

**1. BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the OVEC Generation)
Purchase Rider Audits Required by R.C.)
4928.148 for Duke Energy Ohio, Inc., The) Case No. 21-477-EL-RDR
Dayton Power and Light Company, and AEP)
Ohio)

**REPLY COMMENTS OF DUKE ENERGY OHIO, INC.
IN RESPONSE TO THE AUDIT REPORT**

I. INTRODUCTION

Pursuant to the Entry issued on April 7, 2023, comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) and respectfully submits its Reply Comments to the various Initial Comments filed in this case by the Office of the Ohio Consumers' Counsel (OCC), the Sierra Club, the Ohio Manufacturers' Association – Energy Group (OMA-EG), Citizens Utility Board of Ohio/Union of Concerned Scientists (CUB-Ohio), and the Ohio Environmental Council (OEC) (collectively, the Intervening Parties) regarding the compliance audit report (Audit Report) prepared at the direction of the Public Utilities Commission of Ohio (Commission) Staff (Staff) by London Economics International, LLC (LEI or the Auditor), filed in this proceeding on December 17, 2021.

Duke Energy Ohio's Legacy Generation Rider (Rider LGR) was established pursuant to R.C. 4928.148 as a mechanism for the retail recovery of prudently incurred costs relating to a legacy generation resource.¹ Rider LGR encompasses two power plants owned by the Ohio Valley Electric Corporation (OVEC): Clifty Creek and Kyger Creek.

¹ *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry (Nov. 21, 2019).

Section 4928.148(A)(1) requires the Commission to determine the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in on a periodic basis. The underlying case is the first of the LGR prudency audits.

By Entry issued on July 14, 2021, the Commission selected LEI as the third-party auditor to assist the Commission with its prudency and performance review of Rider LGR, as well as the analogous riders of the two other Ohio electric distribution utilities (EDUs) with interests in OVEC, *i.e.*, the Ohio Power Company (AEP Ohio) and AES Ohio a/k/a The Dayton Power and Light Company (AES Ohio) (collectively, along with Duke Energy Ohio, the Sponsoring Companies), for the period from January 1, 2020, through December 31, 2020.²

LEI was tasked with reviewing the costs associated with Duke Energy Ohio's contractual entitlement to a share of the electrical output of generating units owned by the Ohio Valley Electric Corporation, as established in Rider LGR, for the period of January 1 through December 31, 2020 (the Audit Period). The purpose of the Audit was to establish the prudency of all costs and sales flowing through Rider LGR, and to investigate whether the Company's actions were in the best interest of its retail ratepayers. Following an extensive investigation and collection of data, LEI found that, regarding Duke Energy Ohio, "the processes, procedures, and oversight were mostly adequate and consistent with good utility practice, given that the [Amended and Restated Inter-Company Power Agreement (ICPA)] is in place and customers will be charged for the cost of the plants until at least May 2024."³ In the Audit Report, LEI identified no instances of imprudence or disallowance and recommended continuation of many of the practices and activities currently implemented by the Company in managing its interest in OVEC.

² See Request for Proposal No. RA-PPA-1 (attached to the May 5, 2021, Entry), p. 6 ("The audit shall investigate the prudency of all costs and sales flowing through the EDU riders and demonstrate that the Companies' actions were in the best interest of retail ratepayers.").

³ *Id.* at 9.

The various Intervening Parties submitted Initial Comments, pursuant to the Commission-established comment period for the underlying proceeding. For the reasons further outlined below, the Intervening Parties have not identified any reasoning why the recommendation of no disallowances set forth in the Audit Report should be overturned by the Commission. Despite the Intervening Parties' attempts to establish otherwise, the Audit Report was intended to examine the costs of the Inter-Company Power Agreement in comparison to revenues from the sale of power and to ensure that accounting procedures accurately and properly allocate revenues to ratepayers. Under the test for prudence set forth R.C. 4928.148 and informed by Commission precedent, the Audit Report demonstrates that the costs incurred by the ICPA were prudently incurred. The Audit Report represents a robust investigation based upon the submission and evaluation of extensive data requests answered by the Company, conference calls, and numerous email exchanges with the Company.⁴ Following LEI's investigation, the Audit Report did not make any recommendations for exclusions or disallowances based on imprudence. The Intervening Parties' Initial Comments reflect their latest attempt to overturn OVEC cost recovery, despite the fact that the Commission has approved such recovery multiple times, the Supreme Court of Ohio has affirmed such recovery, and the General Assembly has codified such recovery via the definition of legacy generation resources, as set forth in R.C. 4928.148.

Rather than accept the results and recommendations set forth in the Audit Report, the Intervening Parties seek to substitute their judgment for that of the Auditor, inject their general opposition to OVEC-related riders, and seek to rely upon and make recommendations based on information concerning periods well outside the Audit Period in the underlying case. The Intervening Parties' ultimate (unconcealed) goal is the retirement of the OVEC facilities and \$0 in

⁴ See Audit Report at pgs. 8-9 (describing LEI's audit approach).

LGR charges on behalf of the Company and the other EDUs with an interest in OVEC. For the reasons more fully outlined below, the Commission should set aside the Initial Comments of the Intervening Parties and adopt the well-reasoned and comprehensive findings set forth by the Auditor in the Audit Report.

II. REPLY COMMENTS OF DUKE ENERGY OHIO

A. The Audit Report Confirms that Duke Energy Ohio Prudently Managed its Participation in OVEC and Does Not Recommend Any Disallowances.

The LEI Audit Report confirms that Duke Energy Ohio has prudently managed its participation in OVEC and its entitlements. Overall, LEI found that the “processes, procedures, and oversight were mostly adequate and consistent with good utility practice” when considering that the “ICPA is in place and customers will be charged for the cost of the plants until at least May 2024.”⁵ LEI confirmed that Duke Energy Ohio is actively engaged in the management of its entitlement.⁶ In coming to its conclusions, LEI issued numerous formal data requests and held conference calls and interviews with Duke Energy Ohio personnel.⁷ Among other things, LEI found that the Company’s calculations for Rider LGR true-ups were timely and accurate.⁸ LEI found that the OVEC bills, journal entries, and the actual charges on the LGR bills were consistent with one another and had no recommendations regarding these practices.⁹ LEI found that the Company’s capacity offers were formulated prudently, and transparently reflect the risks and reward features of the PJM capacity construct.¹⁰ With respect to OVEC itself, LEI found that OVEC complied with environmental requirements and that its management of emissions

⁵ Audit Report at pg. 9.

⁶ *Id.*

⁷ *Id.* at pg. 23.

⁸ *Id.* at pg. 26.

