

10 a.m. (EST)
via Zoom



Energy Committee Agenda
September 10, 2020

Welcome and Introductions

Brad Belden, President, Belden Brick
Company, Committee Chair

State Public Policy Report

Ryan Augsburger, OMA Staff

- State government overview
- Householder corruption scandal
- HB 6 developments
- Other legislation / activity
- FERC intervention Columbia Pipeline
- *OMA Competitiveness Agenda*

Energy Engineering Report

John Seryak, PE, RunnerStone, LLC
OMA Energy Engineer

- HB 6: decoupling customer impact
- HB 6: OVEC considerations
- Transparent option for nuclear plants
- FERC MOPR case / PJM update

Counsel's Report

Kim Bojko, Carpenter Lipps & Leland
OMA Energy Counsel

- House Bill 6 implementation & new rider
- Significantly Excessive Earnings
- PUCO case highlights

Natural Gas Market Trends

Richard Ricks, NiSource, Columbia Gas of Ohio
Darin King, NiSource, Columbia Gas of Ohio

Electricity Market Trends

Susanne Buckley, Scioto Energy

2020 Energy Committee Calendar
Meetings begin at 10 a.m.

Wednesday, December 2

OMA Energy Committee

Name	Company	Location
Kevin Abke	Ohio CAT	Perrysburg, OH United States
Matthew Allyn	Infinite Energy	Columbus, OH United States
Todd Altenburger	A E P Energy	Columbus, OH United States
Ryan R. Augsburger	The Ohio Manufacturers' Association	Columbus, OH United States
Lissa Barry	Delta Systems, Inc.	Streetsboro, OH United States
Bradley H. Belden	The Belden Brick Company	Canton, OH United States
Claire Bennett	Squire Patton Boggs	Columbus, OH United States
Kimberly W. Bojko	Carpenter Lipps & Leland LLP	Columbus, OH United States
Tom Bollinger	Sugar Creek Packing Company	Washington Court House, OH United States
Dylan Borchers	Bricker & Eckler LLP	Columbus, OH United States
Daniel Bremer	Honda of America Manufacturing, Inc.	Marysville, OH United States
Shawn Lee Brown	Go Sustainable Energy, LLC	Columbus, OH United States
Susanne Buckley	Scioto Energy	Columbus, OH United States
Maribeth Burns	The J.M. Smucker Company	Orrville, OH United States
Brent Chaney	Vistra Energy	Irving, TX United States
Tim Cosgrove	Squire Patton Boggs	Columbus, OH United States
Ben Cross	Russ College of Engineering, Ohio University	Athens, OH United States
Mickey Croxton	Plaskolite	Columbus, OH United States
Rodney V. Cundiff	Lima Refining Company	Lima, OH United States
Nicholas D'Angelo	Eaton	Cleveland, OH United States
Lee Davis	Lightstone Energy	Princeton, NJ 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
Wyatt Elbin	B P America	Rawson, OH United States
Tari Emerson	Charter Steel	Saukville, WI United States
Drew Felz	General Mills, Inc.	Washington, DC United States
Eric Fezell	TruEnergy	Dallas, TX
Chris Flaig	MCM CPAs & Advisors	Cincinnati, OH United States
Dale Foerster	Starr Manufacturing, Inc.	Vienna, OH United States
Ryan Foster	Premier Power Solutions LLC	Massillon, OH United States
Jay Goyal	Goyal Industries, Inc.	Mansfield, OH United States
Michael E. Heltzer	B A S F Corporation	Florham Park, NJ United States
Chris Henry	Husky Energy	
Ned Hill	The Ohio State University	Columbus, OH United States
Joseph Hollabaugh, Jr	Shumaker, Loop & Kendrick, LLP	Columbus, OH United States
Dan Hutcheson	Sugar Creek Packing Company	Dayton, OH United States
Tyrel Jacobsen	AMG Vanadium LLC	Cambridge, OH United States
Matthew F. Johnston	Worthington Industries, Inc.	Columbus, OH United States
Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Jeff Keller	KDC-Columbus	New Albany, OH United States
Darin King	Columbia Gas of Ohio	Toledo, OH United States
Matt Kinsinger	PPG	Barberton, OH United States
Adam Landefeld	Representative Mark Romanchuk, Ohio House District 2	, OH United States
Mike LaWell	ArcelorMittal	Fairview Park, OH United States
Pablo Lemus	Plaskolite, LLC.	Columbus, OH United States
Timothy Ling	Plaskolite	Columbus, OH United States
Denise Locke	The Ohio Manufacturers' Association	Columbus, OH 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 E Energy	Canonsburg, PA United States
Chris Masciantonio	U S Steel Corporation	Pittsburgh, PA United States
Mitchell Maynard	Vistra Energy	Columbus, OH United States
John Meyer	Smithfield Foods	Cincinnati, OH United States
Dennis Moore	Universal Metal Products	Wickliffe, OH United States
Keith Reinbolt	Whirlpool Corporation	Clyde, OH United States
Richard Ricks	Columbia Gas of Ohio	Cambridge, OH United States
Mark Romanchuk	P R Machine Works, Inc.	Mansfield, OH United States
Jim Samuel	NRG Energy Inc. C/o Capitol Integrity Group	Columbus, OH United States

OMA Energy Committee

Name	Company	Location
Christine Schwartz	Honda North America, Inc.	Marysville, OH United States
Nick J. Scolaro	Morrison Products Inc.	Cleveland, OH United States
Hugh Scott Seaholm	Universal Metal Products	Wickliffe, OH United States
John Seryak, PE	Go Sustainable Energy, LLC	Columbus, OH United States
Jack Shaner	EnviroScience Inc.	Stow, OH United States
Stacey Simmons	Smiths Medical	Dublin, OH United States
Christopher N. Slagle	Bricker & Eckler LLP	Columbus, OH United States
Anthony Smith	Marathon Petroleum Company	Findlay, OH United States
Duane Steelman	Zaclon LLC	Cleveland, OH United States
Samantha Summers	Whirlpool Corporation	Washington, DC United States
Daniel M. Syphard	Husky Energy	Dublin, OH United States
John Szymanski	Hull & Associates LLC	Dublin, OH United States
Andrew R. Thomas	Levin College of Urban Affairs, Cleveland State University	Cleveland, OH United States
Ann Tumolo	PPG	Pittsburgh, PA United States
Justin Walder	Nutrien	Northbrook, IL United States
Paul Wilczewski	Scotts Miracle-Gro Company	Marysville, OH United States
Peter Worley	Go Sustainable Energy, LLC	Columbus, OH United States

Total Participants 75

To: OMA Energy Committee
From: Ryan Augsburger
Re: Public Policy Report
Date: September 10, 2020

Overview

For years customer interests were losing ground on energy policy. The controversial House Bill 6 which became law just last summer remains in the rearview mirror. Implementation is still underway, with some provisions not effective until 2021.

Then on July 21, 2020 federal prosecutors announced the arrest of former House Speaker Larry Householder and associates in what has been referred to as Ohio's largest public corruption scandal. At the center of the government's bribery and racketeering allegations: House Bill 6.

In the six weeks since, calls for "repeal" of HB6 have prevailed from both sides of the aisle. One would hope other bills that are unfavorable for electric customers will fade.

Bribery & Corruption at the Statehouse

In a press conference on the afternoon of July 21, just hours after the arrest of the Ohio Speaker of the House Larry Householder, the US Attorney described an undercover investigation that has been going on for over a year. Efforts by Ohio's top House Republican to deliver HB6 and prevent its repeal via referendum are alleged to have been traded for financial contributions to dark money groups (501C(4)s) from supporters of HB6, most notably, "Company A", widely understood to be FirstEnergy Corp.

The investigation, now in an "overt phase" continues and the US Attorney implied further criminal charges were possible in the racketeering case. Politicians are trying to respond by distancing themselves from the former Speaker and some of his policies. House Republicans acted swiftly to vacate Larry Householder from the office of Speaker and elected Bob Cupp of Lima to lead the chamber.

The OMA held a special joint briefing for members of the OMA energy committee and government affairs committee on July 30. Agenda with resource material is included in meeting materials.

Repeal House Bill 6?

As soon as news of Larry Householder's arrest made its way around Cap Square, calls to repeal HB 6 started, especially from elected officials who went along with Householder's top legislative priority in 2019.

Asked about the matter within hours of the arrest, the Governor initially defended the law, but then a day later called for "repeal and replace" to adopt policies to protect the jobs and the low carbon generation that the two nuclear power plants owned by Energy Harbor.

Speaker of the House Bob Cupp called for a "revisit" of the policies in his inaugural address. Senate President Obhof also called for "repeal" and has committed his chamber will complete the task prior to election day. Three different legislative repeal bills have been introduced in both chambers.

The OMA has developed a paper on transparent policy options. See enclosed.

- HB738 (Skindell & M. O'Brien) repeals HB6. Pending in new House Select Committee. Hearing today.

- HB746 (Lanese & Greenspan) repeals HB6. Pending in new House Select Committee. Hearing today.
- SB346 (S. O'Brien & Kunze) repeals HB6. Pending in Senate Energy Committee. Hearing last week.

HB 6 Scam

Before the racketeering investigation announcement, lawmakers were chastised for allowing the owners of Ohio's nuclear power plants to scam Ohio's ratepayers. As the OMA **reported** earlier, the owner of the plants, Energy Harbor (formerly FirstEnergy Solutions), announced in May it would be rewarding certain investors with hundreds of millions dollars of stock buybacks. This was made possible because the company and its allies were able to persuade lawmakers in Columbus to enact House Bill 6 last year.

FERC Decision Tips HB 6 on its Head

Even before the FBI and US Attorney arrested Larry Householder in July, things had not been going well for HB6 in the wake of a Federal Energy Regulatory Commission (FERC) order to protect competitive wholesale electricity markets from subsidized power.

The order, which modifies and expands the Minimum Offer Price Rule (MOPR), was originally designed to prevent state subsidization of new natural gas generators. Under FERC's recent order, the expanded MOPR also applies to nuclear, coal, and renewable power plants that receive state subsidies. FERC did this to level the playing field.

The FERC order tips House Bill 6 on its head, according to the OMA analysis included in the June Energy Committee meeting materials. At that meeting the Energy Committee heard directly from PJM's independent Market Monitor, Dr. Joseph Bowring about the clear limitations the order places on nuclear energy plants ability to participate in the capacity markets. The OMA warned of such market consequences last summer.

House Bill 6 Becomes Law

Recall HB 6 which was rocketed through the General Assembly last year, provided subsidies for the owners of uneconomic power plants, namely the two nuclear power plants. The bill also notably provided a subsidy to the power plants owned by the Ohio Valley Electrical Corporation (OVEC). The bill also largely orders a stop to Ohio's utility-administered energy efficiency programs and renewable energy standards.

The bill in its final form will distort electricity markets denying customers of the long-term benefits of competition. New costs, some known and some unknown, will hit customers of all sizes.

Virtually all the warnings expressed by the OMA over the past year have materialized exposing manufacturers of all sizes to new costs. Just last week, the owner of the nuclear power plants took action to reward investors, sending hundreds of millions of dollars of revenue to be paid by captive Ohio customers and proving the bailout was not needed. See included resource material.

HB 6 Implementation

The provisions of HB 6 became effective in late-October. The bill delegated immense new authority and price-setting to the PUCO and other state agencies. The OMA Energy Group has been participating in those proceedings to protect manufacturing interests. Even in the wake of the alleged corruption scandal, the executive branch has been implementing HB6 provisions. Even more surprising in the face of a threatened injunction by Ohio Attorney General Dave Yost and repeal conversations in the legislature.

Decoupling Revenue Guarantees Utility Record Revenue

Among the HB 6 provisions that opened the door to unknown new customer costs was the creation of a decoupling rider. Six months after passage of the HB6, the PUCO gave approval to FirstEnergy utilities to place the new rider on customer bills. Under the mechanism, if annual revenue in a given calendar year is less (or greater) than 2018's base distribution revenue, FirstEnergy utilities will charge (or credit) the

difference to customers through the decoupling rider. 2018 produced record revenue for the utilities. Additionally, the rider will move tens of millions of dollars in “lost revenue” charges from the expiring energy efficiency rider into this new rider. The OMA estimates this will benefit FirstEnergy revenue by \$355 million between through 2024 and potentially \$400 million in the following five-year term. See enclosed memo on decoupling by OMA technical consultant RunnerStone, LLC.

SEET Means More Cost for Customers

The House Finance Committee last year inserted language into the state budget (House Bill 166) to alter Ohio’s prohibition of “significantly excessive” profits by regulated utilities. The provision, which would allow FirstEnergy to keep “significantly excessive” profits rather than issue refunds to customers, is set to take effect next year. See enclosed memo from OMA energy counsel Kim Bojko of Carpenter Lipps & Leland and by RunnerStone, LLC for more information. OMA pegs this at \$50 million in denied customer refunds between 2017-2019 and more in future years which will be exacerbated by the decoupling mechanism created by HB6.

- HB 740 (Skindell & Denson) Repeals the SEET giveaway to FirstEnergy. Pending in House Select Committee. Hearing today.

Post HB 6 Legislative Activity

In the months since HB 6 was completed both the Ohio House and Ohio Senate appeared poised to enact other energy reforms. Unfortunately, customer protection does not seem to be in store. Instead we are monitoring new proposals that will protect utilities and erode Ohio’s deregulation law.

- **House Bill 247**
Months after lawmakers gave utilities and other interests the opportunity to force captive ratepayers to pay for new generation, HB 247 would go further in allowing distribution utilities to offer services beyond distribution. It seems unnecessary and anti-market. One utility is aggressively lobbying for this bill and has asked their large manufacturing customers to pen a letter of support. Don’t be fooled. The OMA has been communicating extensively about this threat. The OMA opposes HB 247. Contact staff for our analysis.
- **House Bill 246**
Sponsor state rep. Nino Vitale (R-Urbana) unveiled a new version of House Bill 246, legislation to purportedly modernize state agencies that regulate utilities. The bill would impose new risks on manufacturers and could give utilities even more sway over the regulations that govern them. It would also provide monopoly utilities an unfair advantage against competitive energy companies, including developers of renewable energy and electric vehicle charging businesses. Other provisions of HB 246 would diminish the role and voice of customer advocates in proceedings before the PUCO.

Also, the bill would create a natural gas supply access investment program within the Ohio Public Works Commission. The Commission traditionally coordinates the construction of public buildings and infrastructure financed from state approved bonds, which does not include privately-owned energy infrastructure. This provision appears to bypass market economics. See enclosed memo on HB 246.

- **House Bill 104**
Introduced by Representative Dick Stein (R-Norwalk), HB 104 is intended to spur research and development of molten salt nuclear reactors in Ohio via state tax dollars. The bill also advances Ohio as a hub for radioactive wastes. The OMA has written the primary sponsor to convey concerns. Many other Republican legislators have co-sponsored this unwise legislation.

HB 104 would establish an unwise and elaborate state agency that would take regulatory authority away from professional agencies — including the U.S. Nuclear Regulatory Commission — and instead place it under the Ohio Department of Commerce, which has no expertise in this

arena. Moreover, the bill would empower bureaucrats at this new agency to act in the place of the governor in approving joint-development agreements.

The new agency would have some influence over nuclear plant decommissioning plans, according to an enclosed analysis prepared for the OMA. “Of special note is that Ohio’s two nuclear power plants are required to maintain decommissioning funds, and that whether their decommissioning plans were fully funded was a point of contention in the recent FirstEnergy Solutions (now Energy Harbor) bankruptcy.

- **House Joint Resolution 2**

Representatives Don Manning of Youngstown and Jamie Callender of Lake County provided proponent testimony on HJR 2 to place on the ballot an amendment to the Ohio Constitution to ban foreign interests from owning critical energy infrastructure. The move dovetails with the pro-HB 6 China-bashing campaign. Some believe the resolution is political retribution to referendum proponents.

In today’s global economy, a state provision against foreign ownership seems unwise. Precedents abound for other commercial activity. For example, foreign interests invest heavily in manufacturing businesses in Ohio. No action since last report. Representative Manning passed away earlier this year.

- **Senate “Comprehensive” Energy Reform**

Last autumn Senate Energy & Public Utilities Chairman Steve Wilson (R-Maineville) signaled the Senate would focus on grid reliability as a central component in the Senate’s comprehensive energy reform package. This is a curious, albeit familiar refrain from a policymaker since the grid is more reliable than ever today. The OMA fielded testimony on Tuesday, March 2.

PJM on Resiliency and Power Auctions Delayed

Throughout the recent legislative subsidy debates at the General Assembly, grid operator PJM Interconnect had been clear to dispel the myths of poor fuel diversity and electric supply shortages affecting “reliability.” The OMA has an analysis on current PJM activity but further proceedings at PJM will be needed for clarity. PJM has already delayed a planned energy auction for a full year, from May 2019. PJM suggests it could hold the auction as soon as December of 2020, or as late as March 2021. However, some parties are advocating at the FERC to delay the auction deep into 2021 to allow states time to pass legislation that would return pricing capacity to state regulatory authorities.

Protecting Competitive Electric Markets

In 1999, with the passage of Senate Bill 3, Ohio began a transition to deregulated generation. That transition has delivered customer choice, cost-savings and innovation. One of the main tenets of deregulation was forcing then-integrated utility companies to sell or spin-off their generation. “Stranded costs” and other above-market surcharge constructs enabled the utilities to have their generation paid for by Ohioans for a second time. HB 6 represents yet another above-market payment to utilities and power plant owners by customers who realize no benefit.

The OMA has been a proponent of markets, supporting the original deregulation legislation and opposing utility profit subsidy schemes that distort the market and result in new above-market charges on manufacturers’ electric bills. Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability. NOPEC in August issued an updated study that pegs customer savings at \$24 billion over eight years. With the passage of HB 6, competitive markets are under attack in Ohio.

OVEC Bailout

Last session, the OMA opposed legislation to provide over one hundred million dollars per year to the owners of aging coal plants (one in Ohio and one in Indiana) operated by the Ohio Valley Electric Corporation (OVEC). The OMA had also opposed subsidies for OVEC in rate cases at the PUCO. In a decision by the Supreme Court of Ohio in late 2018, the Court effectively allowed utilities to collect the

rider to subsidize OVEC under terms of a specific Electric Security Plan (ESP). An OVEC bailout for the out years beyond the terms specified in the Court decision is now included in HB 6. OVEC faces an apparent dilemma from the FERC MOPR decision.

On-Site Generation Taxed in Ohio

The Ohio Department of Taxation is sending out tax bills to third parties operating on-site generation, be it wind, solar or onsite gas generation. The Department contends that a customer who generates power should pay generation tax the same as a utility. The Department's basis for collecting the tax is tenuous. The OMA supports a legislative correction for all forms of onsite generation. No further action.

Energy Standards and Renewable Siting Legislation

After six years of back and forth policy battles, HB 6 dismantled the standards for efficiency and renewable energy. Siting requirements for large scale wind generation projects were not part of the debate. The PUCO ordered energy efficiency programs to wind down beginning September 30, 2020, so manufacturers who are using rebates will want to claim them soon. Presumably, if HB 6 is repealed these programs would reactivate.

- HB 223 (Strahorn & Skindell) relaxes overly restrictive wind farm siting regulations. No action.
- SB 234 (McColley) revises regulations governing siting of wind farms by expanding local control. No action.



Special OMA Policy Briefing July 28, 2020

Welcome and Reflections

Scott Corbitt, Region Vice President, Anheuser-Busch, Chair, OMA Government Affairs Committee

Brad Belden, President, Belden Brick, Chair, OMA Energy Committee Chair

Jane Neal, Senior Vice President, AMG Vanadium, Chair, OMA Board of Directors

Review Ohio Corruption Investigation

Ryan Augsburger, OMA Staff

Rob Brundrett, OMA Staff

Chris Slagle, Partner, Bricker & Eckler LLP, OMA General Counsel

Deep Dive: House Bill 6

- Recap HB 6 Impact on manufacturers
- Nuke bailout – distortion of markets
- The FERC problem that still is
- History of nuke bailout
- OVEC is costing customers
- Recession proof utilities via decoupling

John Seryak, PE, RunnerStone, LLC
OMA Energy Engineer

Kim Bojko, Carpenter Lipps & Leland,
OMA Energy Counsel

Energy Policy Outlook

- Repeal
- OMA values that lead
- Next steps

Resource Materials

- [US Attorney criminal complaint](#)
- [OMA Memo: HB 6 Impact to Mfrs](#)
- [Myths & Facts about HB 6](#)
- [HB 6 vote breakdown](#)
- [Speaker election vote breakdown](#)
- [Transparent policy options for nukes](#)

2020 Energy Committee Calendar Meetings begin at 10 a.m.

Thursday, September 10

Wednesday, December 2

2020 Government Affairs Committee Meetings begin at 9:30 a.m.

Wednesday, August 26

Tuesday, November 10



MEMORANDUM

Date: August 20, 2019
To: The Ohio Manufacturers' Association
From: John Seryak, PE and Jordan Nader (RunnerStone, LLC)
RE: Amended Substitute House Bill 6 and the Nuclear and Renewable Generation Funds –
Impact to Manufacturers

Amended Substitute House Bill No. 6 (H.B. 6) was recently signed into Ohio law. H.B. 6 significantly reworks Ohio's electricity policy in a way that substantially affects manufacturers. OMA energy counsel Kim Bojko has separately provided a legal analysis on what H.B. 6 does, and how it works.

In summary, H.B. 6 creates a \$150 million annual fund for nuclear power plants, a \$20 million annual fund for select solar power plants, extends a "power purchase agreement" for legacy, uneconomical coal plants in Indiana and Ohio that currently cost Ohioans tens of millions of dollars, defunds Ohio's competitive renewable portfolio standard, effectively eliminates Ohio's energy efficiency standards on investor-owned utilities, creates a mechanism for utility-backed renewable energy projects, and jeopardizes Ohio's participation in competitive wholesale electricity markets.

These changes in Ohio's electricity policy negatively impact three issues of interest to Ohio's manufacturers: cost, competition, and carbon-dioxide emissions.

Cost

H.B. 6 creates a net increase in customer costs, including the potential to increase manufacturers' electricity bills. First, and most obviously, H.B. 6 creates new customer charges

Impact of H.B. 6

- \$150 million/year in new subsidies for nuclear power, from 2021 through 2026
- Extends subsidies for legacy, uneconomic coal plants in Indiana and Ohio, which cost Ohio tens of millions of dollars each year through 2030
- \$20 million/year for select solar power projects, from 2021 through 2026
- Likely removes significant portions of Ohio generation and consumer load from competitive wholesale capacity auctions
- Likely to increase capacity prices
- Effectively eliminates renewable energy standards
- Utility efficiency programs
 - Continue through 2020
 - Mandate effectively eliminated starting in 2021
 - Subject to mercantile customer opt-out in 2020
- Creates reasonable arrangement mechanisms for trade-exposed industrial manufacturers



for the Nuclear Generation Fund and Renewable Generation Fund - \$10.20 per year for residential customers, \$28,800 /year for large consumers who use over 45 million kWh per year, and a charge to be determined later by the Public Utilities Commission of Ohio for other commercial and industrial businesses¹. Ohio's four investor-owned utilities will be required to collect the combined \$170 million per year for the Nuclear Generation Fund and Renewable Generation Fund. Because residential customers and large consumers have prescribed, capped charges, all remaining revenue must be collected from small and mid-sized commercial and industrial businesses.

Second, H.B. 6 extends a subsidy for the Ohio Valley Electric Corporation (OVEC) through 2030. OVEC owns two legacy, uneconomical power plants, Clifty Creek in Indiana and Kyger Creek in Ohio. The OVEC subsidy currently collects tens of millions of dollars each year from customers of AEP Ohio, Duke, and DP&L. FirstEnergy customers would receive new charges to subsidize OVEC.

Third, H.B. 6 reduces Ohio's Renewable Portfolio Standard from 12.5% by 2026, to 8.5%. It also eliminates a 0.5% by 2026 carve-out for solar energy projects, and creates a large-user opt-out of the compliance. The Renewable Portfolio Standard requires retail electric suppliers and electric distribution utilities to procure this percentage of their supply from renewable energy, and is currently at a 5.5% requirement in 2019. For context, we estimate that the renewable standards cost about \$40 million in 2017², and around \$60 million in 2019³.

Fourth, H.B. 6 directs the PUCO to authorize new power purchase agreements (PPA) for utility renewable energy and customer-sited renewable energy for 3-year terms or longer. The private market currently provides 3-year or greater terms for PPAs to customers who are seeking such projects.

Longer term, H.B. 6 will have an impact on wholesale electricity markets, and the impact could be severe and costly to manufacturers. The exact cost is still elusive. This is because of a domino-effect of state-level nuclear power plant subsidies has left the regional grid operator, PJM, without a FERC-approved capacity auction construct. Based on recommendations from FERC, electricity generators receiving funds from the Nuclear Generation Fund, or via a PPA, would be subject to a "bifurcated" capacity auction, in which the state of Ohio would likely set capacity prices for these power plants instead of PJM, and this potentially higher price would be flowed through to Ohioans.

On energy efficiency, the requirement for a utility to run an efficiency program is effectively eliminated, allowing utility run efficiency programs through 2020. Additionally, a "mercantile opt-out" of the efficiency programs would be enacted in 2020, wherein any customer that consumes over 700,000 kWh/year will be allowed to opt-out of paying into the efficiency programs, but will then not be allowed to receive financial assistance from the programs. While there is no allowance in

¹ Previous versions of H.B. 6 prescribed charges of \$180 per year per meter for commercial customers, and \$3,000 per year per meter for industrial customers. The per-account rate structure created issues for manufacturers that have multiple electric meters. It is not clear if the PUCO will adopt a rate structure similar to previous versions of H.B. 6, or something completely different.

² Renewable Portfolio Standard Report to the General Assembly by the Public Utilities Commission of Ohio for the 2017 Compliance Year.

³ Pro-rated from 2017's RPS benchmark to the 2019 RPS benchmark. Costs would increase to \$142 million by 2026 at 2017 prices, though could be held in check if renewable energy credit prices fall.



H.B. 6 for utilities to continue offering energy-efficiency program, it does not expressly prohibit offering efficiency programs either. For context, during a previous legislative “freeze” of efficiency program requirements in 2015-16, AEP Ohio, Duke, and DP&L continued their programs, while FirstEnergy suspended theirs. In testimony on the original H.B. 6, AEP Ohio, Duke, and DP&L have all expressed interest in operating energy-efficiency programs. Manufacturers should note that there is sharp disagreement over whether efficiency programs represent a cost, or a net benefit, to customers.

Competition

H.B. 6 significantly erodes competition in electricity markets by subsidizing old nuclear and fossil fuel power plants, and favoring specific renewable energy projects over others. H.B. 6 creates subsidies for older generating technologies that have already received cost-recovery from Ohio’s ratepayers several times, are unable to compete in the wholesale electricity markets, and are announced for retirement.

Put another way, H.B. 6 creates subsidies to reverse the competitive electricity market formation that Ohio has supported for 20 years. This is serious - competitive electricity markets save Ohio’s manufacturers, businesses, and residents around \$3 billion per year⁴.

Carbon

H.B. 6 no longer explicitly discusses reduction in carbon or other emissions as objectives. However, purported environmental benefits have been used to justify H.B. 6. When considering carbon emissions, it is important to note several trends:

- Many global manufacturers and their supply chains are adopting greenhouse gas reduction goals, energy reduction goals, or renewable energy supply goals. Thus, the carbon intensity of the regional electric grid is important to a growing number of manufacturers. The carbon intensity of the electric grid counts towards a manufacturer’s internal accounting of Scope 2 emissions and thus impacts a manufacturer’s ability to meet their own corporate emissions reductions goals.
- The US has canceled implementation of the Clean Power Plan, and announced withdrawal from the global Paris Treaty. As a result, there is thus no current federal carbon emissions policy for electricity generation.
- States that have created their own carbon reduction policy for the electricity sector often join regional carbon markets to reduce costs, such as the Regional Greenhouse Gas Initiative comprised of mid-Atlantic and New England states.
- Competitive wholesale electricity markets produce efficiencies of several types, lowering not just cost but carbon emission as well, as producers reduce waste in order to stay competitive.

⁴ “Electricity Customer Choice in Ohio: How Competition Has Outperformed Traditional Monopoly Regulation”, Thomas, A., Bowen, W., Hill, E., Kanter, A., Lim, T. https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2420&context=urban_facpub



Thus, maintaining competitive markets is an important aspect of reducing wastes and improving efficiencies, as supported by multiple academic studies⁵.

- Ohio's existing diverse electricity generation mix is keeping costs low, as well as reducing emissions by 38% from 2005 levels⁶. This lower carbon transformation has occurred in a competitive wholesale electricity market.

In light of these trends, a state policy intended to cost-effectively reduce carbon dioxide emissions from the electric sector would likely have the following components:

- Preserve competitive electricity markets.
- Develop a carbon market, typically with regional partners and a fluctuating price.
- Allow broad competition for carbon credits that is technology neutral, and would include nuclear, large scale renewable energy, smaller scale renewable energy, behind-the-meter generation, and energy efficiency.

H.B. 6 does none of this, and in fact, subsidizes uneconomical coal plants. It could impair Ohio's already successful trend of reducing carbon-dioxide emissions in several ways. First, it erodes competitive electricity markets by introducing subsidies for specific technologies and plants. Even zero-carbon nuclear plants are shown to reduce more emissions when they are in competitive markets⁷. Second, H.B. 6 creates subsidies for the OVEC coal plants. Third, H.B. 6 eliminates support for renewable energy technologies and their significant associated emissions reductions.

In conclusion, H.B. 6 is a major reworking of Ohio's energy policy, and could result in significantly higher electricity prices for Ohio's manufacturers, would erode functioning electricity markets, and could even increase Ohio's carbon-dioxide and other emissions from the electricity sector.

⁵ Cicala, Steve. 2015. "When Does Regulation Distort Costs? Lessons from Fuel Procurement in US Electricity Generation." *American Economic Review*, 105 (1): 411-44

Fabrizio, Kira, R., Nancy L. Rose, and Catherine D. Wolfram. 2007. "Do Markets Reduce Costs? Assessing the Impact of Regulatory Restructuring on US Electric Generation Efficiency." *American Economic Review*, 97 (4): 1250-1277.

Craig, J. Dean, and Savage, S., 2013, "Market Restructuring, Competition and the Efficiency of Electricity Generation: Plant-level Evidence from the United States 1996 to 2006", *The Energy Journal*, 34 (1): 1-31

⁶ Ohio EPA letter to the US Environmental Protection Agency, Oct. 30th, 2018, Docket ID No. EPA-HQ-OAR-2017-0355

⁷ Davis, L., Wolfram, C., 2012. "Deregulation, Consolidation, and Efficiency: Evidence from US Nuclear Power," *American Economic Journal: Applied Economics*, American Economic Association, vol. 4(4), pages 194-225, October.

ELEVEN MYTHS SURROUNDING SUB HOUSE BILL 6 (AS PASSED BY THE SENATE)

(This document was updated July 22, 2019.)

There are numerous myths surrounding Ohio's legislation to bail out uneconomical nuclear power plants. Here are the top 11 myths – and the facts to set the record straight.

MYTH 1: SUB HB 6 IS ALL ABOUT CLEAN AIR – AND NOT A NUCLEAR BAILOUT FOR FIRSTENERGY SOLUTIONS.

FACT: THE BILL CANNOT BE MISTAKEN FOR ANYTHING OTHER THAN A BAILOUT.

- Sub HB 6 provides a Clean Air Credit to nuclear facilities (\$9.00 per MWh of generation) (Sec. 3706.45 and 3706.46) in the amount of \$150 million annually. FirstEnergy already received subsidies for its generation plants during the transition to a competitive market in the amount of \$6.9 billion. Sub HB 6 creates additional subsidies for two Ohio nuclear facilities that are currently in bankruptcy. After bankruptcy, it is estimated that the two Ohio nuclear facilities will become just as profitable as the other nuclear facilities that operate at a profit. (See table below.) Poor debt management should not be rewarded in the form of a corporate bailout.

Nuclear unit forward annual surplus (shortfall) (\$ in millions)

Surplus (Shortfall) (\$ in millions)			
	2019	2020	2021
Beaver Valley	\$134.3	\$93.5	\$84.7
Braidwood	\$106.4	\$80.3	\$51.7
Byron	\$104.3	\$78.6	\$50.6
Calvert Cliffs	\$131.0	\$99.0	\$89.3
Cook	\$95.8	\$48.4	\$41.9
Davis Besse	(\$26.9)	(\$47.8)	(\$45.6)
Dresden	\$97.3	\$76.4	\$53.8
Hope Creek	\$57.9	\$52.0	\$43.3
LaSalle	\$103.5	\$78.0	\$50.2
Limerick	\$112.2	\$100.5	\$83.8
North Anna	\$138.6	\$99.3	\$90.0
Peach Bottom	\$113.4	\$101.5	\$84.1
Perry	(\$22.6)	(\$49.6)	(\$47.8)
Quad Cities	\$61.3	\$42.2	\$20.9
Salem	\$114.6	\$102.8	\$85.5
Surry	\$120.5	\$85.6	\$77.6
Susquehanna	\$77.7	\$37.4	\$28.2
Three Mile Island	(\$56.9)	(\$69.6)	(\$72.3)

Source: PJM 2018 State of the Market, Table 7-42, at page 352 of Volume II

- The latest version of Sub HB 6 also provides subsidies to five large solar facilities in the amount of \$20 million annually and to the Ohio utilities for their direct or indirect ownership in old coal-generating plants, Ohio Valley Electric Corporation (OVEC), which includes one plant in Indiana and will cost customers over \$488 million more than current charges.

MYTH 2: SUB HB 6 WILL REDUCE COSTS.

FACT: SUB HB 6 WILL NOT REDUCE COSTS – IT ACTUALLY CREATES NEW COSTS.

- Sub HB 6 creates the Clean Air Charge that will collect \$170 million annually from customers in new charges.
- Sub HB 6 expands the existing OVEC rider through December 31, 2030 and to include costs associated with FirstEnergy's share for the OVEC plants, adding over \$488 million in costs to customers' bills. The charge will now be assessed to FirstEnergy customers, adding new costs to those customers.
- Sub HB 6 does not eliminate energy efficiency (EE) costs. The bill continues the existing EE programs through December 31, 2020 with increased budgets, and could possibly continue EE programs beyond 2020. **Allows costs associated with those programs to be collected from customers beyond December 31, 2020** if the EE programs continue and/or to reconcile cost recovery of the programs (Sec. 4928.66(F)).
- Sub HB 6 creates a new rider (decoupling mechanism) that will **continue to collect certain EE costs and may add new costs** (Sec. 4928.471). The new rider will continue until the utility's next base distribution rate case. The utility can collect the revenues it received for the 12 months ending December 31, 2018, associated with implementing EE programs, which includes lost distribution revenues. The rider appears to apply to commercial customers that opted out of paying the EE costs pursuant to R.C. 4928.6611, thereby **increasing some opt-out customers' bills**.
- Sub HB 6 will **increase wholesale capacity prices** by eliminating EE mandates that help suppress capacity prices. Also, Sub HB 6 erodes competition in electricity markets by subsidizing certain generating facilities at the expense of others, thereby increasing costs to customers.

MYTH 3: MANUFACTURERS CAN GET THE CLEAN AIR CREDITS OR OTHER FUNDS.

FACT: THAT'S JUST NOT GOING TO HAPPEN.

- The latest version of the bill clearly defines a Clean Air Resource as nuclear or solar facilities that are interconnected to PJM, and that are major utility facilities certified by the Ohio Power Siting Board prior to June 1, 2019, and the bill only provides for funding to Clean Air Resources (Sec. 3706.40). Therefore, manufacturers will not receive any monies from the Clean Air Fund.

MYTH 4: MANUFACTURES WILL BE EXEMPTED FROM PAYING THE CLEAN AIR FEES.

FACT: MANUFACTURERS WILL NOT BE EXEMPTED.

- There are no longer any provisions in the bill that would exempt a manufacturer from paying the Clean Air Fees.

MYTH 5: COST TO MANUFACTURERS IS MINIMAL.**FACT: MANUFACTURERS' COSTS COULD INCREASE SUBSTANTIALLY.**

- The monthly charge to the majority of commercial customers to fund the Clean Air Fund is unknown and undefined as to whether it will be collected on a per-account or per-customer basis or whether it will be a flat monthly charge or a kwh charge (Sec. 3706.46). Typically, utilities assign an account to each meter belonging to a customer; manufacturers frequently have more than one meter. Thus, a large manufacturer with three accounts could be assessed multiple charges based on consumption.

MYTH 6: SUB HB 6 CREATES DIVERSITY OF GENERATING RESOURCES.**FACT: THE BILL REMOVES INCENTIVES TO INVEST IN A BROADER ENERGY PORTFOLIO.**

- If two Ohio nuclear plants, five solar facilities, and two old coal plants (one in Ohio and one in Indiana) receive subsidies and other resources do not receive subsidies, the four subsidized plants will likely be able to be dispatched by PJM, replacing other resources, which could include coal plants that recently invested to add scrubbers and emission control equipment. Unfairly subsidizing certain plants at the expense of all others may enable those subsidized plants to remain in the diversity mix, but could cause other resources to be eliminated from the mix.

MYTH 7: SUB HB 6 PROHIBITS GENERATING FACILITIES FROM RECEIVING MULTIPLE GOVERNMENT SUBSIDIES.**FACT: UNDER THE BILL, GENERATORS COULD GET MANY GOVERNMENT SUBSIDIES.**

- Sub HB 6 does not prohibit a facility from receiving multiple government subsidies. It does not specifically prohibit resources from receiving one or more state, federal, or municipal subsidies, or local tax abatements, and only permits, not requires, the Ohio Air Quality Development Authority to cease or reduce payments to nuclear facilities if FERC or NRC establish a monetary benefit or incentive payment to continue commercial operation of the plants. Moreover, Sub HB 6 allows a Clean Air Resource to receive a Clean Air Credit, while also allowing for increased capacity payments from PJM that could be triggered by Sub HB 6 (Sec. 3706.61).

MYTH 8: SUB HB 6 SWAPS MANDATES – OHIO'S ENERGY EFFICIENCY AND RENEWABLE PORTFOLIO STANDARDS ARE REPLACED BY A CLEAN AIR FUND.**FACT: MANUFACTURERS COULD GET STUCK PAYING FOR MULTIPLE MANDATES.**

- Sub HB 6 does not simply eliminate EE costs and replace with a lower Clean Air Fee. Rather, Sub HB 6 continues to collect costs associated with existing EE programs through December 31, 2020 and possibly beyond 2020, allows the utilities to collect costs and incentives associated with expanding collection of OVEC, and will assess other new charges to customers, including customers that opted out of EE programs (see Myth #2). Additionally, Sub HB 6 does not just affect the EE and Renewable Portfolio Standards (RPS) mandates. Sub HB 6 modifies the ratemaking statutes enacted to effectuate deregulation and allows utilities to add new above-market charges to customers' bills through their Electric Security Plans (ESPs). Sub HB 6 creates a mechanism for distribution utilities to re-enter the generation market, creating bad energy policies. Sub HB 6 is a step backwards for Ohio.

MYTH 9: SUB HB 6 REDUCES EMISSIONS IN OHIO.

FACT: THE CURRENT SYSTEM IS WORKING; SUB HB 6 COULD THWART OHIO'S PROGRESS.

- Ohio's existing diverse electricity generation mix has already reduced emissions by 38 percent from 2005 levels. This lower carbon transformation has occurred in a competitive wholesale electricity market. Subsidizing older plants, including two coal plants, with older technologies that may otherwise retire and make way for newer technologies could result in increased carbon-dioxide emissions in Ohio.

MYTH 10: SUB HB 6 SUBSIDIES FOR OHIO VALLEY ELECTRIC CORPORATION (OVEC) ARE INSIGNIFICANT.

FACT: THE NEW OVEC SUBSIDY WILL COST OHIO FAMILIES AND BUSINESSES AT LEAST AN ADDITIONAL \$488 MILLION THROUGH 2030.

- Total costs to Ohio ratepayers for OVEC under approved ESPs are approximately \$79 million per year.
- The modified OVEC subsidy will expand the duration of the current non-bypassable, above-market charges on customers' electric bills, will include costs associated with FirstEnergy's share of OVEC, and will be expanded to assess the charge on FirstEnergy's customers.(Sec. 4928.148).
- AEP Ohio will recover roughly \$38 million per year from customers under the approved ESP through May 31, 2024. Sub HB 6 would allow the company to recover an additional \$247 million between June 2024 and December 2030.
- Duke Energy Ohio will recover roughly \$32 million per year from customers under the approved ESP through May 31, 2025. Sub HB 6 would allow the company to recover an additional \$176 million between June 2025 and December 2030.
- The Dayton Power and Light Company will recover roughly \$9 million per year from customers under the approved ESP through November 1, 2023. Sub HB 6 would allow the company to recover an additional \$65 million between November 2023 and December 2030.
- Although the OVEC charge will be capped monthly through December 21, 2030, the charge is subject to final reconciliation on December 31, 2030, at which time customers will be responsible to pay all costs that have been deferred and that are due. Customers could be on the hook for a large lump sum payment on December 31, 2030 (Sec. 4928.148(A)(3)).

