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Bill Seitz

Representative of Ohio's 30th House District
Majority Floor Leader

MEMORANDUM

From: Majority Floor Leader Bill Seitz
Re: OVEC Bill HB 239

Recently, you have been subjected to a wave of disingenuous opposition to HB 239, the OVEC cost recovery bill. Opponents have even resorted to the tactless tactic of ginning up citizen calls through misleading robocalls.

It is long past time to put these demonizing dispensers of distraction in their place. So herewith, a point-by-point rebuttal.

I. Why is House Leadership committed to passing the OVEC bill?

- OVEC is a coal plant cooperative currently owned by 17 different utilities. The owners of 62% of the entity get full cost recovery and a rate of return on the assets, because they are either electric cooperatives unregulated by Ohio or utilities located in states that still fully regulate electric generation. The owners of the other 38% are Ohio's four investor owned utilities and they currently do not recover either their cost or any rate of return. This is unfair, especially considering that OVEC was originally built to serve national security interests in furnishing power to the Piketon uranium enrichment plant. Only a couple weeks ago, Department of Energy Secretary Rick Perry indicated that he wants that uranium enrichment operation to resume, so the national security issue is still on the table.
- Despite the absence of legislative approval, the PUCO has granted at least one of the Ohio part-owners (AEP) OVEC cost recovery for its OVEC investment. That decision is on appeal to the Supreme Court, and the recovery is only temporary. However, the current version of the OVEC bill is MORE FAVORABLE TO RATEPAYERS than is the PUCO order. If we do not pass HB 239, the we are delegating authority to the PUCO which may not produce the strong consumer protections and end date found in HB 239.
- All of us welcome the discovery of natural gas resources in Ohio and the construction of new natural gas plants to make electricity. There is no question that natural gas is our

electricity fuel of choice for decades to come. However, it has become increasingly apparent to me, an antitrust lawyer of 40 years practice, that the natural gas producers and merchant generators want to corner the market by eliminating baseload coal and nuclear plants from Ohio's generation mix. When that happens, electric prices in an unregulated generation market will spike, because there is no other electricity fuel to compete with gas (wind and solar do not compete with gas and indeed require backup baseload plants to account for their unreliable and intermittent production of electricity). Therefore, HB 239 is necessary in order to create a hedge against the unfettered exploitation of market power by gas producers.

II. Will passage of HB 239 prevent the independent power producers from building new gas plants in Ohio?

- No, many of them are well on their way to completion, and one has already opened. OVEC will remain in business through at least 2040 whether or not we pass this bill. The Ohio utilities' share of OVEC is 800 megawatts, (Duke, Dayton, and AEP) which is a minuscule fraction of the total megawatts sold in the PJM wholesale market (approx. 170,000). The gas merchants know this and have fully factored it in to their plans. Passage of the bill will only eliminate the unfairness by which Ohio's investor owned utilities receive none of the benefits that the owners of the other 62% of OVEC already receive and will continue to receive. The other 62% of OVEC are receiving both cost recovery and rate of return, while the Ohio owners are simply seeking only cost recovery and NOT rate of return.

III. Is passage of HB 239 linked to passage of the zero emission credit (ZEN) bill for nuclear plants in Ohio?

- No. The House has been clear all year that the two are in separate boxcars. While it is from my perspective a welcome development that FirstEnergy has chosen to modify its original proposal to look more like the ratepayer-friendly OVEC bill, the two bills remain distinct. There are no plans whatsoever to include the ZEN bill into the OVEC bill. It is important to note that the OVEC bill will have no impact on customers in FirstEnergy's service territory. For complex reasons beyond the scope of this memo, FirstEnergy agreed to remove itself from the OVEC bill. Therefore, if you represent ratepayers in FirstEnergy's service territory, please know that the OVEC bill will have absolutely no rate impact on them.

IV. Can the Ohio utilities divest themselves of their ownership of OVEC?

- As a practical matter, no. The OVEC agreement allows an owner to transfer its interest to another owner. However, the other owners have no interest in this because:
 1. In most cases, they would need the approval of the PUCO equivalent in their state, which would not be forthcoming as those states have an adequate supply of electricity already; and
 2. The other owners have no need to assume a higher percentage ownership of OVEC as their needs are already being met through their existing ownership.

The OVEC agreement also allows an owner to transfer its ownership to someone other than a current owner, but only on certain conditions. Duke tried to leave OVEC, offered hundreds of millions of dollars in guarantees, and was told “no”, that only an unlimited guarantee from Duke’s parent entity would suffice. AEP also tried to leave OVEC, and its offer of a \$700 million guarantee was rejected.

Plainly, the exit rights are more theoretical than real.

V. Does the bill allow for unlimited recovery through deferral?

- No. Only those prudently incurred costs through December 31, 2030 may be recovered. After that date, no additional costs may be recovered unless the General Assembly acts to extend the program. Through the “deferral” mechanism in the bill (which is very common in this area), the utilities will only be entitled, after 2030, to recover any amount of previously-incurred prudentially incurred costs to the extent the rate caps in the bill did not fully cover these costs. In that case, the excess amount is “deferred” for later collection, but it too will be subject to the same rate caps that are now in the bill. Again, the rate caps are MORE FAVORABLE TO RATEPAYERS than what the PUCO has already approved.

VI. Will the bill require ratepayers to pay off OVEC’s debt?

- No. While OVEC does have a lot of debt on its books, most of it was incurred to retrofit the plants for environmental compliance. Moreover, the OVEC owners have continually refinanced the debt to take advantage of lower interest rates. And finally, the PUCO reviews and approves OVEC’s debt structure each and every year.

The bill allows for recovery of OVEC’s debt service charges during the cost recovery period, but prohibits paying off the debt through rate charges. Any of us can understand the difference between a commitment to pay someone’s monthly mortgage payments for a while versus paying off the mortgage altogether. The opponents have tried to fool you once again into thinking you don’t know the difference.

Moreover, it is pure sophistry for opponents to claim that the bill creates an incentive for the utilities to incur vast new costs to operate the OVEC plants. This is for two reasons:

1. The PUCO must annually certify that all costs are prudentially incurred.
2. Why would anyone spend money with no hope of gaining anything more than only getting it back later? The bill prohibits any rate of return (profit) on any money they expend on OVEC.

There are other, equally misleading arguments being floated by OVEC opponents. I would only ask you to ask me, or co-sponsors Reps. Ryan Smith and Rick Carfagna, for the truth before you fall for these disdainful and dastardly tactics.

