should disallow all costs passed through Rider PSR during the audit period due to a lack of prudency demonstrated by the Audit Report. Furthermore, and, at a minimum, the Commission should disallow all costs passed through Rider PSR that resulted from OVEC's unreasonable and imprudent must-run commitment strategy, which ensured that the OVEC units would run regardless of whether they operated at a loss, and customers would continue to pay the costs associated with OVEC running at a loss.

During the audit period, each of the OVEC units, excluding Clifty Creek No. 6, was self-scheduled.[82] According to the Audit Report, "[s]elf-scheduling means that the market participant schedules the unit to run regardless of energy prices."[83] This is also known as a "must-run" strategy.

The OVEC Operating Procedures specify that the OVEC units, with the exception of Clifty Creek No. 6, are to be designated as must-run units.[84] OVEC's Operating Committee, which includes a representative from Duke, is ultimately responsible for choosing the commitment strategy for the OVEC units.[85] As such, the OVEC plants operated in the PJM day-ahead market using a must-run commitment status even for periods of time when the variable operating costs exceeded the value of the electricity they produced.[86] During those times, the PJM day-ahead

---

[82] Tr. Vol. II at 39 (Cross Examination of Fagan).

[83] Staff Ex. 1, Public Audit Report at 18.

[84] *Id*. at 44.

[85] Tr. Vol. III at 241-42; 330 (Cross Examination of Swez).

[86] Tr. Vol. II at 121 (Cross Examination of Fagan); Staff Ex. 1, Public Audit Report at 53.

price did not cover the variable costs of running the plants.[87] On average, the OVEC facilities cost customers about $25 more per megawatt-hour than energy and capacity purchased in the PJM market.[88] Duke and OVEC did not take action during the audit period to limit incurring negative energy margins at the plants, and instead operated the plants even when it projected doing so would incur negative margins.[89] Variable costs alone exceeded market location marginal prices over half the time the units were online.[90]

As noted in the Audit Report, "there were times during which the PJM [day-ahead] prices did not cover the variable cost of running the plants."[91] As such, LEI recommended that OVEC reconsider its commitment strategy. The Auditor noted that "efforts to modify OVEC's must-run strategy" following the audit period were prudent, and recommended that Duke continue to do so.[92]

According to the Auditor and Duke, if Duke observes a period in which the units are expected to be "out of the money" and could potentially be decommitted, Duke can inform the Operating Committee, which then discusses the option.[93] According to Duke witness Swez, Duke and OVEC took this step in 2020:

> In fact, this is exactly what happened during the second quarter of 2020 due to the impact of COVID and the resulting low energy prices in PJM. Since the units tended to have a negative margin, at the request of Duke Energy Ohio, as noted on page 44 of the audit report in this proceeding, the Operating Committee voted and approved the use of an Economic commitment status offer during this time. At times, OVEC then utilized this strategy when it made economic sense, in addition

---

[87] Tr. Vol. III at 331-32 (Cross Examination of Swez).

[88] Tr. Vol II at 45 (Cross Examination of Fagan); Staff Ex. 1, Public Audit Report at 17, 26.

[89] OCC Ex. 2, Direct Testimony of Devi Glick at 38 (Oct. 26, 2021).

[90] *Id.*

[91] Staff Ex. 1, Public Audit Report at 53.

[92] Tr. Vol. II at 54 (Cross Examination of Fagan).

[93] *Id.* at 52.

> to changes in scheduled outage timing, to minimize financial losses brought on by the low energy prices because of COVID.[94]

Although the Auditor found Duke's 2020 strategy to change the commitment status for the OVEC units to be prudent, the Auditor failed to find not doing so in 2019 was imprudent. The Auditor did not investigate whether Duke considered changing strategies during the Audit Period.[95] In fact, the Auditor did not even inquire if Duke took that step.[96] Nor is the Auditor aware if Duke performed analysis of the potential benefits to customers from switching to an economic dispatch strategy or a seasonal commitment strategy.[97]

Moreover, the Auditor did not perform any analysis to quantify the startup or shutdown costs of the OVEC facilities.[98] As such, the Auditor cannot identify the costs associated with different commitment strategies.[99] Nor did the Auditor evaluate a re-dispatching of the OVEC units.[100] Without this information, the Auditor cannot (and did not) compare the economic benefits to customers of various commitment strategies.

