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 & LIGHT COMPANY, AND	) CASE NO.21-0477-EL-RDR
AEP OHIO.	)

JOINT INITIAL POST-HEARING BRIEF OF CITIZENS' UTILITY BOARD OF OHIO & UNION OF CONCERNED SCIENTISTS

PUBLIC VERSION

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Respectfully Submitted,

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Pursuant to the attorney examiner's directive in this case, Citizens' Utility Board of Ohio ("CUB") and the Union of Concerned Scientists ("UCS") jointly submit the following brief on the 2020 Compliance Audit for the OVEC Generation Purchase Rider for Duke Energy Ohio, Inc., The Dayton Power & Light Company (d/b/a/ AES Ohio), and AEP Ohio.

I. INTRODUCTION

The above captioned proceeding is unprecedented and precedent setting. The proceeding encompasses **three** separate Audits of **three** separate Ohio electric distribution utilities ("EDUs") – AEP Ohio, Duke Energy Ohio, and AES Ohio (collectively, "the Companies") – and their common ownership of two 1950s-era coal-fired electric generation plants under the auspices of the Ohio Valley Electric Corporation ("OVEC"). The retail customers of the Companies are required to subsidize the costs incurred by the Companies in their collective operation of these plants through a new Legacy Generation Resource Rider ("LGR"). The Audit Period in this case, calendar year 2020, represents the first year of the LGR, a rider created by Ohio House Bill 6 ("HB6") in 2019.

The record in this proceeding—which includes the aforementioned Audits, a series of comments from parties, and more than a week-long evidentiary hearing—shows that the OVEC plants are not providing value to customers. Their old age and inefficiencies make them costly to operate, and uncompetitive in the marketplace.[1] Instead of acting as a financial hedge to help customers, they are a costly millstone around the necks of ratepayers, forcing Ohioans to foot the bill for millions of dollars in above-market costs. These above-market costs are due in large part to imprudent and unreasonable decisions made by OVEC through its co-owners to keep these plants alive, consume coal, and

[1] CUB/UCS Ex. 1 (Glick) at 15.

enrich the Companies. Through this proceeding, the Companies are asking the Commission to force Ohio ratepayers to subsidize each of the Company's costs for owning the OVEC plants. Without subsidies from everyday Ohioans, the shareholders of AEP Ohio, Duke Energy Ohio, and AES Ohio's parent corporations otherwise would have paid the $117.9 million in above-market costs.[2]

This conclusion that the OVEC plant owners paid overmarket costs is not just the opinion of CUB & UCS and their expert Witness Devi Glick, however. Ohio's colleague utility commission, the Michigan Public Service Commission, came to the same conclusion. In analyzing the same calendar year 2020 time period for OVEC co-owner and AEP affiliate Indiana Michigan Power Company, the Michigan Public Service Commission disallowed $1.347 million in above-market power costs for OVEC.[3] Scaled up to 100% of OVEC's ownership and load, such a disallowance for 2020 would amount to $123.6 million.[4] In the same vein, and as discussed and detailed below, CUB and UCS believe this Commission will come to the same conclusion and thus should disallow collection of the entire amount of above-market energy and capacity charges collected from Ohio consumers in 2020.

II. STANDARD OF REVIEW

The Commission's guiding principle in this case is quite clear: pursuant to Ohio Rev. Code 4928.148(A)(1), it "shall determine . . . the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation

[2] *Id.* at 10.
[3] It should be noted that this decision was recently upheld by the Michigan Court of Appeals on January 18,2024
[4] *Id.* at 16.

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."[5] The Revised Code defines "prudently incurred costs related to a legacy generation resource" to mean costs, including deferred costs, allocated pursuant to a power agreement approved by the Federal Energy Regulatory Commission that relates to a legacy generation resource, less any revenues realized from offering the contractual commitment for the power agreement into the wholesale markets, provided that where the net revenues exceed net costs, those excess revenues shall be credited to customers.[6]

Three decades ago, the Ohio Supreme Court adopted the Commission's definition of a prudent decision, which, as the Court stated is "in accord with that used in other jurisdictions."[7] The prudent decision standard is "one which reflects what a reasonable person would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made."[8] The standard contemplates a retrospective, factual inquiry, without the use of hindsight judgment, into the decision making process of the utility's management.

While ostensibly the day-to-day operations of the plants are performed by OVEC, it is the Companies in this case who bear the burden to demonstrate in this rider proceeding that all costs passed through to their customers were just, reasonable, and prudently incurred, and in the best interest of those customers.

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[5] ORC 4928.148(A)(1).
[6] ORC 4928.01(A)(42).
[7] *City of Cincinnati v. Pub. Util. Comm.,* 1993-Ohio-79, 67 Ohio St. 3d 523, 620 N.E.2d 826, 830.
[8] *Id.*

III. FACTUAL BACKGROUND

The OVEC Plants

OVEC is jointly owned by twelve utilities in Ohio, Indiana, Michigan, Kentucky, West Virginia, and Virginia. OVEC operates two 1950s-era coal-fired power plants— (1) Kyger Creek, a five-unit, 1,086 MW plant in Gallia County, Ohio, and (2) Clifty Creek, a six-unit, 1,303 MW plant, in Jefferson County, Indiana. The OVEC plants were originally built to provide power for the Piketon uranium enrichment facility, but the facility ceased doing uranium enrichment and OVEC ceased selling power to the U.S. Department of Energy for the Piketon plant effective September 30, 2003.[9]

According to the Amended and Restated OVEC Agreement in effect in 2020,[10] management of the OVEC units is governed by the 15-person Board of Directors, which delegates operational decisions to a separate Operating Committee. Each of the three Companies is a Sponsoring Company of OVEC, and as such has one member on the Board of Directors and is allowed to appoint one member to OVEC's Operating Committee. Each of the Companies can make requests and recommendations to the Operating Committee to change unit operations but "unanimous approval of the Operating Committee" is required to change the commitment status of the OVEC units.[11]

Today, the plants provide their output to the twelve owners under an Inter-Company Power Agreement ("ICPA"). The ICPA governs each company's rights and duties as to the power produced by the OVEC plants, with AEP Ohio garnering a 19.93

[9] CUB/UCS Ex 1 (Glick) at 12-13 (Citing Ohio Valley Electric Corporation, Annual Report – 2021 (p. 1)).
[10] Note that the OVEC Agreement was subsequently updated on October 7, 2019, and effective November 15, 2019.
[11] *See* AEP Ex. 1 (Stegall) at 5.

percent ownership share, Duke Energy Ohio a 9.00 percent ownership share, and AES Ohio a 4.90 percent ownership share of OVEC.[12] The ICPA was originally signed on July 10, 1953, and then amended on August 11, 2011, to extend the operation of the plants and the owner's commitment to take the power produced by the plants.[13] OVEC bills the Companies for their shares of energy, capacity, and ancillary services under the agreement, and each company receives the revenues resulting from sales of the power into the PJM market. The Companies are under contract with the OVEC plants under the ICPA through 2040.[14]

