

February 8, 2024

To: The Ohio Manufacturers' Association

From: John A Seryak, PE, Charles Schreier, PE

## House Bill 6 OVEC Power Plant Subsidies Dramatically Increase to ~\$100 Million for January through June

### Key Points

- Ohio's electric utilities forecast that the OVEC coal-fired power plants are to lose \$48.6 Million in the first half of 2024.
- Utilities will recover an additional \$48.2 Million in the first half of 2024, true-up likely from losses in the first half of 2023, a period in which OVEC was touted as producing credits for customers.
- Ohioans have already paid nearly \$500 million in total subsidies to OVEC's utility owners, which includes about \$100 million just for the first half of 2024.
- Based on historical and predicted future electricity prices, Ohioans are expected to subsidize OVEC's utility owners over \$950 million total by 2030, all of which directly profits utility shareholders.

### Summary

The Ohio General Assembly passed House Bill 6 (HB6) in July 2019. HB6 is the subject of what is called Ohio's "largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio."<sup>1</sup> The fallout has included an electric utility admitting to bribing public officials for favorable acts and a jury finding Former Ohio House Speaker Larry Householder and lobbyist Matt Borges guilty of racketeering conspiracy.<sup>2</sup> Related investigations are still ongoing.<sup>3</sup>

Since Mr. Householder's arrest, the Ohio General Assembly has repealed several costly components of HB6, including a subsidy to Ohio's nuclear plants<sup>4</sup> and a difficult to understand "decoupling" policy that

<sup>1</sup> "Ohio bribery case: Larry Householder, others charged by fed prosecutors", July 21, 2020.

<https://www.cincinnati.com/story/news/2020/07/21/ohio-bribery-case-state-official-charged-federal-prosecutors/5477862002/>

<sup>2</sup> "Jury convicts former Ohio House Speaker, former chair of Ohio Republican Party of participating in racketeering conspiracy", March 9, 2023.

<https://www.justice.gov/usao-sdoh/pr/jury-convicts-former-ohio-house-speaker-former-chair-ohio-republican-party>

<sup>3</sup> "Request of the United States Attorney, Southern District of Ohio, to stay all discovery in these proceedings for a period of six months", In the Matter of the 2020 Review of the Delivery Capital Recovery Rider of First Energy, Case No. 20-1629-EL-RDR.

<sup>4</sup> "Amended Substitute House Bill 6 and the Nuclear and Renewable Generation Funds - Impact to Manufacturers", <https://www.ohiomfg.com/wp-content/uploads/Am-Sub-HB-6-Impact-to-Manufacturers-8.19.19-1.pdf>

would've cost Ohioans hundreds of millions of dollars.<sup>5</sup> These provisions provided unearned benefits to FirstEnergy and its affiliates at the time. FirstEnergy has admitted to bribing public officials for its benefit,<sup>6</sup> which included donating to Generation Now, a "dark money" 501(c)4 political action committee controlled by Mr. Householder, in exchange for official action on legislation.<sup>7</sup> Generation Now has also plead guilty to racketeering conspiracy.<sup>8</sup>

While FirstEnergy's involvement with Generation Now has received the most attention, electric utility AEP and coal companies also donated to Mr. Householder's PAC<sup>9</sup> and received favorable legislative outcomes in HB6. Here's how:

- HB6 created a "legacy generation rider" which offsets an AEP subsidiary's (AEP Ohio) financial losses from its ownership stake in the Ohio Valley Electric Corporation (OVEC) coal-fired power plants. The rider also offsets losses for AES Ohio and Duke Energy Ohio.
- After ratepayers pay for OVEC's net operating expenses, AEP and other utilities stand to book hundreds of millions in additional profit due to HB6.
- Moreover, until recently, OVEC bought high-priced coal from Resource Fuels, an affiliate of coal donors of Generation Now,<sup>10</sup> resulting in millions of dollars of higher coal costs. OVEC did not pay these high prices to another coal supplier that sold the exact same coal mined from the exact same coal seam.<sup>11</sup> Higher coal costs are ultimately recovered through subsidies from Ohio's electric ratepayers.

To be clear, these companies have not been charged with a crime in the bribery scheme.

