

**Ohio House of Representatives
Public Utilities Committee
February 13, 2018 3:00 PM**

**HB 143, Opponent Testimony
Kurt P. Helfrich, General Counsel, Buckeye Power, Inc. and
Ohio Rural Electric Cooperatives, Inc.**

Mr. Chairman, Vice Chairman, Ranking Member Ashford, and Members of the Committee, thank you for the opportunity to provide this testimony on behalf of Buckeye Power, Inc. (Buckeye) and Ohio Rural Electric Cooperatives, Inc. (OREC). Buckeye is the wholesale generation and transmission provider to the 25 electric distribution cooperatives providing retail electric service in the State of Ohio, and OREC is the statewide trade association for Buckeye and the Ohio electric distribution cooperatives.

I am the General Counsel of Buckeye and OREC, and I provide this testimony in opposition to the proposed HB 143.

Buckeye and OREC see no policy or other reasons to make changes to the kilowatt-hour (kwh) tax provisions regarding self-generation, which changes would provide third party generators with special tax treatment relative to other more traditional power suppliers. It appears that the proposed changes are designed to provide a competitive advantage and tax subsidy to public utility-type competitors to traditional public utilities, rather than as an exemption for true self-generators.

It is Buckeye's and OREC's understanding that the existing exemption under the kwh tax for self-generators, as written and as applied by the Ohio Department of Taxation, is only available to true self-generators, i.e. those customers who own their own generation on their own premises for purposes of serving their own load. On the other hand, the proposed revisions to Section 5727.80 would provide a new kwh tax exemption for retail sales to customers from entities that operate as or like traditional public utilities.

Buckeye and OREC see an important distinction between true-self generators, on the one hand, and companies in the business of soliciting and making sales of electricity to retail customers, through a meter, for profit, on the other hand. This is of particular concern to the Ohio electric cooperatives, none of whom have yet made an election to opt into retail competition.

Buckeye Power, on behalf of its electric distribution cooperative members, has made substantial investments in electric generation to serve the retail customers of the Ohio cooperatives. Buckeye and OREC see no reason why third party competitive generation providers should be given a tax subsidy and competitive advantage, particularly in the service territory of electric cooperatives, where no retail competition otherwise exists or is permitted.

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This subsidy would have the potential to encourage retail sales in cooperative service territory, thereby undermining the cooperative business model and leading to stranded assets and costs, which costs must be borne by the other cooperative retail consumers.

Regardless of whether such retail sales by third party competitive generation providers would otherwise constitute a violation of the territorial laws, or would be subject to regulation by the PUCO, Buckeye and OREC see no reason why a competitive public utility and business model should be given a tax subsidy and competitive advantage in cooperative service territory, unless such tax subsidy is also available to the Ohio electric cooperatives and to the cooperative business model. The Ohio electric cooperatives currently receive no such tax subsidy because sales by them to their retail consumers are subject to the kwh tax under existing law.

Thank you for the opportunity to testify on behalf of Buckeye and OREC, and I am happy to answer any questions that you may have about the position of the Ohio electric cooperatives regarding this matter.