

**BEFORE THE SELECT COMMITTEE ON ENERGY POLICY & OVERSIGHT
OF THE OHIO HOUSE OF REPRESENTATIVES
HOUSE BILL 798**

**INTERESTED PARTY TESTIMONY
THE PJM POWER PROVIDERS GROUP¹**

December 3, 2020

Chairman Hoops, Vice-Chair Abrams, Ranking Member Leland, and members of the House Select Committee on Energy Policy and Oversight. Thank you for the opportunity to submit written testimony on H.B. 798. The PJM Power Providers Group (“P3”) supports a repeal of the subsidies enacted in H.B. 6. The alleged corruption behind H.B. 6 has challenged the confidence of competitive power suppliers to invest in Ohio, and the Legislature has become the focal point of how Ohio chooses to move forward – as a state that ignores misconduct or a state that restores integrity in the policies that brought so many companies here in the first place. P3 was optimistic that the Legislature would do the right thing – restore public trust by repealing H.B. 6 and removing policies enacted through actions questioned as criminal and take a step back to review the policies this legislative body finds to be most contentious.

However, given the limited time remaining until consumers in Ohio will be charged to support the flawed policies of H.B. 6, it is imperative that the General Assembly act quickly. There is little time left for the Legislature to consider additional provisions and the process must move forward. Passing H.B. 798 to prevent charges on consumers from going into effective is an appropriate step, provided that the Legislature commits to further open discussions that focus on additional reforms to H.B. 6 and works to bring a fully functional competitive electricity market to Ohio.

H.B. 798 allows a needed pause to consider the known and unknown negative consequences to some of the policies enacted in H.B. 6. H.B. 798 addresses the immediate concern related to consumers being charged in January 2021, but does not address the long-term challenge of maintaining the benefits of competitive markets when consumers are heavily subsidizing certain market participants.

¹ P3 is a non-profit organization made up of power providers whose mission it is to promote properly designed and well-functioning competitive wholesale electricity markets in the 13-state region and the District of Columbia served by PJM Interconnection, L.L.C. (“PJM”). Combined, P3 members own more than 67,000 megawatts of generation assets in PJM. Several P3 members companies are active suppliers in the state of Ohio, either as generation suppliers or retail electric choice suppliers. The comments contained in this filing represent the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

Moreover, P3 is concerned about the effectiveness of the ill-defined audit provisions contained in H.B. 798. Ensuring integrity in determining financial need is very difficult. P3 urges the Legislature to soberly consider the enormous challenge of creating a meaningful evaluation of the need for subsidies for nuclear facilities. A determination of need based on a flawed audit process should not be allowed to provide a false sense of comfort that a subsidy is justified. P3 has attached a list of concerns associated with auditing a power plant that the Committee should address prior to May of 2021 when the auditing process would commence under H.B. 798.

In conclusion, P3 urges the Committee to support H.B. 798 with an understanding that significant work still needs to be done. H.B. 6 was passed under a cloud of corruption. H.B. 798 does not fix the underlying problems associated with H.B. 6, it merely postpones the consideration of those problems until another day. P3 looks forward to constructively working with the Legislature to create that permanent fix to the problems created by H.B. 6.

The Problems with “Auditing” Nuclear Facilities in Ohio’s Competitive Market

Auditing the profitability of a nuclear plant to determine whether it should be awarded a state subsidy in order to sustain operations is a nearly impossible task that should be approached with great trepidation and aforethought. While an audit of some kind is preferable to a no strings attached subsidy, lawmakers should not feel confident that any audit can protect the interests of consumers. If an audit is the preferred path forward among legislators, the following non-exhaustive list of problems should be considered and addressed:

The incentive problem. Nuclear plant owners are motivated to maximize the value of their assets for the benefit of their owners. If given the opportunity to earn a subsidy, they will naturally seek as large a subsidy as possible. Instead of being motivated to improve operations and lower costs, owners will be motivated to seek as high a subsidy as policymakers will grant them. Investors are not in charge of protecting the public interest – they are mandated to maximize shareholder value. They will do so if given the opportunity.