⁹ *Id.*

¹⁰ *Id.* at pg. 10.

allowance inventories was reasonable and prudent.¹¹ The Audit Report found that recent annual capital expenditures of approximately \$8 to \$9 million represent a small portion of the demand charge paid by the Company and other Sponsoring Companies, and did not recommend any disallowances associated with those expenditures.¹² Further, LEI found that capital projects at OVEC were completed within budget and followed a prudent evaluation process, and that capital investment appears to address environmental issues or improved plant economics.¹³ Regarding power plant operations, the Auditor found that staffing levels had improved in 2020 versus 2019 (*i.e.*, fewer full time employees at the plants), that actual maintenance costs declined faster than planned costs by approximately 46% of budgeted costs, and the OVEC plants were more reliable than industry averages for 2020.¹⁴ The Auditor did not recommend any associated disallowances, but recommended that the Company, in its role on the OVEC Operating Committee, should (1) monitor performance to ensure efficient operation of the plants due to findings associated with its heat rates and capacity factors and (2) determine if it is cost-effective to take measures to improve availability.¹⁵

The Audit Report detailed Duke Energy Ohio's efforts as an active member of the Operating Committee, and in performing its own evaluations as a sponsor to determine what recommendations could be made to improve OVEC's offerings and practices, to the extent possible as a vote on the Operating Committee. The Audit Report did not recommend any disallowances as associated with the Company's interest in OVEC, or its actions during the 2020 Audit Period.

¹¹ *Id.* at pg. 91.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* see generally Section 9.0 *et seq.*

¹⁵ *Id.* at pg. 109.

B. The Intervening Parties Seek to Unreasonably Expand Duke Energy Ohio's Burden in these Proceedings and Overstate the Company's Role in the Management of OVEC.

The Intervening Parties seek to unreasonably expand Duke Energy Ohio's burden in these proceedings by overstating the Company's role in the management of OVEC and its ability to determine when and whether the OVEC units operate, retire, undergo maintenance, and so on. For example, the Sierra Club argues that a "prudent utility" would "have retired the OVEC units during or before calendar year 2020."¹⁶ OMA-EG argues that the Commission should "disregard the ICPA when considering whether the Sponsoring Companies can pass all costs through to customers" and instead evaluate "the prudence or reasonableness of the continued operation of OVEC."¹⁷ Likewise, CUB-Ohio argues that "industry trends" have been "to accelerate retirement" of plants similar to OVEC and that "the PUCO should insist the Companies conduct a retirement study of the cost of continuing to operate the plants versus the cost of retirement."¹⁸ OCC similarly seeks to expand the Company's burden of proof and inflate the Company's ability to control OVEC's output and operation, stating that the Company must demonstrate that "all actions related to the OVEC plants were prudent and in consumers' best interests"¹⁹ and that "the [OVEC] units operations were dictated by OVEC on behalf of AES, AEP, and Duke."²⁰

While the Company maintains the burden of proof in this proceeding, the Intervening Parties unreasonably seek to expand this burden to encompass matters far beyond the scope of this Audit, and the Company's level of control, with respect to OVEC. As the Commission is aware, OVEC is a separate corporation and Duke Energy Ohio is but one of many Sponsoring Companies under the ICPA in the OVEC corporation. Duke Energy Ohio has a nine percent interest in OVEC.

¹⁶ Sierra Club Initial Comments at pg. 3.

¹⁷ OMA-EG Initial Comments at pg. 6.

¹⁸ CUB-Ohio Initial Comments at pgs. 13-14.

¹⁹ OCC Initial Comments at pg. 4.

²⁰ *Id.* at pg. 5.

This means that 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 the Company's personnel do not participate in OVEC's day-to-day operational decision-making. At best, Duke Energy Ohio has only a nine percent "vote" in matters that are brought to the attention of the OVEC board of directors and the OVEC Operating Committee. Moreover, three of the Sponsoring Companies for OVEC operate outside of the PJM marketplace, in the Midcontinent Independent System Operator (MISO) Regional Transmission Organization (RTO) or outside of an RTO altogether, offering an additional layer of complexity to the decision-making process as it relates to OVEC, and bringing operational decisions further outside the Company's control. Although there are multiple OVEC sponsors, there is only one energy offer made for each OVEC unit to PJM. A portion of the physical energy is then delivered to the non-PJM sponsors outside of PJM, or the financial value of the unit is divided among the PJM sponsors after the fact. Operationally, it is simply not possible to split one physical unit into smaller segments of a unit for each sponsor to individually manage. Thus, there is no such thing as a Duke Energy offer for Clifty Creek 1, nor an AES Ohio offer for Clifty Creek 1, nor an AEP offer for Clifty Creek 1, *etc.* Even though each Sponsoring Company's energy is allocated to each unit, including Sponsoring Companies that take energy external to PJM (as mentioned above), as well as those Sponsoring Companies that receive energy revenue from PJM, there is only one unit offer made to PJM for each OVEC unit. The Company's influence in "all actions" is limited to its 9 percent interest. The Company should not be evaluated and face a burden of proof over actions over which it has little or no control (*e.g.*, day-to-day operations, fuel contracts, inventory targets, retirement target dates, *etc.*).

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 OVEC to customers. LEI reviewed the Company's processes and procedures, and its oversight, and found they were consistent with good utility practice. Duke Energy Ohio cannot singlehandedly make decisions for OVEC's operations, on an operational unit basis or otherwise. Neither can it decide when such units are dispatched, retired, and so on. The Intervening Parties' arguments that, because the Company is unable to make such determinations, its actions are somehow imprudent, belies the reality of the operation of OVEC and the nature of the ICPA. This oversimplification and exaggeration of the control one Sponsoring Company exerts over the operations of OVEC is not the standard by which the Company's management of its interests could or should be judged.

Likewise, the Intervening Parties make clear their belief that, if OVEC is operational, *i.e.*, not retired, then cost recovery should be non-existent or zero. At its heart, this is just a rehashing of the Intervening Parties' opposition to House Bill 6, and opposition to OVEC's historic status as a hedge, stemming from the Company's previous Rider PSR to the present. This is not the burden against which the Company's actions in the 2020 Audit Period should be judged.

C. A Commitment Strategy Based Solely Upon an Economic Designation is not in Customers' Best Interests.

Nearly all of the Intervening Parties argue that OVEC's actions in offering the plants on a "Must-Run" basis in the PJM energy markets is grounds for disallowance of OVEC-related charges via Rider LGR.²¹ Most argue that the disallowance should be for the amount of all charges

²¹ See, e.g., OCC Initial Comments at pgs. 4-11 (recommending disallowance of all OVEC-based charges to Rider LGR as "OVEC's commitment of the plants into PJM as must-run units was not prudent and added needless costs to customers."); CUB-Ohio Initial Comments at pg. 8 (arguing the "PUCO should inform OVEC that it is disinclined to approve inclusion in the LGR of energy costs above market value that are incurred when the plants are operated with a must-run status."); OMA-EG Initial Comments at pg. 10 (recommending disallowance and arguing that "At a minimum, it is clear that operating the OVEC plants with a must-run strategy is not reasonable or prudent.").

associated with the Sponsoring Companies' interests in OVEC.²² These arguments should be rejected as they misconstrue the standard of review in the underlying matter and rely upon the various Intervening Parties' misinterpretation of the economics of offering the OVEC plants in the PJM energy market.

1. The Intervening Parties fail to identify any action on the part of the Company that is imprudent as it relates to unit commitment.

