



September 10, 2020

Sponsor Testimony

Representatives Laura Lanese and Dave Greenspan

House Bill 746

Chair Hoops, Vice Chair Abrams, Ranking Member Leland, and members of the House Select Committee on Energy Policy and Oversight, thank you for your time and attention today as you consider House Bill 746, which will repeal House Bill 6 of the 133rd General Assembly and revive prior law.

Introduction:

As the Joint Sponsors of this legislation, we stand before you today to provide analysis and discussion on various provisions of House Bill 6, whose short title is "Creates Ohio Clean Air Program."

We will draw your attention to fine details and specific provisions of House Bill 6 which we believe now merit this call for the complete repeal of the bill.

We, Representatives Lanese and Greenspan, firmly believe that Ohio requires a comprehensive energy policy, which includes consideration of all sources of electricity currently generated in Ohio, the use of advanced and emerging technologies and one that encourages innovation in energy production and efficiency. A comprehensive policy should balance all resources and contribute to a stable, reliable, affordable, and predictable energy platform. Unfortunately, House Bill 6 does not meet these standards. House Bill 6 picks winners and creates many more losers.

Our testimony today has multiple parts. First, we question if there is an honest rationale for the Nuclear Generation Fund created by House Bill 6. We dedicate the second part of our remarks to Energy Harbor's plan to engage in a stock buyback program. And finally, we summarize a provision in House Bill 6 which was added at the last minute called "decoupling." Once we have laid these facts out in the open, we will ask you to join us in the conclusion that we reached after a clear-eyed and sobering reading of the evidence: to support House Bill 746 and repeal House Bill 6.

Rate-Payer Analysis:

Before we begin, it is important to draw your attention to the rate-payer analysis and the alleged financial benefits of removing the Energy Efficiency and Renewable Portfolio Standard – in particular: a reduction in rate-payer fees offset by the increase in fees as a result of the creation of the Nuclear Generation Fund and the Renewable Generation Fund. We plan on having others provide testimony as to that proposed value proposition.

Need for the Nuclear Generation Fund:

Now, getting on to our first major point: Since its passage, I have been referring to House Bill 6 as a "*bailout*" when discussing my reasons for opposing it because, on principle, I do not believe in bailouts. However, I no longer view that entire bill as a bailout – for a number of reasons. First, the word is not used in House Bill 6. More importantly, House Bill 6 does not meet the dictionary definition of the word. A bailout is defined as "an act of giving financial assistance to a failing business or economy to save it from collapse." The operative word in this definition is "failing." Nowhere in House Bill 6 is there any reference to a "failing" business; nor is the criteria for receiving funds based on financial distress or failure. The only criteria, as summarized in the LSC Fiscal Note, are on pages 6 and 7:

Upon completion of an annual review, PUCO is required to submit a report summarizing the findings to OAQDA and members of the Ohio General Assembly. After reviewing the report, OAQDA, in consultation with PUCO, "may cease or reduce payments for nuclear resource credits" if it determines any of the following:

- That the Federal Energy Regulatory Commission (FERC) or the Nuclear Regulatory Commission has established a monetary benefit or other incentive payment to continue the resource's commercial operation;
- The resource is no longer fueled by nuclear power;
- The resource's operator no longer maintains both a principal place of business in this state and a substantial presence in this state with regard to its business operations, offices, and transactions;
- The nuclear resource's owner or operator applies, before May 1, 2027, to decommission the resource; or
- The previously described provision about the market price index exceeding the \$46.00 per MWh strike price.

If you take a look at the table in the Fiscal Note on page 13, LSC projects the highest rate per MWh over the next 11 years to be no higher than the upper \$30 price range.

Nowhere is financial need a requirement for receiving any of the funds from the Nuclear Generation Fund.

So by definition, this is not a “bailout.” Financial performance is not a part of the criteria for funding.