The record demonstrated that despite the prudency of modifying the OVEC units' commitment strategy, Duke made no effort to do so during the 2019 audit period. No efforts were made to modify the commitment strategy until 2020.[101] As noted by Duke witness Swez, Duke's representative on the OVEC Operating Committee, OVEC did not even perform any formal

---

[94] Duke Ex. 1, Direct Testimony of John D. Swez at 11 (Oct. 19, 2021) (Public Version).

[95] Tr. Vol. II at 52-53 (Cross Examination of Fagan).

[96] *Id.* at 54.

[97] *Id.* at 169.

[98] *Id.* at 177.

[99] *Id.*

[100] *Id.* at 168-69.

[101] *See* OMAEG Ex. 13, LEI-DR-01-005, Attachment C.

analysis into the must-run commitment strategy during 2019.[102] As noted by OCC witness Glick, "[a]lthough Duke had detailed daily analysis on the cost to operate the OVEC plants, and the authority under the [ICPA] to at least influence some of the operational decisions at OVEC, the Company declined to invoke that authority during 2019."[103]

Duke has not presented any evidence that it attempted to re-consider, analyze, evaluate, discuss, or take any other actions within its authority in regards to the OVEC units' must-run strategy at a time when utilities "have begun shifting away from self-committing and towards economic dispatch and seasonal commitments in response to increased regulatory scrutiny."[104] Duke witness Swez, Duke's representative on the Operating Committee, noted the steps that the Committee can take in order to evaluate re-dispatching the OVEC units:

> [W]e would have our best indication of the forecasted margin of the unit based on, again, the forecasted forward market prices for energy in PJM….If they are—the forecast shows they are not economic to run, now you have to think about and examine all the other factors we talked about earlier such as startup costs, shutdown costs, risk to cycling, any required maintenance to perform, environmental testing, you know, ramp rate, all the other physical and other parameters you would have to start at that point to consider.[105]

The Office of the Ohio Consumers' Council (OCC) witness Haugh also testified as to the steps a generator should take in evaluating its dispatching or commitment strategy:

> The plant operator should do a daily analysis of the costs and expected revenues from participating in the Day-Ahead Energy Market. The analysis should cover not only that day, but the next several days ahead for units that are not easily turned on and off. If the analysis shows that the expected revenue will cover the plant's variable operating cost, then the operator can commit the plant to the Day Ahead Energy Market. If the plant's variable operating costs, plus shut-down and start-up costs, are projected to exceed expected revenues for a few days or longer, then the

[102] Tr. Vol. II at 343-44 (Cross Examination of Swez).

[103] OCC Ex. 2, Direct Testimony of Devi Glick at 47 (Oct. 26, 2021).

[104] Staff Ex. 1, Public Audit Report at 19.

[105] Tr. Vol. III at 244-45 (Cross Examination of Swez).

> operator should either designate the plant as economic or shut down the plant until prices recover.[106]

Additionally, the OVEC plants consist of aging, dirty coal generation facilities. In fact, the OVEC facilities are the the oldest utility-owned coal fired power plants in the United States over 20 MW in size without a scheduled retirement date.[107] However, Duke has announced accelerated reitreiment dates for a number of coal plants that are *newer* than the OVEC facilities.[108] Various groups, such as the Sierra Club and the Union of Concerned Scientists, criticize the idea of self-committing these dirty coal generation facilities.[109]

However, as noted above, neither Duke nor the Operating Committee, took any of these steps during the audit period.[110] Moreover, Duke witness Swez testified that during the audit period the OVEC Operating Committee met only three times.[111] The Committee did not discuss or consider holding more meetings.[112] The Auditor recognized this shortcoming, and recommended that Operating Committee "meetings should be held more frequently to deal with updates on each plant's operating performance, cost of service or profit/loss statements for market-based revenues derived from the PJM markets in a timelier manner."[113]

Importantly, the Auditor did find that the post audit efforts to change and the actual change of the must run strategy to economic to be prudent. Nonetheless, at the evidentiary hearing, Dr.

---

[106] OCC Ex. 1, Direct Testimony of Michael P. Haugh at 20 (Oct. 26, 2021).