The Commission should focus its review primarily on Duke Energy Ohio's actions, versus the Intervening Parties' insistence that the Commission review actions that OVEC has taken during the Audit Period, which the Company, under the FERC-jurisdictional ICPA, cannot control. For example, in its Initial Comments, OCC argues that "[f]or purposes of this case, AES, AEP and Duke's consumers should not pay for any excess costs associated with the imprudent self-scheduling of [the OVEC] units, which could be demonstrated by requiring the PUCO-approved auditor to perform an hour-by-hour dispatch analysis for the entire year."²³ Though Duke Energy Ohio disagrees with the characterization of OVEC's actions during the audit period as being imprudent, the question in this case must focus on what actions *Duke Energy Ohio* took or did not take. R.C. 4928.148 makes clear that the scope of the underlying case is the question of whether "the prudence and reasonableness of the actions of *electric distribution utilities with ownership interest in the legacy generation resource*"—i.e., the Company, not OVEC. In the Request for Proposal seeking audit services in this case, the Commission further explained that Staff, or another auditor selected by the Commission, will review the "accuracy and appropriateness of the rider's accounting and the prudence of *Duke Energy Ohio's* decisions and actions [.]"²⁴ To show imprudence with respect to the "must run" issue (or any other issue) the Intervening Parties must

²² *Id.*

²³ OCC Initial Comments at pg. 8.

²⁴ Entry, May 5, 2021, Request for Proposal for Audit Services at pg. 4.

identify actions taken or not taken by Duke Energy Ohio, not OVEC, with respect to the issue of unit commitment. The Intervening Parties have failed to do so. In fact, Sierra Club has pointed out the steps taken by Duke Energy Ohio as it relates to unit commitment practices which *were* prudent. The Sierra Club identifies the steps taken by the Company to influence the Operating Committee based upon information Duke Energy Ohio compiles and analyzes, as it relates to its OVEC interests, stating:

Duke Ohio appears to have at least attempted to convince the Operations [*sic*] Committee to consider economic shutdowns during prolonged periods of low energy prices. Specifically, Duke Ohio performed forward-looking market analysis and produced Profit and Loss statements that, if acted upon, could have prompted economic shutdowns to avoid periods of significant energy market losses. *See* Duke Ohio Audit, p. 42 (“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 (see Figure 22).”) However, it does not appear that OVEC’s Operations [*sic*] Committee routinely acted on these findings or attempted to avoid the losses projected by DEO. *See id.* (“If DEO observes a period in which the units are expected to be out of the money and therefore should not be committed, DEO informs OVEC, and this option is then discussed in the Operations [*sic*] Committee.”).²⁵

Sierra Club’s description of the ways in which the Company was able to influence the direction of OVEC operations, without actually having control over the day-in and day-out operations of OVEC, does much to accurately depict the type and level of control the Company has as it relates to OVEC. Likewise, as the Auditor correctly noted, Duke Energy Ohio is one of several OVEC Sponsoring Companies under the ICPA, and OVEC maintains an independent Energy Scheduling Department that handles PJM energy market participation for all OVEC companies.²⁶ Duke Energy Ohio and the other Sponsoring Companies participate in the OVEC Operating Committee,

²⁵ Sierra Club Initial Comments at pg. 8, FN 22.

²⁶ Audit Report at pg. 36.

which reviews policies and offers input to OVEC.²⁷ “In order to reach a decision, [the] OVEC Operating Committee must receive at least two-thirds of the affirmative vote from the members.”²⁸ Under the ICPA, the Company has a single vote on the Operating Committee.

The Auditor found no imprudence with respect to Duke Energy Ohio’s actions under the ICPA but had recommendations for continued attempts to influence OVEC outcomes, where possible, given the limited nine percent interest the Company maintains. The Auditor reviewed Operating Committee records and found that “Duke Energy Ohio is well represented in OVEC Operating Committee’s meetings with active engagement.”²⁹ The Auditor further concluded that “the processes, procedures, and oversight were mostly adequate and consistent with good utility practice.”³⁰ The Intervening Parties complaints do not target these Duke Energy Ohio actions but, rather, focus on the actions OVEC took in the PJM energy market. This shifting focus improperly imputes OVEC’s actions to Duke Energy Ohio and is at odds with the stated purpose of the review undertaken by this proceeding – the purpose being to review Duke Energy Ohio’s actions and management of its interest in OVEC.

2. The Intervening Parties’ contention that the OVEC units should be committed as Economic at all times is misguided; failure to do so should not result in a disallowance of all OVEC charges, as most Intervening Parties contend.

For the reasons set forth above, the scope of this Audit proceeding should be the actions of Duke Energy Ohio. However, if considering the actions undertaken by OVEC during the Audit Period, as focused upon by nearly all Intervening Parties in their Initial Comments, the

²⁷ *Id.* at pg. 38.

²⁸ *Id.* at pg. 43.

²⁹ *Id.* at pg. 44.

³⁰ *Id.* at pg. 9.

Commission should still not find any disallowances warranted, in line with the findings in the Audit Report.

In their Initial Comments, nearly every Intervening Party argued that the Commission should disallow all OVEC-based charges to the LGR Rider due to the fact that the OVEC units were committed as mostly “Must-Run” (self-scheduled) during the Audit Period, versus an Economic commitment—where PJM would decide whether or not the units would be operational at any particular time.

Briefly, but importantly, a review of commitment versus dispatch is relevant here, as well as the different types of unit commitment. Unit commitment refers to the process or determination of deciding to run (commit) or not run a generating unit. The term economic dispatch determines the amount of output from each on-line generating resource supplying electricity, generally using the most cost-efficient resources available. The dispatch of a unit describes the movement of a generating unit usually between the unit’s minimum and maximum capability. Both commitment and dispatch of units are subject to any operational limits and environmental considerations affecting the generation unit, as well as those of transmission facilities available to supply that electricity.

PJM allows for four different commitment status offers: Not Available or Outage, Emergency, Economic (PJM-scheduled), and Must-Run (self-scheduled).³¹ For units that are offered with an Economic commitment status, the decision to turn on or continue running a unit is made by PJM. This is also referred to as “pool-scheduled” in PJM.³² 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, but the unit is still economically dispatched (moved) between the unit’s minimum

³¹ PJM Manual 11. Available at: <https://www.pjm.com/~media/documents/manuals/m11.ashx>.

³² *Id.* at 44.

and maximum capability. Must-Run is also referred to as “self-commitment” or “self-scheduled” in PJM.³³ A commitment status offer of “Economic” should not be confused with offering a unit in an economic manner. Nationally, approximately half of all coal-fired generating units are offered with a commitment status of Must-Run.³⁴ The difference should be noted between the capitalized term “Economic commitment” (*i.e.*, the status of a unit’s offer or, in PJM language, a pool commitment) and performing a function in an economic manner. Unit commitment can be little “e” economic, without being part of an Economic commitment.

OCC, for its part, argues that the Commission “should disallow AES, AEP and Duke’s above-market coal plant subsidy charges which the PUCO-approved auditor should identify through an hour-by-hour dispatch analysis because OVEC’s commitment of the plants into PJM as must-run units was not prudent and added needless costs to customers.”³⁵ Likewise, CUB-Ohio argues in its Initial Comments that “if the Operating Committee, of which all three Companies are members, wish [*sic*] to continue to run the OVEC plants uneconomically, it should be made clear by the Commission that these costs above market value cannot be collected from ratepayers through LGR” and “the PUCO should inform OVEC that it is disinclined to approve inclusion in

³³ *Id.* at 27.

