

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

It is imprudent and unreasonable for Ohio electric distribution utilities to continue to foist the burden of the tainted House Bill 6 (HB 6)¹ on Ohio customers. Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company d/b/a AES Ohio (DP&L), and Ohio Power Company (AEP Ohio) (collectively, the Sponsoring Companies) currently charge their customers for the costs to subsidize the aging, uneconomical, dirty coal plants owned by the Ohio Valley Electric Corporation (OVEC) through the Sponsoring Companies' Legacy Generation Resource (LGR) Riders authorized by HB 6.² Under the Amended and Restated Inter-Company Power Agreement (ICPA), which will remain in place until 2040,³ the Sponsoring Companies must pay a share of the costs incurred by the OVEC coal plants. In turn, under HB 6, the Sponsoring Companies pass

¹ Am. Sub. H.B. 6 (2019), available at <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6>.

² R.C. 4928.148.

³ Audit of the Legacy Generation Resource Rider of Duke Energy Ohio Final Report, Public Version at 7, 12 (Dec. 17, 2021) (Duke Audit Report); Audit of the Legacy Generation Resource Rider of AES Ohio Final Report, Public Version at 7, 12 (Dec. 17, 2021) (DP&L Audit Report); Audit of the Legacy Generation Resource Rider of AEP Ohio Final Report, Public Version at 7, 12 (Dec. 17, 2021) (AEP Ohio Audit Report).

these costs to customers through the LGR Riders.⁴ As of March of this year, customers have paid over \$400 million to subsidize the OVEC coal plants.⁵ By the end of 2030, this amount will likely rise to over \$800 million.⁶

HB 6 only provides one form of protection for customers: LGR Rider audits by the Public Utilities Commission of Ohio (Commission).⁷ The Sponsoring Companies may not recover any costs from customers that the Commission deems imprudent or unreasonable.⁸ To assist with this review, the Commission selected London Economics International LLC (LEI) as the third-party auditor to perform the prudence and performance audit of the LGR Rider costs, including an audit of the Companies' actions in regard to their LGR ownership, for the period from January 1, 2020 through December 31, 2020 (Audit Period), and directed LEI to set forth its findings and recommendations in reports (collectively, Audit Reports).⁹ The Commission also invited interested parties to file comments and reply comments on the Audit Reports.¹⁰

The Ohio Manufacturers' Association Energy Group (OMAEG),¹¹ the Office of the Ohio Consumers' Counsel (OCC),¹² the Sierra Club,¹³ the Ohio Environmental Council,¹⁴ and the

⁴ R.C. 4928.148.

⁵ See Comments of the Ohio Manufacturers' Association Energy Group (May 8, 2023) at 4-6 (OMAEG Comments), citing John Seryak, *House Bill 6's Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More*, Ohio Manufacturers' Association Energy Group at 3-4 (Mar. 29, 2023), available at <https://ohiomfg.informz.net/ohiomfg/data/images/OVEC%20Subsidies%20Double%20-%209.28.21.pdf>.

⁶ *Id.*

⁷ R.C. 4928.148.

⁸ R.C. 4928.148(A)(1).

⁹ Entry at ¶¶ 1, 10, 14 (July 14, 2021).

¹⁰ Entry at ¶ 8 (Apr. 7, 2023).

¹¹ OMAEG Comments.

¹² See Initial Comments by Office of the Ohio Consumers' Counsel at 11 (May 8, 2023) (OCC Comments).

¹³ See Sierra Club's Initial Comments (May 8, 2023) (Sierra Club Comments).

¹⁴ See Ohio Environmental Council's Initial Comments (May 8, 2023) (OEC Comments).

Citizens' Utility Board of Ohio and Union of Concerned Scientists (CUB Ohio and UCS)¹⁵ each filed comments urging the Commission to prevent the Sponsoring Companies from continuing to pass through imprudent and unreasonable costs to customers. These comments identified issues raised by the Audit Reports, as well as shortcomings with the Audit Reports themselves, and asked that the Commission hold an evidentiary hearing to more thoroughly examine these issues. The comments filed by the Sponsoring Companies,¹⁶ on the other hand, failed to meet their burden of proof to demonstrate that the costs passed through the LGR Riders and their actions during the Audit Period were prudent and reasonable.

