

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the OVEC Generation	:	
Purchase Rider Audits Required by	:	Case No. 21-0477-EL-RDR
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	:	

**JOINT MEMORANDUM IN OPPOSITION TO MOTION REQUESTING REPORT
FROM PJM INDEPENDENT MARKET MONITOR BY THE DAYTON POWER AND
LIGHT COMPANY D/B/A AES OHIO, DUKE ENERGY OHIO, INC., AND OHIO
POWER COMPANY D/B/A AEP OHIO**

The Commission should reject the eleventh-hour attempt by the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Manufacturers' Association Energy Group ("OMAEG") to seek new analysis by the PJM Independent Market Monitor ("Market Monitor"), which even if performed, would be available only after the evidentiary hearing in this case concludes.¹ As demonstrated below, the Commission should deny the Joint Motion both because it seeks to add irrelevant information to the record in this case, and because the motion was filed too late for the requested information to be included in the record.

The requested analysis would not address the statutory scope of this proceeding, *i.e.* determining "the prudence and reasonableness of the actions of electric distribution utilities with interests" in "a legacy generation resource" under R.C. 4928.148.² Instead, OCC and OMAEG

¹ The hearing in this case commenced on October 31, 2023.

² See R.C. 4928.01(A)(41) ("Legacy generation resource" means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests, including the Ohio valley electric corporation.").

would have the Market Monitor report on “bidding data by merchant coal plant operators in the PJM Day-Ahead Energy Market during 2020.”³

The Commission already appointed an independent auditor (“LEI”) to assess the activities in 2020 of The Dayton Power and Light Company d/b/a AES Ohio (“AES Ohio”), Duke Energy Ohio, Inc. (“Duke Energy Ohio”), and Ohio Power Company d/b/a AEP Ohio (“AEP Ohio”) (collectively, the “EDUs”), with respect to their minority interests in the Ohio Valley Electric Corporation (“OVEC”) (4.9%, 9.0%, and 19.93%, respectively).⁴ In each audit report,⁵ LEI specifically addressed OVEC’s daily unit commitment designations, which are made pursuant to procedures approved by its Operating Committee.⁶ Absent emergencies or non-availability, those designations are either “Must Run” (*i.e.*, the unit is committed to run at its economic minimum, but can be dispatched by PJM at higher levels based on market pricing and unit cost information) or “Economic” (*i.e.*, the unit may be dispatched to run by PJM via its economic dispatch model).

As LEI recognized, OVEC committed its units as “Economic” in the PJM Day-Ahead Energy Market from April 14, 2020 through June 30, 2020 due to low energy prices at the outset of the COVID-19 pandemic, and committed Unit 6 at the Clifty Creek plant as “Economic” during the summer ozone non-attainment period; otherwise, OVEC’s units were generally

³ Joint Motion (Oct. 20, 2023), Attachment A. Despite using the term “bidding” throughout their Motion, OCC and OMAEG’s focus on “Must Run” versus “Economic” designations concern OVEC’s daily unit commitment designations in the PJM Day-Ahead Energy Market.

⁴ Entry (July 14, 2021).

⁵ Audit of the Legacy Generation Resource Rider of AES Ohio – Final Report (Dec. 15, 2021) (“AES Ohio Audit Report”); Audit of the Legacy Generation Resource Rider of Duke Energy Ohio – Final Report (Dec. 15, 2021) (“DEO Audit Report”); Audit of the Legacy Generation Resource Rider of AEP Ohio – Final Report (Dec. 15, 2021) (“AEP Ohio Audit Report”).

⁶ AES Ohio Audit Report, pp. 37-38; DEO Audit Report, pp. 40-42; AEP Ohio Audit Report, pp. 41-42.

committed as “Must Run.”⁷ The statement in the Joint Motion that the “auditor failed to review how often economic commitment was actually utilized during this period”⁸ is thus simply not true. It is equally unclear why the Joint Motion states that LEI’s audit reports “indicate that the coal plants utilized imprudent and anti-competitive practices,”⁹ when LEI expressly recognized that while “[i]deally, the units would be committed on economics all or most of the time,” such commitment “can be an issue for coal plants, which are designed to operate continuously.”¹⁰ Thus, “LEI would not expect to see the plants committed based on economics all of the time, but the option to do so” (as OVEC implemented in 2020) “provides additional flexibility and could reduce costs for customers.”¹¹

LEI’s findings on OVEC’s commitment designations were consistent with the Commission’s decision that Duke Energy Ohio’s activities with respect to its OVEC interest in 2019, as well as OVEC’s commitment designations, were prudent: “Accordingly, while it may retroactively appear that, in some months, it would have been more prudent for OVEC to have

⁷ AES Ohio Audit Report, pp. 37-38; DEO Audit Report, pp. 41-42; AEP Ohio Audit Report, pp. 41-42.

