



**OHIO 133rd GENERAL ASSEMBLY
SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE**

**TESTIMONY OF THE ELECTRIC POWER SUPPLY ASSOCIATION
IN SUPPORT OF HB 772**

The Electric Power Supply Association (EPSA) appreciates this opportunity to comment on House Bill 772 (HB 772). EPSA is the national trade association representing leading competitive power suppliers participating in restructured markets across the United States. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies, including natural gas, nuclear, coal, and renewables. Our member companies own, operate, and develop critical assets in Ohio and the PJM Interconnection footprint, including over 8,200 MW of electric power generation located in Ohio and over 52,000 MW throughout across the PJM footprint. Unlike regulated utilities and other companies, these power producers have invested billions of dollars in Ohio and the PJM region at their own risk, without the guaranteed financial support of consumers. These generators are able to do so thanks to the voluntary decisions of Ohio and other PJM states to depend on market forces to deliver safe, reliable electricity at the lowest cost to consumers – not using the cost-of-service regulation model. EPSA members rely on this competitive model to continue their valuable service to Ohio electric customers while delivering those same customers substantial cost

savings,¹ significant emissions reductions², and invest in the continued maintenance and operation of these resources, retain both operational and maintenance jobs, tax revenues to local and state government, and support the local communities where those assets are located.

EPSA previously submitted written comments as in Interested Party in the House affirming that passing HB 798 would be good a stopgap measure. In contrast, EPSA fully supports passage of HB 772 as it represents a much better path forward. HB 772 allows the General Assembly to immediately repeal the most insidious provisions of House Bill 6 (HB 6) in their entirety. Given the litany of malfeasance alleged against former Speaker Larry Householder and others involved the passage of HB 6, including two defendants who have entered plea agreements concerning their illegal conduct, Ohio lawmakers cannot allow this tainted legislation to stand. The fruit of the poisonous tree is poison and the people of Ohio should not be required to eat the proverbial fruit because the legislature is unwilling to act. Acting to cut out the poison tree, root and branch, should be the General Assembly's first order of business.

It is clear that some members believe the policies set forth in HB 6 merit retention. The legislature is well positioned to craft measures to address the policy concerns it deems in need of attention now. House Bill 772 is the measure that the General Assembly should pass as it would completely remove the stain of HB 6 from

¹ Anderson, Jared, PJM 2019 power prices hit record lows; gas-fired units cheapest; coal struggling, (March 13, 2020). Available at: <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/pjm-2019-power-prices-hit-record-lows-gas-fired-units-cheapest-coal-struggling-57573947>

² See U.S. Energy Information Administration Data, Available at: <https://www.eia.gov/environment/emissions/state/>

Ohio law. The General Assembly can then demonstrate leadership by revisiting these issues and crafting legislation that is not tainted by allegations of corruption, would help to restore the trust of the public in their elected officials, and ensure the efficacy of the energy policies included in any subsequent legislation.

Should the legislature elect to pursue a replacement measure, there are a number of critical questions that remain unanswered and must be addressed. Energy Harbor is asking Ohio residents and businesses to pay for its nuclear plants, but the company refuses to disclose financial information to prove this money is needed. The evasiveness around this request is especially notable as the company recently paid out hundreds of millions in dividends to its shareholders. Here is a useful timeline of Energy Harbor's recent financial reporting as well as other useful facts about the bailout it seeks:

- February 27, 2020: Energy Harbor emerges from bankruptcy and reports to the media and shareholders "unmatched financial stability," adding it is "financially secure" with a "strong balance sheet."³
- May 10, 2020: Energy Harbor reports HB 6 subsidies enable "Substantial EBITDA" (net earnings) and "visible cash flows supported by clean air zero-emission credits" (ZEC subsidies secured through HB 6).⁴

³ See Press Release: "FirstEnergy Solutions Successfully Completes Financial Restructuring, Emerges as Energy Harbor.", February 27, 2020: <https://energyharbor.com/en/about/news-and-information/firstenergy-solutions-successfully-completes-financial-restructu>

⁴ Energy Harbor 2020-2022 Financial Outlook Slide Deck, slide 3, May 10, 2020.