Facing a forecast of low electricity prices, substantial debt, and looming environmental compliance costs of its OVEC sponsorship and ownership, AEP Ohio, AES, and Duke are escaping the discipline of their choice to operate OVEC in competitive markets by foisting financial losses on to their own customers.

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<sup>5</sup> "H.B. 6 Decoupling Provision - \$355 Million for FirstEnergy through 2024, Possibly Millions More", August 17th, 2020. <https://www.ohiomfg.com/wp-content/uploads/HB-6-Decoupling-8.17.20.pdf>

<sup>6</sup> Deferred Prosecution Agreement, At the United States District Court, Southern District of Ohio, Western Division, Case No. 1:21-cr-86, [https://www.scribd.com/document/516865597/FirstEnergy-Deferred-Prosecution-Agreement#from\\_embed](https://www.scribd.com/document/516865597/FirstEnergy-Deferred-Prosecution-Agreement#from_embed)

<sup>7</sup> "FirstEnergy charged federally, agrees to terms of deferred prosecution settlement." July 22, 2021

<https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement>

<sup>8</sup> "Purported 501(c)4 admits to being used to conceal corrupt payments related to passage of legislation." February 19, 2021

<https://www.justice.gov/usao-sdoh/pr/purported-501c4-admits-being-used-conceal-corrupt-payments-related-passage-legislation>

<sup>9</sup> "Columbus utility giant AEP funded dark money spending in HB 6 campaign", July 25, 2020,

<https://www.dispatch.com/story/news/politics/state/2020/07/25/columbus-utility-giant-aep-funded-dark-money-spending-in-hb-6-campaign/41843419/>; see also "Householder case: 'Company C' CEO Wayne Boich gave cash to HB 6 'dark money' groups", August 5, 2020

<https://www.dispatch.com/story/news/politics/state/2020/08/05/householder-case-quotecompany-csquo-ceo-wayne-boich-gave-cash-to-hb-6-quotodark-moneysquo-groups/112806486/>

<sup>10</sup> Resource Fuels corporate reinstatement with Florida Secretary of State:

<https://search.sunbiz.org/Inquiry/CorporationSearch/ConvertTiffToPDF?storagePath=COR%5C2008%5C1106%5C40703224.tif&documentNumber=M05000001011>

<sup>11</sup> Direct Testimony of John A. Seryak on Behalf of The Ohio Manufacturers' Association Energy Group, In the Matter of the Review of the Power Purchase Agreement Rider of Ohio Power Company for 2018, Case No. 18-1004-EL-RDR.

Despite all of this, House Bill 6's Legacy Generation Rider remains law absent action by Ohio's General Assembly.

## A Costly Reminder: Ohioans Have Paid ~\$500 million in OVEC Subsidies

The OVEC power plants do not typically make enough profit to cover the costs of their debt payments. As a result, OVEC charges its electric utility sponsors - including AEP Ohio, AES Ohio, and Duke Energy Ohio - for the remaining costs. OVEC's losses would otherwise directly eat into the profits of the electric utilities. So, to protect their profits, the Ohio electric utilities have repeatedly requested subsidies from their own customers to cover the losses, first at the Public Utilities Commission of Ohio, and then as part of the corrupt HB6. Recent utility filings show that OVEC is forecasted to lose about \$48.7 million in the first half of 2024, as shown in Table 1.

**Table 1: Utility Forecast of OVEC Losses in 2024, January through June<sup>12</sup>**

<b>Projected OVEC NET COSTS (6 Months)</b>	
<b>FE</b>	N/A
<b>Duke</b>	9,974,368
<b>DPL</b>	4,104,258
<b>AEP</b>	34,583,950
<b>Total</b>	<b>\$ 48,662,576</b>

