



# Energy Committee

February 25, 2021

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## 2021 Energy Committee Calendar

Meetings begin at 10 a.m.

Thursday, May 27  
Thursday, September 9  
Thursday, November 11

## Our Meeting Sponsor:

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## Energy Committee Agenda

February 25, 2021

<b>Welcome &amp; Roll Call</b>	Brad Belden, President, Belden Brick Company, Committee Chair
<b>OMA President's Report</b>	Ryan Augsburger, OMA President
<b>Guest Speaker</b>	Dave Yost, Ohio Attorney General
<b>What Happened in Texas?</b>	John Seryak, PE, RunnerStone, LLC
<b>State Public Policy Report</b> <ul style="list-style-type: none"><li>• New General Assembly</li><li>• Scandal Update</li><li>• HB Repeal</li><li>• New Legislation</li></ul>	Rob Brundrett, OMA Staff Mark Romanchuk, Ohio State Senator
<b>Member Presentation</b>	Tim Ling, Corporate Environmental Director, Plaskolite LLC
<b>Energy Engineer Report</b>	John Seryak, PE, RunnerStone, LLC OMA Energy Engineer
<b>Energy Counsel's Report</b>	Kim Bojko, Carpenter Lipps & Leland OMA Energy Counsel
<b>Natural Gas Market Trends</b>	Darin King, NiSource, Columbia Gas of Ohio
<b>Electricity Market Trends</b>	Susanne Buckley, Scioto Energy

### Our Meeting Sponsors:



## Attorney General Dave Yost



Dave Yost became Ohio's 51st Attorney General on January 14, 2019, bringing to the office his extensive experience rooting out fraud, holding the corrupt accountable and reforming government.

Yost earned his undergraduate degree from The Ohio State University and law degree from Capital University. After working as a Columbus Citizen Journal reporter, he began his public service career as Delaware County's Auditor and Prosecutor. As Prosecutor, he won the first-ever capital case in Delaware County and took down the largest drug ring in county history.

He became Ohio's 32nd Auditor of State in January 2011 and spent the next eight years fighting fraud, rooting out corruption and "skinnying down" government. In two terms, he helped convict 170 corrupt public officials and uncovered \$30 million in stolen and misspent public funds. At the same time, he promoted efficiency by identifying potential savings of \$287 million for governments and school districts.

Through his leadership and at his urging, the General Assembly twice enhanced charter school accountability.

In November 2018, Yost won statewide election as Attorney General, an office in which he pursues his mission of doing big good by protecting Ohio's citizens and aggressively fighting corruption. Major focuses of his administration have included battling the opioid epidemic, standing up for victims of human trafficking, solving cold-case homicides and sexual assaults, and shielding Ohio consumers from scammers and robocallers.

He and his wife, Darlene, make their home in Franklin County. They have three adult children and three grandchildren.

## State Senator Mark Romanchuk



Senator Mark Romanchuk is serving in his first term in the Ohio Senate representing the people of the 22nd Senate District, which includes Ashland, Medina and Richland counties as well as part of Holmes county. He previously served four terms in the Ohio House of Representatives.

Senator Romanchuk has over 35 years of experience in small business, systems engineering, management, and community development. He is the owner and CEO of PR Machine Works, Inc., a contract manufacturer providing precision machining, fabrication, and assembly services in the city of Ontario. Prior to his work at PR Machine Works, he worked at Hughes Aircraft Company in a diplomatic capacity to the former Soviet Union in support of the Intermediate Range Nuclear Forces (INF) Treaty. Also, he was based in Japan as a team leader and technical advisor to the U.S. Navy in support of the F/A – 18 aircraft.

He has been heavily involved in his community, particularly in local efforts to create jobs and in workforce development. He is a member of the National Tooling and Machining Association and served as Economic Region 6's team leader for the state's "Ohio Skills Bank," which strives to develop regional manufacturing career pathways. Senator Romanchuk also serves on the Ashbrook Center Board at Ashland University.

He is also the co-founder and past president of the Regional Manufacturing Coalition and is the past chairman of the Richland Area Chamber of Commerce Board of Directors. He is an active member of the Mansfield Sertoma Club, the National Federation of Independent Business and the Ohio Manufacturers' Association.

Senator Romanchuk resides in Ontario with his wife, Zoi.

