

Energy Committee

September 9, 2021

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2021 Energy Committee Calendar

Meetings begin at 10 a.m.
Thursday, November 11

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Energy Committee Agenda

September 9, 2021

Welcome & Roll Call	Brad Belden, President, Belden Brick Company, Committee Chair
Guest Speaker	Asim Haque, Vice President - State and Member Services, PJM Interconnection
Energy Engineer Report	John Seryak, PE, RunnerStone, LLC OMA Energy Engineer
Energy Counsel's Report	Kim Bojko, Carpenter Lipps & Leland OMA Energy Counsel
Public Policy Report	Rob Brundrett, OMA Staff
Electricity Market Trends	Susanne Buckley, Scioto Energy
Natural Gas Market Trends	LeRoy Smith, NiSource, Columbia Gas of Ohio

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OMA Energy Committee - Sept 2021

Name	Company	Location
Kevin Abke	Ohio CAT	Perrysburg, OH United States
Ryan R. Augsburger	The Ohio Manufacturers' Association	Columbus, OH United States
Ann Bedford	PPG	Pittsburgh, PA United States
Bradley H. Belden	The Belden Brick Company	Canton, OH United States
Kimberly W. Bojko	Carpenter Lipps & Leland LLP	Columbus, OH United States
Dylan Borchers	Bricker & Eckler LLP	Columbus, OH United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
Brent Chaney	Vistra Energy	Irving, TX United States
Mickey Croxton	Plaskolite	Columbus, OH United States
Nicholas D'Angelo	Eaton	Cleveland, OH United States
Steve Dimon	AMG Vanadium LLC C/o 21 Consulting, LLC	Columbus, OH United States
Noah Dormady	The Ohio State University	Columbus, OH United States
Dale Foerster	Starr Manufacturing, Inc.	Vienna, OH United States
Todd Frank	Vistra Energy	Cincinnati, OH United States
TJ Godwin	Advanced Composites, Inc.	Sidney, OH United States
Nicholas A. Goussetis	U S Steel	Pittsburgh, PA United States
Jon Green	Lathrop-Trotter Company	Cincinnati, OH United States
Luke M. Harms	Whirlpool Corporation	Washington, DC United States
Richard Hawk	Hi-Tek Manufacturing, Inc.	Mason, OH United States
Joseph Hollabaugh, Jr	Shumaker, Loop & Kendrick, LLP	Columbus, OH United States
Tyrel Jacobsen	AMG Vanadium LLC	Cambridge, OH United States
Jeremy Johnston	Cleveland State University	Cleveland, OH United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Darin King	Columbia Gas of Ohio	Toledo, OH United States
Matt Koppitch	Bricker & Eckler LLP	Columbus, OH United States
Timothy Ling	Plaskolite	Columbus, OH United States
Michael Longo	Anax Power	Wharton, NJ United States
Sherri Loscko	Castings USA, Inc.	Dublin, OH United States
Richard Loth	McWane Ductile-Ohio, A Division Of McWane, Inc.	Coshocton, OH United States
Kenneth D. Magyar	D T Midstream	Canonsburg, PA United States
Vira Maruli	Liberty Technology Company LLC	Delaware, OH United States
Mitchell Maynard	Vistra Energy	Columbus, OH United States
Jason Puscas	Bollinger Motors	Oak Park, MI United States
Brent Rosebrook	PRO-TEC Coating Company	Leipsic, OH United States
Shelley Roth	Pierre's Ice Cream Company	Cleveland, OH United States
Jim Samuel	NRG Energy Inc. C/o Capitol Integrity Group	Columbus, OH United States
Christine Schwartz	American Honda Motor Company	Marysville, OH United States
Nicholas J. Scolaro	Morrison Products Inc.	Cleveland, OH United States
Hugh Scott Seaholm	Universal Metal Products	Wickliffe, OH United States
Maxim Serezhin	Standard Power Group Ohio	New York, NY United States
John Seryak, PE	Go Sustainable Energy, LLC	Worthington, OH United States
Terri M. Sexton	Navistar, Inc.	Springfield, OH United States
LeRoy Smith	Columbia Gas of Ohio	Middleburg Heights, OH United States
David Sopko	N R G Energy Inc.	Dublin, OH United States
Duane Steelman	Zaclon, LLC	Cleveland, OH United States
Robert Thompson	Charter Steel	Saukville, WI United States
Vickie Trivette	The Ohio Manufacturers' Association	Columbus, OH United States
Justin Walder	Nutrien	Deerfield, IL United States
Steve Walker	The J.M. Smucker Company	Orrville, OH United States

Asim Z. Haque



Vice President - State and Member Services

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Asim Z. Haque oversees State Government Policy, State Policy Solutions and Member Services, which includes Stakeholder Affairs, Client Management, Knowledge Management and State & Member Training. He leads PJM's policy development and interaction with state government, which includes state commissions, governor's offices, state legislatures and state security agencies. Haque also oversees PJM's member interactions, which includes the PJM stakeholder process.

Prior to joining PJM, Haque was the chairman of the Public Utilities Commission of Ohio (PUCO). As the state's chief regulator, he guided Ohio through some of the most relevant energy policy issues facing the nation, including Clean Power Plan compliance, cases related to the future of baseload power plants in competitive markets and distribution grid modernization.

Haque, an attorney, began his career at a large general practice firm and went on to work as in-house counsel at a global auto manufacturer prior to his appointment to the PUCO.

Haque holds a bachelor's degree in chemistry and political science from Case Western Reserve University and a Juris Doctor from The Ohio State University.

Summary of the Updated PJM MOPR Proposal

Overview and objective

PJM proposes to clearly define Buyer-Side Market Power (BSMP) and to prohibit and mitigate the exercise of BSMP through the minimum offer price rule (MOPR) and/or referral to FERC, as further described below. The approach outlined herein will maximize transparency and market confidence while ensuring PJM and the independent market monitor (IMM) are able to mitigate the exercise of BSMP when it is identified, while also better accommodating state public policies and self-supply business models. In addition, PJM proposes to further clarify the actions of a state (or subdivision thereof) which may improperly interfere with bidding in PJM's capacity market and FERC's rate-making authority (deemed Conditioned State Support).

PJM will only apply the MOPR in the limited situations of either a) Exercise of BSMP, or b) Conditioned State Support, as further set forth below. PJM will utilize two attestations to be provided by all market sellers as described below as a key tool in implementing this proposal.

Definitions

- BSMP shall be defined as "Ability of market participant(s) with a load interest to suppress market clearing prices for the overall benefit of their portfolio."
- Exercises of BSMP require both the ability and incentive to do so. The exercise of BSMP shall be defined as "Anti-competitive behavior of market participant(s) with a load interest, or directed by a load interest, to uneconomically lower capacity market offer(s) in order to suppress market clearing prices for the overall benefit of the market seller's load portfolio or that of the directing load interest." It is the exercise of BSMP that shall be prohibited.
- Conditioned State Support shall be defined as "Out-of-market payments or other financial benefit from a state, or political subdivision of a state acting in its sovereign capacity, provided in exchange for the sale of a FERC-jurisdictional product conditioned on clearing in any RPM auction. The term 'conditioned on clearing in any RPM auction' refers to directives as to the price level at which a resource must be offered in the capacity market or directives that the unit is required to clear in any capacity auction."

Conditioned State Support

State¹ policies² deemed to be Conditioned State Support may improperly interfere with bidding in PJM's capacity market and FERC's rate-making authority. As such, PJM will apply the MOPR to resources receiving Conditioned State Support (in accordance with the process described below).

The provisions of this Section concerning the application of the MOPR will not apply to any legislative, executive or regulatory authorization that specifically directs an out-of-market payment to a designated or prospective capacity resource whose enactment predates the effective date of this Section, regardless of when any implementing executive or regulatory action is enacted or promulgated to specifically effectuate the authorization to direct an out-of-market payment. Such policies shall be referred to as 'legacy policies' for the purposes of this document.

¹ For the purposes of this summary, any references to a state shall include any political subdivision of a state acting in its sovereign capacity.

² For the purposes of this summary, any references to a state policy shall include policies and/or programs that may flow from those policies.

Screening for Affected Resources

All market sellers will be required to provide an attestation prior to each RPM Auction confirming whether or not the market seller expects to receive Conditioned State Support for each resource in their portfolio under any legislative or executive policy that is approved at the time of the attestation and otherwise not exempt as a legacy policy.

- If the market seller attests that a resource will receive Conditioned State Support or fails to provide the attestation, the resource will be subject to MOPR pursuant to the process listed below.
- If the market seller attests that the resource will not receive Conditioned State Support, PJM will not apply the MOPR on the basis of Conditioned State Support³. However, if PJM has reason to believe the attestation may be erroneous⁴, the resource may be subject to MOPR pursuant to the process listed below.

Should government policies with provisions that include a condition that requires clearing in any RPM auction be made known to PJM through the market seller's certification or through other means, PJM will review the applicable policy and determine, with advice and input from the IMM, whether it believes such policy constitutes Conditioned State Support. If PJM believes such policy does constitute Conditioned State Support, PJM will file a Section 205 action at the Commission indicating PJM's intention to classify the state policy as Conditioned State Support and therefore apply the MOPR to the offers of the resources receiving the benefits. PJM will apply the MOPR as stated in its Section 205 filing, so long as the filing is approved by FERC through a FERC Order or by operation of law.

Through the Section 205 process, states, affected parties and others will have the due process opportunity to opine to the Commission as to whether the application of the MOPR is warranted based on the specific language and facts surrounding the state law or regulatory action. PJM shall file such 205 action in sufficient time so as to provide for FERC resolution prior to submission of bids.

No element of this proposal shall interfere with the ability of any person to file a complaint pursuant to Section 206 as to PJM's application of this tariff provision or seeking any other such remedies available to the Commission pursuant to Section 206 of the Federal Power Act.

Unconditioned State Support

State policies providing out-of-market payments to generating resources are recognized as being a legitimate exercise of a state's authority over the electric supply mix serving customers in the state, and will not be deemed Conditioned State Support and subject resources to MOPR so long as the policy does not constitute the sale of a FERC-jurisdictional product that is conditioned on clearing in any RPM auction.

For example, such legitimate policies, if not accompanied with a requirement conditioned on clearing in any RPM auction, may include:

- i. Policies to procure, incent, or require environmental attributes, whether bundled or unbundled,
- ii. economic development programs and policies,
- iii. tax incentives,

³ Such resource may still be subject to MOPR for other reasons if the market seller is found to be exercising market power pursuant to the processes described in the "Exercise of BSMP" section herein.

⁴ For example, PJM may have reason to further evaluate the attestation of two resources receiving support from the same state policy or program, but which each attested differently to the receipt of Conditioned State Support.

- iv. state retail default service auctions,
- v. policies or programs that provide incentives related to fuel supplies,
- vi. resources of a) vertically integrated utilities that are subject to state regulation and b) state rate-regulated electric cooperatives,
- vii. resources of municipal utilities or municipal Joint Action Agencies subject to approval by the RERRA,
- viii. policies or programs implementing PURPA.

Exercise of Buyer-Side Market Power

The exercise of BSMP is prohibited. The MOPR is used to mitigate BSMP and will be applied to any resources suspected to be used by a market seller to exert BSMP in accordance with the procedures listed below.

Screening for Affected Resources

PJM proposes requiring a second attestation (in addition to the attestation described above) from all market sellers prior to an RPM Auction confirming that they acknowledge and understand the prohibition on the exercise of BSMP and attest to not offering their resource(s) with the intent to exercise BSMP or having any bilateral contracts that direct the submission of an offer to deliberately lower market clearing prices. Specifically, the attestation provided will attest that the market seller is not: a) through any load interest it may have, or b) through acting at the direction of a load interest, uneconomically planning to lower its capacity market offer in order to suppress market clearing prices for the overall benefit of the market seller's portfolio or for the portfolio of any load serving entity.

- If the market seller does not provide the attestation, the applicable resource shall be subject to MOPR.
- If the market seller does provide the attestation, the applicable resource shall generally not be subject to MOPR.
 - PJM and/or the IMM may, upon suspicion, investigate the potential exercise of BSMP through fact-specific, case-by-case reviews. If PJM, with the advice and input of the IMM, determines that the market seller did not provide sufficient justification that the behavior in question does not represent an attempt to exercise BSMP, the applicable resource shall be subject to MOPR. Additionally, upon that review, should PJM or the IMM have concern that the market seller provided a misrepresentation or otherwise acted fraudulently, PJM or the IMM may make a referral to FERC for investigation.

Fact-specific, Case-by-case Reviews pursuant to Suspicion of BSMP

PJM and/or the IMM may request additional documentation from market participants to conduct fact-specific, case-by-case reviews when PJM and/or the IMM have reason to suspect the potential exercise of BSMP. The various types of business models (self-supply, etc.), in and of themselves, will not be an indicator of buyer-side market power nor raise suspicion thereof. Suspicion of the exercise of BSMP may be raised if a market seller intends to offer a resource or technology believed to be uneconomic in a manner that will result in clearing and lowering the market price in a location where the market seller and/or its affiliates have a net short position. In initiating a review, PJM and/or the IMM shall articulate, in writing, the basis for concern of the exercise of BSMP (including the specific resource(s) that raise concern, the purported beneficiary of the price suppression, and the specific conduct or action that raises concern) and the market seller shall have an opportunity to provide information justifying the conduct or

action in question as not representing the exercise of BSMP. PJM will endeavor to notify the market participant of such suspicion in advance of the deadline of submitting requests for unit-specific MOPR floor prices. PJM and/or the IMM may request additional information to conduct the review and shall describe how such request is reasonably related to the basis for concern. The market seller shall make best efforts to provide the requested information as soon as practicable. PJM and the IMM shall meet with the market seller prior to issuing requests for information and data and before elevating any concern to FERC.

PJM, with advice and input from the IMM, intends to determine whether the capacity market seller holds BSMP and whether the offer of the resource in question may constitute the exercise of BSMP. PJM's review of potential exercises of BSMP will have the goal of determining whether all elements of the exercise of BSMP are present, namely: the participant has the ability to suppress the market clearing price; the participant has the incentive to suppress the price (i.e., it would be profitable to do so); and the participant acts to uneconomically lower capacity market offers below the economically justifiable level. An offer that can be justified, economically⁵ or otherwise, without consideration of the potential benefit of suppressed prices to a participant's portfolio (including load interests) will not be considered an exercise of BSMP.

For clarity and transparency, MOPR will not be applied if any of the following, non-exhaustive circumstances are known or are identified in the course of a fact-specific, case-by-case review by PJM or the IMM:

- i. Merchant generation supply resources not contracted to load
- ii. Resources acquired through a fully competitive and non-discriminatory process open to new and existing units
- iii. All owned and bilaterally contracted (new and existing) generation resources of Self-Supply Entities that are demonstrated to be consistent with or included in their long-range resource plan (e.g. long-range hedging plan) which is approved or otherwise accepted by the RERRA provided any such plan approval or contracts do not direct the submission of an uneconomic offer to deliberately lower market clearing prices.
- iv. Support of resources aligned with well-demonstrated customer preferences

Other Elements

Other elements of the proposal remain unchanged from that which PJM previously shared. PJM proposes to establish default MOPR floor prices for various technology types and for both new and existing resources. Market sellers may utilize a unit-specific exception request to establish unit-specific floor prices lower than the defaults if necessary.

The level of the MOPR floor price differs between new and existing units. New units (which have never cleared in an RPM auction) are subject to MOPR at Net CONE. Existing units (which have previously cleared an RPM auction) are subject to MOPR at Net ACR. Existing units would under no circumstances be changed to "new" status.

Units will remain subject to MOPR in future auctions so long as they trigger the MOPR criteria - even after clearing at the MOPR floor price. Once the MOPR criteria is no longer triggered (that is the market seller is no longer found to be attempting to exert BSMP or accepting Conditioned State Support), the resource is no longer subject to MOPR - even if it did not clear at the MOPR floor price while previously subject to MOPR.

⁵ Out-of-market compensation that is not tied to either Conditioned State Support or a bilateral contract that directs the submission of an offer to lower market clearing prices may be used to support the economics of the resource under review. Examples of this include RECs and ZECs.

Under this proposal PJM intends to terminate the existing MOPR focused on all new natural gas resources and the expanded MOPR resulting from December 2019 FERC Order (including any future trigger of the asset life ban), effective with the 2023/2024 delivery year.



FERC's December 2019 Order on State Subsidies

The Expanded Minimum Offer Price Rule and its Impact on Manufacturers, Markets, Ohio Energy Policy, and Electricity Generation Technology

January 30, 2020

The Federal Energy Regulatory Commission (FERC) issued an order on December 19, 2019 stating that

“... out-of-market payments provided, or required to be provided, by states to support the entry or continued operation of preferred generation resources threaten the competitiveness of the capacity market administered by PJM ...”.

FERC's order is a direct response to a trend of state subsidization of uneconomical power plants, including those benefitting from the recently passed Ohio House Bill 6 (HB6). The FERC order is a giant stick against state subsidies, and tips HB6 on its head: Rather than improve the economic position of select Ohio (and Indiana) power plants, the HB6 subsidies now jeopardizes these same power plants from competitively earned revenue in the wholesale electric capacity market. In fact, by charging Ohio's ratepayers hundreds of millions of dollars in annual subsidies for select power plants, about \$190 million in annual capacity revenue for these same generators is now at risk. Unfortunately, by favoring select power plants through subsidies, HB6 has created a financial liability for them.

To be clear, the select subsidized power plants can request, and may receive, a “Unit Specific Exemption” to earn capacity revenue. Or, these same power plants may request additional subsidies or financial support from the state.

The eventual effect of FERC's order on wholesale electricity prices is being debated, as is which type of generating technologies win or lose. But FERC's order is clear – if states like their subsidy plan, they can keep it – but the state and its ratepayers will bear the direct cost and consequences.

Impact to Manufacturers

A significant concern to Ohio manufacturers is how the FERC order, in conjunction with HB6, impacts electricity costs. The FERC order does not stop Ohio from subsidizing select power plants. And thus, HB6's above-market charges for select nuclear, coal, and renewable energy projects will persist on manufacturers' electric bills.

However, the FERC order does create major changes to how electricity markets work and estimating the financial impact will take careful study. At this date, there is no agreement on the financial impact. Some parties warn that the FERC order could create significant

additional electricity costs, while other parties suggest there may be no additional cost at all. Still others may argue that preservation of market forces is the ultimate cost protection, an assertion supported by market studies and academic literature. PJM and its Independent Market Monitor often conduct detailed simulations of the near-term effect of major policy changes and likely will do so for this FERC order.

Manufacturers should also be concerned about potential state responses to the FERC order, namely, a drive to create fixed resource requirement (FRR) entities. By creating an FRR, a state may attempt to create yet more out-of-market revenue streams for power plants. Not only would this increase charges even more on customers' electric bills, but it would further erode market protections.

While cost is a primary concern for all manufacturers, also of note in the FERC order is a problematic issue for manufacturers with regard to greenhouse gas (GHG) emissions reductions goals. The FERC order will apply to new renewable energy projects receiving state subsidies, including renewable energy credits (RECs) from a renewable portfolio standard (RPS). While the FERC order recognizes that renewable energy projects subscribed with corporate REC purchases should not be subject to the MOPR, it then states that "it is not possible" to distinguish a voluntary REC from a state-mandated REC. As such, without clarification, new corporately funded renewable energy projects could be deprived of capacity revenue unfairly.

Impact to Electricity Markets

The FERC order is intended to protect functioning, competitive electricity markets. In general, competitive markets are desirable because they have been shown to produce lower electricity prices for consumers than cost-of-service regulation. Markets also tend to produce better resource efficiency, and thus lower emissions from power plants. This is all to say that an order to protect markets has inherent features that protect consumers and manufacturers.

However, FERC's order is complex, and it is not fully known how it will impact electricity prices in the short and long term. The order modifies and expands a mechanism called the Minimum Offer Price Rule (MOPR).

The MOPR was originally designed to prevent state subsidization of new natural gas generators entering the market. In contrast, the expanded MOPR will apply to new and existing power plants of any technological types that "receive, or are entitled to receive, certain out-of-market payments, with certain exemptions." This means that nuclear, coal, and renewable power plants that receive state subsidies or other non-bypassable rider support will be required to offer into PJM's capacity auction at a set minimum price or apply for a Unit Specific Exemption. New power plants will have one set of resource-specific prices, called Net CONE (Cost of New Entry). Existing power plants will have another set of resource-specific prices, called Net ACR (Avoidable Cost Rate). The application of these minimum price thresholds is meant to prevent a power plant from using a state subsidy to outbid its unsubsidized competition by offering an artificially low bid into PJM's capacity auction.

Table 1 shows PJM's proposed Net CONE and Net ACR values¹. Consider, in comparison, that PJM's capacity auction clearing price over the past 15 years has been a minimum of \$16 to a maximum of \$174/MW-day, a median of \$110/MW-day. Thus, new and existing resources would need to have minimum offer prices of, at most, around \$110/MW-day to clear the capacity market at least half of the time. Given this low price, it is unlikely that new generating plants that receive or are entitled to receive state subsidies will be able to clear the PJM capacity auction on a regular basis, unless they apply for and receive a Unit Specific Exemption.

For existing resources, it is also unlikely that subsidized nuclear units will be able to clear the auction in most cases, and subsidized coal plants will likely only be able to clear the auction occasionally. New and existing demand response and energy-efficiency should be able to clear most auctions. As for renewable energy, new renewable energy would likely not be able to clear the auction, but existing renewable energy would.

Note that PJM is preparing updated Net CONE and Net ACR values which will be subject to FERC approval. These updated values will have meaningful bearing on how the FERC order plays out. Additionally, any resource may apply for a "Unit Specific Exemption," in order to bid at a different price than Net CONE and Net ACR. Many resources that appear uneconomical based on Net CONE or Net ACR may in fact be economical based on their specific financial situation.

Table 1: PJM Proposed Minimum Prices

	New Resources - Net CONE (\$/MW-day)	Existing Resources - Net ACR (\$/MW-day)
Nuclear - Single Unit	\$ 1,451	\$ 265
Nuclear - Double Unit	\$ 1,451	\$ 227
Coal	\$ 1,023	\$ 126
Combined Cycle - NG	\$ 438	\$ 1
Combustion Turbine - NG	\$ 355	\$ 31
Hydro	\$ 1,066	\$ -
Solar PV	\$ 387	\$ -
Onshore Wind	\$ 2,489	\$ -
Offshore Wind	\$ 4,327	\$ -
Demand (DR or EE)	\$29 - \$67	\$ -

The impact on electricity prices then depends on several things:

- How many MWs of power plants will be subject to the expanded MOPR, and effectively forced out of the capacity auction? The answer is not simple. Some power plants receiving or entitled to receive subsidies have already not cleared the auction. For example, Ohio's nuclear power plants have not cleared the auction recently. Other power plants may choose to forgo their subsidy so they are

¹ PJM Communication, Table 2. <https://pjm.com/-/media/committees-groups/committees/mic/20190306/20190306-item-10-communication-regarding-mopr-related-requirements.ashx>

Net-ACR from: INITIAL SUBMISSION OF PJM INTERCONNECTION, L.L.C. Docket No. EL16-49-000, pages 118 & 120 of pdf.
<https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15059002>

permitted to bid into the auction without the minimum offer price if the subsidy is lower in value than PJM's capacity payments. Or, perhaps some states will find their subsidization policies ineffective, and will eliminate them in the law so that their power plants may compete for capacity revenue. Finally, there exists a "Unit Specific Exemption" process with the MOPR. If a power plant can show that it does not need its subsidy to offer competitive capacity bids, then it may receive this exemption, and continue to receive capacity revenue. Ironically, if a power plant receives this exemption, it will be proof to state policymakers that the subsidy is not needed. For this reason, it should be considered requiring subsidized resources to apply for a Unit Specific Exemption.

- How many new power plants will enter the market due to the expanded MOPR? Again, this is not simply answered, but it is probable that increased amounts of new natural gas fired power plants will enter the market. Some parties' fear of increasing capacity prices come largely from the observation that by excluding subsidized power plants from PJM's capacity auction, the supply of power plants will decrease, while demand for power remains relatively the same. However, PJM has seen large amounts of power plant retirements in the last 15 years, with little impact on capacity prices. This is because as uneconomic power plants close, other power plants that are economic open. It is reasonable to expect that over some period of time, new economic generation will fill the gap and keep prices in check.

All told then, the goal of the FERC order appears to be to reinstate a functioning electric market and the order is designed to seriously discourage state subsidies' manipulation of the electric market. Power plants receiving unit-specific exemptions will have shown that their subsidy is unnecessary, and that they can compete without state subsidy support. Power plants that are subject to MOPR and do not clear the auction will have shown that they are uncompetitive and may need to return to the state for additional subsidies or cease operating. The resulting supply and demand in the market then will more closely match that of a competitive market absent state subsidies. And thus, the resulting price of wholesale electricity should match that of a competitive market.

A caveat is that in the short-term, there may be a mass exit of power plants that are subject to MOPR because of state subsidies. If there is an atypical quantity of exiting power plants, combined with a shorted development timeframe for new entrants, there is the possibility for short-term capacity price increase. Again, Ohio's manufacturers should wait for independent modeling of this financial impact.

The cost of state subsidies will still be borne by the residents of the state, until a state repeals its subsidy policy. And, creation and proliferation of FRR entities is an emerging risk.

Impact to Ohio's State Policy and Regulation of Power Plants

FERC's order has significant impacts to the objectives of the recently passed HB6 in Ohio, and to other Ohio policies and regulations that create subsidies for select electrical power generators. Below we cover possible impacts to specific power plants and technologies in Ohio.

- Davis-Besse and Perry Nuclear Power Plants – The Davis-Besse and Perry nuclear power plants are entitled to receive a subsidy of \$9 per MWh generated from Ohio’s Nuclear Generation Fund, newly created by HB6. This will result in \$150 million of payments annually from Ohio ratepayers to these two nuclear power plants. However, the two nuclear power plants will be subject to the expanded MOPR. The combined capacity of the power plants is about 2,150 MW. At a typical PJM capacity auction price of around \$120 /MW-day, this equates to \$94 million of forgone annual capacity revenue for the two nuclear plants.

It is not clear whether Energy Harbor’s nuclear power plants could receive a Unit Specific Exemption. It is distinctly possible that these nuclear power plants are economical without the HB6 subsidy. If so, they *could* apply for a Unit Specific Exemption, and receive it. However, applying for a Unit Specific Exemption is a choice for Energy Harbor.

In any case, Ohio policymakers face difficult choices. At a minimum, requiring HB6 subsidized units to apply for a Unit Specific Exemption is logical. If subsidized units receive an exemption, then policymakers will need to reconsider whether to continue subsidies that a power plant doesn’t need. If a unit fails to receive an exemption, policymakers will need to reconsider whether to subsidize an uneconomical power plant.

- OVEC Coal Plants – The coal plants of the Ohio Valley Electric Corporation, which include the Kyger Creek plant in Ohio and the Clifty Creek plant in Indiana, will also be subject to the MOPR. There is a chance that they will not clear the PJM capacity auction. OVEC’s capacity is about 2,175 MW, and thus it will forego about \$95 million annually in capacity revenue. However, OVEC’s subsidy is not in the form of a fixed credit, but instead in a rider that passes a pro-rated percentage of its financial losses onto Ohio utilities. As a result, Ohio’s ratepayers will share in 38.68%² of this loss, or about \$36.7 million annually.

Because OVEC’s Ohio utility owners are insulated from any and all financial losses, it is probable this additional cost will simply be passed on to Ohio’s manufacturers and other ratepayers.

- HB6-Favored Solar Energy Plants – HB6 creates a Renewable Generation Fund which will pay \$9 per MWh for renewable energy credits (RECs) for select solar projects. These solar projects have not yet been built and will thus almost certainly be subject to the MOPR and are unlikely to clear the PJM capacity auction. Moreover, given the choice, solar photovoltaic (PV) projects may prefer to receive capacity revenue over the renewable energy credit revenue. For example, a 1 MW solar PV project in central Ohio would receive about \$12,500 in capacity revenue³. That same 1 MW of solar PV would receive \$11,150⁴ from the Renewable Generation Fund. As such, renewable projects of any scale may choose to receive

² OVEC Annual Report, cumulative percentage of Ohio investor-owned sponsoring companies: The Dayton Power and Light Company, Duke Energy Ohio, FirstEnergy Solutions, and Ohio Power Company.

³ 1 MW nameplate x 0.2856 central Ohio capacity factor x \$120 /MW-day, typical x 365 days/year)

⁴ 1 MW of ground-mounted fixed solar in central generates about 1,239 MWh/year, according to PV Watts. \$9 /MWh x 1,239 MWh/year = \$11,150 /year

PJM capacity revenue over HB6 subsidies.

Thus, HB6 could result in reduced revenue for these select solar projects, making them less competitive. The forgone capacity revenue from HB6's select solar projects would be about \$22 million per year.

- Sammis Coal Plant – The Sammis coal-fired power plant owned by the former FirstEnergy Solutions may also be subject to the FERC expanded MOPR because of HB6. At first, this may be surprising, as there is no direct mention or direct subsidy of the Sammis plant within HB6. However, the FERC order appears to catch within its scope sleight-of-hand with state subsidies. FERC states:

“... we consider a State Subsidy to be: a direct *or indirect* payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is (1) a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state ...”

Importantly, FirstEnergy Solutions had publicly credited the HB6 subsidies it is receiving for its nuclear plants for *indirectly* allowing it to subsidize the Sammis coal plant⁵. According to FES comments, the Sammis coal plant cleared 1,233 MW in the most recent PJM capacity action⁶. Thus, HB6 has indirectly put \$54 million in annual capacity revenue at risk for the Sammis coal plant.

- Existing Renewable Energy – Existing renewable energy projects will be exempt from the MOPR and will continue to be able to participate in PJM's capacity auction.
- New “Behind-the-Meter” Renewable Energy – New renewable energy projects that are customer-sited, behind-the-meter, will not be subject to the MOPR. This is because behind-the-meter generation would not bid into PJM's capacity auction anyways. Instead, behind-the-meter generation reduces a customer's capacity obligation. As such, behind-the-meter projects would be able to monetize both capacity value and voluntary or state-mandated renewable energy credits.
- New “Front-of-the-Meter” Renewable Energy – New, front-of-the-meter renewable energy will be subject to the MOPR. As shown in Table 1, solar PV has the second lowest Net CONE value of new resources, after natural gas combustion turbines. That said, it is unlikely that PJM's capacity market price will clear high enough that a solar PV or wind project could enter the capacity market at the Net CONE price. This gives renewable energy developers two options. First, they could choose to enter the market competitively, favoring capacity revenue over REC revenue and subsidies. Second, if new renewable energy plants do not require REC payments to be competitive, they may apply for a “Unit Specific Exemption” and bid into the capacity market at a lower price than Net CONE. This is distinctly possible, as renewable energy projects receive comparatively less of their revenue from capacity payments due to their intermittency and REC prices have dropped to just

⁵ “House Bill Six is really designed to support our nuclear plants, and all the money from that would go to those nuclear plants. But at the same time, it would make our company economically healthy enough that we would be able to look at other investments like investing in the Sammis Plant”, FES CEO John Judge, <https://wtov9.com/news/local/sammis-plant-may-not-close>

⁶ <https://www.prnewswire.com/news-releases/firstenergy-solutions-comments-on-results-of-pjm-capacity-auction-300654549.html>

a few dollars per MWh. As renewable energy installation costs drop, their reliance on REC payments may be low enough that it does not affect the decision on whether to build the project or not, and thus competitive renewable energy projects may request and receive an exemption while preserving their REC payments.

- Energy Efficiency and Demand Response – Most new energy-efficiency and demand response capacity resources would have a Net CONE generally lower than a typical PJM capacity auction clearing price. That is to say, these new resources would have the MOPR applied to them but would still be able to clear the auction at their corresponding technology-specific Net CONE price. Moreover, existing efficiency and demand response resources would be able to continue to bid at any price. While there is some risk that new demand response and energy-efficiency resources may not clear the capacity auction in some years, this may be a manageable risk.

Impact to Technology Mix

Of interest is how FERC's order expanding MOPR will affect the generation technology mix in the PJM territory. While the expanded MOPR is complicated and has nuances, it appears to effectively disincentivize subsidization of older, uneconomical power plants. In recent years, these subsidies have been targeted at coal and nuclear power plants. Newer emerging technologies such as renewables and load management will not be entirely unaffected by the MOPR, but are positioned to be able to continue to grow for a number of reasons, be it behind-the-meter applications, the Unit Specific Exemption, or simply because they no longer require state subsidies. Thus, the expanded MOPR is likely to reinforce the recent trend in electric generation technology mix – considerably more natural gas fired generation with some meaningful expansion of renewable energy and customer-load management, and considerably less coal-fired generation with some reduction in nuclear power.

This analysis was prepared by John Seryak, PE, and Peter Worley of RunnerStone, LLC, Energy Technical Consultant to The Ohio Manufacturers' Association.





Ohio Senate
Senate Building
1 Capitol Square
Columbus, Ohio 43215
(614) 466-7505

Mark Romanchuk
State Senator
22nd Senate District

Federal Energy Regulatory Commission
Attn: Richard Glick, Chairman
888 First St., N.E.
Washington DC 20426

As a member of the Ohio General Assembly and the Senate Energy and Public Utilities committee, I urge the Federal Energy Regulatory Commission (FERC) to support policies which accommodate, protect, and promote competitive markets and which do not impose the costs of other states' policies on our constituents. Our state firmly believes that competitive wholesale markets in which buyers and sellers of energy and capacity compete on a level playing field are essential to the continued success of Ohio's competitive retail markets. The result of these markets has saved our consumers billions of dollars and delivered significant environmental benefits without a centralized federal planning approach.

Competitive markets have saved Ohio families and businesses billions of dollars since their inception in 1999. This has led to Ohio having low residential, industrial, and commercial rates as compared to other states in our Midwest region. Competitive markets have also led to billions of dollars in investment into our state and allowed Ohio to reduce carbon emissions faster than any other state in PJM. We appreciate the progress that has been made to date and hope that it continues.

Our state made the decision to enter the competitive regional wholesale market with the expectation that FERC would protect the sanctity of this market and not allow the actions of other states to diminish our ability to compete in this market. Simply stated, other states' policy decisions should not be allowed to create unfair advantages for select generators in a competitive regional market. FERC needs to stand firm against a market structure which exports the policies and higher prices of one state to another state.

Attached is a resolution (SCR 7) regarding this matter. As soon as session reconvenes, I will proceed in working toward its' passage by the general assembly.

Sincerely,

A handwritten signature in cursive script that reads "Mark Romanchuk".

Mark Romanchuk
State Senator
22nd State Senate District

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. C. R. No. 7

Senator Romanchuk

A CONCURRENT RESOLUTION

To memorialize PJM Interconnection, L.L.C. and the Federal 1
Energy Regulatory Commission to urge the preservation of 2
the Minimum Offer Price Rule for the PJM capacity market. 3

**BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF
REPRESENTATIVES CONCURRING):**

WHEREAS, The State of Ohio has pursued deregulation of 4
electricity to increase consumer choice and encourage the 5
development of a competitive electricity marketplace, beginning 6
with the passage of S.B. 3 of the 123rd General Assembly; and 7

WHEREAS, There have been billions of dollars of investment 8
in new generation resources in Ohio since deregulation began in 9
1999; and 10

WHEREAS, The State of Ohio has rejected state subsidization 11
of various generation resources in favor of encouraging 12
competition; and 13

WHEREAS, The main purpose of the PJM Interconnection, L.L.C 14
capacity market is to secure long-term generation commitments 15
from resources that are capable of performing consistently, even 16
in extreme conditions, to ensure there is always an adequate 17
supply of generation resources to meet the needs of consumers 18
within PJM's region; and 19

WHEREAS, The Minimum Offer Price Rule was established by 20

PJM to prevent state-subsidized generation resources from 21
exercising market power by offering those resources into the PJM 22
capacity market at artificially low prices and to ensure that 23
new resources are competitively offered into PJM's capacity 24
market by establishing a specific minimum dollar amount that a 25
generation resource can offer into the capacity market; and 26

WHEREAS, PJM is now proposing to eliminate the Minimum 27
Offer Price Rule and replace it with an alternative model that 28
would allow state policies to influence the PJM capacity market 29
and decrease competition; 30

WHEREAS, The elimination of the Minimum Offer Price Rule 31
would increase the risk of a critical reliability problem within 32
the PJM states and would force Ohioans to bear costs associated 33
with other states' generation resource preferences; now 34
therefore be it 35

RESOLVED, That we, the members of the 134th General 36
Assembly of the State of Ohio, call upon PJM and the Federal 37
Energy Regulatory Commission to evaluate whether state- 38
subsidized generation resources have a material impact on price 39
formation in PJM's capacity market and whether such 40
subsidization will result in states that have rejected such 41
subsidization being forced to bear increased costs and adversely 42
impact the market's ability to attract and retain commitments 43
from the generation resources necessary to ensure regional 44
reliability; and be it further 45

RESOLVED, That we, the members of the 134th General 46
Assembly of the State of Ohio, call upon PJM and the Federal 47
Energy Regulatory Commission to retain the Minimum Offer Price 48
Rule and reject all efforts to eliminate or replace it; and be 49
it further 50

RESOLVED, That the Clerk of the Senate transmit duly 51

authenticated copies of this resolution to each member of the	52
PJM Board of Managers and the PJM Members Committee, each of the	53
commissioners of the Federal Energy Regulatory Commission, and	54
the news media of Ohio.	55



Ohio, Pennsylvania Oppose Subsidized Energy's 'Free Pass' from FERC Minimum Pricing

Two of the nation's top shale oil and gas producers Friday slammed PJM Interconnection's proposed exemption of certain energy "policy preferences" from its minimum offer price rule (MOPR) -- an actual-cost requirement which federal regulators ordered the 13-state body encompassing Ohio to expand to renewables and other subsidized generation during the Trump administration.

Ohio and Pennsylvania have filed a joint "protest" with the Federal Energy Regulatory Commission (FERC) opposing PJM's July 30 proposal to exempt "legacy" generation policies from real-cost minimum pricing. Rather than referring to older forms of electric generation, the country's largest regional transmission organization (RTO) defines such policies as "any legislative, executive or regulatory action that specifically directs a payment outside of PJM markets [or competitive pricing] to a designated or prospective generation capacity resource, and the enactment of such action predates Oct. 1, 2021."

In a preview of Friday's FERC filing, the Public Utilities Commission of Ohio's (PUCO) Office of Federal Energy Advocate told commissioners this week why something as seemingly arcane as MOPR makes a difference to the Buckeye State and Ohioans generally.

"There's no generation regulation by the PUCO. Ohio depends on a well-functioning wholesale market to provide the least-cost reliable service to our customers," Director Lori Sternisha told members. "The goal of MOPR ... is to ensure that all resources are offered into the wholesale capacity market based on their actual cost of doing business and not to have some advantage because of subsidies or market power."

Sternisha explained why shale producing states' wisdom on the matter should command FERC's attention.

"Ohio and Pennsylvania make up 40 percent of the demand in PJM," she said. "We have similar energy resources and views on how to accommodate state policy preferences in the PJM market."

Friday's brief goes further, noting more than one third of PJM's 65 million people live in the two states.