[107] OCC Ex. 2, Direct Testimony of Devi Glick at 12 (Oct. 26, 2021).

[108] *Id.* at 12-13.

[109] Staff Ex. 1, Public Audit Report at 19; Tr. Vol. II at 42-44 (Cross Examination of Fagan).

[110] Tr. Vol. III at 343-44 (Cross Examination of Swez).

[111] *Id.* at 280-81.

[112] *Id.* at 283.

[113] Staff Ex. 1, Public Audit Report at 54.

Fagan noted that the Operating Committee choosing to dispatch the plants on an economic basis rather than a must-run basis *may* have been prudent and in the best interests of ratepayers.[114]

Given that it was prudent to make this change in 2020 when the plant was operating at a loss, it was clearly imprudent to not act in the same manner in 2019. Duke had an obligation to ensure that costs passed through to customers during the audit period were reasonable and prudently incurred.[115] Moreover, the Auditor was to "review the prudency of unit scheduling and bidding of energy into PJM-administered wholesale markets, including day-ahead and real-time energy markets."[116] The record evidence in this proceeding demonstrates that Duke acted imprudently in dispatching and scheduling the OVEC units during the audit period, resulting in imprudent and unreasonable costs being passed through to customers through Rider PSR. For the foregoing reasons, OMAEG and Kroger respectfully request that the Commission disallow any costs passed through Rider PSR during the audit period in 2019 that resulted from the OVEC units' must-run strategy.

C. Operating the OVEC Plants is not in the Best Interests of Customers.

Finally, the Commission should consider the Auditor's original conclusion in a nearly identical audit, which was curiously omitted from the final Audit Report in that proceeding and this proceeding that continuing to operate the OVEC plants is not in the best interest of ratepayers. As such, any costs incurred through the continued operation of the plants is imprudently incurred, and should be disallowed from recovery through Rider PSR. The Commission should also determine that the Auditor improperly conducted the audit, undermining the validity of the Audit

---

[114] Tr. Vol. II at 163-64 (Cross Examination of Fagan).

[115] *See* OMAEG Ex. 4, *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 17-32-EL-AIR, et al., Opinion and Order at 46 (Dec. 19, 2018).

[116] *See* OMAEG Ex. 3, Entry and Request for Proposal No. RA20-PPA-3, Request for Proposal at 5 (Feb. 13, 2020); Tr. Vol. II at 25 (Cross Examination of Fagan).

Report. Record evidence in this proceeding shows that the Audit was not conducted in an independent manner or consistent with the Commission's Order in Case Nos. 17-32-EL-AIR, et al., or compliant with the RFP issued by Staff in this proceeding.

First of all, it is unclear how the audit could have been conducted consistent with the Commission's orders, as the Auditor does not appear to have adequately reviewed the orders when conducting the audit. The Auditor did not review the Commission's decision initially establishing Rider PSR.[117] The Auditor only briefly reviewed the Commission's decision allowing cost recovery through Rider PSR.[118] The Auditor confirmed that she did not review the Audit Report to make sure it was in compliance with either of these orders.[119]

As discussed by OCC witness Haugh, when the variable costs exceed the forecasted revenue from operating a must-run generation resource, the owner of that resource should consider changing the commitment strategy.[120] If the startup and shutdown costs make an economic commitment strategy infeasible, then the owner should consider shutting the resource down.[121]

Dr. Fagan, who led the Rider PSR Audit, noted that generation is typically priced at market.[122] Generally, absent government subsidies, it would not be economical for a generator to continuously operate at a loss in a deregulated market.[123] At the evidentiary hearing Dr. Fagan,

---

[117] Tr. Vol. II at 108 (Cross Examination of Fagan) ("I don't think we read the first one.").

[118] *Id.* ("I think we reviewed that briefly.").

[119] *Id.* at 109 ("We did not do that.").

[120] OCC Ex. 1, Direct Testimony of Michael P. Haugh at 20 (Oct. 26, 2021) ("The plant operator should do a daily analysis of the costs and expected revenues from participating in the Day-Ahead Energy Market. The analysis should cover not only that day, but the next several days ahead for units that are not easily turned on and off. If the analysis shows that the expected revenue will cover the plant's variable operating cost, then the operator can commit the plant to the Day Ahead Energy Market. If the plant's variable operating costs, plus shut-down and start-up costs, are projected to exceed expected revenues for a few days or longer, then the operator should either designate the plant as economic or shut down the plant until prices recover").

