

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: December 5, 2022

Name: Terry J. Lodge

Are you representing: Yourself Organization

Organization (If Applicable): Ohio Nuclear-Free Network

Position/Title: Legal Counsel

Address: 316 N. Michigan St., Ste. 520

City: Toledo State: OH Zip: 43604

Best Contact Telephone: _____ Email: lodgelaw@yahoo.com

Do you wish to be added to the committee notice email distribution list? Yes No

Business before the committee

Legislation (Bill/Resolution Number): House Bill 434

Specific Issue: Unconstitutionality/illegality

Are you testifying as a: Proponent Opponent Interested Party

Will you have a written statement, visual aids, or other material to distribute? Yes No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

Will your testimony be written, spoken, or both? Written

Please provide a brief statement on your position:

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.

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December 5, 2022

Chairman Rob McColley
Members of Ohio Senate Energy
and Public Utilities Committee

RE: Ohio Nuclear Free Network testimony in opposition to HB 434

Dear Chairman McColley, Vice Chair Schuring, Ranking Member Martin, and members of the committee:

I am writing as legal counsel for the Ohio Nuclear Free Network, a statewide organization of residents and voters that opposes the prospective development of commercial nuclear power using “small modular,” also known as “advanced,” nuclear reactors.

I have familiarized myself extensively with Ohio House Bill 434, the “Advanced Nuclear Technology Helping Energize Mankind, or “ANTHEM,” Act. The General Assembly proposes to assign to a nonprofit, nongovernmental corporation the role of regulating as well as promoting the design and construction of small modular nuclear power reactors. There are many environmental and governance reasons to question and oppose HB 434.

There are also multiple legal reasons to oppose the empowerment of the Ohio Nuclear Development Authority.

If passed, HB 434 will violate Ohio Const. Art. XIII, § 1 because it is a special act conferring corporate powers.¹ HB 434 further proposes to violate Ohio Const. Art. XIII, § 2, which requires all corporations to be created under the general laws.² The Act would violate Ohio Const. Art. VIII, § 4, which prohibits the state from making equity investments and from lending the credit of the State to a private corporation.³ Then, HB 434 would violate Ohio Const. Art. VIII, § 2h by authorizing the state to exceed its bond limit, which is constitutionally-set.⁴

HB 434 would unlawfully outsource considerable executive and legislative discretion to an unaccountable, industry-controlled zombie entity, in violation of the Ohio Constitution. Because its

¹ “The general assembly shall pass no special act conferring corporate powers.”

² “Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.”

³ “The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.”

⁴ “The State may, from time to time, borrow not to exceed two hundred ninety million dollars and issue bonds or other obligations thereof for any one or more of the following purposes. . . .”

main thrust is the subsidy and commercial promotion of next-generation nuclear power reactors, the Ohio Nuclear Development Authority will not qualify for delegated regulatory responsibility from the Nuclear Regulatory Commission under the federal Atomic Energy Act.

This proposal is breathtakingly illegal at its core.

Notably, the Ohio Supreme Court never actually ruled on the constitutionality of JobsOhio, the state-created nonprofit corporation which seems to be the location in the state government where the Ohio Nuclear Development Authority will be set up. The Court merely found that the plaintiffs who challenged JobsOhio did not have legal standing to sue: “A proper party—*i.e.*, one with legal standing—may unquestionably contest the constitutionality of JobsOhio. As to that proper party, the courthouse doors remain open.”⁵

There will be many proper parties with standing to challenge the legitimacy of the Ohio Nuclear Development Authority, with its completely self-interested governing board, lack of accountability under Ohio’s public records and governmental ethics laws, and its mission of exploiting the profitability of inherently dangerous nuclear power.

Ohio Nuclear Free Network urges the Committee to reject this irresponsible idea.

Sincerely,

/s/ Terry J. Lodge
Counsel for Ohio Nuclear Free Network

⁵ *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520 534, 2014-Ohio-2382, 13 N.E.3d 1101 (2014).