House Public Utilities Committee
House Bill 351
September 29, 2021

Chairman Hoops and members of the House Public Utilities Committee, thank you for the opportunity to provide written proponent testimony on House Bill 351 (HB 351).

The Retail Energy Supply Association (RESA) is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail electricity and natural gas markets deliver a more efficient, customer-oriented outcome than does the monopoly-protected, rate-regulated utility structure. RESA is devoted to working with all interested stakeholders to promote vibrant and sustainable competitive retail electric and natural gas markets in the best interests of residential, commercial, and industrial consumers.

RESA supports HB 351 as it endeavors to do the following:

- Repeal the nonbypassable rate mechanism associated with contractual commitments related to "Legacy Generation Resources," including the Ohio Valley Electric Corporation (OVEC).
- Expressly prohibit any future mechanism for retail recovery of costs for the OVEC facilities from being "revived, reimposed, reestablished, or in any way reinstituted" as a result of the bill, or by PUCO order, decision, or rule.
- Require that the full amount of revenues collected from customers under the OVEC provisions from HB 6 be promptly refunded to all customers from whom the revenues were collected.

When the Ohio General Assembly restructured the state's retail electric market, the cornerstone of that legislation guaranteed that customers may choose competitive options for generation service that fit their individual needs. Current law, recently enacted as part of HB 6, undermines that right by requiring all customers, whether they are receiving generation service from their incumbent utility or not, to become involuntary investors in two aging generating facilities, the larger of which is located in Indiana. Ohio's electric utilities willfully invested in these plants, so RESA urges the Ohio House to pass this legislation as it will restore retail customers' ability to choose whether they wish to participate in the cost or benefit of the generation those facilities produce.

To start, it would be helpful to clarify some of the facts about the obligations of OVEC. For some time now, we all have been told to believe that OVEC is "different"— that these assets have been used to serve the needs of this country and that the Ohio utilities have been completely hamstrung in their ability to end that servitude. That has been proven time and again to be anything but true. The existing investment in OVEC was made in its entirety following the restructuring of the electric market and the Ohio utilities willingly passed up multiple opportunities to avoid entering into that investment. A brief history is helpful in vividly illustrating these points.

OVEC was formed in 1952 to serve the energy needs of a U.S. Atomic Energy Commission (AEC) – later the U.S. Department of Energy (DOE) – uranium enrichment facility in Piketon, Ohio. The agreement governing the operation of the OVEC facilities is often referred to as the Inter-Company Power Agreement (ICPA). The ICPA was initially formulated to expire after 25 years but it has been extended several times at the agreement of the co-owners. In 2000, after the passage of SB 3, which restructured Ohio's retail electric market, the DOE informed OVEC that it planned to cease taking power from the OVEC facilities. This amount included the ownership interest transferred by FirstEnergy's Ohio operating companies – Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating – to FirstEnergy Solutions in 2003.

At that point in time, the OVEC facilities had been in operation for nearly 50 years and were close to being fully depreciated, with the DOE contractually bound to satisfy the remaining life of its contract as the ICPA in effect at the time was set to expire in 2006. At that juncture, the co-owners simply could have taken their $97.5 million contract termination payment from the DOE and walked away, or sold the plants, but they chose not to. While having full knowledge that the DOE would no longer purchase power from OVEC and that Ohio law no longer guaranteed cost recovery for the plants, the co-owners retrofitted these half-century-old coal plants with expensive environmental controls at a cost of $355 million, extended the ICPA through 2026, and began to sell the power they generated into the wholesale market.

In 2011, the co-owners doubled down again, investing $1.3 billion in environmental controls for the plants. At that time, they once again extended the ICPA, this time until 2040. To be clear, these decisions were not made to serve the DOE or this country, they were made seeking profits in the competitive market. The OVEC provisions contained in HB 6, however, allowed the Ohio utilities to place the risk of their investment on the backs of all of their distribution customers. Simply put, current Ohio law is contrary to the state's policies against subsidization of competitive services and it undermines the aforementioned cornerstone principle that customers may select the competitive products and services they desire. By enacting this law, we have made Ohio customers involuntary investors in OVEC regardless of their decision to take default service or embrace the options available to them in the competitive market.

In 2020, during the FirstEnergy Solutions bankruptcy proceeding, an Ohio bankruptcy court ruled the company no longer was obligated to comply with the ICPA, which left their ownership stake to be absorbed by the other co-owners. Thus, it begs the question why the current law was structured to encumber all of Ohio's distribution customers. And, perhaps more

importantly, why the law was enacted at all given that the aforementioned risk is solely of the Ohio utilities' own making. As stated above, Ohio customers are now on the hook for the risk associated with the OVEC plants even though existing Ohio law provides them with the freedom to choose what risk they take on or avoid when it comes to electric generation service.

In closing, RESA urges you to pass HB 351 as soon as possible. Doing so would restore Ohio customers' right to choose their generation provider without also sticking them with the bill for these inefficient, inconsequential OVEC relics. Passage would also ensure that Ohio customers would never again be saddled with OVEC related risk and would refund them all associated charges already collected from them since the enactment of HB 6.

Thank you again for the opportunity to submit written proponent testimony on HB 351 and please do not hesitate to contact us if there are any questions or if you would like further information.