House Public Utilities Committee

Testimony in Opposition to HB 178
Robert C. Flexon
President and CEO, Dynegy Inc.

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Dynegy Opponent Testimony – HB 178

Chairman Seitz, Vice Chair Carfagna and Ranking Member Ashford, my name is Robert Flexon and I am the CEO and President of Dynegy Inc. I extend you my thanks for the opportunity to provide testimony on House Bill 178, the FirstEnergy nuclear subsidy bill.

Dynegy Summary

Before making comments specific to the proposed legislation, if you'll permit me I would like to offer the committee a refresher on who Dynegy is and how we fit into Ohio's energy market.

Dynegy is the second largest independent power producer in the United States with more than 31,000 MW of generation at 50 power plants, enough to power more than 25 million households. Dynegy owns generation assets in 12 states and is involved in nearly every organized wholesale energy market in the United States (including the California ISO, ERCOT (Texas), MISO, PJM, NYISO and ISO-NE; excluding only SPP). Additionally, Dynegy's retail operation serves more than 1 million customers nationwide. Dynegy employs more than 2,800 employees across the country, including nearly 1,200 union members.

Dynegy is the largest generation owner of any kind in Ohio. No utility and no other independent power producer owns more generation in Ohio than we do. The Dynegy fleet in Ohio includes 10 power plants totaling more than 6,200 MW and includes both coal and natural gas fueled units. Dynegy's Ohio sited generation produces enough power to supply electricity to more than 5 million homes. Dynegy's Ohio retail operation, Dynegy Energy Services, supplies approximately 8 million MWh of power to more than 250,000 retail customers in Ohio. Dynegy employs more than 450 Ohio-based employees at our power plants located throughout the state and at our retail offices located in Cincinnati. Last year, Dynegy received the JD Power award for "Highest in Residential Customer Satisfaction with Retail Electric Service in Ohio."

Dynegy is also committed to the environment. Dynegy's goal is to recycle 100% of its coal ash for beneficial reuse by 2020. In 2017 at Miami Fort we expect to recycle 99% of our coal ash and at Zimmer we plan to recycle 76%. As we've transformed our fleet, we've reduced our GHG intensity by approximately 25% over the past few years. At the same time, SO2 and NOX intensity has declined by 48% and 17%, respectively.

We've accomplished all of this through private investment – not by reaching into the wallets of captive ratepayers or through the imposition of expensive non-bypassable mandates.

Turning to the proposed legislation that this Committee has been tasked with considering, I would like to share the reasons for Dynegy's opposition to this subsidy.

State of Ohio Marketplace

Ohio has successfully made the nearly complete transition from a fully regulated state to a well-functioning re-structured state. Dynegy entered Ohio in 2015 when we closed on the nearly $3 billion transaction to acquire the Duke Energy Ohio generation portfolio. As a result of Ohio's move to a restructured market, Duke made the decision to exit the competitive generation business and Dynegy determined that Ohio was the kind of state we should make investments in. Ohio's support of competitive energy markets, access to low cost natural gas, and the diversity of fuel resources we could acquire here helped inform our decision to invest here.

In the past two year Dynegy has invested more than $300 million to upgrade and improve the operational efficiency of our Ohio plants. In addition, we have hired 45 people as Dynegy employees, not contractors, to assist in our operations and growth in Ohio bring the total number of Dynegy employees in Ohio to more than 450, not including the more than 500 temporary workers who assist our team during plant maintenance. It is my hope that these facts and my willingness to testify before you today reflect our commitment to Ohio, our intention to remain an active market participant, and our willingness to invest shareholder dollars where it makes sense to do so.

