

**HOUSE BILL 15 OF THE 136<sup>TH</sup> OHIO GENERAL ASSEMBLY**  
**TESTIMONY OF AMY SPILLER, STATE PRESIDENT OF DUKE ENERGY OHIO**  
**BEFORE THE OHIO HOUSE ENERGY COMMITTEE**

February 26, 2025

Chair Holmes, Vice Chair Klopfenstein, Ranking Member Glassburn, and members of the Ohio House Energy Committee:

My name is Amy Spiller, and I am President of Duke Energy Ohio. I lead the company's business, regulatory, and legislative functions that facilitate the provision of safe and reliable energy services and solutions for our 700,000 electric and 490,000 natural gas customers in southwest Ohio, continuing the nearly two-hundred-year legacy of our predecessor companies. Thank you for the opportunity to testify on House Bill 15 (H.B. 15).

**I. Electric and Natural Gas Utilities and the critical infrastructure we construct, operate, maintain, and safeguard play an essential role in our customer's lives and our shared economic prosperity.**

We at Duke Energy Ohio share the state's goal of succeeding in regional, national, and worldwide economic arenas. And, we support the mission of this committee as established by the chair, that of ensuring Ohio citizens have access to reliable, resilient, and affordable energy. While we appreciate your attention to energy supply challenges, we believe that the delivery of that energy by financially healthy utilities is equally mission critical. This is the focus of my company and our work with lawmakers and other stakeholders like JobsOhio, the Ohio Business Roundtable, and the Ohio Chamber of Commerce. It is also the focus of my testimony to follow.

Energy is the lifeblood of our economy – it is the one input common to every good produced and service delivered. As an anchor service institution, the energy delivered by Duke Energy Ohio attracts other companies to our state and region. In 2023, our dedicated economic development team partnered with authorities across our 7-state footprint to secure 67 projects, resulting in 15,000 new jobs and over \$22 billion in capital investments. In Greater Cincinnati, our efforts helped create 276 new jobs and bring in \$263 million in new capital.

At Duke Energy Ohio, we are relied upon to keep homes warm, lights on, and businesses thriving. We take our responsibilities to our customers to heart, but we need your help to ensure that we can accomplish our mission, in support of yours. At present, Duke Energy Ohio must oppose H.B. 15, as introduced, because several of its policy provisions do not

support our ability to meet the needs and expectations of our customers and communities. Currently, we find that H.B. 15:

- Sets Ohio on a backwards path of regulating electric utility services
- Injects risk into critical infrastructure projects
- Adds to an already confusing situation for customers regarding their relationships with utilities and competitive suppliers
- Risks inadvertently violating the cost causation principle
- Provides tax relief for new and existing generation resources, but exacerbates the state's already uncompetitive infrastructure tax policy
- Erodes confidence in the ability to make sound and timely business decisions

**II. Ohio needs a modernized utility regulatory model but H.B. 15's reforms point Ohio toward the past instead of moving us into the future.**

Ohio's 20<sup>th</sup>-century regulations governing the setting of base electric distribution rates are antiquated and do not provide the means for utilities to respond at the speed of business to the evolving needs of our customers and communities. Instead of improving on existing regulations, H.B. 15 merely eliminates a construct known as electric security plans (ESPs), thereby increasing the risk to utilities of regulatory lag (the time between when investments are made and recovered through rates). Of note, Ohio currently ranks dead last among the fifty states for regulatory lag – even worse than California and New York – as was recently expressed by the Ohio Business Roundtable in testimony before the Ohio Senate Energy Committee. Since 2009, ESPs have been the means by which Ohio addressed regulatory lag between base rate cases by allowing utilities to recover certain distribution capital investments between base rate cases. H.B. 15 would eliminate those plans, exposing utilities to an increased risk of regulatory lag and leaving us with the only option of filing base rate cases annually to best match the timing of investments to recovery.

Taking the backwards step of simply eliminating ESPs without implementing a new way forward would intensify an already investment-stifling situation. Base rate cases are expensive and take years to plan, negotiate, settle or litigate, and appeal. In fact, H.B. 15 creates a scenario where a utility could have two cases under appeal at the Ohio Supreme Court while a third case is already being considered by the Commission. If this approach sounds inefficient, expensive, and unsustainable for customers, utilities, and regulators, that's because it is and it will poorly serve Ohio in its pursuit of economic prosperity.

