

**BEFORE THE  
PUBLIC UTILITIES COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES**

**REP. BILL SEITZ, CHAIRMAN**

**HOUSE BILL 239  
OPPONENT TESTIMONY  
OF  
KIM BOJKO, PARTNER  
CARPENTER LIPPS & LELAND LLP  
ENERGY COUNSEL TO THE OHIO MANUFACTURERS' ASSOCIATION**

**JUNE 6, 2017**



Chairman Seitz, Vice Chairman Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter Lipps & Leland LLP, and I lead the firm's energy and utilities practice.

I am testifying today on behalf of The Ohio Manufacturers' Association (OMA) to describe OMA's concerns about various provisions of House Bill 239 (HB 239). In particular, the OMA is concerned about the bill's potential negative impact on the competitive energy markets, customers' energy costs, manufacturing competitiveness, and job creation in our state.

HB 239 would allow Ohio's investor-owned electric utilities (utilities) or their affiliates who are part owners of two Ohio Valley Electric Corporation (OVEC) power plants (one in Ohio, and another in Indiana), to collect unwarranted subsidies from customers to support OVEC's inefficient, uneconomic power plants in which the utilities or their affiliates have an ownership stake.

The legislation would guarantee recovery from customers of all costs associated with the OVEC plants, including deferred costs. These charges, which could be assessed to all electricity users in Ohio, would remain in place until the assets are retired.

It's useful to know something of the history of OVEC in order to understand why the utilities' request is unreasonable.

The Ohio Valley Electric Corporation is a company jointly owned by several electric utilities.<sup>1</sup> OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, own and operate two electric generating complexes: Kyger Creek Power Plant, near Gallipolis, Ohio, and Clifty Creek Power Plant, near Madison, Indiana.

---

<sup>1</sup>American Electric Power, Dayton Power & Light, Duke Energy Ohio and FirstEnergy Solutions all have equity stakes in OVEC.

OVEC was formed in the early 1950s by investor-owned utilities to generate electricity to meet the electric power requirements of the uranium enrichment facilities then under construction by the Atomic Energy Commission (AEC) just south of Piketon, Ohio. The Portsmouth Gaseous Diffusion Plant's uranium enrichment facilities supported the nation's nuclear weapons program. For a short period of time, the Piketon plant produced enriched uranium for commercial nuclear reactors.

However, the demand for enriched uranium for national defense purposes dropped in the early 1990s. In September 2000, the U.S. Department of Energy notified OVEC that the power purchase agreement with Piketon was being canceled. In May 2001, the Piketon plant ceased operations. In 2003, the power agreement between OVEC and Piketon was terminated. Today the Piketon plant remains shut down and is preparing for decontamination and decommissioning.

***Essentially, what the utilities are proposing is a new utility giveaway bill that would bail out OVEC.*** The utilities' proposal is based on the pretense of OVEC being a "national security asset" because it initially was created, in part, to provide electricity needed to produce enriched uranium to support the nation's nuclear weapons program.

***The OMA believes the utilities' stated rationale for the necessity of this request is a red herring.*** As far back as 2000, prior to the implementation of electricity restructuring in Ohio, the utilities knew that OVEC's Kyger Creek and Clifty Creek Power Plants would no longer be used or needed to serve the demands of national defense.

Today, the OVEC plants are no different than any other electric generation resource currently bidding into the wholesale energy markets, competing against other generation resources. What is different is that the OVEC plants are inefficient, produce expensive power and cannot get a foothold in the market. The utilities want the Ohio General Assembly to provide subsidies so they can ignore the energy markets that are working, keep the plants open regardless as to whether they are profitable, force

Ohioans to purchase power from the plants, and avoid having to write down the value of these plants – as they should have done years ago.

