

10:00 a.m. (EST)

1-866-362-9768

940-609-8246#



**OMA Energy Committee Agenda
February 28, 2018**

Welcome and Introductions

Brad Belden, Belden Brick, Chair

State Public Policy Report

Ryan Augsburger, OMA Staff

- State Government Overview
- Power Plant Bailouts OVEC & ZEN
- HB 247 Market Protection

**Energy Engineering Report /
Customer-Sited Resources**

John Seryak, PE, RunnerStone, LLC

- Energy efficiency program updates
- Energy efficiency peer network activity
- PJM and Transmission Developments

Counsel's Report

Kim Bojko, Carpenter Lipps & Leland

- FERC Action on DOE NOPR
- Tax Reform & Utility Rates
- PUCO Case Highlights
- Ohio Supreme Court Decisions

Special Guest

Commissioner Dan Conway, PUCO

- *PUCO Update*

Electricity Market Trends

Susanne Buckley, Scioto Energy

Natural Gas Market Trends

Richard Ricks, NiSource, Columbia Gas of Ohio

Lunch

2018 Energy Committee Calendar
Meetings will begin at 10:00am

Wednesday, February 28
Wednesday, May 16
Wednesday, August 15, Toledo
Wednesday, November 14

Meeting sponsored by:



Daniel R. Conway
Term ends April 10, 2022

Daniel R. Conway was appointed to the Public Utilities Commission (PUCO) of Ohio by Governor John R. Kasich in 2017.



Prior to joining the PUCO, Conway practiced energy and telecommunications law for more than 35 years. He represented public utilities, primarily electric, natural gas utilities and telecommunications companies in a before the PUCO, in appeals to the Ohio Supreme Court and in actions in the federal courts. Conway's work in the energy and utilities sector spreads wide and includes proceedings addressing fundamental changes in utility services and policies. Throughout his career he also represented utility customers in PUCO proceedings, and advised industrial and commercial clients on energy and regulatory matters.

Conway serves as an adjunct professor at The Ohio State University, where he teaches public utility regulatory law. He is a member on the American Bar Association Infrastructure and Regulated Industries Section Council Group and is a past-chair of the Ohio State Bar Association Public Utilities Committee. He currently serves as a member of the National Association of Regulatory Utility Commissioners (NARUC) Committee on Telecommunications, as well as NARUC's Subcommittee on Nuclear Issues - Waste Disposal.

Commissioner Conway earned his bachelor's degree in physics from Miami University, and his law degree from the University of Michigan.

To: OMA Energy Committee
From: Ryan Augsburger
Re: Energy Policy Report
Date: February 28, 2018

Overview

Significant energy policy activity has occurred over the past quarter. Federal government actions eclipse the ongoing legislative and regulatory state subsidy proposals. The OMA has been active in all three theaters. The Ohio Supreme Court also rendered an important decision further justifying the need for PUCO reform legislation sponsored by State Representative Mark Romanchuk (R-Mansfield).

FERC Acts to Protect Customers / Markets: DOE NOPR

Reflecting Ohio's leading role in the genesis of the Department of Energy (DOE) proposed rule to impose additional customer charges to pay for "grid resiliency," U.S. Secretary of Energy Rick Perry announced his Notice of Proposed Rule Making (NOPR) in Ohio last September. Ohio utility and coal interests were known to have lobbied for the proposal. In late January, FERC ruled against the DOE proposal but asked regional transmissions organizations such as PJM to consider pricing for grid resiliency. See memo from counsel and media coverage.

Federal Tax Reform Driving Down Electric Prices, But Not in Ohio

Following passage of the sweeping federal tax reform, electric distribution utilities (EDUs) in many states promptly announced they would be passing the tax windfall savings on to customers. In contrast Ohio EDU's announced they would not follow suit. The OMA has been a vocal critic of the move at both the PUCO and at the General Assembly. More to come. See included resource materials.

Protecting Competitive Electric Markets

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition which has taken over a decade, has delivered customer choice, cost-savings and innovation. One of the main tenets of deregulation was forcing then-integrated utility companies to sell or spin-off their generation. "Stranded costs" and other above-market surcharge constructs enabled the utilities to have their generation paid for by Ohioans for a second time. If approved in some form, the subsidy cases and Nuke bailout legislation would represent yet another above-market payment to utilities by customers who realize no benefit.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers.

Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability (ask staff for the studies). The opportunity to advance legislative reform to protect competitive markets has arrived. The OMA has been working with other customer groups to support House Bill 247 introduced by Representative of Mark Romanchuk from the Mansfield area. OMA members Brad Belden of Belden Brick and Luke Harms of Whirlpool provided proponent testimony on behalf of the OMA and their companies on November 28. Their testimony is included. Earlier this month OMA Energy Counsel Kim Bojko provided proponent testimony rebutting opponent testimony offered by AEP, Duke and DP&L in December.

Manufacturers can engage policymakers and support a campaign to support the reform. Please contact OMA staff to learn how you can support the cause.

OVEC Bailout

Companion legislation is pending both the House and Senate since last May but has not yet advanced. HB 239 is sponsored by Representatives Ryan Smith and Rick Carfagna, while SB 155 is sponsored by Senators Lou Terhar and Bob Peterson.

The legislation provides over one hundred million dollars per year to the owners of aging coal plants (one in Ohio and one in Indiana) operated by the Ohio Valley Electric Corporation (OVEC). The bailout subsidies would be added to customer bills until 2030 and sets up the possibility for continued customer payment after 2030.

The OMA opposes this bailout that will impose new above-market customer charges. OMA Energy Counsel Kim Bojko provided opponent testimony in the Senate early this year (see attached resource materials).

Zero Emissions Credit (ZEC) STILL = Nuke Bailout

After being panned by dozens of important stakeholders, legislation to subsidize the uneconomical nuclear power plants stalled out over the summer. During the autumn, House Bill 381 was introduced by Representative Anthony DeVitis of Summit County and several other bipartisan co-sponsors. Similar legislation in the Senate has been amended to mirror the new House Bill. The OMA strongly opposes the legislation and is working with other opponents to coordinate advocacy. Community activists are now leading the charge to prevent the plants from closing. See attached cost-impact model on Lake County where the Perry power plant is located.

To Levy kWh Tax On-Site Generation: HB 143

The Ohio Department of Taxation is sending out tax bills to third parties operating on-site generation, be it wind, solar or on-site gas generation. The Department contends that a customer who generates power should pay generation tax same as a utility. The Department's basis for collecting the tax is tenuous at best. House Bill 143 has been introduced by state representative Robert Sprague of Findlay. The OMA supports the bill and whatever other common sense solutions can prevail to encourage, not to discourage customer self-help opportunities. See attached proponent testimony.

OMA Appeals Utility Subsidies

Late last year the OMA Energy Group (OMAEG) filed appeals at the Supreme Court of Ohio challenging customer charges in the FirstEnergy ESP case and in the AEP ESP case. In both cases, the PUCO granted the utilities improper customer charges. These are big ticket cost items for energy-intensive customers. See counsel's report.

Energy Standards Legislation

The last time the General Assembly sent a bill to Governor Kasich that would weaken alternative energy standards, the Governor vetoed the bill. Just over one year ago, the Ohio House introduced HB 114 and subsequently approved the measure with over 50 co-sponsors. The bill has been stalled in the Senate ever since. Ask staff for a technical analysis.

Senate President Obhof has commented frequently that HB 114 was a priority for Senate action early in 2018. Some speculate the Senate may use the bill as a vehicle to address the wind set-back siting requirements. The issue is deterring some new investment in large-scale wind farms.

Financial Integrity Bailouts

In Spring of 2016, we reported on favorable Supreme Court decisions that protect customers from inappropriate utility overcharges. The Court decisions pertained to both AEP and DP&L but also established precedent. In late 2016 Dayton Power & Light developed a legislative proposal to reverse Supreme Court decision that fairly protects customers from transition charges. The legislative proposal would authorize PUCO to impose riders on customers' electric bills to fund a utility bailout any time a utility claims their "financial integrity" is threatened. No action but customers need to be vigilant of similar legislative proposals re-emerging.

Re-Monopolization

AEP and other investor-owned utilities have been calling for legislation to *re-monopolize* aspects of utility-owned generation. In spite of assurances made to investors that legislation would be introduced during the term, no such bill has been introduced. Meanwhile utilities are seeking to own certain alternative energy generation. As a state that deregulated generation, the OMA takes a dim view of proposals that provide utility control over any form generation.

Natural Gas Infrastructure

The OMA continues to express industry support for the Rover Pipeline and Nexus Pipeline. Billions of dollars of pipeline investment are underway by several different developers. The OMA has been working with the NAM to promote gas infrastructure and increased market utilization. Please contact staff to learn more about opportunities for supportive manufacturers to engage.

Energy

Tax Reform Drops Electric Rates in 39 States, but Not Ohio

February 26, 2018

This from Speaker Paul Ryan's office this week: Recently enacted federal tax reform is resulting in electricity rate reductions in 39 states, but not in Ohio.

Contact [your state legislators](#) to ask why. [Read more here](#). 2/22/2018

FirstEnergy Solutions Bankruptcy is Said to be Imminent

February 26, 2018

During FirstEnergy's investor call this week, FirstEnergy's CEO Chuck Jones predicted an imminent bankruptcy of affiliate FirstEnergy Solutions (FES). He also expressed disappointment that state and federal officials have not provided customer-funded subsidies to prop up the company that owns several unprofitable nuclear and coal power plants.

Respected energy industry trade press, [RTO Insider reported](#) that Jones remarked that FE has cut ties with FES and that he expects the subsidiary will not survive the winter. The article quotes Jones as saying, "I'm personally disappointed that the endeavors haven't resulted in a meaningful legislative or regulatory support, given the importance of these plants to grid resiliency, reliable and affordable power and the region's economy." 2/22/2018

Electric Utilities Object to Customer Refunds

February 16, 2018

The Public Utilities Commission of Ohio (PUCO) recently opened an investigation into whether it should order rate cuts to reflect the federal tax cut, from 35% to 21%, from which Ohio electric utilities are now benefiting. Public utilities commissions in other states are taking similar action, and most utilities appear to be cooperating in the matter. Not in Ohio.

This week, Ohio's four electric utilities joined together to produce a [raft of legal objections](#) to having to set aside revenue for possible refunds.

Their objections are rooted in the state's faulty ratemaking statutes, statutes that need to be reformed, and would be if the legislature would act on HB 247, sponsored by Rep. Mark Romanchuk (R-Mansfield). 2/15/2018

Stop Taxing Onsite Generation!

February 16, 2018

This week the OMA joined a chorus of supporters in offering [proponent testimony](#) for [House Bill 143](#), a bill that will prevent the state tax department from collecting kilowatt hour tax on electricity that manufacturers produce onsite by modifying the definition of "electric distribution company" for kilowatt-hour tax purposes. As manufacturers increasingly utilize renewable energy and other forms of onsite generation, the clarification of tax law that HB 143 provides supports energy innovation and manufacturing competitiveness. 2/15/2018

PUCO Sets Agenda for PowerForward

February 9, 2018

National and state energy leaders will convene in Columbus March 6-8, and March 20-22 to discuss the electric distribution system of the future and how state policy can facilitate grid enhancements that work to better customers' lives.

Here's the [agenda](#) for the Public Utilities Commission of Ohio's (PUCO) [PowerForward: Ratemaking and Regulation](#) event. PowerForward takes place at the PUCO's offices at 180 E. Broad St., Columbus. The event is free to attend and there is no registration required. PowerForward will also broadcast live online by The Ohio Channel. 2/8/2018

What Would the Nuke Bailout Cost Lake County?

February 2, 2018

Supporters of the proposed bailouts of Ohio's two nuclear plants seek support from local elected officials based on the impact of potential plant closures.

What's not been analyzed is the impact of the bailouts on the local economies. [So, we took a look at one of the plants.](#)

The bailouts would cost the residents and businesses in Lake County up to \$94 million! An economy punishing \$94 million. 2/1/2018

[Economist Hill Testifies on Need for Utility Reg Reform](#)

January 26, 2018

OSU economist Ned Hill [testified before the House Public Utilities Committee](#) this week in support of utility regulation reforms contained in HB 247 (Romanchuk, R-Mansfield).

"The electricity markets are working in Ohio and benefiting consumers and employers, one for electricity generation and the other for capacity. There is no economic rationale for introducing subsidies into the electricity markets; they amount to nothing more than corporate welfare," Hill said.

These subsidies are paid through non-bypassable riders on customers' bill; those riders now exceed the cost of transmission or distribution costs for the average mercantile customer. Transmission charges are 8% of the average cost. Distribution charges are 13% of the final cost. And, PUCO approved non-bypassable charges are 14% of the bill. 1/25/2018

[Supreme Court Confounds Customer Refunds](#)

January 26, 2018

This week the Supreme Court of Ohio [issued an opinion \(case summary\)](#) finding that the PUCO cannot order the FirstEnergy power companies to refund \$43 million to customers for the "imprudent" purchase of renewable energy credits made in 2010.

"This decision negatively impacts the ability of the PUCO to protect customers against the utilities from collecting imprudent expenditures. The Court's decision will send shockwaves through the industry, halting rider rate approvals and changing the regulatory paradigm," wrote OMA energy counsel Kim Bojko of Carpenter Lipps & Leland in a briefing to members of the [OMA Energy Group](#).

The ruling further justifies the need for regulatory reforms contained in House Bill 247 (Romanchuk, R-Mansfield) that protect

customers from above-market power charges. 1/25/2018

[FirstEnergy to Exit Competitive Generation, but Asks General Assembly for Nuclear Power Plant Support](#)

January 26, 2018

In the same week that FirstEnergy [announced](#) an investor group would provide \$2.5 billion to enable the company to offload unprofitable generation liabilities, the Akron-based utility appeared in a Statehouse hearing room to urge lawmakers to pass Senate Bill 128 to require Ohio customers to bailout unprofitable nuclear power plants. Sam Belcher, Chief Nuclear Officer, FirstEnergy, said in [testimony](#): "The updates to the legislation offered by Senator Eklund in October balance the costs to customers of creating a clean energy jobs program with the benefits received from keeping Ohio's nuclear plants operating. The legislation is expected to generate approximately \$180 million annually. While this is less than the original legislation and does not provide the same long-term certainty, it increases the likelihood of keeping Davis-Besse and Perry operational throughout the life of the program."

Mark Stahl, an Ottawa County Commissioner, also attended the hearing to [testify](#) for the bailouts in the name of fuel diversity.

The OMA opposes efforts that shift utility business risk from investors to customers. 1/25/2018

[Manufacturers Urge Utility Law Reform](#)

January 19, 2018

The OMA and a member company this week urged the House Public Utilities Commission to reform electric utility laws that are taking billions of dollars out of consumer pocketbooks.

OMA energy counsel Kim Bojko [debunked various claims](#) that utilities have made to the committee over previous hearings on HB 247 (Romanchuk, R-Mansfield). She testified: "HB 247 furthers many of the original objectives of the deregulation bill passed in 1999. It promotes competitive electric markets and ensures effective competition by avoiding anticompetitive subsidies ... 10 years later, the market has developed and competition is working and

saving customers billions of dollars. ... it is time to move forward and allow the markets to work without government intervention and without above-market charges imposed by regulated utilities.”

Geoff Korff, President, Quaker City Castings, [urged the committee to support the bill](#), saying that current law “allowed for utilities to seek and obtain approval for a whole host of above market, non-bypassable charges on customer bills. These charges are disrupting customers’ ability to save money by shopping their electric loads. My own company has seen its distribution rates increase by 34% in the past three years while my generation rates have come down.

“Passing HB 247 will improve the state’s competitiveness by allowing customers to take advantage of the innovative offerings the competitive market is developing without being encumbered by various non-bypassable charges that do little to nothing to benefit customers.” 1/18/2018

PUCO Hears Arguments re. Revised Net Metering Rules

January 19, 2018

Revised net metering rules were adopted by the Public Utilities Commission of Ohio (PUCO) in its November 8, 2017 order. On January 10, 2018, the PUCO heard oral arguments from interested parties regarding the rules.

Issues of interest to manufacturers that were raised include: 1) the form and amount of compensation available to net metering customers for excess generation; 2) the availability of net metering tariffs to shopping customers, and; 3) the rules governing which facilities qualify for net metering.

Here is a [good summary](#) of the arguments from Kim Bojko of Carpenter Lipps & Leland, OMA’s energy counsel.

The PUCO will take the oral arguments into consideration when rendering its decision adopting final net metering rules. 1/18/2018

Conservative Ohio Voters Support Clean Energy Policies

January 19, 2018

The Republican polling firm, Public Opinion Strategies, last month fielded a survey of Ohio

voters who identify as Republican or as conservative independents regarding energy policies in the state.

According to a memo from Public Opinion Strategies: “The survey results show that conservative voters throughout the state overwhelmingly support policies that encourage greater production of renewable energy and increasing energy efficiency, including a renewable energy standard and revising wind set-back rules to better accommodate turbine siting. Moreover, they reject surcharges to shore up existing coal and nuclear power, and attempts to erode consumer options among electricity providers. Overall, seven-in-ten conservative voters would advise GOP candidates in the state to support those policies, and say that if it were up to them fully half of the state’s electricity would come from renewable energy.” Read more about the [poll results here](#). 1/18/2018

FERC Pulls Plug on Unwise Subsidy Rule

January 12, 2018

This week the Federal Energy Regulatory Commission (FERC) issued an order to terminate its proposed rulemaking that was submitted by the Secretary of the Department of Energy that would have used consumer-paid subsidies to prop up uneconomical coal and nuclear generators in the name of grid reliability and resiliency.

[OMA Energy Group](#) (OMAEG), among other customer groups, twice submitted comments to FERC opposing the proposed rule.

In [this summary](#) of the FERC’s decision, OMA energy counsel [Kim Bojko](#) of Carpenter Lipps & Leland wrote: “... FERC concluded that although the goal of grid reliability and resiliency is a worthy one, the record in this case simply does not support the existence of a reliability or resiliency problem. And even if it had, the Proposed Rule did not put forth a solution that would actually solve that problem.”

And, “FERC’s Order ... will benefit ... consumers by not implementing a rule that would force consumers to fund a bailout to certain, select generators that can no longer compete in the market. The Order defined resiliency and set forth a process to explore ... whether a problem even exists. The

Order also appears to be stating that if a problem does in fact exist, FERC will look for market solutions on a regional basis." 1/11/2018

Advocates Tell Senators No to Power Plant Bailouts

January 12, 2018



OMA energy counsel Kim Bojko of Carpenter Lipps & Leland and Ohio State University economist Ned Hill

The OMA told members of the Senate Public Utilities Committee this week that manufacturers oppose bailouts of unprofitable power plants.

Testifying on behalf of the OMA, OMA energy counsel Kim Bojko of Carpenter Lipps & Leland **expressed opposition** to the most recent version of Senate Bill 155, which would provide a subsidy to maintain uneconomic power plants owned by the Ohio Valley Electric Corp. (OVEC), including a plant in Indiana. Bojko reminded lawmakers that the bill is a departure from the pro-market policies of the state regarding electric generation and competitive retail electric service.

Ohio State University economist Edward "Ned" Hill also presented **opponent testimony**. Dr. Hill said, "What the committee has before it is another attempt to subsidize uneconomic legacy electric generation resources owned by Ohio's Investor-Owned Utilities (IOUs)." 1/11/2018

Amazon Wins Electric Discount in Ohio

January 12, 2018

Members of the PUCO this week voted unanimously to approve an electricity discount for several newly sited Amazon data centers (Vadata). The discount is made possible by

exempting Amazon's affiliate from certain distribution charges which has the effect of shifting costs to other customers, according to statements in the **Columbus**

Dispatch and **Columbus Business First**.

The PUCO-approved deal requires a status report after five years, specifically in response to comments from OMA Energy Group and others to ensure that Vadata is living up to its commitments.

The **OMA Energy Group** intervened in the case and met with policymakers to remind them that one customer's discount is another customer's surcharge. The final approved deal includes some consumer improvements. 1/11/2018

Start 2018 Efficiently! Grant Funding Available for Manufacturing Energy Efficiency

January 12, 2018

Grant funding assistance is available to Ohio manufacturers who are investigating energy-efficiency projects in 2018 through the state's **Energy Efficiency Program for Manufacturers**.

The grants can be used to identify energy efficiency recommendations or take a deep dive on specific equipment's operation and energy impact. Past grant recipients have conducted an energy assessment of their entire plant, while others have focused on improving operations of key energy-intensive equipment, like air compressors, chillers or furnaces.

The state is offering a \$1-for-\$1 match in funds, up to \$15,000 per manufacturing facility. Utility energy study funds are eligible for the manufacturers' cost share.

The grant funding is limited, and available on a first-come, first-serve basis. Please contact **John Seryak** of Go Sustainable Energy, OMA's energy engineering consultant, for more information and to apply for funding. 1/5/2018

PUCO Plans PowerForward 2018

January 12, 2018

The Public Utilities Commission of Ohio (PUCO) is planning for PowerForward 2018, a series of presentations about energy rate making and regulation over six days, March 6-8 and March 20-22.

The PUCO says that through this series, it intends to chart a clear path forward for future grid modernization projects, innovative regulations and forward-thinking policies.

Here are the [topics planned to date](#) for March. Also, the PUCO is still calling for presentations. If you are interested in potentially presenting, [contact the PUCO here](#). 1/10/2018

Electric Transmission Charges on the Rise

January 5, 2018

Transmission rates on electricity consumers are rising by billions of dollars across the PJM grid (which includes Ohio).

But, are consumers getting their money's worth? Not if the rate regulation process is not rigorous. And, it is not for one type of project, "supplemental transmission projects," for which determinations of necessity or prudence are not required. Nor are competitive options.

Read [more in this op-ed](#) by Marc Gerkin, president and CEO of American Municipal Power. 1/4/2018

Utilities Oppose Consumer Protection Reforms

December 15, 2017

Three of Ohio's four electricity utilities this week testified in opposition to HB 247, a bill that would reform Ohio's electric utility regulatory laws that have led to above-market charges on customers. The bill is sponsored by Rep. Mark Romanchuk (R-Mansfield).

The bill would allow customers to obtain refunds of charges overturned by the courts (refunds are currently prohibited!), would eliminate a type of rate case (Electric Security Plans) that has become the vehicle for massive non-bypassable riders on customers' bills (with no customer benefit), and would require the separation of distribution and generation assets of the utilities (as envisioned by the electricity restructuring bill, SB 3, in 1999).

You can read the testimony from AEP [here](#), Duke [here](#) and DPL [here](#). Protect energy markets and your company and family from unwarranted and excessive utility

bills; urge [your state representative](#) to support HB 247. 12/14/2017

Ruling Delayed on DOE Subsidy Scheme

December 15, 2017

In the past week, two new members of the Federal Energy Regulatory Commission (FERC) took office. Among his first acts as FERC chairman, Kevin McIntyre [wrote Department of Energy Secretary Rick Perry](#) to request a 30-day delay in issuing final action on the "grid resiliency pricing rule" proposed by Secretary Perry in late September in an effort to prop up some coal and utility interests. Chairman McIntyre requested the delay in order to afford himself and newly appointed Commissioner Richard Glick adequate time to review the docket and weigh in on deliberations.

Secretary Perry [granted the requested delay](#) and set a new deadline of January 10, 2018 for final action.

The OMA filed comment and reply brief with FERC, opposing the proposed rule that equates to a new tax on energy. Stay tuned. 12/14/2017

Manufacturers Explain Why Proposed FERC Energy Tax Hurts Ohioans

December 15, 2017



In [this op-ed](#) published December 10 in the Cleveland Plain Dealer, Ryan Augsburger, OMA Vice President & Managing Director of Public Policy Services, explains why a rule change proposed by the Federal Energy Regulatory Commission (FERC) is bad for Ohioans. Augsburger wrote: "If enacted, the proposed rule change would deal a serious blow to America's manufacturing competitiveness by requiring consumers to pay more for electricity to prop up

some utilities' uneconomic power plants owned by certain utilities looking for a bailout." 12/13/2017

Consumers for Competitive Markets

December 8, 2017

Customer groups and suppliers continue to line up in support of Representative Mark Romanchuk's House Bill 247, which would protect competitive electric markets. This week members of the House Public Utilities Committee heard proponent testimony from the [Ohio Farm Bureau](#), the [Northeast Ohio Public Energy Council](#) (NOPEC), Energy Professionals of Ohio, and competitive energy supplier [Dynegy](#).

Next week, the committee is expecting to hear from opponents and interested parties. A vote could follow early in 2018. The [OMA strongly supports HB 247](#). Utility companies oppose the bill because they benefit from being able to collect above-market charges from customers under current regulation. 12/7/2017

Finish the Job

December 8, 2017

This week, Pat Wood, former chairman of the Federal Energy Regulatory Commission, as well as former chairman of the Texas Public Utilities Commission, presented testimony before the House Public Utilities Committee about the benefits of electricity markets.

Why markets?, he asked: "Better customer price and service, economic development, sharper utility focus on grid reliability, and technological innovation."

Why do it in Ohio? "Prime location in Eastern Grid (quality access to gas, coal, renewables), large number of new/planned power plants, big state-wide market (with others nearby), successful RTO (wholesale market), and a marginal cost of power that is lower than average cost."

Wood called Ohio "the Texas of the Midwest," and Texas the "Ohio of the Sunbelt," because of the states' energy similarities: "Competition already underway, sitting amid best fuel resources, vibrant wholesale power market, diverse economic base, and a top business climate." 12/7/2017

Customer Groups Testify in Support of Electric Markets

December 1, 2017

Members of the [Ohio House Public Utilities Committee](#) this week heard from numerous important stakeholders who support House Bill 247, legislation sponsored by Rep. Mark Romanchuk (R-Mansfield) that would protect customers' electricity costs by reforming the PUCO rate setting process in favor of markets. In his [proponent testimony](#), OMA Energy Committee Chair Bradley Belden, VP-Administration, Belden Brick Company, questioned why policymakers would consider subsidies for electric generation and urged lawmakers to approve the bill to put a stop to above-market charges layered on the distribution portion of customer bills.

OMA Government Affairs Committee Vice Chair Luke Harms, Sr. Manager, Government Relations, Whirlpool Corporation, also provided [proponent testimony](#) saying, "Above-market charges are an issue of concern for manufacturers of all sizes because they drive up energy costs without delivering any additional benefit to customers. And this is happening at a time when market prices are in decline and electric bills should be dropping, not rising." Other supporters of the bill who testified this week include representatives

of [AARP](#), [National Federation of Independent Business/Ohio](#) and the [Ohio Chemistry Technology Council](#). 11/30/2017

Energy Legislation

Prepared by: The Ohio Manufacturers' Association
Report created on February 26, 2018

- HB105 OIL AND GAS FUNDING LIMIT** (CERA J, HILL B) To limit the amount of revenue that may be credited to the Oil and Gas Well Fund and to allocate funds in excess of that amount to local governments, fire departments, and a grant program to encourage compressed natural gas as a motor vehicle fuel.
Current Status: 5/16/2017 - House Ways and Means, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-105>
- HB114 RENEWABLE ENERGY STANDARDS** (BLESSING III L) To revise the provisions governing renewable energy, energy efficiency, and peak demand reduction and to alter funding allocations under the Home Energy Assistance Program.
Current Status: 1/10/2018 - Senate Energy and Natural Resources, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-114>
- HB143 ELECTRIC DISTRIBUTION COMPANY DEFINITION** (SPRAGUE R) To clarify the definition of "electric distribution company" for kilowatt-hour tax purposes.
Current Status: 2/13/2018 - House Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-143>
- HB178 ZERO-EMISSIONS NUCLEAR PROGRAM** (DEVITIS A) Regarding the zero-emissions nuclear resource program.
Current Status: 5/16/2017 - House Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-178>
- HB225 ABANDONED WELL REGULATION** (THOMPSON A) To allow a landowner to report an idle and orphaned well or abandoned well, to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such a well, to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period, and to authorize an income tax deduction for reimbursements paid by the state to a landowner for costs incurred to plug an idle or orphaned well.
Current Status: 2/28/2018 - Senate Energy and Natural Resources, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-225>
- HB239 ELECTRIC UTILITIES-NATIONAL SECURITY RESOURCE** (SMITH R, CARFAGNA R) To allow electric distribution utilities to recover costs for a national security generation resource.
Current Status: 10/3/2017 - House Public Utilities, (Sixth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-239>
- HB247 ELECTRIC UTILITY CONSUMER PROTECTION** (ROMANCHUK M) To require refunds to utility customers who have been improperly charged, to eliminate electric security plans and require all electric standard service offers to be delivered through market-rate offers, and to

strengthen corporate separation requirements.

Current Status: 1/23/2018 - House Public Utilities, (Sixth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-247>

HB249 RESIDENTIAL UTILITY RESELLING (DUFFEY M) To permit the Public Utilities Commission to adopt rules governing residential utility reselling.

Current Status: 2/20/2018 - House Public Utilities, (Fifth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-249>

HB381 ZERO-EMISSIONS NUCLEAR RESOURCE (DEVITIS A) Regarding the zero-emissions nuclear resource program.

Current Status: 12/12/2017 - House Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-381>

HB393 OIL AND GAS BRINE SALES (DEVITIS A, O'BRIEN M) To authorize a person to sell brine derived from an oil and gas operation that is processed as a commodity for use in surface application in deicing, dust suppression, and other applications.

Current Status: 1/30/2018 - House Energy and Natural Resources, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-393>

HB473 CREDIT LOCAL GOVERNMENT FUND-POWER PLANTS (YOUNG R) To credit additional amounts to the Local Government Fund to provide for payment to fire districts that experienced a 30% or more decrease in the taxable value of power plants located in the districts between 2016 and 2017 and to increase the appropriation to the Local Government Fund.

Current Status: 1/30/2018 - Referred to Committee House Ways and Means

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-473>

HCR14 PARIS CLIMATE AGREEMENT COMMITMENT (LEPORE-HAGAN M, LELAND D) To affirm the commitment of the members of the General Assembly, in accordance with the aims of the Paris Agreement, to reduce greenhouse gas emissions to 26 to 28 per cent below 2005 levels by the year 2025.

Current Status: 9/19/2017 - House Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-14>

HCR22 SUPPORT ENERGY INFRASTRUCTURE (HILL B) To express support for the importance of Ohio's energy resources and energy infrastructure in furthering Ohio's economic development.

Current Status: 1/16/2018 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HCR-22>

HR277 ENERGY GRID RULEMAKING (ARNDT S) To express support for the proposed

rulemaking by United States Secretary of Energy Rick Perry for the preservation of a secure, resilient and reliable electric grid.

Current Status: 10/17/2017 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HR-277>

SB50 WELL INJECTION-PROHIBITION (SKINDELL M) To prohibit land application and deep well injection of brine, to prohibit the conversion of wells, and to eliminate the injection fee that is levied under the Oil and Gas Law.

Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-50>

SB53 NATURAL GAS RESTRICTION (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.

Current Status: 2/22/2017 - Senate Energy and Natural Resources, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-53>

SB65 ENERGY STAR TAX HOLIDAY (BROWN E) To provide a three-day sales tax "holiday" each April during which sales of qualifying Energy Star products are exempt from sales and use taxes.

Current Status: 3/22/2017 - Senate Ways and Means, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-65>

SB128 ZERO-EMISSION NUCLEAR PROGRAM (EKLUND J, LAROSE F) Regarding the zero-emissions nuclear resource program.

Current Status: 1/25/2018 - Senate Public Utilities, (Sixth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-128>

SB155 ELECTRIC DISTRIBUTION COST RECOVERY (TERHAR L, PETERSON B) To allow electric distribution utilities to recover costs for a national security generation resource.

Current Status: 1/10/2018 - Senate Public Utilities, (Seventh Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-155>

SB157 PUBLIC UTILITY RESELLING REGULATION (BACON K) To regulate the reselling of public utility service.

Current Status: 1/18/2018 - **SUBSTITUTE BILL ACCEPTED**, Senate Public Utilities, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-157>

SB188 WIND TURBINE SETBACK REVISIONS (HITE C) To revise wind turbine setback provisions for economically significant wind farms.

Current Status: 10/11/2017 - Senate Energy and Natural Resources, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation->

[summary?id=GA132-SB-188](#)

- SB238** **WIND TURBINE SETBACKS** (DOLAN M) Regarding wind turbine setbacks for wind farms of at least five megawatts.
 Current Status: 1/10/2018 - **BILL AMENDED**, Senate Energy and Natural Resources, (First Hearing)
 State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-238>
- SCR14** **COUNTER OPEC MARKET MANIPULATION** (HOAGLAND F, COLEY W) To urge the Congress of the United States and the President of the United States to take certain actions to counter manipulation of the oil market by the Organization of Petroleum Exporting Countries (OPEC).
 Current Status: 12/4/2017 - Referred to Committee House Energy and Natural Resources
 State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SCR-14>



Ohio's Unmatched Leader of Statehouse News, Information & Research Since 1986

Tuesday, February 27, 2018

OMA, OCC Seek Emergency Action from PUCO on Utility Tax Cuts

The Ohio Manufacturers' Association (OMA) has joined the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) in asking the Public Utilities Commission of Ohio (PUCO) to move forward with its investigation into the federal Tax Cuts and Jobs Act's (TCJA) impact on utility rates. Contrary to the state's electric distribution utilities (EDU), consumer advocates say PUCO has the statutory authority to order immediate billing reductions to prevent "unreasonable, unjust, insufficient, unjustly discriminatory or unjustly preferential" charges to residential and commercial customers.

OCC recently filed to intervene in the commission-ordered investigation and this week reinforced its argument that TCJA warranted "across-the-board rate reductions for Ohio utility consumers." (See *The Hannah Report*, 2/14/18.)

"Consumers -- not utilities or their shareholders -- should reap the benefits of lower federal tax rates under the tax cut act because it is consumers who pay for utilities' tax obligations through their monthly utility bills," OCC states in Tuesday's filing opposing the EDUs' request for rehearing.

"The public would be harmed if customers were required to continue paying their utilities' taxes at a 35 percent rate while the utility is in fact only paying taxes at a rate of 21 percent. The PUCO should invoke R.C. 4909.16 to immediately order utilities to modify all rates -- including base rates and riders approved in electric security plan (ESP) cases -- to reflect the savings from the tax cut act," the consumers' counsel said last week in its initial comments to PUCO.

Under one circumstance or another, R.C. 4909.16 allows the commission to invoke an "emergency" and temporarily "alter" or "amend" an EDU's existing rate plan. OCC says that preempts utilities' request for separate ratemaking cases to determine their new tax liability. Where EDUs have already collected revenues from customers under the older, higher tax rate, OCC argues that "PUCO should order that all rates, including base rates and rider rates are subject to refund."

For their part, utilities warn against proceeding with the "generic, all-utility docket" of the commission-ordered investigation into TCJA, in the words of American Electric Power (AEP) of Ohio. It claims past and pending tax collections under the old rate are not in fact subject to a refund and can only be addressed "prospectively" through individual rate cases.

"The commission can only modify rates and riders prospectively in a rate proceeding and, in the meantime, the rates and riders are implemented using the terms and conditions that were previously approved by the commission. Once rates are established, they are not adjusted until new rates are set in a future proceeding," AEP claims.

In separate comments, Dayton Power & Light (DP&L) reinforces the case for standalone proceedings for each EDU.

"A response to a single variable [tax cuts] -- single-issue ratemaking -- is not authorized in Ohio except when explicitly authorized by statute," DP&L says.

"Using a full base rate case process to review and implement any appropriate changes to DP&L's rates also meets the legal requirements of Ohio law to have due process and the opportunity for an evidentiary hearing before a change in rates is ordered," it continues. "Under no circumstance, should the commission issue an order as the result of this investigation case that would change rates with no opportunity for DP&L to provide evidence of the appropriate adjustments that should be made in light of DP&L specific circumstances and its other costs and revenues."

On Wednesday, OMA asked the commission to deny EDUs' request for rehearing, citing the "just and reasonable" rate test of 4905.26.

"In essence, the EDUs want to realize substantial tax savings immediately as the EDUs will have reduced tax obligations beginning Jan. 1, 2018, but the EDUs claim that the commission cannot force the utilities to immediately reduce the level of tax expense collected from ratepayers in order for customers to reap those same benefits. Instead, the EDUs argue that the commission is only able to reduce their rates in accordance with separate rate proceedings at some unknown date in the future, which could not be until 2024, six years after the TCJA was enacted," OMA states. "Such a result would constitute a violation of Ohio and federal law and cause an unfair and unreasonable result to Ohio's businesses by requiring them to continue to pay unjust and unreasonable rates for electric service based upon federal tax rates that are no longer the law in this country."

As alternative to PUCO's offering immediate protection from the old tax rate, OPAE suggests that utilities' take a proactive approach and make rate adjustments on their own.

"The EDUs could avoid any issues resulting from their continued collection of unjust, unlawful and unreasonable rates and riders containing the wrong federal corporate income tax rate by immediately filing applications to reduce their rates and riders with the effective date of Jan. 1, 2018 to reflect the correct federal corporate income tax rate as of Jan. 1, 2018," OPAE says.

"The EDUs have all the information necessary to make these applications to reduce rates ... immediately in order to avoid the need for regulatory action to refund ratepayers for unjust, unlawful and unreasonable charges resulting from the utilities' use of the wrong federal corporate income tax rate as of Jan. 1, 2018. The EDUs can take responsibility and initiate their own actions to avoid any issues with refunds and deferrals. If the EDUs fail to act immediately against their unjust, unlawful and unreasonable rates and riders, they must be held accountable for their own failure to act. Their voluntary failure to act should only serve to void any argument they may make against refunds, deferrals or other regulatory actions needed to compensate ratepayers," it states.

Other intervenors in the commission-ordered investigation of TCJA include Industrial Energy Users - Ohio, Ohio Energy Group, Northeast Ohio Public Energy Council, Northwest Ohio Aggregation Coalition, IGS Energy, The Kroger Company, Securus Technologies Inc., and a long list of conservationists including the Ohio Environmental Council, among others.

Story originally published in *The Hannah Report* on February 22, 2018. Copyright 2018 Hannah News Service, Inc.

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Lower Ohio electric rates based on federal tax cut won't be easy or quick

Updated Feb 12; Posted Feb 12



FirstEnergy and Ohio's three other investor-owned electric utilities are not going to make it easy for the Public Utilities Commission of Ohio to order cuts to delivery rates to reflect the windfall tax cut -- from 35 percent to 21 percent -- the companies are now enjoying. The companies have filed a rare joint reply to the PUCO's January order announcing it wanted rate cuts, asking for comment and ordering the companies to begin keeping track of how much they are over-collecting, based on their new tax burdens. (*Plain Dealer file*)

By John Funk, The Plain Dealer

CLEVELAND, Ohio -- Don't plan on lower electric bills anytime soon reflecting the fat tax cut Ohio's electric utilities are already enjoying.

FirstEnergy, American Electric Power, Duke Energy and Dayton Power & Light have made it clear to the PUCO that passing on their windfall tax break from 35 percent to 21 percent will take a long time to figure out.

In a rare, joint reply to the Public Utility Commission of Ohio's [Jan. 10 order](#) asking utilities to begin looking into how much of the tax break could be passed onto customers and to begin keeping track of what they are over-charging customers, the four companies threw down a barrage of legal objections -- even that they have already been deprived of "due process." They also included a reference to state law and Ohio Supreme Court rulings that customer refunds are not legal in Ohio because they would constitute "retroactive rate making," unless provisions were made for them in a rate case.

In other words, even if the PUCO were able eventually order a rate cut based on the lower taxes the utilities are paying, none of the over-collection from the preceding months could be refunded.

Other objections include arguments that:

- The commission cannot, under Ohio law, unilaterally decide on a new (lower) rate without going through a series of hearings (due process).
- The commission cannot change rates based on one issue (tax windfall). "It would be unreasonable and unlawful for the Commission to unilaterally force base rate reductions based on a single expense reduction."
- The commission cannot now remove a tax "rider" or add-on to a utility's base rate approved in a previous rate case to cover tax expenses without the consent of the utility.
- Establishing rates "must be done ... as part of a comprehensive review of the [company's] costs in accordance with the traditional rate making formulas and processes found in [state law].
The bottom line? The companies will fight the commission if it attempts to adjust rates based on this one expense -- the windfall tax break. And that fight will probably take many months.

The utilities are drawing a line in the sand despite the PUCO's initial explanation of its order as more of an "investigation."

When explaining the Jan. 10 order, PUCO chairman Asim Haque tried to make it clear that the commission had no intention of running roughshod over the utilities.

"Broadly speaking, the Commission authorizes utilities to recover expenses from their customers, including federal tax obligations," he said after the vote. "If that federal tax obligation is reduced, then utility rates should also be reduced, creating savings to customers."

Ohio Consumers' Counsel Bruce Weston said the utilities are basing some of their objections to changes in state law approved in 2008 (Senate Bill 221) that favor utilities over consumers.

"Our view is that utility consumers should see reduced charges from the federal corporate tax cuts, and sooner rather than later. And, in general, utility regulation in Ohio should be reformed," he said, adding that lawmakers should start by approving legislation introduced by State Rep. Mark Romanchuk, a Republican from Mansfield. The legislation, House Bill 247, repeals parts of the changes made in 2008.

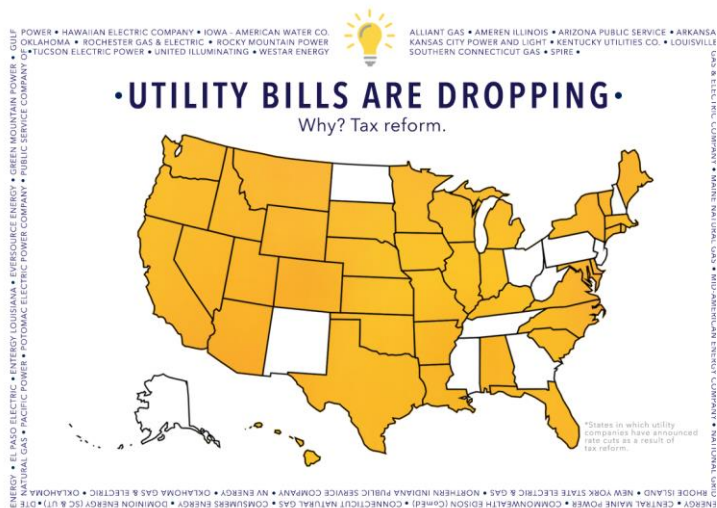
The tough negotiating stance from Ohio's utilities comes as utilities in other states are cooperating. Boston-based Eversource, for example, has already agreed to pass through about \$56 million in tax savings to 1.4 million customers in Massachusetts.

Meanwhile, attorneys general and consumer advocates in at least 19 states have already asked the Federal Energy Regulatory Commission to investigate whether the federal tax cut for electric utility interstate transmission line companies and natural gas pipeline companies should be passed on to customers.

Edited to include reaction from Ohio Consumers' Counsel Bruce Weston.

SPEAKER
PAUL RYAN

February 21, 2018 | Speaker Ryan Press Office



Utility companies are passing along their savings from a lowered corporate tax rate on to customers by way of lower utility bills. **To date, we have tracked utility companies in at least 39 states that have taken action to decrease the utility bills**

“Look, where I come from...it’s pretty cold right now. Your energy costs are very high. And what we’re seeing is all these utility companies are now saying they’re passing through the tax savings on to the rate payers. So if you’re low income, if you’re living paycheck-to-paycheck, if you’re having a hard time just heating your house? This is real relief that’s real tangible.”

Protect Consumers By Reforming Ohio's Electric Utility Law.

Vote Yes for House Bill 247.

Sponsored by Rep. Mark Romanchuk (R-Mansfield), House Bill 247 will reform Ohio's electric utility regulatory laws that have led to billions of dollars in above-market charges for customers. Legislative hearings for House Bill 247 have made the case, clearly and emphatically, for enhanced consumer protection and market protection. The bill will ensure that Ohio electricity customers are protected from unfair, above-market charges by reforming electric utility laws that are taking billions of dollars out of consumers' pockets.

Support for House Bill 247 has been deep and broad-based. Over the course of 6 committee hearings, 25 supportive witnesses provided testimony. Witnesses include customer groups, business groups, leading Ohio employers, competitive energy supplier and energy marketers – and spanned conservative think tanks to liberal environmentalists.

Selected Excerpts From Legislative Testimony on House Bill 247

"Above-market charges are an issue of concern for manufacturers of all sizes because they drive up energy costs without delivering any additional benefit for customers. And this is happening at a time when market prices are in decline and electric bills should be dropping."

-- Luke Harms, Whirlpool Corporation

"With PUCO approval through an Electric Security Plan (ESP), utilities are permitted to assess non-bypassable riders to cover transmission and upkeep costs, which have been used to supplement power generation. These non-bypassable riders inhibit consumers from experiencing the full benefit of competition and keep rates higher. House Bill 247 would eliminate non-bypassable riders by removing the ability to file ESPs for utilities."

-- Jenna Beadle, Ohio Farm Bureau Federation

"The electricity markets are working in Ohio and benefitting consumers and employers, one for electricity generation and the other for capacity. There is no economic rationale for introducing subsidies into the electricity markets; they amount to nothing more than corporate welfare."

-- Edward (Ned) Hill, Ph.D., John Glenn College of Public Affairs, The Ohio Manufacturing Institute, The Ohio State University

"The cost of non-bypassable riders in Ohio has been rapidly rising and, as a result, they have become controversial, especially when they are used to support deregulated activities such as power generation. These riders in Ohio now represent approximately 14 percent of a consumer's cost of electricity usage."

-- Leigh Herington, Northeast Ohio Public Energy Council

"HB 247 will restore much-needed balance and fairness to Ohio's rate-making process. Enactment of the bill will strengthen customers protections against unfair, unwarranted, above-market charges – and, in the process, will support economic growth and prosperity in our state."

-- Bradley Belden, The Belden Brick Company

"Currently, Ohio's utilities are granted the ability to keep monies they have collected that are later deemed unlawful by the Ohio Supreme Court. House Bill 247 would reverse these provisions and return these unlawful charges back to the consumers."

-- Jenn Klein, Ohio Chemistry Technology Council

“ . . . House Bill 247 offers Ohio the opportunity to further the transition to competitive markets. It does so in way that is targeted and direct and in a manner that attracted a wide and diverse supporter.”

-- Dean Ellis, Dynegy

“AARP Ohio supports House Bill 247 because it would create a level playing field for consumers throughout Ohio. . . . We also see the merit in House Bill 247 helping the most vulnerable seniors in Ohio.”

-- Trey Addison, AARP Ohio

The benefits of a competitive electric market are well-documented. They include billions of dollars in savings for consumers, new natural gas-fired generation and more than adequate standby capacity to met Ohio’s peak electricity needs.

House Bill 247 promotes competitive electric markets and ensures effective competition by prohibiting anti-competitive subsidies to the utilities. Enacting House Bill 247 will improve Ohio’s competitiveness by allowing customers to take advantage of the innovative offerings the competitive market is developing without being encumbered by various non-bypassable charges that do little or nothing to benefit customers.

