



Senate Energy and Public Utilities Committee

SB 221

Submitted by:

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**TESTIMONY OF JANINE L. MIGDEN-OSTRANDER
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BEFORE THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
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I am Janine Migden-Ostrander, the Consumers' Counsel for the State of Ohio, representing Ohio's 4.5 million residential households. I thank you for the opportunity to appear before you to discuss The Office of the Ohio Consumers' Counsel (OCC's) comments and concerns regarding Substitute Senate Bill 221. Many changes were made, some of which were very helpful for consumers, and we thank you. Others, quite frankly, are problematic because they provide the utilities with more room to write the destinies of the consumers in terms of what they will pay well into the future. This causes concerns for residential customers, and for OCC as their representative. Therefore, OCC is proposing amendments to address these concerns to better protect Ohio's residential electric customers. To simplify the process, OCC has also supported and added to its packets the amendments submitted by some of the other interested stakeholders.

In the interests of time and the amount of work that is still potentially before this committee, my testimony will focus on seven specific areas of change in Substitute Senate Bill 221.

The areas that I will address are as follows:

1. Comparing the market rate option to the Electric Security Plan rate;
2. The Electric Security Plan;
3. Due process and transparency;
4. Renewable energy;
5. Clarifying the recovery mechanisms for new construction;
6. Energy efficiency; and
7. Federal advocate

1. Comparing the Market Rate Option with the Electric Security Plan Rate

I commend the Senate for including language that requires that a Market Rate Option be compared with the Electric Security Plan in order to be assured that the Market Rate Option is comparable to or less than the Electric Security Plan rate. It is good public policy to conduct this kind of comparison in order to provide the best outcome for Ohioans. However, to more effectively accomplish the task, the legislation should also require that if the Electric Security Plan option is chosen, that it also be compared against the Market Rate Option. In other words, in order to produce just and reasonable rates, this legislation should require parity between the two options. The utilities should not have the discretion, as Sub. S.B. 221 now sets forth, to decide whether they file a Market Rate Option or an Electric Security Plan. The utilities should be required to file both. If

the legislation does not provide parity between the Market Plan and the Electric Security Plan, a utility will choose the option that is best for its shareholders which may not be best for the consumers. Utility executives have a fiduciary duty to their shareholders. That fiduciary relationship translates into maximizing profits, and the major source for those profits comes out of the consumers' collective wallets. It would be bad public policy to put so much power in the hands of the utilities to control such outcomes. At its core, regulation is intended to achieve results that serve the public interest rather than the private interests of the regulated utilities. Leaving too much discretion in the hands of the utilities would be adverse to interests of consumers and to economic development in the State of Ohio.

Moreover, Sub. S.B. 221 does not require a utility to do anything to prepare for January 1, 2009. The legislation should require each utility to file an Electric Security Plan and conduct an auction under a Market Rate Option, with the least cost option being selected by regulators to set prices for January 1, 2009. This comparison of options would be a great benefit to the public, and answer an important question about electricity prices that has been the subject of conflicting testimony before this Committee.

In order for the comparison between a true market price and an Electric Security Plan rate to take place, OCC recommends eliminating the hurdles regarding the existence of a competitive market that must be met as a prerequisite to exercising that option. While OCC might not offer this recommendation without the backstop of the Electric Security Plan, OCC believes that the best way to judge whether the market works is to actually compare market prices against regulated prices and select the best results. If a market approach does not work, or does not yield desirable results, then the Electric Security Plan would be used instead.

2. The Electric Security Plan Rate

The legislation proposes that the rate in effect at the time the legislation becomes effective will be the rate used as the base from which to determine the rate under the Electric Security Plan. The problem with this approach is that the rates for all utilities, to a greater or lesser extent, currently fluctuate over the year. Depending on the legislation's effective date, OCC fears that some base rates will be set at a level higher than the average annual rate -- providing a windfall to the utility. Also, the seasonal rates that currently exist might be eliminated as an unintended consequence of the legislation's concentration on the level of electricity prices. Eliminating the seasonal rates could also result in windfall profits for the utilities and financially hurt their customers.

