

**OHIO 132<sup>nd</sup> GENERAL ASSEMBLY  
HOUSE PUBLIC UTILITIES COMMITTEE**

**TESTIMONY OF THE ELECTRIC POWER SUPPLY ASSOCIATION  
JOHN E. SHELK, EPSA PRESIDENT & CEO  
IN OPPOSITION TO HOUSE BILL NO. 178, ZERO EMISSIONS NUCLEAR CREDITS**

**May 9, 2017**

**Introduction**

Chairman Seitz, Vice Chairman Carfagna, Ranking Member Ashford and distinguished members of the committee, my name is John Shelk and I am the president & CEO of the Electric Power Supply Association (EPSA). Thank you for this opportunity to testify in strong opposition to HB 178, a bill that would bail out some electric power resources in Ohio at the expense of the millions of residential consumers, manufacturers, and others picking up the tab, the state's other power suppliers including their employees and local communities, and the rest of the regional PJM power grid from which Ohio receives reliable and competitively-priced electricity.

EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Our members own, operate and develop major assets in Ohio and throughout the PJM Interconnection. EPSA members have invested billions of dollars at their own risk, not on the backs of consumers, based on the wise decision here in Ohio to rely on market forces (not cost-of-service regulation) to deliver safe, reliable

electricity at the lowest reasonable cost to consumers. EPSA's advocacy includes participating in relevant cases before the Public Utilities Commission of Ohio.<sup>1</sup>

By way of personal background, I have been working on competitive power market issues at EPSA since 2005 and on broader energy issues for several decades. Prior to EPSA, I was the senior vice president for government affairs at the National Mining Association (NMA), where I worked with coal and hard rock mining producers, including companies based or operating in Ohio. Prior to NMA, I worked for Calpine, which has a large fleet of natural gas and geothermal resources. While in public service as counsel to the U.S. House Committee on Energy and Commerce, I worked on the Clean Air Act Amendments of 1990 and what became the Energy Policy Act of 1992 that accelerated the development of wholesale power markets. Earlier in my Congressional career I was involved in the repeal of natural gas price controls and the Fuel Use Act's attempt to micro-manage which fuels are best for power generation. Those public policy seeds planted in the 1980s allowed the shale gas revolution to flourish in the 2000s through to the present day with all the attendant benefits many of which Ohio is directly experiencing both in natural gas development and power plant construction.

### **Lessons Learned from Other States**

As a national trade association, EPSA engages in advocacy at the federal and state levels and we are pleased to share those experiences as you consider HB 178. Ohio is not alone in receiving overtures from those seeking subsidies rather than

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<sup>1</sup> These comments represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

competing in the marketplace. EPSA is a plaintiff in federal lawsuits challenging the constitutionality of the Zero Emissions Credit (ZEC) schemes in Illinois and New York on which HB 178 is based. EPSA is also part of growing coalitions in Connecticut, New Jersey and Pennsylvania opposing the expansion of ZECs. EPSA's involvement protects the markets and the fundamental reason states joined those markets: to deliver safe, reliable electricity to consumers at the lowest reasonable cost.

From these recent experiences, EPSA can attest to the fact that the more the public learns about schemes such as ZEC or ZEN bailouts, the less the public likes or supports them. It is noteworthy that as more and more details emerge as to the costs associated with these bailouts, the diverse coalitions opposing these out-of-market schemes in other states, as in Ohio, have grown to include consumer advocates, industrial and other business users, environmental groups, and those willing to continue putting private capital to work to *earn* revenues from sales to customers, not be *guaranteed* revenues through anti-competitive special treatment such as that which this legislation would prescribe.

