

Ohio Senate Public Utilities Committee
Testimony in Opposition to SB 128
June 8, 2017

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Chairman Beagle, Vice Chairman LaRose, Ranking Member Williams and members of the Committee, my name is Judith Lagano and I am the Senior Vice President of Asset Management for NRG Energy. Thank you for the opportunity to provide testimony on Senate Bill 128.

I'd like to tell you a little about NRG and then why we oppose this legislation.

NRG is the leading integrated power company in the U.S., built on the strength of the nation's largest and most diverse competitive electric generation portfolio and leading retail electricity platform.

We are a Fortune 200 company and we create value for our investors and our customers through best in class operations, reliable and efficient electric generation, and a retail platform serving residential and commercial businesses.

Let me put this in terms of raw numbers- our retail electricity providers currently serve almost 3 million residential and commercial customers. And our generation portfolio of more than 140 generation assets produce about 50,000 megawatts of power which is enough electricity to power more than 13 million homes. NRG is currently the largest independent power producer in the U.S.

In addition, we actively contribute to the local communities where NRG employees live and work. Since 2004, our [positiveNRG](#) program has provided millions of dollars to organizations and charities that have a direct impact on the lives of the people in our communities, including food banks and those that foster self-sufficiency, improve housing and provide supplemental education to people in need.

NRG has [won numerous awards](#) for industry leadership and many of its nationwide ECO-NRG initiatives, which are targeted toward meeting the challenges of climate, clean air and natural resources protection.

Here in Ohio we operate the Avon Lake power plant, located west of Cleveland. We employ about 100 men and women at the plant, are a significant tax payer to the City of Avon Lake and to Lorain County and we're proud of the fact that Avon Lake has operated continuously since 1924. There's a lot of history there and we are pleased to have been able to continue the tradition of providing safe, reliable power generation for a half million citizens in the Cleveland area during our tenure of ownership of the plant.

What's really interesting for this committee about Avon Lake in the context of this legislation is that it stands as a clear example of the benefits of Ohio's competitive market to the citizens of Ohio and to the independent power producer industry. Avon Lake was originally owned and operated by Cleveland Electric Illuminating Company, a predecessor to the company that eventually became First Energy. In fact, First Energy ran Avon Lake until they sold it to GenOn (which was acquired by NRG). GenOn announced they would close the plant in April 2015, because of the cost of emission upgrades mandated by the US EPA that they estimated to be \$400 million. When we acquired the plant we took a second look and determined that we could, with a significant investment of shareholder dollars, run the plant profitably even after making the necessary emission control investments.

Additionally, we initiated a project to develop a natural gas pipeline within Lorain County to bring natural gas supply to the plant. While that project is still in the development phase, through a combination of cost effective technical measures, we are currently operating Avon Lake on coal in compliance with US EPA environmental regulations, as a bridge to the future.

It is important to note that Avon Lake is only about 15% smaller than the Davis Besse nuclear plant and is located in the same power market as both Davis Besse and Perry. When Avon Lake was under financial stress and facing the exact same energy and capacity prices that those nuclear plants did and do, we relied on shareholder investments to find a solution to allow for continued operation. We have not and will not rely on ratepayer subsidies to operate Avon Lake.

This brings me to our position on this legislation. NRG respectfully but firmly opposes this legislation because it would provide preferential, out of market subsidies to unprofitable generators in Ohio. Levying an energy tax on Ohio citizens to bailout certain power plants because of the unfortunate business decisions of one company unnecessarily punishes anyone who uses or generates electricity in this state. If this legislation were to pass as introduced, schools, hospitals, nursing homes, businesses large and small from your local hardware store or dry cleaner or pharmacy, to major manufacturers will pay an extra nuclear bailout fee, month after month, year after year. That is a completely unnecessary outcome and one I urge you to avoid.

We believe this legislation is bad policy for a number of reasons but I will limit my comments to four:

1. It sends the signal to all generators that if they make bad business decisions the General Assembly will bail them out by levying a tax on Ohio citizens;
2. It undermines one of Ohio's biggest competitive business advantages relative to surrounding states which is low energy prices. Artificially increasing the cost of electricity to bail out one company means every other Ohio company will immediately become less competitive relative to their industry peers in Kentucky, Michigan, Indiana, Pennsylvania and West Virginia.

