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February 25, 2025  
Before the Senate Energy Committee  
Opponent Testimony on Senate Bill 2

Chair Chavez, Vice Chair Landis, and Ranking Member Smith, my name is Marc Reitter, President and Chief Operating Officer for AEP Ohio. Thank you for allowing me to testify today in opposition to Senate Bill 2 (SB2).

Headquartered in Gahanna, AEP Ohio serves 1.5 million customers across 61 counties throughout Ohio. With over 1,300 employees that live in the communities we serve, AEP Ohio is proactively working to redefine the future of energy in this state, in addition to developing innovative solutions that power communities and improve lives all across Ohio.

AEP Ohio applauds Senator Reineke for bringing forward this legislation that addresses a package of regulatory reforms and seeks to address the resource adequacy challenge that is looming in the state of Ohio. There are certainly productive and impactful aspects of the bill that AEP Ohio would support, including the mandate for competitive Standard Service Offer (SSO) auctions, the forecasted test year for investments, base rate case procedural reforms, the cadence for filing base rate cases and the mini-rate case concept. However, for the reasons below, we feel that SB2 currently falls short of protecting Ohioans and consumers. Going forward, AEP Ohio would like to work with legislators and stakeholders to develop a more balanced set of energy policy updates that promotes reliability and affordability for our customers, while also continuing the positive trend of economic growth in this state.

### **Repeal of electric security plans**

In an effort to promote competition while ensuring consumer benefits in a volatile market environment, the General Assembly passed Senate Bill 221 in July of 2008 (SB 221), a bipartisan piece of legislation that created two alternative options for pricing the Standard Service Offer (SSO) to non-shopping customers: an Electric Security Plan (ESP) or a Market Rate Offer (MRO). Although the MRO and ESP are alternative options, the reality for over a decade now is that all four Electric Distribution Utilities (EDUs) have exclusively used a competitive procurement process resembling the MRO to supply generation to non-shopping customers under their ESPs. If all four EDUs use an MRO-like competitive process with their ESPs, why do we need ESPs at all? Because the remainder of the ESP statute creates key alternative regulatory mechanisms that supplement traditional ratemaking under R.C. Chapter 4909 of the Revised Code. These alternative mechanisms allow EDUs to provide economic development programs, timely reliability and grid modernization investments, and fund customer-requested programs like the interruptible rate for large industrial customers and the transmission load management rate discount program utilized by large commercial and industrial programs. In fact, in over 20 cases since 2008

addressing ESP proposals for all four EDUs, the PUCO, with five different chairpersons of the PUCO during that time, has expressly found, as required by law, that the ESP option was “more favorable” for customers than an MRO would have been.

Although these alternative regulation provisions in the ESP statute have been criticized over the years as supporting the proliferation of “riders” (additional charges on the electric bill), the reality is that the ESP statute serves as the primary mechanism through which AEP Ohio funds essential investments to accommodate the significant economic growth in Ohio, particularly in Central Ohio. In addition, the ESP statute addresses cost recovery for FERC-mandated costs that AEP Ohio incurs for serving customers, including essential transmission costs that must be tracked accurately. Contrary to the criticisms of some stakeholders, riders are an essential tool for modern ratemaking that are available in almost every state regulatory regime for the electric industry. And riders are not a one-sided regulatory mechanism that favor the utility. Rather, riders provide a number of distinct advantages over traditional ratemaking for all customers. First, riders require the utility to justify every dollar spent in a prudence audit as a condition of recovery from consumers; this is in contrast to a base case, where a utility justifies only a “test year,” and the PUCO has little prudence oversight between cases. Second, unlike base rates, riders do not allow automatic recovery unless money is actually spent. If a utility reduces costs and does not make an investment, that gets automatically reflected in a rider, and customers benefit; under traditional ratemaking, however, there is no verification of spending in between cases and the utility can charge the same rates while cutting costs. Third, riders often require pre-approval through the regulatory/stakeholder process for technology deployments prior to funds being spent under the rider. This is in contrast to the backward-looking review process of traditional regulation, which keeps utility investments better aligned with regulatory priorities. All these reasons are why virtually all neighboring states – and FERC – have approved riders or rider-like regulatory mechanisms for utilities.

In sum, the ESP statute was originally designed, and has been applied, to benefit consumers. As I mentioned, the PUCO cannot approve an ESP unless it finds that it is more favorable to consumers than an MRO plan. Throughout the years, the PUCO has continuously concluded that ESPs have resulted in billions of dollars of savings to AEP Ohio consumers. In addition, the ESP includes an excessive earnings test that has resulted in AEP Ohio consumer refunds.

Without an adequate replacement of the modern ratemaking provisions within the ESP, SB2 would place significant limitations on the ability of utilities to adequately invest in the grid, to improve system reliability, and to continue to drive the tremendous economic growth the state has seen over the past several years. Whether it be the next Intel project, the next data center, or the next big economic development project that seeks to come to Ohio, SB2’s repeal of ESPs without an adequate replacement would hamstring a utility from investing its own money, which is vital to bringing any new, significant economic development projects to this state. Instead, utilities would have to wait until their next base rate cases to ensure any new, critical utility investment or simply forego the investment to the detriment of consumers.

