

**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 )  
Dayton Power and Light Company d/b/a )  
AES Ohio, and Ohio Power Company d/b/a )  
AEP Ohio. )

Case No. 21-477-EL-RDR

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**OHIO POWER COMPANY AND DUKE ENERGY OHIO, INC.'S  
MOTION TO STRIKE SPECIFIED INTERVENOR TESTIMONY**

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Pursuant to Ohio Adm.Code 4901-1-12, Ohio Adm.Code 4901-1-27(B)(4) and (B)(7)(b) and (d), Ohio Power Company (“AEP Ohio” or the “Company”) and Duke Energy Ohio, Inc. (Duke Energy Ohio) (collectively, the Companies) respectfully move for an order striking portions of the testimony filed by Ohio Manufacturers’ Association Energy Group (“OMAEG”) witness, John Seryak, that relate to matters outside the scope of these proceedings. The testimony to be struck and the grounds for this motion are more fully described in the attached Memorandum in Support.

Respectfully submitted,

**OHIO POWER COMPANY**

*/s/ Steven T. Nourse*

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## MEMORANDUM IN SUPPORT

### **I. Introduction**

The Commission’s procedural rules grant attorney examiners the authority to “[r]ule on objections, procedural motions, and other procedural matters” and to “[t]ake such actions as are necessary to \* \* \* [p]revent the presentation of irrelevant or cumulative evidence.” Ohio Adm.Code 4901-1-27(B)(4) and (7)(b). The Companies ask the Attorney Examiners in this proceeding to exercise that authority by striking from the record portions of the witness testimony prefiled in these proceedings by John Seryak on behalf of intervenor OMAEG on October 10, 2023.

On July 7, 2023, the Attorney Examiner issued an Entry setting these proceedings for hearing. The focused purpose of these proceedings, as indicated in that and other entries, is to conduct an “audit of the legacy generation resources costs of Duke Energy Ohio, Inc., The Dayton Power and Light Company, and Ohio Power Company for the period from January 1, 2020 through December 31, 2020.” May 5, 2021 Entry at ¶ 1; *see also* July 7, 2023 Entry at ¶ 33. Nonetheless, Mr. Seryak’s prefiled testimony attempts to offer opinions beyond the scope of this purpose, including commentary regarding the House Bill 6 (H.B. 6) investigations and previous Commission decisions that relate to charges collected by different rider mechanisms than the subject of this proceeding: 2020 net costs recovered through the Legacy Generation Rider (LGR).

Mr. Seryak’s testimony includes topics that are not relevant topics for testimony in this proceeding. Both subjects fall well outside the scope of the audit period, and each has nothing to do with the Companies’ actions in regard to their LGR ownership interest for the 2020 calendar year. Accordingly, AEP Ohio seeks to strike Mr. Seryak’s testimony as it relates to (1) the

enactment of and investigations regarding H.B. 6, and (2) previous Commission decisions regarding AEP Ohio's PPA Riders and other EDUs' corresponding mechanisms.

**II. The Commission Should Strike Portions of Mr. Seryak's Testimony That Raise Issues Outside the Scope of These Proceedings.**

Mr. Seryak's testimony raises two issues that fall outside the scope of these proceedings: (1) the enactment of and investigations regarding H.B. 6, and (2) the Commission's past decisions regarding AEP Ohio's and other EDUs' OVEC Riders. Neither relate to the Commission's review of the Companies' LGR Rider mechanisms established by R.C. 4928.148 and set forth in Case No. 19-1808-EL-UNC. *In re 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). Accordingly, the Companies identify certain portions of testimony that should be struck for the following reasons.

**A. Inflammatory testimony regarding the ongoing H.B. 6 investigation is unrelated and irrelevant to this proceeding.**

Mr. Seryak asserts that the purpose of his testimony is "to address the prudence review and audit of Duke's, AES Ohio's, and AEP's (collectively, EDUs) Legacy Generation Resource Riders (LGR Riders)[.]" (Seryak Testimony at 4:3-6.) He explains that "[t]hese audits were conducted pursuant to a provision in Ohio law (R.C. 4928.148(A)(1)), which establish the nonbypassable LGR Riders[.]" (*Id.* at 4:6-7.) Yet Mr. Seryak's testimony extends far beyond the "prudence review and audit" of the costs collected under the LGR Riders. Instead, he improperly uses his testimony as an opportunity to make inflammatory accusations against AEP Ohio and conduct his own investigation into the prudence of H.B. 6. Mr. Seryak devotes a significant portion of his testimony to discussing investigations regarding the "H.B. 6 bribery scandal." (*Id.* at 9:8 – 13:11.) In particular, Mr. Seryak dedicates an entire section to discussing the federal investigations of former Ohio House Speaker Larry Householder and former PUCO

Commissioner Samuel Randazzo. (*Id.* at Section III.) These opinions fall outside scope of this proceeding and should be excluded.