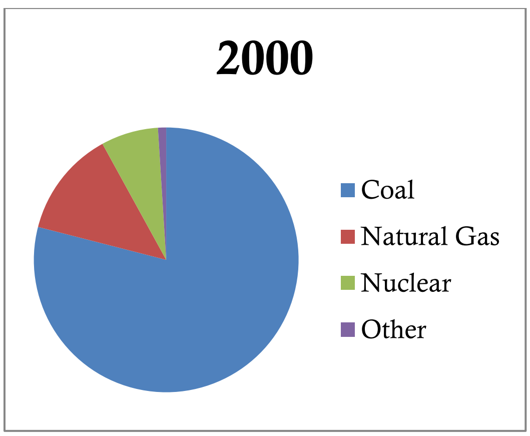
Since 2010, Marcellus and Utica gas resources have fundamentally changed the energy landscape, particularly in PJM. While I would like to think companies and governments can predict things as monumental as the shale gas revolution coming we know that simply isn't true. In fact, when Ohio revised its energy law in 2008 it did so based on what turned out to be two faulty assumptions. First, that utility load growth would continue to increase (in reality, utility load growth is flat to declining); and second that power prices would continue to rise (in reality, wholesale power prices have fallen dramatically).

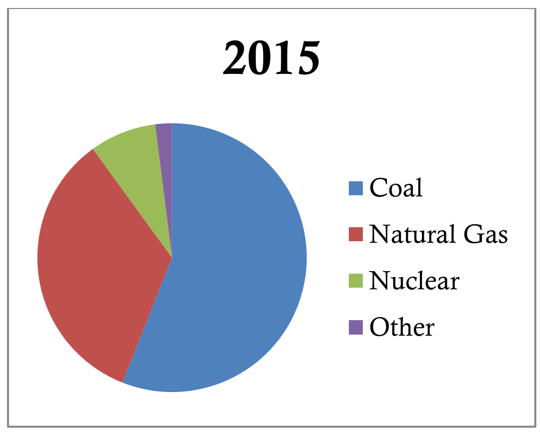
House Bill 178 or the Zero Emissions Nuclear credit bill ("ZEN bill") would provide an enormous subsidy to one nuclear operator for units that they contend are no longer economic to operate. The only plants that qualify for these subsidies are owned by FirstEnergy. The reasons being offered for why you should support this subsidy include fuel diversity, job retention, price stability, and economic development among others. The problem with each of those arguments is none of them stand up to any level of serious scrutiny.

Fuel Diversity

As the owner of both coal and natural gas fueled generation units in Ohio we understand and have built our business around fuel diversity. We also take note of the fact the Ohio's generation portfolio is actually becoming more diverse, as shown below:

	2000	2015
Coal	79%	56%
Natural Gas	13%	34%
Nuclear	7%	8%
Other	1%	2%





What these charts show is this: the shale revolution and the competitive market resulted in a more diverse fuel supply than Ohio had in the days of the vertically integrated utility model.

Job Retention

While I am certainly sympathetic to the employees and communities impacted by large employers who reduce workforce or close their facilities, that problem isn't unique to power plants. Communities and employees can be impacted by the closure of any number of industries and they are not able, nor should they, come to you and say "subsidize us and keep our factory open." Our economy will not grow and prosper by artificially keeping alive business through expensive subsidies that can no longer compete in the marketplace. Certainly, that has been the case throughout

American history. We are constantly evolving and recreating our businesses and occupations. Were that not so, we'd still have buggy whip and ice box manufacturers and tele-type and elevator operators. We as a country did not subsidize those industries and jobs and we shouldn't subsidize nuclear units.

Further, it is not clear whether these nuclear plants will even close. FirstEnergy has said they won't be the long-term operator of the plants, but that would suggest that some other company may buy those assets. Whether that sale is from FirstEnergy Solutions or out of a bankruptcy proceeding isn't yet clear. What is clear is that this bill supposes that a pre-packaged bankruptcy is coming and ensures that the buyer of the plants will receive the ZEN subsidy in full once they acquire the assets. The proposed legislation would drive up the price FirstEnergy Solutions or the bankruptcy trustee receives from a buyer in the bankruptcy proceeding. The future buyer may have bought the assets without the subsidy just at a lower price. The proposed subsidy clearly distorts the market price for these assets and negatively impacts Ohio's competitiveness, jobs at other, economic power plants and at plants being developed by others.

Regardless, if the plants remain in operation under a different owner the jobs, tax revenue and zero emissions benefits continue at no cost to Ohio. A change in the uniform worn by the employees shouldn't come with a $300 million annual price tag.