The OVEC Rider

Prior to 2020, each of the three Companies received approval from the PUCO to collect the net costs associated with the OVEC plants through separate riders.[15] In the most recent decided cases on those riders, the Companies justified their requests for the rider as a financial hedge.[16]

In 2019 the Ohio General Assembly passed House Bill 6 ("HB6") which, among other things that are infamous in Ohio political history, created the Legacy Generation Resource Rider or LGR, which encompassed the OVEC plants.[17] The LGR replaced the existing OVEC Riders, and became effective on January 1, 2020.[18] Through the LGR, each of the Companies recover on a nonbypassable basis the prudently incurred costs

[12] CUB/UCS Ex 1 (Glick) at 12-13.
[13] *Id. (citing* Ohio Valley Electric Corporation, Annual Report – 2021 (p. 1)).
[14] *Id. (citing* Ohio Valley Electric Corporation, Annual Report – 2021 (p. 9)).
[15] For AEP Ohio the rider was called the Power Purchase Agreement Rider, for Duke Energy Ohio it was called the Price Stabilization Rider, and for AES Ohio it was called the Reconciliation Rider.
[16] *Id.* at 21.
[17] *See* Staff Ex. 2 at 7; Staff Ex. 4 at 7; and Staff Ex. 6 at 7.
[18] *Id.*

related to OVEC, net of the revenues the Company receives from selling the associated energy, capacity, and ancillary services into the PJM market.[19] When the Companies' charges exceed the revenues, the rider results in a charge to customers. Where revenues exceed the Companies' charges, the rider results in a credit to customers.[20] In 2020, ratepayers for these three utilities received only charges under the rider, and no credits.

Under HB6, the law requires the Commission to determine the prudence and reasonableness of the actions of the Companies as it relates to their ownership interests in the legacy generation resources—the two OVEC coal plants—and thus what costs may flow to customers.[21] The initial determination shall be made during 2021 regarding the prudence and reasonableness of such actions during calendar year 2020, with the Commission again making the determination in 2024, 2027, and 2030 regarding the prudence and reasonableness of such actions during the three calendar years that preceded the year in which the determination is made.[22]

The OVEC 2020 AUDIT

To assist the Commission with HB6's required review of the Companies' actions for the period from January 1, 2020, through December 31, 2020, the Commission directed Staff to issue the request for proposal ("RFP") for audit services.[23] London Economics International LLC ("LEI"), successfully replied to the RFP, and issued separate Audits for each of the three Companies' LGR. According to LEI, the purpose of each of

[19] AEP Ex. 1 (Stegall) at 6.
[20] *Id.*
[21] *See* Ohio Rev Code 4928.148(A)(1).
[22] *Id.*
[23] *In the Matter of the OVEC Generation Purchase Rider Audits Required by R.C. 4928.148 for Duke Energy Ohio, Inc., The Dayton Power & Light Company D/B/A AES Ohio, Ohio Power Company D/B/A AEP Ohio,* Case No. 21-0477EL-RDR, Entry, Requests for Proposals at Paragraph 5.

its Audits was "to establish the prudency of all of the costs and sales flowing through the LGR, and to investigate whether [each Company's] actions were in the best interest of its retail ratepayers."[24]

In each of the three Audits in this case, the Auditor's conclusions show that the legacy generation rider neither now nor in the future provides value to customers. Specifically, the Auditor found that based on the OVEC costs billed and the revenues earned in the market, the OVEC plants cost more than they earn;[25]and with the ICPA not planned to expire until June 30, 2040, customers could be locked into paying a premium for energy and capacity from the OVEC plants in future years.[26] Further, the Auditor hints at several questionable issues that at times it suggests are imprudent, and others that the Commission "may wish to examine."[27]

It must be stressed, however, that 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 itself, as required by law.

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[24] Staff Ex. 2 at 7; Staff Ex. 4 at 7; and Staff Ex. 6 at 7.
[25] Staff Ex. 6 at Pg. 29; Staff Ex. 4 at 31; Staff Ex. 2 at 27.
[26] Staff Ex. 6 at 30; Staff Ex. 4 at 32; Staff Ex. 2 at 29
[27] *See* Staff Ex. 6 at 9; Staff Ex. 4 at 9; Staff Ex. 2 at 9 Audit Section 1.3 (LEI's findings and recommendations). Specifically, the Auditor highlighted "Component D" or otherwise referred to as "payment per common share." Component D, as LEI explains, is itself a return on investment to owners of OVEC, and suggests that the Commission "may wish to examine this" as imprudent under ORC 4928.01(A)(42).

IV. ARGUMENT

A. PUCO should disallow costs above the market value of OVEC's energy and capacity in PJM to be passed on to Ohio ratepayers through the LGR.

During the Audit Period, the total billed charges from the LGR cost Ohio ratepayers $117.9 million more than the market price for the same amount of energy, capacity, and ancillary services.[28] To evaluate how much in above-market costs each Company incurred under the Rider, CUB & UCS Witness Devi Glick compared the total cost billed to the each of the OVEC-sponsoring Companies to the value of the energy, capacity, and ancillary services provided by OVEC as sold into the PJM market.[29] Through discovery, each Company provided the monthly billing from OVEC for 2020, which includes MWh sold, energy, demand, and transmission charges, along with PJM expenses and fees. Each Company also provided energy market revenue, capacity market revenue, and ancillary services revenue for the power that OVEC sold into the PJM market. Assuming the cost of the OVEC Agreement was equivalent to the monthly billing from OVEC, and the value of the OVEC Agreement would be equal to the sum of the energy, ancillary services, and capacity value, the difference represents the costs passed onto Ohio ratepayers under the Legacy Generation Rider. Witness Glick's analysis found for the three Companies, the following summary of costs and revenues for the OVEC plants:

[28] CUB/UCS Ex. 2C (Glick Confidential) at 27. Note that certain information previously redacted as confidential has subsequently been deemed public or otherwise agreed upon by the parties and Attorney Examiner to be made public.
[29] *Id.* at 28.

