BEFORE THE HOUSE PUBLIC UTILITIES COMMITTEE OVERSIGHT HEARINGS ON ELECTRIC UTILITIES

TESTIMONY BY BRUCE J. WESTON INTERIM CONSUMERS' COUNSEL

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Good morning Chairman Stautberg, Vice Chair Gonzales, Ranking Member DeGeeter and members of the House Public Utilities Committee. Thank you for allowing me to testify today regarding Ohio's electric utilities and their service to Ohio's residential utility customers. I am Bruce Weston, the Interim Consumers' Counsel. The Office of the Ohio Consumers' Counsel (OCC) advocates on behalf of Ohio's residential utility customers for affordable and reliable utility services. In this testimony, I will discuss a few of the benefits and challenges for residential utility customers regarding their electric utility service in Ohio.

Background

Electric services have three components: the distribution, transmission, and generation of electricity. Distribution and transmission services are regulated by various levels of government primarily because they are natural monopolies. It would not be cost-effective to build multiple alternatives to these systems.

Transmission service is regulated by the federal government, primarily by the Federal Energy Regulatory Commission (FERC). Distribution services are regulated by the Public Utilities Commission of Ohio (PUCO).

Electric generation service in Ohio is governed by Amended Substitute Senate Bill 221 (SB 221) from the 127th General Assembly. Utilities have two options for pricing generation service. One option is a market rate offer (MRO). The other is an electric security plan (ESP). The market rate offer requires an electric utility to procure generation service by making purchases from wholesale suppliers through a competitive bidding process. The law specifies that once a utility operates under an approved market rate offer, the utility can never return to an electric security plan. For an electric security plan, the law does not specify how generation pricing is to be determined. But the plan can include distribution charges in addition to generation, unlike the market offer that is limited to generation.

To date, market rate offers have been proposed but not implemented. Recently approved electric security plans have included a market auction as one component of the electric security plan. That is somewhat like having a market rate offer in an electric security plan.

Having a market auction within an electric security plan has provided lower generation prices to customers. But the approach has also required Ohioans to pay for additional charges that were approved as part of the electric security plan. All of Ohio's electric distribution companies except Dayton Power & Light are either operating under an electric security plan with a market auction or have a pending proposal to do so.

SB 221 also provides customers with options for generation service. Customers can choose a competitive supplier of generation services, either directly with a supplier or through governmental aggregation, where available.

<u>Customer Benefits in Ohio's Current Regulation of Electric Generation</u>

Ohio law contains some valuable protections for electricity customers.[1] Those protections include the following:

1. Competition, in the form of opt-out governmental aggregation and electric generation choice;
2. Default generation service pricing (i.e., the standard service offer); and
3. The significantly excessive earnings test (SEET).

Competition, in different forms and where available, is one of the benefits for customers under SB 221. One form of competition is governmental aggregation. Another form of competition is individual customer choice. Attached to my testimony is OCC's fact sheet "Comparing Your Electric Choices" that shows retail choice offers.

The electric utility's standard service offer, or SSO, is an essential consumer protection. The standard service offer is the generation price that is set either through a market rate offer, MRO, or an electric security plan, ESP. While not perfect, the standard service offer is important to customers for three reasons. First, it is a default price option for generation service if customers

[1] The general opinions in this testimony are not intended as OCC positions in individual cases where statutes are applied to specific patterns of facts.

choose not to shop or if such shopping is unavailable to them. Second, with the use of a wholesale market auction, the standard service offer price can be favorable for customers. Third, the standard service offer has been a useful price-to-compare for customers who are considering other choices. If you look at the attachment, you can see some of the competitor offers are at a discount off the price to compare. Even though competitive electricity suppliers are currently offering customers good competitive options, Ohio should maintain the comparison price point for customers that is set by the utilities' standard service offers.

The significantly excessive earnings test (SEET) is one of the most important customer protections in SB 221. Each year, an electric utility is required to show that its earnings were not significantly excessive when measured against the earnings of comparable public companies. This test has already resulted in refunds for customers regarding one electric utility. In that case, OCC, the Ohio Energy Group and others worked together toward obtaining a refund for customers.

It should be noted that, in 2009, the most profitable electric utility in the United States was located in Ohio. That may be good for investors, but it is not good for customers. The significantly excessive earnings test works toward restoring more balance between the interests of the utility's shareholders and those of its customers.