"Pennsylvania and Ohio represent the largest portion of the RTO -- by population, geographical size, portion of existing installed capacity, portion of queued capacity, and forecasted annual load," the joint filing says. "The commission should take our concerns with consideration appropriate to our impacts on the region and the effects of region-wide policy on our ratepayers."

Ohio and Pennsylvania point out that, unlike some other PJM states, generation markets in the shale producing region are unregulated and market-based.

"In these auctions, no conditions are placed on the ownership, location, affiliation, fuel type, technology, or emissions of any resources or supply, with the exception of state renewable portfolio standards (RPS)," they note.

PJM's current proposal to exempt renewables and other subsidized energy outright, however, "unjustly transfers the consequences of a particular state's policy preference(s) to all states and consumers within the PJM region," the filing states, invoking PUCO Commissioner Daniel Conway's recent comment that preferred generation technology should not displace more reliable sources.

"While states should be able to have their own targets for generation, allowing a medley of state goals to displace competitive-market price signals puts the goals of reliability and affordability at risk," say Ohio and Pennsylvania. "When those policies provide a competitive advantage to a participant in a regional marketplace ... that participant should be subject to the MOPR."

Commissioner Lawrence Friedeman also weighed in Wednesday, calling for "fair and transparent competition, which should yield the most efficient pricing in the PJM market" without "advantaging or disadvantaging any market participate."

Ohio and Pennsylvania's joint filing with FERC can be found at www.hannah.com>Important Documents and Notices>Library.

Story originally published in The Hannah Report on August 20, 2021.

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Matt Huffman
Senate President

Statehouse
1 Capitol Square
Columbus, Ohio 43215
Huffman@ohiosenate.gov

Rob McColley
State Senator, 1st District

Ohio Senate
1 Capitol Square
Columbus, Ohio 43215
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Chairman Glick and Members of the Federal Energy Regulatory Commission:

We the undersigned members of the Ohio Senate urge the Commission to reject PJM's July 30th filing proposing changes to the Minimum Offer Price Rule (ER21-2582). If approved, PJM's filing would severely undermine Ohio's efforts to promote robust and fairly administered competitive electricity markets in our state. Instead, PJM's new construct would freely allow states outside of Ohio to effectively export their policies to our state. FERC must stand up to this overreach and discriminatory construct by rejecting the filing.

On May 6, 2021, Senator Romanchuk wrote to you urging FERC to support policies "that accommodate Ohio's state energy policy and do not impose the costs of other states' policies on our constituents." Ohio has constructed an energy policy that is grounded on competition and the efficiencies that can be gained from a regional wholesale power market. This policy has allowed our consumers to benefit from low prices and historically strong reliability while dramatically reducing NO_x, SO_x and Carbon Emissions. Ohio is rightfully proud of what our state has been able to achieve by this energy policy.

PJM's filing represents a significant step backward for an RTO that has traditionally been a champion of just and reasonable competitive markets. Ohio utilities joined PJM with the expectation of joining a regional market in which reliability would be ensured by competitive resources vying to serve load at the lost cost. Ohio desires a market based on competition, not subsidies, and FERC has a duty to protect that market from the disruptive actions of a one state that impact the outcomes for other states.

The full Senate will be shortly considering a resolution urging FERC to reject PJM's filing. While the timing of the resolution's consideration is still unclear given the vagaries of our legislative calendar, please understand that we feel strongly about this matter and intend to continue to advocate for the interests of Ohio consumers before the Commission. The Ohio Senate also intends to hold hearings and otherwise explore how to maintain Ohio's commitment to competitive markets in the face of a PJM filing that is clearly antithetical to that cause.

Thank you for the consideration of these comments.

A handwritten signature in black ink, reading "Matt Huffman". The signature is written in a cursive style with a large, stylized "M" and "H".

Matt Huffman
Senate President
State Senator, 12th District

A handwritten signature in black ink, reading "Rob McColley". The signature is written in a cursive style with a large, stylized "R" and "M".

Rob McColley
Senate Majority Whip
Chairman, Senate Energy & Public Utilities Committee
State Senator, 1st District



Energy Engineering Report

OMA Energy Committee

John Seryak, PE

September 9, 2021

Agenda

1

FE decoupling refund

2

PJM MOPR rework

3

Large solar and SB 52

4

Capacity and transmission updates

5

Increasing OVEC costs

First Energy decoupling refund

- HB 128 signed into law
- Refunds decoupling rider from HB 6
- \$27million in refunds
- Residential and secondary voltage customers
- Credits on Rider CSR began 8/1/21
- See accompanying memo for more information

Typical Refund Amounts for Secondary-Service Manufacturers

HB 128 Decoupling Refunds - Secondary Voltage					
Size	Demand (kW)	Energy (kWh)	Cleveland Electric Illuminating Refund (\$/month)	Toledo Edison Refund (\$/month)	Ohio Edison Refund (\$/month)
Small	200	50,000	\$ (655)	\$ (828)	\$ (299)
Medium	1,000	300,000	\$ (3,323)	\$ (4,022)	\$ (1,316)
Large	2,500	750,000	\$ (8,333)	\$ (10,095)	\$ (3,310)

Rider CSR Rates

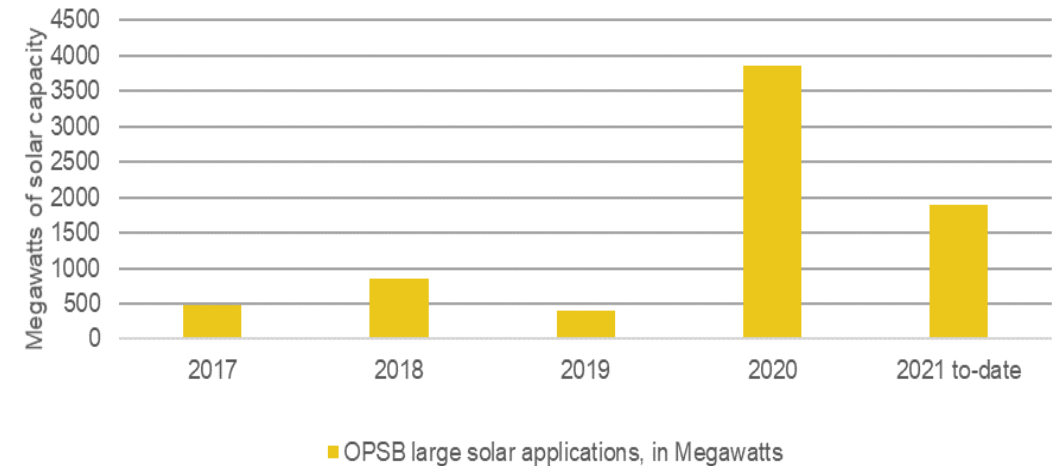
First Energy Utility	Rate 1 (\$/kW > 5)	Rate 2 (\$/kWh)
Cleveland Electric Illuminating	\$ (3.4645)	\$ 0.000414
Toledo Edison	\$ (5.3929)	\$ 0.004480
Ohio Edison	\$ (2.7357)	\$ 0.004688

PJM's MOPR rework

- Expanded Minimum Offer Price Rule (MOPR) terminated by PJM
- New MOPR allows state subsidized generation to participate in capacity auction
- State authority over generation mix
- Must avoid “setting the price of capacity”
- State policy > markets
- Will impact December's 2023/2024 capacity auction

Large solar and SB 52

- Dramatic increase in solar at OPSB
- SB 52 signed into law
- Adds local approval requirement to OPSB
- Grandfathers 7,000 MW of solar
- If built, will produce more than Davis-Besse
- 30% of Ohio's power needs at certain hours
- Impact on future solar unclear
- See accompanying memo for more information

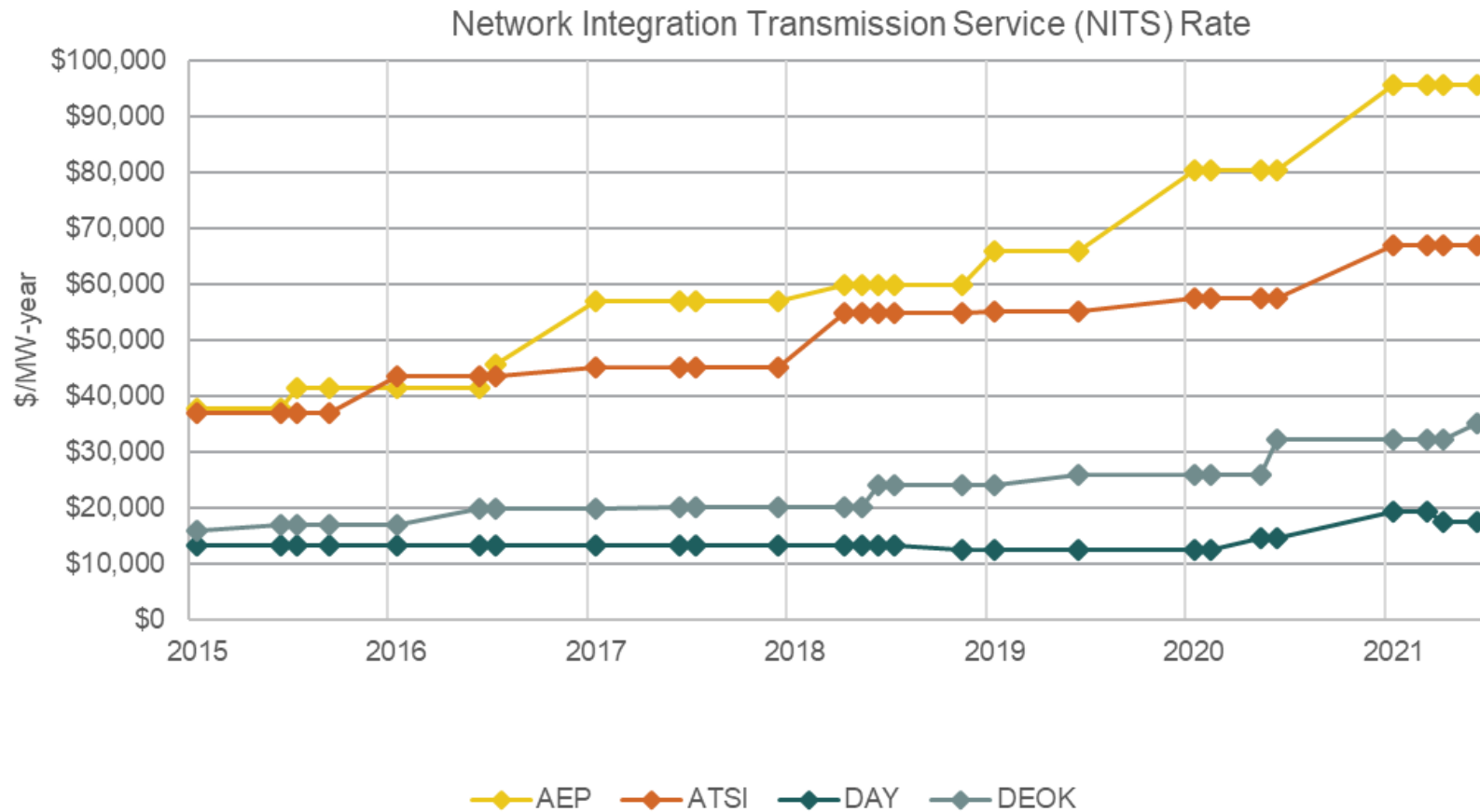


Transmission and capacity peaks (preliminary)

PJM Capacity Peaks			
Rank	MW	Date	Hour
1	148,753	08/24/2021	17
2	148,210	08/12/2021	16
3	146,855	06/29/2021	16
4	146,013	07/06/2021	16
5	145,831	08/26/2021	15

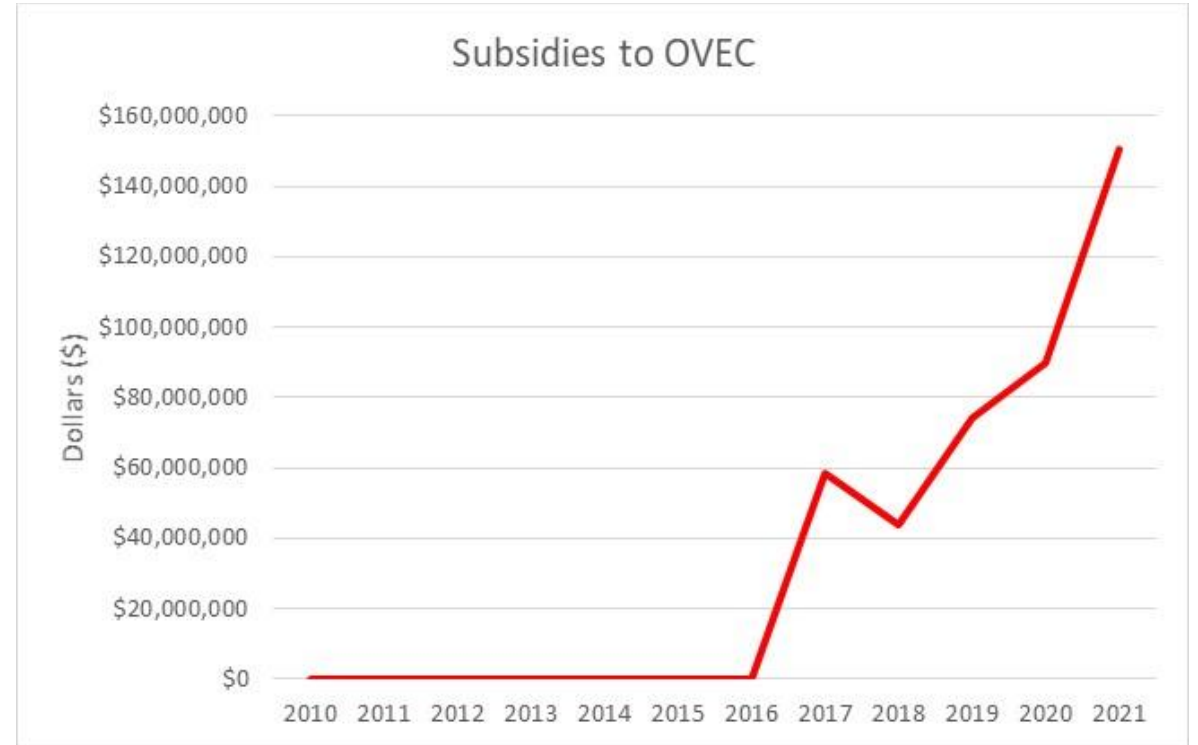
Transmission Zonal Peaks			
Zone	MW	Date	Hour
AEP	21,945	8/24/2021	16
DAY	3,317	8/12/2021	16
DEOK	5,306	8/12/2021	15
ATSI	12,604	6/29/2021	14

Transmission costs



Increasing OVEC costs

- OVEC subsidies from HB 6 remain
- Rate payers cover utilities' losses
- Surged to ~\$150 million this year
- 2x market price for electricity
- Potential \$1.5 billion for utilities
- Legislators still debating





Questions?

Thank you.

To: The Ohio Manufacturers' Association
From: Ryan Schuessler & John Seryak, P.E.

HB 128 Decoupling Refund and the Benefit to Secondary Customers

Summary and Legislative History

House Bill 128 of the 134th General Assembly (128) fully refunds all revenues collected from the FirstEnergy electric distribution utilities' Conservation Support Rider (Rider CSR).¹ Rider CSR resulted from the scandal plagued House Bill 6 and was intended to collect \$355 million plus in "decoupling" and "lost distribution" revenue through 2024, with no associated benefits for ratepayers. Indeed, FirstEnergy's CEO described the effect of the rider in plain language for their investors: "essentially it takes about one-third of our company and I think makes it somewhat recession-proof."² A series of memos to the OMAEG provide a primer and quantitative analysis of the decoupling provision that led to the creation and implementation of Rider CSR.^{3,4,5}

Subsequently, OMAEG and the Ohio Consumers' Counsel filed comments at the Public Utilities Commission of Ohio (PUCO) stressing transparency to ensure that customers receive the full refund that they are entitled to, as well as returning funds to customers over a single billing period rather than over one year.⁶ The total refund amounts to \$27 million, with \$9.2 million in refunds for secondary voltage customers, which includes manufacturers. Typical refund amounts for small, medium, and large manufacturers on secondary service of Toledo Edison, Ohio Edison, and Cleveland Electric Illuminating are shown in Table 1 below.

Table 1. Typical Refund Amounts for Secondary-Service Manufacturers on FirstEnergy Electric Distribution Companies

HB 128 Decoupling Refunds - Secondary Voltage					
Size	Demand (kW)	Energy (kWh)	Cleveland Electric Illuminating Refund (\$/month)	Toledo Edison Refund (\$/month)	Ohio Edison Refund (\$/month)
Small	200	50,000	\$ (655)	\$ (828)	\$ (299)
Medium	1,000	300,000	\$ (3,323)	\$ (4,022)	\$ (1,316)
Large	2,500	750,000	\$ (8,333)	\$ (10,095)	\$ (3,310)

1 https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb128/EN/05/hb128_05_EN?format=pdf

2 <https://www.utilitydive.com/news/firstenergy-nears-proposal-to-decouple-ohio-utility-revenues-electricity-c/566610/>

3 H.B. 6 Decoupling Provision – \$355 Million for FirstEnergy through 2024, Possibly Millions More

4 H.B. 6's Decoupling Provision – A Primer on Decoupling and How H.B. 6 Decoupling Benefits FirstEnergy by Deviating from Best Practices

5 H.B. 6 Decoupling Provision Update – An \$85 Million Increase Beginning Jan. 1, 2021

6 <https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=3d2acaeb-850d-4ddb-9d18-e98beaf4697c>

Effective August 1st, 2021, Rider CSR will refund the full amount of revenues collected through the rider over a one-month period. This affects customers on secondary and residential voltage tariffs. Following the refund period, FirstEnergy will set Rider CSR to zero, subject to final reconciliation. Following final reconciliation, FirstEnergy will remove Rider CSR from their tariff sheets.

Refunds will flow through Rider CSR as a credit, based on the rates shown in Table 2.

Table 2. Rider CSR Rates

First Energy Utility	Rate 1 (\$/kW > 5)	Rate 2 (\$/kWH)
Cleveland Electric Illuminating	\$ (3.4645)	\$ 0.000414
Toledo Edison	\$ (5.3929)	\$ 0.004480
Ohio Edison	\$ (2.7357)	\$ 0.004688

To: The Ohio Manufacturers' Association
From: John Seryak, PE and Wyatt Elbin

Large solar facilities set to have meaningful role in Ohio's electric generation fleet despite passage of SB 52

Summary

A significant number of large solar facilities are operating, approved, or pending approval at the Ohio Power Siting Board (OPSB). Once built, these facilities will produce enough electricity to meet a considerable amount of Ohio's electric demand. Large solar facility development is relatively new in Ohio, with the first major projects applying with the OPSB in 2017 and the first facility coming online in February of this year¹. Since then, development has rapidly increased, with 20 projects submitting applications in 2020.

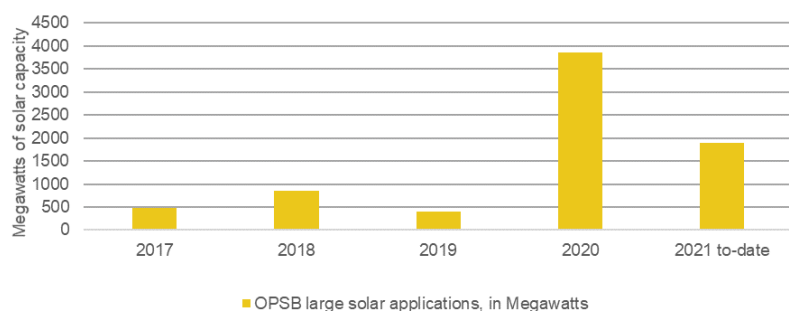


Figure 1: Megawatt capacity of large solar applications received by OPSB

Ohio recently signed Senate Bill 52 (SB 52) into law, which creates a local approval process for utility projects, including wind and solar. This local approval requirement is in addition to the existing OPSB review process. The legislation also contains a grandfather provision for certain pending solar projects².

Key Points

- There are 41 pending or approved large solar facilities with applications at the Ohio Power Siting Board (OPSB).
- Senate Bill 52 (SB 52) added a local approval requirement for solar projects.
- SB 52 includes an exemption for 38 of the 41 projects at the OPSB.
- These 38 projects represent 7,000 MW of solar capacity and will be capable of meeting ~30% of Ohio's electric demand at certain times of their peak production.

¹ Ohio Power Siting Board, Power Siting Solar Case Status map as of 7/16/2021. <https://opsb.ohio.gov/wps/portal/gov/opsb/about-us/resources/solar-farm-map-and-statistics>

² SB 52, Section 4 as enrolled: "(A) The provisions of this act shall not apply to any application for a certificate, or material amendment to an existing certificate, from the power siting board for a large solar facility that is in the PJM interconnection and regional transmission organization, L.L.C., new services queue at the time the application is found to be in compliance with division (A) of section 4906.06 of the Revised Code by the chairperson of the power siting board or the

Ohio's pending or approved solar projects

Ohio currently has 41 pending or approved solar projects at the OPSB. Of the 41 projects, 38 are in advanced enough stages of project development to meet SB 52's grandfather requirements. These requirements state the project must have received a completed PJM site impact study and paid the fee for a facilities study. These 38 projects represent nearly 7,000 MW of nameplate solar generation capacity. Once built, these projects are expected to produce more electricity annually than the Davis-Besse Nuclear Power Station³ and will be able to meet ~30% of Ohio's electric demand at certain times of their peak hourly production⁴.

Senate Bill 52 Overview

Created in 1972, the OPSB will continue to have jurisdiction for approving the construction of electric generation facilities in the state of Ohio. However, SB 52 added a requirement for project developers to notify county officials and receive their approval prior to beginning the OPSB's approval process⁵. Additionally, under the new law, county commissioners can establish zones in their county that would restrict project development⁶. Each project will also now have two voting members from their community during the OPSB review. To address projects already filed at the OPSB for review, the bill establishes development milestones for projects that if achieved by a specific date, would preclude the project from being subject to SB 52's new approval requirements. Finally, SB52 created a referendum process for any local zoning restriction decision that upon the collection of enough signatures, could be challenged at the ballot box.

While SB 52 provides clarity for solar projects in active development, it is uncertain what the new rules will do to future project development. Solar is increasingly financially attractive and the demand from corporate renewable energy buyers continues to increase. SB 52 does not fundamentally change solar siting requirements; it only adds additional approval steps. Time will tell if the new requirements impede solar development in the state.

chairperson's designee and is accepted by the board if, as of the effective date of this section: (1) The applicant has received a completed system impact study from PJM for the large solar facility; and (2) The applicant has paid the fee for the facilities study to PJM."

³Based on annual solar production estimates from the DOE PV Watts simulation tool, the 7,000 MW of solar will produce approximately 9,000 GWh annually. This is compared to Davis-Besse Nuclear Power Station's previous three-year average, annual production of 7,482 GWh, per the International Atomic Energy Association. <https://pris.iaea.org/PRIS/CountryStatistics/ReactorDetails.aspx?current=676>

⁴Based on hourly solar production estimates from DOE PV Watts simulation tool. 7,000 MW of solar in Ohio has a peak output of 5,600 MW on March 14, noon to 1 pm. According to PJM, Ohio's total power demand at this time for the ATSI, AEP Transmission, DP&L, and Duke Energy Ohio zones is 18,510 MW. $5,600 \text{ MW} / 18,510 \text{ MW} = 30\%$ of Ohio's power during peak solar output.

⁵Ohio Revised Code Sec. 303.61. (A) At least ninety days, but not more than three hundred days, prior to applying for a certificate from the power siting board, or a material amendment to an existing certificate, for a utility facility, to be located in whole or in part in the unincorporated area of a county, the person intending to apply shall hold a public meeting in each county where the utility facility is to be located.

⁶Ohio Revised Code Sec. 303.58. (A) The board of county commissioners may adopt a resolution designating all or part of the unincorporated area of a county as a restricted area, prohibiting the construction of any or all of the following: (1) An economically significant wind farm; (2) A large wind farm; (3) A large solar facility.

Version: As Passed by the General Assembly

Primary Sponsors: Sens. Reineke and McColley

Effective date: October 11, 2021

J.R. Lallo, Research Analyst

SUMMARY

County designations of restricted areas for utility facilities

- Allows a board of county commissioners to designate all or part of an unincorporated area of the county as a restricted area, prohibiting the construction of any or all of the following (collectively, known as “utility facilities”):
 - Economically significant wind farms;
 - Large wind farms;
 - Large solar facilities.
- Establishes a procedure for adopting a resolution establishing a restricted area, including notice requirements for a meeting at which the resolution will be discussed.
- Prohibits applications for a certificate, or material amendment, for a utility facility from the Power Siting Board (PSB) in a restricted area prohibiting the construction of that type of facility.
- Establishes a referendum and related requirements for the approval or rejection of a resolution of a board of county commissioners designating a restricted area.
- Defines “material amendment” as an amendment to an existing PSB certificate for a utility facility that does any of the following:
 - For a utility facility:
 - ❖ Changes the facility’s generation type from one type of utility facility to another;
 - ❖ Increases the facility’s nameplate capacity;
 - ❖ Changes the boundaries of the facility, unless the new boundaries are completely within the previous boundaries or the facility components outside the previous boundaries are underground.

- For a large wind farm or economically significant wind farm:
 - ❖ Increases the number of wind turbines;
 - ❖ Increases the height of a wind turbine.
- Specifies the addition of a battery storage system to a utility facility does not constitute a material amendment.

County approval regarding utility facilities

- Requires a person, before applying for a PSB certificate, or material amendment to an existing certificate, for placement of a utility facility in the unincorporated area of a county, to hold a public meeting in each county in which the facility is to be located.
- Requires the prospective applicant to provide certain information at the public meeting and to the board of county commissioners regarding the utility facility that is the subject of the application.
- Allows a board of county commissioners, no later than 90 days after receiving information about the utility facility at the public meeting, to adopt a resolution prohibiting its construction or limiting its geographic size.

PSB membership regarding utility facilities

- Requires that, for all applications pertaining to a certificate, or a material amendment to an existing certificate, for a utility facility, PSB must include two voting ad hoc members to represent the interests of the residents of the counties and townships in which the utility facility is to be located.
- Requires the voting ad hoc members to be the chairperson of the board of township trustees and the president of the board of county commissioners of the township and county in which the utility facility is to be located, or their designees.
- Stipulates that, if the utility facility is to be located in multiple townships or counties, a single voting ad hoc member will be chosen by a majority vote the boards of township trustees to represent all of those townships, and a single voting ad hoc member will be chosen by a majority vote of all the boards of county commissioners to represent all of those counties.
- Requires that a board of county commissioners and a board of township trustees designate one voting ad hoc PSB member each, not later than 30 days after receiving notice that an application to PSB for a certificate or amendment for a utility facility has been determined to be complete and accepted.

Ad hoc PSB member restrictions

- Prohibits, if a board of township trustees or board of county commissioners seeks to adopt a resolution to intervene in a power siting board case for which it is entitled to have a voting ad hoc member, the member who will serve as an ad hoc member from voting on the resolution to intervene unless they designate another as the ad hoc member.

- Prohibits present and former voting ad hoc PSB members from disclosing or using confidential information acquired in the course of official duties without appropriate authorization.
- Exempts voting ad hoc PSB members from limits on ex parte communications with any party to a PSB proceeding, but requires the ad hoc member and the party to disclose the date of the conversation and all participants in the conversation who are parties.

PSB certification process

- Requires PSB to notify boards of township trustees and boards of county commissioners that an application has been filed for a certificate, or a material amendment to an existing certificate, to construct a utility facility in their township or county.
- Prohibits PSB from granting a certificate, or material amendment, for a utility facility if the prospective applicant provided different information to the board of county commissioners for the public meeting regarding nameplate capacity, geographic area, and generation type than what PSB possesses.
- Prohibits PSB from granting a certificate, or a material amendment to an existing certificate, if the utility facility exceeds the limited boundaries set by the board of county commissioners by resolution.

Decommissioning requirements for wind and solar facilities

- Requires an applicant for a certificate, or a material amendment to an existing certificate, for a utility facility to submit a comprehensive decommissioning plan for the facility for PSB to review and approval 60 days before beginning construction.
- Requires the plan to be prepared by a professional engineer, designate the responsible parties for decommissioning, a schedule of decommissioning, and cost estimates.
- Requires the posting of a performance bond that meets certain requirements imposed by the act before construction may begin.

Applicability to pending certificates for utility facilities

- States that, for an application for a certificate, or a material amendment to an existing certificate, for a utility facility that has been filed with PSB, but has not been found to be in compliance with the application requirements and accepted, as of the act's effective date (October 11, 2021), the PSB shall include voting ad hoc members.

Applicability to pending certificates for wind farms

- States that the act applies to any application for an economically significant wind farm or large wind farm that has been filed with PSB, but has not has been found to be in compliance with the application requirements and has not been accepted, by November 10, 2021 (30 days after the act's effective date).

- States that any application for such a wind farm is subject to review and approval by the board of county commissioners of the county in which the utility facility is to be located and the board has until January 10, 2022, to prohibit its construction or limit its size.

Applicability to pending certificates for large solar facilities

- States that applications for a certificate or material amendment to an existing certificate for a large solar facility are not subject to the act's provisions if, as of October 11, 2021:
 - The facility is in the PJM Interconnection and Regional Transmission Organization, L.L.C. (PJM), New Services Queue;
 - The application has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has been accepted by PSB; and
 - The applicant has received a completed system impact study from PJM and has paid the filing fee for the facilities study to PJM.
- States that if a large solar facility meets the above requirements and has multiple positions in the New Services Queue under the same legal entity as an applicant, all the queue positions in effect on October 11, 2021, are exempt from the act.
- States that if, after October 11, 2021, the applicant files an additional new service request with PJM pertaining to the facility, the application is subject to review by the board of county commissioners of the county in which the facility is to be located.
- States that if a large solar facility submits a new queue position for an increase in capacity interconnection rights after October 11, 2021, in order to participate in PJM's capacity market which does not increase the facility's nameplate capacity, the change does not subject the facility to the act.

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DETAILED ANALYSIS

Restricted areas

The act creates a process under which a board of county commissioners may designate all or part of the unincorporated area of a county as a restricted area to prohibit the construction of a “utility facility,” which is defined as any or all of the following:¹

- “Economically significant wind farm,” defined as wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than 50 megawatts. The term excludes any such wind farm in operation on June 24, 2008. The term also excludes one or more wind turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer’s point of interconnection to the electrical grid.

¹ R.C. 303.57, 303.58, and 4906.01; R.C. 4906.13, not in the act.

- “Large solar facility” means an electric generating plant that consists of solar panels and associated facilities with a single interconnection to the electrical grid that is a “major utility facility” (which is an electric generating facility and associated facilities designed for, or capable of, operation at 50 megawatts or more).
- “Large wind farm” means an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is also a major utility facility.

No utility facility within restricted areas

The act prohibits a person from filing an application for a certificate, or a material amendment to an existing certificate, to construct, operate, or maintain a utility facility in a restricted area, if such a facility is prohibited in that restricted area.² Likewise, the act prohibits the Power Siting Board (PSB) from accepting a filing for, or granting, such a certificate or a material amendment to such an existing certificate.³

Material amendment

The act defines a “material amendment” to mean an amendment to an existing PSB certificate that does any of the following:⁴

- For a utility facility:
 - Changes the facility’s generation type from one type of utility facility to another;
 - Increases the facility’s nameplate capacity; or
 - Changes the boundaries of the facility, unless the new boundaries are completely within the previous boundaries or the facility components outside the previous boundaries are underground.
- For a large wind farm or economically significant wind farm:
 - Increases the number of wind turbines; or
 - Increases the height of a wind turbine.

Material amendments do not include the addition of a battery storage system to a utility facility.⁵

Procedure to designate a restricted area

A board of county commissioners may adopt a resolution designating one or more restricted areas, and fixing their boundaries, at a regular meeting of the board or at a special meeting called for the purpose of discussing such a resolution. Any resolution designating a

² R.C. 303.60.

³ R.C. 303.60 and 4906.101.

⁴ R.C. 303.57(C)(1).

⁵ R.C. 303.57(C)(2).

restricted area must include a map of the restricted area, and texts sufficient to identify the boundaries of the restricted area. A copy of the resolution, texts, and maps must be filed with the county recorder's office.⁶

At least 30 days prior to a meeting at which such a resolution will be discussed, the board must do the following:⁷

- Provide public notice of the date and time of the meeting by one publication in a newspaper of general circulation within the county;
- Publicly post a map showing the boundaries of the proposed restricted area at all public libraries within the county; and
- Provide written notice of the meeting, by first class mail, to all school districts, municipal corporations, and boards of township trustees located in whole, or in part, within the boundaries of the proposed restricted area.

The act requires the board to repeat the "30-day" steps described above before the board may modify a previously adopted resolution creating a restricted area.⁸

Effect of adoption of resolution on existing applications

The act provides that the adoption of a resolution creating a restricted area has no effect on the construction of a utility facility that has already been presented to the board of county commissioners, if the board did not adopt a resolution prohibiting the facility within the time required for such a resolution. (See "**Board of county commissioners' rejection or modification of project**" below.)⁹

Referendum re: designation of a restricted area

The act conditions the designation of a restricted area upon the right of referendum the act grants county voters. A resolution designating a restricted area becomes effective 30 days from the day it is adopted, unless a referendum petition is filed with the board of county commissioners.

Referendum process

Petition certification

If a timely referendum petition regarding the designation of a restricted area is filed with the board of county commissioners, the board must certify the petition to the county board of elections (1) within two weeks after receiving it and (2) not less than 90 days before the election at which the question regarding the restricted area designation will be held. If the board of elections determines the petition is sufficient and valid, the question will be voted on

⁶ R.C. 303.58(B) and (D).

⁷ R.C. 303.58(C)(2).

⁸ R.C. 303.58(C)(3).

⁹ R.C. 303.58(E).

at a special election held during either the next primary or general election that occurs at least 120 days after the petition is filed with the board of county commissioners.

Petition requirements

The referendum petition must (1) be signed by the number of registered voters residing in the county equal to at least 8% of the total votes cast for all candidates for governor in that county at the most recent general election at which a governor was elected and (2) request the board of county commissioners to submit the petition to the county board of elections. Each petition must contain a brief summary of the contents of the resolution designating the restricted area. The petition must contain the number and the full and correct title, if any, of the resolution. These requirements are in addition to current Ohio law governing petitions (R.C. 3501.38, not in the act).

The act also sets forth the basic form for a “Petition for Referendum on the Designation of a restricted area prohibiting the construction of utility facilities,” that includes, for example, the name or number of the resolution, if any, a brief summary of the resolution, the county name, a statement by the petition circulator relating to signature collection, and the statement that election falsification is a fifth degree felony. The form actually used must substantially follow this basic form.

Voter action

The resolution designating the restricted area will not take effect unless it is approved by a majority of voters voting on it. If a majority of the voters approve the resolution, it will take effect immediately.

Post-voter approval actions

Within five working days after the resolution’s effective date, the board of county commissioners must file the resolution and all accompanying maps and texts with the county recorder and with the county or regional planning commission, if one exists. However, the failure to file with the recorder the resolution, maps, and texts, will not invalidate the resolution.¹⁰

County approval regarding utility facilities

Pre-PSB application public meeting and notice

At least 90, but no more than 300 days, before applying for a certificate, or a material amendment to an existing certificate, from PSB for a utility facility to be located (in whole or in part) in the unincorporated area of a county, the person intending to apply for the certificate or amendment must hold a public meeting in each county in which the utility facility is to be located. The prospective applicant must provide written notice regarding the meeting to the board of county commissioners of the county, as well as the boards of trustees of every

¹⁰ R.C. 303.59.

township in which the utility facility is to be located within that county, at least 14 days before the meeting is held.¹¹

Information provided at meeting

At the public meeting, the prospective applicant must provide the following information, and also must provide it in written form to the board of county commissioners:

- Whether the utility facility is:
 - An economically significant wind farm;
 - A large wind farm; or
 - A large solar facility.
 - The maximum nameplate capacity of the utility facility;
 - A map of the proposed geographic boundaries of the project within that county.

Further, at the public meeting, the prospective applicant for a material amendment “that makes any change or modification to an existing certificate”¹² must comply with the above requirements for the pre-PSB application public meeting and notice when providing information regarding that change or modification to the board of county commissioners.¹³

Board of county commissioners’ rejection or modification of project

Not later than 90 days after the public meeting regarding the proposed application for a PSB certificate, or a material amendment to an existing certificate, for a utility facility, the board of county commissioners may adopt a resolution that does either of the following:¹⁴

- Prohibits the construction of the proposed utility facility;
- Limits the boundaries of the proposed utility facility to a smaller geographic area of the county, completely within the area proposed by the applicant.

If a resolution is not adopted within the time required, the application may proceed as filed with PSB. A resolution to prohibit or limit a utility facility does not prevent a prospective applicant from filing another proposal for consideration by the board of county commissioners at a later date.¹⁵

¹¹ R.C. 303.61(A) and (B).

¹² It is not clear what this apparent modification (language in quotations) to the term “material amendment” means.

¹³ R.C. 303.61(C).

¹⁴ R.C. 303.62(A).

¹⁵ R.C. 303.63(B) and (C).

PSB membership regarding utility facilities

Voting ad hoc PSB members

The act requires PSB to include two voting ad hoc members in all cases involving an application for a certificate, or a material amendment to an existing certificate, for a utility facility. The voting ad hoc members represent the interests of the residents of the area (county and township) in which the utility facility is to be located. The voting ad hoc members must be designated not later than 30 days after a board of county commissioners or board of township trustees receives notification that an application has been found to be in compliance with the application requirements by the chairperson of PSB (or the chairperson's designee) and has been accepted by PSB. The voting ad hoc members must be:

- The chairperson of the board of township trustees of the township in which the utility facility is to be located, or the chairperson's designee; and
- The president of the board of county commissioners of the county in which the utility facility is to be located, or the president's designee.¹⁶

(See "**Designee requirements**," below regarding who can be a designee.)

If the utility facility is to be located in multiple townships, a single ad hoc member must be chosen by a majority vote of the boards of township trustees of all of the townships in which it is to be located to represent those townships. Likewise, if a utility facility is to be located in multiple counties, a single ad hoc member must be chosen by a majority vote of the boards of county commissioners of all the counties in which it is to be located to represent those counties.¹⁷

The act prohibits a person from serving as an ad hoc PSB member if the person:¹⁸

- Is party to a lease agreement with, or has granted an easement to, the developer of a utility facility;
- Holds any other beneficial interest in a utility facility;
- Has an immediate family member who is party to a lease agreement with, or has granted an easement to, the developer of the utility facility;
- Has an immediate family member who holds any beneficial interest in a utility facility; or
- Has an immediate family member who has intervened in the PSB proceeding for which the ad hoc member is included.

¹⁶ R.C. 4906.02(A)(2), 4906.021(B), (C)(1), and (E), and 4906.022.

¹⁷ R.C. 4906.021(C)(2) and (3).

¹⁸ R.C. 4906.021(D)(1).

If an individual has a conflict of interest, as just described, the individual cannot serve as an ad hoc member of PSB and a new ad hoc member must be appointed as provided above.¹⁹

The act defines an “immediate family member” to mean a person’s:²⁰

- Spouse;
- Brother or sister, of the whole, or of the half, blood, or by marriage;
- Children, including adopted children; and
- Parents.