## **EXPLAINER: Why the power grid failed in Texas and beyond**

By DAVID KOENIG and MICHAEL LIEDTKE February 17, 2021

DALLAS (AP) — The power outages tormenting Texas in uncharacteristically Arctic temperatures are exposing weaknesses in an electricity system designed when the weather's seasonal shifts were more consistent and predictable — conditions that most experts believe no longer exist.

This isn't just happening in Texas, of course. Utilities from [Minnesota to Mississippi have imposed rolling blackouts](#) to ease the strain on electrical grids buckling under high demand during the past few days. And power outages [have become a rite of summer and autumn in California](#), partly to reduce the chances of deadly wildfires.

But the fact more than 3 million bone-chilled Texans have lost their electricity in a state that takes pride in its energy independence underscores the gravity of a problem that is occurring in the U.S. with increasing frequency.

### WHAT HAPPENED IN TEXAS?

Plunging temperatures caused Texans to turn up their heaters, including many inefficient electric ones. Demand spiked to levels normally seen only on the hottest summer days, when millions of air conditioners run at full tilt.

The state has a generating capacity of about 67,000 megawatts in the winter compared with a peak capacity of about 86,000 megawatts in the summer. The gap between the winter and summer supply reflects power plants going offline for maintenance during months when demand typically is less intense and there's not as much energy coming from wind and solar sources.

But planning for this winter didn't imagine temperatures cold enough to freeze natural gas supply lines and stop wind turbines from spinning. By Wednesday, 46,000 megawatts of power were offline statewide — 28,000 from natural gas, coal and nuclear plants and 18,000 from wind and solar, according to the Electric Reliability Council of Texas, which operates the state's power grid.

"Every one of our sources of power supply underperformed," Daniel Cohan, an associate professor of civil and environmental engineering at Rice University in Houston, [tweeted](#). "Every one of them is vulnerable to extreme weather and climate events in different ways. None of them were adequately weatherized or prepared for a full realm of weather and conditions."

The staggering imbalance between Texas' energy supply and demand also caused prices to skyrocket from roughly \$20 per megawatt hour to \$9,000 per megawatt hour in the state's freewheeling wholesale power market.

That raised questions whether some power generators who buy in the wholesale market may have had a profit motive to avoid buying more natural gas and simply shut down instead.

"We can't speculate on people's motivations in that way," said Bill Magness, CEO of ERCOT. He added he had been told by generators that they were doing everything possible to provide power.

## WHY WASN'T THE STATE PREPARED?

Gas-fired plants and wind turbines can be protected against winter weather — it's done routinely in colder, northern states. The issue arose in Texas after a 2011 freeze that also led to power-plant shutdowns and blackouts. A national electric-industry group developed winterization guidelines for operators to follow, but they are strictly voluntary and also require expensive investments in equipment and other necessary measures.

An ERCOT official, Dan Woodfin, said plant upgrades after 2011 limited shutdowns during a similar cold snap in 2018, but this week's weather was "more extreme."

Ed Hirs, an energy fellow at the University of Houston, rejected ERCOT's claim that this week's freeze was unforeseeable.

"That's nonsense," he said. "Every eight to 10 years we have really bad winters. This is not a surprise."

In California, regulators last week ordered the state's three major utilities to increase their power supply and potentially make plant improvements to avoid another supply shortage like the one that [cropped up in California six months ago](#) and resulted in rolling blackouts affecting about 500,000 people for a few hours at a time.

"One big difference is that leadership in California recognizes that climate change is happening, but that doesn't seem to be the case in Texas," said Severin Borenstein, a professor of business administration and public policy at the University of California, Berkeley who has been studying power supply issues for more than 20 years.

## WHY THE NEED FOR ROLLING BLACKOUTS?

Grid operators say rolling blackouts are a last resort when power demand overwhelms supply and threatens to create a wider collapse of the whole power system.

Usually, utilities black out certain blocks or zones before cutting off power to another area, then another. Often areas with hospitals, fire stations, water-treatment plants and other key facilities are spared.

By rolling the blackouts, no neighborhoods are supposed to go an unfairly long period of time without power, but that was not always the case this week in Texas. Some areas never lost power, while others were blacked out for 12 hours or longer as temperatures dipped into the single digits.