³⁴ See *A Review of the Commitment and Dispatch of Coal Generators in MISO by Potomac Economics* at pg. 3 showing coal unit commitments 2016-2019. Available at: www.potomaceconomics.com/wp-content/uploads/2020/09/CoalDispatch-Study_9-30-20.pdf. Last visited May 21, 2023.

³⁵ OCC Initial Comments at pg. 4. A retroactive simulation of OVEC unit performance has been advocated in the past by the various Intervening Parties, and like now, there is scant detail regarding exactly what such a retroactive simulation would model and how it would do so, and what could be determined by engaging in one. The Intervening Parties advocating for such an analysis do not explain how such an analysis would even be possible due to all the factors (*e.g.*, unavoidable variable costs, operating characteristics, baseload needs) discussed above.

the LGR of energy costs above market value that are incurred when the plants are operated with a must-run status.”³⁶

As set forth in the Company’s Initial Comments in response to the Audit Report, whether to offer the units on a “must run” or “economic” basis depends on numerous, complicated factors related to the nature of the OVEC plants and forecasts of PJM market prices. For example, the Intervening Parties’ analyses fail to consider unavoidable variable costs such as OVEC’s contractual requirements to take certain amounts of coal. Were OVEC to simply not run, as requested and advocated by the Intervening Parties,³⁷ then OVEC would be subject to contractual costs under these agreements. Another factor that must be considered is that increased fluctuation in operation from an “Economic” commitment would increase stress on the plants’ equipment, which would thus severely depreciate its assets. The Auditor acknowledges as much in the Audit Report, stating that, with regard to Economic commitment of the units, “in the case of coal plants this can cause difficulties in managing staffing and fuel deliveries, and repeated start-up of coal plants can damage equipment.”³⁸

Moreover, the Intervening Parties’ various analyses fail to account for or even acknowledge the needs of OVEC’s other owners for baseload power, year-round. Duke Energy Ohio is not the sole owner of OVEC; its needs are not the only ones which OVEC’s dispatch must serve. As one of many purchasers under the ICPA and the owner of only 9 percent of the output of OVEC, Duke Energy Ohio cannot unilaterally dictate a generation strategy for OVEC, a strategy which must encompass the other members as well as two separate RTOs. Offering all coal-fired

³⁶ CUB-Ohio Initial Comments at pg. 8. *See also* OMA-EG Initial Comments at pg. 11 (arguing the Commission “should disallow all of the OVEC costs during the Audit Period as unreasonable and imprudent”).

³⁷ *See, e.g., See* CUB-Ohio Initial Comments at pg. 7; OCC Initial Comments at pg. 5; OEC Initial Comments at pg. 5.

³⁸ Audit Report at pg. 10.

units with an Economic commitment status at all times, as all of the Intervening Parties contend OVEC ought to do,³⁹ is not in the best interests of customers and could cost the customers significant benefits in the PJM market due to the fact that the unit may not be committed even when it is economic (little “e”) to run the unit. The outcome would depend on many different factors, such as the initial state of the unit (whether it is on or off), startup cost, startup time, incremental and no-load cost of the unit, and locational marginal price (LMP) present at the time.

The Intervening Parties’ conclusions that OVEC somehow acted imprudently by committing its plants as “Must-Run” demonstrates the misconceptions regarding the differences between market commitment and dispatch. Utilizing a commitment status offer of Must-Run in the PJM energy markets does not mean that a generating unit was not economically committed. Further, the Intervening Parties’ recommendation that the OVEC units should be committed as Economic at all times demonstrates their inexperience in effective operation in PJM markets and of prudent operations of coal-fired generation and ignores the risks of solely relying upon Day-Ahead energy prices as the sole basis of commitment decisions. A commitment decision based solely upon Day-Ahead market prices fails to factor in unit start-up costs, start-up times, cycling costs, risks with powering down and powering up units, such as unexpected outages that occur as a result of additional unit cycling, an operation that is required for environmental and other testing, impacts of multiple unit startups and shutdowns, as well as the loss of option values by missing the opportunity to respond to power price changes. These factors, as well as forward price curves, must be considered when making unit commitment decisions.

There is no evidence that OVEC acted imprudently in its commitment strategy of the OVEC units. Although the Auditor recommended that Duke Energy Ohio and the other members

³⁹ See CUB-Ohio Initial Comments at pg. 7; OCC Initial Comments at pg. 5; OEC Initial Comments at pg. 5; Sierra Club Initial Comments at pg. 3; OMA-EG Initial Comments at pg. 9.

of the Operating Committee allow/advocate for flexibility between unit commitment strategies on an ongoing basis, the Auditor also acknowledged the complexity and challenges this may pose for a plant such as OVEC, stating “[i]deally, the units would be committed based on economics all or most of the time, but in the case of coal plants this can cause difficulties in managing staffing and fuel deliveries, and repeated start-up of coal plants can damage equipment.”⁴⁰ Moreover, the Auditor also found that “DEO’s capacity offers were formulated prudently, and transparently reflect the risks and reward features of the PJM capacity construct.”⁴¹ The Auditor’s recommendations confirm that Duke Energy Ohio is well positioned in the energy offering process to help OVEC make informed decisions and their practice is prudent and that Duke Energy Ohio is well represented in OVEC Operating Committee meetings and is actively engaged and appropriately documents its participation.⁴² For those reasons alone, the Intervening Parties’ recommendations should be rejected.

3. Committing the OVEC units as “Economic” at all times will not necessarily maximize value to customers and should not be mandated, as the Intervening Parties argue.

As stated in the Company’s initial comments in the underlying matter, it would be imprudent and contrary to customers’ best interests to make Day-Ahead market prices the exclusive basis for a commitment decision or designation. This is particularly true with respect to base-load, coal-fired generation. One must also factor in unit start-up costs, cycling costs, risks with powering down and powering up units such as unexpected outages that occur as a result of additional unit cycling, operation that is required such for environmental and other testing, impacts of multiple unit startups and shutdowns, as well as the loss of option values by missing the

⁴⁰ Audit Report at pg. 10.

⁴¹ *Id.*

⁴² *Id.* at pg. 44.

opportunity to respond to power price changes. These factors, as well as forward price curves, must be considered when making unit commitment decisions. The current PJM Day-Ahead market is not a multi-day commitment. Rather, it is exactly, as the name implies, a one-day at a time market (*i.e.*, 24 hours in length). Always using an Economic commitment status could, at times, cause a unit that becomes economic to remain offline or the uneconomic cycling of certain units across multiple days. Looking solely at the next twenty-four hours, to the exclusion of price forecasts for subsequent days would result in a significant loss of value for customers. Quite simply, although the PJM Day-Ahead market is an efficient market that is utilized to the benefit of customers, the PJM Day-Ahead Market construct was never designed to forecast economic commitments beyond the next day. The Day-Ahead Market is designed to minimize the cost to reliably and economically serve the demand for the next 24-hour period.