	MWh	Billed Charges		Revenues		Net Costs	
		$ Million	$/MWh	$Million	$/MWh	$ Million	$/MWh
AEP	1,831,721	$122.0	$66.59	$53.0	$28.94	$(69.0)	$(37.65)
Duke	827,167	$54.8	$66.30	$22.9	$27.71	$(31.9)	$(38.58)
AES	450,349	$30.0	$66.60	$13.0	$28.83	$(17.0)	$(37.76)
Total	**3,109,237**	**$206.8**	**$66.52**	**$88.9**	**$28.60**	**$(117.9)**	**$(37.92)**

- For AEP Ohio, OVEC charged the Company $122.0 million for 1,831,721 MWh during the audit period, for an average cost of $66.59 per MWh. In contrast, the value of the market revenue that OVEC obtained for the energy, capacity, and ancillary services it sold into the PJM market was only $53.0 million, or around $28.94/MWh. This amounts to a loss of $69.0 million for AEP ratepayers, or $37.65/MWh.[30]
- For Duke Energy Ohio, OVEC charged the Company $54.8 million for 827,167 MWh during the audit period, for an average cost of $66.30/MWh. In contrast, the value of the market revenue that OVEC obtained for the energy, capacity, and ancillary services it sold into the PJM market was only $22.9 million, or around $27.71/MWh. This amounts to a loss of $31.9 million for Duke Energy Ohio ratepayers, or $38.58/MWh.[31]
- For AES Ohio, OVEC charged the Company $30.0 million for 450,349 MWh during the audit period, for an average cost of $66.60/MWh. In contrast, the value of the market revenue that OVEC obtained for the energy, capacity, and ancillary services it sold into the PJM market was only $13.0 million, or

[30] *Id.* at 29.
[31] *Id.*

around $28.83/MWh. This amounts to a loss of $17.0 million for AES Ohio ratepayers, or $37.76/MWh. In total, that means that during the audit period, the Companies collected $117.9 million in above-market costs while providing consumers no additional value.[32]

The Auditor in this case came to similar conclusions on the amount of net losses incurred by the Companies. According to the Audits, the Companies overcharged Ohio ratepayer s to the tune of $105,524,869.53.[33] Specifically, the Audits found that Duke over charged customers for its portion of the OVEC subsidy by $29,974,510.91,[34] AES Ohio overcharged for its subsidy $7,652,653.04,[35]and AEP by a staggering $67,897,705.58.[36]

The differences, though, between Witness Glick's calculations and LEI's result stem from differences in each of their mandates. As Witness Glick points out, LEI was conducting an accounting audit, and as such relied on accounting month data for some of its calculations, while Ms. Glick's analysis focused on net costs incurred and revenues earned each month, regardless of when they are recorded on the Company's books. CUB

[32] *Id. at 29-30.*
[33] *See* Revised Public AES Audit Report (Jan. 4, 2024), at 25, Figure 9, Column "Rider revenues, LGR" (Staff Ex. 2); Revised Public AEP Audit Report at 28–29, Figure 9, Column H (Staff Ex. 4); Revised Public Duke Audit Report at 26, Figure 9, Column K (Staff Ex. 6); and Tr. Vol. I at 65, 76–78 (Cross-Examination of Fagan).
[34] Revised Public Duke Audit Report (Jan. 4, 2024), Attachment 1 at p. 26, Figure 9, column K. *See also* Tr. Vol. I at 77-78.
[35] Revised Public AES Ohio Audit Report (Jan. 4, 2024), Ex. 1 at p. 25, Figure 9, column labeled "Rider Revenue LGR." *See also* Tr. Vol. I at 76– 77.
[36] Revised Public AEP Audit Report (Jan. 4, 2024), Attachment A at p. 28-29, Figure 9, column H. *See also* Tr. Vol. I at 65.

& UCS stress that the calculations by Witness Glick are, thus, more accurate as it pertains to the costs borne by customers over the costs otherwise based on the market.[37]

B. The Companies failed to satisfy their burden of demonstrating the plants were operated prudently, in the best interest of consumers.

The record in this proceeding, beginning with the Audits of the LGR and the analysis conducted by the expert witnesses in this proceeding show excessive costs incurred by the OVEC and the Companies in the running of the OVEC plants in the Audit Year 2020. The record shows that these excessive above-market costs are part of a pattern dating back years, and in previous OVEC cost recovery riders. Just as in previous years, the LGR for 2020 has been shown to be a detriment to customers, and not a fulfilment of the promises of previous Commission decisions nor the promises of HB6. Nevertheless, it is not merely the retelling of these imprudent and unreasonable decisions leading to an unnecessary burden on the backs of customers that is important in the present case. As stated earlier, it is the Companies' burden to demonstrate that all costs passed to customers under LGR are just, reasonable, prudent, and in the best interest of its customers.

The losses the Companies' incurred (as detailed above) in 2020 "continued a pattern of exceptionally high prices paid under the OVEC Agreement (relative to market value) since at least 2015."[38] These losses resulted in total above-market costs from 2015-2020 at over $1.245 billion.[39]

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[37] Further, it should be noted that the Auditor was required to amend their report based on apparent double counting of capacity market revenues for Duke Energy Ohio and AES Ohio in Figure 13 of the Duke Energy Ohio and AES Ohio Audits as discovered by Witness Glick. *See* Staff Ex. 8C (Specifically, in Figure 13, the auditor nets out capacity market revenue from OVEC charges, and then nets out PJM settlements from the remainder. But PJM settlements also include capacity market revenues.).
[38] CUB/UCS Ex. 1 (Glick) at 25.
[39] *Id*. at Table 4. ("OVEC power costs and revenues under the OVEC Agreement vs. market").

OVEC power costs and revenues under the OVEC Agreement vs. market prices[40]

	MWh Electricity	Total OVEC Charges billed ($Million)	OVEC ($/MWh)	Energy and capacity market value* ($/MWh)	Total above-market costs ($Million)
2015	8,681,829	$559.10	$64.40	$44.61	($171.85)
2016	9,946,877	$571.70	$58.66	$38.50	($200.55)
2017	11,940,259	$636.30	$54.27	$37.85	($196.00)
2018	12,146,856	$644.10	$54.29	$44.28	($121.56)
2019	11,238,298	$640.80	$57.04	$35.91	($237.45)
2020	9,033,056	$605.30	$67.00	$31.76	($318.41)
Total	**62,987,175**	**$3,657.30**	**$58.06**	**$38.90**	**($1,245.82)**

Before the LGR, each Company had a PUCO-approved rider to collect the net costs associated with the OVEC plants. Recent audits of these riders in effect pre-LGR, specifically during 2018 and 2019, the Companies collectively passed on $112 million in net losses (and zero benefits) to ratepayers.[41] The previous OVEC Riders were approved as a financial hedge.[42] Yet, this hedge only works if there are credits to the ratepayers. In approving AEP's PPA Rider, then-Commissioner Haque explained that such a hedge can

[40] Note: 2015-2020 based on AEP costs from PUCO Case Nos. 18-104-EL-RDR et al.. Source: Billed costs from OVEC annual reports; PJM locational marginal pricing from PJM data miner; hourly load data downloaded from U.S. Clean Air Markets Database; and capacity prices from PJM State of the Market Reports.

[41] *Id*. at 22 Table 3 ("Prior OVEC riders approved for the Companies" Row entitled *Actual rider performance during audit period*).

[42] *Id.* at 21

cease being a hedge and instead become an “illusory insurance policy” if “ratepayers never experience the credits.”[43] During this Audit period, the rider failed to act as a hedge to mitigate spikes in market prices, and instead acted as a “tool to increase the EDU’s profits at the expense of their ratepayers.”[44] Commissioner Haque’s concern that the illusory insurance policy will turn into a blank check to EDUs, with the customers treated as a “trust account” has come to pass.

