

**American Petroleum Institute**  
**Testimony before the Ohio House of Representatives**  
**Energy and Natural Resources Committee**  
**May 8<sup>th</sup>, 2019**

Good morning Chairman Vitale, Vice Chairman Kick, Ranking Member Denson and members of the House Energy and Natural Resources Committee. My name is Todd Snitchler and I am the Vice President of Market Development at the American Petroleum Institute (“API”). I previously represented the 50<sup>th</sup> House District in the Ohio General Assembly and was appointed Chairman of the Public Utilities Commission of Ohio where I served from 2011 – 2014.

**API**

The American Petroleum Institute (API) is the only national trade association representing all facets of the oil and natural gas industry, which supports 10.3 million jobs and 8 percent of the U.S. economy. API’s more than 625 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses and service and supply firms. As Vice President of Market Development, I am responsible for natural gas issues, including those related to using natural gas for power generation. The Ohio division of API is API Ohio and the members of our on-the-ground team are Chris Zeigler, Christina Polesovsky and Claire Linkhart.

**Importance of Natural Gas Resources**

Thank you for the opportunity to provide updated testimony on Substitute (Sub) House Bill 6. Before discussing the bill’s provisions, I think it’s prudent to briefly highlight the role that natural gas has played in the U.S. since the turn of the century, and the role that the U.S. has played in the global oil and gas market. We currently lead the world in the production of natural gas and oil, and at the same time we are the global leader in the reduction of carbon dioxide emissions, which are at their lowest levels in a generation. Additionally, and maybe most pertinent to this discussion, carbon dioxide emissions from electricity generation have declined 28 percent since 2005 and are near their lowest levels in 30 years<sup>1</sup>. About 50 percent of the decrease in power generation-related CO2 emissions since 2005 was due to use of new natural gas fired generation.<sup>2</sup>

API supports a level playing field where any type of generation resource can compete for market share – the type of level playing field that has led to such drastic emissions reductions in our country since 2005. API also believes that awarding subsidies and

---

<sup>1</sup> EIA. “Carbon dioxide emissions from the U.S. power sector have declined 28% since 2006.” October 29, 2018. <https://www.eia.gov/todayinenergy/detail.php?id=37392>

<sup>2</sup> Ibid.

selecting “winners and losers” in the market disrupts effective entry and exit of economic resources resulting in an inefficient market where consumers end up paying more than they otherwise would pay. The increased use of natural gas in power generation has provided dramatic economic and environmental benefits to the families and businesses of Ohio and should not be abandoned to provide subsidies to generation owners.

### **Restructuring of the Utility Business Model**

Before addressing specific issues with Sub. HB 6, a review of how Ohio and other restructured states arrived here is in order. During the 1990s, many states around the country responded to concerns about high electricity costs by restructuring the way electricity was procured. Prior to restructuring, the norm was that utilities operated as vertically integrated businesses where they owned and operated all the assets from generation to transmission to distribution and ultimately every step that brought their electrons to the end user (*i.e.* the customers). Due to higher prices and consumers’ demands, including large manufacturers and large employers, a handful of states decided to change the way in which electricity was provided to customers by separating pieces of the industry that could be competitive (generation and retail) from the natural monopoly (wires) segments of the utility business. The intended benefit of this change was to shift the risk of large investments in generation resources from ratepayers to shareholders. In exchange for the shift in risk, generation owners, including the incumbent utilities who moved generation resources into an unregulated, competitive affiliate, were permitted to compete against other generators and retain the profits they earned in the market and not be restricted by the authorized rate of return approved by the Public Utility Commission. Many argue that these features brought about by restructuring gave the electric market a new level of discipline.

In addition, in order to ensure that commitments previously made by regulated utilities under the vertically integrated model did not cause them undue financial harm, they were able to request and receive “stranded cost recovery” for assets that had not been fully depreciated. This process ensured that utilities were made whole, ratepayers were protected from possible “rate shock,” and enough time passed to ensure retail suppliers were prepared to compete for customers.

Restructuring, along with the dramatic change in the price of natural gas turned the power production market upside down and has since provided consumers with dramatic economic benefits. What it has also done is attract billions in private capital to Ohio from power plant developers when they see opportunities. In Ohio, new generation developers saw opportunities from a market in transition, a low cost, environmentally friendly resource almost literally on site, and rapidly improving turbine technologies. Additionally, developers jumping on these opportunities in the state have, in the end, *improved* fuel diversity throughout the regional grid. This grid, operated by PJM Interconnection, now

has a fuel resource mix that is roughly 30 percent coal, 30 percent natural gas, 30 percent nuclear, and ten percent renewable generation (*i.e.* wind, solar, and hydropower)<sup>3</sup>.

What is more, many API member companies are actively researching technology to further lower carbon emissions by using carbon capture technologies and even how to use carbon to produce more electricity and avoid emissions altogether.

