



Chair Vitale and members of the House Energy and Natural Resources Committee. On behalf of the Ohio Independent Power Producers (OIPP), thank you for the opportunity to testify in opposition to Sub. H.B. 6. Regrettably a representative of OIPP was unable to travel to Columbus to appear in person. OIPP members testified before the Subcommittee on Energy Generation providing both general information on combined cycle natural gas-fired power plants and opposition testimony to H.B. 6. OIPP also previously submitted opposition testimony to the full committee. Upon review of the latest amendments to the legislation, the members of OIPP must again state their opposition to H.B. 6.

OIPP members develop, construct and operate new combined cycle natural gas-fired power plants, representing billions of dollars of new private investment in Ohio and thousands of megawatts of new, efficient and reliable energy. These projects are entirely driven by private investment, not ratepayer guarantees, with project risk on the investors, not captive ratepayers. There are nearly one dozen new, efficient and reliable natural gas combined-cycle power plants in operation, under construction or in development across all corners of Ohio, representing approximately \$11 billion in private investment, 11,137 MW of clean, reliable energy, and more than 14,000 construction and related jobs. The infrastructure improvements brought by these new facilities support the growth of new and diverse industries also locating in Ohio.

On May 8, 2019, OIPP submitted written testimony in opposition of H.B. 6, in which OIPP expressed its continued opposition to subsidies for Ohio's two nuclear plants. OIPP maintains its opposition to any subsidy to Ohio's two nuclear plants at the expense of the competitive market and rather than restate those objections we incorporate the prior testimony as an attachment.

Today's testimony addresses the addition of yet another subsidy to the bill: cost recovery for the 60+ year old coal plants in Ohio and Indiana owned by the Ohio Valley Electric Corporation ("OVEC").

We have been here before. In the previous General Assembly, two bills, H.B. 239 and S.B. 155, proposed to give OVEC out-of-market subsidies by imposing a non-bypassable rider on ratepayers. A diverse set of stakeholders opposed this legislation, debunking a variety of utility claims and highlighting the significant costs associated with OVEC as a result of bad decision-making by its owners. The legislation rightfully went nowhere.

This General Assembly, however, appears to have caught the subsidy contagion. In addition to bailing out uncompetitive nuclear facilities, H.B. 6 now proposes to further undermine the competitive market and private investment by subsidizing aging coal plants (including a plant located in Indiana).

Codifying cost recovery for OVEC for "national security generation resource" ignores the history of OVEC – notably that the closure of the Piketon Uranium Enrichment Facility

ended any connection to national security. OVEC sells power on the open market like any other power plant and deserves no special treatment or subsidy.

Background

OVEC was organized in 1952 and began operations in 1955. OVEC was formed by investor-owned utilities furnishing electric service in the Ohio River Valley area and their parent holding companies for the purpose of providing the large electric power requirements projected for the uranium enrichment facilities then under construction by the Atomic Energy Commission (“AEC”) near Portsmouth, Ohio. From 1955 to 2003, OVEC had a power purchase agreement (“PPA”) with AEC. The arrangement terminated in 2003, and the shareholders of OVEC elected to sell generation at cost under the Inter-Company Power Agreement. In 2011, OVEC owners chose to reinvest in the plant, taking on a large amount of debt that is contributing heavily to OVEC’s lack of profitability. OVEC holds over \$1.1 billion in debt.

Lack of Meaningful Prudency Review

The legislation states that only prudently incurred costs will be passed to consumers and that these costs are subject to the prudency review by the Public Utilities Commission of Ohio (“PUCO”). However, the legislation fails to address a critical underlying issue with the OVEC costs. Specifically, *any* cost that is defined in the ICPA is *presumed to be prudent*. The ICPA defines a wide variety of costs, **including deferrals, to pensions and other post-retirement benefits¹ for Indiana workers, and decommissioning and environmental closure/restoration costs**. The PUCO will have no authority to review the prudency of these costs, which will be most of the costs passed on to ratepayers, as such disallowance of costs through the power agreement may not be jurisdictional for the PUCO because the power supply agreement is a Federal Energy Regulatory Commission-approved contract.

Meaningless Cost Caps

The legislation caps the amount of recovery that can be collected by the investor-owned utilities (“IOUs”) per year but defers the under-recoveries as deferred regulatory assets – meaning that the timeframe for recovering costs can extend past 2030.

