House Bill 239, House Public Utilities Committee
Opponent Testimony of Joseph Oliker, Senior Regulatory Counsel, IGS Energy on behalf of the Retail Energy Supply Association
October 3, 2017

Chairman Cupp, Vice Chair Carfagna, Ranking Minority Member Ashford, members of the Committee, good morning and thank you for the opportunity to speak with you about House Bill 239 as amended. I am Joseph Oliker, Senior Regulatory Counsel of IGS Energy, which is a family-owned, Ohio-based competitive supplier of retail electric and natural gas service. I am here testifying on behalf of the Retail Energy Supply Association, which is a broad and diverse group of retail energy suppliers who share the common vision that competitive energy retail markets deliver a more efficient, customer-oriented outcome than the regulated utility structure. Several RESA members are certificated as Competitive Retail Electric Service ("CRES") providers and are active in the Ohio retail market. The testimony that I am presenting represents the position of RESA as an organization, but may not represent the views of any particular RESA member.

I appreciate that the House Public Utilities Committee is considering changes to improve the content of House Bill 239, but the Retail Energy Supply Association opposes the Bill in its current form. It would undermine customers' power to make unfettered choices regarding their generation supply by making shopping customer responsible for subsidizing two generation facilities—the larger of which is actually located in Indiana.

When the General Assembly restructured the Ohio retail electric market, the cornerstone of that legislation guaranteed that customers may choose competitive options for generation service that fit their individual needs. House Bill 239 as amended would undermine that right by requiring all customers (whether they are receiving generation service from the utility or not) to become involuntary investors in two aging generating facilities that the utilities invested in through the Ohio Valley Electric Corporation ("OVEC"). I urge you to oppose this legislation if it does not allow customers to choose whether they wish to participate in the cost or benefits related to the OVEC generation.

First, I would like to clarify some of the facts about the obligations of OVEC. Some would have you believe that OVEC is "different"—that these assets have been used to serve the needs of this country and that the investor owned utilities have been completely hamstrung in their ability to end that servitude. That is simply not true. The existing investment in OVEC was made in its entirety following the restructuring of the electric market and the utilities willingly passed up multiple opportunities to avoid that investment. A little history is helpful to illustrate these points.

OVEC was formed in 1952 to serve the energy needs of an Atomic Energy Commission ("AEC") (later subsumed by the Department of Energy ("DOE")) uranium enrichment facility in Piketon, Ohio. The agreement governing the operation of the OVEC facilities is often referred to as the Inter-Company Power Agreement ("Operating Agreement"). The Operating Agreement was initially formulated to expire after twenty five years, but it has been extended several times at the agreement of the sponsoring companies. The current ownership and power participation ratio, with respect to these facilities, is a matter of public record, with the Ohio utilities' power participation ratio being just under 40%.[1]

In 2000, after the passage of Senate Bill 3 which restructured Ohio's electric market, the DOE informed OVEC that it planned to cease taking power from OVEC in 2003. At that point in time, the OVEC facilities had been in operation for nearly 50 years and were close to being fully depreciated, with the DOE contractually bound to satisfy the remaining life of its contract. Moreover, the OVEC Operating Agreement in effect at the time was set to expire in 2006. That was a decision point. The sponsoring companies at that point simply could have taken their money from the DOE and walked away or sold the power plants. But they did not.

While having full knowledge that the DOE would no longer purchase power from OVEC and that Ohio law no longer guaranteed cost recovery of generation resources, the sponsoring companies retrofitted these half-century old coal plants with expensive environmental controls at a cost of approximately $355 million. And they extended the Operating Agreement through 2026.

Fast forward to 2011, the sponsoring companies doubled down again, investing $1.3 billion in environmental controls. And they again extended the Operating Agreement, this time until 2040. These decisions were not made to serve the DOE or this country—they were made seeking profits in the competitive market.

These facts are succinctly stated on Appendix A. But, in short, their investment was made with full knowledge that profits will be dictated solely by the competitive market.

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[1] This amount includes the ownership interest transferred by Ohio Edison Company, Toledo Edison Company, and Cleveland Electric Illuminating Company to FirstEnergy Solutions.

