



# OEC [ Action Fund ]

**Opponent Testimony  
Ohio Senate Bill 155 (Terhar, Peterson)  
Ohio Senate Public Utilities Committee  
June 8, 2017**

Good afternoon Chairman Beagle, Vice Chair LaRose, and Ranking Member Williams; I am Trish Demeter, Managing Director of Energy Programs for the Ohio Environmental Council (OEC) Action Fund. Thank you for allowing me to give testimony on Ohio Senate Bill 155 (Terhar, Peterson).

The OEC Action Fund is opposed to this legislation because it:

- Keeps our state stuck in energy sources and regulatory structures of the past;
- Imposes higher energy bills for Ohio families and business owners, which interferes with energy choice and undermines the benefits of energy efficiency;
- Raises fairness issues in that it charges Ohio ratepayers for a power plant located in a different state, at an unknown cost, and with no foreseeable end to the imposed charges;
- When viewed together with similar proposals for the creation of subsidies for nuclear power plants, calls into question the overall direction of state policy away from markets, and possibly towards restructuring or re-regulation of the suppliers of electricity<sup>1</sup>;
- Proposes subsidies for the joint owners of the Ohio Valley Electric Corporation (OVEC) that some of these owners are pursuing or have been awarded already by the PUCO, and;
- Proposes to shift all the risk of two risky plants - Kyger Creek and Clifty Creek - onto Ohio families and business owners rather than keeping the risk where it should be - on the shareholder companies of OVEC.

## **SUBSIDY FOR OVEC IS UNFAIR AND UNDERMINES ENERGY CHOICE AND ENERGY EFFICIENCY**

Electric customers that choose not to shop for a retail energy supplier receive the default service from the distribution utility - called the Standard Service Offer or SSO. While each utility has a slightly different mechanism for determining their SSO price, all are either entirely auction-based or are moving in that direction by this year<sup>2</sup>; meaning that any customer of an investor owned utility that is receiving service at the SSO price is enjoying the full savings of market-priced electricity. The PUCO,

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<sup>1</sup> As acknowledged in the Legislative Service Commission's Senate Bill 155 Bill Analysis, the proposed legislation could be violating the state policy prohibiting recovery of any generation-related costs through distribution or transmission rates, per Ohio Revised Code Section 4928.02 (H).

<sup>2</sup> Details on Ohio distribution utility movement towards market-based SSO pricing can be found in the following cases: Duke ESP 3 adopted April 2, 2015, Case No. 14-841-EL-SSO, p. 49 <https://dis.puc.state.oh.us/TiffToPdf/A1001001A15D02B40703H86216.pdf>; Duke ESP 3 adopted April 2, 2015, Case No. 14-841-EL-SSO, p. 49 <https://dis.puc.state.oh.us/TiffToPdf/A1001001A15D02B40703H86216.pdf>; Duke ESP 3 adopted April 2, 2015, Case No. 14-841-EL-SSO, pp. 59-60. <https://dis.puc.state.oh.us/TiffToPdf/A1001001A15D02B40703H86216.pdf>; ESP IV Application (August 4, 2014) p. 7. <https://dis.puc.state.oh.us/TiffToPdf/A1001001A14H04B60017D82700.pdf>; AEP ESP III (February 25, 2015), Case No. 13-2385-EL-SSO, p. 27 <https://dis.puc.state.oh.us/TiffToPdf/A1001001A15B25B40110J73365.pdf>, and; DP&L ESP 2, Case No. 12-426-EL-SSO, p. 15 <https://dis.puc.state.oh.us/TiffToPdf/A1001001A13I04B40214I63475.pdf>.

rightfully so, has been pushing regulated utilities in the direction of deregulation of energy supply and through a series of orders for each utility have required that utilities abandon antiquated ratemaking for energy supply and pass along the cost benefits of competitive energy markets to their customers in the SSO price. This bill, as introduced, would inflate this price by allowing the OVEC subsidy to be a non-bypassable charge on consumers' bills.

While the legislation stipulates that customers could receive a credit on their bill if the sale of the power from the two plants produces revenue for the OVEC members, this provision is wishful thinking. This means essentially that the power being sold into the market would have to be lower than the prevailing - or clearing - price for energy prices in the region. However, the hope for a credit coming back to customers is far off at best, and unlikely to happen at all given the commonly-accepted projections for wholesale power prices moving forward.

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. During that time, AEP-Ohio officials stated that a credit coming back to customers was not expected before 2020 or 2021. But even this timeframe was disputed by many intervening parties.

#### **SIMILARITIES BETWEEN SB 155 AND SB 128**

While the mechanics are slightly different, Senate Bill 155 is incredibly similar to the proposal for a rate-payer funded subsidy for Ohio's two nuclear plants as proposed by HB 178. They are both non-bypassable charges on customers bills to pay for specific energy resources in specific locations owned by specific utility companies. Both require Ohio ratepayers to pay for coal and nuclear plants not located in the State of Ohio. But they're different in that at least we know the total cost of the ZEN program which is approximately \$300 million per year for 16 years, the total cost of Senate Bill 155 to Ohio ratepayers is unknown, and there is no end date to the imposed charges.