In the Company's practical experience, for units with longer start-up times or higher start-up costs, the Day-Ahead Market will not always result in an optimal commitment of these generating units from an off-line state when being offered with a commitment status of Economic, even though they may be the most economic choice over a multi-day period. For units, such as those of OVEC, that have commitment costs that may not be recovered for a longer period of time (greater than a day), or for units where the startup time, or minimum down times, makes the unit not economically practical to be committed by PJM on a Day-Ahead or Real-time basis, an Economic-only commitment strategy is detrimental to the Company's customers. Additionally, it is simply not operationally possible to shut down and start up all OVEC units at once, which could occur if all 11 units are offered with a commitment status offer of Economic. The units must be cycled on and off independently, not simultaneously. This results in an even greater start up time for the plant to become fully online. It is possible that an off-line coal unit that is economic to operate (revenues greater than variable costs) can go multiple days without a commitment if

offered with an Economic commitment status offer to PJM because of the start-up times alone. Whereas, that same unit with a Must-Run designation over that same period, receives significant revenues because start-up limitations are not a factor. There are often times where it is the best decision to maintain the units' commitment as "Must-Run" because switching to an Economic offer based solely on the Day-Ahead energy market would result in missed opportunities for revenues. There are numerous examples where it is in the best interests of customers to maintain the units as Must-Run commitment strategy, even though the day-ahead price (24 hours in advance) would produce a loss. This is because the forward price curves and energy trading demonstrate that the price the day after, or several days after, would more than offset the loss of the Day-Ahead LMP. In those instances, switching to an Economic commitment offer will result in more losses because of additional costs with start-up, cycling time/costs, and risks of units incurring forced outages due to excessive cycling from additional start-ups. This is the case with any generating unit, not just OVEC.

The Company has identified this example before, in previous commentary, but it bears repeating. If a unit with a cold startup cost of \$10,000 was off-line, the unit would need to receive \$10,000 more in revenues than variable costs before startup costs were considered to be committed for a day by the PJM Day-Ahead market, since the Day-Ahead market would typically require that the unit at least break-even, even though once the unit was committed it could run for multiple days and produce additional positive margin. For example, suppose that a unit would receive \$5,000 more in revenues than variable costs each day, Monday through Friday. Thus, the total energy margin value for the week would be \$5,000 multiplied by 5 days, or \$25,000. If offered with an Economic commitment status offer for each day's energy market, the unit would not be committed by PJM since the PJM comparison of each day's margin in the Day-Ahead market of \$5,000 would be less than the startup cost of \$10,000. The unit would simply never receive a PJM

commitment to operate. Customers would miss out on \$15,000 in total value for the week from just this single unit, calculated by taking the \$25,000 benefit from running the unit for the week minus the \$10,000 to start the unit up. In this situation for just a single unit, the use of a Must-Run offer provides \$15,000 of economic value to customers and use of an Economic commitment status offer costs the customer \$15,000 in lost opportunity.

When used correctly, a “Must-Run” commitment strategy and one that uses an “Economic” commitment strategy, when necessary, will produce greater value for customers than an Economic-only commitment strategy. The price paid to a generator for its energy revenue is the same regardless of the commitment designation. The revenue available to a unit is based upon the LMP and has nothing to do with the status of the unit’s commitment, although certain Make Whole Payments are only available when an offer of Economic status is made which is additionally considered in the commitment status offer.

OCC cites these Make Whole Payments in its Initial Comments, implying that they are a silver bullet demonstrating imprudence when it comes to unit commitment determinations: “By opting out of economic commitment from PJM, the OVEC units forgo the collection of “make whole” payments that would compensate them if they were market-committed by PJM and did not recover their energy costs for that day, thus foregoing revenue which could have been earned [] to offset the amount of the coal plant subsidy charge.”⁴³ While it is true that a unit offered with a Must-Run commitment becomes ineligible for Make Whole Payments (or credits) from PJM, these credits are only paid under certain situations, which OCC fails to enumerate. Namely, when PJM schedules a resource and the revenue paid to the generator is greater than the variable costs (as

⁴³ OCC Initial Comments at pg. 6.

calculated from the unit's energy offer) required to run the generator, such payments are not paid. It is not as simple as OCC would have its reader believe.

4. A mixed commitment strategy of “Must-Run” and “Economic” that is informed by dispatch and market forecasts is prudent and in the best interests of customers.

Duke Energy Ohio has never advocated that OVEC must only commit its units on a Must-Run offer basis. This is clearly evidenced by the 2020 Audit Period and the Auditors findings.⁴⁴ Nor should the Commission impose such a commitment strategy. However, a pure Economic commitment offer strategy is short-sighted and would lead to sub-optimized results for customers, as the units would likely miss significant revenue opportunities. An Economic-only commitment strategy would mean that an off-line unit(s) would only be committed, if the variable costs, including start-up costs, and start-up time, would justify their operations on a short-term (24-hour) basis. As a base-load coal-fired generator, OVEC cannot respond quickly to changes in power process on an hourly basis when a unit is cycled off as a result of an Economic commitment offer. PJM may not call upon the units in the Day-Ahead Market because they cannot power up quickly enough in an offline state, even if it is otherwise economic to operate. As a result, the units would miss significant positive margin opportunities that would exist with a Must-Run commitment model. Similarly, running the units solely as Must-Run without consideration of market forecasts and unit limitations, would not be in the best interests of customers.

What Duke Energy Ohio has advocated previously, and was successfully applied during the Audit Period, is that commitment decisions be made based upon a longer view of market data, including using forward power curves, and other market data to make commitment decisions.⁴⁵ A

⁴⁴ See, e.g., the Audit Report at pg. 10, identifying a mix of Must-Run and Economic commitment strategies in 2020.

⁴⁵ *Id.*

proper balance of “Must-Run” and “Economic” commitments must be used to maximize value for customers. Duke Energy Ohio independently projects the expected energy market revenues from the operation of the OVEC units in PJM, the variable costs to operate the units at the forecasted unit hourly loading and the resulting forecasted hourly energy margins. When the Company observes a period where the units are expected to be out of the money and could potentially be decommitted, the Company discusses the matter with OVEC and the Operations Committee. Duke Energy Ohio has advocated that OVEC begin doing this analysis. Although OVEC’s existing processes were entirely prudent and reasonable, Duke Energy Ohio believes that implementing such independent analysis would be a further enhancement. Finally, in the event that unit decommitment(s) are potentially for an extended period of time, consideration of OVEC’s contractual requirements to take certain amounts of coal would have to enter into the equation.

5. OVEC Commitment Strategy during the Audit Period was Prudent.

The Audit Report determined that Duke Energy Ohio’s capacity offers were “formulated prudently, and transparently reflect the risks and reward features of the PJM capacity construct.”⁴⁶ The Audit Report evaluated and had particular recommendations for OVEC’s commitment and dispatch practices. The procedure for the dispatch of OVEC’s generating units is determined under formal procedures established by the OVEC Operating Committee, which is a committee formed under the terms of the ICPA to establish procedures for, among other things, the scheduling of the OVEC generating units. Each of the Sponsoring Companies of the ICPA is represented on the Operating Committee through a single representative for each group of affiliated Sponsoring Companies. Duke Energy Ohio has one vote on the Operating Committee, and decisions must be made unanimously.