It will remove the clear market signals that the energy markets are sending to all generators about when they should enter and exit the market. We built our business on the premise that price signals that come from pure competition, not legislative mandates, will provide us the profit motives to either make wise and efficient investments that results in Ohioans receiving safe, reliable, and most of all, affordable electricity.

Alternatively when poor investment decisions are made it is investors, not the public, that shoulder the risk. This approach is a good deal for Ohioans because they enjoy the

benefits of efficient investment and the resulting lower costs without having to fund the losses of poor investment choices. The alternative being considered under the bill is a corporate welfare scheme designed to prop up the failing enterprise of a few favored entities. I cannot stress enough, that the facilities for which this subsidy is targeted are fundamentally uneconomic and therefore Ohioans will be throwing good money after bad. Inevitably when the subsidy ends, these companies will be back with their hands out looking for more. In the interim, other economic plants will have been forced out of the market and Ohio will face higher prices and be even more beholden to the demands of the subsidized entities. There's ample evidence of the price benefits of Ohio's competitive markets over the last 18 years and there's zero evidence that returning to a command and control regulatory structure will result in lower prices or more innovative products in the market. In fact, the exact opposite is true. I believe Dr. Ned Hill has provided this General Assembly with numerous examples of this fact in his testimony before your counterparts in the House on May 16th.

3. This legislation will remove the incentive for new power plant construction in Ohio. It may sound strange that I'm advocating in favor of a business climate that attracts new power plants, of which there are at least 5 new combined cycle gas plants in advanced stages of planning or construction in Ohio today, but we welcome their entrance to this market on the basis of fair competition and a level playing field. When private investors see an opportunity to earn a profit, they respond with new investments that will drive economic growth in Ohio and further modernization of the electricity supply. Clearly there will be more electrons flowing into the Ohio grid in the next decade because of the new natural gas plants which is exactly what customers want. This nuclear subsidy would have a chilling effect on construction in the future as developers and investors lose confidence in the market.

Finally, I'd like to address an argument that's come up several times in previous hearings.

There's been an assertion that energy markets are "failing" or that they are not truly markets at all because they are "based on only one factor – price". Nothing could be further from the truth.

Today's wholesale energy markets are attracting hundreds of millions in *private* investment—investments that are employing Ohio citizens and lowering energy prices for Ohio businesses.

And with the recent “Pay-for-Performance” changes implemented by PJM, the grid operator for Ohio and 12 other states, generators that perform during challenging system conditions like the polar vortex will receive a higher payment than generators that don't perform. By June 2020, 100% of the generators will be under the new capacity performance rules. These new rules actually *reward* base-load units, like nuclear because they provide higher payments for high performing units that provide reliability when it is needed most. Thus, the market provides consumers greater protection from power interruptions and price spikes, especially during instances of extreme weather when the power system is most vulnerable. These market improvements are likewise driving investment and jobs in Ohio – along with higher levels of reliability.

Because capacity payments make up a significant portion of a power plant's revenue, in some cases, the majority of the revenue, it's wholly accurate to say that the wholesale electric market does reward power plants with desirable characteristics that go well beyond price. What we're observing in the PJM market is that coal, gas, oil, and nuclear power plants of all ages and sizes are participating in the market without subsidies competing for the opportunity to meet electric system demand; the way a functioning market should work. In fact, in the auction completed in May for delivery in 2020/21, both Davis Besse and Perry “cleared” which means they are obligated to run through at least that time and, of course, they cleared that auction without legislative subsidies like the one proposed in this bill. Intervention in these markets through targeted subsidization will threaten their functionality and distort the outcomes to the detriment to both consumers and investors.

Moreover, it's important to note that the companies claiming a “market failure” were perfectly happy to earn premium returns during periods of high demand and high gas prices. Now that their generating units are no longer competitive, they suggest that it is the market – not their aging power plants – that are obsolete. Rather than make economically rational decisions

based on wholesale market signals, they have turned to the legislature at the expense of the Ohio ratepayer for continuity of profits, something you did not guarantee when you approved the restructuring of the electric market. There is simply no need now to turn away from the very same construct that has delivered lower prices and higher reliability to the people of Ohio. I implore upon you not to backtrack on the benefits and success that Ohio has received from its competitive electricity markets.

Thank you for your time and I'm happy to answer any questions from members of the Committee.