Limitations and restrictions on voting ad hoc PSB members

Designee requirements

A designee tapped to serve as a voting ad hoc PSB member must be a resident of the same political subdivision as the designator or another elected official from that subdivision.²¹

Intervenor actions

If a board of township trustees or board of county commissioners seeks to adopt a resolution to intervene in a PSB case for which it is entitled to have a voting ad hoc member, the member of that body who will serve as a voting ad hoc member cannot vote on the resolution to intervene, unless the member designates another ad hoc member, consistent with the requirements described above.”²²

Ex parte communications

A voting ad hoc member of PSB is exempt from all limitations on ex parte communications. However, if an ad hoc member communicates with a party, including any intervening party, to a PSB proceeding, the ad hoc member and the party must disclose to PSB the date of the conversation and all participants in the conversation who are parties to the case.²³

Confidentiality

No present or former voting ad hoc member may disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential because of the following:²⁴

- Statutory law; or

¹⁹ R.C. 4906.021(C)(2).

²⁰ R.C. 4906.021(A).

²¹ R.C. 4906.021(E).

²² R.C. 4906.023

²³ R.C. 4906.024.

²⁴ R.C. 4906.025.

- Notice the ad hoc member received designating the information as confidential if the status of the proceedings or the circumstances under which the information was received warrants its confidentiality and preserving its confidentiality is necessary to the proper conduct of governmental activities.

PSB certification process

Copies of PSB certificate applications for townships and counties

The act requires that PSB provide full and complete copies of an application for a certificate, or a material amendment to an existing certificate, to the boards of county commissioners and the boards of township trustees of all counties and townships in which a utility facility is to be located. The application must be provided no later than three days after it has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has been accepted by PSB.²⁵ The copies may be provided in any of the following formats:²⁶

- Paper copy;
- Electronic format; or
- An electronic communication containing a link to the application, if posted on PSB's website.

Situations in which PSB certificate/amendment cannot be issued

PSB cannot grant a certificate, or a material amendment to an existing certificate, for a utility facility, if any of the following apply regarding the information the prospective applicant provides to the board of county commissioners for the public meeting (see "**Pre-PSB application meeting and public notice**," above):

- The nameplate capacity exceeds what was provided;
- The geographic area is not completely within the boundaries originally provided to the board of county commissioners; or
- The type of generation is different than what was provided.

Additionally, PSB cannot grant a certificate or an amendment, if the facility exceeds the limited boundaries set by the board of county commissioners by resolution (see "**Board of county commissioners' rejection or modification of project**" above).²⁷

PSB action following county prohibition or limitation

The act prohibits PSB from granting a certificate, or a material amendment to an existing certificate, either as proposed or modified by PSB, to a utility facility to be located in a county in

²⁵ R.C. 4906.31(A).

²⁶ R.C. 4906.31(B).

²⁷ R.C. 4906.30(B).

which the board of county commissioners has adopted a resolution prohibiting the construction of that type of utility facility. If a utility facility is to be located in multiple counties and not all of the boards of county commissioners have adopted a prohibition resolution, PSB must modify the certificate or amendment to exclude all areas in which such construction is prohibited.²⁸

Likewise, if a board of county commissioners has adopted a resolution limiting the boundaries of the proposed utility facility to a smaller geographic area within the area proposed by the applicant, PSB cannot grant a certificate or amendment to a utility facility that includes any area outside of the area approved by the board of county commissioners.²⁹ (See, **“Board of county commissioners’ rejection or modification of project,”** above discussing the prohibition or limitation of a utility facility project.)

Decommissioning requirements for wind and solar facilities

Decommissioning plan

The act requires that, at least 60 days prior to beginning construction of a utility facility, the applicant for a certificate, or a material amendment to an existing certificate (or any subsequent person to whom the certificate is transferred) must submit a comprehensive decommissioning plan for review and approval by PSB.³⁰ The plan must be prepared by a professional engineer registered with the State Board of Registration for Professional Engineers and Surveyors. PSB may reject the engineer chosen by the applicant and require the applicant to choose another qualified engineer.³¹

The decommissioning plan must include:³²

- A list of all parties responsible for decommissioning;
- A schedule of decommissioning activities, not to extend beyond 12 months from the date the utility facility ceases operation;
- An estimate of the full costs of decommissioning the utility facility, including the proper disposal of all facility components and restoration of the land on which the facility is located to its pre-construction state. The estimate cannot take into account the salvage value of any materials from the facility.

The act requires the applicant to recalculate the decommissioning cost estimate every five years. The recalculation must be done by an engineer retained by the applicant.³³

²⁸ R.C. 4906.102.

²⁹ R.C. 4906.103.

³⁰ Please note, R.C. 4906.21 (definition section) contains a technical error. R.C. 4906.232 should be “R.C. 4906.222.”

³¹ R.C. 4906.21 and 4906.211(A).

³² R.C. 4906.211(B).

³³ R.C. 4906.212.

Decommissioning performance bond

The act requires that, prior to beginning construction of a utility facility, the applicant must post a performance bond to ensure that funds are available for decommissioning the facility. PSB must be named as the obligee of the performance bond.³⁴

The performance bond must equal the estimate of the costs of decommissioning included in the decommissioning plan and must be updated every five years. If decommissioning costs are greater in the new estimate than they were in the preceding estimate, the performance bond must be increased proportionately. The performance bond can never decrease, even if the estimated cost of decommissioning decreases.³⁵

Applicability to utility facilities

The act states that PSB shall include voting ad hoc members for each application for a certificate, or a material amendment to an existing certificate, for a utility facility that has been filed with, but has not been found to be in compliance with the application requirements by the Chairperson of PSB (or the Chairperson's designee) and accepted by PSB as of the act's effective date, October 11, 2021.³⁶

Applicability to pending certificates for wind farms

The act states that its provisions apply to any application for a large wind farm or economically significant wind farm that has been filed with PSB, but has not been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee) and has not been accepted by PSB by November 10, 2021 (30 days after the act's effective date). Any such application not found to be in compliance and that has not been accepted is subject to review by the board of county commissioners of the county in which the utility facility is to be located. The board of county commissioners has until January 10, 2022, to review the application and to adopt a resolution prohibiting the construction of the utility facility or limiting its boundaries.³⁷

Applicability to pending certificates for large solar facilities

The act states that an application for a certificate or material amendment to an existing certificate for a large solar facility is not subject to the act's provisions if:³⁸

- The facility is in the PJM Interconnection and Regional Transmission Organization, L.L.C. (PJM), New Services Queue at the time the application has been found to be in compliance with the application requirements by the PSB Chairperson (or the Chairperson's designee);

³⁴ R.C. 4906.22.

³⁵ R.C. 4906.221 and 4906.222.

³⁶ Section 5.

³⁷ Section 3.

³⁸ Section 4(A).

- The application has been accepted by PSB; and
- As of October 11, 2021, the applicant has received a completed system impact study from PJM for the facility and has paid the filing fee for the facilities study to PJM.

Additionally, the act states that if a large solar facility that meets the above requirements and has multiple positions in the New Services Queue under the same legal entity as the applicant, all the queue positions in effect on October 11, 2021, are exempt from the act.³⁹

However, if an applicant files an additional new service request with PJM pertaining to the facility after October 11, 2021, the application is subject to review by the board of county commissioners of the county in which the facility is to be located (see **“Board of county commissioners’ rejection or modification of project”** above).⁴⁰ But note, the act further provides that if, after that date, in order to participate in PJM’s capacity market, a large solar facility submits a new queue position for an increase in capacity interconnection rights, that change does not subject the facility to the act, but only if the change does not increase the facility’s nameplate capacity.⁴¹

HISTORY

Action	Date
Introduced	02-09-21
Reported, S. Energy & Public Utilities	06-02-21
Passed Senate (20-13)	06-02-21
Reported, H. Public Utilities	06-28-21
Passed House (52-44)	06-28-21
Senate concurred in House amendments (21-12)	06-28-21

21-SB52-134ks

³⁹ Section 4(B).

⁴⁰ Section 4(C).

⁴¹ Section 4(D).

CARPENTER LIPPS & LELAND LLP

ATTORNEYS AT LAW

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

MEMORANDUM

To: OMA Energy Committee
From: Kim Bojko, OMA Energy Counsel
Re: Energy Committee Report
Date: September 9, 2021

Active Administrative Actions in which OMAEG is Involved:

American Electric Power (AEP):

- **New Distribution Rate Case Filed (Case No. 20-585-EL-AIR)**
 - On April 29, 2020, AEP filed a notice of intent to file an application to increase its distribution rates.
 - On May 18, 2020, OMAEG intervened to protect members from being charged unreasonable rates.
 - On June 8, 2020, AEP filed an application to increase its base distribution rates by 3.5%. AEP sought to continue existing riders, including the Distribution Investment Rider (DIR). In addition, AEP requested to delay the implementation of the rates purportedly due to concerns over COVID-19, but failed to mention its deferral authority for COVID-19 expenses or request to implement a H.B. 6 decoupling mechanism to increase rates to 2018 levels until the new distribution rates become effective. Lastly, AEP proposed a set of voluntary demand-side management (DSM) programs, which contain a mandatory “administrative fee.”
 - On November 18, 2020, the PUCO Staff filed their report, which included a recommended revenue requirement of \$901,428,666 to \$921,950,845, as opposed to AEP’s requested amount of \$1,065,876,000. OMAEG will submit its objections advocating for reasonable rates and opposing any anticompetitive proposals included in the application.
 - On December 18, 2020, OMAEG filed its objections to the Staff Report.
 - A settlement was filed on March 12, 2021, which AEP, OMAEG, PUCO Staff, and most customer groups joined.
 - An evidentiary hearing occurred in May 2021 where OMAEG cross-examined opponents to the settlement, including environmental groups and retail electric suppliers.
 - Briefing is complete and waiting a decision from the PUCO.

- **Application to Initiate gridSMART Phase 3 Project (Case No. 19-1475-EL-RDR)**
 - AEP filed to initiate phase 3 of its smart grid deployment project, which it claims will expand reliability benefits of Distribution Automation Circuit Reconfiguration (DACR) to additional distribution circuits, the energy efficiency and retail power cost savings of Volt-Var Optimization (VVO), and complete Advanced Metering Infrastructure (AMI) deployment.
 - OMAEG has intervened in this case in order to protect members' interests.
 - On September 9 and September 25, 2020 OMAEG filed comments asserting that AEP's proposal to install, own, and operate a fiber network not related to modernizing the distribution system and to require its customers to subsidize those investments is unlawful, anticompetitive, against the policy of the state, and should be rejected.
 - Awaiting further action by the PUCO.
- **Application for Establishment of Renewable Reasonable Arrangements With Multiple Non-Residential Customers (Case No. 19-2037-EL-AEC)**
 - On November 15, 2019, AEP filed to allow implementation of a significant number of MWs as part of the approved commitment for AEP to develop 900 MW of renewable generation resources in Ohio, without a general finding of need for the solar wind resources that the Company requested in Case No. 18-501-EL-FOR. As part of a future Amended Application to be filed in this proceeding, AEP Ohio plans to request that the PUCO approve each of the individual reasonable arrangements.
 - On January 2, 2020, the PUCO suspended the proceeding until further notice.
- **OVEC Rider Audit (Case Nos. 18-1004-EL-RDR, et al.)**
 - OMAEG intervened in the audit of AEP's Ohio Valley Electric Corporation (OVEC) Rider to ensure that AEP only collects costs that were prudently incurred and in customers' best interests.
 - OMAEG interviewed the auditor of the OVEC Riders on the plants' disposition of energy and capacity, capital expenses, potential sale and retirement, and more.
 - OMAEG requested that the PUCO set an evidentiary hearing to determine whether the OVEC plants were operated prudently and consistent with participation in a competitive market.
- **AEP Submits Final Reconciliation Proposal for its EE/PDR Rider (Case No. 21-497-EL-RDR)**
 - AEP filed an application with the PUCO setting forth its proposal for the final reconciliation of its Energy Efficiency/Peak Demand Reduction Rider (EE/PDR). As of February 28, 2021, the balance of AEP's EE/PDR over-recovery is reportedly \$18,213,860.

- **AEP Files Application for 2020 SEET (Case No. 21-541-EL-UNC)**
 - AEP requested a PUCO determination that its 2020 earnings under its current Electric Security Plan (ESP) pass the Significantly Excessive Earnings Test (SEET). AEP reported a return on equity (ROE) of 10.74% and proposed that the PUCO use a safe harbor of 12.58% and SEET threshold of 14.64% in this case.

Duke Energy Ohio (Duke):

- **Application to Adjust Rider PF (Case No. 19-1750-EL-UNC)**
 - On April 15, 2020 and May 15, 2020, OMAEG and other stakeholders submitted comments on Duke's request to recover costs associated with its Infrastructure Modernization Plan from customers in its Power Forward Rider (Rider PF). OMAEG asserted that Duke's deferral request is improper and that Duke unlawfully sought recovery of past costs. OMAEG also stated that utility ownership of competitive products or services would violate Ohio public policy. Duke's request for mandatory new service and requirement for separate meters for its Commercial Level II program would unnecessarily increase rates for customers.
 - Settlement discussions are in progress.
- **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 filed reply comments regarding Duke's proposed MGP Rider to collect costs from customers for the remediation of gas plants which are no longer in service. In those comments, OMAEG argued that the parties to these cases are entitled to a hearing on these issues, that Duke should continue exploring cost recovery from other parties to mitigate the burden on customers, and that any cost recovery should be carefully audited and only persist for a limited duration.
 - Duke has now sought to recover its MGP remediation costs incurred since 2013 through 2018 from customers, requesting an additional \$45.8 million.
 - Staff issued Staff reports recommending that \$23.3 million be disallowed and not recovered from customers.
 - On May 10, 2019, Duke filed a motion to continue the recovery of Rider MGP costs at the then current rate. OMAEG and others opposed Duke's attempt to seek recovery of these costs without a full hearing process on the appropriateness of the proposed recovery.
 - On July 23, 2019, Duke informed the PUCO that its recovery of remediation costs is complete and filed revised tariffs setting the MGP rider to zero.

- On August 13, 2019, the PUCO consolidated all of the cost recovery cases, 2013 through 2018, and set a procedural schedule. The PUCO also denied Duke's request to continue the MGP rider during the pendency of the cases and set the rider to zero, which will result in cost savings to customers.
- A hearing was held in November 2019, where OMAEG and other parties presented evidence demonstrating that Duke is not entitled to recover certain remediation costs related to 2013 through 2018, including costs incurred remediating the Ohio River and Kentucky.
- Awaiting PUCO decision.
- **2019 MGP Adjustment (Case Nos. 20-0053-GA-RDR, et al.)**
 - On April 30, 2020, Duke filed another application to increase rates for its Manufactured Gas Plant Rider (MGP) to recover another year (2019) of investigation and remediation costs.
 - On July 23, 2020, the PUCO Staff filed a report recommending a total disallowance of \$27.1 million from the total of \$85.2 million that Duke proposed for the ongoing MGP recovery from 2013-2019.
 - On August 21, 2020, Duke filed unsolicited comments on the PUCO Staff's report disagreeing that it should only be allowed to recover remediation costs for certain geographic areas. Duke also opposed Staff's proposal to offset \$50.5 million in insurance proceeds against costs incurred. Duke wants to hold the proceeds until remediation of the sites is complete and collect its current expenses from customers.
 - As in the other cases, OMAEG intervened to protect members from these extraordinary, unlawful costs.
 - On August 31, 2021, Duke, PUCO Staff, and others filed a settlement with the PUCO to resolve all of the pending MGP cases. In exchange for greater benefits and concessions from Duke, OMAEG agreed not to oppose. Some benefits of the settlement included the elimination of certain charges for environmental investigation and remediation, credits on customers' utility bills for federal income tax expense reductions, and decreases in natural gas base rates that customers pay.
- **University of Cincinnati Unique Arrangement Application (Case No. 18-1129-EL-AEC)**
 - The University of Cincinnati (UC) filed an application for a unique arrangement centered around UC's ability to interrupt a portion of its electric load. Under the proposed arrangement, UC would commit to interrupting up to 54.7 MW when certain conditions are met in exchange for a credit against its monthly distribution charges. The credit would be capped at \$2.3 million annually and \$12.8 million over the 7-year term. This credit would be paid for by other Duke customers. UC does not propose any capital investments or employment commitments as part of the proposed arrangement.

- OMAEG intervened and filed comments on August 9, 2018.
- Parties are awaiting a procedural schedule.
- **EE/PDR Recovery (Case No. 18-0397-EL-RDR)**
 - Duke filed an application to recover costs related to compliance with energy efficiency mandates and lost distribution revenues.
 - OMAEG intervened in the case to protect the interests of its members as Duke attempts to recover additional costs from customers.
 - The PUCO approved Duke's request for recovery of program costs, lost distribution revenue and performance incentives related to Duke's EE/PDR programs for 2017. PUCO excluded from recovery incentive pay, dining, sponsorships, labor, employee and other expenses. The PUCO noted that Rider EE-PDR is subject to reconciliation as the result of annual audits by the PUCO.
 - Duke sought rehearing on August 30, 2019, seeking to recover the disallowed costs on the grounds that incentive pay and other employee incentives are not tied to "financial goals," which was opposed.
 - Awaiting PUCO decision.
- **Duke Proposes New EE/DSM Programs (Case Nos. 20-1444-EL-POR, et al.)**
 - On October 9, 2020, Duke proposed a new residential EE program for 2021 that will be paid for through a nonbypassable recovery mechanism. Duke proposed using its former Rider DSM to recover the costs associated with the Program and creating a Joint Benefit Recognition Mechanism to recover 4.5% of after tax avoided transmission and distribution costs (i.e., lost distribution revenue). Duke estimated the total Program costs collected from residential customers would be \$5.99 million, but capped the recovery at \$7.0 million.
- **The PUCO Removes Duke's EE Cost Cap and Reduces Shared Savings (Case No. 16-576-EL-POR)**
 - Based upon a recent decision from the Supreme Court of Ohio, the PUCO removed a cost cap of \$38.6 million that it previously imposed on Duke's recovery from customers for 2018 and 2019 EE/PDR costs and shared savings. However, the PUCO reduced Duke's maximum allowable shared savings for 2017-2020 to \$7.8 million (pre-tax) annually from \$12.5 million. Lastly, the PUCO prohibited Duke (and other EDUs) from recovering lost distribution revenue after December 31, 2020, even if the lost distribution revenue is attributed to energy savings achieved in 2018, 2019, or 2020.
 - Duke requested reconsideration of the PUCO order, which OMAEG opposed explaining that Duke, and other EDUs, lack statutory authority to recover lost distribution revenue after the termination of their respective EE riders.

- On January 13, 2021, the PUCO granted itself more time to evaluate Duke's request for rehearing.
- **OVEC Rider Audit (Case No. 20-167-EL-RDR)**
 - On January 11, 2021, OMAEG intervened in the audit of Duke's OVEC Rider to ensure that customers are assessed only costs that were prudently incurred and in customers' best interests.
 - OMAEG submitted reply comments asserting that Duke failed to meet its burden of proof in demonstrating that the roughly \$24 million in OVEC costs collected from customers in 2019 were prudently incurred.
 - The PUCO granted OMAEG's request to hold an evidentiary hearing to determine whether Duke can demonstrate that the OVEC coal plants were operated prudently and consistent with participation in a broader competitive market.
- **Duke Submits Final Reconciliation Proposal for its EE Rider (Case No. 21-482-EL-RDR)**
 - Duke filed a proposal to reconcile the difference between revenue collected and the cost of compliance related to its prior EE programs through December 31, 2020. Specifically, Duke requested a revenue requirement of \$17.77 million for non-residential customers and proposed new EE Rider rates, which are currently set at \$0.
- **Duke Files 2020 SEET Application (Case No. 21-412-EL-RDR)**
 - Duke requested a PUCO determination that its 2020 earnings under its current ESP pass the SEET. Duke reported a ROE of 8.82% and stated that this figure is below the PUCO-approved rate of return of 9.84% for Duke's electric distribution services.

FirstEnergy:

- **FirstEnergy Revenue Decoupling Case (Case Nos. 19-2080-EL-ATA)**
 - On November 21, 2019, FirstEnergy filed an application for approval of a decoupling mechanism pursuant to H.B. 6. H.B. 6 authorizes an electric distribution utility to file an application to implement a decoupling mechanism.
 - FirstEnergy used its 2018 revenues as a baseline from which future rates will be determined. Staff recommended that FirstEnergy's baseline be weather-normalized to protect against high over collections in years with average weather.
 - On January 15, 2020, the PUCO approved the decoupling without the modification that Staff requested, stating that it lacked authority to do so.
 - On December 30, 2020, the PUCO reinstated the requirement that FirstEnergy must file a rate case at the end of its current ESP (May 31, 2024). Per H.B. 6, the decoupling mechanism must terminate once new distribution rates become effective and accordingly, FirstEnergy's H.B. 6 decoupling mechanism can no longer last in perpetuity.

- On February 1, 2021, the Attorney General announced that the State and FirstEnergy reached a settlement in which FirstEnergy would set its Decoupling Rider rates to zero for 2021 in exchange for the State staying all actions in its H.B. 6 civil lawsuit. The PUCO unanimously approved FirstEnergy's application on February 2, 2021.
- **H.B. 6 Decoupling Refund Case (Case No. 21-484-EL-UNC)**
 - FirstEnergy requested approval from the PUCO to modify its H.B. 6 Decoupling Rider to return to customers the approximately \$26 million collected through the rider, plus interest, over a 12- month period commencing June 1, 2021.
 - OMAEG intervened and submitted comments advocating for a fair and transparent refund process.
 - The PUCO approved FirstEnergy's application and on July 14, 2021, FirstEnergy filed its updated tariffs to implement the Decoupling Rider refund effective August 1, 2021 on a service-rendered basis.
- **Rider DSE Update (Case Nos. 14-1947-EL-RDR, et al.)**
 - The PUCO Staff filed annual reports on FirstEnergy's Demand Side Management and Energy Efficiency Riders for years 2014-2018.
 - On December 1, 2020, the PUCO Staff filed testimony recommending that FirstEnergy be required to recalculate its lost distribution revenue using a maximum of three years for program years 2014-2018. Staff further recommended that FirstEnergy be prohibited from recovering various out of period expenses that FirstEnergy sought to recover during the review years.
 - A hearing has been rescheduled for December 8, 2021 to facilitate settlement discussions.
- **Corporate Separation Case (Case No. 17-0974-EL-UNC)**
 - On November 4, 2020, the PUCO initiated an audit of the FirstEnergy Utilities' compliance with corporate separation laws and regulations. The PUCO explained that its actions were in response to FirstEnergy Corp. providing information to federal regulators indicating that it was launching an internal investigation and that its employees' actions violated the company's "code of conduct."
 - On June 25, 2021, OCC moved to subpoena various documents from FirstEnergy Corp., FirstEnergy Service Company, and FirstEnergy foundation. A ruling has not yet been issued on the subpoena.
 - Awaiting the filing of the audit report.
 - OMAEG was granted intervention on May 18, 2021.
- **PUCO Review of FirstEnergy H.B. 6 Spending (Case No. 20-1502-EL-UNC)**
 - On September 15, 2020, the PUCO opened a case to review FirstEnergy's political and charitable spending related to H.B. 6 and the subsequent referendum effort. The PUCO directed FirstEnergy to show cause by September 30, 2020 that the cost

of these activities were not included, directly or indirectly, in any rates or charges paid by customers.

- On September 30, 2020, FirstEnergy filed a brief response to the order to show cause, stating that it would be impossible to include H.B. 6 costs in customers' rates as the existing base rates came into existence well before H.B. 6 was enacted and that the inclusion of political or charitable costs in riders would be a clear violation of PUCO precedent.
- In a shocking turn of events, FirstEnergy filed a "supplemental response" admitting that H.B. 6 costs were included in pole attachment rates. A prehearing conference occurred on August 31, 2021 to address outstanding discovery issues and the supplemental response. The comment period remains stayed until the PUCO resolves the outstanding discovery issues.
- **2018-2019 SEET Case (Case Nos. 19-1338-EL-UNC, et al.)**
 - On July 15, 2019 and May 15, 2020 FirstEnergy filed applications seeking a determination that it did not have "significantly excessive earnings" for calendar years 2018 and 2019, respectively. FirstEnergy failed to include roughly \$134.7 million in after-tax revenue from its Distribution Modernization Rider (DMR) despite the Supreme Court of Ohio's ruling invalidating the DMR.
 - On January 12, 2021, the PUCO consolidated FirstEnergy's 2017-2019 SEET Cases with the Quadrennial Review of FirstEnergy's ESP.
 - Testimony was filed recommending approximately \$200 million to \$410 million in customer refunds.
 - The hearing has been rescheduled for November 29, 2021 to facilitate settlement discussions.
- **New Consumer Group Files PUCO H.B. 6 Complaint Against FirstEnergy (Case No. 20-1756-EL-CSS)**
 - The Citizens' Utility Board of Ohio, a consumer nonprofit, filed a H.B. 6-related complaint against FirstEnergy with the PUCO regarding FirstEnergy's decoupling mechanism, compliance with corporate separation laws, and potential impropriety with former PUCO Chair Randazzo.
 - FirstEnergy categorically denied all allegations in the complaint.
- **The PUCO Orders New DMR Audit (Case No. 17-2474-EL-RDR)**
 - In response to a request from the Office of the Ohio Consumers' Counsel (OCC), the PUCO opened a new audit of the FirstEnergy Utilities' distribution modernization rider (DMR) to determine whether any of the DMR charges already collected (that the Court stated could not be refunded to customers even though the rider was deemed unlawful) were used to improperly fund H.B. 6 efforts.
 - Awaiting filing of the audit report.

- **The PUCO Orders FirstEnergy to File New Rate Case by May 31, 2024 (Case No. 19-361-EL-RDR)**
 - On December 30, 2020, the PUCO denied a request from the Environmental Law & Policy Center (ELPC) to vacate the PUCO's order and conduct new proceedings in the DMR Extension Case. However, the PUCO, upon its own initiative, reinstated the requirement that the FirstEnergy Utilities must file a new rate case by the conclusion of ESP IV on May 31, 2024. This decision will have the effect of terminating the H.B. 6 decoupling mechanism when new rates go into effect per the rate case.
- **Rider DCR Audit (Case No. 20-1629-EL-RDR)**
 - The PUCO approved Staff's request to expand the scope of the 2020 audit of FirstEnergy's Delivery Capital Recovery Rider (Rider DCR) to ensure that customers were not charged for any improper transactions disclosed in a FirstEnergy Corp. filing with the United States Securities and Exchange Commission.
 - The 2020 Rider DCR Audit Report revealed that customers were improperly charged \$6.6 million for FirstEnergy's payments to vendors, including H.B. 6 dark money groups and the former PUCO Chairman's consulting companies.
- **FirstEnergy Global Settlement**
 - On March 31, 2021, FirstEnergy held a meeting with various stakeholders to discuss terms of a potential future settlement of a variety of issues. At the meeting, FirstEnergy did not offer many firm proposals but committed to returning amounts previously collected under the H.B. 6 Decoupling Rider and stated that it would maintain its litigation posture for the time being in the various H.B. 6-related audits at the PUCO.
- **FirstEnergy Files 2020 SEET Application (Case No. 21-586-EL-UNC)**
 - FirstEnergy requested a PUCO determination that its earnings in 2020 under its current ESP pass the SEET. FirstEnergy reported a ROE of 11.10% for Ohio Edison Company, 4.30% for The Cleveland Electric Illuminating Company, and 7.40% for The Toledo Edison Company and requested that the PUCO use a safe harbor of 13.30% and SEET threshold of 16.50% in this case.

Dayton Power & Light (now d/b/a AES Ohio):

- **Electric Security Plan (Case Nos. 16-395-EL-SSO, et al.)**
 - AES Ohio filed an amended application on October 11, 2016, proposing to withdraw its Reliable Electricity Rider (RER) request. Instead, it sought a Distribution Modernization Rider (DMR) for a term of seven years to recover \$145 million per year from customers.

- AES Ohio and certain intervening parties reached a settlement, 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, AES Ohio will receive \$105M/year for 3 years from customers, with an option to request a two-year extension. The Distribution Investment Rider (DIR-B) rider was eliminated (which had been estimated to cost consumers \$207.5M), and AES Ohio agreed to convert the forgone tax sharing liabilities to AES Corporation into equity payments (estimated by AES Ohio to be a \$300M gain for customers). AES Ohio 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, AES Ohio agreed to slightly discount those members' previous rates. Thus, those members will receive a collective total of \$18,000 per year in shareholder dollars to compensate them for the increase in rates.
- After a hearing, the PUCO approved the settlement, but also modified it to include non-bypassable OVEC recovery. OMAEG filed an application for rehearing, arguing that this modification was unjust, unreasonable, and unlawful.
- The PUCO denied rehearing on its decision to modify the settlement.
- Interstate Gas Supply, Inc. (IGS) withdrew from the settlement and reopened the proceedings based upon the PUCO's modification to make OVEC recovery non-bypassable.
- After IGS' withdrawal, the PUCO held a hearing on the reopened proceeding. OMAEG participated in that hearing as a non-opposing party along with Staff, AES Ohio, and several other parties. OCC, who had opposed the settlement, has appealed the PUCO's modified approval of the settlement to the Supreme Court of Ohio.
- In light of the Court's decision regarding FirstEnergy's credit support rider, the PUCO ordered AES Ohio to eliminate its DMR rider.
- As a result of the PUCO's order, AES Ohio withdrew from its ESP, which the PUCO approved, and AES Ohio reverted to a prior "blended" ESP containing favorable elements of its past ESPs.
- OMAEG and others challenged the blended ESP. Rehearing is pending.
- On May 12, 2020. The Supreme Court Ohio granted OCC's request to dismiss its appeal of AES Ohio's Distribution Modernization Rider (DMR). OCC opted to not pursue the matter in light of AES Ohio withdrawing its ESP and the PUCO eliminating the DMR rider.

- **Application to Establish a Distribution Modernization Plan (Case Nos. 18-1875-EL-GRD, et al.)**
 - Pursuant to its ESP Stipulation, AES Ohio filed an application to establish a distribution modernization plan. AES Ohio asks the PUCO to approve over \$600 million in cost recovery for the implementation of this plan. AES Ohio offers speculative benefits that customers will purportedly receive from this plan and states that it is advancing the PUCO's goals established in the PowerForward initiative.
 - Given that the enabling ESP Stipulation has been withdrawn, AES Ohio has re-initiated settlement discussions for this case based on a smart grid rider approved in an earlier case. AES Ohio is no longer attempting to tie this case with its DMR Extension case.
 - On October 23, 2020, AES Ohio and several parties, including OMAEG, filed a global settlement agreement with the PUCO to resolve multiple AES Ohio proceedings. The PUCO established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.
 - A hearing regarding the Joint Stipulation occurred on January 11, 2021.
 - On February 12, 2021, OMAEG submitted its post-hearing brief urging the PUCO to approve the global settlement.
 - On June 16, 2021, the PUCO approved the global settlement. Various requests for reconsideration are pending.
- **Distribution Decoupling Costs (Case No. 20-140-EL-AAM)**
 - The June 18, 2018 Stipulation and Recommendation from that Distribution Rate Case established that AES Ohio was authorized to implement "Revenue Decoupling." Recovery would occur through the Decoupling Rider that was established in AES Ohio's third Electric Security Plan case ("ESP III") (Case No. 16-0395-EL-SSO, et al.), which AES Ohio withdrew. Given this withdrawal, the PUCO ruled that AES Ohio could no longer implement the decoupling.
 - On January 23, 2020, AES Ohio requested accounting authority to defer its distribution decoupling costs that it would have been otherwise able to recover under ESP III.
 - OMAEG intervened and submitted comments asserting that AES Ohio had no authority to implement a decoupling mechanism after it withdrew its ESP III and that it would be unreasonable for the PUCO to allow AES Ohio to unilaterally reap benefits from a settlement agreement that it breached.
 - An evidentiary hearing occurred on May 4, 2021 where OMAEG and others cross-examined AES Ohio's witnesses regarding the utility's unlawful request to defer decoupling costs.
 - Briefing is complete and the PUCO has not yet issued a decision.

- **SEET (Case No. 20-0680-EL-UNC)**
 - On April 1, 2020, AES Ohio requested a determination that its current ESP passes the Significantly Excessive Earnings Test (SEET) and More Favorable in the Aggregate Test over the forecast period of 2020-2023.
 - OMAEG intervened to protect members from excessive charges.
 - On July 1 and July 16, 2020, OMAEG submitted comments and reply comments asserting that AES Ohio failed to meet its burden of proof in demonstrating that its earnings were not excessive.
 - The SEET Case is a part of the global settlement agreement that AES Ohio, OMAEG, and other signatory parties filed with the PUCO on October 23, 2020. The PUCO established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.
 - A hearing regarding the Joint Stipulation occurred on January 11, 2021.
- **SEET II (Case No. 20-1041-EL-UNC)**
 - On May 15, 2020, AES Ohio filed an application requesting a finding that its 2019 earnings passed the SEET test.
 - On July 2, 2020, OMAEG intervened to protect members' interests.
 - The SEET II Case is a part of the global settlement agreement that AES Ohio, OMAEG, and other signatory parties filed with the PUCO on October 23, 2020. The PUCO established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.
 - A hearing regarding the Joint Stipulation occurred on January 11, 2021.
- **New Distribution Rate Case Filed (Case No. 20-1651-EL-AIR)**
 - On October 30, 2020, AES Ohio provided notice that in the next month it will file an application to increase its base distribution rates. AES Ohio proposed a test year of June 1, 2020 through May 31, 2021 and a date certain of June 30, 2020.
 - On November 30, 2020, AES Ohio filed its application requesting a ROR of 7.71%, which includes a 10.5% ROE. Accordingly, AES Ohio requested to increase its revenue requirement by \$120.8 million.
 - On August 25, 2021, OMAEG filed numerous objections to the PUCO Staff Report, including the recommended revenue requirement of \$306M, the excessive rate of return range of 7.15% to 7.70%, and the proposed customer charges.
 - OCC has filed a motion to dismiss AES Ohio's rate case application, asserting that the request for a rate increase violates a "rate freeze" agreed to in the ESP I stipulation. Awaiting a decision from the PUCO on the motion.

- **OVEC Rider Audit (Case No. 20-165-EL-RDR)**
 - On January 5, 2021, OMAEG intervened in the 2019 audit of AES Ohio's Ohio Valley Electric Corporation (OVEC) Rider to ensure that customers are only assessed costs that were prudently incurred and in their best interests.
 - OMAEG submitted reply comments asserting that AES Ohio failed to meet its burden of proof in demonstrating that the roughly \$11 million in OVEC costs collected from customers in 2019 were prudently incurred.
 - On February 1, 2021, OMAEG filed a pleading opposing AES Ohio's efforts to avoid attending a deposition.
 - OMAEG requested that the PUCO hold an evidentiary hearing to determine whether AES Ohio can demonstrate that the OVEC plants were operated prudently and consistent with participation in a broader competitive market.
- **AES Ohio Submits Final Reconciliation Proposal for EE Rider (Case No. 21-560-EL-RDR)**
 - AES Ohio filed a proposal to reconcile the difference between revenue collected and the cost of compliance related to its prior EE programs through December 31, 2020, including carrying charges. Specifically, AES Ohio requested a revenue requirement for non-residential customers of roughly \$11.47 million and that the PUCO approve new EE Rider rates, which are currently set at \$0, on a bills rendered basis effective the first billing unit of September 2021.
- **AES Ohio Files 2020 SEET Application (Case No. 21-588-EL-UNC)**
 - AES Ohio requested a PUCO determination that its 2020 earnings under its current ESP pass the SEET. AES Ohio reported a ROE of 3.00%, and proposed that the PUCO use a safe harbor of 12.48% and SEET threshold of 15.72% to 19.80%.

Columbia Gas of Ohio (Columbia)

- **Columbia Files to Increase its Distribution Rates and Create New Riders (Case No. 21-637-GA-AIR)**
 - Columbia provided notice that it will file an application by June 30, 2021: for an increase to its gas distribution rates; the continuation of its existing Infrastructure Replacement Program, Capital Expenditure Program, and Demand Side Management Riders; adoption of three new riders, including the Federal/State Tax Reform Rider, the Carbon Reduction Rider, and the Federally Mandated Investment Rider; and various changes to Columbia's tariffs and accounting methods.
 - On July 14, 2021, Columbia filed an application requesting an increase to its distribution rates, approval of an alternative rate plan, and the continuation of its DSM Program. In regards to its distribution rates, Columbia proposed an increase, which would increase its rate of return from 2.4% to 7.85% and would represent a

- 27.07% increase in total operating revenue with a total revenue requirement of \$1.039 billion.
- Awaiting Staff Report.

Statewide:

- **Review of Interconnection Services Rules (Case No. 18-884-EL-ORD)**
 - The PUCO opened a proceeding to review the PUCO's rules governing interconnection services, scheduled a workshop to discuss changes to those rules, and sought comments from stakeholders.
 - On March 13, 2020, OMAEG filed comments addressing costs, access to data, and the formation of a stakeholder group on distributed energy resources (DERs).
 - On April 3, 2020, OMAEG filed reply comments asserting that allocation of distribution system upgrade costs should take into consideration system benefits. OMAEG requested that more data from the interconnection process be accessible, recommended the formation of a working group on interconnection issues, and that the PUCO clarify that a DER is permitted on adjacent property.
- **PUCO Investigation into CRES Contracts (Case No. 14-0568-EL-COI)**
 - The PUCO issued an order setting out its "fixed-means-fixed" guidelines which provide that CRES providers may not include a pass-through clause in a contract labeled as a fixed rate, pass-through provisions must be labeled as variable or introductory rates, regulatory-out clauses must be marked in "plain language," and CRES providers had until January 1, 2016 to bring products into compliance with the fixed-means-fixed guidelines. On rehearing, the PUCO punted the determination of remaining issues, including whether small commercial customers should be more stringently defined, to a future rulemaking proceeding.
 - Rehearing is pending.
- **H.B. 6 Implementation Issues**
 - **OVEC Recovery Mechanism (Case No. 19-1808-EL-UNC)**
 - PUCO Staff proposed to establish a nonbypassable rate mechanism to recover the prudently incurred costs related to OVEC through a newly created legacy generation resource rider (LGR Rider) on customers' bills. Staff proposed to charge the LGR Rider and establish the monthly cap on a "per month per customer account/premise." OMAEG argued that H.B. 6 explicitly used the terms "per customer" to differentiate from a "per account" or "per meter" cap, while OEG and IEU-Ohio commented that Staff's proposed methodology largely complies with the requirements in H.B. 6.
 - On November 21, 2019, despite the mandate that the PUCO implement a per customer cap, the PUCO established a nonbypassable mechanism that is collected on a "per customer account" basis and which creates only one

nonresidential monthly cap. The PUCO also determined that the program was not subject to a refund if H.B. 6 is invalidated.