## WHEN DO THEY OCCUR?

Rolling blackouts are usually triggered when reserves fall below a certain level. In Texas, as in California last August, grid operators tell utilities to reduce load on the entire system, and it is up to the utilities to decide how to do that.

In Texas this week, grid operators and utilities knew about the dire weather forecast for at least a week. Last weekend they issued appeals for power conservation, and ERCOT tweeted that

residents should “unplug the fancy new appliances you bought during the pandemic and only used once.”

The lighthearted attempts at humor were lost on residents, few if any of whom were told in advance when their homes would lose power. Once the outages started, some utilities were unable to provide information about how long they might last.

#### WHAT CAN BE DONE TO REDUCE ROLLING BLACKOUTS?

Start with the obvious steps: When power companies or grid operators warn about trouble coming, turn down your thermostat and avoid using major appliances. Of course, those steps are sometimes easier said than done, especially during record-breaking temperatures.

Like in other places, Texans might be more willing to adjust their thermostats a few more notches if regulators imposed a system that required households to pay higher prices during periods of peak demand and lower rates at other times.

“People turn up their furnaces now because there isn’t a financial incentive for them not to do it,” Borenstein said.

Experts also say more fundamental — and costly — changes must be made. Generators must insulate pipelines and other equipment. Investments in electricity storage and distribution would help. Tougher building codes would make homes in places like Texas better insulated against the cold.

Texas, which has a grid largely disconnected from others to avoid federal regulation, may have to rethink the go-it-alone strategy. There could be pressure for the state to require power generators to keep more plants in reserve for times of peak demand, a step it has so far resisted.

“The system as we built it is not performing to the standards we would like to see,” said Joshua Rhodes, an energy researcher at the University of Texas in Austin. “We need to do a better job. If that involves paying more for energy to have more reliability, that’s a conversation we’re going to have to have.”

**To: OMA Energy Committee**  
**From: Rob Brundrett**  
**Re: Energy Public Policy Report**  
**Date: February 25, 2021**

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### **Overview**

January saw the beginning of a new General Assembly. The 134<sup>th</sup> rendition features Bob Cupp back as the Speaker of the House and Matt Huffman the new Senate President.

When we last saw the legislature, they were scrambling during lame duck to pass legislation in response to the House Bill 6 bribery scandal that has left a path of destruction including the arrest of then Speaker of the House Larry Householder.

In December the legislature chose to sit back and not pass any type of repeal legislation. The OMA supported House Bill 772 as the most comprehensive of the repeal bills. The bill sponsored by then Representative Romanchuk would have repealed the Clean Air Fund, OVEC, decoupling, and SEET.

The new General Assembly has seen numerous bills introduced to address the scandal. The Senate has taken a piecemeal approach, breaking up the scandal ridden provisions of House Bill 6 and repealing several in multiple bills. The House has chunked up larger portions of the bill for repeal. Neither approach is as comprehensive as House Bill 772.

### **General Assembly News and Legislation**

#### **Bribery and Corruption at the Statehouse Update**

The legal fallout of House Bill 6 continues. Since the press conference on July 21, and the initial five arrests including then Speaker Larry Householder, Ohio has seen guilty pleas from two individuals and one guilty plea from Generation Now a dark money group funded by the Ohio utilities.

Leadership at FirstEnergy has been terminated, the Ohio PUCO Chairman Sam Randazzo resigned his position when he was tied to the investigation and the Ohio Attorney General Dave Yost has aggressively pursued litigation against FirstEnergy to stop portions of House Bill 6.

With the change in federal administrations U.S. Prosecutor David DeVillers has submitted his resignation and there is some concern without his leadership the case will not be pursued as aggressively. He has promised to support his successor and the case in any way possible moving forward.

#### **House Bill 10 – Repeal House Bill 6**

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

#### **Senate Bill 10 – Repeal Decoupling and SEET**

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

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

Under SB 10, revenue collected under these provisions would be refunded. Anticipated decoupling costs for customers were estimated at \$17 million for 2020 and more than \$101 million for 2021 for all customer classes. SEET refund amounts are yet to be determined. The House heard its first hearing on the bill this week.