MYTH #11: SUB HB 6 SUPPORTS ONLY OHIO FACILITIES.

FACT: SUB HB6 WILL GIVE MILLIONS OF DOLLARS TO AN INDIANA COAL PLANT.

- The bill does NOT require that the Legacy Generation Resources (OVEC) be in the state of Ohio to receive subsidies under Sub HB 6 (Sec. 4928.01(A)(41); 4928.148). One OVEC unit partially owned by the Ohio distribution utilities that will receive customer-funded subsidies from Ohioans under Sub HB 6 is in Indiana.



Obtaining the Public Trust: Transparent, Adaptable Policy Support for Ohio's Nuclear Power Plants

Amended Substitute House Bill 6 (H.B. 6) was passed and signed into Ohio law in July 2019. H.B. 6 represents a major rework of Ohio's electricity policy and continues to significantly affect customer costs, customer choice, and how Ohio electricity markets function.

Ohio Governor Mike DeWine has noted that support of H.B. 6 centered on preserving Ohio jobs associated with the two nuclear power plants that are the subject of the bill and lowering Ohio's emissions through these carbon-free generation assets. To meet these goals while minimizing the cost burden on ratepayers, the critical question for policymakers is how to fairly and transparently determine the financial requirements to meet these goals – that is, preserving jobs and lowering Ohio's carbon emissions.

The financial case for continuing the operation of nuclear power plants in Ohio has not been demonstrated, at least not publicly. Nevertheless, H.B. 6 established the collection of \$150 million annually from customers to support Energy Harbor-owned Davis Besse and Perry nuclear power plants, amounting to \$1.05 billion over seven years. The policymaking process of H.B. 6 never answered the obvious and critical question: Why \$150 million?

Much has changed in the year since H.B. 6 passed. Wholesale electricity prices have plummeted; the nuclear power plants' owner has shed bad debt in bankruptcy and spent an extra \$300 million on repurchasing its own stock; and a Federal Energy Regulatory Commission (FERC) ruling has cast doubt on the approximately \$95 million/year capacity revenue stream for the plants. If \$150 million were the appropriate subsidy at time of enactment, which is not at all clear, changes in the energy economy and its markets have certainly changed the factors that drive the plants' profits and losses.

In this challenging time, Governor DeWine said that the charge now is "those of us in public office have to work every single day to obtain the public's trust." Governor DeWine further stated that he is "a big believer in transparency" in the law.

While there is still much to debate regarding the effects of H.B. 6, this much is clear:

- Significant doubts persist as to the true financial need of the nuclear power plants.
- Ohio's law lacks transparent accountability of the \$150 million collected from customers annually for the nuclear generation fund, while prohibiting standard-practice legal intervention common to electric regulation, and while lacking a mechanism to modify the cost recovered from Ohio businesses and citizens.

- A corrective opportunity exists right now to reform Ohio's energy policy.

In this memo, we describe the major changes to market conditions for the nuclear power plants, transparency concerns, and potential resolutions.

Major Changes to Market Conditions for Ohio's Nuclear Power

The reality of any market is that it is ever-changing. Demand and supply for any product or service changes from year-to-year, and innovation can disrupt a market at any time. As a result, markets value adaptability. H.B. 6's financial support for nuclear power does not have this adaptability. The \$150 million collected annually from ratepayers to subsidize these plants is fixed and unchanging even as market conditions change.

Recent market condition changes include:

- Dramatic swings in wholesale energy prices – The price of wholesale electricity has changed from an average of \$32/MWh in 2019 to \$23/MWh thus far in 2020¹. This market swing could result in approximately \$152 million less revenue in 2020 for the two nuclear power plants.
- Energy Harbor's emergence from bankruptcy and stock buy-back – The nuclear plants' owner, Energy Harbor, recently emerged from bankruptcy. In doing so, it executed an \$800 million stock buy-back program. This was \$300 million more than it originally planned, crediting "visible" cash flow from H.B. 6's nuclear generation fund.
- Potentially significant revenue disruption from a FERC order – The FERC has issued an order that any power plant that receives, or is entitled to receive, a direct or indirect state subsidy will be subject to the Minimum Offer Price Rule (MOPR). In plain language, this FERC order will bar the nuclear power plants from receiving about \$95 million per year in capacity revenue from the wholesale market if the state subsidy *is needed* for the plants to operate.

The above points do not tell us how much the two nuclear plants need to remain viable, nor their financial position. Instead, these points demonstrate that the nuclear power plants' financial needs, or profit, will vary significantly from year to year. In other words, \$150 million per year is very likely either too much support, or too little.

Transparency Concerns

Significant transparency concerns also exist. These were raised during the H.B. 6 legislative debate. Public, transparent evidence has been presented by reputable parties questioning the nuclear plants' need for \$150 million per year.

In contrast, no financial documentation has been provided by any party to demonstrate the nuclear plants' owner's argument of need. As a result, public trust is eroded. This lack of trust has been exacerbated by the \$800 million stock buy-back conducted by the nuclear plants' owner Energy Harbor.

In addition to the stock buy-back, a 2019 financial analysis completed by Dr. Paul Sotkiewicz, former chief economist for the transmission grid operator, PJM, showed that following the bankruptcy of what was formerly known as FirstEnergy Solutions, the Davis-

¹ US Energy Information Administration for PJM, <https://www.eia.gov/electricity/wholesale/>

Besse and Perry nuclear plants will likely turn an annual profit. Dr. Sotkiewicz estimated the annual profit to be \$28 million for Davis Besse and \$44 million for Perry, for a combined profit of \$72 million annually². His estimates account for the nuclear plants' financial situation following the bankruptcy and relied on plant-specific financial filings.

The general takeaway from Dr. Sotkiewicz's 2019 analysis is that the two nuclear power plants may have excess cash flow in the post-bankruptcy era. Energy Harbor's stock buy-back supports this general conclusion.

Potential Resolutions

Ohio's policymakers have several potential reform options to ensure that the nuclear power plants' financial performance is in line with market conditions. Each would improve accountability compared to existing law, whether through the checks and balances of competitive markets, or by means of transparent government regulation.

- **Market accountability** – Repealing ratepayer financial support for the nuclear power plants is a viable option. Energy Harbor has standard business decisions it can take to remain fiscally solvent. This includes bankruptcy to shed bad debt (which it has done), exploring competitive markets for clean energy credits, sharing financial risk with investors in anticipation of a federal carbon market, and trimming executive pay or corporate stock buy-back programs to maintain fiscal prudence, among others. In general, nuclear plants perform better financially and environmentally when they participate in competitive markets.
- **Best practice financial auditing and safeguards** – Because the nuclear plants' financial need will change from year to year, a transparent financial auditing process will be required to earn the public's confidence that the right amount of financial support is being provided, and that the ratepayer financial support is being used appropriately. Such a process should allow for due process, including legal intervention of customer groups that are paying for the nuclear plants. Policymakers will need to carefully consider how to select a technically competent and apolitical auditing entity, and construct safeguards for the use of ratepayer funds.
- Finally, there is a market for generation assets, including Ohio's two nuclear plants. If the plants' owner, Energy Harbor, is unable to improve management and operations to lower costs and improve competitiveness, or is unwilling to participate in a transparent financial audit of the plants, it should sell the nuclear generators.

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² "The Market and Financial Position of Nuclear Resources in Ohio", Dr. Paul Sotkiewicz, E-Cubed Policy Associations, LLC. Table 12



MEMORANDUM

Date: August 20, 2020
To: The Ohio Manufacturers' Association
From: John Seryak, PE, and Peter Worley (RunnerStone, LLC)
RE: H.B. 6 Decoupling Provision - \$355 Million for FirstEnergy through 2024, Possibly Millions More

Amended Substitute House Bill No. 6 (H.B. 6) was signed into Ohio law in 2019. H.B. 6 significantly reworks Ohio's electricity policy in a way that substantially affects manufacturers. H.B. 6 is again open for debate and examination. Governor DeWine has called for H.B. 6 to be repealed and replaced, saying that a \$61 million bribery and corruption scheme used to pass the bill has "forever tainted the bill and now the law itself."¹

H.B. 6 has well-documented provisions that affect Ohio's nuclear power plants, coal power plants, select solar power plants, and energy efficiency requirements. Less well documented, let alone understood, is a confusing decoupling provision in the bill. This provision is written opaquely even for an industry professional, and its meaning is almost certainly incomprehensible to the public. Fortunately, FirstEnergy's CEO put the effect of the provision in plain language for its investors:

"essentially it takes about one-third of our company and I think makes it somewhat recession-proof"²

As a result of this decoupling provision, FirstEnergy could collect about \$355 million in unearned revenue through 2024. Ratepayers will incur higher electricity costs with no associated benefits. Moreover, a unilateral ruling from the PUCO could extend FirstEnergy's decoupling at the utility's discretion. This could, for example, cost FirstEnergy customers an additional \$400 million if extended from 2025 through 2030.

Decoupling via H.B. 6

H.B. 6 enacted decoupling to specifically benefit FirstEnergy, not to benefit ratepayers or achieve other state policy goals. The decoupling provision is complicated electric policy:

"For an electric distribution utility that applies for a decoupling mechanism under this section, the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and

¹ <https://www.dispatch.com/news/20200723/gov-mike-dewine-calls-for-quick-repeal-and-replacement-of-hb-6>

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



recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018.”³

FirstEnergy CEO Chuck Jones has referenced customer energy efficiency to justify this decoupling provision, saying it “allows us to continue to promote energy efficiency with our customers so that they can get the benefit of that without impacting our base revenues.”⁴ However, this is a misleading statement. H.B. 6 ended the requirement for FirstEnergy – and Ohio’s other investor-owned distribution utilities – to achieve energy efficiency savings as of December 31, 2020. And, FirstEnergy proactively suspended the bulk of its energy-efficiency programs early, in January 2020. FirstEnergy also has taken no steps to offer non-mandated efficiency programs in 2021. Thus, it’s clear that FirstEnergy is not using the H.B. 6 decoupling provision to further promote customer energy efficiency.

The H.B. 6 decoupling provision allowed FirstEnergy to tie its annual base distribution revenue to 2018 collections. Notably, 2018 was *not* a representative year of distribution electricity sales for FirstEnergy; it is the highest electricity sales year in a 10-year span. H.B. 6 decoupling did not include a revenue cap on the base year amount. It did not include any adjustments to total base distribution revenue for weather or economic downturn.

H.B. 6 did, however, include some curious eligibility constraints to the decoupling provision that apply to the efficiency program lost revenue recovery, requiring that this revenue recovery be “recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018.” As it happens, only FirstEnergy has implemented a decoupling mechanism and is receiving decoupling revenues based on the H.B. 6 provision. AEP Ohio, Duke, and DP&L have not successfully implemented an H.B. 6 decoupling mechanism (although AEP Ohio has tried).

These decoupling costs will be charged to the residential and General Service Secondary rate classes. General Service Secondary includes many manufacturers.

Impacts to Ratepayers from Decoupled Base Distribution

Based on its 2018 base revenue, , FirstEnergy can continue to collect approximately \$978 million for base distribution revenue for each year through 2024 as a result of the H.B. 6 decoupling mechanism, no matter its electricity sales (demand), its actual costs, or Ohio’s economic environment. FirstEnergy submitted supporting paperwork at the PUCO documenting these base distribution costs for 2018. We total these costs in Table 1.

³ Ohio Revised Code, Section 4928.471 (B)

⁴ <https://www.utilitydive.com/news/firstenergy-nears-proposal-to-decouple-ohio-utility-revenues-electricity-c/566610/>



	Residential	General Service Secondary	Total (with tax)
Ohio Edison	\$ 353,312,299	\$ 122,247,953	\$ 476,799,932
CEI	\$ 200,556,856	\$ 143,676,179	\$ 345,130,374
Toledo Edison	\$ 106,504,639	\$ 48,763,226	\$ 155,672,614
Total	\$ 660,373,794	\$ 314,687,358	\$ 977,602,920

Table 1. Summary of FirstEnergy 2018 Base Distribution Cost Recovery⁵

Decoupling essentially allows the utility to recover the difference between its 2018 base distribution revenue (approximately \$978 million) and what is collected in a future calendar year through a rider, guaranteeing it a stable revenue of approximately \$978 million. FirstEnergy duplicitously named its decoupling rider “Rider CSR” which stands for “Conservation Support Rider.”

FirstEnergy expects 2018 to be the highest distribution energy delivery year in a decade, which is shown in Table 2. For example, according to FirstEnergy’s filing, its 2019 base distribution costs were \$956 million, which is approximately \$22 million less than in 2018. FirstEnergy will be able to collect the difference (approximately \$22 million) in 2020 because of the H.B. 6 decoupling provision. While the estimates in Table 2 will not perfectly correlate to distribution revenue, we can use it to gauge what future base distribution revenue differences might look like, which are also illustrated. This allows a reasonable estimate of the total cost of the H.B. 6 base distribution decoupling mechanism. H.B. 6’s decoupling provision may apply through 2024, when FirstEnergy’s current distribution rate freeze ends and FirstEnergy is authorized to file its next distribution rate case, which would reset its base distribution revenue requirements. However, note that due to a recent PUCO decision, FirstEnergy is no longer required to file its next base distribution rate case in 2024;⁶ therefore, the H.B. 6 decoupling mechanism, if favorable to FirstEnergy, could last in perpetuity.

⁵ In the Matter of Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company For Approval of a Decoupling Mechanism, Case No. 19-2080, <http://dis.puc.state.oh.us/TiffToPDF/A1001001A19K21B65741G03457.pdf>

⁶ *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company for an extension of the Distribution Modernization Rider*, Case No. 19-361-EL-RDR, Entry at ¶ 17 (November 21, 2019)



Year	FirstEnergy Ohio Energy Deliveries	Energy Deliveries, Percent off Peak Year	Additional Base Distribution Revenue Resulting from Decoupling
2015	62,351,282	1.6%	
2016	62,966,774	0.7%	
2017	60,973,484	3.8%	
2018	63,392,963	0.0%	
2019	61,094,619	3.6%	\$ 21,916,065
2020	61,263,393	3.4%	\$ 20,306,705
2021	61,725,825	2.6%	\$ 15,897,144
2022	62,030,096	2.1%	\$ 12,995,740
2023	62,110,144	2.0%	\$ 12,232,435
2024	62,324,025	1.7%	\$ 10,192,954
Average			\$ 15,590,174
Total			\$ 93,541,043

Table 2. FirstEnergy’s Recorded and Expected Energy Deliveries in Ohio, 2015-2024^{7,8}

It is important to note that base distribution costs were already established for FirstEnergy based on its own forecast of electricity sales, and system costs, prior to the establishment of the decoupling provision in H.B. 6. In other words, FirstEnergy was already made whole through its base distribution costs and had agreed in a rate case at the PUCO to its distribution rates. A good base distribution rate design should essentially average revenue out over time to match utility costs. Meaning, in some years the utility should collect somewhat higher distribution revenue, and others somewhat lower, due to changes in weather, business activity, etc. By tying revenue collection to its peak distribution revenue year – 2018 – FirstEnergy is thereby setting itself up to over-collect on base distribution revenue for years to come.

FirstEnergy is thus using the decoupling provision for the purpose of creating unearned bottom-line profit to the company.

This is the first way FirstEnergy earns revenue from the H.B. 6 decoupling.

Impact to Ratepayers from Decoupled Energy Efficiency Program Revenue

H.B. 6’s decoupling provision applies to more than just base distribution costs. It also applies to energy efficiency program implementation revenue incurred in 2018. The electric distribution companies collect revenue for energy efficiency program implementation in three ways: the actual program costs (administration, staffing, rebates), profit (called “shared savings” in regulatory proceedings), and lost distribution revenue. H.B. 6 allows a utility implementing a decoupling

⁷ 2020 Electric Long-Term Forecast Report to the Public Utilities Commission of Ohio, Case No. 20-657, <http://dis.puc.state.oh.us/TiffToPDF/A1001001A20D15B63247C02407.pdf>

⁸ We estimated future year costs of base distribution decoupling by prorating 2019’s cost. For example, the cost of decoupling for the 2020 year was calculated as \$21,916,065 x 3.4% / 3.6% = \$20,306,705.



mechanism to also collect revenue associated with implementing R.C. 4928.66 “excluding program costs and shared savings”.⁹ Thus, H.B. 6 allows FirstEnergy to continue to collect, for years to come, the lost revenue associated with implementing energy-efficiency programs that it collected in 2018. In fact, FirstEnergy is doing just this, by including its 2018 energy efficiency program lost distribution revenue cost as part of its decoupling filing at the PUCO. As it happens, FirstEnergy collected nearly \$66.5 million for energy efficiency program lost revenue in 2018, as shown in Table 3.

	Residential	Commercial	Total (with tax)
Ohio Edison	\$ 24,780,874	\$ 4,295,483	\$ 29,152,153
CEI	\$ 19,616,798	\$ 5,129,473	\$ 24,810,779
Toledo Edison	\$ 10,914,024	\$ 1,585,707	\$ 12,532,315
Total	\$ 55,311,696	\$ 11,010,663	\$ 66,495,247

Table 3. Summary of FirstEnergy 2018 Lost Revenue Cost Recovery¹⁰

H.B. 6 effectively allows FirstEnergy to calculate the difference of the \$66,495,247 collected in 2018, and the amount of lost revenue recovered in FirstEnergy’s energy-efficiency rider (called Rider DSE2) in a given year and recover this difference in Rider CSR. In 2019, the difference will be a credit that is applied through Rider CSR to customers in 2020. However, at the end of 2020, the efficiency programs will officially end, and FirstEnergy’s Rider DSE2 will cease. As a result, for the 2021 revenue differential the full \$66.5 million difference would flow into Rider CSR. Table 4 shows how the H.B. 6’s decoupling provision provides an additional \$261 million in revenue to FirstEnergy through 2024 from “the implementation of section 4928.66”.

Year	(A) 2018 Lost Revenue Recovery	(B) Lost Distribution Revenue Recovered in EE Rider (Rider DSE2)	(A - B) Difference in Lost Distribution Revenue Collected in Decoupling Rider (Rider CSR)
2019	\$ 66,495,247	\$ 71,290,905	\$ (4,795,659)
2020	\$ 66,495,247	\$ 66,495,247	\$ -
2021	\$ 66,495,247	\$ -	\$ 66,495,247
2022	\$ 66,495,247	\$ -	\$ 66,495,247
2023	\$ 66,495,247	\$ -	\$ 66,495,247
2024	\$ 66,495,247	\$ -	\$ 66,495,247
Total			\$ 261,185,328

Table 4. Location and Amount of Lost Revenue Cost Recovery¹¹

⁹ . The provision states that base distribution shall be decoupled to base distribution revenue “...and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings... as of the twelve-month period ending on December 31, 2018.” Section 4928.66 of the Revised Code is the section of Ohio law which enabled the electric distribution utilities to operate energy-efficiency programs.

¹⁰ In the Matter of Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company For Approval of a Decoupling Mechanism, Case No. 19-2080, <http://dis.puc.state.oh.us/TiffToPDF/A1001001A19K21B65741G03457.pdf>

¹¹ We estimated FirstEnergy’s 2020 lost revenue recovery in the DSE2 rider as exactly equal to the 2018 amount for



Impacts to Ratepayers - Summary

The total cost of FirstEnergy's decoupling, accounting for base distribution and energy efficiency program implementation lost distribution revenue, is thus about \$355 million in total through 2024.

$\$93,541,043$ (*Base Distribution Decoupling through 2024*) + $\$261,185,328$ (*"implementation of 4928.66" through 2024 costs*) = $\$354,726,371$

There is additional risk to ratepayers. As stated by FirstEnergy's CEO, decoupling makes FirstEnergy "somewhat recession proof." The estimated \$355 million in additional revenue does not account for additional costs of decoupling should FirstEnergy's electricity sales in Ohio decline. While the severity of an economic downturn may have been in doubt when H.B. 6 was passed, COVID-19 has made this scenario a near certainty. As a result, decoupling costs during the pandemic could increase as utility sales decrease.

PUCO Implementation of H.B. 6 – Risk of Millions of Dollars More in Customer Charges Benefitting FirstEnergy

Unfortunately, the tens of millions of dollars per year in decoupling that are collected from customers for FirstEnergy may not end in 2024. H.B. 6's decoupling provision provides an expiration event for the decoupling,

"The decoupling mechanism shall remain in effect until the next time that the electric distribution utility applies for and the commission approves base distribution rates for the utility under section 4909.19 of the Revised Code."¹²

At the time of H.B. 6's passage, FirstEnergy was expected to file a distribution rate case in 2024, for implementation in approximately 2025. However, in an unrelated case ruling in November 2019 the PUCO unilaterally created the possibility for FirstEnergy to extend its distribution rates – and thus also its decoupling – in perpetuity. Specifically, the PUCO ordered that,

"... we find that it is no longer necessary or appropriate for the Companies to be required to file a new distribution rate case at the conclusion of the Companies' current ESP."¹³

Importantly, the PUCO's unilateral ruling did not provide the typical evidentiary hearing to offer supporting or opposing evidence from customers and other stakeholders. While FirstEnergy's Long-

illustrative purposes. The actual lost revenue recovery through DSE2 in 2020 could be lower than normal due to the impact of COVID-19. If so, 2021 would have additional costs in Rider CSR due to a true-up. Thus, the estimates of total cost of lost revenue decoupling we present here are conservative.

Note also that the cost differential from 2019 will be collected in calendar year 2020 as a true-up.

¹² Section 4928.471 (C) of the Ohio Revised Code

¹³ In the Matter of Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company For Approval of a Decoupling Mechanism, Case No. 19-2080, <http://dis.puc.state.oh.us/TiffToPdf/A1001001A19K21B65741G03457.pdf>



Term Load Forecast shows higher electricity demand starting in 2025, this is far from certain. And, any decoupling credit over-collection in base distribution revenue in future years would likely be offset by the continuing \$66.5 million revenue potential from the lost distribution revenue resulting from “implementation of 4928.66”, which would amount to \$398 million from 2025 through 2030.

CARPENTER LIPPS & LELAND LLP

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COLUMBUS, OHIO 43215

MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group

FROM: Kim Bojko, Carpenter Lipps & Leland LLP

DATE: August 12, 2020

SUBJECT: Impact of 2019 FirstEnergy SEET Amendment

In the as-passed version of HB 166,¹ which established the State of Ohio's fiscal year 2020-2021 operating budget, FirstEnergy was successful in including a provision that would allow it to retain "significantly excessive profits" if the three Ohio operating utilities collectively did not significantly excessively earn, instead of requiring customer refunds if one or more of the utilities over earned.

Prior to enactment of the new law, the PUCO applied the significantly excessive earnings test (SEET) on a utility-by-utility basis to annually evaluate whether individual utilities have over earned from their electric security plans (ESPs) pursuant to R.C. 4928.143. If it is determined that a utility has significantly excessive earnings under the SEET, the utility must refund the excess earnings to its customers.

HB 166 amended the PUCO governing statute (R.C. 4928.143) to require the PUCO to consider the total earned return on equity (ROE) of all affiliated distribution utilities operating under a joint ESP when administering the SEET. Under the HB 166 amendment, a utility that is over-earning is able to offset that amount by the earnings of an affiliated distribution utility that is not as profitable. For example, FirstEnergy will be able to shield one of its over-earning distribution utilities by including the ROE of its less profitable affiliated distribution utility in the SEET calculation. As a result, FirstEnergy is able to retain significantly excessive profits that it otherwise would be required to refund to customers.

Learn more about the SEET provision by [reading this memo](#) from the OMA's energy consultant RunnerStone.

¹ The new law became effective October 17, 2019.



MEMORANDUM

Date: August 20, 2020
To: The Ohio Manufacturers' Association
From: John Seryak, PE, and Peter Worley (RunnerStone, LLC)
RE: FirstEnergy's 2019 "Significantly Excessive Profits" Amendment – Preventing Potentially \$50 Million in Customer Refunds from 2017-2019

A 2019 Ohio law change, House Bill (HB) 166, created favorable new conditions for FirstEnergy to retain "significantly excessive profits" and avoid customer refunds. A separate legal analysis has been provided by OMA energy counsel Kim Bojko on the issue¹. As stated in that memo, the law change allows FirstEnergy to "shield one of its over earning distribution utilities" from customer refunds.

How much will this shielding cost manufacturers and other customers? Unfortunately, the law also is being used to obfuscate the financial earnings of FirstEnergy's distribution utilities, and we do not yet know the exact current or future cost of this new provision. However, in this memo we show how this law change could prevent tens of millions of dollars in customer refunds, and that this could be exacerbated by the so-called "decoupling mechanism" included in HB 6.

The Significant Excessive Earnings Test (SEET) Law Change

FirstEnergy owns three electric distribution operating companies in Ohio: Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison. It is important to remember that these are three separate public utilities regulated by the Public Utilities Commission of Ohio (PUCO), albeit owned by the same parent corporation. Consider in contrast that AEP formerly merged its two distribution operating companies, Columbus Southern Power and Ohio Power, into one regulated public utility, AEP Ohio. FirstEnergy has not taken this corporate merger step with its Ohio distribution companies. There are important legal, tax, and other financial implications of this difference. When evaluating the policy and financial impacts of the SEET law change, manufacturers and policymakers should consider that FirstEnergy has again modified Ohio law to receive a unique benefit that its peers do not. The SEET law change is part of a clear trend: FirstEnergy regularly seeks to modify Ohio's laws for its own benefit to avoid prior laws enacted to protect customers.

Cost Impact of Significant Excessive Earnings Test (SEET) Law Change

Distribution public utilities in Ohio do not earn a profit in competitive markets. Instead, they receive a government regulated profit via a return on equity (ROE) that is administered by state regulators

¹ Impact of 2019 FirstEnergy SEET Amendment, Memorandum to the Ohio Manufacturers' Association Energy Group, <http://www.ohiomfg.com/wp-content/uploads/OMA-Memo-2019-FE-SEET-Amendment-CLL-FINAL-August-2020.pdf>



and paid for by customers. In Ohio, the PUCO determines the ROE that the regulated public utilities receive. Ohio law allows regulated electric distribution public utilities operating under an electric security plan to retain profit earnings, even if it is “excessive”. It is not until the profit is deemed to be “significantly excessive” that the PUCO can require the electric utility to issue a refund to customers. While typical electric distribution utility ROEs are around 9.7%,² the PUCO determined that 200 basis points above the mean of the comparable utility risk group recognized by the PUCO should establish a safe harbor ROE.³ Utilizing this standard, in a recent PUCO proceeding, the PUCO established FirstEnergy’s SEET threshold ROE at 17.22%.⁴ Given the high safe harbor calculation, the SEET threshold is rarely triggered in Ohio. For example, Table 1 shows the 2017 common equity, earnings, and ROE for each of FirstEnergy’s distribution corporations.

Corporation	Common Equity	Earnings	ROE
Ohio Edison	\$ 1,033,641,759	\$ 126,320,235	12.2%
Cleveland Electric Illuminating	\$ 1,463,357,709	\$ 58,142,960	4.0%
Toledo Edison	\$ 529,304,805	\$ 34,110,490	6.4%
FirstEnergy Owned Corporation Total	\$ 3,026,304,273	\$ 218,573,685	7.2%

Table 1. 2017 Common Equity, Earnings, ROE for FirstEnergy Owned Ohio Electric Distribution Utilities⁵

At first blush, it appears that all of FirstEnergy’s separate utilities are well under the SEET threshold of 17.22%. However, if an appeal of the PUCO’s decision is successful, an above-market charge that FirstEnergy’s utilities received in 2017 called the distribution modernization rider (DMR) will be added to the earnings shown in Table 1. If these DMR revenues are included, Ohio Edison’s earnings are estimated to result in a 17.39% ROE, which is above the SEET threshold, and would thus trigger a refund of about \$1.8 million to its ratepayers⁶.

The DMR earnings were not actually spent on distribution modernization. Instead, it was a straight cash infusion to these utilities. The DMR was recently ruled an unlawful charge by the Supreme Court of Ohio. Unfortunately, Ohio law also prevents customer refunds of unlawful charges. As a result, customers only hope of receiving any of their money back is through the refunds allowed by

² https://www.spglobal.com/marketintelligence/en/news-insights/trending/aln1bkurux_2hqjihmxeg

³ *In re Significantly Excessive Earnings Test*, Case No. 09-786-EL-UNC, Finding and Order (June 30, 2010).

⁴ *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plans of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 18-857-EL-UNC, Opinion and Order at ¶ 29 (March 20, 2019).

⁵ *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2017 Under the Electric Security Plans of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 18-857-EL-UNC, Direct Testimony of Jason S. Petrik at 8-9 (May 15, 2018).

⁶ $(\$126,320,235 \text{ earnings} + \$58,479,765 \text{ DMR earnings}) - (0.1722 \text{ SEET} \times \$1,062,702,154 \text{ modified common equity}) = \$1,841,277 \text{ refund}$

See testimony by the Office of the Ohio Consumers’ Counsel

<http://dis.puc.state.oh.us/TiffToPDF/A1001001A18J16B54335H02196.pdf> (Page 14 of pdf)



SEET. As noted above, the question of whether the DMR should be considered as earnings is currently before the Supreme Court of Ohio.⁷

The stakes increase when evaluating the FirstEnergy companies' earnings in 2018, shown in Table 2. Ohio Edison's earnings and ROE increased significantly in 2018. Thus, the DMR collections by Ohio Edison in 2018 of about \$58.5 million push Ohio Edison further across the SEET threshold than in 2017. Ohio Edison would need to be required to refund \$18.1 million to its customers for 2018 if the DMR is determined to be earnings for SEET calculation purposes.⁸

Corporation	Common Equity	Earnings	ROE
Ohio Edison	\$ 1,066,489,590	\$ 148,242,053	13.9%
Cleveland Electric Illuminating	\$ 1,486,548,741	\$ 86,219,827	5.8%
Toledo Edison	\$ 477,684,058	\$ 32,960,200	6.9%
FirstEnergy Owned Corporation Total	\$ 3,038,887,273	\$ 267,422,080	8.8%

Table 2. 2018 Common Equity, Earnings, ROE for FirstEnergy Owned Ohio Electric Distribution Utilities⁹

The stakes in 2019 increase yet again. Table 3 shows FirstEnergy's earning information made available by FirstEnergy in its 2019 SEET application on an aggregate basis. As one can see, we no longer can evaluate Ohio Edison's earnings. This reduction in transparency is a direct result of the SEET law change. FirstEnergy has used the SEET law change to avoid customer refunds and also to obfuscate what Ohio Edison's earnings are, so that interested parties, regulators, and policymakers cannot determine how much excessive profit they are keeping. However, we can see that collective earnings have increased significantly again, as has the aggregate ROE.

Corporation	Common Equity	Earnings	ROE
FirstEnergy Owned Corporation Total	\$ 2,805,618,220	\$ 305,812,386	10.9%

Table 3. 2019 Aggregate Common Equity, Earnings, ROE for FirstEnergy Owned Ohio Electric Distribution Utilities¹⁰

Absent transparent data on what the FirstEnergy distribution utilities separate earnings were, we will have to make an educated estimate of what customer refunds should be in 2019. Table 4 shows this educated estimate, assuming the increase in earnings is evenly distributed across the three corporate entities. In this scenario, Ohio Edison has further increased earnings and ROE compared to previous years. Thus, the DMR collections by Ohio Edison in 2019 push them further across the

⁷ Ohio Supreme Court Case 2019-0961 <http://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2019/0961>

⁸ (\$148,242,053 earnings + \$58,518,353 DMR earnings) – (0.1722 SEET x \$1,095,549,985 modified common equity) = \$18,106,699 refund; We adjusted common equity to account for DMR revenue per method in OCC's testimony referenced earlier

⁹ *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2018 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 19-1338-EL-UNC, Direct Testimony of Tracy M. Ashton at 7 (July 15, 2019).

¹⁰ *In the Matter of the Determination of the Existence of Significantly Excessive Earnings for 2019 Under the Electric Security Plan of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*. Direct Testimony of Tracy M. Ashton at 7 (May 15, 2020).



SEET threshold. Its DMR collections and in 2019 would likely do this, amounting to \$29.2 million for Ohio Edison before the Supreme Court of Ohio halted its unlawful collection. A decoupling provision included in H.B. 6 will result in an additional \$4.7 million in distribution revenue for Ohio Edison from 2019¹¹. Assuming a comparable SEET threshold is established to that established in the 2017 case, this would result in \$30 million in customer refunds, now lost to customers because of H.B. 166.¹²

Corporation	Common Equity	Earnings	ROE
Ohio Edison	\$ 1,066,489,590	\$ 169,523,234	15.9%
Cleveland Electric Illuminating	\$ 1,486,548,741	\$ 98,597,285	6.6%
Toledo Edison	\$ 477,684,058	\$ 37,691,867	7.9%
FirstEnergy Owned Corporation Total	\$ 2,805,618,220	\$ 305,812,386	10.9%

Table 4. Estimates - 2019 Common Equity, Earnings, ROE for FirstEnergy Owned Ohio Electric Distribution Utilities

Therefore, considering the above assumptions, the total refund that will be lost to Ohio Edison customers from 2017-2019 due to the enactment of the HB 166 change in law is about \$50 million.

Year	Potential Ohio Edison Refund (Millions)
2017	\$ 1.8
2018	\$ 18.1
2019	\$ 30.0
Total	\$ 49.9

Table 5. Potential Customer Refunds Lost for Ohio Edison Customers

There is risk of additional losses of customer refunds under the new SEET law. The decoupling provision of H.B. 6 will result in higher than normal base distribution earnings for FirstEnergy's distribution utilities for years to come. Additionally, the common equity of the distribution utilities could decrease in future years. New costs and riders, such as grid modernization riders, could increase earnings for the utilities. These are all ways in which FirstEnergy's distribution utilities could achieve significantly excessive earnings and exceed a SEET threshold, and would otherwise be required to issue customer refunds were it not for the recent law change in HB 166.

¹¹ In the Matter of Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company For Approval of a Decoupling Mechanism, Case No. 19-2080, <http://dis.puc.state.oh.us/TiffToPDF/A1001001A19K21B65741G03457.pdf>. It is not clear how the decoupling revenue collection for prior years will be handled with earnings accounting, if it will be attributed to the 2019 year in which it is based, or the 2020 year in which it is collected. Here we assume that decoupling revenue for 2019 will be accounted for the 2019 fiscal year.

¹² (\$169,523,234 earnings + \$29,200,000 DMR earnings + \$4,704,328 decoupling earnings) – (0.1722 SEET x \$1,004,229,203 modified common equity) = \$30,499,293 refund; We adjusted common equity to account for DMR revenue per method in OCC's testimony referenced earlier, and also new decoupling revenue



SEET Law Change – Targeting, Timing, and Transparency Issues

Manufacturers and policymakers should carefully consider several other controversial issues with the SEET law change. First, this law change was specifically targeted to benefit FirstEnergy, at the expense of its customers. No other utility benefits from this law change. There is no policy goal advanced by this law change. The SEET law change does not improve electric service, does not lower customers' costs, does not save or create jobs, does not improve reliability, and does not reduce carbon emissions. The SEET law change allows FirstEnergy to keep significantly excessive earnings for their own shareholders.

Second, transparency issues abound with the SEET law change. This law change creates significant costs for customers, but FirstEnergy is not providing any supporting, transparent reasoning for why it needs this money, or how much money it stands to gain. Moreover, it is now considerably more difficult for FirstEnergy to be held accountable at the PUCO, as its three electric distribution operating utilities, separate corporate entities, are not disclosing their individual earnings.

Third, the timing of the SEET law change is conspicuous. The SEET law change was included in HB 166, which was the budget bill for Ohio's 2020-2021 fiscal year. This bill passed in the summer of 2019, approximately the same time as the controversial HB 6 was passed. It would seem that the SEET law change, being a utility-specific law change, would have been included in HB 6, which was a major rework of Ohio's electricity law, but, instead, it was included in the state budget bill. If HB 6 had included the SEET law change for FirstEnergy's benefit, HB 6 would have been demonstrated to be even more costly to customers.

Lastly, the SEET threshold determined by the PUCO of 17.22% is concerningly high. Our refund estimates use the PUCO selected SEET value. In contrast, the Office of the Ohio's Consumers' Council provides arguments for a threshold of 14.91%.¹³ Using the OCC suggested SEET threshold would have resulted in customer refunds of \$135 million.

¹³ <http://dis.puc.state.oh.us/TiffToPDF/A1001001A18J16B54335H02196.pdf> (Page 7 of pdf)

FirstEnergy had big stake in tainted nuclear plant bailout

By MARK GILLISPIE and JOHN SEEWER

August 27, 2020



CLEVELAND (AP) — FirstEnergy Corp. was once blamed for its part in triggering North America's largest blackout nearly 20 years ago. Now, the multistate power company is again facing intense scrutiny — this time for its role in an alleged [\\$60 million bribery scheme that has ensnared](#) one of Ohio's most powerful politicians.

While FirstEnergy and its executives have denied wrongdoing and have not been criminally charged, [federal investigators say the company secretly funneled](#) millions to secure a \$1 billion legislative bailout for two unprofitable Ohio nuclear plants then operated by an independently controlled subsidiary called FirstEnergy Solutions.

Officials from the Akron-based corporation, including CEO Chuck Jones, have long insisted FirstEnergy Corp. had no financial stake in rescuing the plants because they were operated by FirstEnergy Solutions. Yet nearly all of the money used to fund the scheme, authorities said, came from the corporation itself.

Associated Press

Critics say the bailout bill, known as HB6, helped smooth the way for FirstEnergy to officially shift ownership of the nuclear plants and two coal-burning power plants to its creditors in federal bankruptcy court in February. Shedding the plants allowed the corporation to focus on its profitable business of powering 6 million customers in Ohio and other states.

Ashley Brown, executive director of the Harvard Electricity Policy Group at Harvard University's John F. Kennedy School of Government and a member of the Public Utilities Commission of Ohio from 1983 to 1993, said the bailout legislation clearly benefited FirstEnergy Corp.

"I think there's no question that FirstEnergy was acting in its own self-interest," Brown said. "Ordinarily, there's nothing particularly wrong with that. But HB6 skewed everything."

'COMPANY A'

After its bailout-driven success, FirstEnergy's fortunes took an unwelcome turn July 21.

That's when federal authorities released a criminal complaint detailing how "Company A" — a clear reference to FirstEnergy — spent \$60 million to get [a well-known Republican named Larry Householder](#) selected as Ohio's House speaker, finance his bailout passage efforts and prevent Ohioans from having their say about the legislation at the polls.

FirstEnergy's stock price plummeted nearly 35% within two days and has yet to rebound. Independent board members have called for an internal investigation and shareholders have filed at least four potential class-action lawsuits alleging FirstEnergy's executives committed fraud and concealed an "illicit campaign" to secure the bailout.

"The company's most senior executives, including its CEO defendant Jones, were directly involved in and oversaw these efforts, placing the company and its shareholders at extreme risk of legal, reputational and financial harm," one lawsuit said.

FirstEnergy said in a statement this week that it backed the bailout because the corporation has a stake in Ohio's economic success, the stability of its electric grid, and maintaining reliable energy sources.

The plan to separate from the nuclear plants and complete the bankruptcy process did not depend on securing the bailout, the company said.

Associated Press

U.S. Attorney David DeVillers was asked about FirstEnergy during a July 21 news conference in Columbus.

“Individuals that work for Company A and Company A in and of itself, we’re going to continue to investigate this, and we’re going to investigate it wherever it leads and whoever it is and whoever they work for,” DeVillers responded.

The corporation funneled \$38 million [to a dark money group](#) to finance a dirty tricks campaign that prevented bailout opponents from gathering enough signatures to place a referendum on the ballot, federal authorities alleged.

FirstEnergy also benefited from a last-minute change to the bailout legislation that essentially allowed the utility to charge retail customers more for lost revenue, a sweetener that Jones said made roughly one-third of the company’s business “recession proof.”

While the utility said the add-on would stabilize rates for customers, an analysis released by the Ohio Manufacturers Association estimated FirstEnergy could reap \$355 million in unearned revenue through 2024.

Federal investigators said the add-on “likely came as a result of the successful influence campaign” waged by Householder [and his four associates](#), all of whom were indicted on federal racketeering charges last month. The associates have pleaded not guilty, while Householder [has been given more time](#) to find a new attorney.

‘CORNERED JUNKYARD DOG’

FirstEnergy began looking six years ago for ways to [subsidize the Perry and Davis-Besse nuclear plants](#) in northern Ohio as they struggled to compete with cheaper natural gas power generation.

The company’s top priority was to save the plants, Jones told investors in 2017. That same year, one state lawmaker backing FirstEnergy’s attempts to get financial help told energy conference attendees that the company was in “substantial financial trouble.”