The oil and natural gas industry have contributed to the economic, environmental and energy progress of Ohio and will continue to do so. In Ohio, this progress has benefitted consumers, improved fuel diversity, and improved environmental and clean air goals of the state. What we have before us in Sub. HB 6 is a proposal to upend this progress that is disguised as clean air policy. Let's be clear, this is not an environmental or clean air policy but rather a corporate bailout play. Natural gas generation has been the foundation of Ohio's major clean air milestones in the past decade (as will be discussed later in the testimony in more detail.

### **API's Opposition to Sub. HB 6**

With that as background, API remains opposed to Sub. HB 6 because instead of encouraging innovation and recognizing those who have risked private capital and provided beneficial outcomes without burdening Ohio ratepayers, this bill would effectively destroy the market that has provided these positive outcomes. Furthermore, if you look closely at the language regarding potential beneficiaries of the subsidy, Ohioans could be forced to pay to prop up out of state plants, such as nuclear plants in Pennsylvania who are also in the process of directly asking their own state legislature for a subsidy. Finally, the practical effect of Sub. HB 6 is to direct hundreds of millions of dollars to one company to the exclusion of its competitors.

Recent changes to the legislation made in the Energy Generation Subcommittee do not change the fact that this proposed bill is a fuel specific subsidy that would burden ratepayers with additional charges for specified nuclear resources, which could still include out of state assets.

In the portion of the legislation amending Sec. 3706.40, the proposed definition of an eligible "clean air resource", or one that is eligible for Ohio ratepayer money, includes any facility that can argue that it has "made a significant historical contribution to the state..." or one that "...will make a significant contribution..." regarding reducing emissions in the power sector. Even in the newly amended version, this deliberate openness clears the way for out of state nuclear resources to access Ohio ratepayer money.

---

<sup>3</sup> PJM. "PJM's Evolving Resource Mix and System Reliability." March 30, 2017.

<https://www.pjm.com/~media/library/reports-notice/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx> Pp. 9

This is not unprecedented. In fact, in the other states that have passed nuclear subsidy programs, out of state generators were and still are eligible for participation. As legislators hear about the economic impacts of certain nuclear power plants in the state, they should also bear in mind that Sub. HB 6 could help out of state plants and chill investments in new, clean, and innovative energy technologies that are actually in Ohio. They should also bear in mind the significant historic and ongoing clean air benefits that natural gas generation has provided to the state without asking for a subsidy or bailout.

Furthermore, this definition of clean air resources, which is in section 3(a) of the legislation, appears to be fuel neutral by pointing to contributions to the state's air quality, but section A exclusively defines a clean air resources as one that uses zero emissions fuel. The legislation still appears to spell out a worthwhile goal, which is promoting clean air in Ohio, but it actually blocks out the resources that have been the key driver in *reductions* in emissions in the power sector in the state for the past decade and for years to come. The legislation seemingly ties the state's hands behind its back in preserving and improving air quality.

The contribution of resources to cleaner air in Ohio is an important conversation and one in which API and the natural gas industry is prepared to have today. Natural gas generation is a leading driver in cleaner air both nationally and in Ohio. As noted earlier in the testimony, CO2 emissions in the power sector in Ohio are at record lows. Since 2008, roughly the advent of the modern Shale Revolution, Ohio's CO2 emissions from the power sector continue to fall<sup>4</sup>. In fact, CO2 emissions from Ohio's power sector fell by more than 40 percent between 2005 and 2017 according to EIA data<sup>5</sup> while bringing online 17 natural gas fired units totaling about 12 GW<sup>6</sup>. In this same time period, SO2 fell by 90 percent and NOx fell by almost 75 percent<sup>7</sup>.

If the legislature wants to ensure that it is not harming an industry's or a generator's ability to positively contribute to the state's air quality, then it should not approve legislation that seeks to punish a leading driver of improved air quality. This growth in natural gas generation has also led to lower rates for consumers, where now, according to the most recent EIA data, Ohio retail electric power rates are about 8 percent below the national average.<sup>8</sup>

Sub. HB 6 also provides minimal, if any, oversight on program funding allocation. While the amended legislation does away with the egregious language that essentially allowed a designated "clean air resource" to name its price in the application process, the bill still defers heavily to a utility's assessment of their own need. First, the language defers entirely to the applicant in forecasting potential emissions impacts of their plant's closure. The

---

<sup>4</sup> [Re-released: January 15, 2019 Revision/Corrections](#)

<sup>5</sup> Ibid

<sup>6</sup> Data pulled from S&P Platts Market Intelligence Platform on April 18, 2019

<sup>7</sup> EIA

<sup>8</sup> <https://www.eia.gov/electricity/state/>

language provides no guidance on incorporating high regional reserve margins on new build and capacity factor assumptions (nearly 30% in PJM, which is about double the requirement for the region),<sup>9</sup> technology replacement levels, and emissions calculations. By allowing this process to occur completely unchecked and in the hands of the applicant creates a serious conflict of interest and cuts out necessary state oversight.

