OHIO 132nd GENERAL ASSEMBLY
SENATE PUBLIC UTILITIES COMMITTEE
TESTIMONY OF THE ELECTRIC POWER SUPPLY ASSOCIATION
JOHN E. SHELK, EPSA PRESIDENT & CEO

IN OPPOSITION TO SENATE BILL NO. 128,
ZERO EMISSIONS NUCLEAR CREDITS

June 8, 2017

Introduction

Chairman Beagle, Vice Chairman LaRose, Ranking Member Williams and distinguished members of the committee, my name is John Shelk and I am the President and CEO of the Electric Power Supply Association (EPSA). Thank you for this opportunity to testify in strong opposition to SB 128, 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.[1]

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

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 SB 128. Ohio is not alone in receiving overtures from those seeking subsidies rather than 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 SB 128 is based. EPSA is also part of growing coalitions in Connecticut, New Jersey and Pennsylvania thus far successfully 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.

Recently, 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 regional wholesale power pricing mechanisms to function as intended. At the same time, the market conditions that challenge some, but not all, 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 by market-distorting and risk-shifting schemes such as ZENs in SB 128, the consequences are costly and difficult if not impossible to reverse.

SB 128 Ignores the Nature of the Power Grid on which Ohio Depends for Power

The North American power grid has been 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 blend 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, decreasing the need for 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 specifies 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 equally relevant to reliability.

Thus, proposals such as SB 128 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 could undermine accurate wholesale prices for non-ZEN units by bidding below their actual costs with the ZEN revenues making up the difference, a concern shared by both the PJM regional grid operator and its independent market monitor.

SB 128 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 though 2022 or the next 16 years through 2033, when if anything the pace of change will be faster going forward than even looking back ten years? Markets are inherently more flexible than mandates.

It is one thing for private investors to take risks, but SB 128 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.

SB 128 Does Not Reflect Sound Environmental Policy

Regardless of anyone's views on either side of the debate about climate change and greenhouse gas emissions, SB 128 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 certain 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 increasingly important ramping attributes of power plants more flexible than nuclear units. 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 an endorsement by the 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 SB 128 were to become law.

Conclusion: No Need to Rush to Judgment

The legislature has the time to carefully consider these issues and future developments, including ongoing efforts at regional fuel-neutral solutions that recognize the economic and reliability benefits of all Ohio generation resources. Just last week, FirstEnergy announced that *all* its nuclear capacity, including the plants that would receive above-market ZEN payments, cleared the recent annual PJM auction. This means that in a fully competitive process based on FirstEnergy's own voluntary bids, its Ohio nuclear plants were selected for capacity commitments through the middle of 2021 (even though not all other PJM nuclear plants cleared the auction).

Not rushing to judgment is especially important given ongoing attempts to replicate ZENs/ZECs across most of PJM – 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.[2] As a result, the consumer benefits of restructuring are at risk.

At last week's hearing, you heard from a witness for Exelon, the nation's largest nuclear operator and consolidator. On one thing we agree: the nation is at a crossroads. But

[2] 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.")

unlike the basis for Yogi Berra's famous quip that when coming to a fork in the road just take it (because either way led to Yogi's house), the choice before policymakers here as to SB 128 offers up starkly different destinations.

One need only look to Southeast states (South Carolina, Georgia and Mississippi) that did not restructure and kept cost-of-service utility monopoly-owned generation. Consumers there now face billions of dollars in cost overruns and delays for power plants that may never operate or at least not as advertised. Ohio made the better choice to rely on competitive markets, yet SB 128 is a major step away from those markets. Contrary to Exelon's assertions, EPSA only asks for a chance to compete on a level-playing field. Wholesale generation is at the core of EPSA member operations. By contrast, it is nuclear-owning utilities who seek to leave the generation business for the safety of rate-regulated transmission and distribution who would raise consumer costs through ZENs. Please do not let them succeed. I look forward to your questions.