

House Bill 247 Interested Party Testimony

of Michael L. Kurtz, Counsel On Behalf of the Ohio Energy Group

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My name is Michael L. Kurtz and I am Counsel for the Ohio Energy Group (“OEG”). 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 members¹ spend more than \$1 billion annually on gas and electricity and we provide more than 55,000 good paying direct jobs in Ohio.

In addition to representing OEG, I also represent the Kentucky industrial intervener group. I am licensed to practice law in Ohio, Kentucky, Michigan and Pennsylvania. I have presented cases to 15 state utility regulatory commissions and FERC. So I have a fairly wide degree of experience in utility matters.

The Electric Security Plan (“ESP”) statute was enacted in Senate Bill 221 in 2008 on a 93-1 vote as part of a comprehensive energy reform package. The ESP was deemed necessary to give the Public Utilities Commission of Ohio (“PUCO”) the tools to avert customer rate shock if

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.

there was a total elimination of state jurisdiction over the pricing of electric energy and capacity. In 2008, the federally regulated market price for energy and capacity was almost double the current market price. It is ironic that many of the very same parties that strongly advocated for ESPs in 2008 are now advocating to abolish the law they worked so hard to enact. I believe that it would be a mistake to take away from the PUCO the tools that may be needed again to protect consumers. The ESP statute can certainly be improved and that would be productive. But its total elimination would be unwise.

In a March 24, 2008 letter to Assistant Majority Whip Shannon Jones, eleven of the state's leading consumer representatives summarized the need for ESPs succinctly: "*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 the 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.*" (see attached).

The biggest economic and consumer benefit of the ESP is that it allows consumers to shop for their electric supply, and provides for a PUCO administered rate for those that choose not to shop. Keeping the ESP in place will not affect shopping rights. ESPs provide other benefits, including: authorizing utilities to build new power plants in Ohio under certain conditions, capping excessive utility profits through the significantly excessive earnings test ("SEET"), authorizing economic development rates to grow new businesses and protect existing ones, approving low income assistance programs, and helping utilities through streamlined rate making including riders instead of recovering the same costs through rate cases.

In 2009, the Commission used its SEET authority to order AEP Ohio to refund \$42.7 million in excessive profits. In 2009, AEP Ohio's SEET refund was \$6.9 million, and in 2014 AEP Ohio refunded \$20.3 million in excessive profits.

The PUCO's ability to authorize economic development rates is particularly important to energy intensive industries, like steel and auto. Many of the states that border Ohio have the same economic development rate authority and routinely use it.

The streamlined ratemaking process through riders under ESPs certainly has some downsides for consumers. But these riders are audited for accuracy and can only recover costs that the Commission deems are appropriate, such as distribution system upgrades needed for reliability. Elimination of ESPs would not eliminate these costs. It would only mean that recovery would be through lengthy rate cases. And innovative Commission initiatives, such as PowerForward, do not lend themselves to rate case treatment.

The wholesale electricity market is comprehensively regulated by the federal government through FERC and operated independently by PJM. The market rules of PJM are many feet thick, are constantly changing in an effort to get it right, and those rules are developed through a stakeholder process of dozens of market participants each with differing economic interests. It is a market, but it is not a free market.

The federally regulated wholesale power market tries to treat electricity as a commodity based upon marginal cost pricing. To PJM and FERC, it makes no difference if Ohio has any power plants located within its borders, whether there is fuel diversity, and even whether there is an adequate supply to serve consumers and businesses. Neither FERC nor PJM can order that a new power plant be built even if reliability is threatened. The Federal Power Act gives

jurisdiction over generating assets to the states. There is no federal equivalent to the Ohio Power Siting Board. The only thing that PJM can do to protect resource adequacy is to modify its market rules to send better price signals to incentivize new construction.

On September 28, 2017, the Department of Energy (“DOE”) issued the Grid Resiliency Pricing Rule directing the FERC to adopt a rule requiring operators of organized markets to ensure that certain reliability and resiliency attributes of fuel secure generating resources are fully valued. The Grid Resiliency Rule would result in certain nuclear and coal-fired electric generating resources being fully compensated for their costs of operation through a return to cost-of-service regulated pricing. The Rule reflects the belief of DOE that the current market rules have resulted in chronically distorted pricing that is causing the premature retirement of generation resources that are needed for a secure power supply. The Rule could impact all coal and nuclear plants in Ohio and demonstrates why now is exactly the wrong time to change the ESP law that gives the PUCO some limited jurisdiction over generation pricing.

As with all commodity markets there will be cyclical highs and lows. The low market prices of today may be the new normal or may just be part of the natural commodity cycle. But since we don’t know, the price of eliminating ESPs, and with it the ability of the state to retain some jurisdiction over generation, is higher than the price of keeping the ESP statute on the books.

ESPs can be improved. The SEET which has resulted in \$69.9 million in consumer refunds can be strengthened. The Ohio Supreme Court Keco decision can be made more balanced. These would be productive efforts. But abolishing ESPs altogether would be drastic and unwise.