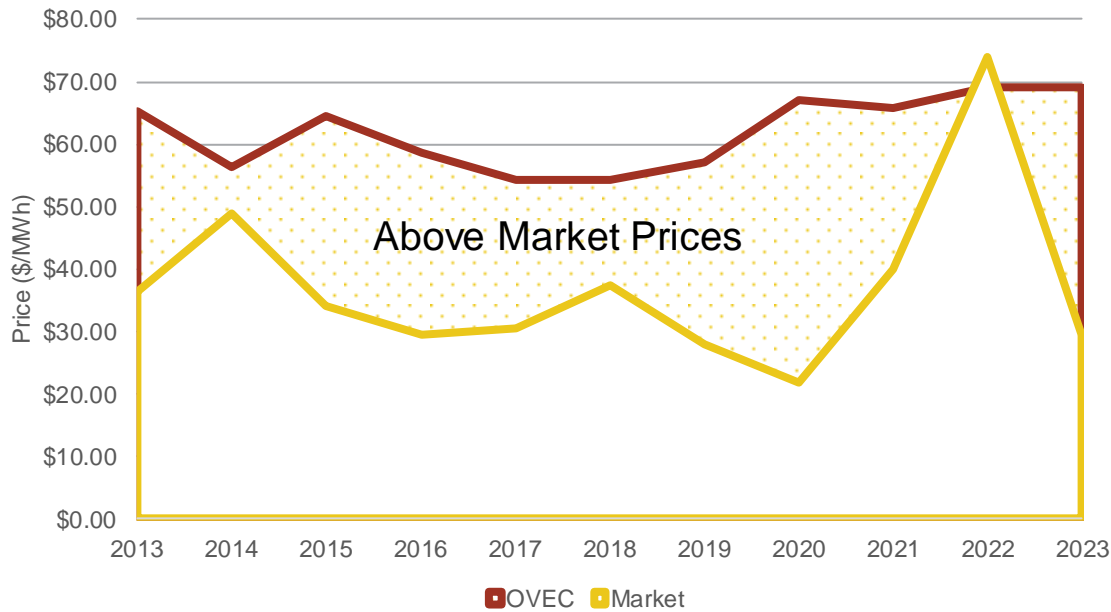
While OVEC is projected to lose money in the first half of 2024, the rates they have submitted for this period will recover nearly double this amount, \$96.9 million dollars. The reason for this is that the Utilities forecasted costs need to be corrected to account for the actual losses that occurred during previous periods. Our understanding is that any difference, above or below the forecast, is recovered the following year during the same biannual period. In this case, the inaccuracy of utility forecasts for January to June of 2023 amounted to \$48.2 million dollars below what was required. Their forecast at that time was only 33% of the eventual amount they needed to recover.

In our previous memo we summarized how customers received credits during the first half of 2023 due to a revenue collection true-up from 2022, when electricity prices were high. However, based upon actual revenue recovery for the first half of 2023, these plants were actually operating at a loss.

OVEC's average weighted price of generating electricity ranges between \$55 - \$65 /MWh. At these prices, OVEC is typically a market loser, resulting in financial losses. Figure 1 shows OVEC's price of electricity versus the market price of electricity, demonstrating that 2022 was an anomaly.<sup>13</sup>

<sup>12</sup> In the Matter of the Application of the Ohio Power Company Updated Legacy Generation Rider, PUCO Tariff No. 20, Case No. 22-1118-EL-RDR, also data provided by the PUCO via correspondence.

<sup>13</sup> The OVEC and PJM prices include Energy and Capacity. Energy price is the PJM Day-Ahead AEP Zone load-weighted LMP price. Capacity price is the PJM Final Zonal Net Load Capacity Price for the AEP Zone. We assume OVEC had all of its 2,350 MW clear the capacity auction. Prices do not include Ancillary Services because OVEC does not attempt to sell them into PJM currently.



**Figure 1: OVEC Price Compared to Market**

As shown in Table 2, we estimated the future average costs of OVEC based upon the average of the full history of LGR cost history. Biannual costs are captured in the LGR rider Part A, which were compiled using PUCO filings and information directly obtained from the PUCO. Based on these averages, Ohio's utilities are set to lose about \$71 million per year on average.

