



**BEFORE THE HOUSE PUBLIC UTILITIES COMMITTEE  
REPRESENTATIVE JIM HOOPS, CHAIRMAN**

**TESTIMONY  
OF  
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OMA ENERGY COUNSEL**

**SEPTEMBER 29, 2021**

Mr. Chairman and members of the House Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter, Lipps, and Leland, where I specialize in energy and public utility law. I also serve as energy counsel to both The Ohio Manufacturers' Association (OMA) and the OMA Energy Group. I appreciate the opportunity to present proponent testimony on House Bill 351 (HB 351).

The OMA represents the manufacturing sector of Ohio. We boast approximately 1,300 members – of all sizes. It is impossible to competitively operate a modern manufacturing facility without economical and reliable power. Our membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is very important to Ohio's manufacturing competitiveness.

Access to reliable, economical energy is critical to all manufacturers. For that reason, OMA members are always seeking cost-effective energy solutions. They are constantly looking for ways to reduce electricity costs because money they save by reducing their energy spend is money manufacturers can reinvest in their businesses, employees, facilities and in product innovations—as well as their communities.

Also critical to Ohio manufacturers are energy policies that support energy markets, free from market manipulation, that allow consumers to access the cost and innovation benefits of competition.

The OMA was an ardent opponent of House Bill 6 (HB 6). OMA and its members testified numerous times in opposition to the anti-consumer and anti-competitive provisions of the bill now tied to the pending bribery investigation by the Southern District of Ohio's U.S. Prosecutor's Office.

Our organization has been before this committee this year to testify in support of legislation that would repeal the harmful provisions of HB 6. We are once again before you to request this body eliminate one of the last remaining anti-consumer pieces of that scandal ridden bill.

HB 351 is a straightforward bill that does several things. The bill ends the subsidies included in HB 6 for the Ohio Valley Electric Corporation (OVEC) and the two 1950's era coal plants it owns, Kyger Creek in Ohio and Clifty Creek in Indiana, and it will refund the charges Ohio ratepayers have borne since the OVEC provisions from HB 6 went into effect.

Also the bill would prevent the revival of any OVEC charges that existed prior to HB 6. Several riders had been approved by the PUCO that were set to expire in the coming

years. HB 6 extended the expiration of those charges, expanded the number of customers charged, and modified how the charges are applied.

Our initial estimates of the subsidies for the two OVEC coal plants for the entire term of the subsidy created by HB 6 was approximately \$700 million. But recently the costs to run the plants have increased to \$150 million per year, and the total amount of the subsidy could end up being well north of \$1 billion. This cost comes with no benefit to customers. In fact, the subsidies are not even helping OVEC improve. OVEC's energy output is down 40% since 2010, its employment is down 20%, its emissions are still high, and its financial losses could continue for another 19 years.

At the time of HB 6's passage, some proponents testified that the OVEC charges were merely codifying Ohio case law. That was not accurate then, or now.

While it is true the Supreme Court of Ohio in 2018 upheld a PUCO ruling allowing AEP to collect OVEC subsidies from AEP customers, that case was in the context of the PUCO approving an Electric Security Plan or ESP and was limited to the term of the ESP. As such, those customer charges were scheduled to drop off when the ESP term concludes on May 31, 2024. HB 6 enabled the owners of OVEC to impose ongoing new charges through 2030 and thereafter.

Some have argued that HB 6 is acceptable because of cost caps imposed in the bill for certain customers, but the owners of OVEC are allowed to defer any uncollected charges that exceed the caps, plus interest. Moreover, this deferral of uncollected costs will be due in 2030 and will be a significant ratepayer cost that will have to be paid in full, plus interest. Again, ratepayer subsidies to OVEC have *increased* since the passage of HB 6. This is because as OVEC's financial performance continues to worsen, ratepayer subsidies increase to pick up the costs.

HB 6 also expanded who pays for the OVEC subsidies. For the first time, FirstEnergy customers are now on the hook to subsidize the two aging plants which includes the aforementioned Indiana plant. In short, the OVEC charges contained in HB 6 legalized another new and unnecessary energy tax on Ohio businesses and families.

This body has moved in the right direction since the beginning of the year by eliminating the Significantly Excessive Earnings Test modifications made in the previous budget, eliminating the decoupling changes made by HB 6, and eliminating the nuclear subsidies in HB 6. HB 315 provides an opportunity to continue to do the right thing by eliminating the onerous and expanded OVEC subsidies that were included in HB 6.

Chairman, members of the committee, again thank you for the time today, this concludes my prepared remarks.