The company created the mess by taking on too much debt when it invested in coal and nuclear plants, said Ohio State University economist Ned Hill, a vocal critic of the bailout.

FirstEnergy acted “like a cornered junkyard dog” to keep the plants from shuttering, he said.

Associated Press

But with state and federal officials reluctant to help, the FirstEnergy Solutions subsidiary announced in March 2018 that it would close the plants in 2021. The subsidiary filed for bankruptcy three days later, saying it had \$7.2 billion in assets and \$3.1 billion in debt as of Dec. 31, 2016.

By that time, according to federal authorities, the bribery scheme had already been set in motion.

Two months after Householder flew on a company plane to President Donald Trump's inauguration in January 2017, FirstEnergy wired \$250,000 into the bank account of Generation Now — a dark money group created to promote “social welfare” under a provision of federal tax law that shields its funding sources or spending. Authorities say Householder controlled Generation Now as part of the alleged scheme.

Of the \$60 million eventually funneled by FirstEnergy to Generation Now through the end of 2019, \$42 million came from an entity called FirstEnergy Services that is overseen by Jones and his corporate team, the criminal complaint said.

HARDLY STRANGERS

Jones and Householder themselves were hardly strangers, the complaint said, with the two men having 84 telephone contacts between February 2017 and July 2019 — many at key points during the alleged scheme, including 30 calls while the bailout bill was pending.

Jonathan Entin, a law professor emeritus at Case Western Reserve University in Cleveland, said there is no way for FirstEnergy “to spin this.”

“They cannot credibly say they’re completely innocent bystanders even if they did not break the law,” Entin said. “It’s really hard to believe they were completely ignorant of what was happening.”

During a conference call with investors late last month, Jones said he was confident that he and the company did nothing wrong.

Two months before Householder unveiled his bailout plan in early 2019, Jones sent a letter to state lawmakers emphasizing that his company and FirstEnergy Solutions were separate. His letter also said his corporation “would not financially benefit from any legislation” helping the plants he asserted were vital to Ohio.

Associated Press

The bailout legislation became law last October, the day after the anti-bailout referendum effort failed. By February of this year, FirstEnergy appeared to have gotten what it wanted: FirstEnergy Solutions [had emerged from bankruptcy](#) as a new privately held company called Energy Harbor. FirstEnergy Corp. was out of the power generation business and was now a regulated electric transmission company, feeding power to 6 million customers in six states.

And it was good, at least initially, for FirstEnergy's bottom line, its shareholders, and the FirstEnergy leadership team.

The company, in a Securities and Exchange Commission filing early this year, said Jones' total compensation in 2019 was nearly \$21 million, including a \$1.6 million performance-based salary bonus for that year and \$18 million in performance-based stock units for a three-year period ending in 2019.

Now, 17 summers after a tree branch touched a high-voltage line and a computer malfunction at FirstEnergy [unraveled into a massive blackout](#) in the U.S. northeast and Canada, the company again finds itself on the defensive.

"If it turns out what FirstEnergy went over the line, the question is who will be held responsible," Entin said. "Will it be individuals? Or will it be the company?"

Seewer reported from Toledo, Ohio.

FirstEnergy, caught up in FBI investigation, used its 'political might' to pressure the Ohio Statehouse

Updated Aug 27, 2020; Posted Aug 27, 2020



Then-Ohio House member Steve Arndt speaks with a constituent. He retired last year. [Sandusky Register photo, used with permission.]

By [John Caniglia, cleveland.com](#)

CLEVELAND, Ohio – Steve Arndt says he remembers the conversation clearly: A lobbyist for FirstEnergy Corp. told Arndt, then a member of the Ohio House, that he needed to sponsor a bill to help a FirstEnergy subsidiary.

The lobbyist, Arndt said, gave him an ultimatum: Put your name on the bill or your political future is over.

Arndt refused.

Later, he suffered through a negative campaign, fueled by what he believes was dark money, that hit his district of Ottawa and Erie counties with fliers and radio ads, attacking his record as a Republican legislator.

“They wield a very heavy hand,” Arndt said of Akron-based FirstEnergy and its affiliates. “They have a lot of political might. [Former House Speaker] Larry Householder and FirstEnergy are of the same ilk. They’ll do whatever they have to to get the job done.”

Interviews and a review of hundreds of pages of court documents, as well as campaign finance reports, show the company and its affiliates have used an army of lobbyists, lawyers and consultants, as well as political contributions, to

pressure state lawmakers to get what they want when they want it.

The companies have used a rough-and-tumble political style to gain legislators’ support through fear or favor, according to interviews and court records. The tactics have sought to mold even the most independent lawmakers into compliant followers.

The strategy became clear last month. The racketeering indictment of Householder and four associates linked to House Bill 6 underscored the political influence of FirstEnergy and its former subsidiary, FirstEnergy Solutions.

FirstEnergy began laying the groundwork for the \$1.3 billion bailout bill when FirstEnergy Solutions owned the Davis-Besse and Perry nuclear plants. FirstEnergy Solutions filed for bankruptcy in 2018, and the plants are now owned by a business called Energy Harbor.

An FBI affidavit said FirstEnergy and its affiliates funneled \$60 million in bribes to a nonprofit that Householder controlled. The money went to pass the bill, aid legislators who supported Householder for speaker and fight a ballot initiative. Authorities called it the largest pay-to-play scheme in Ohio.

And it was spearheaded by a company with \$42 billion in assets that has spent tens of millions of dollars pushing its agenda, documents show.

“When there is an unlimited amount of money, it is really hard to stop them,” said Heather Taylor-Miesle, the executive director of the Ohio Environmental Council.

Former legislators called the reach of FirstEnergy and its affiliates far and powerful.

Those candidates who supported the company’s goals and the legislators pushing them received political contributions and support for future legislation, according to interviews, campaign finance reports and court records.

Those who did not face the possibility of a negative campaign aimed at them and the prospect of becoming a political pariah, the records and interviews show.

"If you didn't support everything that FirstEnergy wanted, you knew that your opponent in your next election was going to be flush with money," said Chris Redfern, a former chairman of the Ohio Democratic Party who served in the Ohio House for 12 years, his last term ending in 2014.

"You ran that risk," said Redfern, who represented Oak Harbor, where the Davis-Besse nuclear plant is located. "[The company and its subsidiaries] had utter disdain for honest, ethical public policy. They're bullies."

FirstEnergy and its affiliates have not been charged. FirstEnergy has said it will cooperate with the investigation. A spokeswoman said, "Ethical behavior and upholding the highest standards of conduct are foundational values for the entire FirstEnergy family."

Others aren't so sure, based on the racketeering allegations.

"This is as hardball as it gets; the scale of this is extraordinary," said Ashley Brown, a former member of the Public Utilities Commission of Ohio from 1983 to 1993 and now the executive director of the Harvard Electricity Policy Group at Harvard University's John F. Kennedy School of Government.



Former Ohio House Speaker Larry Householder. [The Ohio House of Representatives]

'No one cares about your opinion'

Those who watched the company and its subsidiaries for years said they have been a powerful political force since FirstEnergy formed in 1997, through the merger of Ohio Edison Co. and Centerior Energy Corp.

That appeared especially clear more than 20 years later, when Householder texted a member of the House and urged him to vote for House Bill 6 in May 2019, according to the FBI affidavit.

When the unidentified member refused, Householder fired back: "I just want you to remember – when I needed you – you weren't there, twice," the affidavit said.

Later, one of Householder's allies, Neil Clark, contacted the House member, who tried to explain why he refused to vote for the issue.

"No one cares about your opinion," Clark told the representative, according to the affidavit.

Along with Householder, Clark, political aide Jeff Longstreth and lobbyists Juan Cespedes and Matt Borges have been charged with racketeering in the case.

Others said the pressure from Householder and the company were well-known, including the fear of being "primaried," a term longtime observers said happens when a challenger is recruited to run against an incumbent in an upcoming primary.

"We have heard that over and over," said Taylor-Miesle, of the Ohio Environmental Council. "[Legislators] were not only scared of being primaried, but they were scared that there would be unlimited amounts of money that would be used against them."

Take Dave Greenspan, a Republican state representative from Westlake who opposed Householder's run to become speaker of the House and legislation for FirstEnergy.

In 2018, he faced a primary challenge from political novice Monique Boyd, whom he defeated by taking nearly 90 percent of the vote. Some of Boyd's top campaign contributors were Westlake businessman Tony George and his family, who gave her \$17,850 for the race, campaign finance reports show.

[George has long supported FirstEnergy](#), and he and his family gave nearly \$120,000 in contributions to Householder's campaign in the past four years, records show. Greenspan declined to comment. Boyd, an attorney, said no one approached her to run for

the office, adding that it was something she had always been interested in.

In Ohio, the act of being “primaried” has been infrequent. Researchers and former legislators said just the fear of it is a strong motivator for lawmakers.

“The mere threat of being primaried makes legislators think twice,” said Thomas Sutton, a professor of political science at Baldwin Wallace University and the director of its Community Research Institute that conducts polling.

“If you are a candidate who could face a challenger who has the backing of a major corporation, it is something that makes you stop and think.”

‘Frightened into submission’

Christina Hagan, a Republican who served in the Ohio House from 2011 to 2018 and worked on the House’s Public Utilities Committee, said fear among lawmakers was common.

“We can’t have legislators who are frightened into submission,” Hagan said.

“The connotation was always, ‘If you go along with us, we can be very helpful.’ But that’s not how I was raised.”

In the FBI affidavit, agent Blane Wetzel cited how the company and its affiliates sought “a legislative solution” for the two nuclear plants.

The affidavit quoted an unidentified top company official who said in a 2017 conference call over earnings: “We have had meaningful dialogue with our fellow utilities and with legislators on solutions that can help ensure Ohio’s future energy security.”

The discussions came with a price.

In March 2018, FirstEnergy Solutions filed for bankruptcy. Court records and published reports show it retained the national firm of Akin Gump Strauss Hauer and Feld for lobbying and legal services.

The firm billed more than \$67 million in fees and expenses in the past two years. That includes \$2.8 million for state legislative services, according to bankruptcy court records.

Those fees went toward work on House Bill 6, as the firm “participated extensively in discussions on legislative and policy solutions, including regular strategy and update calls,” records submitted by the firm show.

Those amounts are on top of more than \$1.2 million FirstEnergy-related donors doled out in campaign contributions to state officeholders since 2015, records show.

The push for House Bill 178

Arndt spent 27 years as an Ottawa County commissioner. He took state office in 2015 with the hope of pushing forward-thinking energy policies.

After Arndt arrived, one of the first legislative attempts to subsidize the ailing nuclear plants came up in about 2016, when lawmakers began discussing a plan that would become House Bill 178. The bill would have added fees onto electricity customers’ bills to give the power plants about \$300 million a year, according to the Ohio Legislative Service Commission.

Arndt met with officials from FirstEnergy, who wanted to know if he would be interested in sponsoring the bill. He said he would be glad to work with the company officials on drafting something. Later, without his input, they presented him with a proposed copy of the bill, he said. Arndt balked.

He said company officials were not pleased when he rejected the idea, especially because he represented the district where Davis-Besse is located, Oak Harbor. He said he had long supported the plant and its workers, but he feared the proposed bill would violate interstate commerce laws. He also worried that the money raised from the plan would not go specifically for the plants.

He said a company lobbyist, whom he would not identify, told him to support the bill or his political career would be over.

“His name and face will always be remembered,” he said.

Arndt said he told then-House Speaker Cliff Rosenberger and others about the conversation. Arndt said he did not think the issue would go

anywhere because he lacked a tape recording of the conversation.

The lobbyist later met with Arndt and said the legislator misunderstood the conversation, Arndt said.

“How do you misunderstand that, that your political future will be over?” Arndt said.

House Bill 178 never made it out of committee. And Arndt was not the only legislator against the bill. Hagan also refused to go along with it.

“It was a bad deal for Ohioans,” she said.

In May 2018, Hagan ran for Congress against Anthony Gonzalez in the Republican primary. She lost.

[The Center for Public Integrity reported](#) that a group called the Conservative Leadership Alliance fired a series of attack ads at her, based on what the report called her lack of support of House Bill 178. The treasurer of the group had been a longtime FirstEnergy lobbyist, according to the Center for Public Integrity report. Gonzalez went on to defeat Democrat Susan Palmer in the general election in 2018.

Hagan left the House before House Bill 6 was voted on. Arndt said he cast a vote in favor of it, despite the issues with the lobbyist.

He said he pushed Householder to use renewable energy credits to pay for advanced energy programs in the bill. Householder took the idea and made other changes. But Arndt still voted for it when the House passed its version in May 2019.

He retired before the final vote on the bill, after it had been amended in the Senate and later returned to the House.

“There are no perfect bills,” he said.

Asked about the issues brought up by Arndt and others, a spokeswoman for FirstEnergy said in an email: “FirstEnergy has a long history of engaging ethically and appropriately. These high

standards have fostered the trust of our employees, customers and the financial community.”

Can the system change?

Since the indictment, FirstEnergy and its affiliates have faced intense scrutiny, both in and out of courtrooms. FirstEnergy’s stock plummeted soon after the news of the charges.

On July 20, the day before the FBI arrested Householder, the price was at \$41.26 a share. A month later, it hovered at less than \$30 a share.

Also, a shareholder sued the company’s board of directors earlier this month in federal court, accusing the board of failing to provide the necessary oversight.

And now, many state lawmakers are looking to repeal House Bill 6.

Many question what will happen to a company and its affiliates, which were once powerful in the Statehouse.

“The core of FirstEnergy’s business strategy is to use political means to get its earnings and remove its competitors,” said Ned Hill, a professor of economic development at Ohio State University and a critic of House Bill 6.

“It’s crony capitalism. That’s when a business has friends in government who do it favors in exchange for cash payments and political contributions. The only disinfectant that stops crony capitalism is sunshine, that and a good prosecutor.”

Read more on the federal racketeering investigation:

[Ohio House Republicans, Attorney General Dave Yost, at odds over how to remove Larry Householder as Ohio House speaker](#)
[Former Ohio House candidate reveals he was FBI informant](#)
[Who is Team Householder? The candidates Larry Householder recruited to help him become Ohio House Speaker](#)

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House Select Committee on Energy Policy and Oversight



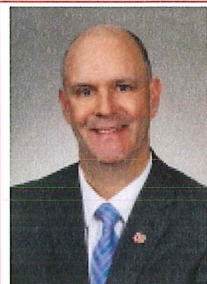
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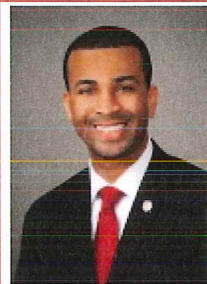
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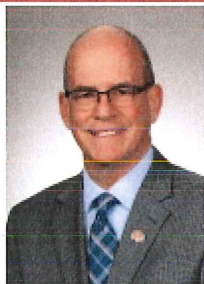
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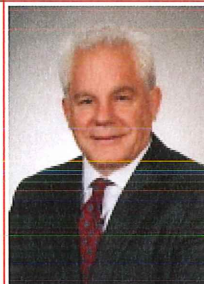
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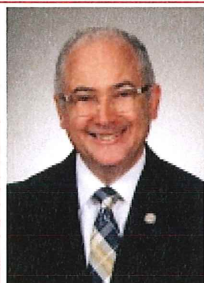
Michael J. O'Brien
(D)



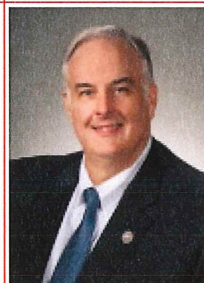
Phil Plummer (R)



Mark J. Romanchuk
(R)



Kent Smith (D)



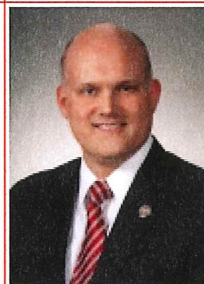
Dick Stein (R)



Jason Stephens (R)



Casey Weinstein
(D)



Scott Wiggam (R)



MEMORANDUM

Date: June 11, 2020

To: The Ohio Manufacturers' Association

From: John Seryak, PE and Peter Worley (RunnerStone, LLC)

RE: Overview of HB 246: Significant Changes to Electric Rate Making, PUCO Accountability, and Customer Rights

On May 25th, 2020, substitute House Bill 246 (HB 246) was introduced into the Public Utilities Committee of the Ohio House of Representatives. Sponsors of the bill claim it is to “reform and modernize” the Public Utilities Commission of Ohio (PUCO) and the Office of the Ohio Consumers’ Counsel (OCC). It does nothing of the sort. Instead, the bill makes perilous changes to the electric ratemaking process, limits customers’ and intervenors’ rights to participate in cases, increases fees paid by competitive suppliers, creates a blank check for utilities, increases the Ohio Power Siting Board’s (OPSB) regulatory oversight and authority, and provides the PUCO with unfettered discretion. The bill is opaque and no clear reasoning exists for why its proposed changes are needed or how important modifications to existing law would work. HB 246 creates unreasonable risk to manufacturers in the following ways:

- Limits intervention rights of manufacturers and other interest groups by providing the PUCO with discretionary authority to consolidate litigation efforts of groups with “common interests.”
- Increases the authority of the PUCO. HB 246 eliminates the PUCO’s requirement to eliminate two regulatory restrictions for every new restriction created.
- Creates a blank check for monopoly utilities by authorizing a new type of ratemaking mechanism, the so-called “alternative distribution rate plan.” The costs of this type of plan are unknown, unjustified, and uncapped. There is no detail provided on what such a plan is, how it works, or why it is needed and leaves the approval of such plan to the discretion of the PUCO with only minimal limitations. It also leaves the necessity of a hearing to the PUCO’s discretion, even for applications that are for increases in rates.
- Offers monopoly utilities a path to infringe on competitive markets. An alternative distribution rate plan is required to be non-discriminatory, which could allow the monopoly utility to offer competitive products to shopping customers. This provision becomes dangerous if the PUCO defines new and emerging technologies as a “public utility service,” which it is contemplating right now with electric vehicle (EV) charging stations. As a result, HB 246 could seriously constrain an emerging, competitive market driven by private investment, and instead socialize competitive services and products through the utilities.
- Socializes what was previously private investment for select natural gas pipelines.



- Worsens restrictions on future local renewable energy development, while exempting favored subsidized solar projects from House Bill 6.

Limits on Legal Intervention Rights of Manufacturers

The bill introduces two mechanisms that can limit manufacturers' ability to intervene in ratemaking proceedings. First, the PUCO would now have the authority to consolidate intervention from various groups if the PUCO believes the groups "have sufficiently common interests and it will expedite the proceeding" (Line 276 of bill). The bill provides no criteria for what qualifies as "sufficiently common interests," introducing a risk that the interests of the manufacturers in the Ohio Manufacturers' Associations could be subordinated under interventions from groups with different policy positions at the discretion of the PUCO.

Secondly, with just six sentences, the bill creates an entirely new ratemaking process, the "alternative distribution rate plan" for monopoly electric distribution utilities that can increase manufacturers' charges. The bill does not explain if groups may intervene and contest said plan. Instead, it alludes to intervention as a mere possibility, the plan "may include a hearing at the discretion of the public utilities commission" (Line 1784 of Bill).

Increases the Authority of the PUCO

For reasons unknown, the bill enables the PUCO to be exempted from the recent General Assembly's restriction put in place to minimize the number of regulatory restrictions imposed on businesses by state agencies. State Agencies are required to eliminate two regulatory restrictions for every new one that they create.

Lastly, the bill reduces OCC's authority, scope of participation, and budget. OCC is a party that advocates for residential customer rights and utility accountability. The bill limits OCC's participation to certain cases before the PUCO. It seems to prohibit OCC's participation in FERC, FCC, and OPSB cases. It grants the PUCO the authority to consolidate OCC's involvement with other residential advocates (e.g., municipalities, Ohio Partners for Affordable Energy, etc.). It appears to eliminate OCC's ability to participate in proceedings at the PUCO regarding rulemakings, general public policy cases, and the operations of the PUCO.

Creation of Blank Checks for Monopoly Utilities through "Alternative Distribution Rate Plans"

As mentioned earlier, the bill creates a new ratemaking process, the "alternative distribution rate plan." Furthermore, the bill puts no limits on what the monopoly electric distribution utilities can request in these plans and at what cost. The PUCO must accept their plans if they meet three vague criteria:

1. The utility is in compliance with not offering any undue or unreasonable preference or advantage to any person or is not subjecting any person to any undue or unreasonable prejudice or disadvantage;



2. The utility is currently in substantial compliance with the policy of the state and the alternative distribution rate plan does not take the utility out of substantial compliance with the policy of the state; and
3. The plan is just and reasonable.

What an “alternative distribution rate plan” is and why it is needed is unclear. There are no details explaining or defining the plan. Based on the minimal criteria that the plan must meet, it seems this new type of rate plan would allow a utility to deviate from the policy of the state, since it only needs to meet “substantial compliance” with the policy. If the utility is not wholly in compliance with state policy, in what ways would it be allowed to deviate from the policy? And, how are utility actions to be held accountable under the law if they are given permission by the law to ignore state policy in some cases? Worryingly, HB 264 also eliminates a requirement that the PUCO report to the General Assembly non-competitive electric services that should be available on a competitive basis.

Competition and customer choice are key parts of Ohio’s energy policy.

This bestows monopoly electric utilities a vast space of options to increase rates, all left to the discretion of the PUCO.

Given that the utility is required not to offer any undue or unreasonable preference or advantage to any person or not subject any person to any undue or unreasonable prejudice or disadvantage, it appears that the utility would be required to offer utility services via the “alternative distribution rate plan” to shopping customers at the same price as non-shopping customers, as to be non-discriminatory. This could include competitive services, such as efficiency services, load management, behind-the-meter services.

Socialization of Investment in Select Natural Gas Pipelines Offers Monopoly Natural Gas Utilities a Path to Infringe on Competitive Markets

The bill creates a new government program: “the natural gas supply access investment program” for “facilitating investment... in meeting natural gas supply needs... of areas of this state in which there is ... insufficient natural gas supply access to meet those needs” (Line 119 of bill). The director of the Ohio public works commission would authorize grants and loans from this program, without limits or minimum standards. The bill provides no criteria on what qualifies as “natural gas supply needs” nor “insufficient natural gas supply access.” The program does not need to perform a cost benefit analysis. The program does not need to compare natural gas investment cost-benefits to alternative energy solutions. This enables the PUCO to decide the solution instead of the market.

Worsening Restrictions on Future Local Renewable Energy Development

By increasing the authority of the OPSB, and authorizing it to create more regulations, the bill makes local renewable energy development even more challenging. The bill makes wind turbine setbacks even more restrictive. Note that wind farm setbacks have been a subject of intense debate at the Ohio General Assembly for many years now, with the most restrictive options being put into law. Given the breadth of debate on the record, it is not clear why there is a need for yet a further restriction.



RunnerStone, LLC

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Troublingly, the bill expands setback regulations to now include major solar projects (>50 MW) as well, as early as 12/2/2020. The bill provides no explanation for the need for setbacks for solar, nor details on what the minimum setbacks would be.

Furthermore, the bill grants the OPSB chair authority to pay outside experts to analyze applications, with no details or limits (e.g., consensus on the expert chosen or \$50,000 maximum fee). The applicant must pay the unlimited and undefined cost for the expert. The bill also increases OPSB oversight over major utility facilities. Before the OPSB oversaw facilities with voltage at 100 kV or greater, but the bill expands its authority to 69 kV or over.

Other Provisions

The bill makes a myriad of other changes to various laws, including laws regarding railroad bridges, railroad rights-of-way, rooftop solar in condo associations, increases in pipeline safety forfeitures, increases in competitive suppliers and aggregators' fees, and creates alternative rate plans for water and sewer companies. Not all provisions of the bill are covered in this memorandum.



MEMORANDUM

Date: July 8, 2020

To: The Ohio Manufacturers' Association

From: John Seryak, PE and Ryan Schuessler (RunnerStone, LLC)

RE: Overview of Substitute House Bill 104

Substitute House Bill 104 (Sub. HB 104) was successfully passed out of the Ohio House of Representatives on June 9, 2020. Sub. HB 104 establishes the Ohio Nuclear Development Authority (ONDA) within Ohio's Department of Commerce. The ONDA is charged with making Ohio a leader in "new type" advanced nuclear reactors, the commercial production of medical isotopes, and in nuclear waste reduction and storage. To carry out its mission, the ONDA is given the charge of developing public-private partnerships, developing education programs, and authorizing joint-development agreements. In addition, the ONDA is given the weighty responsibilities of approving nuclear reactor component designs, assuming regulatory powers from the federal Nuclear Regulatory Commission (NRC), the Department of Energy (DOE), and the US military, and superseding radiation control duties from the Ohio Department of Public Health. ONDA is also intended to "address matters of public necessity for which public moneys may be spent and private property acquired." ONDA's decisions would be made by a nine-member board comprised of industry appointees.

Sub. HB 104 offers multiple serious concerns for manufacturers. Sub. HB 104 is circumspect in how ONDA would influence expenditure of public moneys and acquisition of private property. Sub. HB 104 does not describe which regulatory powers ONDA would assume from the US military, the NRC, the DOE, and the Ohio Department of Public Health, and ONDA does not have staff of its own for such serious regulatory duties.

It should be noted that Sub. HB 104 appears to be primarily supported by advocates of thorium and molten salt reactor nuclear technologies. The federal government halted development of these technologies in the 1960s, and Oak Ridge National Laboratory states that the designs "are not fully mature" and have a wide range of known hazards and unknown risks.

In the remainder of this memorandum we describe Sub. HB 104's provisions, list concerns for manufacturers, and provide context and background of the bill's proponents and molten salt reactor technology.



Establishment of the Ohio Nuclear Development Authority

Sub. HB 104 establishes the Ohio Nuclear Development Authority (ONDA) within the Department of Commerce. The founding purpose of the ONDA is twofold. First, the ONDA is to be an educational resource to the United States Nuclear Regulatory Commission (NRC), all branches of the military, and the United States Department of Energy (DOE) regarding advanced-nuclear-research reactors and isotope technologies.¹ Second, the ONDA aims to make Ohio a leader in the development and construction of new-type advanced-nuclear-research reactors; a national and global leader in the commercial production of medical isotopes; and a leader in the research and development of high-level-nuclear waste reduction and storage technology.

The ONDA is given the following duties to carry out its purposes, including:²

- fostering partnerships between states public institutions of higher education, private companies, federal laboratories, and nonprofit organizations,
- development of education programs related to Ohio's isotope industry,
- assumption of regulatory powers delegated from the NRC, DOE, military, or other similar agency governing the construction and operation of noncommercial power-producing nuclear reactors and the handling of radioactive materials,
- acting in place of the governor in approving joint-development agreements, and
- approving designs for the commercialization of nuclear reactor components.

The powers conferred to the ONDA are considered “the performance of an essential governmental function and address matters of public necessity for which public moneys may be spent and private property acquired.”³

Sub. HB 104 states that the authority shall be made up of nine members, representing nuclear engineering and manufacturing stakeholder groups including safety, industry, and engineering research and development.⁴ These members are appointed by the governor and confirmed by the senate. Members of the authority are not compensated for their service and are not required to forfeit their current employment.⁵

Concerns with Sub. HB 104

ONDA Authority Supersedes the Ohio Department of Health for the Radiation Control Program

Chapter 3748 of the Ohio Revised Code details Ohio's radiation control program, which includes in its purview the licensing and inspection of handlers of radioactive material, identifying levels of radiation that constitute an unreasonable or unnecessary risk to human health or the environment,

¹ R.C. 4164.10

² R.C. 4164.11

³ R.C. 4164.04

⁴ R.C. 4164.05

⁵ R.C. 4164.08



standards for decommissioning funding plans, and procedures for filing complaints among other responsibilities.⁶ Sub. HB 104 adds language giving rulemaking precedence to the ONDA over the Department of Health.⁷ This is a shift in responsibility for protecting the public welfare from the Ohio Department of Health to the ONDA, an entity comprised of nine private citizens representing nuclear industry stakeholders.⁸

Of special note is that Ohio's two nuclear power plants are required to maintain decommissioning funds, and that whether their decommissioning plans were fully funded was a point of contention in the recent FirstEnergy Solutions (now Energy Harbor) bankruptcy. The ONDA would have some influence over nuclear plant decommissioning funding plans.

ONDA Membership Results in an Inherent Conflict of Interest

The authority is comprised of nine members representing nuclear engineering and manufacturing stakeholder groups. These members are not compensated for their service and are not required to forfeit their position of employment to serve as a member of the authority. The members are granted regulatory authority over their own industry, creating an inherent conflict of interest.

Grants the ONDA Ability to Assume Regulatory Authorities

Sub. HB 104 is opaque regarding the limitations of the ONDA's powers and purview. The specific regulatory function of the authority is not outlined, and accountability measures are undetailed. However, ONDA is allowed to assume regulatory duties given to it by the US NRC, DOE, and the US military. The only accountability measure mentioned is the requirement of an annual report to be issued on the 4th of July⁹. Otherwise, the authority is given "extensive power to fulfill its nuclear technology purposes specifically with respect to advanced nuclear reactor commercialization, isotope production, and nuclear waste reduction."¹⁰

Positions the State of Ohio to Approve of Nuclear Reactor Component Designs

Sub. HB 104 proposes that the state of Ohio, via the authority, approve designs for a long list of advanced nuclear reactor components including reactors, core management technology, accident-management regulations, and storage of spent fuel among others. It is concerning that the state would be in the position of approving designs rather than the commensurate federal government agencies.

Defines ONDA Actions as an "Essential Government Function" Relating to Public Expenditures and Property Acquisition

As discussed, ONDA's duties are "the performance of an essential governmental function and address matters of public necessity for which public moneys may be spent and private property acquired." It is unclear what exactly it means to "address matters of public necessity", and what the

⁶ R.C. 3748.04

⁷ Sub. HB 104 PH R.C. 3748.23

⁸ Sub. HB 104 PH R.C. 4164.05

⁹ The 4th of July is a Federal and State holiday. Thus, it is not clear that the ONDA can issue its annual report on this day.

¹⁰ LSC – Bill Analysis – Sub. HB 104 PH

public moneys are spent on, how those monies are raised and from whom, and how much money is to be raised.

As introduced to the House, Sub. HB 104 originally directed a \$1 million annual budget specifically to an advocacy group called eGeneration, not including additional discretionary spending.¹¹ While this language was removed from the substitute bill, Sub. HB 104 does permit the ONDA “to foster innovative partnerships and relationships in the state and among the state’s public institutions of higher education, private companies, federal laboratories, and nonprofit organizations, to accomplish the purposes set forth.”¹² Thus, Sub. HB 104 would still permit the flow of public money to organizations, such as eGeneration, with unclear oversight or restraints outside of future legislative efforts.

Grants the ONDA the Ability to Acquire Private Property

Again, ONDA’s duties are “the performance of an essential governmental function and address matters of public necessity for which public moneys may be spent and private property acquired.” Sub. HB 104 is silent on why private property is needed, why it is needed to be acquired, how it will be acquired, how much public monies are needed, etc. Worryingly, as introduced, Sub. HB 104 explicitly gave the authority “the right of eminent domain in acquiring lands with which to meet its responsibilities as defined in this chapter.”¹³ This clause was removed in the sub bill as passed by the House.

It is unclear whether the classification of the ONDA’s duties as essential government functions would allow for the acquisition of privately held property through eminent domain. The ambiguity is concerning in that the potential remains for the authority to procure property from private owners for the development of a test reactor or for the storage of nuclear waste.

Context and Background Information

Items Eliminated from Previous Iterations of Sub. HB 104

Significant changes were made to Sub. HB 104 from when it was first introduced to the House compared to the version introduced to the Senate. However, the intent behind the original language could remain. A few major changes are highlighted below.

- The ONDA was originally founded as a non-profit, not a state agency, funded by the solicitation of grants and aid and was explicitly granted the power of eminent domain in fulfillment of its purpose.
- A consortium was to be founded by the authority as a for-profit entity. The Treasurer of State’s Office was required to provide an initial stock offering of 20 million shares at \$50 per share – a \$1 billion valuation. eGeneration would act as the agent of the consortium, able to encourage investment, educate the public, lobby the federal government, and expend Consortium funds

¹¹ Sub. HB 104 IN R.C. 4164.50

¹² Sub. HB 104 PH R.C. 4164.11

¹³ Sub. HB 104 IN R.C. 4164.05



up to \$1 million annually. A tax credit would be offered for investments in the Consortium.

- Finally, the creation of state run non-profit and for-profit organizations was intended to serve as a model to further the pursuit of innovative research and development for other industries in the state.

Background on Proponents and their Testimony

Most of the proponent testimonies (10/13) have some connection to the eGeneration Foundation, a 501(c)3 non-profit dedicated to the decentralization of nuclear reactor research and development.

eGeneration argues that the “DOE has not developed a common regulatory pattern with State governments for the research and development of new nuclear technologies...because no State has created an entity specifically tasked with asking the DOE to create these regulations.”¹⁴ Additionally, “prodding or signaling to the Federal Government is essential as the Federal Government and its agencies are never the first to move in granting such authority to a state without substantive state legislation passage.”

eGeneration’s testimony continues: “The eGeneration Foundation’s discussions with the United States Department of Energy has led us to believe that there is support for the Federal government’s decentralization of nuclear technology research and development. Passage of HB104 could position Ohio to be the first State in the union to take advantage of such decentralization efforts.”¹⁵

Thorium advocate Don Larson extols an optimistic future resulting from Sub. HB 104: “There will be a company that develops the technology that gives us a Terawatt of electricity, abundant medical isotopes and global manufacturing advantages. It is inevitable that electricity becomes too cheap to meter.”¹⁶

Background on Molten Salt Reactors (MSR)

A specific type of nuclear reactor, a molten salt reactor technology, is advocated for in proponent testimony. The concept of molten salt reactors was initially developed from the 1940s to the 1970s, starting with the 1946 Nuclear Energy for Propulsion of Aircraft (NEPA) and the 1951 Aircraft Nuclear Propulsion (ANP) programs.¹⁷ The designs developed as part of these programs were leveraged in the Civilian Molten Salt Power Reactor program, and eventually lead to the Molten Salt Reactor Experiment (MSRE). The MSRE demonstration was considered successful, reached criticality in June of 1965 and was shutdown in December of 1969. The program was restructured to focus on tritium management and alloy development to address tellurium cracking, and then was terminated for budgetary reasons.¹⁸ To date, “only two relatively small MSR test reactors have ever been operated.”¹⁹

¹⁴ eGeneration – <https://egeneration.org/decentralization/>

¹⁵ Jon Morrow – Proponent Testimony

¹⁶ Don Larson – Thorium and Molten Salt Reactor Association – Proponent Testimony

¹⁷ History of the ORNL Molten Salt Program – Dr. Jess C. Gehin – ORNL

¹⁸ History of the ORNL Molten Salt Program – Dr. Jess C. Gehin – ORNL

¹⁹ Review of Hazards Associated with Molten Salt Reactor Fuel Processing Operations – ORNL – page 55



A recent study on the hazards associated with molten salt reactor fuel procession operations concludes that “fuel salt processing involves a wide range of hazards depending on the fuel salt, processing operation, fissile material concentration, radiation level, and presence of other toxic or hazardous materials.” “Also, key reactor specific hazards such as inadvertent criticality while performing initial fuel transfer into the reactor vessel have no direct antecedents in solid fueled reactors.” Finally, “MSR designs are not fully mature; nor are the designs for the primary and ancillary support systems for the synthesis and treatment of molten salt fuel.”²⁰ Molten-salt reactors are often associated with using thorium as fuel.

A key takeaway for manufacturers is that thorium and molten-salt reactor technologies have not been developed for commercialization.

²⁰ Review of Hazards Associated with Molten Salt Reactor Fuel Processing Operations – ORNL – page 55

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Columbia Gas Transmission, LLC

)

Docket No. RP20-1060-000

**MOTION TO INTERVENE, PROTEST
REQUEST FOR SUSPENSION AND EVIDENTIARY PROCEEDINGS**

On July 31, 2020, Columbia Gas Transmission, LLC (“Columbia”), pursuant to Section 4 of the Natural Gas Act (“NGA”) and Part 154 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”), filed proposed revised tariff records to its FERC Gas Tariff to effectuate changes in the rates applicable to Columbia’s transportation and storage services (“Primary Case”). Columbia has proposed an effective date of September 1, 2020 for the Primary Case Revised tariff sheets listed in Appendix A to its filing, but indicates that it requests that the Commission suspend the rate changes set forth in the Appendix A for the full five-month period, or until February 1, 2021.¹ Columbia also filed proposed *pro forma* tariff changes listed in Appendix B to its filing (“Preferred Case”) that reflect changes in existing rate design from postage-stamp rates to a two-zone rate structure, which Columbia requests be made effective only on a prospective basis from the date of Commission approval of such rate design change, and upon implementation of business system changes.² Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure,³ American Forest and Paper Association (“AF&PA”), Industrial Energy Consumers of America (“IECA”), The Ohio Manufacturers’ Association Energy Group

¹ See Transmittal at 1.

² *Id.*

³ 18 C.F.R. §§ 385.212, 385.214 (2020).

(“OMAEG”), and Process Gas Consumers Group (“PGC”), hereby submit this motion to intervene and protest in the above-captioned proceeding.

I. Background

Columbia states that its current rates were established in a filing submitted in Docket No. RP95-408 and was resolved by settlements in 1997 and 1999.⁴ Most recently, Columbia reset its base rates in a settlement approved by the Commission in RP16-314-000 (“Modernization II Settlement”).⁵ Section 5.1 of the Modernization II Settlement included a moratorium on rate increases until February 1, 2022.⁶ However, Section 5.2 permits Columbia to file a rate case to be effective February 1, 2021, “in the event that new legislation, regulations, or issuance by the Commission take effect during the term of [the Modernization II Settlement] and impose new integrity, safety, efficiency, or environmental requirements such that Columbia must make incremental capital expenditures not contemplated” in the Modernization II Settlement Eligible Facilities Plan.⁷ Despite Columbia having two successive modernization settlements with customers, first in 2012, and then the Modernization II Settlement in 2016, and having increased gross plant by over \$2 billion to improve the reliability, integrity and safety of its system, Columbia claims that there is a continued need for modernization work and that it has incurred incremental capital expenditures due to the need to comply with new rules issued by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”). Thus,

⁴ Transmittal at 5 (citing *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,044 (1997); *Columbia Gas Transmission Corp.*, 88 FERC ¶ 61,161 (1999)).

⁵ See Testimony of Joshua Gibbon, Exh. No. TCO at 3.

⁶ *Id.*

⁷ *Id.* citing Testimony of Columbia witnesses Sorana M. Linder, Garrett B. Word and Scott Currier.

Columbia states that it is filing this rate case pursuant to Section 5.2 of the Modernization II Settlement.⁸ Columbia proposes a modernization program in its filing with a proposed expenditure cap of \$3 billion over the next seven-year period to address its purported ongoing modernization requirements.⁹

II. Motion to Intervene

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA member companies own and operate facilities that consume natural gas delivered through the numerous interstate natural gas pipelines, including Columbia. AF&PA member companies are firm shippers on Columbia.

IECA is an association of manufacturing companies with \$1.1 trillion in annual sales, over 4,200 facilities nationwide, and more than 1.8 million employees. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food

⁸ *Id.* at 3-7, referring to Part I of the “Mega Rule” and the “Safety of Underground Natural Gas Storage Facilities Interim Final Rule” (“IFR”), as discussed in the testimony of Columbia witnesses Currier and Word.

⁹ *See* Transmittal at 5.

processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, building products, automotive, independent oil refining, and cement. IECA members are firm shippers on Columbia.

The Ohio Manufacturers' Association ("OMA") is an organization through which Ohio manufacturers monitor and advocate on public policies affecting energy for the short-, mid- and long-term. It is a mechanism for manufacturers to engage in the regulatory and policy processes in order to manage their energy needs. The OMAEG is a member-driven organization, wholly owned by OMA. The OMAEG shares the same mission as its parent, the OMA: to protect and grow Ohio manufacturing. OMAEG member companies own and operate facilities that consume natural gas delivered through interstate natural gas pipelines, including Columbia. OMAEG member companies are firm shippers on Columbia.

PGC is a trade association that represents energy-intensive large industrial and manufacturing natural gas consumers who are typically longstanding, significant employers within their respective communities. PGC members own and operate hundreds of manufacturing plants and facilities in virtually every state in the nation and consume natural gas delivered through interstate natural gas pipeline systems throughout the United States. PGC members hold transportation capacity on numerous interstate pipelines. PGC members are firm shippers on Columbia.¹⁰

¹⁰ For purposes of this filing, the respective AF&PA, IECA, OMAEG and PGC members that are shippers and affected parties include: Arconic Lancaster Corp., Honda of America Manufacturing, Inc., Husky Energy Corporation, TimkenSteel Corporation, USG Corporation, and WestRock Company.

