House Bill 239
Opponent Testimony
of Michael L. Kurtz, Esq.
On Behalf of the Ohio Energy Group
Before the House Public Utilities Committee
June 6, 2017

My name is Michael L. Kurtz and I am Counsel for the Ohio Energy Group. OEG is a trade organization formed in 2003 by large energy-intensive industrial companies with one or more plants in Ohio to promote low-cost, reliable electric power. Our 27 members[1] spend more than $1 billion annually on gas and electricity and we provide more than 55,000 good paying direct jobs in Ohio.

For today's discussion, it is best to view OEG member companies as *Energy-Intensive, Trade-Exposed* (EITE) businesses. The term, EITE is defined in two parts. Energy-Intensive means that our production processes demand large quantities of energy and that even very small increases in price become large changes in cost and operating income. Trade-Exposed means that cost increases cannot be passed on to customers without the risk of losing that customer to competitors not burdened by such costs.

I am here today to address H.B. 239, which would require the PUCO to authorize an OVEC Rider to charge or credit net OVEC costs on a nonbypassable basis. As a policy

[1] Current OEG membership: Air Products and Chemicals, Inc., AK Steel Corporation, Acero Junction, Inc., Arconic Inc., Amsted Rail Company, Inc., ArcelorMittal USA LLC, BP-Husky Refining, LLC, Cargill, Incorporated, Charter Steel, Elyria Foundry, Fiat Chrysler Automobile US LLC, Ford Motor Company, GE Aviation, General Motors LLC, Greif, Inc., Johns Manville (Berkshire Hathaway), Linde, LLC, Martin Marietta Magnesia Specialties, LLC, Materion Brush, Inc., Miller Coors LLC, Nature Fresh Farms USA LLC, North Star BlueScope Steel, LLC, POET Biorefining, Praxair, Inc., PTC Alliance Holding Corporation, TimkenSteel Corporation and Worthington Industries, Inc.

matter, OEG does not support this bill. However, if policy makers are inclined to address the OVEC issue through legislation, we offer the following comments.

As an initial matter, OEG is disappointed that some have chosen to wrap the flag around a public policy idea that is, at best, highly questionable. They seek a favorable outcome by citing OVEC's genesis as an important – even vital – provider of electricity to our national defense. OEG simply notes that while OVEC provided its national defense service, many of our member companies were also making their own irreplaceable contributions to our nation's defense. Moreover, while OVEC is now operated just like any other generating station, many OEG member companies continue their roles as key suppliers to America's defense. From vehicle armor, jet engines, military airframes of all kinds and munitions, to name a few, OEG member companies are a vital part of America's modern arsenal of freedom, and the higher rates that could result from this OVEC proposal would work against these missions. There may be good reasons for granting this proposal, but the banner of patriotism is misplaced here.

Next, I would like to provide brief background on OVEC and its potential impact on Ohio customers. The Ohio Power Company ("AEP Ohio"), Dayton Power and Light Company ("DP&L"), Duke Energy Ohio ("Duke Ohio") and FirstEnergy Solutions ("FES") are all Sponsoring Companies and currently share the OVEC power participation benefits and requirements in the following percentages:

AEP Ohio	19.93%
DP&L	4.9%
Duke Ohio	9.0%
FES	4.85%

AEP Ohio is currently recovering its net OVEC costs on a nonbypassable basis pursuant to an ESP Order. Nonbypassable recovery means both shoppers and non-shoppers will be assessed any charge or credit.

DP&L currently is awaiting a decision on a near-unanimous stipulation (to which PUCO Staff is a signatory party) that would allow for the recovery of net OVEC costs on a bypassable basis. Making the collection of net OVEC costs, and the flow-through of net OVEC credits, bypassable would address many of the concerns of OEG. Applying the OVEC charge/credit only to non-shopping customers would probably address many of the concerns of other opponents of H.B. 239.