⁴⁶ *Id.* at pg. 10.

Section 5 of the Audit Report addresses disposition of capacity and unit commitment strategy and contains various recommendations. One such recommendation relates to economic versus must-run offer strategies, regarding the commitment of OVEC units. LEI finds the unit commitment strategy prudent, and recommends as follows:

LEI believes the change to OVEC's must-run strategy due to COVID-19 . . . was prudent, compared with allowing must run commitment only. [The Company] should encourage the Operating Committee to allow OVEC the option to commit available units based on must-run or economics on an ongoing basis. . . . Ideally, the units would be committed based on economics all or most of the time, but LEI is aware that this can be an issue for coal plants, which are designed to operate continuously. LEI would not expect to see the plants committed based on economics all the time, but the option to do so provides additional flexibility and could reduce costs for customers.⁴⁷

Duke Energy Ohio concurs with the majority of the above-identified recommendation but wishes to address the Auditor's recommendation that "[i]deally, the units would be committed based on economics all or most of the time[.]"⁴⁸ The Intervening Parties are wrong in their interpretation that the Audit Report in this proceeding identified a problem in the OVEC plants' "Must-Run" commitment policy. The Audit Report did not identify the Must-Run commitment as a "problem," nor did the Auditor conclude that a Must-Run commitment policy should result in a disallowances during the Audit Period.⁴⁹ Instead, the Auditor reviewed OVEC's commitment practices during the Audit Period and did not find that they were imprudent. The Auditor merely recommended that OVEC Sponsoring Companies "allow [] flexibility on an ongoing basis."⁵⁰ The Intervening Parties' arguments to the contrary should be disregarded.

⁴⁷ *Id.* at pg. 50.

⁴⁸ *Id.* at pg. 10.

⁴⁹ *See Id.*

⁵⁰ *Id.*

D. OVEC's Coal Inventories and Coal Procurement Practices are Reasonable.

As set forth in the Company's Initial Comments, the Audit Report does not make any finding of imprudence regarding OVEC's coal handling. LEI addressed fuel and variable costs expenses in Section 6 of the Audit Report. Specifically, LEI made recommendations regarding coal inventory levels during the 2020 Audit Period, finding that "[c]oal inventories were much higher than target levels in 2020; part of this could be owing to inaccurate forecasting of coal burns. LEI recommends that DEO, through its role on the Operating Committee, encourage ongoing review and improvement to OVEC's coal burn forecasting methods, and coal procurement practices."⁵¹

In response, the Company noted that Duke Energy Ohio does not control OVEC's coal inventories, nor does it make fuel procurement decisions for OVEC. Moreover, fuel costs charged to the Sponsoring Companies and reflected in the LGR Rider are related to fuel burned, not fuel present in inventory. The Company also pointed out that the reason inventory levels were higher than targets in 2020 can be attributed to several factors outside of OVEC's (or the Company's) control, *i.e.*, PJM power prices were lower than anticipated in 2020, reducing generation demand for the OVEC units, decreasing dispatch of the units, and increasing inventory levels and the fact that the 2020 Audit Period encompassed the most uncertain and unprecedented times of the COVID-19 Pandemic.⁵² Decreased manufacturing, consumption, and energy demand were clear

⁵¹ *Id.* at pg. 10.

⁵² *Global Changes in Electricity Consumption During COVID-19*, iScience Vol. 25, Issue 1, January 21, 2022 (available at <https://news.stanford.edu/2022/02/11/fall-rise-electricity-use-early-pandemic/>) ("In April 2020, at the beginning of the COVID-19 pandemic, electricity consumption had declined by 7.6 percent across the globe, which was larger and much more rapid than the 7 percent drop seen during the 2008 global financial crisis. Apparent causes of early consumption reductions – like government restrictions on in-person work, schooling, travel and social interaction, as well as declines in personal mobility and economic production – were much less correlated with recovery times."). According to statistic and projection data from the International Energy Agency (IEA), the shock to energy demand in 2020 was the largest in the last 70 years. Global energy demand in 2020 declined by 7.6% compared to 2019, a fall seven times greater than during the 2009 financial crisis.

throughout the Audit Period, though the resulting repercussions are still being studied by the energy industry. This resulted in a record drop in demand and consumption, thus increasing inventory levels. Additionally, contracts for coal deliveries are typically entered into months or years in advance of when the coal is needed for consumption. Procurement of coal is based on estimated or forecasted generation levels that change based on power market pricing, unit dispatch cost, unit availability and other factors, some of which are unforeseen conditions. It is OVEC's responsibility to abide by its contractual volume obligations to retain good standing and avoid legal action with its coal suppliers. When needed to help manage inventory levels, OVEC may negotiate with its suppliers to defer tons to future periods if the supplier is willing to do so. The variability mentioned in the Audit Report reflects the realities of the inelasticity of coal supply and the requirements to manage within inventory bounds, while minimizing overall costs and ensuring fuel security. Given the inability of the coal supply chain to swiftly respond to changes in real-time demand, coal contracts with longer term supply, delivery, and inventory planning are necessary and reduce the volatility of fuel inventories and are entered into well in advance of the actual use period.

OCC's Initial Comments include a brief section discussing what it deems to be an overpayment for coal obtained from one supplier as compared with that obtained from a different supplier.⁵³ OCC's argument is based on only the mine that the coal came from, the supplier of the coal, and the price OVEC paid for that coal.⁵⁴ For its public argument on this point, OCC could find no publicly available information on a critical, missing piece of data, without which OCC's complaint has no logical merit. The missing data encompasses the dates when the contracts with the two suppliers were entered into. Irrefutably, coal prices change over time. And contracts can

⁵³ OCC Initial Comments at pg. 11.

⁵⁴ *Id.* at pgs. 11-12.

have vastly different time frames. Is it not only possible but, rather, highly probable that a contract to purchase coal sourced from a particular mine might have a different price tag than a contract for coal sourced from that same mine, but entered into in a different year and for a different contract duration? Therefore, a decision to enter into a contract at a given price and duration might be unreasonable in one year and totally reasonable in another.

OCC falsely concludes that different prices, looked at without consideration of dates or durations, demonstrate imprudence. They do not. OCC's suggestion that the \$12.6 million delta between those identified costs be credited back to customers must be rejected.

CUB-Ohio makes a similar, although less specific, argument. CUB-Ohio's concern is also that coal prices, especially for Kyger Creek, were too high. CUB-Ohio compares coal purchase prices for OVEC to current spot market prices identified in the SNL Market Survey and notes that, per the Auditor, OVEC's prices are significantly higher. CUB-Ohio also points to the Auditor's comment about those high contract prices, wherein the Auditor conceded that they might have been a good deal with the contract was secured, even though it is now above current market price.⁵⁵ This argument should also be set aside.