II. COMMENTS

A. The Sponsoring Companies fail to establish that the costs passed through the LGR Riders and their actions were reasonable and prudent.

As OMAEG¹⁷ and other parties¹⁸ noted in their initial comments, the Audit Reports raise a number of concerns with the ongoing operation of the OVEC coal plants.¹⁹ These issues included above-market fuel costs and inflated inventories, a costly “must-run” dispatch strategy, unrestricted capital spending, and returns on investments paid to OVEC owners.²⁰ Despite this, the Audit Reports fell short of making recommendations regarding the prudence, let alone the imprudence of certain costs. Additionally, the Audit Reports simply ignored a number of issues,

¹⁵ Joint Initial Comments of Citizens' Utility Board of Ohio & Union of Concerned Scientists at 3-4 (May 8, 2023) (CUB Ohio/UCS Comments).

¹⁶ Initial Comments of Duke Energy Ohio, Inc. (May 8, 2023) (Duke Comments); Comments of AES Ohio (May 8, 2023) (DP&L Comments); Initial Comments of Ohio Power Company (May 8, 2023) (AEP Comments).

¹⁷ OMAEG Comments at 7-9.

¹⁸ See Sierra Club Comments at 3-4; OEC Comments at 2-3; OCC Comments at 10; CUB Ohio/UCS Comments at 3, 7, 13-15.

¹⁹ Duke Audit Report at 9-11; DP&L Audit Report at 9-11; AES Ohio Audit Report at 9-11.

²⁰ OMAEG Comments at 7-9; Sierra Club Comments at 3-4; OEC Comments at 2-3; OCC Comments at 10; CUB Ohio/UCS Comments at 3, 7, 13-15.

such as whether the plants should continue to operate, and whether there is any nexus between the HB 6 corruption scandal and the subsidies paid to OVEC.²¹

“Yet, just because the Auditor chose not to recommend the Commission find an action imprudent or require disallowance, should not, and cannot, alleviate the Commission from its responsibility to make that determination.”²² The Sponsoring Companies bear the burden to demonstrate the prudence and reasonableness of charges.²³ The fact that the Audit Reports fail to make decisive prudence determinations on several issues, and simply ignore other issues, does not alleviate this burden. Instead, it falls to the Sponsoring Companies to show why these costs were reasonable and prudent.

The Sponsoring Companies do not do so. Instead, they rely on the Audit Reports and blame any imprudence in costs or with regard to their actions on unfavorable terms of the ICPA. However, the central issue in this case is not the Sponsoring Companies’ obligations to OVEC or its coal plants set forth in the ICPA; instead, the central issue is whether it is reasonable or prudent to pass the costs of these obligations through to customers and whether the Sponsoring Companies’ actions were reasonable in doing so.²⁴

²¹ OMAEG Comments at 8-10.

²² CUB Ohio/UCS Comments at 16.

²³ See R. C. 4928(A)(1) (“The commission shall determine, in the years specified in this division , the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation resource, including their decisions related to offering the contractual commitment into the wholesale markets, and exclude from recovery those costs that the commission determines imprudent and unreasonable. The initial determination shall be made during 2021 regarding the prudence and reasonableness of such actions during calendar year 2020.”); *In re Ohio Power PPA Rider*, Case Nos. 14-1693-EL-RDR and 14-1694-EL-AAM, Opinion and Order, (Mar. 31, 2016) at 89 and Second Entry on Rehearing at ¶ 178 (Nov. 3, 2016) (“AEP Ohio will bear the burden of proof, in each annual audit, to establish the prudence of all costs and sales flowing through the PPA rider and to demonstrate the Company’s actions were in the best interests of retail ratepayers.”); see also OCC Comments at 2-4; CUB Ohio/UCS Comments at 3; Sierra Club Comments at 3.

