



**Ohio House Public Utilities Committee
Supporter Testimony House Bill 351
Neil Waggoner - Sierra Club**

Chairman Hoops, Vice Chairwoman Ray, Ranking Member Smith, and members of the House Public Utilities Committee. My name is Neil Waggoner and I am the Senior Campaign Representative for the Sierra Club's Beyond Coal Campaign here in Ohio. Thank you for the opportunity to submit written testimony in support of House Bill 351.

The bailout of the Ohio Valley Electric Corporation (OVEC) plants was a bad idea to begin with and is now absolutely indefensible in the wake of the scandal and corruption that has been brought to light surrounding House Bill 6 (HB6). Sierra Club is pleased to support Senators Romanchuk and Craig's bill to repeal the OVEC coal plant bailout.

Sierra Club's members and supporters have consistently opposed efforts to bail out the OVEC coal plants for many years. At the Public Utilities Commission of Ohio (PUCO), here at the Ohio Statehouse, and in states surrounding Ohio with utilities that have sought rate recovery for the OVEC units, we have argued and demonstrated repeatedly these plants are uneconomic boondoggles. An independent audit carried out by the PUCO in 2020 demonstrated this fact once again.¹ HB6 only made the economics of these plants worse for Ohio electricity customers by fundamentally altering, extending, and expanding the bailout. The HB6 alterations to the OVEC bailout served to further shelter the utilities which made the bad private business decisions around OVEC in the first place, and removed basic regulatory economic safeguards from Ohio electricity customers.

It is unnecessary to once again detail the full history of OVEC other than to point out the companies that have owned the OVEC plants were content to take profits from these plants for many years. Only when the value of the plants soured did the regulated utilities seek to push their excessive costs over to ratepayers. The regulated Ohio electricity utilities that currently hold the OVEC contract - AEP, Duke, and AES Ohio (formerly Dayton Power and Light) - made the business decision to re-invest in the plants and extend the contract to 2040 after Ohio had deregulated electricity generation. That was a foolish business decision made independently of

¹ [PUCO case 18-1759-el-rdr. Audit of the OVEC Power Purchase Agreement Rider of Ohio Power Company Prepared for Public Utilities Commission of Ohio \(PUBLIC VERSION\) electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO.](#)

the PUCO and outside of the purview of regulated electricity customers. In 2011, the OVEC sponsors were the only utilities betting on a long future for coal, and it was a bad bet. The companies that made it should have had to cover the costs of that bet. But instead, they've fought to put it on the backs of captive Ohio ratepayers who at no time had a say or review of the decision.

Long before HB6, Ohio utilities sought bailouts of the OVEC plants at the PUCO. These bailout attempts were met with extreme skepticism and opposition from business groups, environmental groups, and the public at large. During the PUCO proceedings, it was made clear the OVEC facilities were losing money at the time and would continue to do so in the future.² The PUCO's decision to provide bailouts to the plants was based on a flimsy argument that the plants might be a "hedge" against future electricity price increases - even in the face of falling renewable, gas, and energy market prices. To nobody's surprise, prices have not increased, the plants continue to lose money, and the market is only getting worse for them. No rational investor in 2021 would elect to put their own money behind the OVEC plants.

While the PUCO's decisions to grant AEP, Duke, and AES Ohio bailouts of the OVEC plants was largely based on an unsubstantiated market hedge argument that's repeatedly been proven wrong, there was at least some semblance of financial protection for customers. Notably, the bailouts would have ended in the mid 2020s. Under the PUCO's decision, the utilities would have had to again make their case for a bailout, a daunting prospect considering the bad financials of the plants.

HB6, however, removed this small semblance of consumer protection by fundamentally altering, extending, and expanding the OVEC bailout. As a result of HB6, Ohio electricity customers are on the hook for OVEC now through 2030. HB6 limited the PUCO's authority of the OVEC bailout to a prudency review of costs every three years rather than the utilities having to justify the continued imposition of costs on ratepayers. Both the legislature and the PUCO failed to define "prudently incurred costs" thus leaving the door open to the review process being little more than a rubber stamp.

Some may point to the monthly cost cap HB6 implemented on the OVEC bailout as a consumer protection but in reality, this is little more than a fig leaf. All costs above the monthly cap are deferred, not eliminated. As such, Ohio electricity customers will still pay all of the costs associated with these two uneconomic 1950's era coal plants.

This body has taken action to repeal some of the more odorous parts of HB6 with the repeal of the nuclear bailout and FirstEnergy's windfall profit mechanisms. Sierra Club applauds these first steps. Sierra Club has consistently called for the full repeal of HB6 and we continue to do so. The passage of HB351 is a necessary step in addressing the public concerns around HB6 and protecting Ohio electricity customers from the continued monthly cost of plants that provide little or no value to Ohioans.

² [Direct Testimony of Jeremy Fisher on Behalf of Sierra Club, PUCO Docket 17-032-EL-AIR, filed June 25, 2018 \("Fisher Testimony"\)](#)

Sierra Club encourages this body to go further and require that the Ohio owners - AEP, Duke, and AES Ohio - comply with the PUCO's previous orders to divest from OVEC. To date, based on filings at the PUCO, it appears none of these utilities have sought to comply. In fact, the only actions these utilities have taken is to send letters to other OVEC owners inquiring if they would be interested in purchasing an additional share of OVEC.³⁴ Unsurprisingly, no shareholders have been interested in increasing their ownership of the debt-ridden, cash-hemorrhaging OVEC facilities. The extension of the OVEC bailout through at least 2030 has only decreased the incentive to follow the PUCO's order in a meaningful way. This body should take steps to address this issue and force AEP, Duke, and AES Ohio to take meaningful actions to either divest or agree to finally close this contract.

Finally, Sierra Club notes that Ohio leads the nation in coal generation retired or announced for retirement, a trend that will continue. Ohio needs to support transition in the communities where plants are retiring and will retire in the future. We need to provide active planning, retraining, and economic opportunity in coal plant communities including Cheshire, Ohio and the surrounding area where the OVEC Kyger Creek plant is located as well as the Gavin coal plant. But bailouts for the companies that own these facilities, as has been the case with OVEC at the PUCO and in HB6, however, is neither sustainable nor smart policy. These communities require direct support from the state to protect essential services, support worker transition and training for a new workforce, and economic incentives to encourage new investment so these communities thrive in the future.

Thank you for the opportunity to submit this testimony supporting HB351. I am happy to answer any questions or provide followup information as would be helpful to the Committee.

³ [PUCO case 16-0395-el-sso, Annual Report on OVEC electronically filed by Mr. Jeffrey S Sharkey on behalf of The Dayton Power and Light Company.](#)

⁴ [PUCO case 17-1263-el-sso, Duke Energy Ohio, Inc. OVEC Status Letter electronically filed by Mrs. Tammy M Meyer on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco and Vaysman, Larisa.](#)