Testimony of David Johnson
CEO, Summitville Tiles, Inc.
House Bill 6, Repeal

Select Committee on Energy Policy and Oversight
The Honorable James Hoops, Chair

September 23, 2020

Chairman Hoops, Vice Chair Adams, Ranking Member Leland, and members of this Select Committee, I appreciate the opportunity to reiterate concerns with House Bill 6 and to share suggestions for a responsible repeal package.

My name is David Johnson. I am the CEO of Summitville Tiles, Inc. in Columbiana County. My company is a 108 year old, 4th generation Ohio family enterprise and, due to our nation's trade policies, is one the *last* surviving manufacturers of ceramic tile in the nation. I am also a longtime member of The Ohio Manufacturers' Association, having chaired the organization in the early 2000s. As such, I have firsthand knowledge of Ohio's move to deregulate electric generation in 1999. I was also one of five OMA members who testified against HB6 in the Ohio Senate last June. I speak to you with these perspectives in mind.

My colleagues in the manufacturing sector count on affordable and reliable energy in order to compete. But, HB6 was fraught with open-ended and potentially significant new costs that will be passed onto Ohio ratepayers for years to come. And to what public good or benefit?

Last year, we testified that HB6 was a handout to Ohio's two nuclear power plants and select renewable energy projects. We produced a profitability analysis of the nuclear plants that questioned the need for a bailout and predicted the wholesale market restrictions that would follow, exposing Ohioans to even greater energy costs.

Well, I regret to inform you that those fears have been borne out in full.

For over a year since the passage of HB6, I have been deeply disappointed that corporate interests found a way to extract over a billion dollars from Ohio businesses and residents.

Then in May, in the midst of some of the most challenging economic times for our country, those interests acted to convert the promise of HB6 into cash for investors via an $800 million stock buy back from a company that emerged from bankruptcy just three months earlier. This is from the same corporate entity that convinced lawmakers that they needed a bailout to protect the jobs and air emissions.

When a company buys back its own stock, that cuts the number of available shares, which can boost their prices, benefiting shareholders. Clearly, this company has plenty of excess cash and the payments from customers have not even begun.

The stock buyback underscores arguments the OMA and other HB6 opponents made last year. Our money is going to out of state hedge funds and other investors in the nuclear power plants, and I think that stinks.

Mr. Chairman, it you will permit me, I'd like to invite the OMA's energy counsel Ms. Kimberly Bojko to discuss the specific problems with HB6 and its implementation. Then, I will return to address the need to act to repeal and reform these sections of law.

In the year since, we have been an active participant in proceedings to implement the bill before the PUCO and Ohio Air Quality Development Authority (OAQDA). Many of the implementation details will result in new customer costs, as we feared.

Decoupling

The FirstEnergy distribution utilities are already reaping benefits from the bill's decoupling language. These data and analysis demonstrate how FirstEnergy utilities may collect $355 million from customers through 2024 – and hundreds of millions more in later years – from Ohio's electric customers.

This decoupling mechanism will provide the FirstEnergy utilities with 2018 revenue levels regardless of the amount of electricity its customers use. During an investor call, FirstEnergy CEO bragged that the provision would make the company "somewhat recession proof."

I don't need to remind you that many businesses in Ohio are trying to simply survive today. They have no government revenue guarantee to protect their income.

I know you spent time last week on decoupling. There may be a legitimate purpose for a decoupling public policy, but the HB6-enabled decoupling mechanism is a horse of a different color – one that is skewed and provides no offsetting customer benefit.

In response to your questions last week, OMA technical consultants RunnerStone LLC developed this primer to compare a legitimate decoupling mechanism to the unusual decoupling mechanism included in HB6. The projected costs for customers of the unique HB6 decoupling mechanism are in the hundreds of millions of dollars. Decoupling costs will fall on small manufacturing and commercial businesses on secondary electric service, as well as residential customers.

OVEC

In addition to the subsidies for Ohio's nuclear generation plants, HB6 provided additional subsidies for the utility owners of the Ohio Valley Electric

Corporation (OVEC) coal plants. These coal plant subsidies are estimated to be worth $405 million through 2030. As you may recall, one of the two plants is located in Indiana.

Some proponents testified that the OVEC charges are merely codifying Ohio case law. This is not accurate. While it is true the Supreme Court of Ohio in 2018 upheld a PUCO ruling allowing some of the utilities to collect OVEC subsidies from customers, those cases were in the context of the PUCO approving Electric Security Plans (ESP) and were limited to the term of the ESPs.