Rather than advocating for the retention of ESPs, however, Duke Energy Ohio urges you to consider a modernized 21<sup>st</sup>-century approach to the setting of base rates known as Multi-Year Rate Plans (MYRP). These plans would cover 3 years and provide all stakeholders with benefits, including:

- Leveling of rates with regulatory approval of reasonable and prudent spending forecasts
- Transparency into the financial conditions and earnings of utilities every year
- Simplified understanding of rates and the services they cover
- Customer protections against utilities over-earning including appropriate refunds
- Full base rate cases at required intervals where a utility's authorized return is reconsidered

Such plans would not be unique to Ohio. Lawmakers and regulators in states such as North Carolina, South Carolina, and Florida have embraced these plans, and are now experiencing the successful service delivery and economic development results they can produce. Duke Energy Ohio strongly urges you to consider this modernized regulatory model, and we stand ready to provide additional information outlining its structure and supporting its adoption. (See Appendix A.)

**III. H.B. 15 adds uncertainty and risk into the permitting and siting of critical infrastructure projects that are needed for local reliability and economic development.**

H.B. 15 would grant the Ohio Power Siting Board (OPSB) jurisdiction over like-for-like (LFL) replacements of major utility facilities and equipment. Current law exempts LFL projects from the requirement to obtain a certificate from the OPSB based on simple logic: replacement of existing infrastructure with that of substantial similarity should not be subjected to the same certification process such as is appropriate for the construction of brand-new facilities and equipment. H.B. 15's elimination of the LFL exemption would add time and expense to critical infrastructure projects, delay replacements of existing infrastructure in the public right-of-way, delay restoration following weather events or other exigencies like automobile accidents, delay make-ready work for things like broadband deployment, and delay or erode local reliability and economic development benefits. The removal of the LFL exemption should be reversed.

**IV. The Customer Choice Billing Program will result in significant customer billing confusion, costs, and likely a reduction in customer service.**

The customer choice billing program established in H.B. 15 will require a costly and burdensome implementation with no firm participation requirement for competitive retail commodity providers and no requirement to demonstrate a better customer experience. The voluntary nature of these provisions could result in Duke Energy Ohio billing customers for some providers, some providers billing for our distribution services, and some customers receiving separate bills. As the only combination electric and natural gas utility in the state, we are concerned about the experience for our dual-service customers who choose one type of alternative provider but not the other. There would also be duplicative customer service functions as we are the provider of last resort and the consolidated billing agent for providers that do not opt into the customer choice billing program. We anticipate considerable confusion and unpredictable outcomes related to service connections, assistance plans, and customer support. As such, Ohio should not adopt the customer choice billing program.

**V. H.B. 15 may inadvertently open the door for cost-shifting and violate a key principle of Ohio utility regulatory law.**

A fundamental principle in Ohio ratemaking is cost causation, meaning that each customer should always pay for the service requirements that they cause a utility to incur. H.B. 15 seemingly intends to provide small commercial customers with certain protections in their interactions with competitive suppliers. However, included in the bill's definition of "small commercial customer" is language that may be interpreted as authorizing a practice sometimes referred to as "conjunctive billing." Conjunctive billing allows customers with multiple metered locations to aggregate the total demand of all their locations for the purpose of avoiding grid-related charges that they in fact cause.

Consider that utilities must always construct their systems to serve the maximum demand that each metered location is reasonably expected to impose upon the poles, wires, transformers, substations, and other facilities and equipment that deliver service. Now consider that the physical stresses that each metered location place on the grid are not alleviated simply because of a mathematical averaging exercise, meaning that the cost of providing service for the whole system is not decreased simply because of an electronic billing calculation for a few specific customers. H.B. 15's inclusion of a reference to this practice could be argued to be a tacit adoption of conjunctive billing authority, which would result in non-aggregating customers ultimately paying the cost differential it creates. This

would violate the cost causation principle and result in an unfair outcome for the majority of our customers. Protection for small commercial customers from bad acts perpetrated by competitive retail suppliers may be warranted, but reference to meter aggregation should be removed from the bill.