²⁴ Joint Initial Comments of Citizens’ Utility Board of Ohio & Union of Concerned Scientists at 3-4 (May 8, 2023) (CUB Ohio/UCS Comments) (“Importantly, the following comments should not be construed as suggesting what

For example, Duke argued that it “does not control OVEC’s coal inventories, nor does it make fuel procurement decisions for OVEC.”²⁵ AEP also argued that pursuant to the ICPA, it “does not control the activities of the [operating] committee” and can only make non-binding recommendations.²⁶ Duke agreed that the Sponsoring Companies have little control over the operating committee:

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.²⁷

Similarly, as OMAEG noted in its initial comments, LEI’s own statements about the prudence regarding the ongoing operations of the OVEC coal plants also focus on the existence of the ICPA between the Sponsoring Companies and OVEC, rather than whether the costs created by the ICPA should be the burden of customers.²⁸ But the Sponsoring Companies and LEI seem to ignore that while the ICPA creates obligations from the Sponsoring Companies to OVEC, it does not create obligations for customers. The fact that the ICPA forces the Sponsoring Companies to pay unreasonable and imprudent costs does not make these costs reasonable or prudent or allow them to be collected from customers. In accordance with R.C. 4928.148, the Commission is required to determine the prudence and reasonableness of the actions of the Ohio Sponsoring Companies with

OVEC and the companies should do with their money or their coal plants. What we, and other consumer groups, *are* saying is that imprudent costs incurred by OVEC should not be passed on to customers.”).

²⁵ Duke Comments at 9.

²⁶ AEP Comments at 4.

²⁷ Duke Comments at 5.

²⁸ OMAEG Comments at 7.

LGR ownership interests during years 2021, 2024, 2027, and 2030, and only prudently incurred costs related to a legacy generation resource may be recovered from customers.

The Sponsoring Companies argue that they have little sway to improve operations at the OVEC coal plants due to the ICPA. This fact alone should make any costs resulting from the ICPA unreasonable and imprudent. Additionally, this admission demonstrates that the Sponsoring Companies acted imprudently when they did not attempt to effect change.

Overall, the Sponsoring Companies rely on the Audit Reports and the ICPA when discussing the prudence of the charges passed through the LGR Riders. However, the Audit Reports fall short of several key findings, and ignore several major issues with the ongoing operation of the OVEC coal plants. Moreover, the Sponsoring Companies' decision to join the ICPA does not make it reasonable or prudent to force customers to pay for the Companies' poor business decision. As such, the Sponsoring Companies have not met their burden to demonstrate the reasonableness or prudence of their actions or the costs passed through the LGR Riders during the Audit Period and, therefore, all costs related to OVEC during the Audit Period should be disallowed..

B. Alternatively, the Commission should disallow recovery of any costs associated with unreasonable or imprudent costs.

Although OMAEG does not believe that the Sponsoring Companies have met their burden to demonstrate that any costs passed on to customers during the Audit Period were reasonable or prudent, at a minimum, the Commission should disallow recovery of any costs associated with imprudent or unreasonable coal purchases or excessive inventories at the OVEC coal plants. Additionally, the Commission should disallow recovery of imprudent or unreasonable costs associated with the uneconomic dispatch of the OVEC coal plants in the wholesale markets. The

Commission should further disallow any imprudent fixed costs associated with attempting to extend the life of the OVEC coal plants.

a. The Commission should disallow recovery of any costs associated with unreasonable or imprudent coal purchases and excessive inventories at the OVEC coal plants.

