House Bill 6, Senate Energy and Public Utilities Committee
Opponent Testimony of Joseph Oliker
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Chairman Wilson, Vice Chair McColley, ranking member Williams and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to provide opposition testimony on House Bill 6. My name is Joseph Oliker, Associate General Counsel for IGS Energy.

IGS Energy is a diverse energy company that is family-owned and privately held. IGS is headquartered in Dublin, Ohio and employs more than 700 people throughout this state. Each year, IGS directly contributes over $100 million to the Ohio economy in payroll, taxes, and local vendor expenditures. IGS provided over $1 million to Ohio charities and our employees volunteer over 7,000 hours per year. IGS serves over 1,000,000 customers nationwide and we conduct business in over 20 states.

IGS consistently receives accolades for its impact on Ohio. We were rated “Best Employer” by Columbus CEO Best of Business and “Best Place to Work” by Columbus Business First.

IGS is also an active developer of solar in the state with plans to further expand our investments in Ohio solar projects. Last year alone IGS invested over $200 million in customer-sited solar assets. IGS plans to invest even more this year. How much of that investment will be in Ohio is largely up to the General Assembly and the outcome of negotiations on this bill.

Before I go into the substance of this bill, it is crucial to acknowledge an important point: Electric competition is working in Ohio. Since Ohio’s electric restructuring, electric generation rates have remained low and stable, whereas rates in regulated states have continually increased. Moreover, we have a surplus of electric generation available to serve customers in Ohio.

Competition has also attracted jobs to Ohio. Indeed, the 700+ jobs that IGS has created in Ohio would not exist without retail energy competition.

Let's be clear, we are not discussing energy legislation because competition has failed. Rather, we are here today because the incumbent owners of inefficient generation assets are seeking insulation from the risk associated with the competitive market on the back of Ohio's ratepayers. While some of the older inefficient plants have closed, that is not necessarily a bad thing. It is a necessary part of competition, and while its easy to get fixated on potential plant closures, we often forget the incredible amount of more efficient electric generation that is being built in Ohio because of competition.

HB 6 started out as a nuclear subsidy bill sugar coated with a potential rate reduction by elimination of the energy efficiency and renewable portfolio standards ("RPS"). Yet, here we stand with just a few days to discuss not only a nuclear plant subsidy but also a multitude of unrelated special interest provisions that have been tacked onto HB 6—provisions designed almost entirely to benefit the large incumbents and utility monopolies.

While the urgency to take action is largely driven by Ohio's nuclear plants, HB 6 has morphed into the largest piece of energy legislation that this body has considered in over a decade. The bill in its current form would damage the energy landscape in several ways, harm Ohio companies, and tilt the playing field against competition and towards incumbent monopolies.

While I could submit over a hundred pages of testimony and talk for hours detailing each and every flaw in this bill, in the interest of time, I will focus on the provisions that have gotten lost in the debate but could fundamentally harm Ohio's electric market and the substantial benefits it brings to the customers in this state.

This is supposed to be a bill that promotes clean air, jobs, and reduces costs. It fails on all accounts.

1. The Bill Harms Solar

Regarding clean air, the bill will make it more difficult to build renewable generation in this state for anyone except for the electric distribution utilities and largest customers.

The bill eliminates the RPS. Individuals may quibble over the effectiveness of the RPS to incentivize Ohio generation construction, but the fact remains that the RPS and renewable energy credits are a factor in the economic viability of renewable energy development and are available to

anyone that wishes to build solar. By eliminating the RPS, solar and wind projects will lose revenue.

Further, the Ohio Clean Air Program is proposed to replace the RPS, but only a few already determined renewable projects over 50 megawatts would be eligible to access the funds. Although the current bill is intended to promote clean air resources, it would make almost every other renewable generation project less economic than it is today, especially customer-sited solar.

Making matters worse, the bill would increase fixed charges in distribution rates through decoupling. Fixed charges harm the economics of customer-sited generation.

If the Senate is interested in creating jobs, it should ensure that there is still a place for customer-sited solar in Ohio. According to the 2018 Solar Jobs Census, customer-sited solar creates approximately 30 jobs for each megawatt deployed (21.9 jobs per megawatt of non-residential projects and 38.7 jobs per megawatt of residential projects).[1]

2. The Bill Would Provide Subsidies to Utility Renewable Products

The bill would allow electric distribution utilities to directly own and operate renewable energy facilities and provide renewable products to customers through a schedule or reasonable arrangement. The reasoning for this proposal simply does not make sense.