Ok then, so what is this fund? Simply put it's a “grant.” Grants are non-repayable funds or products disbursed or given by one party – that is, grant makers; often a government department, corporation, foundation or trust – to a recipient, who is often (but not always) a nonprofit entity, an educational institution, a business or an individual. In order to qualify for funds from the Nuclear Generation Fund, as outlined above, you basically have to maintain your principal place of business in Ohio and produce nuclear power – that's it. So to make it even simpler, you have to work here and operate here. Well, how many other Ohio businesses would like to qualify for a “grant” with those criteria? The answer is **ALL OF THEM.**

Usually, grants are tied to employment, capital investments and, more often than not, financial need. This “grant” has no output criteria or accountability to be eligible other than to exist – and to exist at its own discretion with no output requirements. This is just wrong.

Energy Harbor Stock Buyback Discussion:

Moving along to the second component we'd like to discuss today: Stock buybacks refer to the repurchasing of shares of stock by the company that issued them. A buyback occurs when the issuing company pays

shareholders the market value per share and re-absorbs that portion of its ownership that was previously distributed among public and private investors.

So where does the money for stock buybacks come from? The answer, usually, is from profits. Companies generally have two uses for profits. Typically, a portion of the profits is first distributed to shareholders in the form of dividends or stock repurchases. Then, the remaining profits become retained earnings, kept inside the company and used for investing in its future.

So why would a company do a stock buyback? The reduction of the “float,” or the number of publicly traded shares, means that even if profits remain the same, the earnings per share increase. Repurchasing shares when a company's share price is undervalued benefits the non-selling shareholders and extracts value from shareholders who sell.

Andy Chow of the Statehouse News Bureau reported on May 13th of this year that “The company that runs Ohio's two nuclear power plants is increasing its stock buyback from \$500 million to \$800 million, less than a year after lawmakers approved a bailout for those power plants.”¹

Remember, the cash used to buy back stock generally comes from profits. Keep that concept in mind – it's important as we move through this discussion. **The cash used to buy back stocks is generally from profits.**

As we discussed earlier, financial need is not a determining factor in the receipt of Nuclear Generation Funds. Not only is financial need not a determining factor, but financial information was never provided to the legislature as our members debated House Bill 6. Financial information was deemed to be a “business secret” even though more than a billion dollars was demanded from Bob and Betty Buckeye and from Bob and Betty Buckeye's employers to foot the bill. This is absolutely unconscionable.

¹ <https://www.stateneews.org/post/nuclear-power-plant-bailout-opponents-criticize-companys-stock-buyback>

Here is the central question: If the Nuclear Generation Fund was created to keep the two nuclear plants in Ohio from failing and ceasing their operations, then why is the owner of those plants engaged in a stock buyback plan *before* this source of unearned revenue – the “grant” – starts to flow? Did they demonstrate need, or did they just aggressively assert need? Did Energy Harbor demonstrate “financial need” when its newly minted Board of Directors voted to increase the stock buyback plan from \$500 million to \$800 million? The answer to this last question should be an obvious and resounding “NO!”

This information about the impending stock buyback plan was not disclosed at the time House Bill 6 was contemplated – it may not even have been known to the company at that time. So I would argue that this is new information which, if known at the time of the bill’s passage, might have impacted its adoption. This action should, by itself, cause the legislature to question the need for the Nuclear Generation Fund. This new information alone is grounds to support House Bill 746 and repeal House Bill 6.

Decoupling: what is it and what does it mean?

The final point I’d like to raise to your attention today is decoupling. From Page 14 of the LSC Fiscal note: “The bill separates kilowatt hour sales from revenues so an EDU (Electric Distribution Utility) can recover a predetermined level of distribution revenue regardless of the actual volume of energy sold.”

What does that mean? Simply put, it means that the EDU can charge its rate-payers for any lost revenue so they can always break even. Think about that: basically, the EDU will not lose money – they are guaranteed to break even.

Decoupling is like a ratchet wrench, where payments for the distribution utility only go up and seldom come down. This concept makes the EDUs recession-proof. So if you remember, earlier in the testimony, I referred to House Bill 6 as a “grant” and not entirely a “bailout” – well this provision *is*, simply put, a “bailout” clause.

Summary:

In closing our sponsor testimony, we'd like to lay out a concise argument for why we believe House Bill 746 deserves your support. We are not saying that a comprehensive clean energy policy bill is not needed. In fact, that is precisely our point – one is needed, and House Bill 6 is not it. House Bill 6 picks winners and creates losers. That is not what Ohio wants or needs. We would suggest, as we have in the past, that a bill should be immediately introduced to do what we were told House Bill 6 was meant – but fails – to do: create a comprehensive clean energy policy.

