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Ohio General Assembly
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Chairman Hoops, Vice Chair Ray, and Ranking Member Smith, thank you for the opportunity to present for a second time the need to repeal HB 6 in this new bill: HB 18. A lot has happened since the last time I made this request, which I believe makes an even stronger case for a straight repeal. While there's a lot to unpack in discussing the reasons for repeal I'd like to focus on three of the strongest justifications for repeal: My first justification is that First Energy Solutions/Energy Harbor (FES/EH) never provided documentation, nor substantiated with incontrovertible (or in fact any) proof that without the funds they would close their plants and that later actions clearly demonstrated that they did not need the funds. The second reason is that given the substantial number of criminal allegations and admissions of guilt intertwined with HB6 it is impossible to separate any good in the bill from the rest. It would be similar taking mud and trying to separate the water from the dirt. The dirt has compromised the integrity of the water. Finally, my third reason for repealing HB 6 is that we have pitted a short list of winners against a long list of losers at a time when those losers can ill afford to take on additional and unnecessary costs. Instead of Adam Smith's invisible hand of the market, we have the 133rd GA's heavy-handed approach to picking and rewarding a handful winners at the expense of all others.

I. First Energy Did Not Clearly and Unequivocally Demonstrate a Need for More Than \$1 Billion

The imperative need to repeal HB6 is independent of any question around the pros and cons of nuclear power. The question is a simple one. Did FES make their case that they needed the money? If not, then we don't need to worry about the corollary effects of the closure on property values, jobs, taxes, etc. Similarly, we do not need to worry about losing 15% of our clean energy production. If they don't need the money, then why would they close? Rather than deal with \$1 billion hypotheticals, we should deal with demonstrated facts. Did FES make their case by clear and convincing evidence that they needed the 1.1 bn in subsidies and the nearly \$1bn in decoupling fees? While we did hear from FES during the proponent testimony, we never had documentation to support claims of demonstrated financial need. Repeated requests were made to open FES' books, but these went unanswered. Yet, we had others who testified and provided analysis that FES did not, in fact, need the bailout. One witness, Paul Sotkiewicz, stated that the plants would be profitable for the next ten years and included support for his claim.

The burden of proving that there was an actual need should fall on the party asking for ratepayers to pick up their billion plus dollar tab. It is rather shocking that we were willing to turn over billions of ratepayer funds without any corroboration of need. But even more troubling, we have

post passage actions by FES that demonstrate they likely did not need the money, and in fact even more information surfaced just yesterday indicating a lack of need. Some examples that strongly call into question FES/EH's need are their bankruptcy proceedings: For example, we knew that FES was in the middle of their bankruptcy proceedings during the passage of HB6. And while we don't know the details, we do know that typically a company can emerge from such proceedings debt-free. While FES may have had substantial debt prior to bankruptcy and may have possibly needed help, they were able to emerge free of debt, at which point it would be highly unlikely they would need ratepayer bailouts or decoupling provisions to make them recession proof. And if they weren't willing to open their books before the bankruptcy when they had bad debt dragging them down, why would they open them post-bankruptcy when they've cast off those negative numbers?

Another example of proof that contradicted FES' claim of their need for money can be seen in their stock buyback. Energy Harbor, their post-bankruptcy named organization, initiated a total of \$800 m in stock buybacks. These buybacks beg the question of how a company could be in such dire need to go to ratepayers for a billion-dollar bailout when they could scrounge up nearly the same amount out of company coffers to enrich two NY hedge funds, who were likely looking to make a quick profit and sell the company?

And yet another clear example demonstrating lack of need is that we now have Energy Harbor saying they may not even want the bailout after all, as they're also currently making arrangements to hold off on their decoupling windfall. But, because of a FERC order, aka Minimum Offer Price Rule, that actually tries to prevent bailouts/subsidies in renewables and non-renewables from distorting the energy markets, EH may lose out on their capacity market funds if they take our bailout. So, if the people who were saying how dire things were before the bailout now say they may not need the bailout, why aren't we running as fast as we can to repeal it? And the true kicker is that if the subsidies are not repealed, ratepayers in Ohio may pay for this boondoggle twice. Once for the subsidies and a second time through the higher prices charged in the capacity market because of the MOPR order. There are efforts at the national level to change this, but for now this is what we're dealing with. And the most important takeaway from this is that EH is saying, "hey we may not really need this subsidy after all." We have further confirmation of this published yesterday with the announcement that FE won't seek to recover their lost revenue.

II. The Political Corruption Scandal is so Inextricably Intertwined with the Passage of the Legislation that It Must Be Repealed in Full.

The corruption scandal was not fallout from the bill; it is the *raison d'être* for the passage of the bill. It is impossible to separate. It would be like splitting atoms. The stain of the corruption, which is no longer just allegations, is now more closely tied to HB6 than any amendment would be. We've had two co-conspirators to the RICO charges, as well as the 501c4, plead guilty to the corruption charges. It looks like there will be an admittance that there was a *quid pro quo* for giving money for passage of HB6 with the plea agreement to be filed this week and this among other just as scandalous acknowledgements of guilt and corruption.

I have a laundry list of reverberations that have been left in the wake of the \$61 million bribery scandal to add to the one above, but I will only highlight a few: (include several from timeline).