- OMAEG challenged the decision, which was denied in January.
- The PUCO will hire an independent auditor to review the nonbypassable LGR riders.
- **The PUCO Opens New Case to Implement the H.B. 128 Solar Generation Fund Rider (Case No. 21-447-EL-UNC)**
 - The PUCO opened a new case and the PUCO Staff provided comments and recommendations on the implementation of the H.B. 6 Solar Generation Fund Rider (Rider SGF), a nonbypassable mechanism that will collect \$20 million annually from customers.
 - OMAEG submitted comments on the PUCO Staff's proposal, which advocated for the inclusion of refund language in Rider SGF's tariffs and for a PUCO order prohibiting collection of the subsidies for periods where no generation occurred and no credits were earned.
 - The PUCO established the Solar Subsidy Rider and largely rejected OMAEG's recommendations, including the argument that H.B. 128 requires the rider to be charged on a "per customer basis" and not on a per account basis.
 - On August 13, 2021, OMAEG requested reconsideration of the decision to implement the Solar Subsidy Rider in a manner that conflicts with the plain language of H.B. 128. AES Ohio opposed OMAEG's request.
- **Stakeholder Input to Improve OPSB Siting Process**
 - The OPSB held three informal stakeholder discussions to learn how to improve public participation in the siting process, technical application requirements, and construction compliance efforts.
 - Next, OPSB will open a formal rulemaking docket in early 2021 and hold public workshops to solicit ideas from interested parties.
 - OPSB will then issue draft rules and solicit formal public comments prior to issuing final rules. OMAEG attended the workshops and will make recommendations for improvement to the rules as appropriate, including an improved transmission siting process in an attempt to control the costs of supplemental transmission projects being passed on to customers.
- **OMAEG Submits Comments on OPSB Transmission Investment Report (Case No. 21-796-EL-UNC)**
 - Ohio law requires the Ohio Power Siting Board (OPSB) to submit a report to the Ohio General Assembly on the state's transmission planning and investment processes. OMAEG submitted comments advocating that the report should detail the ballooning costs of discretionary transmission investments that do not improve reliability and

impede the competitiveness of manufacturers. The comments further recommend expanding OPSB's jurisdiction over certain transmission projects to allow for greater transparency and urge OPSB to adopt more stringent criteria when evaluating transmission projects.

▪ **The PUCO Approved Suvon's CRES Power Broker & Aggregator Application (Case No. 20-0103-EL-AGG)**

- On April 22, 2020, over the objections of many stakeholders raising concerns of corporate separation violations among the FirstEnergy companies, including the regulated utilities, the PUCO approved Suvon, LLC's, also known as FirstEnergy Advisors, application for certification as a Competitive Retail Electric Service (CRES) power broker and aggregator.
- OCC and NOPEC appealed the PUCO's decision to the Supreme Court of Ohio arguing that the PUCO unlawfully denied stakeholders' evidentiary and due process rights and incorrectly determined that FirstEnergy Advisors had the requisite capabilities to provide aggregation services.
- NOPEC asked the Court to take notice of FirstEnergy Corp.'s disclosures regarding a \$4.3 million payment to an unnamed regulator acting at the request or benefit of the Company, which was denied.

▪ **State of Ohio Files H.B. 6 Lawsuits (Case Nos. 20-CV-6281, et al.)**

- On September 23, 2020, Ohio Attorney General Dave Yost filed a civil lawsuit in the Franklin County Court of Common Pleas regarding the H.B. 6 scandal. The lawsuit names fourteen Defendants, including FirstEnergy Corporation, FirstEnergy Service, FirstEnergy Solutions, Energy Harbor, and Larry Householder. The Defendants face allegations of corruption, money laundering, and bribery. The State of Ohio is seeking monetary damages and to prevent the Defendants (including parent companies, subsidiaries, and assigns) from profiting from H.B. 6 or holding government offices or engaging in political activities in Ohio for eight years.
- On November 13, 2020, Ohio Attorney General Dave Yost filed a related lawsuit to prevent the collection and distribution of H.B. 6's nuclear generation fee.
- On December 21, 2020, Judge Brown of the Franklin County Court of Common Pleas issued several injunctions to prevent the H.B. 6 subsidy charges from becoming effective on January 1, 2021.
- On January 13, 2021, Ohio Attorney General Dave Yost requested that the Franklin County Court of Common Pleas enjoin FirstEnergy from collecting approximately \$102 million from customers in 2021 through the H.B. 6 Decoupling Rider.
- On February 1, 2021, the Attorney General announced that the State reached a settlement with FirstEnergy regarding its H.B. 6 decoupling revenues. Shortly after, FirstEnergy filed a very simple application requesting that the PUCO set its Decoupling Rider rate to \$0, without much explanation or detail. The effect of this application appears to prevent FirstEnergy from collecting \$102 million in

- decoupled revenues from customers in 2021. However, the setting of the rider's rate to zero does not eliminate FirstEnergy's Decoupling Rider or prevent other utilities from applying for a decoupling mechanism under H.B. 6.
- On February 2, 2021, the PUCO held a meeting and unanimously approved FirstEnergy's application. In exchange for FirstEnergy filing its application, the Attorney General agreed to stay discovery and other actions in the State's civil lawsuit against FirstEnergy until the federal criminal H.B. 6 investigation is complete.
 - The cities of Columbus and Cincinnati requested that the Franklin County Court of Common Pleas allow Dayton and Toledo to join the cities' related H.B. 6 civil suit against FirstEnergy Corp. and others (see 20- CV-007005).
 - Ohio Attorney General (AG) Dave Yost requested that a Franklin County Judge add FirstEnergy Corp.'s former CEO (Chuck Jones), former Senior Vice President (Michael Dowling), and the former PUCO Chairman (Sam Randazzo) as defendants to the state's racketeering lawsuit for their roles in the H.B. 6 scandal. The amended lawsuit asks Randazzo to forfeit the \$4.3 million bribe he received and repay the salary he collected as PUCO Chairman from April 2019 through November 2020. The AG's Office stated that the three men were added to the complaint because of new information, including FirstEnergy Corp.'s admissions to criminal acts in its Deferred Prosecution Agreement with the federal government.
 - AG Yost announced that his office obtained a court order seizing up to \$8 million in assets from former PUCO Chairman Randazzo. Since February 2021, Randazzo transferred a \$500,000 home to his son and sold four other properties worth a combined \$4.8 million. The court order froze Randazzo's assets and prevent the future transfer or sale of personal property
 - **Supreme Court Rules that the PUCO Improperly Excluded DMR Revenues from FirstEnergy 2017 SEET Calculation (Slip Opinion No. 2020-Ohio-5450)**
 - The Supreme Court of Ohio held that the PUCO improperly excluded DMR revenues from FirstEnergy's 2017 SEET calculation. Accordingly, the Court ordered the PUCO to conduct a new SEET for 2017, which includes the DMR revenues in the calculation.
 - **Supreme Court Rules that the PUCO Applied Incorrect Test in Submetering Case (*In re Complaint of Wingo v. Nationwide Energy Partners*, Slip Opinion No. 2020-Ohio-5583)**
 - The PUCO dismissed a complaint against Nationwide Energy Partners (NEP), a submetering company, finding that the PUCO lacked jurisdiction over businesses not acting as "public utilities." On appeal, the Court held that the PUCO improperly created its own test to determine whether the submeterer is a public utility and failed to examine the relevant statutes. Accordingly, the Court sent the case back to the PUCO and ordered the PUCO to apply the statutory test to determine whether it could hear the claims against NEP.

- The complainant has withdrawn the complaint without prejudice.
- **The PUCO to Hold Workshops on the Future of EE Programs (Case Nos. 16-574-EL-POR, et al.)**
 - The PUCO will hold a series of workshops on the scope and nature of future EE programs and how such programs fit into a competitive retail electric service market. The format and schedule for such workshops will be announced later.

Federal Actions

FERC:

- **MOPR Expansion (Docket 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 FERC's order rescinding the waiver on affiliate sales restrictions 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 AES Ohio DMR proposal.
 - In a 3-2 decision, FERC found that PJM's current tariff is unjust, unreasonable, and unduly discriminatory because it fails to account for state policies that subsidize favored sources of generation, thus disrupting the competitive wholesale market. FERC is now considering how to best address state subsidies provided to certain generation resources in order to avoid market disruption.
 - OMAEG joined several other industrial consumer groups in filing comments and reply comments urging FERC to adopt measures to account for out-of-market subsidies. Those comments were filed on October 2, 2018 and November 6, 2018, respectively.
 - On December 19, 2019, FERC ordered that subsidized generation resources (with some exceptions) could only bid into the wholesale capacity auctions subject to the FERC-determined Minimum Offer Price Rule (MOPR), which sets an offer price

floor for each resource class. By broadening the definition of “subsidy,” more generation resources that bid into the PJM auctions are now subject to the MOPR.

- The OVEC plants, Ohio nuclear plants, H.B. 6-subsidized renewable facilities and possibly Sammis will be subject to MOPR.
- On April 16, 2020, FERC denied requests for rehearing and clarification of its Order, finding that PJM’s then-existing tariff was unjust and unreasonable.
- Shortly after, several parties, including Energy Harbor LLC, filed Petitions for Review in the D.C. Circuit Court regarding FERC’s orders establishing a replacement rate and denying requests for rehearing and clarification of the determination that the MOPR was unjust and unreasonable.
- In July 2020, intervenors requested that the Seventh Circuit Court of Appeals transfer petitions for review of FERC’s PJM MOPR orders pending in that court to the D.C. Circuit.
- In an October 2020 order, FERC determined that competitive, non-discriminatory state default auctions and revenue from Fixed Resource Requirement (FRR) capacity plans are not “state subsidies” subject to the expanded Minimum Offer Price Rule (MOPR). FERC also ordered that replacement capacity restrictions for state subsidized resources include transactions within a portfolio as well as bilateral transactions.
- **Proposed PJM Tariff Revisions to Address Impacts of State Public Policies (Docket ER18-1314)**
 - On April 9, 2018, PJM filed an application to address state public policies. PJM advocated for two different approaches to addressing these issues.
 - The PUCO filed comments advocating the rejection of PJM’s approach and retention of the status quo. The PUCO noted that capacity market has recently been overhauled and that PJM has not substantiated its comments. The PUCO further pointed out that PJM failed to provide cost impacts on customers. The PUCO advocates that PJM should maintain the status quo until a better approach is found.
 - OMAEG joined several other industrial and commercial customer groups in filing comments and reply comments that urged FERC to adopt measures that account for out-of-market payments received by some generation resources under policies pursued by individual states. These anticompetitive payments disrupt the competitive wholesale market that, when left undisturbed, works to benefit customers.
 - On June 22, 2020, the PUCO submitted comments on PJM’s compliance filings to implement the expanded MOPR in its capacity market. PUCO requested that FERC reconsider its inclusion of state default auctions in the definition of “state subsidy.” The PUCO opposed PJM’s proposal to require that each Demand Response registration be associated with one-end customer location. Lastly, the PUCO

encouraged FERC to resolved outstanding MOPR-related issues so that PJM can conduct a Base Residual Auction for 2022/2023.

- On October 15, 2020, FERC ordered that state default auctions are not “state subsidies” subject to the expanded MOPR, directed PJM to file compliance tariffs no later than November 16, 2020, and prohibited PJM from commencing the BRA schedule until FERC issues a subsequent order on a compliance filing in another proceeding.
- During late April 2021 in a presentation to stakeholders, PJM proposed eliminating the MOPR’s application to state-subsidized resources and implementing a presumption that state policies were made in “good faith” and not as an exercise of buyer-side market power. However, PJM stated that under its proposal, this presumption can be overcome via a successful complaint to FERC. Lastly, PJM indicated that it will file its proposal with FERC by July in order for it to take effect by the December auction for 2023/2024 capacity.
- The PUCO and the Pennsylvania Public Utilities Commission submitted joint comments opposing the “narrow” and “targeted” application of the MOPR proposed by PJM in July 2021.
- **FERC Electric Transmission Incentives (Docket RM20-10-000)**
 - FERC recently released a Notice of Proposed Rulemaking (NOPR), which will almost certainly increase transmission rates for all electric consumers. The FERC NOPR proposes giving financial rewards to companies that build electric transmission projects. Specifically, the NOPR proposes allowing transmission owners to receive up to a 250-basis point adder to their current transmission return on equity. Since 2012, electric transmission costs have increased more than 52%. The FERC NOPR established a comment deadline of July 1, 2020.
 - OMAEG joined the American Manufacturers’ comments on FERC’s NOPR and advocated for transmission incentive policies that ensure just and reasonable rates for the benefit of consumers.
 - The PUCO also submitted comments on FERC’s NOPR and recommended limited incentives to avoid unnecessary overinvestment in the transition grid.
 - On April 15, 2021, FERC filed a supplemental NOPR proposing to limit the duration of the transmission incentives to three years after a transmitting utility newly joins a Transmission Organization. The supplemental NOPR further proposed adopting a 50-basis-point ROE-adder, consistent with FERC precedent, rather than increasing it, and noted that most transmitting utilities have increased their base rates considerably. Lastly, FERC will seek comments on whether utilities that are legally required to join Transmission Organizations should be eligible for the incentives.
- **Columbia Transmission Rate Case (Docket RP20-1060)**
 - On July 31, 2020, Columbia filed a rate case with FERC to recoup roughly \$3 billion in capital and operational expenses associated with its transmission system.

- OMAEG has joined the case to protect members' interest.
- Parties in the TCO rate case have reached a preliminary settlement. While specific provisions of the settlement still need to be memorialized in writing and the settlement must be approved by FERC, OMAEG's participation in the settlement process and litigation through the larger manufacturing group resulted in significant cost savings for manufacturers.

FirstEnergy/H.B. 6-Related Federal Proceedings:

▪ FES Bankruptcy Proceeding

- On March 31, 2018, FirstEnergy Solutions Corporation (FES) filed for bankruptcy in the United States Bankruptcy Court.
- FES announced an agreement that would provide for FES and its creditors to release all claims against FirstEnergy (including FirstEnergy's non-debtor affiliates, directors, employees, and professionals) in return for receiving \$1.645 billion in value flowing from FirstEnergy to FES. This agreement is contingent on approval by the boards of FirstEnergy Corp. and Allegheny Energy Supply Company LLC, as well as the United States Bankruptcy Court in the FES bankruptcy proceeding. While the specific claims that are being released have not yet been publicly described, the size of this proposal indicates that FirstEnergy must have significant concerns about litigation arising from its transactions with FES over the years. A version of this that released claims of FES and only other creditors who opted into the release was ultimately approved.
- FES received final approval of its Bankruptcy Plan, which became effective February 27, 2020 after the bankruptcy court issued the final approval necessary on February 25, 2020, just days before FES' nuclear outage was scheduled. FES asked the court to issue an expedited ruling, claiming that it needed the plan to take effect prior to the scheduled nuclear outage on February 29, 2020. FES claimed (without providing detail) that a number of challenges existed, which could prevent the debtors from emerging from bankruptcy during a nuclear outage, if the plan was not approved prior to the outage. This means that FirstEnergy's shares in FES were cancelled and FES is now owned by the various bankruptcy creditors. After FES's Chapter 11 plan became effective, the company changed its name to Energy Harbor, LLC.
- On February 14, 2020, FERC authorized certain transactions to implement FES and its public utility subsidiaries' reorganization plan filed in the Northern District of Ohio's Bankruptcy Court regarding the disposition of facilities and acquisition of securities. FERC specifically stated that its order does not address FES' proposed rejection of certain FERC-jurisdictional power purchase agreements (OVEC) as part of its review under section 203 of the Federal Power Act ("FPA").
- On May 18, 2020, FES entered into a proposed settlement with OVEC under which it would maintain its responsibilities under the OVEC agreement.

- On June 15, 2020, a federal bankruptcy court approved the settlement agreement between Energy Harbor and OVEC. Energy Harbor will assume the role and obligations of FES in the OVEC contract as of June 1, 2020. Energy Harbor will pay OVEC \$32.5 million in exchange for OVEC permanently withdrawing the lawsuit.
- In light of the H.B. 6 scandal, the judge presiding over Energy Harbor’s bankruptcy case has ordered that the millions of dollars in fees and expenses for the utility’s outside law firms be held until November to provide the U.S. Attorney an opportunity to weigh in on how to proceed.
- The Environmental Law & Policy Center, Environmental Defense Fund, Ohio Citizen Action, and the Ohio Environmental Council requested that the Sixth Circuit direct the bankruptcy court that confirmed FES’ reorganization plan in October 2019 to consider suspending the execution of the reorganization due to the H.B. 6 scandal.
- On January 17, 2021, Energy Harbor and the law firm of Akin Gump Straus Hauer & Feld requested an emergency six-month delay in responding to racketeering-related interrogatories requested by the judge overseeing the Bankruptcy Proceeding. The following day a hearing on the request was held and the judge agreed to the six-month delay.
- **U.S. Attorney Initiates H.B. 6 Prosecution (Case No. 1:20-MJ-00526)**
 - The U.S. Attorney for the Southern District of Ohio initiated a criminal prosecution against former Ohio House of Representatives Speaker Larry Householder, along with four other individuals and Generation Now, a 501(c)(4) organization, for allegedly engaging in a bribery scheme to pass the H.B. 6 nuclear bailout.
 - On February 5, 2021, Generation Now, the dark money group that Representative Larry Householder allegedly controlled, filed a guilty plea in the U.S. District Court for the Southern District of Ohio. Generation Now is the third party to have pled guilty in the federal criminal H.B. 6 proceeding along with lobbyist Juan Cespedes and political consultant Jeff Longstreth. In a new regulatory filing, FirstEnergy Corp. disclosed that it is participating in settlement discussions with the U.S. Department of Justice.
- **FirstEnergy Corp. Was Criminally Charged for H.B. 6 Scandal and Enters Deal with DOJ to Pay a \$230M Penalty (Case No. 1:21-CR-86)**
 - FirstEnergy Corp. was criminally charged for the H.B. 6 bribery scheme and has entered into a deferred prosecution agreement with the U.S. Department of Justice (DOJ) regarding the company’s involvement in the scandal. Specifically, FirstEnergy Corp. admitted that it committed wires fraud in furtherance of the H.B. 6 conspiracy; admitted to bribing former Speaker of the House (L. Householder) and the former PUCO Chairman (S. Randazzo) while they were in office; agreed to pay a \$230 million penalty; agreed to continue cooperating with DOJ in its investigation; agreed to publicly disclose corporate contributions to certain charitable or political organizations; and agreed to implement a “corporate compliance” program. Subject

to FirstEnergy Corp.'s compliance with the agreement, DOJ has agreed to not continue its criminal prosecution against FirstEnergy Corp. and may seek dismissal of the charges in three years if FirstEnergy Corp. complies with the terms of the agreement.

- Federal investigators issued subpoenas to the PUCO for documents related to former PUCO Chair's appointments and communications with other government officials concerning H.B. 6. The subpoenas also seek internal records of certain PUCO cases that Randazzo may have improperly influenced such as FirstEnergy's Distribution Modernization Rider case. To date, the former PUCO Chair has not been charged for his participation in the FirstEnergy bribery scheme.

Department of Justice
U.S. Attorney's Office
Southern District of Ohio

FOR IMMEDIATE RELEASE
Thursday, July 22, 2021

FirstEnergy charged federally, agrees to terms of deferred prosecution settlement

CINCINNATI – FirstEnergy Corp. has been charged federally with conspiring to commit honest services wire fraud and has agreed to pay a \$230 million monetary penalty. The company signed a deferred prosecution agreement that could potentially result in dismissal of the charge.

The charge and agreement stem from the [U.S. Attorney's Office's ongoing public corruption prosecutions](#). In today's court filings, FirstEnergy Corp., an Akron, Ohio-based public utility holding company, admits it conspired with public officials and other individuals and entities to pay millions of dollars to public officials in exchange for specific official action for FirstEnergy Corp.'s benefit.

FirstEnergy Corp. acknowledged in the deferred prosecution agreement that it paid millions of dollars to an elected state public official through the official's alleged 501(c)(4) in return for the official pursuing nuclear legislation for FirstEnergy Corp.'s benefit.

The company also acknowledged that it used 501(c)(4) entities, including one it controlled, to further the scheme because it allowed certain FirstEnergy Corp. executives and co-conspirators to conceal from the public the nature, source and control of payments.

FirstEnergy Corp. further acknowledged that it paid \$4.3 million dollars to a second public official. In return, the individual acted in their official capacity to further First Energy Corp.'s interests related to passage of nuclear legislation and other company priorities.

FirstEnergy Corp. has cooperated substantially with the government, and according to the deferred prosecution agreement, the company must continue to cooperate fully with the United States in all matters related to the company's conduct described in the agreement and other conduct under investigation by the government, among other obligations.

For example, within 60 days of today's filing, FirstEnergy Corp. must pay \$115 million to the United States and \$115 million to the Ohio Development Service Agency's Percentage of Income Payment Plus Plan, a program that provides assistance to Ohioans in paying their regulated utility bills.

Other terms in the agreement include publicly disclosing on its website any FirstEnergy Corp. contributions to 501(c)(4) entities and entities known by FirstEnergy Corp. to be operating for the benefit of a public official, either directly or indirectly, and making various provisions to improve corporate compliance moving forward.

As part of the agreement, FirstEnergy Corp. admitted to the facts alleged in the Information and outlined in the Statement of Facts, which detail actions by FirstEnergy Corp. executives to pay money to public officials in return for official action. As a corporation, FirstEnergy Corp. is responsible for the acts of its current and former officers, directors, employees and agents.

Vipal J. Patel, Acting United States Attorney for the Southern District of Ohio, and Chris Hoffman, Special Agent in Charge, Federal Bureau of Investigation (FBI), Cincinnati Division, announced the charge and agreement. Deputy Criminal Chief Emily N. Glatfelter and Assistant United States Attorney Matthew C. Singer are representing the United States in this case.

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Topic(s):
Public Corruption

Component(s):
USAO - Ohio, Southern

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Updated July 22, 2021

FirstEnergy promised huge windfall to former utilities lawyer after company says it got him to change sides on key regulatory issue

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By [Andrew J. Tobias, cleveland.com](#)

COLUMBUS, Ohio -- New documents show Sam Randazzo, a former longtime utilities lawyer who years later became Ohio's top utilities regulator, in 2015 received a huge personal windfall from FirstEnergy Corp. in exchange for what the company has said was his agreement to change sides on a key state regulatory move sought by the company. At the time, Randazzo was in private practice, representing a trade group of large industrial electricity customers, but also had a 2012 consulting agreement with FirstEnergy. In 2015, FirstEnergy more than quadrupled Randazzo's contract, going from owing him \$2.5 million to owing him \$11.2 million, according to the documents, obtained Monday through a public records request.

In exchange, FirstEnergy has said, Randazzo agreed to stop opposing the company's bid for state approval for a controversial "power purchasing agreement" that effectively would have bailed out some of its aging power plants, including the Davis-Besse nuclear plant near Toledo and the W.H. Sammis coal plant near Steubenville. The move, [which was eventually blocked by federal regulators](#), was an early iteration of what became House Bill 6, the nuclear bailout law that now is the center of an ongoing federal corruption probe.

Randazzo had opposed a similar request from American Electric Power the previous year, arguing it would cause customers' electricity bills to go up, [according to a 2014 report from Energy News Network](#). In an interview with the outlet, he initially signaled he might oppose FirstEnergy's request, too. "If it turns out that the proposal FirstEnergy is presenting is not superior to the market and would cost money instead of save money, then not only will it be opposed on factual grounds, but it will be challenged legally," Randazzo said in 2014.

But Randazzo ended up supporting the measure, reads a court filing FirstEnergy made last month as part of a deal with federal prosecutors, with the 2015 changes coinciding with and "in exchange for" Randazzo's group withdrawing its opposition.

Rob Kelter, an attorney with the Environmental Law and Policy Center, said FirstEnergy's "power purchasing agreement" before the Public Utilities Commission of Ohio was hugely contentious at the time, and fiercely opposed by all environmental and consumer groups except for the one that Randazzo led. Randazzo's eventual support was a pivotal factor in the PUCO's decision to approve it, Kelter said.

"Parties before the commission assume that everybody is on the up and up, and parties are taking positions based on principled reasons, not based on inside deals with utilities," Kelter said. "And the respect that regulators had for Sam was based on the assumption that his positions were based on his free market principles. Not on his agreement with FirstEnergy."

In addition to showing how much Randazzo benefited personally from what the company said was his support on a key policy issue, the new documents shed additional light on the contract that FirstEnergy admitted last month [became a vehicle for the \\$4.3 million bribe it paid to Randazzo](#) weeks before Gov. Mike DeWine hired him to run the PUCO in February 2019. The admission about the bribe, and the details about Randazzo dropping his opposition to FirstEnergy's sought regulatory change, came in writing through the deferred

prosecution agreement, a deal through which FirstEnergy will avoid being convicted of a corruption-related crime.

Randazzo has not been charged, and has denied any wrongdoing. But FirstEnergy has admitted to bribing him. Randazzo resigned from his position in November 2020, shortly after FirstEnergy [first disclosed the \\$4.3 million payment to its shareholders](#) in a federal regulatory filing, and days after the FBI searched Randazzo's house in Columbus. The discovery of the payment to Randazzo, FirstEnergy said, led it to fire several top executives, including then-CEO Chuck Jones.

[Cleveland.com](#) and The Plain Dealer obtained Randazzo's written contracts with

FirstEnergy through a public records request sent last week to the Ohio Consumers' Counsel, a state agency set up as a watchdog for consumers. The OCC [received it from FirstEnergy](#) through discovery in an ongoing PUCO case through which the state is investigating whether FirstEnergy billed customers for the money it spent pushing for House Bill 6. FirstEnergy could have tried to block the disclosure of the document, under the terms of a legal agreement between it and the OCC, but decided not to.

An attorney for Randazzo declined to comment for this story. But Randazzo previously has said the agreement was reviewed and approved "by senior executives at FirstEnergy." Jennifer Young, a company spokesperson, declined to offer additional details on the contract with Randazzo.

"While we're unable to comment on the contract in light of pending proceedings, we are carefully reviewing and revising our political activity and lobbying/consulting practices, including requiring robust disclosures about lobbying activities," she said. The 2015 contract amendment documenting Randazzo's significantly increased retainer, a written copy of which FirstEnergy gave to the OCC, was unsigned. Prosecutors and

FirstEnergy said last month that the changes weren't legally binding, since it was never formally executed, and that invoices to Randazzo's company were set up to bypass FirstEnergy's normal process of approving payments.

Randazzo's initial contract, signed in 2013, was to pay him \$2.5 million over five years. The 2015 changes extended it to 12 years, front-loaded with increased payments so Randazzo was to receive \$8.5 million from 2016 to 2019, and then another \$2.7 million from 2020 through 2024.

The updated contract also required Randazzo to sit in on a meeting with FirstEnergy officials and state legislative leaders to discuss Senate Bill 310, [a 2014 law signed by then-Gov. John Kasich](#) that effectively froze Ohio's renewable energy and energy efficiency mandates for two years. The mandates later were eliminated as part of House Bill 6.

FirstEnergy's 2015 changes to its consulting deal with Randazzo lays out terms that are generous to Randazzo, requiring the company to pay the contract amount in full to the Sustainability Funding Alliance of Ohio, a company Randazzo owned, even if FirstEnergy decided to terminate the deal at any time.

And that's what FirstEnergy and Randazzo did in December 2018, hashing out the particulars during a meeting at Randazzo's Columbus condo with two top FirstEnergy executives,

according to the deferred prosecution agreement FirstEnergy reached with federal prosecutors.

During the meeting, Randazzo, Jones and Michael Dowling, another FirstEnergy executive “discussed the remaining payments under the consulting agreement” as well as Randazzo’s “candidacy for the open PUCO chair position.” On Dec. 19, Randazzo texted with Jones and Dowling about the payment, according to court records.

“We’re gonna get this handled this year, paid in full, no discount. Don’t forget about us,” Jones texted in the conversation with Randazzo.

Randazzo responded, “you guys are welcome anytime and any where! [sic] can open the door. Let me know how you want me to structure the invoices. Thanks,” before adding. “I think I said this last night but just in case – if asked by the administration to go for the Chair spot, I would say yes.”

Randazzo has said he applied for the PUCO job after he was recruited and lured out of retirement by members of the DeWine administration. In February 2019 DeWine hired him in one of the first major moves of his term as governor. DeWine has said he knew about Randazzo’s past ties with FirstEnergy when he hired him, [but didn’t know](#) about the \$4.3 million payment at the time.

After Randazzo became PUCO chairman in April, he helped the company push for state law changes worth hundreds of millions of dollars, FirstEnergy officials said in their deferred prosecution agreement. That included helping develop and lobby for the House Bill 6 nuclear bailout bill, which also included a “decoupling” provision that guaranteed FirstEnergy’s revenues at record 2018 levels, and helping the company avoid a 2024 PUCO electricity rate review -- which executives referred to as “the Ohio hole” -- that the company feared would hurt its bottom line.

As part of its deferred prosecution agreement, FirstEnergy also has admitted it paid \$61 million in bribes, in the form of political donations, to former House Speaker Larry Householder. In exchange, Householder helped push House Bill 6 into law, and helped defend it against a repeal campaign effort. Householder, who was removed from his leadership position shortly after his July 2020 arrest, and kicked out of the legislature in June, has pleaded not guilty and denied wrongdoing.

House Bill 6 largely has been repealed, including the nuclear subsidies and the decoupling provision.



July 27, 2021

FirstEnergy Re-Evaluating Whether Ratepayers Funded Lobbying Efforts

FirstEnergy says it is "re-evaluating" its prior assurance to regulators that no ratepayer dollars were used to support passage of a 2019 energy law.

The company said as much in its latest filing in one of four ongoing Public Utilities Commission of Ohio investigations into the company's conduct in relation to the partially repealed law (HB6, 133rd General Assembly) at the heart of an ongoing criminal scandal.

The filing credits the need to reevaluate FirstEnergy's prior claim with the company's recent deferred prosecution agreement in which it admitted seeking to bribe public officials, including a former PUCO chairman, in part to ensure HB6's success. (See [Gongwer Ohio Report, July 22, 2021](#))

The company in September told the PUCO no ratepayer funds – including base rates or supplemental charges – were used directly or indirectly to lobby for the law or thwart a referendum to overturn it at the ballot. (See [Gongwer Ohio Report, October 1, 2020](#))

"In light of the deferred prosecution agreement and the statement of facts attached to it, the companies are in the process of reevaluating their Sept. 30, 2020, response to the commission's directive to show cause demonstrating that the costs of any political or charitable spending in support of (HB6) or the subsequent referendum effort were not included, directly or indirectly in any rates or charges paid by ratepayers in this state," the company wrote in its filing.

"Additionally the companies believe that the deferred prosecution agreement requires supplementation of certain of their discovery responses in this proceeding," FirstEnergy continued. "The companies are in the process of identifying these responses for prompt supplementation."

The investigation began in September and has been one of several points of contention between the company and consumer advocates who continue seeking documents and records from FirstEnergy. (See [Gongwer Ohio Report, September 16, 2020](#))

The Ohio Manufacturers' Association Energy Group and the Ohio Consumers' Counsel earlier this month had filed a joint motion seeking to indefinitely stay – or at least delay by 120 days the comment schedule – the case given the number of outstanding discovery requests that have yet to be resolved.

The parties accused the company of "obfuscation" in the face of OCC's discovery requests and indicated the counsel plans to file more requests for documents in the near future.

"An indefinite stay is needed for serving justice (rather than a specific deadline), as a specific deadline will just be informational to FirstEnergy for how much delay it needs to interpose," the parties wrote.

In its new filing, FirstEnergy states it does not oppose that motion and that good cause exists to stay or extend the schedule given recent events.

Of the four ongoing PUCO investigations, this is the first to show a direct impact from the company's agreement with prosecutors announced last week.

Other investigations center on the company's compliance with corporate separation laws and use of revenue from both its Distribution Modernization and Delivery Capital Recovery riders.



June 8, 2021

AEP Subpoenaed by Federal Regulators in HB 6 Inquiry

AEP has received a subpoena from the U.S. Securities and Exchange Commission in the latest fallout from the ongoing nuclear subsidy scandal.

The Columbus-based utility announced receipt of the subpoena Tuesday in an [update](#) to investors that reiterated "AEP continues to believe that our participation in the HB6 process was at all times lawful and ethical."

It is the latest development as the SEC and other enforcement agencies continue probing utility operations surrounding the passage of the 2019 energy law (HB6, 133rd General Assembly) that sparked a \$60 million racketeering scandal that has netted three convictions.

According to the company, the subpoena, from the SEC's Division of Enforcement, seeks "various documents, including documents relating to the benefits to the company from the passage of HB6 and documents relating to our financial processes and controls."

"AEP is cooperating fully with the SEC's subpoena," the company said. "Although we cannot predict the outcome of the SEC's inquiry, we do not believe the results of this inquiry will have a material impact on our financial condition, results of operations, or cash flows."

No one with AEP has been charged with wrongdoing.

The company did spend in support of HB6, including contributions to a 501(c)(4) called Empowering Ohio's Economy that is referenced – although not by name – in the criminal complaint against the defendants.

That group in turn donated to Generation Now, the nonprofit that pleaded guilty to racketeering in the criminal case.

Officials at AEP have said its spending in support of the law, which has since been partially repealed, was "appropriate and lawful."

In announcing the subpoena, AEP outlined several steps taken in response to the scandal that has dominated the state's energy scene for the last year.

Those include reviewing political engagement policies, expanding disclosures to include contributions of \$5,000 or greater to 501(c)(4)s, revising its political engagement policy, and adopting a new anti-corruption policy.

The SEC is already investigating FirstEnergy, which has fired six executives following the scandal. No one with that company has been charged but the utility continues discussing with the Department of Justice the possibility of a deferred prosecution agreement.

FirstEnergy DCR rider audit report filed

The PUCO has issued an expanded audit report of FirstEnergy's Ohio electric distribution companies' delivery capital recovery rider.

FirstEnergy DCR rider audit report filed

COLUMBUS, OHIO (Aug. 3, 2021) – Today the Public Utilities Commission of Ohio's (PUCO) issued an expanded audit report of FirstEnergy's Ohio electric distribution companies' delivery capital recovery rider for the 2020 calendar year. The audit report recommends \$6.6 million should be returned to customers.

This audit report is a part of the [PUCO's four separate and ongoing proceedings](#) to investigate issues related to FirstEnergy and the passage of House Bill 6 during the 133rd General Assembly.

The audit report examined expenses identified by FirstEnergy Corp. in its Feb. 18, 2021 report to the Securities and Exchange Commission (SEC) to be improperly classified, misallocated, or lacked supporting documentation. The audit examined payments to 17 vendors over a 10-year period, totaling \$24.5 million.

The audit report identifies \$6.6 million of the \$24.5 million total that were included in customer bills and should be refunded. Specifically, the vendor payments include \$2.4 million that were charged to customers in base distribution rates, \$4.15 million charged to customers through the demand side management and energy efficiency rider. The audit also identified \$82,850 charged to customers in pole attachment rates. Pole attachment rates are generally only paid by other utilities, telecom providers and municipal corporations.

Other vendor payments were allocated to the utilities' Delivery Capital Recovery Rider. The audit report indicates the companies had already reached annual revenue caps used in the ratemaking formula for rider DCR, meaning removing these vendor payments would have no impact on customer bills.

Additionally, the audit report identifies \$7.4 million in expenses that were recorded as capital and should be excluded from future ratemaking during the companies' next distribution rate case. The companies are required to file an application with the PUCO to set base distribution rates by May 2024.

[A complete and unredacted audit report](#), prepared by the PUCO's independent third-party auditor, is available in the case docket online in case [20-1629-EL-RDR](#).

The purpose of the audit report is to determine if any of the identified vendor payments were included in rates paid by customers and should be refunded. PUCO staff nor the audit report

make any conclusions or recommendations on the prudence or appropriateness of how the vendor payments were selected.

A PUCO administrative law judge will establish a procedural schedule in this case to determine the next step.

RELATED AND ONGOING CASES

The PUCO has [four separate pending investigations](#) related to FirstEnergy and the passage of Amended Substitute House Bill 6 (133 G.A.)

BACKGROUND

The PUCO regulates FirstEnergy's three Ohio electric distribution utilities: Cleveland Electric Illuminating, Ohio Edison and Toledo Edison.

On Feb. 18, 2021, FirstEnergy Corp.'s 10-K to the SEC disclosed it had identified "certain transactions ... that were either improperly classified, misallocated ... or lacked supporting documentation."

On March 8, 2021, PUCO staff filed a letter stating it had reviewed the transactions disclosed by FirstEnergy Corp. and requested to expand the scope of an ongoing audit of the delivery capital recovery rider for Cleveland Electric Illuminating Company, Ohio Edison and Toledo Edison to determine if any of the identified transactions were included in rates paid by customers.

On March 10, 2021, the Commission granted PUCO staff's request and directed the Commission's third-party auditor, Blue Ridge Consulting Services, Inc., to expand the scope of its audit.

To: OMA Energy Committee
From: Rob Brundrett
Re: Energy Public Policy Report
Date: September 9, 2021

Overview

Over the summer the U.S. Attorney's office announced the Deferred Prosecution Agreement signed by FirstEnergy. In the document, FirstEnergy admitted to bribing the former Ohio Speaker of the House and the former Chairman of the PUCO. Fallout continues from the House Bill 6 scandal.

More legislation continues to be introduced on the energy policy front. The newest piece would create energy efficiency legislation aimed mostly at residential customers. OVEC and ESP repeal bills continue to have hearings in both the House and Senate. More energy legislation is expected to be introduced during the fall session.

General Assembly News and Legislation

Bribery and Corruption at the Statehouse Update

The fallout from the House Bill 6 scandal has not stopped, in fact it just gets uglier and uglier.

Last month FirstEnergy signed a Deferred Prosecution Agreement which included a \$230 million penalty for bribing former House Speaker Larry Householder and Sam Randazzo, the former Public Utilities Commission of Ohio chair. Under the agreement reached with FirstEnergy, the utility cannot pass the costs of the fine onto customers. The \$230 million fine will be split 50-50 between federal and state government.

The release of new documents show Sam Randazzo six years ago received "a huge personal windfall from FirstEnergy in exchange for what the company has said was his agreement to change sides on a key state regulatory move" to effectively bail out less profitable power plants by imposing extra charges on ratepayers. According to The Plain Dealer, FirstEnergy more than quadrupled Randazzo's contract in 2015 — increasing it from \$2.5 million to \$11.2 million.

With all the new information that has been released Ohio Attorney General Dave Yost expanded his House Bill 6 racketeering lawsuit to include new defendants and additional factual allegations based on recent filings by the U.S. Department of Justice in its criminal case. Yost's new filing added the following defendants:

- Chuck Jones, former CEO of FirstEnergy;
- Michael Dowling, former senior vice president for FirstEnergy;
- Former Public Utility Commission of Ohio (PUCO) Chairman Sam Randazzo; and
- Several entities associated with Randazzo, including the now-dissolved IEU-Ohio Administration Co., LLC.

Yost also wants Randazzo to return a \$4.3 million FirstEnergy payment the company admitted was a bribe, as well as his public salary while serving as PUCO chair.

A third-party audit report has found FirstEnergy charged Ohio ratepayers millions in undocumented spending, including for payments the company made to a dark money group tied to the House Bill 6 scandal. The audit report — part of four ongoing proceedings being

conducted by the Public Utilities Commission of Ohio (PUCO) to investigate FirstEnergy's HB 6 activities — only looked into 17 payments specifically flagged by FirstEnergy.

According to a PUCO news release, the auditing firm recommends that ratepayers be refunded \$6.6 million — and that \$7.4 million be excluded from the company's next base rate case in 2024.