As such, those customer charges were scheduled to drop off when the respective utility's ESP term concluded (DP&L' recovery was through 2023, but DP&L subsequently terminated its ESP so the approved charges would have already ended; AEP's recovery was through 2024; and Duke's recovery was through 2025). HB6 enabled the owners of OVEC to impose new charges after the end of their respective ESP.

While some proponents say the legislative approach to OVEC in HB6 is preferable to previous case law because of the cost caps in the bill, the owners of OVEC are allowed to defer the uncollected charges that exceed the caps, plus interest. This deferral will be due in 2030 and likely will be a significant cost that will have to be paid at that time.

Also consider that the old coal plants have already cost Ohio's manufacturers and citizens hundreds of millions of dollars prior to HB6, and these costs are likely to increase through 2030 and beyond. The problem of the uneconomic OVEC plants needs to be solved permanently, now, not perpetuated with subsidies by either the PUCO or the General Assembly.

In summary, the OVEC charges contained in HB6 constituted another new, legislatively mandated energy tax on Ohio businesses and families without any offsetting benefit.

Clean Air Fund / Subsidies for Nuclear Plants

Mr. Chairman and members of the Committee, a business seeking a cash infusion in a market economy would be required by investors to prove its case with credible audited financial statements.

In the case of HB6, the power plants were not seeking a loan, but a gift from Ohio customers. I can think of no reason why they should not have to prove to the state exactly what their profitability is before being awarded.

I'm sure you are aware of a credible financial analysis by Dr. Paul Sotkiewicz former chief economist of grid operator, PJM. His research released last Spring suggested the nuclear power plants will in fact be profitable to the tune of

nearly $70 million per year as FirstEnergy Solution (now Energy Harbor) exits bankruptcy and sheds much of its debt. As was mentioned earlier, EnergyHarbor is attempting an $800 million stock buy-back following their exit from bankruptcy.

In fact, after the bribery scandal came to light, EnergyHarbor's interim stage stock buy-back of $500 million was approved by the FERC on August 3rd of this year. Even as this body reconsiders HB6, EnergyHarbor continues to buy-back stocks, with a goal of transferring control of EnergyHarbor to an out-of-state investment fund at a later stage. I have provided to you EnergyHarbor's stock buy-back plan as submitted to the FERC.

If you remain favorable to subsidizing the assets, then, at a minimum, I urge you to install safeguards to prevent windfall profiteering. Specifically, you can insert guardrails with the addition of an independent profitability analysis and place a reasonable limit on the power plants' profits. Under no circumstances should this audit function run any risk that political influence may affect an outcome.

Significantly Excessive Earnings Test (SEET)
The House Finance Committee last year inserted language into the state budget bill (HB 166) to alter Ohio's prohibition of significantly excessive profits by each regulated utility. The provision, which would allow FirstEnergy to apply the test on an aggregated basis for all three of its regulated utilities could allow FirstEnergy to keep "significantly excessive" profits for one of its profitable regulated utilities rather than issue refunds to customers. This change in law exacerbates the revenue guarantees for FirstEnergy provided under the decoupling mechanism.

We commend Representatives Skindell and Denson for introducing HB 740 to repeal this utility giveaway. The OMA opposed the budget amendment and we are pleased to provide you with this backgrounder on the SEET utility giveaway. You should consider incorporating this into a repeal bill.

The Consequence of Inaction
Deregulation was adopted by this body in 1999 and has produced upwards of $3 billion in savings per year for Ohio's customers. This was the promise that led free-market business advocates to pursue deregulation all those years ago. I was there!

Finally, now, the market is working and delivering lower-priced generation and more innovative energy products to customers. I implore you to act to protect the marketplace.

The Path Forward
None of the claims made in the $60 million HB6 campaign were defensible then or now. The facts are:

- There is not a shortage of electricity.
- There is not a problem with importing or exporting electrons between states within the PJM grid.
- China's government is not trying to take over our grid or generation.
- Markets drive fuel diversity better than government mandates on nuclear, coal and renewables.
- HB6 will not save customers money; instead, it sticks customers with blank checks to enrich select utilities and energy companies.

We believe the preferred legislative package would repeal the anti-market provisions of HB 6 that are punitive to customers. We suggest a repeal that protects customers and maximizes customers' cost savings.