When viewed together, it calls into question the direction of state energy policy we would be headed in the event that both of these pieces of legislation become law. If certain utilities are able to get full cost recovery for jointly- or subsidiary-owned generation assets, new or old, via non-bypassable charges to customers, then the Ohio General Assembly should consider taking the rest of the steps to fully regulating the entire electric sector once again. There is not much further to go beyond putting the risk of electricity generation squarely on the shoulders of ratepayers, which this legislation does. Without a full swing back into a regulated state, we'll continue to operate in this gray area we're currently in now where some utilities get special exemptions, or granted cost recovery for certain assets, or rate-payer funded debt relief.

#### **THIS PROPOSED SUBSIDY HAS BEEN PROPOSED AND AWARDED TO AEP-OHIO BY THE PUCO**

Senate Bill 155 proposes a subsidy mechanism similar to what was originally proposed in recent Electric Security Plans (ESP) for AEP, Duke Energy, Dayton Power & Light, and FirstEnergy. The result of these cases, as they stand today:

- Duke Energy's request for cost recovery for their share of OVEC ownership was rejected, and they never re-submitted a revised plan for their OVEC-related expenses to the PUCO. However, they are poised to file a new ESP case soon.

- FirstEnergy’s ESP case is still in the process of re-hearing, and there is not a final order on this case as of yet. They are not seeking cost-recovery for their OVEC share in this case, but just general credit support.
- DP&L’s ESP case is still ongoing and being actively litigated, but does not seek an OVEC cost recovery mechanism.
- 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. The PUCO approved cost recovery for AEP’s portion of the OVEC ownership. 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.

As the legislation stipulates, this approved charge would more than likely be discontinued if the bill becomes law, but I urge this committee to ask AEP why their commission-approved rider is not enough?

**THESE PLANTS ARE NOT WITHOUT MARKET AND ENVIRONMENTAL RISK, WHICH SHOULD BE BORNE BY OVEC, NOT OHIO FAMILIES AND BUSINESS OWNERS**

Proponents of Senate Bill 155 are claiming special status for OVEC because of the joint ownership structure, but the member and sponsoring companies of OVEC clearly pivoted in 2003 to be a jointly-owned unregulated generation company. They took on this risk with eyes wide open, as the OVEC’s 2015 Annual Report states that *“Since the termination of the DOE Power Agreement on April 30, 2003, OVEC’s entire generating capacity has been available to the Sponsoring Companies under the terms of the Inter-Company Power Agreement (ICPA).”*<sup>3</sup> This ICPA was extended in 2011 and is in force until June 30, 2040. Acting as an unregulated generation company, the risk of the plants is on the shareholders of the member and sponsoring companies - as it should be; these are the rules that every other unregulated generation company has to abide by.

At the time the OVEC members made the decision to stay together as a competitive generator, surely they assessed the market and environmental risk they were taking on. We were about 2-3 years into the emerging shale gas boom in 2011 which was being viewed as a great stabilizer for volatile electricity prices, and our economy was still recovering from the great recession which was keeping demand for electricity low. Despite this landscape, the OVEC owners signed a binding agreement that would keep them together until 2040.

Not only the agreement shows this, but the actions of OVEC demonstrate it. OVEC members made business decisions to invest in these plants to keep them open and compliant with various environmental regulations, even after the termination of the US DOE supply contract in 2003. In 2003, installation of air pollution control equipment totalling \$355 million, and again in 2011-13 timeframe, more upgrades to the plants cost well over \$1 billion.

Proponents of Senate Bill 155 claim that they are unable to exit the agreement they hold among fellow OVEC shareholder companies and/or sponsoring companies. But I urge this committee to understand the directive given to AEP-Ohio - by far the largest shareholder of OVEC - by the PUCO in particular

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<sup>3</sup> <https://www.ovec.com/FinancialStatements/AnnualReport-2015-Signed.pdf> (Page 1 of report)

when it comes to this matter. The PUCO ordered<sup>4</sup> the company to pursue transfer or sale of the utility's entitlement to the OVEC plants, and required the utility to report on its efforts in this regard.

Why should ratepayers suddenly be footing the bill for an unworkable contract between private companies? If certain OVEC members wants out but others do not, how is the fallout from that unfortunate circumstance a problem that Ohio families and business owners have to solve by opening up their checkbooks? I'm sure I can't even imagine the extent of this complicated matter among the OVEC members, but AEP has shown leadership in other matters, and demonstrated open willingness to work towards solutions, particularly when it comes to transitioning away from fossil fuels. They should demonstrate the same leadership with their fellow Ohio Valley Energy Corporation partners to craft a plan for these plants without putting undue burden on Ohio consumers.

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

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<sup>4</sup> PUCO Orders in Case Number 13-1285-EL-SSO.