As we have brought to light in this testimony, and as you will hear in subsequent proponent hearings, various components of House Bill 6 need to be repealed. In fact, there are so many major problems tangled up in House Bill 6 that a complete re-start should be the pathway forward. Starting from scratch and reexamining every aspect of House Bill 6 under the microscope is the only viable option before us to make absolutely sure that we truly get it right.

We have all heard that if House Bill 6 does not pass, the plants will close, hundreds if not thousands of jobs will be lost and vital tax revenues to our local partners will not be generated. Well, if all that is true, then how does the owner and operator of those plants have the free cash flow TODAY, *before* the money from House Bill 6 has even kicked in, to do a stock buyback? I think we were sold a bill of goods.

I mean, let's look at what House Bill 6 does. It guarantees – guarantees! – the owners and operators of the two nuclear power entities a \$150,000,000 “grant” per year regardless of the financial need and with no accountability – in fact, as we have discussed today, the company may even be profitable and it will *still* receive the “grant.”

Additionally, the benefactor of the Nuclear Generation Fund plans on utilizing its profits to buy back its shares. Let me repeat that: **use its profits to buy back its shares.** Well wait a minute. How can you have profits to do that today if you are claiming that without the Nuclear Generation Fund you will have to shut down the plants? How does that work? I'll give you a hint: It doesn't.

And finally, House Bill 6 provides EDUs a break-even financial position – they are guaranteed not to lose money. They are granted the ability to increase utility rates to rate-payers in order to break even through the decoupling provision.

We would argue that all of this is not needed. House Bill 6's title, "Creates Ohio Clean Air Program," is not that. It's not a comprehensive plan – it's a narrow, incomplete and unfairly targeted plan. It only includes selective clean energy assets – it picks winners and creates losers. Again, quite frankly, I think we were sold a bill of goods.

It is clear now that we did not previously have a chance to hear the full story. Today, we now have such a chance. And the first step in ensuring that this situation is made right is a full repeal of House Bill 6.

We understand that there are wheels that have already been put in motion as a result of House Bill 6. Our response to those interests would be to encourage the legislature to introduce a bill that not only focuses on what may be good parts of House Bill 6, but also expands the discussion to be a comprehensive clean energy policy that we can all support. House Bill 746 is a straight, clean repeal – no questions about its intention. This bill resets the playing field to exactly what it was before House Bill 6 was enacted into law. It reverts the language of the Ohio Revised Code to what it previously was – no more, no less. And in order to have the meaningful and important deliberation about Ohio's energy policy which we do still need to have, we must have a clean slate to start from. House Bill 746 is that first step.

And for the next step, I would ask the legislature to immediately introduce, discuss and deliberate on a bill that provides energy security, reliability and predictability for all Ohioans and Ohio businesses. If such a piece of legislation can be agreed to, I would hope we can anticipate its passage with an emergency clause, so that any positive energy policy contained in House Bill 6 can prevail without delay.

Let me say this especially to my colleagues who voted in support of House Bill 6: I know that for many in the legislature, saving jobs was a crucial factor. But as the evidence before us now shows, it turns out that was never an issue. I cannot re-emphasize this point enough: **The owner and operator of the nuclear**

plants has cash flow and is profitable today, *months* before the first cent from House Bill 6 is set to reach them. And so today I ask that you take another look at the bill in light of this new information. In fact, that's exactly what we are supposed to come here to do every single day. It's called the Ohio *Revised* Code for a reason, because we are constantly revisiting legislation. Times change, we learn new information, and as legislators we respond accordingly. That is the task now before us today.

In conclusion, one of the biggest takeaways from all this is that information which we believe would have had a material impact on the passage of House Bill 6 was either not provided to us, or was identified after the bill's adoption. We hope that we have sufficiently made our point. The fundamental question before us today is: "If you knew then what you know now, would you have supported House Bill 6?" I believe that answer is NO.

Thank you for your time and attention to this matter. We are ready to answer questions.