#### House Bill 18 – Straight Repeal of House Bill 6

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

#### Senate Bill 32 – Electric Car Charging Station Grant Rebate

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

#### Senate Bill 44 – Repeal Portions of House Bill 6

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

#### House Bill 47 – Electric Car Charging Station Grant Rebate

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

#### Senate Bill 52 – Wind and Solar Referendum

This controversial bill and its House companion would allow local referendums on wind and solar projects at the local level. It would allow the local populations to override Ohio’s Power Siting Board which right now has the authority of siting energy generation projects. The bill has had its first hearing in the Senate as has its House companion.

#### House Bill 118 – Wind and Solar Referendum

This is the House companion to Senate Bill 52. It has had one hearing in the House.

#### House Bill 128 – Repeal Portions of House Bill 6

House Bill 128 was recently introduced at the Statehouse to repeal the nuclear subsidies authorized by the scandal-plagued House Bill 6. Remarkably, the new legislation is sponsored by one of HB 6’s strongest supporters in 2019.

House Bill 128 was introduced by Rep. James Hoops (R-Napoleon) — chair of the House Public Utilities Committee — and Rep. Dick Stein (R-Norwalk), a vocal proponent of nuclear energy. The bill would rescind HB 6’s \$150 million a year in subsidies provided to Energy Harbor, owner of Ohio’s two nuclear power plants.

In short, HB 128 would:

- Repeal \$170 million in HB 6 generation subsidies, including \$20 million a year for a handful of solar plants;
- Eliminate the decoupling provision that locked in FirstEnergy revenue at record-setting 2018 levels (\$978 million); and
- End the change that reworked the “significantly excessive earnings” test to benefit FirstEnergy.

The sponsors of HB 128 say repeal of the subsidies is now necessary so the plants may continue to sell electricity into the PJM capacity market. (The OMA spotlighted this issue more than a year ago.) The bill has had two hearings. The OMA provided proponent testimony and offered the sponsors suggestions on how to improve the bill by removing the HB 6 OVEC subsidies.

### **PUCO News**

#### PUCO Vacancies

With the resignation of Sam Randazzo, the PUCO nominating council submitted four candidates to Governor DeWine to replace the former Chairman. The governor rejected all four candidates. The PUCO nominating council last week sent four new names to the governor to choose. The four candidates are:

- Daniel Shields
- Jenifer French
- Melissa Shilling
- Virginia King

Last week Dennis Deters was reappointed to the PUCO. Deters is a former state appeals court judge was first appointed in 2019 and was now recommended for a full five-year term by the nominating council last month.

### **News and Notes**

#### AG Yost Announces Decoupling Deal With FirstEnergy

On Feb. 1, Attorney General Dave Yost announced a “long-term settlement” with FirstEnergy, which has agreed to stop using a House Bill 6-authorized decoupling rider that would cost customers an extra \$102 million this year.

In a recent radio interview, Yost said FirstEnergy would ask the Public Utilities Commission of Ohio (PUCO) to zero out the decoupling rider. Shortly after, the PUCO announced that the decoupling rates for FirstEnergy’s Ohio distribution utilities had indeed been set to zero. (This tracker shows FirstEnergy has already collected \$27 million from the rider over the past year.)

This legal development comes after the OMA for nearly two years led efforts to oppose HB 6 — including its decoupling mechanism, which had guaranteed FirstEnergy and its subsidiary, Energy Harbor, profits of at least \$978 million in gross annual revenues.

It’s also the second recent HB 6-related setback for FirstEnergy. In late December, a Franklin County judge ordered that \$170 million per year in HB 6’s customer-funded subsidies could not be collected from customer bills. The OMA helped lead legal efforts to stop the collection of the new subsidies.

### Cold Messes with Texas (and Its Electric Reliability)

Last week's massive winter storms and frigid temperatures wreaked havoc over much of the U.S. Texas has seen the most outages, with businesses and residences left in the dark and sending spot electric prices through the roof. Observers and pundits have been quick to point fingers at different electric generation technologies, regulatory constructs, energy policies, and even Texas' go-it-alone electrical grid. Could this happen in Ohio?

The 2014 polar vortex knocked out 40,200 megawatts (MW) of power generation in Ohio and the region. Nothing was spared. Natural gas, nuclear, and renewables all had failures. Coal was impacted heavily, with 13,700 MW of outages. However, Ohio's power stayed on because the Buckeye State is part of a 13-state power grid market called PJM Interconnection. (PJM is widely considered one of the premier grid and wholesale market structures in the world.)