Lower electric prices in the market should result in lower electric bills for Ohio families and businesses. Continued savings resulting from passage of House Bill 247 will spur economic growth, attract new business investment from manufacturers and benefit communities were they operate. It’s time to move forward and allow the markets to work without government intervention and without the above-market charges imposed by regulated utilities.

We urge you to pass House Bill 247.

#

**BEFORE THE
PUBLIC UTILITIES COMMITTEE
OF THE OHIO HOUSE OF REPRESENTATIVES
REPRESENTATIVE ROBERT CUPP, CHAIRMAN**

**HOUSE BILL 247
PROPONENT TESTIMONY
OF**



THE OHIO MANUFACTURERS' ASSOCIATION

**BY
KIM BOJKO, PARTNER
CARPENTER LIPPS & LELAND LLP
ENERGY COUNSEL TO THE OHIO MANUFACTURERS' ASSOCIATION**

JANUARY 16, 2018

Chairman Cupp, Vice Chairman Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter Lipps & Leland LLP, and I lead the firm's energy and utilities practice.

I am testifying today on behalf of The Ohio Manufacturers' Association (OMA) in support of House Bill 247 (HB 247), which will provide much needed consumer protections for manufacturers and will enhance the competitive energy markets. OMA is a non-profit trade association with over 1,300 member companies of all different sizes and energy use profiles, most of which are Ohio retail customers.

I will address some of the concerns or claims that the Ohio utilities raised in testimony prior to the holidays. First, to be clear, generation is a competitive service that the regulated distribution utilities are not authorized to supply directly to consumers (even the default service for non-shopping customers is competitively bid and supplied by electric suppliers). Ohio's utilities provide distribution services to customers. Under deregulation, the Ohio distribution utilities cannot offer and compete on generation service as they were required to spin off their generation assets and not own those assets unless the assets are needed to support the distribution system.¹ HB 247 does not change that prohibition.

SB 3 and SB 221 required the Ohio regulated utilities to be fully separated from their unregulated affiliates who own competitive generation and who offer competitive retail electric services. Unfortunately, the bright line separation between regulated and unregulated has been blurred and is no longer recognizable. The lack of vigilant adherence to the corporate separation rules for many years has resulted in steady erosion of the intended goals of deregulation and the corporate separation mandates. The ESPs have been used to foster the erosion and HB 247 is needed to end this inequity.

¹ Although the PUCO has ordered the regulated utilities to explore ways to exit the OVEC obligation, the OVEC generation assets are still owned by three of the Ohio utilities.

For example, Ohio's regulated utilities have used or attempted to use customer dollars to subsidize their unregulated affiliates. Contrary to the Ohio utilities' claims, other states have prevented similar subsidies by protecting or restricting the activities of the regulated utilities and prohibiting customer funding from being used to support unregulated affiliates. Some states have utilized "ring-fencing" to operationally, structurally, and financially isolate regulated utilities from their unregulated parent and affiliates.² This is not anticompetitive; it is a strategy used to protect customer dollars and the financial health of regulated utilities. The provision in HB 247 regarding the Ohio regulated companies' affiliates is another way to protect customer dollars and addresses an inequity by leveling the playing field. Other generator owners that do not have regulated affiliates cannot use ratepayer monies to fund the generators' activities. Without protections in place, Ohio's regulated utilities can and have used customer dollars to fund unregulated activities by their affiliates. Placing restrictions around the Ohio regulated utilities falls within the State's purview and in no way infringes on the jurisdiction of the federal government. HB 247 does not ban "any entity from owning and operating new generation in the state" as alleged by the Ohio utilities,³ it only bans Ohio regulated utilities from being affiliated with the owners of generation capacity in Ohio. The parent companies may have an ownership interest in a company that owns

² States have implemented ring-fencing both legislatively and through their state utility commissions. For example, Wisconsin enacted several statutes governing affiliate dealings with energy utilities to effectuate successful ring-fencing strategies and requires the Public Service Commission of Wisconsin to audit public utility holding companies and report its findings to the state legislature for review. See e.g., Wis. Stat. § 196.795. The Public Service Commission of Maryland approved ring-fencing measures in response to an affiliate risk issue affecting a state utility company. See *In the Matter of the Current and Future Financial Condition of Baltimore Gas and Electric Company*, Maryland PSC Case No. 9173, Phase II, Order No. 82986 (Oct. 30, 2009). The Public Utilities Commission of Oregon instituted ring-fencing measures and approved the assessment of fines and penalties against a parent holding company and its wholly owned subsidiary, an Oregon public utility, for violations of the ring-fencing measures. See *In the Matter of the Application of ENRON CORP for an Order Authorizing the Exercise of Influence Over Portland General Electric Company*, Oregon PUC Docket UM 814, Order No. 97-196, Stipulation §21. Similarly, the New Jersey Board of Public Utilities adopted affiliate rules regarding annual audits assessing company compliance with ring-fencing measures and penalties for violations. See *Final Interim Affiliate Relations, Fair Competition and Accounting Standards and Related Reporting Requirements*, adopted *In the Matter of the Promulgation of Standards by the Board Pursuant to the Provisions of the Electric Discount and Energy Competition Act of 1999*, P.L. 1999, C.23, NJ PUC Order EX99030182 (March 15, 2000).

³ Duke Opponent Testimony on HB 247 at 8 (December 12, 2017).

generation or an affiliated company may own generation in another state, but generation assets in Ohio simply cannot be affiliated with the Ohio regulated entity. Remember, Ohio regulated utilities are already banned from owning generation and have been since the end of the market development period—that prohibition was enacted in 1999 through SB 3.

HB 247 furthers many of the original objectives of the deregulation bill passed in 1999. It promotes competitive electric markets and ensures effective competition by avoiding anticompetitive subsidies. R.C. 4928.02. If HB 247 is simply furthering many of the original objectives of the deregulation bill, why are we here? Why is HB 247 necessary? Among other reasons, HB 247 is necessary to remove a safety net that was put in place in 2008, called electric security plans or ESPs. ESPs were created in SB 221 as a customer safety net at a time when markets, at least in AEP's service territory, had not yet fully developed. In 2008, OMA absolutely supported the customer safety net as a temporary measure to protect customers while the competitive retail energy market developed. But 10 years later, the market has developed and competition is working and saving customers billions of dollars. The reasons stated for needing the safety net no longer exist and it is time to move forward and allow the markets to work without government intervention and without above-market charges imposed by regulated utilities.

Also, back in 2008 when this safety net was supported, OMA (and I doubt others) never envisioned that the utilities would propose and the Public Utilities Commission of Ohio (PUCO) would approve the number and level of above-market charges through the ESPs. And in all fairness to the customer groups that supported the temporary measure, the Supreme Court of Ohio has even ruled that many of the charges proposed and granted to the Ohio utilities are beyond the scope of what is allowed under the ESP provisions embedded in SB 221. The Court has deemed these charges to be unlawful. OMA could not have possibly envisioned that unlawful charges would have been placed on customers' bills when supporting a safety net that was intended to protect customers as the market developed. Eliminating the very thing that is authorizing the utilities to

collect excessive charges (many of which have been later deemed unlawful) from customers is good public policy.

Given the magnitude of the above-market charges that have been collected from customers to date that have later been deemed to be unlawful by the Supreme Court of Ohio (collected over a combined \$856 million⁴), HB 247 offers a solution—a way to put money back in the pockets of customers if the charges are later deemed unlawful. If the Ohio utilities are authorized to collect charges that are later deemed to be unlawful by the Court, HB 247 requires the money to be refunded to customers. Charges collected by utilities that are deemed improper should not be kept by the Ohio utilities as a windfall. If the law is enacted and the utilities are put on notice that the charges will be collected from customers subject to refund, contrary to the utilities' claims, there is no retroactive ratemaking. The "subject to refund" tool has been previously utilized by the PUCO to protect consumers and it was not deemed to be retroactive ratemaking.

Why is a stay insufficient? Let's take the example of a recent Supreme Court of Ohio decision where the Court found that the Commission unlawfully allowed AEP to collect approximately \$500 million in provider of last resort charges, \$368 million of which AEP collected prior to the Court's determination that they were unlawful. Therefore, in order for a customer to obtain a stay from the Court, they could be required to post a bond for the full amount of dollars at issue in the case. The customer (appellant) does not just post a bond for the amount of money that it would owe under the utilities' charge, the customer may be required to post a bond sufficient to cover the entire amount of any alleged damages resulting from the stay, even though the customer would only be required to pay a fraction of that amount if the appeal is ultimately unsuccessful. If the customer cannot post such a bond itself, it will need to obtain one from a third party. Third parties will require the customer to pay an annual premium, often between 1 and 2 percent of the total amount of the bond. Thus, for the

⁴ In 2009, AEP customers lost out on \$63 million in a case involving "over collection." In 2014, AEP customers lost out on \$463 million in a case involving "Provider of Last Resort Charges." In 2016, DP&L customers lost out on over \$330 million in a case involving a decision on the Stability charges.

AEP appeal, if a customer challenging the charge were required to post a bond of approximately \$500 million, that customer might be required to pay a premium of between \$5 million and \$10 million during the first year the appeal is pending plus a pro-rated amount for increments of a year after the first year that the appeal remains pending. Some appeals have remained pending for approximately three years. Requiring one customer, a group of customers, or non-profit trade associations (like OMA) to post a bond of this magnitude is unfair, impractical, and unreasonable.

Even if the Supreme Court of Ohio decided some lesser amount of bond would suffice, requiring one customer, a group of customers, or non-profit trade associations to pay this amount is still unreasonable and impractical. In a recent case, without explanation, the Court required appellants to post a bond equal to approximately 2.5% of the total amount at issue on appeal. If the Court would have required a 2.5% bond of the \$500 million in the AEP case, customers would have been required to post a bond of \$12.5 million. It would likely cost between \$125,000 and \$250,000 for an annual premium for that bond during the first year the appeal is pending plus a pro-rated amount for increments of a year after the first year that the appeal remains pending.

Contrary to the arguments of the utilities, HB 247 is not taking away the PUCO's responsibility to set the electric distribution rates for the Ohio electric utilities that are regulated. HB 247 is not attempting to change the hearing process or eliminate public due process for interested parties in the setting of distribution rates. In fact, HB 247 encourages traditional rate cases before the PUCO and eliminates single issue ratemaking and above-market charges that have been allowed through the ESP process. OMA supports traditional ratemaking for the setting of distribution base rates and welcomes the robust, public ratemaking process where an Ohio utility has to come to the PUCO and open its books and show "in detail all of its receipts, revenues, and incomes from all sources, all of its operating costs and other expenditures, and any analysis such public utility deems applicable." R.C. 4909.18(B).

Also contrary to the opponents' claims, HB 247 does not eliminate any economic development or job retention tools that the General Assembly has given to the PUCO to assist customers. HB 247 does not prohibit or eliminate reasonable arrangements authorized by SB 221 set forth in R.C. 4905.31. Pursuant to its statutory directive, the PUCO created robust rules governing various types of reasonable arrangements, including economic development arrangements. Those rules are utilized regularly and can be located in Chapter 4901:1-38 of the Ohio Administrative Code.

The Ohio Manufacturers' Association strongly believes that above-market charges imposed on consumers and manufacturers through the ESP process are not consistent with competitive markets and are not good for Ohio – in either the short term or the long term. For these reasons, the OMA and many other groups firmly support the elimination of ESPs and support the other provisions of HB 247 that eliminate inequities and protect customers. At the last hearing, you heard that HB 247 was solely an OMA effort. It is not. HB 247 is supported by a broad coalition of customer groups (see attached), including AARP, Ohio Farm Bureau, The National Federation of Independent Business/Ohio, Northeast Ohio Public Energy Council (NOPEC), Office of the Ohio Consumers' Counsel, Ohio AgriBusiness Association, The Ohio Cast Metals Association, Ohio Chemistry Technology Council, Ohio Hotel & Lodging Association, and Ohio State Grange. You have also heard testimony in support from several other non-customer organizations.

Chairman Cupp and members of the committee, this concludes my prepared remarks. Thank you for your kind attention. I would be happy to respond to any questions that you may have.

#

Electricity Ratemaking Reforms To Protect Consumers

The successes of Ohio's transition to a competitive market for electricity generation are now documented. They include billions of dollars in savings for standard-offer consumers, governmental aggregation and other shopping consumers, numerous robust new natural gas-fired generation plants planned and coming online, and more than adequate reserve margins for reliability as determined by the Regional Transmission Organization, PJM Interconnection.

Nonetheless, there are some ratemaking provisions in current law that are anti-competitive or unfair—and bad for consumers and Ohio's economy. A broad-based coalition of electricity consumers is working with legislators to resolve the concerns outlined in this document and thereby improve outcomes for consumers and for Ohio. The legislative solution we seek is enactment of House Bill 247 (Romanchuk, R-Ontario), which was introduced in the Ohio General Assembly on May 24, 2017.

PROBLEM #1: Customers Are Denied Refunds for Charges That Are Later Determined to Be Improper.

Current law allows a utility to keep what it has collected from customers, even if the Supreme Court of Ohio determines the charges were improper.

SOLUTION: House Bill 247 would allow refunds to customers for all charges that are later found to be improper by the Supreme Court of Ohio or other authority.

PROBLEM #2: Utility Charges to Customers Under Electric Security Plans (ESPs)

The ESPs, allowed in the 2008 energy law (SB 221), are enabling utilities to request of the Public Utilities Commission of Ohio (PUCO) customer charges that exceed market prices. The result: Ohioans may not benefit from the lower electric bills that should flow from the lower prices in competitive electricity markets. In Ohio's competitive electricity market, ESPs—essentially, rate plans for the supply and demand of electric generation—are unnecessary and should be eliminated. Instead, a market-based option should be used to price service to customers.

Eliminating ESPs will fix a number of provisions that are unfair and costly to Ohioans under current law, including the following:

- **Utilities Are Not Required to Refund Customers All of the Utilities' Excessive Profits.** Even if the PUCO determines that a monopoly electric utility has "excessive" profits, the utility is not required to return the excess profits to customers. Only if the utility's earnings are deemed "significantly excessive" is the utility required to refund the significantly excessive portion of profits to its customers.
- **Customers Are Charged for Non-Generation Charges in an ESP.** Utilities use ESPs to set the price of the standard service offer to customers. However, the law also permits a utility to propose additional distribution-related charges in an ESP. Utilities have used the law to collect a number of so-called distribution charges from customers through non-bypassable riders. (That is, customers cannot "shop around" charges that are non-bypassable.) But some of these riders have nothing to do with distribution service. For example, FirstEnergy

AARP

Ohio Farm Bureau

The National Federation of Independent Business/Ohio

Northeast Ohio Public Energy Council (NOPEC)

Office of the Ohio Consumers' Counsel

Ohio AgriBusiness Association

The Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Hotel & Lodging Association

The Ohio Manufacturers' Association

Ohio State Grange

was granted a “distribution modernization rider” to provide credit support to the corporation without a requirement to spend the consumers’ payments on distribution modernization. That is not the way a competitive, free-market system should work.

- **Customers Are Not Protected from Paying Too Much for Service Under an ESP.**

One consumer protection in the 2008 law provided that ESPs could not be approved unless the result is “more favorable in the aggregate” to customers when compared to the expected results from the market-rate option. But the PUCO has been considering both quantitative and qualitative factors to determine if the ESP is more favorable in the aggregate than a market rate—and the Supreme Court of Ohio has declined to prohibit the PUCO’s approach. The consideration of qualitative factors can allow above-market charges, and that has undermined the consumer protection that prices in ESPs should compare favorably to market prices.

- **Utilities Can Veto Any PUCO-Ordered Modification to Their ESPs.** If a utility doesn’t like a PUCO ruling that modifies its proposed ESP, the utility can withdraw its application. In effect, the 2008 law gave the utilities—but no other stakeholder—veto power in ESP cases. This is a decidedly anti-customer policy.

SOLUTION: House Bill 247 would eliminate language in Ohio law that permits utilities to file ESPs, which would eliminate above-market charges to customers now allowed in ESPs. Utilities then would provide customers the standard service offer through a competitive bidding process. Utilities’ distribution rates would continue to be set through distribution rate cases by the PUCO. This approach would allow the PUCO to review all expenses and revenues when a utility seeks a distribution rate increase, instead of the current approach that allows utilities to add charges to customers’ electric bills using single-issue riders.

PROBLEM #3: Customers Are Not Protected from Subsidizing the Operations of a Utility’s Corporate Affiliate.

Prior to the 1999 deregulation law (Amended Substitute Senate Bill 3, enacted with strong bipartisan support), utilities owned and operated generation plants. SB 3 changed that, prohibiting utilities from owning generation. Rather than complete divestment of the generating plants, however, several of the utilities spun off the assets to a corporate affiliate. In recent years, the utilities have used the poor financial performance of their unregulated generation affiliates to seek above-market charges from captive customers.

SOLUTION: House Bill 247 would protect Ohio customers from new and expanded above-market charges by clarifying that Ohio’s 1999 deregulation law means utilities and their affiliates cannot own generation.

The forgoing proposals will protect consumers by restoring balance in the ratemaking process through repeal of unfair provisions in the 2008 law and making other changes. The proposals will prevent anti-competitive results from the law. And, limiting above-market charges will free up money for business expansion and job creation, spurring Ohio’s economy.



THE OHIO STATE UNIVERSITY

JOHN GLENN COLLEGE OF PUBLIC AFFAIRS

Competitive Electric Generating Markets Work; End the PUCO's Electric Security Plans (ESPs); Separate the Generating Subsidiaries from the IOUs

Testimony Before
The Public Utilities Committee of the Ohio House of Representatives

Representative Robert Cupp, Chair

House Bill 247

Proponent Testimony

Of

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John Glenn College of Public Affairs

The Ohio Manufacturing Institute

The Ohio State University

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The findings, conclusions, and recommendations expressed in this testimony are mine alone and do not represent the views of The Ohio State University, the John Glenn College of Public Affairs, or the Ohio Manufacturing Institute

Chairman Cupp, Vice Chairman Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee, my name is Edward (Ned) Hill. I am a Professor of Public Affairs and City and Regional Planning at The Ohio State University's John Glenn College of Public Affairs and a member of The Ohio State University's Ohio Manufacturing Institute. Today's testimony is mine alone and does not represent the views of The Ohio State University, the John Glenn College of Public Affairs, or the Ohio Manufacturing Institute.

I am an economist and have worked on economic development policies in general, and on issues that affect Ohio's manufacturing sector in particular, for nearly thirty years. Additionally, I have been actively engaged in research on Ohio's electricity markets over the past four years, both in testimony before the Public Utilities Commission of Ohio (PUCO) and the Ohio Legislature and in research supported by the Northeast Ohio Public Energy Council (NOPEC). I have also actively participated in research relating to Ohio's natural gas resources since 2011.

As an economist who works on economic development issues I view the four-year long attempt of Ohio's Investor Owned Utilities (IOUs) to re-monopolize the electric generation industry through regulation and legislation and re-balkanize an efficient and reliable regional generation market managed by PJM Interconnect to be against the best interests of the people of the state of Ohio and harmful to the state's economic development. The goal of re-monopolization is to raise prices above competitively determined levels, thereby allowing the IOUs to keep uncompetitive, high-cost, generating assets on their books and not realize financial losses. Re-balkanization of the electricity markets is then a necessary outcome from pursuing a policy of purchasing over-priced Ohio-generated power first, or subsidizing the purchase of expensive Ohio power. Balkanization then triggers a secondary cost: reduced system reliability.

December 2017 marked the four-year anniversary of a determined campaign by the Ohio's IOUs bailout of their (or their affiliates') loss-making power plants. My involvement in this issue dates back to August of 2014 when I contacted The Ohio Manufacturers' Association and volunteered to testify before the PUCO on their behalf after reading about FirstEnergy seeking subsidies for its failing electricity generating resources through mandatory Power Purchase

Agreements (PPA) in Cleveland's Plain Dealer.¹ As the struggle to maintain competitive electricity generating markets continued, so has my volunteer activity.

First the IOUs used their Electric Security Plans (ESPs) as vehicles to gain approval for uncompetitive, non-bypassable power purchase agreements (PPAs) from the PUCO. The ESPs were accompanied by a slew of non-bypassable riders that funneled above-market electricity payments to the state's IOUs, turning the ESPs into Egregious Subsidy Proposals. Next in line was a synthetic form of a PPA that rivaled the now infamous Synthetic Collateralized Debt Obligations [CDOs] as marvels of irresponsible financial engineering. Unsatisfied by the reception at the Public Utilities Commission of Ohio and at the Federal Energy Regulatory Commission (FERC) the IOUs shifted their attention to the legislature. FirstEnergy sought approval for synthetic Zero-emission nuclear credits, or ZECs, tied to non-bypassable power purchase agreements to subsidize its affiliate's loss-making nuclear plants. Currently the IOUs that own a piece of OVEC are looking for decades of on-going subsidies to bailout loss-making power plants located in Indiana and Ohio. It is time to stop this madness and House Bill 247 is the vehicle for doing so.

It is important to keep in mind the two public policy goals of competitive wholesale energy markets. They are to provide reliable power at the lowest cost to consumers. As former Federal Energy Regulatory Commissioner Tony Clark wrote in his July 2017 white paper: "For many, a 'freer market' was never the end goal. The market was a tool. Affordable power was the goal but many state public policy makers no longer see that as the only goal ... (Electricity generating markets) were never designed for job creation, tax preservation, politically popular generation, or anything other than reliable, affordable electricity."

The electricity markets are working in Ohio and benefiting consumers and employers, one for electricity generation and the other for capacity. There is no economic rationale for introducing subsidies into the electricity markets; they amount to nothing more than corporate welfare.

Yes, there is complexity as a sophisticated and competitive electricity markets serves as the foundation for a transmission market that is currently a natural monopoly, which, in turn, is the supplier of a distribution system that is also a natural monopoly. However, there is a straight

¹ Funk, John. August 5, 2014. "FirstEnergy Corp. looking to rate payers to support its struggling unregulated power." *Cleveland Plain Dealer*. Retrieved from:
http://www.cleveland.com/business/index.ssf/2014/08/firstenergy_corp_looking_to_ra.html

forward four-part test that should be applied to determine if the electricity markets are working for consumers and the industry:

1. Are prices lower than they would have been without competitive electricity markets?
2. Is new investment in generating capacity taking place in the PJM region and is investment taking place in Ohio?
3. Are uncompetitive generating boilers and plants closing down?
4. Has the reliability of the electric grid improved?

There is one additional question that helps to determine if regulatory capture has taken place: Are non-bypassable costs in the transmission and distribution portions of the business increasing as revenue from the competitive side of the business is declining? In Ohio, this question can be answered because Duke Energy shed its electricity generation capacity, while AEP and FirstEnergy did not. This sets up what economists refer to as a natural experiment. We can observe how an IOU with generating plants behaves in the PUCO and Legislature compared to one that sold off the vast majority of its plants.

The next portion of my testimony demonstrates that competitive electricity markets are working for Ohio, but their benefits are being offset by increasing non-bypassable regulatory costs. This has all of the signs of regulatory-approved cross-subsidization. The second section examines how rent-seeking redistribution coalitions have been formed by the IOUs to provide the veneer of broad-based support for their ESPs, corrupting the regulatory process in so doing. And, in the last portion of my testimony I propose a new regulatory activity for the PUCO that is important to Ohio's consumers and to the continued functioning of a competitive electric generating market.

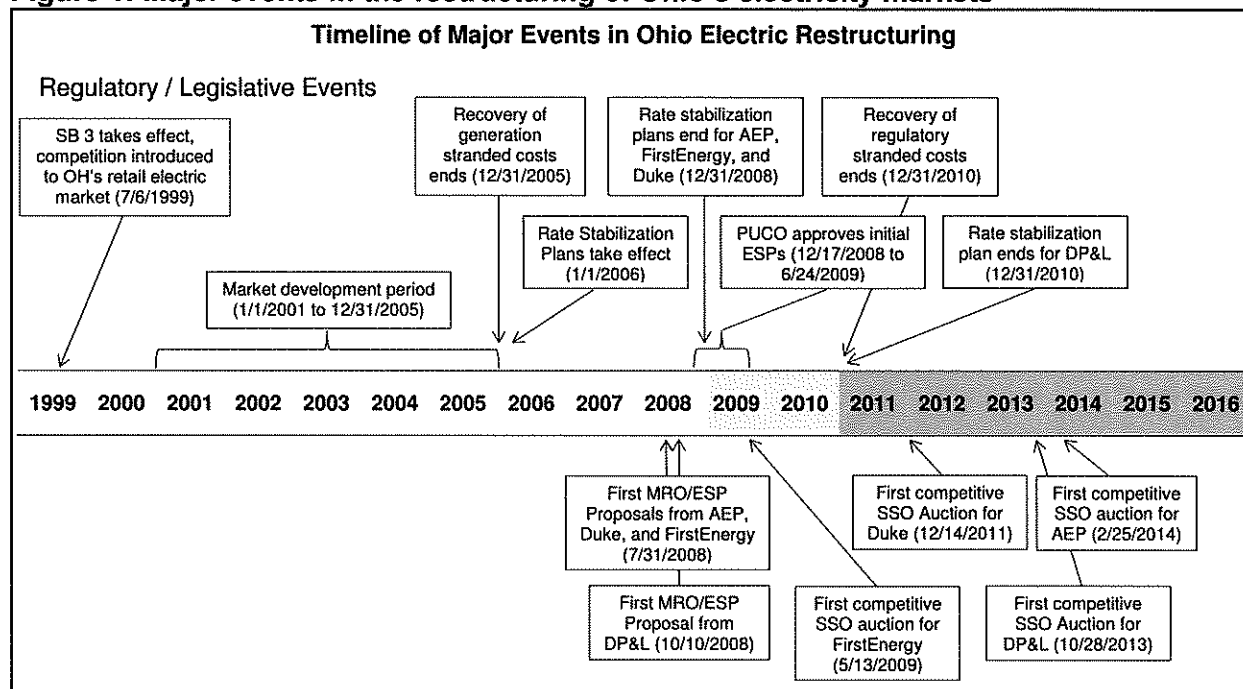
Electric Generating Wholesale Markets are Working—Nine Figures

The figures below are used to demonstrate the power of competition and the offsetting cost of riders paid for by customers under ESPs. The first is a timeline of major events that have taken place in the restructuring of electricity regulation in the state of Ohio. The data displayed in Figures 2 through 7 are of the cost of electricity for mercantile customers in the Duke Energy and AEP service territories. Mercantile customers use at least 700,000 kilowatt hours per year and are a mix of shoppers and non-shoppers.² The data were collected and provided by Scioto

² The data are explained in Thomas, Andrew et al. November 2016. *Electricity Customer Choice in Ohio: How competition has outperformed traditional power regulation*. Energy Policy Center, Cleveland State University, funded by and prepared for the Northeast Ohio Public Energy Council (NOPEC).

Energy. Figures 2 and 3 show the composition of electricity costs paid for by shopping and non-shopping, or Standard Service Offer (SSO) customers of Duke Energy. Figures 4 and 5 display the same data for AEP's mercantile customers. The purpose of these figures is to show the impact of competition in the electricity markets and the offsetting impact of regulatory riders.

Figure 1: Major events in the restructuring of Ohio's electricity markets



Source: Noah Dormady, John Glenn College of Public Affairs, The Ohio State University

The Duke Energy and AEP service territories provide what economists term a “natural experiment” of the regulatory behavior of IOUs that have sold off most of their generating assets (Duke, with the exception of its small share of OVEC) compared to the other IOUs, which retained their generating assets (AEP). The hypothesis being examined in the figures is that utilities that retain loss-making generating plants, even if the generating capacity is located in legally walled-off subsidiaries, have incentive to search for non-bypassable riders. In other words, a utility with upside down generating assets will search for offsetting subsidies from its regulated transmission and distribution businesses. The flip side of that proposition is that utilities that do not have generating assets do not have the same incentive to seek riders.

In Figures 2 through 5 the *blue lines* indicate the average contract rate for purchased power per kilowatt hour, the *red lines* are the kilowatt hour cost of riders, and the line on top of the *yellow shaded area* is the total cost of power, adding together the data behind the blue and red lines. Figures 2 and 3 are for Duke Energy and Figures 4 and 5 are for AEP. Those in

Figure 2 are Duke Energy's customers who shop for their power; Figure 3 are Duke Energy's customers who do not shop and purchase their electricity through the Standard Service Offer (SSO); Figure 4 are AEP shoppers and Figure 5 are AEP non-shoppers or SSO customers.

Duke Energy fully transitioned to market-priced power in January 2012. AEP transitioned to market-priced power over a year ago. In June 2014 the majority of AEP's SSO power was based on regulatory-approved cost-plus power and in January 2015, 100 percent of its power was purchased in the wholesale electricity market. The date when 100 percent of power is purchased competitively is marked by a solid *vertical solid black line* in Figures 2 to 5. The date at which a majority of AEP's power was competitively purchased is marked by a *vertical dashed black line* in Figures 4 and 5.

The key findings on the price movements in the cost of power—not including non-bypassable costs.

- After the transition from regulated power to competitively-priced power was completed Duke Energy's SSO cost dropped by 37 percent and AEP's by 32 percent.
- The savings are more evident for SSO customers than for shoppers, but both benefited.
- The price paid for by SSO customers gradually approaches that paid by shoppers. This is a result one expects to see in competitive markets. What is happening is that prices are converging to a new equilibrium.
- There is no doubt that mercantile customers realized savings from competitive markets for wholesale electric generation.

The striking differences between Figures 2 and 4 and then Figures 3 and 5 are with the costs associated with non-bypassable costs. There are sharp differences in these costs between Duke Energy and AEP.

- Duke Energy's non-bypassable costs were essentially flat from 2010 to 2016, staying near 3 cents a kilowatt hour. In fact, the cost of non-bypassable charges drop in 2015 and 2016.
- AEP's non-bypassable charges increase throughout and jump perceptibly in 2015.
- AEP's non-bypassable charges are about 25 percent higher than Duke Energy's.

Figures 6 graphs the non-bypassable costs for both Duke Energy and AEP. The solid lines are actually average costs and the dashed lines are trend lines drawn through the data using regression equations. Trend lines were included to smooth out fluctuations.

- Duke Energy's non-bypassable costs are essentially flat.
- AEP's non-bypassable costs trend up in relentless fashion.

Figure 7 graphs the total cost of electricity for mercantile customers who shop—this is the contract rate for purchasing power and non-bypassable costs.

- Duke Energy's costs trend down.
- AEP's costs trend up, beginning in 2012 and accelerate in 2014.

What is the difference between Duke Energy and AEP? One's parent company owns an electricity generating fleet and the other does not.³ Duke Energy made the right business decision and followed the guidance of the Legislature when it sold its power generation assets. The other IOUs did not.

What charges are non-bypassable for the average mercantile customer? (See Figure 8) There are three: transmission and distribution charges and other non-bypassable charges approved by the PUCO. Transmission charges are 8 percent of the average cost. Distribution charges are 13 percent of the final cost. And, PUCO approved non-bypassable charges are 14 percent of the bill.

The data indicate that cross-subsidies are likely taking place when an IOU's parent company owns a money-losing fleet of power plants. This has been explicit in some of the PUCO's recent rulings.

The data for mercantile customers cannot be refuted because they come from actual billing records pulled by Scioto Energy. Similar data were collected for the other IOUs by North Shore Energy. The Energy Professionals of Ohio provided support for the data collection and the research that was contracted for by NOPEC.

The research team at Cleveland State University's Energy Policy Center and at The Ohio State University's John Glenn College of Public Affairs examined savings attributed to competitive electricity generating markets and estimated about \$3 billion dollars a year in savings to non-mercantile customers.

Moving from a patchwork, balkanized, state-centric regulated power market to a competitive regionally integrated power market has also improved system reliability. Figure 9 plots PJM Interconnect's data on its reserve capacity, or margin. The regulatory standard was

³ With one minor exception, Duke still owns a small fraction of the OVEC generating facilities.

for 12-16 percent reserve capacity. Since the state's IOUs began to shift their electricity purchases to competitive markets in 2011 reserves have increased to more than 20 percent.

Noncompetitive power plants have been sold and shut down and more will take place, meanwhile Ohio is benefiting from new investments in baseload, natural gas-fired power plants. The transition for communities that rely on property tax payments from outmoded power plants will be hurt in the transition in the same way that any community suffers when a major employer shuts down. However, the sites of former power plants are well connected to transmission lines and often well situated for redevelopment after they are cleaned up, especially if they have access to natural gas pipelines.

In a market-based economy markets should operate for the benefit of consumers, not for the benefit of companies. House Bill 247 will ensure that this remains true for electricity customers, and not just the few that are favored in special interest carve-outs in ESPs.

Figure 2: Electricity costs paid by Duke Energy's shopping mercantile customers

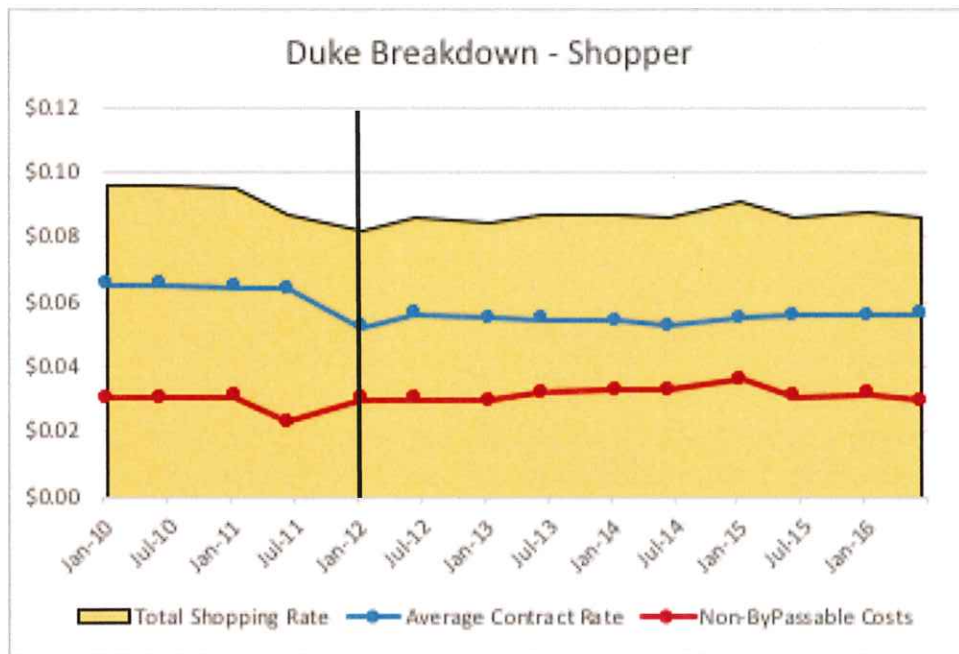


Figure 3: Electricity costs paid by Duke Energy's non-shopping (SSO) customers

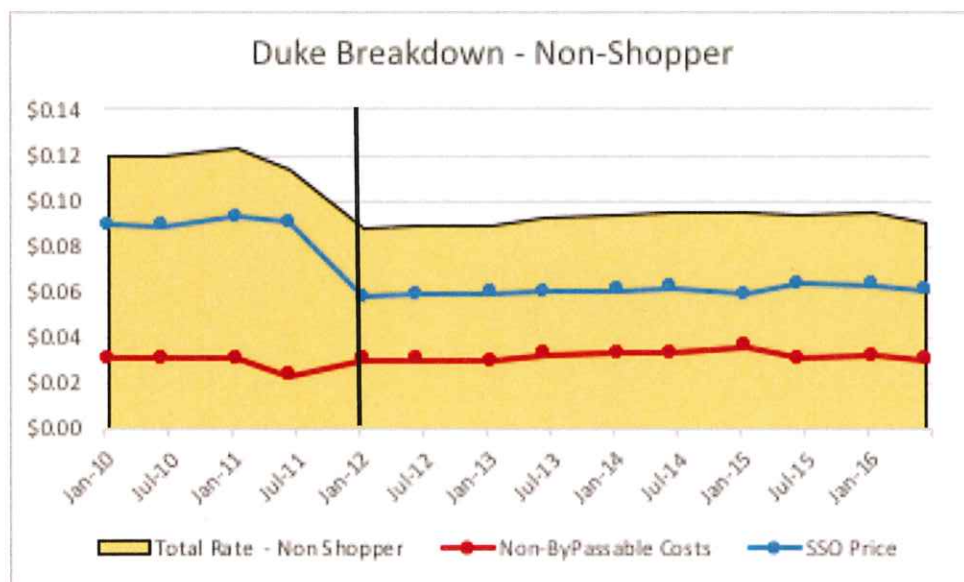


Figure 4: Electricity costs paid by AEP's shopping mercantile customers



Figure 5: Electricity costs paid by AEP's non-shopping (SSO) customers

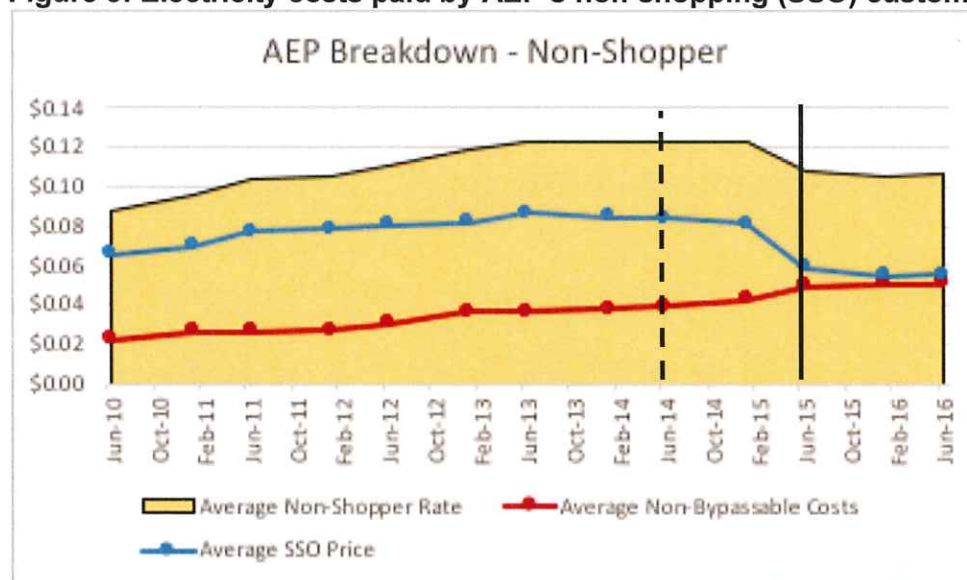


Figure 6: Non-Bypassable costs increase faster for AEP's customers

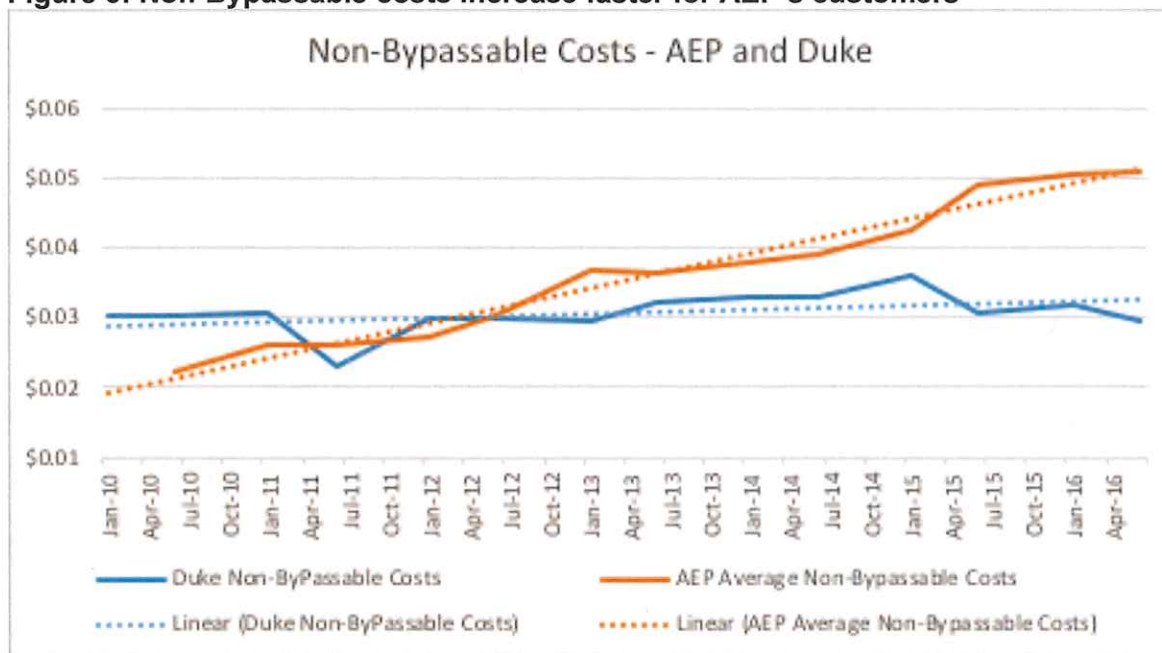


Figure 7: Total shopping rate (contract rate plus riders) higher and increase faster in AEP territory.

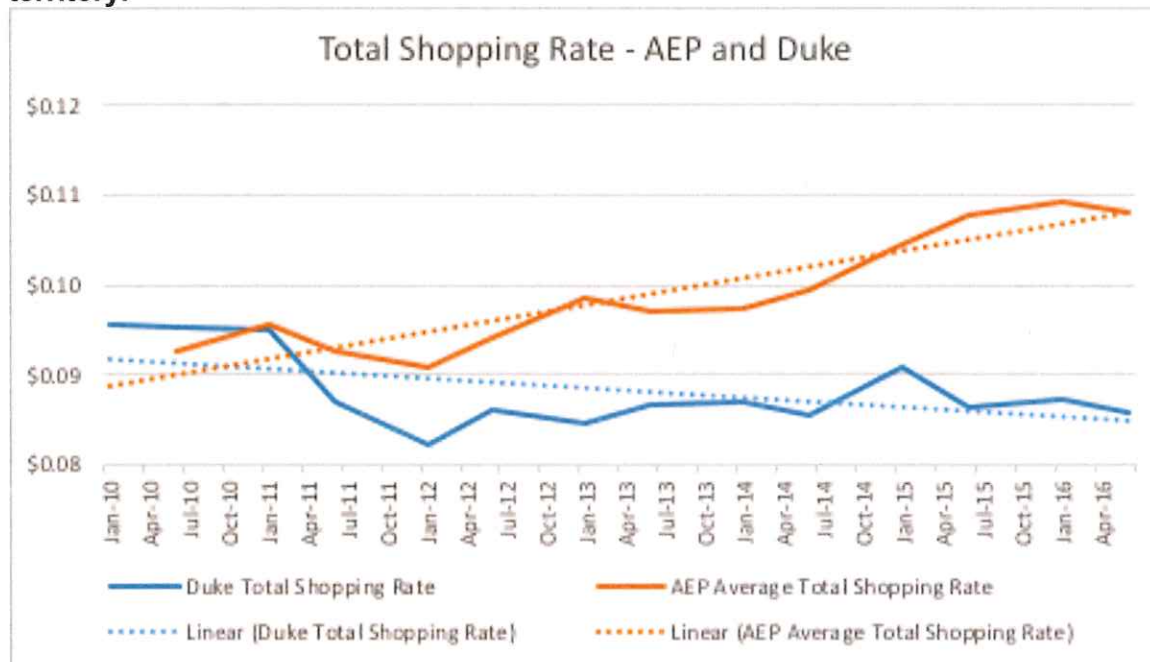


Figure 8: What makes up the cost of electricity for the average Mercantile customer in 2016?