The Companies’ own analysis shows they expected these and future losses, and thus costs to customers. Each of the Companies conducted forward-going economic projections of the OVEC plants as part of their last (pre HB6) OVEC Rider. While AEP Ohio projected $110 million credits for the period of 2015-2024 in its 14-1693-EI-RDR proceeding in its PPA Rider, Duke Energy Ohio and AES Ohio projected tens of millions of losses in that same time period.[45] Duke filed testimony in its 17-1263-EL-SSO case that projected energy and demand charges will exceed forecasted market revenue by $77 million on a net present value basis.[46] AES, likewise projected costs of its Reconciliation Rider in Case 16-0395-EL-SSO to cost $49 million over the period from 2017-2021. Recent audits of these riders for 2018 and 2019 show actual losses of $74.5 million by AEP, $24.6 million by Duke, and $14.9 million by AES.[47] During the Audit period, [redacted]

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[43] *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 No. 14-1693-EL-RDR, et. al., Opinion and Order Concurring Opinion of Asim Haque at 4.
[44] OMAEG Ex. 1 (Seryak) at 9.
[45] CUB/UCS Ex. 1 (Glick) at 21.
[46] *Id.*
[47] *Id.*

[redacted].[48]

Likewise, other entities conducted forward looking analysis into the OVEC plant performance, reaching similar conclusions. In 2018, FirstEnergy Solutions ("FES") conducted a forward looking analysis of OVEC Agreement through 2040, found $268 million in losses relative to market for FES & Allegheny Power's OVEC share (that's a projected $3.4 billion loss projection for all of OVEC from 2018-2040).[49] In December 2018, credit analysts at Moody's Analytics conducted an assessment of the OVEC Agreement and found annual losses for FES share at $10-13 million (equivalent to an all OVEC annual loss of $206-$268 million).[50] Each of these analyses, conducted before anyone knew a COVID-19 pandemic would impact energy costs, show considerable losses for the Audit Period.

Witnesses for the Companies brush off these staggering losses (which resulted in LGR charges to everyday Ohioans) as anomalies due to the low prices for electricity during the first year of the COVID-19 pandemic.[51] However, while the pandemic did disrupt every part of the global economy, the story of OVEC losses goes well beyond such reasoning. Mere low energy prices from any external source, though, do not account for losses of this type and magnitude. While locational marginal prices (LMP) in PJM were at record lows in 2020 due to the impacts from the COVID-19 pandemic, the low LMPs explain the low total revenues but **they do not** explain net losses. A plant that operates at a zero-percent capacity factor will earn zero dollars in the market, but it will also incur

[48] CUB/UCS Ex. 2C (Glick Confidential) at 32.
[49] *See* CUB/UCS Ex. 1 (Glick) at 26 (table 5).
[50] *Id.*
[51] *See* AEP Ex. 1 (Stegall) at 10

zero dollars in costs so on net should incur no losses. When energy market prices are low, plants should be committed and dispatched less. This means they will incur lower costs to match the lower revenues. For a plant to incur significant variable losses, it must be committed into the market with a complete disregard of economics.

The nine-digit, above-market charge to customers from this "illusory insurance policy" was due in large part to OVEC's unreasonable and imprudent decisions and investments, including uneconomically committing the Clifty Creek and Kyger Creek plants; entering into above-market coal contracts; and pursuing unwise and expensive environmental capital investments. As detailed below, these investments should be deemed imprudent and disallowed from recovery from customers under LGR.

C. The PUCO should disallow the Companies' unreasonable and imprudently incurred costs.

1. The PUCO should deem that the OVEC plants were uneconomically committed, and thus incurred unreasonable and imprudently excess variable costs during the audit period.

Lower market prices contributed to higher customer costs due to OVEC's imprudent uneconomic commitment practices. Like most generation sources that Ohio consumers pay for, OVEC energy and capacity are sold into the PJM markets. The daily submission to the PJM Day-Ahead energy market requires a unit commitment designation for each unit. As discussed by many witnesses in this proceeding, these designations are economic, must-run, emergency, or not available. More simply put, generators operating within the PJM market, like OVEC, generally commit their *available* units as either economic or must-run. For units committed economically, the market operator, PJM, has the responsibility for unit commitment and dispatch decisions. Those decisions prioritize reliability for the system as a whole, but then select plants to commit and dispatch based on short-term economics to ensure consumers are served by the lowest-cost resources available to the system. As Witness Glick points out, a plant committed as "economic" will operate only if it is the least-cost option available to the market (i.e., has a lower average commitment period cost than other resources available at the time).[52] Because units operated by the market (i.e., using economic commitment) follow short-term economic signals, they tend to cycle off when market prices are low and therefore do not generally incur significant operational losses.

On the other hand, OVEC's coal-fired power plants instead elect to maintain control of unit commitment decisions and utilize a must-run commitment status. For these units, the utility determines independently when to commit a unit. As Witness Glick explains in testimony, a unit designated as must-run will operate with a power output no less than its minimum operating level.[53] The unit receives market revenue (and incurs variable operational costs) but does not set the market price of energy. If the market price of energy falls below its operational cost, a must-run unit will not turn off and can incur losses. Absent oversight from a state utility commission, these losses can be passed on to consumers.

Company Witnesses state that OVEC units are offered into the PJM market consistent with the Operating Committee approval process, and requires unanimous

[52] CUB/UCS Ex. 1 (Glick) at 35.

[53] *Id.* at 36 (Witness Glick goes on to explain that Minimum operating level is an output threshold often determined operationally, and below which a generator is either less stable or operates inefficiently. Once the unit commitment decision is made, the level of generation output (above the minimum) is generally left to the market. The operating level is based upon the marginal running cost assumptions provided by the owner in the form of offers or bids to PJM.)

consent of the operating board to switch commitment status.[54] With the exception of Clifty Creek Unit 6 during ozone season, the OVEC units that are available are committed as must-run.[55] The Companies defend OVEC's must-run commitment status due to the fact that they are "base load coal fired units" and thus not capable of instantaneous start up and shutdowns which otherwise would result in increased risks and costs.[56] Specifically, they suggest economically committing the units all of the time may result in the plants not being able to start up quickly enough to be economic.[57] That means the OVEC units are bid into the market without regard for economics, and whether they are earning or losing money.

Under this must-run regime for 2020, the OVEC units were online and committed for nearly all the audit period, despite incurring significant net revenue losses. The record shows that OVEC is not acting to limit incurring negative energy margins at its plants, and instead is operating its plants even when it projects that doing so will incur negative margins.[58] During the Audit Period, OVEC operated the Clifty Creek and Kyger Creek plants at respective capacity factors of 39 percent and 51 percent, with at least one unit online at both plants during 98 percent of the time.[59] This is despite both plants incurring substantial revenue losses relative to the market.[60] In fact, OVEC's variable costs exceeded market locational marginal prices 83 percent[61] of the time the units were online.