Gongwer News Service reported the audit also found FirstEnergy lacked sufficient documentation for millions more in other payments, including \$14 million to firms owned by Sam Randazzo, the former PUCO chair.

Finally, Larry Householder was expelled from the House of Representatives by a vote of his colleagues prior to the summer recess. He was the first Ohio legislator to be expelled by his peers for "disorderly conduct" since the Civil War. The former speaker vowed to remain a public figure.

Some good news courtesy of the OMA and its energy team is that FirstEnergy customers are set to receive a "decoupling" refund on their August electricity bills — thanks to OMA-supported legislation (House Bill 128) that partially repealed the scandal-tainted House Bill 6.

House Bill 10 – Repeal House Bill 6

The bill sponsored by Democrat David Leland is loosely modeled on House Bill 772 from the previous General Assembly. The bill would repeal the majority of provisions from House Bill 6 including, the nuclear subsidies, decoupling, and OVEC. It would replace the efficiency rider programs with optional market-based approaches details to be determined. The bill has had one hearing but did generate some buzz when it was first introduced.

Senate Bill 10 – Repeal Decoupling and SEET

The Ohio Senate unanimously passed Senate Bill 10 — the OMA-supported bill introduced by Sen. Mark Romanchuk (R-Mansfield) to repeal House Bill 6's decoupling provision, which allowed FirstEnergy to lock in annual guaranteed revenue at record-setting 2018 levels (\$978 million).

SB 10 also repealed the "significantly excessive earnings" provision authorized in the last state budget (HB 166). That change to the so-called SEET test had allowed FirstEnergy to combine profits across its three companies, offsetting "significantly excessive" Ohio Edison gains with those from less profitable companies, thereby avoiding related customer refunds.

Under SB 10, revenue collected under these provisions would be refunded. Anticipated decoupling costs for customers were estimated at \$17 million for 2020 and more than \$101 million for 2021 for all customer classes. SEET refund amounts are yet to be determined. SB 10's provisions were passed as part of HB 128 which repealed portions of HB 6.

House Bill 18 – Straight Repeal of House Bill 6

Rep. Lanese reintroduced her straight repeal bill she also sponsored in the fall of 2020. The straightforward bill repeals all of House Bill 6 in its entirety. It would have the effect of setting Ohio's energy law landscape back to how it was prior to House Bill 6. The bill has had sponsor testimony in the House.

Senate Bill 32 – Electric Car Charging Station Grant Rebate

The bill sponsored by Senator Rulli requires that the Ohio Department of Transportation creates an electric car charging station grant and rebate. The bill has had one hearing in the Senate.

Senate Bill 44 – Repeal Portions of House Bill 6

Senate Bill 44 is the vehicle the Senate choose to repeal the nuclear credit portions of House Bill 6. While a good first step in righting some of the wrongs over the past two years the bill still fell woefully short of providing comprehensive protections for customers. The OMA provided interested party testimony and pointed out the shortcomings of the bill and encouraged the Ohio Senate to push harder to repeal OVEC and the entire Clean Air Fund. The bill passed out of Senate unanimously. The House included portions of this bill in HB 128 the partial repeal bill vehicle.

House Bill 47 – Electric Car Charging Station Grant Rebate

House Bill 47 requires the Ohio Department of Transportation to create an electric car charging station grant and rebate. It is a companion bill to Senate Bill 32. The bill has had four hearings.

Senate Bill 52 – Wind and Solar Referendum

Senate Bill 52 has passed both houses and was signed by the Governor in June. The controversial bill changed drastically from the introduced version but walked away from the power siting board process and allowed local governments to deny portions of counties and deny applications for large scale wind and solar.

Specifically, the bill:

- Enables county commissioners to approve a project via a lack of action, or to adopt a resolution rejecting or limiting the footprint of a proposed project;
- Allows local officials to adopt a resolution, subject to referendum, to designate a restricted area in which any project is prohibited or block any material amendment to an existing facility; and
- Creates two ad-hoc seats to the Ohio Power Siting Board to represent county commissioners and township trustees in proceedings affecting their jurisdiction.

In an attempt to provide a workable solution, the OMA engaged at the Power Siting Board-level to reach a compromise — one that still achieved the goals of the bill sponsors — but remains opposed to the final version of the bill. To ensure clarity, uniform policy, and economy of process, the OMA continues to urge a statewide approach to such projects and decisions.

Senate Bill 89 – Renewable Energy

Sen. Matt Dolan (R-Chagrin Falls) introduced Senate Bill 89 to make an 8.5% renewable portfolio standard (RPS) permanent. Dolan told the media that the bill represents a compromise necessitated by the passage of House Bill 6, which lowers Ohio's renewable energy benchmarks from 12.5% to 8.5% by 2026 and terminates the RPS in 2027.

An 8.5% RPS would not be affected by FERC's Minimum Offer Price Ruling (MOPR). Any RPS exceeding 8.5% would be subject to the MOPR (due to state subsidies), impairing new renewable projects' ability to compete for PJM capacity revenue. In contrast, the growing market of private corporate renewable energy purchases will not be subject to the MOPR ruling.

The bill has an uphill battle with his fellow Republicans but portions of the bill may find a way through the legislature. The bill did have a first hearing this month.

House Bill 110 – Operating Budget

The new state budget contains little that impacts energy policy. However, it does provide a kilowatt-hour tax exemption for entities that generate electricity primarily for their own consumption, either on the same premises or at a facility on a property contiguous to where the electricity is consumed. This is a valuable provision for OMA members that had implemented either self-generation or alternative-energy generation agreements.

Senate Bill 117 – OVEC Repeal

Brad Belden, president of The Belden Brick Company and chair of the OMA Energy Committee, testified on behalf of the OMA in support of Senate Bill 117 — legislation to repeal House Bill 6's \$700 million ratepayer-funded subsidy for two Ohio Valley Electric Corporation (OVEC) coal plants, one of which is in Indiana. The bill would also refund customers the charges borne since HB 6 took effect.

The OMA has been on the frontlines advocating for the repeal of anti-customer provisions included in HB 6 including, the nuclear subsidies and decoupling provision. The OVEC subsidies are one of the last pieces of HB 6's anti-market policy that remains in law. Customers will be on the hook for these subsidies through 2030 without action by state lawmakers.

Before the June recess the utilities testified in opposition of the bill. Shockingly, the utilities testified that the OVEC subsidies are in fact not subsidies since there's a slim chance customers could someday receive a rebate.

Under questioning from committee members, it was conceded that at no time since OVEC's creation had any customer even received a credit from the riders. The operator of OVEC — which is jointly owned by several parent electrical utilities — also conceded that the two coal plants being subsidized by HB 6 would not close if the rider was eliminated.

The OMA continues to work with SB 117's sponsors, to eliminate the subsidy and protect manufacturers from unnecessary electric charges and riders

Senate Bill 118 – Solar Subsidy Repeal

Sen. Romanchuk introduced SB 118 to rollback \$20 million a year in payments to five solar projects – another subsidy folded into the corrupt HB 6. Originally HB 128 eliminated the subsidy. The House reinserted the subsidy as part of the committee process.

House Bill 128 – Repeal Portions of House Bill 6

Gov. Mike DeWine signed HB 128, which cancels out the nuclear subsidy provisions of HB 6 (133rd General Assembly), originally targeted to support the Davis-Besse and Perry nuclear plants to the tune of up to \$150M/year.

HB 128 also removed the costly HB 6 “decoupling” provision, which tied FirstEnergy future profits to record year 2018 regardless of the amount of power sold, about \$978M annually. The new law also revoked a change made to the Significantly Excessive Earnings Test, which benefited only FirstEnergy by allowing the company to combine profits across three of its companies to avoid customer refunds from its overly profitable company.

The new bill retains HB 6's subsidies for utility-scale solar projects and for two coal plants (one in Ohio, one in Indiana), leaving the door open for more corrective action that could cancel these subsidies that work against ratepayers.

The bill was voted unanimously in the Senate 33-0, 86-7 in the House originally, but then the House unanimously (89-0) concurred with the Senate amendments. HB 128 was sponsored by Reps. James Hoops (R-Napoleon) and Dick Stein (R-Norwalk)

House Bill 192 – Prohibit Energy Generation

The bill prohibits counties, townships, and municipal corporations from prohibiting energy generation from fossil fuels and gas pipelines. The House has had three hearings on this bill.

House Bill 201 – Natural Gas Bans

The House passed House Bill 201, legislation designed to prohibit local governments from banning or blocking consumers from obtaining natural gas hookups. The OMA worked with the bill sponsor and other interested parties to ensure the intent of the bill matched its language.

The Senate passed the bill just prior to breaking for the summer recess. The OMA became a bill supporter after successfully securing several changes in the House to clarify the bill's intent and protect customers.

House Bill 260 – Electric Charge Refunds

The bill would require the refund of improper and illegal electric charges. The OMA is a strong proponent of the bill. Since 2009 utilities have wrongfully collected over \$1.5 billion from ratepayers. This bill will require refunds to customers within a year of being deemed improper.

House Bill 271 – Natural Gas Infrastructure

This month the House had sponsor testimony on House Bill 271, legislation that would establish a grant and loan program to coordinate and expand access to natural gas. The program would be funded by excess revenue in the Oil and Gas Well Fund and/or future appropriations made by the General Assembly. Businesses, non-profits, and local governments would be eligible to apply for funding.

House Bill 317 – Electric Security Plan Repeal

Earlier this month Rep. Shane Wilkin (R-Hillsboro) introduced House Bill 317. At the macro level, HB 317 would eliminate electric security plans (ESPs).

The ESP process was originally established to ensure electricity prices would not increase too much as utilities continued the transition to a mature de-regulated market. Since its creation, however, the ESP process has turned into a mechanism that regulated utilities use to increase costs through numerous above-market charges added to customers' bills. The proposal would eliminate ESPs and require utilities to provide standard service offers under a competitive market-rate offer. The bill would also allow utilities to implement economic development and job-retention programs under the market-rate offer, while allowing utilities to apply to the PUCO to recover non-bypassable costs of those unlimited programs.

The OMA is engaged on the bill and met with House leaders. There is concern that the bill might allow for unintentional alternatives for utility riders. The OMA has shared information with the House on potential repeal language.

House Bill 381 – Electric Rates for Structures on Residential Property

The bill would allow for certain structures on a retail electric customer's property to be charged the same as the primary residence.

House Bill 351 – Repeal Non-Bypassable Cost Recovery Mechanisms

The bill would repeal the OVEC provisions of House Bill 6 and require customers refunds. It was introduced and referred to committee in June.

House Bill 389 – Energy Efficiency

House Bill 389 would create new, utility-run energy efficiency programs. Sponsored by Reps. David Leland (D-Columbus) and Bill Seitz (R-Cincinnati), HB 389 would allow electric distribution utilities to implement “energy waste reduction” programs, which would be targeted at residential consumers. Individuals who did not want to participate would be required to opt out. Commercial and industrial users would be excluded.

Oddly the bill is being introduced after the General Assembly spent the past 7 years trying to eliminate energy efficiency programs.

Senate Concurrent Resolution 7 - Urge Preservation of the Minimum Offer Price Rule

The resolution memorializes PJM Interconnection, L.L.C. and the Federal Energy Regulatory Commission to urge the preservation of the Minimum Offer Price Rule for the PJM capacity market.

Senate Resolution 175 – Urge Preservation of the Minimum Offer Price Rule

The resolution memorializes PJM Interconnection, L.L.C. and the Federal Energy Regulatory Commission to urge the preservation of the Minimum Offer Price Rule for the PJM capacity market.

PUCO News

FirstEnergy Will Refund \$27M in HB 6 Decoupling Charges

FirstEnergy customers are set to receive a “decoupling” refund on their August electricity bills — thanks to OMA-supported legislation (House Bill 128) that partially repealed the scandal-tainted House Bill 6.

The Public Utilities Commission of Ohio (PUCO) — due in part to the OMA Energy Group’s legal advocacy — approved FirstEnergy’s plan to refund customers more than \$27 million in fees collected through HB 6’s decoupling mechanism, which allowed the utility to guarantee itself revenue. Refund amounts will vary based on customers’ electric use this August.

Prior to the PUCO’s approval, the OMA Energy Group provided an active voice in legal proceedings to advocate for a full refund of the decoupling dollars, partnering with the attorney general and Office of the Ohio Consumers’ Counsel.

HB 128, which was passed in March and took effect June 30, required the decoupling refunds. The bill also repealed HB 6’s centerpiece — more than \$1 billion in subsidies for two nuclear plants operated by a former FirstEnergy subsidiary.

News and Notes

PJM Changes Course on State-Subsidized Generation

The ongoing battle over state subsidies in competitive electric markets continues as PJM — the grid operator whose service area includes Ohio — recently backed off its years-in-the-making Minimum Offer Price Rule (MOPR) expansion.

A response to a Federal Energy Regulatory Commission (FERC) order, PJM’s MOPR expansion spelled trouble for state-subsidized generation. The MOPR expansion was applied in

the most recent PJM capacity auction, resulting in low-capacity prices, increases in low-carbon generation, and healthy reserve margins.

Under PJM's new proposal, which must be approved by FERC, complaints would be submitted to FERC on a case-by-case basis if a generator uses "conditioned state support" or coordinated "buyer-side market power." FERC would make the final call. State-subsidized generation would not be subject to the MOPR for a variety of reasons, such as if the subsidy is for "environmental attributes" or "economic development."

While more analysis is needed, PJM's new proposal appears to loosen how states can subsidize their favored generators

PJM's First Capacity Auction in Three Years Yields Low Electricity Prices

PJM — the grid operator whose service area includes Ohio — has completed its first Base Residual Auction (BRA) for capacity in three years for the 2022/23 delivery year. The BRA had been delayed while the Federal Energy Regulatory Commission (FERC) created new rules to discourage state subsidies from influencing competitive market pricing.

This spring's auction was the first to implement FERC's Minimum Offer Price Rule (MOPR) — and may be the only auction to do so. Natural gas-fueled generation, nuclear, solar, wind, and energy efficiency all cleared more megawatts in this auction, while coal plants experienced a significant reduction. The resulting BRA capacity price was \$50/MW-day — the lowest capacity price in nine years. The BRA procured a 19.9% reserve margin, far exceeding PJM's reliability target of 14.5%. Duke Energy's Ohio customers will pay a slightly higher — but still low — capacity price of \$71.69/MW-day.

Missing out on the low market prices and marked increase in low and no-carbon generation was Dominion Energy, which pulled out of the market, apparently to increase its renewable energy supply.

Substantial Increase Hitting Natural Gas Bills

Last summer, Columbia Gas Transmission — also known as TCO — filed a rate case proposal with the Federal Energy Regulatory Commission (FERC) to recoup roughly \$3 billion in transmission-related expenses. As filed, the proposal could increase transmission charges by as much as 78%.

Direct shippers and customers of natural gas-distribution utilities served by TCO are already seeing the increase in their bills. (Increased charges are subject to refund based on final terms.) For gas-intensive manufacturers, this added cost may be quite significant.

The OMA Energy Group (OMAEG) has intervened in this case to protect manufacturers' interests, specifically to reduce the proposed rate increase and eliminate any new penalties or operating restrictions. Only parties that intervened last year have legal standing to influence the outcome. Contact OMA staff to learn how you can support the OMA's litigation efforts. The OMA Energy Group has joined an industrial coalition to pushback on proposals to hike natural gas shipping costs.

Opinion: Ohio lawmakers must jettison final laws tied to largest bribery scheme in state history

Ryan Augsburger

Contributed Commentary

If we could turn back the clock a hundred years, we would find that even in 1921 Ohio was a leader in electricity use and one of the top five electrified states.

Because industry is the largest consumer of energy, Ohio's early leadership in electrification — made possible by a free market — helped the Buckeye State establish its manufacturing legacy and earn its place as one of the nation's top three manufacturing states a century later.

One thing that has not changed with time is manufacturers' need for affordable, accessible, market-based electricity.

This is why in 2019 The Ohio Manufacturers' Association led efforts to oppose House Bill 6 — the scandal-ridden Ohio law that authorized customer-funded subsidies for certain electric utilities.

From last summer's arrest of former House Speaker Larry Householder — along with four others tied to HB 6 — to criticism from federal regulators, HB 6 has been a public relations setback for Ohio. This month's announcement that FirstEnergy has agreed to a \$230 million penalty for bribing Householder and Sam Randazzo, the former chair of the Public Utilities Commission of Ohio (PUCO), is another black eye for the Buckeye State.

The good news is state lawmakers recently repealed key provisions of HB 6. Gone are the law's nuclear subsidies, which would have cost consumers an estimated \$150 million a year (and more than \$1 billion in total).

Also rescinded was HB 6's profit-guaranteeing "decoupling" provision, saving Ohio's FirstEnergy customers an estimated \$355 million in total through 2024. As a part of this repeal, PUCO — due in part to the OMA Energy Group's legal advocacy — recently

approved FirstEnergy's plan to refund customers more than \$27 million in decoupling fees that were already collected.

Finally, lawmakers removed a utility-friendly provision that would have allowed FirstEnergy distribution utility companies to keep even more profit rather than returning excessive earnings to customers.

Despite these responsible steps by the legislature, there is at least one more critical provision of HB 6 that must be repealed to limit the harm inflicted and keep Ohio's electricity costs and services competitive.

HB 6 authorized subsidies for two uneconomical coal-fired plants built in the 1950s, including one in Indiana. Under the provision, Ohioans will pay an estimated \$700 million in subsidies to the Ohio Valley Electric Corporation (OVEC), which owns the plants. Ohio ratepayers should not be on the hook to keep outdated electricity plants afloat.

The Ohio Manufacturers' Association supports Senate Bill 117 by state Sen. Mark Romanchuk, R-Ontario, to repeal HB 6's OVEC subsidies and refund customers the charges borne since the law took effect.

Ohio policymakers moved in the right direction by eliminating several harmful aspects of HB 6. Now, SB 117 provides another opportunity to do the right thing and discard a final piece of the legislation tied to the largest bribery and racketeering scheme in state history.

The primary lesson from HB 6 is that sound energy policy needs the marketplace – not subsidies or new requirements from Columbus. As former OMA Chairman David Johnson, CEO of Summitville Tiles, told state lawmakers during the HB 6 debate in 2019: Markets drive fuel diversity better than government mandates.

Let's make sure Ohio invests in productive energy policy by putting a nail in the coffin of HB 6 and its OVEC subsidies.

In the meantime, manufacturers will continue to remind elected officials that since 1999, Ohio's electricity deregulation law has saved consumers an estimated \$3 billion a year. These savings have made Ohio manufacturing even more competitive.

Ryan Augsburger is president of The Ohio Manufacturers' Association, the state's largest statewide business association comprised solely of manufacturers. Established in 1910, the OMA's mission is protect and grow Ohio manufacturing.

May 25, 2021

The Honorable Rob McColley
Chairman
Senate Energy and Public Utilities
Ohio Senate
1 Capitol Square
2nd Floor N., Rm. 222
Columbus, Ohio 43215

RE: House Bill 201 – Written Proponent Testimony

Dear Chairman McColley:

The Ohio Manufacturers' Association (OMA) represents Ohio's robust manufacturing sector. We boast approximately 1,300 members – of all sizes. As you well know, affordable and reliable energy is integral to the productivity of these manufacturers. OMA's membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is of paramount importance to Ohio's manufacturing competitiveness; therefore, Ohio's energy policy is of great significance to us.

The OMA appreciates the opportunity to provide testimony on House Bill 201 (HB 201). In general terms HB 201 provides that every person has the right to obtain available natural gas and prohibits local governments from enacting laws, rules, or codes that limit the use of, prohibit, or prevent residential, commercial, or industrial consumers from obtaining distribution service or retail natural gas service that would otherwise be available to a person under Ohio's public utility law and regulations.

The OMA is supportive of the legislation and its intent to ensure that manufacturing facilities have access to affordable and reliable natural gas service. It is imperative that Ohio manufacturers continue to have access to natural gas supplies. Our organization has worked closely with the bill sponsor and other proponents of the legislation to ensure that the language matches the intent. We initially had some concern about potential unintended consequences given the original language. These concerns were mostly addressed during the House committee process.

Energy policy is critical to Ohio's ability to attract business investment, stimulate economic growth, and spur job creation – especially in manufacturing. We believe that the current version of HB 201 helps ensure Ohio's manufacturers will continue to have access to reliable and economical energy sources.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert A. Brundrett". The signature is fluid and cursive, with the first name "Robert" and last name "Brundrett" clearly legible, and a middle initial "A." in between.

Rob Brundrett
Managing Director, Public Policy Services

May 26, 2021

The Honorable Jim Hoops
Chairman
Energy and Public Utilities Committee
77 S. High St., 11th Floor
Columbus, Ohio 43215

RE: House Bill 260 – Written Proponent Testimony

Dear Chairman Hoops:

The Ohio Manufacturers' Association (OMA) appreciates the opportunity to provide written proponent testimony on House Bill 260 (HB 260). HB 260 requires the refund of electric utility charges that have been found to be improper by the Supreme Court of Ohio or any other relevant authority. These refunds shall take place within one year of the final determination.

HB 260 offers a solution to put illegitimately collected money back in the pockets of customers. The amount of above-market charges that have been collected from customers, then later deemed to be unlawful by the Supreme Court of Ohio, is significant. The Office of the Ohio Consumers' Counsel has identified more than \$1.5 billion in wrongful charges since 2009.

If Ohio utilities are authorized to collect charges that are later deemed to be unlawful by the Court, HB 260 requires the money to be refunded to customers, not retained by utilities as a windfall. While OMA believes that the PUCO already has the authority to protect consumers by ordering refunds through the utilities' tariffs; HB 260, if enacted, will codify the PUCO's authority to order refunds and will place the utilities on notice that charges will be collected from customers subject to refund if the charges are later found to be unlawful.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,



Rob Brundrett
Managing Director, Public Policy Services

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 389

Representatives Leland, Seitz

**Cosponsors: Representatives Hoops, Ray, Stein, Lightbody, Boggs, Wilkin,
Ingram, Sweeney, Brinkman, Carfagna, Gross, Hillyer**

A BILL

To amend section 4928.02 and to enact sections 1
4928.6630, 4928.6631, 4928.6633, 4928.6634, 2
4928.6636, 4928.6639, 4928.6641, 4928.6644, 3
4928.6646, 4928.6647, 4928.6650, 4928.6653, 4
4928.6655, 4928.6657, and 4928.6660 of the 5
Revised Code to permit electric distribution 6
utilities to establish energy efficiency and 7
peak demand reduction portfolios. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4928.02 be amended and sections 9
4928.6630, 4928.6631, 4928.6633, 4928.6634, 4928.6636, 10
4928.6639, 4928.6641, 4928.6644, 4928.6646, 4928.6647, 11
4928.6650, 4928.6653, 4928.6655, 4928.6657, and 4928.6660 of the 12
Revised Code be enacted to read as follows: 13

Sec. 4928.02. It is the policy of this state to do the 14
following throughout this state: 15

(A) Ensure the availability to consumers of adequate, 16
reliable, safe, efficient, nondiscriminatory, and reasonably 17

priced retail electric service; 18

(B) Ensure the availability of unbundled and comparable 19
retail electric service that provides consumers with the 20
supplier, price, terms, conditions, and quality options they 21
elect to meet their respective needs; 22

(C) Ensure diversity of electricity supplies and 23
suppliers, by giving consumers effective choices over the 24
selection of those supplies and suppliers and by encouraging the 25
development of distributed and small generation facilities; 26

(D) Encourage innovation and market access for cost- 27
effective supply- and demand-side retail electric service 28
including, but not limited to, demand-side management, time- 29
differentiated pricing, waste energy recovery systems, smart 30
grid programs, and implementation of advanced metering 31
infrastructure; 32

(E) Encourage cost-effective and efficient access to 33
information regarding the operation of the transmission and 34
distribution systems of electric utilities in order to promote 35
both effective customer choice of retail electric service and 36
the development of performance standards and targets for service 37
quality for all consumers, including annual achievement reports 38
written in plain language; 39

(F) Ensure that an electric utility's transmission and 40
distribution systems are available to a customer-generator or 41
owner of distributed generation, so that the customer-generator 42
or owner can market and deliver the electricity it produces; 43

(G) Recognize the continuing emergence of competitive 44
electricity markets through the development and implementation 45
of flexible regulatory treatment; 46

(H) Ensure effective competition in the provision of 47
retail electric service by avoiding anticompetitive subsidies 48
flowing from a noncompetitive retail electric service to a 49
competitive retail electric service or to a product or service 50
other than retail electric service, and vice versa, including by 51
prohibiting the recovery of any generation-related costs through 52
distribution or transmission rates; 53

(I) Ensure retail electric service consumers protection 54
against unreasonable sales practices, market deficiencies, and 55
market power; 56

(J) Provide coherent, transparent means of giving 57
appropriate incentives to technologies that can adapt 58
successfully to potential environmental mandates; 59

(K) Encourage implementation of distributed generation 60
across customer classes through regular review and updating of 61
administrative rules governing critical issues such as, but not 62
limited to, interconnection standards, standby charges, and net 63
metering; 64

(L) Protect at-risk populations, including, but not 65
limited to, when considering the implementation of any new 66
advanced energy or renewable energy resource; 67

(M) Encourage the education of small business owners in 68
this state regarding the use of, and encourage the use of, 69
energy efficiency programs and alternative energy resources in 70
their businesses; 71

(N) Encourage electric distribution utilities to develop 72
voluntary portfolios of energy savings programs to help their 73
customers to save energy; 74

(O) Facilitate the state's effectiveness in the global 75

economy-; 76

~~(O)~~-(P) Encourage cost-effective, timely, and efficient 77
access to and sharing of customer usage data with customers and 78
competitive suppliers to promote customer choice and grid 79
modernization-; 80

~~(P)~~-(Q) Ensure that a customer's data is provided in a 81
standard format and provided to third parties in as close to 82
real time as is economically justifiable in order to spur 83
economic investment and improve the energy options of individual 84
customers. 85

In carrying out this policy, the commission shall consider 86
rules as they apply to the costs of electric distribution 87
infrastructure, including, but not limited to, line extensions, 88
for the purpose of development in this state. 89

Sec. 4928.6630. As used in sections 4928.6630 to 4928.6660 90
of the Revised Code: 91

"Behavioral energy savings" means energy savings that 92
occurs as a result of a change in a residential retail electric 93
customer's pattern of electricity use. 94

"Nonresidential retail customer" means a customer that is 95
not a residential customer or a mercantile customer. 96

"Energy savings" includes energy efficiency savings and 97
peak demand reduction savings. 98

Sec. 4928.6631. An electric distribution utility may 99
submit an application to the public utilities commission for 100
approval of a portfolio of energy savings programs to assist 101
retail electric customers in achieving energy savings. 102

Sec. 4928.6633. An electric distribution utility's 103

application for a portfolio shall include the following 104
information about the energy savings programs proposed for the 105
portfolio: 106

(A) Descriptions of the size and scope of the programs; 107

(B) The programs' costs, planned energy savings, and cost- 108
effectiveness; 109

(C) The utility's projection of the expected number of 110
customers opting out of the programs under section 4928.6657 of 111
the Revised Code; 112

(D) The program costs, availability, and planned energy 113
savings listed by programs for residential customer and 114
nonresidential retail customer classes and any programs that 115
could impact all customer classes; 116

(E) A proposed mechanism for the recovery of program costs 117
and utility incentives and for lost distribution revenues, if 118
applicable; 119

(F) A plan to improve customers' smart technology 120
capability for demand side management and to improve utility 121
control to reduce peak demand; 122

(G) A description of how the portfolio will meet the 123
requirements under section 4928.6636 of the Revised Code; 124

(H) If the financial parameters described in section 125
4928.6647 of the Revised Code do not allow the portfolio design 126
to be consistent with the energy savings measures under section 127
4928.6639 of the Revised Code, a reflection and explanation of 128
why consistency is not possible; 129

(I) Any other information that the utility determines is 130
appropriate for commission review. 131

Sec. 4928.6634. (A) Not later than one hundred twenty days 132
after receiving an application under section 4928.6631 of the 133
Revised Code, the public utilities commission shall issue an 134
order to approve or modify and approve the application, if the 135
commission finds that the application meets the requirements 136
under section 4928.6633 of the Revised Code and includes the 137
program required under section 4928.6636 of the Revised Code. 138
The commission may modify an application only as necessary for 139
the application to comply with sections 4928.6633, 4928.6639, 140
4928.6641, 4928.6644, 4928.6647, and 4928.6653 of the Revised 141
Code. 142

An order approving or modifying and approving an 143
application shall authorize accounting mechanisms under which 144
the utility may defer and recover costs that would otherwise 145
exceed the rate cap established under section 4928.6650 of the 146
Revised Code. 147

(B) Not later than ninety days after the date of the 148
commission's final order, the utility shall accept the modified 149
application or withdraw the application if either or both of the 150
following occurs: 151

(1) The commission modifies and approves the application. 152

(2) A higher than expected number of customers opt out of 153
the portfolio. 154

(C) A portfolio approved by the commission shall be for a 155
term of not more than five years. To replace or extend a 156
portfolio that is terminating, a utility shall file a new 157
portfolio application with the commission. 158

Sec. 4928.6636. An electric distribution utility portfolio 159
approved under section 4928.6634 of the Revised Code shall 160

include at least one program planned to benefit low-income 161
residential customers with an annual income at or below two 162
hundred per cent of the federal poverty level. Total proposed 163
residential program costs for programs projected to reach low- 164
income residential customers pursuant to this section shall be 165
not less than fifteen per cent of the total program costs 166
proposed for all residential programs in the portfolio. 167

Sec. 4928.6639. An electric distribution utility portfolio 168
shall be designed to do the following: 169

(A) Achieve gross annual energy savings of at least one- 170
half of one per cent of the gross annual energy savings of the 171
prior year's retail electric sales to participating customers, 172
except as limited by the requirement under section 4928.6647 of 173
the Revised Code; 174

(B) Achieve not more than thirty per cent of the planned 175
annual gross energy savings through residential programs 176
designed to deliver only behavioral energy savings; 177

(C) Emphasize smart technology measures, including, but 178
not limited to, energy star qualified smart thermostats; 179

(D) Determine gross energy savings as follows: 180

(1) Directly through standard evaluation, measurement, and 181
verification protocols, such as a bill savings analysis; 182

(2) For gross energy savings not determined directly 183
pursuant to division (D)(1) of this section, with a baseline 184
established for federal energy standards for appliances and 185
other equipment or standards under the Ohio building code under 186
Chapter 3781. of the Revised Code. 187

(E) For gross energy savings determined under division (D) 188

(2) of this section, only permit customer incentives on 189
equipment that exceeds federal energy standards or Ohio building 190
code standards; 191

(F) Exclude gross energy savings from any physical device 192
or equipment that has not been delivered or installed with the 193
permission or at the request of a participating customer. 194

Sec. 4928.6641. An electric distribution utility's 195
portfolio approved under sections 4928.6630 to 4928.6660 of the 196
Revised Code shall be cost-effective based on a utility cost 197
test that compares the total cost of the portfolio's measurable 198
programs to any of the following: 199

(A) Avoided electric generation, transmission, and 200
distribution costs; 201

(B) Reductions in market prices for energy and capacity; 202

(C) Reductions in utility credit and collection costs; 203

(D) Any other quantifiable utility system benefits. 204

Sec. 4928.6644. Customer incentives offered by an electric 205
distribution utility through a portfolio under sections 206
4928.6630 to 4928.6660 of the Revised Code shall provide a 207
meaningful inducement for customers to participate in the cost- 208
effective delivery of projected energy savings. Utility 209
incentives through such a portfolio shall not exceed ten per 210
cent of net program costs on an after-tax basis and shall not 211
count toward the net cost of the portfolio under section 212
4928.6647 of the Revised Code. 213

Sec. 4928.6646. The recovery of any lost distribution 214
revenues under an electric distribution utility portfolio 215
approved under section 4928.6634 of the Revised Code shall not 216

count toward the net cost of the portfolio under section 217
4928.6647 of the Revised Code. 218

Sec. 4928.6647. The net cost of an electric distribution 219
utility's portfolio under sections 4928.6630 to 4928.6660 of the 220
Revised Code shall not exceed two and one-quarter per cent of 221
the utility's annual total electric operating revenues for the 222
previous year as reported in the utility's FERC financial 223
report, FERC form 1, account 400, required by the federal energy 224
regulatory commission. The utility's net cost equals the 225
utility's total program costs for a portfolio approved by the 226
public utilities commission minus eighty per cent of any 227
revenues the utility collects during the same program year from 228
capacity, environmental, and other attributes of the utility's 229
energy savings programs, including bidding efficiency into the 230
wholesale market operated by PJM interconnection, L.L.C. The 231
utility shall retain twenty per cent of revenues received from 232
utility incentives that are bid into the wholesale market, which 233
incentives shall be separate from customer incentives described 234
in section 4928.6644 of the Revised Code. 235

Sec. 4928.6650. (A) A utility's portfolio costs shall not 236
result in a rate that produces an average monthly charge for 237
residential customers that is greater than one dollar and fifty 238
cents per customer per month. 239

(B) If a higher than expected number of residential 240
customers opt out of the portfolio under section 4928.6657 of 241
the Revised Code, the utility automatically is authorized to 242
reduce spending under its approved portfolio to ensure that the 243
utility complies with division (A) of this section. 244

Sec. 4928.6653. The following applies to gross annual 245
energy savings from transmission and distribution system 246

investments that result in measurable energy efficiency savings: 247

(A) The investments shall not be considered to be a 248
program within an electric distribution utility portfolio under 249
sections 4928.6630 to 4928.6660 of the Revised Code for cost 250
recovery and incentive purposes under the portfolio. 251

(B) The energy savings shall count toward determining 252
whether the utility achieved its annual gross energy savings 253
required under division (A) of section 4928.6639 of the Revised 254
Code. 255

Sec. 4928.6655. Mercantile customers shall be 256
automatically opted out of any opportunities to participate in 257
an electric distribution utility's portfolio and any portfolio 258
cost recovery unless they choose to opt in. 259

After the public utilities commission approves a utility's 260
portfolio pursuant to section 4928.6634 of the Revised Code, the 261
utility shall send, to all mercantile customers in its certified 262
territory, a written notice describing the option for such 263
customers to opt in to portfolio participation. If a mercantile 264
customer, as prescribed by the utility, indicates its intent to 265
opt in, the customer shall be deemed to have opted in. 266
Mercantile customers that opt in shall remain as an opt-in 267
customer for a period of not less than twelve months from the 268
date the customer first receives the benefit of participation. 269

Sec. 4928.6657. Every five years or at the start of a new 270
portfolio, an electric distribution utility that has a portfolio 271
approved under section 4928.6634 of the Revised Code shall 272
provide residential customers and nonresidential retail 273
customers with the option to opt out of portfolio participation 274
and cost recovery for the portfolio. Within five business days 275

after a portfolio is approved by the public utilities 276
commission, the utility shall send, to all residential customers 277
and nonresidential retail customers in its certified territory, 278
a written notice describing the option to opt out of 279
participation in the portfolio. The time period during which a 280
customer may opt out of participation shall extend at least 281
twenty-one days from the date of the postmark on the written 282
notice. If a customer, as prescribed by the utility, indicates 283
the customer's intent to opt out with a return postcard or 284
notice that is postmarked or submitted by other means before the 285
opt-out deadline has elapsed, the customer shall be deemed to 286
have opted out. 287

Sec. 4928.6660. (A) An electric distribution utility's 288
portfolio approved by the commission under section 4928.6634 of 289
the Revised Code shall be subject to an annual cost- 290
effectiveness and compliance review over the term of the 291
portfolio. As part of the annual review, the utility shall 292
review the cost-effectiveness of its portfolio according to the 293
utility cost test and inputs described in section 4928.6641 of 294
the Revised Code. Based on the cost-effectiveness review, the 295
utility may update its portfolio as needed. 296

(B) Not later than the fifteenth day of April each year, 297
the utility shall file with the public utilities commission a 298
report of its annual review for the preceding year. 299

(C) Not later than the thirty-first day of December, the 300
commission shall review each report received pursuant to 301
division (B) of this section and, in accordance with section 302
101.68 of the Revised Code, submit a report to the general 303
assembly that includes a compilation of utility reports received 304
and an overview of utility compliance and energy savings. 305

(D) Based on the results of the commission's review of a 306
utility's report, the commission's incremental costs of each 307
review process and the utility's incentives shall be recovered 308
through the affected utility's portfolio cost recovery 309
mechanism. The commission's review costs and the utility's 310
incentives shall not be considered as portfolio costs or 311
included in any calculations required under section 4928.6647 of 312
the Revised Code. 313

(E) During the review under this section and subject to 314
the general assembly's findings regarding the utility's 315
performance and compliance described in the commission's report, 316
the utility shall continue to offer customers a portfolio of 317
energy savings programs. 318

Section 2. That existing section 4928.02 of the Revised 319
Code is hereby repealed. 320

June 8, 2021

The Honorable Rob McColley
Chairman
Senate Energy and Public Utilities
Ohio Senate
1 Capitol Square
2nd Floor N., Rm. 222
Columbus, Ohio 43215

RE: Senate Resolution 41 – Written Proponent Testimony

Dear Chairman McColley:

Thank you for the opportunity to provide written proponent testimony for Senate Resolution 41 (SR 41). SR 41 implores the governor of Michigan and the director of the Michigan Department of Natural Resources to exercise all efforts to keep the Enbridge Line 5 pipeline operating.

The Enbridge Line 5 pipeline is a major oil pipeline that carries petroleum from Canada across the United States via the Midwest and notably through the Straits of Mackinac. This vital pipeline ships oil directly to multiple Ohio oil refineries, which provide resources for countless manufacturers in Ohio and throughout the United States. Shutting down the pipeline -- as threatened by Michigan's governor -- would cause serious economic damage to Ohio refineries and would create a disruptive ripple effect throughout Ohio's economy. We, therefore, urge the committee to quickly pass SR 41.

Thank you very much for the opportunity to submit this written testimony. I'd be pleased to try to answer any questions that you might have; please contact me at rbrundrett@ohiomfg.com or (614) 629-6814.

