PROPONENT TESTIMONY BEFORE THE HOUSE PUBLIC UTILITIES COMMITTEE
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132-HOUSE BILL 239 NATIONAL SECURITY RESOURCES (Smith, R., Carfagna)

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Introduction

Chairman Seitz, Vice Chair Carfagna, Ranking Member Ashford, and members of the Public Utilities Committee, my name is Amy Spiller and I am Deputy General Counsel for Duke Energy. My main focus is on the Company's legal and regulatory business before the state government and specifically the Public Utilities Commission of Ohio. Thank you for the opportunity to provide proponent testimony on House Bill 239. This important legislation will provide much needed relief to Ohio's investor-owned utilities that are suffering harm due to circumstances brought about by matters of national security and exacerbated by the evolution of the electric power industry in and around the State of Ohio.

I realize that you have previously heard a history of the circumstances that brought me before this committee, but today, I would like to first recall some critical elements of that story. I will then direct the majority of my remarks to explaining the rationale supporting and the substantive details of the proposal before you.

History

The Ohio Valley Electric Corporation, or OVEC, has always been regarded as unique. And this uniqueness – in large part – lies in its origination. OVEC was organized in 1952, during the escalation of the Cold War, to help meet the country's then-critical national security needs. At that time, the Atomic Energy Commission was constructing a uranium enrichment facility in Piketon, Ohio, as part of the nuclear strategy of the Department of Defense. The power needs of this strategy, and particularly the facility in Piketon, were both immediate and substantial. Answering the Atomic Energy Commission's demands, 10 investor-owned utilities or their parent companies banded together to form OVEC.

Subsequently, OVEC and the Atomic Energy Commission entered into a power agreement that was, at the time, the largest single-customer contract in the history of the electric utility industry – a contract for 2,000 MW of generating capacity to power the Piketon facility. Yet the Atomic Energy Commission needed even more – it needed assurance that power would be available during the initial construction of the OVEC plants and during subsequent outages. This time, 15 entities, including Ohio's four investor-owned utilities, became the assurance the Atomic Energy Commission needed. And these entities, referred to as sponsors, memorialized those commitments through the Inter-Company Power Agreement with OVEC, pursuant to which they would ensure that the long-term needs of the Atomic Energy Commission were met.

Two years after the power agreement with the Atomic Energy Commission was approved by regulators, OVEC began producing power. In 1956, these power plants were the largest and most efficient ever built by private industry.

Circumstances, however, changed. In the waning years of the Cold War, as national security objectives were being achieved, the Country's dependence on the Piketon facility declined. In 2003, the Department of Energy, the successor to the Atomic Energy Commission, canceled its contract with OVEC, and all of the output to OVEC's plants reverted to the parties to the Inter-Company Power Agreement.

And consistent with the terms of that power agreement, OVEC has continued to operate these coal-fired power plants and contribute to our state's economy. In 2016, this equated to employing 384 Ohio workers at an average wage of $85,496 and paying nearly $4 million dollars in state, school, and local government taxes.

Just as they did for the federal government, though, circumstances changed for Ohio's electric utilities. And, unfortunately, evolution of the electric power industry is slow and has not always followed a straight and steady path. This, combined with a patchwork of state and federal regulatory policies has left the sponsor companies in very different places. For example, Ohio's utilities are members of the PJM Regional Transmission Operator (RTO) and sit in a fully deregulated state that does not provide for recovery of OVEC costs via base rates. Monongahela Power is also a member of PJM. But as it is located in West Virginia, a regulated state, it receives cost recovery from its customers. Louisville Gas & Electric and Kentucky Utilities are not members of an RTO but, again, located in a regulated state, they are provided cost recovery. Southern Indiana Gas & Electric, also in a regulated state, is a member of the Midwest Independent System Operator, not PJM. It receives regulated cost recovery. Buckeye

Power, an Ohio cooperative and member of PJM, recovers its costs from its members. All very different places, indeed.

Rationale for Support

As you can see, the issues being dealt with herein are complex, yet not unsolvable. House Bill 239 provides the solution for Ohio's utilities that quickly responded to the Country's call during the Cold War.

The merit of this legislation is evident in the following important ways.

- It recognizes the uniqueness of OVEC and the commitments made by Ohio's investor-owned utilities to our country.

    - Ohio River Valley utilities promptly responded to fill a national security need at a crucial time in the nation's history. OVEC built and provided for the Atomic Energy Commission's benefit more than 2,000 megawatts of capacity in record time. The Ohio companies with contractual commitments to OVEC should be made whole with respect to obligations that arose solely because they answered the call of the United States government.