[121] *Id.*

[122] Tr. Vol. II at 120 (Cross Examination of Fagan).

[123] *Id.*

testified that she is not aware of any merchant generators in PJM that operate their plants on a must-run commitment status for long periods of time when their variable operating costs exceed the value of energy that they produce.[124] Therefore, absent the subsidies from Rider PSR, it is reasonable to assume that an unprofitable generation facility will eventually exit the market.[125] Record evidence in this case demonstrates that the OVEC facilities will continue to be uneconomic moving forward. As noted by OCC witness Glick, the cost of energy and capacity from OVEC units has exceeded market prices for several years.[126] As such, it is not in customers' best interests, nor prudent or reasonable, to continue operating the OVEC facilities.

LEI's analysis shows at this time the OVEC plants cost customers more than the cost of energy and capacity that could be bought on the PJM wholesale markets.[127] On average, the OVEC facilities cost customers about $25 more per megawatt-hour than energy and capacity purchased in the PJM market.[128] In fact, the Auditor determined that the OVEC plants lost money every month during the audit period except for January.[129] Despite this finding, LEI did not examine whether the uneconomic nature of the OVEC plants is likely to change going forward.[130]

At the evidentiary hearing, Duke witness Swez attempted to argue that operating the OVEC plants is in the best interests of customers. Witness Swez used misleading calculations to attempt

---

[124] Tr. Vol. II at 123-24 (Cross Examination of Fagan).

[125] *See* Tr. Vol. II at 127 (Cross Examination of Fagan) ("So leaving aside defining subsidy, some plants operate at a loss in deregulated liberalized markets for a number of years because they expect in the years when prices are high to make back their returns. But for a long period of time, let's call that say three years or more, if you didn't think you were going to make back your money, you know, three plus years, and you didn't have another source, whether or not it's a subsidy, however that's defined, then you would probably consider leaving the market.").

[126] OCC Ex. 2, Direct Testimony of Devi Glick at 16-17 (Oct. 26, 2021).

[127] Tr. Vol. II at 31 (Cross Examination of Fagan).

[128] *Id.* at 45; Staff Ex. 1, Public Audit Report at 17, 26.

[129] Tr. Vol. II at 49 (Cross Examination of Fagan).

[130] *Id.* at 144.

to quantify this alleged benefit, including only looking at a portion of the costs actually passed through Rider PSR. By leaving out the fixed costs,[131] Duke attempts to argue that the OVEC plants "produced…gains between energy and capacity in the year 2019."[132]

According to witness Swez, projected revenue "is used to inform, not necessarily determine, the commitment decision"[133] This analysis looks at revenue, hourly dispatch, and variable costs.[134] However, the OVEC Operating Committee only accounts for variable costs and revenues in the profit and loss report. It "does not include fixed costs which are a component…[used] to get to a $2 million [monthly] loss" as identified in the Audit Report.[135] In fact, Duke witness Swez, who is on the Operating Committee, does not know if anyone at Duke or OVEC performs a forecast that included fixed costs: "There may have been someone else that did a forecast that included fixed costs. I did not do a forecast that includes fixed costs."[136] OMAEG witness Seryak noted that Duke charges its customers for more than just the variable costs of fuel:

> Rider PSR is recovering from customers significant other costs included in the monthly demand payment that Duke owes to OVEC, which includes debt payments. These costs were not included in Duke's capacity bid price, were thus not part of a wholesale market transaction, and thus cannot be included as a recoverable cost through Rider PSR. These costs exceeded the net revenue Duke received from the energy and capacity markets as compared to its bids, Because of this, instead of customers receiving credits through Rider PSR, Duke collected net costs from customers through Rider PSR. There are several reasons why these

---

[131] Tr. Vol. III at 253 (Cross Examination of Swez) ("I obviously can take the projected revenues and subtract the fixed costs from that and arrive to a number that makes me aware of what the units total including -- inclusive of the fixed costs are and what that would -- would charge to a customer. So, yes, I am aware of that. However, any forecast that -- most every forecast I can think of I've ever seen would not take the fixed costs out.").

