



Utilities Seek Another Bailout, This Time for Obsolete “National Defense” Assets

Legislation was recently introduced in the Ohio General Assembly that would allow Ohio’s investor-owned electric utilities (utilities) or their affiliates, who are part owners of the Ohio Valley Electric Corporation (OVEC) power plants, to collect from customers unwarranted subsidies to support the uneconomic power plants in which the utilities or their affiliates have an ownership stake, including an OVEC plant located in Indiana. The legislation would guarantee utilities recovery of all costs associated with the OVEC plants, including deferred costs. The legislation authorizes the utilities to collect these charges from all electricity users in Ohio under certain circumstances, which would remain in place until the assets are retired.

The utilities’ rationale for the necessity of this request is a red herring. The OVEC plants are no different than any other electricity generation resource currently bidding into the wholesale market against other generation resources. What is different is that the OVEC plants are inefficient, produce expensive power and cannot get a foothold in the market. The utilities want the Ohio General Assembly to provide subsidies so they can ignore the market, keep the plants open, have Ohioans purchase power from the plants and pay prices that are higher than for other sources of electricity, and avoid having to write down the value of these plants – as they should have done years ago.

If approved, this would not be the utilities’ first consumer-paid subsidy. Ohio’s investor-owned utilities received \$9.2 billion in “stranded assets” and “regulatory transition” payments from 2000 to 2010. Despite collecting these payments, utilities failed to write down their noncompetitive generating plants – including OVEC – which are the assets that were “stranded.” Now the utilities want more.

This is utility regulation right out of the pages of Laura Numeroff’s children’s book *If You Give A Mouse A Cookie*, the classic tale of a mouse that gets the cookie it asks for, but always wants more. From 2000 to 2017, the utilities received \$15.7 billion of cookies and are now asking for what some have estimated to be an additional \$300 million per year for the life of the plants. Another source, the Ohio Legislative Service Commission (LSC), has estimated the costs paid by consumers to be potentially as high as \$256.6 million per year for the 24-year period of the current OVEC contract.

Clearly, it’s time to put a lid on the cookie jar.

Ohio ratepayers should not be required to support uneconomic power plants operating at barely half-capacity, such as the OVEC plants. Requiring customers in Ohio to pick up this tab would increase operating costs for Ohio’s businesses and disadvantage these businesses compared to businesses in competing states with lower electricity costs. The subsidy would be levied on a significant segment of the population, including customers in AEP-Ohio, Dayton Power & Light, Duke Energy Ohio and FirstEnergy service territories.

Background

The Ohio Valley Electric Corporation is a company jointly owned by several electric utilities.¹ OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, own and operate two electricity generating complexes: Kyger Creek Power Plant, near Gallipolis, Ohio, and Clifty Creek Power Plant, near Madison, Indiana. Ohio's Kyger Creek complex has five electricity generating units, and Indiana's CliftyCreek complex has six generating units.

According to OVEC's website, OVEC was formed in the early 1950s by investor-owned utilities to generate electricity to meet the substantial electric power requirements of the uranium enrichment facilities then under construction by the Atomic Energy Commission (AEC) just south of Piketon, Ohio. Piketon's Portsmouth Gaseous Diffusion Plant was built from 1952 to 1956 and was one of the three large gaseous diffusion plants² constructed to produce enriched uranium to support the nation's nuclear weapons program and the U.S. Navy. For a short period of time much later, the Piketon plant produced enriched uranium for commercial nuclear reactors.

In October 1952, OVEC and the AEC entered into a 25-year power purchase agreement to ensure the availability of electricity to meet the needs of the Piketon plant. The agreement provided for excess generating capacity from OVEC (i.e., generation not needed by Piketon) to be available to the OVEC utility owners. The agreement was later extended through 2005.