III. Protest

Columbia's filing raises a host of factual issues that warrant investigation in the context of an evidentiary hearing. For example, Columbia has proposed changes to its transportation and natural gas storage service rates for firm transportation service. Specifically, Columbia indicates that the proposed unit rate for Rate Schedule FTS transportation service reflects a 78 percent increase over the existing Rate Schedule FTS base unit rate when including the 2020 Capital Cost Recovery Mechanism.¹¹ The proposed Rate Schedule FSS storage service unit rate reflects a 134 percent increase over the existing Rate Schedule FSS storage service unit rate.¹² However, Columbia has not demonstrated that these proposed rate increases are just and reasonable.

Columbia proposes an annual cost of service increase from \$602 million to approximately \$2.9 billion, and an increase in rate base from approximately \$1.6 billion to roughly \$11.9 billion,¹³ however, Columbia has not shown these proposed changes to be just and reasonable. In addition, Columbia proposes to earn a rate of return on equity ("ROE") of at least 16.01%,¹⁴ far in excess of the 12% ROE benchmark used by the Commission in the Form 501-G proceedings, and above the amount that the Commission has found to justify a Section 5 investigation. Furthermore, Columbia proposes a capital structure of 65% equity, based on its immediate parent CPG Inc., and a 5.09% debt cost.¹⁵ Thus, the Commission should set for hearing the appropriate ROE and capital structure to be used in setting Columbia's rates.

¹¹ See Transmittal at 14.

¹² *Id.*

¹³ See Transmittal at 8 (table comparing this filing to the rates approved in Docket No. RP95-408).

¹⁴ See Transmittal at 9 (citing to testimony of Columbia witnesses Vilbert and Carpenter).

¹⁵ *Id.* at 9-10 (citing to testimony of Columbia witness Cole).

Columbia proposes a Modernization Cost Recovery Mechanism (“MCRM”) because it anticipates the need to spend approximately \$3 billion in the next seven years to address its modernization requirements. Columbia indicates that the total amount of prudent investment in Eligible Facilities and/or Eligible Expenses incurred for which Revenue Requirements could be recovered through the MCRM will not exceed an annual cap of \$400 million, subject to a 20 percent annual tolerance above this annual cap, through the proposed seven-year term of the MCRM.¹⁶ Columbia is proposing to modernize its aging Low Pressure System in a comprehensive, multi-year proposal that will cost approximately \$1.68 billion.¹⁷ Again, Columbia has not shown its proposed MCRM to be just and reasonable.

Moreover, Columbia’s filing raises a number of factual issues concerning its treatment of ADIT and excess ADIT (“EDIT”) resulting from changes in the corporate income tax rate in 2018. According to the filing, on February 6, 2015, Columbia was a limited liability company that was partially owned by a master limited partnership (“MLP”), Columbia Pipeline Partners (“CPPL”). CPPL in turn was majority-owned by CPG Inc., with public unitholders owning 15% of its outstanding equity.¹⁸ On February 17, 2017, CPG Inc. acquired the remaining 15% of the shares owned by public unitholders, which terminated CPPL’s status as an MLP.¹⁹ Thus, Columbia is now owned by a limited liability corporation, CPG Inc., which is owned by a Subchapter c-corporation, TC Energy.²⁰ Columbia indicates that repurchase of CPPL’s public shares was a

¹⁶ *Id.* at 14 (citing to testimony of Columbia witnesses Parks and Linder).

¹⁷ Transmittal at 8 (citing to testimony of Columbia witness Willard).

¹⁸ Transmittal at 10, (citing to testimony of Columbia witness Cole).

¹⁹ *Id.*

²⁰ *Id.*

taxable event, and proposes to recognize an adjustment to its ADIT in this proceeding.²¹ According to Columbia witness Cole, the tax basis reset and associated reset of ADIT were reflected on March 17, 2017, but Columbia did not adjust its ADIT in 2017 to reflect the taxable event. Columbia now proposes to retroactively reflect the ADIT adjustment in this rate proceeding.²² Columbia claims that this retroactive adjustment to ADIT is consistent with the Commission's 2018 Revised Income Tax Policy Statement,²³ however, Columbia has not pointed to any precedent where the Commission has accepted such an adjustment. Therefore, the Commission should set any proposed ADIT adjustment for hearing to determine the proper allocation by Columbia.

Columbia proposes changes to other tariff provisions that expose shippers to potential penalties and confiscation of their gas, including: (1) imposing a New Daily Scheduling Penalty equal to one-time the maximum ITS rate on any difference greater than 10% between scheduled and actual deliveries; (2) eliminating the Need to Call Critical Day for Daily Scheduling Penalties, which it claims is needed to provide an incentive for shippers to schedule accurately;²⁴ (3) broadening the application for Critical Day Penalties to include violations of interruption orders, Operational Flow Orders and unauthorized withdrawals under Rate Schedules FSS and FFS-M;²⁵ (4) broadening its confiscation rights when shippers exceed stated volume limitations in these rate

²¹ *Id.*

²² *Id.*

²³ *Id.* at 11 (citing *Revised Policy Statement on the Treatment of Federal Income Taxes*, 162 FERC ¶ 61,277, order on reh'g, 164 FERC ¶ 61,030 (2018)).

²⁴ See Transmittal at 15.

²⁵ *Id.*

schedules;²⁶ (5) the rolled-in rate treatment for six previously incrementally-priced projects;²⁷ (6) the re-functionalization of its Low Pressure Gathering Facilities to Transmission;²⁸ and (7) reflecting a discount adjustment for service provided at discounted rates.²⁹ Again, Columbia has not demonstrated that these proposed tariff changes and penalties are just and reasonable, thus, any such changes should be set for hearing in this proceeding and not be allowed to become effective until the Commission rules that such changes are just and reasonable.

Finally, in its Preferred Case, Columbia indicates that it has included *pro forma* tariff records in Appendix B that include modifications necessary to reflect the proposed two-zone rate structure.³⁰ Columbia's proposes to establish a zone boundary between the East and West Zones of its system based on its claims that these reflect operating areas that have been in place and in use on Columbia's system.³¹ Columbia also proposes that the TCO Pool, which it alleges is the primary paper pool on the pipeline system, will be located at a neutral point for rate design and billing purposes, while, for scheduling and system design purposes, TCO Pool will be located near the Lanham compressor station in the West Zone.³² Columbia asserts that customers' access to

²⁶ *Id.* (Currently, Columbia is permitted to confiscate any shipper gas above 25 percent of the shipper's SCQ that remains in storage effective April 1 of each year. Columbia is proposing to add the same confiscation provisions for shippers exceeding the limits on February 1, June 30, and August 31, consistent with the forfeiture provisions that are already included in the Tariff for April 1.)

²⁷ *Id.* at 11-12 (The facilities include the WB-5 Schuller Project, the Eastern Market Expansion Project, the Appalachian Basin On-System Expansion Project, the Giles County Project, and the East Side Expansion Project as describe in testimony of Columbia witness Ayars).

²⁸ *See* Transmittal at 12.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 13.

³² *Id.*

the TCO Pool as it currently exists under the postage-stamp rate design will not be operationally impacted by the change to a two-zone rate design. Similarly, Columbia's Segmentation Pool will be treated as if it is located at a neutral point.³³ Columbia alleges that the proposed two-zone structure is consistent with the Commission's rate design policies, because it will: (1) enable Columbia to maximize throughput; (2) reflect material variations in the cost of providing service due to the distance over which transportation will occur; and (3) reflect the operational characteristics of Columbia's system, including physical configuration, distinct operational areas, and gas flows.³⁴ Columbia has not shown its Preferred Case to be just and reasonable, and, to the extent that it is not rejected by the Commission, it should be set for hearing in this proceeding.

IV. Conclusion

For these reasons, AF&PA, IECA, OMAEG and PGC request that the Commission suspend the proposed rates and tariff provisions for the maximum suspension period, subject to refund and the outcome of evidentiary proceedings.

Respectfully submitted,

/s/ Andrea J. Chambers

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³³ *Id.*

³⁴ *Id.* (citing testimony of Columbia witness Roscher).

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the Service List for this docket compiled by the Secretary in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, DC, this 12th day of August 2020.

/s/ Andrea J. Chambers

Andrea J. Chambers

September 4, 2020

FERC Orders Hearings Following Opposition To Columbia Transmission Rate Hikes

Federal regulators have scheduled hearings after stakeholder groups in Ohio and elsewhere pushed back on proposed rate hikes by Columbia Gas Transmission LLC.

The Federal Energy Regulatory Commission's move this week comes after utility companies, industrial customers and consumer advocates expressed concerns about the company's plan to recover project and modernization costs through rate increases.

"We find that Columbia's proposed tariff records ... have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful," FERC wrote in its order.

The company, a subsidiary of TC Energy, filed its rate case with the commission in July, with company officials saying they are seeking to recover "prudently-incurred operating costs" and a "fair return" on historical investments.

"The modernization and other capital investments we've made over the years have provided our customers with more reliable access to low-cost natural gas and premium markets that are required to continue to grow the US and global economies," said Stanley Chapman III, TC Energy's executive vice president. "We continue to improve the company's strategic position by enhancing our existing robust energy infrastructure with increased efficiency and reliability."

But the proposal triggered a swift response from ratepayers who pointed out the proposed tariffs in some cases could lead to as much as a

threefold increase for customers utilizing the company's Columbia Gas Transmission Pipeline.

"It is manifestly unjust and unreasonable (the company) is asking FERC to accept that its costs have increased by 383% for providing service in Ohio (and elsewhere) and it should increase rates by 78% (firm transportation service) to 134% (storage service) annually for Ohio consumers (and others throughout the region)," argued the Ohio Consumers' Counsel and the Northeast Ohio Public Energy Council in joint comments.

The groups argue that customers of Columbia Gas of Ohio – not to be confused with Columbia Gas Transmission LLC. – would be particularly impacted given that the former passes charges received from Columbia Transmission to its retail customers.

Industrial users, including the Ohio Manufacturers' Association Energy Group, echoed concerns about the justification for the proposed increases in their own comments.

"Columbia proposes an annual cost of service increase from \$602 million to approximately \$2.9 billion, and an increase in rate base from approximately \$1.6 billion to roughly \$11.9 billion, however, Columbia has not shown these proposed changes to be just and reasonable," the groups argued.

Duke Energy agreed that "Columbia Gas has failed to demonstrate how its significant rate increases and other controversial rate design, modernization and tariff proposals are just and reasonable. Rather, rates approaching double or triple the existing rates suggest, in fact, an unjust and unreasonable proposal."

FERC's order requires hearings to be convened by June 23, 2021, with an initial decision issued by November 2021. A settlement judge has also been appointed to oversee talks between the parties, with status reports due every 60 days.



2020-21

OMA Public Policy
COMPETITIVENESS
AGENDA

Competitiveness Agenda

Manufacturing drives Ohio's economy. It is responsible for approximately \$112 billion (17%) of Ohio's Gross Domestic Product – greater than the contribution of any other Ohio industry sector.

In the competitive domestic and global economies, every public policy decision that affects Ohio's business climate affects Ohio's manufacturing competitiveness. In turn, Ohio's manufacturing competitiveness determines the state's economic growth and job creation.

Ohio manufacturers need public policies that attract investment and protect the state's manufacturing legacy and advantage. These policies apply to a variety of issues that shape the business environment in which manufacturers operate.

THE OMA'S MAJOR POLICY GOALS INCLUDE THE FOLLOWING:

- **An Efficient, Competitive Ohio Tax System**
- **A Lean, Productive Workers' Compensation System**
- **Access to Reliable, Economical, Competitive Energy Resources**
- **A Fair, Stable, Predictable Civil Justice System**
- **Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations**
- **A Modern, Job-Supporting Infrastructure**
- **An Adequate, Educated, Highly Skilled Workforce**

PolicyGoal:

An Efficient, Competitive Ohio Tax System

For Ohio to be successful in a global economy, the state's tax system must encourage investment and growth. It must be competitive nationally and internationally. A globally competitive tax system is characterized by certainty, equity, simplicity, and transparency. Economy of collections and convenience of payment also are important attributes.

Generally, manufacturers support efforts to broaden the tax base, which enables lower rates. To preserve the integrity of the broad tax base and ensure fairness, credits and exemptions should be reduced and discouraged. Moreover, earmarking and dedicating tax revenues should be discouraged as well.

Government should instead build on initiatives such as the recently revised Jobs Retention Tax Credit and continue creating incentives for capital investment in Ohio. Productivity gains, which keep Ohio manufacturers competitive, are driven by capital investments in technology and equipment. Therefore, tax policies that encourage investment should be a priority.

As Ohio's number one industry and wealth producing sector of the economy, Ohio's tax structure should be maintained to leverage manufacturing. The state should continue to improve its manufacturing climate by removing the sales tax from temporary labor and manufacturing janitorial supplies and services.

Good tax policy also generates necessary revenue to support the essential functions of government. Good budgeting and spending restraint at all levels of government are vital to a competitive tax environment, especially in challenging times.

Major tax reforms approved by the Ohio General Assembly in 2005 – and additional reforms in 2011 through 2015 – significantly improved a tax system that was for many years widely regarded as uncompetitive and obsolete. These reforms reduced overall tax rates, eliminated tax on investment, and broadened the tax base, all of which provide more stable and predictable revenues and simplify compliance.

The elimination of the tangible personal property tax, the corporate franchise tax, and the estate tax has strengthened the competitiveness of Ohio's tax system. So has the reduction of the personal income tax rate, as well as the creation of a broad-based, low-rate commercial activity tax (CAT).

Going forward, these tax policy improvements must be protected. The tax bases should be protected against erosion caused by new credits and carve-outs to narrow special interests. Where possible and reasonable, tax bases should be expanded and tax rates reduced. Ohio has seen an increase in potential CAT exemptions and carveouts. While most of these have not come to fruition, leaders must ignore the siren song and maintain the broad base.

Finally, reducing the number and type of taxing jurisdictions would be beneficial. Because of its complex layering of local and state taxes, Ohio's tax system is at a competitive disadvantage.

ABOUT OHIO'S UNEMPLOYMENT INSURANCE TRUST FUND

The COVID-19 pandemic thrust the Ohio Unemployment Insurance Trust Fund into default. Coming out of the pandemic, state leaders must work toward aligning benefits with contributions to build a sustainable unemployment trust fund balance. The best solvency plan is one that includes a focus on job creation – because increased employment not only increases fund contributions, but also reduces benefit payouts.

To encourage job growth, unemployment compensation tax rates should be in line with surrounding states, as well as states Ohio competes with to attract and retain new business. Ohio should pause any substantive employer payment increases until sufficient economic recovery has occurred.

PolicyGoal:

A Lean, Productive Workers' Compensation System

An efficient and effective workers' compensation system benefits workers, employers, and the economy of the state. It is built on the following principles:

- Safety is the number one priority for Ohio's manufacturers.
- Injured workers receive prompt benefits that are adequate for returning to work quickly and safely.
- Rates are established by sound actuarial principles, so that employers pay workers' compensation rates commensurate with the risk they bring to the system.
- The system is financed with well-functioning insurance mechanisms, including reserving and investment practices that ensure fund solvency and stability.
- The benefit delivery system deploys best-in-class disability management practices that drive down costs for employers and improve service and outcomes for injured parties.
- The system consistently roots out fraud, whether by employers, workers or providers.

FUNDAMENTAL PRIORITIES FOR FUTURE ACTION INCLUDE:

- The Bureau of Workers' Compensation (BWC) should continue to reform its medical management system to lower costs and improve medical quality through better coordination of care and development of a payment system that creates incentives for best clinical practices. In doing this, the BWC should build on emerging best practices in the private health care system.
- The Ohio General Assembly should enact statutory reforms of benefit definitions so the claims adjudication process is more predictable, less susceptible to fraud and manipulation, and less costly for employers and employees.
- The Industrial Commission should record hearings so the hearing process is more transparent and any appeals have a record on which to build.
- The Industrial Commission should create a mechanism whereby employers can file complaints related to the hearings process without the risk of adverse consequences.

A WORD ABOUT WORKPLACE GUN POLICY

Manufacturers remain concerned with weapons violence and the erosion of private property laws at the expense of more relaxed gun rights. Ohio needs to ensure that businesses are in the driver's seat and can make decisions about whether an individual can bring a weapon, concealed or otherwise, onto their private property.

PolicyGoal:

Access to Reliable, Economical, Competitive Energy Resources

Energy policy can either enhance or hinder Ohio's ability to attract business investment, stimulate economic growth, and spur job creation – especially in manufacturing. State and federal energy policies must 1.) ensure access to reliable, economical, competitive sources of energy, and 2.) promote policies, regulations, and tariff designs that encourage and allow for manufacturers to lower costs through energy management, including efficiency, load management, and behind-the-meter generation.

The OMA's energy policy advocacy efforts are guided by these principles:

- Energy markets free from market manipulation allow consumers to access the cost and innovation benefits of competition.
- Ohio's traditional industrial capabilities enable global leadership in energy product innovation and manufacturing.
- Sustainable energy systems support the long-term viability of Ohio manufacturing.
- Effective government regulation recognizes technical and economic realities.

Shaping energy policy in Ohio that aligns with these principles will support manufacturing competitiveness, stimulate economic expansion and job creation, and foster environmental stewardship.

ENERGY POLICY PRIORITIES ARE:

- To protect customers and markets, repeal and reform House Bill 6 (Ohio's nuclear bailout law) and related legislation.
- Ensure an open and fair electricity generation marketplace in which competition enables consumer choice, which drives innovation.
- Reforming Public Utilities Commission of Ohio (PUCO) rate-making processes by eliminating electric security plans (ESPs) to protect manufacturers from above-market generation charges.
- Correct Ohio case law that denies electric customers refunds from electric utilities for charges that are later determined to be improper by the Supreme Court of Ohio.
- Design an economically sound policy framework for discounted rates for energy-intensive manufacturers.
- Oppose legislation and regulation that force customers to subsidize uneconomical generation, including nuclear and certain coal power plants.
- Encourage electric tariff and rate designs that encourage and allow for manufacturers to lower costs through energy management, including efficiency, load management, and behind-the-meter generation.
- Encourage fair and reasonable power siting regulations that allow new generation facilities in Ohio.
- Support deployment of customer-sited generation technologies, such as co-generation, energy efficiency and demand-side management, to achieve least-cost and sustainable energy resources.

PolicyGoal:

A Fair, Stable, Predictable Civil Justice System

For manufacturers to invest and grow in Ohio – and compete globally – Ohio’s civil justice system must be rational, fair and predictable. Manufacturers must be free to innovate and pursue market opportunities without fear of unreasonable exposure to costly lawsuits, while injured parties must have full recourse to appropriate measures of justice.

The OMA supports policy reforms that protect consumers without overly burdening businesses, while also positioning Ohio advantageously relative to other states. The association encourages policymakers to evaluate all proposed civil justice reforms by considering these questions:

- Will the policy fairly and appropriately protect and compensate injured parties without creating a “lottery mentality”?
- Will the policy increase or decrease litigation burdens and costs?
- Will the policy promote or reduce innovation?
- Will the policy attract or discourage investment?
- Will the policy stimulate or stifle growth and job creation?

Ohio has made great strides in reforming its civil justice system over the past decade, and longer. The primary aim of the state should be to preserve those tort reform improvements in areas such as punitive damages, successor liability, collateral sources, statute of repose, and public nuisance. This will protect consumers without unduly burdening businesses, while also positioning Ohio as an attractive state for business investment.

PolicyGoal:

Science-based, Technologically Achievable, and Economically Reasonable Environmental Regulations

EFFECTIVE ENVIRONMENTAL STANDARDS AND REGULATIONS ARE BASED ON THE FOLLOWING PRINCIPLES:

- Provide clarity, predictability and consistency;
- Are based on scientific consensus;
- Provide for common-sense enforcement; and
- Incorporate careful cost-benefit analysis as part of the policymaking process.

Manufacturers urge policymakers to exercise restraint in establishing state environmental regulations that exceed federal standards, and to avoid doing so altogether without clear and convincing evidence that more stringent regulations are necessary. At the same time, manufacturers understand that fair and reasonable regulations must be balanced with responsible stewardship of our natural resources.

Manufacturing leads the way in innovation in solid waste reduction and recycling. Industry is an enormous consumer of recycled materials, such as metals, glass, paper, and plastics; manufacturers therefore are strong advocates for improving recycling systems in Ohio and nationwide.

The state should expand opportunities for industry to reuse non-harmful waste streams. Beneficial reuse policies can result in less waste and more recycling of industrial byproducts. Likewise, Ohio should continue to expand recycling programs that provide feedstock for the state's industrial processes.

With respect to Ohio's waterways, the state should continue to engage with the manufacturing community for solutions to nutrient loading issues and develop non-point source solutions as stringent as manufacturing-point source solutions.

In designing state implementation plans for new federal regulations, the Ohio Environmental Protection Agency should use a transparent process of stakeholder involvement, supplemented by investment in independent research to determine the least costly and most scientifically sound and technologically feasible implementation plans.

PolicyGoal:

A Modern, Job-Supporting Infrastructure

Modern infrastructure is critical for today's advanced manufacturing economy. To remain competitive and maximize the economic benefits of Ohio's manufacturing strength, the state must update and expand Ohio's multi-modal transportation infrastructure, including roads, bridges, rails, and ports. Continued investment in these resources is critical to providing Ohio manufacturers with flexible, efficient, cost-effective shipping options.

The state also must continue to support the development of natural gas pipeline infrastructure that delivers the abundant energy resources from the Utica and Marcellus shale formations to Ohio manufacturers in all parts of the state and other markets. This infrastructure produces a job-creating competitive advantage for Ohio.

INFRASTRUCTURE POLICY PRIORITIES INCLUDE THE FOLLOWING:

- Support the creation of an Ohio Division of Freight to focus regulatory attention on the logistics needs of manufacturers.
- Support state and federal legislation, as well as rules and regulations, that safely provides greater flexibility and efficiency in truck movements.
- Support technology and workforce solutions that address the shortage of truck drivers.
- Ensure Ohio's freshwater ports remain competitive and state-of-the-art in functionality. Advocate for appropriate facility maintenance, including dredging to ensure navigability.
- Preserve access to, and provide responsible management of, Ohio's sources of water.
- Protect cyber infrastructure to safeguard data used by manufacturers and their customers and suppliers.

PolicyGoal:

An Adequate, Educated, Highly Skilled Workforce

A robust economy requires a reliable population of workers with technical knowledge and skills required to meet global standards for quality – and who can think critically and work collaboratively. Sustained growth in manufacturing productivity will require not only a new generation of globally competent workers, but also workers who are willing to embrace lifelong learning to keep pace with technological advancements and global competition.

WORKFORCE DEVELOPMENT POLICY PRIORITIES INCLUDE:

- Focusing state government and industry efforts on industry-led regional sector partnerships, guided by the statewide, OMA-led Workforce Leadership Committee. The committee's mission is to identify industry-specific workforce priorities, set standards for collaboration, align funding streams to minimize duplication of workforce programs and services, and evaluate program and service efficacy.
- Creating statewide strategies with clear funding sources supported by state agencies. Provide financial support for sector partnerships that have 1.) demonstrated industry leadership in their organizational structure, and 2.) gained meaningful commitments by way of financial and volunteer contributions to ensure they are truly demand-driven.
- Expanding the use of innovative earn-and-learn programs, including cooperative education, internships, pre-apprenticeships, and apprenticeships. Earn-and-learn programs enhance talent recruitment and retention because participants are exposed to company-specific, real-world job expectations and experiences. Students and employees develop job-specific and management skills by working closely with company mentors; participating companies benefit from reduced recruitment and training costs, while ensuring knowledge- and skill-transfer from their senior employees.
- Expanding the use of nationally portable, industry-recognized, “stackable” credentials in all sectors of manufacturing. Credentials validate foundational and technical competencies needed to be productive and successful in manufacturing career pathways.
- Incentivizing K-12 schools, as well as two- and four-year higher education institutions, to coordinate outcomes-based education and training programs along industry-driven career pathways. Multiple on- and off-ramps for entry-to leadership-level careers have been mapped to real industry needs and jobs. Industry-recognized credentials and certificate programs are being adopted across institutions to increase stackable and transferable credentials from classroom to workplace. Investment in demand-driven training programs that offer pathways to retain incumbent workers allow them to acquire new skills as job requirements shift.

- Supporting “Making Ohio” – a statewide manufacturing image campaign that is managed by the OMA to create a consistent, positive perception of Ohio manufacturing career opportunities and pathways.
- Urging state agency administrators to accurately measure and communicate the outcomes of recruitment and training efforts – including the number of industry-recognized credentials earned, as well as participation in earn-and-learn programs – while protecting individual privacy concerns. Having systems in place to produce these data will allow policymakers and industry leaders to better understand outcomes and create more informed policies and programs.
- Addressing the school funding disincentive for school districts to refer students to career and technical centers – a vital source of the skills training needed to fill the manufacturing workforce pipeline.
- Ensuring schools have career counselors whose sole focus is career planning – not just college planning – and equip them with an understanding of manufacturing career pathways and the various options for acquiring the skills necessary for success. Task them with sharing this information in meaningful ways with students, parents, teachers, and other influencers to better inform and align student career path choices.
- Providing meaningful professional development opportunities for educators to have exposure to industry so they can incorporate real-life exercises into lesson plans and classroom activities.
- Ensuring that career counselors within the network of OhioMeansJobs centers have a modern and accurate understanding of manufacturing career pathways to be able to share with adult job seekers and career switchers.



**The mission of
The Ohio Manufacturers'
Association is to protect and
grow Ohio manufacturing**

For more information about the services and activities
of the OMA, contact us at (800) 662-4463 or
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Energy

Speaker Cupp Appoints Select Committee to Deal With HB6

September 4, 2020

This week Speaker **Bob Cupp** appointed the 15-member bipartisan **House Select Committee on Energy Policy & Oversight**, which will lead efforts to repeal and replace House Bill 6.

Rep. **Jim Hoops** (R-Napoleon) has been tapped as the chair of the committee.

Meanwhile, the Senate has begun hearings on a straight repeal measure (SB 346), with members of the Senate Energy & Public Utilities Committee. 9/3/2020

OMA Protests Pipeline Rate Hike

August 28, 2020

The OMA Energy Group has joined a coalition of industrial customers **to protest a proposed hike** in transmission charges on certain natural gas shipments by as much as 78%. In the joint protest, which is pending before the Federal Energy Regulatory Commission (FERC), the coalition questions the justification for such a large increase.

The increased costs would directly impact customers that ship gas on the Columbia Gas Transmission Pipeline and would be passed on to smaller customers. In addition to the OMA Energy Group, the coalition includes the American Forest and Paper Association, Process Gas Consumers, and the Industrial Consumers of America.

Columbia Transmission is not affiliated with Columbia Gas of Ohio, but is owned by TC Energy Corporation (formerly TransCanada). The case will be discussed at the **upcoming meeting** of the OMA Energy Committee on Sept. 10. 8/27/2020

Report: FirstEnergy Bullied Lawmakers to Support Subsidies

August 28, 2020

A **Cleveland Plain Dealer** article published this week details how FirstEnergy has used its “political might” to pressure Ohio lawmakers over the past several years. The article, which profiles a former state legislator who represented the community served by Davis-Besse nuclear plant, reveals how lobbyists for the utility holding company strong-armed legislators into supporting subsidies.

Ned Hill, a professor of economic development at The Ohio State University and a critic of House Bill 6, is quoted as describing the activity as “crony capitalism” — the kind that occurs “when a business has friends in government who do it favors in exchange for cash payments and political contributions.” 8/27/2020

House Bill 6 Fallout Continues

August 28, 2020

The Ohio Senate has added a session date next week and may consider options to repeal the nuclear bailout law, House Bill 6. Meanwhile, Attorney General Dave Yost this week **threatened to sue** to block HB 6 subsidies for Ohio’s nuclear plants. The subsidies would total \$150 million a year, generated by fees added to Ohioans’ electricity bills starting Jan. 1.

Also this week, the Associated Press **published this story** examining the alleged \$60 million bribery scheme that led to the arrest of former Speaker **Larry Householder** (R-Glenford). The article references **OMA research** that estimates FirstEnergy could reap \$355 million in unearned revenue through 2024 due to HB 6’s “decoupling mechanism.” 8/27/2020

Ohio’s Energy Policies Result in Hundreds of Millions of Dollars in Customer Charges

August 21, 2020

Ohio’s nuclear bailout law (House Bill 6) contains a poorly understood regulatory construct called the “decoupling mechanism.” The provision has been implemented and may allow FirstEnergy to collect \$355 million through 2024 — and hundreds of millions more in later years — from Ohio’s electric ratepayers, including manufacturers. **Read this memo** by OMA’s energy consultant RunnerStone for more on this issue. (A key reason the OMA opposed HB 6 was the blank check that the decoupling provision imposes on customers.)

In addition, the House Finance Committee last year inserted language into the state budget (House Bill 166) to alter Ohio’s prohibition of excessive profits by regulated utilities. The provision, which would allow FirstEnergy to keep “significantly excessive” profits rather than issue refunds to customers, is set to take effect next year. **Read this memo** from OMA energy

counsel Kim Bojko of Carpenter Lipps & Leland for more information.

OMA members can join the discussion on these topics at the upcoming virtual meetings of the OMA **Government Affairs Committee** (Aug. 26) and **Energy Committee** (Sept. 10). 8/20/2020

Even During COVID-19, More Power Producers Switching to Natural Gas August 21, 2020

The U.S. Energy Information Administration (EIA) **reports** that natural gas-fired generation in the lower 48 states increased nearly 9% in the first half of 2020 compared with the first half of 2019.

The monthly Henry Hub natural gas spot price, a benchmark for U.S. wholesale prices, averaged \$1.81 per million British thermal units (MMBtu) through the first half of the year, compared with an average of \$2.74/MMBtu one year earlier. 8/18/2020

House Bill 6 Aftershocks Continue August 14, 2020

Ned Hill, a professor at The Ohio State University's John Glenn College of Public Affairs, recently joined a **panel presentation** at the Cleveland Metropolitan Bar Association to discuss state energy policy. Hill speculated on the need for transparent reforms in the wake of the House Bill 6 bribery scandal and called for PUCO reform, referring to Ohio's regulatory process as "an insiders game."

Meanwhile, HB 6 sponsor Rep. **Jamie Callendar** (R-Concord) has written **an editorial defending the bailout** and professing ignorance to the scheme. Rep. Callendar and others in the General Assembly continue to advocate for the policy behind the bailout, which requires Ohioans to subsidize investors — regardless of the corrupt process that brought HB 6 approval last year. 8/13/2020

Another Measure Introduced to Repeal HB 6 August 7, 2020

This week, State Reps. **Laura Lanese** (R-Grove City) and **David Greenspan** (R-Westlake) introduced **House Bill 746** to undo the nuclear

power plant bailout and all other provisions of the bill.

Also this week, the OMA Vice President and Managing Director of Public Policy Services Ryan Augsbarger **discussed the importance of state energy policy** and recent developments in Ohio as a guest on Lincoln Radio Journal's "Capitol Watch," moderated by Pennsylvania Manufacturers' Association President David Taylor. 8/6/2020

More Than 100 U.S. Coal-Fired Plants Replaced or Converted to Natural Gas Since 2011 August 7, 2020

According to **newly published data** from the U.S. Energy Information Administration (EIA), 121 U.S. coal-fired power plants — mostly in the eastern half of the country — were repurposed to burn other types of fuels between 2011 and 2019. Of these plants, 103 were converted to or replaced by natural gas-fired plants, including five plants in Ohio. 8/5/2020

OMA Committees Explore Energy Policy Reform July 31, 2020

A joint briefing of the OMA Energy Committee and Government Affairs Committee was held July 28 to address recent events surrounding former Ohio House Speaker Larry Householder, who's facing federal racketeering charges related to the nuclear bailout (**House Bill 6**) he pushed last year.

After hearing a summary of the **federal complaint** against Householder and four others — as well as a report on recent Statehouse activity following the charges — members reviewed the harmful provisions in HB 6 and discussed **options to make Ohio's energy law more transparent** for the benefit of electric consumers.

OMA Government Affairs Committee Chair Scott Corbitt, region vice president for Anheuser-Busch, told nearly 125 attendees the association has the "opportunity to be transformational" in Ohio's energy policy as lawmakers re-examine HB 6. OMA Energy Committee Chair Brad Belden, president of Belden Brick, thanked OMA members who testified against HB 6 during last

year's hearings and encouraged more members to get involved.

Email Ryan Augsburger, the OMA's managing director of public policy services, to learn how you can take an active role in the reform efforts. *7/28/2020*

What Are the Real Economics Around Ohio's Two Nuclear Plants?

July 31, 2020

Many Ohio lawmakers are clamoring to repeal and replace **House Bill 6**, the bailout for nuclear power plants. But what does that mean? Significant data was ignored by policymakers when the bill was rocketed through the legislative process just one year ago. Many anti-market provisions of the law were not well understood when HB 6 was debated.

A key reason for support of HB 6 was to protect the jobs and carbon-free generation of First Energy's two nuclear generation plants. But the finances of the plants were never examined in the legislative process. Was there really a need for subsidies? **Read more in this OMA memorandum.** *7/30/2020*

Bill Could Mitigate Nuke Plant Decommissioning Funds

July 31, 2020

Before the Ohio House adjourned for summer recess, members approved **House Bill 104**, the Advanced Nuclear Technology Helping Energize Mankind (ANTHEM) Act. On July 21, as former Speaker Larry Householder was being arrested, the sponsor of HB 104 delivered testimony before the Senate Public Utilities Committee.

The bill is intended to spur research and development of largely unproven molten salt and thorium nuclear reactors. In doing so, HB 104 would establish an unwise and elaborate state agency that would take regulatory authority away from professional agencies — including the U.S. Nuclear Regulatory Commission — and instead place it under the Ohio Department of Commerce, which has no expertise in this arena. Moreover, the bill would empower bureaucrats at this new agency to act in the place of the governor in approving joint-development agreements.

The new agency would have some influence over nuclear plant decommissioning plans, according to an **analysis prepared for the OMA**. "Of special note is that Ohio's two nuclear power plants are required to maintain decommissioning funds, and that whether their decommissioning plans were fully funded was a point of contention in the recent FirstEnergy Solutions (now Energy Harbor) bankruptcy." *7/30/2020*

Ohio a Top 10 State for Energy Production

July 31, 2020

A new report from the U.S. Energy Information Administration's (EIA) shows **Ohio ranked tenth in energy production** in 2018, the latest year of data available. Check out the EIA's **2018 primary energy production estimates for all states** for both fossil fuels and renewables, as well as **Ohio's updated energy profile.** *7/27/2020*

U.S. Energy Use at 30-Year Low Due to Pandemic

July 31, 2020

U.S. energy consumption dropped to its lowest level in more than 30 years this spring due to coronavirus-related shutdowns, according to a **new report** by the U.S. Energy Information Agency. Overall, U.S. energy consumption dropped 14% during April compared to a year earlier — the largest decrease since data collection began in 1973. *7/30/2020*

House Bill 6: Why It's Harmful to Ohio Manufacturers

July 24, 2020

Nearly a year ago, state lawmakers approved **House Bill 6** to provide guaranteed income — a bailout — to Ohio's two nuclear power plants. The **OMA opposed the measure** due to its harmful economic impact on manufacturers, including the following provisions:

- \$150 million a year in new subsidies for nuclear power from 2021 through 2026;
- An extension of subsidies for legacy, uneconomic coal plants in Indiana and

Ohio, which will cost Ohioans tens of millions of dollars each year through 2030;

- \$20 million a year for select solar power projects from 2021 through 2026; and
- Likely removes significant portions of Ohio generation and consumer load from competitive wholesale capacity auctions.

Other key reasons the OMA opposed HB 6 are in **this memo documenting its impact on manufacturers**. 7/24/2020

Will House Bill 6 Be Repealed?

July 24, 2020

Gov. Mike DeWine on Thursday **told reporters** he supports “repealing and replacing” the controversial **House Bill 6** — Ohio’s nuclear bailout law approved last year. He said he still supports the underlying policy, but that the process leading to its passage “forever tainted the bill and now the law itself.” The governor said HB 6 should be revisited with legislation that is transparent in its implementation.

On Thursday, July 23, a group of legislators from both chambers held a press conference and **announced a bipartisan effort** to repeal HB 6. Rep. **Rick Carfagna** (R-Genoa Township) said the bill has up to 33 co-sponsors in the 99-member House. He was joined by Rep. **Laura Lanese** (R-Grove City), a member of House leadership. Sen. **Stephanie Kunze** (R-Hilliard) is working on a Senate version with Sen. **Sean O’Brien** (D-Bazetta). 7/24/2020

Natural Gas Spot Prices Reached Record Lows in First Half of 2020

July 24, 2020

The EIA **reports** that in the first half of 2020, natural gas prices at the U.S. Henry Hub benchmark reached record lows. The average monthly spot price in the first six months of the year was \$1.81 per million British thermal units (MMBtu). Monthly prices reached a low of \$1.63/MMBtu in June, the lowest monthly inflation-adjusted price since at least 1989. 7/20/2020

PUCO Rejects AEP’s Recession-Proofing Rider

July 17, 2020

This week, the Public Utilities Commission of Ohio (PUCO) rejected AEP’s request to establish a decoupling mechanism authorized by House Bill 6, the nuclear bailout legislation. The PUCO determined that AEP’s proposed decoupling mechanism was not consistent with HB 6’s language since AEP proposed to decouple only from “other commercial customers.” Ohio law requires the decoupling mechanism to apply to residential and commercial customers.

The OMA Energy Group was the only party to intervene and file comments in the case, which could have resulted in new costs for all customers in AEP service territories. In their **ruling**, the PUCO acknowledged concerns expressed by the OMA Energy Group about the potential for AEP to double recover lost demand revenues through the decoupling mechanism and the already-authorized COVID-19 deferral. This decision is good for customers and we congratulate OMA Energy Counsel Kim Bojko. Unfortunately, **customers in FirstEnergy territories** are already paying additional costs to guarantee FirstEnergy utilities can collect the same record revenue as they collected in 2018, despite lower electricity use. 7/16/2020

Report: Appalachian Energy is Key to COVID Recovery

July 17, 2020

A **new federal report** touts the abundance of natural gas in Ohio and other states as vital for national and state economics recovering from the pandemic. The Department of Energy study says, “Appalachia can expect to grow via energy resource production, next-generation manufacturing, and petrochemical industry development and expansion.” An accompanying **fact sheet** notes “85% of the growth in U.S. natural gas production over the past decade has occurred in northern to central Appalachia.” 7/14/2020

Study Shows Ohio’s Residential Energy Expenses Are About Average

July 17, 2020

Financial website WalletHub.com **recently compared** the monthly energy bills in all 50

states and the District of Columbia. The study considered the following residential energy types: electricity, natural gas, motor fuel and home heating oil. Ohio has the 23rd lowest average energy bill for households, according to WalletHub. 7/14/2020

Water Infrastructure Refinancing Bill Passes Senate With HB 6 Provision

July 2, 2020

This week, the Ohio Senate approved a notable amendment to a water infrastructure bill, **House Bill 264**. The amendment modifies last year's nuclear bailout law (House Bill 6) to provide up to \$300,000 to the state agency charged with reviewing financials of Ohio's two nuclear power plants to verify they are losing money before the plants can receive \$150 million a year in ratepayer-funded subsidies.

Recently, Energy Harbor, the owner of the power plants, **rewarded investors** with hundreds of millions of dollars in stock buybacks. Not bad for a company that just emerged from bankruptcy. 7/1/2020

Coalition Formed for Transportation Fairness

July 2, 2020

A national coalition has been formed to advance public policies that support a competitive and equitable transportation sector. According to the **Transportation Fairness Alliance**, the coalition is comprised of associations that "represent manufacturers, small business owners, farmers, and folks who pay utility bills." They are taking aim at public policies that create incentives for electric vehicles and related infrastructure.

The OMA has monitored Statehouse proposals that would require Ohioans to subsidize the construction of electric vehicle charging stations via a rider on customer power bills. The OMA has pointed out to policymakers that a competitive market for such infrastructure is a preferable approach.

Meanwhile, a coalition of environmental organizations and others has launched a **website** to counter the Transportation Fairness Alliance. At issue is the ongoing debate of markets versus mandates. A deeper dive is

planned for the Sept. 10 OMA Energy Committee meeting. 7/1/2020

Last Year's Petroleum Imports Hit 70-Year Low

June 26, 2020

Providing further evidence that the fracking revolution has been positive for American energy independence, the U.S. Energy Information Administration (EIA) **reports** that last year, net imports of petroleum from foreign countries accounted for about 2.7% of the U.S. average daily petroleum consumption. This was the lowest percentage of net petroleum imports since 1949, the first year for which the EIA has historical data. 6/22/2020

Report: Appalachia Natural Gas Productivity Increased Again in 2019

June 19, 2020

Increased U.S. natural gas production has helped bring lower energy costs to manufacturers. The U.S. Energy Information Administration's (EIA) **latest drilling report** shows that domestic production increased in 2019 due to, in part, greater productivity of new wells drilled in shale and tight formations. Since 2007, gross natural gas production from the EIA's Appalachia (includes eastern Ohio) and Haynesville (Arkansas, Louisiana and Texas) regions has grown at an average annual rate of 20%. 6/17/2020

Another Energy Bill Appears to Take Aim at Ohio Customers

June 12, 2020

Last week, State Rep. **Nino Vitale** (R-Urbana) unveiled a new version of **House Bill 246**, legislation to purportedly modernize state agencies that regulate utilities. The bill would impose new risks on manufacturers and could give utilities even more sway over the regulations that govern them. It would also provide monopoly utilities an unfair advantage against competitive energy companies, including developers of renewable energy and electric vehicle charging businesses. Other provisions of HB 246 would diminish the role and voice of customer advocates in proceedings before the PUCO.

