10:00 a.m. (EST)
1-866-362-9768
940-609-8246#

OMA Energy Committee Agenda
November 16, 2017

Welcome and Introductions	Brad Belden, Belden Brick, Chair
State Public Policy Report • Statehouse report • Utility legislation (OVEC, ZEC) • Market Protection (HB 247)	Ryan Augsburger, OMA Staff
Customer-Sited Resources Report • Sustainability Peer Network • Efficiency Program Updates • Transmission Cost Basics and Trends	John Seryak, PE, RunnerStone, LLC
Special Report on U.S. DOE NOPR	
Counsel's Report • PUCO case highlights • First Energy ESP Appeal	Kim Bojko, Carpenter Lipps & Leland
Member Discussion	
Electricity Market Trends	Susanne Buckley, Scioto Energy
Natural Gas Market Trends	Richard Ricks, NiSource, Columbia Gas of Ohio
Lunch	
Guest Presentation **American Municipal Power**	Lisa McAlister, AMP SVP & General Counsel Jolene Thompson, AMP Executive VP

Meeting sponsored by:

AEP OHIO An AEP Company

Columbia Gas of Ohio

scioto energy

To: OMA Energy Committee
From: Ryan Augsburger
Re: Public Policy Report
Date: November 16, 2017

Overview

Significant energy policy questions were debated by the General Assembly again in the autumn session, but did not advance. Lawmakers will soon recess for the holidays. When they return in 2018, the election year will be at hand. Meanwhile activity at the PUCO has slowed and all eyes are on the federal government as they consider a national subsidy proposal in the name of grid resiliency.

OMA Appeals FirstEnergy Subsidy

In October, The OMA Energy Group (OMAEG) filed an appeal of the FirstEnergy subsidy case. The case spawned copy-cat applications by Ohio's other investor-owned investors. See counsel's report.

Utility Subsidies for Grid Resiliency? DOE NOPR

Reflecting Ohio's leading role in the genesis of the Department of Energy (DOE) proposed rule to impose customer charges to pay for "grid resiliency," U.S. Secretary of Energy Rick Perry announced his Notice of Proposed Rule Making (NOPR) in Ohio earlier this autumn.

National energy advocates have been on high alert ever since. See resource materials on DOE NOPR. The OMA Energy Group filed comment with FERC urging rejection of the proposal. FERC is expected to act by Dec 11.

Zero Emissions Credit (ZEC) STILL = Nuke Bailout

After being panned by dozens of important stakeholders, legislation to subsidize the uneconomical nuclear power plants stalled out over the summer. During the autumn, House Bill 381 was introduced by Representative Anthony DeVitis of Summit County and several other bipartisan co-sponsors. Similar legislation in the Senate has been amended to mirror the new House Bill. The OMA strongly opposes the legislation and is working with other opponents to coordinate advocacy. See attached analysis.

OVEC Bailout

Companion legislation was introduced in late May and was on the fast-track for possible passage prior to the summer recess but did not advance. HB 239 is sponsored by Representatives Ryan Smith and Rick Carfagna, while SB 155 is sponsored by Senators Lou Terhar and Bob Peterson.

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

Sponsors and proponents justify this bailout as "national security" because the plants formerly supplied the Piketon uranium enrichment facility. The OMA opposes this bailout that will impose new above-market customer charges. See OVEC rebuttal document of the most recent version.

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

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

Several noteworthy studies have demonstrated how the market delivers lower prices, choice and innovation without compromising reliability (ask staff for the studies). The opportunity to advance legislative reform to protect competitive markets has arrived. The OMA has been working with other customer groups to support House Bill 247 introduced by Representative of Mark Romanchuk from the Mansfield area. See attached summary of the three-part market protection plan. Manufacturers can engage policymakers and support a campaign to support the reform. Please contact OMA staff to learn how you can support the cause.

***Financial Integrity* Bailouts**
In Spring of 2016, we reported on favorable Supreme Court decisions that protect customers from inappropriate utility overcharges. The Court decisions pertained to both AEP and DP&L but also established precedent. In late 2016 Dayton Power & Light developed a legislative proposal to reverse Supreme Court decision that fairly protects customers from transition charges. The legislative proposal would authorize PUCO to impose riders on customers’ electric bills to fund a utility bailout any time a utility claims their “financial integrity” is threatened. The legislation did not advance in 2016, but a remarkably similar proposal was amended into the state budget in late May of 2017. After a month of intense lobbying by opponents, the provision was stripped from the bill. We remain vigilant of similar legislative proposals re-emerging.

Re-Monopolization
AEP and other investor-owned utilities have been calling for legislation to *re-monopolize* aspects of utility-owned generation. In spite of assurances made to investors that legislation would be introduced during the terms, no such bill has been introduced.

Natural Gas Infrastructure
The OMA continues to express industry support for the Rover Pipeline and Nexus Pipeline. Billions of dollars of pipeline investment are underway by several different developers. The Rover Pipeline secured FERC approval in early February. Natural gas production continues to grow in the Buckeye state even with depressed pricing. In fact, Ohio natural gas prices are among the lowest around the globe today. The OMA has been working with the NAM to promote gas infrastructure and increased market utilization.

Energy Standards Legislation
The Governor acted on his threat to veto House Bill 554 last December. The bill weakened the energy standards that had been frozen since 2015 by then SB 310. The OMA had a technical analysis of HB 554 produced. Together with over fifty co-sponsors, Representative Bill Blessing introduced HB 114 which is very similar to the vetoed legislation.

Energy

Expedited Ruling Expected on Utility Subsidy Scheme
November 10, 2017

More than 300 parties filed comments opposing a recent proposal by U.S. Secretary of Energy Rick Perry to subsidize unprofitable power plants in the name of grid resiliency, even though credible data affirms grid reliability has never been better due to the competitive market.

The OMA **filed comment** in the Federal Energy Regulatory Commission (FERC) docket and this week filed a **reply brief**.

Meanwhile U.S. Representative David Joyce and members of Ohio's Congressional delegation this week **issued a joint Congressional letter** to the FERC, endorsing the pro-utility scheme to force customers to pay more on power bills to subsidize unprofitable nuclear and coal power plants.

The FERC has significant independence of the Department of Energy and the commissioners will consider the evidence and render an opinion by December 11.

OMA members will discuss the far-reaching federal debate – and much more – at the OMA Energy Committee on November 16. **Register here**. *11/9/2017*

DP&L Industrial Energy Savings Workshop – 25% Bonus on Efficiency Rebates
November 10, 2017

DP&L, the Midwest Energy Efficiency Alliance and the EnergyStar Challenge for Industry are hosting a workshop on Industrial Energy Savings. The workshop is scheduled for this coming Thursday, November 16th, at the University of Dayton River Campus.

The workshop features case studies presented by General Motors and Honda, free resources from the Industrial Assessment Center and EPA EnergyStar, and updates on DP&L's energy-efficiency programs.

OMA members served by DP&L who attend will be eligible for an exclusive 25% bonus rebate for eligible efficiency projects. Learn more and **register here**, or contact **John Seryak** for more information. *11/7/2017*

Electricity Subsidy Battle Hits the Airwaves
November 3, 2017

Proponents and opponents of pending Ohio legislation to subsidize power plants are duking it out over Ohio radio waves across the Buckeye State.

The OMA is an opponent to two pieces of legislation that would provide above-market customer-paid subsidies to various utilities: House Bill 239, which concerns the utilities that are members of the Ohio Valley Electric Corporation (**OVEC**), and House Bill 381, the **Zero Emissions Credit** nuclear power plant subsidy for FirstEnergy. Identical legislation is also pending in the Ohio Senate.

In recent weeks the Ohio Petroleum Institute, API-Ohio, has run **radio spots** that oppose the subsidies as anti-competitive. Meanwhile a counter-point **radio spot** is being aired by a pro-utility coalition falsely contending that imported electricity is problematic for Ohio's economic well-being. *11/2/2017*

To FERC: Reject DOE Secretary Perry's Utility Subsidy Proposal
November 3, 2017

Scores of advocates filed comment with the Federal Energy Regulatory Commission (FERC) to oppose a proposed federal rule that would subsidize unprofitable nuclear power plants and some coal power plants. The rule was proposed by U.S. Energy Secretary Rick Perry earlier this fall.

Electrical grid operators and regulators including PJM Interconnection and the Public Utilities Commission of Ohio (PUCO) **filed comment** opposing the proposed rule for it distortion of markets. PJM's **comments** describe a disproportionate effect on customers in the PJM region, which includes Ohio.

Cn behalf of its members, the **OMA Energy Group filed comment** opposing the rule-making.

These other consumer coalitions also filed comments in opposition: **American Manufacturers & Large Institutional Customers** and **ELCON et al**.

Several FERC experts have publicly taken a dim view of the rule proposal as just the latest attempt by some utility companies to prop up their revenues in the wake of competitive generation markets which are saving customers billions of dollars annually.

Energy-intensive manufacturers are invited to join the **OMA Energy Group** to protect your interests. *11/2/2017*

DOE Grid Resiliency Pricing Rule Faces Lots of Opposition
October 27, 2017

A recently filed grid resiliency rule proposal from the U.S. Department of Energy has brought out a storm of opposition from a wide range of groups, including the Ohio Public Utilities Commssion of Ohio (PUCO), PJM, consumers groups (including the OMA), natural gas generators, and even some coal interests.

The rule would effectly require subsidies for coal and nuclear generators. By doing so, it would blow up the functioning electricity markets and raise prices on consumers significantly, according to the rule's critics.

Read a summary prepared for the OMA Energy Group. *10/25/2017*

Efficiency Project Rebates Available in AEP Ohio Territory
October 27, 2017

OMA's energy engineering partner, **Go Sustainable Energy**, recently secured $300,000 in rebates on behalf of Ohio manufacturers in AEP Ohio's **Bid4Efficiency** auction.

AEP Ohio holds the annual auction to create incentives for customer energy efficiency projects.

Rebates awarded by the program are eligible to exceed AEP's $25,000 rebate cap. Projects will be compensated at $0.029/kWh saved or at $0.149/W for lighting projects.

If you have a facility in AEP territory and you are completing or planning an efficiency project in 2018, contact **John Seryak** to learn more. Funding will be available to OMA members on a first-come, first-served basis. *10/26/2017*

A Rebuttal of False and Misleading Utility Claims
October 20, 2017

This week the OMA, together with a broad coalition of partners, produced an **extensive rebuttal of false and misleading claims** being made by Ohio electric utilities regarding HB 239, another massive subsidy proposal for two old, uneconomic generating plants, one in Ohio and one in Indiana. Yes, Indiana. The plants are jointly owned by several utilities through the Ohio Valley Electric Corporation (OVEC).

"Several false and misleading claims about the legislation have been fabricated and reinforced by the utilities in an attempt to convince legislators to provide the OVEC plants with above-market subsidies on the backs of Ohio ratepayers," writes the coalition.

"These are clear and true facts: The utilities want a subsidy to operate and maintain uneconomic OVEC power plants … If approved, the legislation would not be the utilities' first consumer-paid subsidy. Ohio's investor-owned utilities received at least $9.2 billion in "stranded assets" and "regulatory transition" payments from 2000 to 2010. The proposed OVEC legislation is bad for customers, bad for competitive markets, and bad for Ohio." *10/19/2017*

Nuclear Bailout, Part 2
October 20, 2017

Last week a group of 16 lawmakers introduced a new version of legislation to bailout the unprofitable nuclear power plants presently owned by an affiliate of FirstEnergy. The proposed bailout is marketed under the term ZEN for Zero Emission Nuclear credits.

House Bill 381 alters the state's energy policy by establishing a preference for nuclear generation over other fuel sources, such as natural gas or coal. The bill seeks to take advantage of a national question raised by the U.S. Department of Energy about fuel-diversity.

According to an **analysis prepared for members of the OMA Energy Group**, the new bill would cost a small manufacturer an above-market charge of $60,000, while a large manufacturer would pay $504,000, over the course of the proposed ZEN program. The structure of the subsidies is particularly punishing to small and medium manufacturers. *10/19/2017*

OMA Appeals New FirstEnergy Rider to Supreme Court
October 20, 2017

Just over one year ago, the PUCO approved a new credit support rider called the "distribution modernization rider" that will cost manufacturers in the FirstEnergy service territory an additional annual charge ranging between $3,700 to $3.7 million based on a company's electricity usage.

The new above-market charge is unrelated to distribution service and offers no offsetting customer benefit. The **OMA Energy Group** opposed the rider throughout the PUCO process. The charge hit customer bills in January.

"This week, we **appealed** the PUCO decision to the Ohio Supreme Court," reported OMA's Ryan Augsburger. "The credit support rider approved by the PUCO one year ago is unlawful and is merely an instrument to prop up the affiliate company, FirstEnergy Solutions. It is apparent to our members that this rider is just another above-market charge that customers are forced to pay to subsidize an unprofitable and unregulated power generation company. The rider will increase customer's power costs, jeopardizing Ohio's manufacturing competitiveness." *10/19/2017*

PJM Market Monitor: Protect Electricity Markets
October 20, 2017

"The best electric industry structure is the one that results in the lowest possible costs to customers. The best wholesale power market structure is a competitive structure that includes a competitive energy, ancillary services and capacity market," **says Dr. Joe Bowring**, the independent auditor for PJM Interconnection.

Comparing merchant generators to utility generators, he notes: "Merchant generators put private capital at risk, enter the market when it appears profitable and exit the market when it is not profitable. The decisions are made entirely by private investors and the consequences are borne entirely by private investors. Customer funds are not used to fund the construction of merchant generation units and customer funds are not used to guarantee rates of return to investors when units underperform."

Ohio electricity consumers are under siege from subsidy-seeking monopoly utilities. Bowring cautions: "Subsidies, particularly for mature technologies, result in customers paying more than they would pay without subsidies." *10/19/2017*

Poll Shows Ohioans Oppose FirstEnergy Nuclear Subsidy
October 13, 2017

API Ohio last week **released a new poll** finding that a majority of voters in Summit, Lake and Ottawa counties oppose legislation that would allow FirstEnergy to charge its customers a special fee to support its Ohio Davis-Besse and Perry nuclear plants.

API Ohio is a division of API, which represents all segments of America's oil and natural gas industry.

API Ohio Executive Director Chris Zeigler said, " … We do not oppose nuclear power. What we oppose are legislative schemes that subsidize one form of energy over another, and create an uneven playing field that costs consumers, hurts manufacturers and threatens the state's economy."

According to API, **poll results** include:

- 81% of voters agree that Ohio consumers should not have to pay a special fee to bailout FirstEnergy's nuclear power plants.
- 70% of voters agree that the Ohio electricity market should be based on the marketplace, and not on whether the state government allows one particular corporation to charge its customers more to sustain its electric power generation.

601 Ohio registered voters in Lake County, Summit County and Ottawa County were polled. *10/12/2017*

Meanwhile, Another Nuke Bailout Bill Emerges
October 13, 2017

Lawmakers in Columbus have been considering legislation to prop up FirstEnergy's affiliate that owns a fleet of nuclear power plants. The power plants' profitability has diminished as newer, efficient natural gas-fueled power plants come online. The proposed law would impose a new energy rider on all residential and business customers in FirstEnergy service territories.

The original bill has stalled; however, a revised proposal was introduced anew this week by Rep. **Anthony DeVitis** (R-Green) and co-sponsored by **15 other state representatives**.

House Bill 381 calls for the new rider to be paid by customers until at least 2030. The OMA was an opponent of the prior version of the bill. Needless to say: more to come. *10/12/2017*

Utility Subsidy Bill Could Advance Next Week
October 6, 2017

This week members of the **House Public Utilities Committee** again considered an electric utility subsidy, House Bill 239, which would require Ohioans to pay a new tax on monthly power bills to subsidize the owners of the Ohio Valley Electric Corporation (OVEC).

AEP Ohio has the largest ownership stake in OVEC and would get the biggest subsidy. The utility testified in support of the bill this week.

The bill would force Ohio customers to prop up the finances of the Kyger Creek power plant near Gallipolis, Ohio, and the Clifty Creek power plant in Madison, Indiana. The OMA and other business groups sent a **strong letter** opposing the bill. Competitive power suppliers oppose the bill as do residential advocates **including AARP**.

A vote is likely next Tuesday. Concerned manufacturers are encouraged to call members of the **House Public Utilities Committee** to ask them to oppose the bill. *10/5/2017*

OMA Energy Group Files to Intervene in Amazon Electricity Case
September 29, 2017

The **OMA Energy Group** (OMAEG) has filed a motion to intervene in the Unique Economic Development Arrangement filed at the PUCO by AEP and Vadata, Inc. (an affiliate of Amazon Web Services).

The price concession was requested as part of Vadata's plan to build and operate "cloud computing data centers" at three Ohio locations.

OMAEG intervened in order to ensure that the requested reasonable arrangement appropriately balances any purported benefits to the state and local economies with the costs required to achieve such benefits.

ITC to Act on Photovoltaic Panel Trade Case
September 29, 2017

OMA Connections Partner, Jones Day, posted about a trade issue in the photovoltaic industry: "A recent decision by the U.S. International Trade Commission ("ITC") could have long-term consequences for the U.S. solar industry. On September 22, 2017, the ITC found, by a vote of 4-0, that rising imports have caused "serious injury" to domestic manufacturers of solar photovoltaic ("PV") panels, thus supporting trade barriers restricting solar panel imports. The ITC will now have until mid-November 2017 to recommend remedies to President Trump, who may exercise his sole discretion in determining which safeguards are to be implemented."

Jones Day also wrote: "Solar project developers and installation companies, which have benefitted from the rapid decline in solar PV panel prices, lined up in opposition to the case. They argued that increasing the price of panels would jeopardize the development of dozens of gigawatts of solar generation facilities and lead to tens of thousands of lost jobs. …"

Read **more from Jones Day here**. *9/26/2017*

GM Plants to Run on 100% Renewable Power
September 29, 2017

All of GM's Ohio and Indiana manufacturing facilities will meet their electricity needs with 100% renewable energy by the end of 2018 according to this **announcement** by General Motors Corporation this week.

GM is buying a total of 200 megawatts of wind energy from Ohio and Illinois wind farms. Once the turbines come online by the end of 2018, renewable energy will power 20% of GM's global electricity use.

The new wind deals are enough to meet the electricity needs of Fort Wayne Assembly, Marion Metal Center and Bedford Casting plants in Indiana and Lordstown Assembly, Defiance Casting Operations, Parma Metal Center and Toledo Transmission plants in Ohio.

GM is an OMA member. *9/28/2017*

OMA's Sustainability Peer Network Tours Honda
September 22, 2017

This week the OMA Sustainability Peer Network (SPN) toured Honda's Marysville Automobile Manufacturing plant. The sold-out tour focused on Honda's sustainability projects and initiatives.

The SPN plans an in-person meeting on Wednesday, December 6 to discuss manufacturer-driven initiatives and reduction goals with respect to greenhouse gases. There will be a panel of subject matter experts and group discussion.

Watch *Leadership Briefing* for details and registration information. Or **email us here** to make sure we send you the details directly. *9/21/2017*

Legislator Proposes Reduced Wind Setbacks
September 22, 2017

Senator **Cliff Hite** (R-Findlay) introduced **Senate Bill 188** which would reduce the property line setback for large-scale wind farm developments.

Touting the economic and energy benefits of wind farms that have already been approved and constructed in his northwestern Ohio district, Senator Hite said in this **news release**: "The current policy is contrary to Ohio's reputation as a business-friendly environment and an energy-producing state. It prevents businesses with an interest in gaining access to and investing in wind energy in Ohio from doing so." *9/21/2017*

Amazon Affiliate Files for Price Concession
September 15, 2017

AEP and Vadata, Inc. (an affiliate of Amazon Web Services) filed a joint application for a Unique Economic Development Arrangement as part of Vadata's plan to build and operate "cloud computing data centers" at three Ohio locations.

The arrangement proposes to significantly discount the amount that Vadata must pay under riders that are calculated on a kWh basis, with the discounts escalating as Vadata develops more data centers, and to exempt Vadata completely from the obligation to pay other riders.

Although the arrangement purports to offer Vadata these incentives without requiring other AEP customers to pay forgone revenue, the arrangement will likely shift revenue responsibility to other customers paying the same riders.

Members of the OMA Energy Group will review the application and determine a position on the matter. Contact **Ryan Augsburger** to learn more about the **OMA Energy Group**. *9/14/2017*

FERC Approves Partial Operation of Rover Pipeline
September 8, 2017

Last week the Federal Energy Regulatory Commission (FERC) **approved Rover's request** to put Phase 1A of the Rover Pipeline into active operation.

As a result of the approval the pipeline will commence transmission of natural gas services using its 191 mile, 42 inch diameter mainline from Carroll County to Defiance County. A second mainline remains under construction.

FERC also permitted Rover to use 3.5 miles of a 30 inch diameter pipeline in Harrison County and 18.6 miles of 42 inch diameter pipeline connecting Harrison County to Carroll County. *9/7/2017*

FERC Approves Nexus Pipeline
September 1, 2017

Hannah News Services, Inc. reported: "The Federal Energy Regulatory Commission (FERC) has authorized Nexus Gas Transmission LLC to construct an approximately 255-mile pipeline, the majority of which will be built in Ohio.

"The pipeline will originate at the Kensington Processing Plant in Columbiana County, extending through Ohio and connecting with DTE Gas in Washtenaw County, MI. The project will include about 209.8 miles of new 36-inch dimeter pipeline in Columbiana, Stark, Summit, Wayne, Medina, Lorain, Huron, Erie, Sandusky, Wood, Lucas, Henry and Fulton counties. …

"There will be compressor stations located in Columbiana, Medina, Sandusky and Lucas counties. The entire project is expected to cost nearly $2.1 billion.

"Once the project is completed sometime in 2018, the pipeline will have the capacity to deliver approximately 1.5 billion cubic feet of natural gas per day to markets in Ohio, Michigan and Ontario, according to a statement from the company, which is jointly owned by DTE Energy and Spectra Energy Partners."

Read the Nexus media advisory here.
8/30/2017

Mapping Geologic Capacity for Natural Gas Liquid Storage
September 1, 2017

"It is no secret that the region around Ohio, West Virginia and Pennsylvania has abundant natural gas resources, but can the three states uncover the keys to turning those resources into economic growth? West Virginia University-led research may have some of the answers," writes JobsOhio in **a release** this week.

The university just released **a study** that shows how the region can support natural gas liquid storage facilities that are critical for attracting petrochemical and related industries to the area. Researchers from the geological surveys in West Virginia, Pennsylvania and Ohio studied geologic formations that could offer suitable locations for developers to build underground facilities to store natural gas liquids from Marcellus and Utica wells.

Storage capacity is seen as critical to positioning the tri-state area for investments in crackers and other petrochemical facilities. *8/31/2017*

Poll Shows Ohioans Support Clean Energy
September 1, 2017

A **recent statewide survey** shows Ohioans overwhelmingly support policies that increase energy efficiency and encourage expanded use of renewables. The poll was commissioned by the Nature Conservancy in Ohio and conducted by Public Opinion Strategies, the nation's largest Republican polling firm.

Pollster Lori Weigel said the poll is largely consistent with recent polls conducted on the subject, noting that support for renewables and energy efficiency is increasing. She said support for renewable policies crosses partisan lines. *8/31/2017*

Kasich Opposes Nuke Bailouts
August 25, 2017

Governor Kasich has been pretty much silent, publicly, about the proposed (and expensive) nuclear plant bailouts sought by FirstEnergy. Not any more.

This week, at the ribbon cutting for a 900 megawatt gas-fired generator in Oregon, a suburb of Toledo, the governor said he opposes the so-called "zero emissions credits." He said the nukes are the company's responsibility, not the state's.

FirstEnergy and its legislative allies continue to push for passage of the bailout legislation this fall. The governor's public position is a big deal, and welcomed by Ohio's electricity consumers, whose access to innovative, affordable market rates has been constrained by above-market riders approved by the Public Utilities Commission of Ohio.

The Oregon plant is one of 10 gas-powered plants under development in Ohio. As the governor said, the markets are working to attract new investment in new technology in Ohio. *8/23/2017*

Trump Won't Use Emergency Power for FirstEnergy Coal Plants
August 25, 2017

The Associated Press this week **broke a report** that the "Trump administration has rejected a coal industry push to win a rarely used emergency order protecting coal-fired power plants, a decision contrary to what one coal executive said the president personally promised him."

Bob Murray, CEO of Murray Energy, a major coal company, has stated that the president, in private conversations with Murray and FirstEnergy, agreed to use the emergency power for the coal plants.

"The Energy Department's authority comes from section 202(c) of the Federal Power Act, designed for major problems such as war, natural disasters or increased energy demand that require federal government intervention. It appears the Energy Department's reading of the law precludes it from using the authority to save coal jobs," according to **a report in the Washington Examiner**. *8/23/2017*

FirstEnergy Permitted to Collect New Rider
August 18, 2017

The Public Utilities Commission of Ohio (PUCO) rejected requests for reconsideration of an October 2016 ruling that grants FirstEnergy an above-market customer charge of approximately $204 million per year for up to five years.

The **OMA Energy Group** opposed the ruling and requested that the PUCO reconsider its decision.

Even though the final order was issued this week, FirstEnergy began collecting the charge on customer bills in January.

The OMA Energy Group has 60 days to appeal the case to the Supreme Court of Ohio.

Read **an analysis** from OMA energy counsel **Kimberly Bojko** of Carpenter Lipps & Leland. *8/17/2017*

PowerForward Videos on YouTube
August 18, 2017

The Public Utilities Commission of Ohio (PUCO) has a new YouTube channel for its "PowerForward" series of events. PowerForward explores new technologies and their potential impacts on the electricity grid. The program just completed a three-day session on presentations by experts in the technologies.

View the videos. *8/14/2015*

Oil & Gas Boom Driving Jobs and Manufacturing
August 4, 2017

The American Petroleum Institute this week **released a study** quantifying the economic impact of the U.S. gas and oil industry.

The study includes economic impact state reports. The **Ohio fact page** touts an estimated $38 billion in annual economic activity and an estimated 16,000 manufacturing jobs supported by the

HB105 **OIL AND GAS FUNDING LIMIT** (CERA J, HILL B) To limit the amount of revenue that may be credited to the Oil and Gas Well Fund and to allocate funds in excess of that amount to local governments, fire departments, and a grant program to encourage compressed natural gas as a motor vehicle fuel.

Current Status: 5/16/2017 - House Ways and Means, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-105

HB114 **RENEWABLE ENERGY STANDARDS** (BLESSING III L) To revise the provisions governing renewable energy, energy efficiency, and peak demand reduction and to alter funding allocations under the Home Energy Assistance Program.

Current Status: 10/18/2017 - Senate Energy and Natural Resources, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-114

HB143 **ELECTRIC DISTRIBUTION COMPANY DEFINITION** (SPRAGUE R) To clarify the definition of "electric distribution company" for kilowatt-hour tax purposes.

Current Status: 3/29/2017 - Referred to Committee House Public Utilities

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-143

HB178 **ZERO-EMISSIONS NUCLEAR PROGRAM** (DEVITIS A) Regarding the zero-emissions nuclear resource program.

Current Status: 5/16/2017 - House Public Utilities, (Third Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-178

HB225 **ABANDONED WELL REGULATION** (THOMPSON A) To allow a landowner to report an idle and orphaned well or abandoned well, to require the Chief of the Division of Oil and Gas Resources Management to inspect and classify such a well, to require the Chief to begin plugging a well classified as distressed-high priority within a specified time period, and to authorize an income tax deduction for reimbursements paid by the state to a landowner for costs incurred to plug an idle or orphaned well.

Current Status: 6/20/2017 - House Energy and Natural Resources, (Second Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-225

HB239 **ELECTRIC UTILITIES-NATIONAL SECURITY RESOURCE** (SMITH R, CARFAGNA R) To allow electric distribution utilities to recover costs for a national security generation resource.

Current Status: 10/3/2017 - House Public Utilities, (Sixth Hearing)

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-239

HB247 **ELECTRIC UTILITY CONSUMER PROTECTION** (ROMANCHUK M) To require refunds to utility customers who have been improperly charged, to eliminate electric security plans and require all electric standard service offers to be delivered through market-rate offers, and to strengthen corporate separation requirements.

Current Status: 6/20/2017 - House Public Utilities, (First Hearing)

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

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

Current Status: 10/17/2017 - House Public Utilities, (Second Hearing)

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

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

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

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

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

Current Status: 10/31/2017 - Referred to Committee House Energy and Natural Resources

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

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

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

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

HR277 **ENERGY GRID RULEMAKING** (ARNDT S) To express support for the proposed rulemaking by United States Secretary of Energy Rick Perry for the preservation of a secure, resilient and reliable electric grid.

