

**American Petroleum Institute**  
**Testimony before the Ohio House of Representatives**  
**Energy and Natural Resources Subcommittee on Energy Generation**  
**April 23<sup>rd</sup>, 2019**

Good morning Co-Chairman Stein, Co-Chairman O'Brien and members of the House Energy and Natural Resources Subcommittee on Energy Generation. 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 testimony on 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 CO<sub>2</sub> 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

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<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 favored generation owners.

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

Before addressing specific issues with 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 those that were natural monopolies (wires). 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 their state 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 drop in the price of natural gas turned the power production market upside down and has since provided consumers with economic benefits. What it has also done is attract billions in private capital to Ohio from power plant developers as they saw opportunities. In Ohio, new generation developers saw opportunities from a market in transition coupled with a low cost, environmentally friendly fuel source almost literally on site, as well as 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 multistate regional 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 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 HB 6**

With that as background, API opposes 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 HB 6 is to direct hundreds of millions of dollars to one company to the exclusion of its existing or potential competitors.

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 zero emissions facility that can argue that it has "made a significant historical contribution to the state..." This deliberate openness clears the way for out of state nuclear resources to access Ohio ratepayer money. 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 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.

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<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

HB 6 also provides minimal, if any, oversight on program funding allocation. The current language could essentially allow a designated “clean air resource” to name its price. In the portion of the bill amending Sec. 3706.42, which creates the Ohio Clean Air Program, generators applying for clean air resource designation, directs an applicant to provide a “level of funding requested by the Ohio clean air program.” The *only* superficial nod to oversight, or making this a needs-based program, is so loosely written that an applicant has no incentive or need to demonstrate imminent closure. In fact, 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.

But, 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, CO<sub>2</sub> emissions in the power sector in Ohio are at record lows. Ohio’s CO<sub>2</sub> emissions from the power sector continue to fall in lockstep with the revolution in natural gas production and use in the state<sup>4</sup>. In fact, CO<sub>2</sub> emissions from Ohio’s power sector fell by more than 40 percent between 2005 and 2017 according to EIA<sup>5</sup> all while Ohio brought 17 natural gas fired units online that totaled about 12 GW of capacity<sup>6</sup>. In this same time period, SO<sub>2</sub> fell by 90 percent and NO<sub>x</sub> 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 reaching this goal. 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>

And while there is language in HB 6 that could allow some “lower emissions resources” to potentially be eligible for some of the money in the Ohio clean air program 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 “has” or “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. As these upgrades will likely not be to manage carbon emissions (and even if they

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<sup>4</sup> U.S. Electric Power Industry Estimated Emissions by State (EIA-767, EIA-906, EIA-920, and EIA-923) <https://www.eia.gov/electricity/data/state/>

<sup>5</sup> Ibid

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

<sup>7</sup> U.S. Electric Power Industry Estimated Emissions by State (EIA-767, EIA-906, EIA-920, and EIA-923) <https://www.eia.gov/electricity/data/state/>

<sup>8</sup> EIA, State Electricity Profiles, <https://www.eia.gov/electricity/state/>

did, they may not get emissions down to the level of a combined cycle natural gas plant), this loophole could even unnecessarily subsidize higher emitting resources. It bears repeating that natural gas generation providers have and continue to make positive environmental contributions to the state of Ohio without asking the legislature for special regulatory treatment.

It's clear that this bill is not about environmental protection, infrastructure, or jobs. This bill is about propping up uneconomic 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 HB 6 is an attempt to rewrite the rules in favor of those who didn't like the outcome of the system they agreed to and even supported<sup>9</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. 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 HB 6, who have previously benefitted from restructuring and retained the profits earned, now want to mandate that Ohio families and businesses pay \$300 million annually to ensure the continued profit margins deemed acceptable by the plant owners<sup>10</sup>.

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

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<sup>9</sup> See Appendix, "Competitive Markets Work." Testimony from Leifa Vespoli, then Executive Vice President and General Counsel, FirstEnergy before the Ohio House Public Utilities Committee. October 19, 2011.

<sup>10</sup> 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>

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 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 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.* 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 you are being asked to add another \$300 million per year in perpetuity to the annual cost of subsidies<sup>12</sup>. 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. 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;

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

<sup>12</sup> <https://energynews.us/2019/04/05/midwest/ohio-bill-would-create-clean-air-fund-to-benefit-nuclear-excluding-wind-and-solar/>

3. Ohio's natural gas and oil industry supports more than 250,000 jobs in Ohio<sup>13</sup>, while accounting for almost \$40 billion in economic impact added to the state's economy<sup>14</sup> – contributions that could be greatly reduced if 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 legislation is about guaranteeing profits.

Thank you Mr. Chairman and I am happy to answer any questions the committee may have.

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<sup>13</sup> ICF, "Impacts of the Natural Gas and Oil Industry." July 2017.

