



October 3, 2017

RE: Opposition to H.B. 239

Chairman Cupp and members of the House Public Utilities Committee:

The independent power producers (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 express their opposition to House Bill 239.

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 coal plants which cannot 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.

This legislation is entirely unnecessary:

1) At this moment, the federal government is initiating a rulemaking for additional compensation for generating facilities like OVEC.

- a. On September 29, 2017, the Department of Energy (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." The rule would provide for "recovery of costs of fuel-secure generation units frequently relied upon to make our grid reliable and resilient." With the federal government considering a policy to boost compensation for coal and nuclear generators, 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.

- a. 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.

- a. 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. Similar proposals are pending before the PUCO for Duke Energy and Dayton Power & Light. The PUCO is already providing 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, and the shareholders of OVEC, including the IOUs, elected to continue to operate the facilities and sell power in the competitive market. In 2011, OVEC owners chose to reinvest in the facilities, 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. The OVEC facilities are over-leveraged and deep in debt—this is what the legislation will ultimately subsidize.

The IPPs' decision to invest billions of dollars of private capital in Ohio to build new power plants 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 IPPs building new projects are 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, we strongly encourage you to oppose this legislation.

Respectfully submitted,

Apex Power Group, LLC

Caithness Energy

Clean Energy Future

Lordstown Energy Center

Oregon Clean Energy