OHIO SENATE ENERGY & PUBLIC UTILITIES COMMITTEE
PROPONENT TESTIMONY OF JUDITH LAGANO
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SENATE BILL 346
NOVEMBER 10, 2020

Chairman Wilson, Vice Chairman McColley, Ranking Member Williams and members of the Senate Energy & Public Utilities Committee, thank you for the opportunity to testify as a proponent of Senate Bill 346 ("SB 346"). My name is Judith Lagano, I am Senior Vice President for Asset Management at NRG Energy, Inc. ("NRG") and have more than 25 years of experience overseeing power generation assets.

NRG is a leading integrated power company built on diverse generation assets and dynamic retail businesses. A Fortune 500 company, NRG brings the power of energy to consumers by producing, selling and delivering electricity and related products and services – including carbon free energy choices – to consumers in competitive markets across the U.S. and Canada. NRG has 23,000 MW of electric power generation including nuclear, coal, gas, oil and solar facilities. Our retail brands serve more than 3.7 million customers – residential, commercial and industrial - across nineteen states, including Ohio, plus the District of Columbia and two Canadian provinces. NRG's retail companies offer customers a range of products including demand response and energy efficiency, 100% renewable energy, energy plans bundled with energy efficiency technology, such as Nest thermostats, as well as loyalty reward programs to residential natural gas and electricity customers. This summer, we announced the acquisition of Direct Energy, a North American subsidiary of Centrica PLC for $3.625 billion in cash. When it closes, that transaction builds on NRG's status as a growing, customer-driven integrated energy provider, adding more than three million retail customers across all 50 states and Canada, including customers right here in Ohio.

Ohio has a long history of supporting open and competitive electricity markets, starting with the adoption in 1999 of energy competition (SB 3, 123rd G.A.). The Ohio General Assembly adopted a pro-market policy to, among other things, ensure diversity of electricity supplies and suppliers, by giving customers choices over the selection of those supplies and suppliers. The General Assembly also rightly saw the value of competition to encourage innovation and market access for cost-effective supply and demand retail electric service. The General Assembly aimed to ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies. Last summer the General Assembly passed House Bill 6, based on misleading information, and began to unravel the course of Ohio's competitive energy advantages. The passage of SB 346 will correct these inadvertent errors.

NRG supports passage of SB 346 for three reasons.

First, to restore the public trust and confidence in the legislative process.

Second, FirstEnergy told legislators during the HB 6 debate that without a subsidy, its affiliate's nuclear generation would close because it was unprofitable. That affiliate, FirstEnergy Solutions, filed a Chapter 11 bankruptcy. At the end of that bankruptcy process, the new company, now known as Energy Harbor, has a stronger balance sheet, less debt, and is forecasting robust cash flow and profits. In fact, Energy Harbor has revealed that the company's profits and cash flow are strong *even without* the HB 6 subsidies as depicted in its May 10, 2020, 2020-2022 Financial Outlook. Since we downloaded it earlier this year from Energy Harbor's website, the company has now made its financial presentations off-limits to the public.[1] Energy Harbor expects to make about $515 million in profit this year, $585 million next year, and $645 million in 2022.[2] What does that mean? Even *without* the approximately $150 million in annual HB 6 nuclear subsidies, Energy Harbor would still be turning a substantial profit. To use a different metric, the company has provided Wall Street with their primary financial metrics including estimated free cash flow generation of approximately $4/share *without* the HB 6 subsidies, which increases to approximately $6/share, a ~50% increase when normalizing the impact of the HB 6 subsidy for a full year. These figures show Energy Harbor has emerged from bankruptcy highly profitable having shed the bloated cost structure and pervasive inefficiency within the traditional regulated model. Every dollar of the ~$150MM/year it collects from here on in simply fills Energy Harbor's coffers at the expense of Ohio's customers.

