

Ohio Coalition for
Affordable Power



Ohio Partners for Affordable Energy

March 24, 2008

The Honorable Shannon Jones
Assistant Majority Whip
800 Valley View Point
Springboro, OH 45056

Dear Assistant Majority Whip Jones:

Months have passed and there still is no sign of a written alternative to the Governor's and the Senate's energy bill from its opponents, but we've been told that the utilities are seeking support of a much different version of SB 221 than as passed by the Senate.

SB 221 grew out of the realization that if existing law providing for the complete deregulation of electric generation is allowed to take effect (for most Ohio utilities at the end of this current year), the cost of electricity services would spike disastrously, as it had in other states such as Maryland and Illinois, where legislators acted too late to prevent the loss of state regulation over the price of electricity. It's not just price spikes. Data clearly shows that power prices in deregulated states are higher than those relying on regulation and has increased at a must faster rate.

The fear of consumers in Ohio is that power will then be priced according to a federally dictated formula called Locational Marginal Pricing or "LMP." If the PUCO's regulatory authority is allowed to expire, the implementation of LMP will provide the public utilities with windfall profits from the sale of electricity generated by plants that have been paid for by Ohio ratepayers over many years. But, if recent rumors are to be credited, the utilities may be suggesting a version of SB 221 that provides them something far better (and far worse for consumers) even than the dysfunctional LMP market – an unregulated monopoly.

Utilities face three disadvantages from the complete deregulation of generation as prescribed by current law. One is that the utilities no longer have a guaranteed opportunity to earn a traditionally generous PUCO-approved return on their investments. Under the old law (pre-SB 3), the Commission customarily set rates for power at a level that allowed utilities to earn an after-tax return of 10.5 to 11.5% on their investment. Under deregulation, the utility would sell power at a price derived from the LMP formula. Recent experience in other states

shows this will result in much higher prices, but fails to provide Ohio utilities with revenue certainty, a fundamental aspect of traditional regulation.

Two, the utility must face competition for business under deregulation. This was never a threat under traditional regulation, where the electric companies are granted exclusive service territories.

And three, the complete deregulation of generation means that the utilities have no assurance that someone is there to pay for expensive new generating plants. Under traditional regulation, one of the benefits received by the utilities in exchange for the state's regulation of their power prices is the assurance that their captive customers will be obligated to pay, through their electric rates, the cost of new multi-billion dollar generating plants for the entirety of their useful lives. Very few, if any, utilities want to risk that sort of investment in a truly competitive market and most have publicly admitted as much. AEP made that crystal clear when it asked regulators to guarantee recovery for a new plant despite the prohibition contained in SB 3. The Supreme Court rightly reversed the PUCO approval of the proposal just last week.

But what if they could have it all? What if they could have a bill which could allow them to price their electricity at or near the market, effectively prevent ratepayers from purchasing power from alternative providers, and at the same time require customers to pay for expensive new power plants on top of the market price?

This is precisely what appears to have been proposed as the alternative to the LMP-derived power "market." For ratepayers this, not the "market," is the worst-case scenario. If the public utilities can convince lawmakers to direct the PUCO to base the valuation of existing cheaper power plants on considerations other than their depreciated cost (depreciation paid for by consumers over the years) and at the same time require consumers, whether or not they are still buying power from the utility, to pay the un-depreciated cost of expensive new power plants, they will have it all. The so-called "non-bypassable" surcharges that the utility ratepayers must pay will essentially prevent them from buying power from alternative producers. Ohio then stands the very real risk of legislating a system which produces rates higher than market rates while denying customers any option to control power costs.

Depreciated cost is the most understood, transparent, and equitable standard for setting the valuation of existing power plants. It is a standard that has more than seventy years of practice nationwide and continues to be in place in thirty-six other states, is based on empirical data, and is fair to both the utilities and their customers.

In testimony filed before the House Public Utilities Committee by Kathleen M. Trafford on behalf of AEP, Dayton Power & Light and Duke Energy Ohio, those utilities revealed perhaps more than they intended in arguing against S.B. 221 and its cost-based rate standard: *"Just like the State of New Hampshire in the New England Power case, Ohio's purpose is to capture for Ohio businesses and consumers the benefits of any lower-cost power produced by the investor-owned electric utilities by using cost-based pricing to set retail rates. If this purpose is achieved, it will be achieved at the expense of consumers in other states who will be deprived of the benefit of having lower-cost power in the market."* While we grieve for the citizens of those other states, we believe that most Ohio ratepayers will think that Ohio is entitled to the "lower-cost power" produced by Ohio utilities "using cost-based pricing" because Ohio ratepayers paid the depreciation on those generating units.

We urge you to analyze all proposals in light of these facts, and thank you for your thoughtful consideration of SB 221 and amendments proposed for it.

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