One major shortcoming with the Audit Reports is the lack of prudence surrounding the coal purchases at the OVEC coal plants. OMAEG,²⁹ OCC,³⁰ and CUB Ohio and UCS³¹ each noted that in the Audit Reports, LEI indicated that both of the OVEC coal plants maintained inventory levels “significantly above OVEC’s recommended seasonal inventory.”³² While LEI has made similar findings in past audits, neither the Sponsoring Companies nor OVEC have acted on these recommendations to improve the inventory levels.³³

Resource Fuels, one of the coal suppliers for the OVEC coal plants, had donated money to support the corrupt HB 6.³⁴ OVEC has purchased coal from Resource Fuels at above-market prices for several years, an issue that has been raised in previous OVEC audits.³⁵ OCC further noted that as part of this contract, OVEC purchased coal with the same average heat content and coming from

²⁹ OMAEG Comments at 9-10.

³⁰ OCC Comments at 11-12.

³¹ CUB Ohio/UCS Comments at 13-14

³² Duke Audit Report at 68-69; DP&L Audit Report at 63-64; AEP Audit Report at 66-67.

³³ Duke Audit Report at 11, Figure 1; AEP Audit Report at 11, Figure 1.

³⁴ See OMAEG Comments at 2, citing Kathiann M Kowalski, *Dark Money Helped Utilities Subsidize Coal Plants, Delaying Climate Action At Ratepayers’ Expense*, Ohio Capital Journal (May 3, 2022), available at <https://ohiocapitaljournal.com/2022/05/03/dark-money-helped-utilities-subsidize-coal-plants-delaying-climate-action-at-ratepayers-expense/>; Dave Anderson, *Bank Records Reveal More Secret Payments to Larry Householder’s Dark Money Group from the Fossil Fuel Industry, Other Sectors*, Energy and Policy Institute (Mar. 29, 2023), available at energyandpolicy.org/larry-householder-dark-money/.

³⁵ 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., Direct Testimony of John A. Seryak at 14-16 (Dec. 29, 2021).

the same mine from both Resource Fuels and another supplier, Alliance Fuels.³⁶ The fuel purchased from Alliance Fuels averaged \$2.03 per Metric Million British Thermal Unit (MMBtu), while the fuel purchased from Resource Fuels averaged \$2.57 per MMBtu.³⁷ OVEC purchased 1,016,071 short tons from Resource Fuels.³⁸ By purchasing that amount of coal at the above-market per MMBtu price from Resource Fuels, OVEC overpaid by approximately \$12.6 million for its coal supply during the Audit Period.³⁹ This overpayment is striking in connection with the possible conflict of interest (unaddressed by LEI) stemming from Resource Fuel's involvement in enacting the legislation that gifted this customer-funded bailout to OVEC.

The Sponsoring Companies fail to explain why these ongoing fuel procurement and inventory management practices are reasonable or prudent. AEP argues that OVEC's coal procurement contracts represent "a prudent decision in order to diversify coal providers, promotes innovation, reduces supply chain risk, and drives competition when there is already a lack of competition amongst coal suppliers particularly for the Kyger Creek plant."⁴⁰ However, AEP fails to note that the contract in question involves coal from the same mine with the same heat content as other, less expensive coal.⁴¹ The contract with Resource Fuels does not make OVEC's coal selection more diverse or competitive, but does make it more expensive.

³⁶ OCC Comments at 12.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ AEP Comments at 7.

⁴¹ OCC Comments at 12.

Duke, on the other hand, simply argues that it “does not control OVEC’s coal inventories, nor does it make fuel procurement decisions for OVEC.”⁴² This is not an explanation of a prudent or reasonable action or cost that should be passed onto customers. This is an attempt to avoid responsibility for imprudent actions, which the law specifically prohibits. R.C. 4928.148(A)(1) requires the Commission to determine the prudence and reasonableness of the actions of the Sponsoring Companies that have LGR ownership interests during the Audit Period “and exclude from recovery those costs that the commission determines imprudent and unreasonable.” If Duke and the other Sponsoring Companies are unable or unwilling to push for better coal procurement and inventory management, then their actions are not prudent or reasonable and the unreasonable and imprudent costs should be excluded from recovery from customers. Accordingly, the Commission should disallow recovery of any costs resulting from above-market coal purchases.

b. The Commission should disallow recovery of any costs for the uneconomic dispatch of the OVEC coal plants.