[https://www.api.org/~media/Files/Policy/Jobs/Economics-Nat-Gas-Oil/API\\_OilEconomy\\_%20Ohio.pdf](https://www.api.org/~media/Files/Policy/Jobs/Economics-Nat-Gas-Oil/API_OilEconomy_%20Ohio.pdf)

<sup>14</sup> Ibid.

# **House Public Utilities Committee**

## **Competitive Markets Work**

Submitted by:

**Leila L. Vespoli  
Executive Vice President and  
General Counsel  
FirstEnergy**

October 19, 2011

Chairman Stautberg, Ranking Minority Member DeGeeter, members of the Committee – good morning. I’m Leila Vespoli, Executive Vice President and General Counsel of FirstEnergy, which is the parent company of three electric distribution utilities in Ohio – Ohio Edison, The Illuminating Company and Toledo Edison – and of our competitive subsidiary, FirstEnergy Solutions.

I’m pleased to be here today to talk about what Ohio has done right in creating an effective structure for providing customers with lower prices for electric generation, and where we can do more to maintain and expand competitive markets for electricity in the years ahead.

Specifically, my testimony will focus on three key points:

- First, with respect to electric generation, competitive markets work. They deliver the lowest price over the long-term to customers, and the proof is undeniable. Moreover, they will continue to ensure adequate and affordable supplies of generation for Ohio’s future – which, in my mind, is the only meaningful definition of Ohio’s energy security.
- Second, measures that restrict customer shopping or subsidize one electric generator over another are throw-backs to monopoly regulation. Such efforts that pick “winners” and “losers” in the energy market would create obstacles to private investment in generation and increase prices for customers.
- Third, governmental aggregation is the jewel of Senate Bill 3 – a proven way to deliver significant savings on electric generation to large numbers of residential and small business customers. Toward that end, we should pursue every effort to extend this channel to more Ohioans.

### **Keep Competitive Markets Working**

Regarding competitive markets for electric generation, we already know that they work because these markets have resulted in lower electric generation prices and less risk for Ohio customers. That's good news for businesses and homeowners looking for every opportunity to stretch their limited resources.

Today, every customer of FirstEnergy's Ohio utilities is getting the benefits of competition for electric generation. Our utilities conduct wholesale auctions in which many suppliers compete to provide generation at the lowest price for customers who choose not to shop. In addition, customers are free to shop with competitive suppliers and get an even better price – and many customers are choosing to do that. These customers saved an estimated \$100 million in 2010 through competitive markets for electric generation. Right now, 2.3 million Ohioans – including more than 200,000 businesses – are saving money through electric competition. In addition, competitive suppliers are lining up to do more, with more than 40 registered suppliers in Ohio standing ready to bring additional savings to customers.

These and other benefits validate the good judgment of Ohio's legislators when they established competitive markets for electricity in our state – first in 1999 through Senate Bill 3, and then again in 2008 through changes made with Senate Bill 221.

This first display illustrates how our industry was restructured by Senate Bill 3, making generation a competitive business. The idea was that competitive markets for electric generation, instead of utility monopolies, would drive innovation, efficiency and investment – and, most important, deliver the lowest price to customers over time.

At FirstEnergy, we made every effort to meet the letter and spirit of the new law – devoting significant resources to prepare our company, employees and customers for competitive markets.

Among other changes, we structurally separated our regulated and unregulated operations so our power plants are no longer owned by our electric distribution companies. But

more important, all of our generation-related investments – including the risks that accompany them – are now borne by our shareholders, not by customers. This includes the significant investments we've made in environmental controls at our generating plants. This change has made us better – leaner, more efficient, and more customer-focused.

Since 1999, our competitive subsidiary, FirstEnergy Solutions, has invested nearly \$6.4 billion in its generating fleet while adding more than 900 megawatts of power. That's the equivalent of a large, baseload power plant – and, once again, we've brought that additional capacity online *at no risk to customers*.

These are just a few of the many benefits that competitive markets for electricity are bringing to Ohio. Unfortunately, several ill-conceived proposals such as restrictions that effectively cap shopping have the potential to undermine these markets and drive up prices for certain effectively captive customers.

### **Eliminate Shopping Caps and Other Obstacles**

For example, there is one proposal wherein a utility is seeking to be allowed to effectively cap shopping by limiting the amount of market-priced capacity available to suppliers over the next three years. Once these caps are reached, third-party suppliers would be forced to buy capacity from the company at prices that would be more than four times the market value. This is simply an attempt to restrict shopping and to force customers to pay the utility's above-market rate. The stated rationale for imposing this servitude on customers is that the utility needs time to "transition" to market – a transition the company has had more than 10 years to make.

The price tag for this protectionist approach would be significant – especially when you consider how the arbitrary shopping cap would negatively impact governmental aggregation.

We're also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio's energy security –

that our state could experience outages if it doesn't generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located.

The second display highlights PJM and MISO – regional transmission organizations that are charged with maintaining adequate supplies of wholesale power to serve the energy needs of nearly 100 million customers within their footprints. As you can see, these footprints extend far outside Ohio – so a power plant in one state can serve customers in any number of other states if it is economical to do so.

