

**TESTIMONY OF ROBERT KELTER  
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HOUSE SELECT COMMITTEE ON ENERGY POLICY AND OVERSIGHT  
DECEMBER 3, 2020**

Ohio is dealing with a scandal of monumental proportion. The FBI has accused the former Speaker Larry Householder of accepting \$61 million in dark money from First Energy. And on top of that, First Energy paid the Chairman of the PUCO \$4 million at the same time that he took the position regulating the Company. Certainly, FirstEnergy's actions tainted the process and something needs to be done.

So here we are, and the question is what do we do? The first thing is let's ask the question, what did HB 6 actually do? The second question is what should we do to fix it?

In terms of question number 1, the main thing it did was bailout the nuclear plants. One could argue that it also bailed out the OVEC plants, but the Commission had already approved a bailout for those plants pre-HB 6. While the bill did some other things that we didn't agree with, the bill was all about the nuclear bailout. And just as importantly, HB 6 purported to pay for that bailout by cutting spending on energy efficiency and renewable energy.

Then question number 2 is what do we do to fix it? The focus of my testimony today is not on the nuclear bailout, but on the second half of the equation – the funding that HB 6 eliminated for energy efficiency and renewable energy. The environmental community and many consumer groups pointed out that energy efficiency actually saves all customers money on their bills. The money utilities spend on efficiency reduces the amount of money it spends on generation, and the law requires that spending to be cost-effective. That means that each dollar spent on efficiency has to reduce the spending on generation by at least a dollar or the Commission cannot approve the plan. The utilities have all provided the data and testified under oath that their programs save customers money and you've heard me testify on this before, so for today I will leave it at that.

My focus today will be on how to add some efficiency back into this bill in a simple way that takes into consideration the concerns legislators expressed during the HB 6 debate. We heard many of you say, that efficiency programs should be voluntary—and in fact would be under HB 6. We heard many of you say the efficiency programs had too much waste in them. We also heard you say the utilities profit too much from shared savings that they didn't really earn.

We don't disagree about tightening the programs to make them more productive and reducing shared savings. While we disagree that the programs should be voluntary, we can agree to disagree and find a solution that in fact does make them voluntary. But we

need action from the legislature that supports these policies, because as it stands now there is no indication the Commission will approve good voluntary programs.

Since HB 6 passed, AEP, which had been considered the leader in Ohio on efficiency, filed a voluntary plan in its latest rate case. The programs are weak and they don't provide much consumer value. In fact, they still contain the kits that several legislators complained about. Making matters worse, the Commission Staff has reviewed AEP's programs and put out a report arguing that the Commission should not approve any utility spending on voluntary programs because the legislature has sent a strong signal that it doesn't like energy efficiency. The Commission cited HB 6 for this proposition despite the legislative intent to allow voluntary programs to go forward. See attached.

So to date we have voluntary programs that are merely theoretical and don't leave anyone happy. Normally, environmental advocates would intervene in the AEP case and submit testimony that they programs should be improved, but Staff doesn't want the programs at all. And it says that because that's how it interprets the legislature's intent from HB 6.

Given what we've seen from AEP and Staff, HB 6 does not leave us where we should be or where the legislature wants us to be. The environmental community would prefer to go back to the programs we had pre HB 6, and we don't think those programs should be voluntary any more than providing electricity from power plants should be voluntary.

But we want to find a solution to this problem and this situation can be easily fixed. You can amend HB 798, or whatever bill may ultimately repeal and replace HB 6, to say the following:

- The legislature encourages the utilities to run strong voluntary *energy waste reduction programs* that eliminate kits and other programs that don't produce real savings.
- Allow the utilities to treat energy efficiency as a capital expenditure if it meets an efficiency target of .75%, and amortize the costs to lower the efficiency charges on bills.
- Conduct the review of savings by an independent third party hired by the Commission Staff paid for as part of the program, and the programs cannot include kits or other programs that don't produce real results.

We've attached language right here that you can put in the bill. This solution is not the be all and end all that the environmental community wants, but it's a reasonable policy that ELPC hopes will move us in the right direction. Without more direction from the legislature we are likely to see poor programs at best, and more likely no programs at all. HB 6 envisioned modest, voluntary programs. At an absolute minimum, that intent should be restored.

And finally, this solution will save thousands of energy efficiency jobs for workers earning \$40, \$50 or \$60 thousand per year doing skilled trade energy efficiency work. Moreover, if you take action now we can keep the efficiency industry going in a relatively seamless way without laying people off during a pandemic.

We implore you today, please take action and save energy efficiency in Ohio. Thank you and I will be happy to answer any questions.