However, with the Cold War ending in the early 1990s, the demand for enriched uranium for national defense purposes dropped. In September 2000, the U.S. Department of Energy (DOE) notified OVEC that the power purchase agreement with Piketon was being canceled. In May 2001, the Piketon plant ceased operations, with the remaining work going to Paducah, Kentucky, and Piketon relegated to "cold-standby" status. In 2003, the power agreement between OVEC and Piketon was terminated. Piketon's status was clarified in 2006 when the plant's status shifted from "cold-standby" to "cold-shutdown." In May 2011, the power agreement between OVEC and Piketon was amended to make OVEC's entire generating capacity available to the utility owners to supply other customers. The current power agreement extends to June 30, 2040. Today, the Piketon plant remains shut down and is preparing for decontamination and decommissioning.

The timing is critical. As far back as 2000 (prior to the implementation of electricity deregulation in Ohio), the utilities knew that OVEC's Kyger Creek and Clifty Creek Power Plants would no longer be used or needed to serve the demands of national defense.

What would the legislation do?

Essentially, what's being proposed is **a new utility giveaway bill** that would bail out OVEC based on the pretense of OVEC being a "national security asset" because it initially was created, in part, to provide electricity needed to produce enriched uranium to support the nation's nuclear weapons program.

Key provisions of the legislation include the following:

¹American Electric Power, Dayton Power & Light, Duke Energy Ohio and FirstEnergy Solutions all have equity stakes in OVEC.

²The other gaseous diffusion plants were in Paducah, Kentucky and Oak Ridge, Tennessee.

- Changes state policy to recognize OVEC resources as "national security generation" and preserves ongoing, yet unspecified, benefits associated with such resources.
- Guarantees cost recovery of all costs associated with OVEC, including deferred costs, which could potentially be substantial since the OVEC power plants are currently operating at partial load, they aren't efficient and they are likely losing money.
- Allows the PUCO no discretion – i.e., under the bill, the Commission must approve recovery for all costs.
- Approves cost recovery from customers of the utilities of all costs even if the OVEC ownership share is owned by an unregulated affiliate. The bill is silent as to how the affiliate will obtain the revenue from the utility to support its ownership share of OVEC.
- May allow a utility to serve its Standard Service Offer (SSO) with OVEC power
- Requires the Standard Service Offer (SSO) to include OVEC cost recovery.
- Allows a utility with an affiliate to use the affiliate-owned power to serve the utility's SSO – regardless of its price, regardless of the management practices of the operating utility, regardless of how it will affect regional markets for electricity generation, regardless whether an unregulated affiliate owns the share of OVEC, and regardless of whether the power is being produced from the Ohio-sited plant.
- Allows a utility to reopen and revise its current ESP to potentially collect more costs, even though the utility may already be receiving subsidies for OVEC.
- If the OVEC power is sold in the wholesale markets and revenues are credited to offset the costs to customers, the cost recovery rider will be non-bypassable. Although not stated, this implies that if OVEC power is used to supply the SSO, the cost recovery rider will be bypassable.

If the proposed legislation becomes law, and therefore, OVEC is getting full cost recovery for its operations, there would be no incentive for OVEC to operate more efficiently or compete on price in the wholesale market.

What's wrong with this picture?

The utilities and their affiliates want a subsidy to operate and maintain the OVEC power plants. They want Ohio customers, both businesses and individuals, to bail them out and support uneconomic power plants that are no longer used to support, or otherwise related to, national defense. These requests are unreasonable and unwarranted for a variety of reasons:

- Piketon no longer processes nuclear fuel for weapons, and hasn't for many years. It thus is not a national security asset. Such a claim is nothing more than "a rhetorical port in a financial storm."
- The utilities knew the risk of supplying Piketon from 2001 to 2006, and the closure of the defense facility should have been factored into the utilities' business decisions.
- The Piketon nuclear enrichment site was opened in 1952 and closed on September 30, 2006. The utilities were notified in 2000 that the contract with Piketon would be canceled. The contract terminated in 2003.
- The utilities have already been paid transition revenues to help transition to a fully competitive generation market.