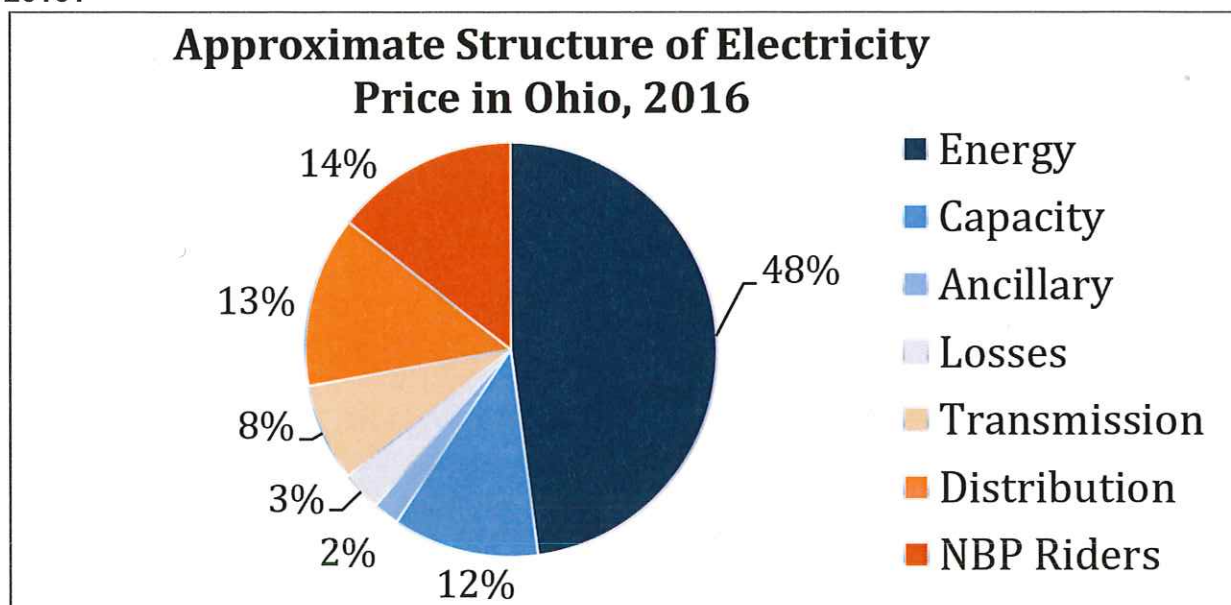
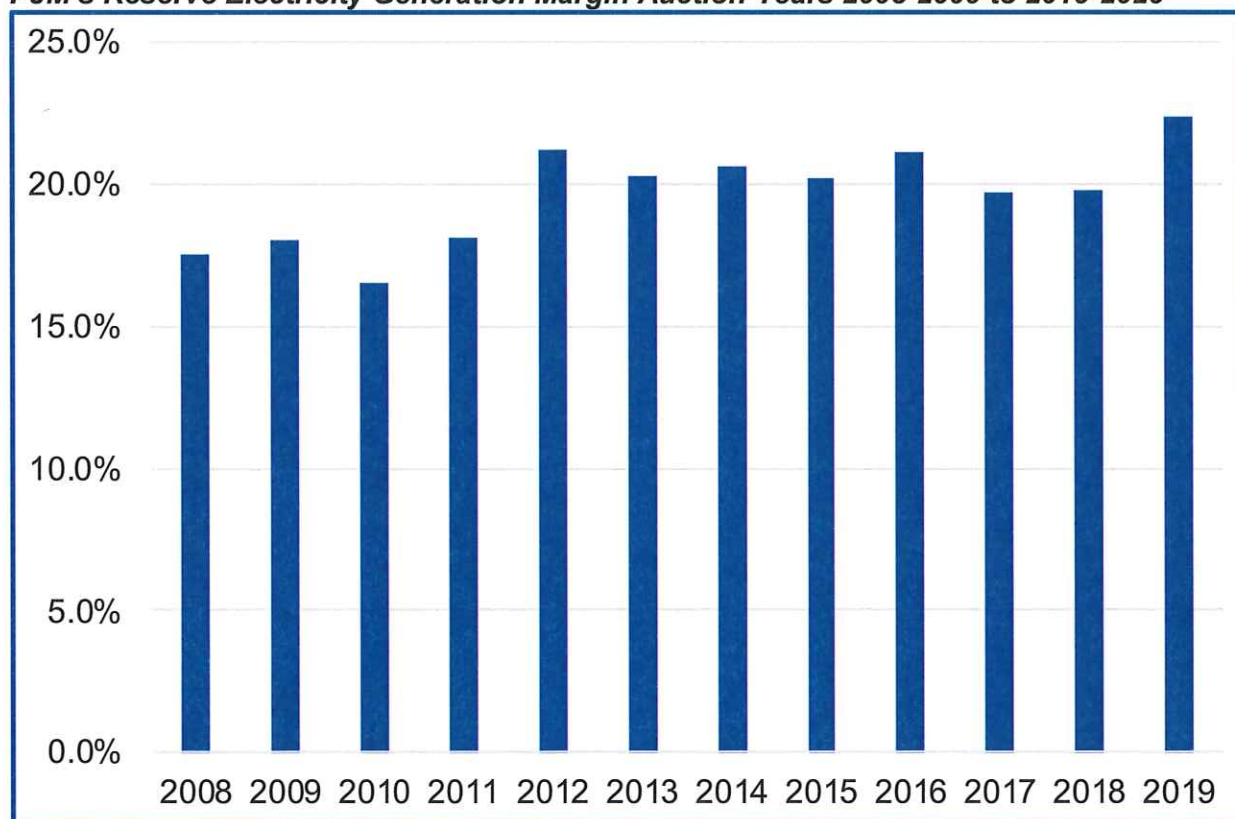


Figure 9: The reliability of the electricity generation system in PJM Interconnect's region has strengthened with competitive generating markets

PJM's Reserve Electricity Generation Margin Auction Years 2008-2009 to 2019-2020



Source: <http://www.pjm.com/markets-and-operations/rpm.aspx>

The ESP Process is an Insider's Game: Living with Redistributive Coalitions

I have been an expert witness testifying against the ESPs brought forward by the Ohio IOUs FirstEnergy and AEP. In each of these hearings the IOUs brought forward a set of signatory parties in support of the agreement in response to the PUCO's "reasonableness" criteria for evaluating stipulations: (1) the stipulation must be the product of serious bargaining among capable, knowledgeable parties; (2) the stipulation must not violate any important regulatory principle or practice; and (3) the stipulation must, as a package, benefit ratepayers and the public interest. The signatories are the purported demonstration of meeting the third criterion

It is my observation that, in general and with the exception of PUCO Staff, the signatory parties do not represent the public interest; they only represent their own interests. The record of the ESPs as they move from the original submission, through the succeeding stipulations, to the final decision demonstrates that the signatory parties are nothing other than a cynically and carefully crafted redistributive coalition that provides the veneer of the public interest to a collection of purely private interests. They are grasping, cost-shifting, and rent-seeking.

The pattern across these two cases is similar. The original ESP proposal is submitted without signatory parties. Opposition arises to the proposal. A stipulation is filed that has a set of carve-out rates, side payments, or other narrowly crafted benefit that apply solely to a signatory party, tied to a binding guarantee of support for the entire ESP. As new stipulations appear, new carve outs materialize, and then the beneficiaries sign on. The *quid pro quo* sits in the stipulation. Compare the stipulation to its predecessor filings, see what has changed in the rates and payments, and then flip to the signatory pages and see who has signed on or been added to the settlement. You can often deduce who a new carve-out was written for by matching the benefit received to the characteristics of the signatory party.

The most entertaining stipulation to read is always the last one. I think of it as the last train to Clarksville and look to see who will be meeting it at the station. Here the closing offers are made to the opposition and they evaluate if what they get is worth the signature of their organization. Those that sign made it onto the last train out of the station.

What is concerning about the way signatory parties are bought off in the regulatory process is that the directed payments, special rates, and other inducements that are part and parcel of the ESP appear to violate the second of the PUCO's criteria: "a stipulation must not violate any important regulatory principle or practice." The PUCO has stated that it disfavors

direct payments to intervenors of funds, even if those funds are to be refunded to ratepayers.⁴ Yet, this appears to be the case with the funds and discounts provided to organizations in the Stipulations that I have read.

I refer to the signatory parties, with the exception of the staff of the PUCO, as members of a redistributive coalition. The purpose of a redistributive coalition is to use political or regulatory processes to generate financial benefits that cannot be earned through the marketplace. This is known in public choice economics as rent-seeking. A redistributive coalition is a relatively small group that promotes policies for their mutual financial benefit. The cost of organizing the group is small relative to the benefits received. The costs are limited to the nominal costs of organizing (the negotiations), together with the sum of the costs of the payments and rate discounts granted to each member. In general, the costs of these payments to the organizer of the coalition are far outweighed by the returns.

In the case of ESPs the actual cost of organizing and paying the members of the redistributive coalition is not borne by the organizer. The organizational costs are passed on to ratepayers as one of the typical cost of utility regulation. And, the funds that the members of the coalition win for themselves are shifted onto the large pool of un-favored electricity users. Therefore, the direct or lasting expense incurred by the organizer, the IOUs, is minimal. Some of the coalition members get cost reductions, a predictable financial benefit, many obtain benefits that will be passed on *only* to their members, and others find funds to support their organizations' missions. Some coalition members can use the windfalls to pay for their administrative or litigation expenses. Nonetheless, while some of these benefits are either socially beneficial or meritorious to a relatively small group of beneficiaries, they are provided at the expense of a much larger group. Additionally, the meritorious social activities supported by riders in ESPs are frequently better suited for the consideration of the Legislature than as part of the purview of the Public Utilities Commission.

The list of signatories are carefully constructed. In support of its settlement, a FirstEnergy executive stated that the members of the redistributive coalition "represent varied and diverse interests including large industrial customers, small and medium businesses, mercantile customers, colleges and universities, low income residential customers, organized

⁴ See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Recover Costs Associated with the Ultimate Construction and Operation of an Integrated Gasification Combined Cycle Electric Generation Facility*, Case No. 05-376-EL-UNC, Order on Remand at 11-12 (February 11, 2015).

labor, and a large municipality.”⁵ The façade of universality is apparent later in the same testimony of the FirstEnergy executive: “The Signatory Parties represent a broad range of interests including the Companies, another Ohio electric distribution utility, organized labor, various consumer groups (themselves representing a broad range of customer classes and varied interests), and a large municipality.”⁶ The same executive concluded that given the group of Signatory Parties that make up the coalition, the stipulation as a package benefits customers and the public interest.⁷

However, the list also raises a series of questions: How are they representative? Do they represent their peers and similar organizations in a negotiation? Were they able to obtain similar benefits for their peers or at the exclusion of their peers? Generally speaking, the answers to the last two questions are no: the signatory parties represented only themselves and the extractions they obtained are restricted to their organizations alone. They are self-dealing.

Here are the questions raised about *just a few* of the signatory parties in the FirstEnergy Stipulation:

- Why is one City a direct beneficiary while other communities with similar low-income populations, in the utility’s service territory excluded?
- Why are private colleges and universities beneficiaries, while public colleges and universities excluded?
- Why are the members of Cleveland’s small business advocacy organization eligible for subsidized energy audits, while small business members of other chambers of commerce or organizations in the service territory are left out?
- Why are discounts and other considerations being directed at a very limited number of large industrial companies through a complicated and opaque set of riders? The political power of these companies cannot be discounted as a reason for their inclusion.

The expected attributes of membership in a redistributive coalition are all evident in the FirstEnergy and AEP stipulations: limit the cost to the organizer, maximize the power and ability to steer benefits to the members of the coalition, maximize the financial return to the organizer,

⁵ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Supplemental Testimony of Eileen M Mikkelsen at 6 (December 22, 2014).

⁶ *Id.* at 7.

⁷ *Id.* at 8.

and have the returns cascade in relation to the power of the participant. It is all the better if the rewards to the participants are shifted onto the general public and away from the organizer.

All members of specific classes of electricity users are not invited to become members of the coalition. This is a political coalition assembled to provide a veneer of broad support for the ESP in exchange for a limited set of pre-defined financial benefits. In exchange, the members of the coalition commit to endorse the totality of the ESP application. One of the FirstEnergy stipulations stated: "each Signatory Party agrees to and will support the reasonableness of the ESP IV and this Stipulation before the Commission, and to cause its counsel to do the same."⁸

Is there anything improper about forming a redistributive coalition? There are improprieties. Apparently, there are no illegalities. Redistributive coalitions promotes economic inefficiency, mandate transfers of income through regulation, devolve what should be powers of the Legislature to the PUCO, and allow the politics of the regulatory process to determine economic winners and losers. While there are improprieties, forming redistributive coalitions are standard practice in enacting ESPs.

The signatory parties to an ESP are a political coalition designed to extract rewards from a regulatory or legislative proceeding for their members. Nothing more, nothing less. It just has to be recognized for what it is, and for what it is not. The coalition is not a bargaining body that represents all of the Companies' ratepayers, nor the public interest. The bargains struck will result in most of the redistributive coalition's benefits being paid for by the vast majority of ratepayers. The broad pool of electricity users pay a *de facto* tax enabled and enforced by the PUCO to benefit the redistributive coalition assembled by the IOUs and the largest beneficiary is the organizer, the IOUs.

Further, the costs of learning about and understanding the impact of the proposals set forth in the various stipulations in an ESP Application are substantial because these costs are opaque, buried in a series of riders that are beyond the ability of a typical ratepayer to understand. And, subsidies that are being handed out to individual companies are hidden under the assertions that they are proprietary trade or business secrets. This standard is, of course, nonsense. The cloak of proprietary business information is being thrown over special carve-outs that are being paid for by residential ratepayers or the competitors of the companies in question.

⁸ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Stipulation and Recommendation at 18 (December 22, 2014).

Additionally, non-members of the redistributive coalition are further disadvantaged by the large, complicated, last minute submittals to the Commission made by the IOUs—this is lawyerly tradecraft. Deepening the opacity of the ESP process many of the provisions embedded in the stipulations are written in ways that are extremely difficult to disentangle. The disinfectant of sunlight is required if ESPs are to continue. Better yet, be done with them.

Conclusions

In an economy with well-functioning regional markets for electricity generation and capacity many of the carve-outs and special industrial deals that are part-and parcel of Electric Security Plans are not need. Allowing the competitive markets to work without interference, without subsidies, and without special deals will provide much-needed transparency in the process, create market solutions and competitive options, and will stop the cost shifting that takes place for Ohio companies that are part of the small, select, club that have rights to the discounts granted to them in the ESPs that are not available to the unprivileged majority of the economy who do not belong to the club. Ending ESPs would be a true and lasting contribution to the economic development of the state. Cost competitiveness works best through sustainable markets rather than in closed door negotiations that favor the powerful few. Ohio is an energy-using industrial state. Upping electricity rates for the vast majority of the state's employers to favor benefits a connected few is a fool's errand.

The PUCO needs to operate in a way that recognizes the reality of the competitive electric generating markets. It needs to become an analytical watchdog and advocate for Ohio's consumers. The PUCO needs to become an advocate and for competitive generation and capacity markets. There is currently freedom of entry and exit in PJM's generating market and it is competitive. However, the PUCO needs to be vigilant to ensure that this regional market does not become oligopolized in the future, ensuring fair and effective competition in the state of Ohio. HB 247 will allow these competitive markets to flourish.

I end by returning to the four-part test that I presented earlier and provide the answers:

1. Are prices lower than they would have been without competitive electricity generating markets? Yes, consumers saved \$15 billion from 2011 to 2015 thanks to competitive generating markets and the foresight of the Legislature. If ESPs are ended and competition maintained Ohioans will save \$2.8 billion a year.

2. Is new investment in generating capacity taking place in the PJM region and is investment taking place in Ohio? \$8.9 billion in new generation capacity has been either invested in Ohio or is on the books. With a commitment to competition more will come.
3. Are uncompetitive generating boilers and plants closing down? 56 coal fired boilers have closed and their capacity has been replaced with energy from Ohio-located (or locating) gas-fired plants.
4. Has the reliability of the electric generating system improved? Yes, the regional electricity generating margin hovers around 20 percent. This is far in excess of previous regulatory standards.

I urge you to vote in favor of House Bill 247: end ESPs and mandate the separation of the generating portion of the business from the regulated portions. Ohioans have paid for stranded generating assets a few times—let us not pay again.

Thank you for providing me with the opportunity to testify. I look forward to answering any questions that you may have.

**BEFORE THE
PUBLIC UTILITIES COMMITTEE
OF THE OHIO HOUSE OF REPRESENTATIVES**

REP. ROBERT CUPP, CHAIRMAN

**HOUSE BILL 247
TESTIMONY
OF**

THE OHIO MANUFACTURERS' ASSOCIATION

**BY
BRADLEY BELDEN**

NOVEMBER 28, 2017

Chairman Cupp . . . members of the House Public Utilities Committee . . . Good afternoon. Thank you for the opportunity to testify today as a proponent of House Bill 247 and its many provisions for strengthening consumer protection through electric competition.

My name is Bradley H. Belden. I am a Vice President of The Belden Brick Company, which is headquartered in Canton, Ohio. I also serve as Chairman of The Ohio Manufacturers' Association Energy Committee. My testimony is reflective of both my company and the OMA.

The Belden Brick Company owns and operates six plants in Tuscarawas County and employs approximately 450 people in Ohio. We produce both molded and extruded face brick and pavers.

We are the largest family-owned-and-managed brick company in the nation, and the sixth-largest brick manufacturer overall, as measured by production volume.

Access to reliable, affordable electricity is a big competitiveness issue for our company. Our electric spend represents about 4.5 percent of our overall costs. While that doesn't qualify us as an "electric energy intensive" industry, it still represents a significant annual cost. We are always looking for ways to reduce our costs – including what we spend on electricity – because that frees up resources that can be used to invest back into the business and create jobs.

Because our electric costs are such a major line item in our expenses, we are keenly interested in public policies that will drive lowest-cost energy resources and solutions.

Ohio's transition to a competitive market for electricity has produced many well-documented successes that support that objective. For example:

- Between 2011 and 2015, business and residential customers in Ohio have saved approximately \$16 billion, with an expected additional \$3 billion per year in savings going forward.
- Seven new gas-fired power plants have been approved for construction or are under construction in Ohio, while an eighth plant is awaiting approval by the Ohio Power Siting Board.
- And, reserve margins – currently around 20 percent and expected to reach 22 percent in the 2019 / 2020 year, and 23 percent in the 2020 / 2021 year – are more than sufficient to meet Ohio's current and near-term reliability needs.

In other words, retail electricity competition is working as intended. Increased choices and savings have served customers well.

Nonetheless, with HB 247, we have an opportunity to produce even better results.

That's because current law contains a number of rate-making provisions that are anti-competitive, unnecessarily costly for residential and business customers, and bad for Ohio's economy. Many of these anti-competitive provisions became law through Senate Bill 221, passed in 2008, and today represent a serious threat to the benefits of competition we currently enjoy.

Unfortunately, anti-competitive provisions of SB 221 are producing unfair and costly outcomes.

For example: Electric Security Plans (ESPs) permitted under SB 221 have made it possible for utilities to secure approval from the Public Utilities Commission of Ohio (PUCO) to charge customers above-market prices through unwarranted non-bypassable riders.

How much money are we talking about? The Ohio Consumers' Counsel has documented more than \$14 billion in PUCO-approved, above-market electric utility charges since 2000. Those costs were paid by customers of AEP-Ohio, Dayton Power & Light, Duke Energy Ohio, and FirstEnergy.

This begs the question: Why should manufacturers like The Belden Brick Company – or any business for that matter – be forced to pay what amounts to unjustifiable energy “taxes” at a time when competitive electricity markets should be producing lower electric bills?

The answer is, “They shouldn’t.”

House Bill 247 will help protect electricity customers by addressing unfair, anti-consumer provisions in current law that cost customers billions of dollars. By eliminating language in current law that permits utilities to file ESPs, the bill also will eliminate above-market charges that those plans allow.

HB 247 will allow customers to receive refunds for all charges later determined to be improper by the Ohio Supreme Court. Under current law, customers are denied such refunds.

Senate Bill 3, enacted in 1999, prohibits utilities from owning and operating generation. However, instead of divesting their generation, some utilities chose to spin off their generation assets to a corporate affiliate. In recent years, some utilities have used the poor financial performance of those unregulated generation affiliates to seek above-market charges from customers on their distribution utility bills in the form of non-bypassable riders.

HB 247 will make the law clear that utilities and their affiliates cannot own generation thereby eliminating the potential for subsidies flowing to the utilities’ unregulated affiliates.

Businesses across all segments look at what a kilowatt of electricity will cost them. Ohio is positioned well to be able to provide reliable power at extremely competitive rates if we continue down the path of implementing fully competitive market rates. Local energy sources have lowered the cost of generation and invited investment

into our state by new generators. Traditional utilities though have been increasing the total cost of power by adding riders on distribution bills to pay for uncompetitive generation. Ohio will find it harder to retain and attract businesses with a higher total cost of electricity.

There are efforts to have ratepayers in Ohio subsidize an aging, less efficient electricity generating system. Society has moved on from the days of horse-drawn carriages, television picture tubes, and analog film cameras. There's been no effort to have us all pitch in to save the manufacturers of those products by subsidizing their continued production. Why are we doing this with electricity generation? The advancements in technology and ample supply of alternative fuel sources have unlocked lower electricity prices, so why aren't we embracing the documented benefits of the competitive market? HB 247 does just that.

HB 247 will restore much-needed balance and fairness to Ohio's rate-making process. Enactment of the bill will strengthen customer protections against unfair, unwarranted, above-market charges – and, in the process, will support economic growth and prosperity in our state.

I ask for your careful consideration of this legislation.

Chairman Cupp . . . members of the committee . . . this concludes my prepared remarks. Thank you for your kind attention. I am joined by OMA Chief Energy Counsel, Ms. Kimberly Bojko.

Together with Ms. Bojko, we will try to answer any questions that you may have.

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**BEFORE THE
PUBLIC UTILITIES COMMITTEE
OF THE OHIO HOUSE OF REPRESENTATIVES**

REP. ROBERT CUPP, CHAIRMAN

**HOUSE BILL 247
TESTIMONY
OF**

THE OHIO MANUFACTURERS' ASSOCIATION

**BY
LUKE HARMS
SENIOR MANAGER, GOVERNMENT RELATIONS
WHIRLPOOL CORPORATION**

NOVEMBER 28, 2017

Chairman Cupp, Vice Chair Carfagna, Ranking Member Ashford. . . members of the House Public Utilities Committee . . . Good morning. Thank you for the opportunity to present proponent testimony today on House Bill 247.

My name is Luke Harms. I am Senior Manager of Government Relations at Whirlpool Corporation.

Whirlpool is the number-one appliance manufacturer in the world, with approximately 93,000 employees and 70 manufacturing and technology centers. Here in Ohio, Whirlpool has five manufacturing facilities and approximately 10,000 employees.

I am testifying today on behalf of The Ohio Manufacturers' Association (OMA). I currently serve as Vice Chairman of the OMA Government Affairs Committee.

The OMA was created in 1910 to advocate for Ohio manufacturers; today it has approximately 1,400 members – large, small and in between. Its mission is to protect and grow Ohio manufacturing.

Access to reliable, affordable energy is critical to all manufacturers. For that reason, companies like Whirlpool are always seeking cost-effective energy solutions. We are constantly looking for ways to reduce our electricity costs because money we save by reducing our energy costs is money we can reinvest in our business –

in our employees, our facilities and product innovations—as well as the communities where our facilities reside.

And of course, policies that avoid unnecessary above-market electricity costs help Ohio manufacturers compete – and are a crucial element of Ohio's efforts to strengthen existing employers and attract new businesses to the state.

One way we are investing in our company's success at Whirlpool is through on-site wind energy. Just two weeks ago, we announced plans for building three wind turbines to power our manufacturing facility in Greenville, Ohio.

The three Greenville turbines will generate more than 12 million kWh annually and offset approximately 70 percent of the plant's electricity consumption. That will eliminate the equivalent of more than 9,000 annual tons of CO₂.

The Greenville plant is the latest Ohio facility where Whirlpool is implementing wind energy to power its manufacturing facilities, following installation of wind turbines at our manufacturing facilities in Findlay, Marion and Ottawa, Ohio.

Expanding our company's commitment to sustainability and reducing our overall energy footprint are two objectives for these wind energy investments. An additional objective is to mitigate the impact of unwarranted above-market charges that put upward pressure on energy costs.

Manufacturers like Whirlpool are deeply concerned about the negative impact of a number of unwarranted rate-making provisions in current law. For example, according to the Ohio Consumers' Counsel, Ohio utilities have collected more than \$14 billion in PUCO-approved, above-market charges from utility customers since 2000.

For this and other reasons, the OMA strongly supports House Bill 247. The legislation will help protect customers by restoring much-needed balance and fairness to Ohio's rate-making process, and by strengthening customer protections against above-market charges through unwarranted, non-bypassable riders.

Above-market charges are an issue of concern for manufacturers of all sizes because they drive up energy costs without delivering any additional benefit to customers. And this is happening at a time when market prices are in decline and electric bills should be dropping, not rising.

Chairman Cupp . . . members of the committee . . . this concludes my prepared remarks. With the assistance of OMA Chief Energy Counsel, Kimberly Bojko, I will be happy to respond to any questions you may have.

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**BEFORE THE
PUBLIC UTILITIES COMMITTEE
OF THE OHIO SENATE**

SENATOR BILL BEAGLE, CHAIRMAN

Substitute Senate Bill 155

**TESTIMONY
OF**



THE OHIO MANUFACTURERS' ASSOCIATION

**BY
KIM BOJKO
PARTNER, CARPENTER LIPPS & LELAND LLP
ENERGY COUNSEL TO THE OHIO MANUFACTURERS' ASSOC.**

JANUARY 10, 2018

Chairman Beagle, Vice Chair LaRose, Ranking Member Williams. . . members of the Senate Public Utilities Committee . . . Good afternoon. Thank you for the opportunity to present opponent testimony today on Substitute Senate Bill 155.

My name is Kim Bojko. I am a partner with the law firm Carpenter Lipps& Leland, LLP, and I lead the firm's energy and utilities practice.

I am testifying today on behalf of the Ohio Manufacturers' Association (OMA) to describe the OMA's concerns about various provisions of Substitute Senate Bill 155 (SB 155).

I had the opportunity to present opponent testimony back in June prior to the substitute bill that was accepted last October. While the substitute version certainly made several revisions, the OMA believes the sub bill will still have a negative impact on competitive energy markets, customers' energy costs, manufacturing competitiveness, and job creation in our state.

Some statements were made at a prior hearing on this legislation suggesting that the sub bill changes were the result of compromise. For example, proponents touted the inclusion of "rate caps" that had been included in the sub bill as a means to protect both residential and nonresidential customers. However, these alleged "rate caps" will actually magnify the negative impact to Ohio's consumers, as the caps will create deferred costs that may accrue

interest, which will cost Ohio's ratepayers exponentially more in the long run.

I've attached to my testimony a document that a coalition of customer interest groups produced to rebut proponents' false and misleading claims about the legislation.

I would be happy to describe for you how this legislation still:

- provides a subsidy for "uneconomic generation."
- provides a bailout of failing generation and bad business decisions.
- fails to protect customers.

The customer coalition also has documented how Ohio utilities had prior opportunities to walk away from OVEC, but they chose not to because they were making money.

Finally, customers highlight how this legislation represents a departure from the conservative, pro-market policies of the state of Ohio regarding electric generation and competitive retail electric service.

Mr. Chairman, the utilities want a subsidy to operate and maintain uneconomic OVEC power plants, including a power plant in Indiana. They want Ohio ratepayers to bail them out and support uneconomic plants that are no longer used to support, or otherwise related to, national defense.

If approved, the legislation would not be the utilities' first consumer-paid subsidy. Ohio's investor –owned utilities received at least \$9.2 billion in “stranded assets” and “regulatory transition” payments from 2000 to 2010. The proposed OVEC legislation is bad for customers, bad for competitive markets, and bad for Ohio. We urge you to reject this legislation.

That concludes my testimony. I look forward to your questions.
Thank you.

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Ohio Valley Electric Corporation (OVEC) Legislation Sub. HB 239 and Sub. SB 155

REBUTTAL OF FALSE & MISLEADING CLAIMS

This document shines a light on misinformation regarding the OVEC cost recovery companion bills pending before both chambers of the General Assembly. Several false and misleading claims about the legislation have been fabricated and reinforced by the utilities in an attempt to convince legislators to provide the OVEC plants with above-market subsidies on the backs of Ohio ratepayers. Regarding customer protection concerns, it is alleged that “rate caps” in the bill protect both residential and nonresidential customers. **However, these alleged “rate caps” will actually magnify the negative impact to Ohio’s consumers**, as the caps will create deferred costs that may accrue interest, which will cost Ohio’s ratepayers exponentially more in the long run.

As this document will make clear, often what the utilities don’t tell you is more problematic and dangerous than what they do tell you.

FACT: THIS LEGISLATION PROVIDES A SUBSIDY FOR “UNECONOMIC GENERATION.”

FICTION: The utilities falsely claim the legislation is not a subsidy to keep uneconomic generation assets running. They say regardless of whether or not the utilities get cost recovery, the OVEC plants will continue to operate. After all, if the plants are “economic” and operating competitively in the wholesale market, there is no need for a customer-funded subsidy. If OVEC does not require a subsidy to continue operation, there would be no need for this legislation.

- The utilities claim that OVEC dispatches power daily into the PJM wholesale market and generates cash sufficient to offset all variable costs and make a contribution toward fixed costs. If this were true, there would be no need for the guaranteed cost recovery this bill seeks to grant to the owners. Furthermore, PJM operates on “economic dispatch,” meaning the lowest cost power available at any given time is dispatched into the market first. OVEC cannot compete on price with power generated by others, including Ohio-based generators, so the utilities want Ohio ratepayers to pay them to make their OVEC power more competitive.

FACT: THIS LEGISLATION IS A BAILOUT OF FAILING GENERATION AND BAD BUSINESS DECISIONS.

FICTION: The utilities claim this legislation does not seek a revenue stream to prevent the closure of any generating facility. While it may not seek a revenue stream to keep the plants from closing, it certainly does seek a revenue stream to “stop the bleeding” resulting from running the uneconomic plants at a loss, paying down debt, or – if the plants are running at a profit – lining the utilities’ pockets. Proponents say the legislation lays out the framework for collection of costs from consumers for the commitment the Ohio utilities made to OVEC. In reality, this creates a virtual “rubber stamp” process within Ohio law to guarantee ratepayer-funded cost recovery to help financially support power plants that the utilities knowingly and voluntarily invested in upon expiration of the original contract with the U.S. DOE in 2003. Note that DOE paid the utilities \$97.5 million to terminate.

- The utilities claim that OVEC is a unique entity, having been formed during the Cold War to serve the power needs of a uranium enrichment facility located near Piketon, OH. While true, the history of the facilities from 1952-2003 is wholly inconsequential to the current debate on OVEC. Once the Piketon plant was closed by the federal government and the OVEC contract was terminated (with three years forward notice and a sizeable termination payment), the utilities and their co-owners decided to proactively and willingly reinvest in the plants and

sell the power into the PJM wholesale market in order to turn a profit. The utilities' claims are nothing more than a disingenuous attempt to wrap this issue in the American flag in order to garner legislator support. In truth, this fact should not have any bearing on the actual facts surrounding this issue.

- The utilities falsely claim that cost recovery for the Ohio utilities will not contribute to the ongoing operation of the plants. They say regardless of the outcome of this legislation, the OVEC-owned units will continue to operate, consistent with the terms of the FERC-approved Inter-Company Power Agreement (ICPA). If this is true, why do we need this legislation? If the consumer-funded subsidy will not be used to cover any losses the utilities have experienced, or will experience, due to the uneconomic nature of the OVEC plants, the subsidy will likely be used to pay down the massive debt payments that have accrued on the OVEC facilities as their debt-to-equity ratio is heavily overleveraged (98 percent to 2 percent).

The utilities disingenuously claim this legislation merely provides parity between the Ohio utility sponsors and other sponsors of OVEC that receive some form of cost recovery. The reality is that this legislation merely provides the Ohio utilities with a bailout to offset the losses they are, or will be, experiencing or pay down debt as a result of their ongoing and voluntary investment in OVEC. They proactively and willingly entered into the current contractual agreement with the other sponsors, with full knowledge of the differing regulatory environments in which the many co-owners existed and operated, but only now when the plants appear to be unprofitable do they come to the legislature with this business dispute and ask legislators not only to mediate but to award damages straight from Ohio ratepayers' wallets. Notably, the utilities did not seek to share profits with customers when then the plants were making money.

FACT: CUSTOMERS ARE NOT PROTECTED IN THIS LEGISLATION.

FICTION: The utilities claim they have worked with interested parties to include in the legislation monthly rate cap provisions that expressly protect consumers against imprudent and unreasonable costs. The claimed protections are illusory; this is a hollow claim not supported by the facts.

- The utilities claim the Public Utilities Commission of Ohio (PUCO) will conduct regular prudence reviews and exclude any costs it deems, through those reviews, to be imprudent and unreasonable. While the language has improved, it unfortunately does not go far enough to protect consumers. The so called "regular" prudence reviews are every three years, allowing the utility to recover imprudent expenditures immediately and retain the customers' money for several years before being required to return any unwarranted costs. Additionally, the language as written requires the PUCO to approve recovery of all prudent costs associated with the ICPA, regardless of the location of the facility. Thus, the PUCO is required to allow recovery of costs associated with a non-jurisdictional plant even though the PUCO has no regulatory authority over that plant or ability to review the prudence of the costs associated with the larger of the two OVEC plants located in Indiana. Therefore, Ohio ratepayers will effectively be subsidizing Indiana plant workers' salaries and pensions, in addition to paying for fuel, environmental costs and any other costs the utilities deem necessary.
- The utilities also misleadingly note that the proposed cost caps limit residential exposure to \$2.50/month and \$2,500/month for all other customers, and that the rate design will not unfairly prejudice one nonresidential customer class vis-à-vis another. The revenues will be netted against the costs, and customers will have to pay for any net costs to run and operate the OVEC plants. The truth is, the cost cap language in the legislation is illusory. While it may temporarily cap the amount of OVEC net costs collected from customers through December 31, 2030, any net costs that exceed the monthly caps must be deferred as a

regulatory asset for later recovery from customers, likely with interest. If the OVEC costs do not exceed the costs of the cap in any given month, the utilities may begin collecting the deferral amount (and any interest) from customers up to the cost cap through December 31, 2030. However, any amounts deferred for later recovery that cannot not be collected under the cost cap during the period of the rider become due when the recovery mechanism is terminated at the end of 2030.

In aggregate, the customer price caps could allow the collection of billions of dollars annually from Ohio ratepayers, resulting in no protection at all for the full customer class. For example, with a price cap of \$30/year (\$2.50 /month), Ohio's residential ratepayers could be on the hook for \$71 million per year. And, with an annual customer cap of up to \$30,000/year (\$2,500 /month), Ohio's 550,000 commercial and industrial accounts could have an aggregate cap of more than \$9 billion per year. If FirstEnergy Solutions were to transfer its OVEC share to FirstEnergy, the cap ceiling would be even higher. (See chart.) While the PUCO has the discretion to lower the nonresidential customer cost caps for the various customer classes, quite clearly there is room for the utilities to collect much (if not all) of their costs unchecked.

TOTAL CUSTOMER COST CAPS ALLOWABLE UNDER UTILITIES' CAP PROPOSAL

| Utility | Residential Customers Qty. | Annual Customer Cap (\$/customer) | Res. Total Cap Ceiling (\$/year) | Commercial & Industrial Customers Qty. | Annual Customer Cap (\$/customer) | C&I Total Cap Ceiling (\$/year) | All Customers, Total Cap Ceiling (\$/year) |
|---|----------------------------|-----------------------------------|----------------------------------|--|-----------------------------------|---------------------------------|--|
| AEP | 1,292,552 | \$30 | \$38,776,560 | 188,817 | \$30,000 | \$5,664,510,000 | \$5,703,286,560 |
| DP&L | 460,850 | \$30 | \$13,825,500 | 52,738 | \$30,000 | \$1,582,140,000 | \$1,595,965,500 |
| Duke | 634,847 | \$30 | \$19,045,410 | 71,971 | \$30,000 | \$2,159,130,000 | \$2,178,175,410 |
| Total | 2,388,249 | | \$71,647,470 | 313,526 | | \$9,405,780,000 | \$9,477,427,470 |
| FirstEnergy - If OVEC transferred from FES to FE | 1,870,980 | \$30 | \$56,129,400 | 234,356 | \$30,000 | \$7,030,680,000 | \$7,086,809,400 |

Customer count based on PUCO reporting: <http://www.puco.ohio.gov/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/electric-switch-rates-by-customer/customers-1q2017/>

No one is suggesting that the utilities would ever actually be permitted to collect \$9 billion. That's not the point. The point is that the proposed cap is too large and too "loose" to function as an effective cap. What the utilities have proposed would be a cap in name only. It would have the effect of allowing the utilities to collect virtually any costs they seek to recover. Alternatively, and unfortunately, if the cap was set at a low enough level, any overage would simply get deferred possibly with interest.

Even if an effective cap were established, the amount necessary to cover the operating losses for the OVEC plants could exceed that which is able to be collected as a result of the rate caps. Thus, the delta overages will be placed into a deferral – as prescribed in the bill – and may be allowed to collect interest so that over time the actual costs to consumers will balloon. Then, at the end of 2030, Ohio ratepayers would be on the hook for exponentially more than they would have been if the caps had not been added in the first place.

The price caps are a smokescreen intended to feign concern for Ohio's ratepayers. If the OVEC plants were making money and the revenue exceeded costs, the utilities would not be seeking this legislation and asking customers to pay for any net costs to run and operate the plants. When the plants were profitable, the utilities chose to continue and extend the ICPA contract and did not seek legislation that would allow the net impacts to be passed on to customers.

- The utilities also note that this legislation sunsets in 2030 unless the General Assembly acts to extend it. What they fail to mention is that in 2030, the termination of the rider mechanism is subject to final reconciliation. This means that at the end of 2030, the deferral possibly with interest that have accrued as the costs exceed the monthly caps become immediately due to the utilities. With no ability to collect the potentially large deferral over a longer period through the recovery mechanism, Ohio ratepayers could be required to pay a large sum at the end of 2030 or the utilities will seek to carry the regulatory asset until some future date for recovery.
- The utilities claim that recovered costs may not include a return on investment. This is clearly false as all three Ohio utilities have an equity ownership in OVEC and currently receive cost recovery today for a return that is embedded in the ICPA agreement. The legislation does not change the ICPA contract.
- Additionally, all Ohio utilities received cost recovery in the form of stranded costs as Ohio customers paid billions of dollars for the utilities to transition to a competitive market. The law explicitly requires the utilities to divest their generation assets and not own them. It also requires that customers not be forced to pay any more for the generating assets (or any more stranded costs) in a restructured market after the transition period, which ended in 2005. But after the transition to the competitive market and being paid stranded costs, the utilities chose to renew and extend the ICPA contract twice. Any customer-funded subsidy distorts the market and favors these generators over other generators competing in the market.
- Ohio ratepayers are endangered in another way. The U.S. Department of Energy (DOE) has announced it is seeking an expedited national solution regarding the operation of coal and nuclear power plants. Ohioans should not be asked to pay on a “single-state basis” for a solution for these uneconomic power plants. Instead, this subsidy issue should be debated at the national level or regional level, where it involves consumers across multiple states. This is further reason for the General Assembly to not enact the OVEC legislation.

FACT: OHIO UTILITIES HAD PRIOR OPPORTUNITIES TO WALK AWAY FROM OVEC.

FICTION: The utilities falsely claim there has never been a “walk away” opportunity and that the conditions to transfer an OVEC obligation are numerous, complex and unwieldy. These assertions are untrue. There were and are opportunities to terminate the ICPA contract. The utilities knowingly and willingly entered into a contractual agreement with the other owners – a contract that clearly spells out methods for transferring OVEC obligations. Additionally, the utilities had at least two opportunities to get out of the contract in 2003 and 2011, but instead, made a financial business decision to continue and extend the contract. SB 3 came well before either of these contract extensions when the utilities knew generation was deregulated, but they still continued to extend the ICPA. In 2003, the utilities could have used their veto power to discontinue the ICPA but chose to continue it because they were making money. Customers should not now have to pay for the utilities’ bad business decisions.

Bottom line: The utilities bet wrong; had they bet right, they would not be here today asking for a subsidy. The extension of the agreement was intended by the regulated utilities to benefit their shareholders. Now that the agreement is not paying off as intended, the utilities are asking captive customers to pay for the utilities’ poor decisions. Shareholders – not customers – should be responsible for any costs associated with the decisions to participate in wholesale competitive markets and to extend the ICPA agreements.

- The utilities falsely claim there is no ability in the FERC-approved ICPA for a sponsor to simply relieve itself of its contractual obligation, and that there are extensive conditions regarding transfer of a contractual commitment. A review of the ICPA, however, indicates that the Ohio utilities are not as “trapped” in OVEC as they claim. For example:

- **Unanimous consent is not required to transfer interests in OVEC.** Section 9.18 (specifically, subsections 9.182 and 9.183) of the ICPA clearly allows for transferability of the interests as long as the transferee meets certain credit-rating thresholds. A company may transfer its interest without the written consent of the other owners to affiliates, and to third parties as long as the selling company provides a right of first refusal to the other remaining OVEC companies. There is clear ability legally to transfer these interests if there is a willing buyer that meets the credit-rating standards in the Agreement. For example, the interests could be transferred to Ohio's electric cooperatives. The utilities' statement that there is no way out of the ICPA does not match the plain language of the ICPA.
- **The ICPA establishes a clear dispute resolution process.** Section 9.10 of the ICPA establishes an arbitration process for contract disputes between the parties. The Ohio investor-owned utilities (IOUs) in testimony to the Ohio House Public Utilities Committee on May 31, 2017, and to the Ohio Senate Public Utilities Committee on June 8, 2017, indicated that they recently tried to get out of the OVEC contract but were unable to successfully transfer their interests. They should provide details about those attempts, such as when they tried, how often they tried and which owners/entities objected. In the event that one of the other OVEC owners attempted to block the transfer or assignment of an Ohio IOU's OVEC interest, the Ohio IOUs should have used the arbitration process to attempt to resolve the matter and should demonstrate whether they attempted to use the arbitration provisions to enable a transfer of their OVEC interests.
- **The Ohio IOUs and their affiliates have operational authority.** Section 9.05 establishes an Operating Committee made up with one member from each participating company, with decisions made with a 2/3 vote. This is the Committee that determines the level of output for the facilities to generate. The IOUs have not disclosed who is on the Operating Committee. However, they and their affiliates make up a substantial portion of the OVEC ownership on the Operating Committee. Without the full disclosure of the membership of the Operating Committee it is unclear if the Ohio IOUs have exhausted all possible remedies to their current situation.
- The utilities also fail to note that there have been prior transfers of OVEC ownership interests. In fact, FirstEnergy was successful at transferring its ownership interest to its unregulated affiliate, FirstEnergy Solutions. The real problem is that no creditworthy, investment-grade company in its right mind wants to buy shares in an unprofitable set of power plants. The utilities could, however, transfer their interests in the plants to other co-sponsors/owners.
- The utilities claim that changes made in 2004 and 2011 enabled debt refinancing at more favorable terms – and that because OVEC is a public utility in the State of Ohio, all such OVEC financing activities are subject to conditions established by the PUCO in an annual proceeding, as required by law. The reality is that cost recovery has been routinely granted by the PUCO to AEP and may be granted in the near future to DPL as well. Additionally, the PUCO approved a placeholder rider for Duke to recover OVEC costs if Duke properly seeks such recovery from the PUCO – recovery granted in the past, although the rider was set at \$0. The utilities have a venue at the PUCO where they can and have proved their cases on OVEC recovery, and the legislature should not inject itself into the process by modifying PUCO jurisdiction and prudence review in that area.

FACT: THIS LEGISLATION IS A DEPARTURE FROM THE CONSERVATIVE, PRO-MARKET POLICIES OF THE STATE OF OHIO REGARDING ELECTRIC GENERATION AND COMPETITIVE RETAIL ELECTRIC SERVICE. BY THE VERY DEFINITION, THIS BILL IS ANTI-MARKET AND ANTI-COMPETITIVE BECAUSE IT GRANTS THE UTILITIES ABOVE-MARKET SUBSIDIES FOR THEIR OVEC OWNERSHIP INTERESTS AT THE EXPENSE OF OHIO RATEPAYERS AND OHIO-BASED GENERATORS.

FICTION: The utilities falsely claim this legislation will not impact the PJM markets or shopping (customer choice). This is a patently false and ridiculous assertion. It is functionally impossible for some market participants to be granted above-market subsidies where others are not without causing a deleterious impact on prices and the other market participants.

- The utilities falsely claim that wholesale markets will not be impacted by the legislation, and that the OVEC plants will continue to operate regardless of whether or not cost recovery is granted. To the contrary, subsidizing plants will adversely affect the wholesale markets. The legislation will favor one generator over another and allow the OVEC plants to bid into the market at a \$0.00 cost (because they do not have to collect their costs from the market as customers are paying the full costs), distorting the functioning of the market and reducing investment in new generation. In its October 3, 2017, comments, PJM explained that HB 239 would enable Ohio's utilities that own OVEC to offer bids into the wholesale markets that are below their actual costs:

“Such bidding practices would likely have an adverse impact on PJM’s markets and on the ability for the markets to effectively attract new generation investment in Ohio.”

Even the earlier June 15, 2017, PJM document that AEP relies upon, PJM explicitly states the following:

“Some bill supporters have stated their explicit belief that, despite merchant affiliates owning a significant share of the units, no impacts to the wholesale market could occur as the result of HB 239. However, PJM believes that just as is the case with any supplemental payment to resources that would otherwise be uneconomic, there is potential for market impacts.”

- The utilities erroneously claim that PJM does not intend to oppose the legislation, based on a recent letter to the Ohio House of Representatives. In its message, PJM articulated an appreciation for the OVEC quandary:

“It is clear that the Ohio policy motivating this bill is materially different than the policy underpinning other electricity bills pending before the legislature. We better understand the uniqueness of the OVEC unit ownership and power purchase agreements with utilities in Ohio and other neighboring states.”

Acknowledgement by PJM of a unique ownership structure is hardly a ringing endorsement of either of the OVEC bills. Further, PJM makes it a point to not advocate for or against state policies across its footprint but instead to provide context on what impact those policies may have on the wholesale market. PJM's most recent “Interested Party” testimony on OVEC is littered with cautionary references such as the following:

“...Such bidding practices would likely have an adverse impact on PJM’s markets and on the ability for the markets to effectively attract new generation investment in Ohio.”

“...Such offers depress wholesale market prices for other competitive generation owners in Ohio and throughout the PJM region, potentially crowding out merchant

competition that relies on its market revenues alone to support investment. In the longer term, this price suppression threatens system reliability. This also results in higher power costs for retail consumers in Ohio and the PJM region by displacing more efficient, lower cost generation resources.”

Conclusion

These are clear and true facts: The utilities want a subsidy to operate and maintain uneconomic OVEC power plants. They want Ohio ratepayers to bail them out and support uneconomic plants that are no longer used to support, or otherwise related to, national defense. If approved, the legislation would not be the utilities’ first consumer-paid subsidy. Ohio’s investor-owned utilities received at least \$9.2 billion in “stranded assets” and “regulatory transition” payments from 2000 to 2010. The proposed OVEC legislation is bad for customers, bad for competitive markets, and bad for Ohio.

The truth? The utilities simply want more, and more, and more. The reply to the utilities should be a firm “No.”



MEMORANDUM

Date: October 26, 2017

To: The Ohio Manufacturers' Association

From: Jordan Nader & John Seryak, PE (RunnerStone, LLC)

RE: HB 381 to Lake County, OH Ratepayers - A Cost of at Least \$94 million

The Ohio House of Representatives has referred to the Public Utilities committee House Bill 381 "Address zero-emissions nuclear resource program." This bill is sponsored by Representative DeVitis and Co-Sponsored by Representatives Young (Lake County), Henne, Householder, Johnson, Seitz, Slaby, Stein, Vitale, Faber, Patton, Roegner, Sweeney, Retherford, Celebrezze, and Keller. This bill would create a "zero-emissions nuclear resource program" to purportedly "provide long-term energy security and environmental and other benefits to the region and to retail electric service customers in the state." The ZEN program would provide above market payments to nuclear plants in Ohio from the time implemented until at least 2030. The bill would result in residential customer's paying a monthly nonbypassable charge of \$2.50 and nonresidential customer's paying the lesser of \$3,500 or 5% of their bill. This is shown in the table below.

| | Residential | Nonresidential | |
|--------------|-------------|----------------|---------------------------------|
| | | Lesser of | |
| Monthly Cost | \$ 2.50 | \$ 3,500 | 5% of Monthly Electricity Costs |
| Annual Cost | \$ 30.00 | \$ 42,000 | 5% of Annual Electricity Costs |

Lake County, Ohio has approximately 85,000 households and roughly 12,000 commercial and industrial accounts. The commercial and industrial accounts break down to mostly secondary accounts, with a handful of primary and sub-transmission accounts. We assumed a blended rate for these C&I accounts of \$0.10/kWh, \$0.075/kWh, and \$0.06/kWh respectively, to estimate how C&I account costs would be capped. Based on aggregated consumption data for C&I accounts, we estimate an annual cost to Lake County residents and C&I customers of at least \$7,108,000. This translates to a total cost through the end of 2030 of about \$94 million. The table below shows the impact to the residential and nonresidential groups on an annual and total basis¹.

| Cost of H.B. 381 to Lake County, OH | |
|--------------------------------------|---------------|
| Annual Cost to Residential Customers | \$ 2,500,710 |
| Total Cost to Residential Customers | \$ 32,981,967 |
| Annual Cost to C&I Customers | \$ 4,607,295 |
| Total Cost to C&I Customers | \$ 60,765,801 |
| Annual Cost to Lake County | \$ 7,108,005 |
| Total Cost to Lake County | \$ 93,747,768 |

¹ The costs shown are estimates, and are likely conservative.