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

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

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

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

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

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

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

Hearing)

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

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

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

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

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

Current Status: 10/24/2017 - **SUBSTITUTE BILL ACCEPTED**, Senate Public Utilities, (Fourth Hearing)

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

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

Current Status: 10/12/2017 - **SUBSTITUTE BILL ACCEPTED**, Senate Public Utilities, (Sixth Hearing)

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

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

Current Status: 6/28/2017 - **BILL AMENDED**, Senate Public Utilities, (Fourth Hearing)

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

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

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

State Bill Page: https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-188

SCR14 **COUNTER OPEC MARKET MANIPULATION** (HOAGLAND F, COLEY W) To urge the Congress of the United States and the President of the United States to take certain actions to counter manipulation of the oil market by the Organization of Petroleum Exporting Countries (OPEC).

Current Status: 11/15/2017 - Senate Energy and Natural Resources, (Fourth Hearing)

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

Ohio Valley Electric Corporation (OVEC) Legislation

Sub. HB 239 and Sub. SB 155

REBUTTAL OF FALSE & MISLEADING CLAIMS

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

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

FACT: THIS LEGISLATION PROVIDES A SUBSIDY FOR "UNECONOMIC GENERATION."

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

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

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

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

- The utilities claim that OVEC is a unique entity, having been formed during the Cold War to serve the power needs of a uranium enrichment facility located near Piketon, OH. While true, the history of the facilities from 1952-2003 is wholly inconsequential to the current debate on OVEC. Once the Piketon plant was closed by the federal government and the OVEC contract was terminated (with three years forward notice and a sizeable termination payment), the utilities and their co-owners decided to proactively and willingly reinvest in the plants and sell the power into the PJM wholesale market in order to turn a profit. The utilities' claims are nothing more than a disingenuous attempt to wrap this issue in the American flag in order to garner legislator support. In truth, this fact should not have any bearing on the actual facts surrounding this issue.

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

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

FACT: CUSTOMERS ARE NOT PROTECTED IN THIS LEGISLATION.

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

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

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

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

TOTAL CUSTOMER COST CAPS ALLOWABLE UNDER UTILITIES' CAP PROPOSAL

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

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

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

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

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

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

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

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

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

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

- **Unanimous consent is not required to transfer interests in OVEC.** Section 9.18 (specifically, subsections 9.182 and 9.183) of the ICPA clearly allows for transferability of the interests as long as the transferee meets certain credit-rating thresholds. A company may transfer its interest without the written consent of the other owners to affiliates, and to third parties as long as the selling company provides a right of first refusal to the other remaining OVEC companies. There is clear ability legally to transfer these interests if there is a willing buyer that meets the credit-rating standards in the Agreement. For example, the interests could be transferred to Ohio's electric cooperatives. The utilities' statement that there is no way out of the ICPA does not match the plain language of the ICPA.
- **The ICPA establishes a clear dispute resolution process.** Section 9.10 of the ICPA establishes an arbitration process for contract disputes between the parties. The Ohio investor-owned utilities (IOUs) in testimony to the Ohio House Public Utilities Committee on May 31, 2017, and to the Ohio Senate Public Utilities Committee on June 8, 2017, indicated that they recently tried to get out of the OVEC contract but were unable to successfully transfer their interests. They should provide details about those attempts, such as when they tried, how often they tried and which owners/entities objected. In the event that one of the other OVEC owners attempted to block the transfer or assignment of an Ohio IOU's OVEC interest, the Ohio IOUs should have used the arbitration process to attempt to resolve the matter and should demonstrate whether they attempted to use the arbitration provisions to enable a transfer of their OVEC interests.
- **The Ohio IOUs and their affiliates have operational authority.** Section 9.05 establishes an Operating Committee made up with one member from each participating company, with decisions made with a 2/3 vote. This is the Committee that determines the level of output for the facilities to generate. The IOUs have not disclosed who is on the Operating Committee. However, they and their affiliates make up a substantial portion of the OVEC ownership on the Operating Committee. Without the full disclosure of the membership of the Operating Committee it is unclear if the Ohio IOUs have exhausted all possible remedies to their current situation.

• The utilities also fail to note that there have been prior transfers of OVEC ownership interests. In fact, FirstEnergy was successful at transferring its ownership interest to its unregulated affiliate, FirstEnergy Solutions. The real problem is that no creditworthy, investment-grade company in its right mind wants to buy shares in an unprofitable set of power plants. The utilities could, however, transfer their interests in the plants to other co-sponsors/owners.

• The utilities claim that changes made in 2004 and 2011 enabled debt refinancing at more favorable terms – and that because OVEC is a public utility in the State of Ohio, all such OVEC financing activities are subject to conditions established by the PUCO in an annual proceeding, as required by law. The reality is that cost recovery has been routinely granted by the PUCO to AEP and may be granted in the near future to DPL as well. Additionally, the PUCO approved a placeholder rider for Duke to recover OVEC costs if Duke properly seeks such recovery from the PUCO – recovery granted in the past, although the rider was set at $0. The utilities have a venue at the PUCO where they can and have proved their cases on OVEC recovery, and the legislature should not inject itself into the process by modifying PUCO jurisdiction and prudency review in that area.

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

October 2, 2017

The Honorable Robert Cupp
Chair, Public Utilities Committee
Ohio House of Representatives
77 S. High Street
Columbus, OH 43215

The Honorable Michael Ashford
Ranking Member, Public Utilities Committee
Ohio House of Representatives
77 S. High Street
Columbus, OH 43215

RE: Opposition Testimony HB 239, OVEC Legislation

Dear Chairman Cupp and Ranking Member Ashford:

We write to jointly convey our opposition to House Bill 239. Some of our organizations have testified previously and some of our organizations are notifying you of our opposition in this letter.

Our associations have undertaken a study of the bill. It would force customers of multiple utilities to subsidize two unprofitable power plants, one in southern Ohio and one in Indiana. These power plants are owned by a coalition of utilities known as the Ohio Valley Energy Corporation (OVEC). Per the Legislative Service Commission, Ohioans could pay approximately $77 million, or more, per year in above-market power charges for over a decade if this legislation is passed.

Competition is what makes our economic system the best in the world. Our members cannot afford to continually bailout monopoly utility companies anytime their management wants to shift ordinary business risk from shareholders to ratepayers.

Proponents of House Bill 239 first justified the bill as necessary to national security. That was found to be inaccurate. Proponents later justified the OVEC bill as needed due to an inescapable contract among a consortium of owners. That was later found to be inaccurate.

If approved, the bill will have a negative impact on the competitive energy markets, customers' energy costs, business competitiveness and job creation in our state.

We urge you to vote no on HB 239 to protect Ohioans against an unmerited tax that will be a drag on Ohio businesses and families.

Thank you.

Roger R. Geiger
NFIB/Ohio

Kevin Schmidt
Ohio Cast Metals Association

Jenn Klein
Ohio Chemistry Technology Council

Joe Savarise
Ohio Hotel & Lodging Assn.

Eric L. Burkland
The Ohio Manufacturers' Assn.

HB381

132nd General Assembly

ZERO-EMISSIONS NUCLEAR RESOURCE (DeVitis, A) - Regarding the zero-emissions nuclear resource program

Current Status: 10/11/2017 Introduced

Primary Sponsor: Anthony DeVitis

Co-Sponsors:
Michael Henne
Larry Householder
Terry Johnson
Bill Seitz
Marilyn Slaby
Dick Stein
Nino Vitale
Keith Faber
Tom Patton
Ron Young
Kristina Roegner
Martin Sweeney
Wes Retherford
Nicholas Celebrezze
Candice Keller

RunnerStone, LLC

3709 N. High Street, Suite 100, Columbus, OH 43214
614.268.4263

MEMORANDUM

Date: October 13, 2017

To: Ohio Manufacturers' Association – Energy Group

From: John Seryak, PE (RunnerStone, LLC)

Kim Bojko, Energy Counsel for the OMAEG (Carpenter, Lipps, & Leland)

RE: Analysis of H.B. 381 – Zero-Emissions Nuclear (ZEN) Credit Program

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House Bill 381 (HB 381), recently introduced in the Ohio General Assembly, proposes to change Ohio's policy regarding electricity generation resources. Ohio's current policy regarding electricity resources states:

> *"Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities."*

But HB 381 would alter this state policy, mandating the operation of nuclear generation, even if it is inefficient or more costly in the competitive market:

- Nuclear generation technology would be given special status that no other technology enjoys, as it would be state policy to specifically ensure "diversity of…resources, including zero-emissions nuclear resources."
- The state would no longer limit itself to ensuring diversity through choice and encouragement, but instead would encourage diversity by recognizing "the need for nuclear energy resources."
- State policy would also be changed to ensure diversity of, and recognize need for, a more generalized category of electricity resources that provide "fuel diversity and environmental and other benefits."

HB 381: Zero-Emission Nuclear Credits

- ZEN = Attributes of 1 MWh nuclear generation
- Cost: greater than $100 million/yr, for at least 12 years, or more than $1.2 billion total
- Allows out-of-state ZEN credits to meet mandates
- Shifts state policy from support for competitive markets to specific generator "need"
- Limits customer intervention at PUCO
- Would cost a small manufacturer ~$60,000 through 2030
- Would cost large, intensive manufacturer $500,000 through 2030

HB 381 is very similar to the previous legislation (Senate Bill 128 and a companion bill, House Bill 178), which required electric distribution utilities to purchase Zero-Emissions Nuclear (ZEN) credits that would be bought from Ohio's nuclear generators, as well as generators operating out of state, and paid for by Ohio's customers in FirstEnergy's service territories. HB 381 provides for the following modifications from prior versions:

- HB 381 modifies the duration of the ZEN program and cost recovery from customers,

3709 N. High Street, Suite 100, Columbus, OH 43214
614.268.4263

guaranteeing that the program and cost recovery continue for at least 12 years, through 2030, with an opportunity for the General Assembly to extend after receiving a report from the PUCO in 2029.

- HB 381 clarifies that the credits are first allocated to each distribution utility, and then the distribution utility collects revenues from all of its customers through a non-bypassable rider in the amount associated with its allocation of the ZEN credits.
- HB 381 more clearly explains how the state of Ohio (PUCO) operates the program as a middle man in order to transfer ZEN credits and funds from an unregulated nuclear generator to a regulated distribution utility. The modifications in the bill are an attempt to create the illusion that FirstEnergy's customers are not subsidizing FirstEnergy's unregulated affiliate that owns nuclear generation (FES) to avoid any FERC scrutiny over such affiliate transaction.
- HB 381 deletes the cost cap included in the prior version of the bill and sets the rider rates similar to those in the OVEC legislation. Residential customers will be charged $2.50/month and non-residential customers will be charged the lesser of 5% of the customer's total bill or $3,500/month. There is no indication of whether the 5% calculation is referencing a customer's total annual bill or total monthly bill, which could affect the customer's monthly charge. The distribution utility may adjust these rider amounts downward if a lower rate would still allow full recovery of the cost associated with obtaining the ZEN credits that the utility is required to purchase. With this change, the deferral was eliminated.
- HB 381 also appears to have deleted recovery of indirect costs associated with the purchase of the ZEN credits.
- HB 381 removed the PUCO review of the program in years 6 and 11 and a recommendation as to whether the program should continue. Thus, the program is guaranteed to collect revenues associated with ZEN credits for 12 years, through 2030, with an opportunity to extend.

HB 381 sets forth how the state would meet the new policy goal of recognizing a need for nuclear generation by creating ZEN credits purchased from nuclear generators for distribution utilities and paid for by some Ohio customers.

Details of the ZEN credit mechanism:

- <u>ZEN credit definition</u>: A ZEN credit would equal the "attributes" associated with one megawatt hour (MWh) of nuclear generation. "Attributes" is not defined, but presumably refers to emissions attributes, meaning the lack of emission pollutants. However, attributes could extend to include other environmental externalities of electric generation that may someday be priced in, such as water use or spent fuel storage.
- <u>ZEN credit price</u>: SB 128 mandates that the initial price of a ZEN credit be $17.00, and that the PUCO should periodically adjust the price for inflation.
- <u>ZEN credit quantity</u>: The number of ZEN credits to be purchased will equal 1/3 of a distribution utility's customer load, provided that the distribution utility has a qualified nuclear resource within its certified territory. Additionally, if that distribution utility is owned by a holding company, which in turn owns other distribution utility companies in Ohio, all of that holding company's Ohio distribution utilities would be required to participate in the ZEN credit program.

In plain terms, this would include all three of FirstEnergy Corp.'s distribution companies (Cleveland Electric Illuminating, Toledo Edison, Ohio Edison), but not AEP Ohio, DP&L, or Duke. The total annual distribution load of the FirstEnergy Ohio distribution utilities is approximately 54 million MWh.

- ZEN credit program duration: The ZEN credit program, including cost recovery from customers, will last for at least 12 years and there is an opportunity for the General Assembly to extend that period.
- ZEN credit cost: The customers of the FirstEnergy Ohio distribution utilities would be required to purchase 18 million ZEN credits at a price of $17.00 per ZEN, totaling ~$300 million per year (plus any increases for inflation). The cost to Ohio ratepayers over the 12-year term would be at least $3.6 billion without a cost cap, though with the cost cap, the costs would still likely result in over $1 billion for the 12-year term.
- ZEN credit availability, Out-of-state ZEN credits: Ohio's two nuclear power plants, Davis-Besse and Perry, fall short of producing 18 million ZEN credits per year. In fact, according to the US Energy Information Administration, not once has nuclear generation in Ohio produced 18 million MWh since 2001.
    - In the most recent 5 years, Ohio nuclear plants produced on average 16.7 million MWh. Thus, an additional 1.3 million ZEN credits would need to be purchased from out-of-state nuclear resources. If the production trend continues, Ohio customers would consistently send $21.5 million each year to out-of-state nuclear resources. Because the cost cap would limit annual cost to consumers by a magnitude greater than the out-of-state potential, it is not clear how the PUCO will decide which nuclear resource, be it in-state or out-of-state, would receive the subsidies.
    - In 2003, nuclear generation in Ohio fell to approximately 8.5 million MWh. In such a year, Ohio would spend approximately $160 million on out-of-state ZEN credits.
- HB 381 further amends the state policy to extend long-term "environmental and 'other' benefits" to the region, not just the state.
- Nuclear plant eligibility: HB 381 provides remarkably specific criteria around which power generating resources are eligible.
    - In and Out-of-State Eligibility: Importantly, separate definitions exist for "in-state nuclear energy resources", and for "all other nuclear energy resources".
- Hypothetical Environmental Baselines: In-state nuclear resources would be eligible by comparing the emissions of the nuclear plant to that of "the predominant electric generation source…as of the time the resource commenced operation." The impact of those hypothetical emissions would assume "the then predominant electric generation source" was located in the exact same place as the nuclear plant. The intent of this provision seems to be to compare the emissions impact of nuclear plants not against what would currently likely replace the nuclear plants – a mix of natural gas, renewable energy, and energy efficiency, all sited at different locations – but instead against 30-40 year old generation technology, which was likely predominantly inefficient coal-power plants with high emissions. This would have the effect of bolstering the alleged

environmental benefits to the region of nuclear technology, but would be wholly untethered to reality.

- ZEN program process:
    - HB 381 dictates that financial data and statements submitted by nuclear plant owners desiring to sell ZEN credits to Ohio customers would not be made public.
    - ZEN program cost recovery would be collected from customers of FirstEnergy's Ohio electric distribution utilities through a non-bypassable rider for at least 12 years.
    - The non-bypassable rider for non-residential customers will be set at the lesser of 5% of the customer's total bill or $3,500/month. This may be adjusted downward if a lower rate would still allow the distribution utilities to collect the full amount associated with the ZEN credits allocated to the distribution utility.
    - The PUCO would have only 50 days to designate a nuclear plant as an eligible nuclear resource after the resource files a written notice, or any nuclear resource that notifies the PUCO would be automatically eligible. Interested stakeholders may file comments within 20 days after the notice is filed. Since presumably out-of-state nuclear resources could be eligible, and there are specific environmental requirements for all nuclear resources, the list of participating plants is not obvious, and could be open to challenge based on the requirements HB 381 sets forth. However, it is unlikely a robust process could take place at the PUCO within 50 days. Thus, even out-of-state nuclear plants could receive defacto eligibility without the full review of the PUCO and intervening stakeholders.
- Transfer of ZEN eligibility to other companies:
    - If a current nuclear plant owner sells or transfers its nuclear power plant, the amount of ZEN credits allocated to the distribution utilities from the transferred nuclear resource would be reduced by half of the dollar amount of any net proceeds otherwise available from the resource's known obligations. It appears that even with this reduction, the requirement for the Ohio distribution utilities to purchase ZEN credits equal to 1/3 of their load remains, implying that Ohio customers would simply need to purchase more out-of-state ZEN credits.

Impact on Manufacturers

The collection of revenues associated with ZEN credits would currently be limited to FirstEnergy's Ohio customers, even though HB 381 clearly states that the benefit of the program is to the "region." The table below shows the annual and 12-year impact to small, medium, large, and extra-large manufacturers located in the service territories of the FirstEnergy Ohio distribution utilities. The total cost, annually and for the full term, is shown, as well as the portion of the cost that could go to out-of-state nuclear plants. A small manufacturer could pay approximately $60,000 extra over the 12-year term, where as a large manufacturer with significant local employment could pay approximately $500,000 extra over the course of the ZEN program.

		Annual		12-year Term	
Manufacturer Size	Consumption (kWh/year)	Total ZEN Cost	With Cost Cap	Total ZEN Cost	With Cost Cap
Small (~$100k/yr in electricity costs)	1,000,000	$ 5,667	$ 5,000	$ 68,000	$ 60,000
Medium (~$600k/yr in electricity costs)	7,500,000	$ 42,500	$ 33,750	$ 510,000	$ 405,000
Large (~$6 million/yr in electricity costs)	100,000,000	$ 566,667	$ 42,000	$ 6,800,000	$ 504,000
Extra Large	1,000,000,000	$ 5,666,667	$ 42,000	$ 68,000,000	$ 504,000

THE BUCKEYE INSTITUTE

The Buckeye Institute & R Street Institute
Policy Brief

Don't Short Circuit the Ohio Electricity Market:

A Q&A with Dr. Joe Bowring on State Subsidies and Power Plant Bailouts

By Joe Nichols & Devin Hartman

Introduction

The Ohio economy depends on an affordable and reliable supply of electricity. Electricity literally powers modern life for Ohioans as we boot up our computers at the office, charge our phones, and crank up the air conditioning on hot summer days. It's also a key input for manufacturers, which still make up nearly one-fifth of Ohio's economy and provide hundreds of thousands of Ohioans with good jobs. Manufacturers typically face tough global competition, and rising electricity prices can contribute to a plant cutting its operations—or even closing.

That's why it's critically important to have good electricity policies that promote competition and customer choice. By sticking to these principles, Ohioans will enjoy a reliable supply of electricity at low cost.

Policymakers made key reforms in 1999 that opened up the electricity market for more competition and customer choice. Traditionally, Ohioans were stuck with their local electric utility and charged a price negotiated by the utility and government regulators. After the 1999 law, Ohio joined other states in a regional organization called PJM Interconnection, which operates a wholesale market for electricity. Power plants compete to sell electricity on this wholesale market and electricity providers buy wholesale electricity through PJM and sell it at retail. Now, Ohioans can choose among these different electricity providers who offer market-based pricing.

Unfortunately, the 1999 reforms didn't go far enough. The playing field is still tilted in the favor of big utilities and against their competitors, and the utilities can still stick consumers with too many charges that they can't opt out of by switching to another electricity provider.

In fact, the Ohio Consumer's Counsel has tallied up $14.3 billion of subsidies to the big four electric utilities—American Electric Power, FirstEnergy, Dayton Power & Light, and Duke—from 2000 to 2016. Approximately $235.11 million more *per year* are currently approved or pending going forward from 2017.[1]

[1] Office of the Ohio Consumers' Counsel, "**Subsidy Scorecard**."

In the following Q&A, Dr. Joe Bowring—who is the independent auditor for PJM Interconnection—explains why Ohio benefits from participating in the PJM market. Bowring makes three key points that are especially relevant for Ohio:

1. Regulated utilities should only be in the business of distributing electricity through power lines. They should not also own the power plants that generate electricity.

2. Government policies that favor one type of power plant over another make the market function less efficiently and raise costs for customers. Ohio is guilty of favoritism in various ways, such as a current law that forces customers to buy renewable energy and proposed laws that force consumers to subsidize certain coal and nuclear plants.

3. Even though Ohio and the greater region served by PJM are experiencing many changes—including power plant closures—there is plenty of extra power capacity, and many new plants coming on-line. There is no legitimate concern that Ohio will have power shortages or blackouts.

Q&A with Dr. Bowring

BUCKEYE/R STREET: *What electric industry structure and policies are best for economic development?*

BOWRING: The best electric industry structure is the one that results in the lowest possible costs to customers. The best wholesale power market structure is a competitive structure that includes a competitive energy, ancillary services and capacity market. A competitive energy market by itself is not enough. A competitive capacity market helps ensure competition for new entry and signals for exit when units are not profitable.

BUCKEYE/R STREET: *How do merchants behave compared to monopoly utilities?*

BOWRING: Merchant generators put private capital at risk, enter the market when it appears profitable and exit the market when it is not profitable. The decisions are made entirely by private investors and the consequences are borne entirely by private investors. Customer funds are not used to fund the construction of merchant generation units and customer funds are not used to guarantee rates of return to investors when units underperform.

BUCKEYE/R STREET: *How does the improved economic discipline of competitive markets affect innovation and consumers?*

BOWRING: Markets provide a price signal and private investors and consumers decide how to react to those prices. Consumers may invest in technologies that reduce energy usage if prices are high, or shift energy usage to lower-price time periods. The private developers of power plants compete with one another to build the lowest cost, most efficient power plants. The developers put pressure on original equipment manufacturers to sell cheaper and more efficient power plants. One result has been the significant increase in the efficiency of the dominant new power plant technology: the gas-fired combined cycle. This technology would not have been invented but for competition and this technology would not have been improved but for competition among equipment manufacturers, responding to the demand for new plants by private power plant investors/developers.

BUCKEYE/R STREET: *How does PJM remain a reliable electricity system despite the retirement of power plants?*

BOWRING: PJM is required to maintain a required margin of reserves in excess of forecast peak load. That required reserve margin is a key determinant of the demand for capacity in the PJM capacity market. Power plants earn revenues from a combination of energy markets and capacity markets. When total net revenues are not adequate to cover the going-forward costs of a generator, it is more economic to retire the unit than to continue to operate it. Based on these market signals, more than 20,000 MW of coal-fired power plants have retired in PJM since 2011. But PJM continues to maintain a reserve margin in excess of its required reserve margin as a result of new entry by investors in new units that believe they can earn a profit. Developers continue to build new generation in PJM based on the results of PJM's energy, ancillary services and capacity market and based on the expectation that the investments will be profitable.

BUCKEYE/R STREET: *Are PJM's markets actually competitive, considering the extent of administrative rules?*

BOWRING: As the independent market monitor for PJM, we continue to find that the PJM markets are competitive. All markets include complex rules and the PJM markets are no exception. The fact that there are rules does not mean that PJM markets are less than markets or are somehow administrative constructs. Cost-of-service regulation is an administrative construct. The PJM markets are competitive markets governed by rules. The PJM markets continue to be subject to regulation by the Federal Energy Regulatory Commission (FERC) because FERC relies on competitive outcomes as a substitute for direct regulation. Market participants continue to put their capital at risk and do not have recourse to customers when they lose money. Load-serving entities continue to compete for customers in states where retail competition exists. Customers continue to respond to price signals. Units and companies have gone bankrupt in PJM markets. Both the energy market and the capacity market are markets that produce competitive results for customers.

BUCKEYE/R STREET: *You regularly note many areas for improvement in the way PJM markets are designed and administered. Are electricity customers better served by PJM's imperfect markets or without a regional transmission organization?*

BOWRING: The energy market works well. The energy market relies on competitive offers from generation owners equal to short-run marginal cost that result in locational marginal prices that reflect both generator offers and constraints on the transmission system that is necessary to deliver power to load. The energy market has local market-power-mitigation rules that work effectively. There are some areas where the energy market could be made more effective, including better and more locational scarcity pricing, less discretion for PJM in affecting prices and better rules for purely financial participants. PJM does not need to find artificial ways to increase energy market prices.

The capacity market works reasonably well. The capacity market has had lower prices than indicated by market fundamentals over the past few years, but PJM's recent changes to the capacity market design (Capacity Performance) has created better and stronger incentives for units to perform. The capacity market does not need rules to support specific technologies or power plants.

In general, PJM has continued to improve the design of its energy, ancillary services and capacity markets, although there is continued need for improvement.

BUCKEYE/R STREET: *What is the best approach to handle shortcomings in PJM markets?*

BOWRING: Continued improvements in market design are the best approach to handling any perceived shortcomings in market outcomes. It is also important to distinguish between actual shortcomings in market outcomes and corresponding market-design issues, and perceived issues; for example, when a specific technology faces market challenges.

BUCKEYE/R STREET: *How do competitive markets affect renewables and demand-side resource investments (versus regulated monopoly)?*

BOWRING: Clear and transparent price signals in the energy market and the capacity market indicate to potential investors in traditional generation, renewables and in demand-side resources whether investment is likely to be profitable and where the most profitable locations are. There is no transparent price signal in a cost-of-service system. In that case, the regulated utilities decide whether to invest in renewables or demand-side base on their overall impact on the profits of the regulated utility. If renewables or demand side investments reduce the overall revenues of the regulated utility, the utility will not invest. Despite the flaws in the PJM capacity market, a large amount of demand-side resources have been built by private investors in response to market signals, and renewables have sited where [they are] expected to be profitable.

BUCKEYE/R STREET: *How do subsidies (e.g., bailouts) and resource mandates (e.g., renewable portfolio standards) affect market performance? How does this affect consumers and economic development?*

BOWRING: The market paradigm is an alternative to the quasi-market design, which relies on cost-of-service regulation and guaranteed rates of return. The market paradigm, and its associated customer benefits, cannot survive if there is intervention in the markets to save specific units or technologies despite clear market signals. Subsidies are contagious. If one owner receives special subsidies, it is the fiduciary duty of other unit owners to seek comparable subsidies. Subsidies are fundamentally incompatible with competitive markets that rely entirely on market signals for decisions about entering and exiting markets. Despite their good intentions, central planners do not succeed and have a poor track record of beating the market.

Subsidies, particularly for mature technologies, result in customers paying more than they would pay without subsidies.

BUCKEYE/R STREET: *What is the best role for regulated utilities within a restructured state?*

BOWRING: The role of regulated utilities is best suited, to date, to investment in transmission and distribution assets, although there is an increasing role for competition in those areas.

One of the risks of vertically integrated utilities is that they can, under some circumstances, shift risk from their generation side to their distribution side. That was the goal of First Energy and AEP in seeking to require Ohio customers to pay a non-bypassable charge to fund a subsidy for uneconomic generating assets. Despite the fact that FERC rejected the more egregious form of these subsidies, it is not possible to separate the financial impacts of generation from distribution in a vertically integrated company.

At the outset of wholesale power-market restructuring, many states required the divestiture, by the transmission and distribution utilities, of their generating assets. That divestiture prevented the types of cross-subsidies that were the subject of the FE and AEP filings.

The overall goal of power-market design should be to maximize the role of market forces, to eliminate incentives for subsidies and cross subsidies, to ensure that risks are borne by those making the investment decisions, to prevent market power of all types and to maximize the degree of customer choice about the types of service that customers wish to purchase.

BUCKEYE/R STREET: *What would be the consequences of re-regulating merchant assets?*

BOWRING: The re-regulation of private merchant assets would likely be a drawn-out, expensive litigation driven process that, at best, would significantly increase costs to customers. Merchant generators would expect to be compensated for their investments as if they were regulated assets, meaning a guaranteed return on and of capital. Given the observed history in PJM markets, merchants have earned less than regulated utilities. As a result, the conversion of merchant assets to regulated assets would increase costs to customers.

Longer term, re-regulation would mean the loss of market-based incentives for market entry and exit. Re-regulation would mean abandoning the market paradigm and restoring the quasi-market paradigm in which investment decisions are made by regulated utilities with guaranteed rates of return. Re-regulation would mean that customers would be required to bear all the risks of planning decisions about the type and location of new assets. Customers would be required to pay for all investments, whether successful or not.

Conclusion

Utilities continue to lobby regulators and lawmakers for subsidies, because changes in the electricity market have lowered prices—and their profitability. While these subsidies are good for the utility companies, they are bad for the rest of the state's families and businesses. Higher electricity bills reduce the amount of money that families have to put food on the table and make companies less confident about starting or expanding operations in Ohio.

Policymakers should make three electricity policy reforms to let the market work and help Ohioans save money on their energy bills:

First, Ohio should have full corporate separation, as is the case in Texas, of power generation companies and the regulated monopoly utility companies that own the power lines. Utilities should be prohibited from owning power plants through "affiliate" companies.

Second, Ohio should embrace market pricing and eliminate "electric security plans" (ESP). ESPs are regulatory proceedings that become utility wish lists for extra charges and subsidies above the market price.

Finally, Ohio law should enable the Public Utilities Commission of Ohio to issue refunds to customers if utilities overcharge them.