    - Both former and current chairs of the Public Utilities Commission of Ohio have acknowledged that OVEC is different – it has only ever had one customer, the federal government. Its plants were not constructed to serve customers in a defined territory. In fact, despite being a public utility, OVEC has no service territory.

    - The Ohio utilities with a contractual commitment to OVEC cannot simply terminate that commitment or unilaterally decide to transfer it to another entity. Consistent with the terms of the agreement, it only takes one "NO" vote to prevent a transfer from happening. So while Ohio utilities have recently tried to transfer their contractual commitments, they have been unsuccessful.

- House Bill 239 prevents disparate treatment between Ohio utilities and other parties to the Inter-Company Power Agreement.

- Currently, cost recovery for the OVEC contractual commitment has been dissimilar.
  - Ohio cooperatives receive full cost recovery.
  - AEP Ohio currently has an order from the PUCO providing for near-term, nonbypassable cost recovery in the context of an electric security plan.
  - DP&L is awaiting a decision from the PUCO on whether it will approve near-term, bypassable cost recovery in connection with its electric security plan.
  - As mentioned above, parties situated in other neighboring states like West Virginia, Indiana, and Kentucky, receive cost recovery.
- These disparate outcomes for Ohio's utilities are born of existing Ohio law that established the regulatory processes that administer state policy. As such, it is most appropriate to remedy the situation by way of reforms to that law.

- House Bill 239 is consistent with Ohio policy regarding generation, competition, and retail customer choice.
  - The electric utilities are not seeking cost recovery to keep uneconomic generating units running.
  - From a retail perspective, customers' rights to shop for an alternative service provider will continue, just as they have since choice began. Duke Energy Ohio also expects that the competitive retail electric service providers that are certified in our service territory will continue to operate after House Bill 239 is passed, just as they do today.
  - From a wholesale standpoint, this legislation does nothing to impact the wholesale markets because OVEC units will continue to run, regardless of whether the Ohio utilities receive cost recovery.

- As previously mentioned, there are sponsoring companies that are situated differently than the Ohio utilities and, as such, are treated differently with regards to the recovery of their costs.

- The market has already priced in the fact that OVEC will continue to operate so this legislation will not have an influence on the price of power.

- Put simply, the coal-fired OVEC units will continue to operate as they have done in the past and Duke Energy Ohio will continue to fulfill its contractual commitment. All this will happen without consequence to the state's support of electric generation competition and customer choice.

House Bill 239 provides the state with the opportunity to recognize the unique circumstances surrounding OVEC and correct for unintended but very real disparities currently allowed for in the law and it does so in a way so as not to run afoul of state policy in the process.

So now let us turn our attention to the details of House Bill 239.

Proposal Details

House Bill 239 provides Ohio's investor-owned utilities with recovery of the difference between the costs and revenues associated with their contractual commitment to OVEC. Today, OVEC capacity and energy are bid into wholesale markets. In the event revenues generated by the plants are insufficient to cover all costs, as is the current case, each Ohio utility would recover the difference from its customers. Further, where revenues exceed costs, the entire difference would be credited to customers. As recognized by the PUCO, this can provide customers with a stabilizing effect on the price of electricity when the market price begins to rise significantly.

It is important to note that under any scenario, this legislation does not authorize utilities to earn or otherwise receive more than their OVEC cost obligation netted against the revenues received from the sale of capacity and energy. This legislation only addresses costs and does not seek to provide an investment or equity component for the utility.

Additional customer protections occur in three separate ways. First, the Federal Energy Regulatory Commission, or FERC, evaluated and approved the Inter-Company Power Agreement, which includes a formula pursuant to which costs are allocated to the sponsoring companies. And the FERC would have approved the agreement consistent with the common regulatory standard: fair, just, and reasonable.

Second, the PUCO has purview over jurisdictional utilities' reasonable handling of revenues. It accomplishes this by evaluating and determining the prudency and effectiveness of the utility's offering of its contractual commitments of capacity and energy into the respective wholesale markets. This legislation does not change the PUCO's role or scope of authority.

Third, cost recovery mechanisms like the one contemplated in House Bill 239 are typically trued up on a regular basis, thereby helping to guard against over- or under-collection.

Conclusion

In summary, House Bill 239 recognizes Ohio utilities' answer to a request by the federal government to commit significant resources in support of national security. It will provide Ohio's utilities only with sufficient relief to match costs, excluding any return on investment for the utilities and providing customers with credits where applicable. It is consistent with state policy as customers will retain the ability to shop for the retail supplier of their choice and it will not impact wholesale markets or competition. Finally, it preserves customer protections including appropriate regulatory oversight by FERC and the PUCO.

Chairman Seitz, Vice Chair Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee, thank you again for allowing me to testify in support of House Bill 239. I hope you will support rapid passage of this important legislation. I now welcome your questions.