Only one party has testified in favor of this proposal, and, no surprise, it was a monopoly utility. It offered two reasons to support allowing the utilities to own generation: (1) customers want utilities to provide them with renewable products; and (2) utility revenue has gone down since they divested their generation and the utilities want to invest in Ohio.

Notably, most customers are against the bill; only the largest industrial customers that are shielded from the costs other customers must pay and stand to benefit from the reduction in energy efficiency costs, support the bill. Not a single customer has testified in favor allowing the utilities to own renewable generation.

There are very good reasons to prohibit utilities from owning generation. Ohio law contains strict corporate separation requirements in

[1] *National Solar Jobs Census 2018*, The Solar Foundation, at 30, accessible at https://www.thesolarfoundation.org/national/.

R.C. 4928.17. In order to establish a level playing field to foster competition, the General Assembly required utilities to separate and divest their competitive businesses. In other words, the General Assembly prohibited utilities from placing the risk associated with competitive businesses on the backs of customers.

There were concerns that utilities would attempt to leverage their monopoly status to insulate their competitive assets from the risks associated with the competitive markets. The goal was to ensure that utilities did not gain an advantage in the provision of competitive products simply by virtue of their role as the monopoly provider of distribution service.

As an interesting reference point, look at some of the issues in HB 6. Subsidies for inefficient nuclear generation and inefficient coal owned by utilities or their affiliates. Given the utilities' proclivity to ask for generation subsidies on the backs of all customers, does it really make sense to allow the utilities to own more generation assets?

Of course not. Particularly when the affiliates of the utilities can, and do, already provide renewable products and services to customers. While regulated utility revenues have gone down, the revenues of competitive utility affiliates have increased as a result of market-based transactions between willing buyers and sellers rather than captive distribution customers. This is a good thing.

Given this fact, it appears this proposed language is only intended to find ways to leverage ratepayer dollars to grow regulated monopoly revenue and tilt the playing field in favor of utility products and services.

There have been some claims that utility ownership of renewable generation will not cost any non-participating customers a dime. That, however, is not what the language of the bill says. The proposed language in R.C. 4928.647 is a standalone provision that permits utilities to provide renewable energy services "regardless of any limitations set forth in any other section of Chapter 4928 . . ." This means that in the implementation of this provision, the PUCO is explicitly able to disregard all other laws in the chapter, such as the state's energy policy and important customer protections. Further, the two alleged safeguards in this proposed section are meaningless.

First, the section states that a utility may provide renewable energy services if the schedule does not create an *undue burden* or *unreasonable preference* to non-participating customers. This is a blanket delegation of

authority to the PUCO to authorize both burdens and preferences—so long as they are not *undue* or *unreasonable*. The provision is this bill is drafted so vaguely that the PUCO may very well conclude that requiring non-participating customers to pay millions to subsidize utility product offerings is reasonable and allowable under the law.

Second, the section states that the utility must comply with any conditions the PUCO *may* impose to ensure that the utility and participating customers are solely responsible for the risks, costs, and benefits. This section is not a safeguard because the word *may* is optional—whereas the word shall would have created a mandatory requirement. Coupled with the section that permits burdens and preferences, it is clear that the proposed section does not require costs and risks to be assigned solely to participating customers.

Irrespective of what the Senate does with HB 6, at a minimum it should strike R.C. 4928.647 altogether from the bill. There is no need to permit the utilities to own generation, particularly given that utility affiliates and other competitive companies such as IGS already can, and do, provide customer's solar without any burden to non-participating customers and without the subsidies that this bill would permit.

To the extent Ohio wishes to encourage the development of renewable generation, it should focus on establishing an energy landscape that facilitates development of resources by all market participants—not just the utilities.

IGS suggests that if the Senate truly wants to provide a level playing field for renewable generation, it should turn its attention to fixing Ohio's net metering policy.

A healthy net metering policy will encourage the development of Ohio-based customer-sited renewable generation on a non-discriminatory basis. If Ohio simply adopted the annual net metering program used by its neighbors in Illinois, Pennsylvania, West Virginia, and Kentucky, it would do far more to advance renewable generation than the provisions in HB 6, which are designed to pick winners and losers and favor incumbent monopolies.