Sincerely,



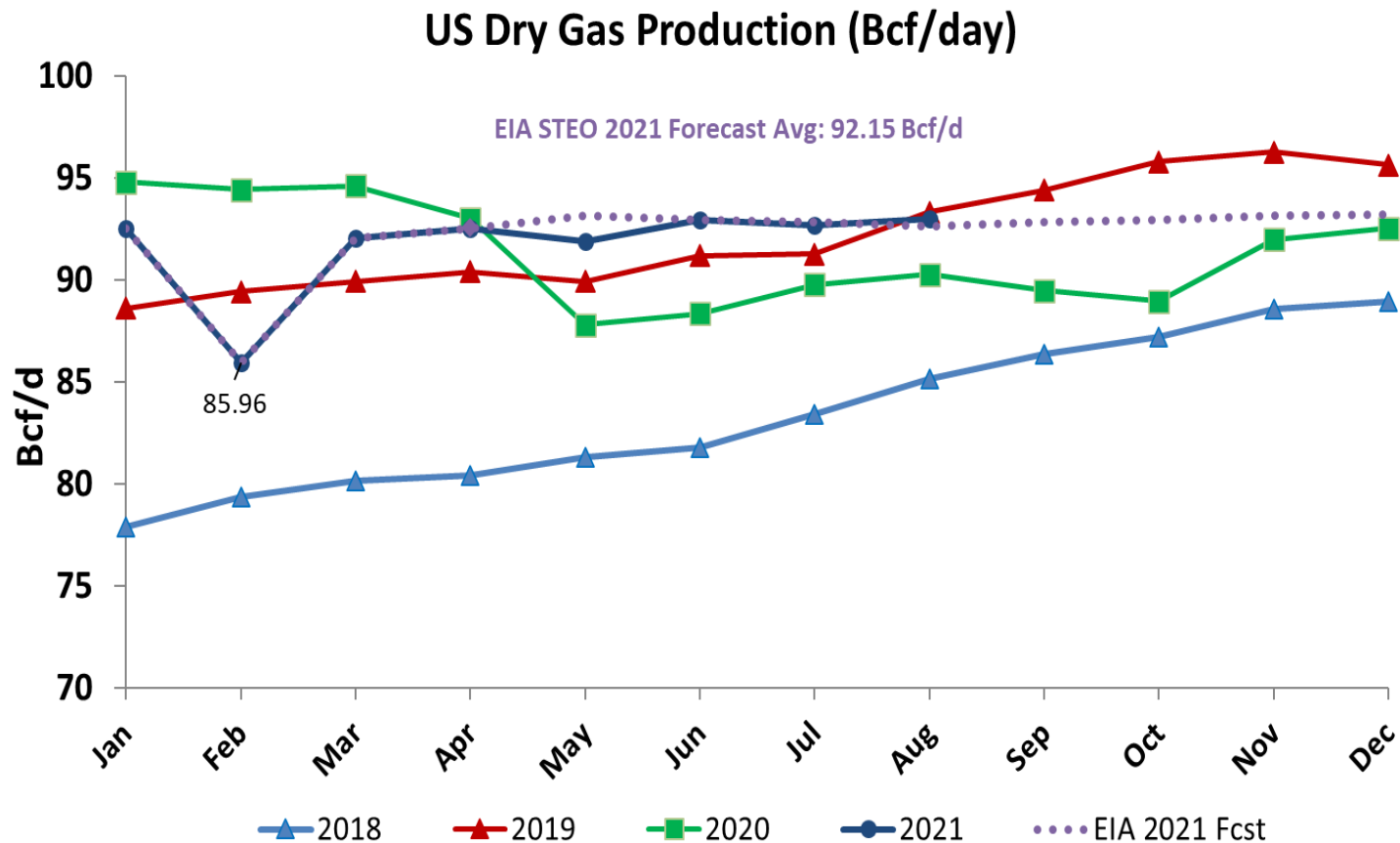
Rob Brundrett
Managing Director, Public Policy Services

Electricity Market Update

September 2021



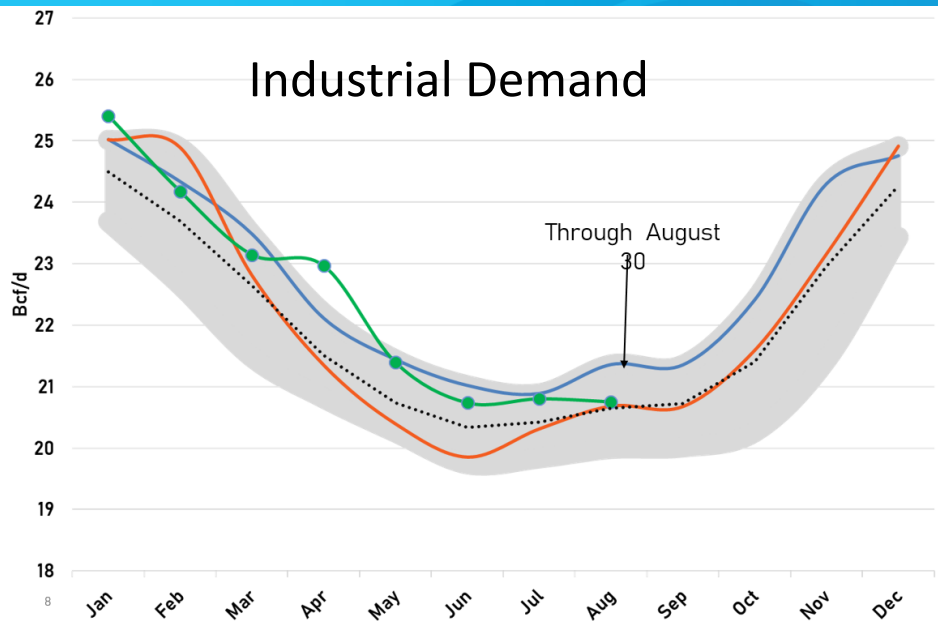
Natural Gas Production



Source: EIA

Page 114

Natural Gas Demand



5-Year Range
2016 - 2020

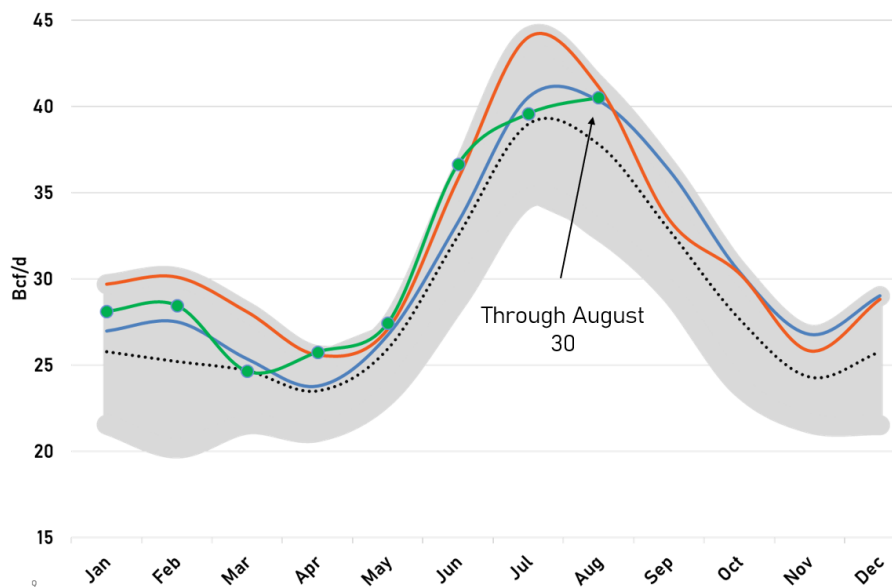
2019

2020

2021

5-Year Average

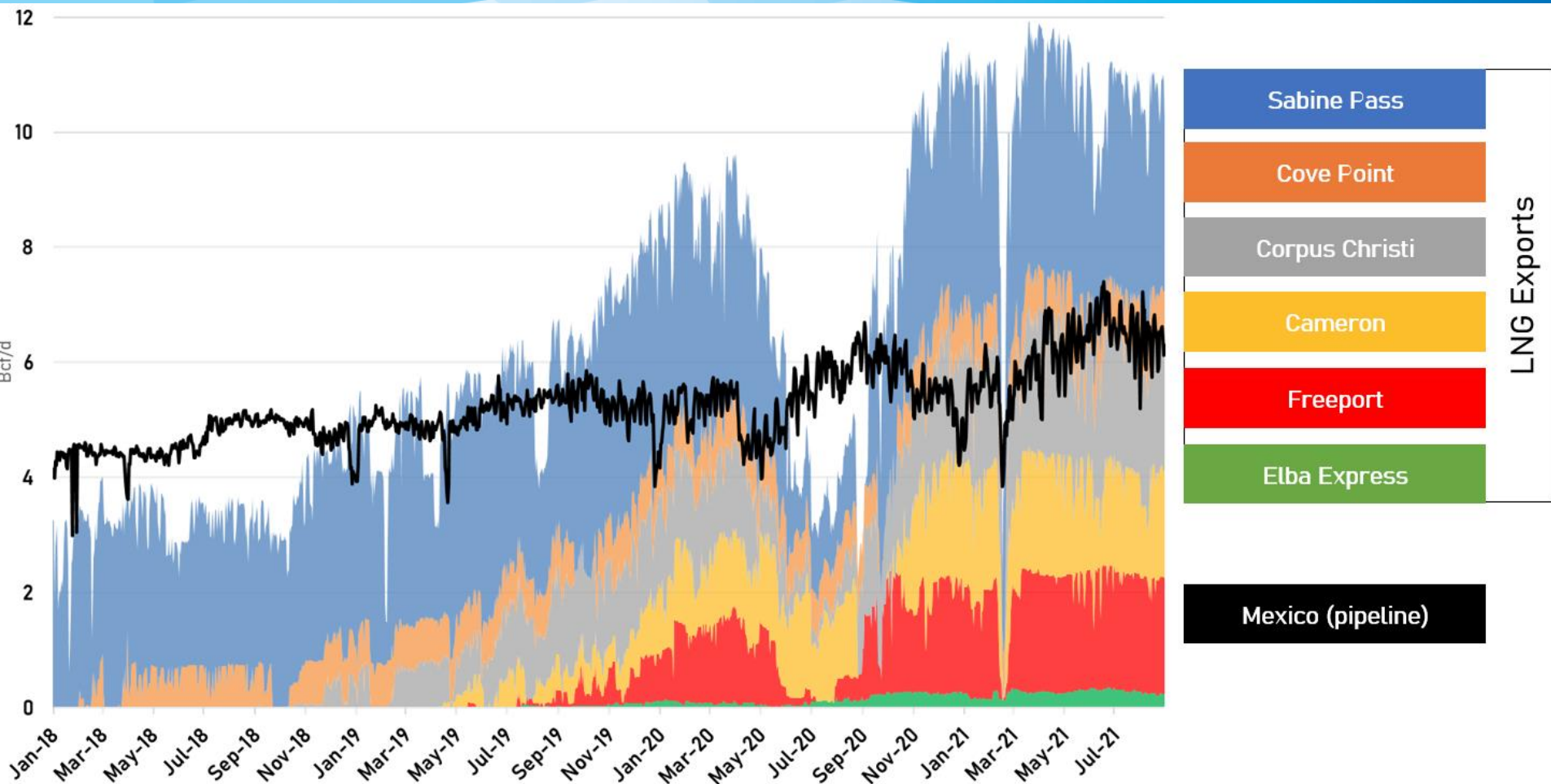
Power Demand Burn



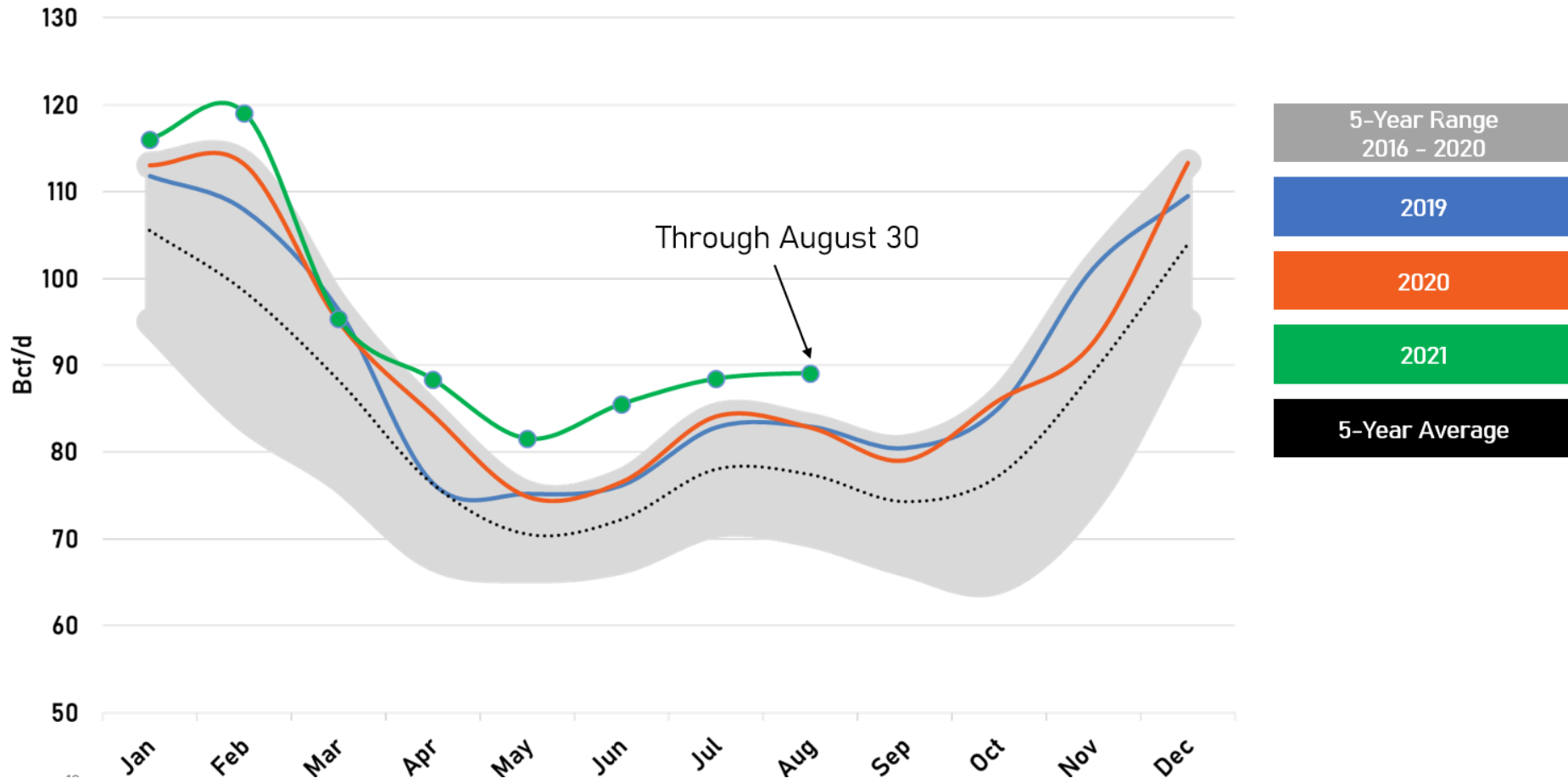
Source: Direct Energy

Page 115

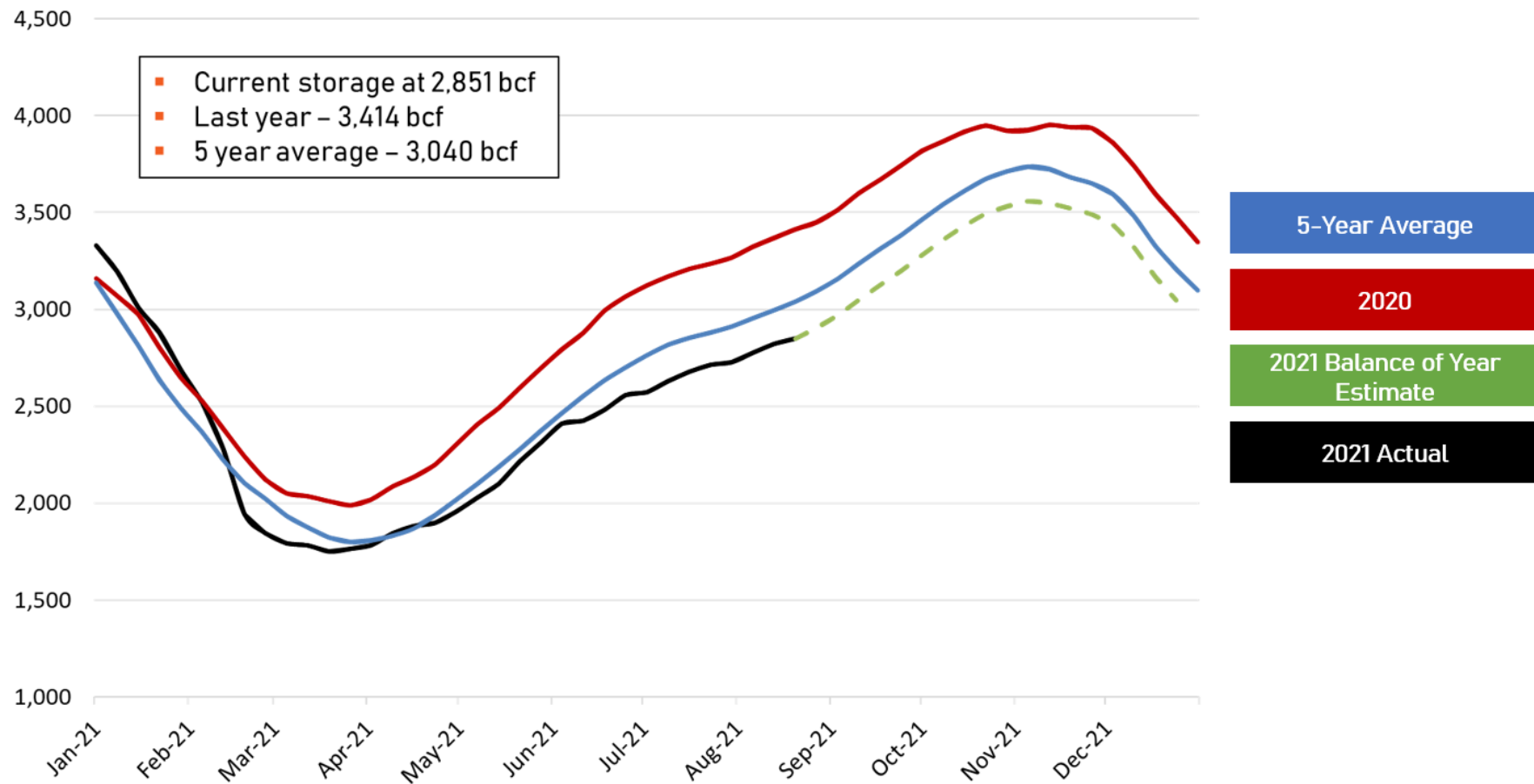
Natural Gas Exports



Total Natural Gas Demand with Exports



Natural Gas Storage

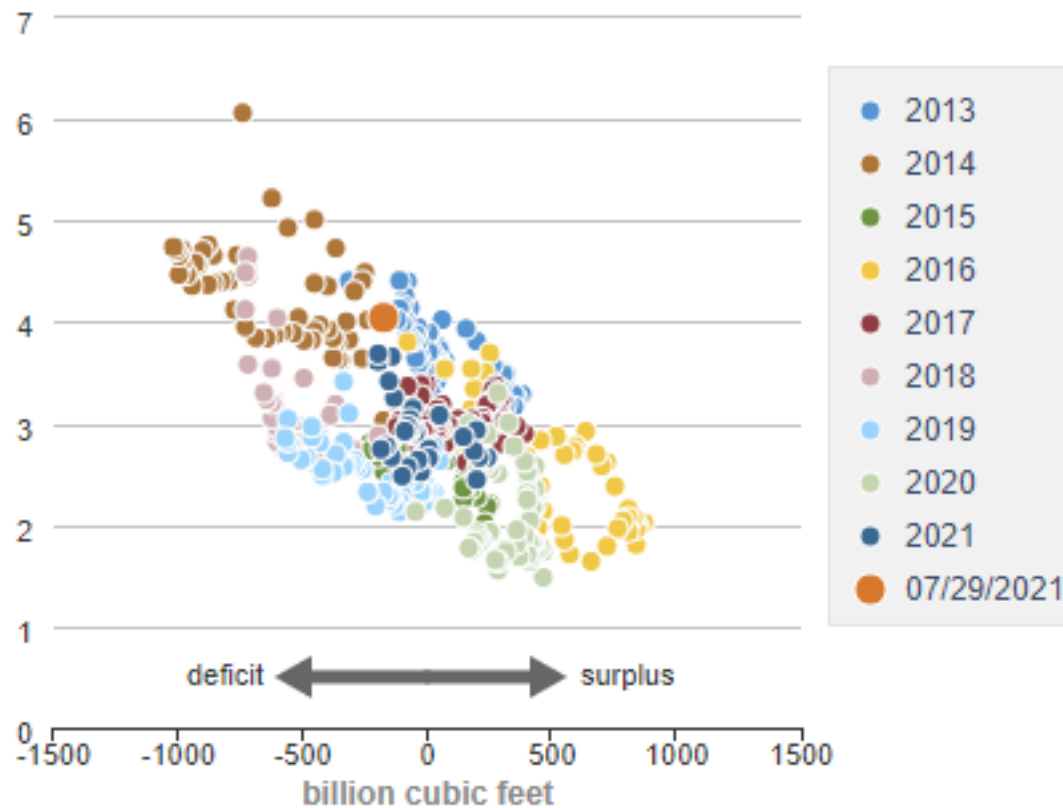


Natural Gas Storage

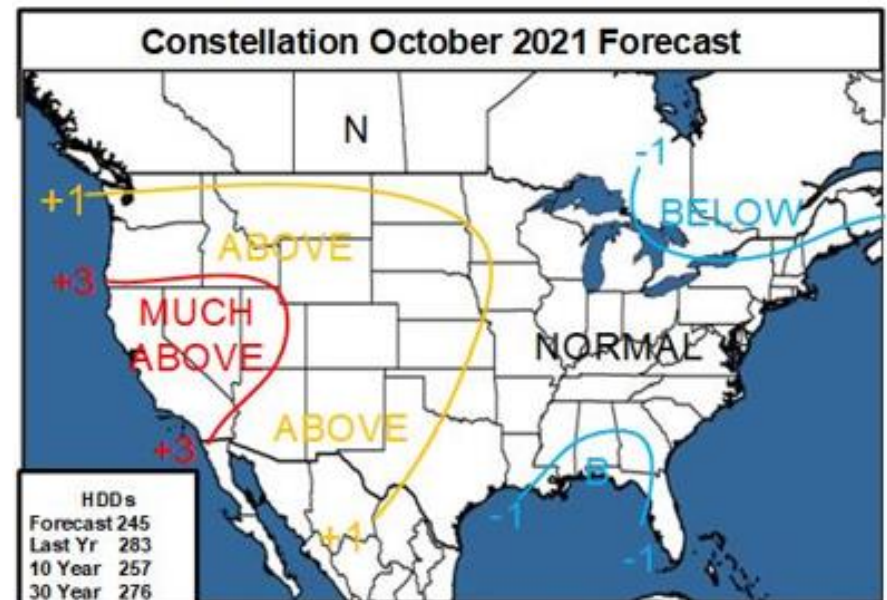
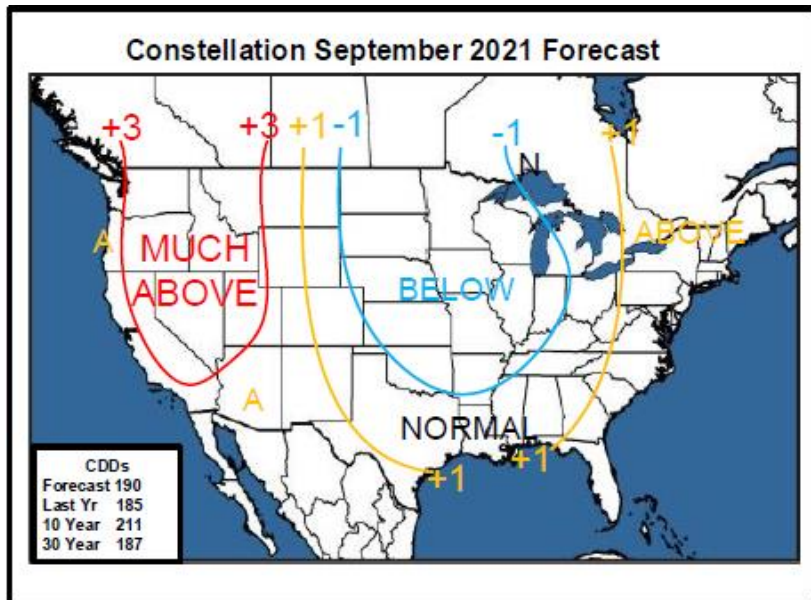
Lower 48 weekly working gas stocks, minus five-year average, and near-month futures prices



price of gas at the Henry Hub in dollars per million British thermal units

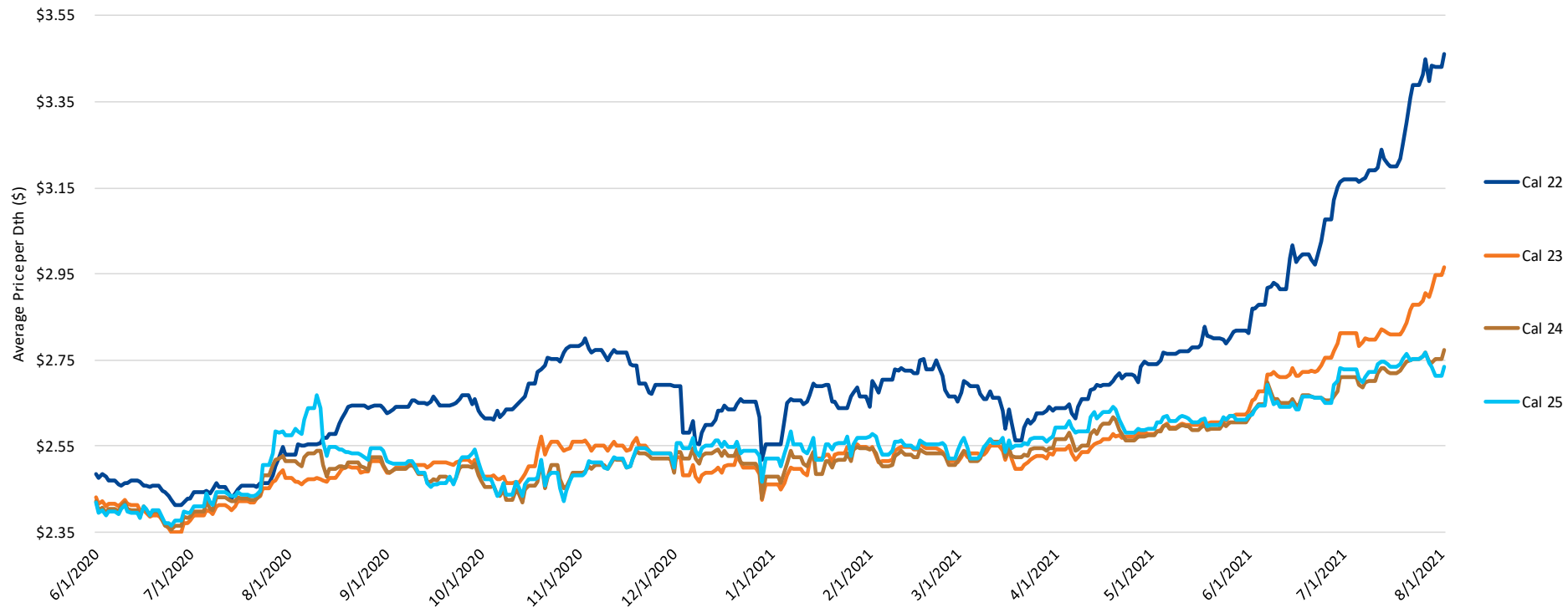


Fall Weather Forecasts



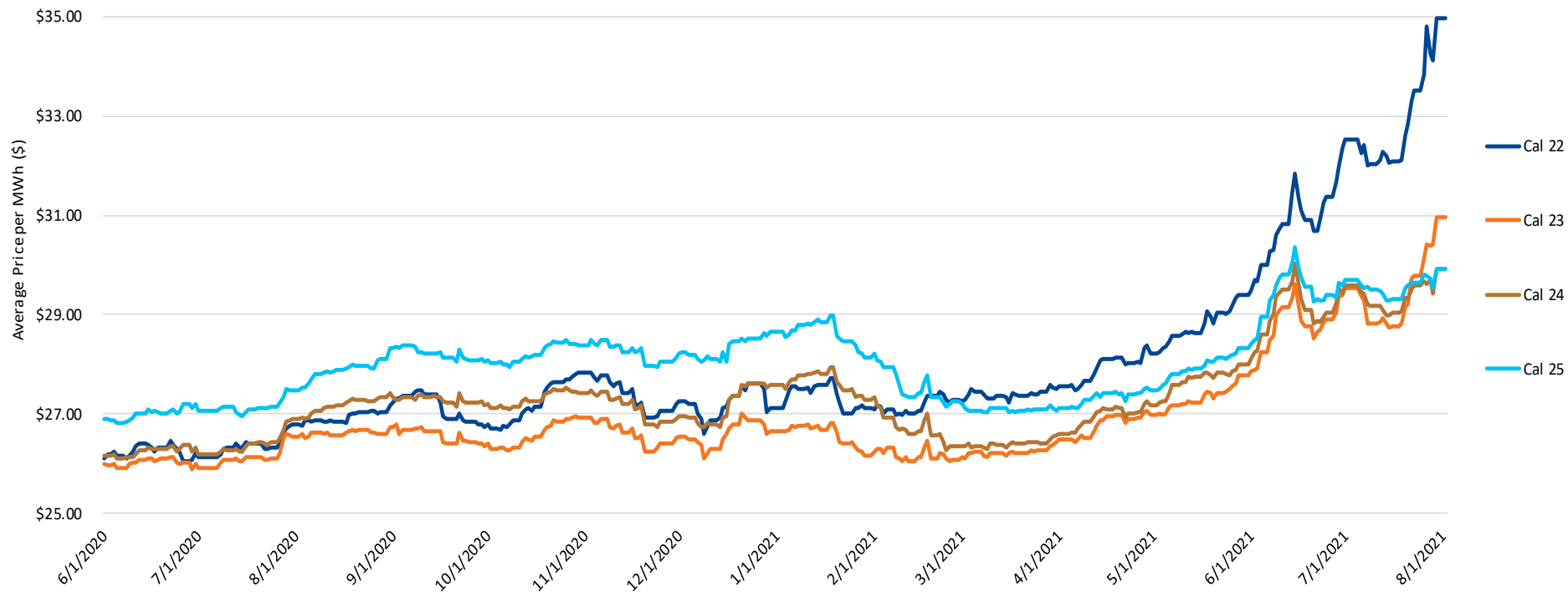
NYMEX Natural Gas Forwards

NYMEX Average Wholesale Prices



PJM AD Hub Electricity Forwards

AEP Dayton Hub Annual Average Wholesale Prices

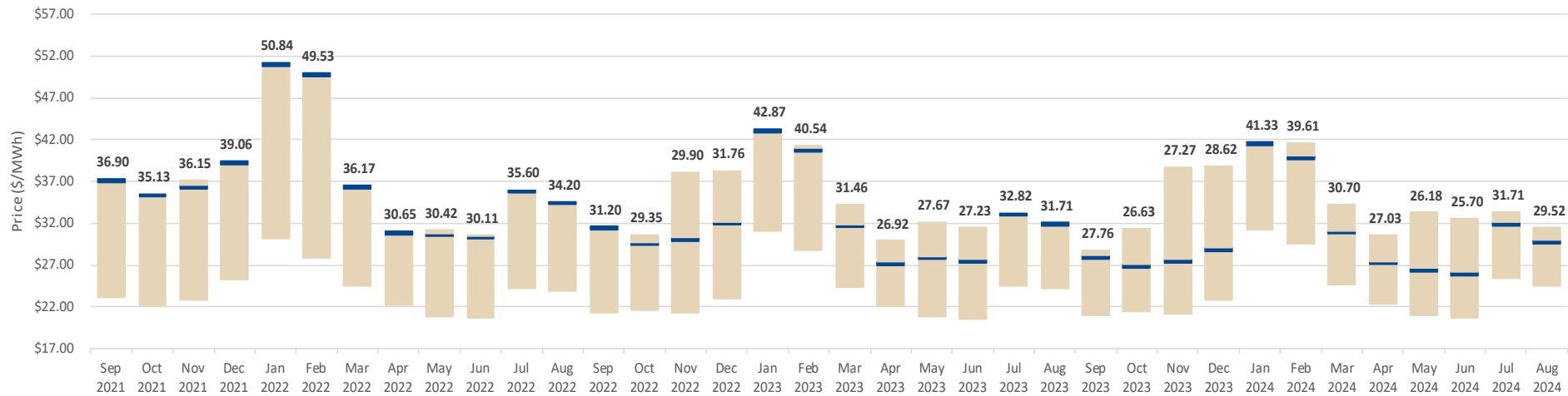


PJM AD Hub Electricity Forwards

Power RTC \$ / MWh on 08.02.21					
From	1/1/2017	1/1/2018	1/1/2019	1/1/2020	1/1/2021
To	8/2/2021	8/2/2021	8/2/2021	8/2/2021	8/2/2021
Cal Year	2022	2023	2024	2025	2026
Current Price	\$ 34.98	\$ 30.96	\$ 29.92	\$ 29.92	\$ 30.67
Maximum Price	\$ 34.98	\$ 30.96	\$ 30.03	\$ 30.36	\$ 31.41
Minimum Price	\$ 24.69	\$ 24.54	\$ 24.75	\$ 26.70	\$ 28.00
Date of Maximum	7/30/2021	7/30/2021	6/15/2021	6/15/2021	6/15/2021
Date of Minimum	7/8/2019	7/8/2019	7/8/2019	3/23/2020	3/22/2021
Compared to Low	41.7%	26.2%	20.9%	12.1%	9.5%

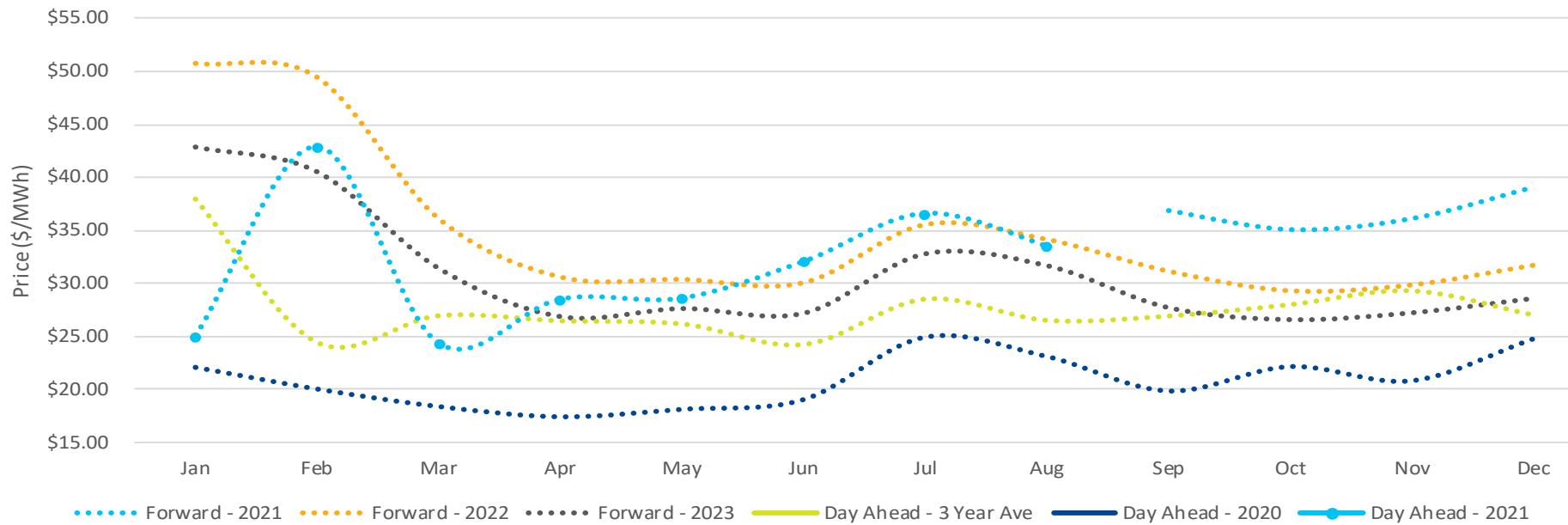
PJM AD Hub Electricity Forwards

Electric Monthly Price Trend Analysis: Current Prices
Data Range: 11.30.17 - 08.02.21



