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Before
The Ohio Senate Energy Committee
Testimony on Senate Bill 2

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Proponent Testimony on Behalf of the Ohio Energy Leadership Council

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Chair Chavez, Vice-Chair Landis, Ranking Member Smith, and Committee members. My name is David Proaño, and I am a partner representing clients on energy and utility matters at the law firm of Baker & Hostetler, where I have practiced law for over 20 years. My testimony today is on behalf of my client, Ohio Energy Leadership Council, as a proponent of Senate Bill 2. And we thank Senate Reineke for introducing this very important piece of legislation.

Relevant to my testimony, my practice is devoted to representing clients before the Public Utilities Commission of Ohio in rate cases and utility matters, including electric utility distribution rate cases and electric security plan cases. Since October 2022, I have served as regulatory counsel to the Ohio Energy Leadership Council, known as OELC, which is the premier trade association in Ohio that represents the interests of large commercial and industrial customers in energy, utility and rate matters.

For more than four decades, OELC has represented energy-intensive manufacturing, industrial, institutional, education, and retail businesses on utility matters in Ohio. Our members include steel companies, chemical processing companies, materials and equipment manufacturers, educational institutions, retail business establishments, petroleum refiners, recycling and scrap steel companies, and many other businesses across the State of Ohio. Our members collectively spend billions of dollars on annual energy expenditures and consume over four billion kWh in electricity in Ohio each year, or the equivalent electricity usage of nearly 400,000 residential homes in Ohio. Our members are located in each of the four major electric utility service territories in Ohio.

As major contributors to Ohio's economy, our members utilize their energy expertise to advocate for fair and transparent energy rates and promote reliable and reasonable utility service. Our mission, quite simply, is to keep Ohio's energy and utility costs competitive for existing and new businesses that fuel Ohio's economy and jobs.

Because OELC supports reasonable rates, competitive energy markets, and transparency in the PUCO ratemaking process, we support Senate Bill 2. Specifically, OELC's members have experienced and believe in the benefits of free and competitive markets, and as a result of those markets, have made significant investments in Ohio providing many jobs and economic benefits for Ohioans. Many of the provisions in Ohio law that would be eliminated by Senate Bill 2 are antithetical to free and competitive markets, including huge subsidies paid by Ohio ratepayers to AEP Ohio, Duke Energy Ohio and AES Ohio related to their ownership stakes in OVEC, which operates aging coal plants in Ohio and Indiana. Those subsidies are paid by Ohio ratepayers through the Rider LGR charged to residential, commercial and industrial customers in all four utility service territories in Ohio. Those subsidies have cost Ohio ratepayers over $600 million since the OVEC rider was enacted, and there is no good reason why Ohio's utilities should be subsidized for ownership stakes in these coal plants.

But OELC requests an amendment to Senate Bill 2 to halt the OVEC subsidies now, because as currently drafted the bill ties the elimination of the OVEC charges to ratepayers to the expiration of the utility's currently-approved electricity security plans, which would hurt ratepayers. Under House Bill 6, the OVEC subsidies run through December 31, 2030, but many electric security plans in place now including for AEP Ohio and soon for Duke Energy Ohio expire May 31, 2028. Ohio's ratepayers need relief now, and thus OELC requests this amendment to Section 4 of Senate Bill 2:

Amendment #1 – Amend Section 4(A) at the end of Senate Bill 2 to eliminate Rider LGR (the OVEC subsidy) upon effectiveness of the bill:

> **Section 4.** (A) Beginning on the effective date of this section, no electric distribution utility shall collect from its retail customers in the state any charge that was authorized under ~~Notwithstanding the repeal by this act of~~ section 4928.148 of the Revised Code for retail recovery of prudently incurred costs related to ~~a rider or cost recovery mechanism for~~ a legacy generation resource ~~authorized under an electric distribution utility's electric security plan in effect on the effective date of this section shall remain in effect until the termination date of the electric security plan~~. Beginning on the effective date of this section ~~After the termination date of the electric security plan~~, the electric distribution utility shall not apply for, and the public utilities commission shall not authorize, any rider or cost recovery mechanism for a legacy generation resource

We would also request an amendment to allow the PUCO to complete its pending audit of the prudency and reasonableness of the 2021 through 2023 OVEC charges in PUCO Case No. 24-153, and also conduct a similar audit for 2024 through the date the OVEC charges are eliminated. Senate Bill 2 deletes that audit provision by eliminating Section 4928.148 entirely, and we should let the PUCO audit the $600 million+ already paid and to be paid by ratepayers prior to the elimination of this subsidy.