<u>The Challenges for Affordable Rates</u>

I will discuss three challenges for achieving affordable rates:

1. An electric security plan can include charges for more than just generation service;

2. The utilities can “veto” a PUCO decision in an electric security plan case;
3. There is a prohibition against the PUCO approving an electric security plan after the utility has used a market rate plan.

I would like to briefly explain each of these challenges.

Electric Security Plans have developed with a twist under the law. The twist is that electric security plans are including, in essence, market rate offers within the ESP. But unlike a real market rate offer, the MRO in the electric security plan comes with a price of admission for customers. That price of admission--to pay for more than just the market rate--can be steep. For example, that price has included proposals for customers to pay for distribution capital recovery, enhanced reliability, storm damages, and other things. In this regard, the statutory comparison between a market rate offer and an electric security plan has been relatively subjective and not necessarily applied to produce the lowest rates for Ohio customers.[2]

The next challenge is an electric utility’s ability to reject – or “veto,” so to speak – a PUCO decision regarding an ESP. If the PUCO modifies a proposed ESP, the utility may withdraw its application. This “veto” power limits the PUCO’s ability to modify and improve an electric security plan because, at the end of the process, the utility can reject the PUCO’s decision. The “veto” power limits parties’ negotiating power during settlement discussions. And the “veto”

[2] Also, the comparison has been rendered impractical by the practice of including an auction process as part of an ESP. SB 221 provides that utilities may only provide service under an MRO if they blend prices from a previously established ESP [R.C. 4928.142(D)]. If the prices from the earlier ESP were set based upon one or more competitive auctions, a utility that has spun off its generating assets may be unable to guarantee that it can provide service at a blended price that includes prices based on past auction results. Such utilities may be unable to propose an MRO, and an MRO comparison with a proposed ESP may lack meaning.

power limits what parties can accomplish through litigation, as well. There is an excellent discussion of this point in a Concurring and Dissenting Opinion by PUCO Commissioner Roberto, filed March 25, 2009, in PUCO Case 08-935-EL-SSO:

> "In the case of an ESP, the balance of power created by an electric distribution utility's authority to withdraw a Commission-modified and approved plan creates a dynamic that is impossible to ignore. I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest - or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable. In light of the Commission's fundamental lack of authority in the context of an ESP application to serve as the binding arbiter of what is reasonable, a party's willingness to agree with an electric distribution utility application can not be afforded the same weight due as when an agreement arises within the context of other regulatory frameworks. As such, the Commission must review carefully all terms and conditions of this stipulation."

It would be preferable for electric utilities, like other parties, to not have "veto" power over a PUCO decision.

The third challenge is the prohibition that prevents the PUCO from authorizing the utility to return to an electric security plan after the utility has used a market rate plan. That prohibition is a deterrent to approve market rate offers, because the approval of the market rate offer would prevent the PUCO from later ordering an electric security plan. It would be better to not discourage the use of market rate offers. As mentioned, electric security plans with market auctions (as differentiated from pure market rate offers) tend to have a price of admission for customers to gain the benefit of the market rate.

Building New Generation Resources in Ohio

There has been discussion in this committee about building new generation facilities in Ohio. Power plants can be built under both regulated and deregulated models. With regard to the regulated model, certain consumer protections should be maintained and others should be added to the law.

First, power plant construction should continue to be subject to the consumer protection that currently exists in the law for resource planning. Electric utilities are required to annually file a long-term forecast report indicating the “need,” if any, for additional electric resources. For years in which the utility forecasts a “substantial change” (such as the need to build generation), the forecast process also requires, by rule, a cost-effective resource plan. That plan includes the electric utility’s projected mix of supply-side (generation) and demand-side (energy efficiency and other demand reduction mechanisms) resources to meet the projection of peak demand and total energy requirements. This process contributes to decisions about what should be built or saved through efficiency, if new generation even needs to be built.

Second, additional consumer protection is needed with regard to charges to customers for power plant construction. The building of power plants may be viewed by some as an opportunity to charge customers for Construction Work in Progress or CWIP. The use of CWIP will require customers to pay for a power plant that is not yet providing service to them. Moreover, customers will be asked to pay for the plant through a non-bypassable charge. Non-bypassable charges hinder the further development of retail electric choice in Ohio. In this regard, competitive retail electric service providers would have to overcome the utility generation charges in their own “offers” to customers.