Diverse power grid is what state needs

HENRY B. SPITZ

Remember when gasoline was nearly \$5 a gallon? I do, and it's not a fond memory. Until hybrid electric vehicles came to market, gasoline was the only source of energy to run our cars. Fortunately, today we have a choice of powering a conventional gas-powered hybrid, or full electric car.

Our homes are "fueled" with electricity generated by the utility company using mostly natural gas, coal, and nuclear sources of energy. Solar panels and wind turbines represent smaller energy sources. Although we can't choose an energy source, utility companies in Ohio primarily use natural gas, coal and nuclear power to generate electricity.

For decades, coal and nuclear power were the reliable energy sources that utilities used to generate electricity every minute of every day throughout the year. Lately, natural gas has become the most popular energy source because the price is so low. Unfortunately, history shows that relying upon only one source of energy puts Ohio in a risky position since prices for natural gas have varied greatly. It's best if our base-load sources of electricity are produced using a mix of energy sources so that costs to Ohio residents remain stable from year to year.

The ongoing debate over preventing the shutdown of nuclear power and coal plants is mostly a local issue. These local issues focus on saving jobs and millions of dollars from the power company to meet municipal needs.

Another question has been overlooked in this debate: Will shutting down coal and nuclear power plants reduce electric-grid reliability? What will happen to Ohio's economy if sources of electricity become unreliable? If Ohio were to forgo nuclear and coal, the state's electricity sector would quickly lose one of its major strengths — fuel and technology diversity. A diverse mix of generating options is an essential characteristic of a robust and resilient system. If current trends continue, that diversity is seriously at risk.

The United States is quickly becoming over-dependent on natural gas for production of electricity. Since the mid-1990s, nearly 90 percent of the new power plants in the U.S. use natural gas. Coal and nuclear, two sources of energy that produce electricity around the clock at stable prices with no price volatility, represent less than 10 percent of the total. If the recent past is any guide, this imbalance could expose consumers of natural gas and electricity to price volatility and loss of reliability, resulting in power shortages that could cripple the economy. And the risk of volatility in gas prices will continue.

The agency responsible for electricity reliability is the Federal Energy Regulatory Commission. Energy Secretary Rick Perry has proposed a plan that will prevent the further shutdown of nuclear and coal plants. Perry, the former governor of Texas who knows a thing or two about gas-price volatility, has called upon the panel to create new rules, compensating nuclear and coal plants for the value they offer to the grid.

Commission Chairman Neil Chatterjee has proposed taking immediate action to save some power plants in danger of early shutdowns until the agency completes a thorough assessment of the potential losses in grid reliability.

Ohio's industrial growth over the past century has a lot to do with the use of abundant, low cost coal as the primary fuel for power production. It is unrealistic to think that we won't continue to use coal.

And if you care about clean air and climate change, now is not the time for Ohio to abandon nuclear power, which is our largest source of emission-free energy. Clearly, shutting down the Perry and Davis-Besse nuclear plants is not in our best interest.

So it makes sense for the commission to recognize — and address — the serious financial and environmental stresses throughout the industry responsible for delivering electricity to our homes and industries. We are taking a huge gamble to think we could meet our everyday needs for electricity, power our economy and compete in international markets without nuclear and coal generation.

Spitz is a professor of nuclear and radiological engineering at the University of Cincinnati.

The Plain Dealer | cleveland.com

Sunday, December 10, 2017

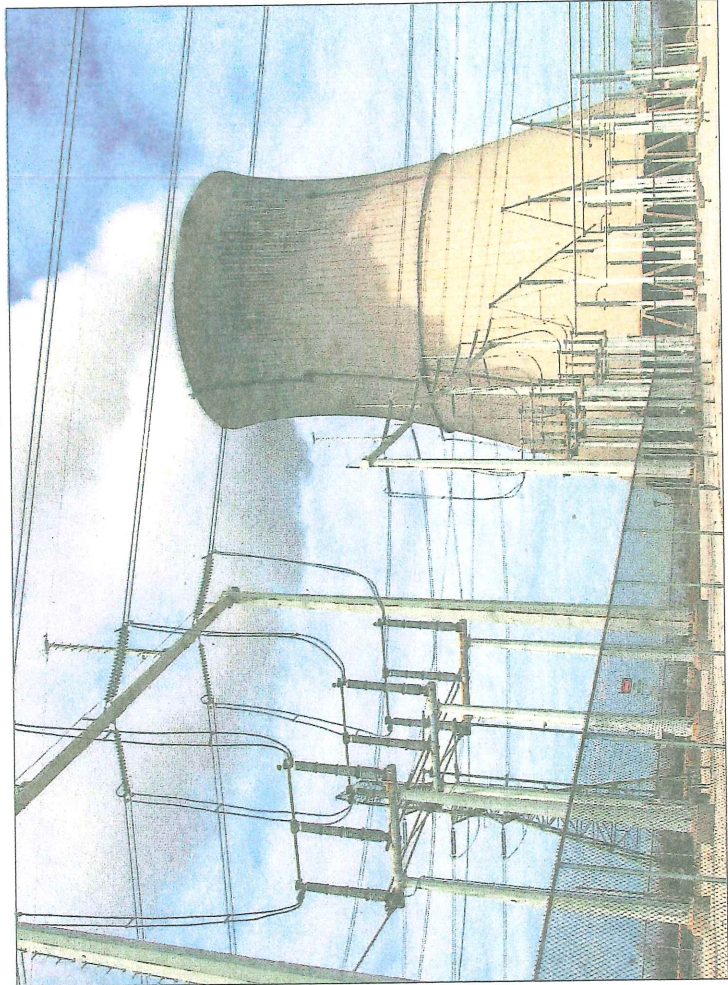
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Should electric rates be raised to keep coal and nuclear plants generating?



FirstEnergy's Davis-Besse nuclear plant in Oak Harbor has been producing electricity since 1977 but nuclear and coal plants have been struggling to compete with generators fueled by natural gas. The Federal Energy Regulatory Commission this week will consider allowing electric bills to rise to subsidize aging facilities.

DIANE HIRSH | AKRON BEACON JOURNAL

Energy tax would hamper ratepayers

RYAN AUGSBURGER

Early this week, the Federal Energy Regulatory Commission will decide whether or not to increase the price of electricity paid by manufacturers and working families in Ohio, the Northeast and Midwest.

If enacted, the proposed rule change would deal a serious blow to America's manufacturing competitiveness by requiring consumers to pay more for electricity to prop up some utilities' uneconomic power plants owned by certain utilities looking for a bailout.

It's a story we've heard time and time again in Ohio. Now, proponents of that plan have gone to Washington in search of a solution. The proposal being considered by the commission could provide hundreds of billions of ratepayer dollars in unwarranted, non-passable subsidies to power plants that keep 90 days of fuel on site. Only certain coal and nuclear plants can meet this definition, so it's squarely designed to aid aging and uncompetitive power plants that rely on these fuel sources.

The Ohio Manufacturers' Association believes this rule, if approved, would impose unjustified costs on virtually all Ohio households, businesses and institutions. Worse, the rule, if approved, would threaten the longer term benefits that only competitive markets can provide including reliability, efficiency, innovation and lower energy prices.

Ohio is a manufacturing state. Responsible for generating more than \$108 billion annually in state GDP, manufacturing remains the backbone of Ohio's economy. A Cleveland State University study of manufacturing in Ohio between 1990 and 2010 found that a one-cent-per-kilowatt-hour increase in electricity prices decreased productivity by \$2,527 per employee, or 2.2 percent. Manufacturing is a highly competitive industry. This proposed rule change would mean fewer jobs and less investment.

The Public Utilities Commission of Ohio echoed our concerns in its own comments, stating that it "is deeply concerned about the additional costs that will be borne by Ohio's consumers

and businesses as a result of the Department of Energy's proposed rule."

"Quite simply, the consequences if the FERC adopts the DOE's proposal could be dire. The proposed rule could upend a state's current authority to choose the regulatory paradigm for its utilities, by forcing all or-ganized markets to implement cost-plus rates. This will most certainly negatively impact the ability of the PUCO to assure just and reasonable rates for our consumers and businesses."

So, what's really going on? In the past decade, historic levels of cheap natural gas and renewables have entered the market — lowering electricity costs for manufacturers and consumers. As a result, some high-cost coal and nuclear plants have found themselves struggling to compete.

In its August grid study, the energy department found that retirements of aging coal and nuclear plants do not threaten the reliability of the grid, as "functioning as designed." Yet the department has recently advanced a misguided proposal that would empower the government, over states and regions, to pick winners and losers for political reasons instead of economic realities. The proposal would undermine well-functioning competitive markets and prop up certain less profitable power plants.

The department fails to provide a coherent reasoning for a new energy tax.

Federal government overreach like this increases prices for consumers and undermines innovation in Ohio and around the country. Competitive electricity markets have consistently fostered efficiency and lowered prices under the guidance of the energy commission, an independent agency with a three-decade legacy of supporting competition.

Ohio businesses hope that on Monday, the energy commission embraces competitive market principles over special interests.

Augsburger is vice president and managing director of public policy services for the Ohio Manufacturers Association.

Thursday, February 22, 2018

FirstEnergy CEO Predicts Death of FES, Coal, Nuclear

February 21, 2018

By Rory D. Sweeney

FirstEnergy CEO Charles Jones said Wednesday the company's floundering FirstEnergy Solutions (FES) merchant generating arm is now under a death watch and that, in his "simple view of the future," coal and nuclear generation will become extinct without market changes.

Jones told analysts on the company's earnings call that "unless something is done to change the construct of these administrated markets, which have been administrated in a way to disadvantage coal and nuclear plants" and "unless the states step in to provide support, there will be no coal or nuclear plants left in these markets."

During the call, Jones revealed the extent to which the company has cut ties with FES and that he expects the subsidiary will not survive the winter. He said FES has been operating independently since early last year and will no longer have access to its parent's internal bank by the end of March, "and that will be the last tie that we have with that business." (See [FirstEnergy Selling Merchant Fleet Despite NOPR.](#))

"While I can't speak for FES, I will be shocked if they go beyond March without some type of a [bankruptcy] filing," he said.

'Personally Disappointed'

Jones said it would be up to the subsidiaries that own generation — FES, Allegheny Energy Supply and Monongahela Power — to determine whether they will bid into [PJM's](#) Base Residual Auction in May. He also touched on the U.S. Department of Energy's Notice of Proposed Rulemaking and other efforts that could provide support for the company's ailing nuclear and coal-fired resources.

"I'm personally disappointed that the endeavors haven't resulted in a meaningful legislative or regulatory support, given the importance of these plants to grid resiliency, reliable and affordable power and the region's economy," he said.

The company is also "not planning to make another attempt at Pleasants," he said, referring to FirstEnergy's recently abandoned plan to transfer ownership of its 1,300-MW coal-fired plant from Allegheny to Mon Power, where the plant would have received a defined return based on regulatory review. He said Mon Power would meet any supply needs through PJM's markets while the company determines how to address a capacity shortfall in its most recent integrated resource plan. Another IRP is due in two years, Jones said. (See [FirstEnergy Shutting down Unsold Coal Plant.](#))

FirstEnergy reported a fourth-quarter GAAP loss of \$5.62/share based on asset impairments and plant exit costs of \$2.4 billion (3.38/share), which included reducing the carrying value of Pleasants, fully

impairing nuclear assets and increasing nuclear asset retirement obligations, said Jim Pearson, the company's new executive vice president of finance. The company also took a non-cash charge of \$1.2 billion (\$2.68/share) related to the Tax Cuts and Jobs Act.

K. Jon Taylor, the new president of FirstEnergy's Ohio operations, said the tax law's elimination of bonus depreciation would add about \$400 million to the rate base, but that depreciation was already scaling down to 40% in 2018 and 30% in 2019.

Adjusted earnings were 71 cents/share for the quarter, driven by a 23 cents/share year-over-year increase from the company's distribution segments. Jones said operating earnings for the company's transmission and distribution segments increased 14% in 2017, or 25% if the distribution modernization rider (DMR) in Ohio is included. The company is looking for the Public Utility Commission of Ohio to approve a \$450 million distribution platform modernization plan to better guard against blackouts and to prepare for "smart grid technologies."

Wired Future

To pump up its transition to becoming a fully regulated "wires" company, FirstEnergy plans to invest \$10 billion in its distribution and transmission infrastructure by 2022, starting with 2018 operating earnings guidance of \$2.25 to \$2.55 per diluted share, with a long-term growth-rate projection of 6 to 8% through 2021, Jones said. He said that each year between \$1 billion to \$1.2 billion of that investment will be targeted to transmission. That excludes the DMR in Ohio and is offset by the corporate segment.

Jones was quick to squelch any thoughts that the company is profiteering in its regulated business.

"There should be absolutely no concern in the market about us overearning in Pennsylvania. And if there is any hysteria out there, you all are smart enough to know that there are people that trade off with the hysteria," he said in response to a question on several rate cases in the state.

The company last month announced the sale of \$2.5 billion in equity to investment companies, which included the formation of a "restructuring working group" to advise on any potential restructuring at FES. The group includes three FirstEnergy executives — Pearson, Leila Vespoli and Gary Benz — along with John Wilder of Bluescape Energy Partners and Tony Horton of Energy Future Holdings. The group serves FirstEnergy's interests, while FES is overseen by its own board of directors. Pearson is also in charge of an internal company redesign known as FE Tomorrow.

Jones also bristled at suggestions that the cash won't be enough.

"No additional equity through 2021," he said. "I can't believe it's only one month after doing \$2.5 billion that we're already getting that question again, but there will be none."

Changes at the Top

FirstEnergy also announced several changes to its board of directors and executive suite before the call on Wednesday. Donald Misheff, who has been on the board since 2012, was elected chairman effective May 15 to replace George M. Smart, while Sandra Pianalto became a director. Smart and William T. Cottle, both 72, are retiring in May in accordance with the company's mandatory retirement-age policy.



From left: William T. Cottle, Donald T. Misheff, Sandra Pianalto, George Smart. Cottle and Smart are retiring from the board in May. Misheff is replacing Smart as chairman of FirstEnergy's Board of Directors and Pianalto is joining the board. They will be tasked with leading the company through its major restructuring into a fully regulated transmission and distribution company. | *FirstEnergy*

Within the company:

- Kevin T. Warvell became vice president, chief financial officer, treasurer and corporate secretary for FES. Previously, he was FES' vice president of commercial operations, structuring and pricing and corporate secretary.
- Christine L. Walker became vice president of human resources for FirstEnergy Service subsidiary. Previously, she was the executive director of FirstEnergy's talent management.
- Jason J. Lisowski became vice president, controller and chief accounting officer of FirstEnergy. Previously, he was the controller and treasurer for FES.
- Donald A. Moul became president of FES Generation and chief nuclear officer. Previously, he was president of FirstEnergy Generation.
- Charles D. Lasky became senior vice president of human resources and chief human resources officer for FirstEnergy Service. Previously, he was the senior vice president of human resources.
- Steven E. Strah became senior vice president and chief financial officer. Previously, he was a senior vice president and president of FirstEnergy Utilities.
- Sam Belcher became a senior vice president and president of FirstEnergy Utilities. Previously, he was president and chief nuclear officer for FirstEnergy Nuclear Operating Co.

Pearson was the company's executive vice president and chief financial officer. Taylor was a vice president, controller and chief accounting officer.



BRIEF

DOE 'would never use' emergency order for uneconomic plants, Walker says

By **Gavin Bade** • Feb. 20, 2018

Dive Brief:

- The Department of Energy "would never" use its emergency authority under the Federal Power Act (FPA) to keep uneconomic generators online, Assistant DOE Secretary Bruce Walker said Tuesday.
- This month, Bloomberg reported DOE is considering an order under 202(c) of the FPA to keep coal plants online that otherwise may retire due to market forces. But Walker, whose office would typically issue such an order, said DOE "would never use a 202 [order] to stave off an economic issue."
- Walker said DOE is also working with other federal agencies and regional neighbors to construct a reliability and resilience model for North American energy infrastructure. That model aims to help identify weaknesses in the power and gas sectors and drive investment and operations decisions to address them.

Dive Insight:

The Federal Power Act gives the Secretary of Energy the authority to issue must-run orders to individual plants in the case of an emergency, exempting them from emissions regulations and insulating them from market forces.

The rule is not often used, but was deployed by Secretary of Energy Rick Perry in April 2017 to keep a large coal plant online

in the Southwest Power Pool until other generators that could provide reliability services came online. Earlier orders from the Trump administration targeted a dam in Oklahoma and two Dominion Energy coal plants in Virginia.

In August, Perry reportedly denied a request from coal miner Murray Energy to deploy the emergency authority for uneconomic coal plants and prevent owners from shutting any down. DOE instead submitted a proposed rule at the Federal Energy Regulatory Commission in September that would have provided cost recovery for many coal and nuclear generators.

FERC rejected that proposal last month, and Bloomberg subsequently reported that some at DOE were still considering a 202 order for some plants — particularly those owned by Ohio-based utility FirstEnergy, a key supporter of the DOE's proposed rule at FERC.

But Walker, head of the Office of Electricity Delivery and Energy Reliability, said neither he nor Perry are considering such an order.

"We would never use a 202 to stave off an economic issue," he said. "That's not what it's for."

DOE has, however, issued 202 orders based on the need to comply with federal emissions standards. The SPP plant that got an order last April was not compliant with the EPA's Mercury and Air Toxics Standards, a regulation that affects the FirstEnergy plants also slated for shutdown.

Walker did not weigh in on those issues during his appearance at the DOE's Electricity Advisory Committee (EAC) meeting on Tuesday, but reiterated repeatedly that a 202 order is not under consideration today.

"Since I would be the one writing it, I can tell you it's never come to my attention, nobody's talked about it, nobody in my department is doing anything with it," he said. "It does not exist."

During the EAC meeting, Walker told the group of power sector executives that his department is working with FERC and the

North American Electric Reliability Corporation to devise a new modeling tool for grid reliability and resilience across North America.

Today, individual utilities use models of their grids to identify weak points and guide investments. But, Walker said, no model exists for the bulk power system that can model the interdependencies between different grid operators, balancing authorities and other sectors, like natural gas delivery.

A "multi-year effort" among DOE, FERC and NERC will aim to change that, designing an all-in-one model that will allow system planners to perform studies like "n minus one, minus one," Walker said. Such studies allow individual utilities to model how their systems would respond to the loss of multiple pieces of equipment.

"This model will enable us to make very well informed investment decisions, O&M decisions, and physical and cybersecurity investment decisions to protect the most important critical infrastructure around the U.S." Walker said.

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Thursday, February 22, 2018

FirstEnergy CEO 'Disappointed' In Legislative Inaction On Nuclear Credits Bills

FirstEnergy CEO Chuck Jones is voicing his frustration with lawmakers over their hesitation to advance legislation financially supporting nuclear power plants.

The proposals (**SB 128, HB 178 & HB 381**) would create zero-emission nuclear credit programs to boost the financial health of nuclear plants owned by FirstEnergy in a move proponents say would bolster local economies and diversity within the state's energy portfolio.

But legislators in both parties have debated whether the plan is the best path forward. Although there is a desire for further discussion on the issue, legislative leaders have laid out no clear timeline and after a myriad of hearings over the past year committee chairs say the measures are no closer to passing. (See **Gongwer Ohio Report, February 1, 2018**)

"I am personally disappointed the endeavors haven't resulted in any meaningful legislative or regulatory support given the importance of these plants to grid resiliency, reliable and affordable power, and the region's economy," Mr. Jones said during his company's fourth quarter earnings call.

Mr. Jones had previously predicted lawmakers would pass the proposal during the first quarter of 2018. He personally appealed to lawmakers last year during hearings, but also previously said the Perry and Davis-Besse plants could close even with the ZEN program in place. (See **Gongwer Ohio Report, January 25, 2018**)

During his recent remarks, Mr. Jones continued foreshadowing the premature closures of the plants that he said would result from legislative inaction.

"We have fully impaired our nuclear assets because the inability to receive any form of legislative or regulatory support has increased the likelihood that the plants will not be able to operate until the end of their useful lives," Mr. Jones said.

Potential relief at the federal level has likewise failed to materialize after the Federal Energy Regulatory Commission denied a Trump Administration proposal for new nuclear and coal-powered plant support and instead ordered further study on the issue. (See **Gongwer Ohio Report, January 9, 2018**)

"Unless something is done to change the construct of these administrated markets which have been administrated in a way to disadvantaged coal and nuclear plants, over the long haul, unless the states step in to provide support, there will be no coal or nuclear plants left in these markets," Mr. Jones said.

Plenty of opponents are aligned against the idea. They say the idea is a bailout that would put taxpayers on the hook for the company's poor investment decisions.

"Hardworking Ohioans shouldn't have to foot the bill for corporate failures and voters across the state reject the misguided, half-baked legislative efforts to bail out FirstEnergy," American Petroleum Institute Ohio Executive Director Chris Zeigler said recently of the company's claims.

"Our natural gas system is highly resilient and rarely significantly impacted by isolated or regional events," he added. "Moving forward, FirstEnergy should stop with its deceptive campaign against natural gas and Ohio legislators should reject this form of corporate welfare that could hurt consumers and our state's economy."

The plants are owned by First Energy Solutions, one of the company's subsidiaries, which late last year informed the Securities and Exchange Commission it may end up seeking protection under U.S. bankruptcy laws. (See **Gongwer Ohio Report, December 4, 2017**)

During the earnings call, Mr. Jones further outlined the formation of a "restructuring working group" that will advise FES management team on the company's future moving forward.

"The group has already started work and they received a presentation from FES management to help the outside members to become familiar with the business," Mr. Jones said. "FES continues to meet with its creditor advisers and we anticipate the (group) will be involved in those discussions at some point as well."

Grid Modernization: Company leaders also touched on their proposed \$450 million distribution modernization plan, which was filed in December with the Public Utilities Commission of Ohio. (See **Gongwer Ohio Report, December 4, 2017**)

Mr. Jones said the plan "will help our Ohio utilities restore power faster, strengthen the system against adverse weather conditions and enhance system performance by allowing remote monitoring of real time grid conditions."

Leila Vespoli, the company's executive vice president for corporate strategy, said the concept of the plan was "warmly received" by the PUCO prior to its formal filing.

"We looked at our system and there are certain things that can be done and should be done that any smart grid system can be built off of and so that's what we have in front of them," Ms. Vespoli said. "It's a way for the commission to consider it, to not tie their hands. And, quite frankly, as you're looking at the (cost) to kind of phase it in."

**Before the House Public Utilities Committee
Honorable Robert Cupp, Chair**



**House Bill 143
Proponent Testimony
Ryan Augsburger**

February 13, 2018

Chairman Cupp and members of the House Public Utilities Committee, my name is Ryan Augsburger and I am Vice President and Managing Director of Public Policy Services for the Ohio Manufacturers' Association. The OMA is comprised of over 1300 member manufacturing companies of all different sizes and products.

One thing all manufacturers share is a need for affordable and reliable energy. Energy policy can enhance – or hinder – Ohio's ability to attract business investment, stimulate economic growth and spur job creation, especially in manufacturing.

I appear before you today as a proponent of House Bill 143. This legislation supports the deployment of customer-sited generation technologies. On-site generation, energy efficiency, and demand-side management strategies are being employed by Ohio's manufacturers to achieve least-cost and sustainable energy resources.

There are a variety of different technologies and tactics available ranging from renewable energy to combined heat and power, waste energy recovery, and bio-digesting, etc. All of these processes are safe and can help to make a manufacturer more competitive and sustainable.

Frequently, a manufacturer will develop these energy solutions with a third party expert. The third party acts as an agent of the manufacturer.

H.B. 143 is needed to clarify the interpretation of Ohio tax law. Regrettably, the Ohio Department of Taxation in recent years has taken an unreasonable position effectively requiring customers' agents to pay a tax intended to apply only to power plants. Let me be clear; manufacturers already pay kilowatt-hour tax on the energy they buy from the grid. The subject of this bill is about on-site activity taken by a customer to reduce electric consumption from the grid... frequently at significant investment cost to the customer.

We have discussed this overly restrictive interpretation with officials from the Department, but the Department has been unwilling to reconsider the matter. Therefore, legislative clarification is appropriate and necessary.

The consequence of not enacting H.B. 143 will be to stifle innovation and energy competitiveness of Ohio's important manufacturing industry.

We thank Representative Sprague for his sponsorship of this legislation and we urge the committee to act promptly to pass H.B. 143.

Thank you. That concludes my testimony.



PUBLIC OPINION STRATEGIES

TO: Interested Parties

FROM: Lori Weigel, Public Opinion Strategies

RE: Conservative Voters in Ohio Overwhelmingly Support Clean Energy Policies and Say GOP Candidates Should Do So

DATE: December 20, 2017

The Republican polling firm, Public Opinion Strategies, recently completed a survey of Ohio voters who identify as Republican or as conservative independents regarding energy policies in the state.¹ The survey results show that **conservative voters throughout the state overwhelmingly support policies that encourage greater production of renewable energy and increasing energy efficiency**, including a renewable energy standard and revising wind set-back rules to better accommodate turbine siting. Moreover, they reject surcharges to shore up existing coal and nuclear power, and attempts to erode consumer options among electricity providers. Overall, seven-in-ten conservative voters would advise GOP candidates in the state to support those policies, and say that if it were up to them fully half of the state's electricity would come from renewable energy.

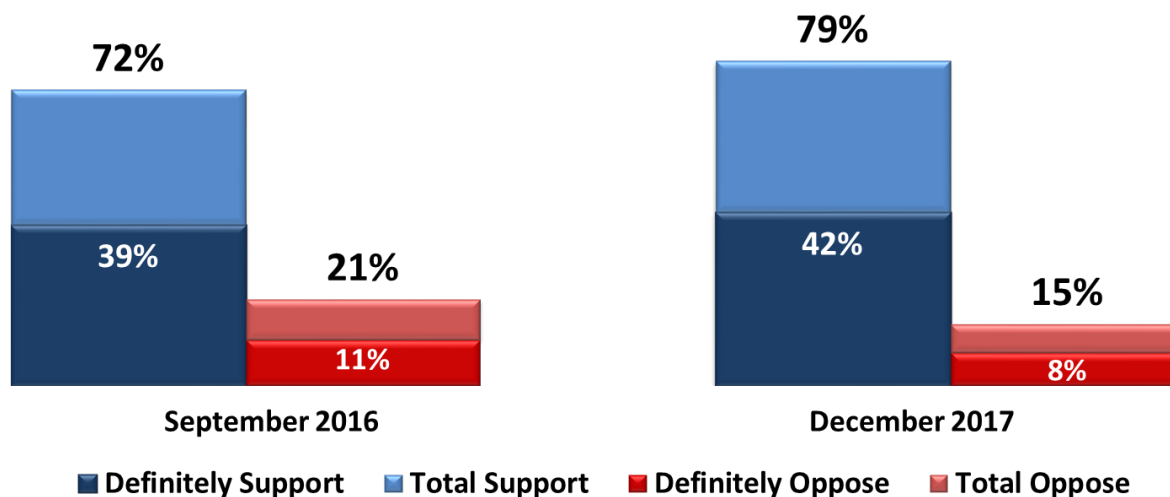
Support may in part be due to the electorate's sense that increasing use of renewable energy will benefit jobs in Ohio. These conservative voters register positive feelings toward a range of energy sources, particularly natural gas and energy efficiency.

Among the key specific findings of the survey are the following:

- **Nearly four-in-five conservative voters in Ohio (79 percent) say they would tell a Republican candidate to support policies that encourage energy efficiency and greater use of renewable energy in the state.** More than two-in-five (42 percent) say they should "definitely" support those policies. Just 15 percent would tell that elected official to oppose these policies. As one can see illustrated in the next graph, more conservative voters would advise a GOP candidate to support pro-renewables policies today than did one year ago.

¹ **Methodology:** From December 7-11, 2017, Public Opinion Strategies completed 400 telephone interviews with registered voters who identify as Republican or independents who also say they are conservative. Interviews were conducted on both landline and cell phones. The margin of sampling error for this statewide sample of conservative voters is +/-4.9%. Margins of sampling error for subgroups within the sample will be larger. Some percentages may sum to more than 100% due to rounding. Certain questions were tracked from a similarly conducted survey of conservative voters from September 2016.

If you were going to give some advice to a Republican candidate here in Ohio, would you tell him or her to support or oppose policies that encourage energy efficiency and greater use of renewable energy in our state?



Even three-quarters (74 percent) of "very conservative" voters say a GOP candidate should support pro-renewables policies.

- **More specifically, conservative voters in Ohio express support for a number of policies that promote energy efficiency and greater production of renewable energy.** We tested a randomized list of policies requesting that respondents indicate support or opposition to each one. As the next graph indicates, an overwhelming majority of these conservative voters indicate support for programs to encourage energy efficiency (82 percent support), for net metering (87 percent support), for requiring an increase in the use of renewable energy to 12.5% by 2027 (60 percent support) and for increasing R&D in battery storage technologies (76 percent).

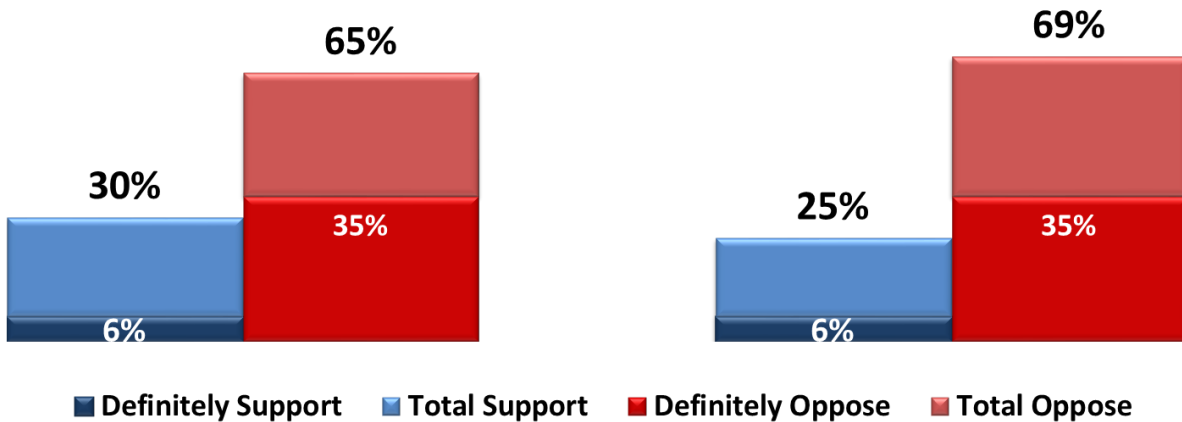
| <i>Policies and Proposals Ranked by Strongly Support</i> | | Strongly Support | Total Support |
|--|--|------------------|---------------|
| Some utility customers generate their own power through solar panels. At times, they generate more than they can use and these customers get a credit on their bill for the power they generate on their homes and business that is fed back into the electric system. Some utilities say this is not fair as these customers do not pay enough for the energy infrastructure they use. Do you support or oppose continuing to credit customers for the power they generate at fair market prices? | | 59% | 87% |
| Requiring Ohio's electric utilities to provide cost-effective programs through which customers can make energy efficiency upgrades to their homes and businesses | | 42% | 82% |
| Increasing research and development to accelerate the adoption of battery storage technologies that allow for greater use of renewable energy even when the sun is not shining or the wind is not blowing | | 32% | 76% |
| Requiring major electric utilities to gradually increase their use of renewable energy like wind and solar to twelve and a half percent by 2027, up from two and a half percent today | | 22% | 60% |

Conservative voters also register strong and significant support for “establishing set-back limits for wind projects that will allow wind energy investment to occur in rural Ohio, and protect individual land owner's rights to lease their land for wind projects” (76 percent support). Only 17 percent of conservative voters oppose this. It is notable that support for the latter policy regarding wind turbine set-backs is strongest among conservatives in small towns (80 percent) and rural areas (77 percent) as in more urban and suburban areas of the state.

- **In contrast, there is overwhelming opposition to new fees to keep coal or nuclear power plants in use.** A majority of Ohio conservative voters oppose “allowing electric utilities to collect new monthly customer surcharges on utility bills so that utilities” can keep with coal-burning power plants or nuclear power plants in operation. As the following graph illustrates, there is very minimal support even among this audience for such a plan.

*Allowing electric utilities to collect new monthly customer surcharges on utility bills so that utilities with **older coal-burning power plants** can keep them operating, now that other sources of energy like natural gas are cheaper*

*Allowing electric utilities to collect new monthly customer surcharges on utility bills so that the utilities with **nuclear power plants** can keep them operating, now that other sources of energy like natural gas are cheaper*



- **Conservative voters are even willing to pay more in higher electricity prices if it means greater renewable energy use.** While respondents were informed that “the cost of renewable energy is coming down dramatically,” they were asked hypothetically if it did cost more how much they would be willing to pay per month in higher electricity prices. Fully 85 percent say they would be willing to pay something more in order to increase the use of renewable energy – well within the margin of error of a year ago. In fact, a majority - 56 percent – would be willing to pay five dollars or more a month. Overall willingness to pay more for renewable energy does not vary based on household income either, with 91 percent of the lowest income sub-group indicating a willingness to pay something more each month.
- **In conclusion,** the survey clearly demonstrates support among conservative voters for a broad range of policies to encourage energy efficiency and greater use of renewable energy. In fact, the vast majority of voters in this conservative portion of the ideological spectrum say they would tell GOP candidates to back these kinds of policies. They even go so far as to be willing to pay more in higher electricity prices if renewable energy costs more. These voters want to re-work wind set-back limits to allow for greater wind energy production in the state, support a renewable energy standard, and affirm requiring utilities to provide energy efficiency programs. They also strongly oppose surcharges that would shore up existing coal and nuclear power plants.

Customer-Sited Resources & Energy Engineering Report

OMA ENERGY COMMITTEE – FEBRUARY 2018

Resources



Sustainability Peer Network

2017 Events

- ❑ September 20th – Honda Marysville tour
- ❑ December 6th – At OMA, corporate energy and GHG reduction goals

2018 Events

- ❑ Early April – Tour at Smucker and SmithFoods, Orrville
- ❑ Early summer – SPN @ OMA

Sign up at MYOMA
at
www.Ohiomfg.com



Questions?

jseryak@gosustainableenergy.com
614-268-4263 x302

Energy Efficiency – Program Updates

EE Opt-Out & Self-Direct – LOOK BEFORE YOU CROSS!

- ☐ DP&L
 - ☐ The EE rider is a CREDIT in 2018
- ☐ AEP - \$0.00094 /kWh credit (true-up from previous years)
 - ☐ Plus \$0.91 /kW charge
 - ☐ May lower EE rider costs for high load factor customers going forward
 - ☐ Credit takes off another ~50% of total charge
- ☐ FirstEnergy EE riders have historically been volatile, and continue to be so
- ☐ Duke EE riders have historically been flat

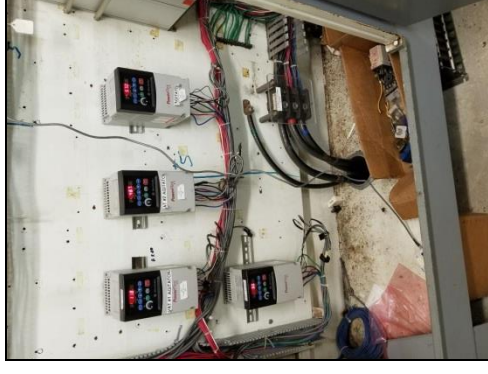
Energy Efficiency – Resources

Energy analysis or study cost-sharing

- ☐ Ohio Development Services Agency (DSA)
 - ☐ Energy Efficiency Program for Manufacturers
- ☐ **50% cost share, a \$1 for \$1 match**
- ☐ Few requirements
- ☐ You're all eligible!

Don't forget about the energy engineer at OMA!

- ☐ We'll answer your questions!!!
- ☐ Ex., “Is it a good energy savings project to install VFDS on chiller condenser water pumps at the time of pump replacement?”



PJM Capacity Auction Process Update

PJM exploring changes to capacity auctions as a result of state policies subsidizing generation units.

Independent Market Monitor (IMM)

- ☐ Minimum Offer Price Rule Expansion (Called MOPR-Ex)
- ☐ Would allow IMM to intervene if state subsidies effected offering price
- ☐ Received 63% of PJM stakeholder process vote

PJM staff - Capacity Repricing

- ☐ Two-tiered capacity auctions
- ☐ Could result in higher capacity prices
- ☐ Could result in early retirement of economic assets
- ☐ State regulating agencies voted against Capacity Repricing 11-2 (Ohio, WV were in favor)

PJM Board: Passing on both proposals to FERC, wants FERC to decide

Transmission Costs – What’s it Called?

| Utility | Acronym | Full Name |
|-------------|---------|----------------------------------|
| AEP | BTCR | Basic Transmission Cost Rider |
| DP&L | TCRR | Transmission Cost Recovery Rider |
| Duke | BTR | Basic Transmission Rider |
| FirstEnergy | NMB | Non-Market Based Services Rider |



Effects municipal electric companies and rural electric cooperatives, too.

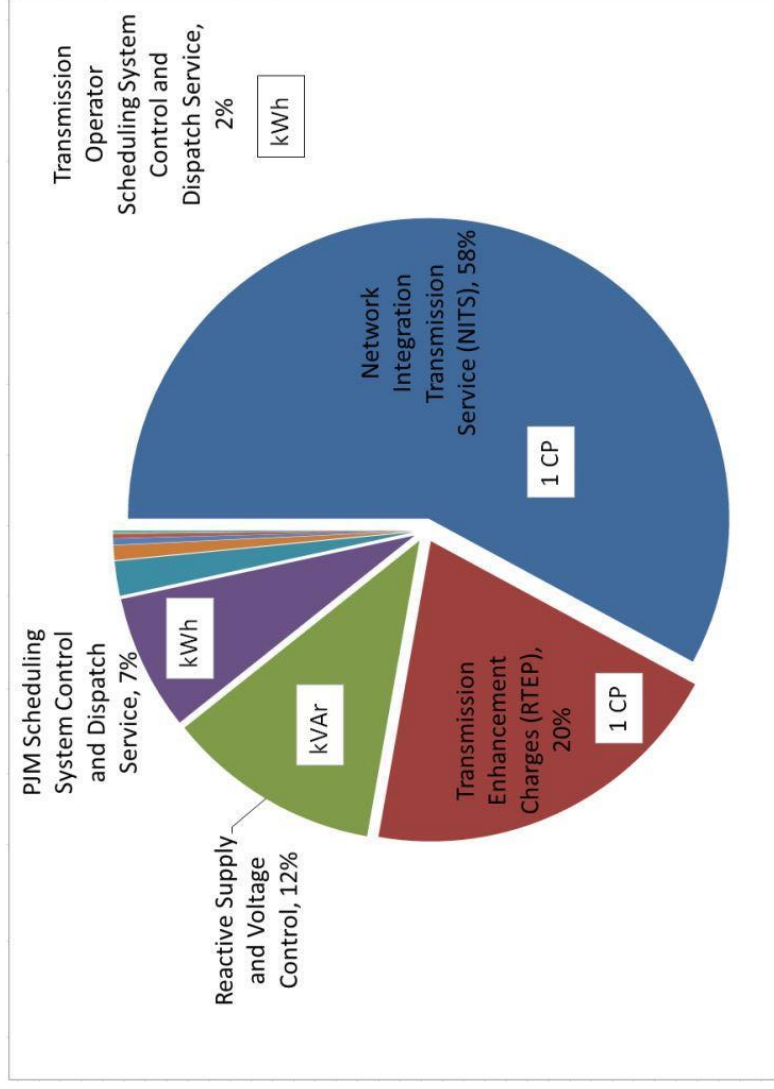
Transmission Costs – What's In It?

❑ Transmission plus ancillary costs

- ❑ ~80% of transmission costs billed to the distribution utility on the 1 CP [coincident peak, also called the Network Service Peak Load (NSPL)]

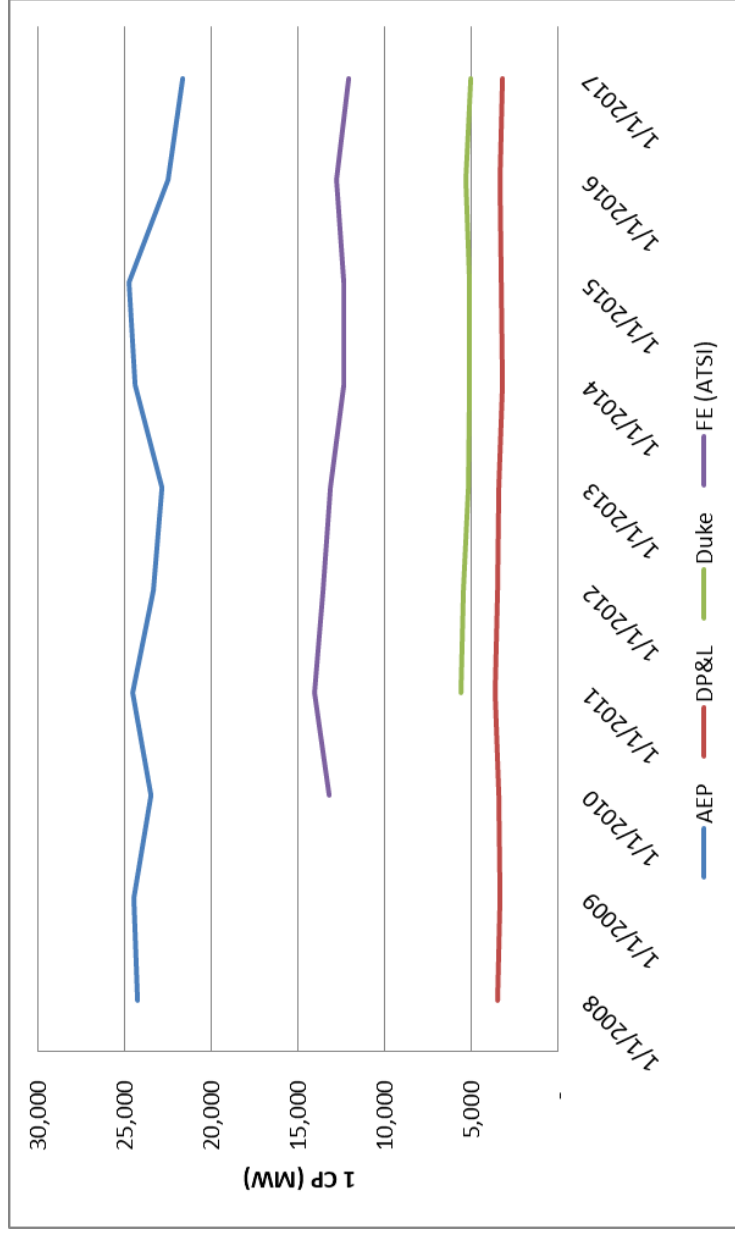
❑ Distribution utilities

- ❑ Allocate and bill out based on monthly peaks
- ❑ Billing determinant is on monthly peak
- ❑ Big difference – 1 CP can be managed, monthly peak not so much



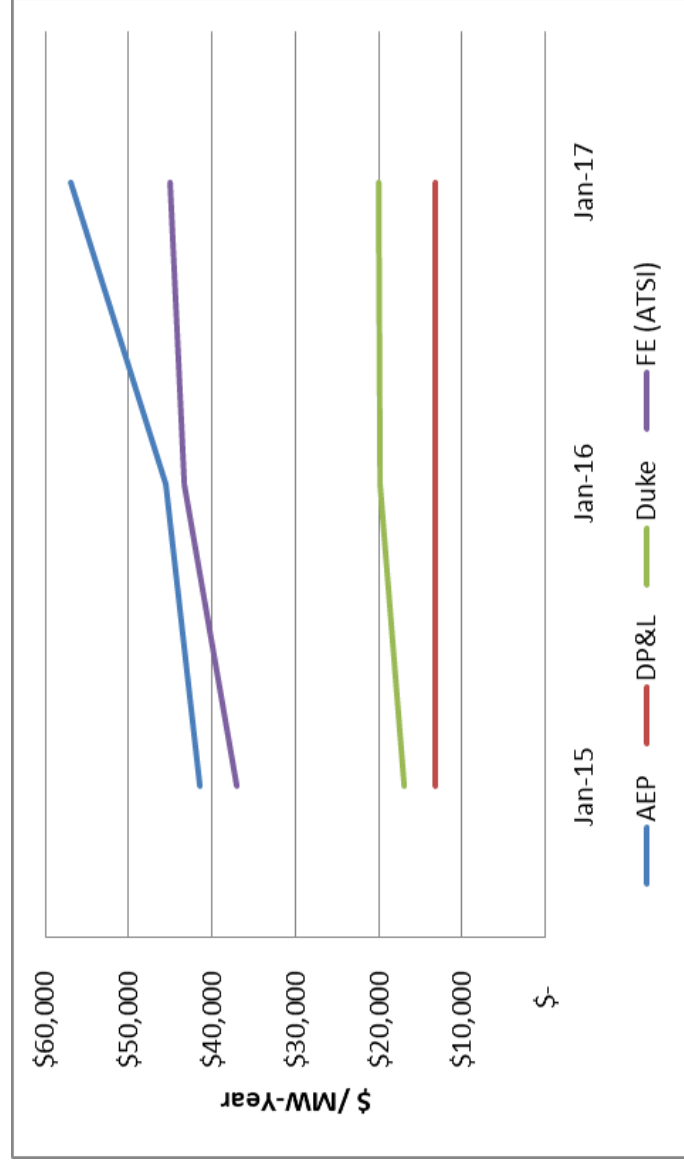
Transmission Trends

- ❑ Network peak loads have decreased for each of Ohio's utilities
- ❑ 11% - 14% reduction since 2011

