



OEC [Action Fund]

Opponent Testimony - Substitute Ohio House Bill 239 (Smith, R., Carfagna) Ohio House Public Utilities Committee October 3, 2017

Chairman Cupp, Vice Chair Carfagna, and Ranking Member Ashford; I am Trish Demeter, Managing Director of Energy Programs for the Ohio Environmental Council (OEC) Action Fund. Thank you for inviting testimony on Substitute House Bill 239 (Smith, R., Carfagna).

While it's appreciated that there's been effort to narrow the scope of the legislation through this latest substitute bill, the OEC Action Fund remains opposed to this legislation for several reasons abbreviated here, but explained in further detail later in my testimony:

- The changes in the substitute bill do not address the fundamental problem with the bill from our perspective - which is a ratepayer-funded subsidy for bad bets made years ago on coal plants - and raises questions about whether some of the changes would lead to even greater costs being borne by Ohio customers;
- The new substitute bill does not encourage Ohio utilities to divest of their share in the Ohio Valley Electric Corporation (OVEC), but instead extends the Public Utilities Commission of Ohio (PUCO)-approved subsidies well beyond any reasonable time frame typically approved by state regulators, and provides for the Ohio General Assembly to extend the subsidy beyond 2030;
- The substitute bill grants an upper hand to two specific coal plants - Clifty Creek in Indiana and Kyger Creek in Ohio - in what would otherwise be a relatively competitive market for electricity supply.

The substitute bill does not fix fundamental flaws and raises concern about future cost burdens on consumers. The substitute bill makes a significant change to the policy of the State of Ohio. Section 4928.02 of the Ohio Revised Code is a section that deals very broadly with the principles and tenets of utility regulation, and Sub. HB 239 proposes to add a new provision:

“It is the policy of this state to do the following throughout the state...(O) Provide clarity in cost recovery for Ohio-based electric utilities in conjunction with national security generation resources and *support* electric distribution utility and affiliate divestiture of ownership interest in any national security generation resource *if divestiture efforts result in no adverse consequence to the utility.*”¹

¹ Sub. H. B. No. 239, I_132_1270-10, Lines 423-424, and also Lines 483-488, Pages 15 and 18 (emphasis added).

The newest substitute bill changes the word in line 485 from “encourage” to “support.” When coupled with the last phrase of this paragraph, could this be read to mean that Ohio consumers will be required to *financially* support a utility’s divestiture of their OVEC share? It’s unclear whether this change in phrasing could include paying off debts, or other costs that could be construed as an “adverse consequence to the utility” in the event of divestiture. Perhaps there is another interpretation to this paragraph that is more innocuous, but this provision clearly places some preference for the utility’s interest as it does not contemplate adverse consequences to consumers or the environment in the case of divestiture.

One key point: when examined alone, the OVEC subsidy may not appear to be a big deal in terms of per month increases, but it cannot be taken out of context of other charges that have been stacked into customers’ bills over time. The more fixed charges that are approved by the PUCO or through legislation have a cumulative impact on customers that hit low-usage customers particularly hard. Low usage customers are individuals, families or businesses that are efficient and/or self-reliant in their energy use (deploying energy efficiency or a distributed generation system), or lower-income customers. Two-and-a-half dollars may sound miniscule, but it could change the game for these customers. And to boot, they will not be receiving any direct or indirect benefit from this additional charge.

When they renewed their Inter-company Power Agreement (ICPA) in 2011, the joint OVEC owners took on the risk with eyes wide open. From that point forward, acting as an unregulated generation company, the risk of the plants should be on the shareholders of the member and sponsoring companies; these are the rules that every other unregulated power producer in the state has to abide by.

The substitute bill does not lay a clear path for resolution on OVEC and grants subsidies well into an uncertain future. Proponents of Sub. HB 239 claim that the Ohio Valley Electric Corporation (OVEC) was formed for national security interests, and claim that the OVEC owners have a unique relationship to one another. However, joint ownership of plants is not entirely unique to OVEC, and even before the claim that the two plants in question were “national security generation assets,” the consumer and environmental impacts of the OVEC arrangement have been the subject to much litigation over the years at the PUCO.

As proposed, Sub. HB 239 establishes a ratepayer mechanism similar to what was originally proposed in the latest Electric Security Plans (ESP) for AEP, Duke Energy, Dayton Power & Light, and FirstEnergy. The result of these cases, as they stand today:

- AEP’s ESP is the only case that has been approved by the PUCO, and where the distribution utility still owns the entitlement to the plants themselves (as opposed to the unregulated generation affiliates of the monopoly distribution utility). The PUCO approved cost recovery for AEP’s portion of the OVEC ownership through 2019, with an extension until 2024 currently pending. Therefore, AEP-Ohio customers are already paying, at least in part, for AEP’s share of the cost for the Kyger Creek and Clifty Creek plants. The approved rider is set to collect approximately \$43 million in 2017 alone. (See attached appendix for details);

- Duke Energy’s request for cost recovery for their OVEC share was rejected. Duke re-applied for a revised plan for their OVEC-related expenses to the PUCO in Spring of 2017. That case is awaiting a decision on a Motion to Dismiss filed by a number of customer class intervenors;
- FirstEnergy’s ESP was amended, and does not refer to the recovery of OVEC plant costs specifically, in that case. The PUCO recently issued an Order approving the modified ESP, and that case is expected to be appealed to the Ohio Supreme Court, and;
- DP&L’s ESP was, similar to FirstEnergy, amended to not directly refer to OVEC. That case is still ongoing and awaiting a decision by the PUCO.

