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HB 772| Change electric utility service law/repeal part of HB 6
Sponsor Testimony
November 10, 2020

Chairman Wilson, Vice Chair McColley, Ranking Member Williams and members of the committee, thank you for giving me the opportunity to testify on HB 772. HB 772 is not a full repeal of HB 6 rather it is a partial repeal that removes bad policy that harms Ohioans.

Background

Let me start with some history. In 1999, the general assembly passed SB 3-123, historic legislation to deregulate the electric generation portion of our electric bills and use competitive “markets” for the purpose of lowering utility bills and improving services. Unfortunately, the legislature hasn’t always followed the path to achieve full deregulation and competitive markets; HB 6 is an example of that. Among other things, HB 6 subsidizes certain electric generating plants which, 21 years after deregulation, should be competing without ratepayer subsidies in the wholesale electricity market operated by PJM Interconnection, LLC (PJM). When Ohio deregulated and joined PJM, a 13 state (plus DC) regional grid operator, Ohio essentially abdicated the responsibility of “electric generation” to PJM. Therefore, it is irresponsible and unnecessary for this body or the PUCO to be engaged in any policy that affects the generation market.

Deregulation and SB 3 are bearing fruit. Billions of dollars are being saved annually on the “generation” portion of the customer bill. Old, inefficient generating plants are exiting the market and being replaced with newer technology that is cleaner, more reliable, and cheaper to operate. Markets are functioning. Instead of staying the course of SB 3, HB 6 disrupts the principles of markets by unfairly and needlessly subsidizing certain generation plants at the expense of other generation resources and Ohio ratepayers.

Why have we lost our way to achieving the goals of SB 3 and full deregulation? It’s because of poor business decisions by legacy generation plant owners and effective lobbying to bail them out. Interest groups often turn to the legislature and ask for handouts to prop up failing businesses and old, inefficient, and costly generators. The legislature is a “political” body and should only be involved with new, transformative energy policy such as: regulation v. deregulation, Renewable Portfolio Standards (RPS), or Energy Efficiency (EE) programs, to name a few. The legislature should not be choosing winners and losers within a policy already created. But that is exactly what HB 6 did. It chose winners by subsidizing only a handful of

select generating plants. It also created riders that *increased* Ohioan's electric bills. Why would any legislator want to vote for that?

Throughout last year's HB 6 debate and the subsequent debate this year, I have heard on numerous occasions that this is a "complex" subject. As in other debates, when someone says something is "complex", it's a red flag and should be treated with skepticism. It is commonly used as a distraction to keep you from researching and understanding the policy matter. In my view, this is not complex. This debate can be boiled down to two questions: 1) should Ohio policy be interfering with a deregulated competitive generation market and, (2) should Ohioans be forced to bail out corporations when they make bad business decisions?

HB 772 Repeals Both the Nuclear Resource and Renewable Energy Credit Programs (Nuclear and Solar Subsidies)

The \$150 million annual nuclear subsidy from Ohioans was never needed to sustain the operation of the two Ohio nuclear plants. Evidence was provided by witnesses during the HB 6 debate that financial instability was likely untrue. Subsequently, the owners of the new company, Energy Harbor, confirmed in May 2020 using their \$800 million stock buyback that money is not a problem. In addition to the stock buyback, it is not hard to learn that Energy Harbor is performing well in the market. Anecdotal evidence and a recent Wall Street Journal article suggests they are winning contracts to supply power to consumers – all before receiving any subsidies from HB 6.

PJM, the regional transmission operator responsible for ensuring the safety, reliability, and security of the wholesale electricity markets, testified last year that reliability will not be negatively affected by the closing of the two nuclear plants. Also, PJM recently testified to the House Select Committee on Energy Policy and Oversight that Ohioan's bills will *decrease* if the nuclear plants close and the scheduled new plants are placed into service. Further, Mr. F. Stuart Bresler, III of PJM testified in April 2019 in front of the House Energy and Natural Resources Committee that, if necessary, PJM would undertake three remedial actions if the nuclear plants closed for a total cost of \$24 million.

So we have two choices:

1. Charge Ohioans \$1 billion to keep two, inefficient nuclear power plants open, or
2. Charge Ohioans \$24 million to upgrade the grid while lowering Ohioan's bills, all without sacrificing reliability.

Mr. Chairman and members of the committee, I believe the latter is clearly the best for Ohio's electricity consumers.

With regard to the \$20 million annual subsidy for what will likely be five solar projects, again, the legislature should adhere to the principles of deregulation and SB 3; and should not be picking winners and losers or interfering in competitive generation markets.