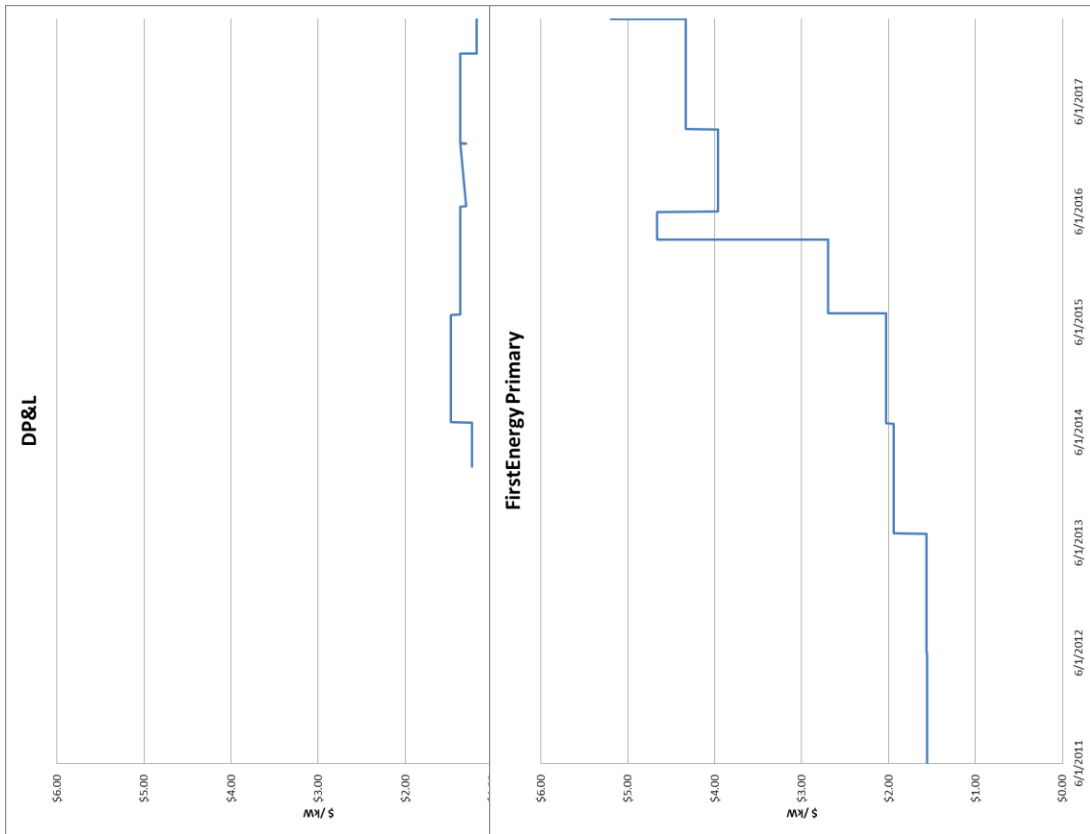
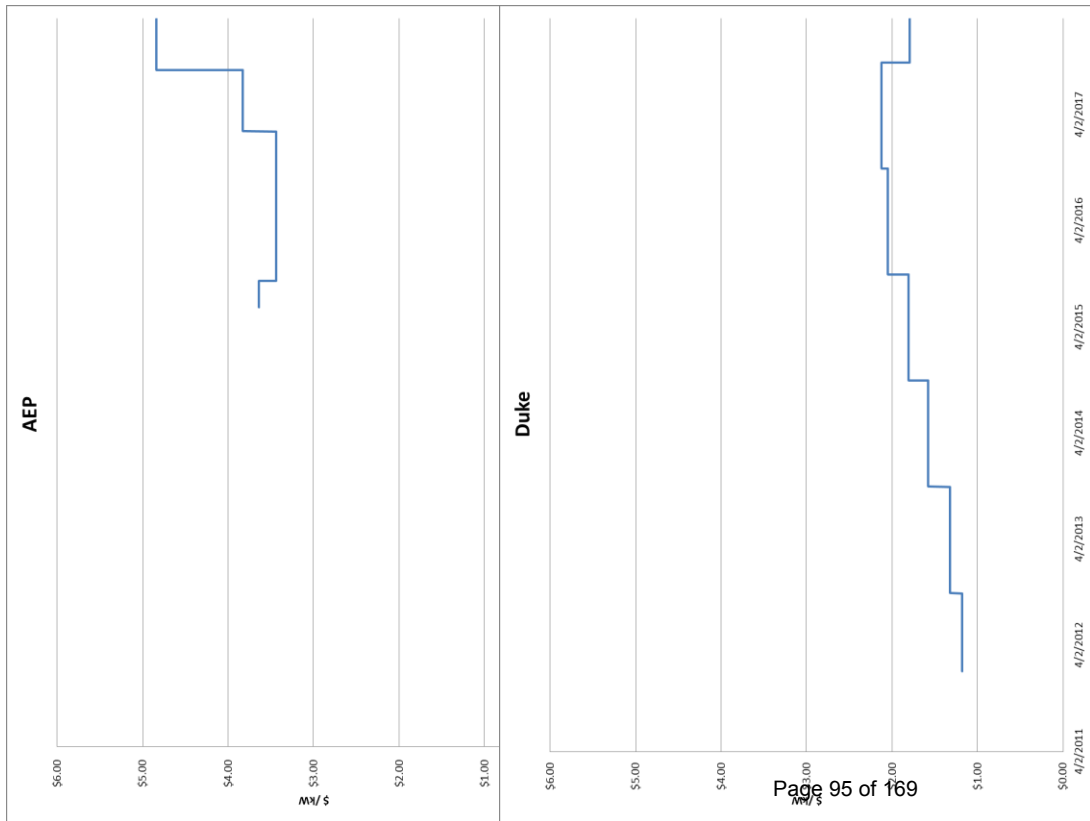


Transmission Trends

- ❑ Network Integration Transmission Service (NITS) rate has ranged:
 - ❑ Steady (DP&L)
 - ❑ Large increase (AEP, FE)

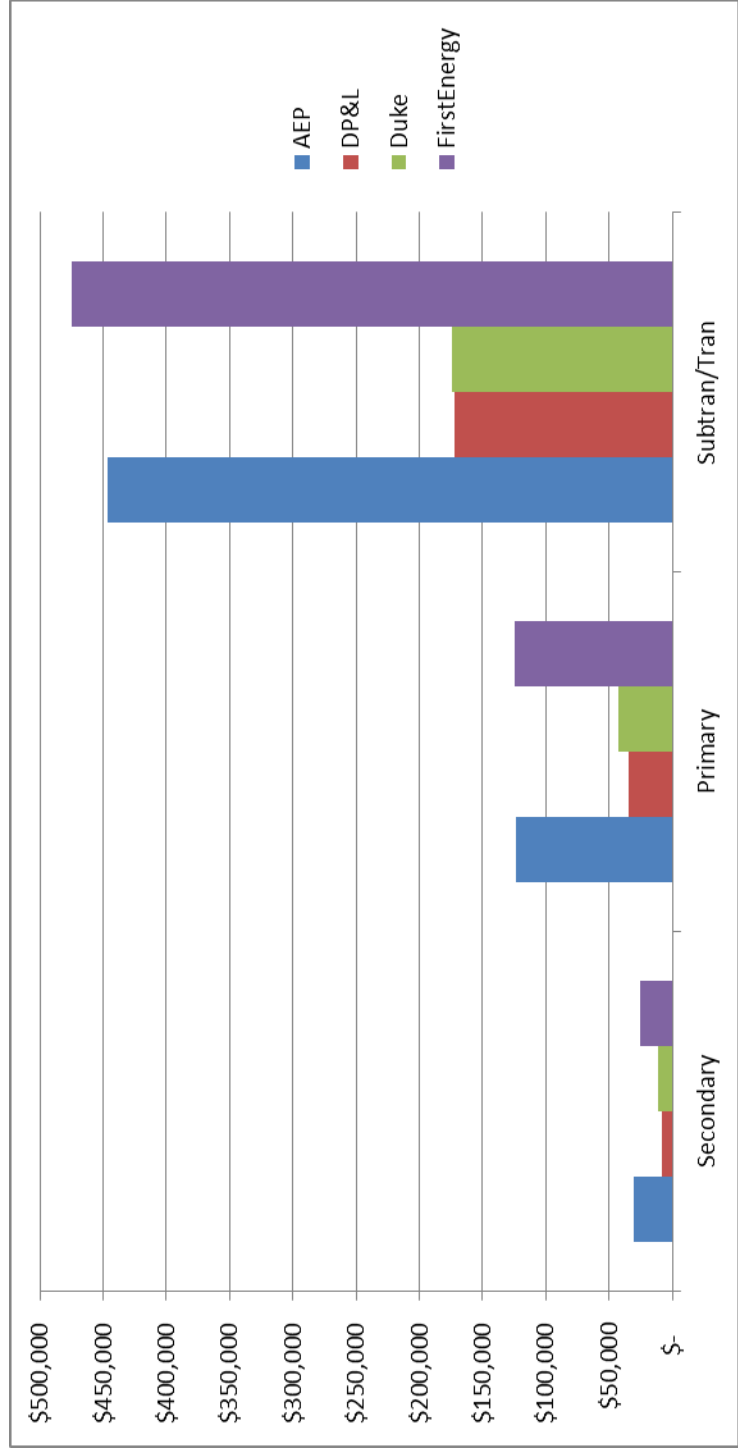


Transmission Trends



Transmission Trends

Transmission cost comparison by utility



Transmission Costs – What We (And You) Can Do

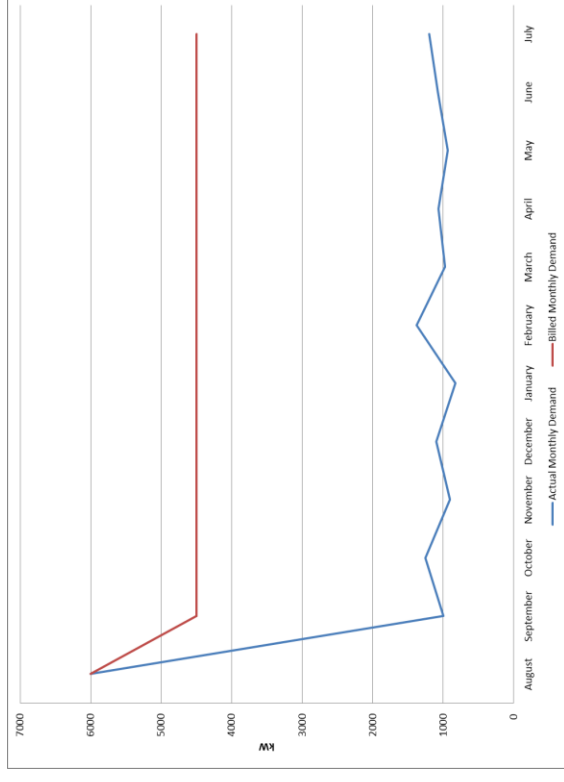
What we (and you) can do

- ☐ OMAEG
 - ☐ Argue for cost causation principles – work to get transmission costs allocated and charged on a 1 CP basis
 - ☐ AEP – BTCR Pilot
 - ☐ DP&L – TCRR Pilot
 - ☐ FE – Rider NMB Pilot
- ☐ What you can do:
 - ☐ Join pilots, if eligible
 - ☐ Manage your 1 CP
 - ☐ Reducing your costs reduces everyone's price (by reducing load on the grid)

Impact on Customer-Sited Generation, Load Management

- ☐ Without intervention, transmission charged on a plant's monthly peaks
 - ☐ Monthly demand charges have “ratchets” for later months
 - ☐ Demand is on 100% of monthly peak, or 75% of the previous 11 month's peak
- ☐ Would add costs to:
 - ☐ CHP
 - ☐ Behind-the-meter wind, solar
 - ☐ Running nights & weekends as a cost reduction strategy

- ☐ Standby rates is the same/related issue
 - ☐ Base distribution rates and other riders can have a monthly kW charge component
 - ☐ OMAEG will be working on this issue with DP&L





MEMORANDUM

Date: February 26, 2018

To: The Ohio Manufacturers' Association – Energy Group

From: Jordan Nader & John Seryak, PE (RunnerStone, LLC)

RE: PJM's Capacity Market Repricing Proposal

UPDATE: On February 16, 2018, President and CEO of PJM, Andrew L. Ott sent a follow-up letter¹ to the members and stakeholders of PJM. In it, he expressed appreciation to stakeholders for their response to his January 16 letter, in which he expressed that PJM would recommend to the board only the Capacity Repricing proposal instead of the MOPR-Ex proposal supported by a majority of the members of the CCPSTF. As a result of this feedback, and the position of the Board that there is “growing pressure threatening competitive outcomes in PJM’s markets,” the Board directed PJM to file both the Capacity Repricing and MOPR-Ex proposals with FERC. The Board justified their decision by acknowledging that there are issues of “federalism and comity” that have been reviewed by the courts and thus FERC, as the federal policymaker, should decide between the positions brought forward by stakeholders.

The Board recognizes the value of both proposals and says that both would result in “just and reasonable” outcomes to preserve competitive markets. They directed PJM to present the advantages and tradeoffs for both proposals. In addition, the Board is requesting that stakeholders should engage at FERC to aid in deciding between the proposals. To that end, PJM will be requesting that the Commission direct a “time-bound settlement judge proceeding,” to take place after the Commission determines which outcome is preferred to gain as much consensus around a final rule change before it is presented later in 2018.

Throughout 2017, the Capacity Construct/Public Policy Senior Task Force (CCPPSTF) at PJM has been working to proactively respond to the potential for state public policy initiatives to interfere with the Reliability Pricing Model (RPM). There has been an uptick in large generation resources seeking state subsidy programs as a means to clear the capacity auctions and remain profitable. The final meeting of the CCPPSTF occurred November 21, 2017 where results from voting on various proposals before the task force were presented: 63.03% of the task force supported a proposal from the Independent Market Monitor (IMM) to expand the Minimum Offer Price Rule (MOPR) to apply to all resources with specific exemptions instead of the existing limit on only new generators. The second most supported proposal was PJM's Capacity Market Repricing Proposal at 26.10% support. It is worth noting that the majority of task force members, when asked a non-binding question as to whether they preferred to make a change or retain the status quo, chose to retain the

¹ <http://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20180216-letter-from-pjm-president-and-ceo-on-behalf-of-the-board-of-managers-regarding-capacity-market-reforms.ashx?la=en>



status quo (63.64%). The IMM MOPR-Ex proposal was presented to the Markets and Reliability Committee (MRC) on December 7, 2017.

On January 16, 2018, the President and CEO of PJM, Andrew L. Ott, sent a letter² to the PJM Membership, States, and Stakeholders informing them of PJM's current thinking regarding the path forward in regards to solving the issue of state subsidies. He views two broad proposal outcomes from the CCPPSTF: a "two tiered" auction settlement or the IMM MOPR-Ex. Mr. Ott and PJM management hold that there is conflict "between state programs that financially support generation and the efficient operation of PJM's markets." However, Mr. Ott argues that a decision in a district court in Illinois with regard to nuclear subsidies forces PJM to accommodate state programs and minimize any problems that arise with creating "just and reasonable wholesale rates." He argues that it is incumbent upon PJM to utilize a "two tiered" auction process in order to allow generators receiving subsidies through state action to receive both a capacity commitment and payment, but that the market clearing price should be adjusted to reflect the impact of the subsidy. As such, it is the intention of Mr. Ott to recommend to the PJM Board to address state programs via the capacity repricing proposal that PJM has put forward, now in its seventh version.

On January 25, 2018, the MRC had the first opportunity to discuss these intended actions by PJM management. The membership forced a vote on the proposed capacity repricing language with the intention to communicate to the PJM Board the extent to which membership disapproved the proposal. The measure was voted on in a sector weighted vote (PJM has five sectors) and was opposed by 3.93 out of 5, with 1.07 supporting the proposal. Following that, the membership voted on the IMM MOPR-Ex proposal from December 7. This received 1.17 support, and 3.83 opposed. However, this was expected as there were friendly amendments that had been added to an alternate proposal that were more widely supported and were voted on subsequently. This vote returned 3.02 in favor with 1.98 opposed and did not pass. This was immediately followed by a move to vote on a version of the IMM MOPR-Ex from December 21 by the Delaware Division of the Public Advocate and seconded by American Municipal Power (AMP). This vote received support from 3.19 out of 5, with 1.81 opposed causing the measure to fail.

These votes will now be considered by the PJM Board during their February meeting. Based on the voting data, membership appears more in favor of the IMM MOPR-Ex proposal than the PJM Repricing proposal. However, it will be up to the PJM Board to make a decision apart from the actions taken by the membership over the past twelve months and determine what tariff language should be sent to FERC for modification of the 2019 Base Residual Auction. The expediency is necessary as several states in PJM, including Ohio, have legislative proposals on the table that would result in subsidies for otherwise uneconomic generation units. At this point, it is unclear how the PJM Board will act, or if the actions by the PJM Board will be accepted by FERC.

² <http://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20180116-pjm-president-and-ceo-letter-regarding-capacity-market-repricing-proposal.ashx?la=en>

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FERC Rules to Boost Storage Role in Markets

February 15, 2018

By Michael Brooks

WASHINGTON — *FERC* (/ferc/) on Thursday ordered RTOs and ISOs to revise their tariffs to allow energy storage resources full access to their markets, a move the commission said will enhance grid resilience (RM16-23).

The rulemaking requires each RTO/ISO to establish a “participation model” for storage resources to ensure they are eligible to provide all energy, capacity or ancillary services of which they are capable, while also enabling them to set clearing prices as both a buyer and seller. Grid operators will also need to establish a minimum threshold for participation that doesn’t exceed 100 kW.

FERC also required that storage resources be able to resell electricity into the markets at the wholesale LMP.

The order “will enhance competition in these markets and help ensure that they produce just and reasonable rates,” staff told commissioners at FERC’s open meeting.

The commission issued its Notice of Proposed Rulemaking on energy storage market participation in November 2016. It could be about two years until the new rules take full effect. (See *FERC Rule Would Boost Energy Storage, DER* (<https://www.rtoinsider.com/ferc-rule-boost-energy-storage-der-34469/>)). FERC’s directives will become official 90 days after their publication in the *Federal Register*. RTOs will then have nine months to file their tariff revisions, up from the six months proposed in the NOPR in response to requests for additional time, staff said. The grid operators would then have a year to implement the revisions.



(<https://i0.wp.com/www.rtoinsider.com/wp-content/uploads/LaFleur-in-Eagles-Jersey-2018-02-15-RTO-Insider-FI.jpg?ssl=1>)

LaFleur wearing an Eagles (Quarterback Nick Foles) jersey. Had the Patriots won the Super Bowl, Commissioner Powelson would be wearing a Patriots jersey | © RTO Insider

The commissioners said the order demonstrated their commitment to ensuring they were not “picking winners and losers” in the markets. Commissioner Cheryl LaFleur noted that the markets “were largely designed around the resources that prevailed when they were launched” but have evolved to accommodate new technologies.

“I think the storage participation model required by today’s order will facilitate storage being able to provide all the services it is technically capable of providing, for the benefit of consumers,” she said.

The order is “the kind of positive regulatory action that removes barriers to competition, allowing emerging technologies to compete in the marketplace,” Commissioner Neil Chatterjee said. “Put simply, it’s good regulatory policy that people from all political backgrounds can support.”



(<https://i0.wp.com/www.rtoinsider.com/wp-content/uploads/Powelson-Rob-at-ESA-2018-02-14->

“In my view, today’s final rule also strikes the appropriate balance between prescriptive requirements and high-level directives,” Commissioner Robert Powelson said. FERC ordered RTOs/ISOs to take into account the unique physical and operational characteristics of storage, he said. “In doing so, we have given the RTOs and ISOs significant latitude to develop market rules that work best with existing market constructs and are respectful of regional differences,” he said.

The Energy Storage Association applauded the order.

RTO-Insider-Fl.jpg?ssl=1)

Powelson speaking at the Energy Storage Association Policy Summit on Feb. 14, 2018 | © RTO Insider

"With this morning's unequivocal action, the FERC signaled both a recognition of the value provided by storage today and, more importantly, a clear vision of the role electric storage can play, given a clear pathway to wholesale market participation," CEO Kelly Speakes-Backman said in a statement.

Powelson at ESA Policy Forum

In an appearance at ESA's Energy Storage Policy Forum at the National Press Club the day before FERC issued the rules, Powelson told attendees the order would demonstrate the commission's commitment to fair and open markets.

He also spoke about the larger trends in electricity, and how storage will have a bigger role to play under the new rules. Increased use of renewables has led to "market-based decarbonization," he said.

"Whether you're a fan of the Clean Power Plan or not, we are not building coal plants right now, and we are not building ... 1,200-MW cathedral nuclear plants," Powelson said.

He pointed to the 2014 "polar vortex" and last month's cold snap. "No one [in D.C.] wants to talk about ... the benefits of demand-side resources," Powelson said. "They want to talk about baseload, baseload, baseload."

Tech Conferences for DER

The commission had also proposed directing RTOs to give aggregated distributed energy resources the same treatment as storage, but on Thursday it said it needed more information before it could take action, ordering a technical conference to be held April 10-11 and opening new dockets for the issue (RM18-9, AD18-10).

Among the changes under FERC's proposal, a DER aggregator could register as a generation asset "if that is the participation model that best reflects its physical characteristics." The commission hopes to remove the commercial and transactional barriers to DER participation in wholesale markets.

Previewing the technical conference, LaFleur and Powelson said they were particularly interested in how DER operates and is compensated in both the wholesale and retail markets. "There needs to be a crisp understanding of who pays what to whom for what," LaFleur said.



(<https://i0.wp.com/www.rtoinsider.com/wp-content/uploads/Chatterjee-L-and-LaFleur-at-FERC-2018-02-15-RTO-Insider-Alt-Fl.jpg?ssl=1>)

Chatterjee (left) and LaFleur speak before the FERC meeting on Feb. 15, 2018. | © RTO Insider

"Distributed energy resources are becoming increasingly more integral to our resource mix, and we at the commission should make every effort to advance this issue without delay," Chatterjee said.

Speaking to reporters after the meeting, Chairman Kevin McIntyre acknowledged "the quasi-disappointment that I heard between the lines from some of my colleagues, which I share. It would have been great if we could have addressed both storage resources and distributed energy resources today. ...

"But really, after looking at the state of the record on those two side-by-side issues, we determined that we needed to bolster our record on the distributed energy resource side of things. So I think our conference will be very useful."



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FERC OKs OVEC Move to PJM

February 19, 2018

By Rory D. Sweeney

FERC dismissed concerns from several stakeholders last week in approving the Ohio Valley Electric Corp.'s integration into PJM (*ER18-459, ER18-460* (<https://www.ferc.gov/CalendarFiles/20180213155348-ER18-459-000.pdf>)).

The commission said OVEC and PJM had satisfied the Operating Agreement requirements for integrating the company, rejecting objections by stakeholders including American Municipal Power, the Ohio Consumers' Counsel and the Public Utilities Commission of Ohio. The protesters expressed concern that OVEC's integration will result in significant upgrade costs and increase the existing generation oversupply without providing more load for PJM generators to serve. (See *OVEC Integration not up for Debate, PJM Says* (<https://www.rtoinsider.com/pjm-ovec-ohio-valley-electric-corp-79825/>)).

The commission also accepted grandfathering of several power agreements and delivery commitments.

OVEC, which is headquartered in Piketon, Ohio, owns 2,200 MW of generation capacity but will have no load after a U.S. Department of Energy contract ends sometime before 2023. The company was created in 1952 to service a uranium enrichment plant near Piketon that ceased operations in 2001. The department ended the 2,000-MW contract in 2003 but maintains a load that can be 45 MW at its maximum but is generally less than 30 MW.

The company's two coal-fired generating plants — the 1.1-GW Kyger Creek in Cheshire, Ohio, and 1.3-GW Clifty Creek in Madison, Ind. — are already pseudo-tied into PJM, and its eight "sponsors" can sell their portions of the output into the RTO's markets. The generation would become internal to PJM following membership, eliminating the pseudo-ties.



(<https://i1.wp.com/www.rtoinsider.com/wp-content/uploads/Clifty-Creek-Power-Plant-Complex-Wikimedia-Alt-FI-1.jpg?ssl=1>)

Clifty Creek Power Plant Complex | Crowezr

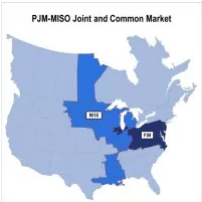
The commission said it didn't buy members' arguments that a cost-benefit analysis should be required prior to integrating OVEC — a request which the OCC also made (<http://pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20180202-oh-consumers-counsel-letter-regarding-the-ohio-valley-electric-corporations-integration-into-pjm.ashx?la=en>) separately to PJM — because there's no precedent for it and the benefits to consumers from RTO membership "outweigh" integration costs. The commission said those benefits are "increased efficiency for transmission planning and generation investment, reduced transaction costs, improved grid reliability, limited discriminatory practices and improved market operations."

It also said concerns about future costs aren't warranted because those costs will be allocated based on PJM's Tariff and OVEC's sponsor companies will continue to pay for OVEC's share. The order noted that PJM's studies indicated no transmission upgrades will be required to integrate OVEC. "With the exception of a single deliverability violation, which OVEC has committed to remedy, the existing equipment and facilities are adequate," the commission said.

PJM's Independent Market Monitor had raised concerns about OVEC's aging plants becoming eligible for reliability-must-run contracts if they decide to shut down, but the commission said the issue is beyond the scope of the integration request.



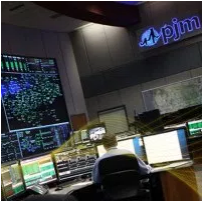
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FERC OKs PJM Pseudo-Tie Rules
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FERC approved PJM Tariff revisions incorporating two pro forma pseudo-tie agreements and a pro forma reimbursement agreement. | MISO, PJM



(<https://www.rtoinsider.com/ferc-pjm-rtep-cost-allocation-80287/>)

FERC OKs Cost Allocation of PJM Transmission Projects
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FERC approved cost responsibility assignments for 39 baseline upgrades recently added to PJM's Regional Transmission Expansion Plan. | PJM



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Unanswered Questions Force Special PJM Session on OVEC Integration
(<https://www.rtoinsider.com/pjm-ohio-valley-electric-corp-ovec-78910/>)

PJM will hold a special meeting Nov. 7 to address stakeholder concerns over how the proposed integration of the Ohio Valley Electric Corp. into the RTO would affect existing members. | © RTO Insider

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OPINION, EDITORIALS, LETTERS AND COLUMNS

To avoid skyrocketing electric transmission costs, FERC scrutiny of 'supplemental' projects is needed: Marc S. Gerken (Opinion)

Updated Dec 31; Posted Dec 31

BY: Marc S. Gerken is president and CEO of American Municipal Power Inc.

COLUMBUS, Ohio -- Transmission rates are on the rise, and consumers are feeling the pinch. But what exactly are consumers getting in return for these costs? It's not always clear.

Transmission rates, which are set and approved by the Federal Energy Regulatory Commission, consist of the costs associated with transmitting electricity over high-voltage lines from an electric generation facility to substations closer to ultimate customers, and also to provide owners of transmission infrastructure a return on their capital investment and on equity.

PJM Interconnection -- the regional transmission organization that [coordinates the electric transmission grid](#) for Ohio and all or parts of 12 other states and the District of Columbia -- has a transparent and detailed process to address grid reliability concerns (baseline projects). Some baseline projects are also subject to competition.

However, supplemental transmission projects -- ones that aren't required to satisfy reliability, operational performance or economic criteria -- do not receive the same level of scrutiny. Like baseline project costs, the costs of supplemental transmission projects are also passed along to consumers, but without a determination that they are necessary or prudent before they go into service, and absent the competitive option.

A baseline project is one that is necessary to maintain reliability of the grid. For example, if an old coal generator is retired, without a new transmission project, the generator retirement could cause an overload on some transmission lines, jeopardizing safety and reliability. The required transmission line would be a baseline project.

Conversely, a supplemental project is not required for reliability. For example, a supplemental project could be a transmission owner choosing to replace existing wood poles with steel and concrete poles for storm-hardening purposes that may provide additional resilience but are not required to maintain reliable service.

Imagine if you were a business owner, and you gave your employees unlimited expense accounts and required no receipts. Even if your employees were making purchases strictly for the business, there's no guarantee that they would be making the most economical purchase, or even prudent choices. In reality, this wouldn't happen, because you would demand to know what you were paying for and why.

In a new [review](#) commissioned by American Municipal Power Inc., Dr. Ken Rose, a nationally recognized expert in the structure, regulation and economics of U.S. energy markets, found that the portion of transmission rates that includes supplemental projects for the PJM territory increased considerably.

From 2009 to 2017, the transmission rates of transmission owners in PJM that have formula rates increased by at least 20 percent, to upwards of 465 percent. (Similarly, the portion of the transmission rates that includes baseline projects has increased by nearly 300 percent since 2011.)

Rose found that through 2012 in the PJM territory, baseline projects (\$21.3 billion) outpaced supplemental projects (\$6.8 billion). After 2012, however, supplemental projects are outpacing baseline projects (\$12.7 billion vs. \$11.6 billion, respectively).

This means there were more transmission projects proposed without any meaningful oversight than within the established PJM planning process.

These findings reinforce recent studies by the Edison Electric Institute, Brattle Group and Navigant, all of which expect multiple billions to be invested in transmission infrastructure over the next 10 years.

American Municipal Power (AMP) is the nonprofit wholesale power supplier and services provider for 135 members, including 134 member municipal electric systems in Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania and Virginia, as well as the Delaware Municipal Electric Corporation -- a joint action agency with nine member communities. Combined, these member utilities serve more than 650,000 customers.

Among AMP's membership is Cleveland Public Power, the Cuyahoga Falls Electric System, Hudson Public Power and the city of Painesville.

Locally, AMP's members have experienced similar increases over the past eight years. In four transmission zones in which AMP members are located, annual revenue requirements (supplemental projects, operations, maintenance and reasonable profit) have increased by a range of 99 percent to 214 percent from 2009 to 2016. This level of investment is expected to continue over the next few decades.

In accordance with the Energy Policy Act of 2005, the Federal Energy Regulatory Commission (FERC) has issued orders [establishing requirements](#) for coordination, openness, transparency, information exchange and comparability in the transmission planning processes.

Unfortunately, current implementation of this planning process falls short of the spirit of the FERC orders.

Since PJM began its planning process in 1997, over \$19 billion in supplemental transmission projects in the PJM territory alone have been proposed with no transparent criteria, assumptions or models to support the decision-making process.

It's imperative that customers - the ones who ultimately bear the cost of these projects - have the ability to verify that they're getting their money's worth, and that transmission owners are engaging in cost-effective and efficient grid upgrades and expansion that take into account the future needs of a rapidly evolving industry. This means a transmission planning process that is open and transparent and takes into account the changing resource mix and configuration of the future.

It is important to note that the concerns expressed by AMP should not be misconstrued as an unwillingness to bear costs arising from reasonable and prudent transmission expansion. AMP supports policies that reasonably promote a robust, reliable and resilient grid through the needed replacement or enhancement of infrastructure. However, we feel strongly that additional oversight is needed to ensure the right considerations are guiding the process.

While it's essential for transmission developers to earn a fair rate of return on their investments in transmission infrastructure, many transmission owners are receiving returns of an astounding 10 to 12 percent. Rates of return should reflect actual market risks and not have the unintended consequence of encouraging building or over-

building for the sake of revenue generation. Return on equity rates must reflect current economic conditions, and additional incentives must be awarded judiciously to reflect actual levels of risk.

As the [Edison Electric Institute](#) points out in its 2016 report, customers are demanding increased choice for their energy sources and delivery. The industry is responding and making investments in new energy infrastructure. Electricity customers at all levels must call upon federal policymakers to implement a review process that ensures these investments are prudent, cost-effective and future-focused.

Marc S. Gerken is president and CEO of Columbus-based American Municipal Power Inc.

FERC finds PJM's transmission planning process for supplemental projects unjust and unreasonable

By Lisa McAlister - senior vice president and general counsel for regulatory affairs

On Feb. 15, 2018, the Federal Energy Regulatory Commission (FERC) issued a long-awaited order finding that the PJM transmission planning process for supplemental projects (those not required for reliability) lacks transparency and opportunity for stakeholder involvement, and directed the PJM transmission owners (TOs) to make a compliance filing in accordance with FERC's directions within 30 days. FERC's order found that the current PJM TOs' supplemental project planning process was not just and reasonable, and did not meet FERC Order No. 890's requirements for transparency, coordination or providing stakeholders enough information in a timely manner. FERC relied on evidence provided by AMP and others that demonstrated that the PJM TOs "often provide models, criteria and assumptions as part of the supplemental project transmission planning process that are vague or incomplete and do not allow stakeholders 'to replicate the results of planning studies.'" Additionally, FERC found that the information that is shared by the TOs is often shared too late in the process for stakeholders to meaningfully participate, as the TOs may have already taken major steps toward developing the projects. For example, as AMP pointed out, many of the supplemental projects are already well into the design or construction phases, or even in service at their first presentation to stakeholders - leaving little opportunity for meaningful stakeholder input.

The FERC order requires PJM and the PJM TOs to submit changes to their transmission planning processes in compliance with FERC's order and Order No. 890. Specifically, FERC's order requires a minimum of three meetings: one to discuss the TOs' models, criteria and assumptions; one to discuss the need for proposed projects; and one to discuss proposed solutions. The meetings have to be a minimum number of days apart to allow for time to discuss needs for supplemental projects and possible solutions, as well as to establish time frames for information to be posted and allow for stakeholder comments. The TOs also have to add a dispute resolution process that is currently lacking entirely from the process.

AMP is encouraged by the FERC order, but there is still much work to be done.

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MEMORANDUM

To: OMA Energy Committee
From: Kim Bojko, OMA Energy Counsel
Re: Energy Committee Report
Date: February 28, 2018

Active Administrative Actions in which OMAEG is Involved:

American Electric Power (AEP):

- **Application to Expand ESP III Case/New ESP (Case Nos. 16-1852-EL-SSO, et al.)**
 - On November 23, 2016, AEP filed its application to amend its ESP extending the term through May 2024 and to add several new riders and charges. AEP also requested an expedited procedural schedule.
 - The PUCO has set a procedural schedule requiring intervenor testimony to be filed by May 2, 2017, Staff testimony by May 30, 2017, and setting the evidentiary hearing to begin on June 6, 2017
 - OMAEG filed the testimony of OMAEG witness John Seryak opposing AEP Ohio's plans for microgrids, renewable energy, submetering, and electric vehicle charging stations.
 - On August 25, 2017, all parties, except the residential advocate, reached a Settlement resolving the issues of AEP's third ESP (ESP III). The Settlement extends the term of the ESP III through May 31, 2024. The Settlement provides for Distribution Investment Rider caps that are significantly lower than AEP requested; an OVEC PPA Rider that does not affect pending appeals to the Supreme Court regarding the lawfulness of the PPA Rider, and; a Renewable Generation Rider (RGR) which will be populated in a separate proceeding wherein all parties reserve the right to challenge individual projects AEP seeks to include under the rider.
 - Several OMAEG members enrolled in AEP's Basic Cost Transmission Recovery Pilot Program. Ten slots in this program were reserved for OMAEG members through the settlement reached in this case. The enrolling members will realize cost savings through their participation in the program.

Duke Energy Ohio (Duke):

- **ESP Application (Case Nos. 14-841-EL-SSO, et al.)**
 - Order issued on April 2, 2015, wherein PUCO approved establishment of a PPA rider (Rider PSR), but Duke was not authorized to collect any PPA costs through Rider PSR.
 - Several parties, including OMA, filed applications for rehearing on May 4, 2015. The applications for rehearing are still pending.
- **2013/2014 EE/PDR Recovery (Case Nos. 14-457-EL-RDR and 15-534-EL-RDR)**
 - Duke and Staff filed a stipulation seeking to resolve the shared savings mechanisms relating to Duke's 2013 and 2014 programs.
 - OMA and others opposed the stipulation.
 - The PUCO issued a decision on October 26, 2016, approving the stipulation, which provides Duke \$19.75 million in shared savings incentives.
 - Rehearing is pending.
- **Shared Savings Mechanism Extension Case (Case No. 14-1580-EL-RDR)**
 - Duke sought PUCO approval of its request to extend the use of its shared savings incentive mechanism in 2016.
 - OMA and others opposed the proposal and filed reply briefs on September 8, 2016, and are awaiting a PUCO decision.
- **EE/PDR Portfolio Plan (Case No. 16-576-EL-POR)**
 - On June 15, 2016 Duke filed its EE/PDR plan.
 - OMA and several other intervening parties reached a settlement to implement Duke's comprehensive EE/PDR portfolio, effective from 2017 through 2019. OMAEG successfully negotiated a shared savings cap and tiered incentive levels. OMA also obtained language to prohibit Duke from collecting shared savings on banked savings, and to initiate a CHP program with positive incentives. OMA further obtained funding for EE programs in the amount of \$50,000 per year.
 - Both PUCO Staff and the Office of the Ohio Consumers' Counsel (OCC) challenged the plan proposing the adoption of a cost cap for program costs and additional limitations on shared savings incurred through FirstEnergy's energy efficiency portfolio plan. OMAEG does not oppose a cost cap or additional limitations on the amount of profit FE may earn.
 - On September 27, 2017, the PUCO issued an Order adopting the parties' settlement in this case with one modification. The PUCO modified the settlement to limit Duke's annual recovery of EE/PDR program costs, including shared savings, to 4% of Duke's 2015 operating revenues for the years 2018 and 2019.
 - Duke applied for rehearing, arguing that the cost cap was unlawful and OCC applied for rehearing, arguing that the settlement should not have been approved at all.

- **Distribution Rate Case (Case No. 17-0032-EL-AIR)**
 - On March 2, 2017, Duke filed an application to increase its distribution rates. The application proposes to increase the rates starting on January 1, 2018. OMAEG and other consumer groups intervened.
 - On February 23, 2017, the PUCO issued a decision that granted Duke's request to waive certain filing requirements regarding the production of generation or fuel-related information. The decision also set April 1, 2016 through March 31, 2017 as the test period and June 30, 2016 as the date certain.
 - Discovery has concluded and settlement discussions are ongoing.
- **MGP Remediation Rider (Case Nos. 17-596-GA-RDR, et al.)**
 - On March 31, 2017, Duke filed an application to recover 2016 costs for investigation and remediation of its Manufactured Gas Plant (MGP) site. In Duke's natural gas distribution case (Case No. 12-1685-GA-AIR), the PUCO approved up to \$55.5 million for investigation and remediation costs incurred from January 2008 through December 2012.
 - OMAEG intervened in April 2017.
- **Price Stabilization Rider (Case Nos. 17-872-EL-RDR, et al.)**
 - On March 31, 2017, Duke filed an application to populate its Price Stability Rider (PSR), which was established in its ESP case at \$0 (Case No. 14-841-EL-SSO et al.) Duke proposes to include in Rider PSR the net costs associated with its contractual entitlement in generating assets owned by the Ohio Valley Electric Corporation (OVEC). Rider PSR would be nonbypassable.
 - OMAEG and other parties filed a joint motion to dismiss Duke's application on the grounds that the PSR was already established on a zero placeholder basis in the 2014 ESP case and the PUCO does not have authority to review Duke's application outside of an ESP under its general authority over utilities. Alternatively, the parties requested the proceedings be stayed until the PUCO has decided the applications for rehearing in the ESP case and appellate review is completed.
- **ESP IV Case (Case Nos. 17-1263-EL-SSO, et al.)**
 - In June, Duke filed an application for its fourth ESP. In its application for a six year ESP, Duke proposes to continue its Distribution Capital Investment Rider (Rider DCI) and Rider PSR and introduce several new riders. On June 19, 2017, OMAEG intervened.
 - Discovery has concluded and settlement discussions are ongoing.

FirstEnergy:

▪ ESP IV Application (Case No. 14-1297-EL-SSO)

- FirstEnergy, Staff, Ohio Energy Group, OPAE, IGS, and others filed a stipulation seeking PUCO approval of FirstEnergy's ESP IV Application together with authority to establish and populate a PPA rider (Rider RRS) with the costs associated with certain plants owned by its affiliate, FirstEnergy Solutions.
- The stipulation also contains provisions addressing: grid modernization; energy efficiency; and a plan to transition to decoupled rates.
- The PUCO modified and approved the stipulation.
- On November 14, 2016, OMAEG submitted an application for rehearing of the PUCO's Fifth Entry on Rehearing adopting Rider DMR, which will collect from customers approximately \$132.5 million per year, adjusted for recovery of taxes, for a total of three years, with a possible extension of two additional years.

The PUCO approved FirstEnergy's implementation of its Rider DMR, effective January 1, 2017, and denied OMAEG's request to stay the collection of Rider DMR revenues or in the alternative, permit collection subject to refund.

- In August, the PUCO issued its Eighth Entry on Rehearing where it rejected FE's request to modify the revenue collected under Rider DMR. The PUCO also rejected FirstEnergy's request to reduce the scope of the Non-Market Based Services Rider (Rider NMB) Opt-Out program to just the signatory parties to the stipulation. The PUCO agreed with OMAEG that the NMB Opt-Out program should be open to all parties.
- OMAEG has now appealed the PUCO's decisions to the Supreme Court of Ohio.

Dayton Power & Light (DP&L):

▪ Distribution Rate Increase (Case Nos. 15-1830-EL-AIR, et al.)

- The PUCO set June 1, 2015 to May 30, 2016 as the test period and September 30, 2015 as the date certain.
- On March 22, 2017, the PUCO issued an unusual order seeking assistance for Staff in auditing DP&L's application to increase its distribution rates. The hiring of an auditor is occurring over a year and a half after DP&L's application was filed. The auditor will review DP&L's accounting accuracy, prudence, and use and usefulness of DP&L's jurisdictional rate base as presented in its application. The selection of the auditor should be complete by April 19, 2017 and a final audit report is estimated to be complete by September 29, 2017. OMAEG and other parties will have an opportunity to review any conclusions, results, or recommendations the auditor makes.

▪ Electric Security Plan (Case Nos. 16-395-EL-SSO, et al.)

- DP&L filed an amended application on October 11, 2016, withdrawing its Reliable Electricity Rider (RER) request. Instead, it is now seeking a Distribution

Modernization Rider (DMR) for a term of seven years to recover \$145 million per year from customers.

- DP&L and certain intervening parties filed a stipulation on January 30, 2017, which was opposed by numerous other intervening parties, including OMAEG.
- On March 13, 2017, a new settlement was reached between a majority of the parties, including PUCO Staff and OMAEG (as a non-opposing party). Under the new settlement, DP&L will receive from customers \$105M/year for 3 years with an option to request a 2 year extension of the DMR, totaling approximately \$315M over three years. The Distribution Investment Rider (DIR-B) rider was eliminated (which was estimated to cost consumers \$207.5M), and DP&L agreed to convert the forgone tax sharing liabilities to AES Corporation into equity payments (estimated by DP&L to be a \$300M gain for customers). DP&L will also provide several OMAEG members the economic development rider (EDR) credit of \$.004/kWh. For OMAEG members that do not qualify for the EDR credit, DP&L agreed to make those members see no increase in their current rates, plus a slight discount. Thus, those members will receive a collective total of \$18,000 per year in shareholder dollars to compensate them for the increase in rates due to the DMR.
- A hearing was held in April 2017 and the parties have submitted briefs. The matter is now pending before the PUCO.
- The PUCO approved the settlement, but also modified it to include nonbypassable OVEC recovery. OMAEG filed an application for rehearing, arguing that this modification was unjust, unreasonable, and unlawful.
- **EE/PDR Portfolio Plan (Case Nos. 16-649-EL-POR, et al.)**
 - On June 15, 2016, DP&L filed its EE/PDR plan to continue its current EE/PDR POR for another year.
 - OMAEG, Staff, and all other intervening parties, except OCC, reached a settlement to continue DP&L's EE/PDR portfolio for 2017. OMAEG obtained continued funding for EE programs in the amount of \$30,000, more favorable language, limitations on EE/PDR portfolio costs and shared savings that can be collected from customers, continuation of the CHP program and incentives, and other consumer protections. OCC is challenging the collection of lost distribution revenues.
 - A hearing was held on February 7, 2017 to submit the settlement where OCC waived its right to cross-examine DP&L's witnesses.
 - On September 27, 2017, the PUCO approved the settlement. OCC has applied for rehearing.
- **EE/ PDR Portfolio Plan (Case Nos. 17-1398-EL-POR, et al.)**
 - In accordance with the stipulation that was reached in DP&L's third EE/PDR portfolio plan case (Case No. 16-649-EL-POR, et al.), in June, DP&L filed an application for its proposed EE/PDR portfolio plan for years 2018-2020. As part of the new plan, DP&L proposes to implement non-residential programs, including Rapid Rebates (Prescription Rebates), Customer Rebates, Mercantile Self-Direct Rebates, and Small Business Direct Install programs. DP&L is also proposing to

- introduce new Stakeholder Initiatives and Non-Programmatic Savings programs, not currently part of the existing portfolio plan. Additionally, the proposed shared savings mechanism would apply to the extent DP&L exceeds its benchmarks.
- In August, OMAEG intervened and filed objections opposing certain aspects of DP&L's EE/PDR portfolio plan.
 - On October 27, 2017, OMAEG and other parties reached an unopposed settlement resolving the issues surrounding DP&L's energy efficiency and peak demand reduction programs.
 - The PUCO approved the settlement between the parties without modification.

Statewide:

- **Net Metering Rules (Case No. 12-2050-EL-ORD)**
 - OMAEG filed comments urging the PUCO to adopt rules that align the compensation schemes applicable to shopping and non-shopping customers.
 - On November 8, 2017, the PUCO adopted new rules for net metering. These rules allow customer-generators to generate up to 120% of their own energy needs and allow customers who obtain their energy through a CRES provider to enter into net metering contracts with those providers. Customer-generators that generate more than they consume may receive a credit to their bill for the excess generation. That credit will be based on the energy-only component of the electric utility's standard service offer. For a more comprehensive analysis of the new rules, please see the memorandum entitled *Public Utilities Commission of Ohio Adoption of New Net Metering Rules*, prepared by Carpenter Lipps & Leland.
- **Submetering Investigation (Case No. 15-1594-AU-COI)**
 - The PUCO opened an investigation to determine whether the activities of submetering entities meet the definition of a public utility.
 - On December 7, 2016, the PUCO issued a decision to expand the application of the *Shroyer test*, used to determine if a landlord is operating as a public utility, to include condominium associations, submetering companies, and other similarly-situated entities. Additionally, the PUCO created new parameters for applying the test to determine whether those entities are acting as public utilities, and thus should be subject to regulation when they resell or redistribute utility service.
 - Concerned that this expansion may unlawfully classify entities that resell or redistribute electric, gas, and water utilities in commercial settings as public utilities, OMAEG joined other commercial groups to seek rehearing of the PUCO's Order that may affect commercial shared services arrangements.
 - In June, the PUCO issued an entry on rehearing wherein it limited the application of its Relative Price Test and adoption of a Safe Harbor provision to resellers servicing submetered residential customers, stating that it will not apply to arrangements between commercial or industrial parties.