As Dr. Bowring attests, the restructured electricity market is doing a good job of providing Ohioans with reliable, yet low-cost electricity. These reforms are the best way to ensure that continues to be the case.

About the Authors

Joe Nichols is the strategic partnerships officer at The Buckeye Institute. In this role, Nichols develops existing and new relationships with the Institute's investors and partners. Prior to his current position, Nichols was a policy analyst in The Buckeye Institute's Economic Research Center where he focused on energy policy. He obtained his Bachelor of Arts in Economics from Denison University in Granville, Ohio.

Devin Hartman is electricity policy manager and senior fellow with the R Street Institute, where he researches and promotes competitive electricity markets, efficient energy innovation and environmental policies, and sensible electric rate designs. Devin joined R Street in January 2016, having previously conducted economic analysis of wholesale electricity markets at the Federal Energy Regulatory Commission and on retail electric regulation at the Indiana Utility Regulatory Commission.

Dr. Joseph Bowring is the president of Monitoring Analytics. Since 1999, Bowring has been the independent market monitor for PJM, responsible for all market monitoring activities of PJM Interconnection. He has a Ph.D. in economics from the University of Massachusetts and has taught economics as a member of the faculty at Bucknell University and Villanova University. In addition, he has served as senior staff economist for the New Jersey Board of Public Utilities and as chief economist for the New Jersey Department of the Public Advocate's Division of Rate Counsel.

THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1120
Columbus, Ohio 43215
(614) 224-4422
BuckeyeInstitute.org

R Street
1050 17th St. NW #1150
Washington, DC 20036
(202) 525-5717
RStreet.org

Don't Short Circuit the Ohio Electricity Market: A Q&A with Dr. Joseph Bowring on State Subsidies and Power Plant Bailouts
By Joe Nichols and Devin Hartman

Electricity Ratemaking Reforms To Protect Consumers

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

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

AARP

Ohio Farm Bureau

The National Federation of Independent Business/Ohio

Northeast Ohio Public Energy Council (NOPEC)

Office of the Ohio Consumers' Counsel

Ohio AgriBusiness Association

The Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Hotel & Lodging Association

The Ohio Manufacturers' Association

Ohio State Grange

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

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

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

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

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

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

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

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

- **Customers Are Not Protected from Paying Too Much for Service Under an ESP.** One consumer protection in the 2008 law provided that ESPs could not be approved unless the result is “more favorable in the aggregate” to customers when compared to the expected results from the market-rate option. But the PUCO has been considering both quantitative and qualitative factors to determine if the ESP is more favorable in the aggregate than a market rate—and the Supreme Court of Ohio has declined to prohibit the PUCO’s approach. The consideration of qualitative factors can allow above-market charges, and that has undermined the consumer protection that prices in ESPs should compare favorably to market prices.
- **Utilities Can Veto Any PUCO-Ordered Modification to Their ESPs.** If a utility doesn’t like a PUCO ruling that modifies its proposed ESP, the utility can withdraw its application. In effect, the 2008 law gave the utilities—but no other stakeholder—veto power in ESP cases. This is a decidedly anti-customer policy.

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

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

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

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

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

For additional information, contact: **EMBARGOED – FOR RELEASE 8.29.17**

Nina Holliday
216.363.5428 (o)
216.218.6462 (c)
nholliday@teamneo.org

West Virginia University-led team lays foundation for regional natural gas liquids storage "hub"

Findings will help strengthen Ohio's supply chain

Cleveland, Ohio – August 29, 2017 – It is no secret that the region around Ohio, West Virginia and Pennsylvania has abundant natural gas resources, but can the three states uncover the keys to turning those resources into economic growth? West Virginia University-led research may have some of the answers.

On August 29, WVU is releasing to the public a study that shows how the region can support storage facilities that are critical for attracting petrochemical and related industries to the area. Researchers will present the data at a technical workshop in Canonsburg, Pennsylvania, hosted by the Eastern Petroleum Technology Transfer Council, PTTC, at WVU.

"This study helps us to better understand how the geology in the region would support potential underground storage of natural gas liquids," said JobsOhio Senior Managing Director Dana Saucier. "This information is a valuable asset to support our expanding petrochemical industry and can strengthen the position of our region for future downstream investment."

"Appalachia is poised for a renaissance of the petrochemical industry due to the availability of natural gas liquids," said Brian Anderson, director of the WVU Energy Institute who helped secure the funding to conduct the work. "A critical path for this rebirth is through the development of infrastructure to support the industry."

Led by Doug Patchen, director of the WVU Appalachian Oil and Natural Gas Consortium and the Eastern PTTC, researchers from the geological surveys in West Virginia, Pennsylvania and Ohio studied geologic formations that could offer suitable locations for developers to build underground facilities to store natural gas liquids from Marcellus and Utica wells.

The team identified and mapped all potential options for subsurface storage of natural gas liquids along the Ohio River from southwestern Pennsylvania to eastern Kentucky, and the Kanawha River in West Virginia. Previously, the consortium had conducted studies of the Marcellus and Utica shale gas plays. Results from those studies have been used by both small producers such as Northeast Natural Energy and large multinationals such as Exxon and have helped fuel the region's shale gas boom.

This latest project was conducted as part of the Tri-State Shale Coalition, an innovative cross-border collaboration between Ohio, Pennsylvania and West Virginia and a critical key for unlocking the region's economic opportunity, according to its members.

The Coalition was created following a collaborative agreement signed in October 2015 by Governors' offices in West Virginia, Pennsylvania, and Ohio. Charter members include the Benedum Foundation, a charitable organization, and Team NEO, the Allegheny Conference on Community Development and Vision Shared, all non-profit economic development organizations in Ohio, Pennsylvania, and West Virginia.

A public-private partnership, the coalition brings together workforce development organizations, academic institutions such as WVU, and economic development groups to strategically advance the area as a "super-region" for petrochemical, plastics fabrication and advanced manufacturing jobs and investments.

"Recognition of the enormous opportunity for economic development based upon shale gas, including downstream modern manufacturing, was the motivation for the Governors of West Virginia, Ohio, and Pennsylvania to agree to collaborate to maximize the opportunity," said William Getty, Benedum Foundation president.

"The results of the study will be a valuable tool for our already strong manufacturing base in Northeast Ohio," said Team NEO Vice President Paul Boulier, "Being able to store valuable feedstock will help develop midstream and downstream opportunities that will make us even more competitive on a global and national basis."

"Having natural gas liquids storage capacity in the greater region is critical to fully realizing the potential of the shale gas resources found in our three states. Shell's decision to build a world-scale petrochemical facility here is game-changing and shines a spotlight on fresh opportunities in this part of the country. Natural gas storage will do the same – positioning us to attract additional ethane crackers and other petrochemical investments, as well as supporting further upstream and midstream development," said David Ruppersberger, president of the Pittsburgh Regional Alliance, the economic development marketing affiliate of the Allegheny Conference.

The WVU Energy Institute secured $100,000 from the Benedum Foundation to support the study. That amount was matched by a total of $100,000 more from AEP, Antero, Blue Racer, Charleston Area Alliance, Chevron, Dominion, EQT, First Energy/Team NEO, Mountaineer NGL Storage LLC, Noble Energy, Southwestern Energy, XTO Energy and the West Virginia Oil and Natural Gas Association.

About Team NEO

Team NEO is an economic development organization focused on creating jobs for Northeast Ohio's residents. In collaboration with our partners, it leads the region's business attraction efforts, supports business retention and expansion work as Northeast Ohio's JobsOhio affiliate, accelerates the impact of innovation in the region, and aligns strategies and resources within the economic development network to maximize its impact. In addition, Team NEO provides tools to assist employers in attracting talent to the region. For more information, visit clevelandplus.com.

Team NEO works with its state partners – JobsOhio and the Appalachian Partnership for Economic Growth – to help advance economic opportunities presented by the Marcellus and Utica Shales.

About the Tri-State Shale Coalition

The Tri-State Shale Coalition represents the region of Ohio, Pennsylvania, and West Virginia working together to build a global petrochemical hub. This “super-region” is on the verge of potential, game-changing petrochemical, plastics fabrication and advanced manufacturing jobs and investment thanks to shale gas. Public and private partners representing workforce development, academia and economic development in the tri-state region recognize this opportunity and are visibly and strategically aligned to promote the super region as the new “Global Petrochemical Hub.” At its foundation is the 2015 Tri-State Regional Cooperation Agreement, a collaboration agreement signed by Lt. Governor Mary Taylor of Ohio, Governor Tom Wolf of Pennsylvania, and Governor Earl Ray Tomblin of West Virginia which signified an unprecedented level of cross-border cooperation.

###

NATURAL GAS AND OIL

FUEL OHIO

The natural gas and oil industry supports more than 262,800 jobs, provides more than $14.7 billion in wages and contributes more than $37.9 billion to the state's economy.

MORE THAN 262,800 JOBS

Natural gas and oil activity support a wide-array of jobs. They include everything from petroleum engineers, environmental experts and rig hands to truck drivers, caterers and contractors that benefit from the industry's economic activity.

JOBS SUPPORTED BY THE INDUSTRY

Natural Gas and Oil	Services	Wholesale and Retail	Manufacturing	Construction	Transportation and Warehousing	Other
90,100	91,500	23,100	16,000	4,500	9,800	27,800

MORE THAN $14.7 BILLION IN WAGES

Good jobs mean community-supporting wages that are spent on homes, at local restaurants, car dealerships and boutiques among the whole spectrum of businesses that make up a state's economy.

MORE THAN $37.9 BILLION IN ECONOMIC IMPACT

Value Added Economic Impact

Industry activity boosts manufacturing, logistics, banking and construction among dozens of other economic sectors.

Resource: "Impacts of the Natural Gas and Oil Industry on the U.S. Economy in 2015," prepared for the American Petroleum Institute by PwC in July 2017: http://www.api.org/~/media/Files/Policy/Jobs/Oil-and-Gas-2015-Economic-Impacts-Final-Cover-07-17-2017.pdf

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CUSTOMER-SITED RESOURCES REPORT

ENERGY EFFICIENCY - DEMAND RESPONSE - CHP - RENEWABLE ENERGY - STORAGE

ENERGY COMMITTEE – NOVEMBER 2017

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Sustainability Peer Network

Managing GHG Emissions Amid Uncertainty

- December 6th – At OMA, 10:30 am
- International View – Guest speaker Elliot Diringer, EVP C2ES and BELC
- Energy & Emissions in the US
- What Does it All Mean for Ohio Manufacturers?

REGISTER at MYOMA
at
www.Ohiomfg.com

C2ES Business Environment Leadership Council

AECOM, ALCOA, amazon.com, aps, ARCONIC
Bank of America, Berkshire Hathaway Energy, BHP
CBRE, Dominion, Dow, DTE Energy, Duke Energy
Entergy, Exelon, GE, GM, hp
IBM, intel, JPMorgan Chase & Co., LafargeHolcim, Lockheed Martin
Microsoft, nationalgrid, nrg, PG&E Corporation
PSEG, RioTinto, Sempra Energy, Shell, Toyota

Questions?
jseryak@gosustainableenergy.com
614-268-4263 x302

SUSTAINABILITY

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- AEP Efficiency Auctions
  - $300,000 set aside at a higher incentive rate
  - Otherwise – YOU'RE CAPPED
  - Funding available first-come, first-served
- Trends in programs
  - All four utilities have CHP incentives available now
  - Utility programs have cost caps of around "4%"

ENERGY EFFICIENCY – PROGRAM UPDATES

EE Opt-Out – LOOK BEFORE YOU CROSS!

- AEP - $0.00094 /kWh credit (true-up from previous years)
  - Plus $0.91 /kW charge
  - May lower EE rider costs for high load factor customers going forward
  - Credit takes off another 30-50% of total charge
- DP&L
  - The <u>EE rider is GOING NEGATIVE</u> in 2018
- EE riders in general have had some volatility

ENERGY EFFICIENCY – PROGRAM UPDATES

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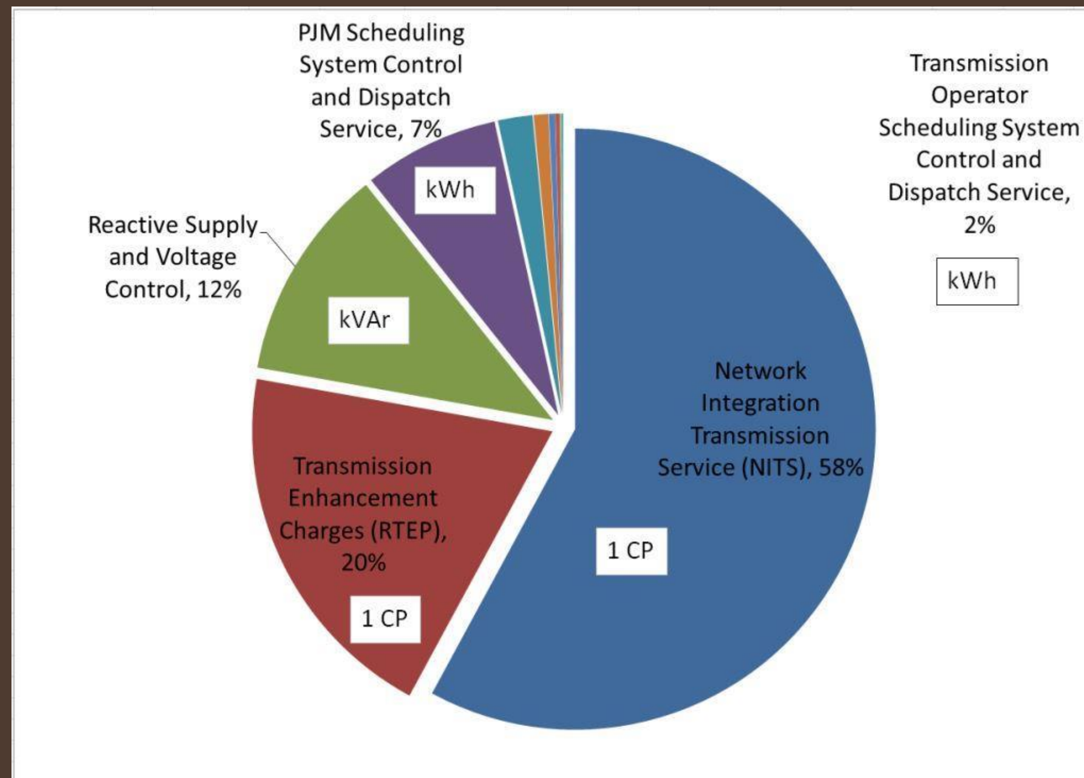
- Transmission rider lingo
  - AEP – Basic Transmission Cost Rider (BTCR)
  - DP&L – Transmission Cost Recovery Rider (TCRR)
  - FE – Non Market-Based Services Rider (NMB)
  - Duke – Base Transmission Rider

TRANSMISSION COSTS – WHAT'S IT CALLED?

- Transmission plus ancillary costs
  - ~80% of transmission costs billed to the distribution utility on the 1 CP
- Distribution utilities allocate and bill out based on monthly peaks
  - Big difference – 1 CP can be managed



TRANSMISSION COSTS – WHAT'S IN IT?

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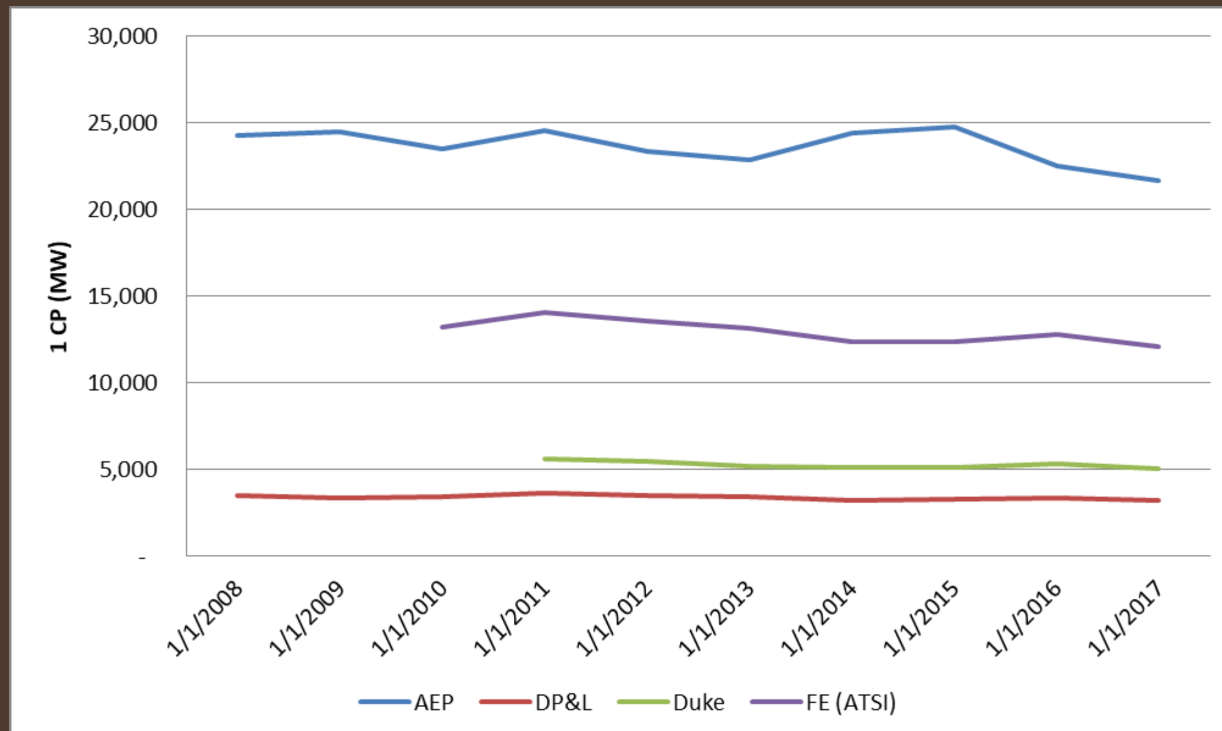
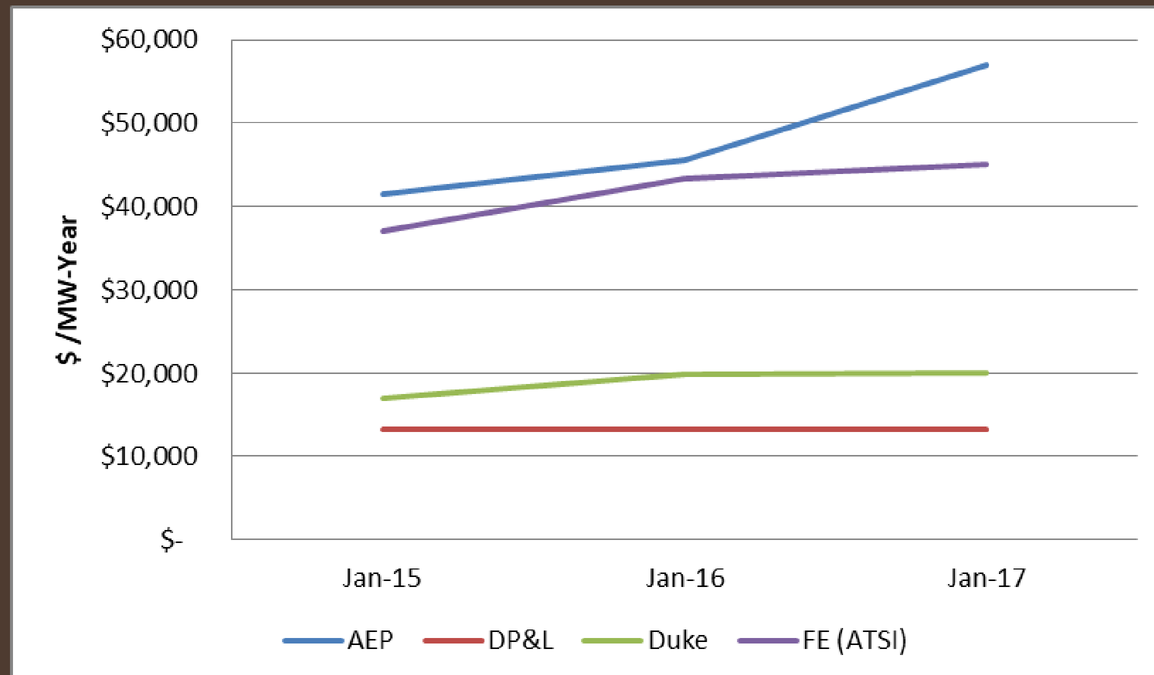
- Network peak loads have decreased for each of Ohio's utilities
- 11% - 14% reduction since 2011



TRANSMISSION COSTS – TRENDS

TRANSMISSION COSTS – TRENDS

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



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What we (and you) can do

- OMAEG
  - Argue for cost causation principles – work to get transmission costs allocated and charged on a 1 CP basis
  - AEP – BTCR Pilot
  - DP&L – TCRR Pilot
  - FE – Rider NMB Pilot

- What you can do:
  - Join pilots, if eligible
  - Manage your 1 CP
  - Reducing your costs reduces everyone’s price (by reducing load on the grid)

TRANSMISSION COSTS – WHAT WE (AND YOU) CAN DO

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<u>PUCO rules on net-metering – Impact to manufacturers</u>

- Most manufacturers likely to shop generation, not generate excess electricity
- Good
  - Location – behind-the-meter generation can include contiguous lots
- Not so good
  - Shopping customers do not receive compensation for excess generation
  - Generation capacity not compensated for
  - Transmission not compensated for
    - Ex. Solar likely results in lower 1 CP, facility still billed for same transmission costs under monthly peaks
  - Reciprocating engines not included (limits CHP options)

NET-METERING

RunnerStone, LLC

3709 N. High Street, Suite 100, Columbus, OH 43214
614.268.4263

MEMORANDUM

Date: October 20, 2017

To: Ohio Manufacturers' Association

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

RE: Grid Resiliency Pricing Rule at FERC

On September 29th, 2017, the Secretary of Energy filed a Notice of Proposed Rulemaking (NOPR) with the Federal Energy Regulatory Commission (FERC) to issue a final rule directing Independent System Operators (ISO) and Regional Transmission Organizations (RTO) to "accurately price generation resources necessary to maintain the reliability and resiliency of our Nation's bulk power system.[1]" The three major takeaways of the proposed rule are:

- Eligible units must have a 90-day supply of fuel on site
- Must be technologically capable to provide essential energy and ancillary reliability services
- Cannot receive state or local cost-of-service rate regulation in addition to this regulation

This rule is touted as providing significant *national security* benefits. The Secretary claimed that the Polar Vortex event of 2014 resulted in consumers choosing between heat and electricity and that this proposed rule will mitigate the risk of a similar event in the future. The Secretary has requested an expedited review process with public comments due by November 24th and a final action to be taken by December 11th.

Current Status of NOPR

The final NOPR published in the Federal Register on October 10th, 2017, had additional text that was not present in the original NOPR. Specifically, it clarified that only merchant power plants would be eligible for cost recovery and only if they keep 90 days of fuel supplied on site. However, there was an additional change that it would apply only to ISOs and RTOs that had "energy and capacity markets." This distinction would limit this rule's application to ISO-New England, New York ISO, and the PJM Interconnection and exclude merchant generators in the Southwest Power Pool, California ISO, and potentially the Midcontinent ISO from the benefits of the rule.

Supporting Argument for NOPR

The argument outlined by the Secretary is that premature retirements of "fuel-secure" generation threaten the resilience of the electric grid and that these resources are thus "indispensable for our economic and *national security*." The Secretary notes that between 2002 and 2016, 531 coal generation units retired from operation and that 4,666 MW of nuclear generation announced retirement. The

[1] https://energy.gov/sites/prod/files/2017/09/f37/Notice of Proposed Rulemaking .pdf

Secretary considers these retirements significant but does not note the volume of new generation that has been developed since 2002 and what impact it has had in diversifying generation resources.

The 2014 Polar Vortex is pointed to as an event that tested the "resiliency of the electric grid." DOE claims that PJM "struggled" to meet capacity requirements during the vortex despite no loss of load, active participation from demand response resources, and over performance of wind resources. The suggestion in the outlined argument is that coal and nuclear resources performed at greater than required levels during the event. There is no mention of frozen coal piles or of Beaver Valley Nuclear Station's transformer failure due to improper operations by plant operators. The report then moves to argue that current wholesale energy and capacity markets are too short run in their design in order to sufficiently price "resiliency attributes of fuel-secure generation." DOE points to the Quadrennial Energy Review from January 2017 wherein they previously argued that resilience is more easily accounted for in "traditional end-to-end, vertically integrated electricity delivery." They argue that market structures "complicate reliability and resilience investment decision-making."

DOE then points to an IHS Markit study where IHS argued that without coal and nuclear resources providing a meaningful contribution to the U.S. bulk power system, consumers would have to pay an additional $114 billion annually in order to adequately retain the level of resilience currently enjoyed. Beyond this, DOE points to a NERC letter from May 2017 that argues the benefit of secured on-site fuel to allow coal-fired and nuclear units to operate independent of supply chain disruptions. Many commentators have pointed out that Puerto Rico's generators have fuel at their plants but due to transmission and distribution damage were unable to deliver capacity to the grid.

Finalizing their argument, DOE points to the "extensive record on price formation in … ISOs and RTOs" that the Commission has developed as evidence that FERC has the ability to act expeditiously. The Secretary has requested an expedited docket (some commentators have called it a "rocket docket") to take final action within 60 days of the proposed rule being published in the Federal Register. The Secretary also requested that the final rule go into effect within 30 days of publication in the Federal Register. The NOPR was published in the Federal Register on October 10th, 2017 leading to a final action being due by December 11th, 2017.

Criticism of NOPR

The response to the NOPR has been just short of apocalyptic. Former FERC Chairman Jon Wellinghoff has been quoted saying "This would blow the market up." He also said that "It's going to be expensive as hell, expensive as it can be because we will be paying the full freight on coal and nuclear plants." Former FERC Commissioner Tony Clark focused on the fact that FERC is an independent federal agency and is free to ignore the details of the DOE proposal. However, he noted that FERC has responded in the "most aggressive angle that they could" and that "it would be very challenging for the markets." One analyst pointed out that if the concern is resilience, research should be conducted on the specific elements of resilience that are essential to the system. Once those are determined, the market can acquire those elements at the lowest cost. Instead, DOE has decided that 90 days of fuel onsite represents resilience without an "underpinning or modeling" to explain why 90 days is important. Another analyst said "having a mountain of coal…doesn't mean [anything] if you can't deliver the power" referencing the weaknesses observed in Puerto Rico's power system. Even the American Coalition for Clean Coal Electricity (ACCCE) was "perplexed" by the 90 day focus of the proposal as most coal plants have 73-82 days of fuel on site today. In addition, there are practical limitations to storing 90 days of fuel at a site. By one estimate, a 1,250 MW natural gas combined cycle power plant would require 400 acres of compressed natural gas tanks. And if a natural gas site is able to burn diesel, it is likely that they would acquire 90 days' worth of diesel fuel to store on site to become eligible for the rule's benefits.

Ultimately, it will be necessary for FERC to create a rule based on a record and that a record must first be built before a decision can be made anywhere near as sweeping as the DOE proposal. Several former FERC commissioners were skeptical that the final rule would bear any resemblance to the published NOPR in the Federal Register as it "flies in the face of everything FERC has done under the Federal Power Act over the past 20 years."

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resiliency Pricing	))	Docket No. RM18-1-000

COMMENTS OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

The Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits these comments in response to the Federal Energy Regulatory Commission's (Commission) Notice Inviting Comments dated October 2, 2017 in response to the Secretary of Energy's September 28, 2017 proposed rule submitted pursuant to Section 403 of the Department of Energy (DOE) Organization Act (Proposed Rule).

OMAEG is a non-profit entity created by the Ohio Manufacturers' Association (OMA) for the purpose of educating and providing information to energy consumers, regulatory boards, and suppliers of energy; advancing energy policies to promote an adequate, reliable, and efficient supply of energy at reasonable prices; and, advocating on behalf of manufacturers in critical cases at the state and federal levels. OMAEG's members are all members of OMA. OMA has over 1,400 member companies of all different sizes and with various energy usage profiles, all of which are Ohio retail customers.

Like OMA, OMAEG is comprised exclusively of manufacturers who work together to protect and grow Ohio manufacturing. OMAEG strives to improve business conditions in Ohio and drive down the cost of doing business for Ohio manufacturers. Ohio's manufacturing sector is one of the top consumers of electricity in the state of Ohio, and any impacts arising from future increases to electricity prices that are caused by the Proposed Rule may have a significantly negative effect on their businesses. OMAEG is regularly and actively involved in proceedings before the Public Utilities Commission of Ohio as well as this Commission. Its unique knowledge and perspective will contribute to the Commission's consideration of the Proposed Rule and the issues it presents.

As further described herein, the Commission should take affirmative steps to protect competitive wholesale markets and ensure that customers are not saddled with soaring costs arising from a scheme to protect certain uneconomic power plants. Given that the Proposed Rule will distort the energy markets and manufacturers will be negatively impacted by the Proposed Rule, the Commission should exercise its authority to reject the Proposed Rule.