Moreover, using the rate stabilization plan ("RSP") as a base from which to *add* more costs will create a burden to customers. This questionable base for an Electric Security Plan further underscores the need to have a side-by-side comparison with a market-based rate. The RSP rates are negotiated, opaque box rates. These rates were set in proceedings that were not transparent and where data that supported the rates were weak. The data that supports the rate adjustments under the RSPs cannot be easily traced and

verified. The rates that form the base upon which we build just and reasonable future regulated rates should be supported by real and justifiable costs.

The use of RSP rates as the base for future generation rates poses additional problems. From utility-to-utility, RSP rates contain different cost categories that are bypassable or nonbypassable by customers who wish to switch to an alternative generation supplier, or bypassable for some but not all customers without any systematic explanation for the differences between utilities.

Further, does the standard service offer for generation include the Provider of Last Resort (“POLR”) charge that has been placed into various RSP rates? Such charges include one tenth of a cent for AEP and over two cents for FirstEnergy. How should the generation-related regulatory transition charges, especially those large charges assessed by FirstEnergy, be treated under new generation pricing under S.B. 221 implementation? How should Duke’s Annually Adjusted Component or DP&L’s Environmental Adjustment Rider -- which captures capital expenditures associated with the cost of generation construction that would not qualify for inclusion in rates under the protections in Sub. S.B. 221 -- be treated for purposes of setting, and adding to base generation rates?

Billions of dollars of costs will be added to base generation rates. The added costs will be for environmental compliance, fuel, and some construction costs. As a final note, I applaud the addition to the legislation that requires the flow-back of benefits from projects that add costs customers must ultimately pay.

3. Due Process and Transparency

Due process and transparency remain a central concern for residential consumers as we proceed into future rate-setting. Some of the changes that the Senate Committee has made are positive in this regard. However, there is still the need for more work. An example of a positive change was the further clarification with respect to special contracts and side-deals with utility affiliates. OCC appreciates those changes and again, we thank you for your work on this issue.

OCC, however, continues to be concerned about the amount of delegation to the Public Utilities Commission of Ohio when it comes to the process that will put in place rate increases that may well go into the billions of dollars. In order to protect all customers, we continue to seek fairness and accountability. President Reagan said: “Trust, but verify.” And that is all we are asking for. On behalf of the 4.5 million households who will be asked to carry the burden of paying higher rates, the OCC asks for processes that allow for the following:

- Adequate time to prepare our cases, including time to complete the discovery process and do the necessary preparation on behalf of our clients -- your constituents;

- Procedures that require the verification of costs, both from the standpoint of the accuracy of the numbers and the prudence of the costs so we eliminate opaque boxes that build rates on bases that are merely shifting sand;
- Audit and true-up hearings for costs being passed on to consumers through adjustment clauses:
- For the infrastructure modernization plan, assurances should be provided that the increases -- which are likely to run into the billions of dollars -- will be handled in full rate case proceedings and not in any abbreviated form. (The OCC notes that improvements were made to the section of S.B. 221 regarding infrastructure modernization, for which we are grateful.)
- Where substantive and procedural processes are left to the Commission -- as is done in several sections of the legislation -- guidance should be provided to the Commission to assure that full proceedings are required with ample discovery and the opportunity for all parties to prepare their cases.

I cannot stress enough the importance of due process and the ability to verify costs, which has been problematic in proceedings during the last several years. We at OCC continue to be concerned about approaches that basically involve “picking a number,” oftentimes without the involvement of representatives of the customers that pay a large share of the number picked. I am confident that the numbers chosen have worked well for the utilities. The question is whether they have worked well for customers. Hence, we have the need to question and to verify.