- Several parties filed applications for rehearing. Importantly, no party challenged the applicability of the PUCO's Relative Price Test and Safe Harbor provision to only residential submetered consumers. The PUCO's decision on rehearing is pending.
- **PUCO Announces PowerForward**
 - The PUCO announced the launch of PowerForward: a PUCO review of the latest in technological and regulatory innovation that could serve to modernize the electric distribution grid and enhance the customer electricity experience. Through PowerForward, the PUCO will comprehensively explore technology and consider how it could serve to enhance the customer electricity experience. The PUCO will be hosting national experts through a series of phases.
 - In April, the PUCO held its first of three phases for its PowerForward initiative. Phase 1: A Glimpse of the Future - was a three-day conference that featured presentations examining technologies affecting a modern distribution grid; what our future grid could offer customers; and what technologies are in development to realize such enhancements. AEP and AES Corporation, DP&L's parent corporation, outlined the view of Ohio's utilities on grid modernization and its importance in meeting customer needs. Other speakers shared what some of the services on the new "platform" might look like, such as providing bill credits to customers who reduce their usage during peak load hours. OCC and other groups cautioned that because the benefits of grid modernization come at a cost, the PUCO should keep in mind how much each aspect of grid modernization would benefit customers.
 - In July, the PUCO held Phase 2, which also took the form of a three day conference. Phase 2 focused on the grid, platforms, the grid's core components, requirements for building the grid of the future, distribution system safety and reliability, planning and operations of the distribution system, and energy storage. Speakers emphasized the importance of standards, infrastructure, and communications to ensure that new technologies are compatible with legacy equipment. The PUCO shared its goals to "future proof" the grid to ensure technologies paid for by ratepayers are effective, provide benefits to customers, and do not quickly become obsolete. Other speakers discussed how consumers and electric distribution utilities can use data from smart grid technologies and how it can help increase reliability improve theft detection and consumer consumption, as well as distribution system safety and reliability, planning and operations, and energy storage. Finally speakers representing two Ohio townships talked about how their communities have implemented microgrids and used energy storage systems.
 - Phase 3 of PowerForward will take place during the First Quarter of 2018.
- **PUCO Tax Cut Investigation (18-47-AU-COI)**
 - The PUCO ordered an investigation into the impact of the reduction of the federal corporate income tax rate from 35% to 21%, effective January 1, 2018, on regulated utilities and to determine the appropriate course of action for passing benefits resulting from this reduction on to ratepayers. The Commission recognized that the significant reduction in the corporate tax paid by regulated utilities will impact those

utilities' revenue requirements, and, thus, the rates that they collect from customers. The PUCO also directed all rate-regulated utilities to record on their books as a deferred liability, in an appropriate account, the estimated reduction in the federal corporate income tax resulting from the new law, effective January 1, 2018. This directive by the Commission should allow customers to receive the benefit of the reduction in the federal income tax starting January 1, 2018, pending the resolution of the investigation, and prevent utilities from over-collecting from customers and subsequently arguing that customers are not entitled to refunds. The PUCO also solicited comments from the jurisdictional rate-regulated utilities and interested stakeholders.

- The four investor owned Ohio utilities— Duke, FirstEnergy, AEP, and DP&L— filed a joint application for rehearing of the PUCO' s January Order in the PUCO' s investigation into the impact of recent changes to the federal tax law on rates paid by customers. The utilities are challenging the PUCO' s accounting order requiring the utilities to record the tax savings resulting from the new law as a deferred liability beginning January 1, 2018. Requiring the creation of a deferred liability should ensure that customers are properly refunded upon the conclusion of the PUCO' s investigation. The utilities also argue that they are prohibited from refunding monies to customers because that would constitute retroactive ratemaking. OMAEG opposed this attempt by the utilities to deny customers cost relief to which they are entitled.
- See the attached summary, surveying other states and their responses to the tax reform and its impact on public utilities and ratepayers, **prepared by Carpenter Lipps & Leland, LLP.**

Judicial Actions—Active Cases Presently on Appeal from the PUCO to the Supreme Court of Ohio

Duke Energy Ohio:

- **Increase to Natural Gas Distribution Rates, Case No. 2014-328 (Appeal of Case Nos. 12-1685-EL-AIR, et al.)**
 - OMA, OCC, Kroger, and Ohio Partners for Affordable Energy appealed a PUCO order to the Ohio Supreme Court that permitted recovery from ratepayers for environmental remediation costs associated with two former manufactured gas plant (MGP) sites.
 - On February 28, 2017, OMA's energy counsel, Kim Bojko, argued before the Supreme Court of Ohio on behalf of the Appellants requesting that it overturn the PUCO order that awarded Duke \$55.5 million from customers for cleanup costs associated with the two former MGP sites that have not been in operation for 50-89 years.
 - The Court in a split 4:3 decision affirmed the PUCO's order holding that the "used and useful" standard does not apply to the ratemaking statute for "the cost to the utility of rendering the public utility service for the test period" under R.C. 4909.15(A)(4).

- Believing that the Court failed to consider the evidence that most of the MGP sites were either vacant or unused in rendering natural gas distribution service, on July 10, 2017, OMA filed a Joint Motion to Reconsider with the Court urging it to reconsider its decision and remand the case back to the PUCO to determine whether, all, part, or none of the remediation costs were incurred to render natural gas distribution service during the test period.
- **Appeal of DP&L Electric Security Plan, Case Nos. 2017-0204 and 2017-0241 (Appeal of Case Nos. 08-1094-EL-SSO, et al. and 12-0426-EL-SSO, et al.)**
 - In DP&L's ESP II case, the Supreme Court of Ohio reversed the PUCO's authorization of the Service Stability Rider (SSR) contained in DP&L's ESP II on grounds that it was an unlawful collection of transition revenue for costs incurred by the utility before retail competition began that will not be recoverable through market-based rates. The Court found that these costs were no longer recoverable under Ohio law. Thereafter, the PUCO authorized DP&L to withdraw its ESP II after collecting SSR charges for nearly three years. The PUCO also concurrently authorized DP&L to revert back to its ESP I, but allowed it to retain certain aspects of the competitive bidding process approved under ESP II. Further, the PUCO allowed DP&L to reinstate the Rate Stability Charge (RSC), which was originally approved in DP&L's ESP I, but later expired.
 - OMAEG and others filed applications for rehearing requesting that the PUCO reverse its decisions authorizing DP&L to revert back to its ESP I and to reinstate the RSC because it was an unlawful transition charge similar to the SSR that the Supreme Court of Ohio found to be unlawful. In December, the PUCO denied these requests.
 - In February, OMAEG jointly filed notices of appeal of the PUCO's Orders and subsequent entries on rehearing regarding various issues raised in DP&L's ESP I and ESP II cases. The issues in both appeals have been fully briefed. The matter is pending oral arguments.
 - In an unusual move, the Supreme Court of Ohio, on its own initiative, asked the parties to submit briefs on whether the pending appeals at the Court are now moot in light of the PUCO's approval, with modification, of the settlement in the DP&L ESP III case (Case Nos. 16-395-EL-SSO, et al.). OMAEG argued that the appeals are not moot and that the Court should resolve the issues that are disputed in these cases.
 - The PUCO heard oral arguments in the appeal of the PUCO's decision in 12-426-EL-SSO, et al. The parties await a decision.

American Electric Power (AEP):

- **Appeal of AEP's ESP III and PPA Rider Expansion Cases (Case Nos. 2017-0749 and 2017 0752) (Appeal of Case Nos. 14-1693-EL-RDR, et al. and 16-1852-EL-SSO, et al.)**
 - In AEP's ESP III case, the PUCO in its February 25, 2015 Order authorized AEP to establish a zero rate placeholder power purchase agreement (PPA) Rider.
 - The PUCO issued an Order on November 3, 2016, affirming its decision in the February 25, 2015 Order not to approve AEP Ohio's recovery of costs under the PPA

Rider, including OVEC costs (but authorized the recovery in the PPA Rider case on the same day). The PUCO also increased the Distribution Investment Rider (DIR) caps by an additional \$8.6M (in addition to the \$37.8M increased in the prior order, which was an increase over the amounts in the original order). Total authorized is \$589.6M from 2015 through May 2018.

- In the PPA Rider case, AEP, Staff, Sierra Club, Ohio Energy Group, Ohio Hospital Association, IGS and others filed a stipulation seeking PUCO approval to populate the PPA Rider to recover costs certain plants owned by AEP Generation Resources as well as the costs of AEP's entitlement to the OVEC output.
- The stipulation contained several other provisions unrelated to the PPA Rider, including: extension of the ESP III plan; expansion of the IRP program; and a proposal to develop wind and solar facilities.
- The PUCO modified and approved the stipulation in the PPA Rider case.
- Pursuant to the stipulation in the PPA Rider case, AEP filed an application to extend the ESP through 2024, and included other provisions agreed to in the stipulation, such as BTCR opt-out program, IRP extension and modifications, the Competition Incentive Rider, DIR extension and modifications, and a Sub-Metering Rider.
- On rehearing, AEP stated that in light of the FERC decision it was going to only pursue recovery of the OVEC PPA.
- In April, the PUCO denied OMAEG and others' applications for rehearing in both the ESP III case and the PPA Rider case. OMAEG appealed the PUCO's decisions to the Supreme Court of Ohio.
- OMAEG has now filed its merits brief and reply brief. The parties await oral argument.

Federal Actions

FERC:

- **MOPR Expansion (EL16-49)**
 - On March 21, 2016, Dynegy and others filed a complaint against PJM requesting that the Minimum Offer Price Rule be expanded to apply to existing resources.
 - The complaint aims to protect against AEP and FirstEnergy offering the subsidized affiliate generating units into the capacity market below costs, which will suppress capacity prices.
 - Dominion, American Municipal Power, and others filed a motion to dismiss on mootness grounds given the FERC's order rescinding the waiver on affiliate sales restrictions previously granted to AEP, FirstEnergy, and their unregulated generating affiliates.
 - The Independent Market Monitor claims that the issues are not moot given the Staff's proposal adopted in the FirstEnergy ESP IV case for a DMR, and the pending DP&L DMR proposal.

- The Complaint is still pending.

- **FERC Rulemaking (RM18-1)**
 - FERC is currently considering a rule proposed by the Secretary of Energy that would subsidize inefficient and failing coal plants in the name of promoting grid reliability and resiliency. In reality, however, the Proposed Rule would serve neither of those goals and only acts as a subsidy to prop up failing generators at the expense of electric customers.
 - OMAEG filed initial comments opposing the Proposed Rule on October 23, 2017. It then filed Reply Comments to support the arguments of other manufacturing coalitions and oppose comments of parties who supported the Proposed Rule.
 - FERC agreed with OMAEG and others and rejected the proposed rule. FERC concluded that the record did not support the claim that the grid faces reliability or resiliency threats from the retirement of inefficient generation, and, even if a problem existed, FERC explained that the proposed solution was contrary to FERC's longstanding commitment to markets and market-based solutions and did not satisfy the legal requirements for the creation of a new rule. Instead, FERC defined resiliency and sought comments and data from the regional transmission organizations and independent system operators regarding their resiliency challenges on a regional basis. For a more detailed summary of FERC's actions, please see the attached summary titled *Summary of FERC Order Terminating the Notice of Proposed Rulemaking and Establishing Additional Procedures*, prepared by Carpenter Lipps & Leland, LLP.

- **Electric Storage Participation in Markets Rule (RM16-23-000; AD16-20-000)**
 - FERC issued a final rule in a rulemaking proceeding it initiated in order to remove barriers to participation of electric storage resources in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). This rule addresses FERC's concern that existing participation models in these markets unfairly favor traditional resources, thus constricting competition. FERC concluded that this new rule should enhance competition and improve competition in the wholesale market. It will go into effect on May 16, 2018.

CARPENTER LIPPS & LELAND LLP

ATTORNEYS AT LAW

280 PLAZA, SUITE 1300
280 NORTH HIGH STREET
COLUMBUS, OHIO 43215

MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group

FROM: Kim Bojko, Carpenter Lipps & Leland LLP

DATE: February 27, 2018

SUBJECT: Survey of State Responses to Tax Reform and Impact on Public Utilities and Ratepayers

I. INTRODUCTION

In December 2017, Congress passed, and the President signed the Tax Cuts and Jobs Act of 2017 (TCJA). Among other things, the TCJA reduces the corporate income tax rate paid by all companies, including public utilities, from 35% to 21%. The Public Utilities Commission of Ohio (PUCO) has opened an investigation into the impact of this change on rate-regulated public utilities in order to determine how to best pass the benefits of tax reform on to ratepayers in the form of reduced utility rates.

As part of its investigation, the PUCO directed the utilities to record their tax savings resulting from the TCJA as a deferred liability on their books so that they can refund customers at the conclusion of the PUCO's investigation. Ohio's investor-owned electric distribution utilities (AEP-Ohio, Duke Energy, FirstEnergy, and Dayton Power & Light) have challenged this directive by the PUCO in an attempt to thwart the PUCO's attempt to pass savings onto customers.

Meanwhile, other states have undertaken efforts to provide customers with the benefits of reduced tax obligations resulting from the TCJA. In many of those states, customers have already begun seeing benefits on their monthly bills. For the sake of comparison, a brief accounting of the actions taken voluntarily by public utilities or by the state commissions in the various states are detailed below.

II. STATE RESPONSES TO THE TCJA

- **Arizona:** Arizona Corporation Commission stated that "it is imperative that this Commission and the regulated utilities work together to pass the tax savings onto the ratepayers." Arizona ordered all public utilities to, within sixty days, file an application for tax expense adjustor mechanisms, file their intent to file a rate case within 90 days, or file any such other applications as necessary to address the ratemaking implications of the TCJA.

- **Arkansas:** Public Service Commission ordered all investor-owned utilities in Arkansas to “prepare and file an analysis of the ratemaking effects of the [Tax Cuts and Jobs Act] on its revenue requirement” and to “make adjustments to each affected entry [pending before the Commission] to incorporate changes incurred by the passing of the [Tax Cuts and Job Act].”
- **California:** California Public Utilities Commission directed all of the electric and gas utilities in California to track the savings from the tax law changes and required them to refund the savings to their customers.
- **Connecticut:** The Connecticut Public Utilities Regulatory Authority initiated a proceeding “to consider adjustments to rates that may be appropriate for Connecticut customers of regulated utilities, to account for revisions to tax laws—including corporate tax rates--contained in the recently enacted Federal Tax Cuts and Jobs Act.”
- **Delaware:** Public Service Commission of Delaware ordered each rate regulated utility to file an application “addressing the impacts of the new Tax Cuts and Jobs Act of 2017 and [to] provide any new rate schedules that may be appropriate under the revised financial circumstances of the utility.”
- **Florida:** Florida Public Service Commission established a generic docket “to investigate and adjust rates for 2018 tax savings.”
- **Hawaii:** Public Utilities Commission opened a proceeding “to investigate the impacts of the Tax Cuts and Jobs Act of 2017” on certain regulated utilities.
- **Indiana:** Indiana Utility Regulatory Commission ordered a utility company in a pending case to increase rates to “update any schedules submitted in this proceeding that are impacted by the [Tax Cuts and Jobs] Act.”
- **Iowa:** Iowa Utilities Board initiated an investigation “to gather information concerning the effect of the [Tax Cuts and Jobs Act] on utilities that are subject to rate regulation by the Board...to determine whether the retail rates of each utility are still just and reasonable.”
- **Kentucky:** Kentucky Public Service Commission ordered “investigations into the impacts of the recent corporate tax rate reduction for each of the five utilities named as parties to this case;” Louisville Gas & Electric Company and the Kentucky Utilities Company agreed to pass almost \$180 million in savings to customers.
- **Maryland:** Baltimore Gas & Electric announced plans to pass \$82 million in tax savings to customers.
- **Massachusetts:** Eversource Electric in Massachusetts agreed to pass \$56 million in savings to its 1.4 million customers, just months after the company had been approved for a \$37 million increase.

- **Michigan:** Michigan Public Service Commission ordered utilities to “apply regulatory accounting treatment, which includes the use of regulatory assets and regulatory liabilities, for all impacts resulting from the Tax Cuts and Jobs Act of 2017” and to “outline the preferred method to flow the benefits of those impacts to ratepayers.”
- **New Mexico:** New Mexico Public Regulation Commission ordered a utility to “make an adjustment to the illustrative cost of service for the [] rate increases to account for the following changes to the calculation of [] corporate income taxes and cost of debt.”
- **Oregon:** The Public Utility Commission of Oregon is receiving applications from regulated electric and natural gas utilities to provide savings to their Oregon customers due to the recently passed tax reform legislation. These filings request the Commission to authorize deferrals to track the changes in tax obligations so that future savings may be reflected in rates.
- **Utah:** Public Service Commission of Utah opened dockets “to investigate the revenue requirement impacts of the new federal tax legislation....”
- **Washington:** Washington Utilities and Transportation Commission directed “regulated companies to track federal tax savings resulting from the passage of the federal Tax Cuts and Jobs Act to ensure those savings will benefit utility customers.”
- **Wyoming:** Public Service Commission of Wyoming ordered that the “currently approved rates of each public utility and telecommunications company charged for services rendered on and after January 1, 2018, shall be subject to refund and adjustment commensurate with the difference between its federal income tax liability under the law in effect on December 31, 2017, and the law in effect on and after January 1, 2018.”

III. CONCLUSION

As the PUCO continues navigating the process of passing tax relief onto customers, OMAEG will remain updated on how similar processes are developing around the country in order to most effectively advocate for the necessity of the benefits of the TCJA being passed onto ratepayers.

CARPENTER LIPPS & LELAND LLP

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COLUMBUS, OHIO 43215

MEMORANDUM

TO: The Ohio Manufacturers' Association Energy Group

FROM: Kimberly W. Bojko, Carpenter Lipps & Leland LLP

DATE: January 10, 2017

SUBJECT: Summary of FERC Order Terminating the Notice of Proposed Rulemaking and Establishing Additional Procedures

On January 8, 2018, the Federal Energy Regulatory Commission (FERC) issued an Order terminating the Notice of Proposed Rulemaking (NOPR) in FERC Docket No. RM18-1-000. The NOPR was submitted to FERC by the Secretary of the Department of Energy (DOE) and concerned a proposal to subsidize failing generators in the name of ensuring grid reliability and resiliency (Proposed Rule). On October 23, 2017, and again on November 7, 2017, OMAEG submitted comments opposing this rule. In its Order, FERC adopted the position of OMAEG, other customer groups, and many others that the Proposed Rule was contrary to FERC's longstanding commitment to market-based solutions and did not satisfy the legal requirements for the creation of a new rule. Ultimately, FERC determined that it had "no choice but to terminate" the docket for the Proposed Rule.

The Record Did Not Support the Existence of a Reliability or Resiliency Problem

The Proposed Rule would have used a consumer-funded subsidy to prop up failing coal and nuclear generators that are no longer economically viable on their own. The Proposed Rule attempted to justify this bailout by arguing that the loss of the generation supplied by these failing plants would jeopardize grid resiliency and reliability. FERC, however, correctly noted that despite the extensive comments that were submitted on the Proposed Rule by the Regional Transmission Organization (RTO) and Independent System Operator (ISO), the RTOs/ISOs did not point to a single instance (either in the past or in the future) where the retirement of a coal or nuclear generator threatened (or would threaten) grid reliability or resiliency. FERC concluded that although the goal of grid reliability and resiliency is a worthy one, the record in this case simply does not support the existence of a reliability or resiliency problem. And even if it had, the Proposed Rule did not put forth a solution that would actually solve that problem.

FERC also noted that it had consistently achieved its objectives by relying on market-based solutions and not by deploying subsidies or bailouts for some sectors of the grid. Finally, FERC recognized that the record failed to demonstrate that the Proposed Rule would not be unduly

discriminatory or preferential. As one Commissioner stated in a concurring opinion, the record did not support the need for “a multi-billion dollar bailout” to coal and nuclear generators because the record contained no evidence that affording such a bailout to these generators would meaningfully improve grid resilience.

FERC’s Alternative Solution

FERC explained that it remains concerned with grid reliability and resiliency. But, rather than blindly adopt a proposal that may well have constituted a solution that does not work to a problem that does not exist, FERC chose to pursue a balanced approach to addressing reliability and resiliency concerns by first determining to what extent, if any, a problem exists, and then seeking out solutions. Understanding that reliability and resiliency challenges may vary across different regions of the country, FERC first put forward a uniform definition of resilience (as many comments, including OMAEG’s, pointed out that no such definition existed) and then asked RTOs and ISOs to respond to a number of questions about their resiliency challenges within 60 days. After those comments are submitted, OMAEG and other parties will have the opportunity to respond with their own comments and concerns.

FERC’s Decision Benefits OMAEG Members and All Electric Consumers

FERC’s Order rejecting the Proposed Rule and terminating the NOPR will benefit OMAEG members and other consumers by not implementing a rule that would force consumers to fund a bailout to certain, select generators that can no longer compete in the market. The Order defined resiliency and set forth a process to explore through the RTOs/ISOs, on a regional basis, whether a problem even exists. The Order also appears to be stating that if a problem does in fact exist, FERC will look for market solutions on a regional basis.

Consistent with OMAEG’s comments, the Order recognized FERC’s support, for more than two decades, for markets and market-based solutions, citing those as a core tenet of FERC policy. The Order also explained that in regions with organized markets, FERC has largely adopted a pro-market regulatory model, relying on competition to approve market rules and procedures that, in turn, determine the prices for energy, capacity, and ancillary services products. The Order noted that under a pro-competition, market-driven system, owners of generating facilities that are unable to remain economic in the market may take steps to retire or mothball their generating facilities.

Conclusion

FERC recognized the merits of the comments submitted by OMAEG and many others and rejected a rule that would have had a negative impact on all but a few select generators that can no longer keep up with market demands. As a result, OMAEG members will be spared the obligation of subsidizing failing generators as part of an inefficient solution to an ill-defined problem.

CARPENTER LIPPS & LELAND LLP

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COLUMBUS, OHIO 43215

MEMORANDUM

TO: The Ohio Manufacturers' Association Energy Group

FROM: Kimberly W. Bojko, Carpenter Lipps & Leland LLP

DATE: January 12, 2018

SUBJECT: Oral Arguments Before the Public Utilities Commission of Ohio Regarding Net Metering Rules

On January 10, 2018, the Public Utilities Commission of Ohio (PUCO) held oral arguments regarding its review of the net metering rules in Case No. 12-2050-EL-ORD. Several parties, including utilities, environmental groups, and the Office of the Ohio Consumers' Counsel (OCC), were afforded an opportunity to present oral arguments in front of the PUCO regarding their requests to revise net metering rules adopted by the PUCO in its November 8, 2017 Order. Commissioners and Staff questioned these groups about their proposals over the course of several hours.

Throughout the various arguments, a number of issues that affect OMAEG members were discussed. In particular, the presentations and questions covered the form and amount of compensation available to net metering customers for excess generation, the availability of net metering tariffs to shopping customers, and the rules governing which facilities qualify for net metering. Additionally, OCC, along with other parties, suggested that the PUCO use the upcoming PowerForward Conference and future rule reviews to gather additional information on these matters.

Compensation for Excess Generation

In the November rules, customers are permitted to generate up to 120% of their electricity needs through net metering and are eligible for a credit for electricity generated in excess of their own consumption up to that 120% threshold. During oral arguments, the parties discussed both the establishment of the 120% cap on excess generation and the calculation of the credit consumers will receive for said generation.

The utilities and IGS advocated for lowering the cap to 100%. This would prohibit customers from ever receiving compensation for excess generation that they put back on the grid. As the environmental groups pointed out, this is an impractical approach because it is impossible for any customer to size their generation to perfectly align with their consumption. Moreover, the utilities benefit from the excess generation put back on the grid because they use the generation to serve other customers, who then pay the utility for that electricity. Thus, it is reasonable to compensate customers for that excess generation.

The parties also discussed the amount of compensation customers should receive for the generation that they produce and put on the grid. The November rules allow compensation for only the value of the energy component of the generation, and do not afford any value for the capacity component. The environmental groups pointed out, however, that the General Assembly has made it clear that net metering customers should be treated like all other customers, and thus, their compensation should include both energy and capacity components. Additionally, those groups argued that the utilities receive capacity value from excess generation and should compensate their net metering customers for that value. The utilities responded that the excess generation does not provide capacity value because the capacity is not sold and doesn't reduce the capacity obligations of non-net metering customers.

Availability of Net Metering for Shopping Customers

Another issue discussed was the availability of net metering for customers who take service from a CRES provider. In the November rules, shopping customers are not entitled to the same credits for excess generation as customers who take service under the Standard Service Offer (SSO). IGS argued that shopping customers should not be discriminated against by the rules. Meanwhile, AEP advanced statutory and policy arguments for denying shopping customers the same credits afforded to SSO customers.

Permissible Net Metering Locations

Finally, arguments were heard on the required location of any customer-sited generation used for net metering. The November rules required net metering facilities to be located on a customer-generator's premises or a contiguous lot, so long as the electric utility determines that using the contiguous lot is not unsafe or hazardous. One Energy argued that the rules should define contiguous to include lots separated by roads, easements, or other rights of way. One Energy noted that issues with rights of way exist on almost every customer's premises. One Energy further stated that allowing the utility to give ultimate approval of the use of such a lot for net metering infringes on private property rights and gives utilities unfettered discretion to create arbitrary standards on a case-by-case basis. On the other hand, DP&L and FirstEnergy argued that lots separated by easements or other rights of way should not be considered contiguous. All the utilities agreed that utility involvement in determining whether net metering on a contiguous lot is sufficiently safe was important.

Conclusion

The PUCO will take the oral arguments into consideration when rendering its decision adopting final net metering rules. We will continue to monitor the issues of importance to OMAEG members such as the applicability of the net metering rules to shopping customers, where the customer-sited generation may be built, and compensation received.

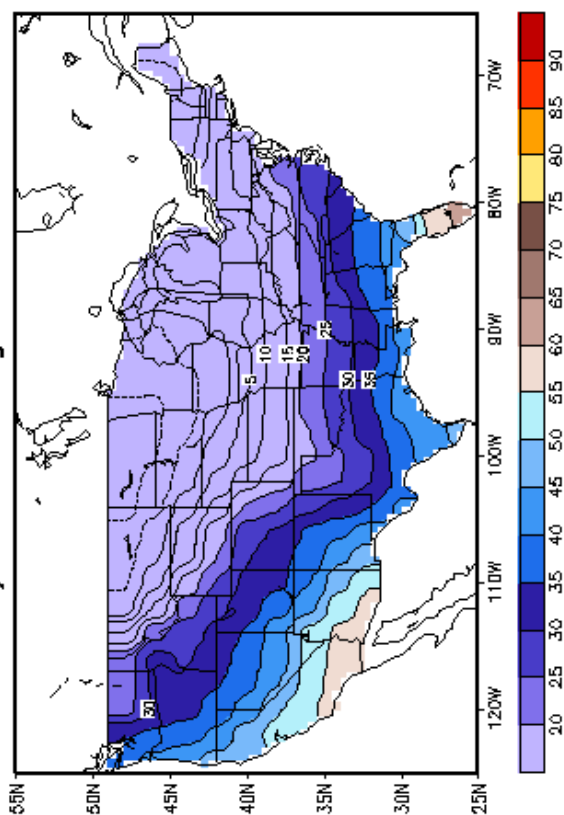
Electricity Market Update

February 2018

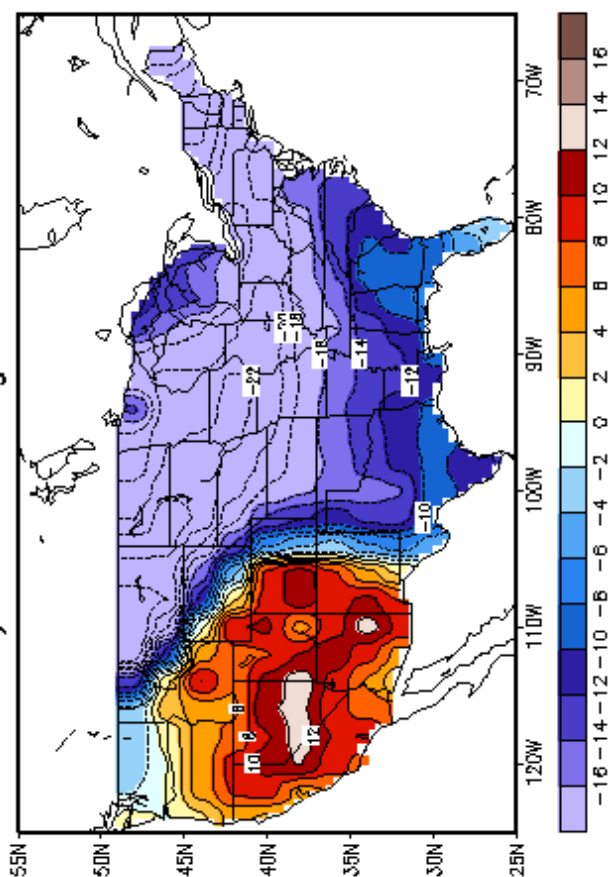


January Record Temperatures

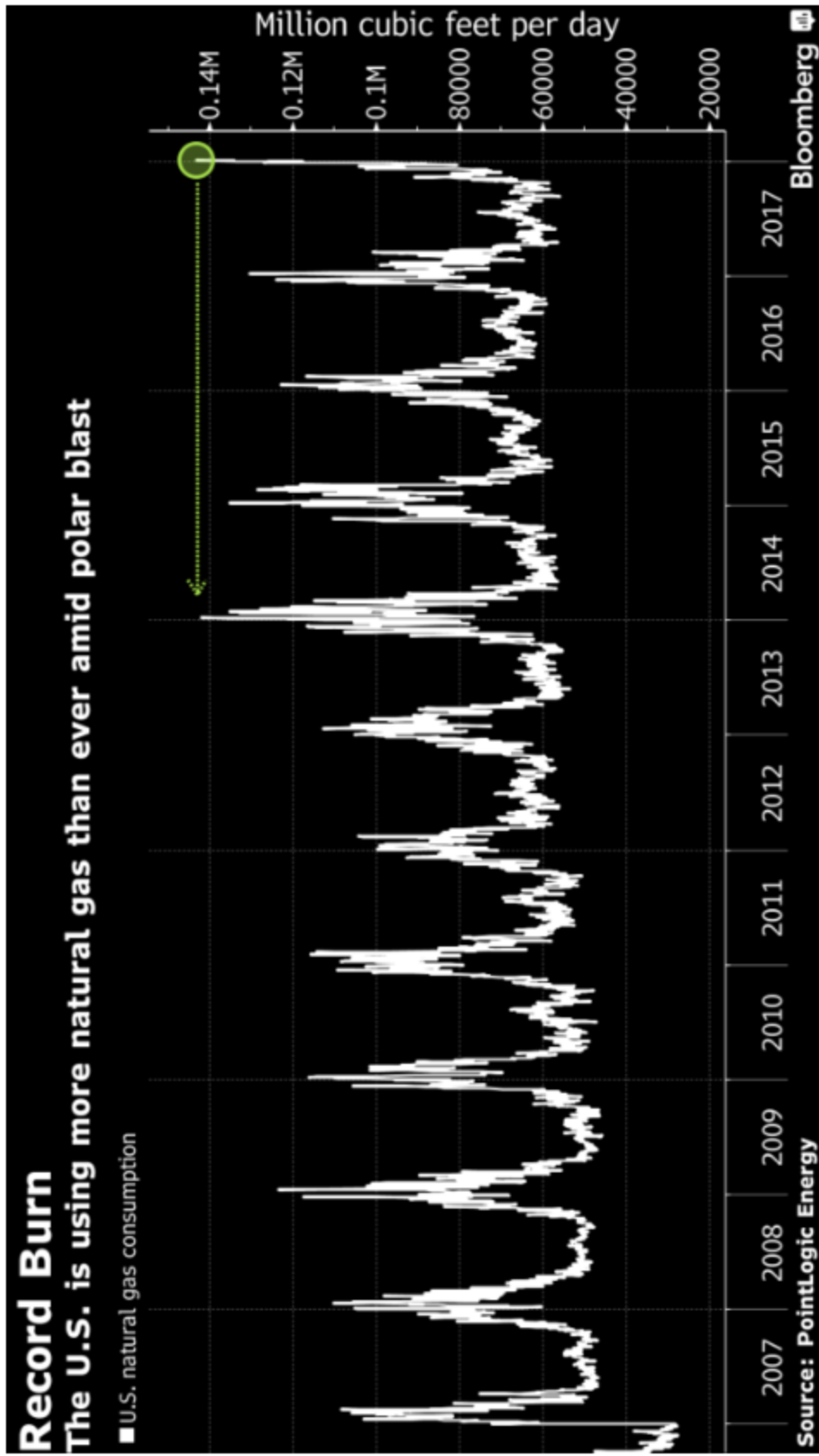
Mean Temperature (F)
5-day mean ending Jan 02 2018



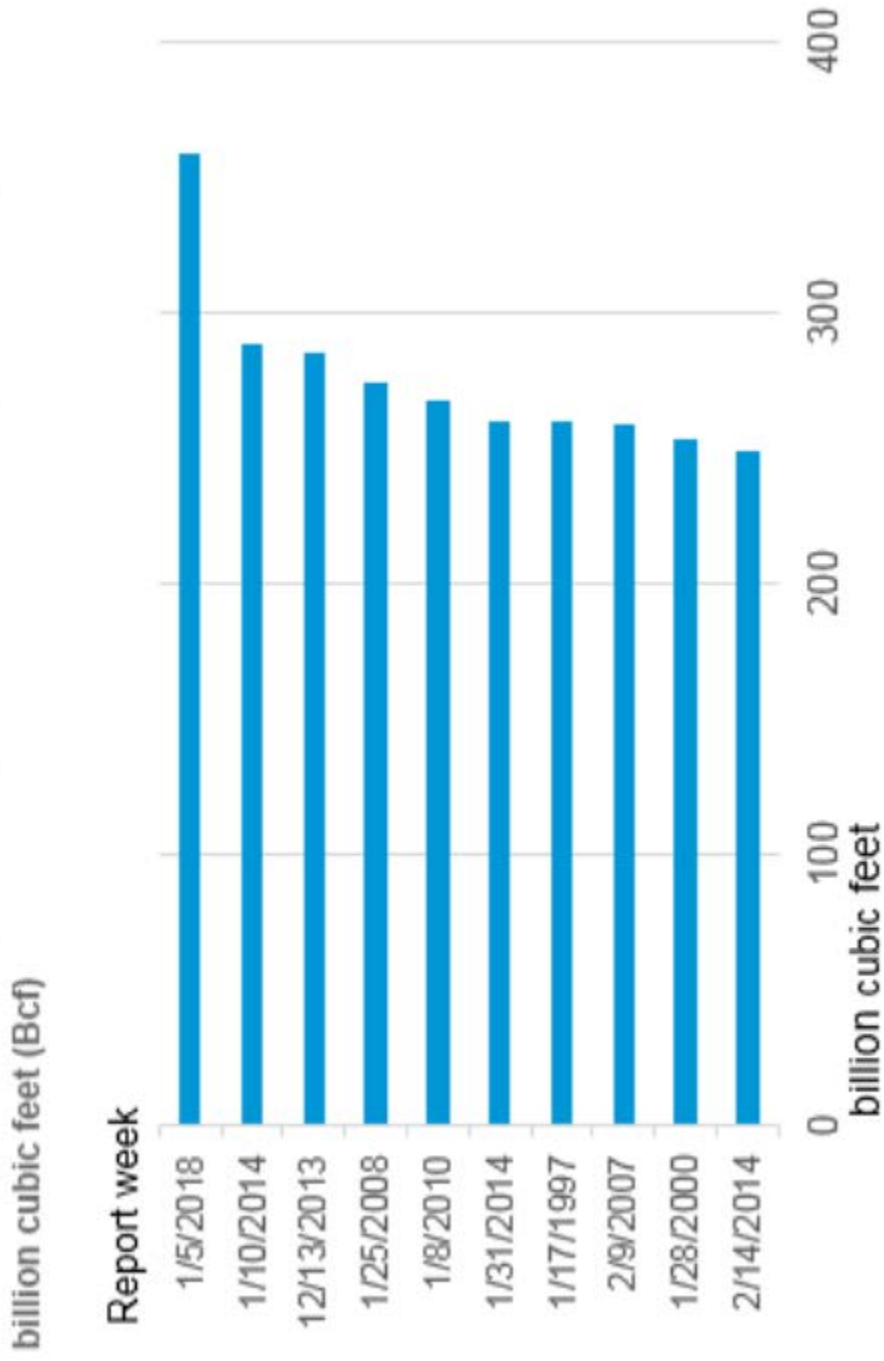
Mean Temp (F) Anomaly
5-day mean ending Jan 02 2018



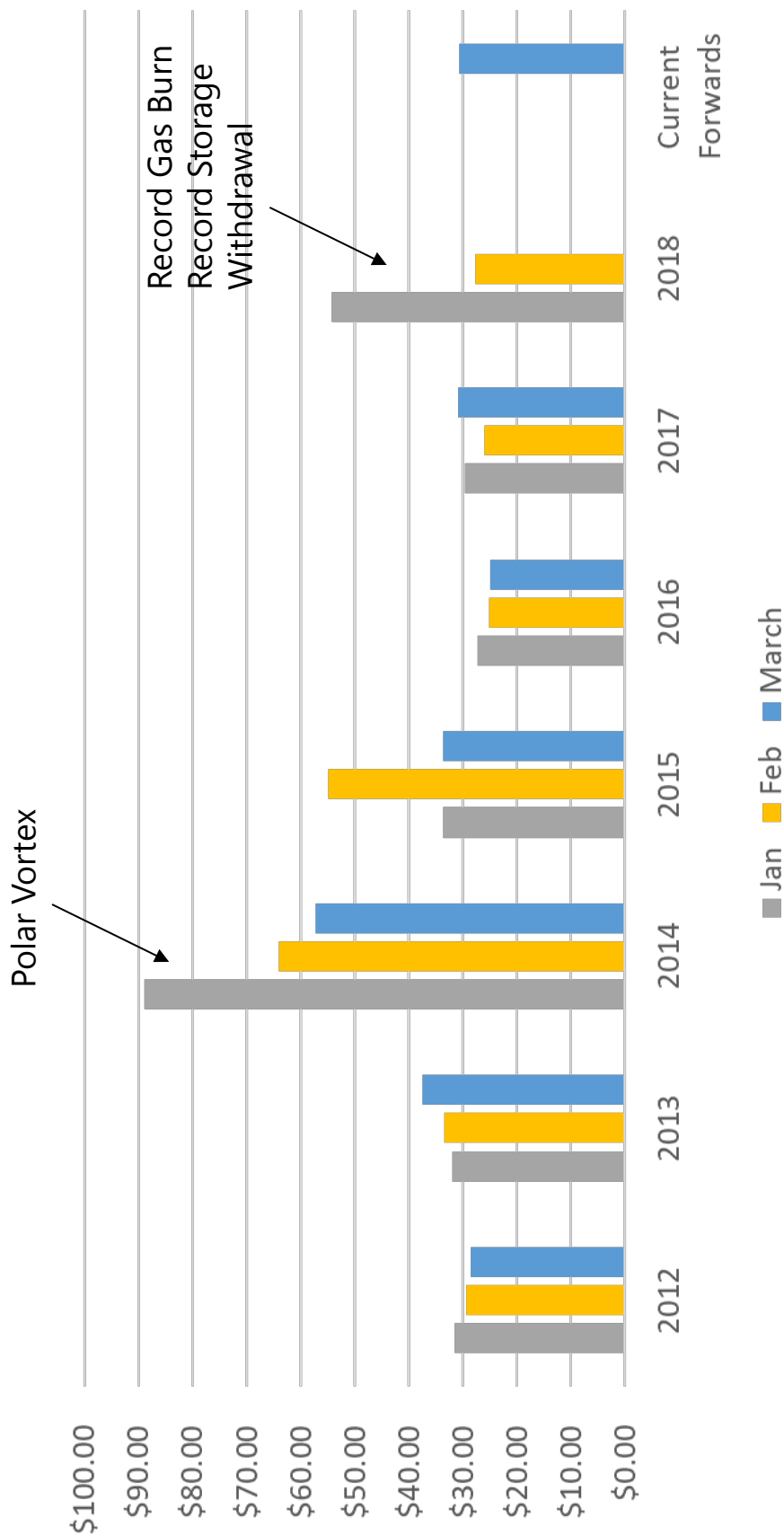
Record Daily Natural Gas Burn



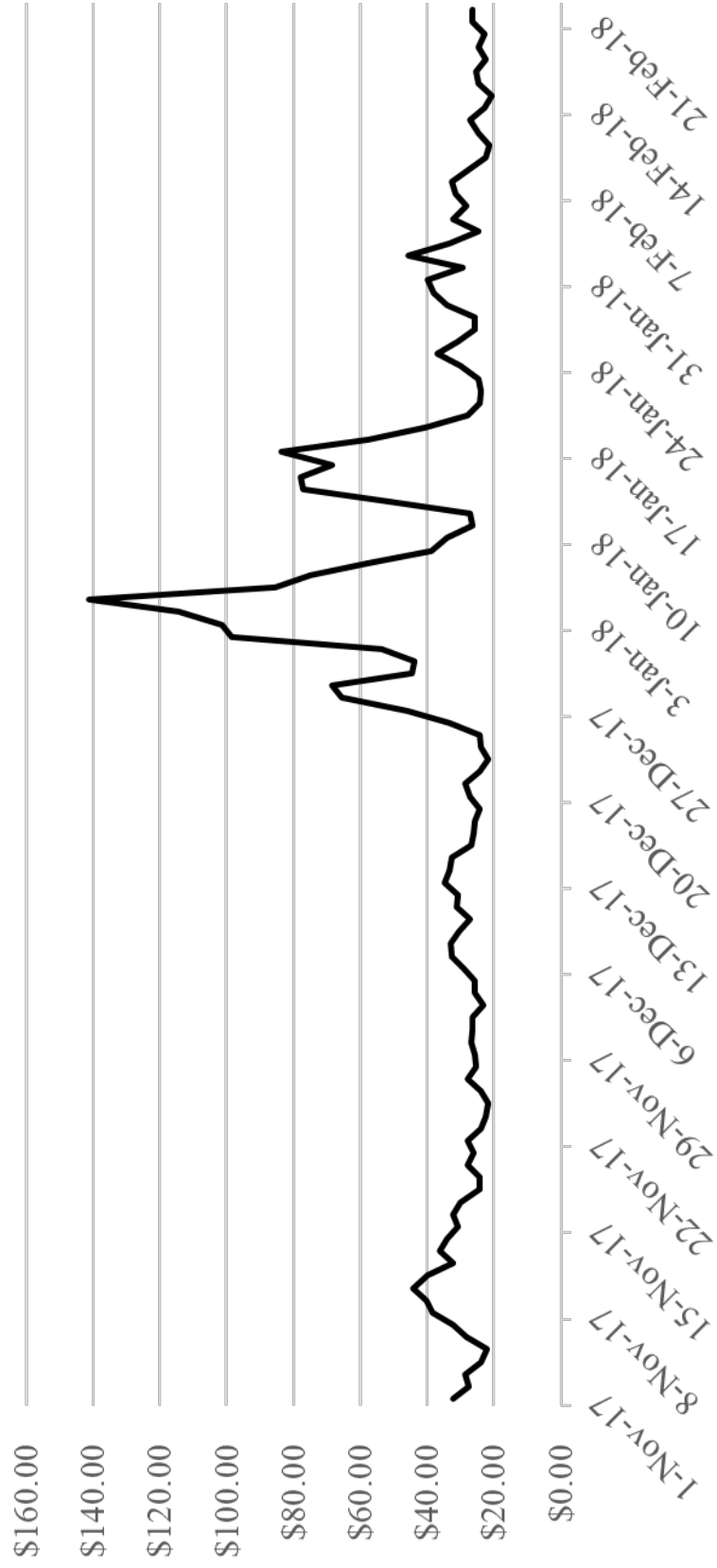
Ten Largest weekly storage withdrawals (1994-2018)



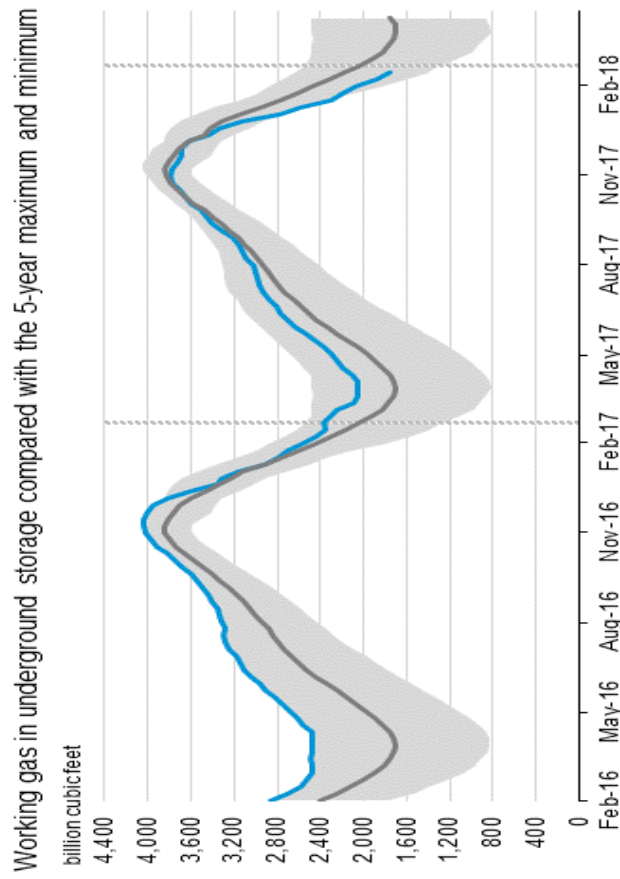
Day Ahead Index AEP Ohio



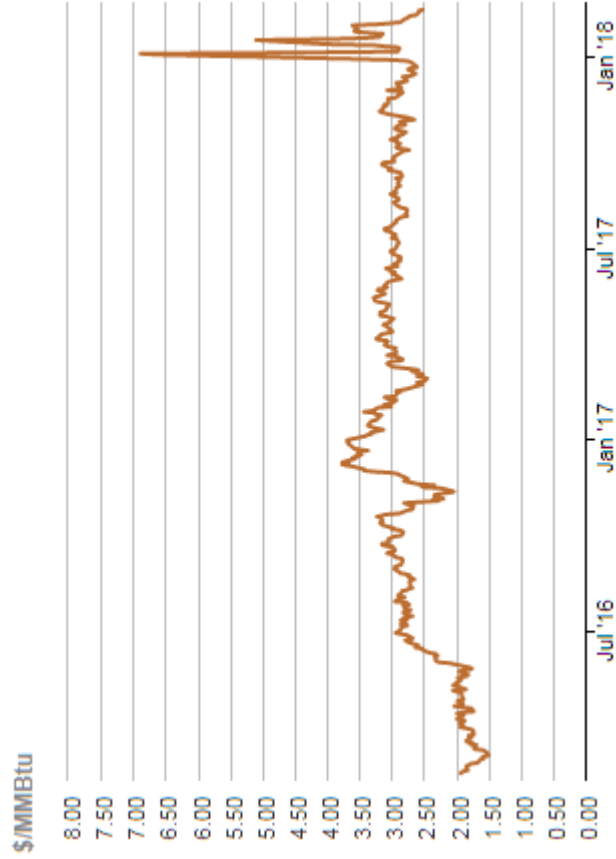
Day Ahead Index AEP Ohio



Natural Gas Storage and Spot Pricing

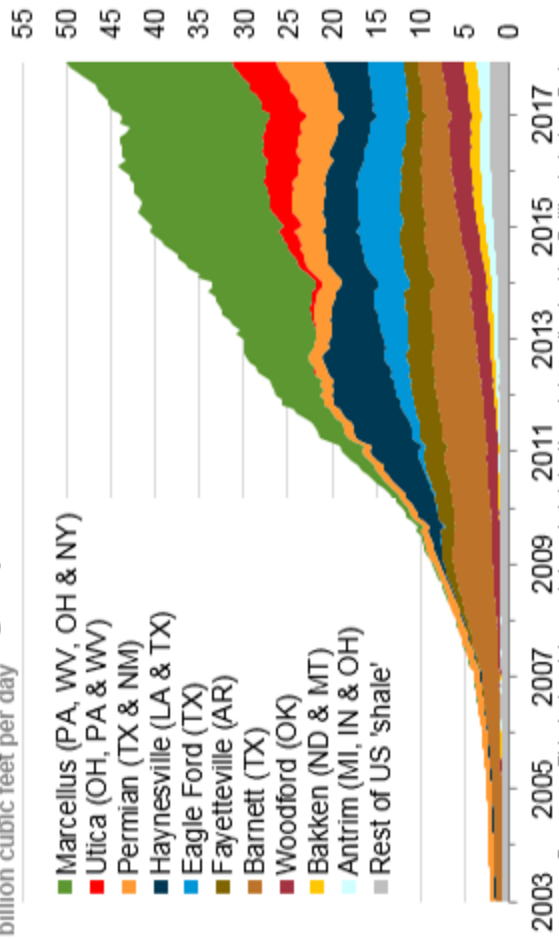


Natural gas spot prices (Henry Hub)



Natural Gas Production

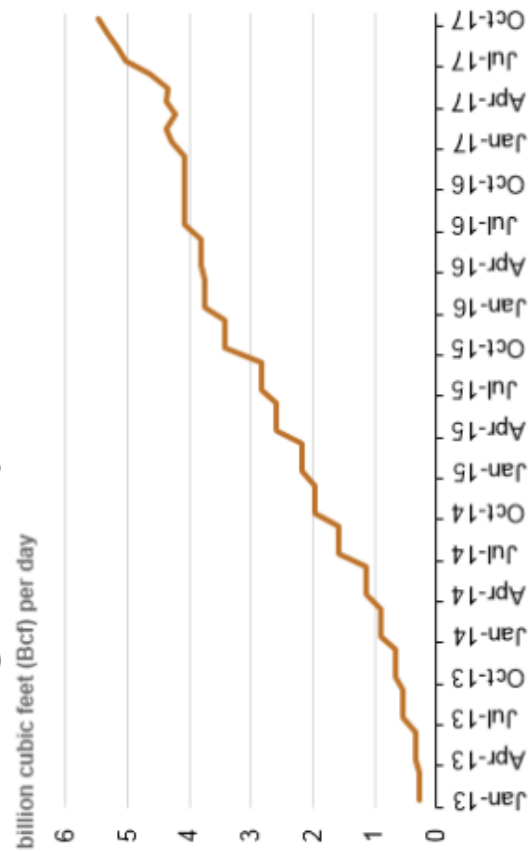
Monthly dry shale gas production
billion cubic feet per day



Sources: EIA derived from state administrative data collected by DrillingInfo Inc. Data are through December 2017 and represent EIA's official shale gas estimates, but are not survey data. State abbreviations indicate primary state(s).