II. BACKGROUND

DOE proposes to weaken the competitive foundation of energy markets in order to prop up select types of generation resources that cannot meet the competitive demands of the market. This would impair the market's ability to naturally select the most efficient generation resources to best serve customers across the United States. This will result in significantly higher energy costs for individuals and businesses. For manufacturers, this means a severe decrease in manufacturing competitiveness and jobs.

The Proposed Rule justifies inviting these deleterious effects by advancing the unfounded claim that the Proposed Rule is necessary because the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. The reality is that these sources of generation are being retired as part of the natural cycle of competitive markets that has long sustained efficient and competitive generation and led to massive improvements in energy efficiency. If nuclear and coal based generation are truly necessary to the reliability or resiliency of the electric grid, those sources of generation would be thriving.

For the Commission to now decide that coal and nuclear are so necessary to the resiliency and reliability of the electric grid that it needs to wade into the waters of the competitive market, it would have to suddenly reverse course and determine that existing regional transmission organization (RTO) and independent system operator (ISO) tariffs are unjust and unreasonable. There is no justification for that sort of abrupt adjustment. OMAEG does not contend that competitive markets are infallible or cannot be improved. Rather, OMAEG draws the Commission's attention to the fact that competitive markets have led to record low prices that benefit the worldwide competitiveness of manufacturing in the United States. Those benefits would be jeopardized if the Commission elects to allow certain generation resources, but not others, to be compensated with extra-market payments or subsidies.

Ultimately, the federal government should not be deciding which segments of the competitive energy markets to favor and disfavor. The competitive wholesale markets have consistently advanced the efficiency of energy generation in this country and the Commission should be wary to impede that process to rescue failing power plants when doing so will increase costs to electric customers across the United States and harm manufacturing and the millions of jobs it supports.[1]

With these general principles in mind, OMAEG submits the below comments regarding the specifics of the Proposed Rule.

III. COMMENTS

A. DOE Has Not Demonstrated that Existing RTO and ISO Tariffs Are Unjust and Unreasonable.

The fundamental premise underlying the proposed rulemaking is that the retirement of coal and nuclear generation threatens the reliability and resiliency of the electric grid. This premise is not based in reality and fails to support the requisite finding under Section 206 of the Federal Power Act that the existing RTO or ISO Tariffs are unjust, unreasonable, unduly discriminatory, or preferential.[2]

In the Notice of Proposed Rulemaking (NOPR), DOE does not actually define system "resiliency." Due to this failure, DOE did not identify which attributes the system needs in order to achieve "resiliency" that are not being met with the current markets. Without stating which aspects of the current markets impair the resiliency this Proposed Rule seeks to achieve, DOE is unable to demonstrate that existing RTO and ISO Tariffs are unjust or unreasonable.

DOE did, however, ask its Staff to evaluate system reliability. And when the Staff conducted its investigation, its report found that the markets were "functioning as designed," meaning that they were working to "ensure reliability and minimize short-

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1 Bureau of Labor Statistics, The Employment Situation at 29 (October 6, 2017) https://www.bls.gov/news.release/pdf/empsit.pdf.

2 16 U.S.C. § 824e(a).

term costs of wholesale electricity."[3] At the conclusion of its extensive report, Staff discussed proposals for the Department's approach to the electricity grid.[4] Nowhere in that discussion did the report suggest advancing a life support plan for generators that had failed or were failing in the competitive markets.[5] The North American Electric Reliability Corporation (NERC) concurred with Staff's assessment when it testified before Congress that "the bulk power system (BPS) remains highly reliable and resilient, showing improved reliable performance year over year."[6]

In the NOPR, DOE emphasizes the 2014 Polar Vortex. Notably, the NOPR fails to mention that many coal and nuclear plants performed poorly during the Polar Vortex as the plants encountered equipment failures and frozen coal piles. Additionally the NOPR focuses on the winter of 2014, but does not mention the following winter, which brought about more record low temperatures.[7] The reason that DOE cannot tell a tale of calamitous unreliability from this second polar vortex is that following the 2014 event, the markets operated as markets do: the markets identified the problems that beset the grid in 2014 and they came up with solutions. In PJM, Capacity Performance Rules were implemented that address the concerns raised by the DOE. If existing market products are truly insufficient to support reliability and resiliency, however those terms may be

[3] Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability at 16 (August 2017) https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf.

[4] Id. at 126-29.

[5] See id.

[6] "Powering America: Defining Reliability in a Transforming Electricity Industry," Testimony of Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation, Before the Subcommittee on Energy, House Committee on Energy and Commerce (September 14, 2017) http://docs.house.gov/meetings/IF/IF03/20170914/106383/HHRG-115-IF03-Wstate-CauleyG-20170914-U1.pdf.

[7] Doug Stanglin and Doyle Rice, "Winter Holds Eastern U.S. in Icy Group with Record Lows," USA TODAY (February 20, 2015) https://www.usatoday.com/story/weather/2015/02/20/winter-weather-cold-snow-record-temperatures/23728379/.

defined, the proper course of action is to propose a solution tailored to product definition and the attributes sought so that all capable resources can compete to best provide service to customers. The current markets remain fully capable of ensuring reliability without the need to favor certain types of generation with subsidies paid for by captive customers.

B. Regional Transmission Organizations Effectively Address System Reliability and Resiliency, Eliminating the Need for a One-Size-Fits-All Federal Regulation.

DOE proposes that the federal regulatory apparatus usurp the authority of states and regional transmission organizations to determine its own resource procurement decisions. Existing RTO and ISO tariffs provide adequate authority for an RTO or ISO to prevent a generator retirement when such a retirement would actually threaten grid reliability. These RTOs and ISOs already have authority to enter into "Reliability Must Run" agreements that allow for cost recovery for generators that are needed for reliable and resilient grid operations. This approach is preferable to the Proposed Rule because it allows for a case-specific approach where only generators that are actually needed for grid reliability receive cost support payments and requires resource owners to formally indicate an intent to retire, which enables the RTO or ISO to separate generators that need additional payments to continue operations from those that simply want them. On the other hand, the Proposed Rule indiscriminately provides for cost support payments to any coal or nuclear power plant, regardless of whether that power plant is truly needed to maintain grid reliability and resiliency—or whether the payments are necessary to prevent retirement.

Ultimately, a federal agency should not be picking and choosing which competitors within an industry will live or die on their own merits and which will be guaranteed survival by federal policy. Market forces will always do a better job of streamlining the market than reckless favoritism effectuated on a political whim. This has long been the Commission's policy, and that policy should not change with this case.

C. Without Any Acknowledgement of its Negative Effects, the Proposed Rule Will Harm Manufacturing.

The Proposed Rule purports to impose a regulatory burden that is limited to the initial implementation costs borne by ISOs and RTOs. The Proposed Rule, therefore, makes no attempt to quantify the millions or billions of dollars in cost increases for electricity that its adoption would impose on customers. For non-coal or nuclear generators, these costs will be felt when they are forced to compete on an uneven playing field. For residential customers, these costs will be felt when they pay their monthly electric bill. For manufacturers, these costs will be felt when they are forced to reduce their operations and lay off workers because their electric costs are cost prohibitive.

Lest anyone be inclined to disregard the real-world impacts of higher electric prices, the Commonwealth of Kentucky commissioned a study on the effect of electricity prices on U.S. businesses. That study found that a 10% increase in the real price of electricity would cause a net loss of one million jobs and a decrease of $142 billion in the national Gross Domestic Product (GDP).[8] That study further concluded that those effects would be felt the strongest in the metals, paper, wood, chemical, textiles, and minerals sectors of the economy—which collectively employ 2.5 million Americans.[9] Further,

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[8] Commonwealth of Kentucky Staff at the Energy and Environment Cabinet, "The Vulnerability of the United States Economy to Electricity Price Increases" (March 2015). http://energy.ky.gov/Programs/Data%20Analysis%20%20Electricity%20Model/Vulnerability_to_Electricity_Prices.pdf.

[9] Id.

these industries are geographically clustered, so the increased prices would disproportionately harm those areas of the country that are home to these sectors.[10]

Additionally, another study in Ohio examined the gross state product per employee and measured how it changed with the cost of electricity between 1990 and 2010 to demonstrate the effects of electricity price on productivity of manufacturing in Ohio and the region.[11] The study concluded that higher electricity prices have had a statistically significant negative effect on manufacturing productivity in Ohio, as well as in four other neighboring states.[12] Specifically, the study showed that an increase of 1 cent per kilowatt-hour correlated to a decrease in gross product generated of about $2,527/employee, a total of 2.2%.[13] Similarly, the results of the study determined that those effects would be felt most keenly within the electricity-intensive industries.[14]

D. The Rapidly Accelerated Time Schedule Imposed in this Case Denies Parties the Opportunity to Effectively Respond to the Commission's Questions and Denies the Commission the Opportunity to Fully Evaluate the Complete Effects of the Proposed Rule.

Section 403(b) of DOE's Act provides that the Commission shall act on DOE's proposals in "an expeditious manner in accordance with such *reasonable* time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal" (emphasis added). The timeframe proposed by DOE is patently unreasonable. It fails to allow parties sufficient time to address the complicated issues that surround the Proposed Rule.

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[10] Id.

[11] I. Lendel, S. Park and A. Thomas, "Moving Ohio Manufacturing Forward: Competitive Electricity Pricing" (2013) at 30-31. *Urban Publications.* Paper 679. http://engagedscholarship.csuohio.edu/urban_facpub/679.

[12] Id.

[13] Id. at 31.

[14] Id.

This sweeping proposal to disrupt competitive markets would impact millions across the country and the Commission should allow for all parties to have enough time to submit meaningful comments on the Proposed Rule. Given the significant nature of the Proposed Rule, the Commission should allow at least 60 days for comment, as provided in Executive Order 12,866.[15]

The volume and depth of questions posed by the Commission should mandate additional time for response. In its October 4, 2017 Request for Information, the Commission asked parties to respond to 30 different requests, many with multiple questions or subparts, affording parties less than 20 days to respond. This is entirely inconsistent with comment periods for other significant regulations that have ranged from 100 days to six months.[16]

Given that DOE does not present concrete evidence that any immediate harm will befall the electric grid should the Proposed Rule not be enacted within the near future, there is no credible reason to not extend the comment period to allow for a full consideration of the issues presented.

IV. CONCLUSION

The Commission should reject the imprudently-crafted Proposed Rule and continue its longstanding policy of competitive solutions to market impediments and fuel neutrality. The current state of affairs does not support the extreme step of using the power of the federal government to prop up failing power plants while neglecting the market benefits that have spurred efficiency, innovation, and lower prices in the energy

[15] See Executive Order 12,866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (September 30, 1993).

[16] See 75 FR 37884 (June 17, 2010); 50 FR 48540 (Nov. 25, 1985).

industry. For the reasons stated above, OMAEG respectfully requests that the Commission reject the Proposed Rule and maintain the status quo that has effectively guided the industry.

NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com

Counsel for OMAEG

Columbus, Ohio

October 23, 2017

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 23rd day of October, 2017.

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Carpenter Lipps & Leland LLP

671086-3

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Grid Reliability and Resiliency Pricing	))	Docket No. RM18-1-000

REPLY COMMENTS OF THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP

I. INTRODUCTION

Pursuant to the Federal Energy Regulatory Commission's (Commission) Notice Inviting Comments on Secretary of Energy's September 28, 2017 Proposed Rule under Section 403 of the Department of Energy (DOE) Organization Act (Proposed Rule),[1] the Ohio Manufacturers' Association Energy Group (OMAEG) hereby submits these reply comments in response to comments offered by various entities.

OMAEG submitted initial comments in this docket on October 23, 2017, encouraging rejection of the Proposed Rule.[2] Numerous other manufacturers and large consumers of electricity, including the American Manufacturers and Large Institutional Customers and U.S. Manufactures, strongly oppose the Proposed Rule,[3] and agree that, if implemented, the Proposed Rule would "fundamentally reconfigure the nation's wholesale electricity markets . . .[,] override the market's ability to select the most efficient

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1 Notice Inviting Comments (October 2, 2017).

2 See OMAEG Initial Comments (October 23, 2017) (Comments of OMAEG).

3 See Comments of American Manufacturers and Large Institutional Customers (October 23, 2017) and Comments of Electricity Consumers Resource Council (ELCON), et al. (collectively, U.S. Manufacturers) (October 23, 2017).

units, increase the electricity costs by many millions of dollars for untold numbers of businesses and consumers, and result in a substantial loss of U.S. manufacturing capacity and jobs."[4] The Public Utilities Commission of Ohio (PUCO), PJM Interconnection, L.L.C. (PJM), former FERC Commissioners, and numerous others, also oppose the Proposed Rule, citing concerns for the additional costs that will be borne by consumers and businesses, the lack of support for the identification of the problem and proposed remedy, and the injection of uncertainty over the future of efficient, competitive electric markets and long-term investment.[5]

OMAEG's Reply Comments further highlight the significant concerns associated with implementing the Proposed Rule and the negative impact on the competitive wholesale electric markets and manufacturers. Despite assertions to the contrary, the Proposed Rule would create a host of problems, all in the name of solving a problem that does not exist. As such, for the reasons set forth herein and in its initial comments, OMAEG respectfully requests that the Commission reject the Proposed Rule and continue to promote competitive wholesale electric markets by relying on the market-based solutions that have long benefited consumers.

4 Comments of U.S. Manufacturers at 5.

5 Comments of PUCO at 1, 8-13 (October 23, 2017); Comments of PJM at 1-14 (October 23, 2017). Comments of Former FERC Commissioners at 3-11 (October 19, 2017).

II. COMMENTS

A. Ohio Utilities Miss the Mark in Their Assessment of the Proposed Rule

The parent or affiliate companies of each of Ohio's electric distribution utilities (collectively, Ohio Utilities) filed comments in this docket.[6] Notably, none of the Ohio Utilities' comments sufficiently address the cost impact that the Proposed Rule would have on their customers' electric service. But, all of the Ohio Utilities' make the error of uncritically accepting the assertion that the proposed rule may improve grid resiliency. Three of the four companies, however, stop short of endorsing the misguided Proposed Rule.[7] Only FirstEnergy completely supports its adoption.[8]

i. FirstEnergy and Others Support a Solution to a Problem, Which They Admit Is Undefined

The first step in addressing any problem is to define it. Here, the Proposed Rule purports to address grid reliability and resiliency, yet the Notice of Proposed Rulemaking fails to enumerate what is meant by "resiliency."[9] FirstEnergy, for its part is unfazed by this glaring omission from the Proposed Rule. It contends that the "Commission need not look far to find definitions of resiliency appropriate for use in this rulemaking proceeding."[10] FirstEnergy then proceeds to submit no fewer than five different definitions and gauges for resiliency before broadly concluding that resilient generation is

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6 See Comments of the Duke Energy Corporation (October 23, 2017) (Comments of Duke); Comments of American Electric Power Company, Inc. (October 23, 2017) (Comments of AEP); Comments of FirstEnergy Service Company et al. (October 23, 2017) (Comments of FirstEnergy); and Motion to Intervene and Comments of AES Companies (October 23, 2017) (Comments of AES).

7 Id.

8 See Comments of FirstEnergy at 1.

9 Comments of FirstEnergy at 17; Comments of Duke at 6; Comments of AES at 15; Comments of OMAEG at 4; Comments of PJM at 7; Comments of American Manufacturers and Large Institutional Customers at 24.

10 Comments of FirstEnergy at 17.

important to the grid.[11] FirstEnergy does not explain which of the definitions of resiliency should be used for the Proposed Rule or how the varying definitions would impact the Proposed Rule. FirstEnergy also explains how it believes various regional transmission organizations, reliability coordinators, and even Congress are already addressing some form of resiliency.[12] AEP, Duke, and AES also provided varying definitions of resiliency.[13] The references to a plethora of definitions and actions already being taken in a number of forums expose a major flaw in the Proposed Rule: it never actually defines the problem it is trying to solve.

ii. Retirement of Inefficient Power Plants Does Not Negatively Impact Grid Reliability or Resiliency

The initial comments and supporting documentation confirm that the fundamental premise of the Proposed Rule is unfounded. The retirement of inefficient power plants is not an imminent threat to the reliability and resiliency of the electric grid.

FirstEnergy litters its comments with conclusory statements that the retirement of coal and nuclear plants threatens resiliency. Like the Notice of Proposed Rulemaking, FirstEnergy uses the Polar Vortex of 2014 as the central justification for the claim that retirement of inefficient plants devastates grid resiliency.[14] In the rush to assume that the difficulties were caused by—and not just correlated with—retirement of inefficient plants, FirstEnergy and others overlook factors that undercut the probative value of this purported evidence. First, as noted in OMAEG's initial comments, later, comparably cold winters did not have the same negative impact on the grid after the market corrected

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[11] Id. at 17-22.

[12] Id.

[13] Comments of AEP at 4; Comments of Duke at 6; Comments of AES at 15.

[14] See Comments of FirstEnergy at 22.

the flaws that led to the 2014 reliability issues.[15] Second, as the U.S. Manufacturers noted in their initial comments, a broader view of all outages caused by major electricity disruptions demonstrates that retirement of outdated generation does not pose a serious risk.[16] In fact, only .00007% of total outage hours from 2012-2016 were caused by fuel shortages.[17] Moreover, 97% of those fuel shortage-related outage hours were caused by a single event; a single event that involved a coal-fired power plant.[18] U.S. Manufacturers further point out that severe weather, not fuel supply concerns or generation adequacy, account for the vast majority of outages.[19]

The American Manufacturers and Large Institutional Consumers supplied a more comprehensive study of the causes of, and subsequent response to, the 2014 Polar Vortex.[20] In reality, problems with a number of different generation sources, including coal piles freezing over, led to the inadequate response to that event.[21] Additionally, those comments demonstrate that the market has corrected these flaws to avoid similar issues going forward.[22]

The Proposed Rule, FirstEnergy, and others proceed under the assumption that these failing power plants could stop a resiliency crisis if they were just compensated fairly for the benefits that they provide. The statistics, however, demonstrate that this is

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15 See Comments of OMAEG.

16 Comments of the U.S. Manufacturers at 10-11 (internal citations omitted) .

17 Id. at 10.

18 Id. at 10-11.

19 Id. at 11.

20 Comments of American Manufacturers and Large Institutional Customers at 29-30.

21 Id. at 30.

22 Id.

not the case; the grid does not need failing generators to save it.[23] As the American Manufacturers and Large Institutional Consumers correctly state, the wholesale electricity markets already account for resiliency.[24] The wholesale electricity markets are not indifferent to whether or not the grid is resilient. Rather, the markets will seek solutions that are resilient and also meet the other needs of the grid on its own.

It is not the job of the federal government to step in and compensate failing generators when the free market is unwilling to do so. This perspective is further supported by the comments of PJM. PJM argues that a diverse resource portfolio is more resilient; and the current resource portfolio is more resilient than ever before.[25] With that diverse portfolio, PJM has been able to successfully develop its own resiliency strategies without the need for federal mechanisms to support failing generators.[26]

The question of whether coal or nuclear generation needs to be part of a reliable and resilient resource profile at all is not before the Commission. Economic coal and nuclear plants would be unaffected by the rejection of the Proposed Rule. They would continue operating as they do currently and continue making the same positive resiliency contributions to the grid. The only question currently before the Commission is whether to prop up failing power plants to solve a non-existent resiliency problem. U.S. Manufacturers explain that the generation retirements referenced by the Proposed Rule and others are part of a long-term gradual, natural trend that has yet to impact resiliency or reliability.[27] Allowing this natural trend to continue and result in the retirement of

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[23] Comments of U.S. Manufacturers at 10-11.

[24] Id. at 12.

[25] Comments of PJM at 19.

[26] Id. at 19-20.

[27] Comments of U.S. Manufactures at 9.

uneconomic plants will not make the grid less resilient or reliable, just as the preceding retirements have not done so.

iii. Even if a Reliability or Resiliency Problem Did Exist, It Would Be Best Addressed on a Regional Level

Putting aside the issue of whether a problem exists that needs a regulatory solution, the universal federal proposal is not the proper mechanism to address grid issues. While FirstEnergy seems to accept this one-size-fits-all approach offered by the Proposed Rule, the other Ohio Utilities realize that these problems are best addressed on a regional basis.[28]

AEP argues that region-specific planning will better enable decisionmakers to craft solutions that address the precise needs of each state or region.[29] AEP contends that these needs will be different region-to-region and that solutions crafted after a reasoned analysis of those needs will provide the most effective way to address whatever problems may exist.[30] Duke concurs with AEP's assessment, contending that "[i]t cannot be emphasized enough that, as this rule is implemented, variation in ISOs'/RTOs' configuration and operation should be respected."[31] Duke adds that the regulatory structures that underlie these markets differ from state to state.[32] Given each region's unique characteristics, generation portfolio, and history, AES also recognizes the need for regional flexibility in implementation of any final rule.[33] While Ohio and other states in the PJM region are primarily restructured states, utilities in the MISO region are

28 Comments of AES at 1-2, 6-7; Comments of Duke at 5; Comments of AEP at 6-7.

29 Comments of AEP at 6.

30 Id. at 6-7.

31 Comments of Duke at 5.

32 Id.

33 Comments of AES at 6.

primarily vertically integrated utilities, and the New York Independent System Operator is a single state RTO.[34] The Commission should respect these distinctions and allow states to develop solutions that address their specific needs.

PJM's comments reinforce the arguments for regional solutions advanced by AEP, Duke, AES, and others. PJM explains that the PJM region is "less dependent on any single fuel type" than other regions throughout the country.[35] Given PJM's distinct resource makeup, it should not be subjected to a rule based on a rough approximation of what is needed for grid reliability across the country.

B. Adopting the Proposed Rule Would Require the Commission to Abandon Its Own Mission

This Commission's charge is to "assist consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means."[36] As a bipartisan group of former Commissioners point out, the Commission has long advanced its mission through reliance on competitive market forces.[37] The former Commissioners emphasize that this Proposed Rule would be a "significant step backward" after the Commission's substantial progress towards competitive wholesale markets that promote lower costs and greater efficiencies for consumers.[38]

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[34] Comments of Duke at 5.

[35] Comments of PJM at 19.

[36] Comments of Former FERC Commissioners at 1.

[37] Id. at 2.

[38] Id. at 3-4.

OMAEG concurs with the American Manufacturers and Large Institutional Customers that the law limits the Secretary of Energy's role in the rulemaking process.[39] As explained, it is up to the Commission to decide whether to adopt the Proposed Rule as the Commission has "exclusive jurisdiction with respect to any proposal made" by the Secretary of Energy.[40] As such, the Commission should engage in its legally-required analysis to determine the appropriateness of the Proposed Rule on its own merits.

OMAEG furthers supports the argument that, in order to adopt the Proposed Rule, the Commission must have a "reasoned basis" to alter the current rules.[41] Adoption of the Proposed Rule would constitute a significant departure from the Commission's precedent. To make this departure, the Commission would have to say that the current rates are "unjust, unreasonable, unduly discriminatory or preferential."[42] The thrust of the Proposed Rule's rationale that the current rates are so flawed is that the retirement of inefficient coal and nuclear plants (due to the competitive generation market) now threatens grid reliability and resiliency. As the American Manufacturers and Large Institutional Customers note, however, the DOE's own report has already concluded that there is no such threat.[43]

State public utilities commissions have similar stated goals as this Commission (e.g., the Ohio commission "is charged with assuring that Ohioans have access to adequate, safe, and reliable public utility service at a fair price."[44]). The PUCO, in

[39] Comments of American Manufacturers and Large Institutional Customers at 13-14.

[40] Id. at 14 (citing 42 U.S.C. § 7173(c)).

[41] American Manufacturers' Comments at 16-17 (citing *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985))

[42] 16 U.S.C. § 824e

[43] American Manufacturers' Comments at 16.

[44] Comments of the PUCO at 3.

striving towards those goals, concurs with the former Commissioners and urges the Commission to "reject the Department of Energy's . . . Proposed Rule."[45] The PUCO notes that market solutions have greatly improved "access to adequate, safe, and reliable public utility service at a fair price."[46] In short, market reforms have worked without the aid of artificial price supports.[47] With regard to reliability, the PUCO explains that "PJM's capacity market has successfully attracted new, highly efficient, investor-supported NGCC generation in Ohio and elsewhere, while simultaneously allowing inefficient and high cost generators to retire, all without endangering resource adequacy."[48] The PUCO adds that that PJM's reserve margins "are increasing and are consistently in excess of the levels necessary to ensure reliability"[49] and that "fundamental market principals are sound in PJM's wholesale markets."[50]

Importantly, the PUCO also explains how the Proposed Ruled could affect the state commissions' rights and the advancement of their missions: "the [P]roposed [R]ule could upend a state's current authority to choose the regulatory paradigm for its utilities, but forcing all organized markets to implement cost-plus rates. This will most certainly negatively impact the ability of the PUCO to assure just and reasonable rates for our consumers and businesses."[51]

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45 Comments of PUCO at 1.

46 Id. at 3.

47 Id.

48 Id. at 7.

49 Id. at 7.

50 Id. at 8.

51 Id. at 13.

C. The Proposed Rule Is Too Costly for Manufacturers

As explained in various comments, the Proposed Rule will increase costs to manufacturers and other energy-intensive businesses, compromising businesses' ability to compete in the U.S.[52] U.S. Manufacturers attempt to quantify just what the impact of the Proposed Rule would be on manufacturers across the country.[53] They cite research that concludes that a 10% increase in the price of electricity nationally could lead to a net loss of over one million manufacturing jobs, to say nothing of jobs in other sectors that will also be impacted by increased costs caused by the Proposed Rule.[54] The PUCO cites to a potential increase in costs on consumers and businesses in PJM's retail choice states by $8.1 billion annually, explaining that "[g]ranting cost-plus compensation to all generation units that meet the DOE's proposed criteria would undoubtedly have a deleterious impact on PJM's administered wholesale markets and, as a result, on the retail prices that consumers would ultimately pay."[55] The PUCO is rightfully concerned that consumers and businesses "may incur billions of dollars of new costs that would negatively impact economic development and job growth."[56]

Contrary to the arguments of some,[57] uneconomic coal and nuclear power plants and their jobs should not take preference over U.S. manufacturing jobs and the jobs of

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52 See, e.g., Comments of American Manufacturers and Large Institutional Customers at 17-20; Comments of U.S. Manufacturers at 14-15; Comments of PUCO at 12; Comments of OMAEG at 7-8.

53 Comments of U.S. Manufacturers at 14-15.

54 Comments of U.S. Manufacturers at 14-17.

55 Comments of PUCO at 12.

56 Id.

57 See, e.g., Comments of the Ohio AFL-CIO at 1 (October 23, 2017) (Comments of AFL-CIO); Comments of the Ohio Coal Association at 6 (October 23, 2017) (Comments of Ohio Coal Association). .

customers forced to subsidize (again) the uneconomic generation plants.[58] Ohio has seen the devastation that occurs when major employers leave a region, including the loss of more than 320,000 manufacturing jobs in the last decade.[59] Economic changes, such as increased costs, negatively impact the balance sheets of manufacturers and the vendors in their supply chains. Economic changes like the one proposed here will adversely impact manufacturing and Ohio businesses. As the PUCO explained: "Quite simply, the consequences if the FERC adopts the DOE's proposal in its section 403 NOPR could be dire."[60]

III. CONCLUSION

OMAEG respectfully requests that the Commission reject the Proposed Rule for the reasons stated herein and in its initial comments. The Proposed Rule is ill-conceived and would result in disastrous consequences in the manufacturing sector and across the broader American economy.

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[58] Comments of American Manufacturers and Large Institutional Customers at 17-20; Comments of U.S. Manufacturers at 14-15;

[59] Comments of AFL-CIO at 1.

[60] Comments of PUCO at 13.

NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com

Respectfully submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Telephone: 614.365.4100
Fax: 614.365.9145
Bojko@carpenterlipps.com

Counsel for OMAEG

Columbus, Ohio

November 7, 2017

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.2010, I hereby certify that I have this day served the foregoing document by electronic means upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 7th day of November, 2017.

/s/ Kimberly W. Bojko
Kimberly W. Bojko
Carpenter Lipps & Leland LLP

671086-3

DAVID P. JOYCE
14TH DISTRICT, OHIO

1535 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225–5731

Congress of the United States
House of Representatives
Washington, DC 20515–3514

October 20, 2017

Chairman Neil Chatterjee
Commissioner Cheryl A. LaFleur
Commissioner Robert F. Powelson
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Dear Chairman Chatterjee, Commissioner LaFleur, and Commissioner Powelson,

We write to thank the Department of Energy and Federal Energy Regulatory Commission (FERC) for initiating a rulemaking to help ensure a secure, resilient, and reliable U.S. electrical system. This will be accomplished by preserving the baseload power plants that form the backbone of our electric grid.

Our nation depends on an affordable, reliable, and secure supply of electricity produced by diverse energy resources. Baseload power plants are the only resources that can operate around the clock to support the energy demands of customers, businesses, and industries. These plants operate in all types of weather, and because they maintain large reserves of on-site fuel, they are not sensitive to fuel supply disruptions.