Like other multi-state grids, PJM allows diverse generators from a multi-state region to bid into the capacity market, resulting in a significant reserve capacity (over 20% more power than needed). There were only sporadic outages in Ohio and other PJM states this week.

In contrast, Texas resisted joining a multi-state grid in favor of a walled-off or island approach so that only Texas generation can supply Texas markets. The Texas grid, operated by the Electric Reliability Council of Texas (ERCOT), is not subject to federal transmission regulations and does not have a capacity market that functions to assure adequate electricity supply, especially during peak events.

During Ohio's House Bill 6 debate, some state lawmakers expressed condemnation of PJM in favor of a Texas-like model in which utilities and generators win and customers are exposed to considerable risk. But this week has served as another reminder that in times of extreme weather, PJM's multi-state regional market has kept the power on.

### **Natural Gas Cost Hikes at FERC**

The OMA Energy Group has joined an industrial coalition to pushback on proposals to hike natural gas shipping costs.



**Testimony of David Johnson  
CEO, Summitville Tiles, Inc.  
House Bill 798**

**Select Committee on Energy Policy and Oversight  
The Honorable James Hoops, Chair**

**December 8, 2020**

Chairman Hoops, Vice Chair Abrams, Ranking Member Leland, and members of this Select Committee, I appreciate the opportunity to express opposition to HB 798.

My name is David Johnson. I am the CEO of Summitville Tiles, Inc. in Columbiana County. I am a longtime member of The Ohio Manufacturers' Association, and a former chairman of the organization. In both capacities, I express perspectives today as I did previously at your invitation on September 23.

The OMA represents more manufacturing customers, large and small, than any other organization in the state. As I expressed in my testimony in September, customers were harmed by HB 6 and its imposition of new costs and new forms of costs without any benefits to customers. Select energy companies and utilities were the beneficiaries of HB 6.

I told the committee in September that the preferred legislative package would repeal the anti-market provisions of HB 6 that are punitive to customers. We suggested a repeal that protects customers and maximizes customers' cost savings.

Specifically, we suggested a repeal bill that contains the following elements:

- Repeal the Clean Air Program and rider created by HB6 to subsidize the nuclear power plants and select renewable energy projects, which publicly available data, including from Energy Harbor itself, proves are unneeded.
- Repeal the OVEC rider created by HB 6 that continues to subsidize the two old coal plants, including one in Indiana, owned by a consortium of energy companies and prevent the PUCO from enacting a new OVEC rider without explicit approval from the General Assembly.
- Repeal the decoupling mechanism in HB 6 that benefits FirstEnergy by rewarding it with unearned income at the expense of customers. A repeal package should also require FirstEnergy to immediately refund the full amount of these ill-gotten gains to customers.
- Require the PUCO and the Ohio Air Quality Development Authority to eliminate or rescind any mechanism, charge, rule, or order enacted, authorized, or issued to implement an anti-market provision of HB6.

HB 798 falls short when measured against these consumer-protecting requirements. We do appreciate that HB 798 terminates the special HB 6-bestowed decoupling mechanism drafted to benefit FirstEnergy.

This provision is good policy. However, HB 798 leaves intact decoupling mechanisms that other utilities will continue to charge customers as a mechanism to recover lost revenues from energy efficiency mandates long after the mandates cease to exist at the end of 2020.

Since HB 6 repealed utility-administered energy efficiency programs, all decoupling riders should be repealed, and customer refunds (for the HB 6 decoupling mechanism) should be required. Failure to comprehensively repeal decoupling **is a gift to monopoly electric distribution utilities – a gift financed by Ohio families and businesses.**

The omission of OVEC repeal is particularly troubling for manufacturers who pay this unjustified HB 6 tax. I've attached this memo on the [boondoggle that is OVEC](#). Failure to address total OVEC repeal **is a gift to OVEC's owners, principally AEP – a gift financed involuntarily and with no benefits by Ohio customers.**

Finally, let me comment on HB 798's deferred treatment of the new Clean Air Fund. Evidence has emerged over past months that demonstrates the nuclear plants are viable without subsidies. This evidence includes Energy Harbor's own financial statements to its investors, and to the Nuclear Regulatory Commission, both of which assert that the nuclear plants are financially viable without HB 6 subsidies.