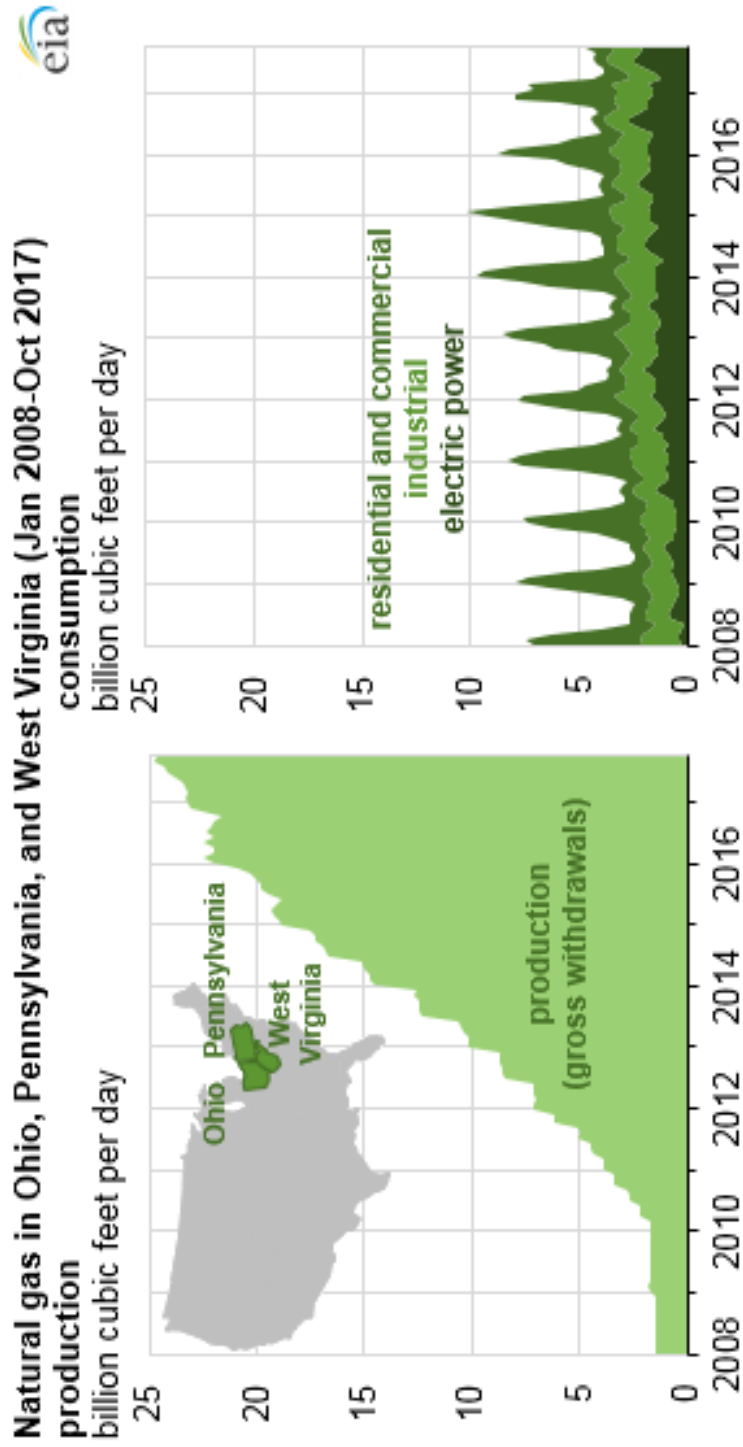


Ohio natural gas marketed production
billion cubic feet (Bcf) per day

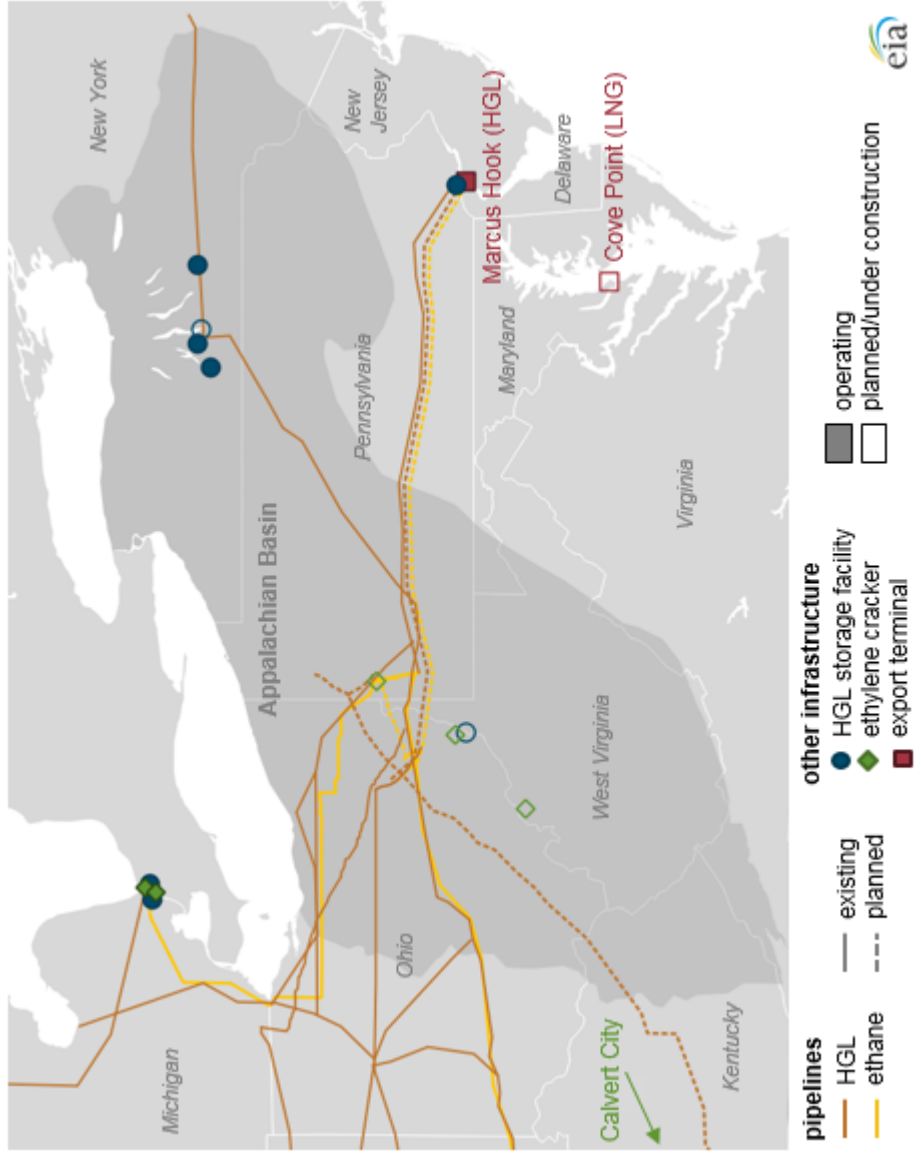


scioto energy

Natural Gas Supply and Demand

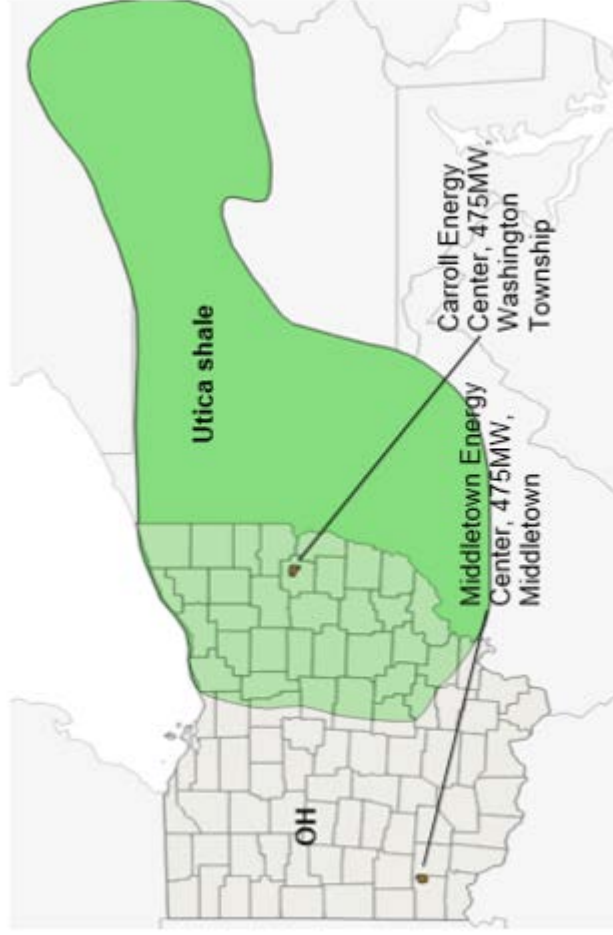


Hydrocarbon gas liquids infrastructure near Appalachian Basin



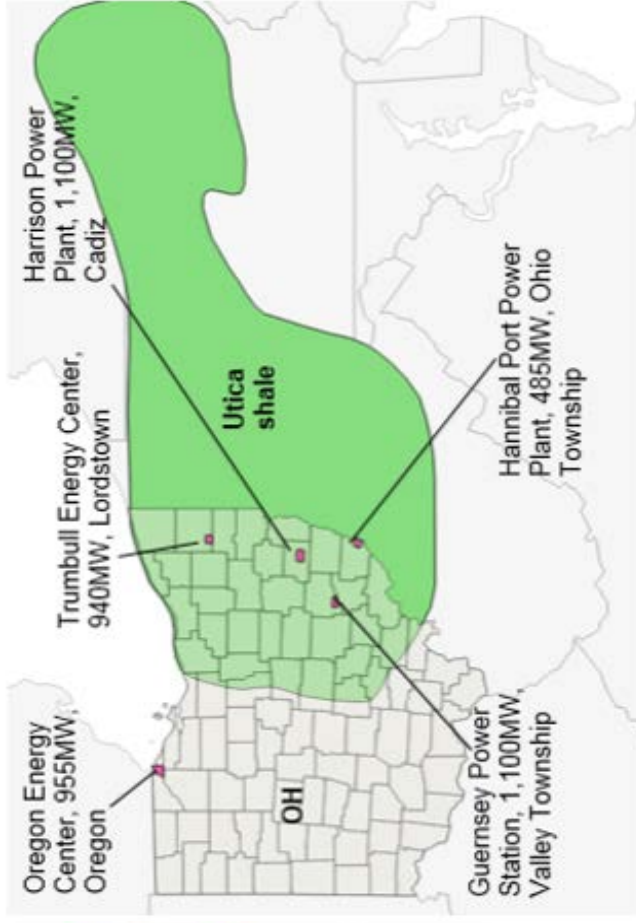
New Natural Gas Generation

Ohio gas-fired power plants under construction 2017-2018



eia Source: Ohio Public Utilities Commission and U.S. Energy Information Administration

Ohio gas-fired power plants approved and proposed in 2017



eia Source: Ohio Public Utilities Commission and U.S. Energy Information Administration

Ohio New Natural Gas Generation

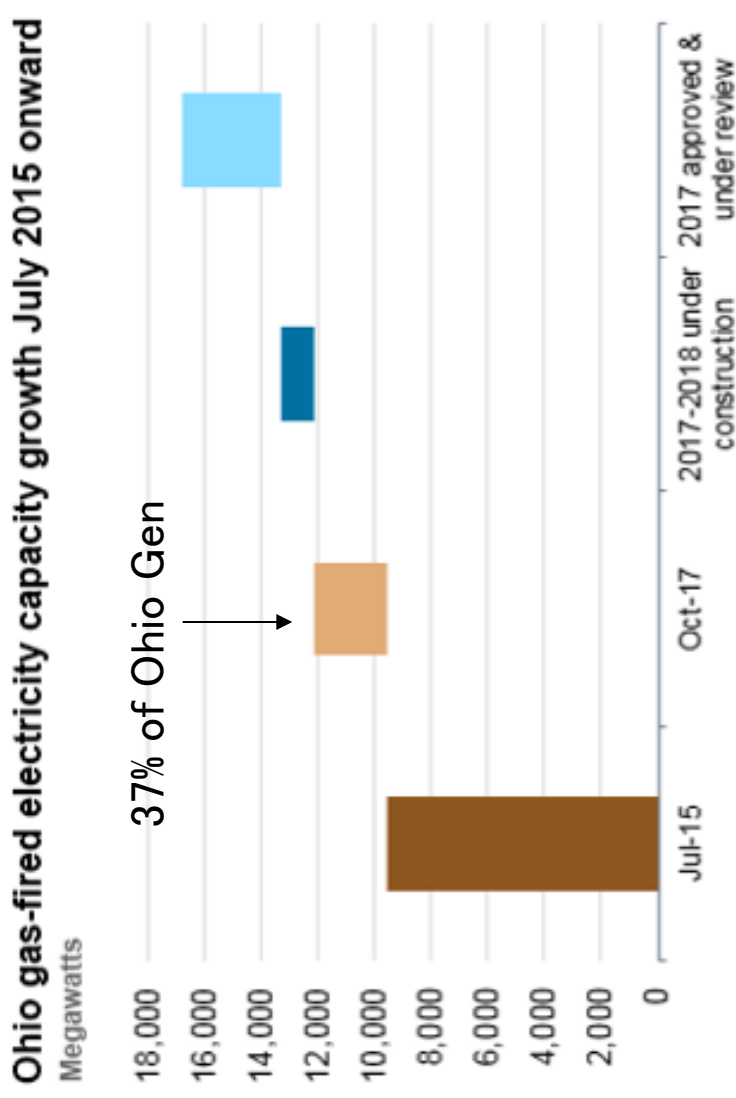
Total Ohio Gen
Oct 17 = 32,546 MW

- Coal 50%
- Nat Gas 37%
- Other 13%

Total Ohio Gen
Summer 2020 (assuming no retirements) = 37,046 MW

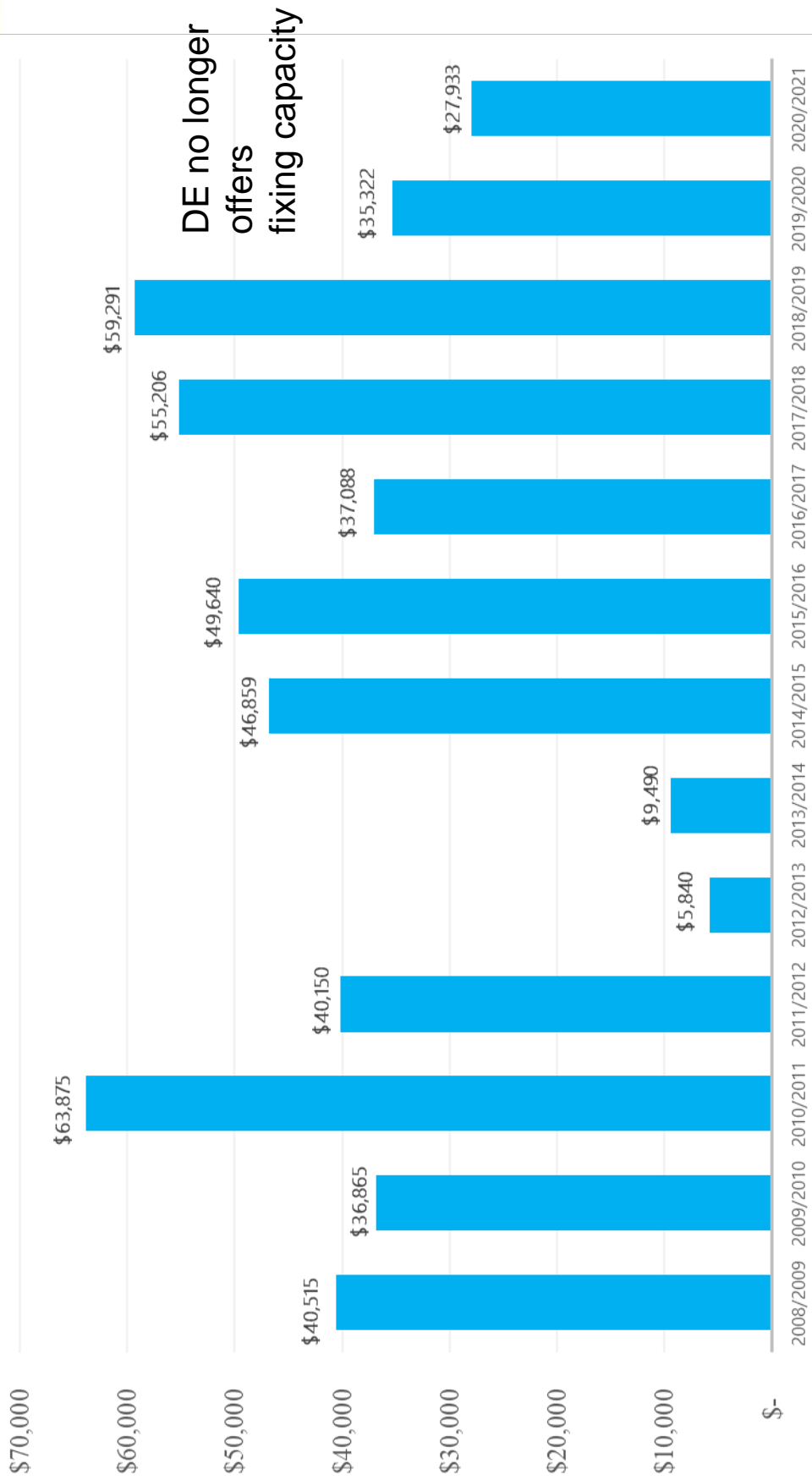
- Coal 44%
- Nat Gas 45%
- Other 11%

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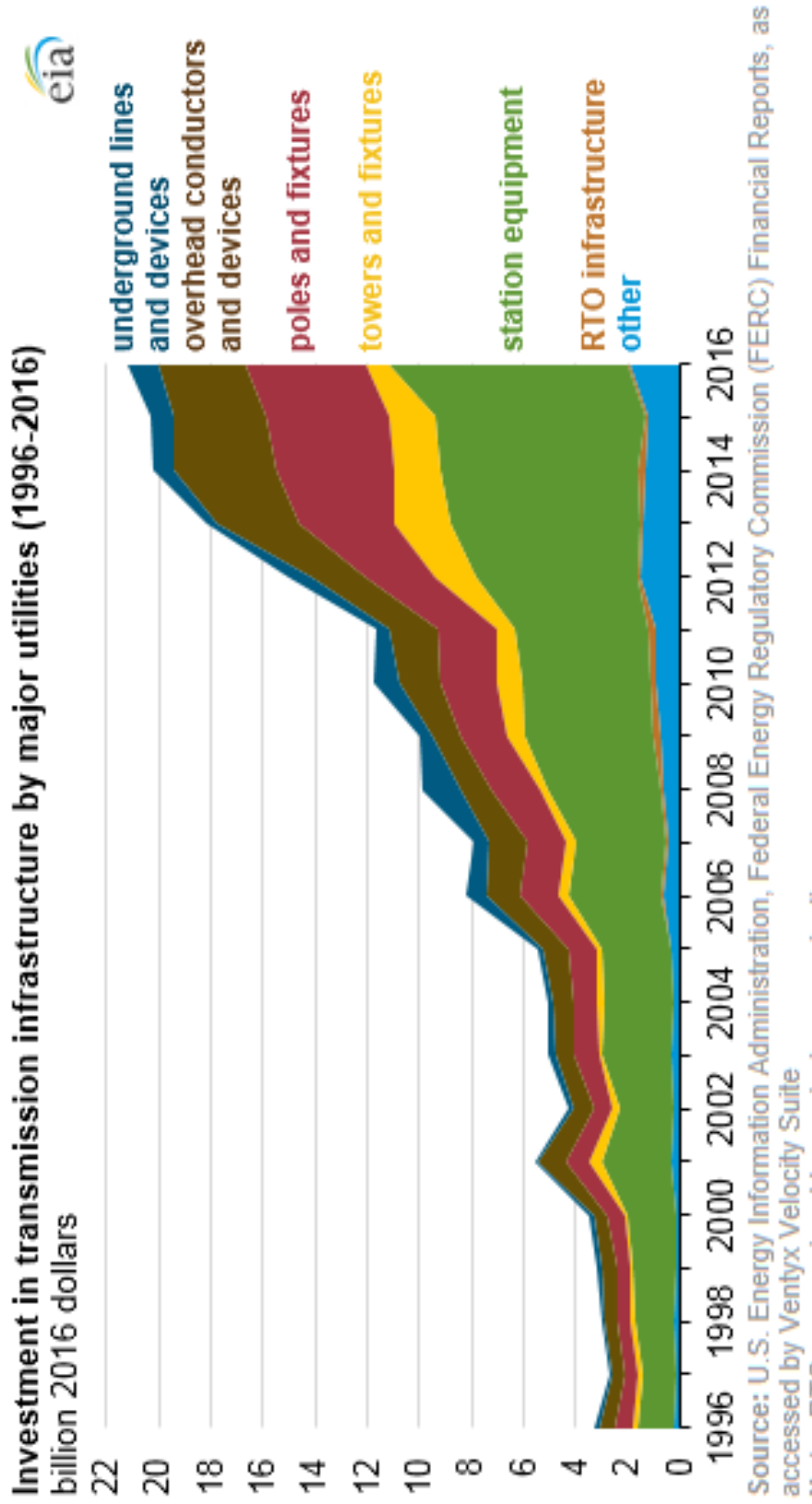


Source: U.S. Energy Information Administration and Ohio public utility commission

PJM Capacity Auction: AEP Ohio \$/MW-year

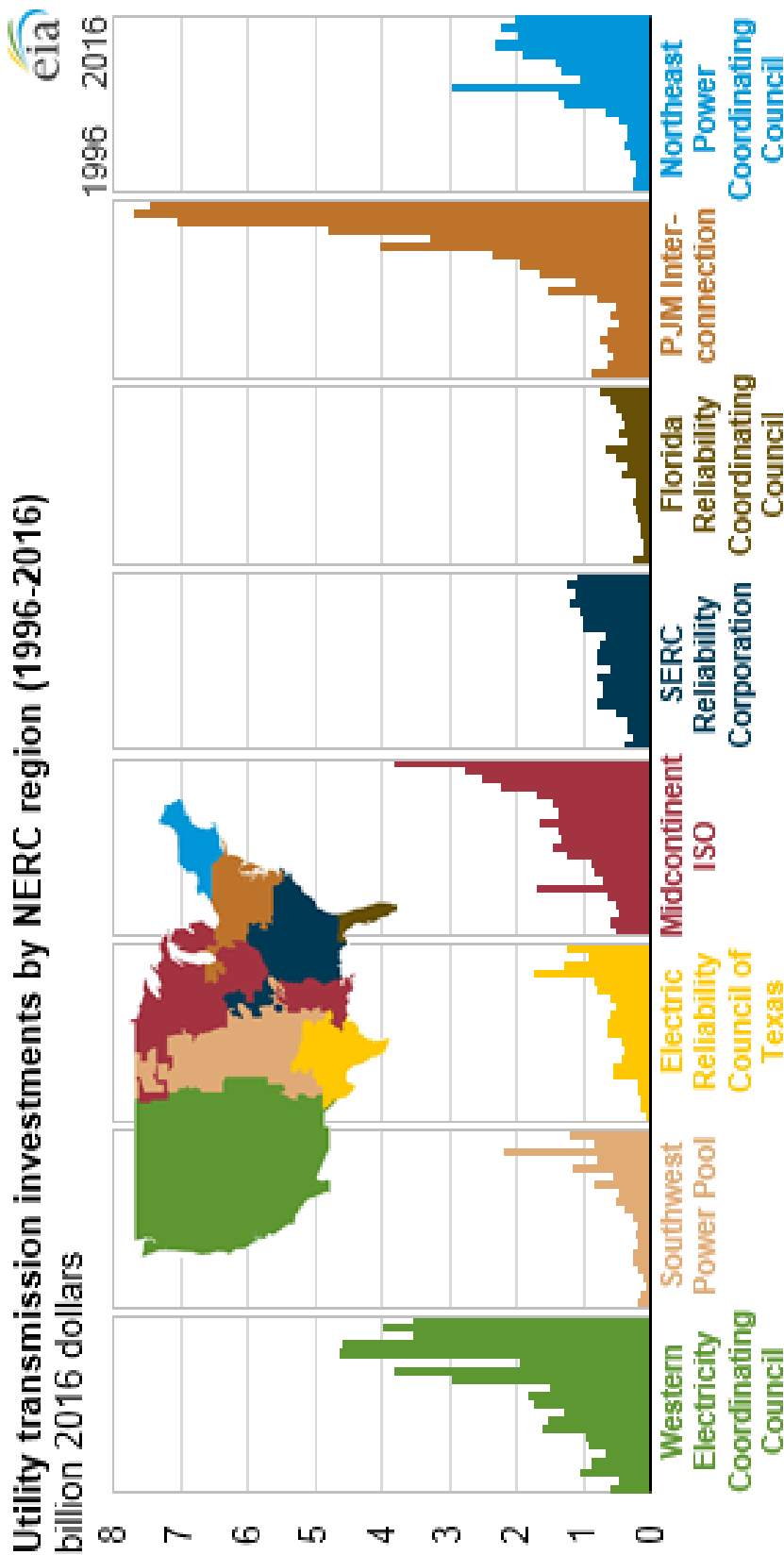


Transmission Spending



Transmission Spending

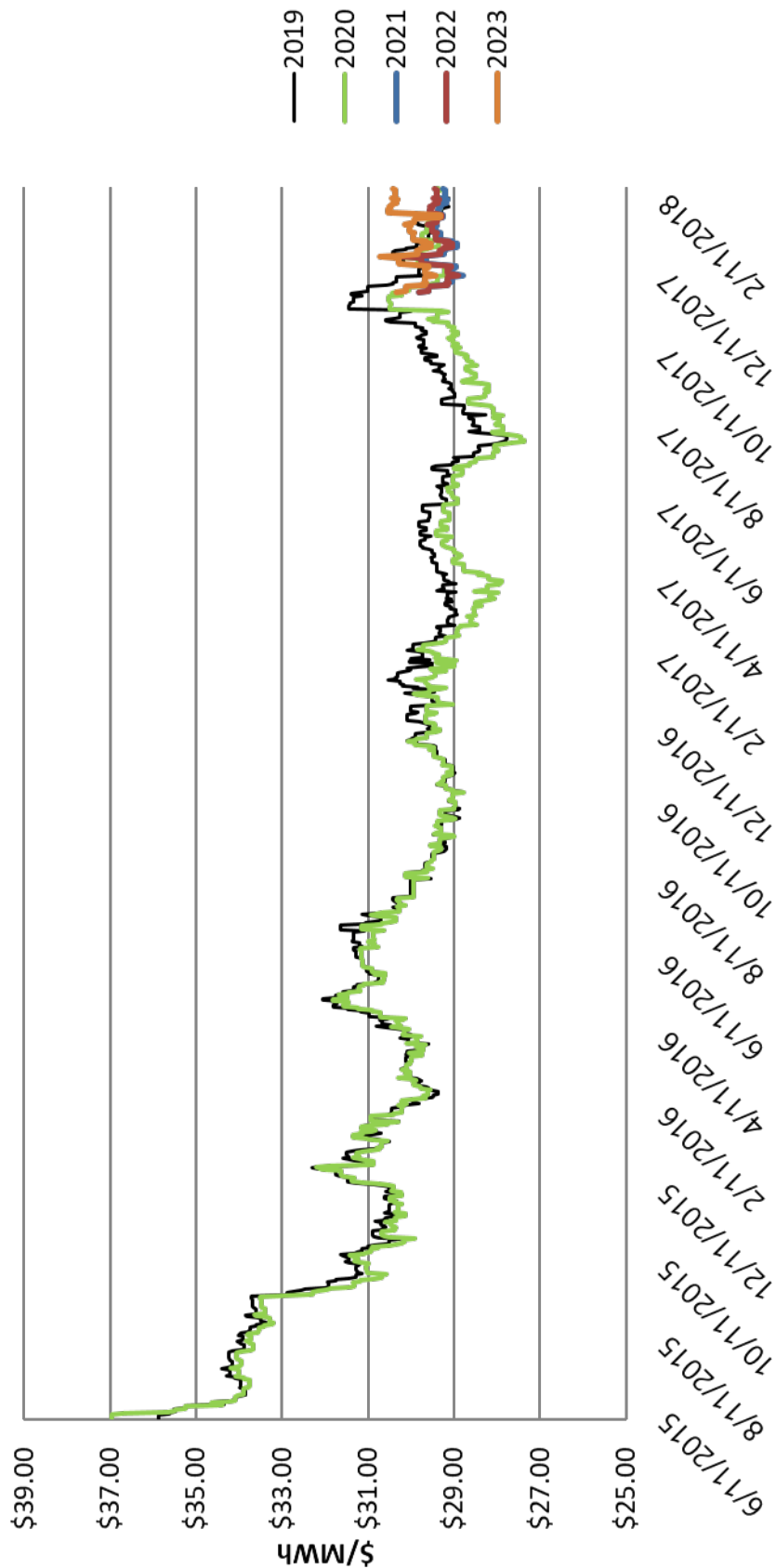
Utility transmission investments by NERC region (1996-2016)



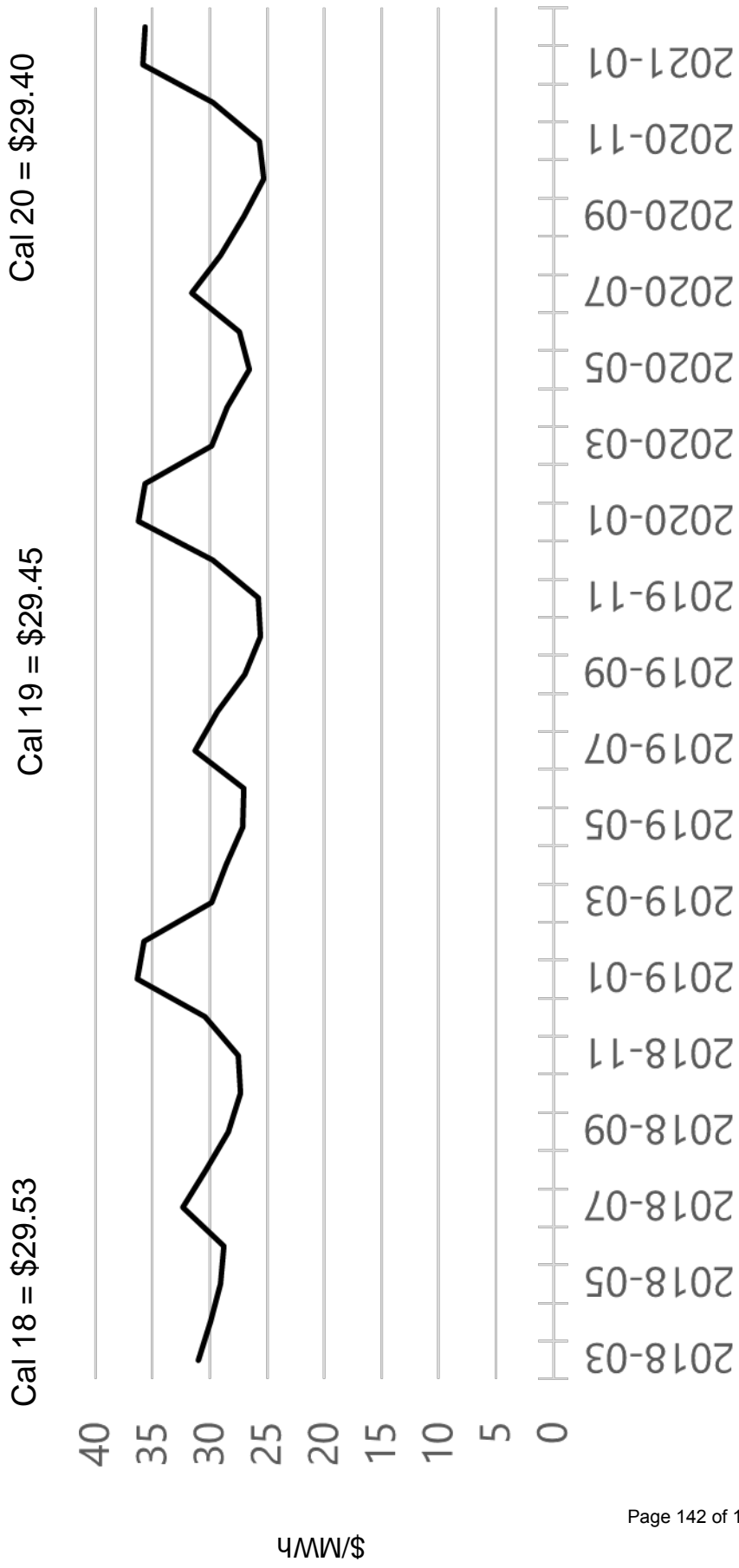
Source: U.S. Energy Information Administration, Federal Energy Regulatory Commission (FERC) Financial Reports, as accessed by Ventyx Velocity Suite



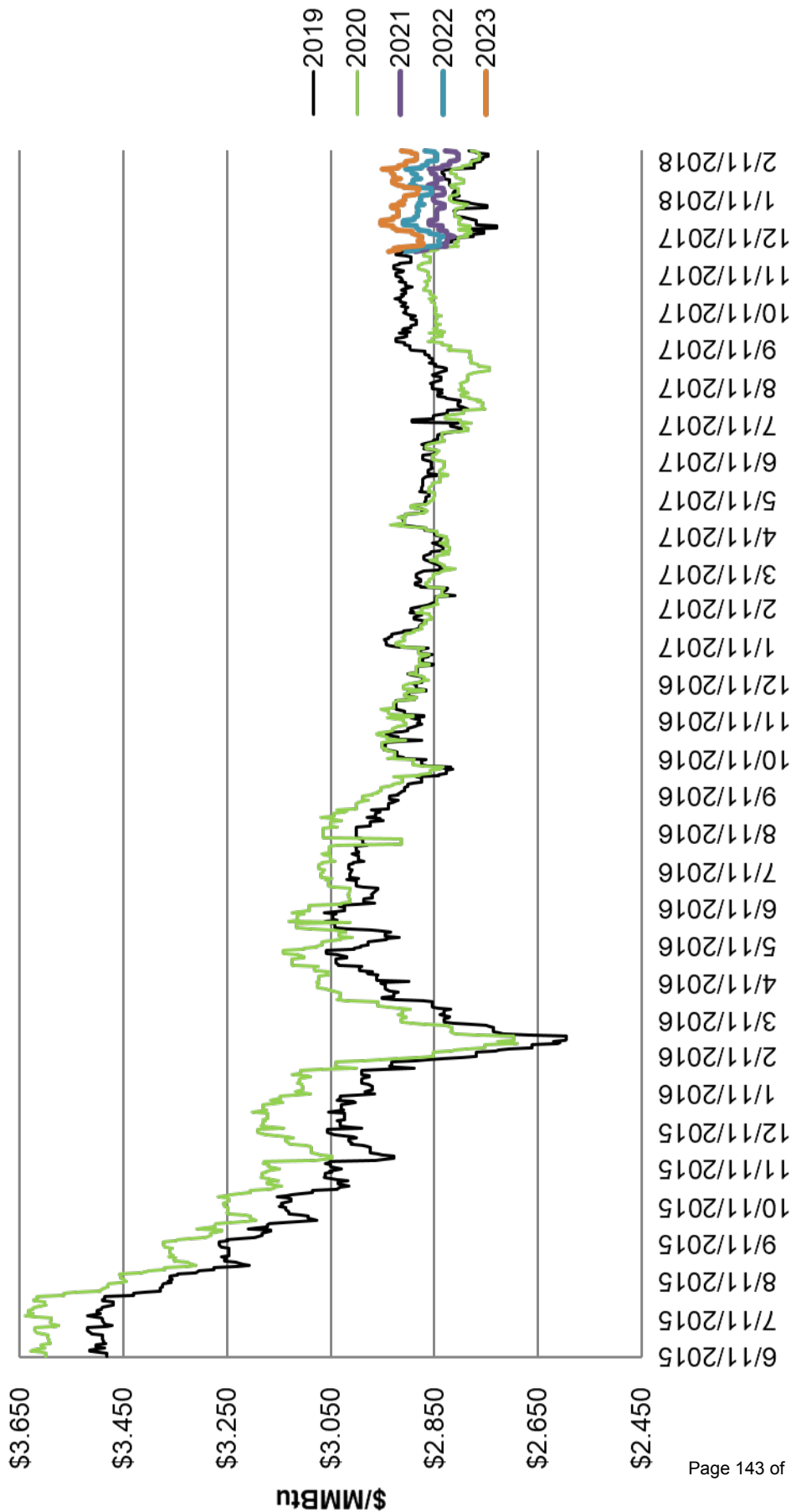
AEP/Dayton Hub Electric Forwards



AEP Ohio Electric Forwards



Natural Gas Futures



Natural Gas Update OMA Energy Committee

**Richard Ricks
NiSource
February 28, 2018**

Agenda

- **Summary**
- **Weather & Outlook**
- **Gas Storage & Pricing**
- **Gas Demand, Production & Rig Counts**
- **Recent Developments**

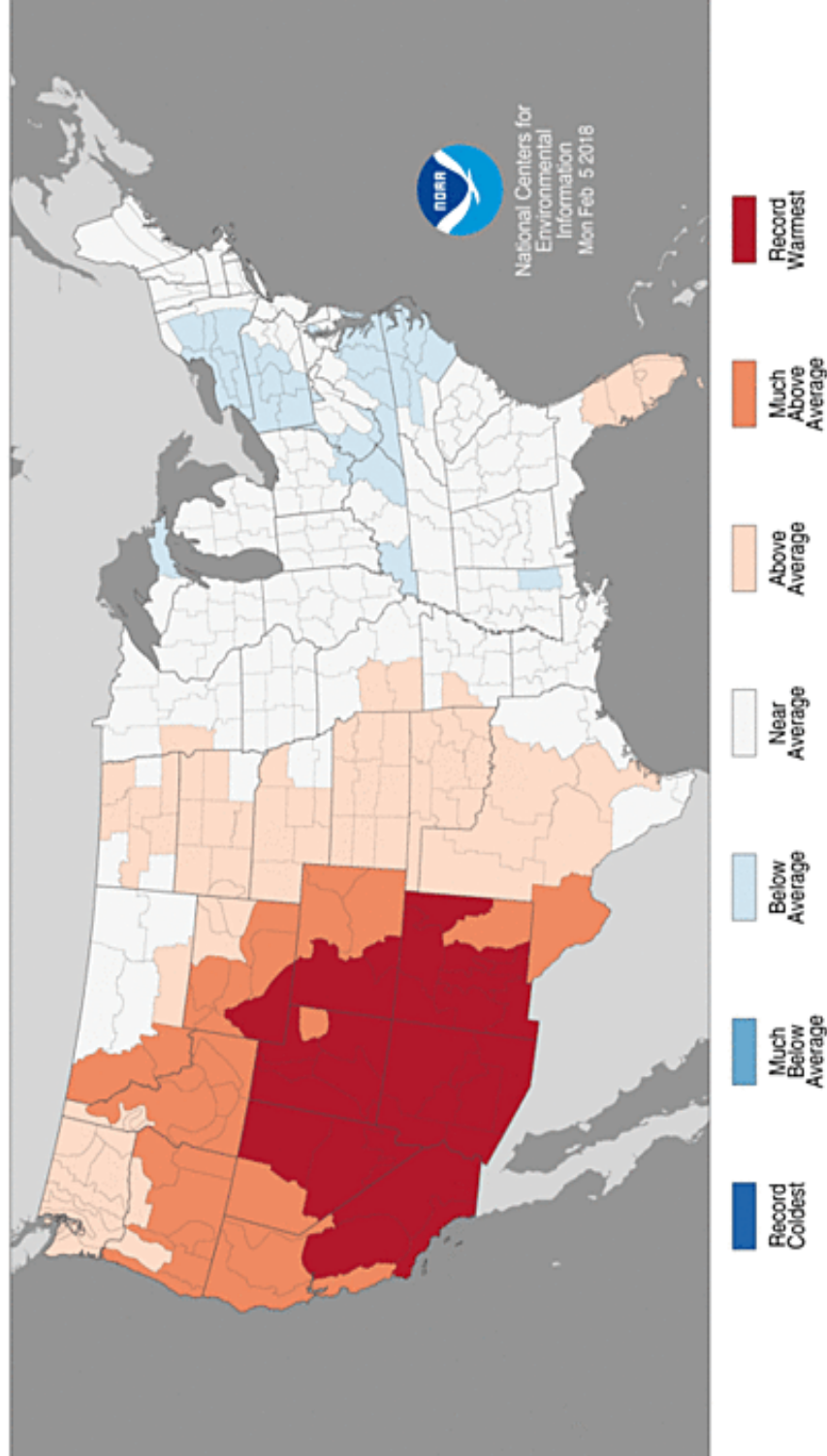
Summary

- **Natural gas pricing even lower**
- **Gas markets still pretty “Boring”**
- **Gas prices did get some excitement in January particularly in the East Coast area**
- **Some of the Utica/Marcellus pipeline projects are completed or nearing completion**

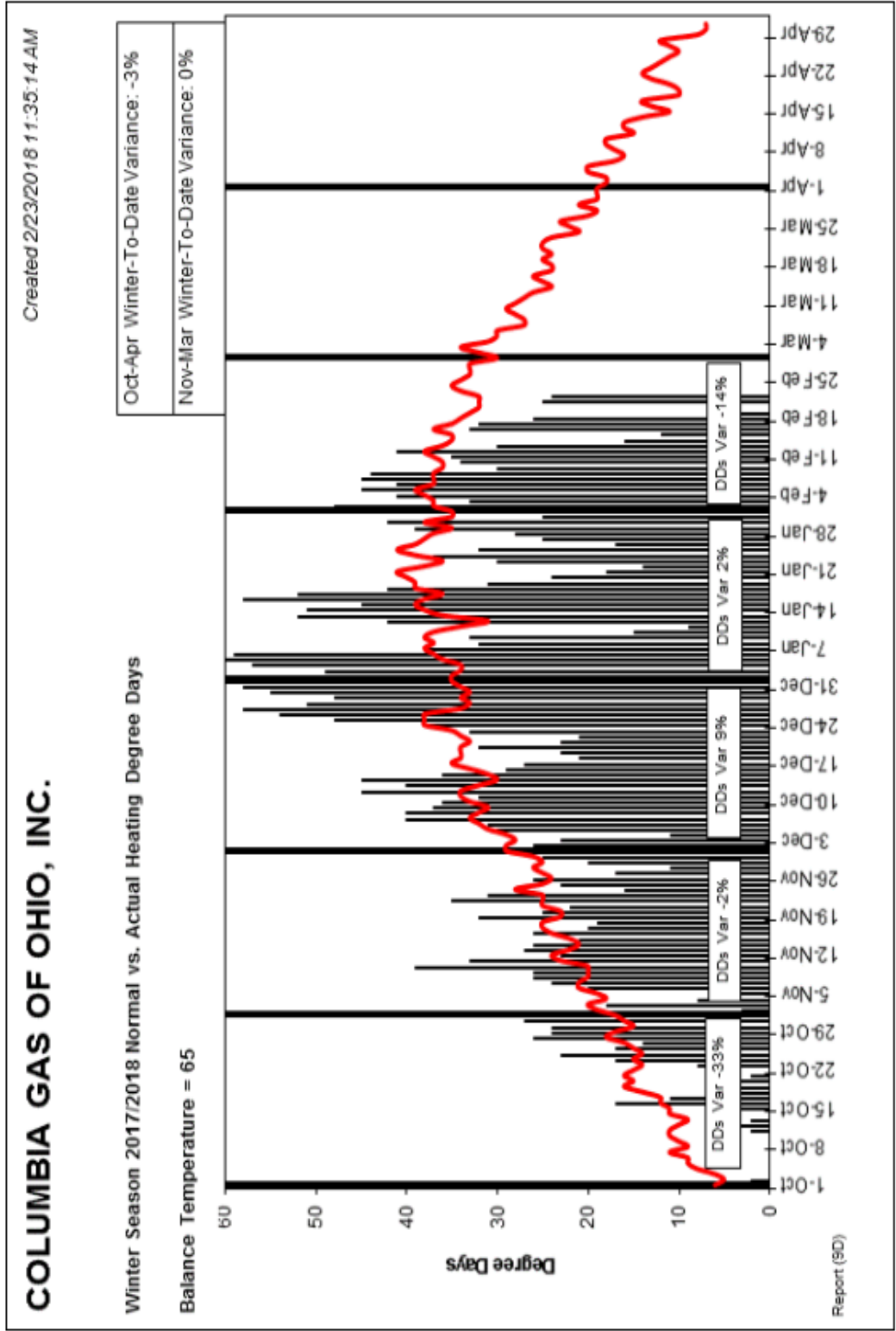
Weather & Outlook

17/18 Winter Average Temperatures – “Normal”