Mr. Seryak asserts that “the Commission should refrain from continuing to authorize recovery to LGR Rider costs until all federal investigations into HB6 conclude.” (*Seryak Testimony* at 9:5-7.) The H.B. 6 investigations relate to matters *outside these proceedings* and should not be considered. In other words, Mr. Seryak’s conspiracy-laden allegations do not help determine whether the Companies’ LGR costs during 2020 were prudent. *See* R.C. 4928.148(A)(1); May 5, 2021 Entry at ¶ 1. Mr. Seryak provides only one reason for discussing the H.B. 6 investigations: to “explain the genesis of the LGR Riders.” (*Seryak Testimony* at 13:3-4.) Yet the Commission has already determined that information regarding H.B. 6-related investigations is beyond the scope of these proceedings. In its July 7, 2023 Entry, the Commission summarily rejected OCC’s attempt to retrieve copies of “subpoenas received by any AEP entity relating to [H.B. 6] from the [SEC]” because “this proceeding is limited to reviewing the prudence and reasonableness of the actions of EDUs with ownership interests in OVEC during calendar year 2020, *rather than the events leading up to the creation and implementation of the LGR mechanism that occurred in 2019.*” (Emphasis added.) July 7, 2023 Entry at ¶ 33.

The Commission should likewise reject Mr. Seryak’s attempt to introduce evidence regarding the creation of H.B. 6, and pending investigations related to the same. Such testimony is not relevant, and – as it relates to accusations against AEP – is inflammatory. Accordingly, the Companies move to strike the following testimony:

<u>Intervenor</u>	<u>Witness</u>	<u>Testimony</u>	<u>Text to be Struck or Modified</u>
OMAEG	John Seryak	5:19 – 6:3	“that the LGR Riders are part and parcel of the corrupt House Bill 6 (HB6), which remains under investigation. Therefore, the Commission should not allow EDUs to continue to recover costs through the LGR Riders until all HB6-related investigations have concluded or determine that such costs were in fact reasonable, prudently incurred, and in the best interest of customers;”
OMAEG	John Seryak	6:4-9	“that a former Commissioner has been implicated in the HB6 bribery scandal that established the LGR Riders. Given that this Commissioner may have assisted in creating and implementing the LGR Riders, the Commission should not continue to authorize cost recovery through the LGR Riders or determine the prudence and reasonableness of such costs while open corruption investigations remain ongoing;”
OMAEG	John Seryak	9:5-7	“At a minimum, the Commission should refrain from continuing to authorize recovery of LGR Rider costs until all federal investigations into HB6 conclude.”
OMAEG	John Seryak	9:8 – 13:11	All of Section III.
OMAEG	John Seryak	26:16-20	“The LGR Riders only exist because of the corrupt HB6, which remains under investigation. Therefore, the Commission should not authorize the EDUs to continue to recover costs through the LGR Riders or determine that such costs were prudent, reasonable, or in the best interest of customers until all HB6-related investigations have concluded.”

<u>Intervenor</u>	<u>Witness</u>	<u>Testimony</u>	<u>Text to be Struck or Modified</u>
OMAEG	John Seryak	26:21 – 27:3	“a former Commissioner has been implicated in a related bribery scandal. Accordingly, the Commission should not authorize continued cost recovery through the LGR Riders or deem costs to be reasonable, prudent, and in the best interest of customers while open corruption investigations remain ongoing.”

**B. Neither AEP Ohio’s PPA Rider proceedings nor Duke’s or AES’s corresponding predecessor mechanism proceedings are proper topics for testimony in this proceeding.**

In her July 7, 2023 Entry, Attorney Examiner Addison also found that “reports, forecasts, policies, and other information that pertains to years falling beyond the period under review in these proceedings – January 1, 2020, through December 31, 2020” are “not relevant to the subject matter of these cases or reasonably calculated to lead to the discovery of admissible evidence.” July 7, 2023 Entry at ¶ 29 (granting the Companies’ joint motion to quash OCC’s subpoena).

Despite this ruling, Mr. Seryak attempts to offer opinions regarding OVEC-related charges that occurred before the audit period and that were the subject of separate proceedings pertaining to AEP Ohio’s and other EDUs’ use of non-LGR mechanisms. He opines, for example, that the “LGR Rider costs should be disallowed in their entirety” because, based on his “understanding of prior Commission orders, the OVEC Riders were intended to function as meaningful ‘financial hedge[s] that mitigate price spikes in market prices’ and ‘provide added rate stability.’” (Seryak Testimony at 14:3-6, citing *In the Matter of the Application of Dayton*



*Power and Light Company to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case No. 16-369-EL-SSO, Opinion and Order at ¶ 14 (October 20, 2017) (“*AES RR Case*”) and *In the Matter of the Application Seeking Approval of Ohio Power Company’s Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case Nos. 14-1693-EL-RDR, *et al.*, Opinion and Order at 21 (March 31, 2016) (“*AEP Ohio Rider PPA Case*”).) He quotes Commissioners Trombold and Haque’s concurring opinions in the *AEP Ohio Rider PPA Case*, in which they articulated their thoughts regarding the purpose of AEP’s PPA Rider. (Seryak Testimony at 14:12 – 15:3.) Additionally, Mr. Seryak opines that LGR Rider costs are “required to be related to a contractual entitlement” because of the Commission’s holdings in prior OVEC-related proceedings for AEP Ohio, Duke Energy Ohio, and AES Ohio. (*See id.* at 16:4-14.)

