



CAITHNESS ENERGY

APEX Power Group, LLC

January 10, 2018

RE: Sub. S.B. 155

Chairman Beagle and members of the Senate Public Utilities Committee,

My name is Dylan Borchers, representing the Ohio Independent Power Producers (“the Ohio IPPs”) developing new natural gas-fired power plants representing billions of dollars in new private investment in Ohio and thousands of megawatts of new, efficient, and reliable energy. The Ohio IPPs continue to express their opposition to Senate Bill 155.

The legislation is deeply flawed and would have a chilling effect on private investment in new generation assets – jeopardizing billions in investment and thousands of jobs. In its current form, the legislation represents a bailout of 65 year old uneconomical coal plants that are struggling to compete in today’s energy market. This legislation sends a message to the investment community that Ohio’s legislature is willing to change the rules of the game and pick winners and losers instead of maintaining the integrity of the competitive market.

In June 2017, representatives from two of the new gas-fired power plants testified before this body in opposition to subsidies to the OVEC facilities.¹

Later, in October 2017, a diverse set of stakeholders, ranging from owners of merchant coal fired facilities, to consumer groups, to environmental groups, to competitive retail suppliers, once again voiced their opposition to the legislation in its present form. The following briefly summarizes just some of the grounds communicated in this previous hearing for opposing this legislation:

1) At this moment, the federal and regional bodies are examining the issue for additional compensation for generating facilities like OVEC.

In September 2017, DOE filed a Notice of Proposed Rulemaking (NOPR) under the Federal Power Act to enhance grid resilience, directing the Federal Energy Regulatory Commission (FERC) to “accurately price generation resources necessary to maintain reliability and resiliency.”

Just two days ago, on January 8th, FERC terminated the NOPR and ordered PJM and other regional transmission organizations to undertake a comprehensive examination on grid resiliency specific to the respective regions. This process may actually make available compensation beyond what was originally proposed in the NOPR (which was narrowly focused on

¹ Clean Energy Future and the Lordstown Energy Center both testified in June 2017 in opposition to S.B. 155. For reference, the testimony of Lordstown Energy Center is attached.

onsite fuel) for generation facilities that promote needed grid resiliency. This process is a priority for FERC, and PJM will have 60 days to submit information on resiliency issues to FERC.²

With the federal and regional bodies exploring and considering policies that may boost compensation for coal and nuclear generators with identifiable resiliency characteristics, Ohio should not be advancing this legislation.

2) Ohio’s investor owned utilities (IOUs) do not need unanimous consent to transfer their interests in OVEC.

The IOUs have made representations that they are unable to transfer their interest in OVEC to a buyer under the terms of the OVEC Inter-Company Power Agreement (ICPA) without unanimous consent of all of the owners. However, Section 9.18 of the ICPA clearly allows for transferability of the interests as long as the transferee meets certain credit rating thresholds. A company may transfer its interest without the written consent of the other owners to affiliates, and to third parties as long as the selling company provides a right of first refusal to the other remaining OVEC companies. There is clear ability legally to transfer these interests if there is a willing buyer which met the credit rating standards in the ICPA.

3) The Public Utilities Commission of Ohio is already providing medium-term payments to OVEC.

In Case No. 14-1693-EL-RDR, the PUCO approved a rider to subsidize AEP Ohio’s share of the OVEC facilities. A pending Stipulation in Case No. 16-1852-EL-SSO proposes to extend this recovery until 2024. On October 20, 2017, the PUCO approved Dayton Power & Light’s request to recover net OVEC costs from ratepayers, through 2026, Case No. 16-395-EL-SSO. A similar proposal is pending before the PUCO for Duke Energy in Case No. 17-872-EL-RDR.

The PUCO is already providing a subsidy to the IOUs for their OVEC obligations on a case-by-case basis. There is no need for the General Assembly to provide a blanket subsidy for all above-market OVEC costs through 2030.

4) This legislation is a bailout for OVEC’s debt obligations.

- a. In 2003, the shareholders of OVEC, including the IOUs, elected to continue operating the facilities and sell power in the competitive market. In 2011, OVEC owners chose to reinvest in the plant, taking on a large amount of debt that is contributing heavily to OVEC’s lack of profitability. Today, OVEC holds approximately \$1.4 billion in debt.³ The OVEC facilities are over-leveraged and deep in debt—this is what the legislation will ultimately subsidize.

These grounds for opposition remain unchanged since the last hearing.

² The Order is available in FERC Docket Nos. RM18-1 and AD18-7.

³ See, OVEC 2016 Consolidated Financial Statements, p. 14, available at <https://www.ovec.com/FinancialStatements/2016-ConsolidatedFinancials.pdf>.