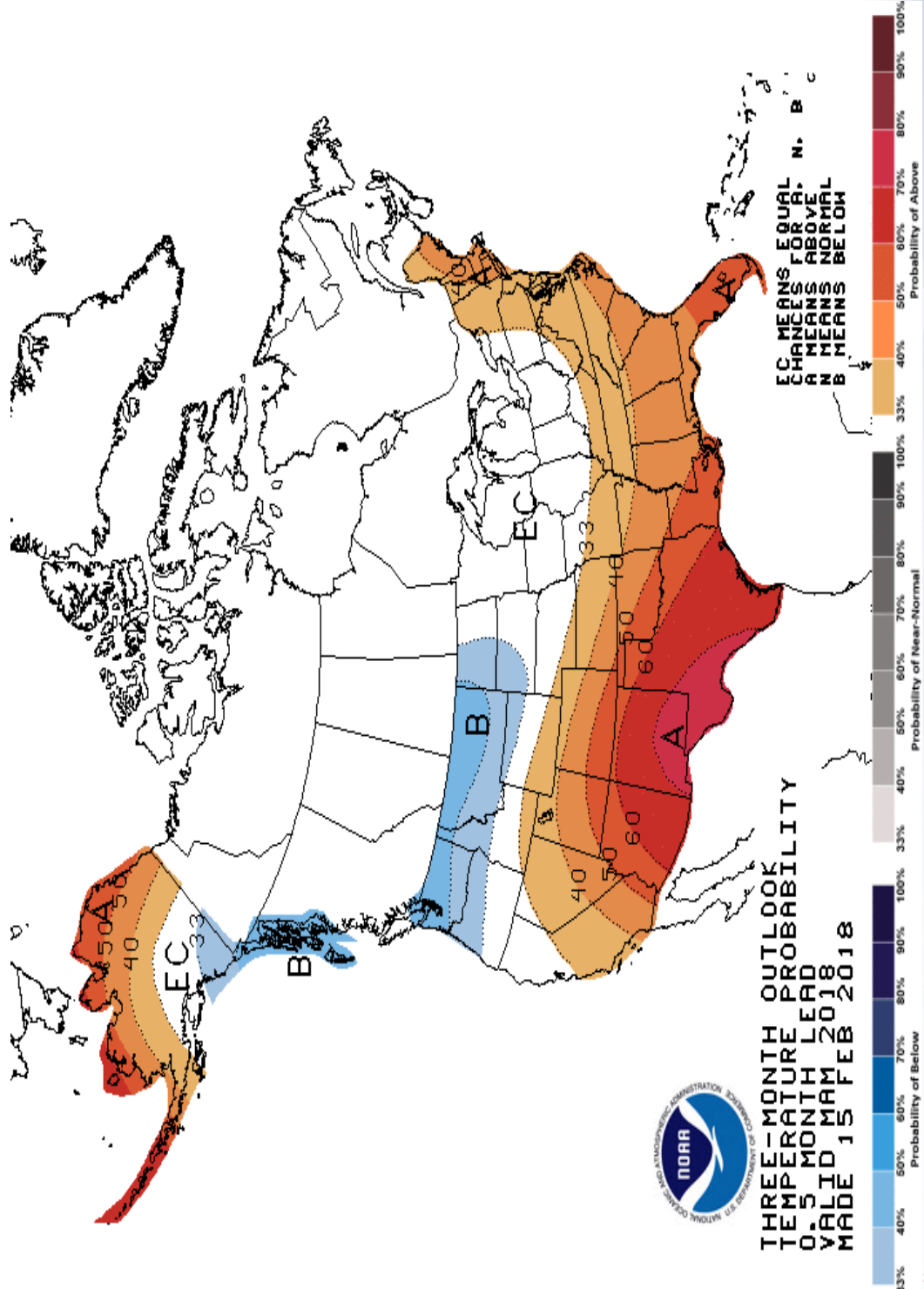
Divisional Average Temperature Ranks
November 2017–January 2018
Period: 1895–2018



17/18 Ohio Winter Daily Degree Days – Up & Down



3 Month Temperature Outlook from 2-15-18



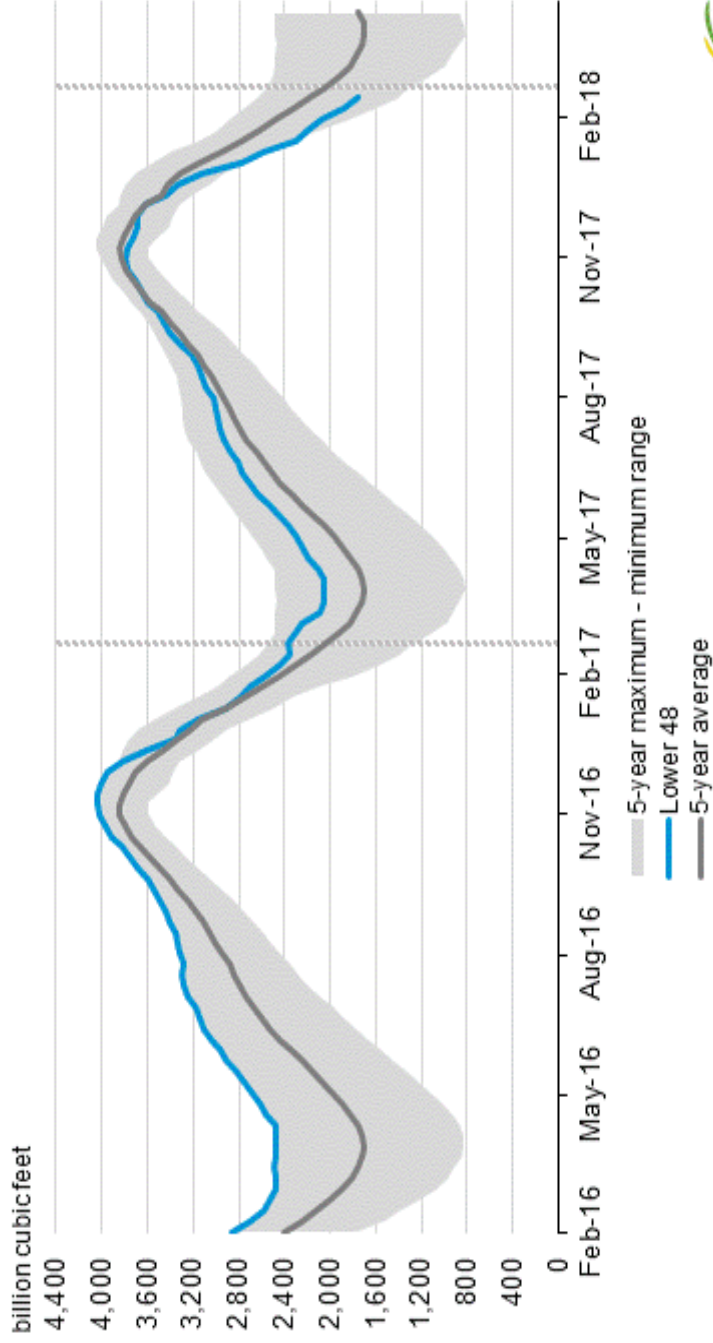
Storage & Gas Pricing

Storage – Below the ‘5 Yr Average’ Position

Working gas in storage was 1,760 BCF as of Friday, February 16, 2018, according to EIA estimates. This represents a net decrease of 124 BCF from the previous week. Stocks were 609 BCF less than last year at this time and 412 BCF below the five-year average of 2,172 BCF. At 1,760 BCF, total working gas is within the five-year historical range.

Note: The 359 BCF withdrawal during the week ending 1-5-18 was the largest weekly storage withdraw on record, beating the previous weekly withdrawal record of 288 BCF during the “Polar Vortex” in January 2014.

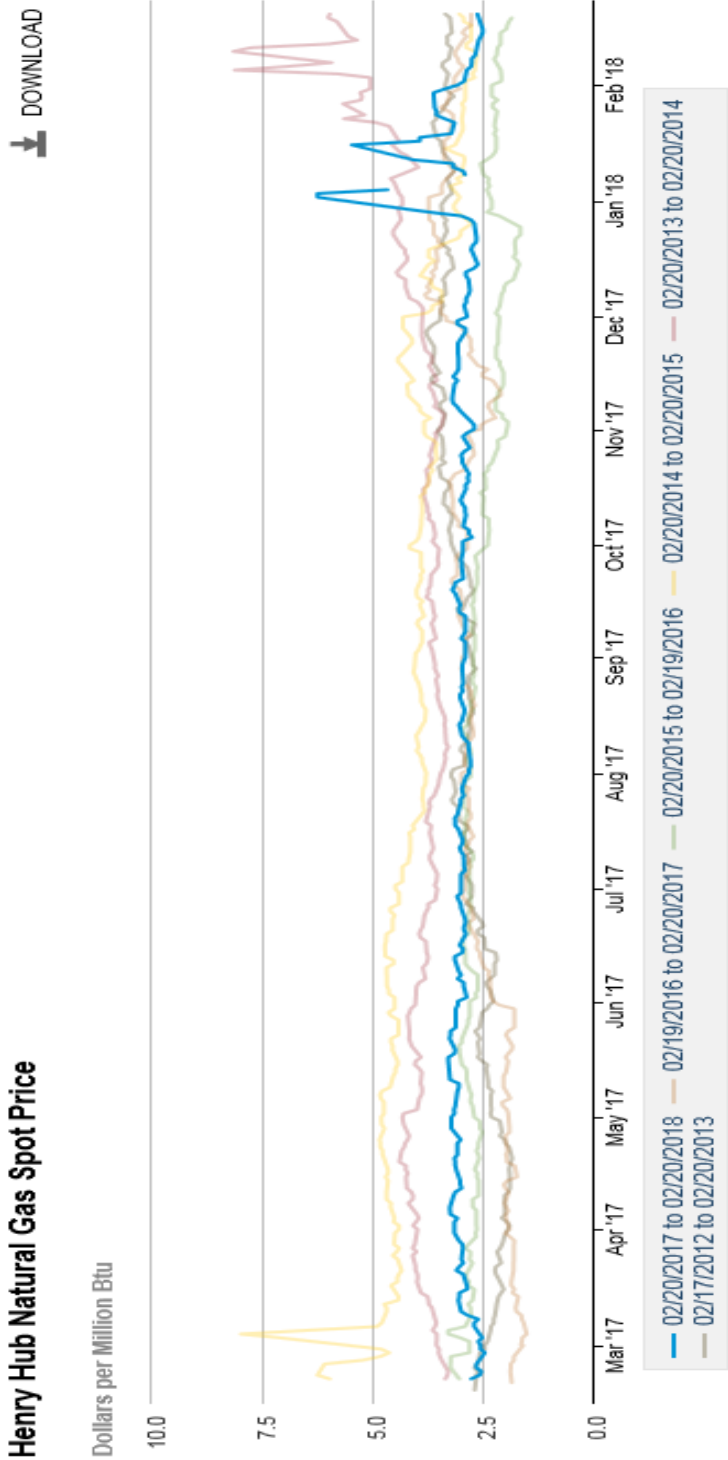
Working gas in underground storage compared with the 5-year maximum and minimum



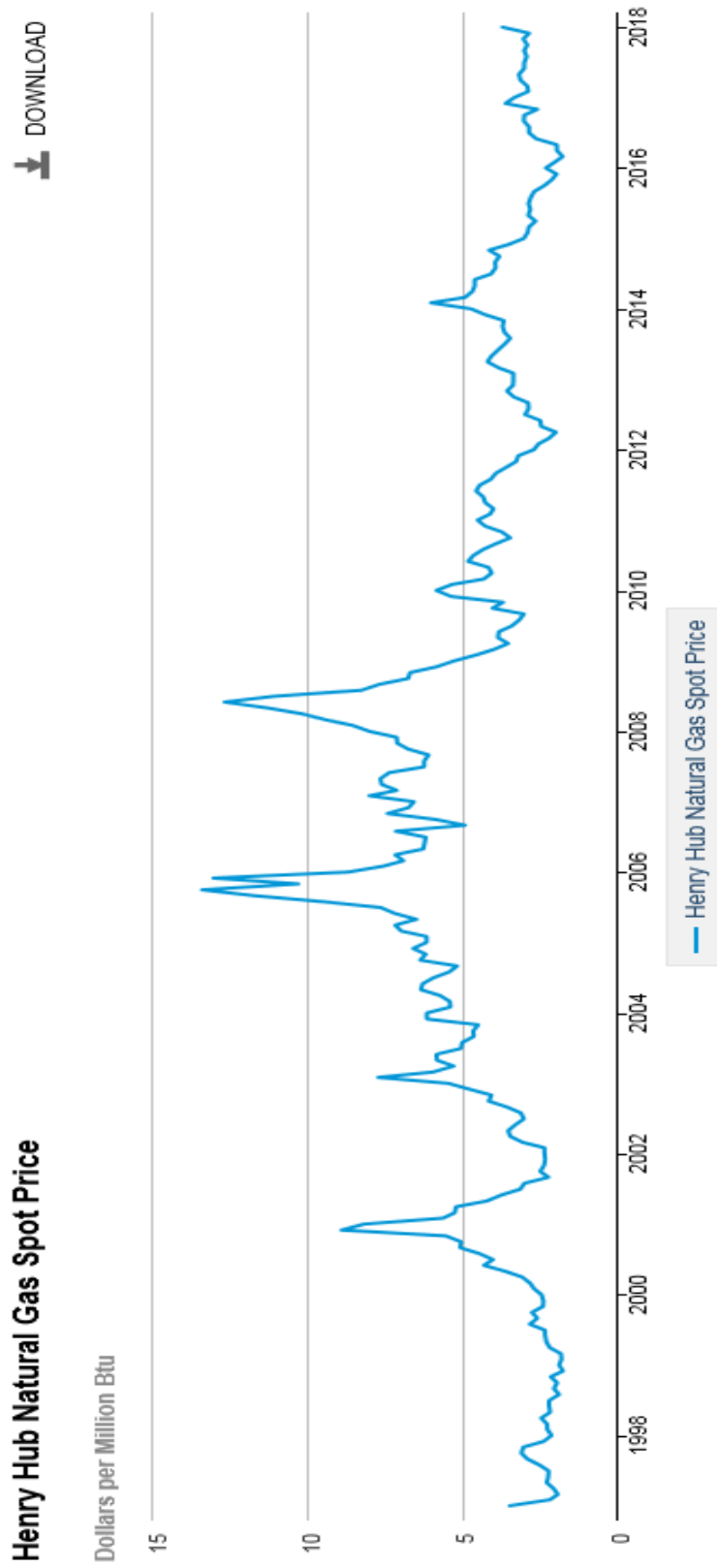
Source: U.S. Energy Information Administration



NYMEX Prompt Month Settlement – 5 Years



NYMEX Prompt Month Settlement History



NYMEX Term Pricing – February 22, 2018

| <u>TERM</u> | <u>PRICE 11-13-17</u> | <u>PRICE 2-22-18</u> |
|-------------|-----------------------|----------------------|
| 3 month | \$3.28 | \$2.67 (-\$0.61) |
| 6 month | \$3.17 | \$2.72 (-\$0.45) |
| 12 month | \$3.10 | \$2.81 (-\$0.29) |
| 18 month | \$3.09 | \$2.78 (-\$0.31) |

Select Hub Pricing – Lower February 22, 2018

| <u>HUB LOCATION</u> | <u>11-13-17</u> | <u>2-22-18</u> |
|----------------------|-----------------|------------------|
| Henry Hub | \$3.14 | \$2.60 (-\$0.54) |
| TCO Pool | \$3.01 | \$2.36 (-\$0.65) |
| Houston Ship Channel | \$3.07 | \$2.61 (-\$0.46) |
| Dominion South Point | \$2.40 | \$2.14 (-\$0.26) |
| TETCO M-3 | \$2.58 | \$2.24 (-\$0.34) |
| TGP Zone 4 | \$2.21 | \$1.85 (-\$0.36) |

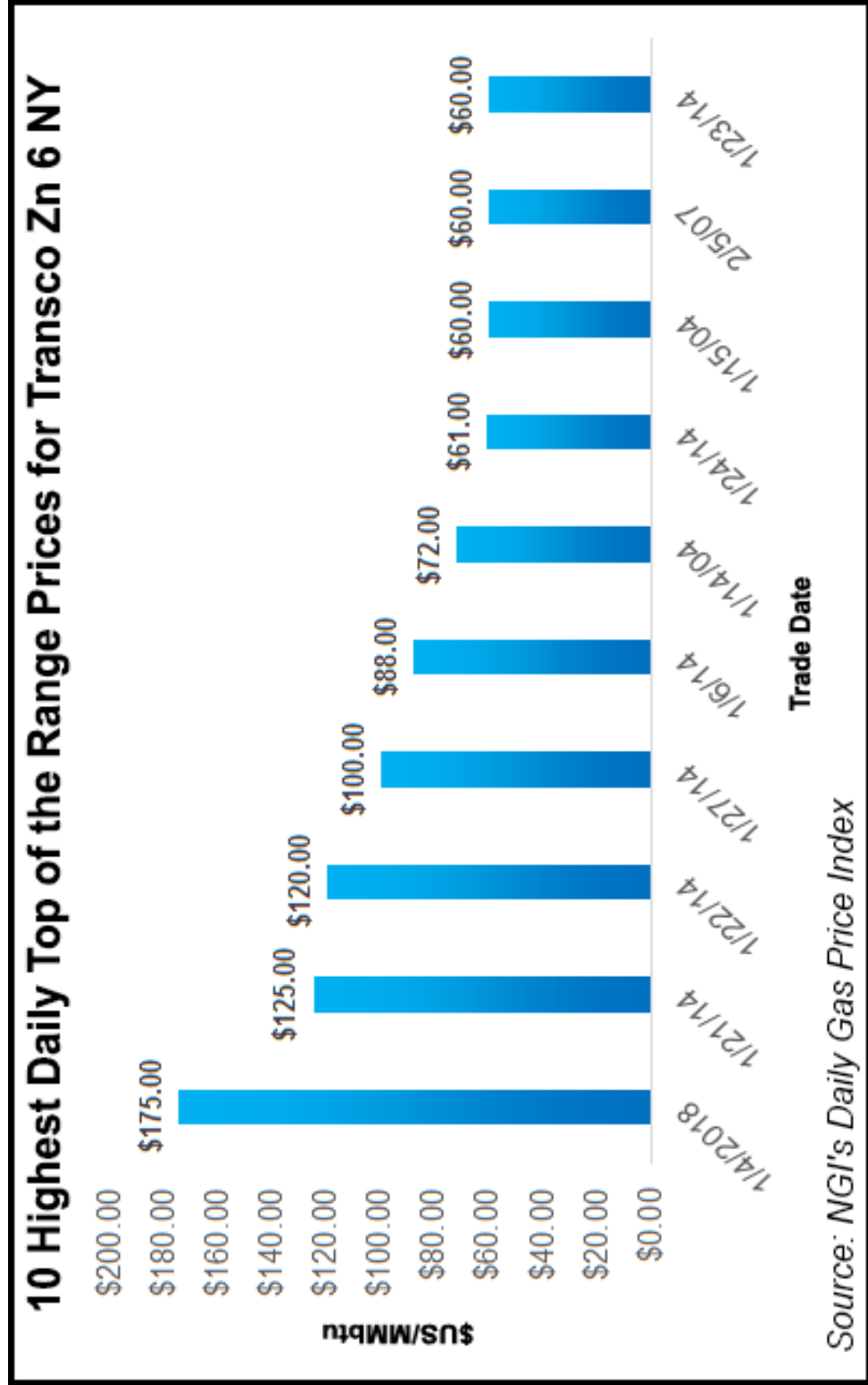
Dominion, TCO, TETCO, & TGP pricing is Marcellus Area.

Select Hub Pricing – East Coast Daily Prices did Spike with the Cold Weather

| <u>HUB LOCATION</u> | <u>2-22-18</u> | <u>1-5-18</u> |
|---------------------------|----------------|---------------|
| Henry Hub | \$2.60 | \$4.42 |
| TCO Pool | \$2.36 | \$4.29 |
| Houston Ship Channel | \$2.61 | \$4.23 |
| Dominion South Point | \$2.14 | \$4.15 |
| TETCO M-3 | \$2.24 | \$95 |
| TGP Zone 4 | \$1.85 | \$3.61 |
| TGP Zone 6 | | \$125 |
| New York City Gate | \$2.58 | \$139 |

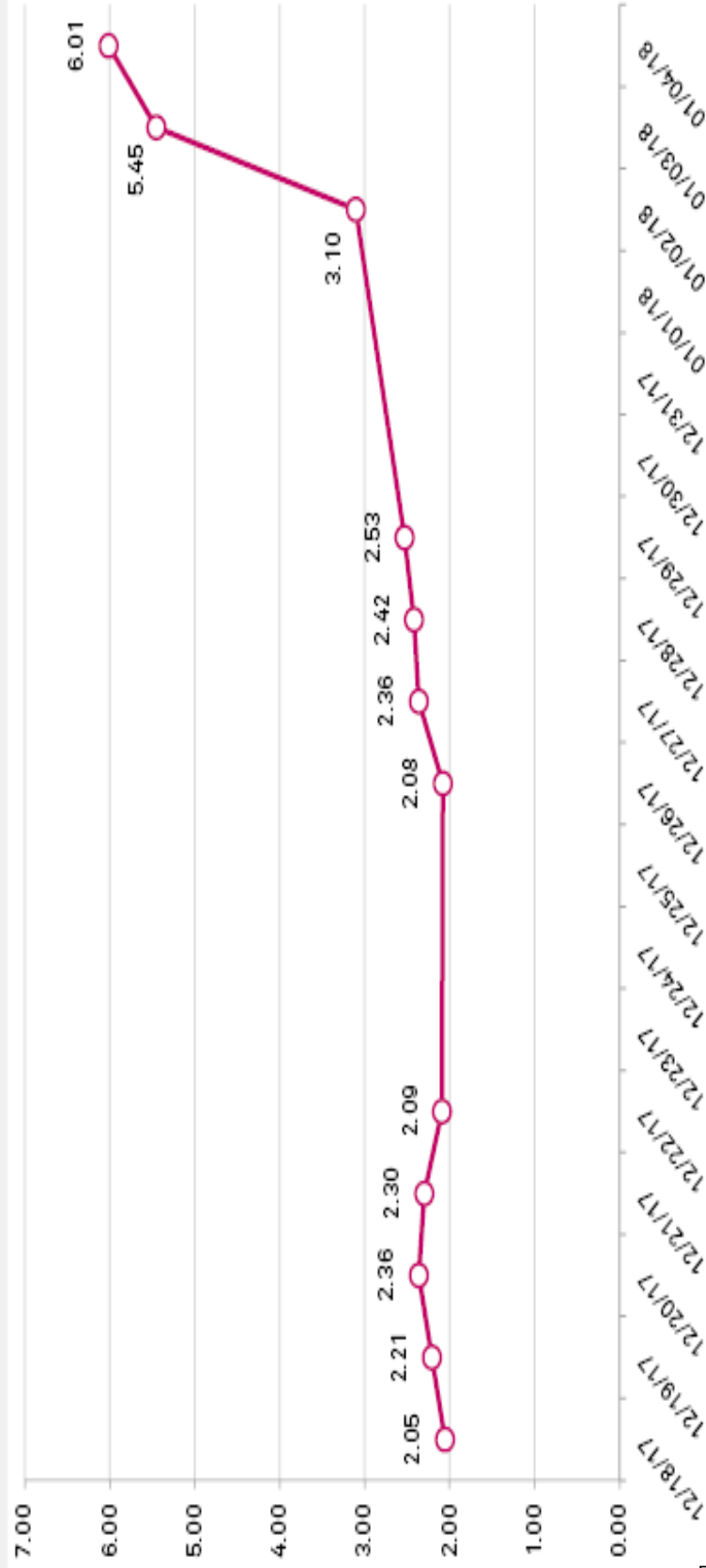
TGP Zone 6, NY City Gate (in particular), & TETCO M-3 pricing is the East Coast area.

Highs for East Coast Transco Zone 6 NY Pricing



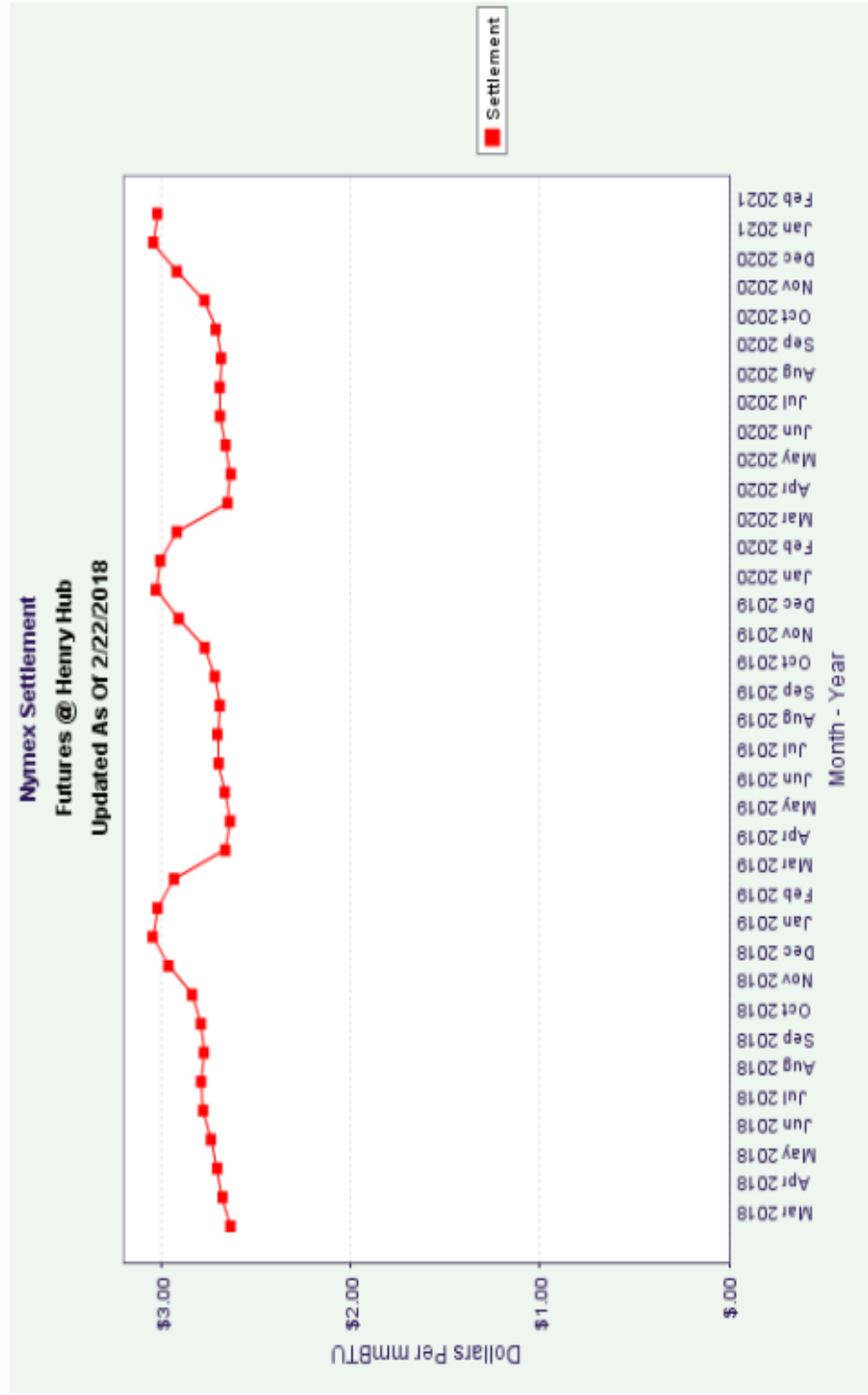
Appalachian Pricing with the recent chill

Winter chill triples in-basin pricing for Marcellus gas
Marcellus region volume-weighted average price (\$/MMBtu)



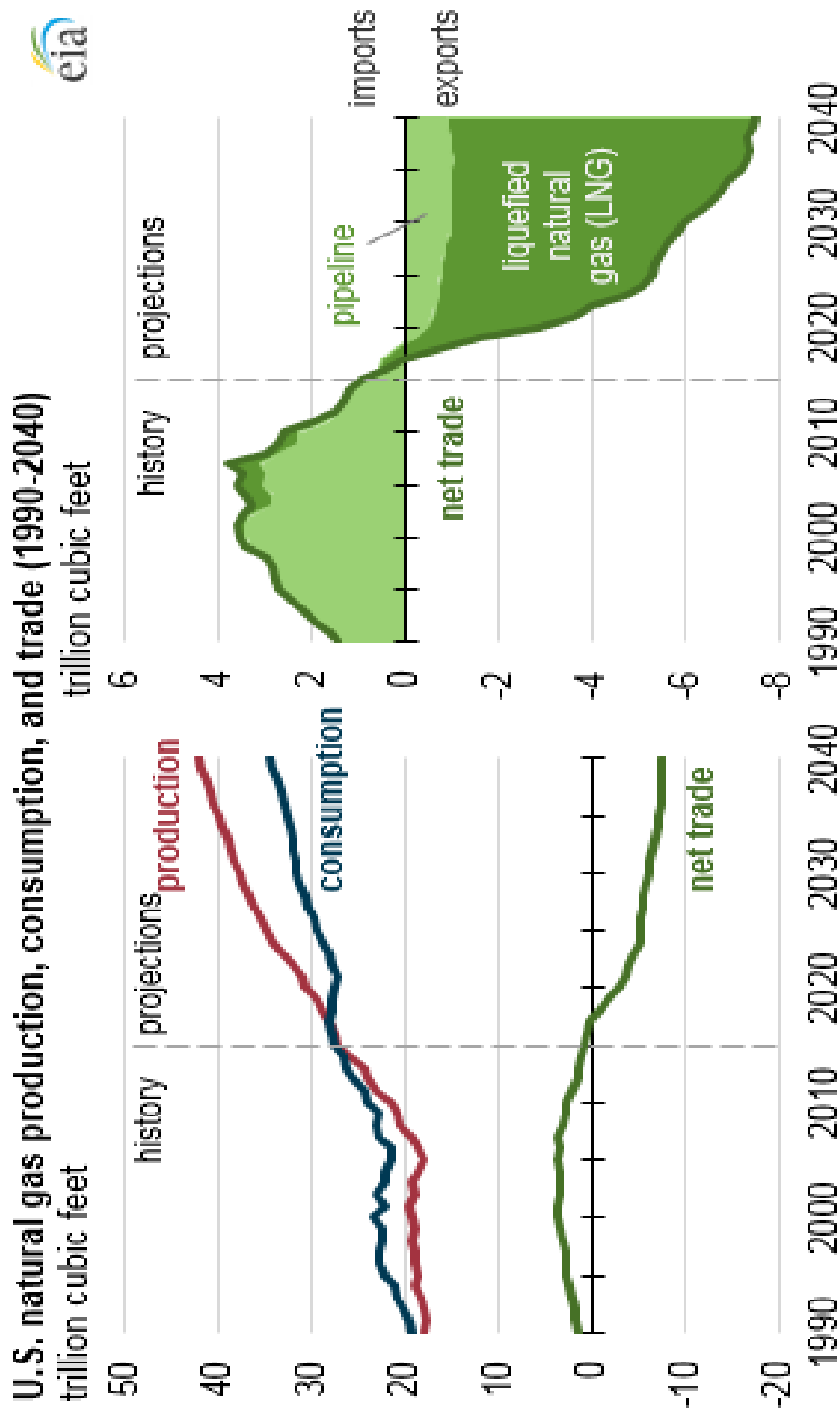
As of Jan. 4, 2018.
Marcellus region volume-weighted average includes SNL day-ahead natural gas prices for Leidy, Dominion N, Dominion S, TGP Z 4 200L and TGP Z 4 Marcellus.
Source: S&P Global Market Intelligence

NYMEX Futures Settlement – 2-22-18

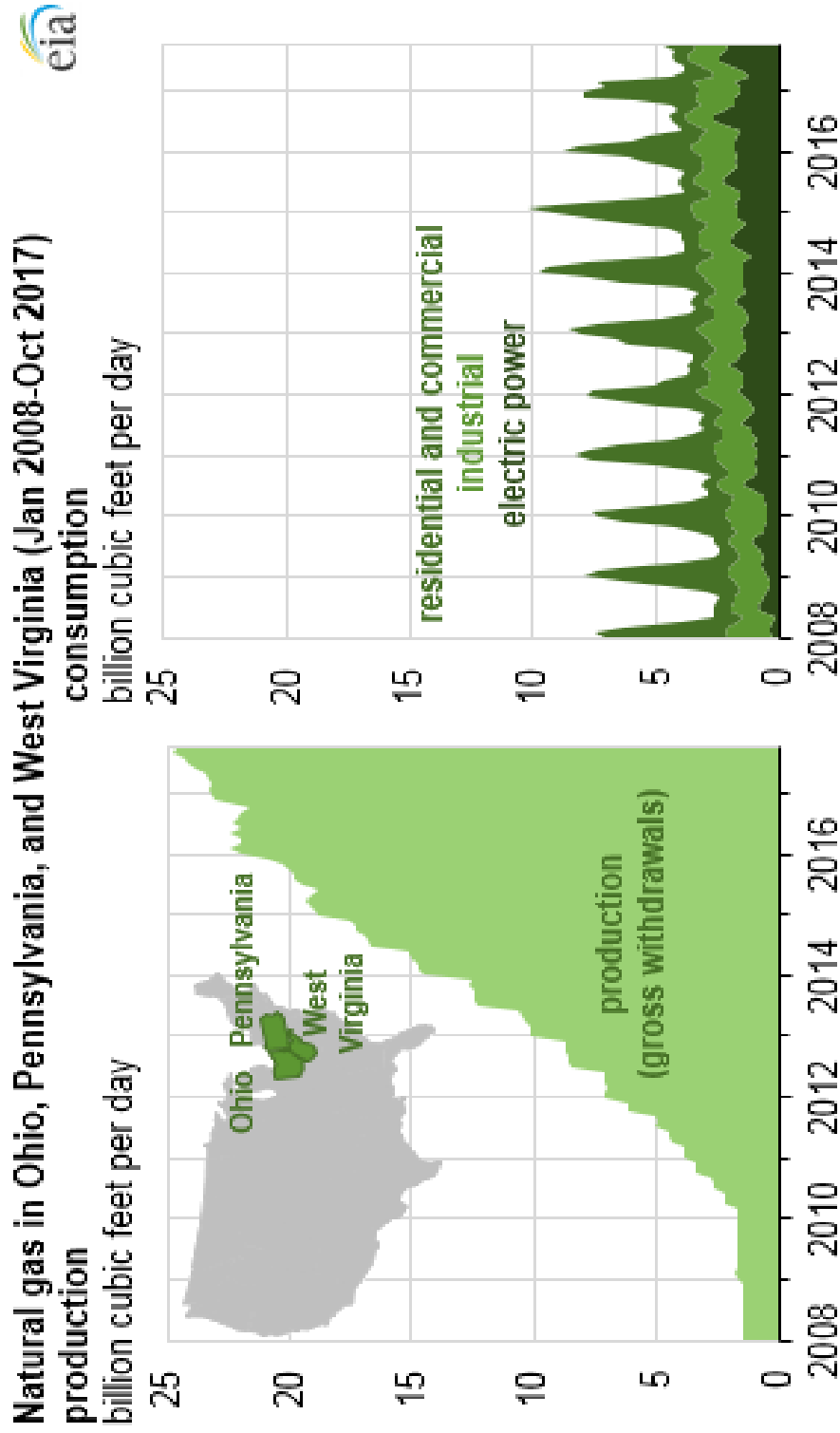


Demand, Production & Rig Count

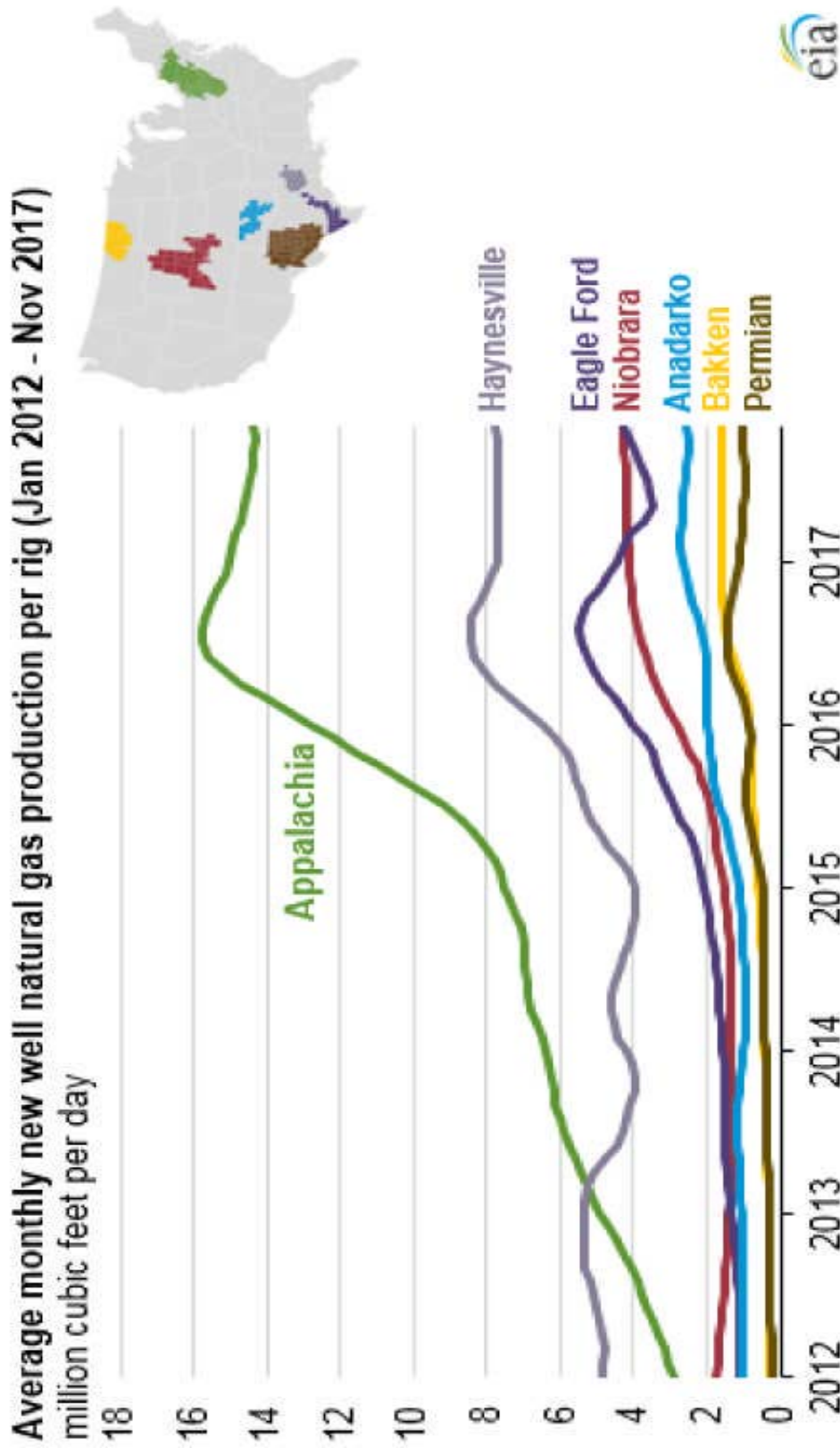
US Supply & Demand Outlook



Oh, PA & WV Production & Demand

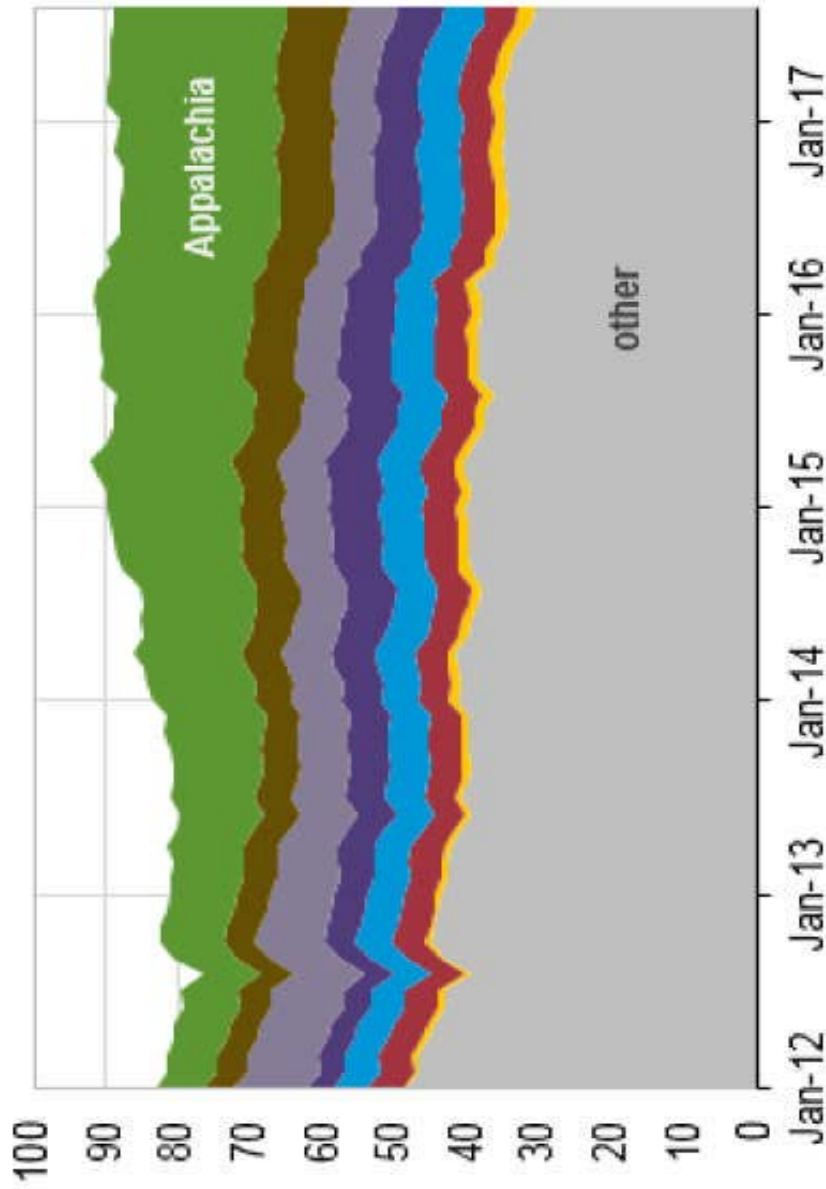


Relative Natural Gas Well Production



Relative Natural Gas Production

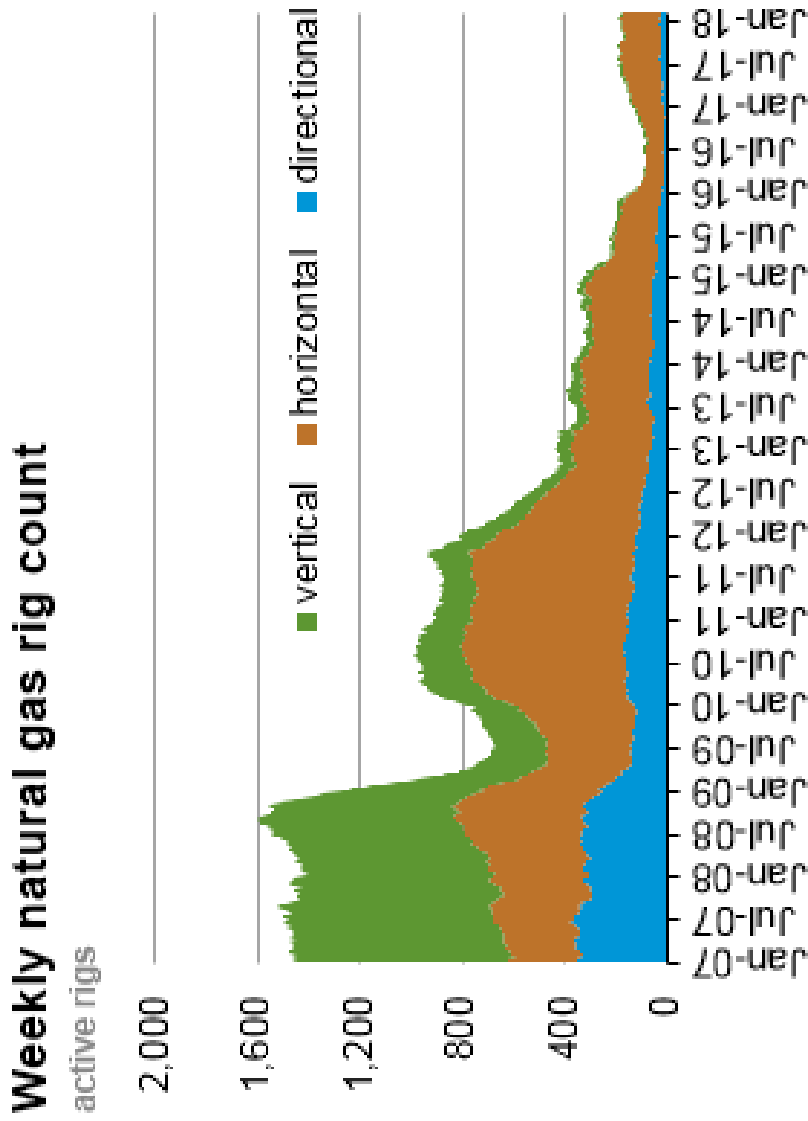
U.S. gross withdrawals of natural gas (Jan 2012 - Aug 2017)
billion cubic feet per day



Permian
Haynesville
Eagle Ford
Anadarko
Niobrara
Bakken



Gas Rig Count – Still towards Lower Range



Source: Baker Hughes

Recent Developments

Natural Gas Related Developments

- Rover Pipeline now at 2 BCF/Day; Anticipate in full service sometime in second quarter 2018
- FERC rejects Energy Secretary Perry's proposed plan to subsidize coal & nuclear power plants
- McIntyre sworn in as FERC Chairman on 12-7-17; FERC now has a full complement of Commissioners
- 1-1-18 TransCanada's "Leach Express" Pipeline put into service (1.5 BCF/Day)
- Ohio gubernatorial candidate Kucinich says he'll attempt to eliminate oil & gas drilling in Ohio if elected Governor

Thank You