

House Bill 798 Sponsor

Chairman Wilson, Vice-Chair McColley and Ranking Member Williams and members of the Senate Energy and Public Utilities Committee thank you for allowing me to give sponsor testimony on House Bill 798. This is a legislative package that is the result of extensive hearings, conversations, and feedback from members of this General Assembly.

I, along with others both Republicans and Democrats did support HB 6 when it was brought up for a vote last year. We felt this was a way to save the nuclear plants and save over 4,000 jobs in the State of Ohio and make sure we continue to have clean power and a diversified energy portfolio. It also will save ratepayers an estimated \$2.3 billion over the term of the legislation.

However, when the story broke about the scandal and what was happening behind the scenes I, along with every member of this General Assembly was angry, disgusted and disappointed in what we were hearing. Those who voted for the bill voted for what was in the bill and discussed in committee hearings. We did not vote for what was happening behind the scenes and in a room somewhere outside the Statehouse. The people of this State have entrusted us to represent them here in Columbus in an honorable way by making the best decisions based on the information we have for the issues we have before us. Well that trust was taken advantage of and as you are well aware by reading the stories in the media and will continue to read those stories in the media those who have allegedly broken that trust, if found guilty, will pay dearly.

Today I am here before you to ask you to join me in supporting this legislation that will continue to move the State of Ohio forward in the energy sector to make sure Ohioans will have reliable, diversified and low cost energy. And I might add, I feel this is just the beginning. Since the time Speaker Cupp asked me to become Chairman of the House Select Committee on Energy Policy and Oversight, my eyes have been opened to realize the energy sector is very complex and that new technology is being developed every day and we need to make sure Ohio stays ahead of the curve.

This legislation will do the following:

Decoupling

House Bill 798 would end the HB 6 decoupling provision 60 days after its effective date. This will give the PUCO time for a final reconciliation which will make sure ratepayers receive any credits they are owed. My understanding this is needed due to COVID-19 which has increased residential customer loads.

OVEC

The legislation keeps the HB 6 OVEC provision, but requires an Ohio utility with an ownership interest in OVEC every year beginning not later than 2022 to make a good faith effort to divest from its legacy generation resources obligations.

SEET (Significantly Excessive Earnings Test)

Removes the entire SEET provision contained in the budget that only could potentially benefit one utility.

Audit

The bill adds strengthened audit provisions by requiring the audits to be completed by July 1st each year, requires an annual financial need assessment, mandates an experienced independent third party must be used, and Energy Harbor must comply with any document requested or the credits may cease.

The new audit provision specifically says “That for the purpose of ensuring that the funding for the credits helps to maintain the economic viability of the resource at the lowest cost to consumers, payments for credits shall be limited to the amount necessary to increase the net income or profit margin of the resource from a negative amount to not more than zero for the annual audit period by considering all revenue received or accrued from all sources and only reasonable and prudent expenses.”

Reasonable and prudent expenses include depreciation, but not lobbying costs, political or charitable donations, share buybacks, management bonuses, or incentive compensation.

Refunds and credit adjustment

House Bill 798 revises House Bill 6 to require the Ohio Air Quality Development Authority, in consultation with PUCO, every year to cease or reduce nuclear resource credits (no more than \$9 MWh) based on the financial need determined in the PUCO audit.

Further, it requires that, each year, upon the completion of the annual management and financial audits, the OAQDA, in consultation with PUCO, must refund to customers any amounts remaining in the funds. Basically if the audit determines Energy Harbor doesn't need the entire \$9 credit that year or nothing at all, that excess money will be refunded to ratepayers.

New nuclear charge and disbursement

The legislation would delay nuclear charge to ratepayers by one year until January 1, 2022, and also delays the first disbursement to Energy Harbor by one year until April 2022.

Further, based on the financial need determined in audit, the PUCO can annually adjust the amount ratepayers pay downward each year (no more than \$150 million annually or 85 cents a month for residential and \$2,400 a month for large users).