Just last week, I participated as an invited panelist at the Federal Energy Regulatory Commission's two-day technical conference on the intersection of state policies such as ZECs/ZENs and wholesale power markets. Those sessions confirmed what we have seen first-hand in these other states: ZECs/ZENs are very controversial and costly for consumers of all kinds, running into the billions of dollars in the aggregate. Independent grid operators and experts such as independent market monitors confirmed that ZECs/ZENs pose real and material threats to the future ability of wholesale power markets to function. At the same time, the market conditions that

challenge nuclear plants, such as historically low wholesale prices and essentially flat demand, are faced by *all* power suppliers, *not just* nuclear. FERC and PJM are working on regional solutions to what are market-wide, regional conditions impacting all fuels and technologies as to how electricity is produced and consumed given the dramatic changes now under way.

Thus, EPSA respectfully submits that policymakers at all levels of government should not rush to judgment when considering, much less making, fundamental changes to the statutory and regulatory frameworks that govern electricity, because once any damage is done from market-distorting and risk-shifting schemes such as ZENs in HB 178, the consequences are costly and difficult if not impossible to reverse.

**HB 178 Ignores the Nature of the Power Grid on which Ohio Depends for Power**

The North American power grid has been correctly described as the largest single machine in the world, composed of thousands of power plants deploying a variety of technologies using many different fuels to deliver reliable and affordable electricity.

While there are regional power grid operators and local balancing authorities based on transmission systems and geography, no state or region has separate power grids for nuclear, coal, natural gas, renewables, or any other specific fuel or technology. Instead, reliability rests on the combination of base load, mid-merit and peaking resources from a variety of fuels and technologies operating simultaneously as dispatched by the independent grid operator in the case of PJM, primarily based on economic merit order (within transmission and other operational constraints) to deliver electricity at the lowest reasonable cost to consumers. The required mix among base load, mid-merit and peaking resources (as measures of the “capacity factor” or how

often specific types of units are dispatched) is changing as the resource mix changes over time. For example, increased intermittent renewables, distributed resources, and demand-side management require greater use of flexible resources, such as natural gas units, that can ramp up and down quickly, with less emphasis on less flexible resources. At the same time, which fuels can provide “base load” (or higher “capacity factor”) resources is changing as illustrated by Secretary of Energy Rick Perry’s recent memo directing a DOE study of base load resources that notes that natural gas can be a base load fuel along with coal, nuclear and hydro. All of this makes electricity tightly linked physically and financially more so than for any other good or service in the economy. Preferential, non-market pricing for some generating plants can undermine just and reasonable revenues for other power plants just as relevant to reliability.

Thus, proposals such as HB 178 to selectively grant *some* resources preferential treatment without regard for the impact of doing so on the rest of the power grid risk highly adverse and likely irreversible consequences for the state and region. First and foremost, consumers in the affected service territory will undoubtedly pay more for the subsidized nuclear power than would otherwise be the case or else those seeking ZENs would not be doing so. But the damage does not stop there. Investors will price political risk into decisions about non-ZEN resources. Once investors in non-ZEN resources conclude the deck is stacked against them, even though all resources (ZEN and non-ZEN) compete to be dispatched on a least-cost basis, the damage will have been done and subsidies will proliferate beyond ZENs over time to maintain reliability. This would occur as the ZENs undermine accurate wholesale prices for non-ZEN units.

## **HB 178 Merely Shifts Risks and Costs from ZEN Recipients to Consumers**

Reducing competition is always bad for consumers, but especially so given the dramatic changes underway in Ohio, across PJM, and throughout the country in states with which Ohio competes, in how and by whom electricity is produced, consumed and managed. Under these circumstances, locking in payment via a non-bypassable charge of hundreds of millions of dollars per year, for a large subset of existing resources, for up to sixteen years is very unwise to say the least.

Who could have accurately predicted the dramatic technological improvements of the past few years that led to the shale gas expansion in Ohio? Or the equally impressive improvements in energy efficiency, demand-side management, distributed resources, and conventional generation that occurred in the *past* 16 years? Who today can predict what will happen over the next five years through 2022 or the next 16 years through 2033, when if anything the pace of change will be faster going forward than even the past decade? Markets are inherently more flexible than mandates.