Energy Harbor's "[2020-2022 Financial Outlook](#)" projects \$515 million in profit this year, \$585 million next year, and \$645 million in 2022. There has been no evidence presented to the contrary.

There is no need for the subsidy, not now, and not in a year from now. Even if there were a need, the audit requirement contained in HB 798 is poorly defined, lacks direction on what is to be reviewed, lacks a stakeholder process at the OAQDA, and lacks a time frame for OAQDA's actions. Importantly, the proposed audit is retrospective, allowing collection and disbursement of funds prior to need being established and that cannot be returned to customers. **Collectively, this is a gift to Energy Harbor and other energy companies seeking Clean Air Fund subsidies from captive Ohioans.**

The provision regarding the significantly excessive earnings test, which restores a review of a utility's profits and whether they have significantly excessively earned on a company-by-company basis – is positive. More stringent review of transmission projects is also positive

Mr. Chairman, I've attached a [detailed analysis](#) of the impacts of HB 798 prepared by the OMA's technical resource teams.

According to this analysis , HB 798 will result in around \$4,000 in above-market charges per year for a small manufacturer, and about \$40,000 per year for a large manufacturer. It will cost other sectors as well – an estimated \$3,000 per year for lodging businesses, \$1,000 per year for restaurants, \$700 for small businesses, and \$30 to \$40 from every home and apartment. All at a time when families are struggling with the effects of the pandemic.

**As HB 798 stands today, on balance, it continues to benefit energy companies and utilities, with no benefit to Ohioans. Moreover, it fails to make Ohio's energy policy more competitive at a time when we need to grow jobs and opportunity to prepare for the post-pandemic era.**

We would be happy to work with you to resolve the shortcomings. However, HB 798 while it has merits, does not go far enough to resolve the injuries of HB 6. Therefore, we urge you to set it aside and instead focus on Representative Romanchuk's HB 772 as the blueprint from which to build to protect customers and protect markets.

I appreciate your attention to these perspectives and wish you the wisdom to do the right thing for Ohio.

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## MEMORANDUM

Date: December 4, 2020

To: The Ohio Manufacturers' Association

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

RE: H.B. 798 Analysis – Impact to Customers and Markets

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House Bill 798 (H.B. 798) was introduced in the House Select Committee on Energy Policy and Oversight on December 2, 2020. H.B. 798 is an attempted course correction of House Bill 6 (H.B. 6), the passage of which is now the root of a federal racketeering case. However, the scandal surrounding H.B. 6 illuminates a years-long problem with Ohio's electricity regulation and policy. That is, monopoly electric utilities have effectively seized control over the policies and regulations *meant to check their own monopoly power*.

When state government grants a monopoly franchise to a corporation, it in turn takes away customers' power of choice. In exchange, and absent the natural checks-and-balances of competition, the monopoly is supposed to submit itself to laws and regulations devised by the state. It is all too logical that customers should be the driving force of these laws and regulations, for it is customers whose power of choice was eliminated when the monopoly franchise was granted. Customer-driven policy, through trusted government, is what creates fairness and balance with monopolies.

H.B. 798 makes some thoughtful revisions but maintains H.B. 6's monopoly influence over important laws. It also does not restore customer choice or markets where it could. As a result, customers remain on the hook for billions in above market charges through 2030. This perpetuates a power imbalance that is inherently unfair. The needed corrections are intuitive:

- Allow customer choice and competition to exist where it already does,
- Encourage and foster customer choice and competition to emerge where it can, and
- Where there is no choice, create balance and fairness through customer-driven policy and regulation.

Below, we address the costs and power imbalances for the headline provisions of H.B. 798: the nuclear plant subsidies and renewable subsidies, the OVEC coal-plant subsidies, and decoupling. Even with some improvements to H.B. 6, the total annual cost of these H.B. 798 provisions to customers is shown in Table 1.