Specifically, we suggest a repeal bill that contains the following elements:

1. Repeal the Clean Air Program and rider created by HB6 to subsidize the nuclear power plants and select renewable energy projects.
2. Repeal the OVEC rider created by HB6 to subsidize the two old coal plants including one in Indiana owned by a consortium of energy companies and prevent the PUCO from enacting a new OVEC rider without explicit approval from the General Assembly.
3. Repeal the decoupling mechanism in HB6 that benefits FirstEnergy by rewarding it with unearned income at the expense of customers. A repeal package should also require FirstEnergy to refund the full amount of these ill-gotten gains to customers, immediately.
4. Require the PUCO and the Ohio Air Quality Development Authority to eliminate or rescind any mechanism, charge, rule, or order enacted, authorized, or issued to implement an anti-market provision of HB6.

We are not proposing that you that you reinstate energy efficiency and renewable energy standards and associated riders as they existed prior to HB6. We do not think this diminishes the importance of energy efficiency and technological innovation to Ohio's energy economy, nor abdicates a clean energy policy. Instead, we believe more appropriate paths are now available to drive energy innovation forward in Ohio.

For twelve years the standards served their purpose to simulate emerging technologies. But over recent years, in some cases, a utility could collect much more money for itself than it spent on running efficiency programs for its customers.

Frankly put, legislative and regulatory actions, and lackluster utility choices, have watered-down Ohio's standards to be far less effective than envisioned.

OMA has a long history of supporting customer choice, energy efficiency, and the technological innovation that drives new markets and increases competition, like we are seeing today with renewable energy. We should recognize that the world's leaders in researching, developing, and manufacturing clean energy products are based right here in Ohio. The world looks to Ohio for its clean energy solutions, from energy-efficient air-conditioning, to insulation, to solar panels, and including micro-grid components, electric vehicles, smart appliances, and more. Clean energy product manufacturing employs tens of thousands of Ohioans.

Mr. Chairman, in conclusion, I most respectfully urge the committee to pursue a repeal and reform bill that protects customers by empowering markets. The Ohio Manufacturers' Association stands ready to work with you.

Thank you for the opportunity to visit with you today. I am also joined by the OMA's energy technical consultant, Mr. John Seryak. Together with Kim and John, I would be pleased to respond to your questions. This concludes my testimony.

Obtaining the Public Trust: Transparent, Adaptable Policy Support for Ohio's Nuclear Power Plants

Amended Substitute House Bill 6 (H.B. 6) was passed and signed into Ohio law in July 2019. H.B. 6 represents a major rework of Ohio's electricity policy and continues to significantly affect customer costs, customer choice, and how Ohio electricity markets function.

Ohio Governor Mike DeWine has noted that support of H.B. 6 centered on preserving Ohio jobs associated with the two nuclear power plants that are the subject of the bill and lowering Ohio's emissions through these carbon-free generation assets. To meet these goals while minimizing the cost burden on ratepayers, the critical question for policymakers is how to fairly and transparently determine the financial requirements to meet these goals – that is, preserving jobs and lowering Ohio's carbon emissions.

The financial case for continuing the operation of nuclear power plants in Ohio has not been demonstrated, at least not publicly. Nevertheless, H.B. 6 established the collection of $150 million annually from customers to support Energy Harbor-owned Davis Besse and Perry nuclear power plants, amounting to $1.05 billion over seven years. The policymaking process of H.B. 6 never answered the obvious and critical question: Why $150 million?

Much has changed in the year since H.B. 6 passed. Wholesale electricity prices have plummeted; the nuclear power plants' owner has shed bad debt in bankruptcy and spent an extra $300 million on repurchasing its own stock; and a Federal Energy Regulatory Commission (FERC) ruling has cast doubt on the approximately $95 million/year capacity revenue stream for the plants. If $150 million were the appropriate subsidy at time of enactment, which is not at all clear, changes in the energy economy and its markets have certainly changed the factors that drive the plants' profits and losses.

In this challenging time, Governor DeWine said that the charge now is "those of us in public office have to work every single day to obtain the public's trust." Governor DeWine further stated that he is "a big believer in transparency" in the law.

While there is still much to debate regarding the effects of H.B. 6, this much is clear:

- Significant doubts persist as to the true financial need of the nuclear power plants.
- Ohio's law lacks transparent accountability of the $150 million collected from customers annually for the nuclear generation fund, while prohibiting standard-practice legal intervention common to electric regulation, and while lacking a mechanism to modify the cost recovered from Ohio businesses and citizens.

- A corrective opportunity exists right now to reform Ohio's energy policy.

In this memo, we describe the major changes to market conditions for the nuclear power plants, transparency concerns, and potential resolutions.