Ohio’s largest electric distribution utilities have either already spun off their generation assets to an unregulated subsidiary, are in the process of doing so, or are waiting for PUCO approval to do so. In these situations, investors in the unregulated generation subsidiaries—and not customers—would bear the full risk of cost collection. As generation in Ohio becomes increasingly more competitive, the model emerging can be one where the electric distribution utilities are in a position to procure a least cost mix of demand-side resources (in increasing amounts in compliance with ORC 4928.66) and supply-side resources through a competitive auction.

It’s worth noting that the least expensive resource in Ohio is energy efficiency. I say “least expensive” because, under Ohio rules, a utility’s three-year energy efficiency and peak demand reduction portfolio must be less expensive than the supply-side alternative as demonstrated by a positive Total Resource Cost test result.[3] The energy efficiency and peak demand reduction requirements[4] of Senate Bill 221 have already saved Ohio consumers many millions of dollars. For example, just last week AEP filed its portfolio of energy efficiency programs with a figure of $880 million in customer bill savings.

[3] The TRC test is usually the litmus test in many jurisdictions and it compares the utility and customer costs of the energy efficiency program to utility resource savings (usually represented by avoided capacity and energy costs).
[4] Beginning in 2009, Ohio requires that a cumulative 22 percent of utility sales be met with energy efficiency by 2025. Also, electric-distribution utilities must implement peak demand efficiency programs designed to achieve efficiencies in peak demand of 1 percent in 2009 and .75 percent through 2018.

Conclusion

Thank you for listening to my recommendations regarding Ohio’s electric distribution utilities. The benefits for customers that I’ve described should be preserved in any new law. And the challenges for customers should be addressed in future legislation.

Office of the Ohio
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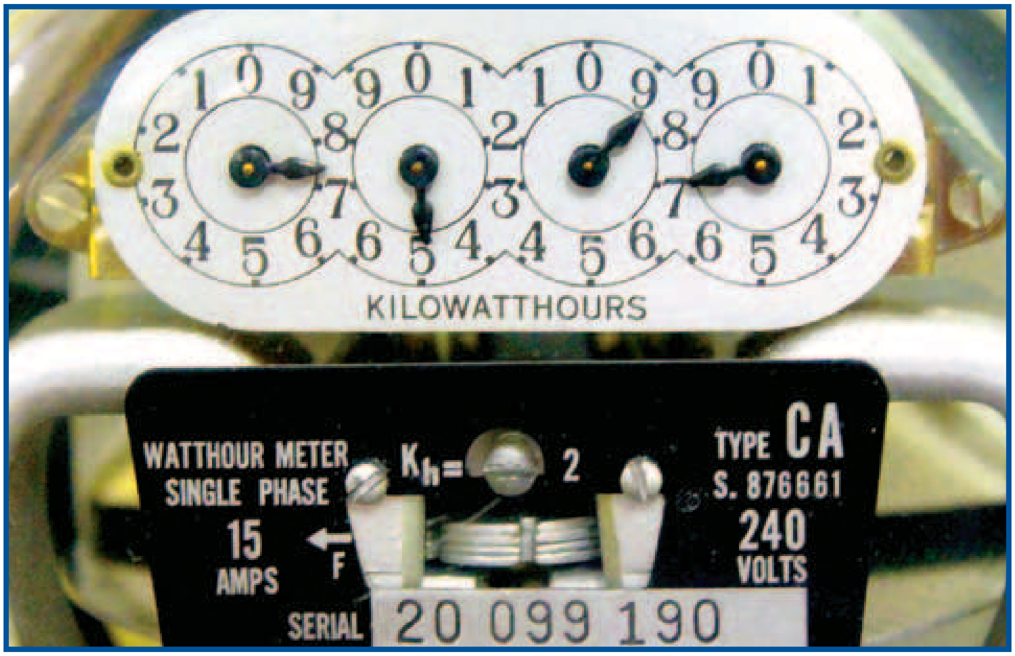
COMPARING YOUR ELECTRIC CHOICES



The Office of the Ohio Consumers' Counsel (OCC) provides general information about competitive retail supplier offers for residential customers of Ohio's regulated electric utility companies.

Customers should have their latest monthly bill available to find their **price to compare** when deciding if they can save money on their electric bill by purchasing electricity from a competitive supplier. The price to compare is the amount a competitive supplier would have to beat in order for a customer to save on their electric bill. This includes the cost of electric generation, transmission and some miscellaneous charges.

