

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.)

BY
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October 20, 2023

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The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers of AEP, Duke and AES (the "Utilities"), and the Ohio Manufacturers' Association Energy Group ("OMAEG"), on behalf of Ohio manufacturers, jointly move the Public Utilities Commission of Ohio ("PUCO") to ask the PJM Independent Market Monitor for a report on certain PJM bidding practices. OCC and OMAEG request that the report be filed in this docket, that parties receive an opportunity to comment on it and that the PUCO consider it in rendering its decision. The report would address how merchant coal plant operators bid their plants into the PJM Day-Ahead Energy Market.

The PUCO adopted this rule for reviewing Coal Plant Subsidy costs:

Retail cost recovery may be disallowed as a result of the annual prudency review *if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues.*¹

1

The legislature included this standard in the Legacy Generation Rider,² by requiring the PUCO to review:

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.³

The PUCO does not regulate PJM wholesale markets' bidding practices and has no access to bidding data. The PJM Independent Market Monitor reviews the competitiveness of bidding practices and has access to bidding data. The PJM Independent Market Monitor's role includes reporting to state public utility commissions.⁴ The PUCO should request such a report in order to follow the facts wherever they may lead. At stake is whether the PUCO will force all Ohio consumers to pay approximately \$850 million in above-market electricity costs under the Legacy Generation Rider through 2030.⁵

It would be just and reasonable and in the interests of Ohio electric consumers for the PUCO to ask the PJM Independent Market Monitor for a report on these bidding practices. The proposed request to the PJM Independent Market Monitor is in the form of the letter at Attachment A. This Motion is based on the attached Memorandum in Support.

² R.C. 4928.148(A)(1).

³ *Id.* (emphasis added).

⁴ PJM Open Access Transmission Tariff, Attachment M – PJM Market Monitoring Plan.

⁵ R.C. 4928.148(A); John Seryak, *House Bill 6's Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More* at 1, RUNNERSTONE (March 29, 2023), available at <https://www.ohiomfg.com/wp-content/uploads/HB6s-Legacy-Power-Plant-Subsidies-Cost-Ohioans-Millions-3.21.23-2.pdf>.

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. LAW AND ARGUMENT	2
A. Good cause exists for the PUCO to ask the PJM Independent Market Monitor for a report on PJM bidding practices used by merchant coal plant operators.....	2
B. The PUCO must decide whether the coal plants used competitive bidding practices.	3
C. The questionable bidding practice is the “must-run” commitment status. ..	3
D. The PUCO auditor recommended the use of “economic” commitment.....	4
E. The PUCO does not have access to merchant plant bidding practices but the PJM Independent Market Monitor does. The PJM Independent Market Monitor’s role includes providing reports to state public utility commissions upon request.	5
F. Requesting a report from the PJM Independent Market Monitor would be consistent with the PUCO’s existing practice to require independent monitors to oversee and report on the competitiveness of energy market auctions.	7
III. CONCLUSION.....	7

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I. INTRODUCTION

The PJM Independent Market Monitor's role is to oversee the competitiveness of bidding practices.⁹ The PJM Independent Market Monitor prepares reports to state public utility commissions on wholesale market activities.¹⁰ State public utility commissions

¹⁰ *Id.*

have called on the PJM Independent Market Monitor for reports when needed to evaluate wholesale market information and competitive bidding practices.¹¹

The PUCO should protect consumers from unjust and unreasonable Coal Plant Subsidy costs by asking the PJM Independent Market Monitor to report on whether the coal plants utilized prudent and competitive bidding practices in the wholesale market.

II. LAW AND ARGUMENT

A. **Good cause exists for the PUCO to ask the PJM Independent Market Monitor for a report on PJM bidding practices used by merchant coal plant operators.**

A classic anti-competitive practice is selling a product below cost. Per the PUCO auditor's reports, the coal plants operated for long periods of time when the coal cost was greater than the value of the electricity produced.¹² This resulted in above-market energy costs.¹³ The PUCO auditor recommended: "Ideally, the units would be committed based on economics all or most of the time."¹⁴ Good cause exists for the PUCO to ask the PJM Independent Market Monitor whether the coal plants utilized competitive bidding practices in the PJM Day-Ahead Energy Market.