In their initial comments, OMAEG,⁴³ OCC,⁴⁴ OEC,⁴⁵ Sierra Club,⁴⁶ and CUB Ohio and UCS⁴⁷ each explained how OVEC’s dispatching and scheduling strategy led the OVEC coal plants to incur even higher losses in the wholesale market that were passed on to customers. The OVEC coal plants were largely self-scheduled, or operated on a “must-run” basis.⁴⁸ “Due to its persistent

⁴² Duke Comments at 9.

⁴³ OMAEG Comments at 7-10.

⁴⁴ OCC Comments at 4-11.

⁴⁵ OEC Comments at 2.

⁴⁶ Sierra Club Comments at 3, 7-8.

⁴⁷ CUB Ohio/UCS Comments at 8.

⁴⁸ See OCC Comments at 5.

‘must run’ commitment strategy, OVEC continued to incur PJM energy market losses for months at a time.”⁴⁹ OCC highlighted how the must-run commitment strategy impacted customers:

The more the OVEC units operated in 2020, the greater the above-market electricity prices AES, AEP and Duke’s consumers had to pay. While consumers were credited with the PJM energy revenue from the OVEC units, this only results in a net energy benefit to customers if those energy revenues exceed the energy costs.⁵⁰

The Sponsoring Companies (and therefore their customers) pay both the fixed and the variable costs for the OVEC coal plants.⁵¹ The fixed costs generally remain the same whether or not the plants run, while the variable costs increase when the plants run. In some previous years, the cost of energy has exceeded the variable costs, meaning that running the coal plants resulted in a decrease in the total costs customers would pay due to the fixed costs.⁵²

However, because of how low energy prices were in 2020, “OVEC’s energy market revenues didn’t cover its variable costs, and the costs...flowed to the customers.”⁵³ Essentially, had the plants not operated at all, generating no electricity and incurring no variable costs, customers would have paid less than they did during the Audit Period.⁵⁴

The variable costs related to energy generation for the OVEC exceeded the PJM energy price for all three Sponsoring Companies. According to the Audit Reports, the monthly average cost of OVEC’s energy charges was \$25.61/MWh.⁵⁵ By comparison, the average PJM energy price was \$21.35 per MWh in Duke service area, \$19.55 per MWh in the DP&L service area, and

⁴⁹ Sierra Club Comments at 3.

⁵⁰ OCC Comments at 5.

⁵¹ See Duke Audit Report at 21; DP&L Audit Report at 21; AES Ohio Audit Report at 22.

⁵² See CUB Ohio/UCS Comments at 6.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Duke Audit Report at 29; AEP Audit Report at 31.

\$20.92 per MWh in the AEP service area.⁵⁶ On average, therefore, energy from the OVEC coal plants cost Duke customers 20 percent more than the market price, cost DP&L customers 31 percent more than the market price, and cost AEP customers 22 percent more than the market price.⁵⁷ This disparity will continue to grow as “[w]holesale electric energy prices have generally declined since 2013 in the PJM market” on average of 8.3% annually across the PJM footprint.⁵⁸

Despite this, OVEC still insists on maintaining an imprudent and unreasonable “must-run” dispatch strategy. Again, in their comments, the Sponsoring Companies attempted to shift blame for the strategy and scheduling to the ICPA.⁵⁹ Moreover, Duke, in attempting to justify OVEC’s strategy, essentially acknowledged that the facilities are incapable of running a more prudent and reasonable dispatch strategy:

Put more simply, OVEC generating units are not capable of turning off and back on without additional cost, time, or risk. These factors, as well as forward price curves, must be considered when making unit commitment decisions.⁶⁰

AEP also acknowledged that the OVEC plants may not be able to operate an economic dispatch strategy.⁶¹

⁵⁶ See Duke Audit Report at 17; DP&L Audit Report at 17; AEP Audit Report at 18. See also OCC Brief at 7-8.

⁵⁷ OCC Comments at 7-8.

