Ohio Environmental Council's *Initial* Comments
In the Matter of the OVEC Generation Purchase Rider Audits
21-0477-EL-RDR

Date: May 8, 2023

The OEC thanks this Commission for the opportunity to comment on the 2020 audit of the Legacy Generation Rider and its beneficiary, the OVEC coal plants. The Legacy Generation Rider and OVEC have been subject to significant public scrutiny. This review provides four key recommendations. These recommendations repeat many of the 2019 OVEC audit recommendations. These ongoing concerns require an evidentiary hearing to ensure the utmost transparency in OVEC charges. If this Commission does not elect for an evidentiary hearing, the OEC urges this Commission to adopt all of the audit recommendations and refund customers for imprudent equity expenses and unreasonable reliability deficits.

<u>Public Criticism of Legacy Generation Rider</u>

The legislation creating the Legacy Generation Rider, generally known as HB 6, is the result of Ohio's biggest corruption scandal. Several Ohio political figures have been convicted of receiving bribes to pass this legislation.[1] In addition, the coal plants owned by OVEC have received significant criticism for their contribution to climate change.[2] Following this scandal, and OVEC's ongoing contributions to climate change, the public has called for robust oversight of these coal plants.[3]

[1] Mark Feuerborn, Householder, Borges found guilty in Ohio's largest bribery scandal, NBC4i (Mar. 9, 2023 at 10:04 pm).
https://www.nbc4i.com/news/local-news/verdict-reached-in-householder-bribery-trial/.
[2] 22-900-EL-SSO et al, Transcript of Hearing held on Tuesday, May 2, 2023 at p 169, lines 7-17 (filed May 8, 2023).
[3] Karen Kasler, *Environmental activists say Ohio utility regulators could halt fees for two coal-fired plants* Statehouse News Bureau (April 5, 2023 at 4:34 pm) https://www.statenews.org/government-politics/2023-04-05/environmental-activists-say-ohio-utility-regulators-could-halt-fees-for-two-coal-fired-plants.

The public has also criticized the large potential earnings HB6 authorized. "Ohioans are expected to subsidize OVEC's utility owners around $850 million total by 20230."[4] Ohioans have already paid nearly $400 million even with a short period of credits to customer's bills.[5] A war and supply chain issues led to a small credit of between 29 to 48 cents on customers' monthly bills from 2022 to early 2023.[6] However, by March 2023, OVEC was once again operating at a loss and a charge on customers' bills.[7] This short credit period shows it takes extreme circumstances—a war and a global pandemic—for OVEC to become profitable. Even then, OVEC only became profitable at a marginal amount compared to overall losses. Given these circumstances, the current estimates of extreme losses through 2030 are reasonable.

These Cold War era assets are over 60 years old and have had reliability concerns throughout the two most recent audits. For example, auditors have consistently noted concerns with efficiency at the plants. The audit covering 2016-2017 recommended AEP Ohio implement a sliding pressure control strategy during low load periods to reduce unit heat rates (a measure of plant efficiency).[8] The audit in this case also noted that both plants had heat rates above PJM averages in 2020. In the recent Winter Storm Elliot, several fossil fuel plants in and around Ohio failed.[9] PJM has announced it will fine several plants for failures to operate during Winter Storm Elliot, resulting in power outages. These reliability concerns for coal generation generally, leave Ohioans wondering about the reliability of OVEC.

<u>The 2020 Audit in this case</u>

The auditors in this case made four key recommendations applicable to all three utilities:

1. Remove payments per common share (Component (D)) as part of the fixed costs assessed in the OVEC bill.
2. Allow the flexibility for OVEC coal plants to switch from a constant operation (must-run) status to an economic commitment status which limits operation to the most profitable periods.
3. Improve coal burn forecast methods to limit the over purchase of coal.
4. Apply a cap to capital expenditures to deter overspending.

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[4] 21-0477-EL-RDR, *Application Interlocutory Appeal, Request for Certification to the PUCO Commissioners and Application for Review by Office of the Ohio Consumers' Counsel*, Exhibit, Runnerstone Report, *House Bill 6's Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More* (March 24, 2023) (filed April 12, 2023) (hereinafter "Subsidy Report").

[5] Id.

[6] During the fall to early winter, AEP Ohio customers received a 48 cent credit each month. Duke's residential customers received a 36 cent credit each month. AES Ohio's residential customers received a 29 cent/month credit. Kathiann M. Kowalski, *As Ohio Regulators sit on Coal Plant Subsidy Cases, Costs would Rack up for Ratepayers*, Ohio Capital Journal (October 17, 2022) https://ohiocapitaljournal.com/2022/10/17/as-ohio-regulators-sit-on-coal-plant-subsidy-cases-costs-could-rack-up-for-ratepayers/.

