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Sponsor Testimony for HB 746
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Chair Hoops, Vice Chair Abrams, Ranking Member Leland, and members of the House Select Committee on Energy Policy and Oversight, thank you for the opportunity to testify on behalf of HB 746, the HB 6 repeal legislation and return us to prior law.

I don't think any of us takes lightly the charge to repeal legislation that passed this General Assembly. It's something that should be done sparingly and only in good faith. I will provide you with three critical reasons for us to take such an action: the shocking revelation of the biggest corruption scandal in Ohio history, the \$800 million stock buyback indicating a lack of need for subsidies, and the mysterious decoupling provision. These three factors, two of which were only revealed after the passage of HB 6, the other was not transparent at the time, should provide enough justification for immediate and complete repeal. They call into question fundamental issues of integrity, necessity, and transparency. And they call us to repeal.

ALLEGED CORRUPTION

First, I will discuss the allegations of corruption that emerged only recently, and that call into question the legitimacy of this signature piece of legislation. Most of us who watched US District Attorney David DeVillers announce the charges of the \$60 million bribery scandal against the former speaker of the house and his political cadre were shocked and angered by these allegations of gross impropriety that surround our Chamber. District Attorney DeVillers did not sugar coat things when he concluded that this was "bribery pure and simple" He also noted, "This

was a quid pro quo, this was a pay to play, and I use that term because that that is the term they used, as alleged in the affidavit.”

Other leaders across the State chimed in. Governor DeWine, stated, ““No matter how good the policy is, the process by which this bill was passed is simply not acceptable.” Attorney General Yost stated, “It is evident...that Ohio’s legislative process was corrupted.” And finally, Senate President Obhof remarked, “I favor straight repeal and frankly, I’m not sure how much discussion we need to have to discuss that.” And as much as I agree with President Obhof, we are specifically here to have that discussion.

Some will argue that the process, not the legislation, was corrupt. Even if true, the legislation is so intimately tied to the process that it would take the precision of splitting atoms to separate the two. And even if we could do that successfully our constituents overwhelmingly support a complete repeal. One poll indicates that nearly 70% want a repeal. I know I’m hearing it from my constituents, and I’m sure you are too. And I have no doubt, the longer this drags out the more they will want us to act quickly and rid the state of the questions of integrity of our state government. This is our opportunity to listen to our constituents and repeal swiftly and unequivocally.

I won’t go into great detail about the alleged corruption because the US Attorney clearly laid that out the charges in the affidavit, but I will share some of the excerpts to highlight the seriousness of the allegations and the implications that follow from them. According to one member of the purported RICO enterprise “We call Co. A (we all know who company A is) the bank...because they can fund these things for 20 years if they want to. They’ve got too much money. They’ve got too much power.” Later in the document we read that “On HB 6, Company A got \$1.3 bn in subsidies, free payments, so what do they care about putting \$20 million into this thing (Householder Enterprise).” Another co-conspirator, according to the affidavit, reiterated that “Company A has deep pockets.”

STOCK BUYBACK AND NECESSITY

Deep pockets. Let that sink in. Did FES really need the money, or did they have deep enough pockets to not ask ratepayers for a \$1.1 billion subsidy, as alleged by one of those closest to “the bank”? During the committee hearings this issue was brought up by several experts. While we may not have known at the time, it seems likely that if they had enough money on hand to spend \$800 million,

which is more than half the total of the bailout, on a stock buyback and \$60 million on alleged bribes, they likely did not need the money.

We could more easily have answered that question by looking at their books. But FE was not required to share their financial records. Why? I don't know. Maybe one of the opponents to this repeal can clarify. Next question: Where did we get the detailed data analysis for the amount of the subsidy? According to the former speaker, the subsidy of \$9 per megawatt hour/\$160 million subsidy was based on our numbers that for two years he and the joint sponsors had in their heads. Interesting. Were these numbers corroborated anywhere? Another question for the opponents. Also noteworthy is that while we heard several requests to have the subsidy audited so that we could at least know where that money was going, this was intentionally left out of the bill as well. Thus, we didn't have open books to determine the necessity of the bailout, nor did we have a plan to audit **need more precise term** the funds to ensure that the ratepayer would be protected.