Preserving baseload plants also promotes a strong American economy. These facilities are economic engines that provide thousands of jobs not only at generating facilities and throughout the supply chain, but also in the small businesses, restaurants, entertainment venues, and other industries that comprise the communities around these plants. Local schools, police and fire departments, and other vital community services rely heavily on tax revenues paid by these facilities.

The current market structure, which undervalues baseload generation, has led to these plants closing prematurely at an alarming rate. These closures have resulted in an electrical grid with weakened resiliency and a diminished ability to respond to crisis.

A logical way to address this issue is to develop and implement market rules that appropriately compensate fuel-secure baseload generating plants. America's energy future depends on preserving a diverse, resilient, dependable, and secure energy supply. We appreciate your commitment on this matter and respectfully urge your swift action to develop and implement market rules that will prevent premature baseload plant closures, consistent with the rules and regulations of the Commission.

Respectfully,

David P. Joyce
Member of Congress

Bob Gibbs
Member of Congress

Michael R. Turner
Member of Congress

Steve Chabot
Member of Congress

Patrick Tiberi
Member of Congress

Bill Johnson
Member of Congress

Jim Jordan
Member of Congress

Warren Davidson
Member of Congress

Robert E. Latta
Member of Congress

Steve Stivers
Member of Congress

Brad Wenstrup
Member of Congress

Joyce Beatty
Member of Congress

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: November 16, 2017

Active Administrative Actions in which OMAEG is Involved:

American Electric Power (AEP):

- **Application to Expand ESP III Case/New ESP (Case Nos. 16-1852-EL-SSO, et al.)**
  - On November 23, 2016, AEP filed its application to amend its ESP extending the term through May 2024 and to add several new riders and charges. AEP also requested an expedited procedural schedule.
  - The PUCO has set a procedural schedule requiring intervenor testimony to be filed by May 2, 2017, Staff testimony by May 30, 2017, and setting the evidentiary hearing to begin on June 6, 2017
  - OMAEG filed the testimony of OMAEG witness John Seryak opposing AEP Ohio's plans for microgrids, renewable energy, submetering, and electric vehicle charging stations.
  - On August 25, 2017, all parties, except the residential advocate, reached a Settlement resolving the issues of AEP's third ESP (ESP III). The Settlement extends the term of the ESP III through May 31, 2024. The Settlement provides for Distribution Investment Rider caps that are significantly lower than AEP requested; an OVEC PPA Rider that does not affect pending appeals to the Supreme Court regarding the lawfulness of the PPA Rider, and; a Renewable Generation Rider (RGR) which will be populated in a separate proceeding wherein all parties reserve the right to challenge individual projects AEP seeks to include under the rider.
- **Global Settlement of Several Cases (Case Nos. 11-5906-EL-FAC, 14-1189-EL-RDR, 15-1022-EL-UNC, 11-4920-EL-RDR, et al.)**
  - On December 21, 2016, a Global Settlement was reached and filed with several parties, resolving several cases, including cases that were appealed to the Supreme Court of Ohio and remanded to the PUCO for reconsideration. OMAEG members and some other customers will see rate reductions as a result of the settlement.
  - Through OMAEG's participation in the cases and Settlement, OMAEG successfully negotiated one-time bill credits to offset the rate increases to those OMAEG members

that would have been otherwise negatively affected. Other large customers will also see savings from the implementation of the Settlement due to negotiated rate design modifications. All customers will also see a rate reduction in the form of a credit for the significantly excessive earnings test (SEET) in 2014. The amount of the total SEET credit passed on to customers is $20M. Additionally, those customers in the Ohio Power rate zone will receive a $2/MWh reduction in their PIRR rate.

- Further, the parties negotiated early implementation of a limited Basic Transmission Cost Rider (BTCR) Pilot Program agreed to in AEP's purchase power agreement (PPA) rider case, and obtained an OMAEG participation level of 5 customer accounts for those members who may benefit from the program.
- On February 23, 2017, the PUCO adopted and approved the Global Settlement in its entirety.
- On March 29, 2017, the PUCO approved AEP's tariff to establish the interim BTCR Pilot Program for 19 of AEP's customers, including 5 OMAEG members, according to the terms of the Global Settlement. The BTCR Pilot Program is an annual program (the 1CP is set from November 1st to October 31st). The approved tariff was effective with the first billing cycle of April 2017.

<u>Duke Energy Ohio (Duke):</u>

- **ESP Application (Case Nos. 14-841-EL-SSO, et al.)**
  - Order issued on April 2, 2015, wherein PUCO approved establishment of a PPA rider (Rider PSR), but Duke was not authorized to collect any PPA costs through Rider PSR.
  - Several parties, including OMA, filed applications for rehearing on May 4, 2015. The applications for rehearing are still pending.
- **2013/2014 EE/PDR Recovery (Case Nos. 14-457-EL-RDR and 15-534-EL-RDR)**
  - Duke and Staff filed a stipulation seeking to resolve the shared savings mechanisms relating to Duke's 2013 and 2014 programs.
  - OMA and others opposed the stipulation.
  - The PUCO issued a decision on October 26, 2016, approving the stipulation, which provides Duke $19.75 million in shared savings incentives.
  - Rehearing is pending.
- **Shared Savings Mechanism Extension Case (Case No. 14-1580-EL-RDR**)
  - Duke sought PUCO approval of its request to extend the use of its shared savings incentive mechanism in 2016.
  - OMA and others opposed the proposal and filed reply briefs on September 8, 2016, and are awaiting a PUCO decision.
- **EE/PDR Portfolio Plan (Case No. 16-576-EL-POR)**
  - On June 15, 2016 Duke filed its EE/PDR plan.

- OMA and several other intervening parties reached a settlement to implement Duke's comprehensive EE/PDR portfolio, effective from 2017 through 2019. OMAEG successfully negotiated a shared savings cap and tiered incentive levels. OMA also obtained language to prohibit Duke from collecting shared savings on banked savings, and to initiate a CHP program with positive incentives. OMA further obtained funding for EE programs in the amount of $50,000 per year.
- Both PUCO Staff and the Office of the Ohio Consumers' Counsel (OCC) challenged the plan proposing the adoption of a cost cap for program costs and additional limitations on shared savings incurred through FirstEnergy's energy efficiency portfolio plan. OMAEG does not oppose a cost cap or additional limitations on the amount of profit FE may earn.
- On September 27, 2017, the PUCO issued an Order adopting the parties' settlement in this case with one modification. The PUCO modified the settlement to limit Duke's annual recovery of EE/PDR program costs, including shared savings, to 4% of Duke's 2015 operating revenues for the years 2018 and 2019.
- Duke applied for rehearing, arguing that the cost cap was unlawful and OCC applied for rehearing, arguing that the settlement should not have been approved at all.

- **Distribution Rate Case (Case No. 17-0032-EL-AIR)**
  - On March 2, 2017, Duke filed an application to increase its distribution rates. The application proposes to increase the rates starting on January 1, 2018. OMAEG and other consumer groups intervened.
  - On February 23, 2017, the PUCO issued a decision that granted Duke's request to waive certain filing requirements regarding the production of generation or fuel-related information. The decision also set April 1, 2016 through March 31, 2017 as the test period and June 30, 2016 as the date certain.
  - Discovery has concluded and settlement discussions are ongoing.
- **MGP Remediation Rider (Case Nos. 17-596-GA-RDR, et al.)**
  - On March 31, 2017, Duke filed an application to recover 2016 costs for investigation and remediation of its Manufactured Gas Plant (MGP) site. In Duke's natural gas distribution case (Case No. 12-1685-GA-AIR), the PUCO approved up to $55.5 million for investigation and remediation costs incurred from January 2008 through December 2012.
  - OMAEG intervened in April 2017.
- **Price Stabilization Rider (Case Nos. 17-872-EL-RDR, et al.)**
  - On March 31, 2017, Duke filed an application to populate its Price Stability Rider (PSR), which was established in its ESP case at $0 (Case No. 14-841-EL-SSO et al.) Duke proposes to include in Rider PSR the net costs associated with its contractual entitlement in generating assets owned by the Ohio Valley Electric Corporation (OVEC). Rider PSR would be nonbypassable.
  - OMAEG and other parties filed a joint motion to dismiss Duke's application on the grounds that the PSR was already established on a zero placeholder basis in the 2014

ESP case and the PUCO does not have authority to review Duke's application outside of an ESP under its general authority over utilities. Alternatively, the parties requested the proceedings be stayed until the PUCO has decided the applications for rehearing in the ESP case and appellate review is completed.

- **ESP IV Case (Case Nos. 17-1263-EL-SSO, et al.)**
  - In June, Duke filed an application for its fourth ESP. In its application for a six year ESP, Duke proposes to continue its Distribution Capital Investment Rider (Rider DCI) and Rider PSR and introduce several new riders. On June 19, 2017, OMAEG intervened.
  - Discovery has concluded and settlement discussions are ongoing.

<u>FirstEnergy:</u>

- **ESP IV Application (Case No. 14-1297-EL-SSO)**
  - FirstEnergy, Staff, Ohio Energy Group, OPAE, IGS, and others filed a stipulation seeking PUCO approval of FirstEnergy's ESP IV Application together with authority to establish and populate a PPA rider (Rider RRS) with the costs associated with certain plants owned by its affiliate, FirstEnergy Solutions.
  - The stipulation also contains provisions addressing: grid modernization; energy efficiency; and a plan to transition to decoupled rates.
  - The PUCO modified and approved the stipulation.
  - On November 14, 2016, OMAEG submitted an application for rehearing of the PUCO's Fifth Entry on Rehearing adopting Rider DMR, which will collect from customers approximately $132.5 million per year, adjusted for recovery of taxes, for a total of three years, with a possible extension of two additional years.

    The PUCO approved FirstEnergy's implementation of its Rider DMR, effective January 1, 2017, and denied OMAEG's request to stay the collection of Rider DMR revenues or in the alternative, permit collection subject to refund.
  - In August, the PUCO issued its Eighth Entry on Rehearing where it rejected FE's request to modify the revenue collected under Rider DMR. The PUCO also rejected FirstEnergy's request to reduce the scope of the Non-Market Based Services Rider (Rider NMB) Opt-Out program to just the signatory parties to the stipulation. The PUCO agreed with OMAEG that the NMB Opt-Out program should be open to all parties.
  - OMAEG has now appealed the PUCO's decisions to the Supreme Court of Ohio.
- **EE/PDR Plan (Case No. 16-743-EL-POR)**
  - On May 9, 2016, OMAEG filed a motion to intervene in the proceeding.
  - In December 2016, several parties reached a settlement with FirstEnergy in support of its revised EE/PDR plan. OMAEG agreed to not oppose the settlement in exchange for favorable language, limitations on shared savings that can be collected from customers, favorable CHP program incentives, and other consumer protections.

    - Both PUCO Staff and OCC are challenging the plans proposing the adoption of a cost cap for program costs and additional limitations on shared savings incurred through FirstEnergy's energy efficiency portfolio plan. OMAEG does not oppose a cost cap or additional limitations on the amount of profit FE may earn.
    - Hearings have been held on the settlement and the parties have submitted briefs.
    - The matter is now pending before the PUCO.

<u>Dayton Power & Light (DP&L):</u>

- **Distribution Rate Increase (Case Nos. 15-1830-EL-AIR, et al.)**
    - The PUCO set June 1, 2015 to May 30, 2016 as the test period and September 30, 2015 as the date certain.
    - On March 22, 2017, the PUCO issued an unusual order seeking assistance for Staff in auditing DP&L's application to increase its distribution rates. The hiring of an auditor is occurring over a year and a half after DP&L's application was filed. The auditor will review DP&L's accounting accuracy, prudency, and use and usefulness of DP&L's jurisdictional rate base as presented in its application. The selection of the auditor should be complete by April 19, 2017 and a final audit report is estimated to be complete by September 29, 2017. OMAEG and other parties will have an opportunity to review any conclusions, results, or recommendations the auditor makes.
- **Electric Security Plan (Case Nos. 16-395-EL-SSO, et al.)**
    - DP&L filed an amended application on October 11, 2016, withdrawing its Reliable Electricity Rider (RER) request. Instead, it is now seeking a Distribution Modernization Rider (DMR) for a term of seven years to recover $145 million per year from customers.
    - DP&L and certain intervening parties filed a stipulation on January 30, 2017, which was opposed by numerous other intervening parties, including OMAEG.
    - On March 13, 2017, a new settlement was reached between a majority of the parties, including PUCO Staff and OMAEG (as a non-opposing party). Under the new settlement, DP&L will receive from customers $105M/year for 3 years with an option to request a 2 year extension of the DMR, totaling approximately $315M over three years. The Distribution Investment Rider (DIR-B) rider was eliminated (which was estimated to cost consumers $207.5M), and DP&L agreed to convert the forgone tax sharing liabilities to AES Corporation into equity payments (estimated by DP&L to be a $300M gain for customers). DP&L will also provide several OMAEG members the economic development rider (EDR) credit of $.004/kWh. For OMAEG members that do not qualify for the EDR credit, DP&L agreed to make those members see no increase in their current rates, plus a slight discount. Thus, those members will receive a collective total of $18,000 per year in shareholder dollars to compensate them for the increase in rates due to the DMR.
    - A hearing was held in April 2017 and the parties have submitted briefs. The matter is now pending before the PUCO.

- The PUCO approved the settlement, but also modified it to include nonbypassable OVEC recovery. OMAEG is considering an Application for Rehearing on that modification.

- **EE/PDR Portfolio Plan (Case Nos. 16-649-EL-POR, et al.)**
  - On June 15, 2016, DP&L filed its EE/PDR plan to continue its current EE/PDR POR for another year.
  - OMAEG, Staff, and all other intervening parties, except OCC, reached a settlement to continue DP&L's EE/PDR portfolio for 2017. OMAEG obtained continued funding for EE programs in the amount of $30,000, more favorable language, limitations on EE/PDR portfolio costs and shared savings that can be collected from customers, continuation of the CHP program and incentives, and other consumer protections. OCC is challenging the collection of lost distribution revenues.
  - A hearing was held on February 7, 2017 to submit the settlement where OCC waived its right to cross-examine DP&L's witnesses.
  - On September 27, 2017, the PUCO approved the settlement. OCC has applied for rehearing.

- **EE/ PDR Portfolio Plan (Case Nos. 17-1398-EL-POR, et al.)**
  - In accordance with the stipulation that was reached in DP&L's third EE/PDR portfolio plan case (Case No. 16-649-EL-POR, et al.), in June, DP&L filed an application for its proposed EE/PDR portfolio plan for years 2018-2020. As part of the new plan, DP&L proposes to implement non-residential programs, including Rapid Rebates (Prescription Rebates), Customer Rebates, Mercantile Self-Direct Rebates, and Small Business Direct Install programs. DP&L is also proposing to introduce new Stakeholder Initiatives and Non-Programmatic Savings programs, not currently part of the existing portfolio plan. Additionally, the proposed shared savings mechanism would apply to the extent DP&L exceeds its benchmarks.
  - In August, OMAEG intervened and filed objections opposing certain aspects of DP&L's EE/PDR portfolio plan.
  - On October 27, 2017, OMAEG and other parties reached an unopposed settlement resolving the issues surrounding DP&L's energy efficiency and peak demand reduction programs.

<u>Statewide:</u>

- **Net Metering Rules (Case No. 12-2050-EL-ORD)**
  - OMAEG filed comments urging the PUCO to adopt rules that align the compensation schemes applicable to shopping and non-shopping customers.
  - On November 8, 2017, the PUCO adopted new rules for net metering. These rules allow customer-generators to generate up to 120% of their own energy needs and allow customers who obtain their energy through a CRES provider to enter into net metering contracts with those providers. Customer-generators that generate more than they consume may receive a credit to their bill for the excess generation. That credit will be based on the energy-only component of the electric utility's standard

service offer. For a more comprehensive analysis of the new rules, please see the memorandum entitled ***Public Utilities Commission of Ohio Adoption of New Net Metering Rules*, prepared by Carpenter Lipps & Leland**.

- **Submetering Investigation (Case No. 15-1594-AU-COI)**
  - The PUCO opened an investigation to determine whether the activities of submetering entities meet the definition of a public utility.
  - On December 7, 2016, the PUCO issued a decision to expand the application of the *Shroyer test*, used to determine if a landlord is operating as a public utility, to include condominium associations, submetering companies, and other similarly-situated entities. Additionally, the PUCO created new parameters for applying the test to determine whether those entities are acting as public utilities, and thus should be subject to regulation when they resell or redistribute utility service.
  - Concerned that this expansion may unlawfully classify entities that resell or redistribute electric, gas, and water utilities in commercial settings as public utilities, OMAEG joined other commercial groups to seek rehearing of the PUCO's Order that may affect commercial shared services arrangements.
  - In June, the PUCO issued an entry on rehearing wherein it limited the application of its Relative Price Test and adoption of a Safe Harbor provision to resellers servicing submetered residential customers, stating that it will not apply to arrangements between commercial or industrial parties.
  - Several parties filed applications for rehearing. Importantly, no party challenged the applicability of the PUCO's Relative Price Test and Safe Harbor provision to only residential submetered consumers. The PUCO's decision on rehearing is pending.
- **PUCO Announces PowerForward**
  - The PUCO announced the launch of PowerForward: a PUCO review of the latest in technological and regulatory innovation that could serve to modernize the electric distribution grid and enhance the customer electricity experience. Through PowerForward, the PUCO will comprehensively explore technology and consider how it could serve to enhance the customer electricity experience. The PUCO will be hosting national experts through a series of phases.
  - In April, the PUCO held its first of three phases for its PowerForward initiative. Phase 1: A Glimpse of the Future - was a three-day conference that featured presentations examining technologies affecting a modern distribution grid; what our future grid could offer customers; and what technologies are in development to realize such enhancements. AEP and AES Corporation, DP&L's parent corporation, outlined the view of Ohio's utilities on grid modernization and its importance in meeting customer needs. Other speakers shared what some of the services on the new "platform" might look like, such as providing bill credits to customers who reduce their usage during peak load hours. OCC and other groups cautioned that because the benefits of grid modernization come at a cost, the PUCO should keep in mind how much each aspect of grid modernization would benefit customers.

- In July, the PUCO held Phase 2, which also took the form of a three day conference. Phase 2 focused on the grid, platforms, the grid's core components, requirements for building the grid of the future, distribution system safety and reliability, planning and operations of the distribution system, and energy storage. Speakers emphasized the importance of standards, infrastructure, and communications to ensure that new technologies are compatible with legacy equipment. The PUCO shared its goals to "future proof" the grid to ensure technologies paid for by ratepayers are effective, provide benefits to customers, and do not quickly become obsolete. Other speakers discussed how consumers and electric distribution utilities can use data from smart grid technologies and how it can help increase reliability improve theft detection and consumer consumption, as well as distribution system safety and reliability, planning and operations, and energy storage. Finally speakers representing two Ohio townships talked about how their communities have implemented microgrids and used energy storage systems.
- Phase 3 of PowerForward will take place during the First Quarter of 2018.

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

Duke Energy Ohio:

- **Increase to Natural Gas Distribution Rates, Case No. 2014-328 (Appeal of Case Nos. 12-1685-EL-AIR, et al.)**
  - OMA, OCC, Kroger, and Ohio Partners for Affordable Energy appealed a PUCO order to the Ohio Supreme Court that permitted recovery from ratepayers for environmental remediation costs associated with two former manufactured gas plant (MGP) sites.
  - On February 28, 2017, OMA's energy counsel, Kim Bojko, argued before the Supreme Court of Ohio on behalf of the Appellants requesting that it overturn the PUCO order that awarded Duke $55.5 million from customers for cleanup costs associated with the two former MGP sites that have not been in operation for 50-89 years.
  - The Court in a split 4:3 decision affirmed the PUCO's order holding that the "used and useful" standard does not apply to the ratemaking statute for "the cost to the utility of rendering the public utility service for the test period" under R.C. 4909.15(A)(4).
  - Believing that the Court failed to consider the evidence that most of the MGP sites were either vacant or unused in rending natural gas distribution service, on July 10, 2017, OMA filed a Joint Motion to Reconsider with the Court urging it to reconsider its decision and remand the case back to the PUCO to determine whether, all, part, or none of the remediation costs were incurred to render natural gas distribution service during the test period.

- **Appeal of DP&L Electric Security Plan, Case Nos. 2017-0204 and 2017-0241 (Appeal of Case Nos. 08-1094-EL-SSO, et al. and 12-0426-EL-SSO, et al.)**

    - In DP&L's ESP II case, the Supreme Court of Ohio reversed the PUCO's authorization of the Service Stability Rider (SSR) contained in DP&L's ESP II on grounds that it was an unlawful collection of transition revenue for costs incurred by the utility before retail competition began that will not be recoverable through market-based rates. The Court found that these costs were no longer recoverable under Ohio law. Thereafter, the PUCO authorized DP&L to withdraw its ESP II after collecting SSR charges for nearly three years. The PUCO also concurrently authorized DP&L to revert back to its ESP I, but allowed it to retain certain aspects of the competitive bidding process approved under ESP II. Further, the PUCO allowed DP&L to reinstate the Rate Stability Charge (RSC), which was originally approved in DP&L's ESP I, but later expired.

    - OMAEG and others filed applications for rehearing requesting that the PUCO reverse its decisions authorizing DP&L to revert back to its ESP I and to reinstate the RSC because it was an unlawful transition charge similar to the SSR that the Supreme Court of Ohio found to be unlawful. In December, the PUCO denied these requests.

    - In February, OMAEG jointly filed notices of appeal of the PUCO's Orders and subsequent entries on rehearing regarding various issues raised in DP&L's ESP I and ESP II cases. The issues in both appeals have been fully briefed. The matter is pending oral arguments.

    - In an unusual move, the Supreme Court of Ohio, on its own initiative, asked the parties to submit briefs on whether the pending appeals at the Court are now moot in light of the PUCO's approval, with modification, of the settlement in the DP&L ESP III case (Case Nos. 16-395-EL-SSO, et al.). OMAEG argued that the appeals are not moot and that the Court should resolve the issues that are disputed in these cases.

<u>American Electric Power (AEP):</u>

- **Appeal of AEP's ESP III and PPA Rider Expansion Cases (Case Nos. 2017-0749 and 2017 0752) (Appeal of Case Nos. 14-1693-EL-RDR, et al. and 16-1852-EL-SSO, et al.)**
    - In AEP's ESP III case, the PUCO in its February 25, 2015 Order authorized AEP to establish a zero rate placeholder power purchase agreement (PPA) Rider.
    - The PUCO issued an Order on November 3, 2016, affirming its decision in the February 25, 2015 Order not to approve AEP Ohio's recovery of costs under the PPA Rider, including OVEC costs (but authorized the recovery in the PPA Rider case on the same day). The PUCO also increased the Distribution Investment Rider (DIR) caps by an additional $8.6M (in addition to the $37.8M increased in the prior order, which was an increase over the amounts in the original order). Total authorized is $589.6M from 2015 through May 2018.

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

Federal Actions

FERC:

- **MOPR Expansion (EL16-49)**
  - On March 21, 2016, Dynegy and others filed a complaint against PJM requesting that the Minimum Offer Price Rule be expanded to apply to existing resources.
  - The complaint aims to protect against AEP and FirstEnergy offering the subsidized affiliate generating units into the capacity market below costs, which will suppress capacity prices.
  - Dominion, American Municipal Power, and others filed a motion to dismiss on mootness grounds given the FERC's order rescinding the waiver on affiliate sales restrictions previously granted to AEP, FirstEnergy, and their unregulated generating affiliates.
  - The Independent Market Monitor claims that the issues are not moot given the Staff's proposal adopted in the FirstEnergy ESP IV case for a DMR, and the pending DP&L DMR proposal.
  - The Complaint is still pending.
- **FERC Rulemaking (RM18-1)**
  - FERC is currently considering a rule proposed by the Secretary of Energy that would subsidize inefficient and failing coal plants in the name of promoting grid reliability and resiliency. In reality, however, the Proposed Rule would serve neither of those

goals and only acts as a subsidy to prop up failing generators at the expense of electric customers.

- OMAEG filed initial comments opposing the Proposed Rule on October 23, 2017. It then filed Reply Comments to support the arguments of other manufacturing coalitions and oppose comments of parties who supported the Proposed Rule.

CARPENTER LIPPS & LELAND LLP

ATTORNEYS AT LAW

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

MEMORANDUM

TO: Ohio Manufacturers' Association Energy Group

FROM: Kim Bojko, Carpenter Lipps & Leland LLP

DATE: November 13, 2017

SUBJECT: PUCO Adoption of New Net Metering Rules

I. INTRODUCTION

On July 11, 2012, the Public Utilities Commission of Ohio (PUCO) conducted a review of Rule 4901:1-10, Ohio Administrative Code (O.A.C.), and issued an order regarding that review on January 15, 2014.[1] Rule 4901:1-10-28, O.A.C., which covers the PUCO's rules for net metering, was later withdrawn for further consideration. After conducting a workshop and receiving comments from a number of parties, including OMAEG, the Commission issued an order adopting new net metering rules on November 8, 2017.[2]

II. KEY POINTS OF THE NEW RULES

- **Definition:** A net metering system is a generation facility that uses an appropriate fuel type, is located on the customer-generator's premises, operates in parallel with the electric utility's transmission and distribution facilities, and is intended primarily to offset part or all of the customer-generator's requirements for electricity. Permissible fuel types for net metering are: solar, wind, biomass, landfill gas, or hydropower.
- **Location**: Net metering facilities must be located on a customer-generator's premises, which include areas owned, operated, or leased by the customer-generator with the metering point for the customer-generator's account. A contiguous lot to the area with the customer-generator's metering point may also be considered part of the customer-generator's premises, as long as doing so does not create an unsafe or hazardous condition.
- **Qualifications:** To qualify for net metering, customer-generators must intend primarily to offset all or part of their requirements for electricity. Customer-generators must size their facilities so that they do not generate in excess of 120% of

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1 See *In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 12-2050-EL-ORD, Finding and Order (January 15, 2014) (Initial Order).

2 *In the Matter of the Commission's Review of Chapter 4901:1-10 of the Ohio Administrative Code*, Case No. 12-2050-EL-ORD, Finding and Order at 3 (November 8, 2017) (Net Metering Order).

the customer-generator's requirements for electricity. Utilities are required to provide consumption data or estimates to customers to assist in the planning process.

- **Compensation:**
  - Shopping customers: The rules allow Competitive Retail Electric Service (CRES) providers to enter into net metering contracts with customer-generators at any price, rate, credit, or refund for excess generation from a customer-generator.
  - Non-shopping customers: The metering credit that customer-generators receive for excess generation when taking service from the utility's standard net metering tariff is calculated based on the energy-only component of the electric utility's standard service offer (SSO) and applied to the customer-generator's total bill. Customer-generators who use advanced meters will receive the benefit of their peak load contributions in the form of lower bills for electric service.
  - The Commission disagreed with OMAEG's argument that shopping customer-generators should receive the same compensation as SSO customer-generators, instead adopting the belief that compensation for excess generation is a factor that customer-generators should consider when choosing a CRES provider. Utilities can move customer-generators to bill-ready billing as long as a customer-generator and its CRES provider have not already agreed to dual billing.
- **Meter Cost:** Customer-generators must pay the costs of installing new meters to enable net metering, but customer-generators in certain territories may be able to have those costs paid for them through the utility's smart grid rider.
- **Utility Cost Recovery:** The Commission rejected the utilities' arguments that the net metering rules should explicitly allow recovery of costs associated with net metering. Utilities can apply for deferral of costs but the Commission did not establish a cost recovery mechanism through the rules.
- **Additional Charges:** Electric utilities are prohibited from imposing any charges on customer-generators that relate to the electricity that the customer-generator supplies back to the system.

III. NEXT STEPS

The Commission ordered that the amendments to the net metering rules be filed with the Joint Committee on Agency Rule Review (JCARR). The Rules will become effective if JCARR adopts them. At the earliest, the rules could become effective 65 days from the date the PUCO final files the rules with JCARR.

