



Chair Wilson and members of the Senate Energy and Public Utilities Committee. On behalf of the Ohio Independent Power Producers (OIPP), my name is Tim Eves, VP NTE Ohio. Thank you for the opportunity to testify in opposition to Sub. H.B. 6.

OIPP members develop, construct and operate new combined cycle natural gas-fired power plants, representing billions of dollars of new private investment in Ohio and thousands of megawatts of new, efficient and reliable energy. These projects are entirely driven by private investment, not ratepayer guarantees, with project risk on the investors, not captive ratepayers. As detailed in the attached map, there are nearly one dozen new, efficient and reliable natural gas combined-cycle power plants in operation, under construction or in development across all corners of Ohio, representing approximately \$11 billion in private investment, 11,137 MW of clean, reliable energy, and more than 14,000 construction and related jobs. The infrastructure improvements brought by these new facilities support the growth of new and diverse industries also locating in Ohio.

The members of OIPP oppose directing subsidies to Ohio's two nuclear power plants. Fundamentally, the legislation is an anti-competitive corporate bailout and ask this Committee to reject H.B. 6.

Is the Subsidy Needed

On June 4, 2019, this Committee heard testimony from Dr. Paul Sotkiewicz regarding the profitability of the Davis-Besse and Perry facilities. His testimony, utilizing publicly available data indicated that the two power plants are in fact profitable and would therefore receive a windfall payment if H.B. 6 is enacted.

FirstEnergy Solutions, in their advocacy for H.B. 6, has provided a far gloomier outlook for the two power plants.

While, one might question the wisdom of investing in facilities that even the owners say can't generate a profit, this Committee is now presented with a fundamental question: is the subsidy even needed?

That question begets additional questions. If the subsidy is in fact needed, how much is needed? How long is the subsidy needed? All of these questions remain unanswered. This Committee should ask that FirstEnergy Solutions provide detailed financial data and ask a neutral third party conduct a thorough review to determine if a need exists and if so, how much is needed.

Market Effects from the Subsidy

Injecting this subsidy into the market will distort energy prices, resulting in higher costs to consumers, will create an unfair market advantage for one company, and will discourage

future investment in new power plant projects, which ultimately leads to higher costs and more reliance on aging and higher emission power plants.

In PJM's testimony to the House Energy and Natural Resources Committee on April 9, 2019, PJM made clear the market effect of subsidies saying "While we are neither proponents nor opponents of any bill this Committee evaluates, what is clear not only in this State but across the PJM footprint is that efforts to subsidize less competitive plants will result in higher power prices for Ohioans. Such actions have the potential to roll back the progress and stability that the markets have facilitated. Such actions could prevent the building of more efficient and cost effective plants, including cleaner technologies like solar and wind. Such actions, according to the independent market monitor who oversees PJM's market operations, could result in an increase in costs upwards of \$3.8 billion across the PJM footprint."

For power plants or projects in development, this legislation is devastating. For example, a project currently seeking financing to commence construction faces immense competition to attract investors. If H.B. 6 passes, investors, who are potentially committing millions of dollars, may view Ohio as closed for business to private development. That means fewer new power plants constructed in Ohio.

Energy Exporting

Proponents of this legislation focus on positioning Ohio as an "energy exporter." During PJM's testimony to the House Energy and Natural Resources Committee on April 9, 2019, PJM testified that nearly 24% of Ohio's energy was imported. However, PJM noted that this was not due to a lack of capacity in Ohio. Instead, importing energy was a result of lower cost generation servicing Ohioans. This is a feature of PJM, not a problem.

Ohio's current competitive market is working and attracting new private investment in combined cycle natural gas-fired power plants, which are more efficient and generate energy at lower prices. Having more low cost energy produced in Ohio increases Ohio's potential to export power. H.B. 6 does nothing to further that stated goal. Injecting a subsidy, like the one contained in H.B. 6, into Ohio's competitive market could stifle private investment and slow development of newer, cheaper, and cleaner generation sources.

Reduced Emissions due to Natural Gas-Fired Power Plants

Ohio's emissions are already falling. Natural gas-fired power plants are leading the way in reducing emissions in Ohio. Not only do the combined cycle plants in the OIPP fleet emit drastically lower emissions than similar sized coal-fired power plants, they enable the use of more renewable energy sources. The U.S. Energy Information Agency attributes the majority of carbon emission reductions in the electric power sector from 2005 to 2017 to natural gas generation replacing coal power.¹ The National Bureau of Economic Research found that a 1 percent increase in "fast-reacting fossil generation" (combined cycle natural gas) can be

¹ <https://www.eia.gov/environment/emissions/carbon/>

associated with a 0.88 percent increase in renewable generation.² In other words, increasing combined-cycle natural gas generation facilitates and enabling the installation and use of renewable generation results in fewer emissions from energy generation.

According to the Ohio EPA, in comments filed on October 30, 2018 with the U.S. EPA, “Ohio’s generation mix is being positively influenced by shale gas, renewables and energy efficiency which is keeping costs low, as well as reducing emissions.” In those same comments, the Ohio EPA also noted that carbon dioxide emissions from electric generation by 38% since 2005.³

If reducing carbon is a goal for Ohio’s energy policy, then Ohio is already well on its way towards achieving that result and H.B. 6 is unneeded.