Other subsidies that would be eliminated by Senate Bill 2 include the so-called Solar Generation Fund, through which Ohio's ratepayers are charged $20 million each year to subsidize a fund used for large-scale solar generation plants in Ohio. OELC believes these facilities do not require additional subsidies for development, as demonstrated by the significant number of renewable projects in PJM's queue. In fact, PJM's 4 R's report ("Resource Retirements, Replacements & Risks") published in February 2023 noted that PJM's queue stood at approximately 290

GW of installed generation capacity interconnection requests, of which nearly 94% (271 GW) was composed of renewable and storage-hybrid plants.[1]

OELC also supports Senate Bill 2's provisions that would eliminate the ability of Ohio's utilities to own generation. Ohio is a competitive and free market, and Ohio's electric utilities should be strictly in the business of safely and reliability delivering that competitively sourced electricity to Ohio consumers. Under no circumstances should we give Ohio's electric utilities monopoly power over generation. We should look to the competitive markets for that power, and Senate Bill 2 is an important step to providing independent power produces the regulatory certainty they need to make large investments in existing and new generation in Ohio. As long as the prospect of utility-owned generation exists in this state, the competitive generation market will have a difficult time making those necessary investments in this state. Providing utilities that monopoly power, subsidized by ratepayers, is the quickest way to shut down new generation investment in this state.

Senate Bill 2 also incentivizes the creation of new generation resources in this state by encouraging behind-the-meter generation and the co-location of large mercantile load with large generation, which OELC supports. The more generation resources we can build in this state through the proper regulatory framework, the better off all ratepayers will be, because the development of customer sited generation projects will lessen the need for new transmission, remove load from the grid needed by other customers, and pave the way forward towards a future where distributed generation is an important component of our 21st century economy in this state.

Ohio's ratepayers would also benefit from the elimination of Electric Security Plans, which have resulted in a proliferation of riders and have allowed electric utilities to extend the time between rate cases, sometimes by 15 or more years. On the positive side, ESPs have permitted the development of critical interruptible, transmission and economic development programs for Ohio's businesses that have been instrumental in keeping Ohio an affordable and competitive state in which to

[1] *See* https://www.pjm.com/-/media/DotCom/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx

do business. Accordingly, OELC requests amendments necessary to ensure that Ohio remains attractive for large manufacturers and energy users that rely on affordable energy and utility rates to remain in operation and expand in this state.

Specifically, the elimination of ESPs would have the very negative outcome of unintentionally eliminating utility programs that have become instrumental to keeping Ohio affordable for manufacturers in this state. Dozens of Ohio's most important employers are in reliability programs called "interruptible" programs that allow the utilities to drastically reduce the power to those companies when necessary to keep the grid stable. These companies can be interrupted at any time, meaning essentially shut down, and for however long is needed in exchange for monthly interruptible credits. These crucial interruptible programs, which between AEP Ohio and FirstEnergy include as much power as a 1 GW natural gas power plant, are a crucial tool to keep Ohioans' lights on when electricity demand is high and power is needed most. The interruption of the industrial load in these programs is equivalent to immediately turning on a 1 GW power plant in Ohio and is a powerful tool to keeping the lights on for our residential customers and critical businesses during times of emergency and extreme weather events -- 1 GW can power around 750,000 to 1 million residential customers!

These interruptible programs proved themselves during Winter Storm Elliot on the eve of Christmas in 2022, with those customers being interrupted over two days, ensuring that residential customers had light and heat during those extremely frigid days. Likewise, we should preserve the ability of the utilities to propose transmission and economic development programs that also help with grid reliability and are critical to keeping businesses in Ohio. Over one hundred Ohio businesses are in either AEP's or FirstEnergy's transmission programs, called "pilot" programs, and these important programs could be eliminated with the ESPs without a necessary adjustment to Ohio's ratemaking statute.

Accordingly, if we are going to eliminate ESPs, Ohio's ratemaking statute should be updated to permit the Public Utilities Commission of Ohio to approve interruptible programs that provide these important grid reliability benefits for all Ohioans. To that end, OELC proposes the following amendments to preserve these important programs as part of the rate case process:

Amendment #2 – Add New Section 4909.192:

> When considering an application to increase rates under section 4909.18 of the Revised Code, the commission may approve:
>
> 1. Programs for energy-intensive customers to implement economic development, job growth, job retention, or interruptible rates that enhance distribution and transmission grid reliability and promote economic development.
>
> 2. Programs for customers that align retail rate recovery with how transmission costs are incurred by or charged to the utility, or programs that allow customers to be billed directly for transmission service by a competitive retail electric service provider.

This proposed amendment is also consistent with the "mini rate case" proceeding to allow for the recovery of economic development costs proposed by Senate Bill 2 through new Section 4909.47.

We also request an amendment to allow for the orderly transition away from ESPs because, as currently drafted, Senate Bill 2 could immediately eliminate these programs for utilities operating under expired ESPs, such as FirstEnergy, and also create a hodgepodge of different utility rates across the state depending on the service territory. Accordingly, we should have a single date for the termination of all electric security plans, and to that end OELC proposes this language:

Amendment #3 – Rewrite the last sentence of Section 4928.141(A)(2) (to ensure all ESPs expire on the same date, ensuring equal treatment to all Ohio ratepayers regardless of their utility service territory):

> Any electric security plan approved before the effective date of the amendments to this section by this act shall extend to the earlier of (a) the termination date of the plan's term, or (b) May 31, 2028.