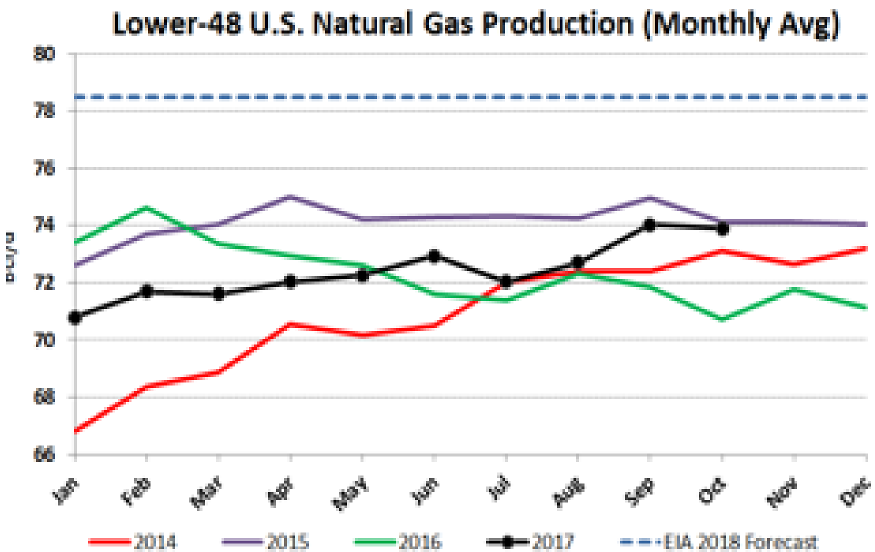
IV. CONCLUSION

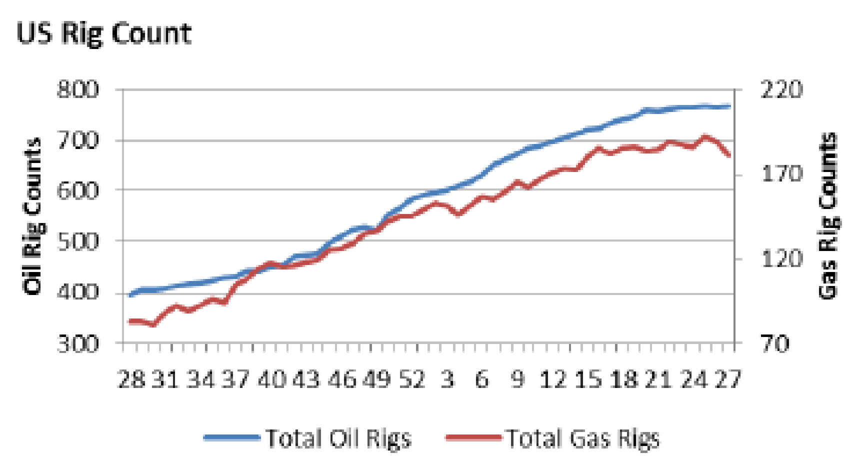
These new rules may impact the net metering activities of OMAEG members across the state that have on-site generation, both in terms of the amount that can be generated and the compensation for excess generation. For those who are interested, the complete order, including a copy of the rule that reflects the changes from the previous rule, can be found here.

Electricity Market Update

November 2017

Natural Gas Market





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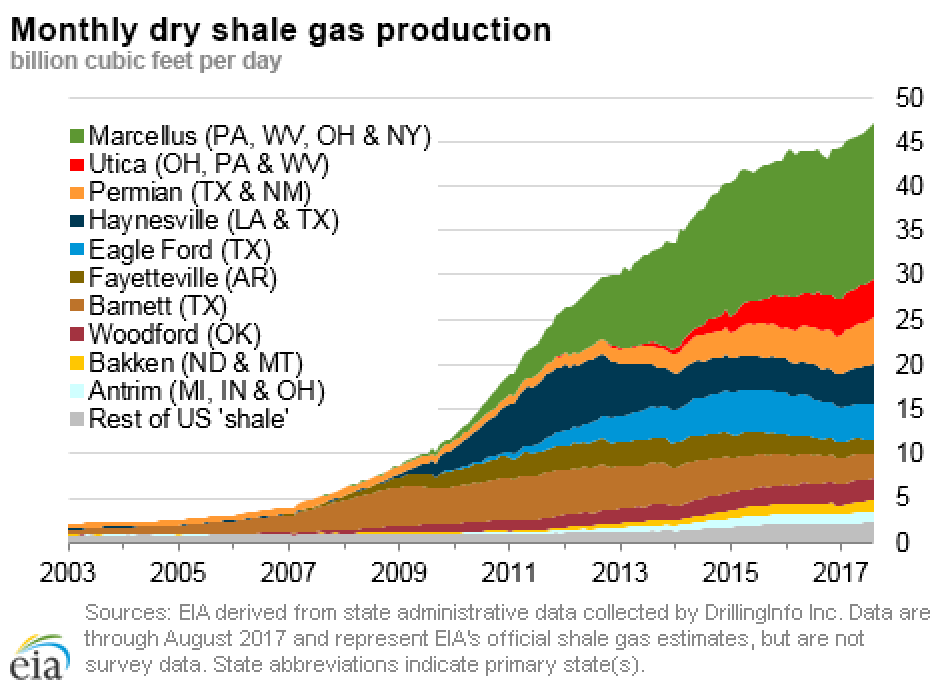
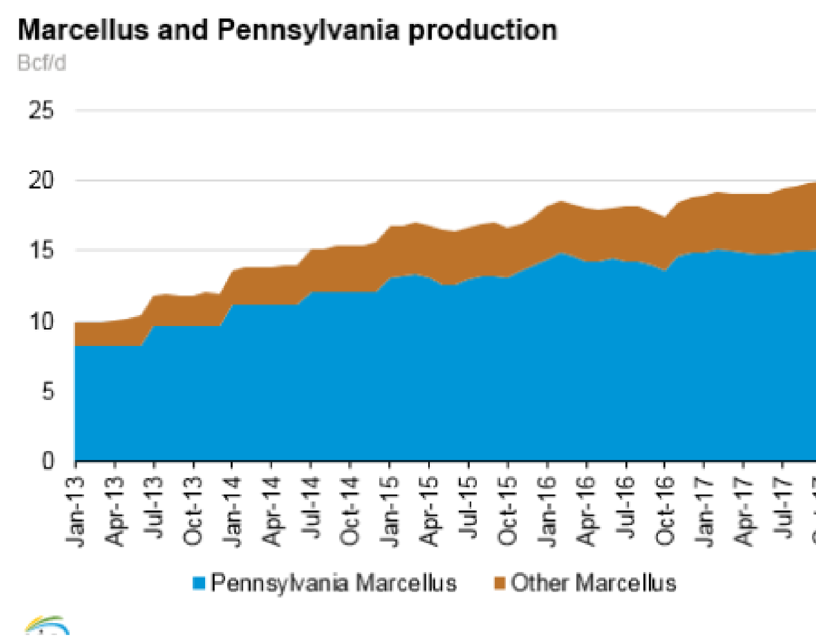
Natural Gas Market





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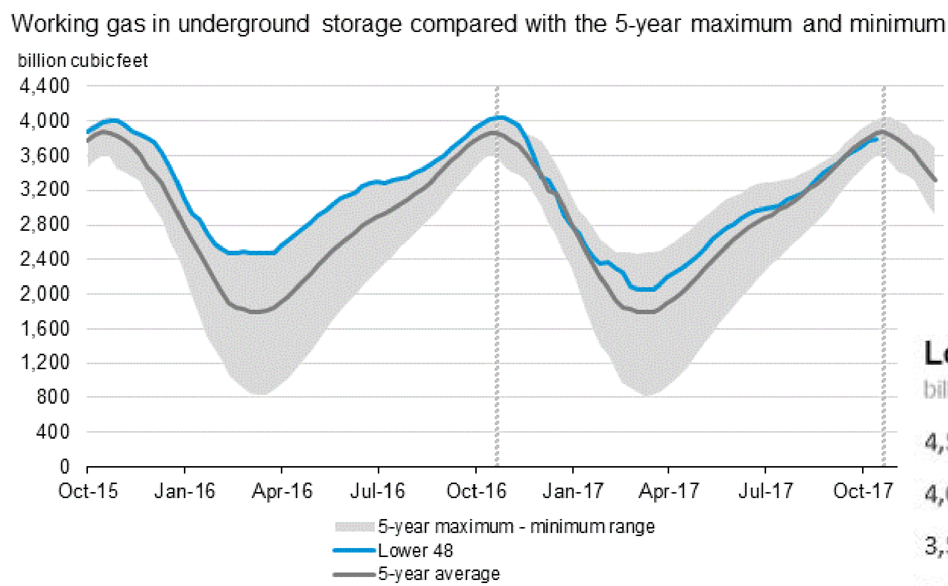

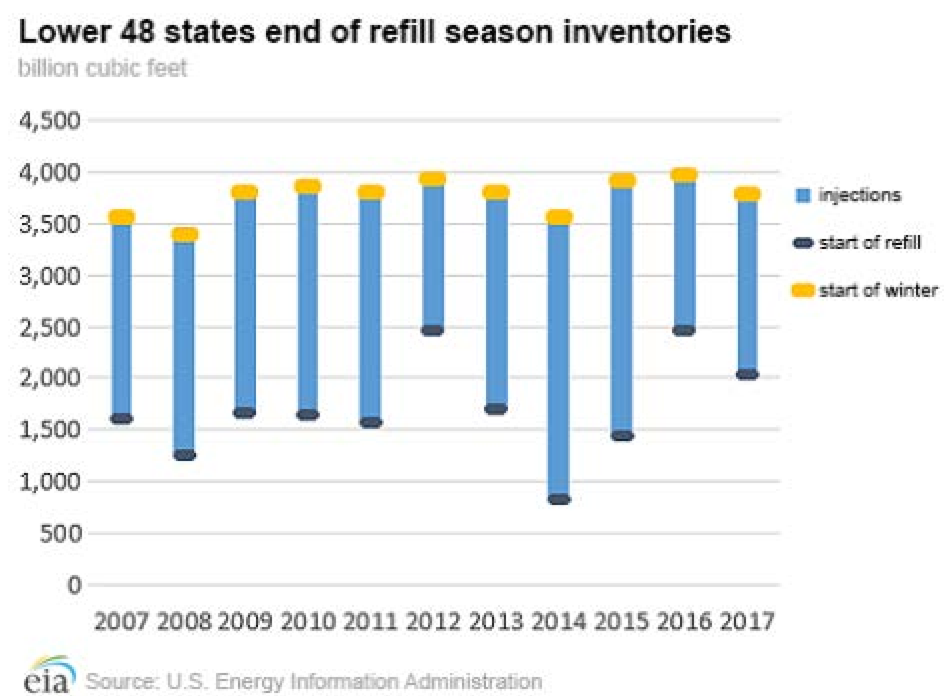

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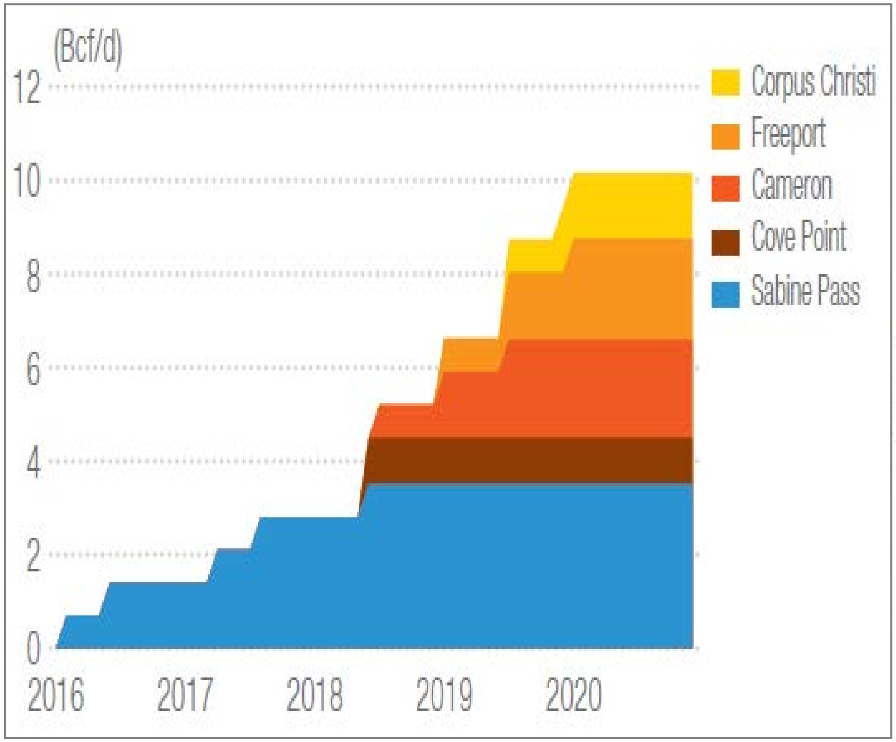
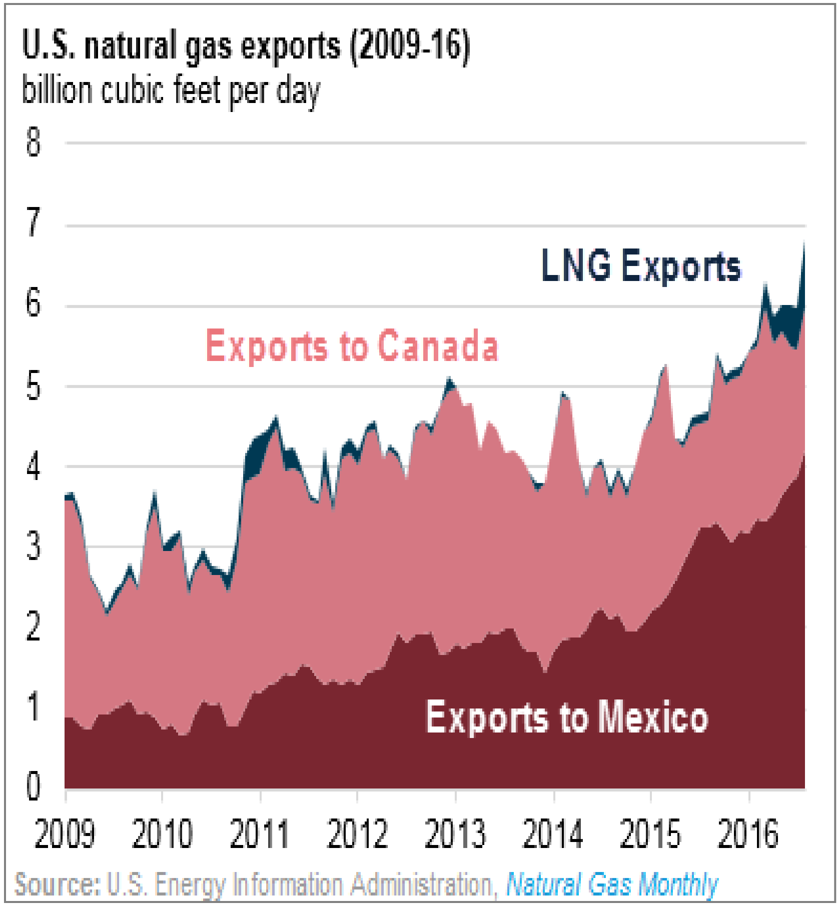
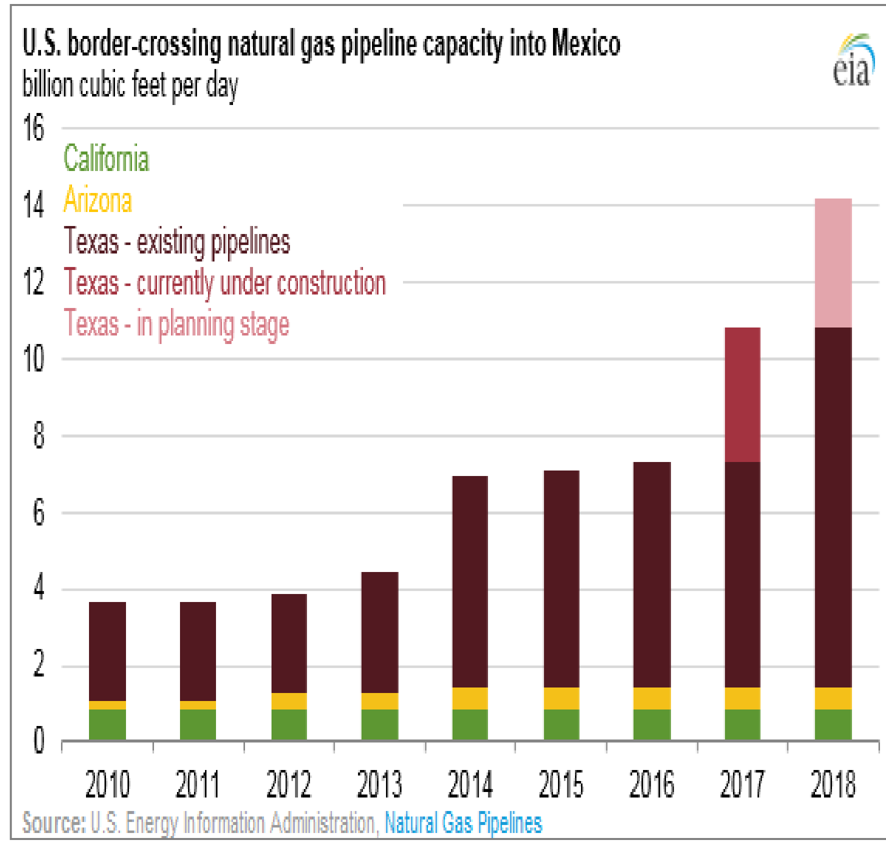
Natural Gas Market



Sabine Pass liquefaction project

Natural Gas Market





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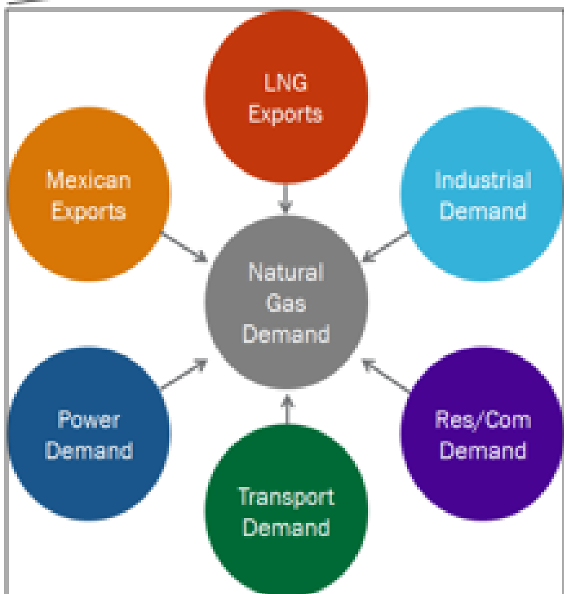

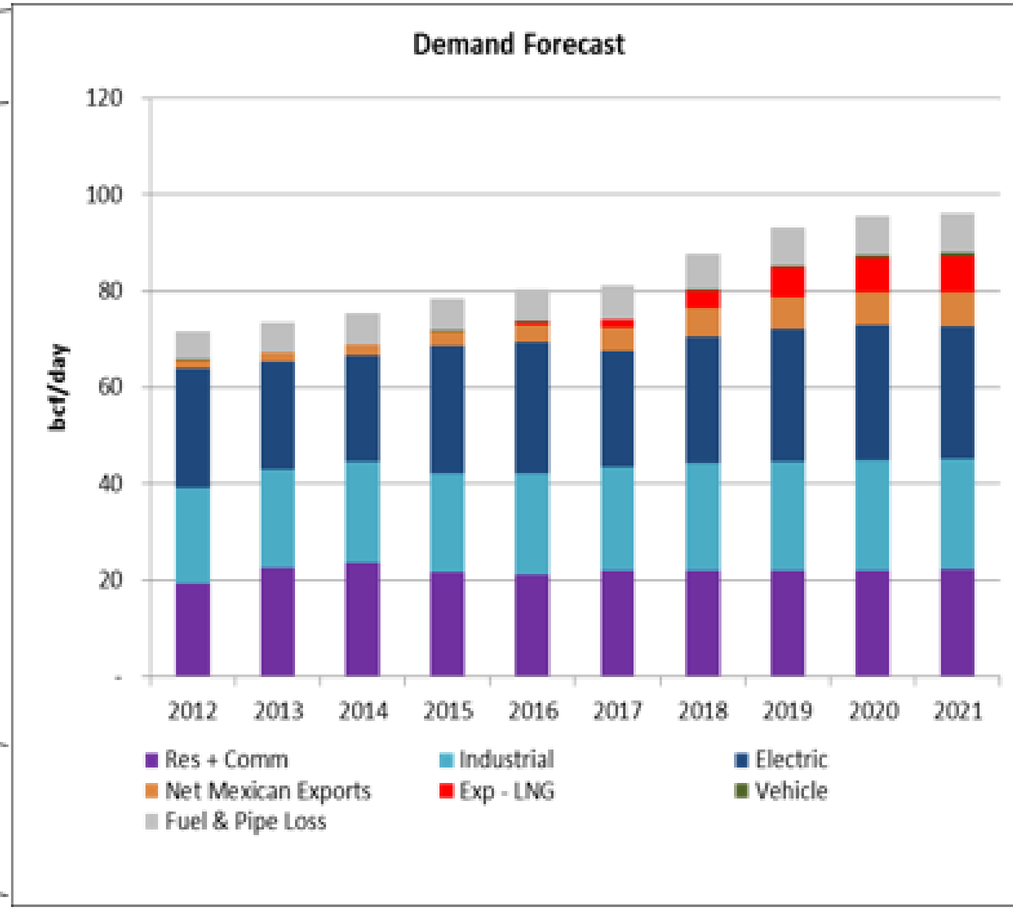

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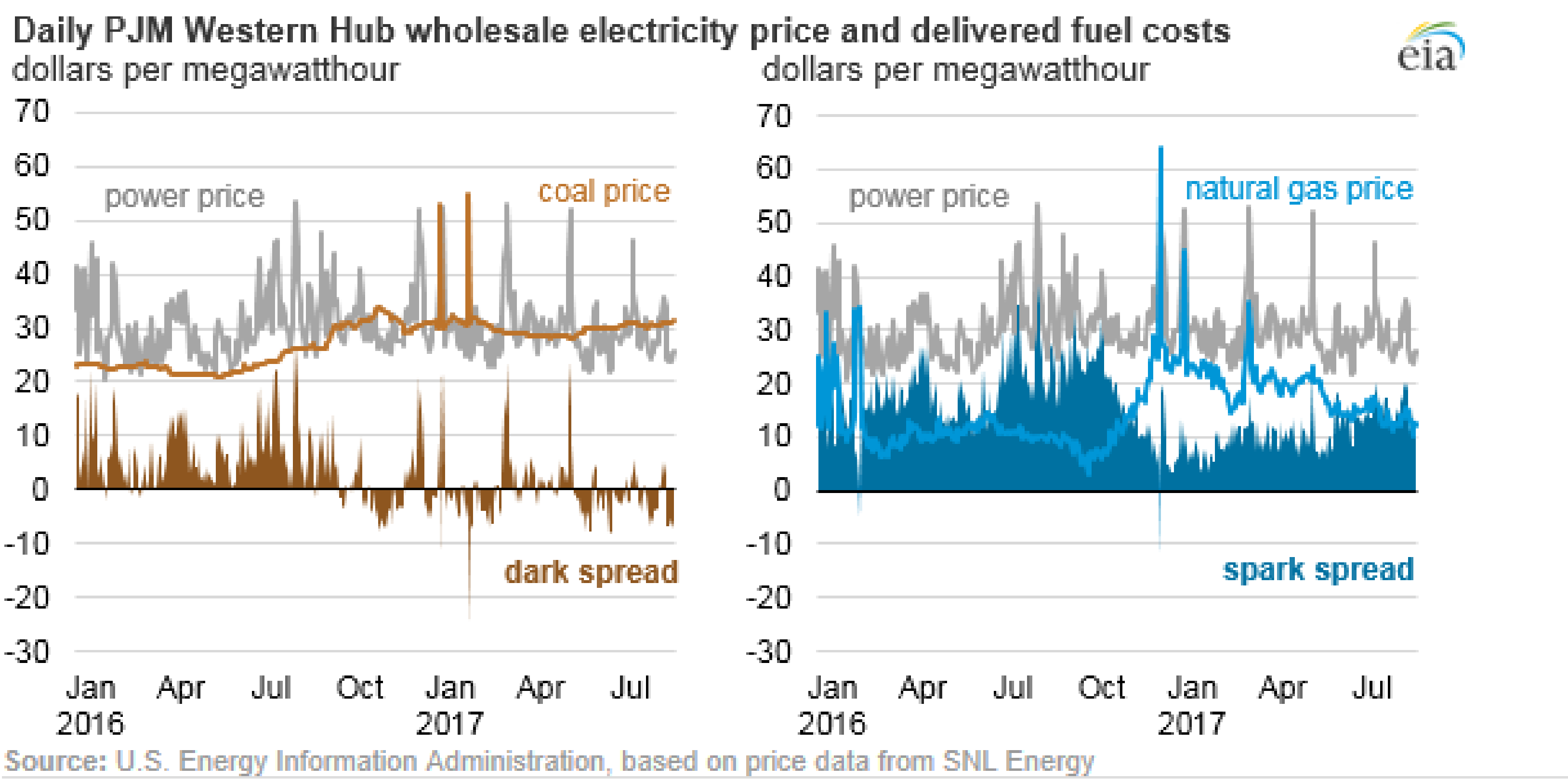
Natural Gas Market



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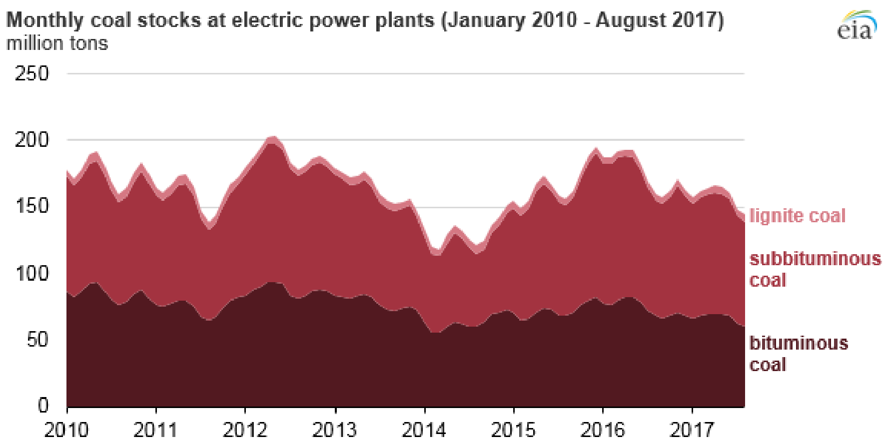
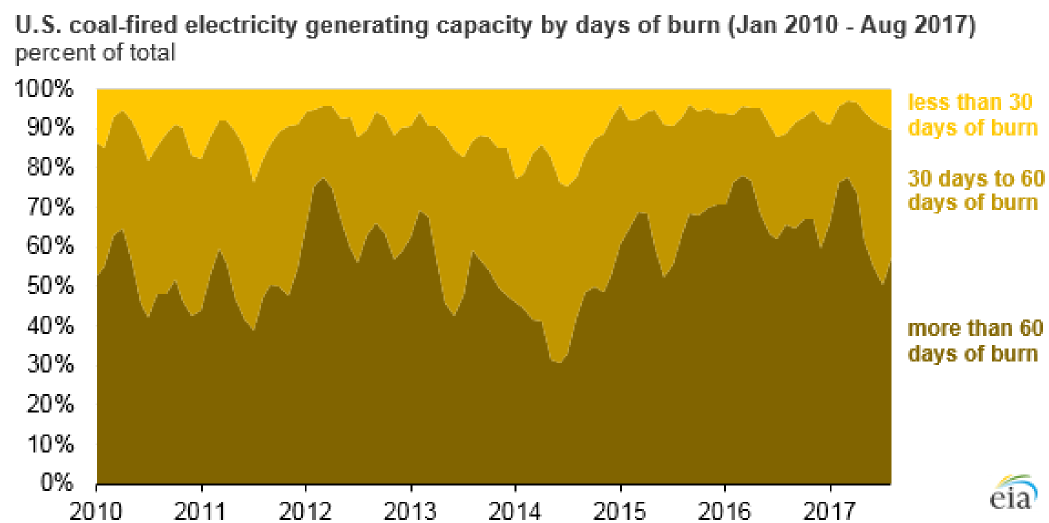
Coal Stocks



Source: U.S. Energy Information Administration, *Electricity Monthly Update*



Source: U.S. Energy Information Administration, *Electricity Monthly Update*
Note: Excludes plants using lignite coal.