**VI. Reducing the tangible personal property tax on new and existing generation may support new resource build and prevent premature resource retirements, but shifting taxes from generation to transmission and distribution assets is inconsistent with a pro-growth economic policy.**

As mentioned earlier, energy is the one common input into every component of our economy. This means that taxes on energy and the associated delivery systems are, in effect, taxes on the economy. As may reasonably be expected, a pro-growth tax environment promotes economic development and can reduce customer bills. While H.B. 15 would provide a potentially valuable tax incentive for the operation of existing and construction of new electricity supply resources in the state it would simultaneously increase the tax rates for the transmission and distribution assets that are essential to the operation of those generators. This shift should be reversed by removing from H.B. 15 the increase in rates for transmission and distribution assets. Furthermore, Ohio would be wise to reconsider its overall infrastructure taxation policy, as the state currently taxes critical infrastructure at economically uncompetitive rates compared to surrounding and key benchmark states. In fact, Ohio's statutory effective tax rate on electric transmission and distribution assets is more than double that of New York and more than six times that of California. While the comparisons to our closest neighbors are not quite as dramatic, they still demonstrate how through pro-growth tax policies in places like Indiana, Kentucky, and Michigan are better positioned than Ohio for economic success. (See Appendix B.)

**VII. H.B. 15 erodes business confidence in state law at a time when policymakers should be sending the opposite signal.**

The Legacy Generation Resource (LGR) statute that would be repealed by H.B. 15 was established by policymakers to mitigate a portion of customers' exposure to volatile wholesale commodity markets. Before the state codified the LGR provisions, similar constructs were approved by the Public Utilities Commission of Ohio, and its decision to do so was affirmed by the Ohio Supreme Court. Duke Energy Ohio has since made business decisions that rely upon the existence of the LGR law through the statutory sunset of December 31, 2030. Abruptly repealing parts of state law – no matter the industry involved –

without providing a means of redress or alternate remedy sends a chilling message to the business community and is thus antithetical to economic development. If the state is determined to remove the LGR statutes from law, it should provide entities such as Duke Energy Ohio – that relied upon and followed the law – with a different path down which we can proceed and a reasonable amount of time to do so.

## **VIII. Conclusion**

I appreciate the opportunity to share with this committee Duke Energy Ohio's informed perspectives on H.B. 15, which we recognize contains some benefits for our electric and natural gas customers, mostly in the form of competitive supplier protections. When balanced against the issues I have addressed in my testimony, though, Duke Energy Ohio must oppose passage of the bill in its present form. We appreciate your willingness to listen to our concerns and suggestions. And, we welcome the opportunity to continue working with the bill sponsor, members of leadership, members of this committee, and other interested parties on amendments to address the issues covered in my testimony. With those improvements, H.B. 15 would be better able to advance the mission of the chair and this committee of ensuring Ohio citizens have access to reliable, resilient, and affordable energy.