Even the auditor does not condemn OVEC for the change in coal market prices over time. Neither should the Commission. Furthermore, both OCC and CUB-Ohio fail to comprehend that fuel costs charged to the Sponsoring Companies and reflected in the LGR Rider are related to fuel actually burned, not fuel that is sitting in inventory—the same fuel upon which both parties make claims of imprudence.

Similarly, there is no evidence that coal quality acquired by OVEC was imprudent. OVEC evaluates its coal purchases based on a quality adjusted, delivered \$/MMBtu price and typically

⁵⁵ CUB-Ohio Initial Comments at pg. 13.

utilizes a competitive request for proposal process to ensure it is purchasing the lowest cost coal available at the time the purchase is made. The contract price will vary due to market timing, but it will also vary due to the quality of the coal. OVEC's standard purchase agreements include a provision whereby the contract price will be adjusted up or down based on the actual heat content (expressed in btu/lb) of the coal delivered. However, each agreement includes a cap on the amount of additional btu/lb for which the supplier can be compensated, as well as provides rights to reject any deliveries that don't meet the minimum contractual quality specifications. As noted by LEI, coal is "purchased with due consideration of all relevant factors, including: competitive pricing, the quantity needed to maintain an appropriate supply, the quality required to optimize the operating characteristics of the generating stations[.]"⁵⁶ Therefore, if a higher btu/lb quality coal is received than what is contracted or required for the unit, it means fewer tons will be needed and thereby offsetting the total cost. Once again, the ICPA provides that OVEC bills the Sponsoring Companies based on coal consumed, not coal purchased and in inventory. There is no justification to disallow any fuel costs related to OVEC's inventory or quality purchase decisions. The Commission should ignore OCC and CUB-Ohio's claims.

E. Despite the Intervening Parties' Arguments to the Contrary, the "Component D" Charge is Supported and Appropriate.

The Audit Report found that "[t]he components of fixed costs were billed properly" but called into question "one component of fixed costs, referred to as 'Component (D)' in the OVEC bill."⁵⁷ Many Intervening Parties, including Sierra Club, OEC, and CUB-Ohio, latched on to the concept of a disallowance associated with Component D.⁵⁸ For the reasons set forth in the

⁵⁶ Audit Report at pg. 63.

⁵⁷ *Id.* at pgs. 9-10.

⁵⁸ *See, e.g.*, OEC Initial Comments at pg. 5; CUB-Ohio Initial Comments at pg. 15.

Company's Initial Comments in response to the Audit Report, should the Commission review the charges associated with Component D, it should not find that a disallowance is warranted.

As set forth by the Company previously, Component D is one component of a monthly demand charge imposed on each sponsor, including Duke Energy Ohio, which sponsors have the right to OVEC output. This amount represents the portion of the demand charge associated with the permitted return for OVEC on initial investment and was determined as part of the approval of the cost-based wholesale rate, first by the Federal Power Commission and, subsequently, in connection with the review of amendments to the Inter-Company Power Agreement, by the Federal Energy Regulatory Commission (FERC). Should the Commission decide to evaluate the prudence of Component D, as many of the Intervening Parties argue it should, the Company notes the following. The Component D charge is a cost allocated pursuant to a power agreement, the ICPA, which agreement and charge are approved by FERC. The payment of Component D does not result in Duke Energy Ohio earning a return on its investment, as contemplated and disallowed by R.C. 4928.01(A)(42). Moreover, Component D is part of the FERC-approved rate that has been in effect and unchallenged since the inception of the ICPA. The decision to incur Component D charges was made in or before 1953—when the first iteration of the ICPA was signed. Thus, Component D is merely an allocation of the totality of costs that FERC has approved, which includes a return on investment *for OVEC*. What the Component D charge is *not* is a return to Duke Energy Ohio for its investment in common equity of OVEC. R.C. 4928.01(A)(42) provides for an exclusion only of costs for recovery for “any return on investment in common equity.” For Duke Energy Ohio, costs associated with Component D are ICPA-based costs, and no different from any other component of OVEC's charges to Duke Energy Ohio. The costs are not returned to Duke Energy Ohio, either directly or indirectly, via a dividend paid to the Company, or

otherwise. The Component D charges incurred by Duke Energy Ohio are charges for a legacy generation asset that are allocated to Duke Energy Ohio under the ICPA.

If Component D is considered by the Commission as part of this proceeding, as the Intervening Parties suggest, that consideration should be limited by the additional factors discussed above, and a disallowance associated with Component D is not warranted.

F. The Commission should reject Sierra Club’s suggestion to impose a prospective \$0 cap on capital expenditures for OVEC.

The Commission should reject Sierra Club’s suggestion to impose a \$0 cap on capital expenditures at OVEC on a going forward basis.⁵⁹ The overly simplistic request from Sierra Club is unsupported by either a factual record or good public policy. The proper approach to Sierra Club’s request is to address the prudence of specific expenditures on a case-by-case basis in accordance with standard ratemaking principles. This audit is a prudency audit for calendar year 2020. The Commission expressly addressed the scope of auditing capital expenses – “[t]he auditor shall ensure that any fixed costs incurred by OVEC are properly allocated to Duke Energy Ohio, including depreciation, debt service, and plant maintenance expenses.” The audit is *not* a prospective look into what costs should or should not be incurred by OVEC in the future; it would be improper if not impossible to judge the prudence of future investments in this proceeding, as Sierra Club urges. In so doing, Sierra Club is essentially seeking an advisory opinion regarding future compliance costs and spending associated with OVEC. Not only does this suggestion go well beyond the scope of this Audit, it is contrary to Ohio law. Sierra Club’s suggestion fails to acknowledge the Audit Report findings and appears to discount the practical realities associated with the OVEC plants. Sierra Club suggests a \$0 cap on capital expenditures, and submits that closure of the plant would relegate any investments as “avoidable”—arguing “[t]hese OVEC coal

⁵⁹ Sierra Club Initial Comments at pg. 4.

units are uneconomic and thus no further customer resources should be wasted on them.”⁶⁰ Sierra Club ignores the Auditor’s conclusion that the majority of capital investments for the Audit Period involved compliance, environmental and otherwise, and “that OVEC’s environmental equipment configuration is consistent with the industry standard, and therefore, OVEC is well positioned to comply with environmental rules and regulations at federal, state, and local levels.”⁶¹ The Auditor additionally found that OVEC’s “capital project budget approval process provides a good foundation for capital project planning and implementing.”⁶² While the Auditor made a passing comment to capping capital expenses, it was suggested to prevent “over-investment” because approval of the Commission is not needed for OVEC to engage in capital spending projects.⁶³ The Auditor certainly does *not* suggest that that cap should be \$0, as Sierra Club appears overtly state. Certainly, making capital investments to comply with federal law would not be considered “over investment,” hence, the Auditor did not make such a recommendation with respect to Audit Period expenditures.

This is further demonstrated by the fact that there is no incentive to over-invest when “OVEC is not allowed to earn a return on capital projects.”⁶⁴ Sierra Club’s proposal simply relies upon its clear opinion that the plants should be shuttered and does not react to some Audit Report findings or provisions. Sierra Club makes this fact obvious. Failure to make necessary capital investments could result in penalties or fines in an environmental compliance context, as well as potential Capacity Performance penalties. Certainly, it is not unreasonable to avoid such penalties when the Commission made clear that Capacity Performance penalties are not considered prudent expenditures. Sierra Club has provided no information to indicate that allowing such events to

⁶⁰ *Id.*

⁶¹ Audit Report at pg. 76.