On that point, it is important to note that there was a time when these utilities did very well in the market with the OVEC facilities, and the utilities kept those profits for themselves. If OVEC was still profitable, we would not be here today discussing this bill. Given that reality, it is not appropriate to pass legislation that would permit the utilities to privatize their gains and socialize their losses. Moreover, it is not appropriate to prop up utility earnings that are already robust. For example, AEP Ohio's return on equity in 2016 was approximately 15%, which is well above industry standard.

Through House Bill 239 the sponsoring companies would place the risk of their investment on the backs of all distribution customers. This proposal does not comport with Ohio energy policy established by the General Assembly. It is contrary to policies against subsidization of competitive services and it would frustrate the cornerstone principle that customers may select the competitive products and services they desire—customers would become involuntary investors in OVEC regardless of their decision to take default service or embrace the options available in the competitive market.

House Bill 239 would also undermine the ability of competitive suppliers to provide rate certainty to customers. For example, a customer may see value in entering into a fixed-rate contract with IGS or another supplier with the belief that they can control the generation portion of their electric price. If this Bill becomes law, the customer will have to account for an unknown generation-related cost or credit in their monthly bill.

This Bill would also undermine existing settled regulatory proceedings at the PUCO. For example, in the Dayton Power and Light electric security plan case, a majority of the parties, including PUCO Staff—under principles of existing law—agreed to make the costs or benefits related to OVEC "bypassable" such that existing DP&L default service customers, and not shopping customers, would receive the cost or benefit from OVEC. Under that agreement, DP&L would sell its OVEC-related power into the wholesale market and flow the difference (either a credit or charge) between the cost-based rate and the market-based revenues to default service customers. While RESA does not find that approach perfect, it agreed to it within the context of settlement for two important reasons anchored at the core of Ohio law and policy. First, that approach avoids an outcome that requires all distribution customers to subsidize a competitive service. Second, it preserves customers' ability to choose which products and services fit their needs. House Bill 239, however, satisfies none of these goals and undermines an existing workable result.

Given this reality, it begs the question why the proposed law is structured to encumber all distribution customers. And, perhaps more importantly, why should the General Assembly modify the law in the first place given that this is a risk of the utilities' own making and the existing law provides opportunities to address it should the PUCO seek to utilize its existing tools to that end. In closing, RESA urges you to reject House Bill 239 in its current form. And, at a minimum, an amendment should be tailored to make the cost and benefits of OVEC bypassable so that customers have a choice as to whether they wish to receive the costs or benefits related to the Ohio utilities' investments in OVEC.

Thank you for the opportunity to speak with you about the current version of House Bill 239. In any remaining time, I would be happy to answer any questions.

Appendix A

OHIO VALLEY ELECTRIC CORP.

A look into the history and financial investments before and after electric market restructuring

OVEC INVESTMENT TIMELINE

1952
OVEC Constructed at a cost of $292 million

1970s
Electrostatic Precipitators $184 million

1990s
Overfire Air & Low Sulfur Modifications $141.2 million

ELECTRIC RESTRUCTURING

2000s

9/29/2000 Notice of DOE Cancellation

2003
Selective Catalytic Reduction (SCR) $355 million

4/30/2003 DOE Contract Termination

2006
ICPA would have expired 3/12/06 without further action. ICPA voluntarily extended until 2026

2011-2013
JBR Scrubbers $1.32 billion

8/11/2011 ICPA Amended through 6/30/2040

TOTAL: $672 MILLION | TOTAL: $1.675 BILLION

Nearly all undepreciated assets stem from investments made after electric restructuring and the cancellation of the DOE Contract

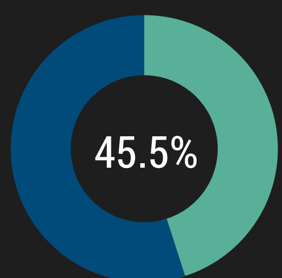
UNDEPRECIATED ASSETS AS OF 2015: $1.45 BILLION

OVEC electrical output represents approximately 3% of the total utility electric load in the state of Ohio.

The four publicly traded Ohio Utilities own a combined 38.68% of the generation output.

The U.S. Department of Energy (DOE) gave notice of cancellation of the Power Agreement with OVEC on Sept. 29, 2000.

The Inter-Company Power Agreement (ICPA) would have expired on 3/12/2006 without further action. In 2006, the ICPA was extended until 2026. In 2011 the ICPA was extended until 2040.



Only 45.5% of OVEC generation is located in Ohio