- Energy Harbor appears to be profitable going forward, even without H.B. 6 subsidies, per the company's EBITDA, Free Cash Flow and Gross Margin charts found in its May 10, 2020 Financial Outlook slide deck.⁵
- HB 6 subsidies (ZECs) are only 11% of EH's projected gross margin, suggesting these payments are just the cherry on top of its already healthy financial position.⁶
- On top of that, Energy Harbor has very low debt coming out of bankruptcy and is positioned far better than its peers in terms of free cash flow.⁷

In addition to these facts shared by Energy Harbor, Energy Harbor has reported its desire is to consistently return excess cash to shareholders and touted its ability to return substantial free cash flow to shareholders. The company has already authorized distributions to its shareholders an amount roughly equal to the HB 6 subsidies the plants expect to receive. Should HB 6 stand, Ohio ratepayer money would be used to pay Energy Harbor shareholders at the expense of Ohio residents and businesses. HB 772 offers the path of least resistance in eliminating the unjust enrichment of Energy Harbor and its shareholders and the General Assembly should take it.

EPSA was part of a diverse coalition of voices opposing HB 6 during the debate prior to its passage. Though sometimes at odds on a broad array of issues, consumer advocates, environmental interests, and power generators joined together to oppose HB 6 because the bill represented bad policy on its merits and would harm consumers and the state's energy future. Rather than encouraging choice, innovation, and a fair competitive process, HB 6 selectively granted some resources preferential treatment

⁵ *Id.* at slides 4-5.

⁶ *Id.* at slide 5.

⁷ *Id.* at slide 6.

without regard to the financial impact on consumers or the rest of the market participants in PJM, including 8,200 MW of generation owned by EPSA members. Picking winners and losers based on political influence damages the efficiency and transparency of competitive power markets, which have served Ohio very well since their inception.⁸ In the years since Ohio wisely opted to restructure its electric system, competitive markets have continually delivered historically low prices while improving system reliability and drastically reducing power sector emissions.

Of note, even without a market tool to reduce emissions, market forces yielded significant environmental benefits. This is because low natural gas costs encouraged competitive power suppliers to retire significant amounts of inefficient, expensive, higher emitting generation and switch to cleaner, more efficient, and reliable natural gas technology – like combined cycle turbines – based on competitive market price signals. As a result, emissions in the PJM footprint have dropped 34% since 2005.⁹ Ohio itself has experienced a 41% decline in emissions from its power plants during that period.¹⁰ These impressive benefits were realized through the commitment of billions of dollars of private capital with investment risk borne by resource developers and operators, not consumers or taxpayers. While some have argued that should HB 6 not have passed emissions would have increased dramatically, that assertion makes economically

⁸ See generally, Statement of Asim Z. Haque on Behalf of PJM Interconnection, (June 5, 2019). Available at: <https://pjm.com/-/media/library/reports-notices/special-reports/2019/20190605-statement-of-asim-z-haque-to-the-ohio-senate-energy-and-public-utilities-committee.ashx?la=en>. Among other benefits, Mr. Haque outlined that “over the last five years, have seen more than \$2 billion dollars in savings through [PJM’s] core functions.”

⁹ PJM Inside Lines: “Emissions Continue to Drop Throughout PJM Footprint,” (March 4, 2020). Available at: <https://insidelines.pjm.com/emissions-continue-to-drop-throughout-pjm-footprint/>.

¹⁰ See U.S. Energy Information Administration Data, Available at: <https://www.eia.gov/environment/emissions/state/>

irrational assumptions about what would replace any retiring nuclear unit and also fails to account for other retirements of higher emitting resources. Cherry picking the inputs to deliver the desired outcome is a disservice to those obligated to pay the bills based on policy choices.

The General Assembly should keep these achievements in mind as it charts a course out of the shadow cast by HB 6. It is imperative that this tainted legislation be removed from Ohio law before its ill-gotten gains are realized with Ohio consumers and businesses paying the bill while shareholders and corporations enjoy the rewards. Once HB 6 is repealed, Ohio should put competition at the forefront of any future energy policy discussion. Ohio citizens deserve energy policy that puts them in the driver's seat and encourages market participants to innovate and compete for the opportunity to serve them. This winners in this scenario should be those that offer the grid the best products, not those who have the deepest pockets or can wield outsized political influence. If a fair competitive playing field for power providers is in place, customers, the grid and our environment will continue to reap the benefits.

Respectfully Submitted,

A handwritten signature in black ink that reads "Todd A. Snitchler". The signature is written in a cursive, flowing style.

Todd A. Snitchler
President & CEO
Electric Power Supply Association