DECOUPLING AMENDMENT

The next justification for immediate repeal lies in a mysterious amendment known as the decoupling amendment. In utility speak decoupling means the disassociation of a utility's profits from its sales. And what does it mean in HB 6? It appears that no one really knows its purpose, except that it benefits FES/EH to the tune of at least \$350 million. Is that mixed in with the \$1.1bn subsidy? No, it's an additional subsidy added to the \$1.1bn. According to one energy magazine: "This provision is written opaquely even for an industry professional, and its meaning is almost certainly incomprehensible to the public. And the writer continues, "fortunately, FirstEnergy's CEO put the effect of the provision in plain language for its investors. And now quoting FE CEO "essentially it takes about one-third of our company and I think makes it somewhat recession-proof." What does that mean for our constituents? It means that they are paying for a guaranteed income for one company regardless of actual costs. As a result of this decoupling provision,

FirstEnergy could collect about \$355 million in unearned revenue through 2024 and possibly an additional \$400 million if it's extended by the PUCO until 2030. Thus, we could be paying more for electricity even if the price goes down to ensure that FE makes a profit. One suggested use of this money was that it's for energy efficiency programs, which would be great if HB 6 hadn't killed those programs.

CONCLUSION

I won't get into the alleged corruption surrounding the referendum shenanigans that denied Ohioans their constitutional and democratic right to overturn our legislation because, though important in the desire to be somewhat succinct, I believe that the three reasons discussed above: 1) the \$60 plus million dollar bribery charges brought by the US attorney's office, 2) the unanticipated \$800 million dollar stock buyback post passage, and 3) the mysterious decoupling amendment that gave an extra \$355 million to FE should be enough to have us running to the floor to vote on this repeal right now.

REBUTTAL: GOOD POLICY?

So, I've given you three good reasons to repeal, but, I'm sure some of you may be thinking that, "yeah the process wasn't great, but this was good policy, and we shouldn't swiftly repeal until we know how we will replace the subsidies and get FES/EH the help they need."

Not meaning to sound like a broken record, but I will repeat FE not only failed to establish they needed the money, their actions after the passage indicated that they did not need the extra ratepayer subsidy.

The first part of that statement that it was good policy needs more discussion because it is being used to discourage immediate and complete repeal. The suggestion is that we shouldn't throw the baby, i.e. the good policy, out with the bath water, i.e. the corruption. I would counter that what we have now isn't bathwater, but mud. And once you have mud, you can't cleanly separate the dirt from the water and still have confidence you got rid of all the dirt. And I don't think our constituents want us spending too much time mucking around in that mud.

But this also begs the question about why this is good policy. The main reason put forth is that it will reduce ratepayer bills. This argument fails on two grounds. It's premised on the removal of the RPS and EE programs. If that's the justification, we could easily write legislation to do just that. In fact, we did in 2014 under SB 310. I won't go into a long explanation, but it's important to note that such a policy could be done separately with a swift repeal of HB 6. I would strongly disagree with the wisdom of that policy because of the importance of RPS and EE to Ohio's economic development through direct job creation (Ohio has

114k clean energy jobs) and through the enticement that RPS brings to many Fortune 500 companies wishing to relocate to Ohio. I also support RPS and EE programs because of the important reduction in health care costs when Ohioans have cleaner air to breathe.

But for those who dislike RPS and EE programs because they believe they cost too much money and interfere with the free market, I'm not sure how they can justify \$1.1 billion for HB 6's nuclear bailout, for the 400k OVEC coal bailout, and for the specially anointed six solar projects. This argument also ignores the billions of dollars given to utilities in the post-deregulation world that subsidized the other nonrenewable energy utilities. FE received nearly \$11 billion prior to HB 6. Why is it okay to subsidize those and not RPS/EE? Or as AG Yost so bluntly put it, "Once you choose to meddle in the markets the same sauce works on every sandwich." Or in other words, you can't say that you support cutting RPS and energy efficiency riders when you're ok with allowing \$11 billion to soften the blow of deregulation and then give another \$1.1 billion in nuclear bailout subsidy riders that appear to benefit the C-suite folks and the shareholders more than they do ordinary Ohioans.

In other words, if the goal is to kill those mandates and theoretically remove those charges from ratepayer bills, then it makes no sense to add in higher rates on the nuclear side. This would increase the overall costs to consumers, which leads me to my next point that it's inconclusive as to whether removing the RPS/EE programs will lower costs or actually increase them.