3. The Bill Provides FirstEnergy Solutions ("FES") a Competitive Advantage

The driving force behind HB 6 appears to be a desire to keep the Davis-Besse and Perry nuclear power plants open. The bill would go far beyond

that through a mixture of wholesale and retail subsidies. While the $9 credit per megawatt hour has received most of the attention, this bill would also provide FES with a significant market distorting retail subsidy.

Specifically, R.C. 4928.47 permits mercantile customers (any customers that uses more than 700 megawatt hours in a year) to avoid paying into the Ohio Clean Air Program if they enter into a purchase power agreement of three years or longer with certain generation resources, including nuclear. What does this mean? If a retail provider offers a contract to a customer at the same or lower price as FES, the customer would be more likely to choose FES because purchasing power from nuclear generation makes the customer eligible for an exemption from the Ohio Clean Air Program charge. For example, a large mercantile customer could avoid paying $90,000 over a three-year period if they pick FES as their retail electric supplier. This retail subsidy effectively permits FES to double dip and earn additional profits on top of the $9 per megawatt hour wholesale subsidy.

The $9 will already distort the wholesale and retail market by permitting FES to make below market offers that do not reflect its costs. Given that the $9 per megawatt hour credit will already provide sufficient revenue to keep the nuclear plants open, there is no good reason to provide FES with an additional competitive advantage in the retail energy market.

4. Remaining issues

- **The Renewable Portfolio Standard**. If the RPS is eliminated, it will harm the economics of customer-sited renewable generation, particularly solar. At a minimum, the Ohio Clean Air Program funds should be available to all solar and wind resources regardless of size, not just utility and incumbent projects. Additionally, the elimination of the RPS contains a phase out that favors the utilities, permitting them to recover the cost associated with their long-term purchases from all customers, whereas there is no provision to make retail electric providers whole for similar investments. Thus, should the General Assembly choose to repeal the RPS, the mechanism to recover a utility's RPS compliance costs must remain bypassable.

- **Energy Efficiency**. The bill touts providing a bill decrease by eliminating the energy efficiency standards and costs. But through proposed R.C. 4928.661, this promise is largely illusory. As drafted there is no guarantee that energy efficiency costs will go down. Under the bill, the utilities may propose new energy efficiency measures as soon as the current plans expire. There are no restrictions on what the utilities may propose other than that the proposal be cost effective and in the public interest. However, the current $290 million per year in energy efficiency spending was determined to be cost effective and in the public interest by the PUCO, so it is hard to see how the law changes the status quo. Stated differently, there is nothing in HB 6 that would prevent the utilities from spending $290 million or more per year on energy efficiency in the future. To the extent that this provision remains, at a minimum, the Senate should require that 75% of energy efficiency dollars be allocated to customer energy efficiency measures. This would trim bloated, inefficient budgets that funnel customer dollars to utility shared savings, advertising, and excessive overhead.

- **The Nuclear Subsidy**. Even if you accept that the power plants need money, $9 per megawatt hour is too high. This simply will increase the return on equity of east coast banks and foreign investors. It will also provide additional headroom to permit FirstEnergy Solutions to use its subsidized generation assets to provide predatory pricing contracts to the detriment of competition. The subsidy—if provided at all—should be tailored to a level of no greater than $6 per megawatt hour. Even the independent market monitor's evaluation of the viability of the plants—a study that others have concluded is extremely conservative—determined that the plants' revenue shortfall is less than $6 per megawatt hour. Thus, $6 per megawatt hour would provide revenues greater than avoidable costs and ensure the plants do not close.

- **The Ohio Valley Electric Corporation**. Customers should not be responsible for paying for the utilities' legacy investment in OVEC coal plants, nor bear the risk that comes with operating 65-year-old coal plants that currently hold $1.22 billion dollars in

debt.[2] Rather than codifying this subsidy into law, the General Assembly should pass legislation to terminate cost recovery for these outdated power plants, the larger of which is located in Indiana.

In sum, there is too much in HB 6 that would fundamentally alter Ohio's energy landscape for the Senate to act rashly in approving the bill. While HB 6 started out in the House primarily as a vehicle to subsidizing Ohio's nuclear plants, it has morphed into much more. If the Senate wishes to provide financial assistance to these nuclear plants, it should do so in a clean and straightforward way and remove the additional provisions designed to favor incumbent utilities, and move Ohio away from competition and towards more monopolization and regulation.

With any remaining time, I would be happy to answer any questions that you may have.

Sincerely,

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[2] *In re OVEC*, PUCO Case No 19-0763-EL-AIS, Staff Report at 3 (June 5, 2019).