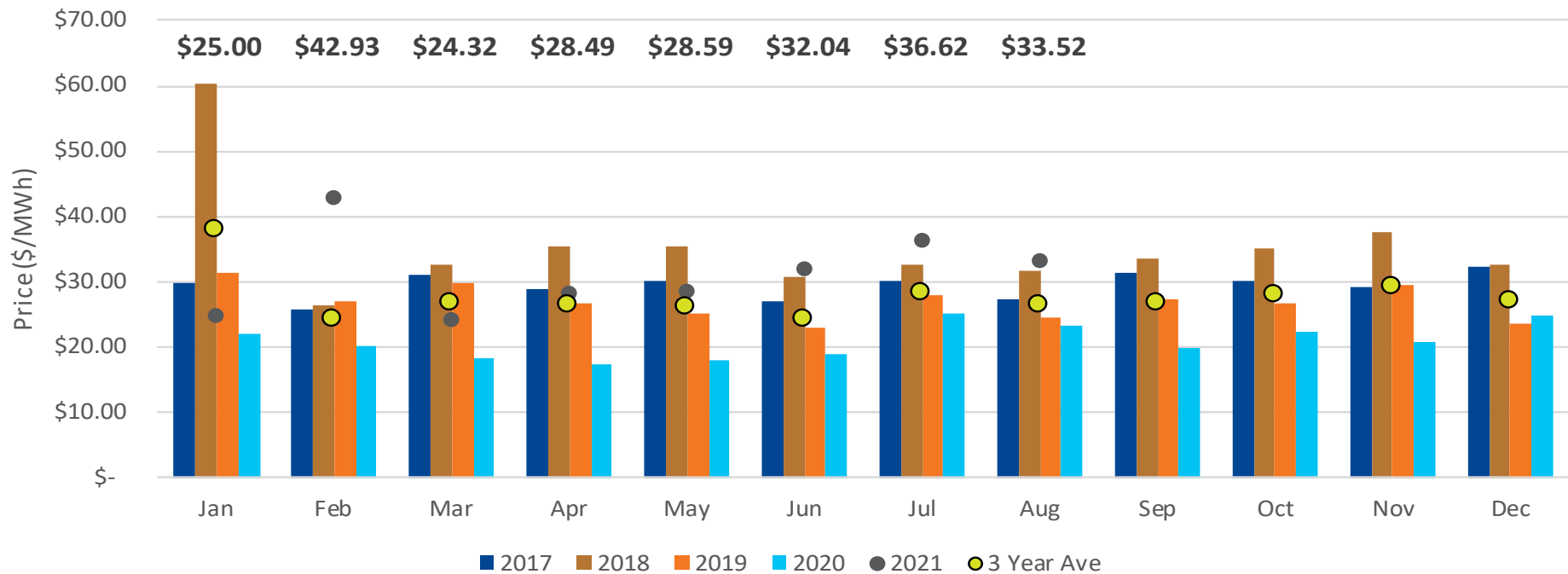
PJM AD Hub Electricity Forwards

AEP Zone Historical vs Forward Price as on 08.02.21



PJM AD Hub Day Ahead LMP's

AEP Zone DA LMP Averages with Monthly Average Pricing



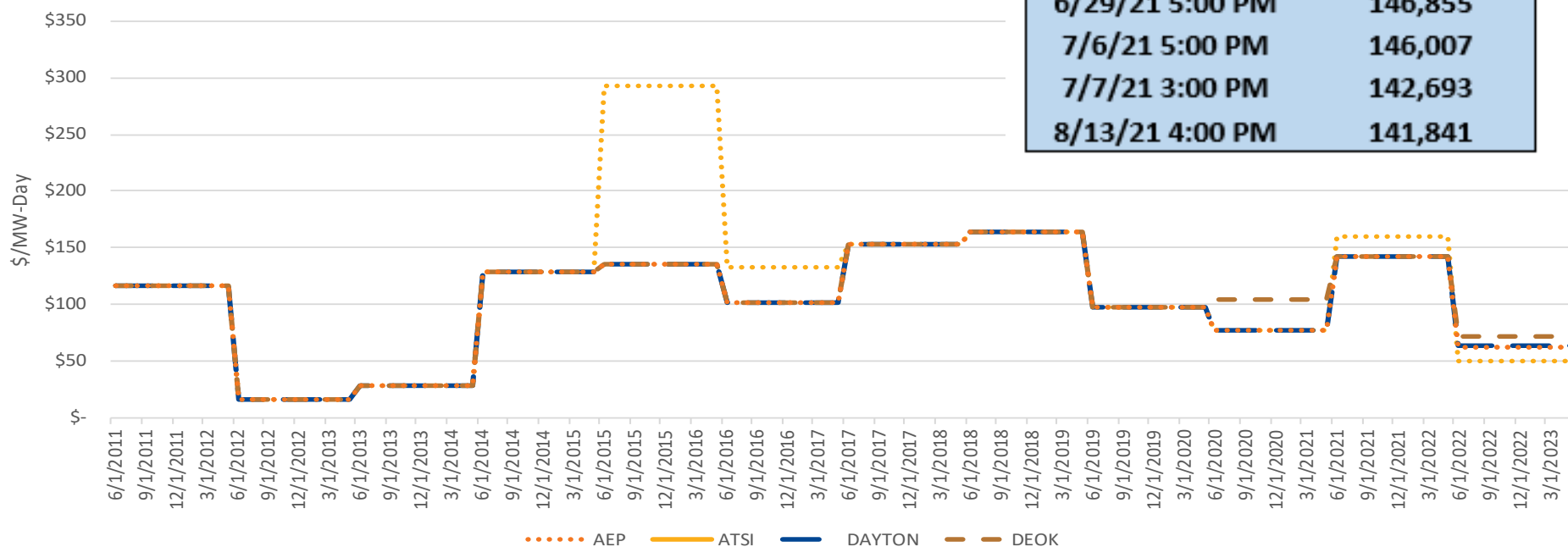
*Pricing listed is for 2021 averages

Capacity Auction Rates

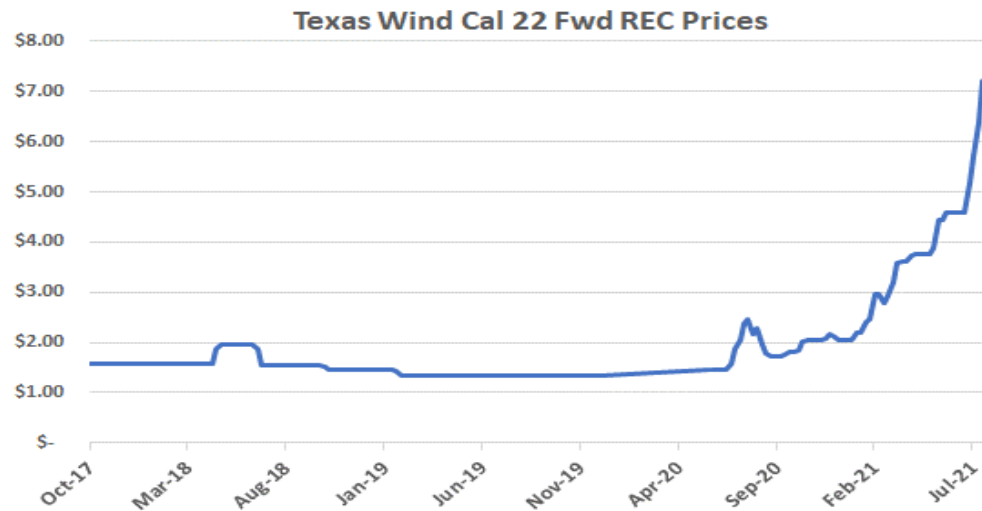
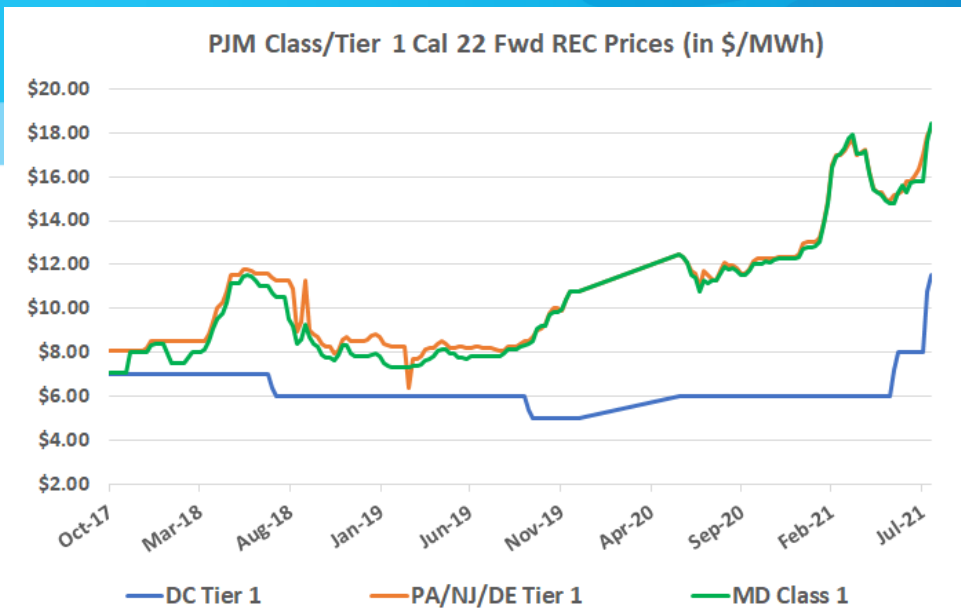
PJM 5 Coincident Peaks Summer 2021

Date/Time	PJM RTO Load
8/12/21 5:00 PM	148,209
6/29/21 5:00 PM	146,855
7/6/21 5:00 PM	146,007
7/7/21 3:00 PM	142,693
8/13/21 4:00 PM	141,841

PJM Capacity Auction Rate



Renewable Energy Credits



Source: Constellation

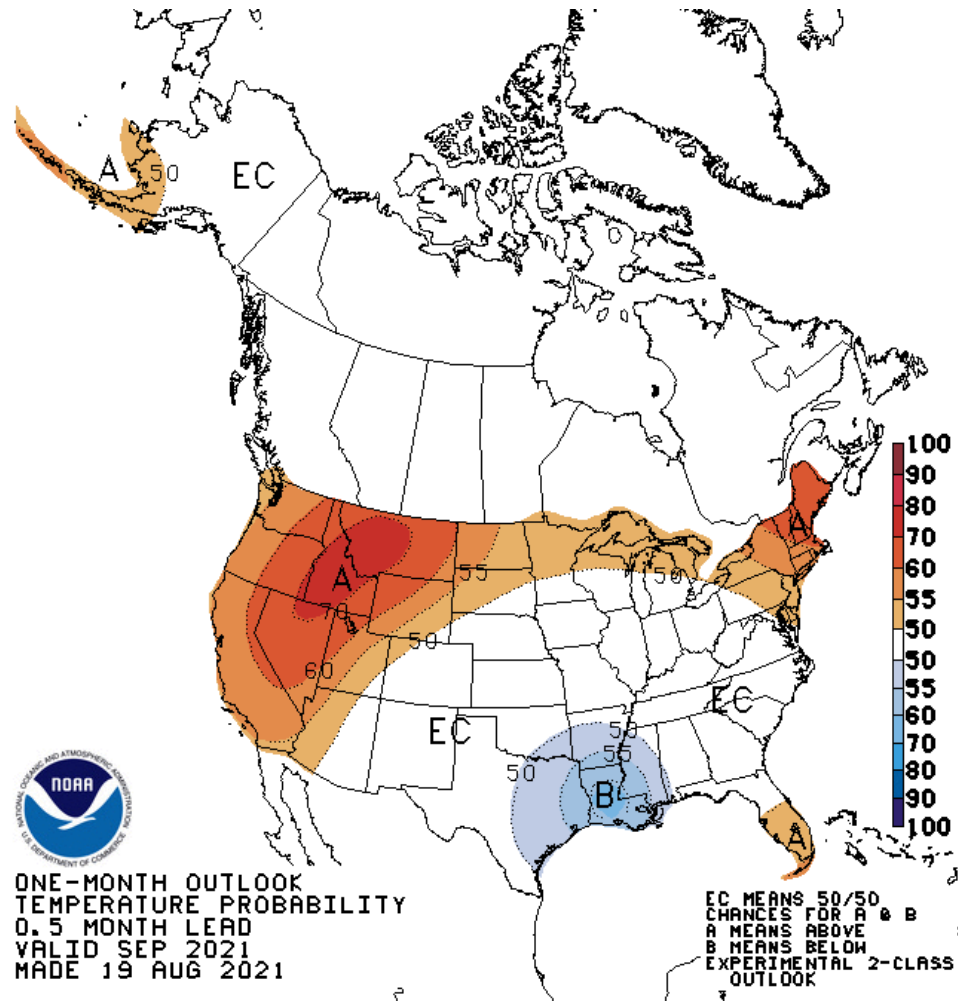
Page 128

Natural Gas Update OMA Energy Committee

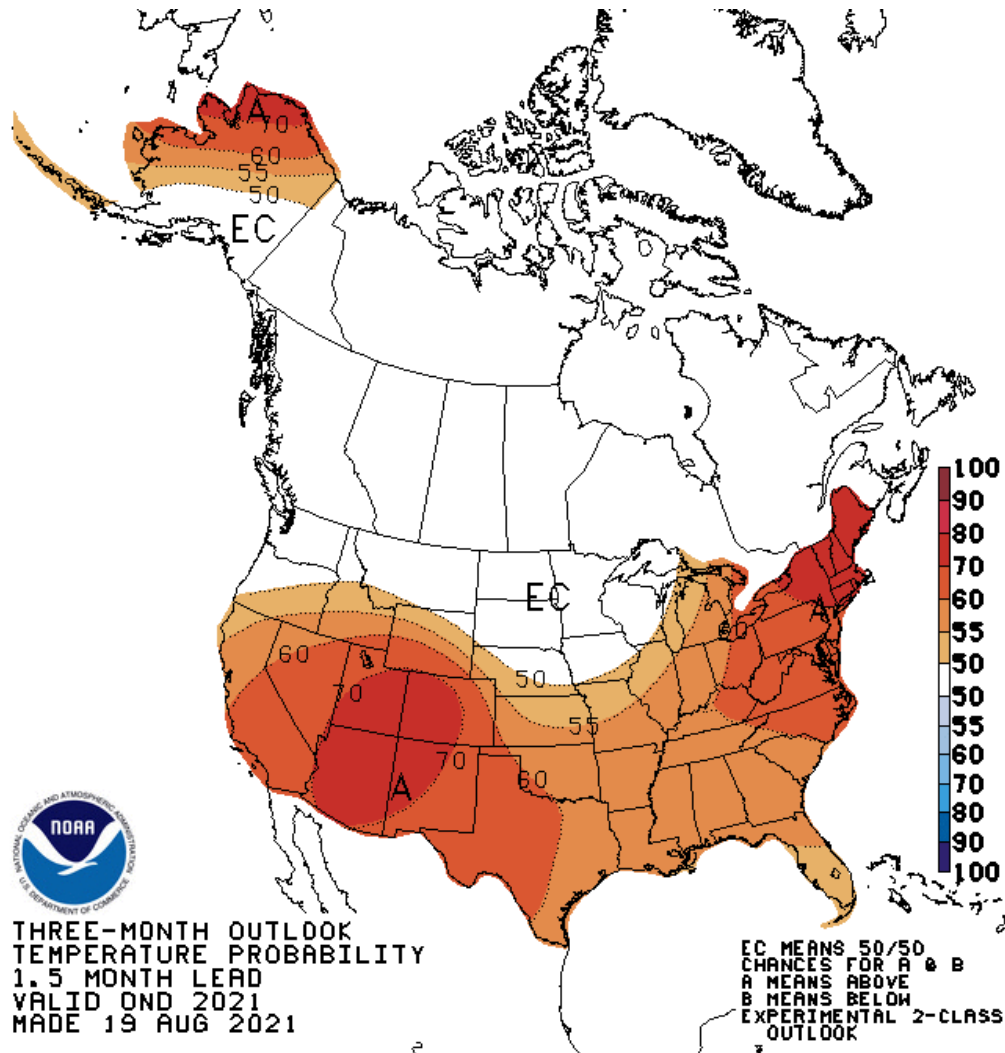
**LeRoy Smith
NiSource/Columbia Gas of Ohio
September 9, 2021**

Weather & Outlook

NOAA Temperature Outlook: September Forecast



NOAA Temperature Outlook: October - December



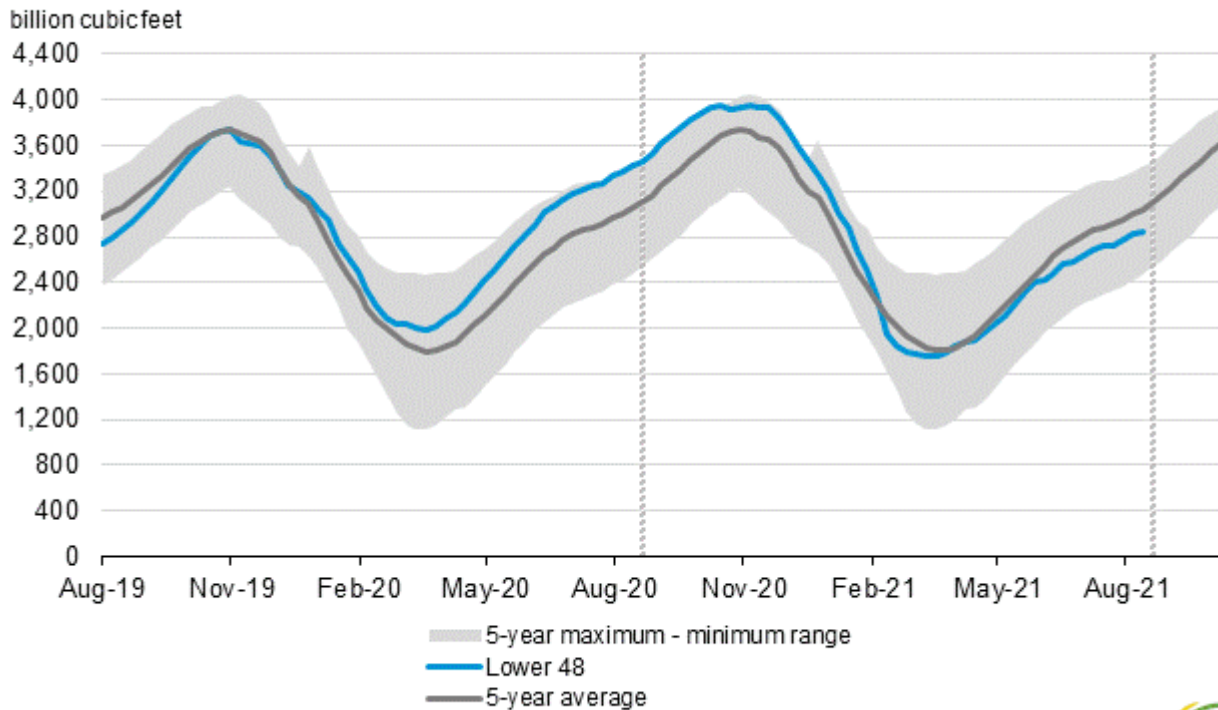
Storage & Gas Pricing

Storage

Working gas in storage was 2,851Bcf as of 8/20, according to EIA estimates.

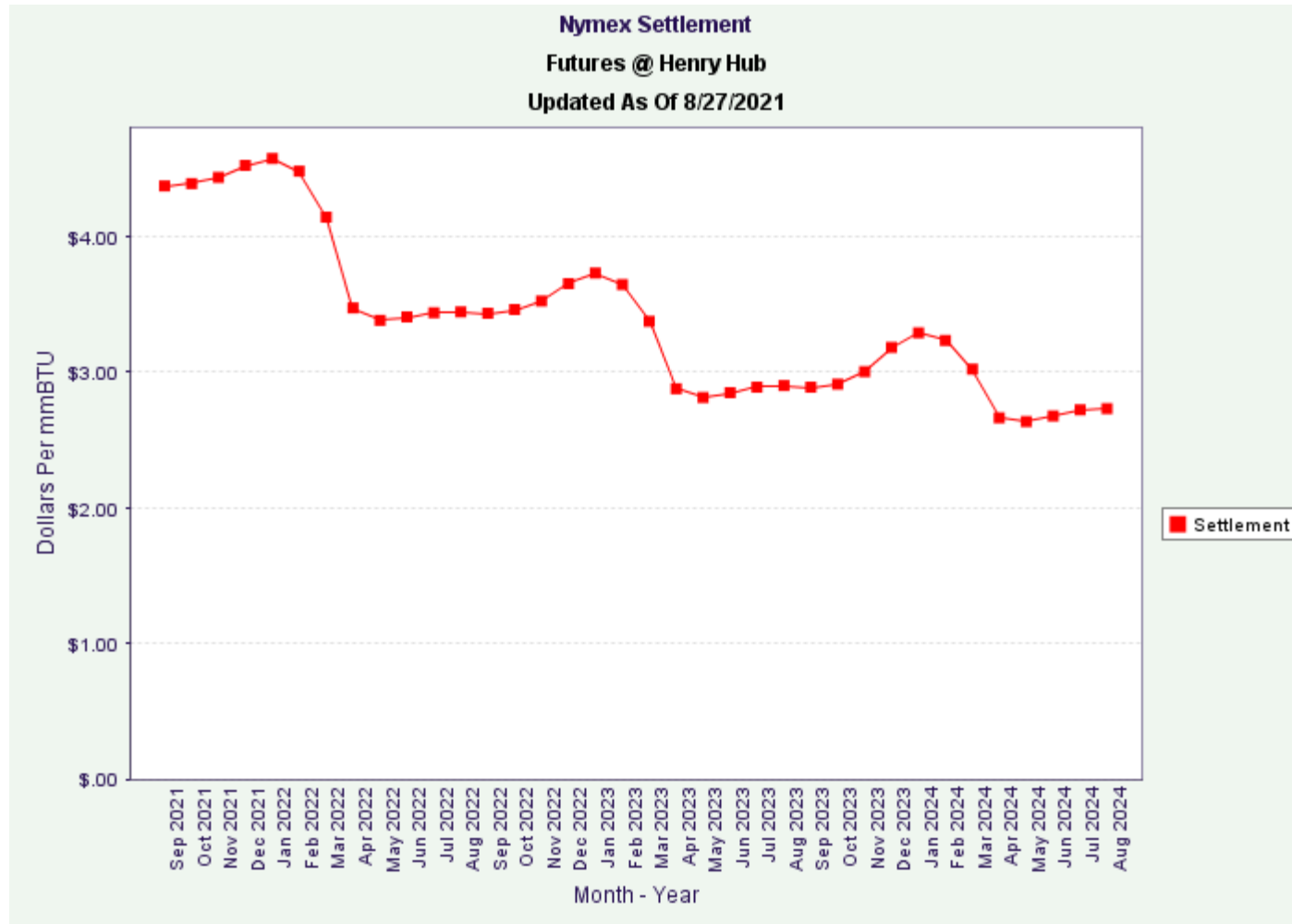
Stocks were 563 Bcf lower than last year at this time, and 189 Bcf above the five-year average.

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



Source: U.S. Energy Information Administration

Futures Settlement



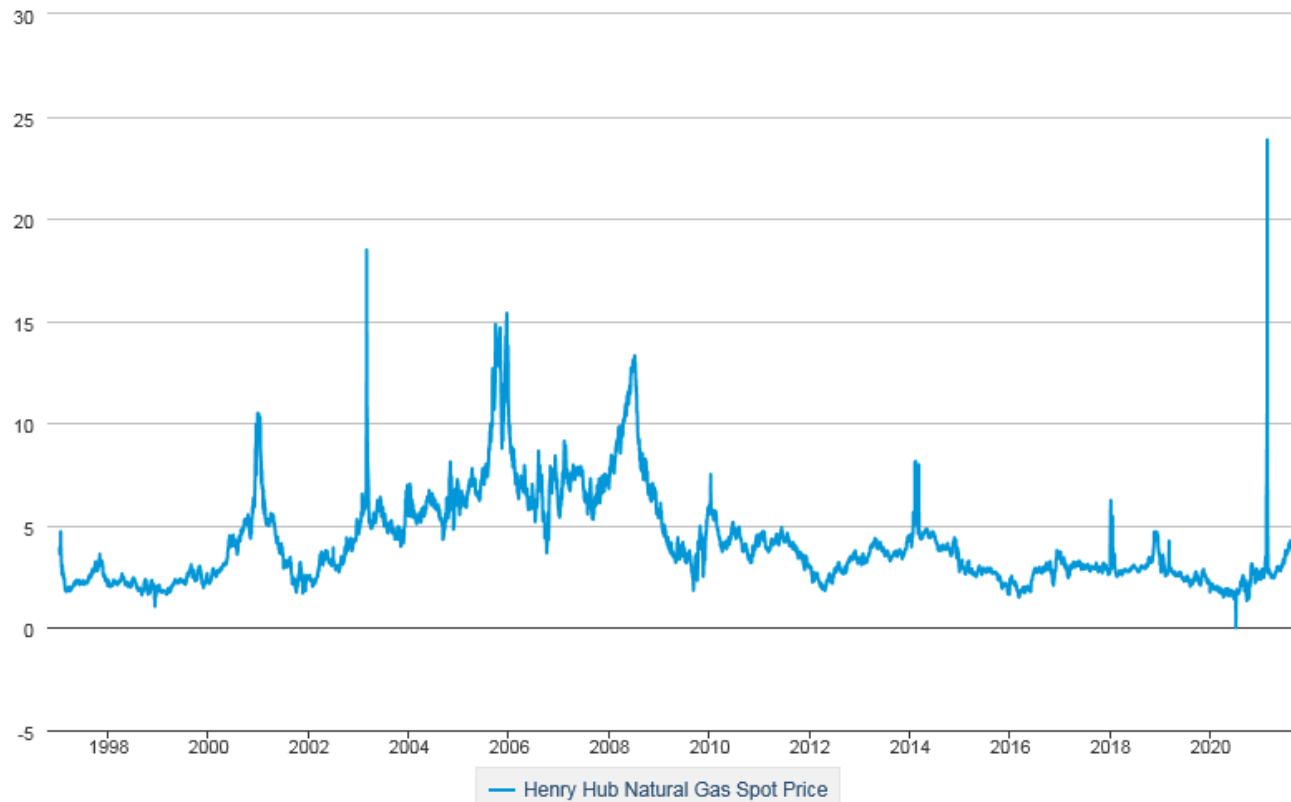
NYMEX Spot Price History

(Daily Prices)

Natural Gas Spot and Futures Prices (NYMEX)

 [DOWNLOAD](#)

\$/MMBTU




Source: U.S. Energy Information Administration

NYMEX Spot Price History

(Monthly Prices)

Natural Gas Spot and Futures Prices (NYMEX)

 DOWNLOAD

\$/MMBTU



Source: U.S. Energy Information Administration

NYMEX Term Pricing

<u>TERM</u>	<u>PRICE 5/18/21</u>	<u>PRICE 8/30/21</u>
3 month	\$3.08	\$ 4.69 (+\$1.61)
6 month	\$3.08	\$ 4.35 (+\$1.27)
12 month	\$3.14	\$ 3.86 (+\$0.72)
18 month	\$2.97	\$ 3.75 (+\$0.78)

https://www.cmegroup.com/trading/energy/natural-gas/natural-gas_quotes_globex.html

Select Hub Pricing

<u>HUB LOCATION</u>	<u>5/18/21</u>	<u>9/1/21</u>
Henry Hub	\$2.99	\$4.34 (+\$1.35)
Houston Ship Channel	\$3.00	\$4.30 (+\$1.30)
<u>TCO Pool</u>	<u>\$2.62</u>	<u>\$3.93 (+\$1.31)</u>
Dominion South Point	\$2.33	\$3.79 (+\$1.46)
TETCO M-2	\$2.38	\$3.74 (+\$1.36)

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

Petroleum Products Pricing

<u>TERM</u>	<u>PRICE 5/2021</u>	<u>PRICE 9/2021</u>
Crude	\$ 65	\$ 67
Gasoline	\$ 2.89	\$ 3.14
Fuel Oil	\$ 1.83	\$ 1.79
Jet Fuel	\$ 1.75	\$ 1.76

Gasoline Pricing

Weekly U.S. Regular All Formulations Retail Gasoline Prices

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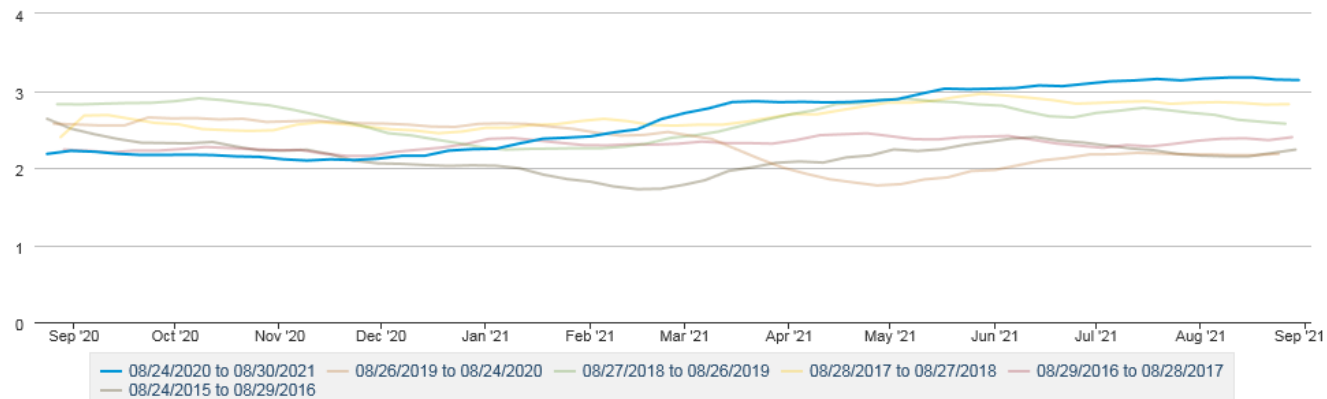
Dollars per Gallon



Weekly U.S. Regular All Formulations Retail Gasoline Prices

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Dollars per Gallon



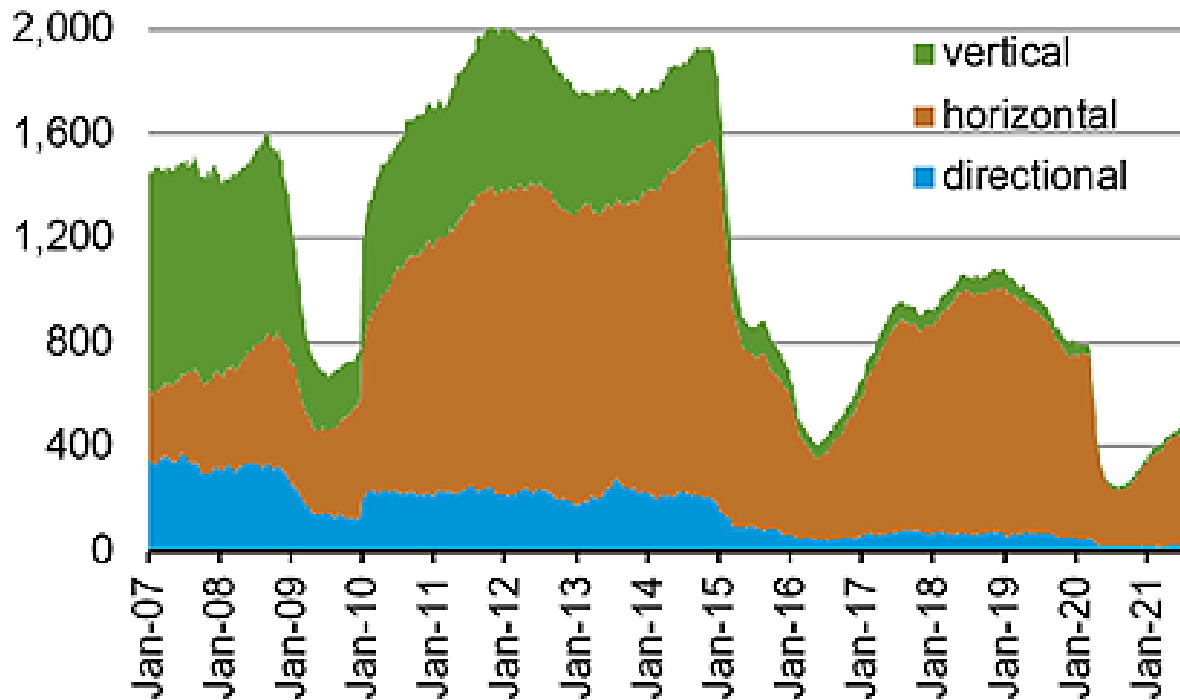
eia Source: U.S. Energy Information Administration

Production, Demand, & Rig Count

Rig Count

Weekly total rig count


active rigs

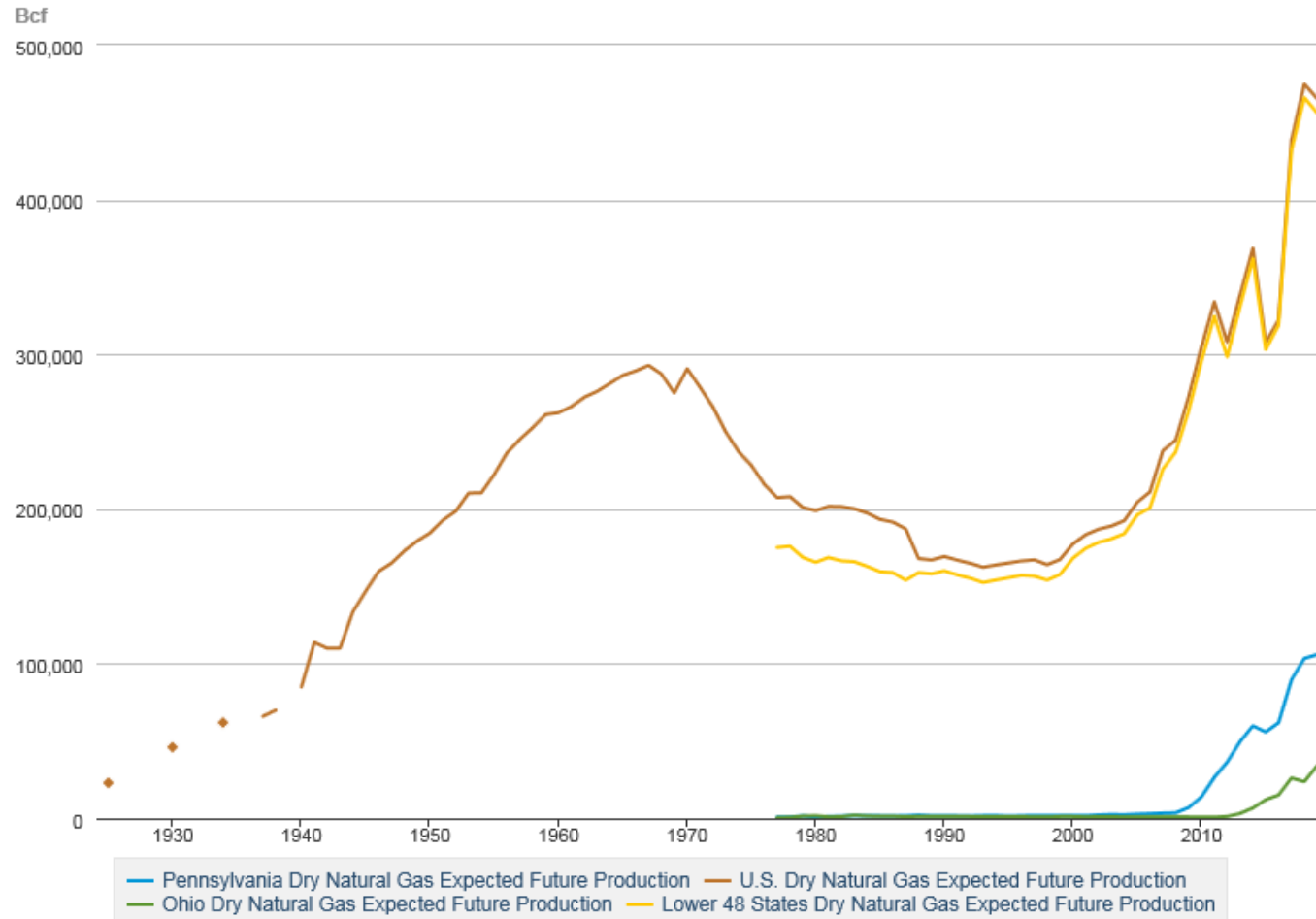


Source: Graph by the U.S. Energy Information Administration (EIA), based on data from Baker Hughes Company

US Reserves

Dry Natural Gas Proved Reserves

 [DOWNLOAD](#)

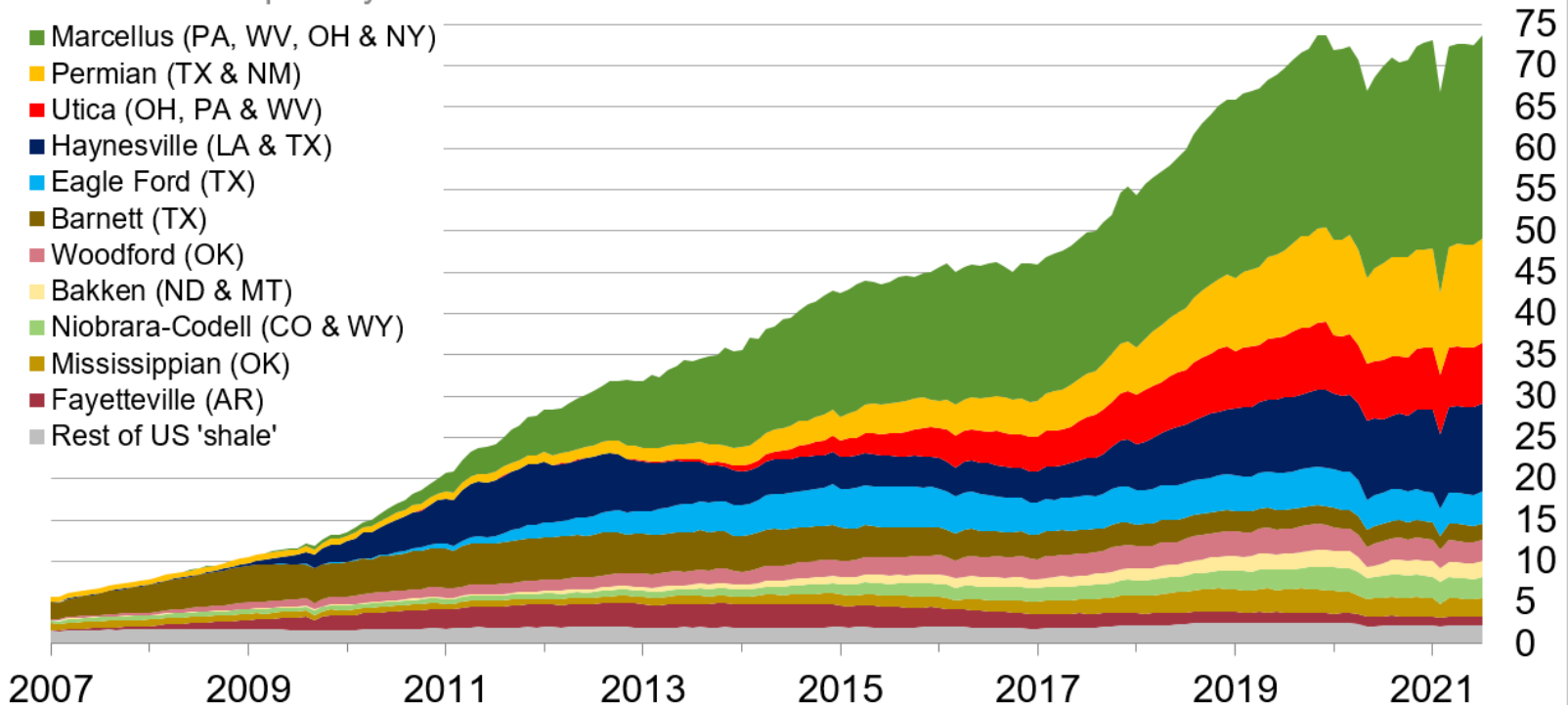


Source: U.S. Energy Information Administration

Production

Monthly dry shale gas production

billion cubic feet per day



Source: Graph by the U.S. Energy Information Administration (EIA) based on state administrative data collected by Enverus Drillinginfo Inc. Data are through July 2021 and represent EIA's official tight gas estimates, but are not survey data. State abbreviations indicate primary state(s).