The price to compare does not include distribution costs, which customers continue to pay to their utility company even if they choose a competitive supplier. ***Customers should remember that the price to compare varies from utility to utility and month to month based on the amount of electricity used. Review previous bills to determine what the average price-to-compare may be and if there are savings by switching to a competitive supplier for the term of the contract being considered.***

The OCC can help

When considering an electric choice provider, customers should carefully weigh all of their options, including staying with their regulated utility company. Customers also can visit the OCC's website, www.pickocc.org, to obtain a copy of its *Electric Choice 101* and *Consumer protections in electric choice* fact sheets for more information about electric choice.

What do these offers mean?

Fixed Rate: This is a fixed price per kilowatt-hour of electricity that will not change for the length of the agreement. Typically, agreement periods range anywhere from six months to three years.

Variable Rate: This type of agreement offers a price per kilowatt-hour of electricity that can change over a period of time, based on various conditions. Customers considering entering into a variable rate

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agreement should ask the supplier how often the rate is subject to change and what factors will cause the rate to change.

Percentage off the Price to Compare: This agreement offers a discount off the customer's price to compare printed on their electric bill. While the percentage of discount a supplier offers will remain the same for the duration of the agreement, the actual price could vary with changes in the wholesale price of electricity.

Hybrid Programs: These offers often have different rates associated with seasonal changes. Most offers charge one rate for the winter months (November-April) and another rate during the summer months (May-October). Other hybrid offers may include a variable rate for a period of time and a fixed rate for the remainder of the agreement period.

Incentive Offers: In addition to the rate, some supplier offers may include incentives or discounts. Customers may see a fixed or variable rate offer that includes a certain month of the year for free or a rebate at the end of the agreement period. Other offers may include gift certificates or promotional coupons. The added incentives should be accounted for when customers estimate how much, if any, money they would save by choosing a certain supplier.

Customers should remember that the price to compare varies from utility to utility and month to month based on the amount of electricity used. Review previous bills to determine what the average price-to-compare may be and if there are savings by switching to a competitive supplier for the term of the contract being considered.

Offers for American Electric Power customers

Supplier	Offer (per kWh)	Contract term	Offer details
AEP Retail Energy (855) 205-4397 www.aepretailenergy.com	Introductory low fixed price of 6.39 cents per kWh through February 2012; then 7.19 cents per kWh through May 2014 billing cycle.	Through May 2014	This offer is limited to residential customers of AEP Columbus Southern Power only. Enroll online at http://aepretailenergy.com/savetoday $75 early cancellation fee.
	Introductory low fixed price of 6.39 cents per kWh through February 2012; then 6.99 cents per kWh through May 2014 billing cycle.	Through May 2014	This offer is limited to residential customers of AEP Ohio Power only. Enroll online at http://aepretailenergy.com/power
Border Energy Electric Services, Inc. (888) 901-8461 www.borderenergyelectric.com	6.39 cents per kWh through Dec. 2011; then Jan. 2012 - Sept. 2014, fixed at 7.25 cents per kWh in winter (Oct. - May) and 10% off price to compare in summer (June - Sept.)	Through Sept. 2014	This offer is limited to residential customers of AEP Columbus Southern Power only. Enroll online at http://www.borderenergyelectric.com/cgi/htmlos.cgi/border-enrollment.html $75 early cancellation fee.
	5% off price to compare	Through Dec. 2013	This offer is limited to residential customers of AEP Ohio Power only. Enroll online at http://www.borderenergyelectric.com/cgi/start.cgi/border-enrollment-ohio.html $75 early cancellation fee.

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Offers for American Electric Power customers

Supplier	Offer (per kWh)	Contract term	Offer details
FirstEnergy Solutions 1-877-404-2070 www.fes.com	6.47 cents per kWh – Fixed rate	Through Sept. 2013	Offer valid to residential customers of Ohio Power. Enroll at www.fessave.com/ohiopower $150 early cancellation fee.
	6.69 cents per kWh – Fixed rate	Through Sept. 2013	Offer valid to residential customers of Columbus Southern Power. Enroll at www.fessave.com/aep $150 early cancellation fee.
	6% off price to compare	Through Sept. 2013	Offer valid to residential customers of Columbus Southern Power. Enroll at www.fes.com $150 early cancellation fee.