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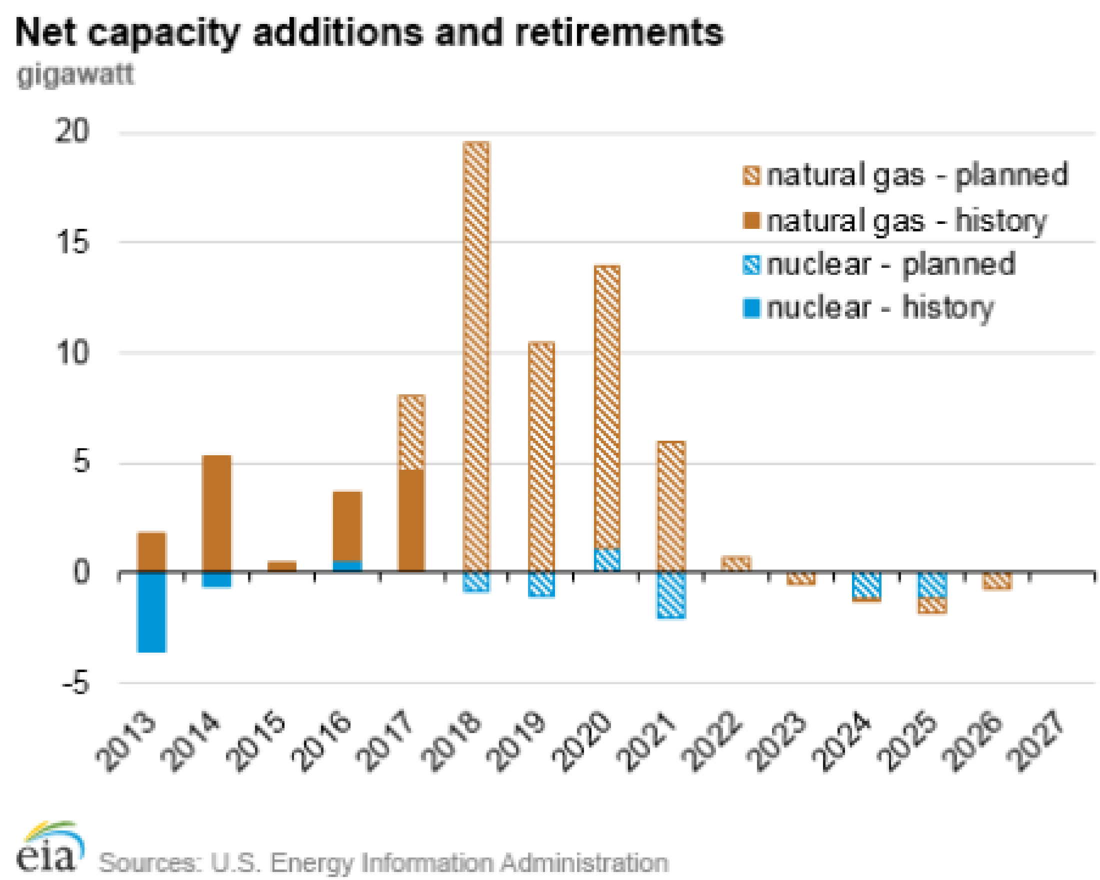
Net Generation Position



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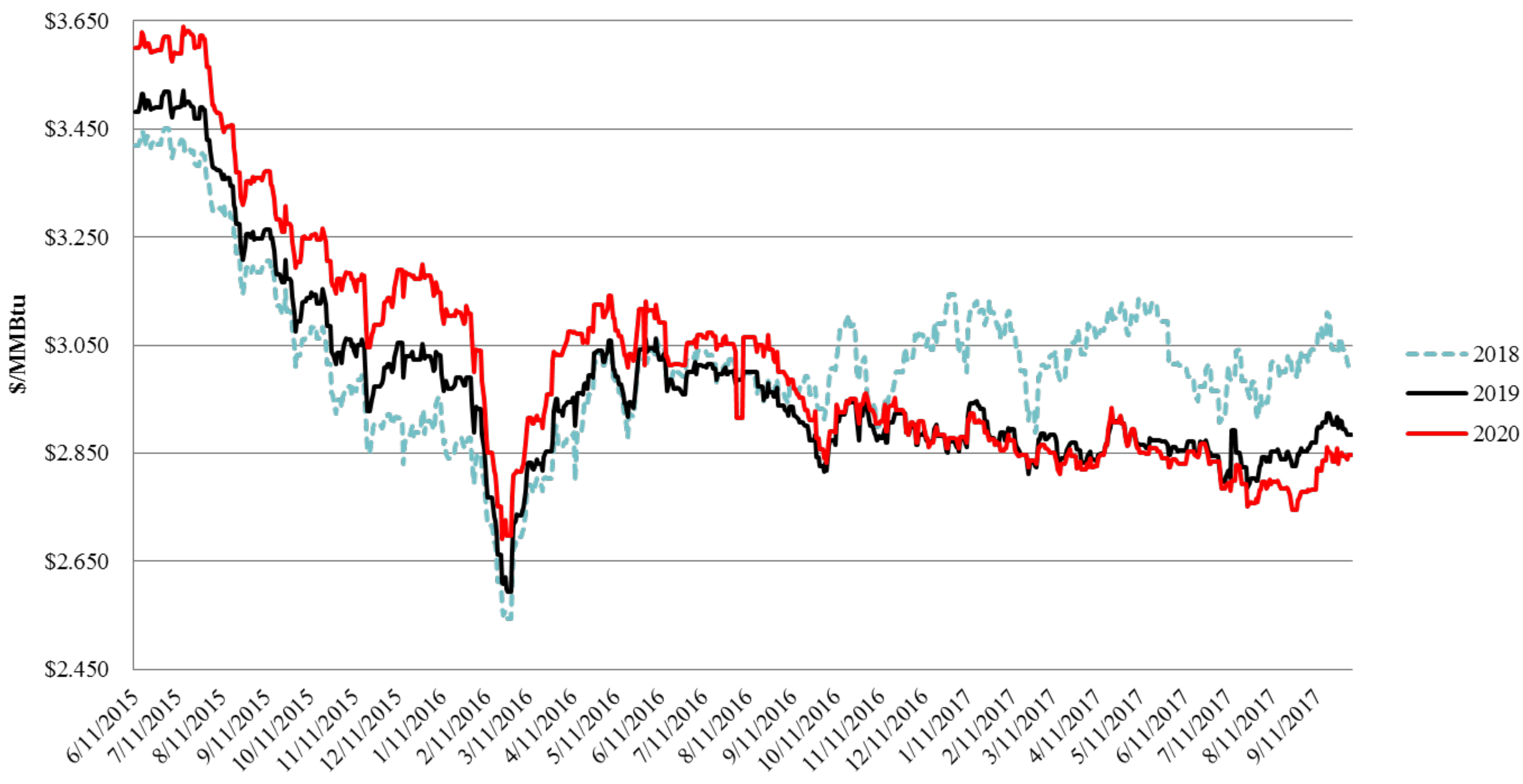
NYMEX



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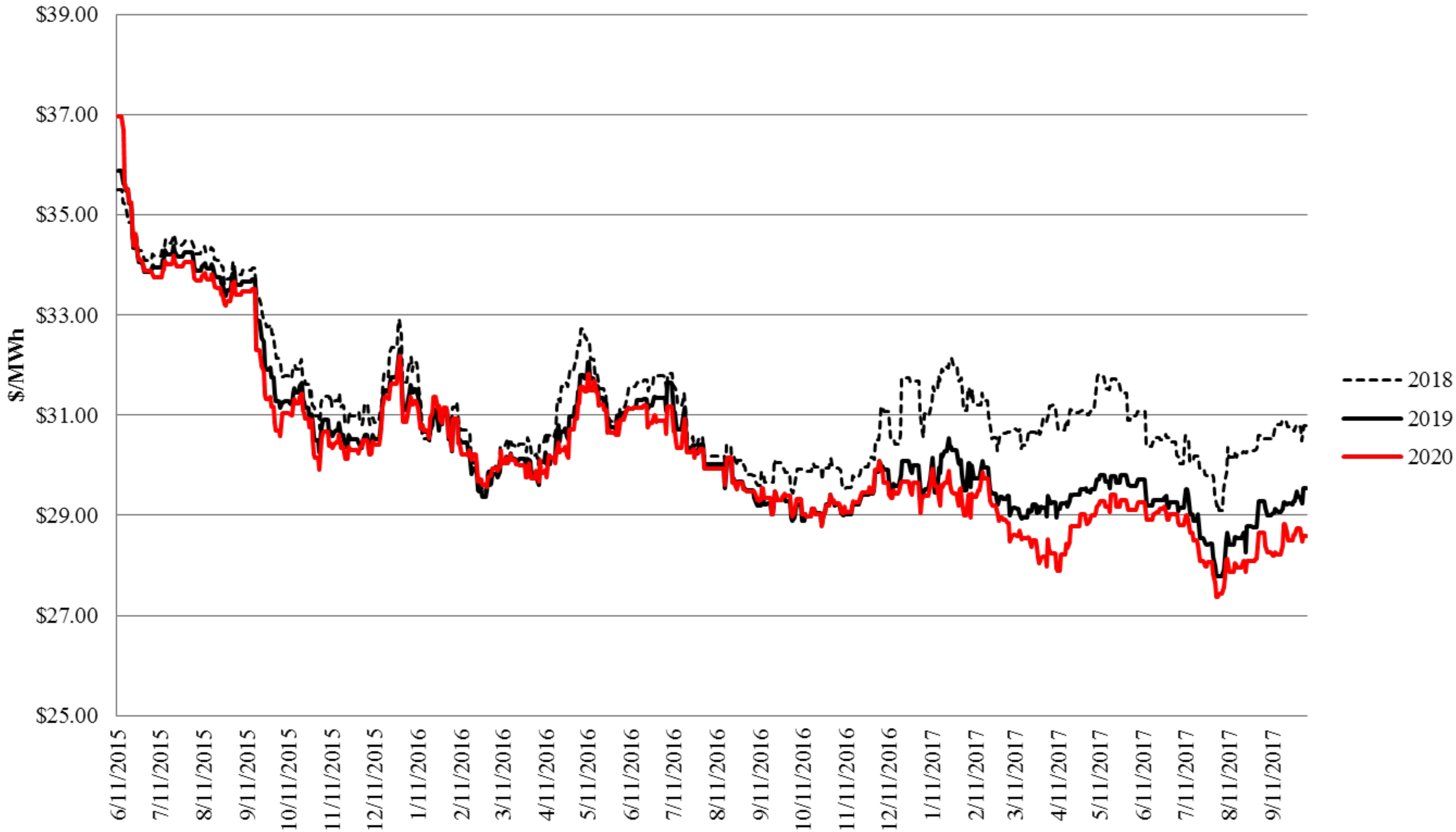
AD HUB ATC



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2018
2019
2020

Natural Gas Update
OMA Energy Committee

Richard Ricks
NiSource
November 16, 2017

Columbia Gas of Ohio
A NiSource Company

Agenda

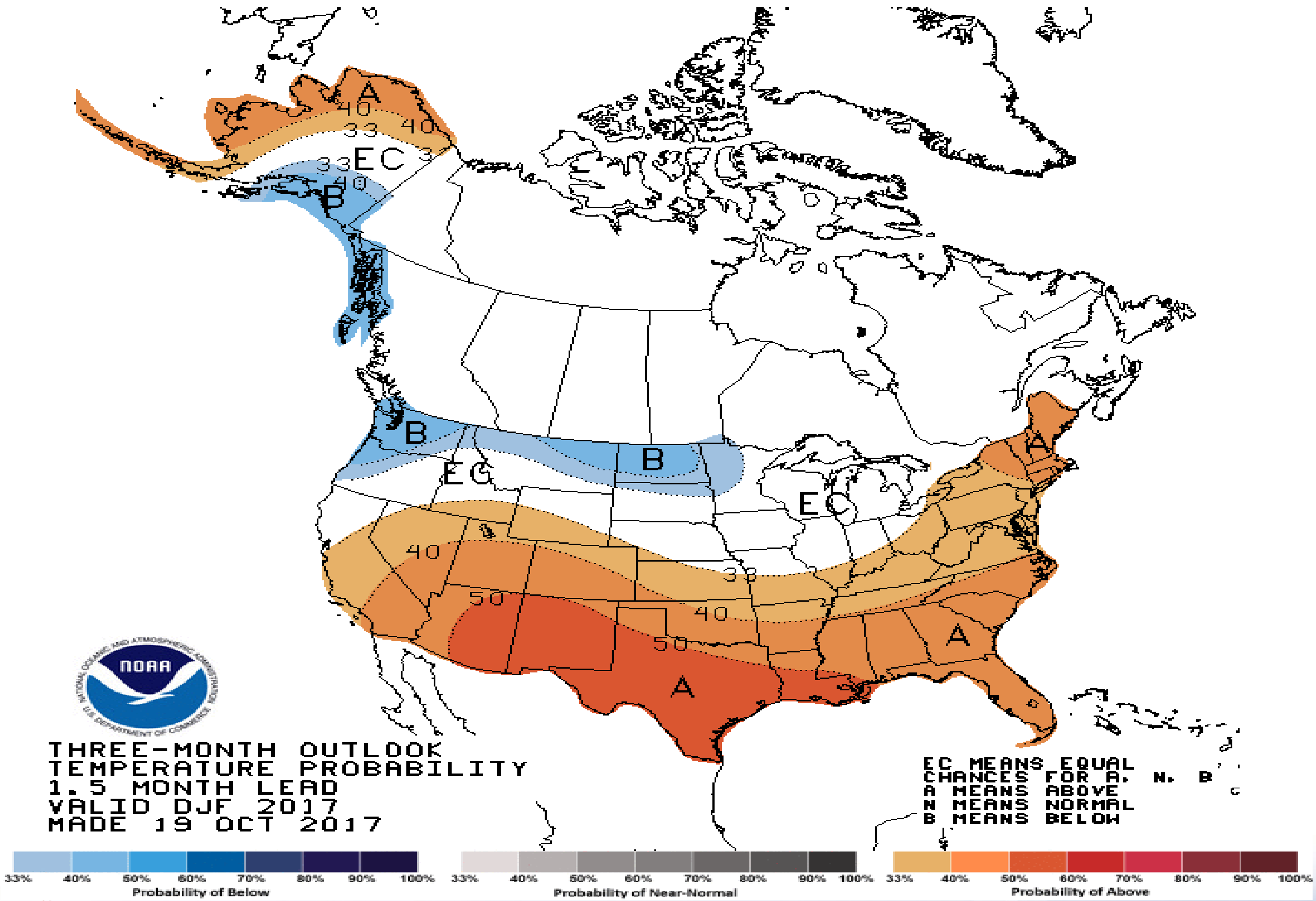
- **Summary**
- **Weather & Outlook**
- **Gas Storage & Pricing**
- **Gas Demand, Production & Rig Counts**
- **Recent Developments**

Summary

- **Basically little change - Pricing relatively flat**
- **Gas markets still pretty “Boring”**
- **FERC has a full slate of Commissioners**
- **Environmental Groups continue to focus on stopping or slowing down Pipeline Infrastructure build out, however**
- **Several Marcellus/Utica pipeline projects moving along (Rover, Nexus, Leach Express, & others)**

Weather & Outlook

Dec, Jan, & Feb 17/18 Temperature Outlook – La Nina?



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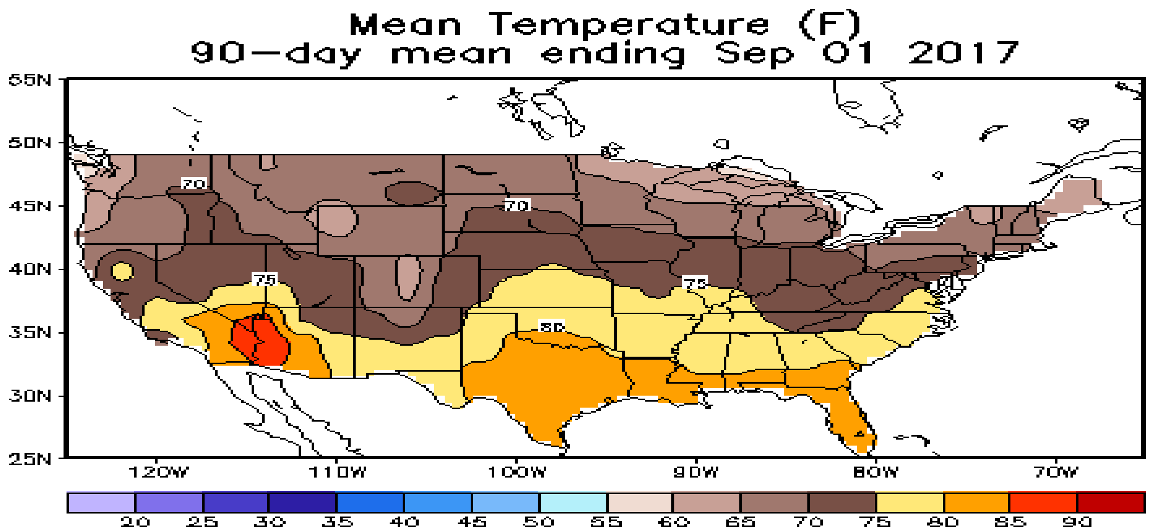
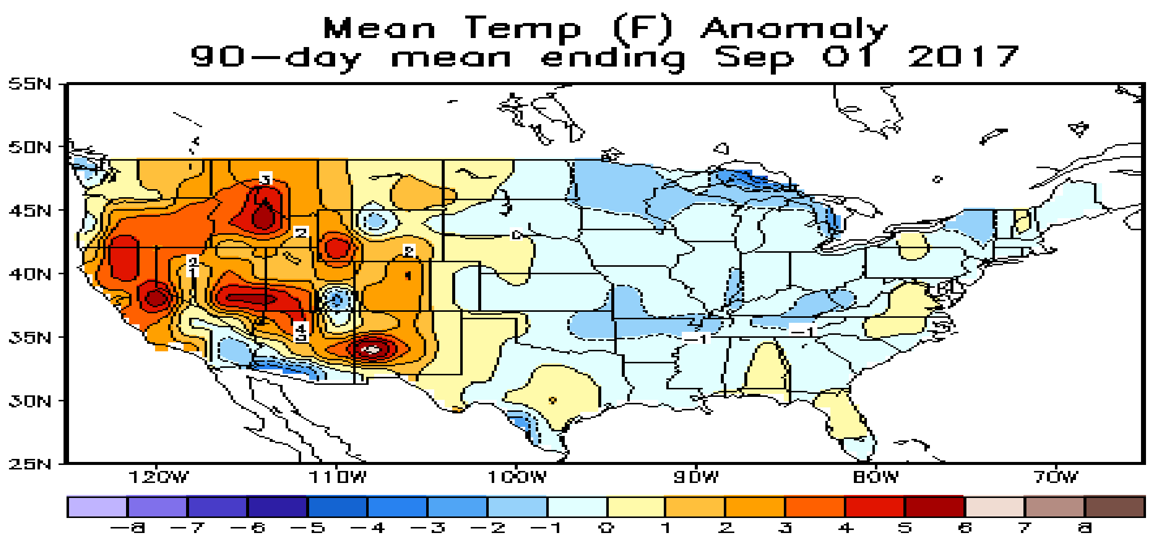
Summer slightly cool in Midwest & East





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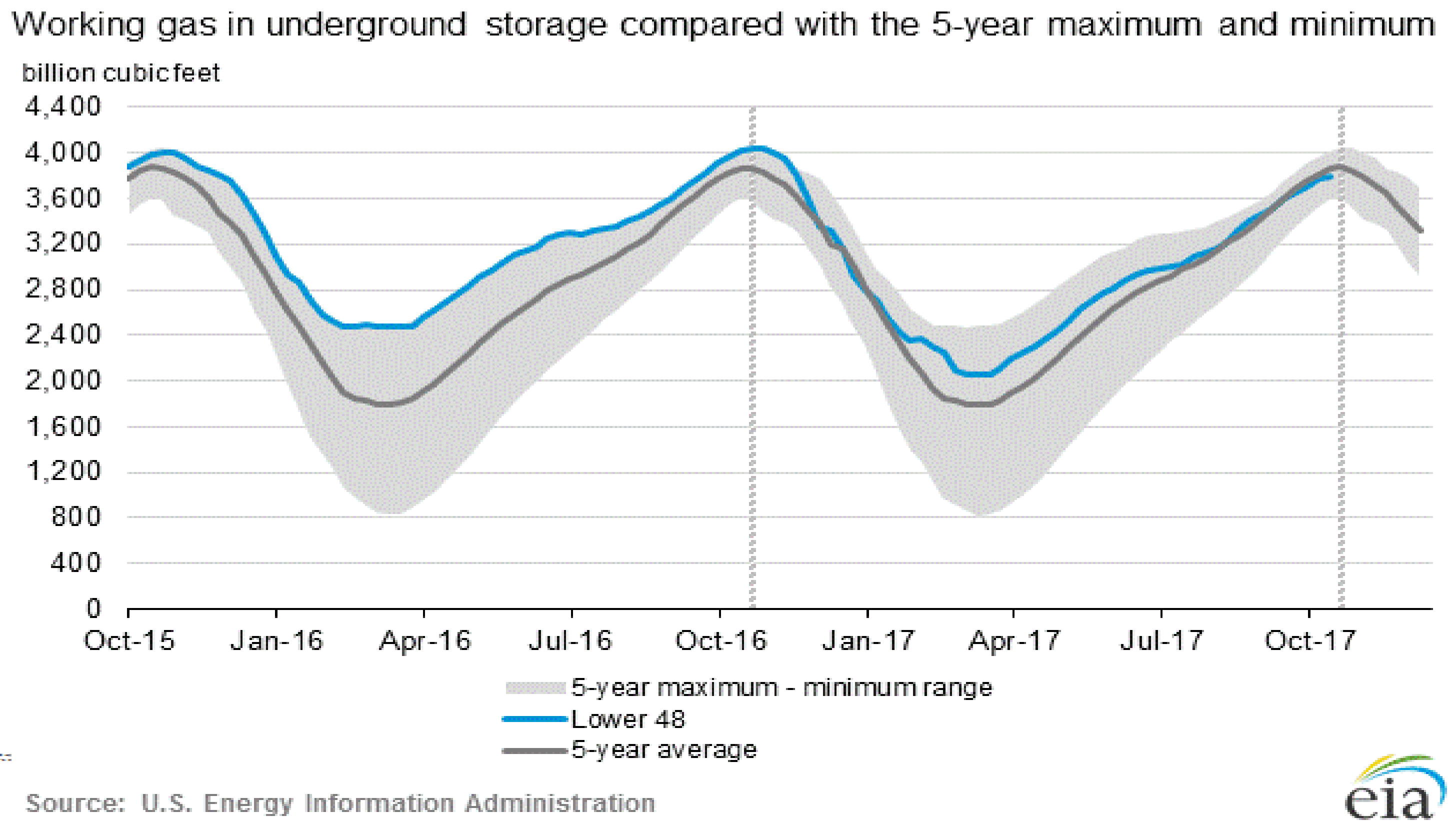
Storage & Gas Pricing

Storage – At the “5 Yr Average” Position

Working gas in storage was 3,790 BCF as of Friday, November 3, 2017, according to EIA estimates. This represents a net increase of 15 BCF from the previous week. Stocks were 219 BCF less than last year at this time and 71 BCF below the five-year average of 3,861 BCF. At 3,790 BCF, total working gas is within the five-year historical range.



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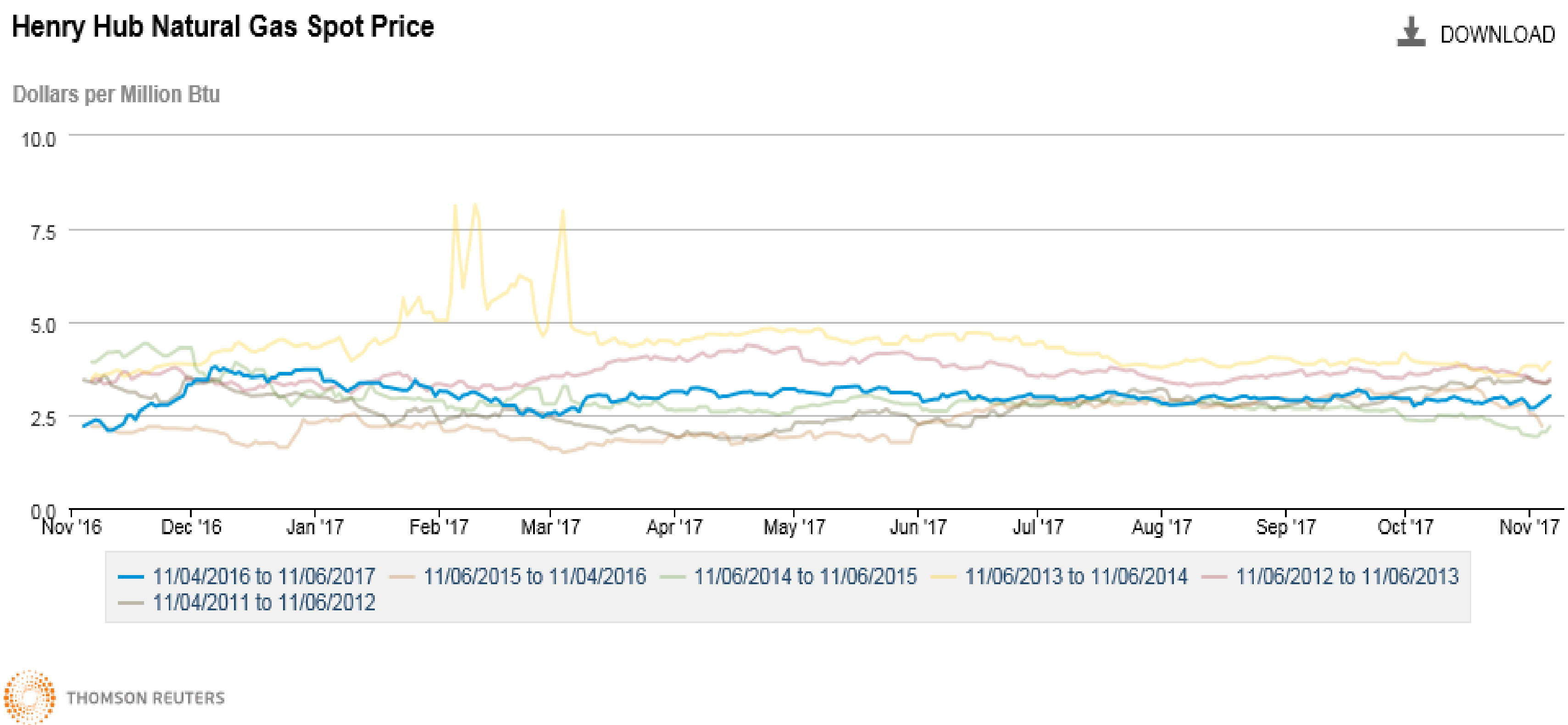
NYMEX Prompt Month Settlement – 5 Years



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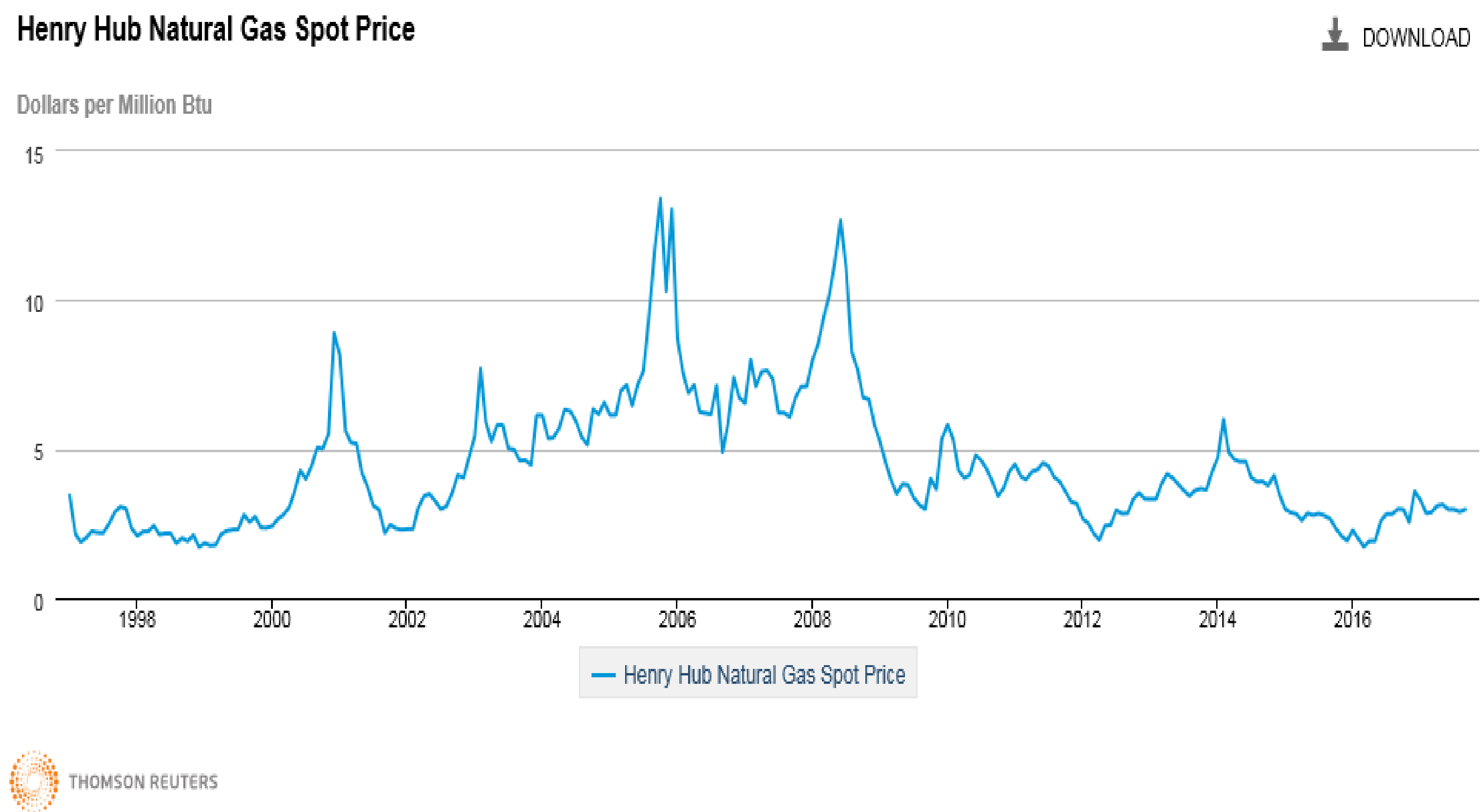
NYMEX Prompt Month Settlement History



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NYMEX Term Pricing – November 13, 2017

TERM	PRICE 8-18-17	PRICE 11-13-17
3 month	$2.98	$3.28 (+$0.30)
6 month	$3.11	$3.17 (+$0.06)
12 month	$3.03	$3.10 (+$0.07)
18 month	$3.02	$3.09 (+$0.07)

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Select Hub Pricing – A little higher
November 13, 2017

HUB LOCATION	8-18-17	11-13-17	
Henry Hub	$2.88	$3.14	(+$0.26)
TCO Pool	$2.80	$3.01	(+$0.21)
Houston Ship Channel	$2.87	$3.07	(+$0.20)
Dominion South Point	$1.79	$2.40	(+$0.61)
TETCO M-3	$1.86	$2.58	(+$0.72)
TGP Zone 4	$1.76	$2.21	(+$0.45)

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

The recent, significant Appalachian trading discounts to Henry Hub (particularly Dominion South Point, TETCO M-3, & TGP Zone 4) are likely to narrow a bit going forward with the ongoing Marcellus/Utica pipeline projects build out (Rover, Nexus, Leach Express, Access South, etc.).