The need problem. The question of need is in the eyes of the beholder and any audit provision would have to precisely evaluate what constitutes “need.” Does a unit owner who “breaks even” have a “need” for a subsidy? Does a unit owner “need” a subsidy if it earns enough to fund ongoing expenses? Is a unit owner that has maintenance issues and loses money from an outage have a “need” for a subsidy? Does a unit owner that had one unprofitable year over a five-year period have a “need” for a subsidy? Need is a subjective concept as it relates to nuclear facilities and Ohio should specifically define what it considers “need” as the unit owners will be incented to define it as broadly as possible.

The cost verification problem. To evaluate need, an open and transparent evaluation of verifiable costs is necessary. Are staffing levels appropriate? Is fuel being obtained in the most economic manner? Are salaries and bonuses consistent with industry standards? Is too much or too little maintenance being done on the assets? Questions like these and so many others are asked in a typical utility rate case and would need to be evaluated to determine if a subsidy is necessary to sustain operations. The process matters and subsidy seekers should be required to verify its costs to auditors and the public in general in order to have confidence that all costs are prudently incurred.

The rate of return problem. Critical to evaluating the financial need of any plant is the question of an appropriate rate of return for the owners. Lawmakers should understand that the any subsidy will be asked to fund the nuclear plant owner's profit expectations unless legislation is explicitly clear that profit is limited to financial viability. That profit expectation should be limited to return on new capital expenditures needed to keep the plant in operation. In the typical utility rate case, significant expert testimony is provided to develop a record upon which the PUCO can determine an appropriate rate of return for regulated facilities. Nuclear plants are de-regulated, but their owners and future owners (following a potential sale) will have expectations. If these plants are subsidized, auditors will have to answer the difficult question of how much, if any, return on investment the owners should be making.

The revenue projection problem. Inevitably, auditors will be called upon to project future energy revenues that plants are likely to garner. In PJM, electricity prices are largely tied to the price of natural gas which can fluctuate with supply and demand like any commodity. Revenue projections are subjective as well and should be subject to challenge and debate in order to assess the veracity. Again, this question of future revenue projections should be addressed in an open and transparent process similar to a typical utility rate case and should be managed similarly for nuclear subsidies.

The timing problem. Energy markets fluctuate. It is conceivable that a plant could be in the red one year, but in the black for the next three. After the fact audits will be of little consolation in years in which plants owner pocket significant profits from the market in years in which the plants are receiving subsidies. Future downward adjustments that seek to correct the overpayment will face the hostage problem described more fully below.

The auditor problem. Who conducts the audit is a critical question that must be answered in any legislation. The PUCO no longer conducts generation rate cases and would need to develop the expertise necessary to appropriately consider whether a subsidy is necessary to sustain the operation of a nuclear plant. Moreover, the auditor would effectively be making a decision on how much Ohio consumers would be "taxed" in order to support a subsidy which could have other implications the Legislature should consider.

The hostage problem. Ohio has no leverage to stop a nuclear plant owner from closing or threatening to close. As long as the units are not need for reliability, the unit owner has the sole authority to keep the unit operational or to shutter the facility. A unit owner can always threaten to close a facility if its subsidy demands are not met and there is virtually nothing Ohio can do to remove this leverage.

The New Jersey Problem. Ohio can learn from New Jersey which required that the New Jersey Board of Public Utilities (“BPU” or “Board”) establish a “need” for a subsidy before it was awarded. The BPU conducted such a proceeding and four independent experts, including the Board’s own consultant, concluded that the plants in question did not require a subsidy to sustain operations. Despite this overwhelming evidence, the unit owners, two days prior to the deadline for the BPU’s decision, announced that the plants would be closed if they did not receive a \$300 million subsidy.² One New Jersey BPU Commissioner commented, “the Board is being directed to pay ransom, and the hostages are the citizens of New Jersey,” before voting to approve the subsidy.³

² <https://www.njspotlight.com/2019/04/19-04-16-critics-slam-psegs-notice-of-nuclear-shutdown-on-eve-of-subsidy-decision/>

³ <https://newjerseyglobe.com/legislature/bpu-passes-approves-nuclear-subsidy-in-4-1-vote/>