<u>Price Stability</u>

Prices in Ohio are already stable. In fact, in Chuck Jones's testimony he notes Ohio's power prices before re-structuring were 22nd in the country and today are 22nd in the country. What he didn't mention is that although wholesale power prices are down significantly charges in the form of riders have kept the overall utility bill flat. Ohio consumers haven't benefited as fully as they should from restructuring because companies like FirstEnergy and AEP continue to add fees to consumers' bills via riders that ensure they collect stable revenues regardless of power prices. Additionally, if this bill is enacted it ensures higher costs to consumers for the next 16 years – it provides price stability but at much higher prices. FirstEnergy pointed your attention to a Brattle report that suggests if the uneconomic, high cost nuclear units are retired and replaced by lower cost, higher efficiency natural gas units consumers will pay $177 million more for electricity. How can that possibly be? Only an economist supporting FirstEnergy's position could produce a report that says replacing higher cost power with lower cost power will result in higher charges to consumers. A proper study of this question would determine if the supply curve shifted but more importantly what would be the impact on the clearing price before assuming that higher costs are a certainty.

Making matters worse, customers in Ohio that shop for their electric supply in the retail market can already secure price certainty in the market by selecting a fixed rate option in their supply agreement. There are contracts already available to residential customers of various terms that ensure their price remains fixed and stable. Commercial and industrial customers can also secure fixed prices and use any number of hedging, demand response and other tools to ensure their prices remain stable and predictable. I should also note, customers can secure green energy or zero emission products today, without out-of-market payments. This program destroys those benefits by making shopping customers pay this unnecessary charge as well. To say it doesn't impact customers' ability to shop the competitive retail market because everyone pays is the same as saying because everyone pays it doesn't matter that we are raising your taxes on food and beverages you can still shop at whatever grocery store you want.

Economic Development

Dynegy, like virtually every other power producer, would like to see steady growth in every state's economic development. After all, our employees live here as well and economic development means more customers and more opportunities for us to compete and deliver power to customers. But one of the basic tenets of sound economic development is the need for lower cost power.

How will northern Ohio businesses in particular, but all of Ohio if other possible re-regulation ideas are introduced, be able to remain competitive when shouldering the burden of increased costs to the tune of $300 million or more for ZENs and on top of an additional $200 million for the next 3-5 years for the Distribution Modernization Rider that the PUCO has already awarded FirstEnergy? A rate increase of $500 million is crippling to economic development opportunities and creates long-term problems for existing businesses that have to look at ways to minimize their costs.

In addition to being disadvantageous to northern Ohio, it makes Ohio overall less attractive for companies who are looking to locate or expand their operations here. Energy is a critical element to securing economic development opportunities. Ensuring the availability of lowest cost power solutions and fostering the competitive retail energy market are key attributes of a vibrant and healthy business environment; burdening businesses with unnecessary subsidies lessens Ohio's ability to retain and attract employers.

"Home Grown" and "Base load" Power

Ohio has historically been an importer of power, and there's a simple reason for that: States that are part of a regional grid benefit from obtaining electricity pool at the lowest cost, and reliably. It's the basic reason why Ohio is part of PJM. Also, because of its strong manufacturing-based economy, Ohio has imported power at some level for decades. It is important to note that in 2011, Ohio imported less electricity than it did under the vertically integrated model. The reason is that the competitive markets drove investment. FirstEnergy's own testimony before this committee in 2011, reported that from 2005 – 2009, Ohio imported an average of 10 percent of its electricity, compared with 17% in 1990.

Ohio's generation fleet is under a significant transformation due to the development of local shale resources. Power plant developers want to locate in Ohio to take advantage of low cost fuel and the ability to tie into the PJM market where the most economic and reliable units are rewarded for their performance. If the markets are allowed to work, and Ohio can leverage its access to low-cost natural gas, it's easy to assume that Ohio could quickly become a net exporter in the near future.

Perhaps most important, Dynegy is not coming to the Ohio General Assembly seeking support or subsidies. As a competitive generator it is incumbent on me and our team of employees to perform at the highest level and operate our facilities at their most safe, reliable and efficient level. For example, we have invested more than $50 million into the Zimmer facility in southwest Ohio and as a result of our improved operations have reduced the outage rate from nearly 30% to less than 10%. By doing so we are doing the things necessary to ensure the greatest opportunity for success in the market. Being forced to compete against subsides and generation that can be agnostic about the costs of operation means generators like Dynegy are fighting an uphill battle and put the investments we have made in Ohio at risk.

