Ohio House Public Utilities Committee

HB 247 (Rep. Romanchuk) – Electricity Market Reforms

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Written Testimony in Support – December 5, 2017

Chairman Cupp, Vice Chair Carfagna, Ranking Member Ashford, members of the House Public Utilities committee, thank you for the opportunity to present supporting testimony on HB 247, implementing electricity market reforms.

We will address two main areas of the bill – improving competitive markets and refunds for utility customers.

HB 247 requires utilities to fully divest their generating plants. This is the next logical step for Ohio's evolving competitive electricity market. This would enhance competition, and greater competition should lower electricity prices for utility customers.

The basic issue is whether utilities should sell electricity at a competitive market price, or at their cost plus a reasonable return. When Ohio passed SB 3 in 1999, the legislature implemented a competitive market to determine electricity prices. The prevailing thought was that competitive regional, or wholesale, electricity markets would develop, and new gas plants could be built at low cost, such that competition would produce lower electricity prices than the utilities' cost-based, monopoly prices.

SB 3 established a five-year rate freeze. Utilities were allowed to recover all of their "stranded costs" – the costs they could not recover in the competitive market. Competition would begin at the end of this five-year period. Utilities were allowed to own generating plants, but they had to operate them as a separate business unit from their utility business. Customer choice started in 2001.

But conditions did not develop as expected. As the end of the five-year rate freeze period was approaching, other states that did a "flash cut" to competition saw price increases up to 200%. Many factors contributed to these price spikes: (1) slower-than-expected development of regional markets; (2) higher-than-expected construction costs for new generating plants (due to high demand for construction materials from China's booming economy); (3) high natural gas costs; and (4) a credit crunch – and resulting bankruptcies – for many merchant power companies (Enron, Dynegy, Mirant, Calpine and NRG, to name a few).

So the PUCO did a "pause" on competition, and allowed utilities to file "rate stabilization plans" where utilities were allowed to recover their cost of providing electricity, and the utilities could use their own (or their affiliates') power plants to supply some or all of the default load. Some stakeholders questioned whether the PUCO had the legal authority

to do this, so the legislature passed SB 221 in 2008, which allowed utilities to file a "market rate option plan," where they would sell electricity at market prices, or an "electric security plan," where utilities could still recover certain types of costs for producing electricity – this was a hybrid approach.

As with SB 3, utilities were not forced to sell their power plants; however, they were still required to divest the generation or spin it off into an affiliate. In fact, many stakeholders thought customers would benefit if the utilities (or their affiliates) continued to own power plants, and sold power at cost-based prices – because the competitive markets were too volatile. However, the regulated utilities were required to operate under a corporate separation plan so that the regulated utility was separate from the unregulated affiliate.

Today it is nearly ten years after SB 221 was enacted. Competitive wholesale markets are thriving and wholesale power prices have been stable for a long time. Many factors have helped keep prices stable: (1) more efficient technology for natural gas plants; (2) declining costs for renewable plants; (3) abundant supplies of shale gas, causing low natural gas prices; and (4) increased energy efficiency for manufacturing processes, buildings and appliances that have kept energy demand stable.

Utilities now hold competitive auctions to procure their default power supply, instead of relying on utility-owned power plants. The fact that utilities and their affiliates continue to own generating plants, however, has unexpectedly led to regulated utilities seeking anti-competitive rate increases that unfairly subsidize these plants. This causes higher electricity prices and thwarts competition. HB 247 would solve the problems that have arisen since SB 3 and SB 221 and benefit customers by requiring utilities to fully divest their power plants.

The other issue we will address is customer refunds. As the law now stands, utilities can collect rate increases when approved by the PUCO and are not required to refund these rate increases if the Ohio Supreme Court later reverses the PUCO's ruling. For example, in October, 2016, the PUCO initially approved a three-year, $600 million bailout for FirstEnergy's old coal and nuclear plants. FirstEnergy began collecting the rate increase in January.

EDF and several other parties have appealed this ruling to the Ohio Supreme Court. This came after a lengthy PUCO rehearing process that lasted a full year. And the court won't decide the case for several more months. Meanwhile, FirstEnergy has already collected over $120 million of the rate increase. By the time the Ohio Supreme Court decides the case, FirstEnergy will have collected over $250 million.

FirstEnergy will likely keep the full amount, even if the court decides the rate increase was illegal. This would be unfair to customers and it creates a perverse incentive for utilities to litigate cases and cause every possible delay, instead of reaching reasonable settlements with the PUCO and customers. HB 247 would fix this situation by requiring

utilities to refund these amounts if the Supreme Court later decides that a PUCO ruling was illegal.

Mr. Chairman, thank you for the opportunity to present this written testimony in support of HB 247.