It is one thing for private investors to take risks, but HB 178 would allow ZEN recipients to bet with consumers' dollars and keep the winnings. The proposed ZENs would handcuff the state's customers by assuming we collectively have enough information today to set in stone the right mix of resources needed to meet electricity needs well into a changing future. This is the classic case of privatizing profits for those receiving the ZENs, while socializing the costs and risks across all consumers in a utility's footprint. This would happen even if, as is likely, less expensive and more desirable alternatives emerge that are as effective in achieving the state's public policy objectives, including as to both environmental and economic development goals.

## **HB 178 Does Not Reflect Sound Environmental Policy**

Regardless of anyone's views on either side of the debate about climate change and greenhouse gas emissions, HB 178 clearly does not represent sound policy.

*If* one believes that reducing carbon emissions is the proper public policy goal, then avoiding a ton of carbon emitted from any source anywhere on the planet helps address climate change, whether from a "zero emitting" resource or not. However, instead of placing a uniform price on carbon that would apply to any ton of carbon avoided (whether from greater coal plant efficiencies, carbon capture and storage, fuel switching, repowering or building new plants with more efficient gas turbines, or otherwise), ZENs only reward tons of carbon avoided by existing nuclear power plants. No credit is given for other ways to reduce carbon, nor is there any recognition that ZENs undermine and under value the ramping attributes of power plants more flexible than nuclear units that will become increasingly important. Furthermore, ZENs are based on but one of many estimates of the social cost of carbon.

On the other hand, *if* one is also concerned about coal-based and gas-fired generation, then a decision to approve ZENs is explicit approval of, and endorsement by, the Ohio legislature of a price on carbon that effectively translates into over \$40 per ton. (By contrast, the Northeastern states in the Regional Greenhouse Gas Initiative effectively price carbon at only \$3 per ton based on recent auction prices.) Those industries in Ohio most impacted by such a policy choice would be in a better position to determine the ramifications, but it would seem difficult to avoid the inference as to how to value carbon reductions for purposes beyond ZENs if HB 178 were to become law.

## **Conclusion: No Need to Rush to Judgment**

The Ohio legislature has the time to carefully consider these issues and should take the time to do so before a costly mistake is made. Caution should be the reaction to anyone pleading for a rush to judgment to reverse the clear benefits of state electric restructuring and competitive wholesale markets without full consideration for *all* the consequences for *all* market participants, including *their* communities and employees, not to mention consumers and the state's economy generally.

This is especially so given the on-going aggressive attempts by some to replicate ZENs/ZECs across much of the PJM footprint – from Illinois, through Ohio, to Pennsylvania and New Jersey. The independent PJM market monitor has warned that this is a contagious situation which would undermine the very foundation of PJM's markets should it spread.<sup>2</sup> One need only look to Southeast states such as South Carolina, Georgia and Mississippi that did not restructure as Ohio did and kept cost-of-service regulation of utility monopoly-owned generation for their electricity. Those states now face billions of dollars in growing cost overruns and increasing delays for several power plants that may never operate at all, or at least not as advertised. Ohio made the better choice to rely on competitive wholesale and retail market forces. To preserve the benefits of doing so, EPSA strongly urges you not to move forward with HB 178. I look forward to answering any questions you may have about EPSA's views.

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<sup>2</sup> See, *State of the Market Report for PJM 2016 Volume 1: Introduction pages 1-2* (March 9, 2017) ("The issue of external subsidies emerged more fully in 2016. These subsidies are not directly part of the PJM market design but nonetheless threaten the foundations of the PJM capacity market as well as the competitiveness of the PJM markets overall" citing Illinois ZECs as an example.) ("Subsidies are contagious. Competition in the markets could be replaced by competition to receive subsidies. PJM markets have no protection against this emergent threat.") ("Once the decision is made that market outcomes must be fundamentally modified, it will be virtually impossible to return to markets.")