Disincentive to Divest

The bill recites it is the state policy to “support” the divestiture of the OVEC obligations. The legislation provides no detail how divestiture will be supported. In fact, by guaranteeing the full cost recovery of the plants from Ohio ratepayers, the bill actually creates a disincentive for the utilities to divest.

Subsidizing OVEC’s Massive Debt

¹ According to the 2018 OVEC Consolidated Financials, pensions and other post-retirement benefits were underfunded by over \$43 million. See, OVEC 2018 Consolidated Financial Statements, available at <https://www.ovec.com/FinancialStatements/2018-ConsolidatedFinancials.pdf>

This legislation is a bailout for OVEC's debt obligations. OVEC does not require a subsidy for operating expenses. It needs a bailout for its massive debt load. In 2003, the shareholders of OVEC, including the IOUs, elected to continue operating the facilities and sell power in the competitive market. In 2011, OVEC owners chose to reinvest in the plant, taking on a large amount of debt that is contributing heavily to OVEC's lack of profitability. Today, OVEC holds more than \$1.1 billion in debt.² The OVEC facilities are over-leveraged and deep in debt—this is what the legislation will ultimately subsidize.

Most of this debt is from after when the OVEC owners, including the Ohio investor owned utilities, made the decision to continue to operate OVEC, after the 50 year contract with DOE. In 2017 alone, OVEC had \$248 million of debt maturities, and in 2019 OVEC has debt maturities of \$179 million. The interest payment alone to this debt is significant -- \$73 million in 2016. So when Ohio ratepayers have to pay the difference between the cost of power that an Ohio utility buys from OVEC under the ICPA and the revenues from the sale of that power into the market, part of the difference is because of OVEC's large debt burden

FirstEnergy Solutions' Bankruptcy Makes OVEC More Expensive for Ratepayers

OVEC is saddled with massive debt over \$1 billion. Much of the debt is associated with additional capital expenditures after the Sponsoring Companies made the business decision to keep the OVEC facilities open to sell in the market at the end of the 50 year contracts with the federal government. Many of the costs passed to Ohio ratepayers under this legislation are to pay for this debt burden and related interest costs.

However, public filings by the IOUs indicate that Ohio ratepayers could face even higher OVEC debt costs as a result of the FirstEnergy Solutions ("FES") bankruptcy. For example, an AEP SEC 10-K filing notes that the announcement of a potential FES bankruptcy led to a downgrade of OVEC's rating by Moody's.³ AEP further states:

If OVEC does not have sufficient funds to honor its payment obligations, there is risk that [AEP] *may need to make payments in addition to their power participation ratio payments*. Further, if *OVEC's indebtedness is accelerated* for any reason, there is risk that [AEP] may be required to pay some or all of such accelerated indebtedness in amounts equal to their aggregate power participation ratio of 43.47%. Also, as a result of the Moody's and Fitch actions, *OVEC's ability to access capital markets on terms as favorable as previously may diminish and its financing costs may rise*.⁴

² See, OVEC 2018 Consolidated Financial Statements, available at <https://www.ovec.com/FinancialStatements/2018-ConsolidatedFinancials.pdf>

³ AEP 2016 SEC Form 10-K.

⁴ Id.

Emphasis added.

Similarly, Duke Energy, in its 2016 Annual Report noted that “[d]eterioration in the credit quality or bankruptcy of one or more parties to the ICPA could increase the costs of OVEC.”⁵

The substitute bill will allow such increased costs or other costs related to FES OVEC debt and contractual obligations to be passed on to the customers due to FES’ bankruptcy.

As stated in its previous testimony, Ohio’s competitive market is working. Our state is seeing new private investment in more efficient and cheaper sources of power. Ohio residents and businesses are seeing the benefits of this without a high-priced subsidy for two uneconomic nuclear facilities. H.B. 6 could be a staggering step backwards.

The Ohio Independent Power Producers appreciate the interest that this Committee has shown in Ohio’s various sources of generation and offer an open invitation to tour one of our revolutionary, clean, efficient, and competitive facilities located throughout the state. While several members have already had the opportunity, we welcome any member who is interested to see firsthand this technology at work.

We urge the General Assembly not to pass legislation that will impact ratepayers and the competitive market for the next decade. The OVEC facilities are not at risk of shutting down, nor are they essential for grid reliability. We ask the House Energy and Natural Resources Committee to oppose H.B. 6 and preserve Ohio’s competitive market and the economic investment it brings.

⁵ Duke Energy Ohio, Inc. 2016 Annual Report, pgs. 38-39.