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[54] AEP Ex. 1 (Stegall) at 10.
[55] *Id.*
[56] AEP Ex. 1 (Stegall) at 11., Duke Ex. 1 (Swez) at 9., AES Ex. 1 (Crusey) at 9.
[57] *See Id.*
[58] CUB/UCS Ex. 1 (Glick) at 34.
[59] *Id.* (citing EIA CAMPD database; EIA form 923; PJM data miner).
[60] *Id*.
[61] *Id.* (citing EIA CAMPD database; EIA form 923; PJM data miner; OVEC Monthly Bills, provided in AEP response to LEI-DR-02-009_CONFIDENTIAL_Attachment_1).

Additionally, for ten months during the audit period, the variable costs incurred by the OVEC plants exceeded the revenues the plants earned in the energy market, contributing $10.5 million to the total of $117.9 million in above-market costs across the two plants.[62] This result is due to purported requirements of OVEC's operating procedures that dictate, as a default, the plants must be self-committed into the market with a must-run status whenever they are available. This may be a requirement by OVEC, but it does not negate the fact that this is imprudent and not in the best interest of retail ratepayers.

Furthermore, such self-commitment strategy is not what a reasonable operator in the region would have done in similar circumstances. Specifically, OCC Witness Joseph Perez's analysis concluded that the OVEC plants are not operated consistently with how merchant coal plant operators would act to attempt to maximize revenue.[63] This conclusion was deduced from Mr. Perez's analysis of both MISO and PJM Market Monitor reports from the Audit period that confirmed that coal generators are offered as economic instead of must-run most of the time.[64] The MISO analysis showed that only in 3% of merchant coal generators utilized must-run status in 2017-2020.[65] The Auditor stated that ideally the units would be committed based on economics all or most of the time.[66] Witness Perez's analysis shows that if the Auditor had utilized the findings of the Market Monitors, this statement would be more definitive. By not following what a merchant coal plant

[62] *Id*. (citing EIA CAMPD database; EIA form 923; PJM data miner.)
[63] OCC Ex. 20 (Perez) at 15.
[64] *Id.* at 13.
[65] *Id.* at 14.
[66] Staff Ex. 2 at 10; Staff Ex. 4 at 10; Staff Ex. 6 at 10.

operator would have done in a similar situation, the prudency of OVEC's decision to continue its must-run status for its plants is directly called into question.

i. OVEC's brief switch to economic commitment demonstrates that it is physically possible to run the plants economically.

The Operating Committee did approve a switch to economic commitment between April 14, 2020, and June 30, 2020, based on the impact of the COVID-19 pandemic on energy prices.[67] The units were switched back to their default "must run" commitment status in July 2020, and continued under must-run for the remainder of the Audit period.[68] As pointed out by OMAEG Witness Seryak, the fact that OVEC ran its units under an economic commitment regime during part of the Audit period "demonstrates that the plants can be run and offered into the market as economic plants with economic dispatch commitment strategy."[69]

During the exception period between April 14, 2020 and June 30, 2020, OVEC applied an economic commitment status to only three of the eleven OVEC units, and only for a total of 631 hours.[70] This means that even during a two-and-half-month period of time when energy prices reached record lows, OVEC still only opted to economically commit less than one third of its units just over one third of the time. OVEC did not

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[67] *See* Staff Ex. 4 at 42.

[68] *See* CUB/UCS Ex. 1 (Glick) at 37 (citing AEP Response to CUB-INT-02-017; AEP Response to CUB-INT-02-018 Confidential Attachment 1; AES Response to CUB-INT-02-017; AES Response to CUB-INT-02-018 Confidential Attachment 1; Duke Response to LEI-DR-01-003 Confidential; Duke Response to CUB-INT-02-018; AEP Response to CUB-INT-02-019; AES Response to CUB-INT-02-019; AEP Response to LEI-DR-01-017-Confidential Attachment 1).

[69] OMAEG Ex 1(Seryak) at 21.

[70] CUB/UCS Ex. 1 (Glick) at 37 (citing AEP Response to CUB-INT-02-017; AES Response to CUB-INT-02-017).

economically commit Kyger Creek at all, and Clifty Creek was economically committed for only [redacted] percent of the hours in 2020.[71]

For this critical issue, the Audits are less than helpful to the Commission in making its statutory determination. As OMAEG Witness Seryak states, the Audit "only evaluated OVEC's energy and capacity revenue verses total cost on a monthly basis."[72] An hourly or daily redispatch analysis, however, would have provided the total picture as to whether OVEC would have saved customers money by utilizing economic commitment.[73] This lack of a full analysis is borne out in the fact that nowhere in the Audit does it state that the commitment actions in making energy market offerings was prudent or whether OVEC acted imprudently,[74] and did not look into whether the Companies' actions here were in the best interest of customers.[75] The Audit's lack of analysis of the customer interest and prudency conclusion of dispatch commitment is troubling, as the Commission's RFP mandated such conclusions.[76] Nonetheless, the Auditors do recommend that "ideally" the units should be "committed based on economics all or most of the time" and at the least allow flexibility on an ongoing basis.[77] Furthermore, in the Auditor's recommendations, "LEI believes that the changes to OVEC's must-run strategy was prudent, compared with allowing must-run commitment only."[78]

[71] *Id.* at 37 (citing AEP Response to CUB-INT-02-018 Confidential Attachment 1; AES Response to C&U-02-018 Attachment 1; AEP Response to LEI-DR-05-005 Confidential Attachment 2).
[72] OMAEG Ex. 1 (Seryak) at 22.
[73] *Id. at 23.*
[74] Tr. Vol. at 125.
[75] *Id.* at 136.
[76] Entry directing Staff to issue the request for proposal for audit services to assist the Commission with the prudency and performance 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.
[77] Staff Ex. 2 at 10; Staff Ex. 4 at 10; Staff Ex. 6 at 10.
[78] Staff Ex. 2 at 44; Staff Ex. 4 at 48; Staff Ex. 6 at 50.

Thus, in 2020, uneconomic plant operation led to lower market revenues than OVEC would have incurred had it limited operations to periods when the plants' production costs equaled or were below energy market costs. OVEC's failure to act on feedback from the market on the economic competitiveness of its plants demonstrates imprudence. Short term or one-off losses can be explained away as the Companies making a temporary mistake. Long-term patterns of losses, as seen here from OVEC, without efforts to correct operations, demonstrate imprudent business behavior. It may be up to OVEC and the Companies to determine how they operate their plants, as long as *they* are the ones paying for it. However, if the ratepayers of this state are burdened with subsidizing the costs of the OVEC plants due to HB6, then it is incumbent on the owners of the plants to commit the units economically.

ii. The switch to economic dispatch also shows the Companies had the ability to prudently mitigate their above-market costs but unreasonably failed to do so throughout the audit period.