However, at the last hearing, two of the OVEC Sponsoring Companies, Duke Energy Ohio and AEP Ohio testified in support of the legislation. While their testimony does not alter the reasons for opposition to this legislation, I want to briefly address three of the points made in their testimony:

- 1) **The “cost cap.”** Since the introduction of the original OVEC legislation, language was added to put in place a “cost cap” on the amount customers can be charged monthly. However, the legislation still permits any amount above the cap to be collected at a later time, as a deferral. Moreover, the utilities will be permitted to treat these deferrals as regulatory assets, which will likely be subject to additional carrying charges.
- 2) **That “unwieldy” ICPA.** As discussed above, when the original legislation was introduced, supporters indicated that the utilities are trapped in ICPA, with no way out. While it is now acknowledged that OVEC interests can in fact be transferred under the ICPA, the utilities testified that such transfers are difficult and “unwieldy” under the ICPA.⁴ That may be. But there is a difference between contract with no way out and an “unwieldy” process. Second, and more importantly, is that the Sponsoring Companies voluntarily re-entered the ICPA that included these “unwieldy” transfer provisions.
- 3) **PJM’s non-opposition.** Duke Energy testified that PJM “is not opposed to this legislation because it recognizes that there are already market participants that receive regulated cost recovery.”⁵ It is correct that PJM filed its testimony as an “Interested Party,” instead of an as “Opponent.” But PJM’s testimony makes clear the consequences of this legislation:

The recovery of OVEC-related costs that Senate Bill 155 authorizes would enable the Ohio investor-owned utilities with OVEC ownership shares to offer bids into the wholesale market at prices that do not reflect their actual costs. Generation resources that do not rely on the wholesale market to recover all of their costs are incentivized to submit lower-than-cost-offers. Such offers depress wholesale market prices for other competitive generation owners in Ohio and throughout the PJM region, potentially crowding out merchant competition that relies on its market revenues alone to support investment. In the longer term this price suppression threatens system reliability. This also results in higher power costs for retail customers in Ohio and the PJM region by displacing more efficient, lower cost generation resources.⁶

While PJM may not be actively supporting or opposing this legislation, its testimony is certainly clear as to the significant negative consequences that may arise if subsidies like those proposed in this legislation are approved.

⁴ Testimony of Duke Energy Ohio, October 12, 2017, p. 3.

⁵ Id. at p. 2.

⁶ Testimony of PJM , October 12, 2017, p. 2.

Finally, this body should be aware that, in December 2017, PJM and OVEC made a filing with FERC seeking approval of OVEC's proposed integration into PJM, effective March 1, 2018.⁷ This proposal includes the transfer of functional control of the OVEC transmission facilities to PJM and the integration of the OVEC control area into the PJM energy and other markets. The OVEC system has over 700 miles of transmission lines, and like its two generating facilities—the subject of this hearing—these transmission lines are 60 years old. OVEC's transmission lines are likely to require upgrades in order to meet PJM's reliability requirements, and the cost to upgrade even a portion of the OVEC transmission system could be hundreds of millions of dollars.⁸ Currently, any transmission upgrade cost is borne by the Sponsoring Companies. However, once integrated into PJM, it will be PJM customers, and most likely Ohioans, who will bear these costs. For these reasons, on January 5, 2017, American Municipal Power, the Independent Market Monitor, the Ohio Consumers' Counsel, and the Public Utilities Commission of Ohio all filed comments in opposition to OVEC's current proposal to integrate with PJM.⁹

OVEC's integration into PJM is important to this body for a variety of reasons. First, it's one more component of OVEC's aging system that Ohio customers may have to pay for—another example of risk being shifted from the OVEC owners to ratepayers. Second, OVEC's full integration into PJM makes it even more likely that it will benefit from future federal or regional efforts to financially support the country's aging coal fleet, since such price supports are likely to be implemented at the regional level, as referenced above

Indeed, OVEC is not left wanting for additional revenue streams. Between the existing PUCO recovery, the likelihood of transmission cost recovery from PJM, and the prospect of federal and/or regional support for coal facilities, passing this legislation seems ill-advised.

The Ohio IPPs' decision to invest billions of dollars of private capital in Ohio was predicated on the belief that Ohio's General Assembly would remain committed to the competitive market and not change the rules in favor of narrow interests. The Ohio IPPs remain disturbed by the apparent willingness by some in the General Assembly to display favoritism in the law rather than promote new innovation and investment. Legislation like OVEC sends a message that private investment in Ohio is subject to additional risk because the General Assembly is willing to bailout uncompetitive assets.

For these reasons, the Ohio IPPs strongly oppose this legislation.

Respectfully submitted,

Apex Power Group, LLC

Caithness Energy

⁷ The filing is available in FERC Docket Nos. ER18-459 and ER18-460.

⁸ See, Protest and Request for Suspension and Hearings of American Municipal Power, Inc., FERC Docket Nos. ER18-459 and ER18-460 (Jan. 5, 2017) at p. 19, noting: "The OVEC zone will have over 700 miles of 60-year-old, 345 kV, mostly double-circuit transmission lines. A reasonable estimate of the cost to rebuild double-circuit 345 kV transmission ranges between \$3M per mile and \$5M per mile. Accordingly, replacing only a quarter of existing aging infrastructure could cost between \$525M and \$875M."

⁹ For background, the comments of PUCO to FERC on the issue of OVEC's proposed PJM integration are attached hereto.

Clean Energy Future
Oregon Clean Energy

Lordstown Energy Center