HB 772 Repeals the Legacy Generation Resource Cost Recovery (OVEC Subsidy)

Ohio Valley Electric Corporation (OVEC) consists of two, 1950's coal power plants with one operating in Ohio and the second in Madison, Indiana. The plants were originally built for the purpose of providing electricity to a uranium enrichment plant owned and operated by the federal government. After the enrichment plant closed and OVEC's contract ended with the U.S. Department of Energy (and later the U.S. Enrichment Corporation) in the early 2000's, the owners of the plants made a business decision to enter into another contract (without the federal government), continue operation of the plants and sell their power into PJM's wholesale electric market. The owners again (without the federal government) renewed that contract in 2011. The OVEC companies freely entered into these contracts – they were not ordered to do so by the PUCO or any other governmental entity. Unfortunately for the owners, the plants haven't been profitable since 2012. Ohioans should not be responsible for bad business decisions made by the plants' owners, including utilities. Prior to HB 6, ratepayers had paid \$150 million in subsidies to the OVEC plants through 2019 (this was PUCO approved recovery). It's estimated the OVEC plants will remain uncompetitive and HB 6 continues to subsidize these plants with \$100's of millions of additional ratepayer money, transfers the business risk to Ohioans, and does nothing to make the plants competitive. Even though the subsidy ends in 2030, charges to customers will likely continue because of the deferred cost recovery allowed under HB 6. Again, per SB3 and deregulation, we should not be interfering in the competitive generation market.

HB 772 Repeals Decoupling and Provides Refunds

HB 772 repeals the decoupling mechanism which was included in HB 6 to benefit FirstEnergy by rewarding them with unearned income. As PUCO Chairman Randazzo recently testified to the House Select Committee on Energy Policy and Oversight, decoupling has been allowed previously as a rate mechanism in certain circumstances, but it is typically a ratemaking issue that the PUCO decides on a case-by-case basis. The PUCO has the expertise and experience to approve or not approve these ratemaking mechanisms if it deems them to be necessary, reasonable and prudent. Since charges related to the decoupling mechanism authorized under HB 6 have already started to be collected, HB 772 requires FirstEnergy to refund the full amount of these ill-gotten gains to customers.

HB 772 Repeals the Changes to the Home Energy Assistance Program (HEAP)

This provision would have provided for the Ohio Development Services to divert more federal HEAP funds to low income weatherization instead of utility bill payment assistance for Ohioans. With the advent of COVID-19, it is especially important to keep people connected to utility service. According to an October 27, 2020 Columbus Dispatch article which states, "Because of the novel coronavirus and its ensuing economic crisis, nearly 100,000 ratepayers in the greater Columbus area and tens of thousands of ratepayers in Cincinnati have fallen behind on their utility bills." After the pandemic passes, revisiting this change may make more sense.

HB 772 Repeals Any Actions Taken by the PUCO to Implement HB 6 and Refunds All Charges Collected

HB 772 simply terminates all actions taken by the PUCO to implement HB 6 and requires all revenue collected from customers due to HB6 be refunded.