If the General Assembly ultimately wishes to repeal the ESP, AEP Ohio would recommend doing more to modernize the base case statute in Section 4909 to bring it up to date with the regulatory systems in other states and FERC. In addition to a forecasted test year for investment, AEP Ohio would propose a

distribution investment rider to support vital infrastructure projects between base cases. AEP Ohio would also propose a limited number of additional riders, which, again, are commonplace in other jurisdictions, to support storm restoration and recovery of FERC-mandated transmission costs, for example. Not only would these riders support the investment that AEP Ohio needs to make to provide quality service and promote growth, but they would also have all the benefits and safeguards for customers described above – including better alignment of utility investments with regulatory goals, regular and thorough prudence review by the PUCO and a limitation on recovery to what the utility actually spends.

### **Repeal of the legacy generation rider**

In 2019, the General Assembly passed legislation that allowed for the recovery of prudently incurred costs related to a legacy generation resource. The effect of this provision was that it allowed for AEP Ohio, Duke and AES to recover their respective share of costs related to the Ohio Valley Electric Corporation (OVEC), and, importantly, enacted monthly caps to the significant benefit of our customers and established an end date for recovery of 2030. The General Assembly, however, did not create the OVEC cost recovery mechanism out of thin air. OVEC units have continuously either supplied load or served as a PUCO-approved financial hedge to the benefit of Ohio retail customers since 2005 and through the present. Continuing in 2008 after passage of SB 221, the PUCO approved ongoing utilization of OVEC to serve non-shopping customers as part of the first and second ESPs that covered 2009-2015.

The importance of OVEC as a baseload resource has been shown time and time again. Significant increases in natural gas prices have caused units like OVEC to be dispatched by PJM for reliability purposes. That means that OVEC's units are being dispatched by PJM because OVEC's units are essential to making sure there are no disruptions for customers. This is especially important during times of extreme weather conditions which our state is experiencing frequently.

### **Repeal of the *Keco* rule against retroactive ratemaking**

For at least 70 years in Ohio, and in many other jurisdictions, the 'filed rate doctrine' and the 'rule against retroactive ratemaking' have established that rates approved by the Commission are effective immediately and are not subject to refund if later overturned by the Ohio Supreme Court. This rule is essential to avoid chaos and confusion from uncertain rates, and it benefits both customers and utilities equally. The filed rate doctrine is a two-way prohibition that benefits consumers against both retroactive increases and decreases that are ultimately found to be erroneous. Since 1957, the Ohio Supreme Court has consistently held that Ohio's comprehensive statutory system of public utility rate regulation attempts to "keep the equities between the utility and the consumer in balance" with respect to rate predictability and stability by prohibiting retroactive ratemaking to compensate for prior over or under recoveries of costs.

Abandoning the state's long-standing policy could operate against the financial interests of customers and subject those customers to significant and unpredictable rate increases in cases where the Court finds a utility's rates should have originally been higher than the Commission authorized. Allowing retroactive adjustments to rates inevitably will also encourage litigation and appeals by utilities and their

customers alike because there would be a retrospective financial reward for doing so. Finally, doing so would foist considerable added risk on investors in Ohio public utilities because of the loss of rate predictability, which would itself cause upward pressure on rates for utility service and delay upgrades to the grid.

### **Consumer choice billing program**

The ability of residential customers to shop for their electric supply from competitive retail energy suppliers (CRES) continues to be a source of confusion for many of our customers. With this in mind, SB2 will cause even greater confusion amongst our customers if the so-called “Consumer Choice Billing Program” (CCBP), in its current form in SB2, is enacted into law.

In effect, the CCBP would allow for a CRES to send a bill directly to customers for not only the electricity that the CRES provides to customers, but also for the transmission and distribution costs that a utility bills its customers. That proposed policy would remove a utility from the billing process entirely. Doing so will increase confusion among a utility’s customers by leaving them unsure of who to contact in the event of a power outage or emergency.

AEP Ohio understands a policy that would potentially allow a CRES to bill for the products and services that the CRES provides to customers; however, any such policy must allow a utility like AEP Ohio to retain its vital role in billing for non-supply charges.

Therefore, AEP Ohio recommends that the General Assembly replace the current proposal with a “dual billing” approach in which AEP Ohio bills customers for its wires charges and the CRES provider bills customers for its supply charges. This dual billing system would more effectively delineate the distinct roles and responsibilities of the EDU and the CRES, offering unparalleled transparency for customers regarding their CRES bills. By receiving two separate bills, residential customers will have a clearer understanding of the costs associated with their electricity service, potentially empowering them to make even more informed decisions when it comes to shopping for energy providers.

### **Conclusion**

SB 2, though well intended and more thoughtful, currently falls short of the goal of modernizing Ohio’s ratemaking process and making the state a more attractive place for investment in each component of the grid.

Ohio is in the beginning of a once-in-a-generation opportunity for tremendous economic growth across numerous industries. Essential to the state’s ability to capture all of that potential growth during this unique opportunity is the health of Ohio’s electric utilities.

Therefore, we urge the committee to carefully consider the implications of this legislation and AEP Ohio stands ready to provide solutions that puts Ohioans first – by working to amend the bill in a way that addresses the major concerns outlined above. I am happy to answer any questions at this time.