4. Renewable Energy

The changes to the sections on advanced energy are a source of very deep disappointment. We had hoped for increased standards, benchmarks, and penalties. Instead Sub. S.B. 221 has removed even the most modest of oversight possibilities and imposed conditions that could allow the utilities to avoid any responsibility to supply renewable energy. The result is an energy portfolio standard in name only. For example, based on the wording of the cap on costs for advanced energy, a utility could build an Integrated Gasification Combined Cycle (IGCC) coal plant, hit the cap, and then never have to provide *any* renewable energy. An amendment has been proposed to provide separate caps for advanced energy and renewable energy. Further, there is no oversight until 2025, and the Commission can simply give the utility a new schedule if the utility fails to meet the benchmark. This hardly holds any utility’s feet to the fire.

Another area that is problematic is that in order for retail choice customers to bypass the advanced energy charges on their electric bill, the Commission has to determine that the advanced energy technology or facilities of their new suppliers are comparable to that implemented by the utility. This is cumbersome and impractical. OCC therefore recommends deleting this section and replacing it with a section that merely states that any supplier, certified in the State of Ohio, must meet the same standards as the electric distribution utilities. This change accomplishes the same goal of leveling the playing field. The section which we propose deleting is not only difficult to work with for residential consumers, but it creates a new and unnecessary barrier to competition.

The OCC believes that the Senate missed a golden opportunity to perform a really great service for the public. With half the states adopting renewable portfolio standards far more aggressive than those contained in Sub. S.B. 221 and with many witnesses testifying about the economic development benefits, the case has been made that renewable energy is good for Ohio. This conclusion should be reached even without considering the environmental benefits -- which translates into cost savings for customers -- and the contribution of renewable energy to energy independence. These are all laudable reasons for promoting a strong renewable energy standard. The many witnesses who have testified before you have spoken eloquently about the benefits of renewable energy, and they came to you supported with facts, figures, and information.

On the other side of this renewable discussion have been the utilities -- detractors -- who have vaguely spoken of higher costs associated with renewable energy. I ask: Where were their numbers to back their claims? As the statutory representative of residential consumers, my task and my responsibility is to seek affordable solutions regarding energy services, now and in the future. I have attached to my testimony an updated chart which sets forth the costs of the various technologies. Most renewable energy technologies are clearly competitive with and less costly than any advanced technology. Yet I have heard no opposition from the utilities with respect to the cost of advanced energy. Why is that? I can only conclude that our Ohio utilities believe that they have a better opportunity to increase their profits by building massive coal or nuclear plants than they have from providing renewable energy.

The bottom line is that the numbers speak, quite simply, for themselves. Demand for electricity is projected to grow by forty percent by 2030. This means that over the next eighteen years we will need to add additional capacity to meet Ohio's electric needs. We are fortunate to have options. As we compare these options, it makes good economic sense to push for the least cost options in order to manage our utility rates -- to keep them affordable for both residential consumers and businesses. The good news is that renewables are not only the least cost supply option, but they also provide many other societal benefits. While you still have this legislation before you, I urge this Committee to fully consider and adopt the original amendments proposed by OCC that increase the renewable portfolio standard and include benchmarks and penalties.

5. Clarifying the Recovery Mechanism for New Construction

OCC appreciates the change in the public policy section that protects customers from having the responsibility for power plant construction.

From what OCC can glean -- and we hope correctly -- it also appears that the legislation appropriately relies on existing law that if customers are to pay in rates for construction costs, then the generating plants must be deemed "used and useful" with the exception of limited amounts for "construction work in progress." However, new construction is listed in the section on costs that can be included in an Electric Security Plan. OCC has offered an amendment to even more definitively state that the existing laws relating to

power plant construction costs are applicable to cost determinations under an Electric Security Plan.

6. Energy Efficiency

In accordance with the chart that is attached to my testimony, energy efficiency remains the least cost of all options. No supply option is less costly. It makes sense, therefore, to maximize this opportunity. Importantly, and to the best of OCC's knowledge, unlike renewable energy, no one testified that energy efficiency is not a good idea. While OCC is pleased that the measurement for energy efficiency has been amended to be based on actual load, we would welcome an increase in the energy efficiency standards to those levels previously recommended by OCC.