But AEP Ohio’s Power Purchase Agreement Rider (“PPA Rider”), Duke Energy Ohio’s Price Stabilization Rider (“PSR”) and AES Ohio’s Reconciliation Rider (“RR”) are not the subject of these proceedings. Through enactment of R.C. 4928.148, the General Assembly explicitly provided that those prior mechanisms “shall be replaced” as of January 1, 2020 with “a nonbypassable rate mechanism” to recover those same costs through the end of 2030. R.C. 4928.148(A). The Commission began to implement the statute and established the LGR Rider in November 2019. *See In re Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry ¶ 38 (Nov. 21, 2019). Thus, the scope of this proceeding is statutorily set, with R.C. 4928.148(A)(1) directing the Commission to review “the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation resource \* \* \* during calendar year 2020.” There should be no consideration of the prior mechanisms created under a

different statute or Commission decisions implementing those separate mechanisms under different statutes.

Mr. Seryak’s testimony relies on past proceedings related to the mechanisms the LGR Rider replaced. Moreover, in contrast to the standard applied in those proceedings, the legal standard for LGR Riders is now specified by statute. Setting aside that Mr. Seryak’s testimony grossly misquotes and misapplies the passages referenced from those prior decisions, the Commission’s past approval of the EDUs’ OVEC riders, and the standard it applied to approve them, have no bearing on this case.

Mr. Seryak should not be permitted to expand the scope of these proceedings and otherwise confuse the issues defined by statute for this proceeding by introducing evidence regarding past Commission decisions related to EDU costs associated with different mechanisms during a different time period. Accordingly, the Companies move to strike the following testimony:

<b><u>Intervenor</u></b>	<b><u>Witness</u></b>	<b><u>Testimony</u></b>	<b><u>Text to be Struck or Modified</u></b>
OMAEG	John Seryak	6:12-15	“that, as explained by the Commission through its orders, the LGR Riders should be functioning as meaningful “financial hedge[s] that mitigate price spikes in market prices” and “provide added rate stability,” and they “must not impose unreasonable costs on customers.”
OMAEG	John Seryak	8:10-12	“To date, the EDUs have collected over \$400 million from customers to subsidize the OVEC plants, and I estimate that they could collect in total around \$850 million by 2030.”
OMAEG	John Seryak	13:14-24	All of Q&A 14

<u>Intervenor</u>	<u>Witness</u>	<u>Testimony</u>	<u>Text to be Struck or Modified</u>
OMAEG	John Seryak	14:1-10	All of Q&A 15
OMAEG	John Seryak	14:11 – 16:3	All of Q&A 16
OMAEG	John Seryak	16:5-14	“All of the OVEC Riders were constrained by Commission orders, and those same restraints should apply to the LGR Riders. In approving AEP Ohio’s PPA Rider, the Commission stated that costs eligible for recovery were those related to AEP Ohio’s “contractual entitlement” to OVEC. Similarly, when approving Duke’s PSR, the Commission stated that costs eligible for recovery were those “resulting from transactions, in the wholesale market, relating to Duke Energy Ohio’s entitlement under the Inter-Company Power Agreement (ICPA).” When approving AES Ohio’s RR, the Commission stated that “[t]here is no evidence in the record of this proceeding to distinguish our determination in [the AEP PPA Rider case] from the facts of this case.”
OMAEG	John Seryak	17:14-16	“Notably, these costs are not related to a wholesale market transaction, as required in prior Commission decisions approving the OVEC Riders”
OMAEG	John Seryak	19:4-7	“As stated by Commissioner Haque when approving AEP Ohio’s PPA Rider, “what exactly is the point [. . .] if ratepayers never experience the credits?” The LGR Riders and their predecessors have cost Ohio ratepayers about \$400 million to date, and I estimate that they will cost Ohioans up to \$850 million by 2030.”

<u>Intervenor</u>	<u>Witness</u>	<u>Testimony</u>	<u>Text to be Struck or Modified</u>
OMAEG	John Seryak	20:3-7	“Additionally, the Commission should consider that a draft audit report— also created by LEI— previously determined that “keeping the [OVEC] plants running does not seem to be in the best interests of the ratepayers.” LEI’s previous determinations that keeping the two OVEC plants running is not in the best interests of customers remains true today.”
OMAEG	John Seryak	27:5-9	“Therefore, the LGR Riders should be functioning as meaningful “financial hedge[s] that mitigate price spikes in market prices” and “provide added rate stability,” and they “must not impose unreasonable costs on customers.”

**III. CONCLUSION**

For the reasons provided above, the Companies respectfully request that the Commission grant their motion to strike the cited portions of the pre-filed testimony of OMAEG witness John Seryak.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Ohio Power Company's Motion to Strike Specified Intervenor Testimony* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 30<sup>th</sup> day of October 2023, via e-mail.

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Summary: Motion To Strike the Testimony of John Seryak. electronically filed by Mr. Steven T. Nourse on behalf of Ohio Power Company.