The amount of any net OVEC charge/credit will vary over time, primarily due to changes in market pricing. For example, in the years just prior to and after the passage of S.B. 221 in 2008, market prices were very high and the OVEC units generated significant profits for the Sponsoring Companies. Based upon the ten months of actual data and two months of projected data from AEP Ohio's OVEC filing at the PUCO, the following is a fair estimate of each Sponsoring Company's current annual net OVEC costs that would be recovered under this bill.

AEP Ohio	$38.9 million
DP&L	$9.6 million
Duke Ohio	$17.5 million
FES	$9.5 million
TOTAL	$75.6 million

Finally, OEG would like to offer three specific recommendations as to how H.B. 239 can be improved.

<u>OEG Recommendations to Improve H.B. 239</u>

<u>Recommendation 1</u>: The bill should authorize net OVEC cost recovery, not mandate it. "*Shall*" should be changed to "*may*." This would eliminate the appellate risk that the current AEP Ohio OVEC PPA Rider, and the pending DP&L PPA Rider, could be reversed by the Ohio Supreme Court. At the same time, this would enhance the discretion of the PUCO to react to changed future circumstances.

<u>Recommendation 2</u>: The Sponsoring Companies should retain "*skin in the game"* to incentivize them to reduce OVEC costs and maximize OVEC market revenues. The Ohio Legislative Service Commission's Fiscal Note & Local Impact Statement identified three examples where the bill might be interpreted to allow the recovery of costs that are not regarded by the PUCO as prudent: 1) PJM Capacity Performance penalties; 2) below-market sales to affiliates; and 3) refueling, repowering, or retirement costs. But merely inserting a prudence standard is not enough. A more effective solution would require each Sponsoring Company to absorb 20% of all OVEC net costs and retain 20% of all OVEC net credits. This 20% "*skin in the game*" would be self-policing in that it would financially incent the utilities to only incur prudent costs and to maximize market revenues.

<u>Recommendation 3.</u> Net OVEC costs/credits should be bypassable (only paid by non-shoppers per the pending DP&L Stipulation) with a circuit breaker. The concern of the Sponsoring Companies with a bypassable OVEC Rider is the problem of the "*last man standing.*" If the OVEC Rider is a bypassable charge and more customers shop, then the bypassable charge would grow. Theoretically, if Betty Buckeye is the only customer of AEP Ohio not shopping, then she could get a $38.9 million OVEC charge at her house.

The solution is a circuit breaker. If the bypassable OVEC Rider increases above a certain amount, then the incremental costs should convert to a nonbypassable Rider. A similar concept has already been adopted by the PUCO to protect non-shopping customers from the potential rate impacts of FirstEnergy's Generation Cost Reconciliation Rider.

With respect to OVEC costs, a reasonable circuit breaker would trigger when any OVEC Rider exceeds 5% of the standard service offer ("SSO") generation rate for non-shoppers. The average SSO rate across Ohio is approximately 5.1¢/kWh. A 5% circuit breaker would allow for a bypassable OVEC charge or credit of up to about 0.25¢/kWh. For an average residential customer, this would be about $2.50/month. OVEC costs or credits above 5% of the SSO rate would be nonbypassable and allocated to all customers based upon the current methodology approved by the PUCO for AEP Ohio.[2] This methodology is in place and functioning efficiently.

Making any OVEC Rider bypassable, with the protection of a circuit breaker, would be a more balanced solution than the inflexible and undefined nonbypassable language in the bill. Every customer could enjoy protection from the bypassable OVEC Rider simply by shopping. Yet at the same time, the utility would receive full cost recovery. This circuit breaker recommendation should be implemented whether or not OEG's first two recommendations are adopted.

Thank you for the opportunity to testify.

[2] In AEP Ohio's service territory, OVEC net costs or credits are initially allocated to rate classes based on each class' 5 Coincident Peak ("5 CP") demand and then recovered within the rate classes on the basis of energy usage.