[7] Subsidy Report, *supra* note 2.

[8] 18-1003-EL-RDR (Audit Report at 6, 87).

[9] https://www.utilitydive.com/spons/winter-storm-elliott-proved-fossil-fuel-plants-are-an-infirm-resource/641320/.

The auditors also noted the status of two recommendations from the AES Ohio RR audit remained unknown. Those recommendations were (1) to examine small projects and determine if they are capital in nature and (2) formally document the procedures for cost recovery for OVEC capital costs and expenses. That audit recommended a report on the potential benefits of ancillary services which was pending at the time of this audit but is likely now complete.

Finally, the auditors found the OVEC plants struggled to maintain two key efficiency metrics. OVEC heat rates, "an indicator of the efficiency in converting thermal energy from fuel into electrical energy," were higher than 2019 and higher than PJM averages. OVEC's capacity factors, measuring whether a plant operated to its full potential, were worse than OVEC's 2019 rates. On two additional metrics, the OVEC plants saw some declines and some improvements, and remained within PJM averages. Thus, the OVEC plants' efficiency remains average at best, and in many cases worse, compared to PJM and its own past performance.

Given these findings and the ongoing public criticism of OVEC, this case requires a full evidentiary hearing to fulfill the transparency anticipated in ORC 4928.148. Even if this Commission decides to forgo an evidentiary hearing, the audit gives sufficient evidence to adopt its findings and issue credits to customers for imprudent and unreasonable costs.

I. <u>The OEC Urges this Commission to order an evidentiary hearing in this case.</u>

This audit requires an evidentiary hearing to work towards restoring public trust and develop a full factual record. The OEC formally raises objections to the April 7, 2023 order to the extent that it omits an evidentiary hearing.[10] Rendering a prudence decision prior to an evidentiary hearing breaks with commission precedent. Regardless of commission precedent, a full prudence analysis in this case is critical given the substantial potential cost recovery and the ongoing public criticism of OVEC. Thus, the OEC urges this Commission to use an evidentiary hearing to establish a full factual record before issuing a finding in this case.

An evidentiary hearing for audit reviews is consistent with past precedent.[11] Evidentiary hearings can support public trust by creating an open proceeding with the opportunity for cross-examination and discovery. As noted by OCC in its recent interlocutory appeal, the Supreme Court of Ohio views cross-examination as the most effective tool for fact-finding. These tools provide the public with guarantees that the audit process has received the utmost scrutiny.

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[10] OAC 4901-1-15(F) allows any party adversely affected by an Attorney Examiner's Ruling to file an interlocutory appeal or raise the propriety of the ruling "by discussing the matter as a distinct issue in … any other appropriate filing prior to the the issuance of the commission's opinion and order…." Here, the OEC raises the Attorney Examiner's failure to schedule an evidentiary hearing in its April 7, 2023 as inappropriate and against precedent.
[11] 18-1004-EL-RDR, 18-1759-EL-RDR, 20-165-EL-RDR, and 20-167-EL-RDR.

PUCO Attorney Examiners have even found that omitting an evidentiary hearing is grounds for rehearing.[12] In its memo contra to OCC's recent interlocutory appeal, AEP Ohio relied on a 2016-2017 audit where the Commission issued an order without an evidentiary hearing.[13] However, that case does not support AEP's position that audits without evidentiary are appropriate. The Attorney Examiner in that case granted rehearing after the OCC and OMA raised concerns about the lack of evidentiary hearing.

The public also deserves additional information not available in this audit. This audit gives no information on whether two outstanding recommendations from the 2019 AES RR rider have been implemented.[14] The audit also noted a report on the ancillary service market was still ongoing. The parties and public could benefit from a discovery process to determine the status of these recommendations and review that ancillary services report. Finally, the recommendations in this case raise serious environmental and financial concerns about the OVEC plants' in-flexible must-run status. Each of these concerns would be better addressed through an evidentiary hearing process with opportunities for discovery and cross examination.

Evidentiary hearings provide the necessary opportunity for parties to thoroughly review the audit materials and in this case and ensure a robust audit review process. An evidentiary hearing is particularly important in this case given the ongoing public scrutiny of OVEC. The OEC requests this Board quickly provide an evidentiary hearing and procedural schedule for this audit review.

II. The OEC urges this Commission to adopt all the auditor's recommendations.

The OEC urges this Commission to adopt all of the auditor's recommendations, many of which are consistent with past audits. The auditor's recommendations in this case would limit imprudent costs and environmental harm. Adopting these recommendations fulfills the statutory intent that customers only pay for reasonable and prudent OVEC costs.