⁵⁸ See Duke Audit Report at 17; DP&L Audit Report at 17; AEP Audit Report at 18.

⁵⁹ Duke Comments at 5 (“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.”); AEP Comments at 4 (“But it must be understood that AEP Ohio does not control the activities of the committee. Therefore, while AEP Ohio can make recommendations, any change in the bidding procedure requires the unanimous approval of the OC.”).

⁶⁰ Duke Comments at 7.

⁶¹ AEP Comments at 3 (“For instance, the OVEC generating units are designed to operate as ‘base load’ generation and any dispatch procedure that would cause the units to cycle on and off based on scheduling and dispatch would have an adverse impact on the units, both in terms of availability and increased costs to maintain and operate the units.”)

If the ICPA truly binds the Sponsoring Companies to an unreasonable strategy or poor business decision, this does not make the Sponsoring Companies' obligations under the ICPA the burden of customers. Ohio customers "should not pay for any excess costs associated with the imprudent self-scheduling of these units, which could be demonstrated by requiring [LEI] to perform an hour-by-hour dispatch analysis for the entire year."⁶² In fact, the law prohibits recovering these imprudent and unreasonable costs from customers. R.C. 4928.148(A)(1) states:

The commission shall determine, in the years specified in this division, the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation resource, *including their decisions related to offering the contractual commitment into the wholesale markets*, and exclude from recovery those costs that the commission determines imprudent and unreasonable.⁶³

The Commission should find that any additional costs incurred due to the OVEC coal plants' must-run commitment strategy during the Audit Period are unreasonable and imprudent and should be excluded from recovery from customers.

Moreover, if the coal plants are incapable of operating more efficiently, the Commission should consider whether it is reasonable or prudent for customers to fund their ongoing operation at all. Because operating the plants on a must-run basis incurs larger losses for customers than not actually running the plants at all, the Commission should either direct OVEC to adopt an economic dispatch strategy, or stop operating the plants altogether.

c. The Commission should disallow any imprudent fixed costs associated with attempting to extend the life of the OVEC coal plants.

Making unlimited capital investments at the OVEC coal plants represents a futile attempt to extend the life of the plants. When the fixed costs of the plant are factored in, the costs of the

⁶² OCC Comments at 8.

⁶³ R.C. 4928.148(A)(1) (emphasis added).

OVEC coal plants significantly exceed the costs of building and operating an entirely new combined cycle gas turbine (CCGT) plant.⁶⁴ When factoring in both fixed and variable costs, the OVEC coal plants cost customers \$65.19 per MWh, compared to a range of between \$35.90 and \$42.20 per MWh for building and operating a new CCGT.⁶⁵ Despite this, OVEC continues to burn more customer money in an attempt to keep the aging, dirty, uneconomic coal plants running.

LEI noted that there is still no limit on capital investments at the OVEC coal plants.⁶⁶ Imposing a ceiling on this spending, LEI concluded, would be prudent.⁶⁷ Unlimited capital expenditures are imprudent when those costs are passed on to customers, and are used in an attempt to keep the OVEC coal plants operating. While customers are already on the hook for above-market charges for the OVEC coal plants, the Sponsoring Companies have been able to spend *more* customer money to insure the subsidies keep flowing. As the Sierra Club noted, “the decision to operate the OVEC plants at all during 2020 and the failure to retire the OVEC plants reflects imprudence on the part of OVEC’s owners, including the Ohio EDUs.”⁶⁸ Had the Sponsoring Companies chosen to not operate the OVEC coal plants at all, Ohio customers would have been better off.⁶⁹

Customers should not be on the hook for additional capital expenditures made at the OVEC coal plants. As OCC noted in their initial comments, an environmental compliance failure at the

⁶⁴ See Duke Audit Report at 21; DP&L Audit Report at 21; AES Ohio Audit Report at 22.

⁶⁵ *Id.*; see also OCC Brief at 10.

⁶⁶ Duke Audit Report at 89; DP&L Audit Report at 82; AEP Audit Report at 87.