In addition, as ESPs expire the electric utilities would likely need to file rate cases sooner than the mandatory December 31, 2029 date proposed in the current version of the bill. OELC would support moving this mandatory date up by several years to more closely align with expiration of all ESPs in Ohio, such as May 31, 2027.

Senate Bill 2 also reforms the ratemaking process by requiring faster decisions from the Public Utilities Commission of Ohio. This is a prudent change that would ensure utilities are able to implement rates in a timely manner. But at the same time, the current language in the bill would allow electric utilities to use a fully forecasted 12-month test period. This is a change that OELC opposes because it puts ratepayers at a significant disadvantage in the rate case process, where the Commission and parties must rely on the utilities' own forecasts of revenue and expenses. This disadvantage would be particularly prominent as drafted, because by requiring a Commission decision within 275 days, rates would be implemented over three months before the test period is even completed, meaning the Commission is making a decision without actual expense and revenue data.

Also, perhaps as significant, the all-important date certain requirement is eliminated in the bill. OELC supports more accelerated rate cases, but a date certain should remain for ratemaking purposes, which is critical to understanding the value of the assets used for utility service and setting appropriate rates. Further, the current language in Senate Bill 2 has conflicting provisions regarding when the forecasted period begins for valuation purposes. By accelerating the rate case process by requiring a PUCO decision within 275 days, that directly addresses the concern of timely implementing rates and permitting reasonable cost recovery by the utilities. But introducing fully forecasted test periods and eliminating the date certain requirement would almost certainly raise rates paid by Ohio's consumers, which is entirely contrary to the goals in this bill.

In addition, Senate Bill 2 introduces the phrase "cost recovery mechanism" into the ratemaking statute. The bill should make clear that this phrase does not allow utilities to introduce riders in rate cases, because the allowance of riders in rate cases will provide an end-run around the elimination of ESPs and the dozens of riders that utilities have introduced through ESPs.

Finally, no discussion of reform of Ohio's energy laws is complete without a discussion of transmission reform. This is one subject matter OELC would like to see addressed in Senate Bill 2. Specifically, we must allow the Ohio Power Siting Board to have jurisdiction over supplemental projects built at 69 kV, which is below the current jurisdictional threshold of 100 kV. Supplemental projects by transmission companies in Ohio, such as AEP Transco and ATSI, receive virtually no review at PJM, and if below the 100 kV level, they receive zero review from the Ohio Power Siting Board. This is a regulatory gap that has allowed the unchecked proliferation of 69 kV supplemental transmission projects in Ohio, the costs of which are allocated 100% to Ohio ratepayers through the transmission riders that ratepayers pay to every single electric distribution utility. For example, in 2022 alone, AEP's zone had $26 million in baseline transmission projects but $469 million of supplemental transmission projects. I have attached a chart to this testimony showing the transmission rate increases between 2017 and 2025 for AEP Ohio and FirstEnergy customers, which I will walk through.

This out-of-control transmission spending has cost Ohio's businesses, including OELC's members, dearly, leading to shocking transmission cost increases over the past decade and reducing the competitiveness of Ohio's energy markets for existing and new businesses. There must be some checks and balances, and regulatory oversight, over these projects, and OELC is ready to work with this committee to introduce amendments to Seante Bill 2 that would allow for review of 69 kV supplemental transmission projects by the Ohio Power Siting Board.

For these reasons, the Ohio Energy Leadership Council respectfully urges that this committee pass Senate Bill 2 with the amendments discussed today necessary to keep Ohio affordable, competitive and attractive for existing commercial and industrial customers in this state and new businesses looking to locate their facilities to this state. We look forward to working with this committee to pass Senate Bill 2 with the amendments requested today.

Thank you for your consideration. I welcome any questions from the committee.

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Transmission Charge Increases: 2017 – 2025 for AEP Ohio and FirstEnergy Utilities

Assuming Large Energy User with 100,000 kW/kVa of Demand

AEP Ohio	**kW Demand**	**Transmission Rate (per kW or KVA)**	**Monthly Transmission Charges**	**Annual Transmission Charges**
2017	100,000	3.45	$ 345,000.00	$ 4,140,000
2025	100,000	7.72	$ 772,000.00	$ 9,264,000
			123% increase	**$ 5,124,000 increase**
Toledo Edison	**kVa Demand**			
2017	100,000	3.8822	$ 388,220.00	$ 4,658,640
2025	100,000	9.6019	$ 960,190.00	$ 11,522,280
			147% increase	**$ 6,863,640 increase**
Ohio Edison	**kVa Demand**			
2017	100,000	3.1154	$ 311,540.00	$ 3,738,480
2025	100,000	7.953	$ 795,300.00	$ 9,543,600
			155% increase	**$ 5,805,120 increase**
Cleveland Electric Illuminating	**kVa Demand**			
2017	100,000	2.6203	$ 262,030.00	$ 3,144,360
2025	100,000	7.3552	$ 735,520.00	$ 8,826,240
			180% increase	**$ 5,681,880 increase**