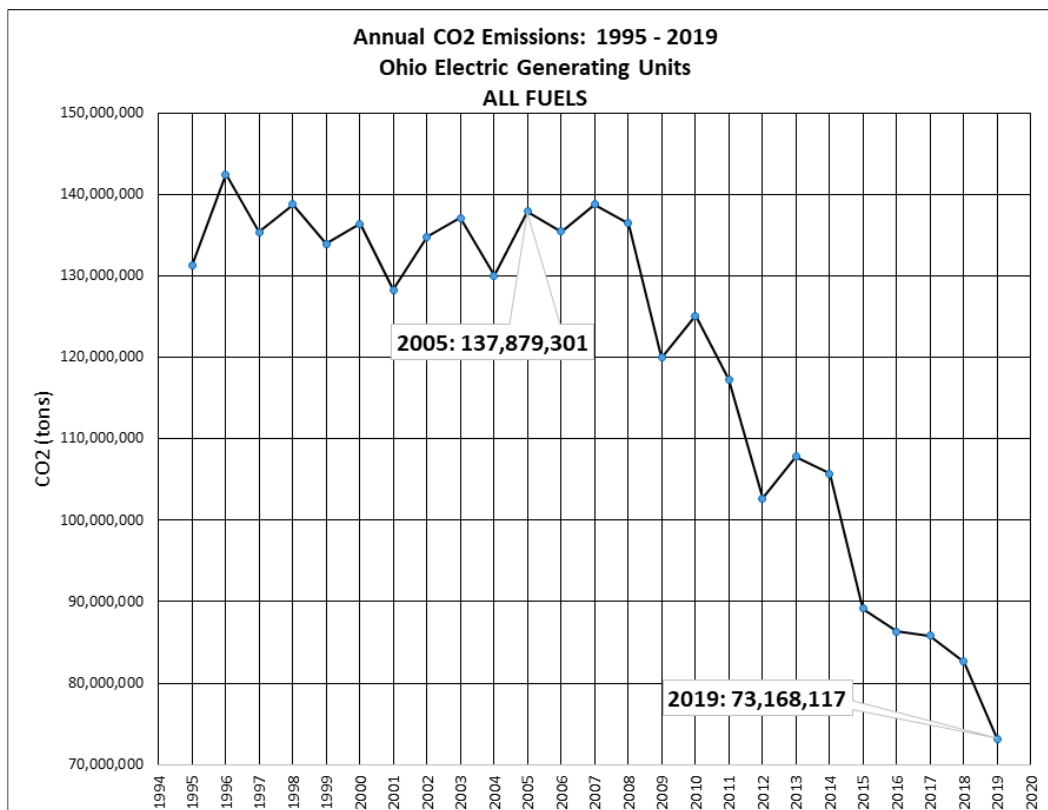
HB 772 Declares an Emergency

Since most of the new charges start January 1, 2021, it is necessary to pass this bill with an emergency clause.

The Reasons Used to Pass HB 6 Were Flawed and Misguided

First, we were told we had to subsidize two nuclear power plants because the operations were not generating enough cash to keep the plants open. During the HB 6 debate, the legislature asked to see the company's financial statements to verify their financial need. We were told that would not be possible – that was the first clue something was amiss. Can you imagine walking into a bank and claiming you have a financial need and need to borrow money, then telling the banker you won't supply financial statements or your tax returns? In addition to the \$800 million stock buyback and the fact they are winning business, the Wall Street Journal reported on October 15, 2020 that the company was doing well because of "low debt levels and a growing retail electricity business". This is all coming months before Energy Harbor is set to receive any of the HB 6 subsidies. It is the shedding of debt through the bankruptcy proceedings, *not* ratepayer subsidies, which have bolstered Energy Harbor, and will likely be the reason the plants remain operational into the future.

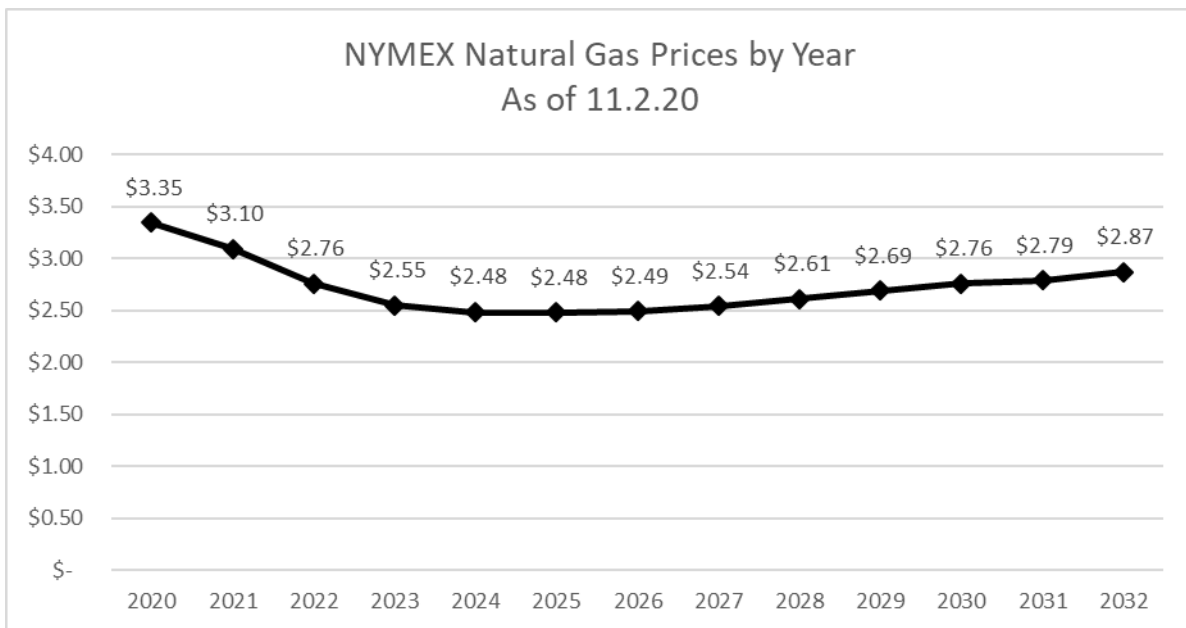
Second, we were told we needed to preserve the two nuclear power plants because of their low carbon emissions. While that may be true, have we forgotten about a nuclear plant's waste stream – spent nuclear fuel which remains high-level radioactive waste and a pollutant for thousands of years? Nuclear plants are hardly pollution free. In addition, the Ohio Environmental Protection Agency (OEPA) reports Ohio has reduced CO₂ emissions from Ohio electric generating plants for all fuel types by 47% since 2005. That equates to over 64 million tons of CO₂ removed from our air in a 14-year period. While one can argue that more work needs to be done, this reduction occurred not because of any decision made by this body or any other Ohio official but by technology and the market. If our goal is to further reduce emissions, technology and the market will provide the best chance of that occurring.