Major Changes to Market Conditions for Ohio's Nuclear Power

The reality of any market is that it is ever-changing. Demand and supply for any product or service changes from year-to-year, and innovation can disrupt a market at any time. As a result, markets value adaptability. H.B. 6's financial support for nuclear power does not have this adaptability. The $150 million collected annually from ratepayers to subsidize these plants is fixed and unchanging even as market conditions change.

Recent market condition changes include:

- Dramatic swings in wholesale energy prices – The price of wholesale electricity has changed from an average of $32/MWh in 2019 to $23/MWh thus far in 2020[1]. This market swing could result in approximately $152 million less revenue in 2020 for the two nuclear power plants.
- Energy Harbor's emergence from bankruptcy and stock buy-back – The nuclear plants' owner, Energy Harbor, recently emerged from bankruptcy. In doing so, it executed an $800 million stock buy-back program. This was $300 million more than it originally planned, crediting "visible" cash flow from H.B. 6's nuclear generation fund.
- Potentially significant revenue disruption from a FERC order – The FERC has issued an order that any power plant that receives, or is entitled to receive, a direct or indirect state subsidy will be subject to the Minimum Offer Price Rule (MOPR). In plain language, this FERC order will bar the nuclear power plants from receiving about $95 million per year in capacity revenue from the wholesale market if the state subsidy *is needed* for the plants to operate.

The above points do not tell us how much the two nuclear plants need to remain viable, nor their financial position. Instead, these points demonstrate that the nuclear power plants' financial needs, or profit, will vary significantly from year to year. In other words, $150 million per year is very likely either too much support, or too little.

Transparency Concerns

Significant transparency concerns also exist. These were raised during the H.B. 6 legislative debate. Public, transparent evidence has been presented by reputable parties questioning the nuclear plants' need for $150 million per year.

In contrast, no financial documentation has been provided by any party to demonstrate the nuclear plants' owner's argument of need. As a result, public trust is eroded. This lack of trust has been exacerbated by the $800 million stock buy-back conducted by the nuclear plants' owner Energy Harbor.

In addition to the stock buy-back, a 2019 financial analysis completed by Dr. Paul Sotkiewicz, former chief economist for the transmission grid operator, PJM, showed that following the bankruptcy of what was formerly known as FirstEnergy Solutions, the Davis-

[1] US Energy Information Administration for PJM, https://www.eia.gov/electricity/wholesale/

Besse and Perry nuclear plants will likely turn an annual profit. Dr. Sotkiewicz estimated the annual profit to be $28 million for Davis Besse and $44 million for Perry, for a combined profit of $72 million annually[2]. His estimates account for the nuclear plants' financial situation following the bankruptcy and relied on plant-specific financial filings.

The general takeaway from Dr. Sotkiewicz's 2019 analysis is that the two nuclear power plants may have excess cash flow in the post-bankruptcy era. Energy Harbor's stock buy-back supports this general conclusion.

Potential Resolutions

Ohio's policymakers have several potential reform options to ensure that the nuclear power plants' financial performance is in line with market conditions. Each would improve accountability compared to existing law, whether through the checks and balances of competitive markets, or by means of transparent government regulation.

- Market accountability – Repealing ratepayer financial support for the nuclear power plants is a viable option. Energy Harbor has standard business decisions it can take to remain fiscally solvent. This includes bankruptcy to shed bad debt (which it has done), exploring competitive markets for clean energy credits, sharing financial risk with investors in anticipation of a federal carbon market, and trimming executive pay or corporate stock buy-back programs to maintain fiscal prudence, among others. In general, nuclear plants perform better financially and environmentally when they participate in competitive markets.
- Best practice financial auditing and safeguards – Because the nuclear plants' financial need will change from year to year, a transparent financial auditing process will be required to earn the public's confidence that the right amount of financial support is being provided, and that the ratepayer financial support is being used appropriately. Such a process should allow for due process, including legal intervention of customer groups that are paying for the nuclear plants. Policymakers will need to carefully consider how to a select a technically competent and apolitical auditing entity, and construct safeguards for the use of ratepayer funds.
- Finally, there is a market for generation assets, including Ohio's two nuclear plants. If the plants' owner, Energy Harbor, is unable to improve management and operations to lower costs and improve competitiveness, or is unwilling to participate in a transparent financial audit of the plants, it should sell the nuclear generators.