It has been demonstrated in this proceeding that one of the Companies, Duke Energy Ohio, recommended that the OVEC Operating Committee make changes to the unit commitment strategy during the Audit period.[79] Duke Witness Swez initially made the decision to request this change via a vote of the Operating Committee after Duke's analysis showed the OVEC units had "a combined energy margin of a loss of approximately $150,000 to $175,000 per day."[80] That recommendation was ultimately

[79] *See* Duke Ex. 1 (Swez) at 16-17.
[80] *See* OMAEG Ex. 9 (Swez email on 4/8/2020).

accepted and as stated before, OVEC was permitted to utilize the option of economic unit commitment for a limited period during the spring of 2020.[81]

This is a rarity, however, due in part to the fact that the Operations Committee needs a unanimous vote of all of its members before such actions can be taken.[82] As opined by CUB & UCS Witness Glick, this arrangement is of concern, both for how little power each of the individual Companies *claims* to have, and for how much influence each Company actually has but generally fails to exercise.[83] The Companies, under this veil of required unanimity, blindly allow the status quo to continue despite the increased costs and losses to them (or more accurately, to their ratepayers).

Despite this protestation that the utilities are helpless in the face of required unanimity, the Companies' burden of proving prudency and best interest remains. Thus, we challenge the assertion that each individual Company has limited power to control the operation and management of OVEC. Witness Glick pointed out that the Companies represent three rather sophisticated parties out of the 15-person Board and a very large percentage of the ownership share, and if these three very relatively sophisticated utilities formulated combined, prudent recommendations to the OVEC Board, those recommendations would be taken seriously by the other members.[84] Duke's actions to provide results of its commitment status, which was taken up and approved by the rest of the OVEC operators, proves that this influence of individual or a subset of companies is not as limited as the Companies claim.

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[81] *Id.*
[82] *See Supra* AEP Ex. 1 (Stegall) at 5.
[83] CUB/UCS Ex. 1 (Glick) at 41.
[84] Tr. Vol. at 1206-7.

If each Company really has so little power and influence, then it means they are all asking to pass the significant costs associated with the OVEC plants onto their ratepayers but have only limited authority to control operational and planning decisions that drive those costs. Pointing fingers at the other owners that they are but one vote, especially with little to no action to provide recommendations, passes the buck but does not pass the prudency test. Duke Witness Swez, in an email to Duke colleagues contemporaneous to the decision to extend the use of economic commitment an additional month, admits that he thinks "we'd all like to see OVEC have the ability to manage both an EC (economic commitment) and MR (must-run) offer, just like we (Duke) do, moving back and forth to maximize the value of the unit within the constraints of the DA (day-ahead) market."[85] Each Company has an obligation to exercise its power to prevent imprudent operational and planning decisions that cause unnecessary costs to be passed on to ratepayers.

iii. The PUCO should require that OVEC conduct a daily unit commitment analysis, consistent with industry best practices; the auditor should review this analysis in all future OVEC Rider dockets.

As part of the Legacy Generation Rider review, the PUCO must require that the Companies demonstrate that the OVEC power plants were operated prudently and economically and in the best interest of retail ratepayers. To make prudent decisions about unit commitment and prioritize the best interests of ratepayers, OVEC should either (a) generally commit units based on economic factors, letting the market determine when to operate them, or (b) make decisions based on a well-documented analysis that

[85] *See Id.* (Swez email 5/27/2020).

considers future projections and pricing. Yet as a normal course of business, OVEC does not consider economic commitment and does not produce or rely on forward-going economic analysis to inform its unit commitment decisions.[86] If the Commission allows for costs to flow through the LGR, OVEC's owners should be required to follow reasonable parameters.

This means that OVEC must either economically commit the units into the market on a daily basis or, at a minimum, conduct daily unit commitment economic analysis.[87] According to Witness Glick's testimony based on Companies' witnesses in other proceedings,[88] AEP and Duke use such a daily unit commitment analysis to decide whether and how to commit their other power plants they own into the market. As part of this process, utilities review the forecasted energy market prices and projected variable operation costs for the next week (or another similar, multi-day time period) to project net operational revenues (or losses) for each unit for each individual day over the forecast period. The data presented in these forecasts represents the market price information and the unit cost data available to the plant owners at the time they are making unit commitment decisions. This market price data is readily available through PJM and widely used by plant operators.

Yet, this standard practice is not so standard in the context of OVEC. Based on Company discovery responses, it was shown that AEP and AES do not conduct an

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[86] CUB/UCS Ex. 1 (Glick) at 44.
[87] *Id.* at 42.
[88] *See Id.* at 45 (citing to the Rebuttal Testimony of Jason Stegall in Michigan Public Service Commission Case No. U-20530, and the Direct Testimony of John Swez in Indiana Utility Regulatory Commission Case No. 38707 FAC123 S1).

analysis on daily unit commitment for their OVEC shares, but Duke does include the OVEC shares it owns in *its* Daily Profit and Loss Report.[89] Duke revealed that it does at times share its *findings* from these reports with OVEC management but, critically, the reports and analyses themselves are not shared with OVEC management.[90] Yet, Duke's actions show that this type of information is possible and can be used successfully in the OVEC construct. As CUB & UCS Witness Glick points out, operators know day-ahead market prices with certainty for the next day and can project them with a sufficient level of accuracy for the purposes of unit commitment. They also know O&M costs and start-up costs with relative certainty a few days out.[91] This means that at the time the utility makes a decision to self-commit a unit in the day-ahead market (i.e., to either bring the unit online, keep it online, take it offline, or keep it offline) it has the information needed to make the prudent decision of maximizing projected net revenues or minimize projected net losses to ratepayers over a several-day period. Regardless of whether prices may continue to change, OVEC and the Companies can and should save the full set of information it has at the time of its decisions to allow the PUCO to assess the prudence of its decisions.

OVEC's and the Companies' continuous use of must-run commitment status at the OVEC plants, except to a very limited extent during the two-and-a-half months in 2020, and their failure to perform a daily financial review to determine whether to use economic commitment status, was completely inconsistent with a least-cost approach. These decisions directly resulted in their Ohio consumers paying above-market charges. If a unit

[89] CUB/UCS Ex.1 (Glick) at 43.
[90] *Id.*
[91] *Id.* at 44

is projected to be profitable, then ratepayers expect to see savings from operating the unit related to the acquisition of market-supplied power. If the unit is projected to lose money, then consumers would expect to see savings by the acquisition of market-supplied power. The imprudence and failure to act in the retail ratepayers' best interest is evident from most of Audit Year 2020 where the OVEC plants incurred variable net losses relative to the market, which could have been avoided if they followed prudent market commitment practices.