¹¹ *In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, Order No. 12767, Formal Case No. 95, 2003 D.C. PUC LEXIS 108, Order (D.C. PUC) (June 13, 2003); *Investigation Upon the Commission's Own Motion with regard to PJM Installed Capacity Credit Markets*, Case No. I00010090, 2002 Pa. PUC LEXIS 27, 218 P.U.R.4th 149, Opinion and Investigation Report (Pa. PUC) (June 13, 2002).

¹² *See, e.g.*, Duke Audit Report at 10 (December 17, 2021).

¹³ Runnerstone, LLC, *Ohio's Costly – and Worsening – OVEC Situation* at 1 (November 12, 2020), available at: <https://www.ohiomfg.com/wp-content/uploads/Ohios-Worsening-OVEC-Situation-11.9.2020-Final.pdf>.

¹⁴ *See, e.g.*, Duke Audit Report at 10 (December 17, 2021).

B. The PUCO must decide whether the coal plants used competitive bidding practices.

The PUCO stated that it would do a “rigorous review” of Coal Plant Subsidy costs¹⁵ and determine whether it should disallow cost recovery of imprudent costs:

Retail cost recovery may be disallowed as a result of the annual prudency review *if the output from the units was not bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues.*¹⁶

The legislature also specifically included the prudence and reasonableness standard in the law establishing the Legacy Generation Rider,¹⁷ and required the PUCO to review:

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.¹⁸

The PUCO, therefore, is required to decide whether the coal plants utilized competitive bidding practices in the PJM wholesale markets.

C. The questionable bidding practice is the “must-run” commitment status.

At issue is whether the coal plants used “must-run” or “economic” commitment status in the PJM Day-Ahead Energy Market. This decision must be made on a daily basis, based on current data for costs and electricity market prices. “Must-run”

¹⁵ *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR, Opinion and Order at 25 (March 31, 2016).

¹⁶ *Id.* at 89 (March 31, 2016) (emphasis added).

¹⁷ R.C. 4928.148(A)(1).

¹⁸ *Id.* (emphasis added).

commitment means a coal plant can run at times when costs exceed the market value of the electricity produced.¹⁹ “Economic” commitment means a coal plant will run only if the market value of the electricity exceeds cost.²⁰

The coal plants used a “must-run” commitment strategy throughout 2020, except for brief periods for outages/scheduled maintenance and during the Covid pandemic.²¹ Merchant coal plant operators, however, rarely use “must-run” for unprofitable coal plants, as shown below:²²

**Table 8: Coal-Fired Resource Operation and Profitability
2017–2022**

	2017-2020			2021			2022		
	Annual Starts	% of Starts	Net Rev. (\$/MWh)	Starts	% of Starts	Net Rev. (\$/MWh)	Starts	% of Starts	Net Rev. (\$/MWh)
Regulated Utilities	1839		\$3.54	1718		\$14.04	1765		\$22.41
Profitable Starts	1570	87%		1564	91%		1635	93%	
Offered Economically	727	39%		885	52%		754	43%	
Must-Run and profitable	843	48%		679	40%		881	50%	
Unprofitable (Must Run)	269	13%		154	9%		130	7%	
Merchants	187		\$5.05	124		\$14.96	84		\$30.42
Profitable Starts	184	97%		124	100%		84	100%	
Offered Economically	143	70%		124	100%		84	100%	
Must-Run and profitable	41	27%		0	0%		0	0%	
Unprofitable (Must Run)	4	3%		0	0%		0	0%	

D. The PUCO auditor recommended the use of “economic” commitment.

As noted above, the Utilities modified their commitment strategy to allow *for the possibility of* economic commitment for a brief period in the spring of 2020 due to Covid.²³ However, the PUCO auditor failed to review how often economic commitment

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Potomac Economics, *2022 State of the Market Report for the MISO Electricity Markets* at 52 (June 15, 2023).

²³ Duke Audit Report at 10 (December 17, 2021).

was actually utilized during this period.²⁴ Importantly, the PUCO auditor recommended that economic commitment strategy should be utilized at almost all times: “Ideally, the units would be committed based on economics all or most of the time.”²⁵

E. The PUCO does not have access to merchant plant bidding practices but the PJM Independent Market Monitor does. The PJM Independent Market Monitor’s role includes providing reports to state public utility commissions upon request.