***If approved, this would not be the utilities' first consumer-paid subsidy.***

Ohio's investor-owned utilities received \$9.2 billion in "stranded asset" and "regulatory transition" payments from 2000 to 2010. Despite collecting these payments, utilities failed to write down their noncompetitive generating plants – including OVEC – which are the assets that were "stranded." Other customer groups have documented that the same utilities were "gifted" an additional \$6.5 billion in above-market payments through a host of complicated non-bypassable riders from 2010 to 2017. That's a total of \$15.7 billion in consumer subsidies between 2000 and 2017.

Now they are asking for an additional \$300 million dollars a year in customer subsidization, with no sunset.

***Ohio ratepayers should not be required to support uneconomic power plants operating at barely half-capacity, as the OVEC plants are.*** In 2016, Kyger Creek's annual output was 52 percent, while Clifty Creek's annual output was 44 percent.

Requiring customers in Ohio to pick up the tab for these inefficient generation assets would increase operating costs for Ohio's businesses and disadvantage these businesses compared to businesses in competing states with lower electricity costs. Further, the subsidy would be levied on a significant segment of the population, including customers in AEP-Ohio, Dayton Power & Light, Duke Energy Ohio and FirstEnergy service territories.

Here are several problematic provisions of the proposed legislation:

- HB 239 changes state policy to recognize OVEC resources as "national security generation" and preserves ongoing, yet unspecified, benefits associated with such resources.

- HB 239 guarantees cost recovery of all costs associated with OVEC, including deferred costs, which could potentially be substantial since the OVEC power plants are not efficient and they are likely losing money. LSC has estimated the cost to all consumers could potentially be as high as \$256.6 million annually for the 24-year period, 2017 to 2040. If the costs are netted against the revenues received from selling the output into the wholesale market, the estimated cost to consumers would be lower.
- HB 239 allows the PUCO no discretion – i.e., under the bill, the Commission must approve recovery for all costs.
- The bill requires PUCO to make cost recovery nonbypassable if a utility agrees "to offer the contractual commitment related to the national security generation resource into wholesale markets with any resulting revenues being credited to the benefit of retail customers." It implies that if the utility uses the output to supply the standard service offer, the charge may be bypassable. Under this scenario, there would be no revenues from the wholesale market that could be used to offset the costs.
- HB 239 subsidizes OVEC regardless of its price, regardless of the management practices of the operating utility, regardless of how it will affect regional markets for electricity generation, regardless whether an unregulated affiliate owns the share of OVEC, and regardless of whether the power is being produced from the Ohio-sited plant.

The utilities and their affiliates want a subsidy to operate and maintain the OVEC power plants. They want Ohio taxpayers to bail them out and support uneconomic plants that are no longer used to support, or otherwise related to, national defense. These requests are unreasonable and unwarranted for a variety of reasons:

- Piketon no longer processes nuclear fuel for weapons, and hasn't for many years. It thus is not a national security asset.

- The utilities were notified in 2000 that Piketon's contract with the utilities was going to be canceled. The contract terminated in 2003., The closure of the defense facility should have been factored into the utilities' business decisions.
- The utilities have already been paid transition revenues to help transition to a fully competitive generation market.
- HB 239 allows an unregulated affiliate to use the output of their contractual commitment to OVEC in the regulated utility's standard service offer. The language is silent as to how the affiliate will receive the ratepayer dollars from the utility. Presumably, it would be through an affiliate PPA, which would have to be approved by FERC.
- HB 239 allows utilities to reopen, update or amend their current ESPs. Some of these ESPs are on appeal, pending before the Supreme Court. Reopening the ESPs would halt the appeal process and allow utilities to continue to collect unlawful charges.
- OVEC's capacity is 12.1 percent more than peak usage at Piketon. The additional 289.9 MW was built to service customers beyond Piketon and has continued to serve other customers after the closure of Piketon in 2006. This belies the utilities' argument that OVEC was built solely for national security purposes.
- Under no circumstances should Ohio electricity users subsidize out-of-state power plants. Piketon's peak usage (before 2001) was 2,100 MW. Total OVEC capacity is 2,390 MW. Ohio-located Kryger Creek is 45.4 percent of OVEC capacity, and Indiana-located Clifty Creek is 54.5 percent of OVEC capacity. So, if the proposed subsidy is awarded to the utilities, the maximum subsidy should be based on 45.4 percent of 2,100 MW, not 100 percent of OVEC's total capacity.