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	Ohio Power Cost (\$/year)	Columbus Southern Cost (\$/year)	DP&L Cost (\$/year)	Duke Cost (\$/year)	Ohio Edison Cost (\$/year)	Toledo Edison Cost (\$/year)	CEI Cost (\$/year)
Small	\$ 4,604	\$ 5,587	\$ 2,684	\$ 6,526	\$ 4,338	\$ 4,108	\$ 4,382
Medium	\$ 34,532	\$ 41,900	\$ 20,130	\$ 48,945	\$ 32,161	\$ 30,790	\$ 32,465
Large	\$ 43,952	\$ 43,952	\$ 26,829	\$ 44,272	\$ 39,894	\$ 39,894	\$ 39,894
Extra Large	\$ 43,952	\$ 43,952	\$ 26,829	\$ 44,272	\$ 39,894	\$ 39,894	\$ 39,894
Lodging	\$ 3,262	\$ 3,958	\$ 1,901	\$ 4,623	\$ 3,008	\$ 2,945	\$ 3,035
School	\$ 2,246	\$ 2,725	\$ 1,309	\$ 3,183	\$ 2,132	\$ 2,050	\$ 2,155
Restaurant	\$ 951	\$ 1,154	\$ 554	\$ 1,348	\$ 881	\$ 860	\$ 889
Small Retail	\$ 720	\$ 873	\$ 420	\$ 1,020	\$ 680	\$ 656	\$ 687
Church	\$ 208	\$ 253	\$ 121	\$ 295	\$ 204	\$ 192	\$ 206
Residential	\$ 39	\$ 39	\$ 24	\$ 42	\$ 30	\$ 31	\$ 31

**Table 1. Annual Cost of H.B. 798 to Customers**

### Nuclear Plant Subsidies

H.B. 6 created up to \$150 million per year in subsidies for two nuclear plants in Ohio, Davis-Besse and Perry, both currently owned by Energy Harbor. The funds are collected through charges on customers’ electric bills over a seven-year term, totaling up to \$1.05 billion in costs to consumers for the nuclear plant subsidies. H.B. 798 makes two modifications to H.B. 6’s design. First, it delays the subsidy term by a year, now to begin in 2022 and end in 2028, but it does not shorten the term or reduce the amounts collected from customers. Second, it attempts to strengthen language regarding financial auditing of the nuclear power plants.

While these changes appear to be well intentioned, they do not fully restore a power balance for customers. First, competition exists in competitive wholesale electric markets already, and competition is an effective check-and-balance for customers. Second, all evidence has thus far demonstrated that the nuclear plants are financially viable without subsidies. This evidence includes Energy Harbor’s own financial statements to its investors, and to the Nuclear Regulatory Commission (NRC), both of which assert that the nuclear plants are financially viable without H.B.6 subsidies. In Energy Harbor’s “2020-2022 Financial Outlook”, they show \$515 million in profit this year, \$585 million next year, and \$645 million in 2022<sup>1</sup>. There has been no evidence presented to the contrary.

Thirdly, an effective financial audit may be better than no audit, but it cannot identify all business decisions that create financial losses, nor necessarily correct them. This is demonstrated by recent third-party expert audits of the OVEC power plants contracted by the PUCO. As described in our Nov. 12<sup>th</sup> memo<sup>2</sup>, these audits have repeatedly identified OVEC’s decision to operate the plant at a

<sup>1</sup> <https://www.ohiomfg.com/wp-content/uploads/Energy-Harbor-Investor-Deck-5.10.2020-Final-Investor-update.pdf>

<sup>2</sup> Seryak, J. and Worley, P., “Ohio’s Costly – and Worsening – OVEC Situation”, Memorandum to The Ohio Manufacturers’ Association, Nov. 12<sup>th</sup>, 2020.

financial loss during certain times. Yet, OVEC has not changed its operating practices, and Ohio customers continue to be charged for the continued operations and losses. Consider that a power plant business makes hundreds of decisions each day. When customers are covering the financial losses, the incentive for the power plant's management to make careful and economic decisions is removed. A retroactive financial audit that guarantees money-losing decisions will be made whole, will likely yield more money-losing decisions.