What is important is this – imports fluctuate and Ohio should be most concerned about securing reliable, low cost power regardless of where it comes from. Ohio could commit to generating more than 100% of its power from in-state resources and becoming an exporter to neighboring states but there is a cost associated with doing so. Again, FirstEnergy rightly pointed out in 2011 that even under vertically integrated model power plants that used to be regulated weren't always built in Ohio because new siting decisions are based on many factors including water, space, and fuel source resulted in them being located in other jurisdictions.

There is nothing in Ohio law that prevents any Ohio based utility from constructing a new power plant via their unregulated generation affiliate. They simply choose not to do so. Instead they are asking you to ensure they continue to collect revenue for plants that are no longer economic.

There is also much rhetoric around "saving base load power plants." What's important to note is that "base load" isn't a reliability attribute; it's a measure of a plant's ability to run flat out for extended periods of time. While coal and nuclear plants have traditionally been thought of as "base load" plants, many natural gas plants are now base loaded because of their price advantage. And, natural gas plants are the best kind of base load there is: In addition to running flat-out, they can ramp up and down quickly, something nuclear plants can't do.

ZEN credits are not RECs

It is critical to note that ZENs are **NOT** the same as RECs, or renewable energy credits. Renewable energy credits operate in a market construct where supply and demand dictate the value of the RECs and all qualifying resources can compete.

The ZEN program is applicable only to nuclear units owned by FirstEnergy and the value of the ZENs are set in statute with an adjustment mechanism that almost guarantees costs continue to increase. While the bill seeks to minimize the impact by limiting the increase to customers to no more than five percent (5%), it also provides a mechanism to create a deferral for any charges above the five percent increase. When that deferral is created it hides the actual cost of the subsidy and creates another cost (likely yet another rider) that customers will have to pay, with interest creating a revenue stream for FirstEnergy or any subsequent purchaser of the assets.

Finally, nuclear power is the least effective form of generation to partner with the evolving electric grid where greater renewables and their intermittency challenges are the current reality. Nuclear plants do not cycle or ramp up and down like natural gas fueled units. They are typically either on or off and do not respond well to ramping up and down to follow changing customer usage.

What is the Alternative?

Substantial investment in Ohio is happening in a variety of ways. First, companies like Dynegy and Kindle have invested billions of dollars to acquire existing generation assets from utilities that no longer wanted to operate in a competitive market. The decision to buy assets in Ohio was made because we believe they can be operated profitably, and it's at our risk if we can't succeed in doing so. If we can do so, our investors and shareholders benefit - just like the utility's shareholders benefit from their profitable operation. I've been told former Governor Jim Rhodes once said, "Profit isn't a dirty word in Ohio."

Separately there are approximately 10,000 MWs of new, clean, lower emitting natural gas fueled plants that developers are bringing to Ohio. These new plants are choosing Ohio because of low cost fuel and a seemingly well-functioning market that rewards low cost generation. The 12 power plants that are under construction, have

Ohio Power Siting Board approval, or are in application or development phase are located mainly in eastern Ohio.

<u>Conclusion</u>

In the event my words aren't as persuasive as I hope, then perhaps the following statements will resonate with you.

> "First, with respect to electric generation, <u>competitive markets work</u>. They deliver the lowest price over the long term to customers, and the proof is undeniable.
>
> Second, measures that restrict customer shopping or subsidize one electric generator over another are throwbacks 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.
>
> …more important, all of [FirstEnergy's] generation-related investments – including the risks that accompany them – are now borne by [FirstEnergy] shareholders and not by customers."

Those are the words of FirstEnergy's Executive Vice President and General Counsel in testimony before this committee on October 19, 2011. I completely agree with those statements. Those assertions, dare I say facts, remain true regardless of a specific company's financial performance over time. When customers save money, where investment in new and existing competitive generation is happening, and where the power grid remains reliable there is no rational basis for reversing course and returning Ohio to a regulatory paradigm that looks more like the 1960's than the 21st century.

Thank you for the opportunity to testify today. I am happy to answer any questions.