Offers for Dayton Power & Light customers

Supplier	Offer (per kWh)	Contract term	Offer details
AEP Retail Energy 1-877-923-7728 www.aepretailenergy.com	7.19 cents per kWh – Fixed rate	24 months	Offer valid for DP&L residential customers on RS or RH rate. Enroll online at www.aepretailenergy.com/save20
DPL Energy 1-800-319-1356 www.dplenergy.com	Guaranteed 15% off DP&L's price to compare	Through Dec. 2012	Offer valid for DP&L residential customers not participating in the Percentage of Income Payment Plan.
FirstEnergy Solutions 1-877-404-2070 www.fessave.com/dayton	7.19 cents per kWh – Fixed rate	Through Dec. 2013	Offer valid to residential customers on RS or RH rate. $150 early cancellation fee.
	7.39 cents per kWh – Fixed rate	Through Dec. 2012	Offer valid to residential customers on RS or RH rate. $100 early cancellation fee.

Offers for Duke Energy Ohio customers

Supplier	Offer (per kWh)	Contract term	Offer details
AEP Retail Energy 1-877-923-7728 www.aepretailenergy.com	5.89 cents per kWh – Variable rate	Month to month	Offer valid for residential customers on RS rate only. Special Internet offer. Enroll at http://aepretailenergy.com/lowprice
Border Energy Electric Services, Inc. (888) 901-8461 www.borderenergyelectric.com	Guaranteed 18% off Duke's price to compare through Dec. 2011, then 6.25 cents per kWh – Fixed rate	Through Dec. 2012	Offer valid for residential and commercial customers with annual usage less than 700,000 kWh. $75 early cancellation fee.
Cincinnati Bell Energy (866) 852-6849 www.cincinnatibellenergy.com	5.99 cents per kWh – Variable rate	Month to month	This offer is for residential RS customers of Duke Energy only. No enrollment or cancellation fees.
Direct Energy 1-888-566-9988 www.directenergy.com	6.99 cents per kWh – Fixed rate	12 months	No cancellation fee.
Dominion Energy Solutions 1-888-216-6603 www.dom.com/products	5.99 cents per kWh – Fixed rate	Through Dec. 2011	No cancellation fee.

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Offers for Duke Energy Ohio customers

Supplier	Offer (per kWh)	Contract term	Offer details
Duke Energy Retail 1-877-331-3053 www.dukesavings.com	Guaranteed 15% off Duke's price to compare	Through Dec. 2011	Offer valid for residential customers on RS rate only. $25 early cancellation fee.
FirstEnergy Solutions 1-866-430-4408 www.fes.com	6.14 cents per kWh – Fixed rate	Through July 2013	Offer valid for residential customers on RS rate only. Enroll at http://fessave.com/savings $100 early cancellation fee.

Offers for FirstEnergy customers

Supplier	Offer (per kWh)	Contract term	Offer details
Constellation Energy 1-866-577-4700 www.home.constellation.com	6.99 cents per kWh – Fixed rate. 100% green energy.	12 months	This offer is for electric residential customers of Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison.
FirstEnergy Solutions 1-888-254-6359 www.fes.com	Electric heating customers get a price of 5.75 cents per kWh on electric generation during the winter months (Oct. through March) and 6.30 cents per kWh during the summer months (April through Sept.).	Through May 2014	This offer is for residential electric heating customers of Ohio Edison, The Illuminating Company and Toledo Edison. This offer ends Jan. 31, 2012. To enroll, go to https://fes.com/electric-heat or call 1-888-254-6359. $100 early cancellation fee
	6% off price to compare	Through Dec. 2012	Offer valid for Cleveland Electric Illuminating, Ohio Edison and Toledo Edison customers on RS rate. $25 early cancellation fee.

Disclaimer: This information has been obtained by the Office of the Ohio Consumers' Counsel and should be used only as a guide. The OCC is not responsible for selections you make based on the information contained herein. Contact the supplier before enrolling to verify its rate, contract terms and availability in your county. For more information about the electric choice programs and participating suppliers visit www.pickocc.org or contact the OCC toll free at 1-877-PICKOCC (1-877-742-5622).

The Office of the Ohio Consumers' Counsel (OCC), the residential utility consumer advocate, represents the interests of 4.5 million households in proceedings before state and federal regulators and in the courts.

The state agency also educates consumers about electric, natural gas, telephone and water issues.

For more information, please visit the OCC website at www.pickocc.org.

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