Also, the bill would create a natural gas supply access investment program within the Ohio Public Works Commission. The Commission traditionally coordinates the construction of public buildings and infrastructure financed from state approved bonds, which does not include privately-owned energy infrastructure. This provision appears to bypass market economics.

The OMA will convey its concerns to the General Assembly in the coming weeks. **View our preliminary analysis.** 6/11/2020

U.S. Renewable Energy Consumption Surpasses Coal for First Time in 135 Years

June 5, 2020

In 2019, U.S. annual energy consumption from renewable sources exceeded coal consumption for the first time since before 1885, **according** to the U.S. Energy Information Administration. This outcome mainly reflects the continued decline in the amount of coal used for electricity generation over the past decade, as well as growth in renewable energy, mostly from wind and solar. 6/4/20

Energy Legislation
Prepared by: The Ohio Manufacturers' Association
Report created on September 9, 2020

- HB6** **CLEAN AIR PROGRAM** (CALLENDER J, WILKIN S) To create the Ohio Clean Air Program, to facilitate and encourage electricity production and use from clean air resources, and to proactively engage the buying power of consumers in this state for the purpose of improving air quality in this state.
Current Status: 7/23/2019 - **SIGNED BY GOVERNOR**; Eff. 10/22/19
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-6>
- HB20** **SOLAR PANEL LIMITATIONS** (BLESSING III L) To prohibit condominium, homeowners, and neighborhood associations from imposing unreasonable limitations on the installation of solar collector systems on the roof or exterior walls of improvements.
Current Status: 6/26/2019 - House State and Local Government, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-20>
- HB55** **OIL AND GAS WELL ROYALTY STATEMENTS** (CERA J) To require the owner of an oil or gas well to provide a royalty statement to the royalty interest holder when the owner makes payment to the holder.
Current Status: 2/26/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-55>
- HB94** **LAKE ERIE DRILLING** (SKINDELL M) To ban the taking or removal of oil or natural gas from and under the bed of Lake Erie.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-94>
- HB95** **BRINE-CONVERSION OF WELLS** (SKINDELL M) To alter the Oil and Gas Law with respect to brine and the conversion of wells.
Current Status: 9/17/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-95>
- HB104** **NUCLEAR DEVELOPMENT** (STEIN D) To enact the Advanced Nuclear Technology Helping Energize Mankind (ANTHEM) Act by establishing the Ohio Nuclear Development Authority and the Ohio Nuclear Development Consortium and authorizing tax credits for investments therein.
Current Status: 7/21/2020 - Senate Energy and Public Utilities, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-104>
- HB223** **WIND SETBACKS** (STRAHORN F, SKINDELL M) To alter the minimum setback requirement for wind farms of five or more megawatts.
Current Status: 5/8/2019 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-223>

HB245 **PROPERTY TAX EXEMPTION TIMELINES** (SMITH J) To remove the current deadlines by which an owner or lessee of a qualified energy project must apply for a property tax exemption.

Current Status: 5/21/2019 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-245>

HB246 **PUCO/OCC REFORM** (VITALE N) To reform and modernize the Public Utilities Commission and the Consumers' Counsel.

Current Status: 5/28/2020 - **SUBSTITUTE BILL ACCEPTED**, House Public Utilities, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-246>

HB247 **RETAIL ELECTRIC SERVICE LAW** (STEIN D) Regarding the competitive retail electric service law.

Current Status: 10/23/2019 - House Public Utilities, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-247>

HB260 **CLEAN ENERGY JOBS** (DENSON S, WEINSTEIN C) To maintain operations of certified clean air resources, establish the Ohio generation and jobs incentive program and the energy performance and waste reduction program, and make changes regarding wind turbine siting.

Current Status: 5/28/2019 - Referred to Committee House Energy and Natural Resources

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-260>

HB401 **TOWNSHIP REFERENDUM - WIND FARMS** (REINEKE W) 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 certificates.

Current Status: 12/3/2019 - House Energy and Natural Resources, (Third Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-401>

HB499 **MOTOR FUEL TESTING PROGRAM** (KELLY B, LANG G) To authorize a county to implement a motor fuel quality testing program.

Current Status: 5/19/2020 - House Transportation and Public Safety, (First Hearing)

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-499>

HB564 **PREVENT UTILITY DISRUPTION DURING COVID-19** (LELAND D) To prevent the disruption of utility service during the state of emergency declared regarding COVID-19 and to declare an emergency.

Current Status: 5/5/2020 - Referred to Committee House Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-564>

- HB738 REPEAL HB6 - REVIVE PRIOR LAWS** (SKINDELL M, O'BRIEN M) To repeal Sections 4 and 5 of H.B. 6 of the 133rd General Assembly to repeal the changes made by H.B. 6 of the 133rd General Assembly to the laws governing electric service, renewable energy, and energy efficiency and the changes made to other related laws.
Current Status: 9/10/2020 - House Energy Policy and Oversight Select Committee, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-738>
- HB740 EARNINGS - UTILITY SECURITY PLAN** (SKINDELL M, DENSON S) Regarding the significantly excessive earnings determination for an electric distribution utility's electric security plan.
Current Status: 9/10/2020 - House Energy Policy and Oversight Select Committee, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-740>
- HB746 REPEAL HB6** (LANESE L, GREENSPAN D) To repeal the changes made by H.B. 6 of the 133rd General Assembly to the laws governing electric service, renewable energy, and energy efficiency and the changes made to other related laws.
Current Status: 9/10/2020 - House Energy Policy and Oversight Select Committee, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-746>
- HJR2 CRITICAL INFRASTRUCTURE PROTECTION AMENDMENT** (MANNING D, CALLENDER J) Proposing to enact Section 12 of Article XV of the Constitution of the State of Ohio to provide Ohio critical infrastructure protection.
Current Status: 10/30/2019 - House Energy and Natural Resources, (First Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HJR-2>
- SB86 UTILITY SERVICE RESELLERS** (MAHARATH T) To regulate certain resellers of utility service.
Current Status: 12/10/2019 - Senate Energy and Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-86>
- SB234 WIND FARMS** (MCCOLLEY R) 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 certificates.
Current Status: 2/11/2020 - Senate Energy and Public Utilities, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-234>
- SB346 REPEAL HB6** (O'BRIEN S, KUNZE S) To repeal the changes made by H.B. 6 of the 133rd General Assembly to the laws governing electric service, renewable energy, and energy efficiency and the changes made to other related laws.

Current Status: 9/1/2020 - Referred to Committee Senate Energy and Public Utilities

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-346>

Energy Engineering Report

OMA ENERGY COMMITTEE – SEPTEMBER 2020



Energy Efficiency Programs



- ☐ Last chance!
- ☐ State-mandated energy efficiency programs
 - ☐ Applications due by September 30th
 - ☐ Ramp down 4th quarter
 - ☐ Cost true-up in 2021
 - ☐ Subject to mercantile opt-out. Customers using > 700,000 kWh/year or part of a national account can forgo paying into and participating in the programs
- ☐ Contact jseryak@gosustainableenergy.com for assistance

Obtaining the Public Trust: Why \$150 Million?

- ❑ HB 6 established up to \$150 million/year for 7 years for nuclear power
- ❑ \$1.05 billion total
- ❑ Gov. DeWine goals – preserve carbon-free generation and Ohio jobs

Why \$150 million per year?



Obtaining the Public Trust: Why \$150 Million?

- ❑ Former PJM Chief Economist Dr. Paul Sotkiewicz estimated \$72 million annual profit w/o subsidy, post bankruptcy
- ❑ Energy Harbor increased stock buy-back by \$300 million – up to \$800 million
- ❑ Energy Harbor credited HB6 funds for allowing it to reopen Sammis coal plant
- ❑ Why \$150 million/year?



Obtaining the Public Trust: Why \$150 Million?

- ❑ Wholesale energy price swings:
\$152 million less revenue in 2020
- ❑ PJM capacity revenue
uncertainty: \$95 million/year
- ❑ Why \$150 million/year?



Obtaining the Public Trust: Why \$150 Million?

- ❑ Why \$150 million/year?
- ❑ Potential resolutions
 - ❑ Market accountability - let the plants compete
 - ❑ Real financial audit + safeguards
 - ❑ Sell the plants



HB6 Impact – OVEC



- ❑ HB6 creates a statewide subsidy for OVEC, two 1950s era coal plants – Kyger Creek (Ohio), Clifty Creek (Indiana)
- ❑ Recently, Ohio subsidizes OVEC on the order of \$70 million annually
- ❑ Not a set subsidy amount. Subsidy is the difference between “prudently incurred costs” and revenue
- ❑ Is the HB6 subsidy helping OVEC compete?
 - ❑ OVEC generated ~25% less electricity through June as compared to 2019
 - ❑ OVEC revenue is likely to drop substantially
- ❑ Takeaway – Ohio ratepayers are subsidizing old, uneconomic power plants (one of which is in Indiana) during a severe economic downturn


Decoupling

❑ \$355 million through 2024

❑ Possibly around \$750 million through 2030

❑ FirstEnergy CEO on an investor call:

“..essentially it takes about one-third of our company and I think makes it somewhat recession-proof”



LAWriter® Ohio Laws and Rules

Route: [Ohio Revised Code](#) » Title [\[49\] XLIX PUBLIC UTILITIES](#) » Chapter [4928: COMPETITIVE RETAIL ELECTRIC SERVICE](#)

4928.471 Application to implement a decoupling mechanism.

(A) Except as provided in division (E) of this section, not earlier than thirty days after the effective date of this section, an electric distribution utility may file an application to implement a decoupling mechanism for the 2019 calendar year and each calendar year thereafter. For an electric distribution utility that applies for a decoupling mechanism under this section, the base distribution rates for residential and commercial customers shall be decoupled to the base distribution revenue and revenue resulting from implementation of section [4928.66](#) of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section [4928.143](#) of the Revised Code, as of the twelve-month period ending on December 31, 2018. An application under this division shall not be considered an application under section [4909.18](#) of the Revised Code.

(B) The commission shall issue an order approving an application for a decoupling mechanism filed under division (A) of this section not later than sixty days after the application is filed. In determining that an application is not unjust and unreasonable, the commission shall verify that the rate schedule or schedules are designed to recover the electric distribution utility's 2018 annual revenues as described in division (A) of this section and that the decoupling rate design is aligned with the rate design of the electric distribution utility's existing base distribution rates. The decoupling mechanism shall recover an amount equal to the base distribution revenue and revenue resulting from implementation of section [4928.66](#) of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section [4928.143](#) of the Revised Code, as of the twelve-month period ending on December 31, 2018. The decoupling mechanism shall be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an electric distribution utility to recover the same level of revenues described in division (A) of this section in each year.

(C) The commission's approval of a decoupling mechanism under this section shall not affect any other rates, riders, charges, schedules, classifications, or services previously approved by the commission. The decoupling mechanism shall remain in effect until the next time that the electric distribution utility applies for and the commission approves base distribution rates for the utility under section [4909.18](#) of the Revised Code.

(D) If the commission determines that approving a decoupling mechanism will result in a double recovery by the electric distribution utility, the commission shall not approve the application unless the utility cures the double recovery.

(E) Divisions (A), (B), and (C) of this section shall not apply to an electric distribution utility that has base distribution rates that became effective between December 31, 2018, and the effective date of this section pursuant to an application for an increase in base distribution rates filed under

Decoupling

- ☐ Base distribution revenue gets pegged to 2018
- ☐ 2018 was a peak energy delivery year for FE utilities
- ☐ Can be extended past 2024 if FE chooses

	Residential	General Service Secondary	Total (with tax)
Ohio Edison	\$ 353,312,299	\$ 122,247,953	\$ 476,799,932
CEI	\$ 200,556,856	\$ 143,676,179	\$ 345,130,374
Toledo Edison	\$ 106,504,639	\$ 48,763,226	\$ 155,672,614
Total	\$ 660,373,794	\$ 314,687,358	\$ 977,602,920

Table 1. Summary of FirstEnergy 2018 Base Distribution Cost Recovery

Year	FirstEnergy Ohio Energy Deliveries (MWh)	Energy Deliveries, Percent Below Peak Year	Additional Base Distribution Revenue Resulting from Decoupling
2015	62,351,282	1.6%	
2016	62,966,774	0.7%	
2017	60,973,484	3.8%	
2018	63,392,963	0.0%	
2019	61,094,619	3.6%	\$ 21,916,065
2020	61,263,393	3.4%	\$ 20,306,705
2021	61,725,825	2.6%	\$ 15,897,144
2022	62,030,096	2.1%	\$ 12,995,740
2023	62,110,144	2.0%	\$ 12,232,435
2024	62,324,025	1.7%	\$ 10,192,954
Average			\$ 15,590,174
Total			\$ 93,541,043

Table 2. FirstEnergy's Recorded and Expected Energy Deliveries in Ohio, 2015-2024

Decoupling

- ❑ “Lost Distribution Revenue” in 2018 was \$66 million
- ❑ Consider – FE suspended the bulk of their efficiency programs in January, yet is still charging a steep rider
- ❑ This charge applied to residential and secondary service commercial & industrial customers

Year	(A) 2018 Lost Revenue Recovery	(B) Lost Distribution Revenue Recovered in EE Rider (Rider DSE2)	(A - B) Difference in Lost Distribution Revenue Collected in Decoupling Rider (Rider CSR)
2019	\$ 66,495,247	\$ 71,290,905	\$ (4,795,659)
2020	\$ 66,495,247	\$ 66,495,247	\$ -
2021	\$ 66,495,247	\$ -	\$ 66,495,247
2022	\$ 66,495,247	\$ -	\$ 66,495,247
2023	\$ 66,495,247	\$ -	\$ 66,495,247
2024	\$ 66,495,247	\$ -	\$ 66,495,247
Total			\$ 261,185,328

Table 4. Location and Amount of Lost Revenue Cost Recovery



Obtaining the Public Trust: Transparent, Adaptable Policy Support for Ohio's Nuclear Power Plants

Amended Substitute House Bill 6 (H.B. 6) was passed and signed into Ohio law in July 2019. H.B. 6 represents a major rework of Ohio's electricity policy and continues to significantly affect customer costs, customer choice, and how Ohio electricity markets function.

Ohio Governor Mike DeWine has noted that support of H.B. 6 centered on preserving Ohio jobs associated with the two nuclear power plants that are the subject of the bill and lowering Ohio's emissions through these carbon-free generation assets. To meet these goals while minimizing the cost burden on ratepayers, the critical question for policymakers is how to fairly and transparently determine the financial requirements to meet these goals – that is, preserving jobs and lowering Ohio's carbon emissions.

The financial case for continuing the operation of nuclear power plants in Ohio has not been demonstrated, at least not publicly. Nevertheless, H.B. 6 established the collection of \$150 million annually from customers to support Energy Harbor-owned Davis Besse and Perry nuclear power plants, amounting to \$1.05 billion over seven years. The policymaking process of H.B. 6 never answered the obvious and critical question: Why \$150 million?

Much has changed in the year since H.B. 6 passed. Wholesale electricity prices have plummeted; the nuclear power plants' owner has shed bad debt in bankruptcy and spent an extra \$300 million on repurchasing its own stock; and a Federal Energy Regulatory Commission (FERC) ruling has cast doubt on the approximately \$95 million/year capacity revenue stream for the plants. If \$150 million were the appropriate subsidy at time of enactment, which is not at all clear, changes in the energy economy and its markets have certainly changed the factors that drive the plants' profits and losses.

In this challenging time, Governor DeWine said that the charge now is "those of us in public office have to work every single day to obtain the public's trust." Governor DeWine further stated that he is "a big believer in transparency" in the law.

While there is still much to debate regarding the effects of H.B. 6, this much is clear:

- Significant doubts persist as to the true financial need of the nuclear power plants.
- Ohio's law lacks transparent accountability of the \$150 million collected from customers annually for the nuclear generation fund, while prohibiting standard-practice legal intervention common to electric regulation, and while lacking a mechanism to modify the cost recovered from Ohio businesses and citizens.

- A corrective opportunity exists right now to reform Ohio's energy policy.

In this memo, we describe the major changes to market conditions for the nuclear power plants, transparency concerns, and potential resolutions.

Major Changes to Market Conditions for Ohio's Nuclear Power

The reality of any market is that it is ever-changing. Demand and supply for any product or service changes from year-to-year, and innovation can disrupt a market at any time. As a result, markets value adaptability. H.B. 6's financial support for nuclear power does not have this adaptability. The \$150 million collected annually from ratepayers to subsidize these plants is fixed and unchanging even as market conditions change.

Recent market condition changes include:

- Dramatic swings in wholesale energy prices – The price of wholesale electricity has changed from an average of \$32/MWh in 2019 to \$23/MWh thus far in 2020¹. This market swing could result in approximately \$152 million less revenue in 2020 for the two nuclear power plants.
- Energy Harbor's emergence from bankruptcy and stock buy-back – The nuclear plants' owner, Energy Harbor, recently emerged from bankruptcy. In doing so, it executed an \$800 million stock buy-back program. This was \$300 million more than it originally planned, crediting "visible" cash flow from H.B. 6's nuclear generation fund.
- Potentially significant revenue disruption from a FERC order – The FERC has issued an order that any power plant that receives, or is entitled to receive, a direct or indirect state subsidy will be subject to the Minimum Offer Price Rule (MOPR). In plain language, this FERC order will bar the nuclear power plants from receiving about \$95 million per year in capacity revenue from the wholesale market if the state subsidy *is needed* for the plants to operate.

The above points do not tell us how much the two nuclear plants need to remain viable, nor their financial position. Instead, these points demonstrate that the nuclear power plants' financial needs, or profit, will vary significantly from year to year. In other words, \$150 million per year is very likely either too much support, or too little.

Transparency Concerns

Significant transparency concerns also exist. These were raised during the H.B. 6 legislative debate. Public, transparent evidence has been presented by reputable parties questioning the nuclear plants' need for \$150 million per year.

In contrast, no financial documentation has been provided by any party to demonstrate the nuclear plants' owner's argument of need. As a result, public trust is eroded. This lack of trust has been exacerbated by the \$800 million stock buy-back conducted by the nuclear plants' owner Energy Harbor.

In addition to the stock buy-back, a 2019 financial analysis completed by Dr. Paul Sotkiewicz, former chief economist for the transmission grid operator, PJM, showed that following the bankruptcy of what was formerly known as FirstEnergy Solutions, the Davis-

¹ US Energy Information Administration for PJM, <https://www.eia.gov/electricity/wholesale/>

Besse and Perry nuclear plants will likely turn an annual profit. Dr. Sotkiewicz estimated the annual profit to be \$28 million for Davis Besse and \$44 million for Perry, for a combined profit of \$72 million annually². His estimates account for the nuclear plants' financial situation following the bankruptcy and relied on plant-specific financial filings.

The general takeaway from Dr. Sotkiewicz's 2019 analysis is that the two nuclear power plants may have excess cash flow in the post-bankruptcy era. Energy Harbor's stock buy-back supports this general conclusion.

Potential Resolutions

Ohio's policymakers have several potential reform options to ensure that the nuclear power plants' financial performance is in line with market conditions. Each would improve accountability compared to existing law, whether through the checks and balances of competitive markets, or by means of transparent government regulation.

- **Market accountability** – Repealing ratepayer financial support for the nuclear power plants is a viable option. Energy Harbor has standard business decisions it can take to remain fiscally solvent. This includes bankruptcy to shed bad debt (which it has done), exploring competitive markets for clean energy credits, sharing financial risk with investors in anticipation of a federal carbon market, and trimming executive pay or corporate stock buy-back programs to maintain fiscal prudence, among others. In general, nuclear plants perform better financially and environmentally when they participate in competitive markets.
- **Best practice financial auditing and safeguards** – Because the nuclear plants' financial need will change from year to year, a transparent financial auditing process will be required to earn the public's confidence that the right amount of financial support is being provided, and that the ratepayer financial support is being used appropriately. Such a process should allow for due process, including legal intervention of customer groups that are paying for the nuclear plants. Policymakers will need to carefully consider how to select a technically competent and apolitical auditing entity, and construct safeguards for the use of ratepayer funds.
- Finally, there is a market for generation assets, including Ohio's two nuclear plants. If the plants' owner, Energy Harbor, is unable to improve management and operations to lower costs and improve competitiveness, or is unwilling to participate in a transparent financial audit of the plants, it should sell the nuclear generators.

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² "The Market and Financial Position of Nuclear Resources in Ohio", Dr. Paul Sotkiewicz, E-Cubed Policy Associations, LLC. Table 12

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 10, 2020

Active Administrative Actions in which OMAEG is Involved:

American Electric Power (AEP):

- **Application for a Reasonable Arrangement and Deferral Authority for COVID-19 Emergency Plan (Case Nos. 20-0602-EL-UNC, et al.)**
 - On March 17, 2020, AEP requested accounting authority and a recovery mechanism for the costs associated with its COVID-19 Emergency Plan.
 - On April 9, 2020, AEP filed a Second Amended Application requesting a reasonable arrangement to allow minimum demand charges for commercial and industrial customers to be temporarily reset at lower usage level and for authority to recover forgone revenue (including foregone discretionary revenue).
 - On April 27, 2020, OMAEG filed comments to protect members from being charged for AEP's imprudent costs and lost revenue claims during the declared emergency (including the impropriety of the reasonable arrangement mechanism, the type and level of deferrals, and potential for double recovery). Others filed similar concerns. IEU-Ohio and OEG, however, expressed support for AEP's reasonable arrangement and cost recovery proposal.
 - On May 6 2020, the PUCO agreed with OMAEG (and others) and denied the proposed reasonable arrangement and cost recovery through the Economic Development Rider. Although the PUCO granted AEP deferral authority for its foregone revenues and expenses, it explained, at OMAEG's and Staff's request, that recovery is not guaranteed and the amounts must be reasonable, properly computed, and not double recovered. The PUCO also stated that recovery for foregone revenue associated with eliminating minimum billing demand charges should only be collected from those benefiting and directed AEP to establish an opt-in process. Importantly, the PUCO also rejected AEP's request to repurpose its regulatory liability from an overcollection of the Phase-In-Recovery Rider and ordered that it be applied to the universal service fund rider to lower customers' costs. Lastly, the PUCO ordered AEP to track costs avoided due to emergency and to track and defer uncollectible expenses with its default service generation such that expenses could potentially be recovered through a bypassable

mechanism, and noted that AEP may be able to collect some of its costs through its next rate case.

- On August 12, 2020, the PUCO approved AEP's plan to resume activities and operations previously suspended during the COVID-19 emergency. **AEP has resumed the assessment of late fees as applicable effective with August bills** and disconnections for nonpayment starting with the September billing cycle. AEP will offer payment plans to nonresidential customers subject to minimum demand billing provisions and will accommodate reasonable requests from nonresidential customers for additional payment plan options on a case-by-case basis.
- **New Distribution Rate Case Filed –NOI (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 HB 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."
- **AEP Request to Develop Renewable Resources (Case No. 18-501-EL-FOR)**
 - AEP requested that the PUCO permit it to amend its longer-term forecast report to allow AEP and its affiliates to develop at least 900 MW of renewable projects. AEP concedes that PJM wholesale markets already provide sufficient capacity, yet strangely argues that these proposed renewable projects are necessary for AEP to meet its obligation to provide customers with a standard service offer (SSO). The proposal appears to be an attempt by AEP to charge customers for generation supplied by itself and its affiliates, which is contrary to Ohio's state law and policy, which support competitive electric generation markets.
 - After an extensive hearing, on November 21, 2019, the PUCO found that AEP Ohio failed to demonstrate a need, under any offered definition of the term, for at least 900 megawatts of renewable generating facilities.
 - On December 23, 2019, AEP filed an application for rehearing, which was opposed by multiple parties, including OMAEG. The PUCO denied the rehearing request by operation of law.
- **Application to Initiate its 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, 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.
- **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.
- **Application for Establishment of HB 6 Decoupling Mechanism (Case No. 20-1099-EL-UNC)**
 - On May 28, 2020, AEP filed an application to establish a new decoupling mechanism under HB 6. The proposed rider would true up AEP's base distribution revenue to the corresponding revenue from 2018. If approved, this would allow AEP to offset any revenue shortfalls AEP is experiencing from COVID-19 (up to 2018 revenue levels) which is in addition to AEP's COVID-19 deferral authority.
 - On June 12, 2020, OMAEG intervened and filed comments asserting that AEP's application was inconsistent with HB 6's plain language and that the PUCO should evaluate AEP's application in light of its requests for a distribution rate increase and deferral authority.
 - On July 15, 2020, the PUCO rejected AEP's request due to inconsistencies between the proposed rate design and plain language of HB 6. OMAEG was the only party to intervene and the PUCO acknowledged OMAEG's concerns about the unlawful nature of AEP's request and the potential for AEP to double recover lost demand revenues through the decoupling mechanism and COVID-19 deferral already authorized.

Duke Energy Ohio (Duke):

- **Application for a Reasonable Arrangement for COVID-19 Emergency Plan (Case Nos. 20-0856-EL-AEC, et al.)**
 - On April 16, 2020, Duke filed an application with the PUCO seeking an economic development reasonable arrangement to recover lost revenues from its proposal to reduce demand ratchets for commercial and industrial customers during the COVID-19 emergency.

- On May 7, 2020, OMAEG filed comments to protect members from being charged for Duke's imprudent costs and lost revenue claims during the declared emergency (including the impropriety of the reasonable arrangement mechanism, the type and level of deferrals.
- On May 11, 2020, Duke requested deferral authority for costs and lost revenues associated with its COVID-19 response. Shortly after, Staff recommended that the PUCO grant Duke's deferral request.
- On June 17, 2020, the PUCO approved Duke's COVID-19 plan to suspend disconnections for non-payment, waive all late fees to be deferred for later recovery as a regulatory asset, and other actions to minimize social contact. As OMAEG recommended, the PUCO rejected Duke's request for a reasonable arrangement and instead directed Duke to make optional extended payment plans available to non-residential customers. The PUCO granted Duke's request for deferral authority but, consistent with OMAEG's comments, prohibited Duke from adding carrying costs on to that amount and emphasized that Duke will only be able to recover amounts that are prudently incurred, properly computed, and free of double recovery.
- On July 29, 2020, the PUCO approved Duke's plan to resume certain activities and operations suspended during the COVID-19 emergency. Effective August 10, 2020, Duke resumed normal billing processes including the assessment of late fees during the regular billing cycles and issuing disconnection notices to customers. Duke estimated that disconnections for non-payment will begin in September 2020 for non-residential customers.
- **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.
- **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.
- **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 the 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 (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.

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 HB 6. HB 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 June 22, 2020, the PUCO directed FirstEnergy to re-file its tariffs so as to not limit reconciliation of the decoupling rider exclusively on the finding of double recovery.
- **Rider DSE Update (Case Nos. 14-1947-EL-RDR, et al.)**
 - FirstEnergy filled tariff pages reflecting changes to its Demand Side Management and Energy Efficiency Rider (Rider DSE). Rider DSE recovers costs associated with energy efficiency, peak demand reduction, and demand side management programs and is subject to an annual audit by the Commission. FirstEnergy's filing does not appear to be consistent with the PUCO's stated expectation that Rider DSE adjustments following the implementation of the Amended Portfolio Plan would reflect lower costs to customers.

- A Staff report was issued on February 28, 2019, and the PUCO set a procedural schedule with FirstEnergy's testimony due June 22, 2020, and a hearing scheduled for December 14, 2020.
- **Corporate Separation Case (Case No. 17-0974-EL-UNC)**
 - PUCO initiated a review of FirstEnergy's compliance with the PUCO's corporate separation rules. FirstEnergy is the first utility to undergo this review process.
 - Comments and reply comments were filed.
 - On April 29, 2020, PUCO directed interested persons to file supplemental comments regarding the audit report by May 29, 2020, and supplemental reply comments by June 15, 2020.
 - Comments and reply comments were filed regarding the FirstEnergy utilities' provision of competitive services, FERC's classification of shared-service employees, the use of the "FirstEnergy" name by the Company's competitive affiliates, and whether FirstEnergy's unregulated generation affiliate is a barrier to retail electric competition.
 - OMAEG is monitoring this case.
- **2018-2019 SEET Case (Case Nos. 18-0974-EL-UNC)**
 - 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.
 - In addition, HB 166 amended the PUCO governing statute to require the PUCO to consider the total earned return on equity (ROE) of all affiliated distribution utilities operating a joint ESP. Consequently, FirstEnergy is able to shield one of its overearning distribution utilities by including the ROE of its less profitable affiliate distribution utility in the significantly excessive earnings test (SEET) calculation.
 - OMAEG intervened to advocate that the PUCO return to customers any earnings that are excessive or unlawful.
 - On September 4, 2020, the PUCO granted OMAEG intervention and scheduled a hearing for January 5, 2021.

Dayton Power & Light (DP&L):

- **Application for a Reasonable Arrangement and Deferral Authority for COVID-19 Emergency Plan (Case Nos. 20-650-EL-AAM, et. al.)**
 - On March 23, 2020, DP&L requested deferral authority for expenses related to its Plan during the COVID-19 emergency.
 - On April 15, 2020, DP&L supplemented its Plan by proposing to temporarily revise demand charges for commercial and industrial customers. For customers whose meters cannot be read, DP&L will charge an energy-only rate and for customers whose meters can be read, it will reduce the minimum demand charge. DP&L sought to defer as a

- regulatory asset for future recovery charges avoided by customers provided that those costs are not already included in the distribution decoupling deferral request that DP&L filed on January 23, 2020 in Case No. 20-140-EL-AAM. Alternatively, DP&L proposed recovering these lost revenues through an economic development or unique reasonable arrangement.
- On May 4, 2020, OMAEG filed comments to protect members from being charged for DP&L's imprudent costs and lost revenue claims during the declared emergency (including the impropriety of the reasonable arrangement mechanism, the type and level of deferrals, the potential for double recovery and the impropriety of recovering foregone revenue associated with acts of good-will during the COVID-19 emergency).
 - On May 2020, the PUCO rejected DP&L's proposed reasonable arrangement and acknowledged OMAEG's comments. The PUCO directed DP&L to create an optional extended payment plan mechanism to benefit nonresidential customers. While the PUCO granted DP&L deferral authority, it recognized the concerns of various stakeholders, including OMAEG, and emphasized deferral amounts are not final until the PUCO review for reasonableness, proper computation, and the potential for double recovery.
 - On August 12, 2020, the PUCO approved DP&L's transition plan to resume activities and operations suspended during the COVID-19 emergency. DP&L will offer nonresidential customers payment arrangements, up to sixth months in length. On September 1, 2020, DP&L will resume assessing late fees and disconnections for nonpayment.
- **Electric Security Plan (Case Nos. 16-395-EL-SSO, et al.)**
- DP&L 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.
 - DP&L 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, DP&L 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 DP&L agreed to convert the forgone tax sharing liabilities to AES Corporation into equity payments (estimated by DP&L to be a \$300M gain for customers). DP&L will also provide several OMAEG members the economic development rider (EDR) credit of \$.004/kWh. For OMAEG members that do not qualify for the EDR credit, DP&L agreed to 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, DP&L, 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 DP&L to eliminate its DMR rider.
 - As a result of the PUCO's order, DP&L withdrew from its ESP, which the PUCO approved, and DP&L 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 DP&L's Distribution Modernization Rider (DMR). OCC opted to not pursue the matter in light of DP&L 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, DP&L filed an application to establish a distribution modernization plan. DP&L asks the PUCO to approve over \$600 million in cost recovery for the implementation of this plan. DP&L 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, DP&L has re-initiated settlement discussions for this case based on a smart grid rider approved in an earlier case. DP&L is no longer attempting to tie this case with its DMR Extension case.
 - **DMR Extension Application (Case No. 19-162-EL-RDR)**
 - DP&L's Rider DMR was established in DP&L's most recent ESP proceeding. DP&L filed an application to extend Rider DMR for an additional two years, with Rider DMR set at \$199 million per year.
 - OCC filed a motion to dismiss in light of the PUCO's decision to eliminate the DMR from DP&L's ESP.
 - On April 6, 2020, DP&L filed a motion to withdraw its application to extend the DMR, which the PUCO subsequently granted on August 12, 2020.

- On May 12, 2020, the Supreme Court of Ohio granted OCC's request to dismiss its appeal of DP&L's Distribution Modernization Rider (DMR). OCC opted to not pursue the matter in light of DP&L withdrawing its ESP and the PUCO eliminating the DMR rider.
- **Distribution Decoupling Costs (Case No. 20-0140-EL-AAM)**
 - The June 18, 2018 Stipulation and Recommendation from that Distribution Rate Case established that DP&L was authorized to implement "Revenue Decoupling." Recovery would occur through the Decoupling Rider that was established in DP&L's third Electric Security Plan case ("ESP III") (Case No. 16-0395-EL-SSO, et al.), which DP&L withdrew. Given this withdrawal, the PUCO ruled that DP&L could no longer implement the Decoupling.
 - On January 23, 2020, DP&L 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 DP&L 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 DP&L to unilaterally reap benefits from a settlement agreement that it breached.
- **SEET (Case No. 20-0680-EL-UNC)**
 - On April 1, 2020, DP&L 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 DP&L failed to meet its burden of proof in demonstrating that its earnings were not excessive.
- **SEET II (Case No. 20-1041-EL-UNC)**
 - On May 15, 2020, DP&L filed an application requesting a finding that its 2019 earnings passed the SEET test.
 - On July 2, 2020, OMAEG intervened to protect members' interests.
- **Transmission Cost Recovery Rider (Case No. 20-0547-EL-RDR)**
 - On September 4, 2013, in Case No. 12-426-EL-SSO, et al., DP&L was authorized to separate its Transmission Cost Recovery Rider (TCRR) into a market based bypassable rider (TCRR-B) and a non-market based rider (TCRR-N).
 - On October 20, 2017 in Case No. 16-395-EL-SSO, et al., the PUCO authorized DP&L to amend the TCRR-N and establish a pilot program, which allows certain customers to opt out of the TCRR-N and purchase transmission services directly from the regional transmission operator.
 - Although DP&L withdrew its ESP and reverted to ESP I, the PUCO found that DP&L's TCRR-N is authorized under ESP I and should be continued.

- On March 16, 2020, DP&L filed the annual update of its TCRR-N, as amended on April 17, 2020.
- On May 8, 2020, Staff filed its Staff Report, recommending that the PUCO approve the amended application, subject to its recommendation that DP&L not significantly increase the max charge in TCRR-N.
- On May 20, 2020, the PUCO approved the amended application.

Statewide:

- **PUCO COVID-19 Emergency Orders (Case No. 20-591-AU- UNC)**
 - On March 12, 2020, PUCO directed public utilities to review their disconnection policies and other practices and promptly seek approval to suspend any requirements that might impose a "service continuity hardship" on customers or create unnecessary risks associated with spreading the virus. The PUCO also encouraged municipalities and cooperatives that are beyond their jurisdiction to take similar actions. The Order also empowered Chair Sam Randazzo and Vice Chair Beth Trombold to act individually on behalf of the full five-member PUCO for the duration of the emergency.
 - The PUCO and Ohio Power Siting Board (OPSB) tolled any time period in an order, statute, or rule requiring PUCO or OPSB to act upon a pending application or filing during the declared emergency and fourteen days after. The tolling does not apply to automatic approval of filings to suspend service disconnection or reconnection requirements.
 - On March 13, 2020, PUCO extended the Winter Reconnect Order through May 1, 2020. The PUCO's Order does not eliminate customers' payment obligations.
 - On March 20, 2020, the PUCO ordered the suspension of utilities' non-essential activities during the COVID-19 emergency. The Order does not relieve utilities of the obligation to address safety concerns.
 - On April 8, 2020, the PUCO extended its March 12, 2020 emergency Order by an additional 30 days.
 - On April 8, 2020, the PUCO authorized eligible utilities to obtain loans through the Federal Paycheck Program without receiving additional PUCO approval. The program authorizes up to \$349 billion in forgivable loans to enable small businesses to retain employees during the COVID-19 emergency. Utilities with fewer than 500 employees are eligible.
 - On April 22, 2020, in response to the state of emergency, the PUCO temporarily waived requirements regarding provisional medical certification of commercial drivers. The waiver expires on June 30, 2020.
 - On June 1, 2020, the PUCO and OPSB terminated the suspension of deadlines requiring them to act on applications during the COVID-19 emergency.

- On June 17, 2020, the PUCO terminated the suspension of door-to-door marketing services, pursuant to requirements and best practices issued by state and local health authorities.
- On July 3, 2020, the PUCO granted water transportation companies waivers from Ohio Adm. Code provisions that would enhance COVID-19-related burdens. On July 29 and August 31, 2020, the PUCO extended these waivers.
- **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.
- **PUCO PowerForward Initiative**
 - The PUCO announced the launch of PowerForward to comprehensively explore technology and consider how it could serve to enhance the customer electricity experience.
 - Phase 1 featured presentations examining technologies affecting a modern distribution grid, what our future grid could offer customers, and what technologies are in development to realize such enhancements.
 - Phase 2 focused on the grid, platforms, the grid’s core components, requirements for building the grid of the future, distribution system safety and reliability, planning and operations of the distribution system, and energy storage.
 - Phase 3 focused on grid modernization, the distribution system, data access, ratemaking, and rate design.

- Following the completion of the three phases of the PowerForward Initiative, the PUCO issued a report outlining its approach for maintaining a strong, robust power grid that will benefit Ohio consumers.
- The PUCO established working groups and proceedings for each of the three PowerForward working groups: the PowerForward Collaborative, the Distribution System Planning Working Group, and the Data and the Modern Grid Working Group. The PUCO stated that it was establishing these proceedings in order to ensure that its PowerForward roadmap is being fulfilled. The PUCO invited interested parties to participate in these proceedings so that their views can be considered throughout this process.
- The PUCO ordered electric distribution utilities to file reports regarding the current status of their grid architecture and distribution system capability. The PUCO determined the required contents of these reports after reviewing comments submitted by various parties. The PUCO stated that these reports will be an important component in advancing various components of the PowerForward initiative.
- On April 22, 2020, the PUCO found that the works of the Collaborative, the Distribution System Planning Workgroup (PWG), and the Data and Modern Grid Workgroup have been completed and closed those cases. The PUCO stated that it will continue to address issues raised in the Power Forward Roadmap in discrete proceedings. In her concurring opinion, Commissioner Trombold stated EDUs should make interval data from advanced meters available to customers and competitive suppliers. Similarly, Commissioner Conway advocated in a concurring opinion for customer benefits resulting from customer energy usage data access. In addition, he supported the suggestions in EnerNex's Final Report for the PWG regarding standards for the interconnection of distributed energy resources with the EDUs' networks.
- **Nuclear Bailout Bill (HB 6)**
 - The Ohio General Assembly passed a bill that effectively serves as a bailout for nuclear generation. OMAEG actively participated throughout the hearing process regarding this proposed legislation, including various members and legal counsel offering testimony opposing the bill. The bill was amended several times, and each amendment included provisions that would impose unreasonable costs on customers in order to subsidize uneconomic generation.
 - The Governor signed into law HB 6 on July 23, 2019, which means that customers will be forced to subsidize failing nuclear and coal facilities. The mechanics of the increase in charges to customers has been left to the PUCO, which will now open proceedings to establish new rates and rules in light of HB 6.
 - Not enough signatures were gathered to place the referendum on the ballot as required by the Ohio Constitution. Challengers went to federal court to obtain an extension, but it was punted to the Supreme Court of Ohio to resolve what the federal court considered a "state question."
 - Appellants Ohioans Against Corporate Bailouts voluntarily dismissed their appeal, explaining that the group did not have sufficient money to continue the appeal. Efforts to repeal HB 6 by veto measure have ended.