PJM Analysis

In response to requests from both the Pennsylvania Public Utility Commission and the Ohio Consumers’ Counsel, PJM studied the impacts on costs and emissions from potential nuclear power plant retirements in Pennsylvania and Ohio.

The analysis showed that if the nuclear power plants in Ohio and Pennsylvania retire as scheduled and new natural gas-fired power plants continue entering commercial operation the wholesale energy market is projected to produce \$1.6 billion in annual savings by 2023.

Proponents of H.B. 6 focused on another scenario in the analysis, where Ohio’s two nuclear power plants remained in operation. PJM projected Ohioans would save an additional \$95 million in 2023. However, that decrease does not factor in the price of H.B. 6’s subsidies, which at \$150-190 million would exceed any projected savings.

In other words, H.B. 6 increases costs to Ohioans.

Lack of Auditing

H.B. 6 contains structural flaws as well. For example, the legislation has no actual independent audit of the facilities receiving the subsidy, only an audit of the Ohio Clean Air Program. While we believe strongly that the legislation should be rejected, if the Committee decides to move forward, we suggest an amendment that provides for auditing of the actual facilities. Perhaps a process conducted by the PUCO would provide the oversight needed to ensure that Ohio ratepayers are providing only a subsidy

Subsidies for OVEC

² “Bridging the Gap: Do Fast Reacting Fossil Technologies Facilitate Renewable Energy Diffusion?” <https://www.nber.org/papers/w22454.pdf>

³ Docket ID No. EPA-HQ-OAR-2017-0355; Ohio EPA Comments Proposed CAA Section 111(d)CO2 for EGUs

Our testimony now turns to the other subsidy in H.B. 6: cost recovery for the 60+ year old coal plants in Ohio and Indiana owned by the Ohio Valley Electric Corporation (“OVEC”).

We have been here before. In the previous General Assembly, two bills, H.B. 239 and S.B. 155, proposed to give OVEC out-of-market subsidies by imposing a non-bypassable rider on ratepayers. A diverse set of stakeholders opposed this legislation, debunking a variety of utility claims and highlighting the significant costs associated with OVEC as a result of bad decision-making by its owners. The legislation rightfully went nowhere.

This General Assembly, however, appears to have caught the subsidy contagion. In addition to bailing out uncompetitive nuclear facilities, H.B. 6 now proposes to further undermine the competitive market and private investment by subsidizing aging coal plants (including a plant located in Indiana).

Codifying cost recovery for OVEC for “national security generation resource” ignores the history of OVEC – notably that the closure of the Piketon Uranium Enrichment Facility ended any connection to national security. OVEC sells power on the open market like any other power plant and deserves no special treatment or subsidy.

Background

OVEC was organized in 1952 and began operations in 1955. OVEC was formed by investor-owned utilities furnishing electric service in the Ohio River Valley area and their parent holding companies for the purpose of providing the large electric power requirements projected for the uranium enrichment facilities then under construction by the Atomic Energy Commission (“AEC”) near Portsmouth, Ohio. From 1955 to 2003, OVEC had a power purchase agreement (“PPA”) with AEC. The arrangement terminated in 2003, and the shareholders of OVEC elected to sell generation at cost under the Inter-Company Power Agreement.⁴ In 2011, OVEC owners chose to reinvest in the plant, taking on a large amount of debt that is contributing heavily to OVEC’s lack of profitability. OVEC holds over \$1.1 billion in debt.

Lack of Meaningful Prudency Review

The legislation states that only prudently incurred costs will be passed to consumers and that these costs are subject to the prudency review by the Public Utilities Commission of Ohio (“PUCO”). However, the legislation fails to address a critical underlying issue with the OVEC costs. Specifically, *any* cost that is defined in the ICPA is *presumed to be prudent*. The ICPA defines a wide variety of costs, **including deferrals, to pensions and other post-retirement**

⁴ Supporters of the OVEC subsidy often point to the complex nature of the Inter-Company Power Agreement as a justification for the subsidy. The legislature should not bailout companies simply because they agreed to a poorly constructed contract. Moreover, a review of the contract reveals how parties to the agreement can leave the agreement. We would be happy to provide a copy of the Inter-Company Power Agreement to Committee members upon request.

benefits⁵ for Indiana workers, and decommissioning and environmental closure/restoration costs. The PUCO will have no authority to review the prudence of these costs, which will be most of the costs passed on to ratepayers, as such disallowance of costs through the power agreement may not be jurisdictional for the PUCO because the power supply agreement is a Federal Energy Regulatory Commission-approved contract.

Meaningless Cost Caps

The legislation caps the amount of recovery that can be collected by the investor-owned utilities (“IOUs”) per year but defers the under-recoveries as deferred regulatory assets – meaning that the timeframe for recovering costs can extend past 2030.

Disincentive to Divest

The bill recites it is the state policy to “support” the divestiture of the OVEC obligations. The legislation provides no detail how divestiture will be supported. In fact, by guaranteeing the full cost recovery of the plants from Ohio ratepayers, the bill actually creates a disincentive for the utilities to divest.