## **LEGISLATIVE PROPOSAL**

The legislature encourages utilities to file voluntary Energy Waste Reduction Plans (EWRP) to replace the Energy Efficiency plans that ended at the end of 2020. The Commission shall approve any voluntary plan that meets the utility consumer test for cost effectiveness, as well as just and reasonable standards. The Commission may modify any voluntary plans to ensure the program provides maximum benefits to customers. Utilities shall amortize the costs of the EWRP over a period of 5-7 years approved by the Commission. Utilities may earn a return on equity for spending on their EWRP starting when they reach .75 annual savings and the Commission may increase the return on equity by a reasonable amount for savings achieved above .75 annual savings. Savings must be generated by programs in the EWRP and cannot include any capital investment already earning a return on equity. Reviews of the programs must be by independent firms hired by the Commission and paid for out of EWRP funds. Voluntary plans shall not include savings from measures not requested by customers, nor savings from measures that have a savings life less than ten years.

**PUCO Staff Report**  
**AEP Rate Case Docket 20-0585 11/18/20**

Demand Side Management

The Company has requested to include \$40,261,000 in the test year to include forecasted customer assistance and supervision expenses associated with the implementation of the DSM Plan. This amount is derived from 12-months of forecasted DSM Plan program costs in the amount of \$36.6 million and a ten percent administration fee in the amount of \$3.66 million, which is further described below. Staff rejects including the DSM Plan in base rates and has removed \$40,261,000 from the test year operating income, as shown on Schedule C-3.22.

As explained in the filing, the costs associated with the DSM Plan and administration fee would be included in the test year and incorporated into the distribution rates. However, if the Company spends less than the budgeted program costs for the year, then the difference would be credited to the EDR rider. The Company also proposed a program administration fee associated with the DSM Plan, which would allow the Company to earn 10% of the program year spend, if the spending was cost-effective at the program level and overall, using the Resource Value Test (“RVT”) test. <sup>8</sup>The RVT value can be calculated by taking the sum of the present values of both the avoided costs and non-energy benefits and dividing by the sum of the present values of both the administrative costs and incentive costs. Finally, for eligible EE resources, the Company plans to bid those resources into PJM Interconnection, L.L.C.’s (PJM) base residual auction (BRA) and use 80% of the revenues to increase the DSM plan budget or offset expenses and retain the other 20%.

<sup>8</sup> Direct Testimony of Jon F. Williams, Exhibit JFW-1, VI., Cost-Benefit Analysis, Case No. 20-585-EL-AIR (June 15, 2020).

Staff recommends that the Commission deny the Company’s request to include the DSM plan costs on Schedule C-3.22, as proposed, and recommends an adjustment to decrease the test year expenses by \$40,261,000 to eliminate DSM Plan expenses. While Staff is generally supportive of energy efficiency and demand side management programs that furthers state policies as defined in R.C. 4928.02, there are concerns about the proposal in the current application. Specifically, Staff believes that the framework for the DSM plan puts unnecessary risk on rate payers for several reasons, which include, but are not limited to the following:

1. The Company would be guaranteed recovery of these expenses through distribution rates until the next rate case. However, the ability to credit (refund) customers for reduced expenses, (i.e. if the Company is under budget or chooses to eliminate programs all together), is contingent upon the availability of the EDR.
2. There is current legislative uncertainty surrounding the potential repeal of H.B. 6, which seems to make it impractical to include an EE/PDR investment of this magnitude in base rates, at this time. Regardless of the cost recovery structure, Staff recommends that the Commission eliminate the proposed \$3.66 million included for the administration fee. The Commission has recently provided guidance that shared savings mechanisms are not necessary because there’s no statutory basis and there is no need to incentivize the Company to implement these programs to ensure reliability.<sup>9</sup> Further, the DSM plan is projected to achieve an RVT value (the basis for the proposed administration fee) of 3.0 – meaning that the benefits are forecasted to be three times greater than the costs – which seems to

indicate that it is relatively easy for the Company to achieve cost-effectiveness, without additional financial motivation.

In Staff's opinion, the same Entry addressing shared savings mechanisms also suggests that the retail market should be offering EE/DSM programs, so that customers can choose their desired products and services. Alternatively, a utility could offer programs for customers who elect to stay on the standard service offer, for which the associated costs could be recovered on a by-passable basis. The Company has not demonstrated that the retail market is unable to offer the types of products and services include in the current Application.

Finally, the Company has not demonstrated enough rationale to justify retaining twenty percent of PJM revenues related to bidding DSM plan resources into PJM's base residual auction. The Company stated that retaining these revenues would be necessary to offset risks associated with participating in the market, however, the Company has not incurred any financial penalties for non-performance, to date.<sup>10</sup>