The Companies defend the use of must-run commitment by claiming that the units cannot quickly ramp on and off, and that cycling them comes with unnecessary costs and risks.[92] But it is not reasonable for OVEC and the Companies to claim that the only alternative is to continue to commit the units as must-run with no analysis nor documentation to support the decision as the prudent one. Additionally, as Witness Glick stated in cross examination, she does not disagree with the Companies' characterization of the units in that they can't quickly ramp on or off, but if the units have operational characteristics that make them inherently challenging to operate economically within the current market, then perhaps they are not good assets to continue operating and funding through ratepayers.[93]

As Witness Glick states, utilities are expected to use accurate cost and pricing information and to make prudent decisions based on that information, but they are not expected to always be right.[94] If market prices deviate significantly from what the utility

[92] *See* Duke Ex. 1 (Swez) at 12-15, *See Also* AES (Crusey) Ex. 1 at 10, *See Also* AEP Ex. 1 (Stegall) at 11-12.
[93] Tr. Vol. V at 1217.
[94] CUB/UCS Ex. 1 (Glick) at 47.

reasonably projected, the utility's self-commitment decisions may not actually maximize net revenues. If the utility finds it is consistently wrong in its projections, that information itself should provide feedback to improve the utility's approach and be used to drive changes to the utility's commitment process. To be prudent, the utility's decision to self-commit its units must have been projected to maximize net revenues at the time the utility made the must-run commitment decision.

2. PUCO should also disallow costs from OVEC's unreasonable and imprudent coal procurement.

The Companies' and OVEC ran the plants at higher levels than was economic during a period of low market prices as a way to manage its coal inventory and avoid penalties and liability from its coal fuel procurement strategy.[95] AEP admits that OVEC's decision to cut short its economic commitment strategy was due to its coal contracts which require minimum amounts of coal to be purchased and accepted.[96] These minimum-buy and minimum-accept contracts resulted in the risk of coal piles reaching maximum safe storage levels according to AEP Witness Stegall.[97] As Witness Stegall states, "[o]perating with a Must-Run commitment status allowed the units to remain online and consume coal."[98] That statement speaks volumes. The OVEC plants do not provide value to ratepayers and are, in essence, just vehicles for burning more and more coal. CUB & UCS contend, however, that despite the coal contracts, prudence required an attempt to

[95] *See* Duke Ex. 1 (Swez) at 24, See Also AEP Ex. 1 (Stegall) at 14.
[96] AEP Ex 1 (Stegall) at 14.
[97] *Id.*
[98] *Id.*

restructure or seek relief based on the circumstances facing the global economy and the plants in 2020.

The Audits cited that coal inventories were much higher than target levels in 2020 with part of this owing to inaccurate forecasting of coal burns, and recommended that the utilities, through their roles on the Operating Committee, encourage ongoing review and improvement to OVEC's coal burn forecasting methods, and coal procurement practices.[99] LEI also found that coal purchase prices were "significantly higher" than the spot prices from the SNL Market Survey.[100] The Auditor cited a similar higher cost at Kyger Creek.[101] The Auditor attributed these, in part, to coal contracts that were nearly a decade old. To paraphrase LEI, while these coal contracts "might have been a good deal" in the past, now the customers are paying the price. When it comes to coal transportation costs, while these costs "improved" in 2020 compared to the high costs of 2019, they still appear to be higher than the EIA average.[102]

As OMAEG Witness Seryak points out, LEI has repeatedly found that the costs of coal under the Resource Fuels contract for Clifty Creek is unreasonably high, resulting in OVEC's coal costs being above-market.[103] The Companies' main explanation for why the costs for coal were higher than market is that they are old contracts that, due to recent fluctuations in costs, have become bad contracts.[104] Relying on poor decisions when entering into coal contracts is not excusable nor prudent for two reasons. First, the method

[99] *See* Staff Ex. 2 at 10; Staff Ex. 4 at 10; and Staff Ex. 6 at 10 (LEI Audit Section 1.3 (LEI's findings and recommendations)).
[100] *See* Staff Ex. 2 at 53; Staff Ex. 4 at 56; and Staff Ex. 6 at 58 (LEI Audit Section 6.1.3.6 (Coal spot price comparison)).
[101] *Id.*
[102] *See* Staff Ex. 2 at 57; Staff Ex. 4 at 60-61; and Staff Ex. 6 at 62-63 (LEI Audit Section 6.1.3.10 (Coal transportation and transportation costs))
[103] OMAEG Ex. 1 (Seryak) at 23.
[104] *Id.* at 24

of purchasing coal for Clifty Creek involved more than just a poor decision. OCC Witness Stanton's analysis of 2020 EIA Form 923 showed that OVEC purchased coal sourced from the River View Mine through two separate suppliers, Resource Fuels and Alliance Coal.[105] The same mine producing coal of the same heat content cost $0.54 more per MMBtu from the Resource Fuels contract than from the Alliance Coal contract. This resulted in an equivalent overcharge of $12.6 million.[106]

Secondly, OVEC had the ability and opportunity to renegotiate or terminate its higher-than-market contract with Resource Fuels. The contract, similar to many contracts entered into daily by businesses large and small, contains a clause where the parties can terminate or renegotiate. Under cross-examination, Duke Witness Swez[107] and AEP Witness Stegall[108] suggest that there are ways to renegotiate these contracts. OMAEG Witness Seryak clarifies this suggestion by citing in his testimony the OVEC/Resource Fuels coal contract that identifies certain circumstances where the contracts can be broken or renegotiated.[109] OMAEG Witness Seryak suggests, these contingencies did exist and could have existed to renegotiate, yet no such attempt had occurred.[110] Duke Witness Swez admits, he too was unaware that any negotiations of the contracts occurred during the Audit period or at any time.[111] At a time of low energy prices, and nearly unsafe coal carrying capacity at the plants, prudency would require action to mitigate the impacts of these above-market contracts.

[105] OCC Ex. 1 (Stanton) at 22.
[106] *Id*. at 23.
[107] *See* Tr. Vol. III at 772-774.
[108] *See* Tr. Vol. IV at 1064-1066.
[109] OMAEG Ex. 1 (Seryak) at 24.
[110] *Id.* at 25.
[111] Tr. Vol. IV at 868.

It is important for the PUCO, thus, to not only disallow these imprudent and unreasonable fuel related costs, but to also scrutinize these coal contracts and the Companies' coal procurement strategies in order to protect Ohio consumers.

3. OVEC's environmental upgrade costs and decisions were unreasonable, and the PUCO should not permit them to be passed on to Ohio ratepayers through the Rider.

The Companies are asking to pass through its LGR over [redacted] in environmental upgrade costs incurred in 2020.[112] These upgrades included [redacted][113] Yet, neither OVEC nor the Companies conducted any analysis to determine that investing in additional environmental upgrades was economic, nor to demonstrate that these upgrades are more advantageous than retiring the units.[114] Without conducting such an analysis the owners and operators of these plants cannot prove that these costs were prudent or in the best interests of customers.

The addition of these costs to address environmental compliance of the aging, polluting plants results in increased costs to customers. As stated previously, the charges billed by OVEC to the Companies substantially exceed the revenues received in the PJM market for both plant's energy and capacity.[115] The demand charges billed by OVEC include all fixed and capital costs, including the costs for environmental upgrades. OVEC's demand charges have historically exceeded the capacity market revenues that

[112] CUB/UCS Ex. 2C (Glick Confidential) at 49.
[113] *Id.*
[114] *Id.* at 51.
[115] *See Supra* Section IV. A.

the Companies earn for their shares of the OVEC plants. This means that each time the Companies incur costs at the OVEC plants, those costs are passed on to ratepayers through demand charges that exceed the revenue the Companies can recover in the market.