⁶⁷ *Id.*

⁶⁸ Sierra Club Comments at 1.

⁶⁹ *Id.*

Clifty Creek facility will likely necessitate it cease operations.⁷⁰ Due to the age of the plants, it is likely they will face additional compliance issues in the future. Since the plants *already* cost customers more to run the plants than it would if they did not run at all, it is not reasonable or prudent for customers to pay *more* money in an ill-fated effort to keep the OVEC coal plants running. Therefore, the Commission should disallow recovery from customers of any capital investments made to attempt to extend the life of the OVEC coal plants.

C. The Commission should hold an evidentiary hearing in this case.

Since the Sponsoring Companies have failed to meet their burden, the Commission should find that none of the LGR Rider costs were reasonable and prudent and that all costs incurred during the Audit Period should be disallowed and not recoverable from customers. Alternatively, the Commission should disallow recovery of any costs associated with imprudent or unreasonable coal purchases or excessive inventories at the OVEC coal plants, disallow recovery of imprudent or unreasonable costs associated with the uneconomic dispatch of the OVEC coal plants in the wholesale markets, and disallow recovery of any imprudent fixed costs associated with attempting to extend the life of the OVEC coal plants.

At the very least, however, the Commission should hold an evidentiary hearing and require that the Sponsoring Companies satisfy their burden to demonstrate that the costs incurred were prudent and reasonable. Holding an evidentiary hearing would be consistent with precedent from past cases.⁷¹ Moreover, evidentiary hearings provide the necessary opportunity for parties to

⁷⁰ OCC Comments at 13-14

⁷¹ See, e.g., *In the Matter of the Review of the Power Purchase Agreement Rider of the Ohio Power Company for 2018 and 2019*, Case Nos. 18-1004-EL-RDR & 18-1759-EL-RDR, Entry at ¶ 24 (Oct. 5, 2021); *In the Matter of the Review of the Reconciliation Rider of Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR, Entry at ¶ 13 (Aug. 25, 2021).

thoroughly review the audit materials and ensure a robust audit review process.⁷² With no evidentiary hearing, parties cannot cross-examine witnesses, including the auditor and the Companies' personnel regarding the prudence of these costs.⁷³

From the comments filed, it is clear that the Commission should find that the Sponsoring Companies have failed to satisfy their burden that their actions were reasonable and prudent, and that the costs that were recovered from customers were similarly reasonable and prudent. Therefore, the Commission should issue an entry setting this matter for hearing. Doing so will allow parties to introduce evidence, examine witnesses, and file briefs regarding the reasonableness and prudence of the Sponsoring Companies' actions and the costs collected from customers. "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."⁷⁴

III. CONCLUSION

"Long-term patterns of losses, as seen here from OVEC, without efforts to correct operations, demonstrate imprudent business behavior."⁷⁵ The Sponsoring Companies have the burden of proof of demonstrating why these long-term losses are somehow reasonable or prudent, and they have failed to do so. Comments by intervenors have shown how the Audit Reports identify a number of imprudent and unreasonable practices at the OVEC coal plants and by the Sponsoring Companies' actions, while ignoring other issues entirely. The Sponsoring Companies merely point to the ICPA and the Audit Reports as evidence of prudence. They are not. As such,

⁷² OEC Comments at 4.

⁷³ See Application for Interlocutory Appeal, Request for Certification to the PUCO Commissioners and Application for Review by Office of the Ohio Consumers' Counsel at 3 (Apr. 12, 2023).

⁷⁴ OEC Comments at 1.

⁷⁵ CUB Ohio/UCS Comments at 8.

the Commission should find that the costs passed through the LGR Riders during the Audit Period were unreasonable and imprudent and direct the Sponsoring Companies to issue refunds, or, at a minimum, set this matter for hearing for consideration of that issue.

Respectfully submitted,

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/s/ Kimberly W. Bojko

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Summary: Comments OMAEG Reply Comments, OVEC Generation Purchase
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on behalf of The Ohio Manufacturers' Association Energy Group.