- Following the \$1 billion ratepayer-funded nuclear bailout that Ohio legislators passed last year, Energy Harbor LLC, formerly FirstEnergy Solutions, has moved to spend an additional \$300 million to repurchase the company's stock. On May 8, 2020, Energy Harbor LLC's board of directors voted to increase authorization for its stock buyback program from \$500 million to \$800 million. The company can buy back its stock at any time until August 26, 2020. This benefit to corporate shareholders comes after FirstEnergy Solutions declared bankruptcy and lobbied aggressively for the HB 6 subsidy, which will increase rates for Ohio customers.
- In light of the HB 6 scandal, repeal efforts are underway.
- **HB 6 Implementation Issues**
 - OAQDA Rulemaking
 - OAQDA requested written comments on its proposed rules. As established in HB 6, the rules provide for utility ratepayer funding of two newly created funds – the nuclear generation and renewable generation funds. OMAEG and OCC were the only entities that filed written comments by the published deadline. OMAEG filed comments requesting clarification and supplementation, to ensure that the proposed rules are complete and allow for adequate and transparent reporting and accountability regarding the nuclear and renewable generation program and funding mechanism.
 - OAQDA issued a memorandum rejecting all comments, stating that its rules comply with the minimal requirements of HB 6 and OMAEG's and OCC's comments address considerations outside the scope of rules.
 - Subsequently, OAQDA held a public hearing regarding its proposed rules on November 18, 2019. OMAEG presented its previously filed written comments at the hearing. AEP provided oral and written comments, requesting a rule clarification that the nine dollar per megawatt hour payment created in HB 6 does not strip the underlying renewable or green attribute in the power so that customers may count the renewable energy as green power or use it for sustainability purposes. FES provided written comments stating that the rules met the minimum requirements of HB 6 and rebutted OMAEG's proposed accountability and transparency provisions. Hillcrest Renewables also provided oral comments agreeing with OMAEG's comments regarding the importance of transparency and accountability and requested a rule modification allowing entities to opt-in and out of the program.
 - 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 HB 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 HB 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 HB 6 is invalidated.
 - OMAEG challenged the decision, which was denied in January.
- Clean Air Fund Rider (Case No. 20-1143-EL-UNC)
 - On June 9, 2020, the PUCO Staff filed a proposal regarding the allocation and rate design for the utilities to collect \$170 million from customers annually to fund the Clean Air Fund Rider (Rider CAF) to subsidize the Ohio nuclear plants, now owned by Energy Harbor, and five solar arrays.
 - On June 17, 2020, OMAEG intervened and filed comments recommending an alternative rate design and that the PUCO adhere to HB 6’s plain language.
 - On August 26, 2020, the PUCO established the nonbypassable recovery mechanism, which will become effective January 2021, and adopted Staff’s allocation and rate design proposal. As OMAEG warned in its comments, the likely result will be that similarly situated nonresidential customers will be charged disparate rates depending on the number of residential customers in their service territory and which service territory their business operations are located in. The PUCO unlawfully included Commercial Activity Taxes in (Rider CAF) and failed to ensure that customers are not being charged “abrupt and excessive charges” or provide for a refund/reconciliation in the tariff language, as HB 6 requires.
- **PUCO Solicited Comments Regarding Future of Energy Efficiency Programs (Case No. 17-1398-EL-POR)**
 - The PUCO requested comments from interested persons regarding the appropriate steps to be taken with respect to energy efficiency programs once the statewide cap of 17.5 percent, set by HB 6, has been reached. Staff has been tracking the EDUs’ progress towards the benchmark, and has been filing periodic reports regarding that progress.
 - The PUCO solicited comments from interested persons on: (1) whether the PUCO should terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met; and (2) whether it is appropriate for the EDUs to continue to spend ratepayer provided funds on energy efficiency programs after the statutory cap has been met.
 - On November 25, 2019, OMAEG and other stakeholders submitted comments regarding the future of Energy Efficiency programs for FirstEnergy and the other EDUs since implementation of HB 6.
 - OMAEG argued that the EDUs should continue their Energy Efficiency programs through December 31, 2020, with programs continuing as economically appropriate thereafter.

- The PUCO agreed with OMAEG and others and concluded that HB 6 and the public interest require all of the utilities' EE Programs to continue through 2020. The PUCO, however, determined that there should be an orderly wind-down of the programs beginning on September 30, 2020 to minimize any recovery of costs associated with the programs after 2020. The PUCO directed the EDUs to honor any application for EE programs approved prior to September 30, 2020 and to cease accepting applications for direct rebate programs on September 30, 2020. The PUCO also ordered the EDUs to notify customers beginning April 1, 2020 that EE applications will no longer be accepted as of September 30, 2020 and stated that any programs that do not involve a direct rebate to consumers should continue only until September 30, 2020 in order to ensure that all activities are completed by December 31, 2020.
 - On September 4, 2020, in light of the impending EE wind-down, the PUCO waived the Ohio Adm. Code requirement that each EDU must file a new portfolio program by September 1 of each year.
- **Reasonable Arrangement Rule Revisions (Case No. 18-1191-EL-ORD)**
 - The PUCO initiated a rule review process to review its rules regarding economic development arrangements, energy efficiency arrangements, and unique arrangements (collectively, reasonable arrangements). As part of that process, the PUCO released its proposed rules and solicited comments from interested parties.
 - OMAEG submitted comments and reply comments on the proposed rules, arguing that the PUCO should create clear standards governing these arrangements in order to ensure fairness and predictability in the process, including both standards for approval and for addressing recipients of reasonable arrangements who do not meet their commitments.
 - On May 6, 2020, the PUCO amended its rules. Despite the suggestions of OMAEG and others, the PUCO appeared to relax its rules and filing requirements regarding reasonable arrangement applications, adopting criteria that it will consider, but not require of applicants, when evaluating reasonable arrangements. The PUCO disregarded several recommendations, including: a cost-benefit requirement; minimum capital investment and job creation requirements; a requirement that applicants show that charges paid to a utility cover all incremental costs of service and contribute to payment of fixed costs; a prohibition against the renewals of reasonable arrangements; and the reservation of economic development reasonable arrangements for energy-intensive customers. Overall, the PUCO opted for language that would allow it maximum discretion over reasonable arrangements. The PUCO did agree with OMAEG and retained requirements that applicants must state the economic benefits of their proposals and that a utility must summarize customers' annual reports.
 - In July 2020, the PUCO denied OMAEG's request for reconsideration of the May 6, 2020 Order, stating that the Order sufficiently addressed OMAEG's concerns.
- **Stakeholder Input to Improve OPSB Siting Process**

- The OPSB held informal stakeholder discussions to learn how to improve public participation in the siting process, technical application requirements, and construction compliance efforts.
- On March 10, 2020, the OPSB held its first stakeholder meeting. Stakeholders raised concerns about applicant costs, delays between certification and construction for wind and solar projects, and the appropriate level of private company involvement with the OPSB process. The Board also heard various proposals to increase public input, including the extension of the 90-day window following the public information meeting process. Stakeholders also discussed how increased flexibility could improve the application process for transmission lines for wind projects. It was further suggested that for transmission projects generally, there should be a higher level of scrutiny for need and an earlier determination of need.
- On March 11, 2020, the OPSB held its second stakeholder meeting. Stakeholders stated that the Board should ensure it has adequate resources to conduct independent assessments on project impacts, using actual data from the area. Stakeholders urged that the pre-application conference be mandatory, held in the project area, and run by the OPSB with the developer present. It was stated that everyone, not just leaseholders, needs an opportunity to provide input, especially on wind projects. Stakeholders discussed that there are no siting regulations for solar projects, whereas there are specific requirements for wind projects. It was argued that OPSB should verify that the developer satisfies each condition post-certification and this information should be docketed and made public. Stakeholders asserted that decommissioning plans should be fully developed, giving communities a clear idea of when they will be funded.
- On May 12, 2020, the OPSB held its third stakeholder discussion. Stakeholders made several comments recommending what the Board should examine in its process including: the cumulative effect of multiple projects in a single area; the long-term impact of wind turbines; warranty and merchantability issues; promises of financial gains made to school districts; multigenerational land use issues; reporting requirements once sites are operating; the selection process for expert testimony; and taxation issues regarding pipeline developers.
- Next, OPSB will open a formal rulemaking docket 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.
- **PUCO Sought Comments on Electric Vehicle Charging Service (Case No. 20-434-EL-COL)**
 - The PUCO is seeking comments on whether an entity that provides electric vehicle charging (EV) service is a “public utility” subject to the jurisdiction of the PUCO. The PUCO explained that its Staff has consistently taken the position that entities that

provide EV charging services are neither electric light companies nor public utilities in this state, but the PUCO has never decided this specific issue.

- Interested persons filed comments and reply comments on March 23, 2020 and April 7, 2020, respectively.
- The majority of stakeholders asserted that providers of EV charging services are not public utilities subject to the PUCO's jurisdiction while Duke and AEP Ohio stated charging operators may be public utilities in certain scenarios and encouraged EDU involvement in the development of the EV charging market and infrastructure.
- On July 1, 2020, the PUCO determined that providers of EV charging services do not qualify as "public utilities" and are not subject to PUCO jurisdiction.
- **The PUCO Approved Energy Harbor's Certification as CRES & CRNGS Suppliers (Case Nos. 20-550-GA-CRS; 0-1742-EL-CRS)**
 - On May 6, 2020, the PUCO approved Energy Harbor LLC's, formerly FirstEnergy Solutions, applications for certification as Competitive Retail Electric Service (CRES) and Competitive Retail Natural Gas Service (CRNGS) providers.
- **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.

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 DP&L 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, HB 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.

FERC Rulemaking

- **Proposed Grid Reliability and Resiliency Rule (Docket RM18-1)**
 - FERC considered a rule proposed by the Secretary of Energy that would subsidize inefficient and failing coal plants in the name of promoting grid reliability and resiliency. In reality, however, the proposed rule would only act as a subsidy to prop up failing generators at the expense of electric customers.
 - OMAEG filed comments opposing the proposed rule and supporting the arguments of other manufacturing coalitions.
 - FERC agreed with OMAEG and others and rejected the proposed rule. FERC concluded that the record did not support the claim that the grid faces reliability or resiliency threats from the retirement of inefficient generation, and, even if a problem existed, FERC explained that the proposed solution was contrary to FERC's longstanding commitment to markets and market-based solutions and did not satisfy the legal requirements for the creation of a new rule. Instead, FERC defined resiliency

and sought comments and data from the regional transmission organizations and independent system operators regarding their resiliency challenges on a regional basis.

- Rehearing is pending.
- **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 resolve outstanding MOPR-related issues so that PJM can conduct a Base Residual Auction for 2022/2023.
- **Grid Resilience in RTOs and ISOs (Docket AD18-7)**
 - FERC opened this proceeding to evaluate bulk power system resilience. PJM filed comments that advocated a broader approach to system resilience and asserting that PJM should be involved in improving resilience.
 - The PUCO filed reply comments that supported PJM's position in favor of a broader approach to system resilience, but also urged FERC to avoid adopting PJM proposals without acknowledging the state and local role in the process. The PUCO believes that resilience is already considered in existing reliability standards and does not want ratepayers to be burdened by a new approach to resilience through increased charges without receiving any benefits.
- **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 filed a motion for approval of its sale to Exelon Generation Company (Exelon), the parent company of Constellation Energy, which was later withdrawn.
- The bankruptcy court agreed to allow FES to abandon its contracts with two money-losing OVEC plants. This could cause OVEC charges for AEP, Duke, and DP&L customers to increase.
- FES filed a term sheet that contained provisions of an agreement with the Official Committee of Unsecured Creditors, the Ad Hoc group of Pollution Control Notes, the Ad Hoc group of Mansfield bond holders, and certain holders of rejection damage claims. In the next few months, FES will file a Restructuring Support Agreement (RSA), which will contain FES' complete restructuring plan.
- The judge rejected FES' proposed settlement release of FirstEnergy Corp. from its decommissioning and environmental obligations to the government. The judge determined that this proposed release made the plan unconfirmable, which means that FES had to develop a new plan for its exit from bankruptcy. This triggered the renegotiation of the FirstEnergy bankruptcy settlement.
- FES submitted a new bankruptcy settlement plan. The judge refused to confirm the plan unless the unions voluntarily agreed to a new collective bargaining agreement or FES goes through the difficult process to reject a collective bargaining agreement.
- FES union workers reported that they had reached an agreement with FES creditors to retain their pensions, wages, and benefits.
- In a win for consumers in Ohio, the Sixth Circuit overturned the Bankruptcy Court decision that enjoined FERC from taking any actions with respect to the OVEC contract and that authorized rejection of the OVEC contract through bankruptcy.
- The Sixth Circuit found the Bankruptcy Court's injunction on FERC was overly broad in prohibiting any action by FERC related to the OVEC contract and that the Bankruptcy Court erred in approving the rejection of the contract based solely on whether the OVEC contract was burdensome on FES.
- The Sixth Circuit remanded the cases to the Bankruptcy Court to reconsider FES' attempt to walk away from the OVEC contract under a "heightened standard," taking into account the impact on the public (including customers) and not just whether the OVEC contract is burdensome on FES.
- 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 HB 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.
- **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.
 - In April 2020, OMAEG joined 60 other consumer groups in requesting an extension to protect customers from unwarranted transmission rate increases as customers deal with challenges associated with the COVID-19 emergency. The motion requests that FERC delay the comment process, by extending the comment deadline to the earlier of 30 days after the national emergency is lifted or October 1, 2020.
 - On May 15, 2020, FERC denied the request to delay and the deadline to comment on the NOPR remains 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.

- **FERC Tolling Orders Attacked (Allegheny Defense Project v. FERC, No. 10-98 (D.C. Cir. 2020))**
 - On June 30, 2020, the D.C. Circuit Court ruled that under the Natural Gas Act (NGA), FERC cannot grant itself more time to consider requests for rehearing of its orders by issuing tolling orders. The decision raises questions about pending and future proceedings under the NGA and its companion act, the Federal Power Act. This would also seem to question the PUCO's practice of issuing the same type of orders.
- **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.
 - A prehearing conference will occur on October 7, 2020 to establish a procedural schedule and discuss other relevant matters.

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MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group

FROM: Kim Bojko, Carpenter Lipps & Leland LLP

DATE: Updated September 9, 2020

SUBJECT: Concerns with Implementation of HB 6

Subsequent to the passage of HB 6, several PUCO cases have occurred to implement HB 6 or to give effect to HB 6 provisions. Many of the rulings in these cases have exacerbated the concerns highlighted by OMA through the HB 6 legislative process and have, in fact, made the effects of HB 6 worse for manufacturers. OMAEG has challenged each of these rulings, arguing that the PUCO has exceeded the intent of the General Assembly when adopting HB 6 or the authority granted by HB 6.

1. Decoupling Mechanism:

- a. In a non-HB 6 related FirstEnergy proceeding regarding the distribution modernization rider (DMR) that the Supreme Court of Ohio determined to be unlawful, the PUCO, on its own motion, removed the electric security plan (ESP) requirement for FirstEnergy to file a rate case at the end of its base distribution rate freeze in 2024.¹ This PUCO ruling impacts the decoupling mechanism included in HB 6, potentially increasing the costs that can be collected from customers. The decoupling mechanism in HB 6 remains in effect until the utility files a base distribution rate case and the PUCO approves new base distribution rates. Given this language and the requirement that FirstEnergy file a base distribution rate case in 2024, the decoupling mechanism was anticipated to only pass on costs associated with decoupling to customers through 2024 and the first part of 2025, as new rates were expected to be approved in 2025,² thereby eliminating the decoupling mechanism in 2025. The PUCO's ruling, however, now allows the decoupling mechanism to continue beyond 2024 for an unknown and undefined period, thereby allowing FirstEnergy to collect unprecedented revenues it

¹ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for an Extension of the Distribution Modernization Rider*, Case No. 19-361-EL-RDR, Entry at ¶ 17 (November 21, 2019).

² Assuming FirstEnergy filed its rate case at the conclusion of its ESP IV in June 2024 and a decision was issued within 275 days of the application as set forth in R.C. 4909.18.

received in 2018, plus lost distribution revenues received in 2018 from energy efficiency programs even though FirstEnergy no longer offers such programs.

- b. The PUCO failed to weather normalize the 2018 revenues as is typical in base distribution rate proceedings and as Staff recommended,³ exacerbating the effects of the unusually warm 2018, allowing FirstEnergy to collect for an unknown period higher than normal revenues.
- c. The PUCO approved FirstEnergy's use of projected data in establishing its decoupling mechanism, which defeats the decoupling's purpose of charging or crediting customers based on *actual* costs.⁴
- d. The PUCO authorized FirstEnergy's unjustified claims to collect \$66 million in lost distribution revenue from implementing energy efficiency programs in 2018 (which was a greater amount than the cost of running the programs).⁵

2. OVEC Rider:

- a. HB 6 caps the cost of the new OVEC Rider on a per customer basis,⁶ but, in the PUCO proceeding implementing this HB 6 provision, the PUCO capped the costs on a per meter basis.⁷ Consequently, nonresidential customers with multiple accounts and meters or nonresidential customers with multiple facilities within the same service territory will be unlawfully charged the OVEC Rider for each meter/account and will be subject to a \$1,500 cap for each meter/account. The per customer v. per meter/account cap was debated in the legislative process and the legislature decided to include in the final language of the bill a cap on a "per customer basis." The PUCO ruling ignored the intent of the General Assembly and imposed an OVEC charge cap on a per meter basis, increasing the costs to manufacturers having multiple meters and/or accounts.
- b. The PUCO rejected arguments to make the OVEC Rider subject to an audit and review process, reconciliation, and refund to ensure that customers only pay prudently incurred costs related to the legacy generation resource as provided for in HB 6.⁸ The PUCO

³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Approval of a Decoupling Mechanism*, Case No. 19-2080-EL-ATA, Finding and Order at ¶¶ 25- 28 (January 15, 2020); Staff Report at 1 (January 1, 2020).

⁴ OMAEG's Comments at 9, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=19-2080&x=0&y=0>.

⁵ Id. at 6-8.

⁶ R.C. 4928.148(A)(2) ("For all other customer classes, the commission shall establish comparable monthly caps for each class at or below one thousand five hundred dollars *per customer*") (emphasis added).

⁷ *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry at ¶ 33 (November 21, 2019) ("[t]he combination of Part A and Part B rates will be capped at \$1.50 per month for residential customers and \$1,500 per month for non-residential customers on a *per account basis*") (emphasis added).

⁸ OMAEG's Comments at 9, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=191808&x=0&y=0> ; see R.C. 4928.148(A).

determined that the program would not be subject to a refund should HB 6 be invalidated.⁹

3. Elimination of EE Programs:

- a. Despite the plain language of HB 6, the PUCO solicited comments on whether it should terminate energy efficiency programs once the utilities achieved cumulative energy savings of 17.5% pursuant to HB 6 and whether utilities should be permitted to spend customer-provided funds on energy efficiency programs after the 17.5% was met.¹⁰ HB 6's plain language does not authorize the PUCO to terminate the energy efficiency programs before December 31, 2020 and indicates that 17.5% was a minimum threshold rather than a defined "cap."¹¹ Although participating customers paid for the efficiency programs in 2021 and reasonably relied on and invested in the energy efficiency programs and factored rebates or incentives from such programs into their business decisions for pending or scheduled projects, the PUCO ordered the wind-down of statutorily required EE programs to prematurely commence on September 30, 2020.¹²
- b. Despite the intent of the General Assembly to eliminate non-bypassable charges associated with energy efficiency programs, utilities have filed for approval of voluntary energy efficiency programs that include non-bypassable charges related to profit and administrative fees for the utility to run the energy efficiency programs beyond December 31, 2020 with no opportunity for customers to opt-out.¹³ While the PUCO has rejected one such filing, another is still pending.

4. Clean Air Fund Rider:

- a. Pursuant to HB 6, the PUCO must establish a rate design and allocation method for a nonbypassable recovery mechanism sufficient to produce an annual revenue requirement of \$170 million for the utilities collectively.¹⁴ Accordingly, the PUCO

⁹ *In the Matter of Establishing the Nonbypassable Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148*, Case No. 19-1808-EL-UNC, Entry at ¶ 31 (November 21, 2019).

¹⁰ *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case Nos. 16-574-EL-POR, et. al, Entry at 1 (October 23, 2019).

¹¹ OMAEG's Comments at 2-5, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=16-574&x=0&y=0/>

¹² *In the Matter of the Application of Ohio Power Company for Approval of its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2017 Through 2020*, Case Nos. 16-574-EL-POR, et. al, Finding and Order at ¶ 48 (February 26, 2020).

¹³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of its 2021 Energy Efficiency and Demand Side Management Portfolio of Programs and Cost Recovery Mechanism*, Case No. 20-1013-EL-POR, Application (June 8, 2020); *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, et al., Direct Testimony of Jon F. Williams at 6 (June 15, 2020).

¹⁴ R.C. 3706.46(A)(2).

established the Clean Air Fund Rider on August 26, 2020,¹⁵ despite efforts underway to repeal HB 6.

- b. The PUCO ordered the \$170 million annual revenue requirement to be allocated to each utility based on the total number of kWhs sold by each utility during the previous calendar year.¹⁶ Residential customers will pay \$0.85 per month and each utility will then collect the nonresidential portion of its allocated share of the total revenue requirement by dividing the forecasted annual nonresidential kWhs, for all kWhs up to 833,000 per month per customer, to determine a \$/kWh rate for each nonresidential customer's usage up to 833,000 kWhs per month.¹⁷ As OMAEG cautioned in its comments, the likely impact of this allocation method will be that similarly situated nonresidential customers will be charged disparate rates based on the number of residential customers in their service territory and which service territory their business operations are located in.¹⁸
- c. The PUCO included the Commercial Activity Taxes (CAT) in Rider CAF.¹⁹ Ratepayers typically only pay tax-gross ups for utility services, which Rider CAF does not recover costs for.²⁰
- d. The PUCO applied the revenue requirement cost cap of \$2,400 per month to *any* nonresidential customer eligible to self-assess, while HB 6 only provides that the cost cap applies to industrial customers eligible to self-assess.²¹
- e. The PUCO approved Rider CAF without a bill impact analysis, which prevents customers from determining whether the rate design avoids “abrupt and excessive” charges as HB 6 requires.²²
- f. The PUCO determined that Rider CAF is not subject to reconciliation or refund, contrary to the plain language of HB 6.²³

5. Ohio Air Quality Development Authority (OAQDA) Rules:

- a. HB 6 required OAQDA to draft rules to implement HB 6 regarding the creation and funding of the two newly created funds – the nuclear generation and renewable generation funds.²⁴ The rules lacked clarity and did not ensure adequate and

¹⁵ *In the Matter of Establishing the Clean Air Fund Rider Pursuant to R.C. 3706.46*, Case No. 20-1143-EL-UNC, Entry at ¶ 1 (August 26, 2020).

¹⁶ Entry at ¶ 25.

¹⁷ Id.

¹⁸ See OMAEG's Comments at 8, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=20-1143&x=0&y=0>.

¹⁹ Entry at ¶ 18.

²⁰ See OMAEG's Comments at 10, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=20-1143&x=0&y=0>.

²¹ Entry at ¶ 19; R.C. 3706.46(B) (emphasis added) (requiring that the recovery mechanism's “per-customer monthly charge for *industrial* customers eligible to become self-assessing purchasers . . . does not exceed two thousand and four hundred dollars.”)

²² Entry at ¶ 23; R.C. 3706.46(B).

²³ Entry at ¶ 23; see OMAEG's Comments at 12, <https://dis.puc.state.oh.us/CaseRecord.aspx?CaseNo=20-1143&x=0&y=0> (citing R.C. 3706.46(C), R.C. 3706.55(B)).

²⁴ See R.C. 3706.40-3706.65.

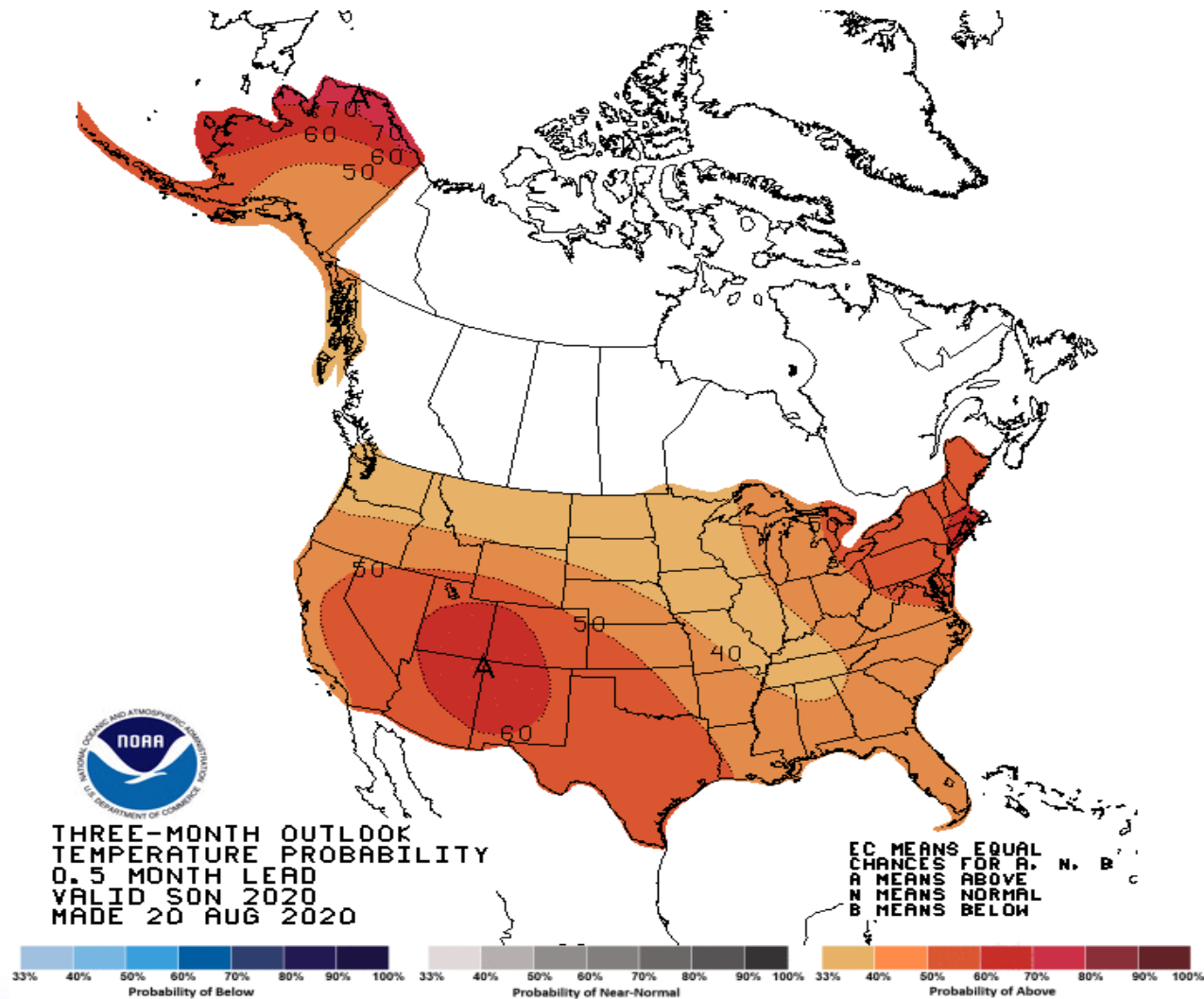
transparent reporting and accountability regarding the programs and funding mechanism.²⁵

²⁵ OMAEG's Comments at 1-3.

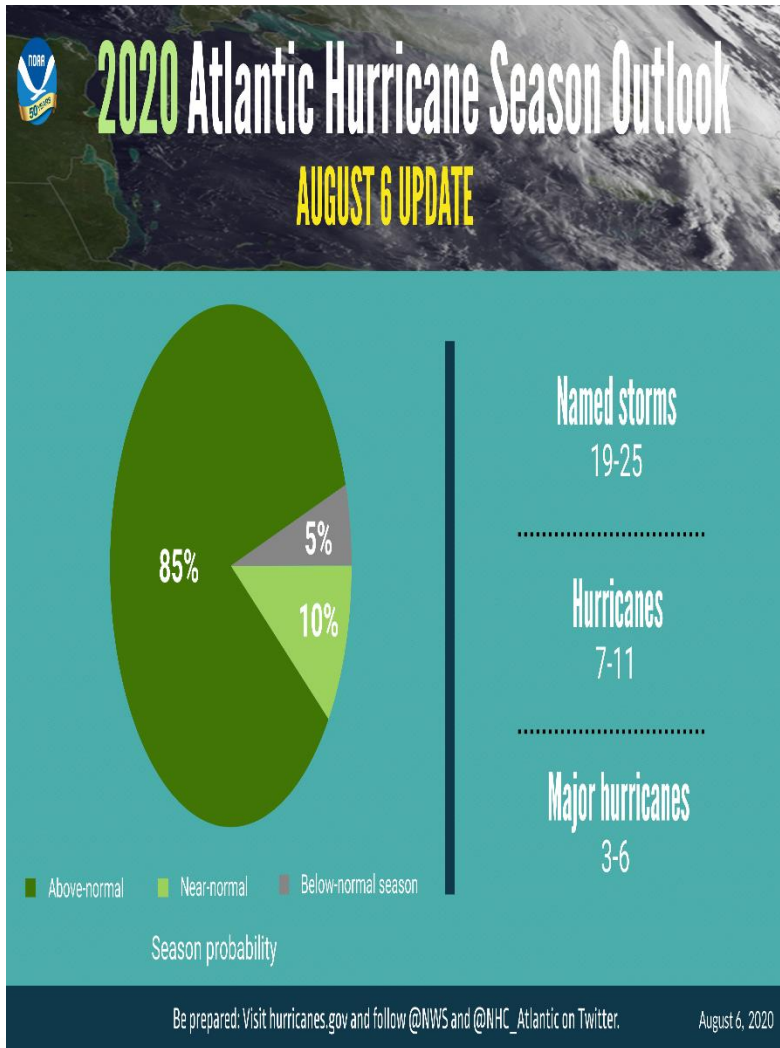
Natural Gas Update OMA Energy Committee

**Darin King
NiSource/Columbia Gas of Ohio
September 10, 2020**

NOAA Temperature Outlook: Sept, Oct, & Nov 2020



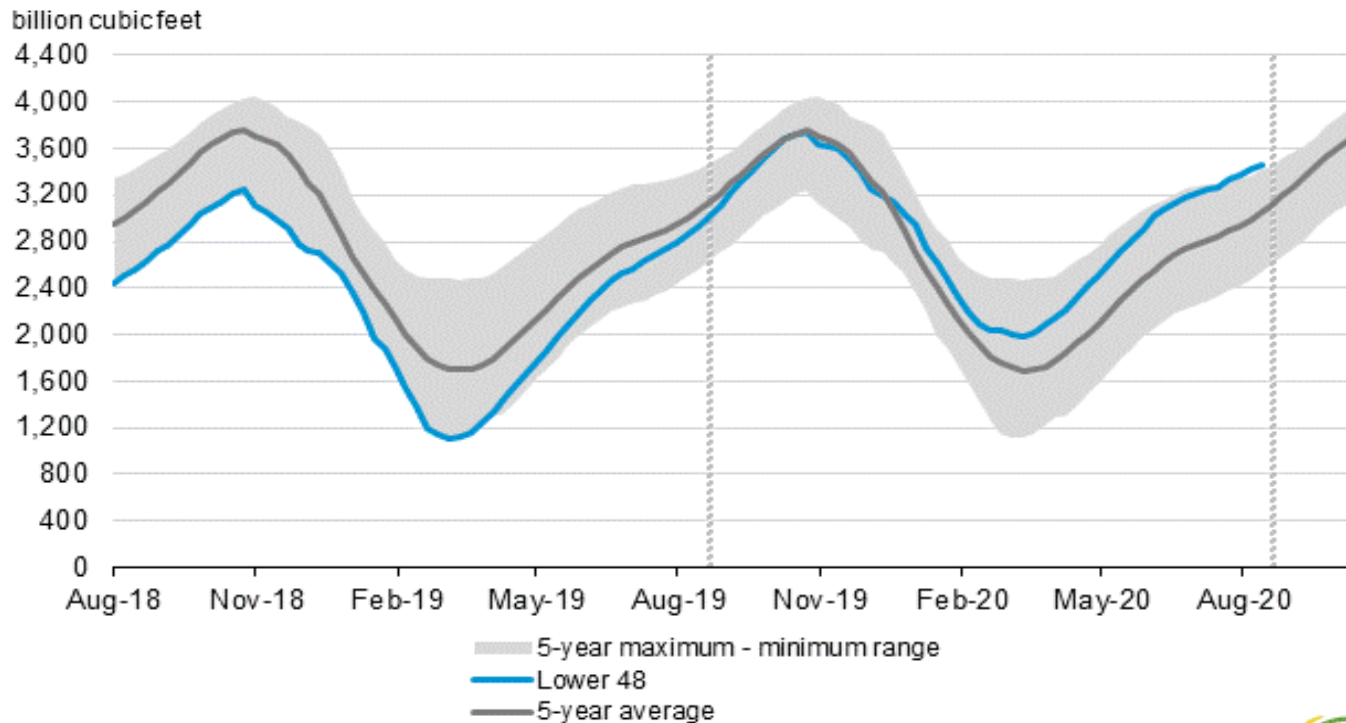
NOAA Hurricane Outlook: “Extremely Active” Possible



Storage – Above the 5 Yr Average

Working gas in storage was 3,455 BCF as of Friday, August 28, 2020, according to EIA estimates. This represents a net increase of 35 BCF from the previous week. Stocks were 538 BCF higher than last year at this time and 407 BCF above the five-year average of 3,048 BCF. At 3,455 BCF, total working gas is above the five-year historical range.

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



Source: U.S. Energy Information Administration

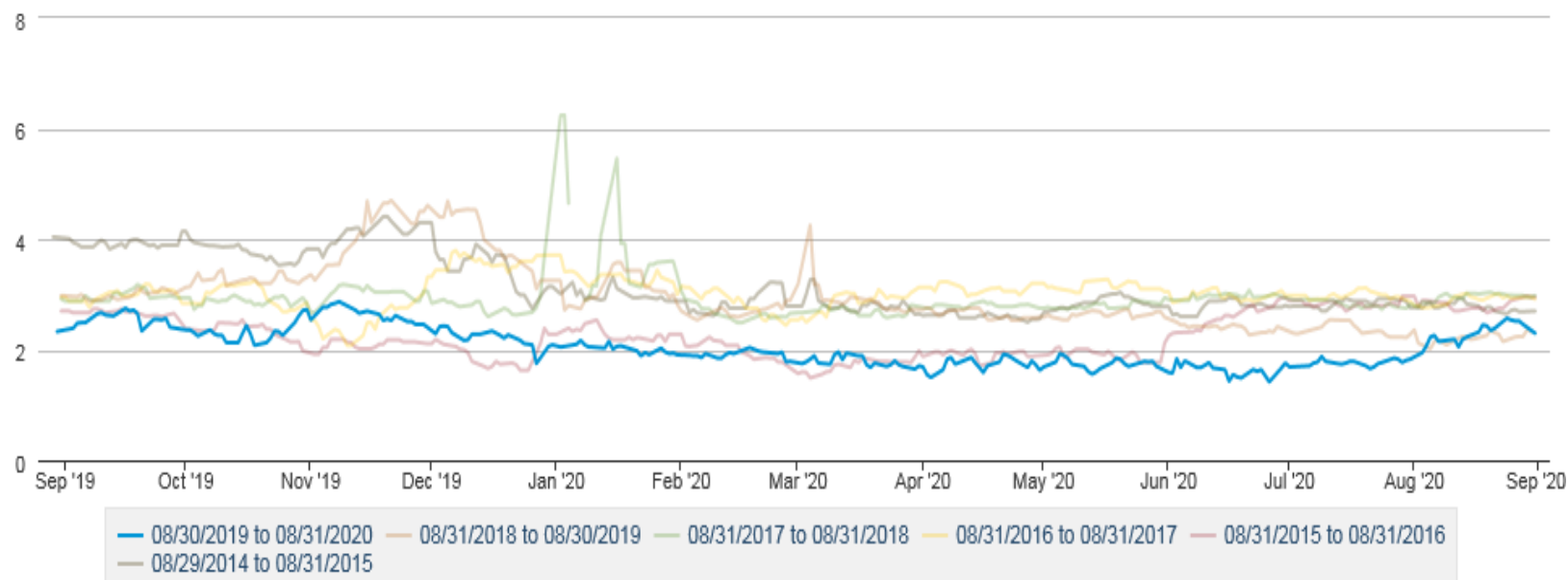


NYMEX Prompt Month Settlement – 5 Years

Henry Hub Natural Gas Spot Price

 [DOWNLOAD](#)

Dollars per Million Btu

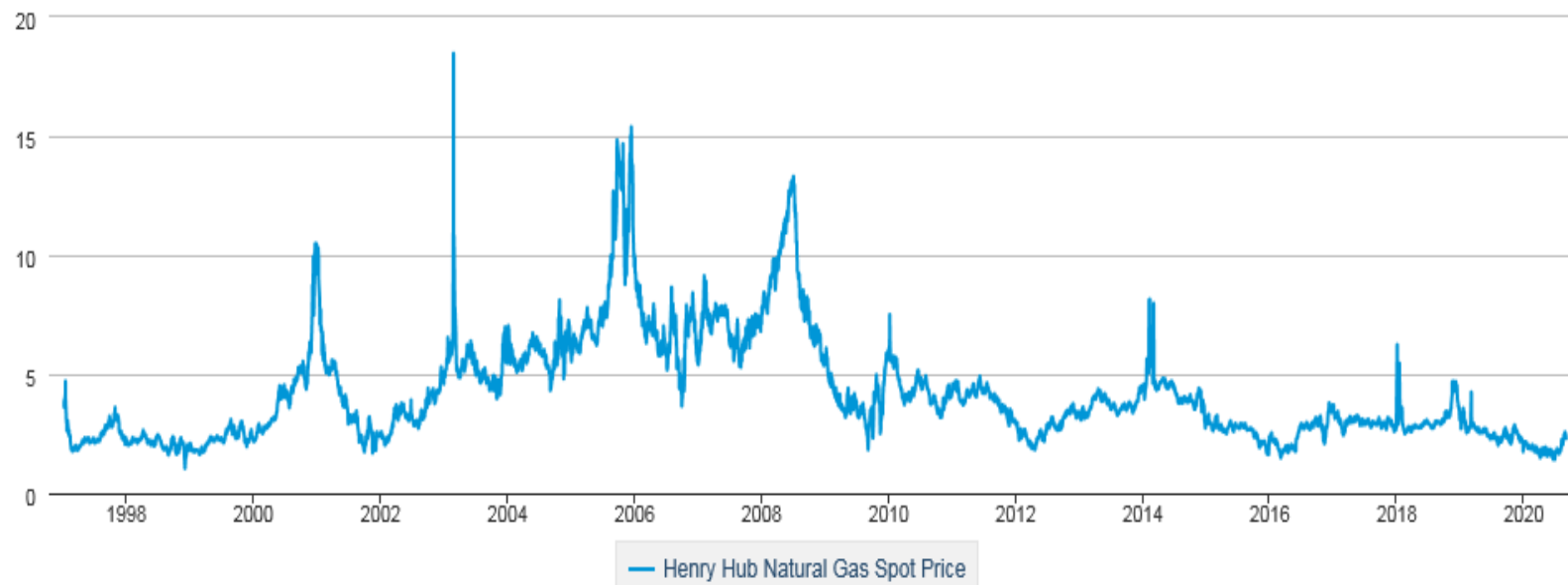


NYMEX Prompt Month Settlement History

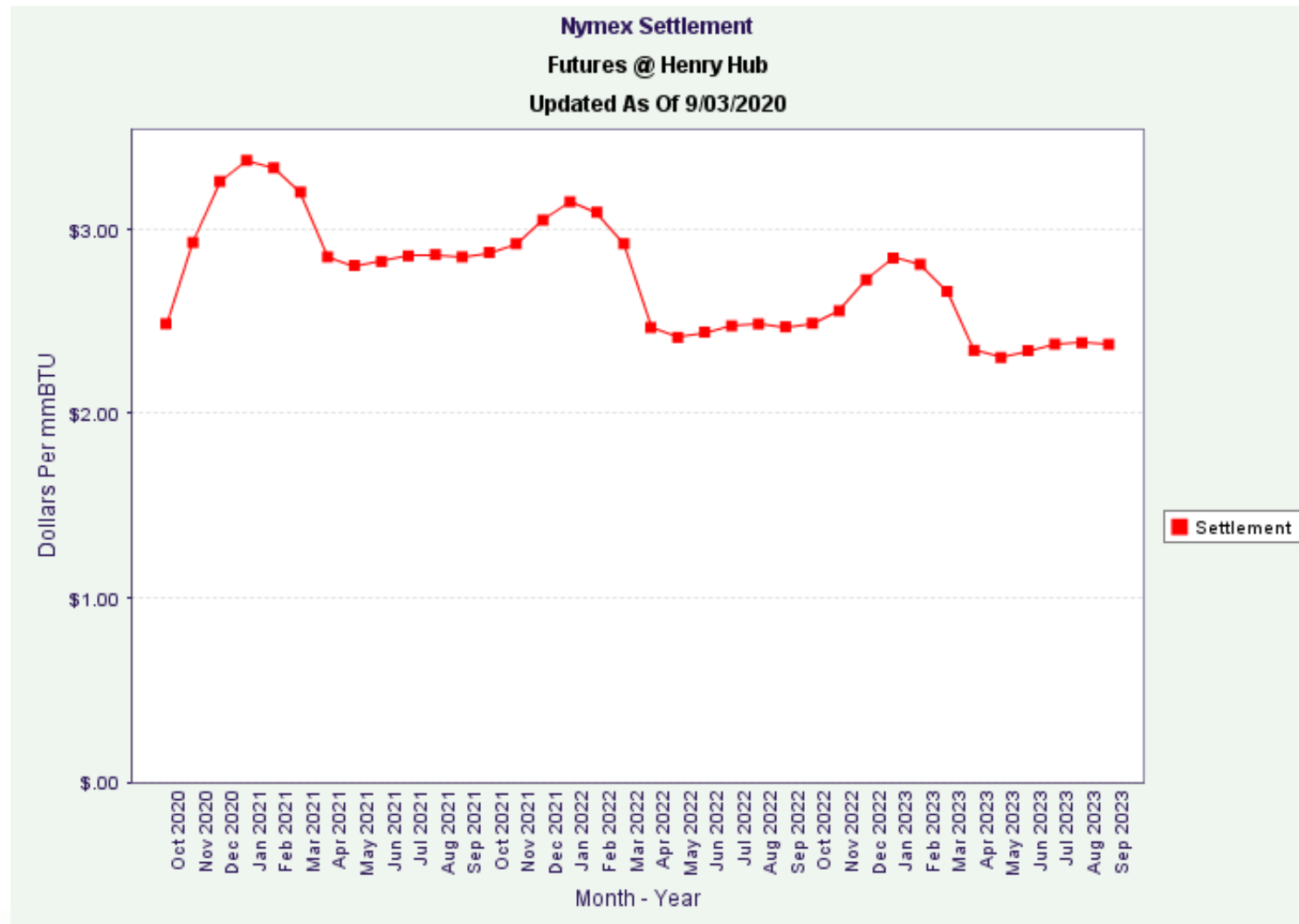
Henry Hub Natural Gas Spot Price

 [DOWNLOAD](#)

Dollars per Million Btu



NYMEX Futures Settlement: 9/4/2020 – \$3 is back



NYMEX Term Pricing: 9-4-2020: Much Higher

<u>TERM</u>	<u>PRICE 5-18-20</u>	<u>PRICE 9-4-20</u>
3 month	\$1.80	\$2.89 (+\$1.09)
6 month	\$1.98	\$3.10 (+\$1.12)
12 month	\$2.37	\$2.97 (+\$0.60)
18 month	\$2.44	\$2.98 (+\$0.54)

Select Hub Pricing – Sept 4, 2020 – Higher

<u>HUB LOCATION</u>	<u>5-18-20</u>	<u>9-4-20</u>	
Henry Hub	\$1.60	\$2.32	(+\$0.72)
Houston Ship Channel	\$1.61	\$2.34	(+\$0.73)
TCO Pool	\$1.37	\$1.74	(+\$0.37)
Dominion South Point	\$1.17	\$1.44	(+\$0.27)
TETCO M-2	\$1.13	\$1.42	(+\$0.29)
TGP Zone 4	\$1.03	\$1.33	(+\$0.30)

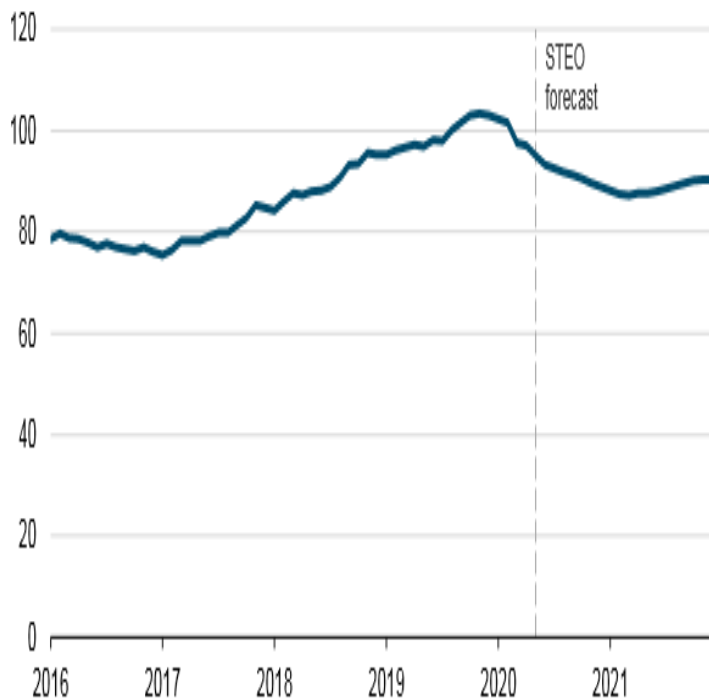
Dominion, TCO, TETCO, & TGP pricing is Marcellus/Utica Area.

