



COMMENTS TO THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
REGARDING
SENATE BILL 315

APRIL 24, 2012

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Chairman Jones; Ranking Member Schiavoni; members of the committee;

Thank you for the opportunity to give the following Interested Party testimony on behalf of the Sierra Club's 17,000 members in Ohio.

ENERGY

The Sierra Club is very supportive of cogeneration technologies such as combined heat and power and waste energy recovery. These technologies have both an economic and environmental benefit, and the state should find ways to encourage these technologies and maximize the potential of cogeneration in Ohio. However, we oppose efforts to redefine cogeneration as renewable for several reasons.

All of Ohio's utilities are currently meeting the benchmark requirements of Ohio's renewable standard, and are – in fact – overcomplying with the efficiency targets. None of them are overcomplying with the minimum renewable targets, even though wind energy is now cheaper than any new fossil generation could be in Ohio, and is expected to become 20% cheaper in the next two years.

A recent report from the National Association of Regulatory Utility Commissioners filed at the PUCO found that – even using a conservative low-supply/high-demand scenario, and taking into account the renewable energy requirements of our surrounding states – there will be more than enough renewable energy available for Ohio's utilities to meet their benchmark requirements every year between now and 2020. We already know that creating renewable energy benchmarks has brought several billion dollars worth of construction and manufacturing to Ohio. Now is the wrong time to turn our backs on that success!

Altering the definition of "renewable energy" will unfairly hurt renewable energy companies who have made significant investments in Ohio under the assumption of a

particular regulatory framework. For renewable energy companies to continue making large investments in Ohio, they need market certainty, and need to know that the regulatory rug won't be pulled out from under them.

Senate Bill 221 created a 25% alternative energy requirement; but as of today, we only have 'benchmarks' for 12.5% of that standard. Without benchmarks or some other incentive for the full 25%, including advanced energy resources, there is no scenario by which we'll actually meet the 25% alternative energy requirement by 2025. At some point soon, we need to focus on creating ways to meet the full 25% requirement.

Over the next several years, Ohio can expect to see the closure of at least 35 coal-fired electric generating units, with a total capacity greater than 6,300 MW's. This is only 20% of Ohio's total capacity, and Ohio has had excess capacity for many years. But by 2015/16, we will need to find new, low-cost sources to replace these lost megawatts and avoid becoming dependent on the whims of the natural gas market or the construction of expensive new power plants we don't need. Meeting the full 25% alternative energy requirement of Senate Bill 221, as well as exceeding the efficiency requirement is necessary to avoid significant price shock in the very near future.

A recent report by the Lawrence Berkeley National Laboratories and National Renewable Energy Laboratory¹ shows that wind power has the potential to deliver between 30 and 40 percent capacity factor in Ohio, which translates to prices around 6 cents/kilowatt hour without the federal wind production tax credit, and 4 cents/kilowatt hour with the credit. At 4 cents per kilowatt hour, wind would be cheaper than other alternatives, such as retrofitting old coal plants, and building new natural gas plants. Again, meeting the full 25% requirement of Senate Bill 221 is not just an environmental issue, but very much an economic imperative for Ohio ratepayers.

Senate Bill 221 as written allows the market to function very well. The efficiency provisions have resulted in overcompliance, which is saving Ohio electric customers of all classes billions of dollars over the next decade or so, and can save much more if we do not reduce its effectiveness. But proposing to redefine resources in order to select preferred winners does not provide any market discipline, and the failure of the full implementation of the law clearly diminishes Ohio's ability to ensure the adequacy of the electric supply in the near future.

We believe the Governor should convene the committee called for in the law, or the PUCO should independently create a schedule for the 12.5% requirement that is not currently benchmarked, or the General Assembly should establish such a schedule in this proposed legislation. Whichever way it is done, it is needed urgently. Our utilities have

¹ "Recent Developments in the Levelized Cost of Energy from U.S. Wind Power Projects." <http://eetd.lbl.gov/ca/ems/reports/wind-energy-costs-2-2012.pdf>

² *Hydraulic Fracturing Disclosure/BLM Proposed Rule Making*, presentation of

already proposed more expensive and less flexible alternatives, and decisions on the make-up capability must be made within the next 18 months in order to have sufficient generation in 2016 and beyond.

OIL AND GAS REGULATIONS

The oil and gas regulations contained in this bill are a step in the right direction, but fail to go far enough in certain areas. I want to commend the administration for recognizing many of the risks associated with hydraulic fracturing, and attempting to put some much needed safeguards in place. I will let other speakers today highlight the specific areas where Ohio's proposed rules fall short from what is currently required in other states. The following are some specific areas where we feel the proposed rules fall short:

Currently, if someone wants to build a coal-mine, they are required to provide 4 weeks of public notice; a 30-day period to comment on the permit; the ability to petition ODNR to hold a public hearing; and the ability to appeal a proposed permit. The Ohio Environmental Protection Agency follows a similar process for new factories, landfills, wastewater plants, etc. This same level of public involvement, at the very least, should be required for a process that, as we've seen, carries with it a high level of public concern.

Specifically, we oppose the proposed amendment to section 1509.03(B)(1). This amendment would completely eliminate judicial review of issued drilling permits. Especially in light of the high-anticipated permit load, ODNR's limited resources, and the novelty of high volume fracking in Ohio, the avenue for review and accountability must remain open.

Fracking should avoid areas that pose a high risk to public health. It's particularly risky to drill within 3,000 feet of a wellhead protection area, sole source aquifer, 100 year floodplain, groundwater recharge area, or public water supply.

Sufficient penalties should be put in place to ensure that the potential penalty exceeds the potential monetary benefit that could be gained by committing a violation. Not only does this help protect the environment and public health, but it also rewards those companies who play by the rules and work hard to operate in full compliance.

Chemical disclosure should be sufficient enough to allow nearby property owners to conduct their own pre-drilling baseline testing of their water wells. If citizens do not know what is being pumped into the ground, they don't know what to test for. So citizens need to know all chemicals that are used, and they need to know this before the well is fracked. Industry can handle comprehensive prior disclosure. They're already doing it in other states, and in a recent industry presentation to the federal Bureau of Land

Management, industry did not object to proposed federal comprehensive prior disclosure rules.²

It's important to conduct seismic activity testing prior to digging both production wells, and wastewater injection wells.

The spreading of brine from fracking operations onto Ohio's roads is very concerning, especially to local residents who rely upon private wells for drinking water.

And finally companies should be required to perform well integrity testing before each "refrack" of a well.

CONCLUSION

Again, we want to commend the administration for attempting to improve Ohio's energy future. This bill is a step in the right direction, and we hope that the committee will carefully and thoughtfully consider testimony given today and tomorrow morning.

Thank you for your attention, and I look forward to any questions you may have.

² *Hydraulic Fracturing Disclosure/BLM Proposed Rule Making*, presentation of Anadarko Petroleum Corporation to the Office of Management and Budget (April 3, 2012), available at http://www.whitehouse.gov/sites/default/files/omb/assets/oira_1004/1004_04032012-1.pdf