[132] *Id.* at 251.

[133] *Id*. at 243

[134] *Id.* at 243-44.

[135] *Id.* at 250-51.

[136] Tr. Vol. III at 251 (Cross Examination of Swez).

significant other costs, including debt repayments, do not meet the ESP IV Settlement terms or the ESP IV Order.[137]

Unfortunately for customers, while Duke and the OVEC Operating Committee only consider variable costs, customers still must pay the fixed costs through Rider PSR. These "non-market charges in Rider PSR far exceed the net-revenue credits from wholesale transactions, creating charges to customers."[138] In fact, Duke's representative on the OVEC Operating Committee noted that these cost are ultimately borne by customers, even though Duke and OVEC do not consider them in their dispatch decision.[139]

Net OVEC costs, which are eventually passed on to customers, include variable costs for operating the OVEC facilities as well as fixed charges for debt service and demand as well as fixed costs for maintenance of the OVEC facilities.[140] Once the fix costs are included, the OVEC facilities resulted in $24.6 million in costs charged to customers through Rider PSR during the Audit Period.[141] As such, it is imprudent, unreasonable, and not in the best interests of customers to continue operating the OVEC plants and passing costs through to customers through Rider PSR. As OMAEG witness Seryak concluded, "the recovery of all of the net costs associated with Duke's contractual entitlement in OVEC through Rider PSR is unjust and unreasonable."[142] Moreover, it appears that the Auditor originally came to this conclusion in auditing the OVEC plants, but ultimately omitted that conclusion when filing its final Audit Reports on the issue. As noted above,

[137] OMAEG Ex. 1, Seryak Public Testimony at 16.

[138] *Id.* at 18.

[139] Tr. Vol. III at 253 ("That's more on the rate side. I'm the generation dispatch person who is looking at variable costs and variable revenues….I would have to assume that someone on the rates or rates department would have done that calculation; but, again, my group provides the variable revenues and variable costs.") (Cross Examination of Swez).

[140] Tr. Vol. III at 287 (Cross Examination of Swez).

[141] Tr. Vol. III at 360 (Cross Examination of Swez); *see also* Staff Ex. 1, Public Audit Report at Figure 8, Column I.

[142] OMAEG Ex. 1, Seryak Public Testimony at 17.

LEI performed Duke's Rider PSR Audit at the same time it performed another audit for another Ohio EDU (AEP Ohio), regarding a similar recovery mechanism for costs associated with the OVEC facilities.[143] Dr. Fagan led LEI in performing both audits, and testified in both audits.[144] LEI conducted both audits simultaneously, and at one point, the Auditor considered doing simultaneous site visits.[145] The Auditor reviewed the same OVEC costs and revenues for 2019.[146] The companies have different revenue shares from the revenues, but the same OVEC bills were used.[147] According to the Auditor, "all the drafting was simultaneous" between the two audit reports.[148] LEI filed the AEP Ohio Audit Report on September 18, 2020, and filed the Duke Audit Report in October.[149]

As Dr. Fagan testified at the hearing in this case, Paragraph 1.3 is nearly identical in both audit reports.[150] However, she explained that a previous version of Paragraph 1.3 of the AEP Ohio Audit Report contained the conclusion "Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers."[151] The Auditor further explained that she sent a draft version of the AEP Ohio Audit Report to Staff before filing it, and received feedback from Staff.[152]

---

[143] *See In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018*, Case Nos. 18-1004-EL-RDR, et al., Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company (Sept. 16, 2020) (Public Version).

[144] Tr. Vol. II at 184-86.

[145] OMAEG Ex. 7, Email from Dr. Fagan (Aug. 4, 2020).

[146] Tr. Vol. II at 186 (Cross Examination of Fagan).

[147] *Id.* at 200.

[148] *Id.*at 219

[149] *Id.*at 57.

[150] Tr. Vol. II at 208 (Cross Examination of Fagan).

[151] *Id.*at 214.

[152] *Id.* at 68.