Additionally, Energy Harbor disclosed in May 2020 that it authorized an increase to its share buyback program from $500 million to $800 million dollars (a significant percentage of its overall equity valuation) referencing a market dislocation while clean air emissions credits have become a source of visible cash flow. The

[1] For example, the data that follows comes from Energy Harbor's May 10, 2020 2020-2022 Financial Outlook, which is no longer publicly available on energyharbor.com, but is only available to shareholders who submit a registration form to the company, and which the company approves for access. ("Energy Harbor Financial Outlook").
[2] *Id.*

dots are all there for Ohio lawmakers to connect: Energy Harbor has parlayed FES's distress call into a subsidized cash flow generator using Ohio ratepayer's pocketbooks to enrich its executives and Wall Street.

Third, and finally, HB 6 contains other provisions that are not often commented upon, but which are also bad policy. The law's "decoupling" provision pays utilities for energy that they may not deliver. Decoupling will allow FirstEnergy to charge customers for the difference between current year revenues and revenue earned in 2018 for every year from 2019 to 2024 when it just so happens 2018 was a high revenue year arising from peak energy deliveries. While the cost of the nuclear subsidies has been established by law, the cost of decoupling will not be known until each year is over and the math is complete. FirstEnergy will lock in revenues at an unrealistically high figure and customers will pay higher rates *because* they used less energy... how does that make any sense?

Before that provision was enacted by the PUCO in January of this year, former FirstEnergy CEO Chuck Jones told investors it would make the utility "recession-proof."[3] Mr. Jones was recently terminated after a FirstEnergy internal investigation determined that he, and other FirstEnergy executives, "violated certain [c]ompany policies and its code of conduct."[4] And, of course, a recession did happen—and is still ongoing—but HB 6 insulates FirstEnergy from having skin in the game in the economic cycle that has negatively affected so many Ohioans. At the same time, HB 6 suspended energy efficiency programs, but fixed FirstEnergy's utility profits in a way that included payments for "lost" sales due to energy efficiency programming. In the words of Ned Hill, an economics professor at the Ohio State University, FirstEnergy was "ordered by the legislature to not provide services while receiving the money that was once earned from providing those services from a de facto tax."[5] It is hard to imagine a more inappropriate and socially unjust policy in the current moment.

There are other troubling provisions of HB 6, as well. The law provides nearly $343 million in subsidies for the OVEC coal plants (one of which is in Indiana). Another $140 million for six specific solar projects. HB 6 is a grab bag of subsidies, but one thing unites them in the legislation's basic architecture: consumers always pay but they don't always benefit.

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[3] https://energynews.us/2020/05/15/midwest/ohio-policies-cushion-the-pandemics-impact-on-electric-utilities/

[4] *See FirstEnergy Corporation*, Form 8-K, filed before the United States Securities and Exchange Commission on October 30, 2020 at Item 5.02, *available at:* https://investors.firstenergycorp.com/IRW/Docs/4056944

[5] *See Energy Harbor Financial Outlook.*

NRG recognizes that nuclear energy can play a role in Ohio's energy future, but it must compete fairly. As a part owner of a nuclear facility in Texas, NRG's South Texas Project nuclear facility operates in a competitive wholesale electric market to provide carbon free, safe, reliable energy and is an important part of a fuel-diverse and competitive generation fleet serving the south Texas region. Passage of SB 346 would restore the competitiveness of the wholesale market which has afforded Ohio with low electric generation rates and billions in new capital investment and new jobs. The Perry and Davis-Besse nuclear plants would compete in the PJM capacity auctions based on their true costs and have an opportunity to earn capacity revenue based on free-market competition, without requiring Ohioans to foot the bill for Energy Harbor's alternative uses of capital such as share buybacks.

Ohio has made impressive strides reducing carbon emissions since it embraced free market competition in the electric sector. In fact, according to the US Energy Information Administration, carbon dioxide emissions in Ohio fell by 67 million metric tons between 2005 and 2016, the largest absolute reduction in the nation[6] Competition has helped drive efficiencies and corresponding reductions in air emissions. Preserving a competitive market in Ohio will secure even more emission reductions in the future.

NRG appreciates the opportunity to provide this testimony about this very important issue. We urge you to pass SB 346.

[6] United States Energy Information Administration, Energy-Related Carbon Dioxide Emissions by State, 2005-2016, February 27, 2019.