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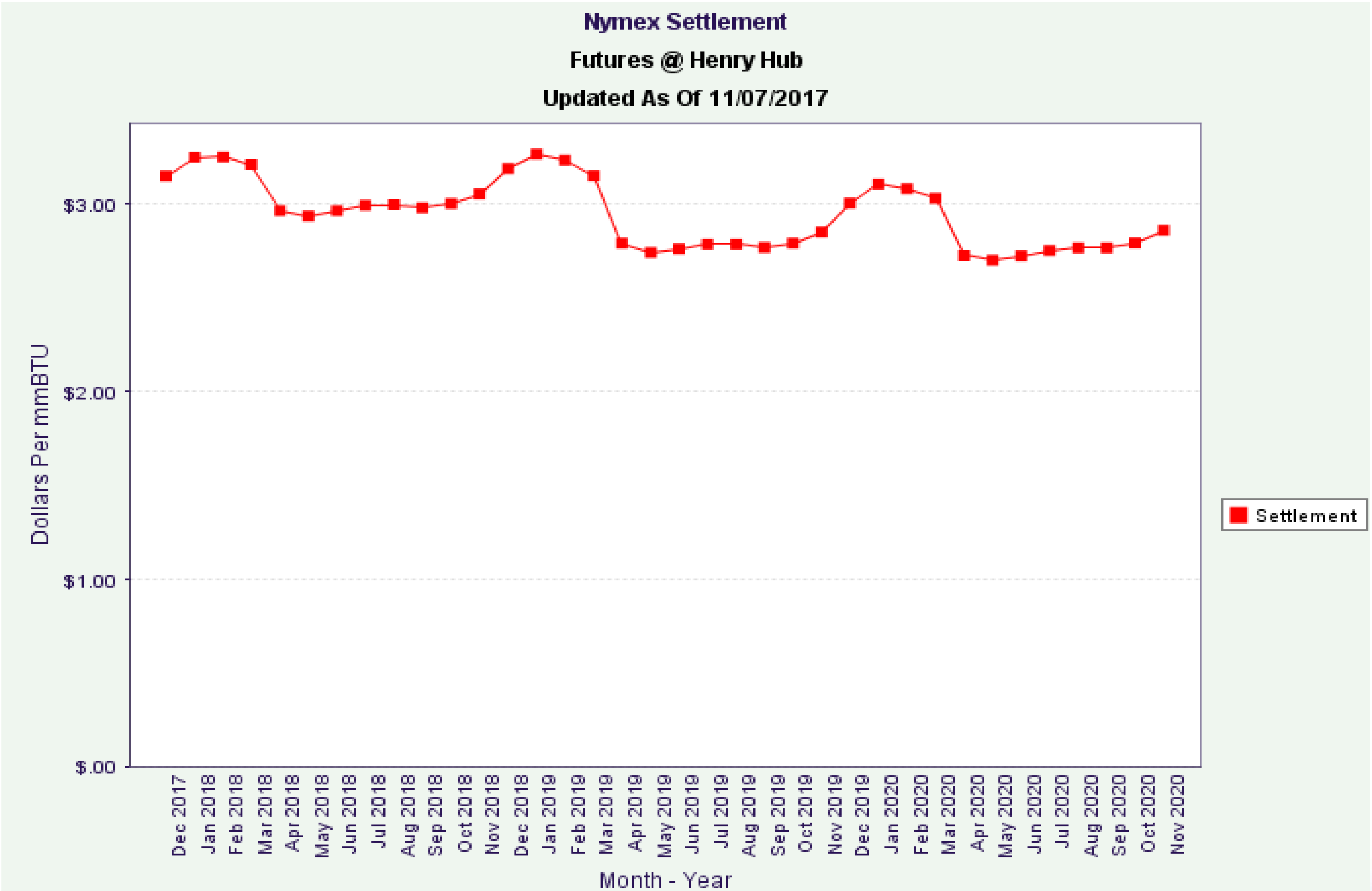
NYMEX Futures Settlement – 11-7-17



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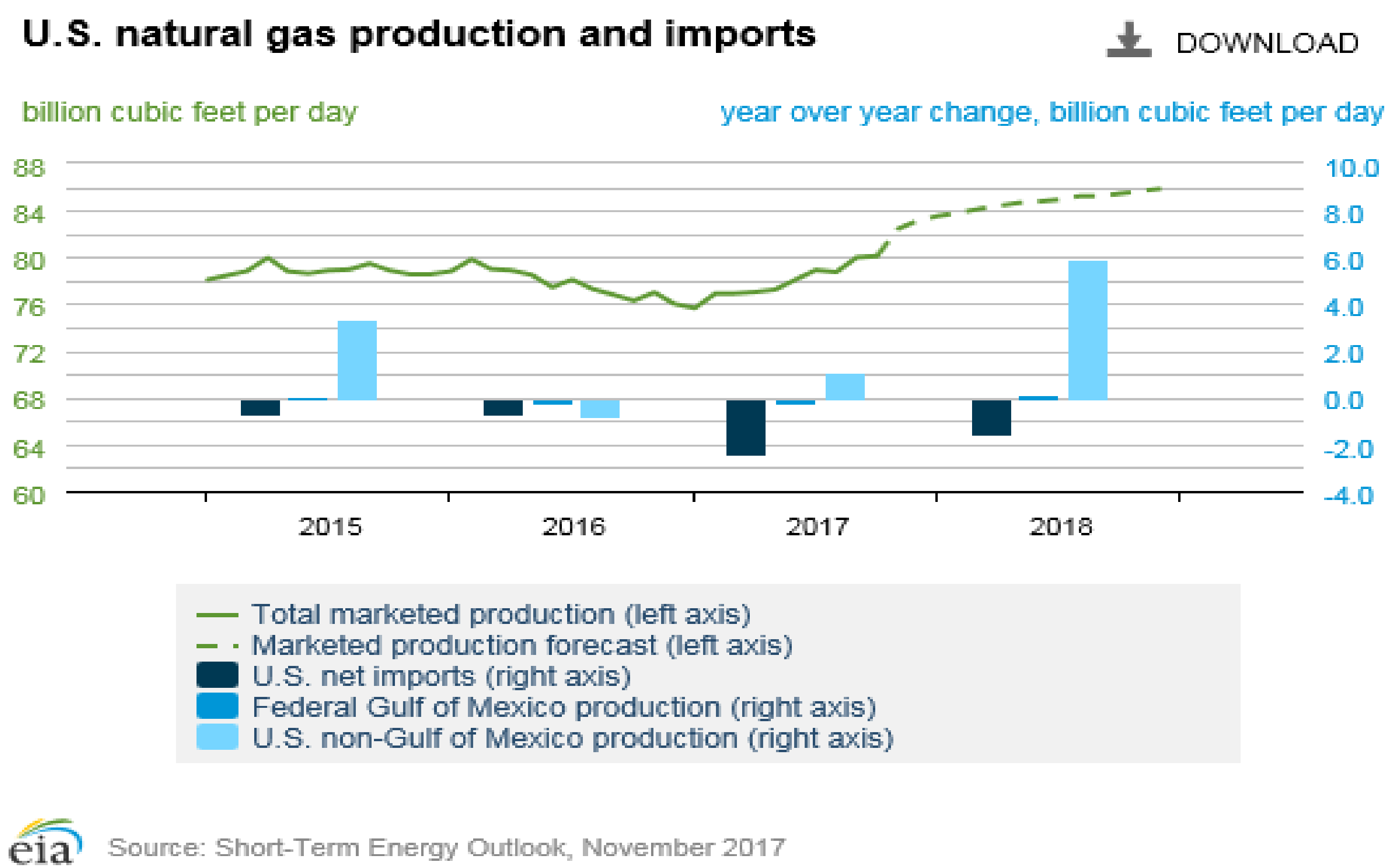
Demand, Production & Rig Count

Total US Natural Gas Production



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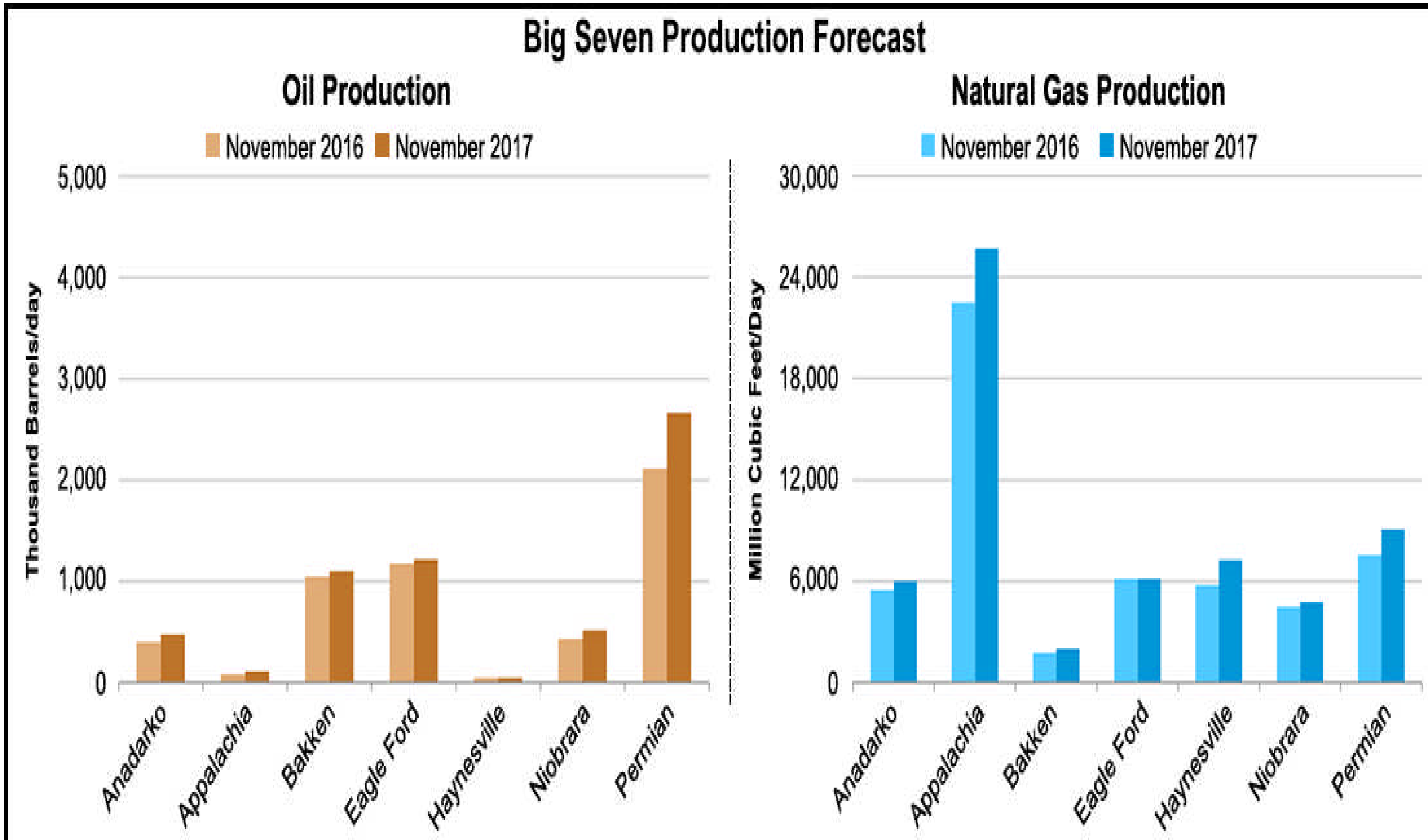
Relative Oil & Natural Gas Production



Source: Energy Information Administration

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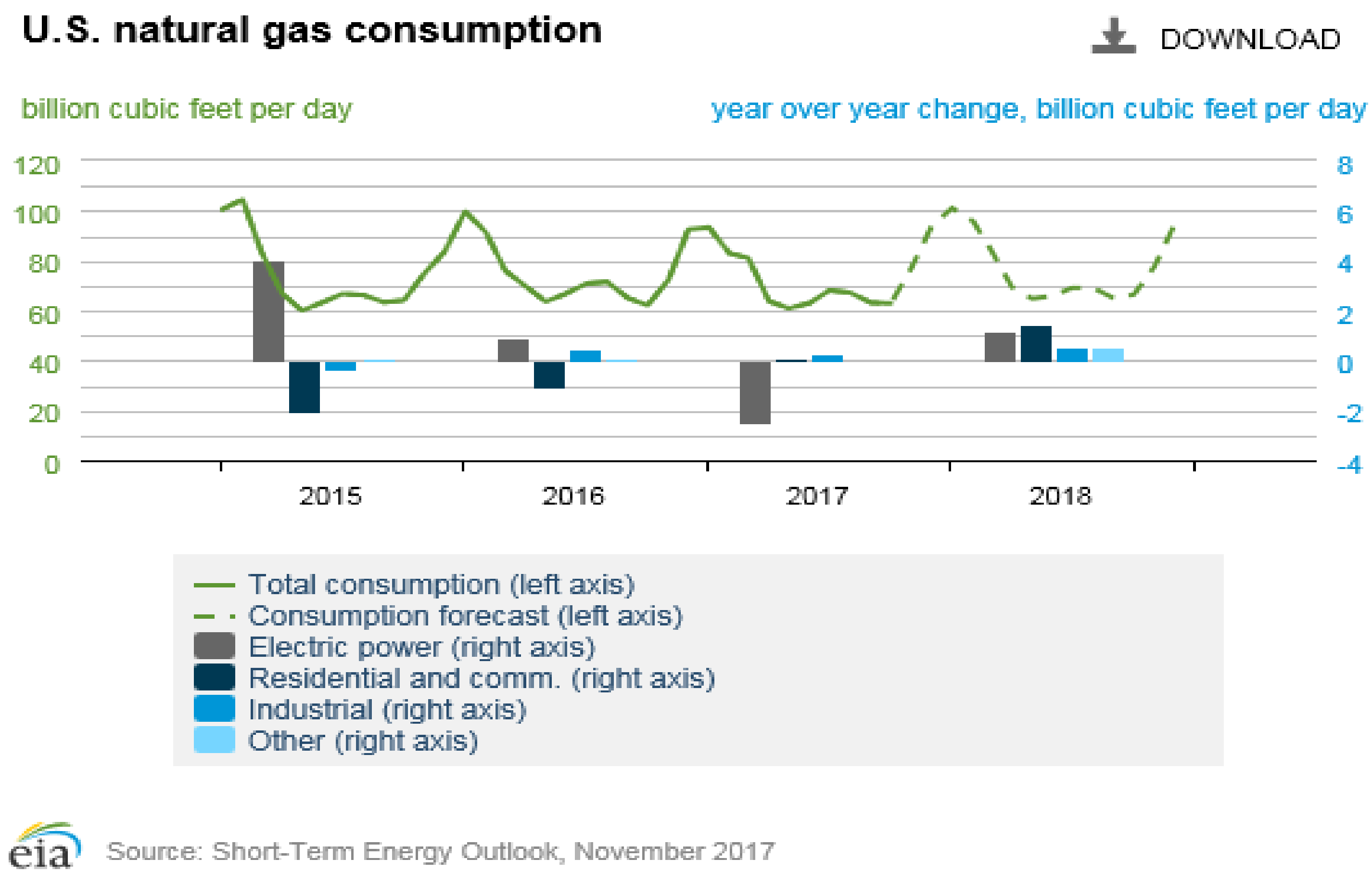
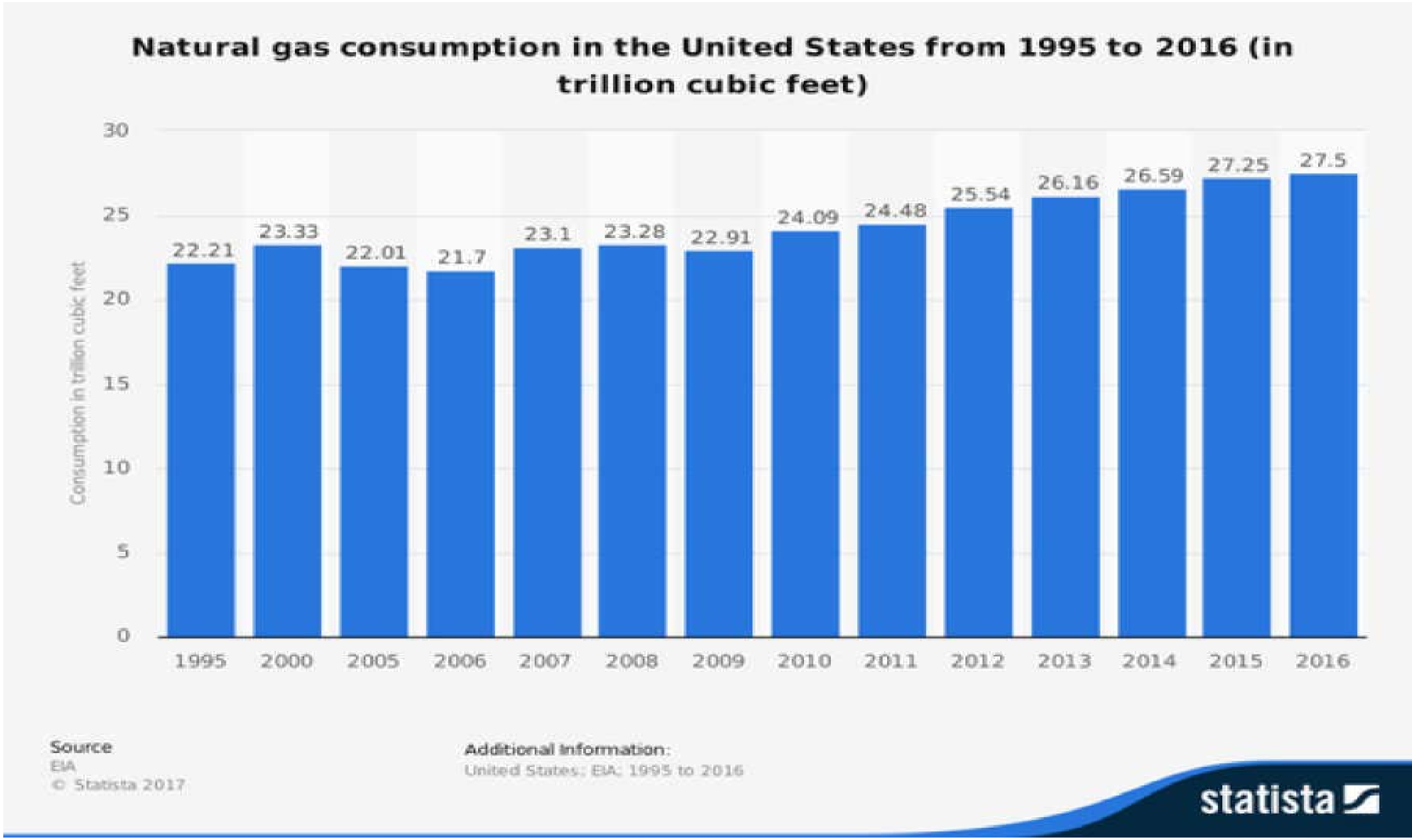
Recent US Natural Gas Consumption



US Gas Demand History 1995 to 2016



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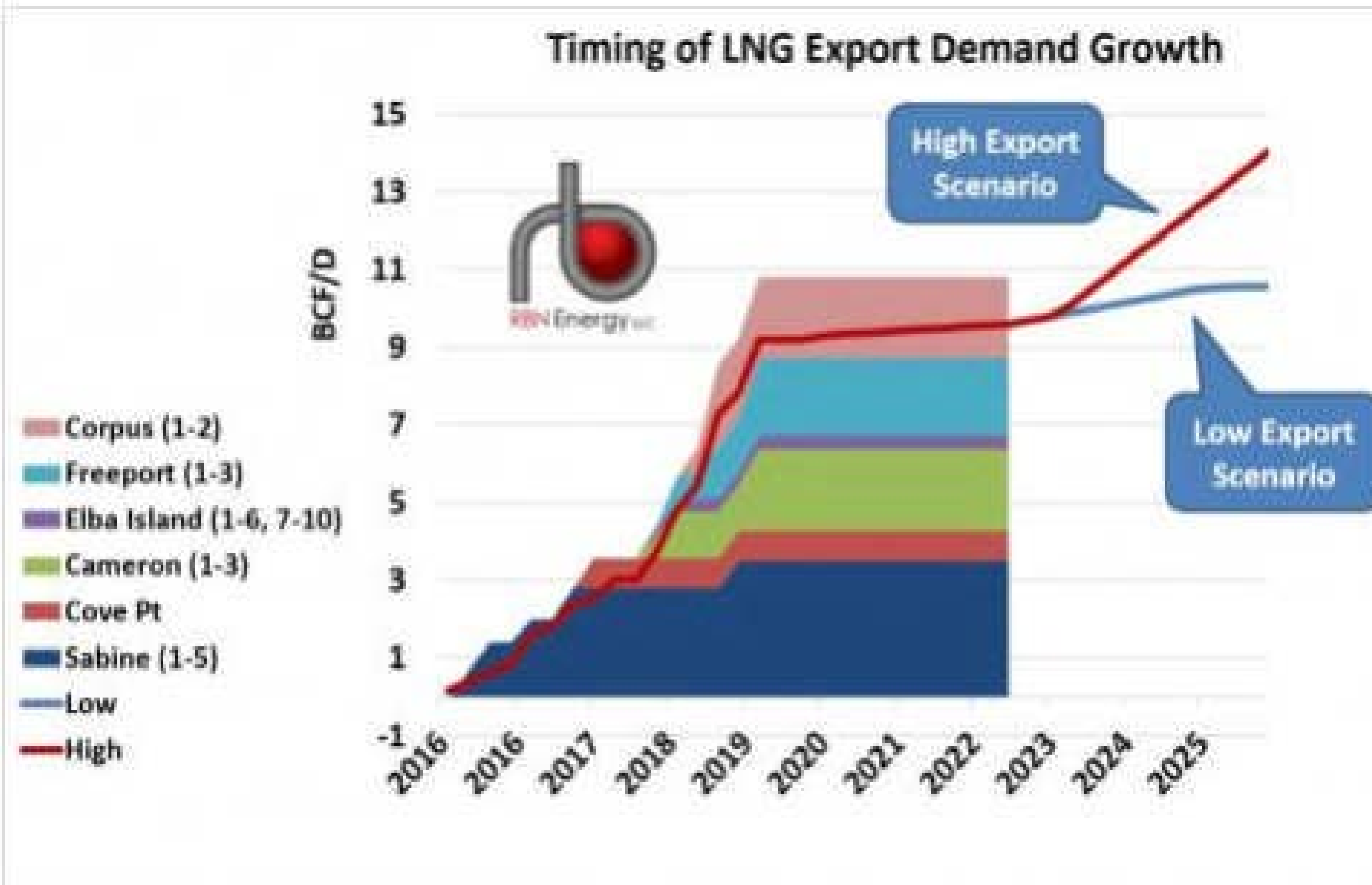
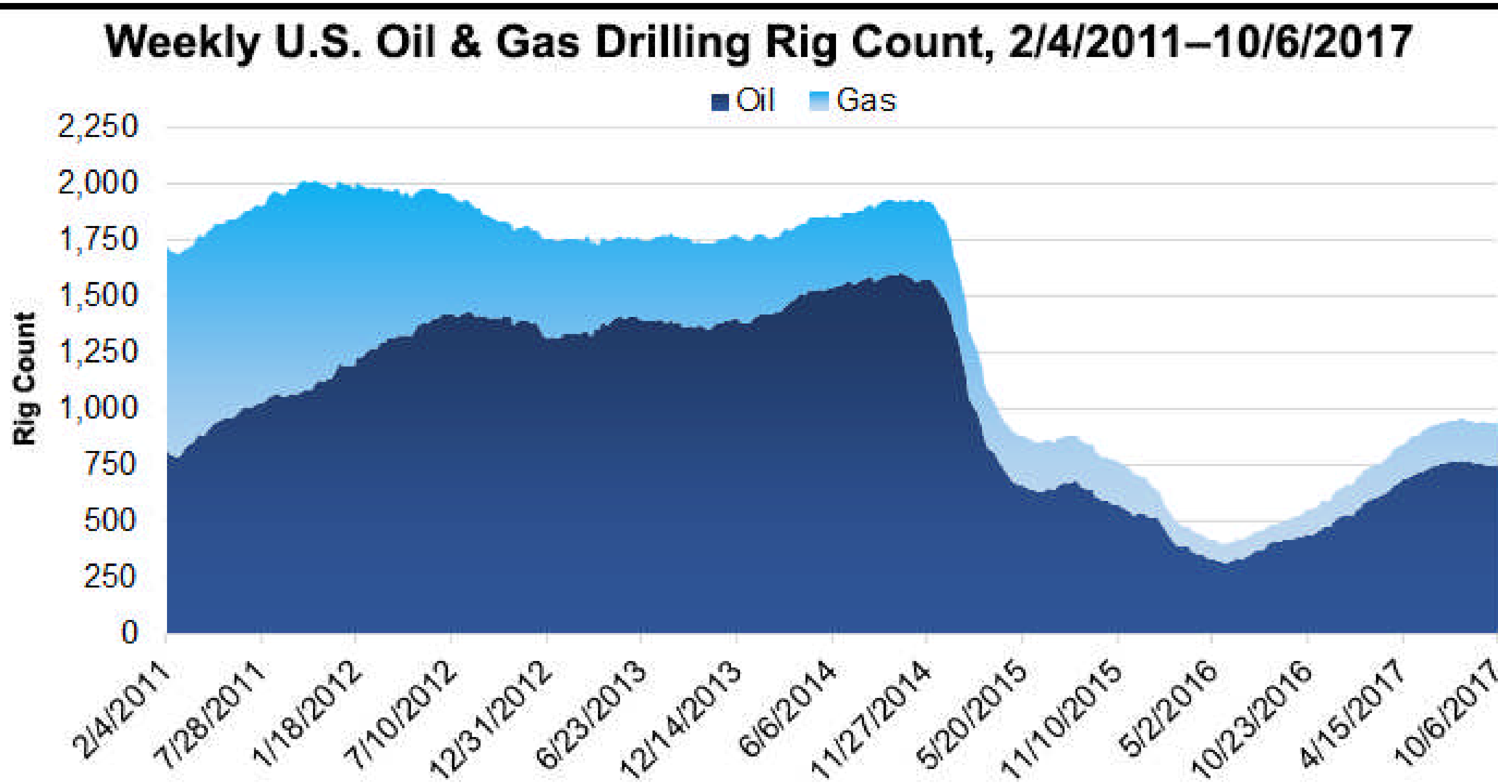
US Natural LNG Exports



Rig Count – The Historic Picture



Source: Baker Hughes

Recent Developments

Natural Gas Related Developments

- FERC permits commercial operation of portions of the Rover Pipeline in Ohio
- US Climate Prediction Center: 65% to 75%% chance of La Nina continuing through this winter – Suggests a colder winter, however NOAA maps not indicating that yet.
- FERC now has a full compliment of Commissioners
- Environmental groups continue to focus on methods to slow down or stop Pipeline Infrastructure projects

Thank You