Dr. Fagan testified at the hearing that Staff proposed changes or commented as to the tone and intensity of the draft AEP Ohio Audit Report.[153] Dr. Fagan further explained that part of the e-mail was in regards to Paragraph 1.3 of the AEP Ohio Audit Report.[154] After receiving Staff's comments, Dr. Fagan testified that she made changes to paragraph 1.3 of the AEP Ohio Audit Report. She also explained that a similar statement or conclusion does not appear in the final filed version of that report.

Dr. Fagan testified that, subsequently, she forwarded the draft Duke Audit Report, dated October 2, 2020, to Duke on October 5, 2020.[155] Duke sent feedback, changes, and corrections which the Auditor could have decided to incorporate into the final draft.[156] The Auditor confirmed that neither this draft version, nor the final filed version of the Duke Audit Report, contained a similar conclusion that was in the previous draft audit report: "Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers."

Based on the record evidence, it appears that in conducting her audits concerning the OVEC plants, the Auditor originally reached the conclusion that continuing to operate the OVEC plants is not in the best interests of customers. However, due to suggestions from Staff, this conclusion was omitted from any final audit reports filed with the Commission. Accordingly, when issuing a decision in the above-captioned proceeding, the Commission should contemplate whether the audit was conducted in a manner that comports with the Commission's orders issued regarding the OVEC plants and the subsidies paid for by customers and whether the audit was conducted independently.

---

[153] Tr. Vol. II at 209 (Cross Examination of Fagan).

[154] *Id.* at 211-12.

[155] *Id.*at 64-65; OMAEG Ex. 2, E-Mail from Dr. Fagan (Oct. 5, 2020).

[156] Tr. Vol. II at 74-75 (Cross Examination of Fagan).

As long as the OVEC plants continue to operate, they will continue to be an unreasonable and imprudent cost unfairly borne by customers through Rider PSR. The Commission did not set any dollar amount as a cap for total OVEC recovery.[157] Although the Commission established a monthly customer cap, amounts that are not paid are deferred as under-recovery amounts and ultimately recovered from customers at a later point.[158] The Commission, therefore, should determine that continuing to operate the OVEC facilities is imprudent, unreasonable, and not in the best interests of customers.

IV. CONCLUSION

Duke cannot satisfy its burden of proof in demonstrating that all costs flowing through Rider during the audit period were prudently incurred, reasonable, or that the actions taken were in the best interest of customers. Instead, record evidence demonstrates that Rider PSR is used to subsidize Duke and that OVEC's voluntary and imprudent must-run strategy, overpriced coal purchases, and debt payments should be the responsibility of shareholders, not captive utility customers. As the Auditor has previously concluded about OVEC, continuing to operate the OVEC plants is not in customers' best interest.

---

[157] *Id.* at 180-81.

[158] Tr. Vol. II at 180-81 (Cross Examination of Fagan).

For the aforementioned reasons, OMAEG and Kroger respectfully request that the Commission disallow all costs flowing through Rider PSR during 2019. At a minimum, the Commission should disallow all costs passed through Rider PSR resulting from OVEC's imprudent must-run commitment strategy, that are unrelated to the intended function as a rate stabilization charge, that are a result of imprudent coal purchases, and that are otherwise the result of imprudent decision-making.

Respectfully submitted,

/s/ *Kimberly W. Bojko*
Kimberly W. Bojko (0069402) (Counsel of Record)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
bojko@carpenterlipps.com
(willing to accept service by email)

Counsel for the Ohio Manufacturers' Association Energy Group

/s/ *Angela Paul Whitfield*
Jonathan Wygonski (0100680)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4100
paul@carpenterlipps.com
wygonski@carpenterlipps.com
(willing to accept service by email)

Counsel for The Kroger Co.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 29, 2022 upon the parties listed below.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

Counsel for Ohio Manufacturers' Association Energy Group

thomas.lindgren@ohioattorneygeneral.gov
rocco.dascenzo@duke-energy.com
jeanne.kingery@duke-energy.com
larisa.vaysman@duke-energy.com
elyse.akhbari@duke-energy.com
mkurtz@BKLlawfirm.com
kboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com
angela.obrien@occ.ohio.gov
john.finnigan@occ.ohio.gov

Attorney Examiners:
matthew.sandor@puco.ohio.gov
nicholas.walstra@puco.ohio.gov