The PUCO does not regulate the PJM wholesale markets and does not have access to bidding practices used by merchant coal plant operators. On the other hand, the PJM Independent Market Monitor’s role is to oversee the competitiveness of bidding practices of generating plants and it has access to this data.²⁶

The PJM Independent Market Monitor’s role includes providing reports to state public utility commissions upon request. PJM’s Open Access Transmission Tariff states:

F. Studies or Reports for State Commissions: Upon request in writing by the OPSI Advisory Committee, the Market Monitoring Unit may, in its discretion, provide such studies or reports on wholesale market issues, including wholesale market transactions occurring under a state-administered auction process, as may affect one or more states within the PJM area. Any such request for such a study or report, as well as any resulting study or report, shall be made simultaneously available to the public, with simultaneous notice to PJM members, subject to the protection of confidential information.²⁷

State public utility commissions have called on the PJM Independent Market Monitor to report on various wholesale market issues as the need arises. For example, the

²⁴ *Id.*

²⁵ *See, e.g.,* Duke Audit Report at 10 (December 17, 2021).

²⁶ PJM Open Access Transmission Tariff, Attachment M – PJM Market Monitoring Plan.

²⁷ *Id.*

Pennsylvania Public Utility Commission asked the PJM Independent Market Monitor for a report on Installed Capacity (“ICAP”) bidding market practices in 2021.²⁸ The District of Columbia Commission asked the PJM Independent Market Monitor for a report on PEPCO’s designation of its plants as “must-run.”²⁹

The PJM Independent Market Monitor is already familiar with the issues in this case. In fact, the PJM Independent Market Monitor expressed grave concerns about the OVEC coal plants’ bidding practices, by filing initial testimony, supplemental testimony, an initial brief and a reply brief when the PUCO initially approved the Coal Plant Subsidy charge.³⁰

Ohioans are at risk for paying approximately \$850 million in Coal Plant Subsidy costs through 2030.³¹ The PUCO should protect all consumers from unjust and unreasonable costs by asking the PJM Independent Market Monitor for a report on bidding practices. Indeed, the Michigan Public Service Commission has repeatedly noted that the Coal Plant Subsidy costs are excessive:

The issue of the economics of the ICPA [Inter-Company Power Agreement] has been repeatedly raised in I&M's [Indiana Michigan Power Company] PSCR [Power Supply Cost Recovery] plan and reconciliation proceedings and the

²⁸ *Investigation Upon the Commission’s Own Motion with regard to PJM Installed Capacity Credit Markets*, Case No. I00010090, 2002 Pa. PUC LEXIS 27, 218 P.U.R.4th 149, Opinion and Investigation Report (Pa. PUC) (June 13, 2002).

²⁹ *In the Matter of the Investigation into Electric Service Market Competition and Regulatory Practices*, Order No. 12767, Formal Case No. 95, 2003 D.C. PUC LEXIS 108, Order (D.C. PUC) (June 13, 2003).

³⁰ *In re Ohio Power PPA Rider*, Case No. 14-1693-EL-RDR Direct Testimony of Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM (September 11, 2015); First Supplemental Testimony of Joseph E. Bowring on Behalf of the Market Monitor for PJM (December 28, 2015); Initial Post Hearing Brief of the Independent Market Monitor for PJM (February 1, 2016); Brief Post-Hearing Reply Brief of the Independent Market Monitor for PJM (February 8, 2016).

³¹ John Seryak, *House Bill 6’s Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More* at 1, RUNNERSTONE (March 29, 2023), available at <https://www.ohiomfg.com/wp-content/uploads/HB6s-Legacy-Power-Plant-Subsidies-Cost-Ohioans-Millions-3.21.23-2.pdf>.

Commission has expressed its concerns multiple times that the cost of the ICPA exceeds its value to customers.³²

F. Requesting a report from the PJM Independent Market Monitor would be consistent with the PUCO’s existing practice to require independent monitors to oversee and report on the competitiveness of energy market auctions.