⁸ Joint Motion (Oct. 20, 2023), p. 4.

⁹ *Id.* at 1.

¹⁰ AES Ohio Audit Report, p. 44; DEO Audit Report, p. 50; AEP Ohio Audit Report, p. 48. *Accord*: Direct Testimony of John D. Swez (Oct. 3, 2023), pp. 9-10 (“[A]ny commitment decision must factor in the cycling timing, risks, and costs. It can often be more economic to run a unit during periods where it is ‘out of the money’ so that the unit is capable of operation during those periods when it is ‘in the money’ so to maximize potential margins and access to potential benefits and value to customers. Similarly, with respect to other risks, every time a coal-fired unit is shut down, there are risks associated with starting it up again. Units can fail to start due to thermal cycles or other cycling issues, causing potential damage to the units, thereby causing additional costs to repair, and thereby, a loss of market revenue. This risk of cycling must also be factored into commitment decisions and whether or not to offer the unit as Economic or Must-Run.”).

¹¹ AES Ohio Audit Report, p. 44; DEO Audit Report, p. 50; AEP Ohio Audit Report, p. 48.

implemented an ‘economic’ strategy, other factors come into play to demonstrate that *it was still prudent to go forward with a ‘must-run’ commitment.*”¹²

Despite those findings of prudence, OCC and OMAEG now seek additional data (though, only from merchant coal plants in PJM) that they claim will support their “anti-competitive” arguments. Such an investigation is beyond the scope of this proceeding and the assessment contemplated by R.C. 4928.148.¹³

Indeed, OVEC’s commitment strategy is set by its Operating Committee, where AES Ohio, Duke Energy Ohio, and AEP Ohio sit alongside sponsoring companies that operate in a variety of different regulatory environments (*e.g.*, the EDUs providing credits and charges of net OVEC costs through the Legacy Generation Rider, regulated utilities in vertically-integrated states receiving cost-based recovery, and unregulated electric cooperatives).

Information regarding how PJM merchant power plants offer their energy into PJM’s day-ahead energy markets is thus irrelevant here, as those merchant plants are not subject to the same requirements to which the OVEC plants are subject.

Not only does the Joint Motion seek to add irrelevant information to the record, but also, the Joint Motion was filed too late for the requested information to be added to the record. Specifically, the Joint Motion was filed on October 20, 2023. The hearing in this case began on October 31 and should end soon. It will thus be impossible for the Commission to decide the

¹² *In re Duke Energy Ohio, Inc.*, Case No. 20-167-EL-RDR, Opinion and Order (Sept. 6, 2023), ¶ 58-60. *See, e.g., id.* at ¶ 58 (emphasis added).

¹³ R.C. 4928.148(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.”).

motion, and for the Market Monitor to complete the requested analysis by the close of the hearing.

This case has been pending for two and a half years. The audits in this case were filed nearly two years ago. OCC and OMAEG have had ample opportunities to file their motion earlier, and never explain why they waited until just before the hearing is to start to file the Joint Motion.

Given the timing of the Joint Motion, the Commission should treat it as a request to re-open the proceeding under Ohio Adm.Code 4901-1-34. OCC and OMAEG have not demonstrated good cause for considering such data in this proceeding, including “the nature and purpose of such evidence” (which has not yet been compiled) and “facts showing why such evidence could not, with reasonable diligence, have been presented earlier in this proceeding.”¹⁴ It is telling that neither OCC nor OMAEG discussed the effect of “Must Run” commitments on the wholesale market in their comments that were filed in response to LEI’s reports in this proceeding.¹⁵ The Commission should, therefore, proceed with its consideration of this case based on the record before it.

For each of these reasons, the Commission should deny the Joint Motion.

¹⁴ Ohio Adm.Code 4901-1-34(B).

¹⁵ Initial Comments by Office of the Ohio Consumers Counsel (May 8, 2023); Comments of the Ohio Manufacturers’ Association Energy Group (May 8, 2023); Reply Comments by Office of the Ohio Consumers’ Counsel (May 23, 2023); Reply Comments of the Ohio Manufacturers’ Association Energy Group (May 23, 2023).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Joint Memorandum in Opposition to Motion Requesting Report from PJM Independent Market Monitor by the Dayton Power and Light Company d/b/a AES Ohio, Duke Energy Ohio, Inc., and Ohio Power Company d/b/a AEP Ohio has been served via electronic mail upon the following counsel of record, this 3rd day of November, 2023:

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Summary: Memorandum Joint Memorandum in Opposition to Motion Requesting Report from PJM Independent Market Monitor by the Dayton Power and Light Company d/b/a AES Ohio, Duke Energy Ohio, Inc., and Ohio Power Company d/b/a AEP Ohio electronically filed by Mr. Jeffrey S. Sharkey on behalf of The Dayton Power and Light Company.