Contact:
Ryan Augsburger
Vice President & Managing Director
Public Policy Services
raugsburger@ohiomfg.com
(614) 348-1227

[2] "The Market and Financial Position of Nuclear Resources in Ohio", Dr. Paul Sotkiewicz, E-Cubed Policy Associations, LLC. Table 12

172 FERC ¶ 62,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Energy Harbor LLC
Energy Harbor Generation LLC
Energy Harbor Nuclear Generation LLC
Pleasants LLC
Pleasants Corp.
Nuveen Asset Management, LLC
Avenue Capital Management II, L.P.

Docket No. EC20-61-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued August 3, 2020)

On May 4, 2020, Energy Harbor LLC (EH LLC), Energy Harbor Generation LLC (EHG), Energy Harbor Nuclear Generation LLC (EHNG), Pleasants LLC (Pleasants), Pleasants Corp., Nuveen Asset Management, LLC (Nuveen), and Avenue Capital Management II, L.P. (Avenue) (collectively, Applicants) filed an application pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)[1] requesting authorization for funds and investment accounts managed by Nuveen and Avenue to increase their voting percentage of the common stock of Energy Harbor Corp. (Energy Harbor) (Proposed Transaction). The jurisdictional facilities involved in the Proposed Transaction consist of market-based rate tariffs, rate schedules, contracts, books, records, and interconnection facilities.

Applicants explain that EH LLC owns and operates electric generating facilities and markets power in wholesale markets; EHG owns a 2,223 megawatt (MW) coal generating facility in Ohio, and Pleasants owns a 1,300 MW coal generating facility in West Virginia. EHG, Pleasants, and ENHG sell the output of their respective generating facilities to EH LLC. EH LLC, EHG, and EHNG are wholly owned subsidiaries of Energy Harbor. Pleasants is a subsidiary of Pleasants Corp, which is owned by EHG.

Applicants state that Nuveen provides investment management services. Other than its ownership in Energy Harbor, Nuveen does not own or control any electric generation or transmission facilities or any inputs to electricity production. Nuveen is an indirect subsidiary of Teachers Insurance and Annuity Association of America (TIAA), a legal reserve life insurance company in the State of New York. TIAA is affiliated with generating facilities in Ohio and California.

[1] 16 U.S.C. § 824b (2012).

Applicants state that Avenue is a wholly owned subsidiary of Avenue Capital Group, a global investment firm that is ultimately controlled by two individuals. Avenue indirectly owns a portfolio of approximately 3,008 MW of electric generation in the United States.

Applicants explain that the Board of Directors of Energy Harbor has authorized the repurchase of up to $500 million of Energy Harbor's outstanding shares of common stock, which will result in funds managed by Nuveen and Avenue increasing their interests up to 58% and 30%, respectively, of the issued and outstanding shares of common stock of Energy Harbor, of which these funds currently hold 39% and 14%, respectively.

Applicants state that the Proposed Transaction will not have an adverse effect on horizontal or vertical competition. The Proposed Transaction will not involve any change in control over any generating capacity, transmission facilities, or any upstream inputs to electricity production because Nuveen and Avenue are affiliated with the other Applicants prior to consummation of the Proposed Transaction, so no new relationships would be initiated.

Applicants explain that the Proposed Transaction will have no adverse effect on rates as both before and after the Proposed Transaction is consummated, wholesale sales of electric energy, capacity, and ancillary services by Applicants will be made pursuant to market-based rate tariffs. Further, there is no mechanism in any related reactive power rate schedule that would allow for the pass-through of any costs that might be associated with the Proposed Transaction, and no other rates or customers are implicated.

Applicants state that the Proposed Transaction will have no adverse effect on regulation because they will continue to be regulated by the Commission under the FPA and subject to state regulation to the same degree as before the Proposed Transaction.

According to Applicants, the Proposed Transaction falls within one of the "safe harbors" established by the Commission for which detailed explanation and evidentiary support to demonstrate a lack of cross-subsidization is not required. Specifically, Applicants state that the Proposed Transaction falls within the "safe harbor" for transactions that do not involve a franchised public utility with captive customers.

Applicants verify that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new

issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

The filing was noticed on May 5, 2020, with comments, protests, or interventions due on or before May 26, 2020. PJM Interconnection, L.L.C. (PJM) and the Independent Market Monitor for PJM submitted motions to intervene. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2019)).

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the

characteristics the Commission relied upon in granting market-based rate authority.[2] To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

(1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;

(3) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;

(4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

(5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicants' affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2019) shall be made;

(6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;

(7) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction; and

(8) Applicants shall notify the Commission within 10 days of the date that the disposition of jurisdictional facilities has been consummated.

[2] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2019). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2019).

Steven T. Wellner, Director
Division of Electric Power
Regulation - West