Recent Developments

Hurricane IDA



Formed	August 26, 2021
Dissipated	September 4, 2021 (Extratropical after September 1)
Highest winds	1-minute sustained: 150 mph (240 km/h)
Lowest pressure	929 mbar (hPa); 27.43 inHg
Fatalities	63 direct, 8 indirect
Damage	≥ \$50 billion (2021 USD) (Sixth-costliest tropical cyclone on record)
Areas affected	Venezuela, Colombia, Jamaica, Cayman Islands, Cuba, Gulf Coast of the United States (especially Louisiana), East Coast of the United States (especially the New York metropolitan area), Atlantic Canada

Headlines

Natural gas price nears three-year high as summer heat strains supply

By JOSYANA JOSHUA on 7/23/2021

Natural Gas Prices Are Soaring Despite U.S. Production Records

By [Tsvetana Paraskova](#) - Sep 02, 2021, 6:00 PM CDT

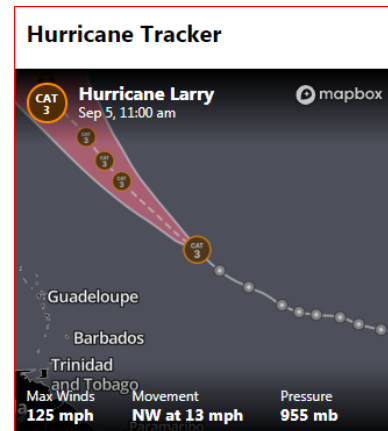
Markets

The Era of Cheap Natural Gas Ends as Prices Surge by 1,000%

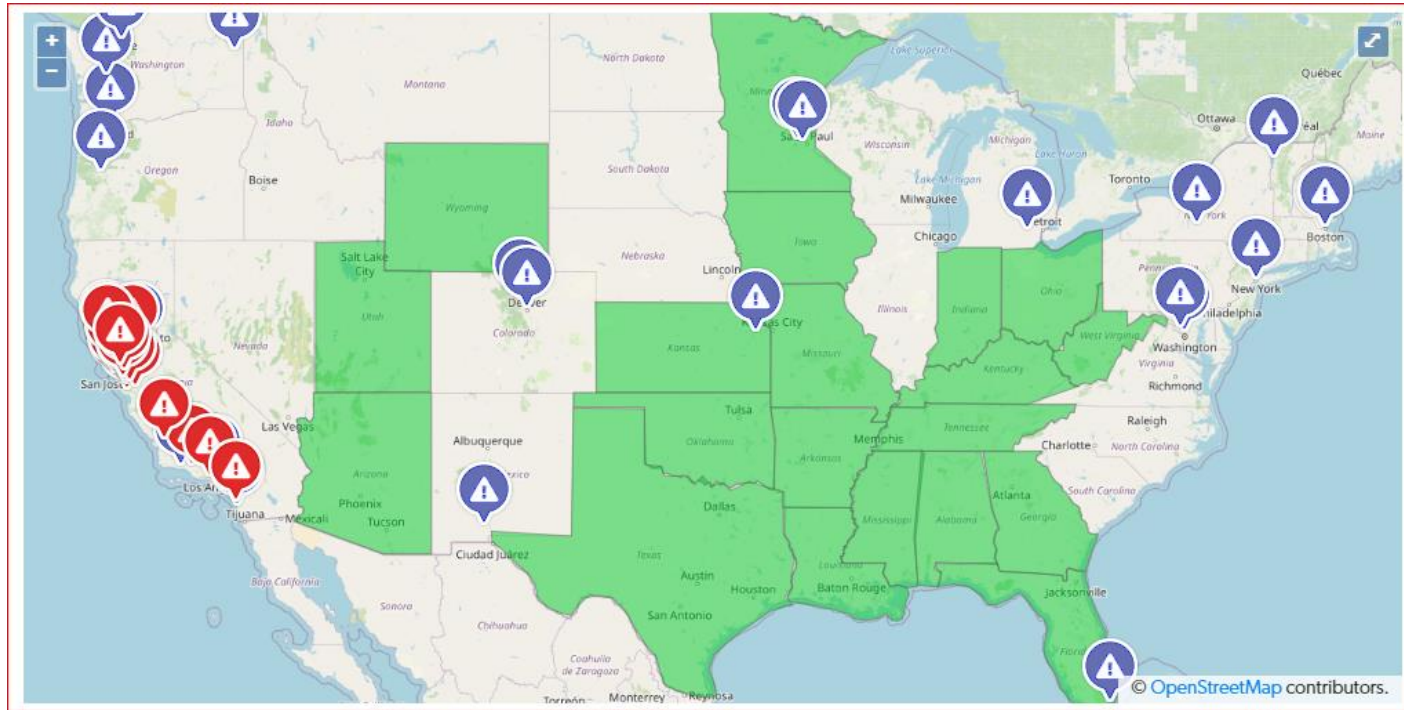
By [Anna Shiryayevskaya](#), [Stephen Stapczynski](#), and [Ann Koh](#)

August 5, 2021, 8:00 PM EDT Updated on August 6, 2021, 5:20 AM EDT

Ida's Path of Destruction Dogging Natural Gas, Oil Operations in Louisiana, Offshore



US Natural Gas Ban Bans



- BANS OUTLAWED ON STATE LEVEL
- MUNICIPALITIES WITH ACTIVE BANS ON NEW NATURAL GAS HOOKUPS
- GAS BANS PROPOSED

Thank You

Energy

Infographic: Each State's Electricity Generation Mix September 3, 2021

Using 2020 data from the U.S. Energy Information Administration, Visual Capitalist has published **this infographic** highlighting sources of electricity generation in each state. Ohio's generation mix last year was comprised of natural gas (43.5%), coal (33.1%), nuclear (15.0%), and a combination of renewables and oil. 9/1/2021

Ohio Senate Leaders to FERC: Reject Subsidies in Generation Marketplace September 3, 2021

This week, Ohio Senate President **Matt Huffman** (R-Lima) and Senate Energy and Public Utilities Committee Chair **Rob McColley** (R-Napoleon) **wrote members** of the Federal Energy Regulatory Commission (FERC), urging the agency to reject a **proposal** that would soften current restrictions preventing subsidized power plants from competing against non-subsidized plants.

The OMA has championed fair competition within the electric generation marketplace. The issue has been especially contentious following the passage of House Bill 6, which created nuclear generation subsidies (later banned under FERC rules).

The OMA Energy Committee will dive deeper into this topic next week at its Sept. 9 meeting. **Register here.** 9/2/2021

PUCO Investigation Into FirstEnergy's HB 6 Spending Turns One Year Old September 3, 2021

Gongwer News Service **this week examined** the ongoing investigation by the Public Utilities Commission of Ohio (PUCO) into FirstEnergy's charitable spending in the House Bill 6 scandal. According to Gongwer, the PUCO wants to "expeditiously" move forward with its one-year-old review, which is the first of four investigations into FirstEnergy's efforts to ensure passage and implementation of HB 6. 9/1/2021

Ohio, Pennsylvania Protest PJM's Changes Addressing Subsidized Generation August 27, 2021

Ohio and Pennsylvania last week criticized **PJM Interconnection's** proposed update of the minimum offer price rule (MOPR), which aims to ensure that all electricity-generating resources in a region are offered into the wholesale capacity market based on their cost of doing business — not based on cost advantages due to subsidies.

Under PJM's **new proposal**, state-subsidized generation would not be subject to MOPR for reasons such as "environmental attributes" or "economic development."

As **reported** by Hannah News Service, Ohio and Pennsylvania officials argue their generation is market based — unlike some other states in PJM's jurisdiction — and that the proposal to exempt renewables and other subsidized energy "unjustly transfers the consequences of a particular state's policy preference(s) to all states and consumers within the PJM region." 8/24/2021

Energy Efficiency Legislation Introduced at Statehouse August 20, 2021

Legislation (**House Bill 389**) has been introduced to create new, utility-run energy efficiency programs. The bill comes after the legislature spent the past several years trying to eliminate such programs, and did so successfully in 2019 via the scandal-tainted House Bill 6.

Sponsored by Reps. David Leland (D-Columbus) and Bill Seitz (R-Cincinnati), HB 389 would allow electric distribution utilities to implement "energy waste reduction" programs, which would be targeted at residential consumers. Individuals who did not want to participate would be required to opt out. Commercial and industrial users would be excluded. 8/16/2021

DOE: Solar Could Generate 40% of U.S. Power by 2035 August 20, 2021

The Biden administration and the U.S. Department of Energy (DOE) this week released a **memo** on solar energy research, deployment, and workforce priorities. According to the DOE document, solar generation "could supply **more than 40%** of U.S. electricity by 2035 if Congress implements clean energy policies, such as tax

credits for solar farms and manufacturing facilities.” Solar generation currently produces around 3% of the U.S. electricity supply. 8/18/2021

Documents: Randazzo Was Working for FirstEnergy August 6, 2021

This week, Cleveland.com **reported** on the release of new documents that show Sam Randazzo — the longtime utilities lawyer and former chair of the Public Utilities Commission of Ohio (PUCO) — six years ago received “a huge personal windfall from FirstEnergy in exchange for what the company has said was his agreement to change sides on a key state regulatory move” to effectively bail out less profitable power plants by imposing extra charges on ratepayers.

According to *The Plain Dealer*, FirstEnergy more than quadrupled Randazzo’s contract in 2015 — increasing it from \$2.5 million to \$11.2 million.

Last month, FirstEnergy **admitted attempting to bribe** Randazzo, who has not been charged and has denied any wrongdoing. Stay tuned for further developments. 8/5/2021

Randazzo, Former FirstEnergy Execs Added as Defendants in Yost’s HB 6 Lawsuit August 6, 2021

Ohio Attorney General Dave Yost this week **expanded** his House Bill 6 racketeering lawsuit to include new defendants and additional factual allegations based on recent filings by the U.S. Department of Justice in its criminal case. Yost’s **new filing** added the following defendants:

- Chuck Jones, former CEO of FirstEnergy;
- Michael Dowling, former senior vice president for FirstEnergy;
- Former Public Utility Commission of Ohio (PUCO) Chairman Sam Randazzo; and
- Several entities associated with Randazzo, including the now-

dissolved IEU-Ohio Administration Co., LLC.

Yost wants Randazzo to return a \$4.3 million FirstEnergy payment the company **admitted** was a bribe, as well as his public salary while serving as PUCO chair.

Yost’s **press release** states: “As layers of the corrupt enterprise continue to be pried apart, it became clear that Jones, Dowling, and Randazzo were significant players in what one of the participants labeled ‘an unholy alliance’ ... engaged in extortion, money laundering, coercion, intimidation and an attempted cover-up by a politically-connected group trying to enrich themselves.” 8/5/2021

Audit Recommends \$6.6M Refund for FirstEnergy Customers Due to HB 6-Related Spending August 6, 2021

A third-party **audit report** has found FirstEnergy charged Ohio ratepayers millions in undocumented spending, including for payments the company made to a dark money group tied to the House Bill 6 scandal. The audit report — part of four ongoing proceedings being conducted by the Public Utilities Commission of Ohio (PUCO) to investigate FirstEnergy’s HB 6 activities — **only looked** into 17 payments specifically flagged by FirstEnergy.

According to a PUCO **news release**, the auditing firm recommends that ratepayers be refunded \$6.6 million — and that \$7.4 million be excluded from the company’s next base rate case in 2024.

Gongwer News Service **reports** the audit also found FirstEnergy lacked sufficient documentation for millions more in other payments, including \$14 million to firms owned by Sam Randazzo, the former PUCO chair. Last month, FirstEnergy admitted attempting to bribe Randazzo. 8/3/2021

Renewables Were No. 2 Electricity Source in 2020 August 6, 2021

In 2020, renewable energy (including wind, hydroelectric, solar, biomass, and geothermal

energy) became the second-leading source of U.S. electricity generation, **according** to the Energy Information Administration. Renewables generated a record 834 billion kilowatthours (kWh) of electricity (21%) — trailing only natural gas generation (1,617 billion kWh). 8/4/2021

OMA's Augsburger: Time to Repeal HB 6 Coal Subsidies July 30, 2021

In a July 24 **editorial** published by *The Columbus Dispatch*, OMA President Ryan Augsburger provides the manufacturing perspective on the House Bill 6 scandal and its impact on the Buckeye State.

Augsburger writes that while state lawmakers have repealed key provisions of the law, “there is at least one more critical provision of HB 6 that must be repealed” to keep Ohio’s electricity costs and services competitive. The OMA is urging lawmakers to pass the bipartisan **Senate Bill 117** to end HB 6’s subsidies for two uneconomical coal-fired plants, including one in Indiana. 7/26/2021

Prodged by the OMA, FirstEnergy Re-examines Whether Ratepayer Funds Were Used for HB 6 Efforts July 30, 2021

Following last week’s **announcement** that FirstEnergy will pay a \$230 million penalty for bribing state officials to pass House Bill 6, the company said this week it is “re-evaluating” its **prior assurance** that no customer dollars were used to support the effort. *The Plain Dealer* (subscription) reports that a FirstEnergy spokeswoman **declined to elaborate**.

The utility’s re-evaluation was announced in its latest filing in one of four ongoing Public Utilities Commission of Ohio (PUCO) investigations into the company’s conduct during HB 6’s consideration. The PUCO, which regulates utilities in Ohio, began its probe last September, ordering the company to demonstrate that its customers weren’t directly or indirectly billed for charitable and political spending.

Gongwer News Service **notes** that legal efforts by the **OMA Energy Group** and the Ohio Consumers’ Counsel earlier this month accused the company of “obfuscation” in the face of

requests for FirstEnergy documents and records related to HB 6 spending. 7/27/2021

Republicans Ask If FERC Is Going Too Far on Climate July 30, 2021

As the Federal Energy Regulatory Commission (FERC) increasingly takes climate issues into account in its decision making, *Politico* **reports** that Republicans on Capitol Hill are questioning the commission’s statutory authority to do so. At a U.S. House hearing this week, GOP members said FERC may be overstepping its jurisdiction “by viewing all decisions through an environmental lens instead of putting reliability and affordability for the consumer first.” 7/28/2021

Summer Natural Gas Prices Highest Since 2014 July 30, 2021

Last month, U.S. natural gas prices surged to their highest summer level **in seven years**, according to the Energy Information Administration (EIA). The June spot price at the Henry Hub averaged \$3.26 per million British thermal units (MMBtu) — only to increase to an average of \$3.67/MMBtu during the first two weeks of July. Tighter natural gas supply-and-demand balances have contributed to price increases, the EIA says. 7/29/2021

FirstEnergy Charged in HB 6 Bribery Scheme July 23, 2021

Fallout from the House Bill 6 scandal continues as FirstEnergy this week **agreed to a \$230 million penalty** for bribing former House Speaker Larry Householder and **Sam Randazzo**, the former Public Utilities Commission of Ohio chair. According to the acting U.S. attorney for the Southern District of Ohio, Vipal Patel, this is the largest criminal penalty ever collected by his office.

Under the agreement reached with FirstEnergy, the utility cannot pass the costs of the fine onto customers. The \$230 million fine will be split 50-50 between federal and state government. Meanwhile, Gov. Mike DeWine **said he will donate** FirstEnergy’s contributions to his campaign to charity in light of this week’s revelations.

Investigators say FirstEnergy and its affiliated companies conspired with public officials and others to pass the \$1 billion, ratepayer-funded nuclear subsidies law. HB 6 also contained a profit-guaranteeing “**decoupling**” **provision** (worth an estimated \$355 million through 2024).

As *The Columbus*

Dispatch (subscription) **reports**, between 2017 and March 2020, FirstEnergy Corp. and FirstEnergy Solutions (now Energy Harbor) donated \$59 million to Generation Now — a dark money group allegedly controlled by Householder.

The **OMA Energy Group** plans a deep dive on this development Tuesday, July 27. Contact the OMA’s **Rob Brundrett** with questions. 7/22/2021

One-Year Anniversary of HB 6 Scandal Arrests July 23, 2021

This week marked the one-year **anniversary** of FBI agents arresting former Ohio House Speaker Larry Householder and four others tied to the House Bill 6 scandal, which prosecutors call the largest public corruption scandal in state history.

The anniversary was noted by several media outlets, including **Gongwer**, which pointed out that over the past year, Ohioans have seen “three guilty pleas to federal racketeering charges; one expelled former House speaker; six fired FirstEnergy senior executives; and the resignation of a Public Utilities Commission of Ohio chairman.” Investigations continue on several fronts.

Despite recent steps taken by the General Assembly to **partially repeal HB 6**, lawmakers still have not repealed the HB 6 subsidies for two uneconomical coal-fired plants built in the 1950s, including one in Indiana. Under the provision, Ohioans will pay an estimated \$700 million to the Ohio Valley Electric Corporation (OVEC), which owns the coal plants. The OMA supports **Senate Bill 117** by Sen. **Mark Romanchuk** (R-Ontario) to repeal the OVEC subsidies and refund customers. 7/21/2021

PJM Changes Course on State-Subsidized Generation July 23, 2021

The ongoing battle over state subsidies in competitive electric markets continues as PJM — the grid operator whose service area includes Ohio — recently **backed off** its years-in-the-making Minimum Offer Price Rule (MOPR) expansion.

A response to a Federal Energy Regulatory Commission (FERC) order, PJM’s MOPR expansion **spelled trouble** for state-subsidized generation. The MOPR expansion was applied in the most recent PJM capacity auction, resulting in low capacity prices, increases in low-carbon generation, and healthy reserve margins.

Under PJM’s **new proposal**, which must be approved by FERC, complaints would be submitted to FERC on a case-by-case basis if a generator uses “conditioned state support” or coordinated “buyer-side market power.” FERC would make the final call. State-subsidized generation would not be subject to the MOPR for a variety of reasons, such as if the subsidy is for “environmental attributes” or “economic development.”

While more analysis is needed, PJM’s new proposal appears to loosen how states can subsidize their favored generators. 7/22/2021

Study: Oil and Gas Industry Supports 375,000 Ohio Jobs July 23, 2021

According to a new study of the natural gas and oil industry’s impact on the U.S. economy, fossil fuel production continues to play a vital role in Ohio’s economy, supporting approximately 375,000 jobs in the Buckeye State. That’s 5.3% of Ohio’s total employment.

The 134-page study commissioned by the **American Petroleum Institute** found that in 2019, the oil and gas industry produced \$24.7 billion in labor income in Ohio. **Read the full study.** 7/21/2021

Governor Signs Solar and Wind Energy Siting Bill July 16, 2021

Gov. Mike DeWine this week signed **Senate Bill 52**, controversial legislation that modifies Ohio’s siting process for renewable energy projects. Among other things, the new law allows county commissioners to designate all or part of an

unincorporated area of the county as a restricted area to prohibit the construction of large-scale wind farms and solar facilities, according to an **LSC summary**.

During the bill's consideration, the OMA opposed local differences in siting processes in favor of a statewide approach — overseen by the Ohio Power Siting Board — to ensure clarity, uniform policy, and economy of process. 7/12/2021

FirstEnergy Will Refund \$27M in HB 6 Decoupling Charges **July 9, 2021**

FirstEnergy customers are **set to receive** a “decoupling” refund on their August electricity bills — thanks to OMA-supported legislation (**House Bill 128**) that partially repealed the scandal-tainted House Bill 6.

Earlier this week, the Public Utilities Commission of Ohio (PUCO) — due in part to the OMA Energy Group's legal advocacy — approved FirstEnergy's plan to refund customers more than \$27 million in fees collected through HB 6's **decoupling mechanism**, which allowed the utility to guarantee itself revenue. Refund amounts will vary based on customers' electric use this August. (**Here are the refund rates.**) Prior to the PUCO's approval, the OMA Energy Group provided an **active voice in legal proceedings** to advocate for a full refund of the decoupling dollars, partnering with the attorney general and Office of the Ohio Consumers' Counsel.

HB 128, which was passed in March and took effect June 30, required the decoupling refunds. The bill also repealed HB 6's centerpiece — more than \$1 billion in subsidies for two nuclear plants operated by a former FirstEnergy subsidiary. 7/8/2021

Report: Regions of U.S. Face Elevated Risk of Electricity Disruptions **July 9, 2021**

Portions of the U.S. are at elevated or high risk for potential electricity emergencies this summer, according to a new **reliability assessment** from the North American Electric Reliability Corporation (NERC). Fortunately, Ohio and the rest of **PJM** territory are at “low risk” of disruptions, the report found. NERC says electricity shortages are most likely in the

western U.S., Texas, New England, and parts of the Midwest. 7/6/2021

Study: Ohio's Energy Costs Are Competitive **July 9, 2021**

When compared to other states, Ohio has the 13th lowest energy costs, according to a **new study** by WalletHub. The comparison considered monthly residential costs for electricity, natural gas, motor fuel, and home heating oil.

For the latest average electricity prices for industrial customers, see the **U.S. Energy Information Agency's comparison**, in which Ohio also performs favorably. 7/7/2021

Gasoline Prices Expected to Rise Through August **July 9, 2021**

The national average price of gasoline has increased 40% since the start of the year. And prices are expected to rise another 10 to 20 cents — to more than \$3.25 a gallon — by the end of August, according to a **new analysis** by AAA. This **heat map** shows current average gasoline prices across all 50 states. 7/7/2021v

Budget Contains kWh Exemption for Self-Generation **July 1, 2021**

The new state budget contains little that impacts energy policy. However, it does provide a kilowatt-hour tax exemption for entities that generate electricity primarily for their own consumption, either on the same premises or at a facility on a property contiguous to where the electricity is consumed. This is a valuable provision for OMA members that had implemented either self-generation or alternative-energy generation agreements. 6/29/2021

Solar and Wind Energy Siting Bill Sent to Governor **July 1, 2021**

Unrelated to the budget, the House this week voted 52-44 — followed by a Senate concurrence vote of 21-12 — to approve **Senate Bill 52**, which would make significant changes to

Ohio's power siting process for large-scale wind and solar projects. Specifically, the bill would:

- Enable county commissioners to approve a project via a lack of action, or to adopt a resolution rejecting or limiting the footprint of a proposed project;
- Allow local officials to adopt a resolution, subject to referendum, to designate a restricted area in which any project is prohibited or block any material amendment to an existing facility; and
- Create two ad-hoc seats to the Ohio Power Siting Board to represent county commissioners and township trustees in proceedings affecting their jurisdiction

Critics say the bill unfairly singles out wind and solar projects. In an attempt to provide a workable solution, the OMA engaged at the Power Siting Board-level to reach a compromise — one that still achieved the goals of the bill sponsors — but remains opposed to the final version of the bill. To ensure clarity, uniform policy, and economy of process, the OMA continues to urge a statewide approach to such projects and decisions.

The bill now awaits Gov. Mike DeWine's signature or veto. 6/30/2021

Senate Approves Bill Barring Natural Gas Bans **June 25, 2021**

The Ohio Senate has passed **House Bill 201**, a measure prohibiting local governments from preventing consumers from obtaining natural gas service or propane. The bill now goes to the governor for his signature or veto. Earlier this year, the OMA **worked with the bill sponsors** and other interested parties to ensure

the language of HB 201 matched its intent. 6/25/2021

U.S. Consumed Record Amount of Renewable Energy in 2020 **June 25, 2021**

Last year, consumption of renewable energy in the U.S. **grew for the fifth year in a row**, reaching a record high of 12% of total U.S. energy consumption. According to the Energy Information Agency, renewable energy was the only source of energy consumption that increased in 2020 from 2019. By itself, **solar consumption** increased 22%, while **wind energy** consumption grew 14%. 6/21/2021

Householder Expelled From Ohio House for HB 6 Scandal **June 18, 2021**

For the first time since before the Civil War, the Ohio House **has expelled** one of its members. On a **75-21 vote**, the chamber stripped Rep. Larry Householder (R-Glenford) of his office for “disorderly conduct” amid his ongoing criminal case tied to Ohio's scandal-ridden 2019 energy law, House Bill 6. (The OMA **led the opposition** to HB 6 upon its introduction in 2019.)

The former speaker was **arrested last summer** along with his political strategist Jeff Longstreth and three lobbyists — accused of accepting \$61 million from FirstEnergy through a dark money group to help ensure enactment of HB 6. The law authorized customer-funded subsidies for FirstEnergy's nuclear generation assets, OVEC-owned coal plants, and more. Householder has pleaded not guilty to the charges, and this week — prior to the House vote — **declared his innocence** in front of the House Rules & Reference Committee. 6/16/2021

Utilities Testify to Keep the OVEC Subsidies Coming **June 18, 2021**

Utility interests **testified** this week in opposition to **Senate Bill 117**, legislation that would repeal the **OVEC subsidies** authorized by the scandal-tainted House Bill 6. Shockingly, the utilities testified that the OVEC subsidies are in fact not subsidies since there's a slim chance customers could some day receive a rebate.

Under questioning from committee members, it was conceded that at no time since OVEC's creation had any customer even received a credit from the riders. The operator of OVEC — which is jointly owned by several parent electrical utilities — also conceded that the two coal plants being subsidized by HB 6 would not close if the rider was eliminated.

The OMA has led efforts to eliminate the unnecessary OVEC subsidy, which could amount to \$700 million in ratepayer dollars by the time it expires in 2030. The OMA continues to work with SB 117's sponsor, Sen. **Mark Romanchuk** (R-Mansfield), to eliminate the subsidy and protect manufacturers from unnecessary electric charges and riders. 6/17/2021

OMA Energy Group Seeks to Ensure Transparency of Decoupling Refunds June 18, 2021

The **OMA Energy Group** (OMAEG) is leading the effort at the Public Utilities Commission of Ohio (PUCO) to ensure FirstEnergy customers receive a full and immediate refund of nearly \$30 million paid under House Bill 6's **decoupling provisions**.

As **reported** by Gongwer News, under HB 6's decoupling provision, which has since been **repealed**, FirstEnergy was authorized to collect revenue through a rider that guaranteed the company's revenue at record-setting 2018 levels (about \$978 million). The repeal legislation — **House Bill 128**, which takes effect June 30 — requires those funds to be promptly returned to consumers.

The OMA wants the PUCO to make public the records used to calculate decoupling refunds — and to ensure those records are independently verified. 6/14/2021

Eight Straight Weeks of Rising Fuel Prices June 18, 2021

Gasoline prices rose for the eighth straight week as **crude oil** has surpassed \$70 a barrel. GasBuddy reported that the national average price for gasoline climbed to \$3.07 per gallon; the average for diesel was \$3.21. **Check out this heat map** from AAA for the latest average price for gasoline in your county. 6/16/2021

OMA Supports Enbridge Line 5 Pipeline June 11, 2021

The OMA this week **supported** a measure (**Senate Resolution 41**) that implores the governor of Michigan and director of the Michigan Department of Natural Resources to exercise all efforts to keep the Enbridge Line 5 pipeline operating.

The owner of the pipeline is currently embroiled in a legal battle with the State of Michigan over whether it can operate through the Straits of Mackinac, which connect Lakes Huron and Michigan. Enbridge Line 5 is a major oil pipeline that carries petroleum from Canada to multiple Ohio oil refineries, which provide resources for countless manufacturers. 6/10/2021

AEP Subpoenaed by Federal Regulators in HB 6 Inquiry June 11, 2021

In the latest development tied to the House Bill 6 scandal, AEP has received a subpoena from the U.S. Securities and Exchange Commission (SEC). Gongwer News **reports** that the Columbus-based utility believes its participation in the HB 6 process "was at all times lawful and ethical" and that the company is cooperating fully with the SEC's subpoena.

Over the past year, it has been discovered that AEP contributed large amounts of money in support of HB 6 through wholly-funded dark money groups. 6/9/2021

House Holds Hearings on Householder Expulsion June 11, 2021

The Ohio House this week kicked off hearings on two measures (House Resolutions **69** and **70**) aimed at removing Rep. **Larry Householder** (R-Glenford) from the General Assembly. The former speaker, who faces federal corruption charges related to the House Bill 6 scandal, has been invited to provide "voluntary" testimony at the Tuesday, June 15 hearing on HR 69.

Householder, his political strategist Jeff Longstreth, and lobbyists Neil Clark, Matt Borges, and Juan Cespedes were **indicted last**

summer — accused of accepting \$61 million from FirstEnergy through the dark money non-profit Generation Now to help ensure enactment of HB 6, the law that authorized customer-funded subsidies for nuclear generation, OVEC coal plants, and more. 6/10/2021

Developer Pulls Plug on Keystone XL Pipeline **June 11, 2021**

Environmental activists celebrated the news this week that TC Energy Corp. had **officially canceled** the Keystone XL pipeline, which was to bring Canadian oil to U.S. refiners. Earlier this year, President Joe Biden **revoked** a federal permit needed to complete the 1,200-mile project. The American Petroleum Institute called the development “a blow to U.S. energy security” and the employment of thousands of high-paying union jobs. 6/10/2021

Senate Passes Controversial Wind and Solar Bill **June 4, 2021**

On a 20-13 vote that included five Republicans voting no, the Senate this week passed **Senate Bill 52**, legislation that would make sweeping changes to Ohio’s power siting process for large-scale wind and solar projects. The bill now **heads to the House**.

While SB 52 saw major changes from its original language, the substitute bill would still give final decision-making authority to local governments instead of the Ohio Power Siting Board — which is currently tasked with approving such projects. The OMA opposed the bill in committee and remains concerned about the precedent it would set, as well as potential long-term impacts to onsite power generation. 6/3/2021

FirstEnergy Fires Another Executive Tied to HB 6 Scandal **June 4, 2021**

Late last week, it was **reported** that FirstEnergy informed federal regulators that the company had fired another senior executive — more fallout related to the House Bill 6 scandal. Former Senior Vice President Eileen Mikkelsen was dismissed for her “inaction” in the face of a \$4.3 million payment linked to Sam Randazzo, the former chairman of Public Utilities Commission of Ohio, reports say. 6/1/2021

PJM’s First Capacity Auction in Three Years Yields Low Electricity Prices **June 4, 2021**

PJM — the grid operator whose service area includes Ohio — **has completed** its first Base Residual Auction (BRA) for capacity in three years for the 2022/23 delivery year. The BRA had been delayed while the Federal Energy Regulatory Commission (FERC) created new rules to discourage state subsidies from influencing competitive market pricing.

This spring’s auction was the first to implement FERC’s Minimum Offer Price Rule (MOPR) — and may be the only auction to do so. Natural gas-fueled generation, nuclear, solar, wind, and energy efficiency all cleared more megawatts in this auction, while coal plants experienced a significant reduction. The resulting BRA capacity price was \$50/MW-day — the lowest capacity price in nine years. The BRA procured a 19.9% reserve margin, far exceeding PJM’s reliability target of 14.5%. Duke Energy’s Ohio customers will pay a slightly higher — but still low — capacity price of \$71.69/MW-day.

Missing out on the low market prices and marked increase in low and no-carbon generation was Dominion Energy, which **pulled out of the market**, apparently to increase its renewable energy supply. 6/3/2021

OMA Testifies: Fix Utility Refund Law **May 28, 2021**

Continuing the OMA’s drumbeat for policies that provide refunds to customers when electric utilities are found to have improperly over collected, Rob Brundrett, OMA’s managing director of public policy services, **this week filed testimony** in support of **HB 260**. The bill would correct case law that has denied customer refunds and allowed utilities to keep overages.

Numerous other organizations expressed support for the bill including the Office of the Ohio Consumers’ Counsel and Ohio Cast Metals Association. 5/27/2021

OMA Testifies in Support of Bill That Secures Natural Gas Access
May 28, 2021

This week the OMA **went on record** with the Senate Energy and Public Utilities Committee chairman in support of **House Bill 201**, a bill that prohibits local governments from banning or blocking consumers from obtaining natural gas hookups.

The OMA worked with the bill sponsors and other interested parties to ensure that the intent of the bill matched its language. OMA's Rob Brundrett wrote: "We believe that the current version of HB 201 helps ensure Ohio's manufacturers will continue to have access to reliable and economical energy sources." The bill is expected to move before the end of the summer. 5/27/2021

Senate Continues Debate on Approvals of Large Solar/Wind Projects
May 28, 2021

This week the Senate introduced a **substitute version** of **SB 52**. The intent of the original bill was to increase the influence local and impacted parties have during the Ohio Power Siting Board process when siting large-scale wind and solar projects.

The original bill allowed for local referendums of Board decisions. The new sub bill gives county commissioners the ability to stop projects in advance of the application being filed with the Power Siting Board.

The sub bill also allows county commissioners to designate zones in their counties where wind or solar projects would be permitted, and finally the bill provides that if a county or township passes a resolution against such a project then there is a rebuttal presumption that the project is detrimental, requiring the Power Siting Board to create a defense of the project.

The bill is expected to be voted out of the Senate soon. 5/27/2021

Changes Coming to Wholesale Power Markets?
May 28, 2021

Members of the **OMA Energy Committee** gathered this week to assess the energy policy environment and learn about best practices.

Chaired by Brad Belden, president of the Belden Brick Company, the committee heard from guest presenter Todd Snitchler, President and CEO of the Electric Power Supply Association (EPSA). Snitchler described significant policy changes affecting the rules of the largely deregulated wholesale generation market and the importance of competitive markets.

Committee members also got an update from Enbridge on Michigan's Line 5 Pipeline. If energy matters are important to you, it's free and easy to **join the committee** – no obligations! 5/27/2021

Energy Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on September 7, 2021

- HB10** **REPEAL HB6 - REVISE ELECTRIC UTILITY SERVICE LAW** (LELAND D) To repeal Section 5 of H.B. 6 of the 133rd General Assembly to make changes regarding electric utility service law, to allow the implementation of energy waste reduction programs, and to repeal certain provisions of H.B. 6 of the 133rd General Assembly.
Current Status: 2/17/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-10>
- HB18** **REPEAL HB6** (LANESE L) Repeal HB 6 of the 133rd GA
Current Status: 2/17/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-18>
- HB47** **ELECTRIC CAR CHARGING STATION GRANT REBATE** (LOYCHIK M) To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.
Current Status: 6/22/2021 - **BILL AMENDED**, House Transportation and Public Safety, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-47>
- HB87** **EXEMPT UTILITY SUPPLY CONTRACTS FROM 10-YEAR MAXIMUM** (STEPHENS J, JOHN M) To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts and to declare an emergency.
Current Status: 5/17/2021 - **SIGNED BY GOVERNOR**; eff. Immediately
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-87>
- HB118** **REVISE CERTAIN WIND FARM/SOLAR FACILITY LAWS** (RIEDEL C, STEIN D) To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm and solar facility certificates.
Current Status: 5/12/2021 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (Fourth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-118>
- HB128** **REPEAL HB6** (HOOPS J, STEIN D) To make changes regarding electric utility service law, to repeal certain provisions of H.B. 6 of the 133rd General Assembly, and to provide refunds to retail electric customers in the state.
Current Status: 3/31/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-128>
- HB152** **REVISE LAW GOVERNING UNIT OPERATION** (STEWART B, GINTER T) To revise the law governing unit operation.
Current Status: 6/24/2021 - **BILL AMENDED**, House Energy and Natural Resources, (Fourth Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-152>

- HB192 PROHIBIT LOCAL GOVERNMENTS FROM STOPPING CERTAIN ENERGY GENERATION (CUTRONA A)** To prohibit counties, townships, and municipal corporations from prohibiting energy generation from fossil fuels and gas pipelines.
Current Status: 5/6/2021 - House Energy and Natural Resources, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-192>
- HB201 PREVENT LOCAL GOVERNMENTS FROM LIMITING NATURAL GAS USE (STEPHENS J)** To prevent local governments from limiting use of natural gas and propane.
Current Status: 7/1/2021 - **SIGNED BY GOVERNOR**; eff. 90 days
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-201>
- HB260 REQUIRE REFUNDS FOR IMPROPER UTILITY CHARGES (LANESE L, TROY D)** To require refunds to utility customers who have been improperly charged.
Current Status: 5/26/2021 - House Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-260>
- HB271 ESTABLISH NATURAL GAS INFRASTRUCTURE PROGRAM (EDWARDS J)** To establish a natural gas infrastructure development program and fund to help meet Ohio's natural gas supply needs.
Current Status: 5/6/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-271>
- HB273 CONSUMERS' COUNSEL OPERATING CALL CENTER (O'BRIEN M)** To amend Section 245.10 of H.B. 166 of the 133rd General Assembly to remove the prohibition on the Office of the Consumers' Counsel operating a call center and to make an appropriation.
Current Status: 5/4/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-273>
- HB299 CONSUMER UTILITY BILLING TRANSPARENCY ACT (SKINDELL M)** To enact "The Consumer Utility Billing Transparency Act" requiring the itemization of all riders, charges, taxes, and other costs on certain utility bills.
Current Status: 5/19/2021 - House Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-299>
- HB300 BAN OIL/NATURAL GAS EXTRACTION FROM LAKE ERIE BED (SKINDELL M)** To to ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 5/20/2021 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-300>

- HB317 REPEAL ELECTRIC SECURITY PLANS (WILKIN S)** To repeal electric security plans and make other changes to the law regarding competitive retail electric service.
Current Status: 5/26/2021 - House Public Utilities, (Second Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-317>
- HB351 REPEAL NONBYPASSABLE COST RECOVERY MECHANISMS (LANESE L, STOLTZFUS R)** To repeal the nonbypassable cost recovery mechanisms associated with legacy generation resources and to provide customer refunds.
Current Status: 6/22/2021 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-351>
- HB381 ELECTRIC CHARGES - OTHER STRUCTURES (GRENDALL D)** To allow for certain structures on a retail electric customer's property to be charged the same as the primary residence.
Current Status: 7/27/2021 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-381>
- HB389 REGARDING ENERGY EFFICIENCY (LELAND D, SEITZ B)** To permit electric distribution utilities to establish energy efficiency and peak demand reduction portfolios.
Current Status: 8/12/2021 - Introduced
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-389>
- SB8 BROADBAND-ELECTRIC COOPERATIVE EASEMENTS (MCCOLLEY R)** Regarding broadband expansion, including access to electric cooperative easements and facilities, and to make an appropriation.
Current Status: 2/17/2021 - Referred to Committee House Finance
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-8>
- SB10 REFUNDS TO ELECTRIC CUSTOMERS (ROMANCHUK M)** To terminate any approved decoupling mechanism, to modify the significantly excessive earnings determination for an electric security plan, and to provide refunds to retail electric customers in the state.
Current Status: 2/24/2021 - Referred to Committee House Public Utilities
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-10>
- SB20 COUNTY UTILITY SUPPLY CONTRACTS (HACKETT R)** To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts and to declare an emergency.
Current Status: 3/24/2021 - Referred to Committee House State and Local Government
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-20>
- SB29 ELIMINATE AUTO ENROLLMENT-UTILITY AGGREGATION (HOAGLAND F)** To eliminate automatic enrollment in governmental electric and natural gas aggregation programs.
Current Status: 2/23/2021 - Senate Energy and Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-29>

SB32 **ELECTRIC VEHICLE CHARGING STATION** (RULLI M) To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.

Current Status: 2/17/2021 - Senate Transportation, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-32>

SB44 **REVISE HB6 FROM 133RD G.A.** (RULLI M, CIRINO J) To repeal the nuclear resource credit payment provisions, and amend, and rename as solar resource, the renewable resource credit payment provisions of H.B. 6 of the 133rd General Assembly.

Current Status: 3/9/2021 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-44>

SB52 **WIND TURBINE SETBACKS** (REINEKE W, MCCOLLEY R) To permit a board of county commissioners to designate energy development districts and to permit a board of township trustees or a board of county commissioners to prevent power siting board certification of certain wind and solar facilities.

Current Status: 7/12/2021 - **SIGNED BY GOVERNOR**

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-52>

SB89 **RENEWABLE ENERGY** (DOLAN M) To extend the renewable portfolio standard, increase solar energy benchmarks, and extend the property tax exemption for qualified energy projects that use renewable energy resources.

Current Status: 5/12/2021 - Senate Energy and Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-89>

SB95 **REGULATE UTILITY RESELLERS** (MAHARATH T) To require refunds to utility customers who have been improperly charged and to regulate certain resellers of utility service.

Current Status: 3/31/2021 - Senate Energy and Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-95>

SB117 **REPEAL LEGACY GENERATION PROVISIONS-HB6** (ROMANCHUK M, CRAIG H) To repeal the legacy generation resource provisions of H.B. 6 of the 133rd General Assembly and provide customers refunds.

Current Status: 6/15/2021 - Senate Energy and Public Utilities, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-117>

SB118 **REPEAL RENEWABLE RESOURCE CREDITS-HB6** (ROMANCHUK M) To repeal the renewable resource credit payment provisions enacted under H.B. 6 of the 133rd General Assembly.

Current Status: 3/31/2021 - Senate Energy and Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-118>

SB127 **PREVENT LOCALITIES-LIMIT USE OF NATURAL GAS** (LANG G, RULLI M) To prevent local governments from limiting use of natural gas.

Current Status: 5/12/2021 - Senate Energy and Public Utilities, (Second Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-127>

SCR7 **MEMORIALIZE PJM INTERCONNECTION** (ROMANCHUK M) To memorialize PJM Interconnection, L.L.C. and the Federal Energy Regulatory Commission to urge the preservation of the Minimum Offer Price Rule for the PJM capacity market.

Current Status: 8/19/2021 - Referred to Committee Senate Rules and Reference

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SCR-7>

SR175 **MEMORIALIZE PJM INTERCONNECTION** (ROMANCHUK M) To memorialize PJM Interconnection, L.L.C. and the Federal Energy Regulatory Commission to urge the preservation of the Minimum Offer Price Rule for the PJM capacity market.

Current Status: 9/2/2021 - Referred to Committee Senate Rules and Reference

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SR-175>