The auditor's recommendations for AES Ohio, AEP Ohio, and Duke Ohio related to ensuring prudent capital expenditures and efficient operations. The auditor made the following recommendations:

1. Remove payments per common share (in Component (D)) as part of the fixed costs assessed in the OVEC bill (*originally recommended in the 2019 AEP Ohio PPA rider and Duke Ohio PSR audits*).
2. Allow the flexibility for OVEC coal plants to switch from a constant operation (must-run) status to an economic commitment status which limits operation to the most

[12] 18-1003-EL-RDR.
[13] 21-477-EL-RDR, *AEP Ohio's Memorandum Contra OCC's Request for an Interlocutory Appeal* at 2 (filed April 17, 2023).
[14] 21-0477-EL-RDR, AES Ohio Audit at 11.

profitable periods (*originally recommended in the 2019 AEP Ohio PPA rider and Duke Ohio PSR audits*).

3. Improve coal burn forecast methods to limit over-purchasing coal (*originally recommended in the 2019 AEP Ohio PPA rider and Duke Ohio PSR audits*).
4. Apply a cap to capital expenditures to deter overspending (*originally recommended in the 2019 Duke Ohio PSR audit*).

All of these recommendations reflect outstanding audit recommendations from 2019. Following the 2019 recommendations to switch operations to an economic basis, the OVEC Operating Committee temporarily authorized flexibility for economic based commitments in 2020. The success of that temporary authorization further bolsters the auditor's recommendation in this case to continue allowing the plant to run on an economic basis. Thus, not only are the current recommendations consistent with past audits, the recommendation to operate on an economic basis now has a track record of efficacy.

The recommendations in this case relate to critical concerns of operations and overspending, at the public's financial and environmental expense. The recommendations on whether to operate under a flexible or must-run schedule are key to ensuring the best return in the PJM market and show Ohio residents near the Kyger Creek plant may be withstanding unnecessary air pollution. This audit demonstrates that the OVEC plants are wasting Ohio consumers' money. Thus, the OEC urges this Commission to implement the audit's recommendations.

III. Imprudent equity costs and unreasonable inefficiency costs should result in a credit to customers.

The OEC requests this Commission provide a credit back to customers based on imprudently incurred costs and OVEC's failures to operate efficiently. Ohio law requires this Commission to review the "prudence and reasonableness of the actions of electric distribution utilities" and exclude any imprudent costs from recovery. ORC 4928.148(A)(1). The OEC requests this commission provide customers with credits from: all charges related to equity expenses from 2020; losses incurred when OVEC operated on a must-run basis; and OVEC's poor heat rates and reduced capacity factors.

For yet another year, OVEC billed Ohio customers for improper equity charges. When the Ohio legislature created the Legacy Generation Rider, it wanted to direct this resource to OVEC's costs for running the coal plants. As a result, the legislature explicitly carved out costs for returns on investment OVEC might pay to its owners. ORC 4928.01(A)(42). However, the auditors found OVEC included shareholder payments as fixed costs in Component (D) of its bill. This equity cost is not only imprudent, but illegal, and should be returned to Ohio customers.

2020 also saw renewed efficiency concerns for OVEC. The primary rationale legislators and utility executives provide for the OVEC bailouts is to maintain "critical generation resources" Ohio can rely on in times of need.[15] However, the results of recent audits call into question the efficiency, and thus reliability, of these coal plants. After two 2019 audits recommended the plants were not securing the best prices in the PJM market by operating on a must-run basis instead of an economic basis, OVEC's operating committee temporarily shifted to a flexible approach. Despite redactions in the public audit reports, it appears this temporary basis lasted for the month of May 2020. These audits found that temporary authorization resulted in better prices for OVEC's electricity. It is unreasonable to ask customers to pay for the OVEC coal plants to run continuously when running on an economic basis yields better results.

The audit also found that while these plants were operating on a continuous must-run basis, they were burning through coal much quicker than the PJM average and worse than the previous year performance. At any point where OVEC under an exclusive must-run basis, was unreasonably costly to Ohio customers because it was securing lower compensation for its energy and was taking more resources to produce that energy than the average coal plant in PJM territory. Ohio customers should receive a credit for these inefficient periods where OVEC was operating exclusively on a must-run basis.

The audits in this case reveal consistent problems which should result in a credit to customers. Any charges related to shareholder dividends are imprudent and should be returned to customers. During 2020, OVEC experienced inefficiencies due to unreasonable operating costs, like operating on a must-run basis. These unreasonable operating costs should also result in a credit to customers.

Respectfully Submitted,

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[15] https://spectrumnews1.com/oh/columbus/news/2021/10/19/future-of-the-ovec-bailout-tied-to-hb6-up-in-the-air; https://ohiocapitaljournal.com/2021/06/16/coal-plants-owners-fight-to-protect-worst-of-the-bad-subsidies/.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this filing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 8, 2023 In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below.

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