Other items

- Requires the Ohio Power Siting Board, in consultation with JobsOhio and after at least one public meeting, to submit a report to the General Assembly, not later than December 1, 2021, on whether the current requirements for planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers
- Prohibits a homeowners association or condominium association from prohibiting an individual owner from installing solar on their home
- Contains a funding mechanism for OAQDA using money from the nuclear fund
- Grandfathers in two solar projects originally allowed to receive credits from HB 6 but missed their filing deadline
- Contains an emergency clause

Yesterday, after listening to some of the concerns from members and others who gave or submitted testimony over the past several weeks, I offered an amendment that was accepted and I believe makes it a stronger bill:

- Adds the condition that *unless the Ohio Air Quality Development Authority (Authority) in consultation with the Public Utilities Commission (PUCO) finds otherwise*, financial and proprietary information, including trade secrets, submitted to the Authority is confidential information and not a public record. Currently all documents submitted to the Authority are confidential.
- Make a technical change to specify that payments for nuclear resource credits be based on the credit price multiplied by the credits earned by the resource during the quarter that ended 24 months (instead of 12 months) prior to the last day of the previous quarter. This is due to the one year delay
- Changes the date by which PUCO must complete the annual retrospective financial and management audit of nuclear resource owners or operators from the first of May to the first of July and requires the audit to include any recommendations. This change is needed to capture the next several PJM base residual auctions which will be run in May and June in the forthcoming years
- Specifies that the audit information provided must be certified as accurate by the owner's or operator's chief financial officer and that failure to provide accurate information must result in suspension of further receipt of nuclear resource payments;
- Makes the following changes to strengthen the provision that requires the Authority, in consultation with PUCO, to consider the findings and recommendations of the audit and cease or reduce nuclear resource credits *based on the findings, recommendations, and audit*, if the Authority determines certain factors including (italicized is the new language):
 - That the owner or operator applies, before May 1, 2028, to decommission the resource *or takes any other action to cease commercial operation; and*
 - That for the purpose of ensuring that the funding for the credits helps to maintain the economic viability of the resource at the lowest cost to consumers, payments for credits must be just enough to keep the resource from losing money from its ongoing operations for the annual audit period by considering all revenue received or accrued from all sources, *whether directly incurred or charged from affiliates.*
 - Adds that *"reasonable and prudent expenses" must be in accordance with generally accepted accounting principles, but changes the list of what expenses must not be included by adding (1) management incentive compensation, (2) allocation of corporate overhead in excess of reasonable amounts, (3) costs related to other facilities or businesses, and (4) interest expenses or preferred dividends related to any financing or convertible or preferred securities incurred after the fact.*
- With regard to the report that the OPSB must submit to the General Assembly, the amendment now permits the Board to consult with or request the assistance of PJM, the independent market monitor for PJM, and other interested stakeholders, such as transmission owners. This was at the request of the Board
- Finally, in addition to terminating the decoupling provision that was established under HB 6, the amendment now repeals Revised Code section 4928.471. This was an oversight and now the amendment ensures no future utility can get similar treatment.

The bottom line is this legislation allow us to take a pause and truly see if Energy Harbor needs a subsidy. Then, the General Assembly can reassess this program after the first audit report and recommendations come back. Further, it keeps customer rate reductions in place and good energy

policy including the county fairs rate reduction, increased home weatherization funding, increased industrial on-site wind, and the eventual total elimination of other energy mandates.

House Bill 789 will result in a further rate decrease for Ohio ratepayers over current law. This is the result of the elimination of the FirstEnergy decoupling provision (at least \$17 million a year), potentially a reduced subsidy or none at all going to Energy Harbor each year, and setting up future legislation to control the rapid growth of transmission costs.

Thank you again for allowing me the opportunity to present HB 798 to you today. I would be happy to answer questions.