- In other words, the utilities knew the risk involved, took money to offset the costs of stranded assets, and are now asking to be compensated for their bad debt.
- In 2016, Kyger Creek's annual output was 52 percent, while Clifty Creek's annual output was 44 percent. These two plants basically were running at, or less than half of, full load.
- If the utilities are pursuing a national defense rationale to offset their losses in the OVEC plants, the solution should be reached at the national level – i.e., the costs should be spread over the entire population.
- OVEC's capacity is 12.1 percent (or 289.9 MW) more than peak usage at Piketon. The additional 289.9 MW was built to service customers beyond Piketon and has continued to serve other customers after the closure of Piketon. This belies the argument that OVEC was built solely for national security purposes. And this is not a trivial amount – it's the equivalent of one generating unit.
- Under no circumstances should Ohio electricity users subsidize out-of-state power plants. Piketon's peak usage (before 2001) was 2,100 MW. Total OVEC capacity is 2,390 MW. Ohio-located Kryger Creek is 45.4 percent of OVEC capacity, and Indiana-located Clifty Creek is 54.5 percent of OVEC capacity. So, if the proposed subsidy is awarded to the utilities, the maximum subsidy should be based on 45.4 percent of 2,100 MW (i.e., Kyger Creek's share of peak usage), not 100 percent of OVEC's total capacity.
- No matter how you cut it, the legislative proposal is a subsidy for uncompetitive power. Subsidizing power produced with old, inefficient technologies should not be allowed.

What alternatives are there for addressing the problem?

Following are two ideas for resolving OVEC without rewarding OVEC's utility owners (using Kyger Creek as the example):

1. **Preferred approach.** Provide no subsidy and allow the markets to work. Allow the owners to decide whether to continue operating the OVEC units and sell the power into the wholesale market or sell the plants to a new owner at market value.
2. **Alternative approach.** If the owners cannot sell the plants, and the owners deem the plants to be unprofitable or uneconomic, and the owners decide to close the plants, the owners could seek assistance from the State of Ohio. The state could assist in the closure of the plants by forming a nonprofit Kyger Creek Decommissioning Corporation that could float bonds secured by a non-bypassable rider across Ohio ratepayers. This would be done only after OVEC turns over the title to the generating units free and clear for \$1 to the Decommissioning Corporation. The transfer of assets must include on-site transmission equipment and connections. The site would then be owned free and clear by the Decommissioning Corporation, which could sell or lease the land for economic development purposes. Proceeds from the sale or lease of the site would be used to accelerate payment of the Decommissioning bonds.

This alternative approach calls to mind the Troubled Asset Relief Program (TARP), which was signed into law in October 2008. TARP provided a vehicle for the U.S. Department of the Treasury to purchase toxic assets and equity from trouble financial institutions to strengthen the nation's financial sector. It was a key component of the government's actions to address the subprime mortgage crisis.

We've seen this movie before

The OVEC bailout proposal is the utilities' third attempt at forcing Ohioans to purchase above-market electricity. From 2014 through 2015 two utilities created regulatory mandated power purchase agreements to force Ohioans to consume power from their loss-making coal fired plants first. This included the OVEC plants. The PUCO agreed, but the Federal Energy Regulatory Commission stopped in its tracks this blatant attempt to re-monopolize the electricity generating market.

This year witnessed FirstEnergy's attempt to have Ohioans purchase expensive nuclear power first, with the prospect of Ohio electricity users being forced to bail out FirstEnergy's plant in Pennsylvania along with its two northern Ohio nuclear plants. That proposal is still in play.

Now we have a proposal that could funnel upwards of \$300 million more per year, indefinitely, to the owners of both the Ohio and Indiana OVEC plants.

What's the bottom line?

There is no compelling argument for having Ohio ratepayers, electricity customers, pay for uneconomic generation assets. Ohio should not reward OVEC's utility owners with the subsidies they seek for several reasons:

- Under Ohio law, utilities are not allowed to own and operate generation assets.
- Utilities had multiple decades to write down the value of their OVEC plants.
- Utilities have already collected stranded costs associated with their OVEC generation assets.
- Utilities should not be rewarded for their bad business decisions.
- More than half (54.5 percent) of the OVEC assets are in Indiana. Ohio consumers should not be required to subsidize Clifty Creek in Indiana.
- Utilities should not be permitted to impose on customers even more above-market charges.

The mouse has consumed enough cookies.

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