7. Federal Advocate

OCC proposes a modest amendment to clarify that the Public Utilities Commission's involvement in federal energy matters is on behalf of the State of Ohio, since it is the PUCO's responsibility to balance those interests. Consumers' Counsel has a long history of participating in federal proceedings to represent residential customers. Consumers' Counsel plans to continue that representation in order to assure the best outcomes possible for consumers.

In conclusion, I would like to thank you for the opportunity to testify. Again, on behalf of Ohio's residential consumers, I also thank you for all your hard work and the many hours you have dedicated towards developing good energy policy for our state. I am available to answer your questions, and I look forward to working with you.

Comparative Cost of Generation_07_with_biomass.xls

Technology	IGCC AVG (1)	IGCC AVG (1)	Latest IGCC Project estimate AEP & Duke (2)	Pulverized Coal (1)				Latest PC Plant Estimate (3)	Natural Gas Combined Cycle (1)	Nuclear (4)	Latest Nuclear Project Quote (5)	Wind Actual Cost (6)	Energy Efficiency (7)	Solar Electricity (8)	Biomass (9)	
				Subcritical		Supercritical										2 x 7FB
Metric				w/o CC	with CC	w/o CC	with CC	w/o CC	w/o CC	with CC						
Case #	w/o CC	with CC		w/o CC	with CC	w/o CC	with CC	w/o CC	w/o CC	with CC						
\$/kW	\$1,841	\$2,496	\$4,000	\$1,474	\$2,626	\$1,508	\$2,635	\$2,600	\$554	\$1,172	\$2,000	\$4,000	\$1,480	\$400	\$4,840	\$1,510
LCOE, Cents/kWh*	7.79	10.63		6.40	11.88	6.33	11.48		6.84	9.74	6.70		4.90	1.3 - 3.2	15.3 - 21.4	7.3
% Increase in COE with Capture		36.4			85.6		81.4			42.4						
Notes:																
* 20 year LEVELIZED COST OF ELECTRICITY (LCOE). Includes estimate of capital cost, fixed operating cost, variable and operating cost and fuel cost.																
1. Average of 3 IGCC designs (GE, CoP E-Gas, Shell), "Cost and Performance Baseline for Fossil Energy Plants", Exhibit ES-2, DOE, May 2007. CO2 transport, storage and monitoring adds <0.5 ¢/kWh, increase in COE ~ 3 cents/kWh (36%).																
2. Based on latest IGCC estimates, see 9/10/07 <u>Power Daily</u> , page 5, for Duke \$2.0 billion estimate and 6/18/07 \$2.23 billion filing of AEP's 629 MW W. Virginia plant.																
3. Based on expected cost of Longview supercritical, pulverised coal-fired generating facility in West Virginia at \$1.8 billion for 695 MW, or about \$2,600/kW, http://www.altassets.com/news/arc/2006/nz9491.php .																
4. "The Future of Nuclear Power", Table 5.3, MIT, 2003. These figures are in 2002 dollars and do not include an estimated decommissioning cost of \$350 million per plant.																
5. "Realistic" costs of nuclear power as expressed by AEP CEO Mike Morris, "AEP not interested in nuclear plants", Bloomberg, AP and Staff Reports, 8/29/2007.																
6. "Annual report on U.S. Wind Power Installation, Cost and Performance Trends: 2006, DOE. Figures are capacity weighted averages and include a federal production tax credit of 2 cents/kWh.																
7. Levelized cost of saving electricity, Martin Kushler, "The Midwest Energy Crisis and Why Energy Efficiency Should Be a Top Policy Priority", ACEEE 2005. The capacity costs are modeled after a residential direct load control program.																
8. These prices are for the modules and assume a volume purchase such as an industrial customer would make. Adding installation labor and the inverter (\$700 per installed kW) raises the total cost. However, there is a 30% federal tax credit and also an additional 8% can be subtracted because most of the solar will be distributed generation and will not experience line losses. Adjusting for the latter yields a cost of 15.3 cents for the solar module and the inverter. See http://www.solarbuzz.com/ .																
9. Direct fired biomass, LCOE value interpolated for 2005 from Table on page 9, "Power Technologies Data Book", NREL/DOE 2005.																