What is more, the decisions made by OVEC and the Companies in the 2020 Audit year look to saddle customers with more unnecessary capital costs into the future. In response to the U.S. Environmental Protection Agency's draft effluent limitation guidelines (ELG) rule, [redacted] OVEC expects to have until no later than December 31, 2025, to modify how it manages both bottom ash transport wastewater and flue gas desulfurization wastewater at the Clifty Creek and Kyger Creek plants. AEP expected construction to begin in 2021 and continue over the next few years.[117] [redacted] While the costs associated with compliance with the revised CCR and ELG rules are not included in the 2020 audit period, this decision in 2020 will be included in the Rider during subsequent audit periods as part of the demand charge.

AES Witness Crusey stated that, as it relates to capital expenditures, there is an internal OVEC Board review for projects over $750,000.[119] He goes on to state that there

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[116] CUB/UCS Ex 2C (Glick Confidential) at 50.
[117] CUB/UCS Ex. 1 (Glick) at 50.
[118] CUB/UCS Ex 2C (Glick Confidential) at 50.
[119] AES Ex. 1 (Crusey) at 15.

were "active discussions of those investments of the Board, and the Board would approve them only if the Board concluded that they were reasonable and prudent."[120] This statement should not give the wrong impression to the Commission that the OVEC Board is aiming to benefit anyone the Companies. In fact, this statement is undermined by the witness' admission that there are no such policies to guide the Board to make a reasonableness or prudency determination.[121] Therefore, we urge the Commission to disallow the inclusion of these costs from the LGR on the basis that the Companies have not conducted robust analysis to demonstrate that investing in additional capital upgrades at the plants is the most economic option relative to retirement and replacement of the plants with alternatives.[122]

4. Ratepayers and the public interest would be best served if OVEC retired its plants instead of incurring more over market costs.

CUB & UCS believe that the OVEC plants would better serve the public and the ratepayers who bear the cost burden if they were retired. We do not come to this conclusion based just on the Audit period's snapshot of unreasonable and uneconomic costs and commitment strategy. We do not make this recommendation based solely on the long track record of unreasonable above-market costs borne by the Companies' ratepayers. We make such a recommendation because prudence and good business judgement would lead (and has led) similarly situated Companies (including the affiliates of the Companies in the present proceeding) to come to the same conclusion.

[120] *Id.*
[121] Tr. Vol.V at 1162-1163.
[122] CUB/UCS Ex. 1 (Glick) at 52.

The two OVEC plants, Kyger Creek and Clifty Creek, are the oldest utility-owned coal-fired power plants in the nation (over 20 MW) without a scheduled retirement date.[123] CUB and UCS argue that many, if not all, of these costs to customers could be fully mitigated through retirement of these plants. Prudency would suggest at least a discussion of whether to retire these plants or keep shoveling money (and coal) into the continued operation. When ratepayers are not subsidizing coal plants, the trend has been to accelerate retirement. The declining economics of coal plants in the market are one of the main triggers for the accelerating retirement dates for similar (and much younger) plants. Such trends are not lost on the utilities in this case or their parent companies and affiliates.

When the OVEC operating agreement is set to expire in 2040, these plants will be over 85 years old. A study on the impact and implications of retirement of these plants is long overdue. Such a plan would include analysis evaluating the going-forward cost to the Companies' customers of the OVEC Agreement, the increasing environmental obligations, new coal procurement contracts, and evaluating an economic dispatch or seasonal operation protocol. Therefore, through the Opinion and Order in this case, and for a true prudency determination of the LGR Audits to come, the Commission must put the Companies on notice that it will disallow in future Riders dockets any environmental capital costs incurred without robust forward-going analysis to justify the investment over retirement and replacement with alternatives.

[123] *Id.* at 17-18.

V. CONCLUSION

The data and evidence supplied by the intervenors in this case show that when generators do not have ratepayers to cover their losses, the operators tend to make fundamentally different, and more profitable, operation decisions. Having everyday Ohioans pay the bills may be profitable for these companies, but the evidence clearly shows these business practices to be imprudent. Therefore, CUB and UCS urge the Commission to:

1) disallow the entire $117.9 million in above-market energy and capacity charges collected from consumers in 2020 under the Legacy Generation Rider. These costs should be disallowed on the basis that OVEC and the Companies acted imprudently by not taking action to minimize the above-market costs incurred at the OVEC plants;

2) find that the OVEC plants were uneconomically committed, and thus incurred excess variable costs under the Legacy Generation Rider during the audit period;

3) require OVEC (through the regulated Companies) to provide documentation of the daily unit commitment decisions used for the OVEC plants whenever they are committed with a must-run status, before cost recovery is allowed;

4) put the Companies on notice that the Commission will also disallow collection in future cases for OVEC costs incurred as a result of imprudent unit commitment decisions that are not in the best interest of retail ratepayers;

5) disallow imprudent and unreasonable costs incurred due to coal procurement and failure to attempt to renegotiate or otherwise mitigate the impacts of the long-term coal agreements on the plants' costs

6) scrutinize OVEC's coal contracts and the Companies' coal procurement strategies in order to protect Ohio consumers;
7) disallow the imprudent environmental capital costs incurred during 2020; and
8) put the Companies on notice that it will disallow in future Riders dockets any environmental capital costs incurred without robust forward-going analysis to justify the investment over retirement and replacement with alternatives.

CUB and UCS do not challenge the fact that the Companies should pay the cost to OVEC and abide by its contractual obligations. What we do challenge is whether those costs, when based on a lack of prudent mitigation tactics and unreasonable decision-making, should be passed on to ratepayers. The OVEC Agreement assigns plant operating costs and PJM revenues to OVEC's sponsoring organizations, effectively holding OVEC's revenues harmless during uneconomic generation. This dynamic allowed OVEC to maintain a net income in 2020 even while the OVEC plants' variable costs exceeded locational marginal prices during many hours. And while the OVEC sponsoring companies such as AEP Ohio, AES Ohio, and Duke Energy Ohio are obligated to pay the OVEC bills, their ratepayers should not be obligated to pay for the net revenue losses. During the Audit year of 2020, Ohioans were suffering the effects of the COVID-19 pandemic individually, socially, and economically. Of that economic suffering, this proceeding showed that the HB6 coal subsidy known as the LGR accounted for well over $100 million. In the absence of action by utility commissions to disallow recovery of the full Rider, OVEC owners have no incentive to demand that the OVEC units change their practices and operate more economically. The resulting costs will continue to be passed on to Ohio ratepayers absent action from the Commission in disallowing the recovery of such costs. The Commission has the power to make positive change for customers and disallow these imprudent and unreasonable costs.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

/s/ Trent Dougherty
Trent Dougherty