

THE DAYTON POWER AND LIGHT COMPANY

H.B. 247 Opposition Comments

December 12, 2017

Chairman Cupp, Vice Chair Carfagna, Ranking Minority Member Ashford and members of the House Public Utilities Committee; please consider the following comments regarding H.B. 247. DP&L is opposed to this legislation which we believe is *anti-competitive, puts customers at risk of significant rate shock* and *fundamentally changes Ohio's regulatory structure*. We respectfully urge the Committee to oppose this legislation.

Below are some of the initial concerns identified after our review:

- Removes a valuable tool from the PUCO by eliminating its ability to compare the benefits of an Electric Security Plan (“ESP”) and a Market Rate Option (“MRO”) plan and selecting the one that provides the most benefits.
 - Under current law, the PUCO cannot approve an ESP without finding that the ESP provides more benefits than an MRO.
 - H.B. 247 removes that requirement, ties the hands of the PUCO, and requires it to impose an MRO in all circumstances.
- Creates an anti-competitive environment for Ohio’s electric distribution utilities by preventing our affiliates from competing in generation opportunities. Forfeits Ohio’s electric utilities or affiliates ability to ever be able to compete in the generation market in Ohio. This may result in Ohio forfeiting millions of dollars of potential capital investment and lost job opportunities.
- Eliminates critical customer benefits that the PUCO can approve under an ESP that are not expressly part of the MRO construct.
 - Under existing Section 4928.143, which H.B. 247 repeals, the PUCO can approve provisions in an ESP to: 1) promote economic development, job retention, and energy efficiency programs, 2) establish fixed rates enhancing customers’ ability to establish forward looking budgets, and 3) encourage construction of distribution infrastructure and smart metering (infrastructure modernization).
 - The MRO-only approach taken by H.B. 247 disregards the benefits of ESPs and assumes, without proof, that market rates for generation by themselves will provide more benefits.
- Raises grave Constitutional concerns. H.B. 247 may violate the Commerce Clause, Equal Protection Clause and prohibition against Takings, by imposing requirements on both utilities and companies that happen to be affiliated with utilities to sell all their generation in Ohio.
 - A utility-affiliated company that currently owns a generation facility cannot be compelled to sell that generation facility merely because of its affiliation.
 - By limiting the potential pool of buyers to non-affiliated companies, H.B. 247 drives down the market value of generation facilities owned by utilities and their affiliates.
 - There is no Constitutional authority for the State legislature or the Public Utilities Commission to order any company to divest itself from a business that other entities are allowed to own.
- Creates an unbalanced regulatory structure.
 - Some states have a refund power, but it is paired with a right under which a utility can propose a rate increase that can become effective shortly after filing and before a final decision is made on the rates. Ohio does not allow increases to be recovered so quickly, and in most cases, rate increases are not allowed to go into effect until after the final decision is made, sometimes years later.
 - H.B. 247 would create a regulatory scheme where earnings by utilities in Ohio become significantly riskier than utilities in other states, which would decrease their access to investment capital and require increases in authorized rates of return.