



March 11, 2025

Chair Chavez, Vice Chair Landis, Ranking Member Smith, and Members of the Senate Energy Committee:

My name is Dylan Borchers testifying on behalf of the Ohio Independent Power Producers. I am a partner at the law firm Bricker Graydon and have been the siting attorney on more than 7,000 MW of new electricity capacity in Ohio before the Ohio Power Siting Board. These projects include six new natural gas combined cycle power plants.

OIPP members develop, construct, and operate modern natural gas-fired power plants, representing billions of dollars of new private investment in Ohio and thousands of megawatts of new, efficient, and reliable energy. OIPP members have invested over \$6.9 Billion developing and constructing 7,000MW of new generation in Ohio in the last 10 years. These projects are entirely built by private unsubsidized investment, not ratepayer guarantees, with project performance risk on the investors, not captive Ohio ratepayers.

I testify today to emphasize the developer side of OIPP membership and the membership's concerns with how S.B. 2 has involved since its introduction.

There is much to like in S.B.2. Repealing out of market subsidies, priority investment areas, and modifying existing law to strengthen Ohio's right to self-generate with behind the meter generation are positive, market enhancing policies.

However, a recent amendment permits monopoly electric distribution utilities (EDUs) to enter arrangements with mercantile customers to build, own, and operate behind the meter generation. This is a dramatic change to Ohio law and undermines the competitive market for generation that Ohio has worked to foster for over two decades.

Over these decades, references to the "competitive market" for generation have typically been in the context of the PJM and the markets it administers. Indeed, the 7,000 MW of new natural gas plants built in Ohio over the last decade by OIPP members are connected to the PJM bulk system and participate in these markets. However, due to a myriad of issues at PJM, including multi-year interconnection processes to connect new generation, more customers are pursuing onsite generation for their power needs. In other words, the "competitive market" increasingly includes behind the meter generation. Accordingly, competitive power plant developers are responding to this growing demand for behind the meter generation, including OIPP members.

S.B. 2, as originally proposed, presented an opportunity to meet respond to customer demand and unlock the potential of this emerging market.

Instead, the recent anti-competitive amendment not only opens the door for the EDUs to participate in the behind the meter market; it allows the EDUs to close the door behind them, shutting out private developers. This is bad for customers and the overall competitive market.

For example, data center or industrial customers seeking potential sites in Ohio will engage with the electric utility for interconnection to the grid and availability of capacity for their facilities. This is a core function of the regulated wires company. In this role, the EDU is the sole possessor of critical information, such where there are grid constraints that may limit a customer's service or timeline to interconnect with the grid.

The electric utility has significant power over customers through the processing of electric service agreements and other critical agreements with customers. Customers cannot operate their businesses without these agreements. Recently, at least one utility unilaterally – without permission from the Public Utilities Commission of Ohio – imposed a moratorium on connecting and serving new customers in certain industries. Under the amendment, a customer needing to connect to the grid may feel compelled to now also agree to utility-owned behind the meter generation if it leads to quicker, more favorable treatment by the utility. The amendment creates conditions for unfair bargaining power and coercive behavior by the monopoly utility over captive customers.

Since 1999, when Ohio restructured its electric system to enable competitive services, Ohio law has recognized the unfair advantages that the monopoly utility would have if it could utilize its asymmetric information advantage and capture of customers to provide competitive services. For this reason, Ohio has robust corporate separation requirements if the utility wishes to provide – usually through an affiliate – a competitive service. The amendment to Senate Bill 2 does away with these protections.

OIPP members respectfully request that the provision permitting reasonable rate arrangements for EDU owned and operated behind the meter generation be removed from the legislation.

Not only is it anti-competitive, it's unnecessary. The private market is responding to the growing demand for behind the meter generation. In just the last month, 3 new behind the meter natural gas power plants have initiated applications at the Ohio Power Siting Board.

Without revealing attorney-client privileged information, I can also share with you that more applications are coming soon.

As stated earlier in my testimony, the competitive market for power generation also – and increasingly – includes behind the meter generation. Accordingly, the result of the amendment is the re-regulation of Ohio's energy market just as a new wave of private investment in generation begins.

Thank you and I'm happy to answer any questions.