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March 23, 2021

The Honorable Bob Peterson
Chairman
Energy and Public Utilities Committee
Ohio Senate
1 Capitol Square
1st Floor South, Rm. 138
Columbus, Ohio 43215

RE: Substitute House Bill 128 – Written Interested Party Testimony

Dear Chairman Peterson:

The OMA represents Ohio's robust manufacturing sector. We boast approximately 1,300 members – of all sizes. As you well know, affordable and reliable energy is integral to the productivity of these manufacturers. OMA's 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 of paramount importance to Ohio's manufacturing competitiveness; therefore, Ohio's energy policy is of great significance to us.

The OMA was an active and vocal opponent of House Bill 6 (HB 6). OMA and its members brought research-based testimony 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.

Harmful provisions of HB 6 include the following:

- A. Clean Air Fund/Subsidies for Nuclear Plants: HB 6's "crown jewel" was a \$150 million-a-year subsidy for the owner of Ohio's two nuclear power plants. This subsidy, financed by Ohio's electric consumers, could not be financially justified. Publicly available financial data and the owner's proposed \$800 million stock buyback demonstrated that the subsidy was and is not needed. An additional \$20 million subsidy for select solar plants brings this subsidy total to \$170 million annually.
- B. Decoupling (profit guarantees): The bill's decoupling mechanism provided the FirstEnergy utilities with 2018 revenue levels (plus at least an additional \$66 million each year), regardless of the amount of electricity sold. The data and analyses demonstrate how HB 6 authorized the FirstEnergy utilities to collect \$355 million through 2024 – and hundreds of millions more in later years – from Ohio's electric customers. (The then FirstEnergy CEO told investors this provision would make the company "somewhat recession proof.")
- C. OVEC Subsidies: HB 6 provided additional subsidies for the utility owners of the uneconomical Ohio Valley Electric Corporation (OVEC) coal plants – subsidies estimated to be worth \$700 million through 2030. One of the plants is in Indiana.

During the waning days of the 133rd General Assembly, the OMA testified on several different pieces of proposed legislation that addressed the repeal of HB 6. The OMA supported then Representative Romanchuk's House Bill 772 as the most comprehensive approach to address the problems presented by HB 6. We still believe it would be the best approach to protect Ohio's business and residential customers.

Nonetheless, while not addressing all of the issues that are problematic for consumers in HB 6, HB 128 begins the process of rebalancing Ohio's utility laws between customers and utilities.

HB 128 originally eliminated the Clean Air Fund subsidies for Ohio's two nuclear plants and select solar projects in the state. The House amended the bill before voting it out of committee to retain the solar subsidies. Since mid-2019, the OMA has provided members of the General Assembly information regarding the market effects of the Federal Energy Regulatory Commission's Minimum Offer Price Rule (MOPR). We cautioned of the obstacle posed by MOPR: that the subsidized plants may not be able to participate in the capacity auctions as long as there was a state subsidy in the law. More specifically, in June of 2019, OMA explained: "This is a real, probable, and possibly unintended consequence of H.B. 6 – that Ohio's nuclear power plants will be ineligible to compete in wholesale capacity auctions and will likely be further impaired financially by this loss in revenue." We are pleased to see that others now agree with our initial analysis regarding the rule.

HB 128 also repeals the FirstEnergy utilities' decoupling provisions and removes the modification to the Significantly Excessive Earnings Test which compromised the fairness of the earnings test in favor of FirstEnergy (included in House Bill 166, the 133rd General Assembly's operating budget bill). Finally, the bill also provides for a transmission study. All of these are worthy constructs.

However, we would urge this committee to repeal the additional anti-consumer provisions contained in HB 6, most notably the subsidies for OVEC. HB 6 codified and extended the subsidy for OVEC through 2030. OVEC owns two legacy, uneconomical power plants, Clifty Creek in Indiana and Kyger Creek in Ohio. The OVEC subsidy currently collects tens of millions of dollars each year from customers of AEP Ohio, Duke, and DP&L. And FirstEnergy customers are now paying new charges for the first time to subsidize OVEC, due to provisions in HB 6.

HB 128 is a positive step in the right direction, repealing many of the toxic provisions of HB 6. OMA encourages the Senate to go further and repeal the entirety of the expensive and unneeded Clean Air Fund and the OVEC rider that continues to subsidize two obsolete and uneconomical coal plants, including the one in Indiana, and prevent the PUCO from enacting a new OVEC rider without explicit approval from the General Assembly.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,



Rob Brundrett
Managing Director, Public Policy Services