⁶² *Id.* at pg. 88.

⁶³ *Id.* at pg. 89.

⁶⁴ *Id.*

take place would be a prudent management decision at this time. Its \$0 cap on capital expenditures is not indicated by the Audit Report findings and should be disregarded.

G. OCC and CUB-Ohio’s Arguments in Favor of Environmental Compliance Disallowances are Related to a Time Well Outside the Audit Period and Should not be Incorporated or Considered as Part of this Proceeding.

Like Sierra Club, OCC argues that the Commission should disallow “any further costs related to the Clifty Creek plant” on a moving forward basis, a time period well outside the Audit Period—namely April of 2021 and beyond.⁶⁵ Likewise, CUB-Ohio argues that the Auditor erred in not finding that costs associated with compliance with US EPA’s Coal Combustion Residuals rule were imprudent, and argues that the Auditor should have disallowed any associated costs from being incorporated in Rider LGR recovery.⁶⁶ CUB-Ohio also argues that OVEC’s attempts to comply with 2020 Effluent Limitations Guidelines (ELG), published in October 2020 were “for naught” as the “plants are unlikely to comply with a recently proposed rule in March 2023 that would again update ELG.”⁶⁷ CUB-Ohio calls these mandatory environmental regulatory compliance measures “seemingly wasteful investments” due to the fact that it considers OVEC an “aging coal plant[]” and argues any such environmental compliance costs should be a disallowance in the 2020 Audit. All of these arguments are unavailing and arguably not in good faith.

As OCC and CUB-Ohio are well aware, the underlying Audit Period covers January 2020 through December 2020. The US EPA published Coal Combustion Residuals Part A Final Rule, upon which OCC hangs its hat and which CUB-Ohio references, establishes a closure date of April 11, 2021 for unlined surface impoundments receiving coal ash. In January of 2022—over two years after the Audit Period in question had ended—US EPA issued a proposed denial of

⁶⁵ Initial Comments of OCC at pg. 13.

⁶⁶ Initial Comments CUB-Ohio at pg. 12.

⁶⁷ *Id.*

alternative closure deadlines for the Coal Combustion Residuals surface impoundments associated with Clifty Creek.⁶⁸ OCC recommends that the Commission disallow *any* costs (not just environmental-related costs) associated with Clifty Creek “since the date of [US] EPA’s proposed decision denying the coal ash pond permits,” which again, such decision was issued in January 2022.⁶⁹ This argument is a half-hearted attempt to bootstrap a *proposed* determination from the year 2022 into the current Audit Period. Setting aside the fact that it is not obvious that the administrative process associated with the CCR surface impoundments decision for Clifty Creek is even complete, and that the one associated with Kyger Creek has not even been acted upon by US EPA, it makes no sense to adopt OCC’s arguments. The Commission would be engaging in an advisory opinion to incorporate such information or such considerations into this proceeding, which are clearly meant for consideration in 2021 or 2022 and beyond.

Likewise, CUB-Ohio argues that OVEC elected to retrofit the plants to comply with environmental regulations in place during the 2020 Audit Period, and that taking those required compliance measures was somehow imprudent of OVEC.⁷⁰ CUB-Ohio argues that “OVEC recognized that the coal ash surface impoundments at both Kyger Creek and Clifty Creek were not compliant with the 2020 CCR rule, prompting OVEC to submit an extension request to EPA by November 30, 2020, with the aim of gaining compliance.”⁷¹ CUB-Ohio then fast forwards to January of 2022, where US EPA proposed to deny the compliance plan for Clifty Creek, and still in 2023 has not acted upon the compliance plan for Kyger Creek. CUB-Ohio then makes the long jump of arguing that costs associated with this CCR compliance process should be disallowed, even though the associated determinations were either made in 2022 (and still under administrative

⁶⁸ Initial Comments of OCC at pgs. 13-14.

⁶⁹ *Id.* at pg. 14.

⁷⁰ CUB-Ohio Initial Comments at pg. 12.

⁷¹ *Id.* at pg. 11.

review) or not yet even occurred. This argument is unsupported and far outside the scope of the underlying Audit.

The Commission must not take the bait. OCC provides no reason why “costs related to Clifty Creek” should be excluded from the underlying Audit Period, as such costs were certainly within the current Audit scope. Moreover, OCC does not explain or enumerate what such costs would be, how they could be calculated, or why a *proposed* decision from 2022 should be controlling upon the Auditor and the current Audit Period. Similarly, CUB-Ohio does not enumerate what environmental compliance costs it believes should be excluded from LGR recovery during the Audit Period. This is because all of the compliance costs referenced by CUB-Ohio in its argument occurred or will occur well *outside* the Audit Period at question in this case. For example, one argument by CUB-Ohio is based upon 2023 updates to the Effluent Limitations Guidelines, arguing that OVEC should have been able to foreshadow the changes to the rules from its vantage point in 2020. These arguments are unserious, based upon both parties’ belief that the plants should be retired, and must clearly be set aside

H. Decommissioning and Demolition Costs, like Component D, are a Part of the ICPA and have been Since the Agreement’s Inception; OCC’s Attempts to Parse Decommissioning Costs Should not be Given Weight.

In its Initial Comments, OCC also takes issue with OVEC costs related to “funding a reserve for eventual plant decommissioning.”⁷² These “decommissioning costs” are set forth in the Audit Report in Figure 10 on page 27, as part of the total demand charges payable to OVEC from all participants. They are labeled as subpart F and are approximately \$13 million dollars during the underlying Audit Period, spread over all participants. OCC argues that consumers should not be required to pay costs for eventual plant decommissioning but does not elaborate

⁷² OCC Initial Comments at pg. 14.

beyond that statement in its arguments. The Auditor did not identify any issues with these enumerated costs, set forth in Figure 10, and did not associate any disallowances or imprudence with their inclusion.

Moreover, the question of decommissioning and retirement is not a question before the Auditor in this proceeding and is one for a future audit and date. OCC does not support its arguments related to Figure 10, subpart F, and therefore, the Commission should give them little weigh in its consideration.

III. CONCLUSION

In their Initial Comments, the Intervening Parties overstate the scope and purpose of the Audit Report and LEI's discretion. The purpose of the Audit Report is to investigate the prudence of the Company's ICPA as it relates to OVEC, not whether Rider LGR should exist or whether OVEC should continue to operate. Duke Energy Ohio respectfully requests that any Commission order in this case be in accordance with the above reply comments and the Company's Initial Comments, incorporated herein by reference.

Respectfully submitted,

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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 is also being served via electronic mail on the 23rd day of May 2023, upon the persons listed below.

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Summary: Comments Reply Comments of Duke Energy Ohio, Inc. in responses to the Audit Report electronically filed by Mrs. Debbie L. Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Akhbari, Elyse and Kingery, Jeanne W and Vaysman, Larisa.