INCONCLUSIVE PROOF THAT ELIMINATING RPS/EE SAVES MONEY

There was a significant amount of testimony on this issue by people much more knowledgeable than I. I do want to note, however, that under existing Ohio law, energy efficiency must be cost effective. The PUCO cannot approve an energy efficiency program that costs more than it will save. We have all been falsely told to believe energy efficiency produced zero dollars in savings on the cost side of the ledger. We know this simply cannot be the case and we know that it can be calculated – as has been done by independent experts and even the PUCO. Yet, the memorandum sent to me by LSC yesterday plainly states that they did not have the proper information to quantify this savings. We simply must have those numbers – and a complete analysis on the real cost of HB 6 – presented by those experts to this committee. Also, I believe Rep. Greenspan will discuss the often-overlooked cost increases for small businesses who will see a dramatic rate

hike under HB 6 at a time when they can afford it the least. And while this information of substantial increased costs to small business wasn't clearly laid out during the HB 6 process, I think the effects of the pandemic should have us hastening the repeal of this bill so that these small businesses aren't hurt even further.

IMPORTANCE OF CLEAN ENERGY

The second argument that we should not immediately and completely repeal HB 6 is that nuclear energy is an important part of a clean energy portfolio. I would like to make two points on that. First, both Representative Greenspan and I believe in an "all of the above energy" policy. We recognize that nuclear provides over 80% of our clean energy currently and approximately 15% of our entire portfolio. The second point is that even if we were to lose this 15% nuclear contribution to the PJM, which is recognizably undesirable, we have an excess of 26% on any given day so we could easily absorb that loss if we had to. And while I'm sure the California blackouts will be used as proof that we need HB6 to save our grid, I'll have to leave that argument for another day, but quickly add: don't be distracted by it because a) we have the excess capacity and b) the blackouts are caused by electric distribution not generation, and c) broken record again, but we don't have proof that FES needed the money or they would have disappeared without the subsidy?

JOBS

The third argument against straight repeal is that we need HB 6 to prevent the loss of jobs. This is a very sympathetic argument because we have communities that would be greatly impacted by plant closures if that were to happen. Important to this discussion is the question of what role the government should play in bailing out companies to save jobs. Unfortunately, Ohio, like many states has had to face this issue during the last recession and again even more recently. My hometown is Wilmington, Ohio where the departure of DHL, the express delivery company, left the community of about 11,000 residents economically devastated. Eight thousand jobs were lost-double the amount employed at the two nuclear power plants. Wilmington became the poster child for the US recession, where everyone from Rachel Ray, Jay Leno, and 60 Minutes folks descended upon the community to chronicle the economic crisis. It was difficult to watch as many families suffered from the loss of that one large employer. Should the legislature have stepped in and offered taxpayer money to

keep DHL in Wilmington? Should we have done the same in Lordstown? Anywhere? No doubt we will see more economic devastation in the post-pandemic shutdown economy. However, I can tell you that today good ole American ingenuity has resulted in a huge economic renaissance in Wilmington today. Unleashed, the free market forces led to possibilities unforeseen at the time. Companies like Amazon and Bright Farms, a mega greenhouse hydroponic lettuce production facility that can grow 1 million pounds of produce indoors, have taken root in a post-DHL Wilmington.

PICKING WINNERS AND LOSERS

Finally, I'll note that even today despite the billions spent to soften the blow of deregulation the energy market is not quite a free market. Most free market proponents argue we should be careful to not intervene on the side of one company or industry at the expense of others: that we are in essence picking winners and losers. In this case by putting the \$1.1 billion heavy hand of government on the free market scales of energy, we have created an exceptionally large disruption for the others who compete in this same market. These competitors, the natural gas, petroleum, coal, wind, and solar industries, have employees too. We should be careful not to create job losses in those industries as we heavily tip the balance in favor of another industry.

FINAL CNC

As a representative who voted against the former speaker and against HB 6, I get no pleasure in testifying here today. But it is imperative that we cooperate on behalf of all Ohioans. I will close here and strongly encourage you to swiftly and completely repeal HB 6 given the alleged corruption, the \$800 million stock buyback, the late addition of the mysterious decoupling provision and the alleged short circuiting of the democratic referendum process. We can craft a free-market based comprehensive energy policy that includes nuclear, natural gas, oil, solar, wind, and any future energy breakthroughs that will make our constituents proud. But we can't quickly do it on the back of HB 6. We must do it with transparency, integrity, and a more comprehensive approach. After we repeal HB 6.

Thank you.