Subsidizing OVEC’s Massive Debt

This legislation is a bailout for OVEC’s debt obligations. OVEC does not require a subsidy for operating expenses. It needs a bailout for its massive debt load. In 2003, the shareholders of OVEC, including the IOUs, elected to continue operating the facilities and sell power in the competitive market. In 2011, OVEC owners chose to reinvest in the plant, taking on a large amount of debt that is contributing heavily to OVEC’s lack of profitability. Today, OVEC holds more than \$1.1 billion in debt.⁶ The OVEC facilities are over-leveraged and deep in debt—this is what the legislation will ultimately subsidize.

Most of this debt is from after when the OVEC owners, including the Ohio investor owned utilities, made the decision to continue to operate OVEC, after the 50 year contract with DOE. In 2017 alone, OVEC had \$248 million of debt maturities, and in 2019 OVEC has debt maturities of \$179 million. The interest payment alone to this debt is significant -- \$73 million in 2016. So when Ohio ratepayers have to pay the difference between the cost of power that an Ohio utility buys from OVEC under the ICPA and the revenues from the sale of that power into the market, part of the difference is because of OVEC’s large debt burden

FirstEnergy Solutions’ Bankruptcy Makes OVEC More Expensive for Ratepayers

⁵ According to the 2018 OVEC Consolidated Financials, pensions and other post-retirement benefits were underfunded by over \$43 million. See, OVEC 2018 Consolidated Financial Statements, available at <https://www.ovec.com/FinancialStatements/2018-ConsolidatedFinancials.pdf>

⁶ See, OVEC 2018 Consolidated Financial Statements, available at <https://www.ovec.com/FinancialStatements/2018-ConsolidatedFinancials.pdf>

OVEC is saddled with massive debt over \$1 billion. Much of the debt is associated with additional capital expenditures after the Sponsoring Companies made the business decision to keep the OVEC facilities open to sell in the market at the end of the 50 year contracts with the federal government. Many of the costs passed to Ohio ratepayers under this legislation are to pay for this debt burden and related interest costs.

However, public filings by the IOUs indicate that Ohio ratepayers could face even higher OVEC debt costs as a result of the FirstEnergy Solutions (“FES”) bankruptcy. For example, an AEP SEC 10-K filing notes that the announcement of a potential FES bankruptcy led to a downgrade of OVEC’s rating by Moody’s.⁷ AEP further states:

If OVEC does not have sufficient funds to honor its payment obligations, there is risk that [AEP] *may need to make payments in addition to their power participation ratio payments*. Further, if *OVEC’s indebtedness is accelerated* for any reason, there is risk that [AEP] may be required to pay some or all of such accelerated indebtedness in amounts equal to their aggregate power participation ratio of 43.47%. Also, as a result of the Moody’s and Fitch actions, *OVEC’s ability to access capital markets on terms as favorable as previously may diminish and its financing costs may rise*.⁸

Emphasis added.

Similarly, Duke Energy, in its 2016 Annual Report noted that “[d]eterioration in the credit quality or bankruptcy of one or more parties to the ICPA could increase the costs of OVEC.”⁹

The substitute bill will allow such increased costs or other costs related to FES OVEC debt and contractual obligations to be passed on to the customers – Ohio ratepayers – due to FES’ bankruptcy.

Ohio’s competitive market is working. Our state is seeing new private investment in more efficient and cheaper sources of power. Ohio residents and businesses are seeing the benefits of this without a high-priced subsidy for two uneconomic nuclear facilities. H.B. 6 could be a staggering step backwards.

The Ohio Independent Power Producers appreciate the interest that this Committee has shown in Ohio’s various sources of generation and offer an open invitation to tour one of our revolutionary, clean, efficient, and competitive facilities located throughout the state. While several members have already had the opportunity, we welcome any member who is interested to see firsthand this technology at work.

⁷ AEP 2016 SEC Form 10-K.

⁸ Id.

⁹ Duke Energy Ohio, Inc. 2016 Annual Report, pgs. 38-39.

Erosion of the Ohio Power Siting Board Process

An amendment added by the House to H.B. 6 also concerns our members. The provision creates a local referendum for citizens of townships for Ohio Power Siting Board (OPSB) certificates granted to utility scale wind farms. While this applies only to wind farms, OIPP members find any erosion of the OPSB process concerning. The OPSB is staffed with capable experts who apply Ohio's rules and regulations for siting of large-scale generation facilities in a manner that is both demanding and fair. Our members were drawn to Ohio in part because of the state's business friendly regulatory environment. This includes the OPSB, which provides clear, uniform rules that must be followed in order to receive a certificate. This includes ample opportunity for local input on potential projects.

Conclusion

We urge the General Assembly not to pass legislation that will impact ratepayers and the competitive market for the next decade. The question of need for the nuclear power plants remains unanswered. The OVEC facilities are not at risk of shutting down, nor are they essential for grid reliability.

We ask the Senate Energy and Public Utilities Committee to oppose H.B. 6 and preserve Ohio's competitive market and the economic investment it brings.