

To: The Ohio Manufacturers' Association

From: John A Seryak, PE

House Bill 6's Legacy: Utility Power Plant Subsidies Poised to Cost Ohioans Millions More

Key Points

- According to Ohio's electric utilities, the OVEC coal-fired power plants are again losing money. Utilities plan to charge Ohioans for these losses, enabled by House Bill 6.
- Ohioans have already paid nearly \$400 million to OVEC's utility owners, despite recent credits from the plant.
- Based on historical and predicted future electricity prices, Ohioans are expected to subsidize OVEC's utility owners around \$850 million total by 2030, directly profiting utility shareholders.
- The OVEC coal-fired power plants are at risk of major environmental upgrades, which could further increase costs to Ohioans.

Summary

The Ohio General Assembly passed the notorious 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."¹ 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.² Related investigations are still ongoing.³

Since Mr. Householder's arrest, the Ohio General Assembly has repealed several costly components of HB6, including a subsidy to Ohio's nuclear plants⁴ and an abstruse "decoupling" policy that would've cost

¹ "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/>

² "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>

³ "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.

⁴ "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>

Ohioans hundreds of millions of dollars.⁵ These provisions provided unearned benefits to FirstEnergy and its affiliates at the time. FirstEnergy has admitted to bribing public officials for its benefit,⁶ which included donating to Generation Now, a "dark money" 401(c)4 political action committee controlled by Mr. Householder, in exchange for official action on legislation.⁷ Generation Now has also plead guilty to racketeering conspiracy.⁸

While FirstEnergy's involvement with Generation Now has received the most attention, electric utility AEP and coal companies also donated to Mr. Householder's PAC⁹ and received favorable legislative outcomes in HB6. Here's how: HB6 created a so-called "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. After ratepayers pay for OVEC's net operating expenses, AEP stands 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,¹⁰ 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.¹¹ 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 perennially low electricity prices, substantial debt, and looming environmental compliance costs its OVEC sponsorship and ownership, AEP Ohio and other Ohio utilities are escaping the discipline of their choice to operate OVEC in competitive markets by foisting financial losses on to their own customers.

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 ~\$400 million in OVEC Subsidies

The OVEC power plants do not typically make enough profit in the electricity market to cover the costs of its own debt payments. As a result, OVEC charges its electric utility sponsors - including AEP Ohio, AES

⁵ "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>

⁶ 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

⁷ "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>

⁸ "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>

⁹ "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/>

¹⁰ Resource Fuels corporate reinstatement with Florida Secretary of State:

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

¹¹ 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.

Ohio, and Duke Energy Ohio - for the remaining costs. Thus, OVEC's costs would directly eat into the profits of the electric utilities if paid by the Ohio 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 \$23.8 million in the first half of 2023, as shown in Table 1.

Table 1: Utility Forecast of OVEC Losses in 2023, January through June¹²

Projected OVEC NET COSTS (6 Months)	
FE	N/A
Duke	5,366,248
DPL	1,080,940
AEP	17,346,454
Total	\$ 23,793,642

While OVEC is projected to lose money in the first half of 2023, customers will be receiving credits at this time due to a revenue collection true-up from 2022, when electricity prices were high. Manufacturers and policymakers should be on alert for HB6's Legacy Generation Rider to begin collecting net costs from customers again starting mid-year 2023.

OVEC's ability to make a profit and credit customers is rare and only occurs when electricity prices are extremely high and OVEC's fuel costs are low. For example, OVEC has only generated profits in one of the past seven years, 2022, a year that saw unprecedented global energy market spikes due to Russia's invasion of Ukraine. 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.¹³

¹² 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.

¹³ 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.

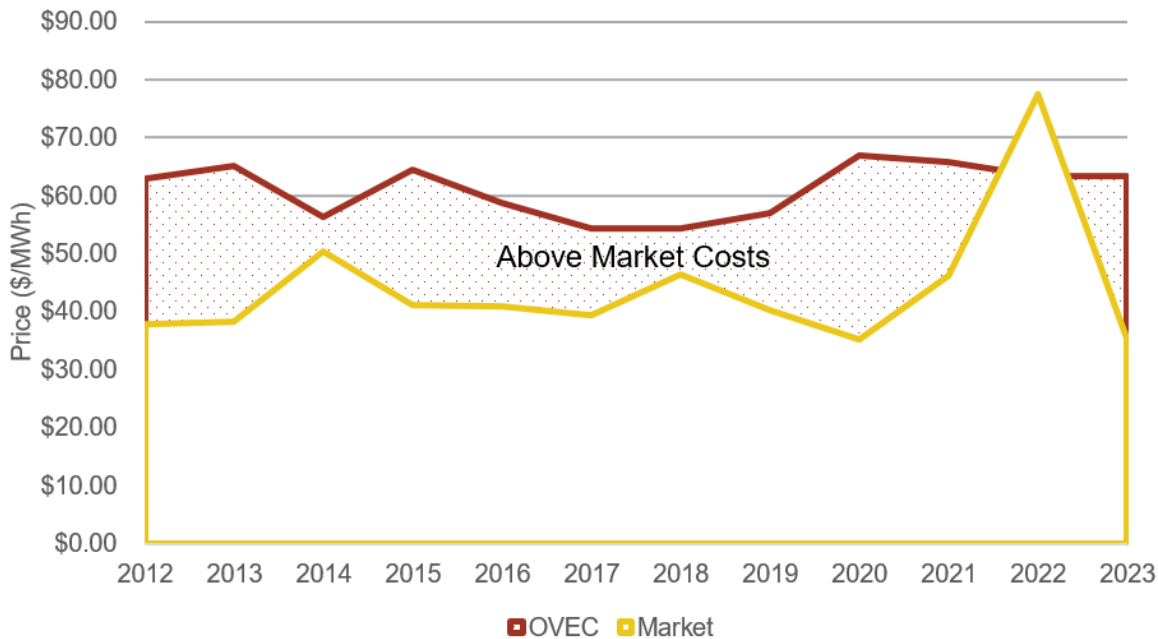


Figure 1: OVEC Price Compared to Market

These short periods of profit from OVEC only credits back to Ohio's electric ratepayers a tiny fraction of what the ratepayers have sunk into OVEC in recent years - customers are still in the red nearly \$400 million. Odds remain that OVEC will continue to lose money, resulting in Ohioans paying to subsidize the plants, for several reasons:

- Electricity prices have dropped significantly in 2023, returning to historically normal ranges, as shown in Figure 1. OVEC cannot make enough money at these prices to cover its debt payments, and this will result in costs to Ohioans.
- Electric capacity prices will be very low beginning in June of 2023¹⁴ - dropping from \$140 /MW-year just one year ago to \$34.13 starting in June. By June 2024, capacity prices drop further to \$28.92 /MW-year. This means that OVEC will make about \$63 million¹⁵ less annually in coming years as compared to 2021/22. This will result in increased costs to Ohio ratepayers. Additionally, it is possible that OVEC's capacity did not clear the PJM capacity auction. If so, OVEC would not receive any revenue for electric capacity starting in July 2023, increasing its net costs that will have to be paid for by ratepayers.

¹⁴ PJM Base Residual Auction (BRA) delivery results, see Table 1. <https://sdc.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2024-2025/2024-2025-base-residual-auction-report.ashx>

¹⁵ Assuming 1,550 MW of cleared capacity from OVEC: 1,550 MW x (\$140 - \$28.92) / MW-day x 365 days/year = \$62,843,510. This is an estimate, final capacity clearing prices are slightly larger than BRA prices. Also, the amount of capacity that OVEC cleared is likely less at lower prices, but is confidentially held information.

- There is risk that OVEC will face higher coal prices in 2023 and beyond. Policymakers and regulators should scrutinize OVEC's coal contracts, to determine if and by how much OVEC's operating costs will increase in 2023.

As shown in Table 2, we estimated the future average costs of OVEC based on five-year averages of PJM electricity (MWh) and capacity (MW) prices, average OVEC electrical generation, and average OVEC price of electricity sold. Based on these averages, Ohio's utilities are set to lose about a \$58 million per year on average.

Table 2: Estimate of Future OVEC Losses¹⁶

Future year cost/credit estimate	
5-year average OVEC production (MWh)	10,709,429
5-year ave PJM energy price (\$/MWh)	\$38
Estimate of OVEC cleared capacity (MW)	1,550
5-year ave PJM capacity price (\$/MW-day)	\$106
Estimated Average OVEC Revenue (\$/year)	\$466,369,644
5-year average OVEC price (\$/MWh)	\$60
5-year average OVEC production (MWh)	10,709,429
Estimated Annual Operating Cost	\$639,181,550
Total Annual OVEC Profit/(Loss)	(\$172,811,905)
Ohio Utility Share (%)	33.83%
Ohio's Subsidy (\$/year)	(\$58,462,268)

At these losses, the OVEC subsidy bill could total around \$845 million through 2030, as shown in Table 3.¹⁷

Table 3: Annual OVEC Subsidy Collection from Ohioans¹⁸

Subsidies to OVEC		
Year	(\$)	Subsidy Granted By
2017	\$42,868,858	PUCO
2018	\$27,447,386	PUCO
2019	\$85,136,721	PUCO
2020	\$89,571,982	HB6
2021	\$150,705,129	HB6
2022	\$28,827,735	HB6
2023 Jan-June	(\$30,339,960)	HB6
Total To Date	\$394,217,851	
2023 July-Dec	\$41,388,638	HB6
2024-2030	\$409,235,873	HB6
Total through 2030	\$844,842,362	

¹⁶ Annual profit/loss = Revenue [Annual production (MWh/year) x Market price (\$/MWh) + Capacity (MW) x Capacity Price (\$/MW-day) x 365 days/year] - Operating cost [Annual production (MWh/year) - OVEC price (\$/MWh)]

¹⁷ 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>

¹⁸ "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>

Future Risks

The OVEC power plants are struggling by many measures. In addition to losing money most of the time, the OVEC coal contract situation is uncertain, OVEC faces mounting environmental compliance costs, and it has debt liabilities through 2040. Moreover, its power output may not even be needed at peak times.

- **Coal contracts** - OVEC had historical coal contracts that kept its operating cost detached from current market prices in 2022. As coal market prices increased significantly in 2022, OVEC was able to generate electricity using lower-priced coal, while simultaneously selling power into the market at the extremely elevated prices. However, this advantage may have ended. Many of OVEC's coal contracts expired in December 2022, according to the US Energy Information Administration (EIA).¹⁹ OVEC's profitability outlook could change based on the new coal contract terms and prices. OVEC's new coal prices and contract end dates will be available from EIA for public viewing at the end of March 2023.
- **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.
- **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. To be fair, PJM's approach to reliability looks ripe for revision following concerns from failing power plants in December 2022. However, 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

¹⁹ US Energy Information Administration, Form 923, Page 5 Fuel Receipts and Costs, <https://www.eia.gov/electricity/data/eia923/>

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 benefits for Ohio utilities at customers' expense.