

**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 :  
D/B/A AES Ohio, and Ohio Power :  
Company D/B/A AEP Ohio. :

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**MEMORANDUM CONTRA  
JOINT MOTION BY OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP  
REQUESTING THE PUCO TO SEEK REPORT FROM THE PJM  
INDEPENDENT MARKET MONITOR ON BIDDING PRACTICES IN THE PJM  
ENERGY MARKETS  
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES  
COMMISSION OF OHIO**

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The Public Utilities Commission of Ohio ("Commission") Staff ("Staff") hereby opposes Office of the Ohio Consumers' Counsel's ("OCC") and Ohio Manufacturers' Association Energy Group's ("OMAEG") (together, Joint Movants) Joint Motion requesting the Commission to seek a report from the PJM Independent Market Monitor ("IMM") on bidding practices in the PJM energy markets in Case No. 21-477-EL-RDR, for the reasons set forth in the attached Memorandum.

Respectfully Submitted,

**Dave Yost**  
Attorney General

**John H. Jones**  
Section Chief  
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/s/*Ambrosia E. Wilson*

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**On Behalf of the Staff of the  
Public Utilities Commission of Ohio**

## **MEMORANDUM IN SUPPORT**

Staff opposes OCC's and OMAEG's unreasonable and prejudicial Joint Motion requesting the Commission to seek a report from the IMM on bidding practices in the PJM energy markets. Joint Movants filed this motion on October 20, 2023, merely eleven days before the scheduled start of the hearing.<sup>1</sup> Joint Movants had plenty of time and opportunity to make this request long before the start date of the evidentiary hearing in this matter but did not. Granting Joint Movants' request now would prejudice the other parties and should be denied.

Joint Movants' request for a new report is unreasonable and prejudicial. First, Joint Movants acknowledge that "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." Joint Motion at 2. So Joint Movants knew that the Commission would not have this information without requesting it before this case was even opened.

Second, the Ohio Supreme Court found that it is improper for the Commission to base decisions on evidence presented without the opportunity to explain and rebut the evidence. *Forest Hills Utility Co. v. Pub. Util. Comm'n*, 39 Ohio St.2d 1, 3, 313 N.E.2d 801 (1974). Granting this Motion, requesting a detailed and complicated report—which will likely need to be created by the IMM—*eleven days* before the start of the evidentiary

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<sup>1</sup> Joint Movants filed their motion on October 20, 2023. The evidentiary hearing is scheduled for October 31, 2023.

hearing prejudices and denies due process to all parties in the proceeding. This is especially true where Joint Movants have had nearly two years to request this information. And even if the Commission were to request this data from the IMM now, *eleven days* before the hearing starts, this report would likely not be produced before the hearing begins (or ends for that matter) and could further delay the proceedings of this case. And even if the report could be completed before the end of the evidentiary hearing, which is unlikely, the parties will not have a chance to rebut the report—if it can even be entered into the record before the hearing ends.

Finally, Joint Movants and the other parties to the proceeding are free to rebut the auditor's findings/recommendations and offer evidence (including calling an OVEC witness) of their own for the Commission's consideration *at the evidentiary hearing*. However, no witness (presumably) will be made available to explain the nature or import of such a report requested by Joint Movants; thus, the other parties will have no opportunity to cross-examine a witness to dispute the report or present their own witness to rebut the evidence. This result prejudices all parties and violates Ohio precedent in *Forest Hills*. Accordingly, commissioning a custom, detailed market monitoring report is unreasonable and unnecessary, and the Joint Motion should be denied.

The Commission has already met its statutory obligation under R.C. 4928.148(A)(1). The Commission directed that an independent audit occur to determine the prudence and reasonableness of the electric distribution utilities' ("EDUs") disposition of energy and capacity into the PJM markets during years 2021, 2024, 2027, and 2030. *In re OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio*,

*Inc., Dayton Power and Light Company, and AEP Ohio*, Case No. 21-477-EL-RDR, Entry (May 5, 2021) at 2. The Commission selected an auditor, the selected auditor was directed to and has filed lengthy audit reports with respect to each of the EDUs, and the audit reports address the dispatching of the OVEC units. *Id.*, AEP Ohio Final Report, AES Final Report, Duke Energy Ohio Final Report (December 17, 2021) at 9-10, respectively. The Commission has met every requirement of the statute and, therefore, this motion should be denied.

It is unreasonable and prejudicial for Joint Movants to make this request less than two weeks before the hearing is to start—especially where the audit reports have been available for nearly two years. And it would be improper for the Commission to base decisions on evidence presented without the opportunity to explain and rebut the evidence. A newly created market monitoring report—likely unavailable before the end of the hearing—will not be available for explanation and rebuttal. Joint Movants have had plenty of time and opportunity to make this request before now. Granting the Joint Motion would be unreasonable, prejudicial, and inconsistent with Ohio precedent established in *Forest Hills*.

The Commission should deny the Joint Motion.

Respectfully Submitted,

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**On Behalf of the Staff of the  
Public Utilities Commission of Ohio**

## **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Memorandum Contra OCC's and OMAEG's Joint Motion Requesting the PUCO to Seek Report from the PJM Independent Market Monitor on Bidding Practices in the PJM Energy Markets, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the below parties, this 30<sup>th</sup> day of October 2023.

**/s/ Ambrosia E. Wilson**

**Ambrosia E. Wilson**

Assistant Attorney General

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Summary: Memorandum Contra and Joint Motion electronically filed by Mrs.  
Tonnetta Y. Scott on behalf of PUCO.