Furthermore, allowing an applicant alone to speak to the need for certification does not include any external audit or even guiding parameters to measure need. This again puts the ball in the applicant's court to demonstrate *their* need without any external verification. In short, the legislation would force the state to abdicate its responsibility in protecting consumers and put this role in the hands of generation owners with their bottom line in mind.

An applicant only needs to show (as detailed in section 5(a) of this portion of the bill) that without certification as a "clean air resource" that their "positive contributions to the air quality of the state...*may* be reduced or eliminated." Not *will* be eliminated but *may* be eliminated. Also, without further oversight, there is little insight or guidance as to what exactly it means to have a "reduced" positive contribution.

And while there is language in Sub. HB 6 that could allow some "lower emissions resources" to potentially be eligible for some of the money in the Clean Air Fund, the definitions of what qualifies as a lower emissions resource is overly and unnecessarily vague. Essentially, the certification could be open to any resource that "will" make some sort of positive contribution to the emissions levels in the state.

Absent any emissions reductions benchmarks or set dates, this could leave the status open to any non-nuclear power plant in the state. In fact, by permitting a plant that "will" make upgrades, the language might event inherently favor coal plants making necessary pollution control upgrades. Natural gas generation, including the pipeline of new plants that will come online in the next few years, will unquestionably make a major beneficial air quality impact on the state. What these plant developers have not done, on the other hand, is ask the legislature for a subsidy.

It's clear that this bill is not about environmental protection, infrastructure, or jobs. This bill is about propping up targeted plants and preventing progress in the state's energy, economic, and environmental goals. Ohioans have benefited from the perfect storm of restructuring, the Shale Revolution, and national energy leadership. These all brought forward an environment of lower prices, lower emissions, and major economic development.

Investors in and developers of natural gas power plants in Ohio have played by the rules of restructuring, much to the benefit of the state. What we see here in Sub. HB 6 is an attempt to rewrite the rules in favor of those who didn't like the outcome of the system they agreed

---

<sup>9</sup> <https://www.pjm.com/-/media/planning/res-adeq/2018-pjm-reserve-requirement-study.ashx?la=en> Pp. 14

to, and even supported more than a decade ago.<sup>10</sup> After successfully completing the years-long process to create the current environment, changing course now to address the financial concerns of one company and its economically challenged generation assets at the expense of competitors and customers alike is bad policy and moves Ohio backward instead of forward.

It is also important to note that API is not anti-nuclear and is not seeking closure of any plant. Much of the significant growth in Ohio's natural gas fleet has come *alongside* the state's historic nuclear fleet. In fact, this is a trend seen nationwide. Rather, API believes that businesses ought to follow the rules they agreed to and not try to unwind them when challenges arise.

The supporters of Sub. HB 6, who have previously benefitted from restructuring and retained the profits earned, now want to mandate that Ohio families and businesses pay roughly \$300 million annually to ensure the continued profit margins deemed acceptable by the plant owners

The threats of closure and harm to the environment should nuclear units close sounds compelling, but before you agree to impose another charge to consumers bills that goes directly to a private business and only helps one entity – the generation owner – you should consider the rest of the story.

You also will hear that nuclear units are more expensive to operate due to security and safety upgrades codified after several high-profile incidents – one being the Fukushima disaster in Japan. In this case, it is important to note that increased safety and security measures at Ohio nuclear reactors were not pursued until the need for justification for the subsidies arose. Further, those increased costs are the cost of doing business. If burdensome security regulations are the problem, bailing out an industry because of the regulatory environment does not address that central problem. Many of these nuclear owners in the very recent past openly stated that competition and markets would solve these and other issues and ultimately benefit consumers.<sup>11</sup>

What is more, the beneficiaries of Sub. HB 6 also like to say that “there is no market” or “PJM isn't a real market” and this “artificial construct” is broken. At the same time, supporters of Sub. HB 6 say they prefer market-based solutions. What seems clear is that the lack of “credit” (read: payment) for nuclear power's non-emission profile means the market does not serve their needs. While I will leave it to PJM to defend its market, I will offer the following points to consider.

First, as presently constructed, the PJM market seeks to deliver reliable power at lowest cost. Also, until nuclear generation owners stopped making the returns they desired, there was no concern for zero emission compensation; this is a well-executed ruse to justify (*i.e.*

---

<sup>10</sup> See Appendix, “Competitive Markets Work.” Testimony from Leila Vespoli, then Executive Vice President and General Counsel, FirstEnergy before the Ohio House Public Utilities Committee. October 19, 2011.