Even when utilities were vertically integrated – with centralized control of distribution, transmission and generation – new siting decisions involving power plants were always based on key factors such as available water, space and fuel sources. That's why even under the previous regulated model, power plants formerly regulated by the PUCO weren't necessarily built in Ohio. Some were built in Pennsylvania or West Virginia to serve customers in Ohio.

Even if Ohio's energy security were an issue – which it is not – our state imports less electricity today than it did under the previous regulated model, largely due to the significant amount of generation that has been added since competitive markets were established in Ohio. From 2005 to 2009, Ohio imported an average of 10 percent of its total electricity needs, compared with 17 percent in 1990.

The real problem with subsidized generation is that regulators would be picking the “winners” and “losers” in the energy market. We've been down that road before, and the results weren't pretty. For example, in the past our utilities in Pennsylvania and New Jersey were required to purchase power from Non Utility Generators, with contracts extending up to two or three decades. In our Pennsylvania service area alone, customers have paid \$1.5 billion over market prices for this subsidized generation. At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply

cannot afford similar missteps that would saddle our customers with higher-than-market prices for electricity.

Let me offer a final example of the unintended consequences of subsidized generation. FirstEnergy Solutions is currently reviewing a plan to transform an old limestone mine in Norton, Ohio, into a Compressed Air Energy Storage, or CAES, facility. With the volume of nine Empire State Buildings, the site was identified by a leading developer of natural gas storage facilities as the best among more than 70 potential sites in the nation for supporting CAES technology. It would be scalable – from approximately 270 megawatts all the way up to 2,700 megawatts – and, more important, would support the operation of intermittent renewable sources such as wind by compressing air at night and standing ready to serve load on peak. However, it is highly unlikely that we would consider moving forward with this project if the plant would have to compete against subsidized generation in Ohio.

#### **Extend Governmental Aggregation to More Ohioans**

Rather than creating new obstacles to competitive markets, I believe lawmakers and regulators should build on efforts such as governmental aggregation that already are delivering lower prices for electric generation to Ohioans.

As you may know, governmental aggregation is an effective way for local communities to combine their residents and small businesses into a single, large buying group. With this significant buying power, municipalities can then shop for the best deal on electric generation on behalf of all its citizens. This process is currently providing savings on electricity to nearly 1.2 million Ohioans. In addition, ballots scheduled for the upcoming election in November would authorize governmental aggregation for more than 100 additional communities representing 450,000 residential and 15,000 small commercial customers.

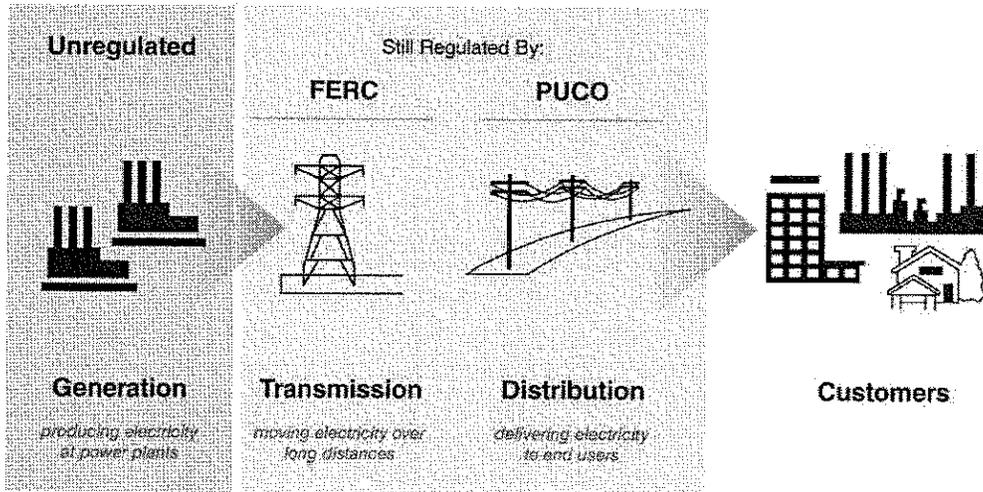
However, because of the way one utility plan is contrived, there will be limited – if any – opportunities for residential customers and no opportunities for small business customers to benefit from governmental aggregation.

The fact is, these and other restrictions can only undermine competitive markets that already are bringing significant savings to customers throughout Ohio. Simply put, we have the right structure in place. We just need to keep those markets working to continue delivering real savings to homes and businesses throughout our state. That's one of the best strategies I can think of to create jobs and promote economic development in Ohio.

As always, FirstEnergy remains committed to working with the Committee and the Ohio General Assembly. Thank you again for allowing me to address you today. I would be pleased to answer your questions.

Attachment A:

### Generation is a competitive business; transmission and distribution remain regulated



### MISO and PJM – FERC Regulated

Large, regional transmission organizations coordinate movement of wholesale electricity

