Alliance for Energy Choice

House Select Committee on Energy Policy and Oversight
House Bill 798
December 3, 2020

Chairman Hoops and members of the House Select Committee on Energy Policy and Oversight, thank you for the opportunity to provide written interested party testimony on House Bill 798 (HB 798).

The Alliance for Energy Choice is an Ohio non-profit corporation that seeks to promote fairness and competition in electric utility service. The Alliance advocates for free-market solutions that will ensure an adequate and fairly priced supply of electric power to Ohio's residents, businesses, and industries. The Alliance also advocates for policies that do not favor one supplier or one form of energy over another.

While we still firmly believe that a full repeal would be the proper and most effective manner in which to correct the myriad wrongs wrought by House Bill 6 (HB 6), this legislation mostly provides a path in the right direction to repair Ohio's broken energy policy and to restore Ohioans' trust in their government institutions and elected officials.

We applaud Chairman Hoops for this legislation. Our members believe the following provisions included in HB 798 are fair and equitable to customers, competitive market participants, and frankly, Energy Harbor:

- Delaying for one year until January 1, 2022, the further collection of the nuclear and utility scale solar subsidies by all Electric Distribution Utilities (EDUs) from their retail customers.

- Requiring upon completion of an annual financial and management audit, from 2021-2028, any amounts remaining in the nuclear generation fund and renewable generation fund, minus the remittances required to be made, will be refunded to customers annually.

- Requiring in each year, beginning in 2021 and ending in 2028, the conducting and completion of a retrospective management audit and financial audit, including a financial need assessment of the owner or operator of a qualifying nuclear resource, by independent consultants and auditors who are knowledgeable and experienced in the particular subject.

- Repealing the law that permits FirstEnergy to pool the total earned return on common equity of its three Ohio EDUs for purposes of applying it to the state's Significantly Excessive Earnings Test.

- Requiring in every year beginning not later than 2022 and ending after 2030, all EDUs with an ownership interest in a legacy generation resource to make a good faith effort to divest from their obligations.

- Repealing the decoupling mechanism created in HB 6 and setting the date after which EDUs may apply for a new decoupling mechanism for calendar year 2019 and each calendar year thereafter as no earlier than 30 days after October 22, 2019.

- Including an emergency clause in order for the bill to take immediate effect if the requisite vote threshold is achieved.

There is, however, one provision within the bill that we believe would have unintended consequences if enacted in its current form. That provision, which appears on page 8 of the bill, between lines 210-223, reads:

> That, for the purpose of ensuring that the funding for nuclear resource credits helps to maintain the economic viability of the resource at the lowest cost to consumers, payments for nuclear resource credits shall be limited to the amount necessary to increase the net income or profit margin of the resource from a negative amount to not more than zero for the annual audit period. In determining whether any resource operated with no net income or profit margin, the authority shall consider all revenue received or accrued from all sources and only reasonable and prudent expenses.
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> As used in this division, "reasonable and prudent expenses" shall include depreciation but shall not include lobbying costs, political or charitable donations, share buybacks, management bonuses, or incentive compensation.

We are supportive of virtually the entire provision, save for the inclusion of blanket depreciation as a deduction used in calculating the net profit of the nuclear resources. Specifically, we believe it is fair to include an allowance for depreciation associated with future investments made in the assets, but we do not believe it is fair to include an allowance to earn a return on past investments made in the assets. Depreciation is a non-cash accounting charge related to investments that have already been made. The owner does not incur any cash cost going forward related to this expense. However, if Energy Harbor is allowed to recover it through this bill's financial assessment mechanism, the nuclear resources would be earning a cash profit even though the calculated net income is zero.

Our fear is that not making that distinction clear within the bill will skew the calculation since Energy Harbor recently went through bankruptcy, in which the value of the two assets in question was in effect, "reset," for both tax depreciation and accounting purposes. Thus, while the nuclear resources theoretically would have been fully depreciated at this point in their useful lives, except for the depreciation associated with ongoing maintenance expenditures, their actual level of depreciation is now substantially elevated because the value of those assets, for deprecation purposes, was significantly increased during the recent bankruptcy proceeding as the company was able to shed all of the debt associated with the assets.

Therefore, if this language is not corrected to specify that only depreciation related to future investments is permitted in the calculation of net profit for the nuclear assets, and that depreciation applied to past investments is explicitly forbidden from being used in the calculation, then the outcome will yield a result that unfairly favors Energy Harbor.

Similarly, the legislation should also make clear that the net profit calculation excludes other potential inappropriate expenses that are not already listed to ensure ratepayers are not subsidizing costs unrelated to keeping the nuclear resources operational. These include, allocation of corporate overhead in excess of reasonable amounts, costs related to other facilities or businesses, and interest expenses or preferred dividends related to any financing or convertible or preferred securities incurred after the fact. These exclusions are important to ensuring that ratepayers are not paying for allocation of costs

that should be borne by other parts of Energy Harbor's business, or for a future dividend recapitalization that puts more money in the pockets of the company's shareholders.

We appreciate this opportunity to submit written interested party testimony on HB 798. As always, please do not hesitate to contact us if you have any questions or would like further information regarding this document or the Alliance for Energy Choice.

Alliance for Energy Choice

The Alliance for Energy Choice membership currently includes Calpine, Eastern Generation, The Energy Professionals of Ohio, LS Power, and Vistra Energy.