<sup>11</sup> *Ibid.*

guarantee) higher corporate profits. Credit the serendipitous convergence of “environmental concern” with a need for corporate returns to justify an otherwise outrageous wealth transfer from hard working families and businesses to out of state corporate shareholders. In Illinois the cost for a similar bailout is \$235 million per year for ten years; in New York its \$7.6 billion over 12 years; and in New Jersey it could be as high as \$300 million per year in perpetuity. Here in Ohio even with the changes, you are still being asked to add another nine figures per year in perpetuity to the annual cost of subsidies. Strangely, if you accept the supporters’ arguments that nuclear power is critically important to retain, why are some units securing subsidies and others being forced to close? (*e.g.* Indian Point in New York).

Also, let’s be clear here. Sub. HB 6 is not an environmental policy. It is not a clean air policy. It is a corporate bailout policy—and no one should be surprised to see such widespread opposition to the proposal. If legislators want to discuss lowering emissions in the state, then let’s have it. As has been discussed here today, the growth in highly efficient natural gas generation has been a foundational driver of Ohio’s improved air quality, emissions reductions, and integration of other renewable and innovative energy technologies—whose physical features require generators with built in flexibility. If this really were a clean air policy, it would at least seek to recognize the low emissions attributes of a diverse array of generating assets, like natural gas.

In conclusion, please remember these key takeaways:

1. API supports a level playing field where any resources can compete for market share;
2. API opposes subsidies for specific generation types;
3. Ohio’s natural gas and oil industry supports nearly 200,000 jobs in Ohio<sup>12</sup>, while accounting for almost \$27 billion in economic value add to the state’s economy<sup>13</sup> – contributions that could be greatly reduced if Sub. HB 6 passes and reduces the ability of natural gas to compete; and
4. Contrary to much of the rhetoric around this legislation, in the end, this bill is about guaranteeing profits.

[1] EIA. “Carbon dioxide emissions from the U.S. power sector have declined 28% since 2006.” October 29, 2018. <https://www.eia.gov/todayinenergy/detail.php?id=37392>

[2] Ibid.

---

<sup>12</sup> ICF, “Benefits and Opportunities of Natural Gas Use, Transportation, and Production.” Ohio fact sheet. <https://www.api.org/~media/Files/Policy/Natural-Gas-Solutions/API-Natural-Gas-Impact-Report-50-States/Ohio-API-Natural-Gas-Industry-Impact-Report.pdf>

<sup>13</sup> Ibid.

[3] Christina Simeone. Kleinman Center for Energy Policy. "A Case Study of Electricity Competition Results in Pennsylvania." October 28, 2016. <https://kleinmanenergy.upenn.edu/paper/electricity-competition>

[4] EIA. Electric Power Monthly: Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector. [https://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.php?t=epmt\\_5\\_6\\_a](https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a)

[5] PJM. "The Value of Markets." <https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/the-value-of-pjm-markets.ashx> pp. 2

[6] Average annual prices for the Dominion South Point Hub. Data pulled from Energy Velocity on April 1, 2019.

[7] Measured as the ratio of standard deviation to average daily prices, Henry Hub. EIA. <https://www.eia.gov/dnav/ng/hist/rngwhhdD.htm>

[8] PJM. "PJM's Evolving Resource Mix and System Reliability." March 30, 2017. <https://www.pjm.com/~media/library/reports-notice/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx> Pp. 9

[9] Energy in Depth. "Natural Gas Helps Pennsylvania Reach Clean Power Plan Goals." February 15, 2019. <https://eidclimate.org/natural-gas-helps-pennsylvania-reach-clean-power-plan-goals/>

[10] PJM. "Pennsylvania Statistics on Generation Portfolio and Emissions: From PJM 2017 Pennsylvania State Infrastructure Report (issued May 2018). Pp. 4

[11] Christina Simeone. Kleinman Center for Energy Policy. "Pennsylvania's ZEC Bill Reveal." February 27, 2019. <https://kleinmanenergy.upenn.edu/blog/2019/02/27/pennsylvanias-zec-bill-reveal>

[12] Daymark Energy Advisors. "Analysis Regarding Pennsylvania Nuclear Power Plant Cash Flows." June 14, 2017. Pp. 2

[13] Joe Bowring, Monitoring Analytics (PJM's Independent Market Monitor). "State of the Market Report for PJM." [https://www.monitoringanalytics.com/reports/Presentations/2019/IMM\\_MC\\_SOM\\_20190321.pdf](https://www.monitoringanalytics.com/reports/Presentations/2019/IMM_MC_SOM_20190321.pdf)

[14] Joe Bowring. Monitoring Analytics (PJM's Independent Market Monitor). "State of the Market Report for PJM. January through September." [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2018/2018q3-som-pjm.pdf](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018/2018q3-som-pjm.pdf) Pp. 332