Note that Appalachian price increase is smaller than most areas due to strong production supply

EIA predicted Production & Consumption slow downs in 2020 (Slides from 5-18-2020 OMA Meeting)

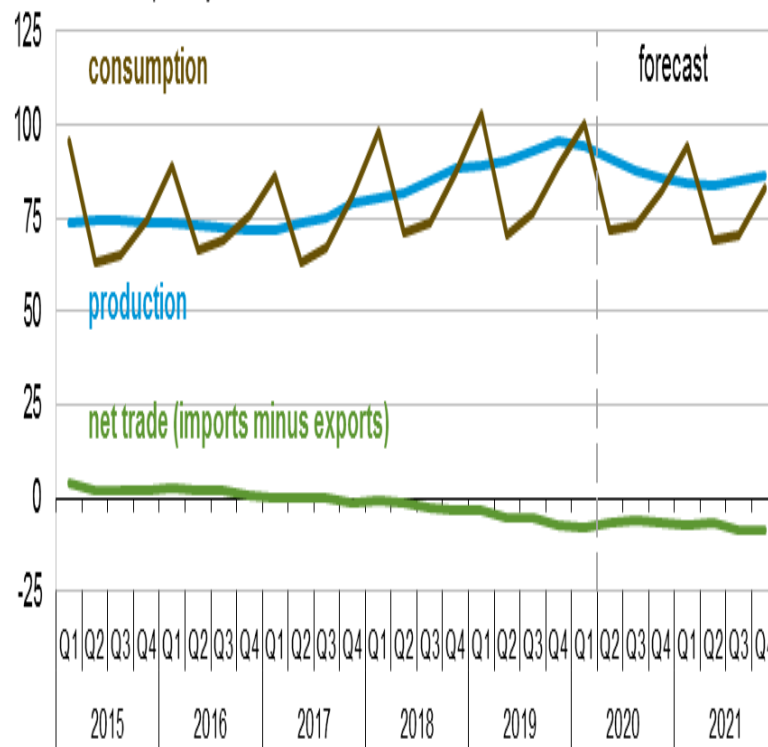
Monthly U.S. marketed natural gas production (2016-2021)

billion cubic feet per day



U.S. natural gas production, consumption, and net imports

billion cubic feet per day

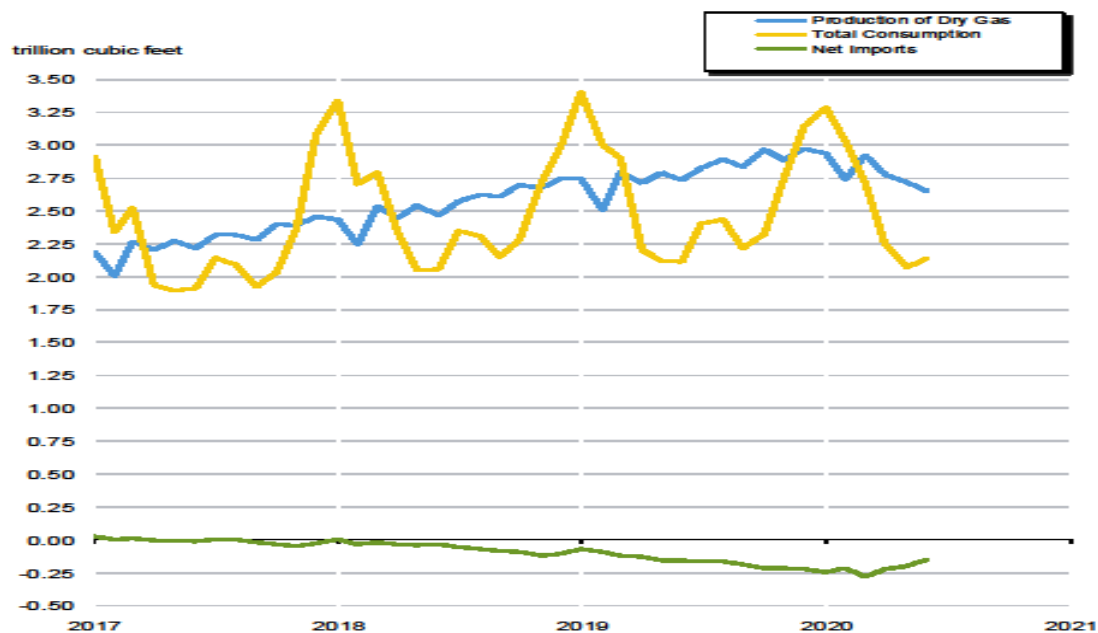


Those Decreases are What has Occurred

Figure 1

August 2020

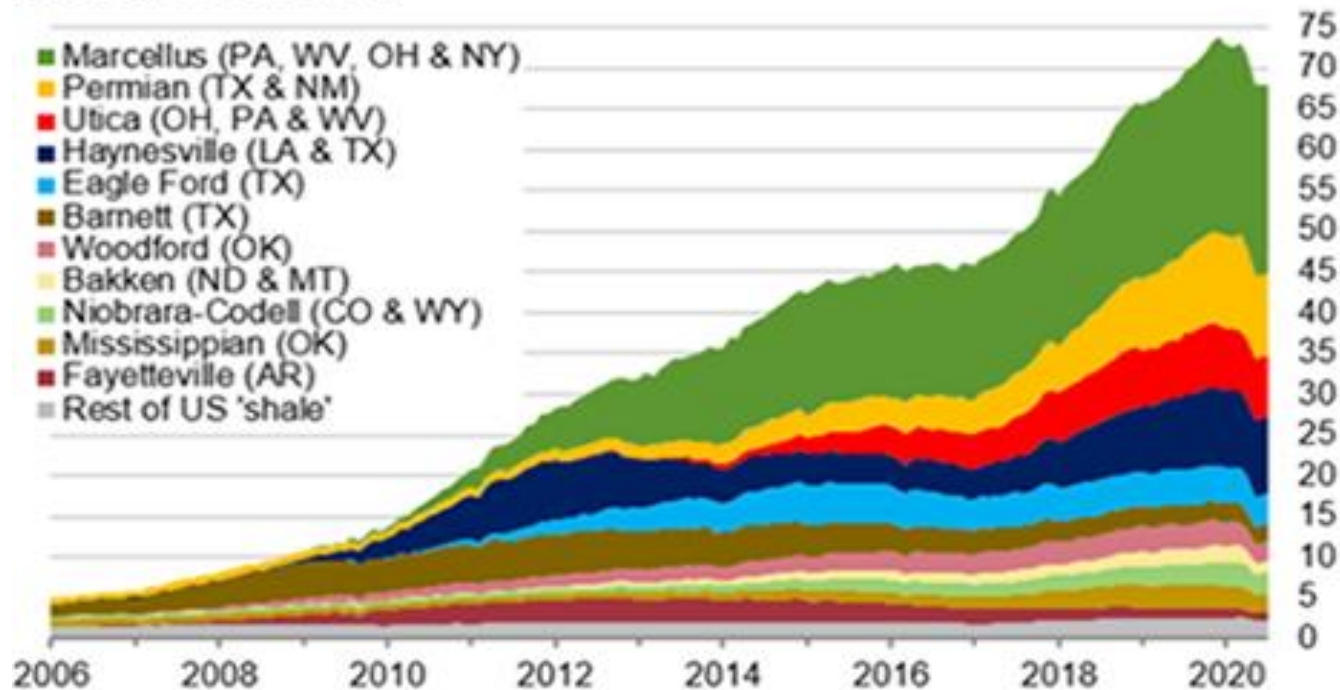
Figure 1. Production, consumption, and net imports of natural gas in the United States, 2017-2020



Sources: 2017-2018: U.S. Energy Information Administration (EIA), Natural Gas Annual 2018; January 2019 through current month: Form EIA-914, Monthly Crude Oil and Lease Condensate, and Natural Gas Production Report; Form EIA-857, Monthly Report of Natural Gas Purchases and Deliveries to Consumers; Form EIA-133, Monthly Underground Gas Storage Report; EIA computations and estimates; and Office of Fossil Energy, Natural Gas Imports and Exports.

Recent Shale Gas Production Slight Decline – Low Prices

Monthly dry shale gas production
billion cubic feet per day

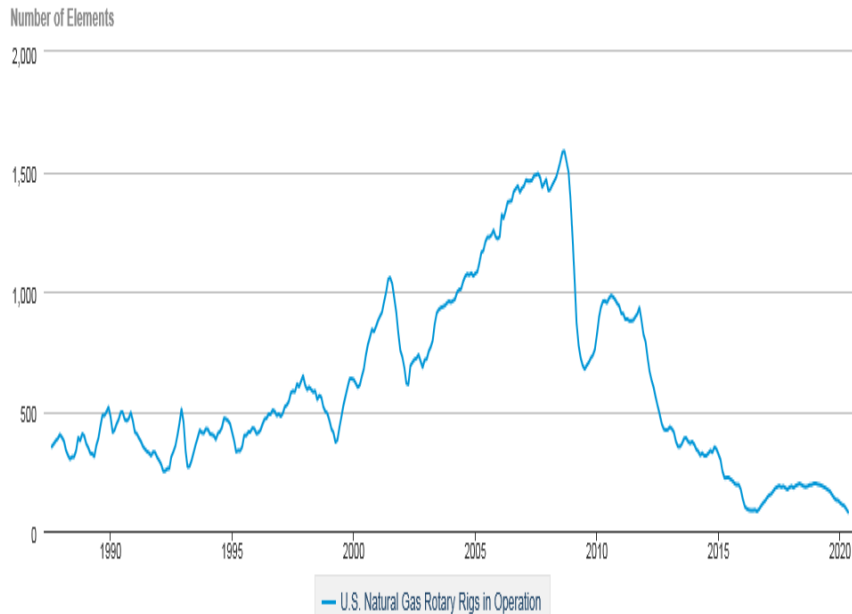


Sources: EIA derived from state administrative data collected by Enverus Drillinginfo Inc.
Data are through July 2020 and represent EIA's official tight gas estimates, but are not survey data. State abbreviations indicate primary state(s).

US Gas & Oil Rig Count History – Currently, Very Low

U.S. Natural Gas Rotary Rigs in Operation

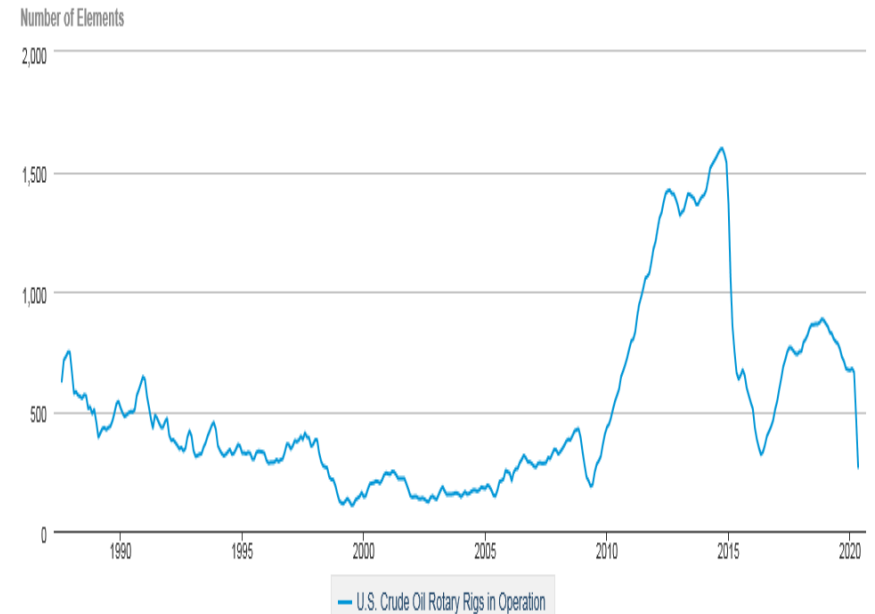
DOWNLOAD



Source: U.S. Energy Information Administration

U.S. Crude Oil Rotary Rigs in Operation

DOWNLOAD

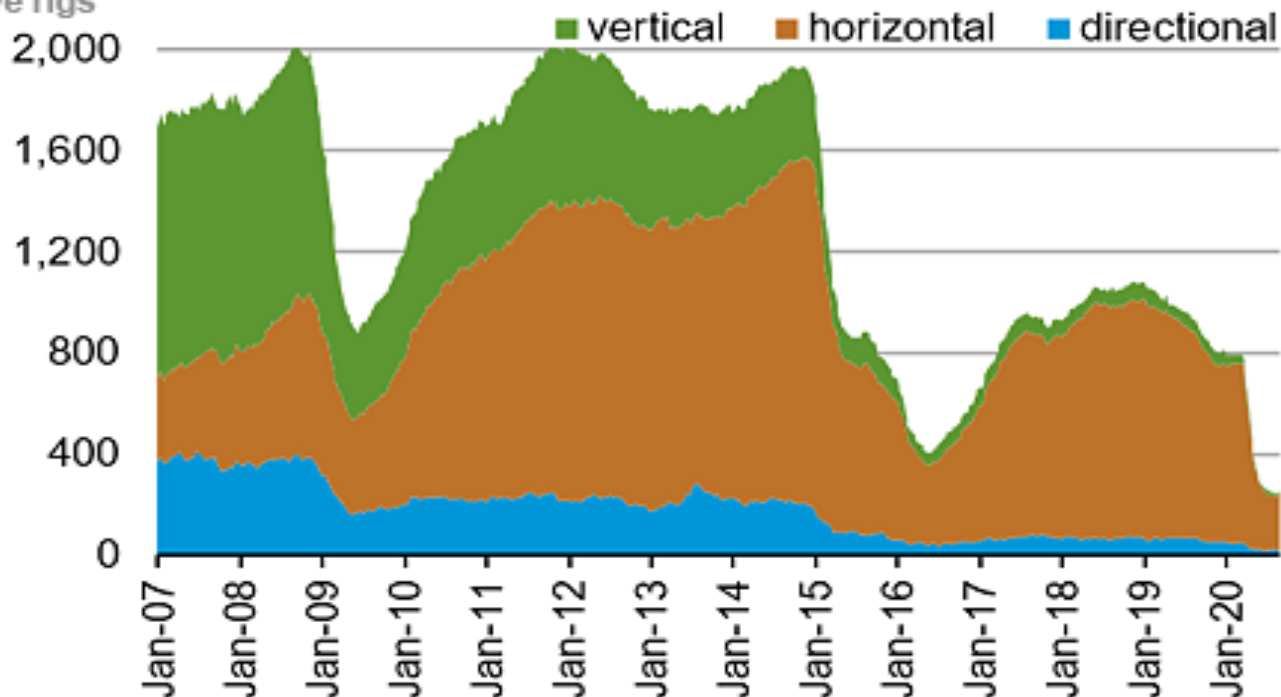


Source: U.S. Energy Information Administration

Oil & Gas Rig Count – Lot's Lower – Price too low

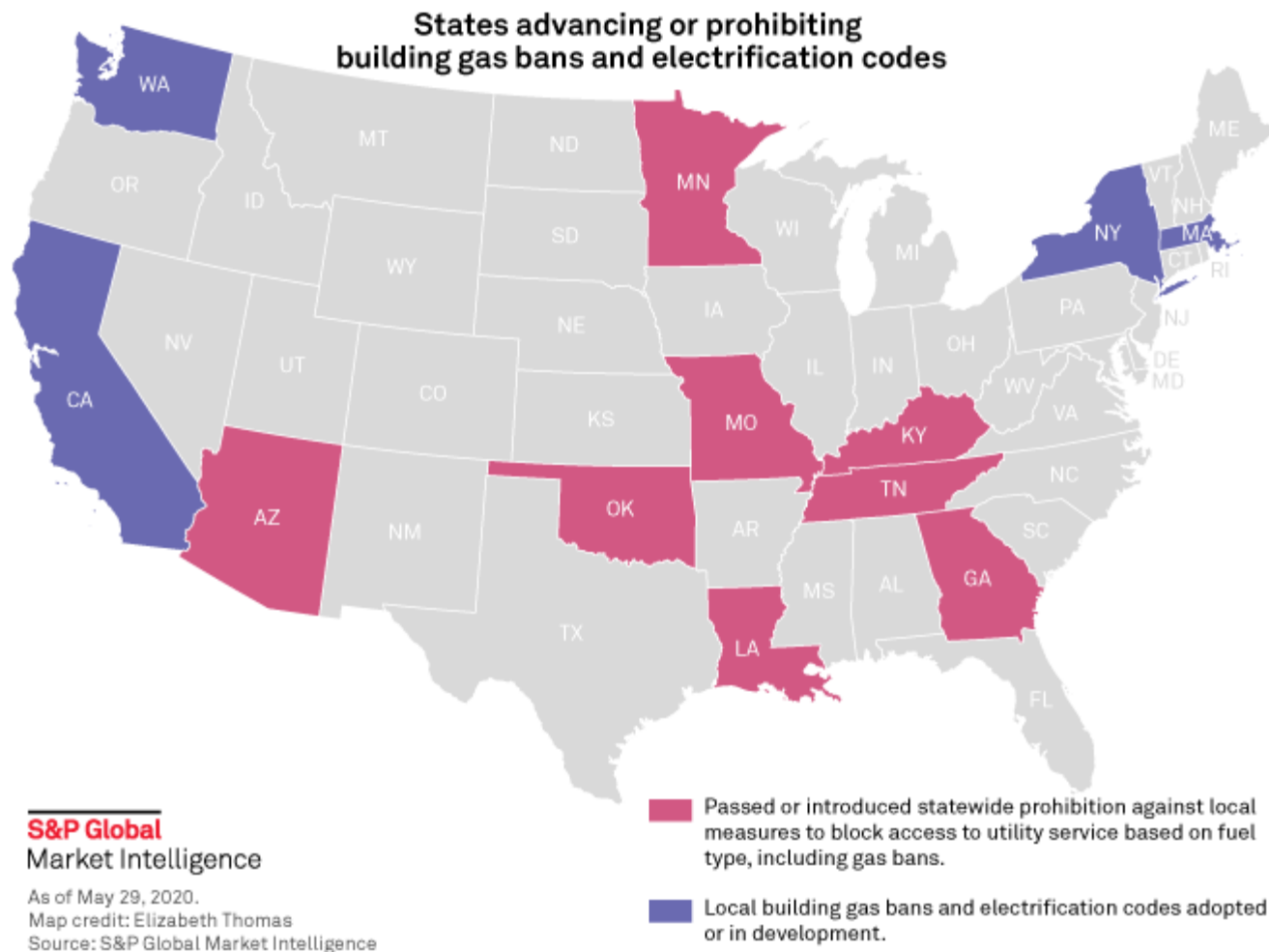
Weekly total rig count

active rigs



Source: Baker Hughes Co.

Natural Gas Bans & No Natural Gas Bans



Climate Goals of Some of US's Largest Utilities

Timeline of largest US electric, gas utilities' topline climate goals

		Highest reduction (%)
2025	NextEra Energy Inc.	40
2030	AES Corp.	70
	Alliant Energy Corp.	50
	Entergy Corp.	50
	Eversource Energy	Net-zero
	NiSource Inc.	90
2035	Atmos Energy Corp.	50
	Avangrid Inc.	Net-zero
	CenterPoint Energy Inc.	70
2040	CMS Energy Corp.	90
	Consolidated Edison Inc.	Net-zero
	UGI Corp.	95
2045	FirstEnergy Corp.	90
	Sempra Energy	Net-zero
2050	Ameren Corp.	80
	American Electric Power Co. Inc.	80
	Dominion Energy Inc.	Net-zero
	DTE Energy Co.	Net-zero
	Duke Energy Corp.	Net-zero
	Eversource Inc.	80
	NRG Energy Inc.	Net-zero
	Pinnacle West Capital Corp.	Net-zero
	PPL Corp.	80
	Public Service Enterprise Group Inc.	Net-zero
	Southern Co.	Net-zero
	Vistra Energy Corp.	80
	WEC Energy Group Inc.	80
	Xcel Energy Inc.	Net-zero

Data compiled July 16, 2020.

Filtered from companies classified by S&P Global Market Intelligence as electric utilities, multi-utilities, gas utilities, independent power producers and energy traders, or renewable energy firms.

Limited to 30 largest utilities companies in terms of market capitalization as of June 10, 2020.

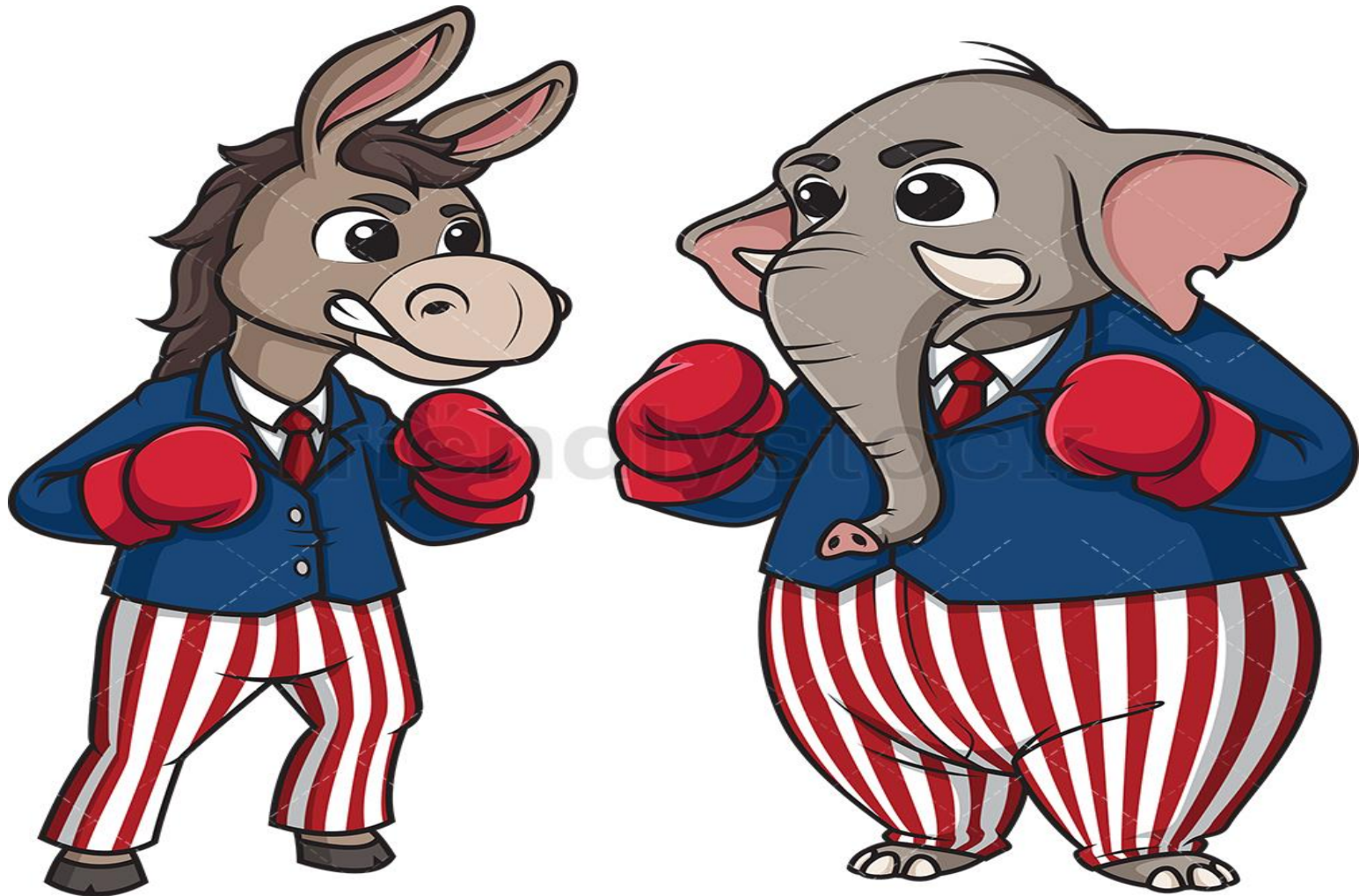
A spokesperson for Edison International, which was excluded from the timeline, said the company and its subsidiary Southern California Edison "support California's goals to reduce greenhouse gas emissions 40% by 2030 from 1990 levels and ... the state's goals to decarbonize electricity and achieve carbon neutrality by 2045."

The topline reduction targets listed for companies that own gas distribution or retail sales assets may or may not include emissions from those gas assets.

Some companies have established an "aspirational" net-zero target and some companies marked as having a net-zero goal may have pledged a more aggressive target of going carbon free by a certain date.

Sources: S&P Global Market Intelligence; S&P Global Platts

The Likely Biggest Development Coming



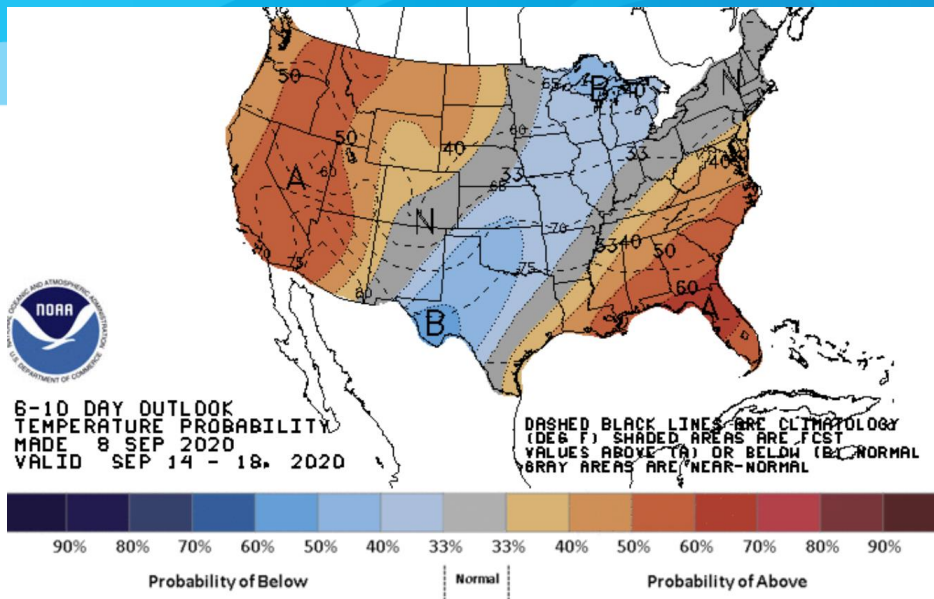
Electricity Market Update

September 9, 2020



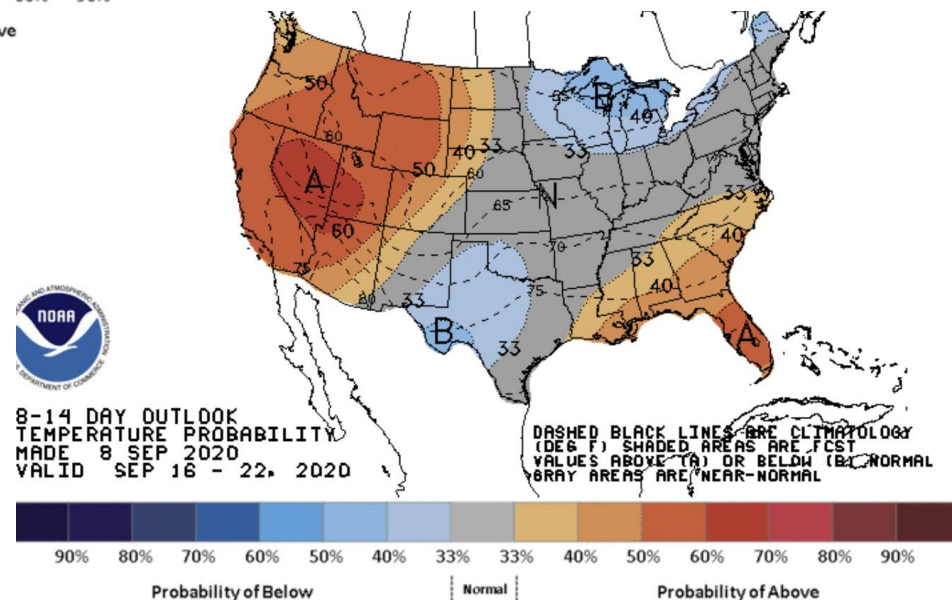
scioto energy

Temperature Forecast



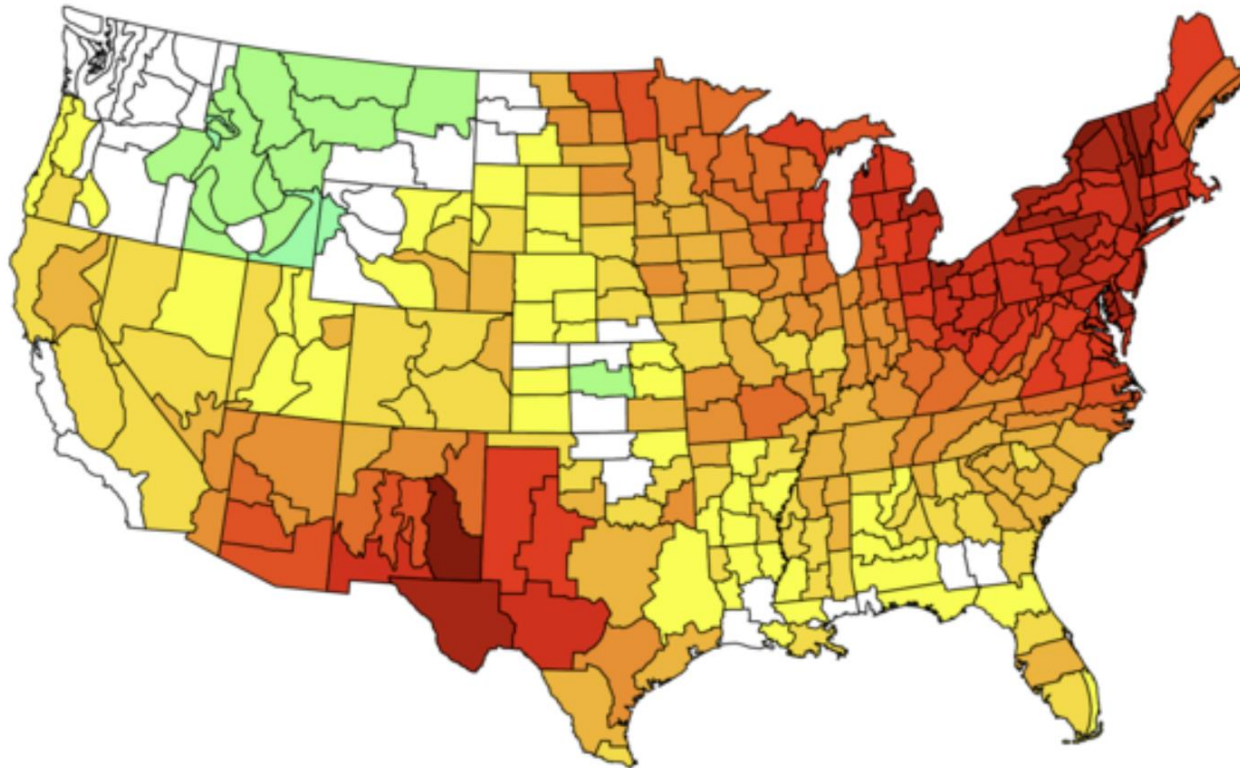
← 6 – 10 day

8 – 14 day →

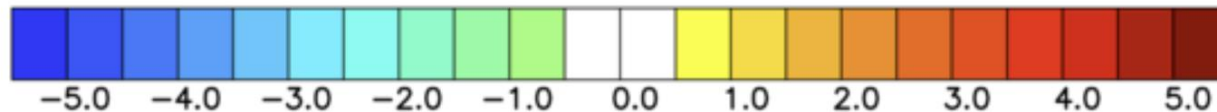


Historic Temperatures

NOAA/NCEI Climate Division Temperature Anomalies (F)
Jul 2020
Versus 1981–2010 Longterm Average

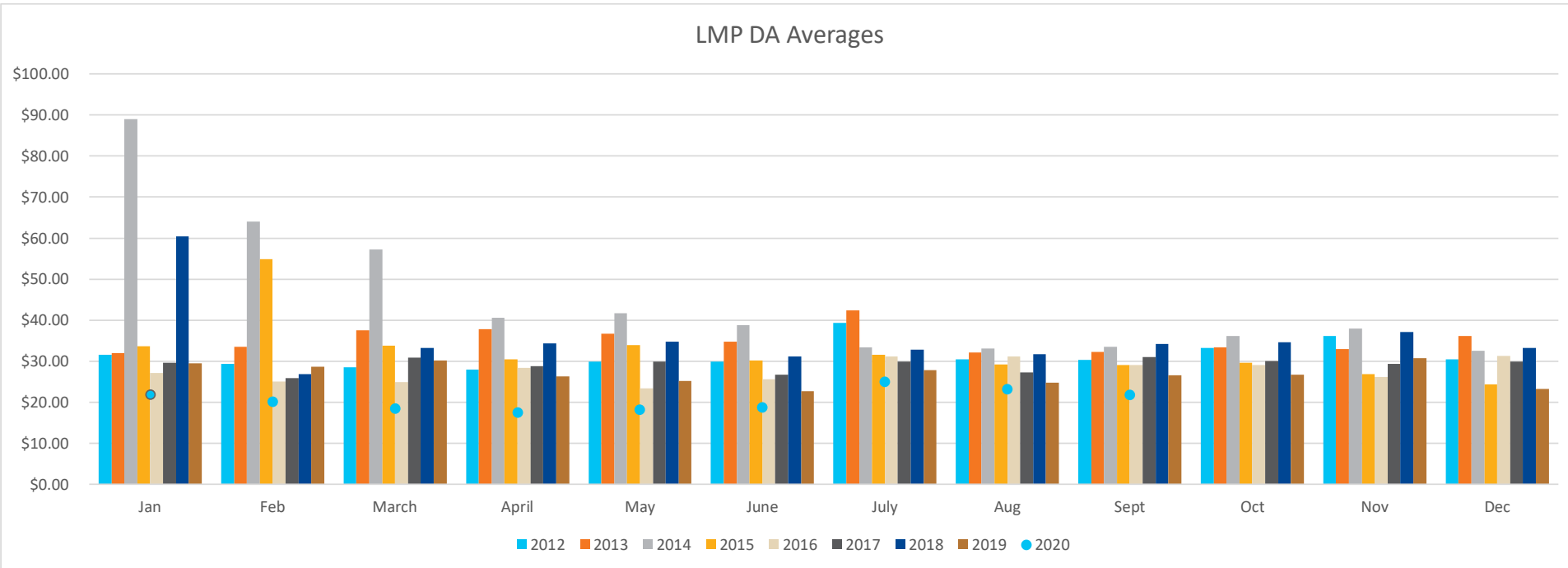


NOAA PSL and CIRES-CU



Day Ahead LMP's

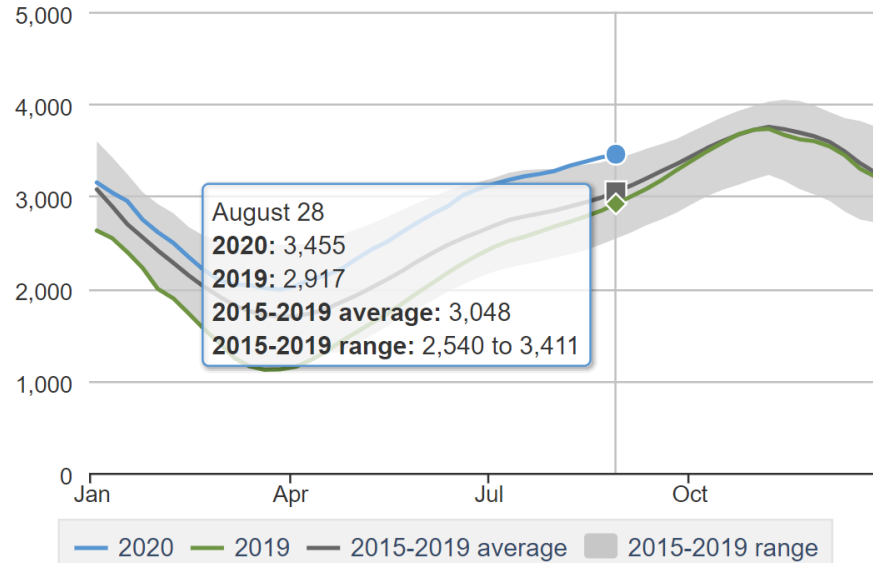
LMP DA Averages



Natural Gas Storage

Lower 48 weekly working gas in underground storage

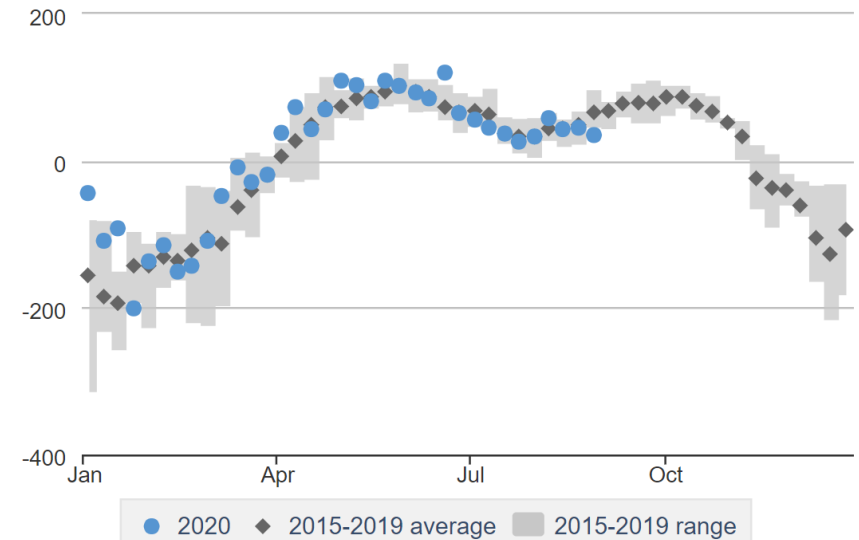
billion cubic feet



- 13% above the 5-year average
 (Last update was 18% above 5-year average)

