



**Ohio Senate Energy and Public Utilities Committee  
Opponent Testimony House Bill 6  
Neil Waggoner - Sierra Club**

Chairman Wilson, Ranking Member Williams, and members of the Senate Energy and Public Utilities Committee. My name is Neil Waggoner and I am the Ohio Campaign Representative for the Sierra Club's Beyond Coal Campaign. Thank you for the opportunity to provide opposition testimony on House Bill 6.

To begin, the Sierra Club continues to welcome a real conversation around the impacts of carbon pollution, the need to reduce those emissions, and how that fact should inform a comprehensive energy agenda for Ohio. Carbon pollution is the main contributor to climate disruption, making extreme weather worse--including more severe floods, widespread wildfires and record drought. It is also linked to life-threatening air pollution--such as the smog that can trigger asthma attacks. In 2017, Ohio was one of the nation's top ten largest contributors to carbon pollution, so this discussion is incredibly important.<sup>1</sup>

While Sierra Club appreciates the deep engagement here in the Senate, we remain in strong opposition to HB 6 and do not feel the changes made in the House materially alter or improve the bill from the as-introduced version. Those changes have made the bill substantively worse from a consumer, environmental, and health perspective. Despite public statements that HB 6 represents a "clean air program," the policies developed within the bill do not represent a serious attempt to actually lower carbon emissions. If HB 6 were implemented, carbon emissions in Ohio would likely increase.

An area of particular concern for Sierra Club and the Beyond Coal Campaign is the provision of HB 6 that extends the bailout of the OVEC coal-burning plants--Kyger Creek in Ohio and Clifty Creek in Indiana. These Eisenhower-era plants have proven a terrible investment for Ohio electric customers and extending that bailout till 2030 is the exact opposite of sound and rational policy making.

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<sup>1</sup> [US EPA 2017 Greenhouse Gas Emissions from Point Sources.](#)

Sierra Club has been engaged with and opposed cost recovery attempts for the OVEC facilities not just here in Ohio but across multiple states for a number of years and based on that history, we offer four main reasons why the Senate should reject the OVEC bailout included in HB 6.

First, HB 6 does more than extend the duration of the OVEC bailout - it fundamentally alters the nature of the OVEC bailout and decreases regulatory oversight of it. When the PUCO originally rejected Duke's and AEP's attempts to secure customer-funded bailouts, the Commission created criteria for when it would consider allowing a bailout.<sup>2</sup> Later, when PUCO approved a followup AEP OVEC bailout request, it was part of a larger settlement that included shareholder funds to attempt to rein in increasing OVEC costs. Finally, under the current approved bailouts, AEP, Duke, and DP&L will have to once again prove to the Commission the need for bailout funds in the early 2020s -- while HB 6 would essentially give the OVEC coal plants a blank check until 2030. Overall, HB 6 decreases oversight.

Second, these plants have been losing money for years--since at least 2010, to be specific--and projections consistently show they will continue to lose money. The OVEC owners see these plants as losing assets.<sup>3</sup> In its recent Electric Security Plan case, Duke's own expert forecast significant OVEC losses. FirstEnergy Solutions filed to end its participation in the OVEC contract very soon after filing for bankruptcy, arguing in court proceedings that its approximate 5% share of OVEC would cost hundreds of millions of dollars over the life of the current contract. There is simply no doubt that bailing these plants out simply increases customers' costs with no benefit to them.

Third, there is no "national security" aspect to these plants. The Department of Energy terminated its contract with the OVEC plants in the early 2000s and the two plants became full merchant generating plants immediately thereafter. All of the obligations of the federal government to OVEC were "settled at that time."<sup>4</sup> Notably, this move to merchant generation included millions in federal government assistance to ease that transition. PUCO Chairman Sam Randazzo laid out this transition well in testimony he offered in his former role at the Industrial Energy Users opposing a previous attempt in 2017 to pass legislation to bail these plants out.<sup>5</sup>

Fourth, despite being ordered to do so by the PUCO, AEP, Duke, and DP&L have made no meaningful attempts to divest themselves from OVEC. This lack of effort is especially noteworthy in DP&L's Feb 2018 status report on divestment attempts where the company described the entirety of their efforts as follows: "In 2017, DP&L sent a formal letter to each OVEC sponsor stating that DP&L was interested in selling its share of OVEC and to please

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<sup>2</sup> [PUCO Case 13-2385-EL-SSO, opinion and order, p. 25](#)

<sup>3</sup> [Direct Testimony of Jeremy Fisher on Behalf of Sierra Club, PUCO Docket 17-032-EL-AIR, filed June 25, 2018 \("Fisher Testimony"\)](#).

<sup>4</sup> Fisher Testimony, p. 31 (citing OVEC 2017 FERC Form 1, p. 123.2).

<sup>5</sup> [IEU Opposition Testimony SB 155 132nd GA](#)

contact the Company if they are interested in acquiring DP&L's OVEC interest. DP&L did not receive any acceptable offers in response.”<sup>6</sup>

Like businesses across Ohio do every day, the OVEC owners should take responsibility for their business decisions, instead of seeking ways to force their losses on Ohio customers.

There are a myriad of ways HB 6 can and must be improved if it is to become law. A good first step would be for the Senate to remove the extension of the OVEC bailout. The bill would be further improved by the legislature going a step further and ending AEP's, Duke's, and DP&L's currently approved cost recovery for OVEC, thus ending the incentive for the utilities to not take action on divestment and instead force their respective shareholders--and not their captive regulated customers--to cover the costs of their foolish business decisions made over the last two decades. The OVEC Inter-Company Power Agreement has been renegotiated multiple times over the years and with the right motivation, the Ohio utilities will take action to do that again.

To conclude, there is an opportunity in front of the legislature. Ohio has not had a comprehensive, consistent energy policy for years and starting with ideas to reduce carbon and increase clean energy is a good first step. However, if we are serious about the need to reduce carbon emissions and increase clean energy, HB 6 is not the answer. It bails out costly nuclear plants and extends the indefensible bailout of Eisenhower era coal plants--one not even in Ohio --at the expense of low-cost, truly carbon-free energy like wind, solar and energy efficiency.

If the legislature eliminates ongoing successful policy mechanisms that support clean energy and reduce energy waste, Ohio's carbon emissions will go up -- not down. Ohio should therefore maintain affordable clean energy and energy efficiency goals as part of an effort to continue to decrease carbon emissions.

For these reasons, Sierra Club stands with the numerous opponents - a wide swath of energy, consumer, business, environmental, and every day Ohioans - and urges the Committee to vote NO on the current version of HB 6. Instead, we encourage the Committee to pursue a true comprehensive energy agenda with a focus on how to increase investment in energy efficiency, expand clean energy development, lower carbon emissions, and to also support communities disproportionately impacted by the transition away from, and retirement of, dirty energy generation.

I am happy to answer any questions or provide followup information as would be helpful to you.

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<sup>6</sup> [PUCO case 16-0395-el-sso, Annual Report on OVEC electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company.](#)