**Table 2: Estimate of Future OVEC Losses<sup>12</sup>**

Period	Future year cost/credit estimate
2020 1st and 2nd Quarter	OVEC Subsidy \$33,301,097
2020 3rd and 4th Quarter	\$38,116,453
2021 1st and 2nd Quarter	\$76,748,128
2021 3rd and 4th Quarter	\$67,243,881
2022 1st and 2nd Quarter	\$35,317,425
2022 3rd and 4th Quarter	(\$7,077,155)
2023 1st and 2nd Quarter	(\$30,173,251)
2023 3rd and 4th Quarter	\$10,128,656
2024 1st and 2nd Quarter	\$97,113,199
<b>LGR Part A Biannual Average (Jan 2020 - June 2024)</b>	<b>\$35,635,381</b>
<b>Estimated Annual OVEC Revenue (\$/Year)</b>	<b>\$71,270,763</b>

At these losses, the OVEC subsidy bill could total over \$950 million through 2030, as shown in Table 3.<sup>14</sup>

**Table 3: Annual OVEC Subsidy Collection from Ohioans<sup>15</sup>**

Year	Subsidies to OVEC (\$)	Subsidy Granted By
2017	\$42,868,858	PUCO
2018	\$27,447,386	PUCO
2019	\$85,136,721	PUCO
2020	\$89,571,982	HB6
2021	\$143,992,009	HB6
2022	\$28,240,270	HB6
2023	(\$20,044,595)	HB6
2024 Jan-June	\$97,113,199	HB6
<b>Total To Date</b>	<b>\$494,325,830</b>	
2024 July-2030	\$463,259,959	HB6
<b>Total through 2030</b>	<b>\$957,585,789</b>	

## Future Risks

The OVEC power plants are struggling by many measures. In addition to losing money most of the time, uncertainty of OVEC coal contracts, the potential for environmental compliance costs, and debt liabilities through 2040 all pose additional costs. Moreover, its power output may not even be needed at peak times.

- Coal contracts - The need to regularly renegotiate coal contracts amidst uncertainty of coal markets leaves uncertainty in the potential for increasing costs.
- Environmental compliance - OVEC's Clifty Creek power plant in Indiana is subject to the US Environmental Protection Agency's (EPA) Coal Combustion Residuals (CCR) regulation. The CCR rule could force Clifty Creek to close its coal ash waste holding ponds. OVEC has stated that they may need to cease operations if the EPA enforces the CCR rule until it can build another waste handling system on site, a low-volume water treatment system (LVWTS). The costs of the LVWTS and any other environmental remediation will create additional operating costs for OVEC, which will be passed on to Ohio ratepayers.
- Debt - While HB 6 is silent on OVEC subsidies after 2030, AEP Ohio, AES Ohio, and Duke Energy Ohio have agreed to contractual commitments to maintain and operate the plants through 2040 via an inter-company power agreement (ICPA) and have debt payments due through 2040. If Ohio's electric utilities change course and look to cut future losses by closing the OVEC plants, there is still a risk that they will seek a subsidy from Ohioans to cover outstanding debt.

<sup>14</sup> 2017-2020 subsidy estimates here: "While HB 6's Remaining Provisions Are Debated, Subsidies to Ohio Utilities Double to \$150M Annually for Two Aged Coal Plants,"

<https://ohiomfg.informz.net/ohiomfg/data/images/OVEC%20Subsidies%20Double%20-%209.28.21.pdf>

<sup>15</sup> "While HB 6's Remaining Provisions Are Debated, Subsidies to Ohio Utilities Double to \$150M Annually for Two Aged Coal Plants", <https://ohiomfg.informz.net/ohiomfg/data/images/OVEC%20Subsidies%20Double%20-%209.28.21.pdf>

- **Reliability** - Ohioans do not need to subsidize OVEC to maintain reliable power supply. Ohio is part of a regional wholesale electric market, PJM. In this market, power generators compete to sell needed electricity to electrical load at any given hour based on price. If a power plant cannot compete on price, then it means there are plentiful electricity generators already meeting the system needs, at a lower price. Policymakers should know that customers already pay for reliability to power plants via PJM's capacity auctions. Allowing another charge through Ohio's distribution utilities would be a double payment.

## **A Clouded Future: Costs on the Horizon**

As has been demonstrated, in most years OVEC's power plants do not make enough money selling electricity to cover its debts. In these years, Ohio's electric utilities that own and sponsor OVEC have sought to use governmental mandates to shield their corporate profits and pass losses on to their ratepayers. On the other hand, OVEC has rarely been profitable enough to cover its debt payments and pass credits on to customers, and only under extreme circumstances.

In conclusion, HB6 continues to create unearned financial profits for Ohio utilities' shareholders at customers' expense.