When a competitive bidding auction process is used to determine energy prices for a utility’s standard service offer, the PUCO’s well-established practice is to require an independent monitor to report on the competitiveness of the auction process.³³ In the present case, the PUCO auditor had no access to data on how merchant coal plant operators bid into the PJM Day-Ahead Energy Market. The PUCO auditor did note: “Ideally, the units would be committed based on economics all or most of the time.”³⁴

It would be consistent with this existing practice for the PUCO to ask the PJM Independent Market Monitor for a report on bidding practices utilized by merchant coal plant operators in the PJM wholesale markets.

OCC and OMAEG recommend that the request to the PJM Independent Market Monitor take the form of the letter at Attachment A.

III. CONCLUSION

Good utility practice suggests that the utilities buy their electricity for customers through competitive wholesale auctions. The PUCO auditor’s reports indicate that the

³² *In the Matter of the Application of Indiana Michigan Power Company for approval to implement a power supply cost recovery plan for the 12 months ending December 31, 2022*, Case No. U-21052, 2023 MICH. PSC LEXIS 117, Opinion at 26 (June 23, 2003).

³³ *See AEP ESP 5*, Case No. 23-23-EL-SSO, et al., Stipulation (September 6, 2023); *AES Ohio ESP 4*, Case No. 22-900-EL-SSO, et al., Opinion & Order (August 9, 2023) *Duke ESP 4*, Case No 17-1263-EL-SSO, Opinion & Order at (December 19, 2018).

³⁴ *See, e.g.*, Duke Audit Report at 10 (December 17, 2021).

coal plants might have used anti-competitive and imprudent practices by running the plants for long periods when the coal cost was greater than the value of the electricity produced.³⁵ The PUCO should fulfill its commitment to “rigorously review” the Coal Plant Subsidy costs by requesting a report from the PJM Independent Market Monitor on bidding practices used by merchant coal plant operators. A suggested form of the request to the PJM Independent Market Monitor is at Attachment A.

Respectfully submitted,

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³⁵ See, e.g., Duke Audit Report at 10 (December 17, 2021).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Joint Motion Requesting the PUCO to Seek Report from the PJM Independent Market Monitor on Bidding Practices in the PJM Energy Markets was served on the persons stated below via electric transmission this 20th day of October 2023.

/s/ John Finnigan

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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October __, 2023

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

Dear Dr. Bowring,

I am the Federal Energy Advocate for the Public Utilities Commission of Ohio. I am writing to request a report under the provisions of “Studies or Reports for State Commissions” in Attachment M of the PJM Open Access Transmission Tariff, for the Commission’s consideration in the above captioned case. That case is exploring a number of issues including whether coal plants owned by Ohio utilities through OVEC were ... (1) operated prudently; (2) operated in the best interests of retail ratepayers; and (3) bid in a manner that is consistent with participation in a broader competitive marketplace comprised of sellers attempting to maximize revenues.”

I am requesting a report that contains bidding data by merchant coal plant operators in the PJM Day-Ahead Energy Market during 2020. I understand that a report similar to what I am requesting was produced for the MISO Electricity Markets by the MISO Independent Market Monitor for 2017-2022.

In particular it would be helpful if the report could provide the following information:

- Total number (and percentage) of starts
 - Total number (and percentage) of profitable starts
 - Sub-total (and percentage) of profitable starts offered as “economic”
 - Sub-total (and percentage) of profitable starts offered as “must-run”
 - Total number (and percentage) of unprofitable starts
 - Sub-total (and percentage) of profitable starts offered as “economic”
 - Sub-total (and percentage) of profitable starts offered as “must-run”

Please contact me if you have any questions. Thank you for your consideration in this matter.

Very truly yours,

Sarah Parrot
Federal Energy Advocate
Public Utilities Commission of Ohio

**This foregoing document was electronically filed with the Public Utilities
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in

Case No(s). 21-0477-EL-RDR

Summary: Motion Joint Motion Requesting the PUCO to Seek Report from the PJM Independent Market Monitor on Bidding Practices in the PJM Energy Markets by Office of The Ohio Consumers' Counsel and The Ohio Manufacturers' Association Energy Group electronically filed by Mrs. Tracy J. Greene on behalf of Finnigan, John.