## Appendix A

### Multi-Year Rate Plan Comparison

	Multi-Year Rate Plan	Traditional Base Rate Case	Electric Security Plans
<b>Primary purpose and functions</b>	<ul style="list-style-type: none"> <li>Determines utility base distribution rates over multiple plan years to provide greater transparency and predictability in charges for distribution service</li> <li>Promotes gradualism in rates to avoid rate shock to customers</li> <li>Places state in a more competitive position to quickly deploy infrastructure to attract economic development projects</li> </ul>	<ul style="list-style-type: none"> <li>Sets base distribution rates using historical investments and spending data that are out of date and do not reflect current conditions when rates are set</li> </ul>	<ul style="list-style-type: none"> <li>Provides method for utilities to obtain generation supply for non-shopping customers</li> <li>Permits recovery of investments and costs related to distribution service and economic development</li> </ul>
<b>Term allowed</b>	<ul style="list-style-type: none"> <li>Sets term to 3 years</li> </ul>	<ul style="list-style-type: none"> <li>Excludes any specific term; rates remain in place until next base rate case is filed by utility and approved by PUCO</li> </ul>	<ul style="list-style-type: none"> <li>Excludes any limitation as to term</li> </ul>
<b>Key Characteristics</b>	<ul style="list-style-type: none"> <li>Uses base rates as primary means of providing for utility's needs to construct, operate, maintain and secure critical infrastructure</li> <li>Sets reasonable authorized return for the utility and determines base rates for each year of the plan</li> <li>Provides greater rate predictability for customers by forecasting capital investments and other spending over each plan year</li> <li>Requires annual review of utility finances through earnings report/test</li> <li>Protects customers against over-earning, including refund of over-charges</li> <li>Protects utilities against under-earning and promotes responsible cost management</li> <li>Provides due process rights for intervenors in plan application and annual earnings reviews</li> </ul>	<ul style="list-style-type: none"> <li>Establishes base distribution rates designed to provide an opportunity—but not a guarantee—for utility to earn a reasonable authorized return</li> <li>Calculates rates largely on a backward-looking, snapshot-in-time of utility's financial records and spending, with no anticipation of needs, <i>i.e., no eye towards the future</i></li> <li>Leaves frequency of cases almost exclusively to the utility's choice; PUCO and other parties may force utilities to file a base distribution case at any time</li> <li>Provides due process rights for intervenors</li> </ul>	<ul style="list-style-type: none"> <li>Allows for the establishment of certain limited distribution riders</li> <li>Relies on authorized return determined in last base rate case for return to be earned by utility through riders</li> <li>Lessens utility motivation to file for new base rates, depending on plan terms and conditions</li> <li>Tests earnings against industry peers through annual Significantly Excessive Earnings Test</li> <li>Includes only limited financial data, rather than full review as required in base rate case</li> <li>Provides due process rights for intervenors</li> </ul>
<b>Impacts on base distribution rates</b>	<ul style="list-style-type: none"> <li>Subjects proposed, projected capital investments and O&amp;M to comparison of historical and current, actual expenditures</li> <li>Allows for review by intervenors to ensure capital and operation and maintenance proposals are reasonable</li> </ul>	<ul style="list-style-type: none"> <li>Sets base rates using historic costs of investments and a combination of historic and near-term forecasted operating expenses</li> <li>Ignores evolving needs of infrastructure investments based upon changing conditions and customer demands and expectations, potentially limiting economic development competitiveness with other states in the region</li> </ul>	<ul style="list-style-type: none"> <li>Has no impact on base rates</li> </ul>
<b>Impacts on riders</b>	<ul style="list-style-type: none"> <li>Eliminates the need for many riders</li> <li>Allows continuation of a small number of riders as are required by law and necessary for specific functions (such as serving individual customer needs)</li> </ul>	<ul style="list-style-type: none"> <li>Leaves establishment of riders to PUCO interpretation of law, which currently is that riders may not be established in base rate cases</li> <li>Allows continuation of a small number of riders as are required by law and necessary for specific functions</li> </ul>	<ul style="list-style-type: none"> <li>Allows for the establishment of distribution riders addressing topics specified in statute</li> </ul>

## Appendix B

### Utility Property Tax Multi-Jurisdiction Benchmark

#### Property Tax Effective Rates Multi-Jurisdiction Benchmark

State	Statutory Effective Tax Rate <sup>1</sup>	Effective Tax Rate on Net Book Value <sup>2</sup>
Ohio	6.3%	4.2%
Indiana	2.1%	0.7%
Kentucky	1.4%	0.7%
Pennsylvania <sup>3</sup>	0.1%	0.1%
Michigan	1.3%	1.4%
West Virginia	1.4%	0.7%
California	1.0%	1.0%
New York <sup>4</sup>	3.0%	5.5%

#### Notes:

1-Represents rate applied to the fair market value of electric transmission and distribution assets. Statutory effective tax rate equals assessment ratio multiplied by average statewide local tax rates.

2-Represents average of taxes paid divided by an electric utilities net book value, as determined in benchmark analysis. Benchmarking analysis based on FERC reporting within each jurisdiction reflected above.

3-Public Utility Realty Tax is in lieu of property tax in Pennsylvania.

4-New York statutory effective tax rate is non-inclusive of New York City.

*\*Benchmarking analysis is based on publicly available information and estimates, including but not limited to: most recently published local tax rates and Federal Energy Regulatory Commission financial data for selected electric utilities.*