The result of these cases came about after hours of litigation and/or settlement discussions. The PUCO-approved subsidies cover a time range that are typical in ESP cases - 3-5 years (save for the possibility that AEP’s subsidy will be extended out to 2024). With an end date proposed for 2030, the proposed Sub. HB 239 locks ratepayers in for an unreasonable amount of time. Given how much could shift in that time, it’s unfair to ask customers to continue to pay their utilities to continue their financial interest in these old, and polluting plants.

The substitute bill puts Ohio customers on the hook for years of subsidies that will provide few, if any, benefits to Ohioans. The ICPA *does not discern between the Ohio plant and the Indiana plant* precisely because the ICPA stipulates that the shareholders and sponsoring companies are obligated to pay a “Total Monthly Charge²” to OVEC for the energy and capacity supplied by the “Project Generating Stations” defined as the “Ohio Station” and the “Indiana Station.”³

Lastly, the PUCO’s March 31, 2016 Opinion and Order on the AEP-Ohio Electric Security Plan case, the PUCO permitted the distribution utility to recover all costs associated with its contractual commitment to OVEC through a non-bypassable Rider (Rider PPA). The PUCO’s Opinion and Order did not disallow or even mention a distinction between the Indiana Station and the Ohio Station.

In conclusion, we urge this committee to ask hard questions of proponents regarding the total cost because, in fact, the total cost estimates were the subject of much of the litigation when this same idea of bailout out Kyger Creek and Clifty Creek was being considered at the PUCO just recently.

Thank you for the opportunity to testify and I’d be happy to answer any questions at this time.

² In *Amended and Restated Inter-Company Power Agreement Dated as of September 10, 2010*, the “Total Monthly Charge” consists of “...the sum of an energy charge, a demand charge, and a transmission charge...” (at pages 7-8). Components of these charges are defined in *Article 5* of the ICPA

³ *Ibid*, defines the Ohio and Indiana Stations as “one station (herein called Ohio Station) consisting of five turbo-generators and all other necessary equipment, at a location on the Ohio River near Cheshire, Ohio, and the other station (herein called Indiana Station) consisting of six turbogenerators [sic] and all other necessary equipment, at a location on the Ohio River near Madison, Indiana,” at pages 1-2.

Appendix: How much are AEP-Ohio customers already paying to subsidize OVEC?

AEP-Ohio has been recovering the cost of their share of the Ohio Valley Electric Corporation (OVEC) commitment through its Power Purchase Agreement Rider (PPA Rider) *since January 1, 2017*⁴. The PPA Rider is assessed on all customers of AEP-Ohio/Ohio Power Company.

Estimated Total Collected/To be Collected from AEP-Ohio Customers - 2017

Reporting Period	Cost to Consumers
January, February, March (Actual) ⁵	\$10,076,595
April, May, June (Actual) ⁶	\$12,176,713
July, August, September (Forecasted) ⁷	\$9,616,362
October, November, December (Forecasted) ⁸	\$11,664,871
Total	\$43,534,541

In the PUCO's Second Entry on Rehearing on November 3, 2016, the Commission directed AEP-Ohio to defer any OVEC costs incurred for the period of June - December 2016, and stipulated that the *company could begin recovering the deferred costs on January 1, 2017* and continue to recover these deferred costs over calendar year 2017. Therefore, *the above-referenced PPA \$ figures more than likely reflect both deferred OVEC-related costs* incurred over June-December 2016, *plus any new OVEC-related costs* continually accruing in 2017.

Total Deferred OVEC-Related Costs for AEP-Ohio to be Collected in 2017⁹

June - December 2016 PPA Costs Deferred	\$21,763,059
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⁴ Original PPA Rider approved on [March 31, 2016 Opinion and Order](#) on [PUCO Case Nos. 14-1693-EL-RDR, 14-1694-EL-AAM](#)

⁵ As reported by the [June 1, 2017 Updated PPA Rider Correspondence from Ohio Power Company to Attorney Examiner Greta See](#), Total PPA Revenue, page 5

⁶ As reported by [August 30, 2017 Updated PPA Rider Correspondence from Ohio Power Company to Attorney Examiners Greta See and Sarah Parrot](#), Calculation of Quarterly PPA for Billing During October through December 2017, page 5.

⁷ As projected by [June 1, 2017 Updated PPA Rider Correspondence from Ohio Power Company to Attorney Examiner Greta See](#), Calculation of Quarterly PPA for Billing During July through September 2017 FC Component, page 4

⁸ As projected by [August 30, 2017 Updated PPA Rider Correspondence from Ohio Power Company to Attorney Examiners Greta See and Sarah Parrot](#), Calculation of Quarterly PPA for Billing During October through December 2017, page 4.

⁹ As reported by the [June 1, 2017 Updated PPA Rider Correspondence from Ohio Power Company to Attorney Examiner Greta See](#), Total PPA Cost, page 5.