III. Picking Winners and Losers Means Ohioans Wind Up the Real Losers

Government policy is always rife with the problems associated with the picking of winners and losers, as much as we'd like to avoid it. During this pandemic we've heard cries of how unfair it is that certain businesses were allowed to stay open during the early days of the pandemic while others were forced to close. It appears patently unfair to take such draconian actions against certain businesses, while enriching others. Yet this is precisely what we have done with HB 6. And we're doing to the people who can least afford it and at a time when they can least afford it. And all for a winner who now claims they may not need it.

Who are the winners of this \$1.5 bn bill? Obviously EH is a winner. With a \$1.1 bn bailout, a decoupling provision that adds nearly a billion more, the earlier SEET winner, EH hit the super lotto at ratepayer and competitor's expense. In addition to EH as the clear winner, there were others: those who own the OVEC plants, the 6 anointed solar plants who will receive a \$20 million subsidy, and the weatherization folks. Finally, while the county fairs are also winners, their sole justifiable win does not warrant the stopping of a full repeal of HB6.

The losers are varied and vast. The individual 4.5 million rate payers who have to foot the bailout AND the decoupling provision AND the OVEC extension have clearly paid the price for EH's win. These ratepayers include the little old ladies down the street that I have personally heard from, as well as all of us in this room. This is Robin Hood in the reverse. While we might be able to afford a rate increase, I believe most of us would rather keep our money than give it to the two NY hedge funds. Another group who loses under HB 6 are the large manufacturers who have had to pay a substantial rate increase under HB6. While this legislature has tried to make many inroads in helping the businesses in Ohio, this is clearly a slap in the face to pass along an unnecessary rate hike at a time when these businesses can least afford it. Is Ohio really open to business? Or just to the right business?

Others who clearly lose out under HB 6 are competitors of Energy Harbor. Natural gas producers, petroleum producers, and other energy producers. We won't know for years the detrimental effects to other energy producers. One example is the loss of a \$1.5bn natural gas power plant that pulled out from their deal in Lordstown. Another plant, the LS Power, announced its cancellation of a \$500m expansion of its plant near Toledo. Both have cited HB6 for their reasons to forgo development. While these companies are individually the losers of our tipping the scales in one direction, all of Ohio loses without those jobs being created, without the beneficial impact on natural gas prices. We will likely never know the true cost of HB6 in regard to lost businesses and lower utility prices. Whenever you tip the scale to the advantage of one company, others have the scale tipped against them, which is why we heard from so many opponents who testified against HB 6 during the last committee hearings all to no avail, and whom I'm sure we'll hear from again.

Other groups who will feel the fallout from HB 6 are clean energy companies that employ more than 110K workers in the state. While the point could be made that HB6 requires clean energy companies to compete fairly without RPS and EE mandates in the free market and that's why HB 6 should not be repealed, I'll make two quick counterpoints to that argument: One, if that's the goal, that should be the legislation. Remove RPS and EE programs in a stand-alone bill. Don't complain about government mandates that benefit one group, while billions in benefits are given to another group and then try to rely on free market principles. Second the RPS and EE programs were meant to counter decades worth of programs that benefited the other energy programs (for example FE has received \$10bn to date just from the state and this is just one utility-the others have received hundreds of millions as well, especially during deregulation. And that doesn't include any federal assistance programs, including the building of the plants in the first place). The complicated interplay between support for various utilities and energy sources point to the need for a comprehensive energy policy and not a convoluted, corrupted piecemeal approach as seen here. We're working on this with our education policy, and we should be doing the same with our energy policy.

Moving on to others who lost from the passage of HB6, are all the other solar companies who were not given a \$20 million subsidy. We're again distorting the market in favor of six companies, and I have yet to see a reason for this benevolence for these special six? And while the HEAP provision looks like a winner, for many in practice it is not. It forces the expenditure of 25% of funds on weatherization programs, which in theory are nice to have, yet they come at the expense of actually heating homes in the winter. If we truly wanted to make real winners with the HEAP provision, we would have added the additional funds to provide for weatherization on top of the money for individuals who need help with their heating bills. And with regards to the county fairs, this might be the only good provision left in HB6, and the best way to help county fairs is to remove them from this corrupted bill and put their fix in either the budget or a standalone bill. If we could pass a highly controversial, unnecessarily complex bill

like HB6 in six weeks then surely, we can pass a simple bill to make county fairs whole. I'll co-sponsor.

In conclusion, I hope I have demonstrated that we must quickly and fully repeal HB6 because EH never demonstrated the need for the money and now says they may not want the money, but also because the passage of the bill occurred through corrupt means and is so intertwined with the largest bribery scandal in the state's history that it is forever stained, and finally because we have caused too many innocent parties to bear the brunt of the cost of the bill at a time when many can least afford it. We need to demonstrate to Ohioans that just because a big company comes to our door asking for a handout, we're not going to do everything possible to give them one. We also need to completely repeal HB6 and bury it so deep into the ground that it doesn't contaminate our reputation. Anything less than a straight repeal, besides being overly and unnecessarily complicated, will continue to send the wrong message.

Thank you for allowing me to give testimony today. I am happy to answer any questions you may have.