- If HB 239 becomes law, and therefore, OVEC gets full cost recovery for its operations, there would be no incentive for OVEC to operate more efficiently or be competitive in the wholesale market.
- Under Ohio law, utilities may not own and operate generation assets.
- Utilities had multiple decades to sell or write down the value of their OVEC plants.
- Utilities should not be permitted to impose on customers even more above-market charges.
- If the utilities are pursuing a national defense rationale to offset their losses in the OVEC plants, the solution should be reached at the national level – i.e., the costs should be spread over the entire population.

No matter how you cut it, the legislative proposal is a subsidy for uncompetitive power. Subsidizing power produced with old, inefficient technologies should not be allowed. OMA recommends that customers not be forced to provide a subsidy to the owners of OVEC to bailout bad business decisions that they have made over the years. There is no compelling argument for having Ohio electricity customers pay for uneconomic generation assets. Ohio should not reward OVEC's utility owners with the subsidies they seek. Therefore, OMA recommends that the General Assembly allow the markets to work without interference. The owners of OVEC should decide whether to continue operating the OVEC units and sell the power into the wholesale market or to sell the plants to a new owner at market value.

Alternatively, the OMA offers an idea for resolving OVEC without rewarding OVEC's utility owners. The OMA's approach would require creating a third-party solution that may call to mind the Troubled Asset Relief Program (TARP), which was signed into law in by President George W. Bush in October 2008. TARP provided a vehicle for the U.S. Department of the Treasury to purchase toxic assets and equity

from troubled financial institutions to strengthen the nation's financial sector. It was a key component of the government's actions to address the subprime mortgage crisis.

If the owners cannot sell the OVEC plants, and if the owners deem the plants to be unprofitable or uneconomic, and the owners decide to close the plants, the owners could seek assistance from the state of Ohio. The state could assist in the closure of the plants by forming a nonprofit Kyger Creek Decommissioning Corporation that could float bonds secured by a non-bypassable rider across Ohio ratepayers to shut down four of the units. This would be done only after OVEC turns over the title to the generating units free and clear for \$1 to the Decommissioning Corporation. The transfer of assets must include on-site transmission equipment and connections. The site would then be owned free and clear by the Decommissioning Corporation, which could sell or lease the land for economic development purposes. Proceeds from the sale or lease of the site would be used to accelerate payment of the Decommissioning bonds.

The Ohio Manufacturers' Association strongly believes that subsidized charges imposed on consumers and manufacturers in HB 239 are not consistent with competitive markets and are not good for Ohio – in either the short term or the long term. For these reasons, the OMA firmly opposes HB 239. At a minimum, however, OMA encourages a redraft as there are many technical problems with the language before you, which makes the language very confusing and inconsistent. For example, cost recovery is not confined to plants operating in Ohio. Cost recovery is not limited or capped to current output (thus, cost recovery could be much higher depending on the level of output and what portion of that Ohio ratepayers are being asked to subsidize). Additionally, it is not clear when and whether the utilities can use the output of OVEC to supply the standard service offer. And if they do supply the standard service offer, it is implied (but not stated) that the charge becomes bypassable. Additionally, lines 495-500 seem to contradict two other sections (lines 554-560 and lines 769-774), as lines 495-500 require recovery of OVEC costs to be through the standard service offer, which would make the charge bypassable. It is also not clear as to what mechanism would be put in place to allow an affiliate that owns a portion of the OVEC output to receive revenue from the utility's ratepayers.



Chairman Seitz . . . members of the committee . . . this concludes my prepared remarks. Thank you for your kind attention. I would be happy to respond to any questions you may have.

# # #