*Data from Ohio EPA

Third, it's said that because other fuel types used to generate electricity are receiving subsidies we should, therefore, subsidize nuclear and coal. To begin, not all subsidies are created equal. Some subsidies such as tax abatements are available to everyone, not a select few. Also, some of the subsidies mentioned such as the Production Tax Credit (PTC) are federal and are out of the control of this legislature. While we can dispute the need for these subsidies, adding more *state* subsidies is not how we should combat them.

Fourth, it's said we need nuclear plants to hedge against natural gas plants cornering the market and raising their prices. There is no evidence this will occur. First, Ohio (the Utica shale formation) is fortunate to have an abundant supply and one of the world's largest natural gas fields. With the addition of natural gas plants in Ohio, we will enjoy lower electricity bills while buying our own resources – a double benefit. Second, natural gas has many uses making it improbable that increased demand by power plants would drive up pricing. Lastly, the financial markets (which are the best indicator we have), are signaling through their futures that natural gas pricing will remain low for the foreseeable future.



*Futures Data from NYMEX

Lastly, we heard the subsidies were necessary to preserve jobs. This assumes, of course, the plants actually close if they do not receive the state subsidies. A fact that has not yet been proven as explained previously. But, assuming closures do occur, it's completely understandable that any legislator would fight to preserve jobs and protect their constituents. On the other hand, every Ohio community has experienced business closures. It's still fresh in my mind when, in my district, our General Motors stamping plant was closed in 2009 displacing 2,800 workers. While we felt sorry for ourselves for a month or two, we pulled ourselves up by our bootstraps and eventually replaced the lost jobs. This scenario has, sadly, repeated itself many times throughout Ohio. The communities affected by the *potential* closing of the nuclear plants, can and will rebound. Furthermore, it takes years to decommission a nuclear power plant, so the number of jobs will not decrease for several decades.

And more recently, I am hearing that a strengthened audit provision will fix the nuclear subsidy policy in HB 6. It will not. Due to deregulation, electricity generators are not entitled to subsidies from Ohio ratepayers. Not to mention, audit results can be manipulated. PUCO audits have uncovered that the OVEC plants continue to sell electricity for less than it cost to make. A recent audit of the AEP Ohio PPA Rider (OVEC subsidy), uncovered questionable business decisions. Unfortunately, the audit did not lead to changes that would lower cost to consumers. An audit, therefore, does not incentivize better business decisions that will make the plants competitive and save the ratepayer money.

Conclusion

Mr. Chairman, I do not know what standard we are using to replace HB 6. What I do know is, we don't represent lobbyist that usually sit in this hearing room, and we don't represent the interest groups that routinely walk the halls of this statehouse. We do, however, represent constituents who are everyday Ohioans - and it's our duty to do what's best for them.

HB 6 was bad policy that had no benefit to Ohioans and was going to cost ratepayers billions. HB 6 was simply a handout that was intended to bailout corporations that made bad business decisions. We all want financially strong, innovative electric power plants. Market forces will deliver that. It's time for our policy to return to markets and make the consumer our focus. Sadly, almost every piece of energy legislation that has been deliberated by this body since I have been in the General Assembly has neglected one thing – what's best for the consumer. It's time to repeal the anti-market provisions of HB 6 that have no benefit to the residential and business constituents that we all represent.

Again, I do not know what standard we are using to replace HB 6. If the standard is to save our constituents money on their electric bills, HB 772 is the only repeal bill (at the time of this testimony) that will save Ohioans additional money. Per the attached LSC fiscal note, Ohioans will save a total of **\$2.93 billion** as a result of passing HB 772. If you add this savings to the \$2.3 billion LSC calculated savings from the passage of HB 6, ratepayers will avoid paying a total of **\$5.23 billion**. It's time to put our constituents first and leave this money where it belongs, in their pockets.

Mr. Chairman, thank you for the opportunity to testify, and I would be happy to answer any questions.