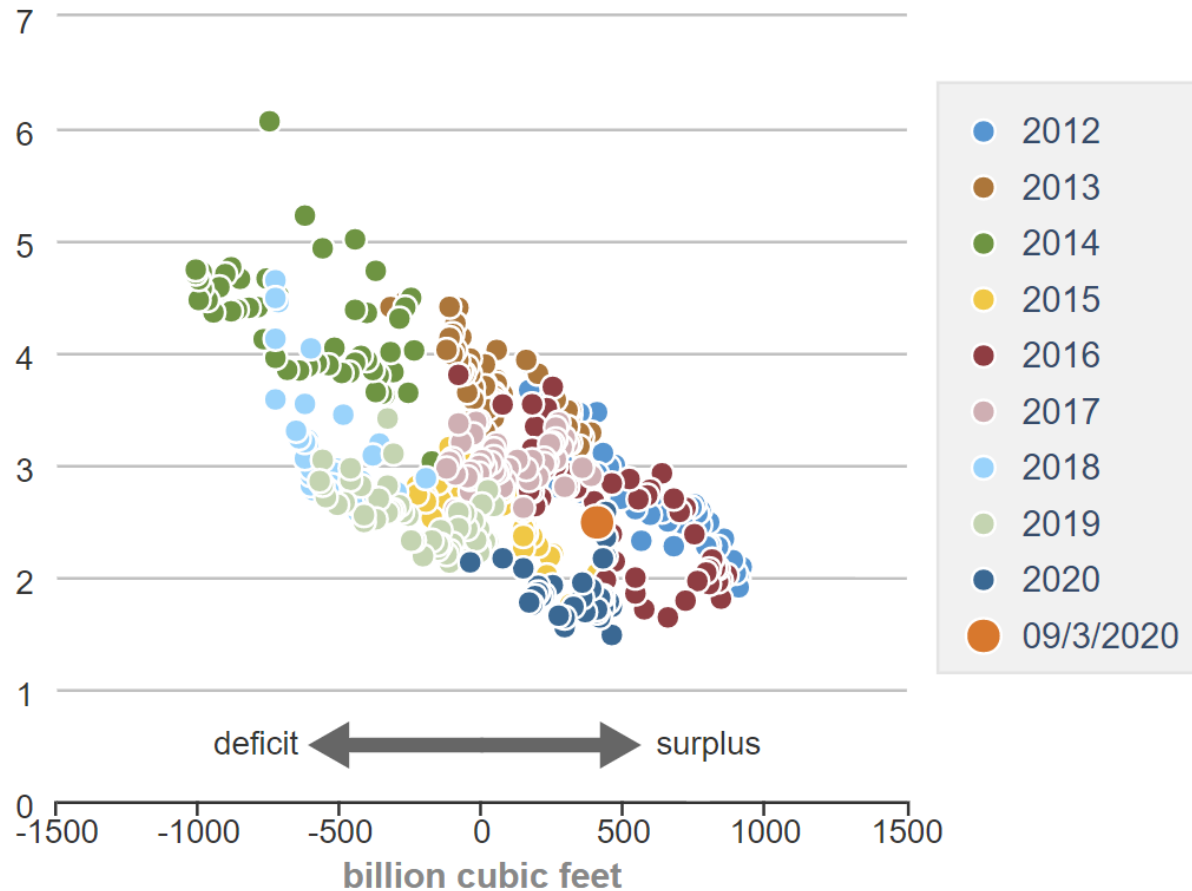
Lower 48 weekly net change in working gas in underground storage

billion cubic feet



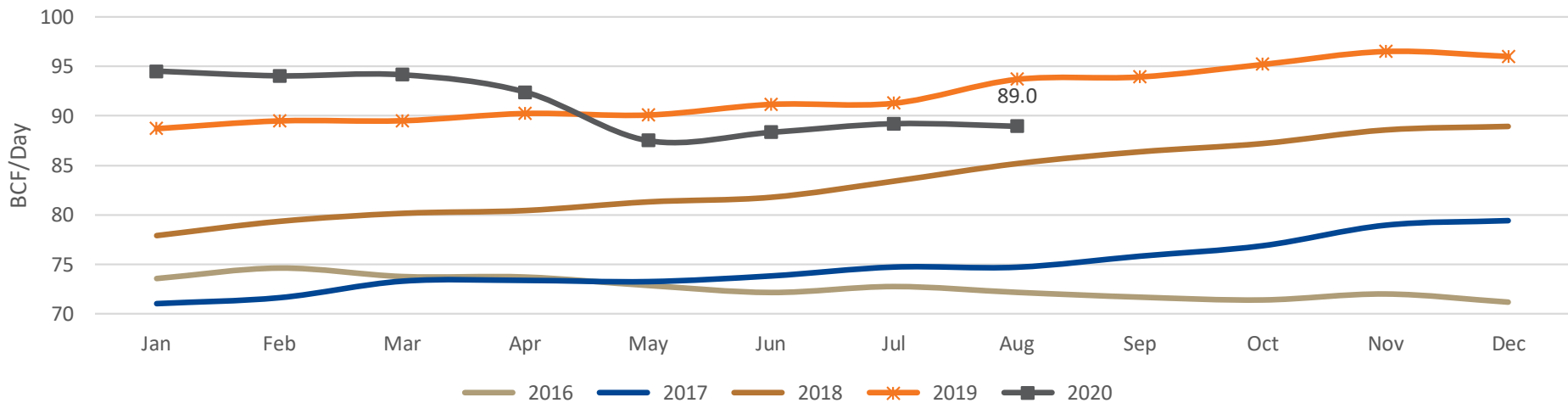
Lower 48 weekly working gas stocks, minus five-year average, futures prices

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



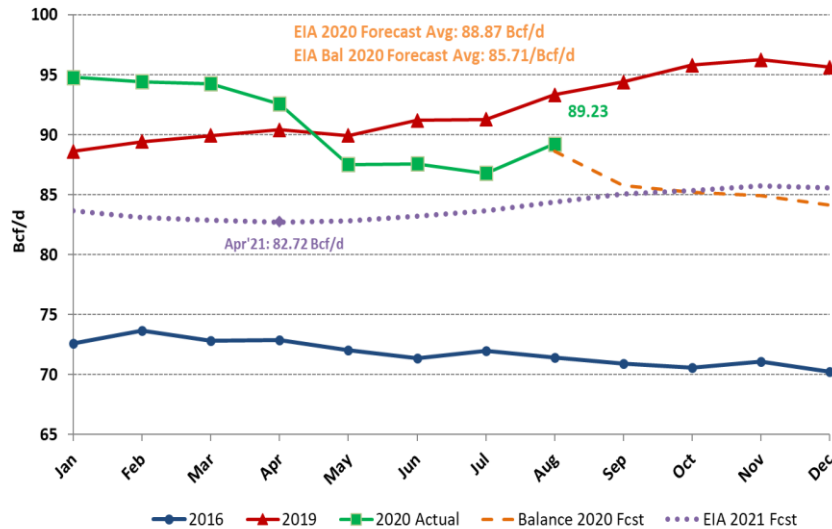
Natural Gas Production

US Production of Dry Natural Gas: EIA 2020 Forecast Ave: 89.65 BCF/Day
Current 2020 Ave: 91.15 BCF/Day

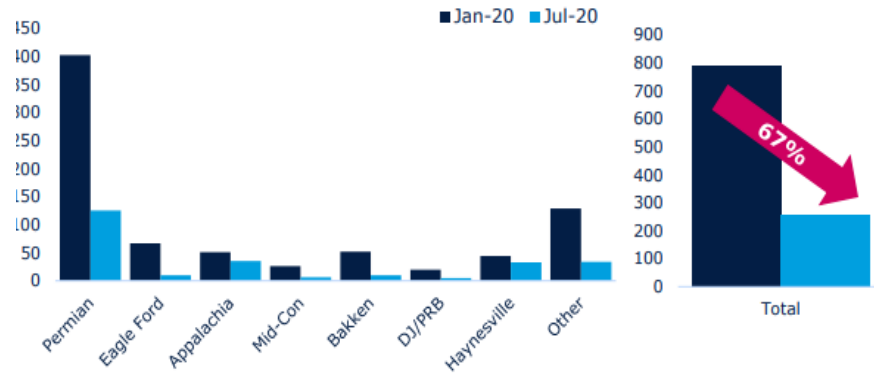


Natural Gas Production

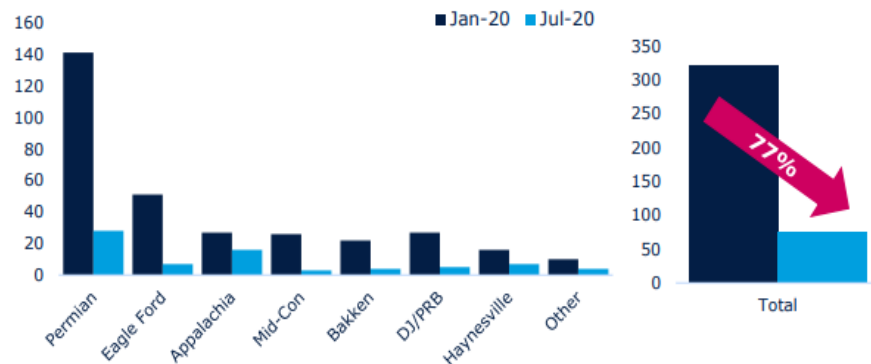
US Dry Gas Production (Bcf/day)



Rig Counts⁽¹⁾



Frac Crews⁽²⁾

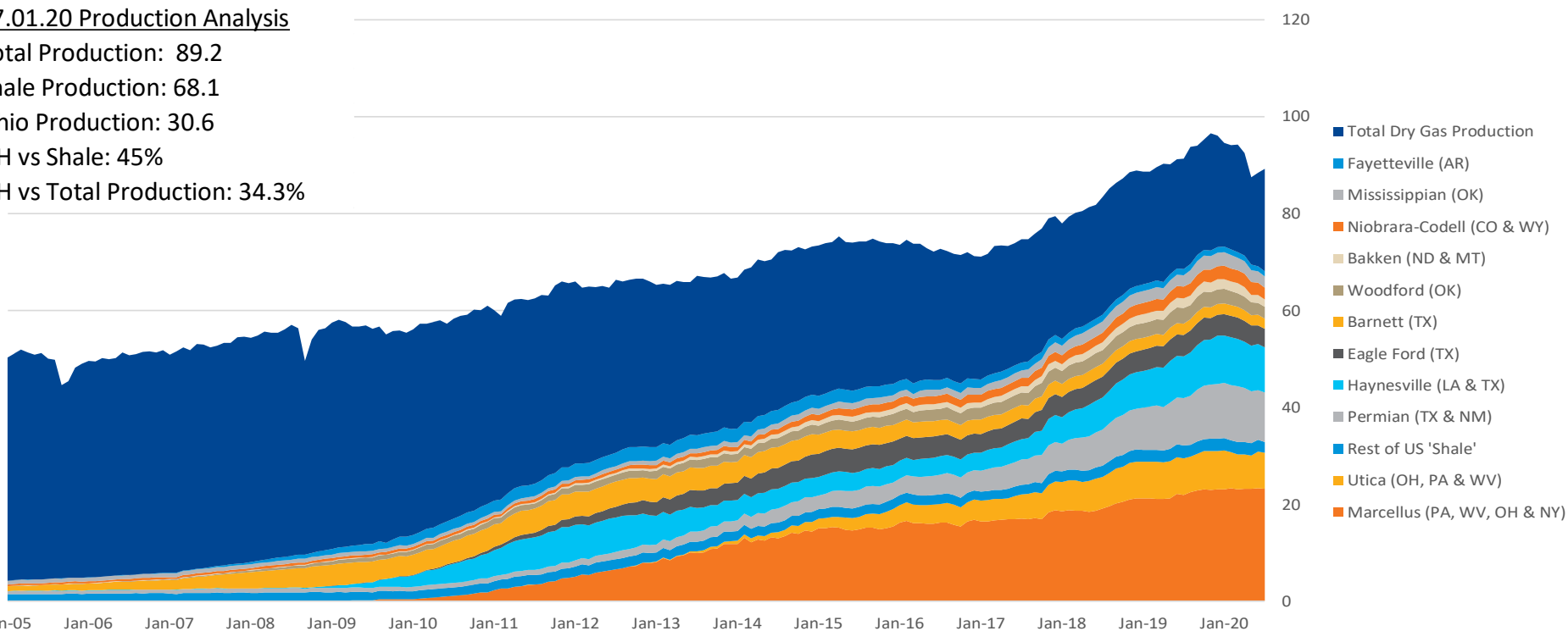


Source: Baker Hughes
Source: Rystad Energy

- EIA in its August STEO expects further declines in gas production as lower oil activity will reduce associated gas output.
- Rig counts are off 67% since the start Jan and frac crews are off 77%. This could impact ability to keep up with natural decline rates in shale production, which decline after initial high yields.

Dry Natural Gas Production

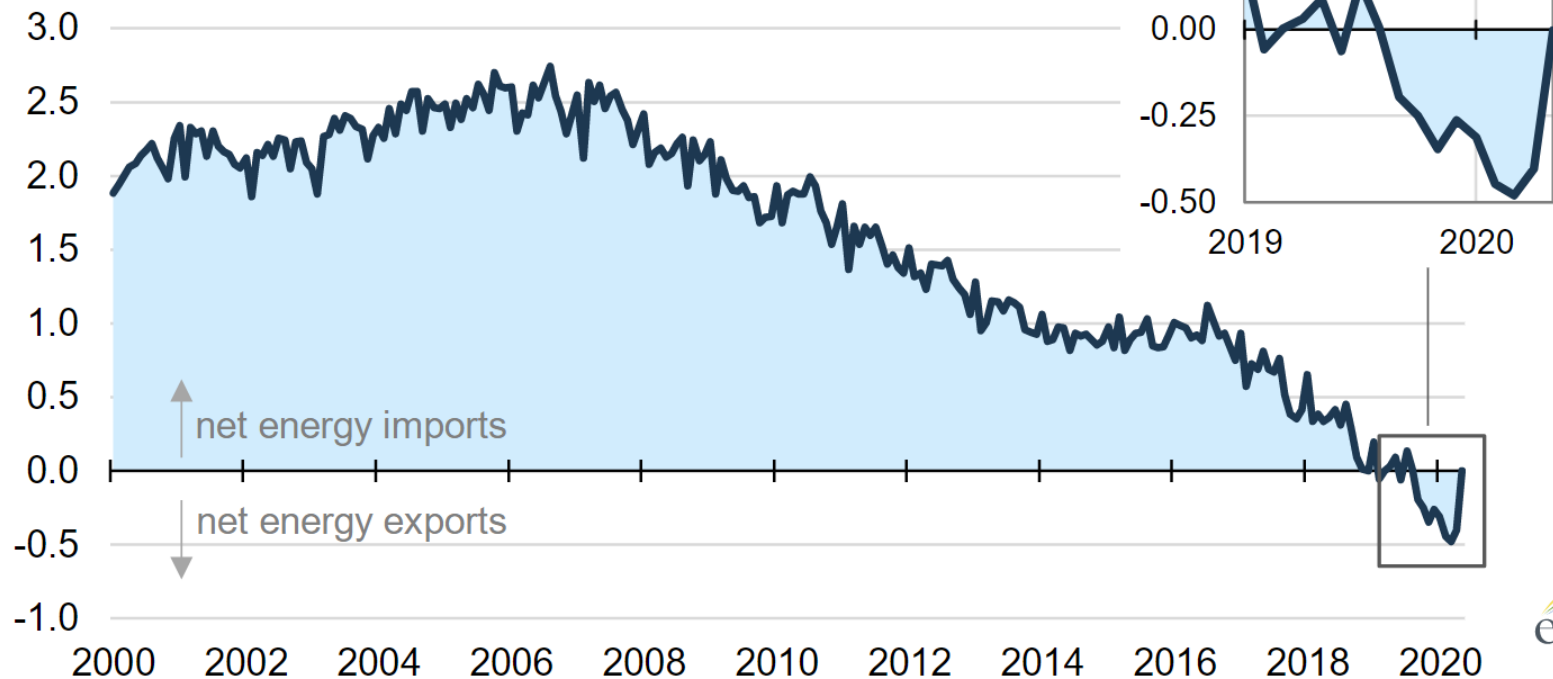
Monthly Dry Gas Production - Shale (BCF/Day)



Energy Imports / Exports

U.S. monthly net energy imports (Jan 2000–May 2020)

quadrillion British thermal units



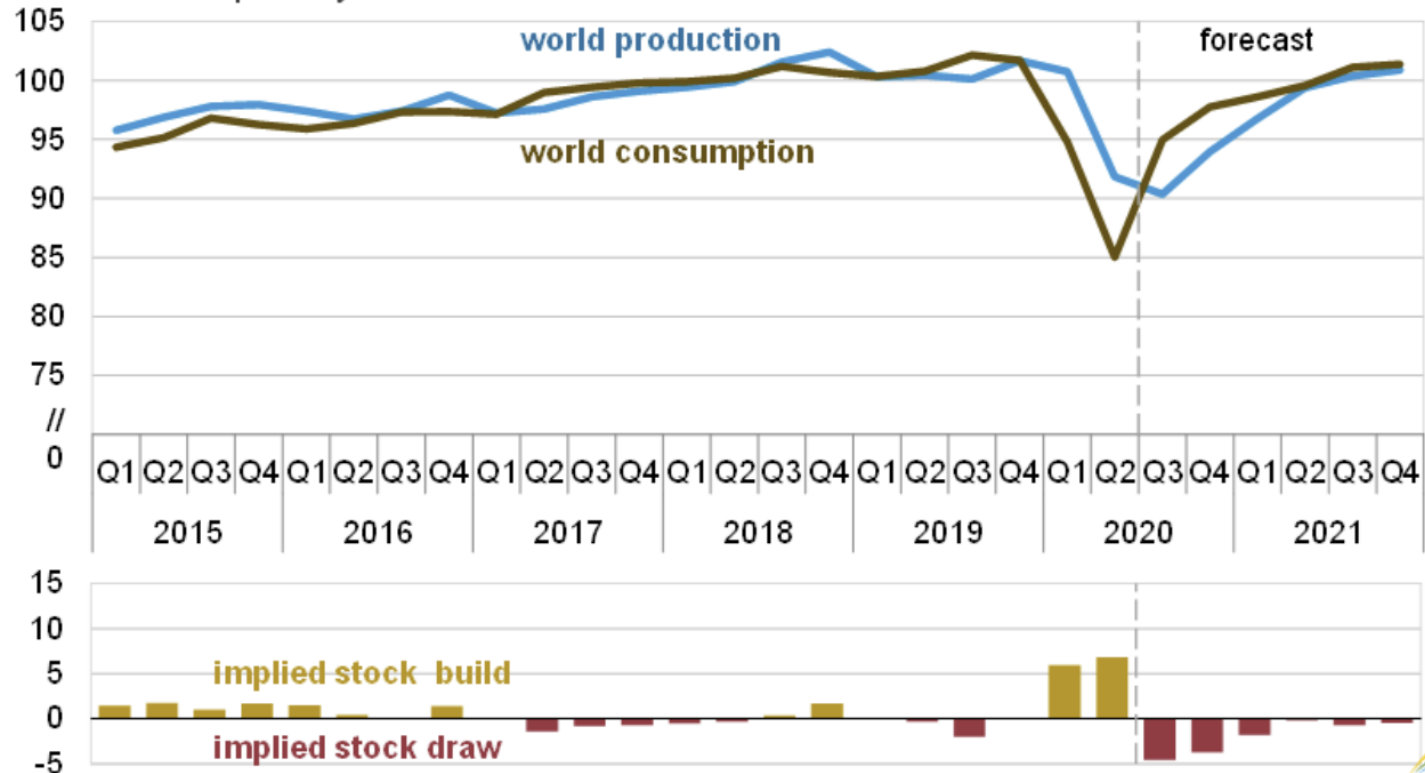
Source: U.S. Energy Information Administration, [Monthly Energy Review](#)



Liquid Fuel Forecast

World liquid fuels production and consumption balance

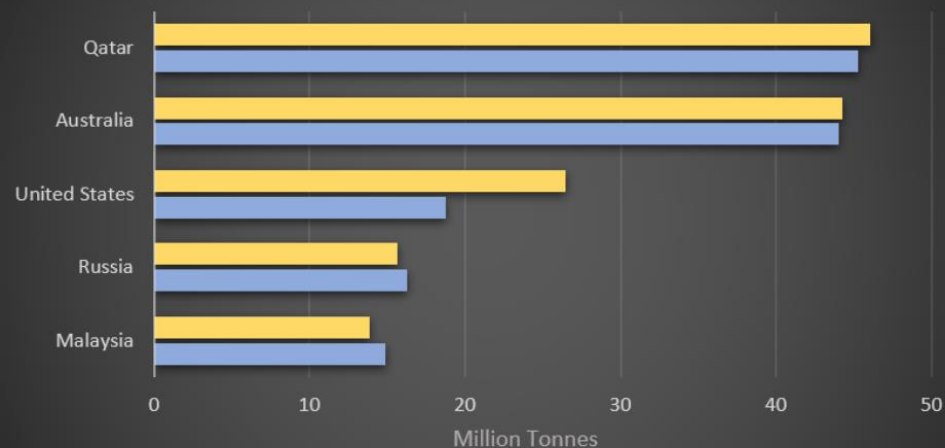
million barrels per day



Source: U.S. Energy Information Administration, Short-Term Energy Outlook, August 2020

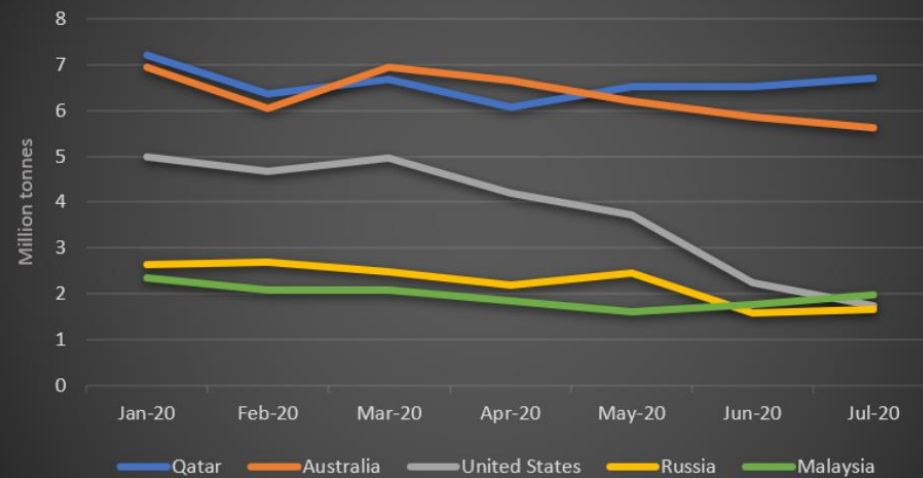


Top LNG exporters in Jan-Jul 2019 and 2020



Source: Refinitiv

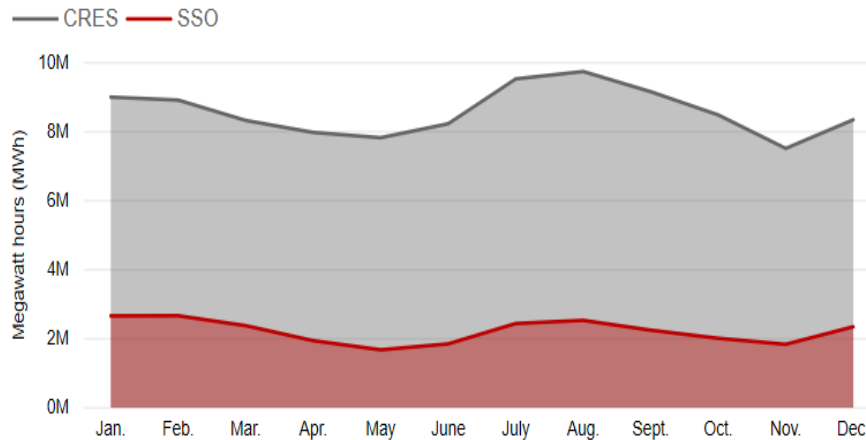
Monthly LNG exports of top producers in 2020



Ohio All Customer Class (Indust, Comm, Res) Usage

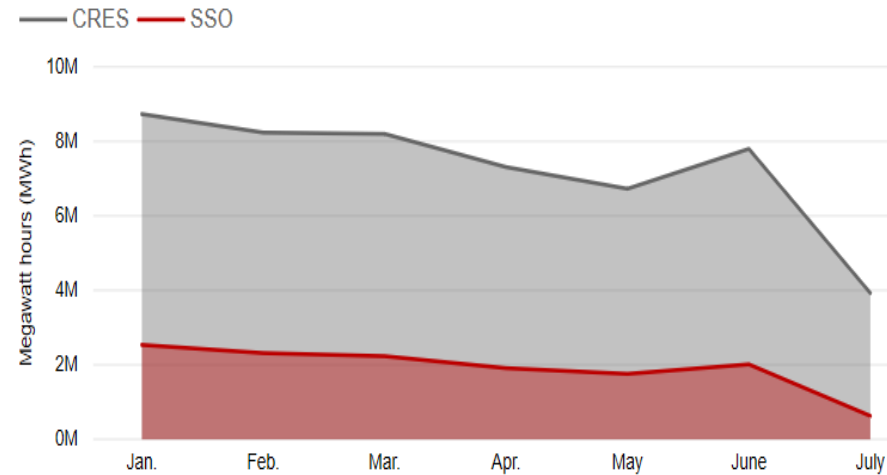
2019

Sales in MWh by Selected Customer Class



2020

Sales in MWh by Selected Customer Class

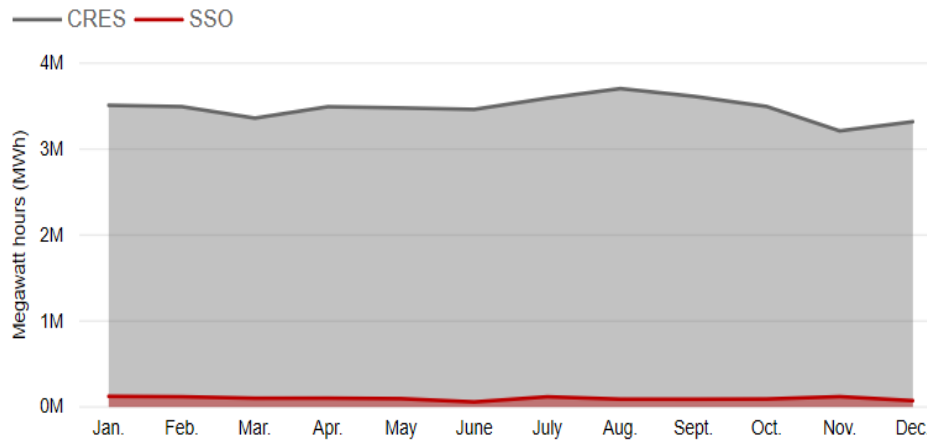


	2019	2020	% Change
Jan	11,664,743	11,266,229	-3%
Feb	11,584,444	10,549,629	-9%
March	10,704,595	10,431,107	-3%
April	9,923,334	9,219,020	-7%
May	9,505,274	8,482,784	-11%
June	10,083,262	9,808,649	-3%

Ohio Industrial Usage

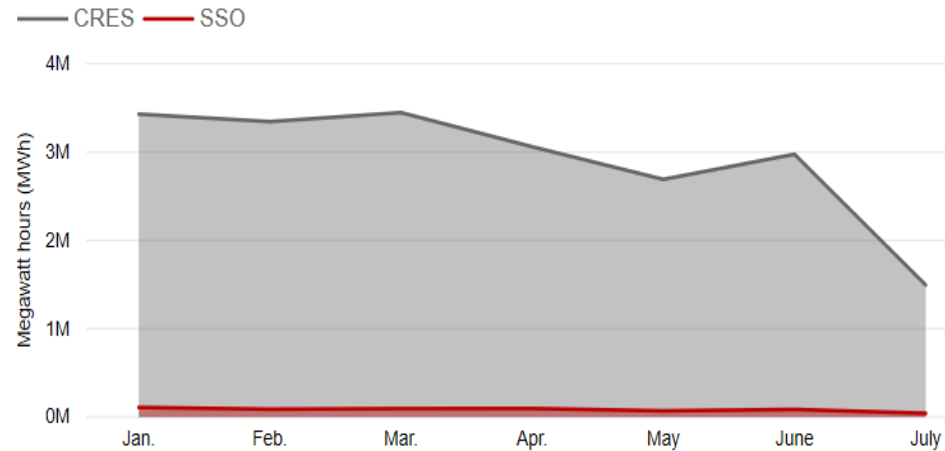
2019

Sales in MWh by Selected Customer Class



2020

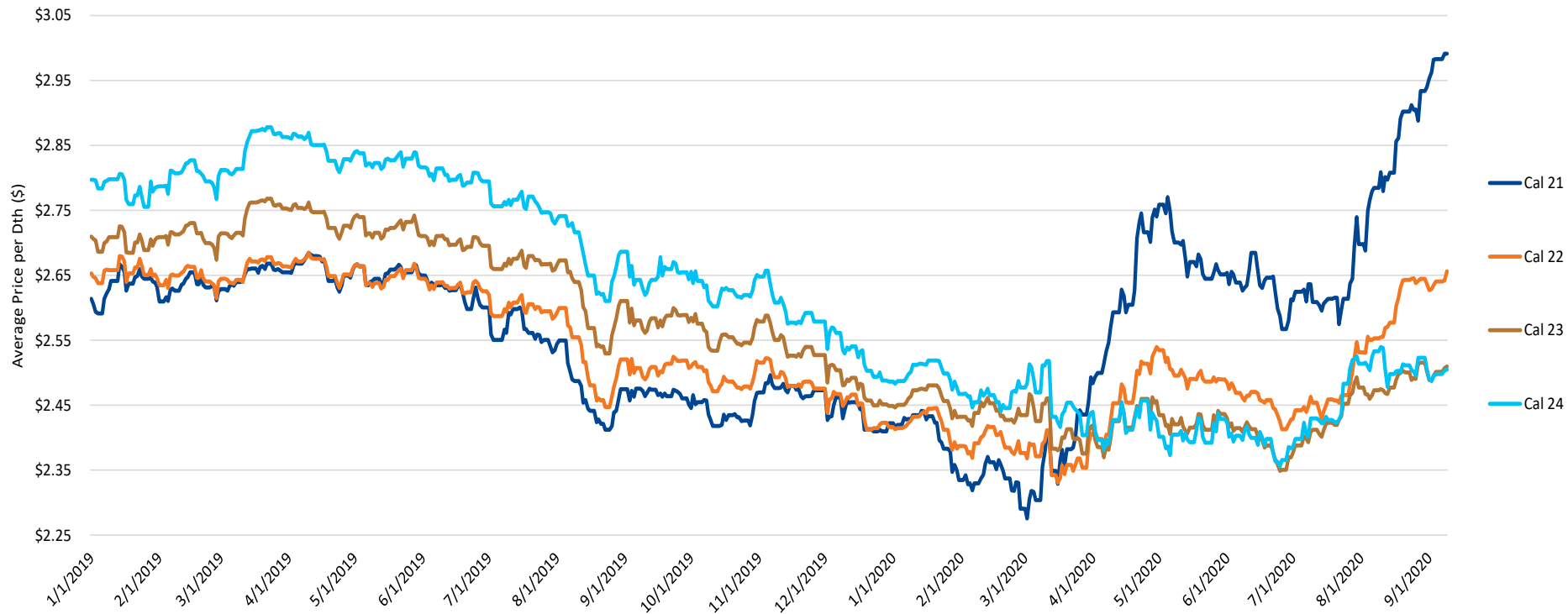
Sales in MWh by Selected Customer Class



	2019	2020	% Change
Jan	3,635,077	3,539,404	-3%
Feb	3,614,247	3,434,201	-5%
March	3,462,476	3,543,069	2%
April	3,596,027	3,157,263	-12%
May	3,576,537	2,761,449	-23%
June	3,520,906	3,062,077	-13%

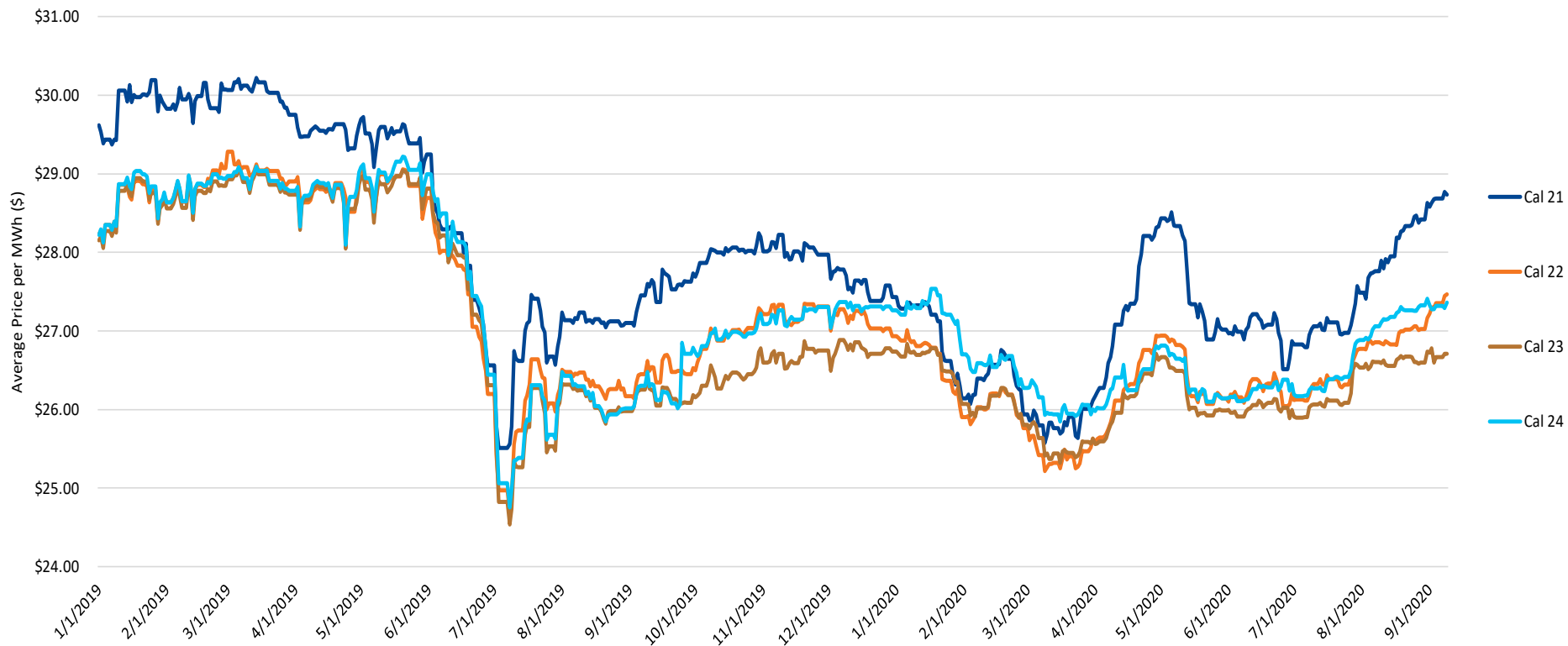
NYMEX Natural Gas Futures

NYMEX Average Wholesale Prices



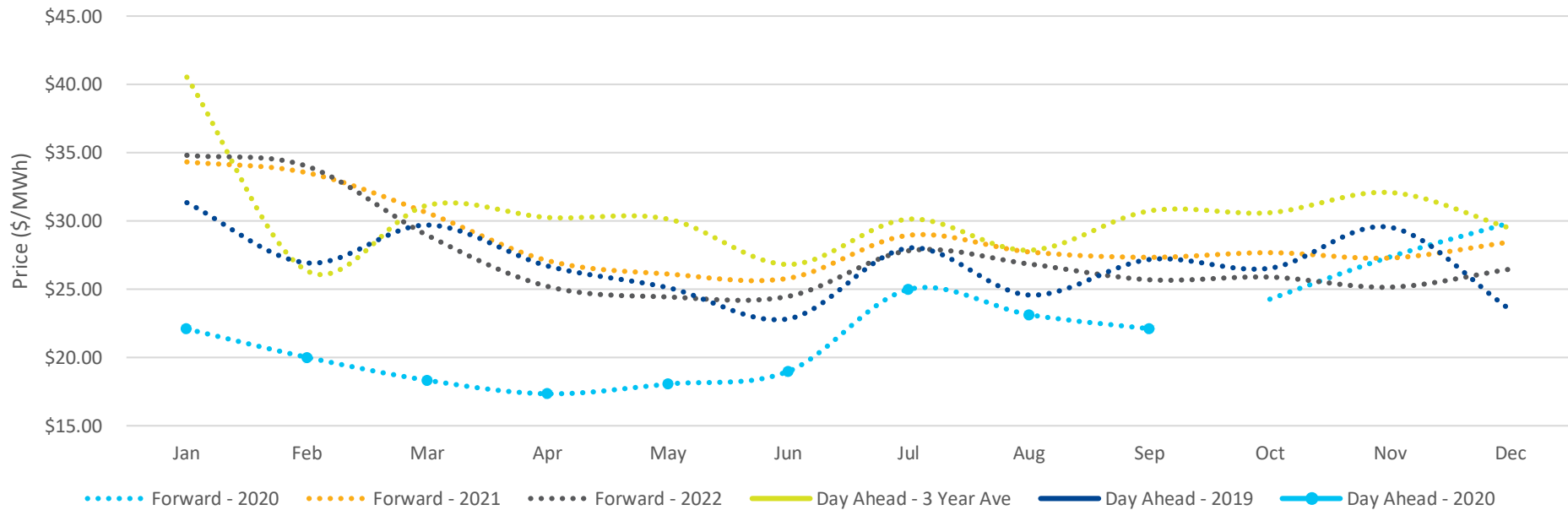
Electricity Forwards

AEP Dayton Hub Annual Average Wholesale Prices



Electricity Forwards

AEP Historical vs Forward Price as on 09.09.20



Electricity Forwards

Power RTC \$ / MWh on 09.09.20					
From	1/1/2016	1/1/2017	1/1/2018	1/1/2019	1/1/2020
To	9/9/2020	9/9/2020	9/9/2020	9/9/2020	9/9/2020
Cal Year	2021	2022	2023	2024	2025
Current Price	\$ 28.74	\$ 27.46	\$ 26.71	\$ 27.36	\$ 28.23
Maximum Price	\$ 30.22	\$ 30.22	\$ 30.87	\$ 29.22	\$ 28.37
Minimum Price	\$ 25.51	\$ 24.69	\$ 24.54	\$ 24.75	\$ 26.70
Date of Maximum	3/14/2019	12/28/2017	3/25/2018	5/20/2019	9/4/2020
Date of Minimum	7/3/2019	7/8/2019	7/8/2019	7/8/2019	3/23/2020
Compared to Low	12.6%	11.2%	8.8%	10.5%	5.7%