Lastly, because H.B. 798 leaves in place the eligibility to receive state subsidies for these nuclear plants, they will remain subject to the Minimum Offer Price Rule (MOPR) of PJM's capacity market established by the Federal Energy Regulatory Commission. To be subject to the MOPR, a power plant has only *to be eligible* to receive state subsidies. PJM has announced its restart of capacity auctions for the upcoming May 2021. Under H.B. 798, the nuclear plants will be subject to the MOPR. As such, the nuclear plants will then face a set of choices:

- The nuclear plants can decline, by choice, to participate in the PJM capacity auction and forego the substantive revenue. In turn, they could show this lack of capacity revenue as “need” to the state in the financial audit process. Essentially, Energy Harbor would be in position to choose whether to show need for a subsidy or compete for revenue.
- The nuclear plants can apply for a Unit Specific Exemption of the MOPR. If the plants receive a Unit Specific Exemption, they will be allowed to participate in the capacity auction and receive capacity revenue if the plants clear the auction. This would be allowed if the plants did not need the subsidy to clear the auction competitively.
- The nuclear plants can participate in the capacity auction with the minimum offer price as determined by PJM. They may or may not clear the auction with this minimum offer price.

The challenge of a financial audit, even a well-defined audit, is that when considering MOPR, the audit will have difficulty distinguishing the nuclear plants' needs from the prudence of Energy Harbor's business decisions. However, H.B. 798's financial audit is not well defined, lacking direction on what is to be reviewed, an intervention process at the OAQDA, and a time frame for OAQDA's actions. Importantly, the proposed audit is retrospective, allowing collection of funds prior to need being established.

The annual cost impact of the Clean Air Fund to typical customer types is shown in Table 2. We include the additional \$20 million per year of the Clean Air Fund that is allocated to select solar projects.

Category	Example Typical Energy Use (kWh/year)	AEP Ohio Cost (\$/year)	DP&L Cost (\$/year)	Duke Cost (\$/year)	First Energy Cost (\$/year)
Manufacturer - Small	1,000,000	\$ 2,596	\$ 883	\$ 2,628	\$ 2,190
Manufacturer - Medium	7,500,000	\$ 19,470	\$ 6,623	\$ 19,710	\$ 16,425
Manufacturer - Large	100,000,000	\$ 25,950	\$ 8,826	\$ 26,269	\$ 21,891
Manufacturer - Extra Large	1,000,000,000	\$ 25,950	\$ 8,826	\$ 26,269	\$ 21,891
Lodging	708,400	\$ 1,839	\$ 626	\$ 1,862	\$ 1,551
School	487,790	\$ 1,266	\$ 431	\$ 1,282	\$ 1,068
Restaurant	206,544	\$ 536	\$ 182	\$ 543	\$ 452
Small Retail	156,332	\$ 406	\$ 138	\$ 411	\$ 342
Church	45,245	\$ 117	\$ 40	\$ 119	\$ 99
Residential	10,013	\$ 10	\$ 10	\$ 10	\$ 10

**Table 2. Clean Air Fund Costs to Customers**

### **OVEC Coal Plant Subsidies**

H.B. 6 also created subsidies for the Ohio Valley Electric Corporation’s two 1950s-era coal plants. One of the coal plants is in Indiana and would benefit from this subsidy. As shown in our Nov. 12<sup>th</sup> memo, the OVEC subsidies have done little to change OVEC’s poor performance. The OVEC power plant is still selling power for less than it costs to generate it, has declining power output, declining employment, and enough carbon dioxide emissions for two nuclear power plants’ worth of offsets. H.B. 798 does not solve OVEC’s problems, nor does it incent OVEC’s owners to make fiscally sound business decisions. Instead, H.B. 798 leaves in place the OVEC subsidies. Requiring utilities to use good faith efforts to divest the assets is meaningless as the PUCO has required this for years to no avail. Without a change in course, Ohioans could be on the hook for \$1.5 billion in additional costs to OVEC over its remaining life.

The annual cost impact of the OVEC subsidies to typical customer types is shown in Table 3.

Category	Example Typical Energy Use (kWh/year)	2021 Rider LGR (\$/year)
Manufacturer - Small	1,000,000	\$ 1,801
Manufacturer - Medium	7,500,000	\$ 13,508
Manufacturer - Large	100,000,000	\$ 18,003
Manufacturer - Extra Large	1,000,000,000	\$ 18,003
Lodging	708,400	\$ 1,276
School	487,790	\$ 879
Restaurant	206,544	\$ 372
Small Retail	156,332	\$ 282
Church	45,245	\$ 81
Residential	10,013	\$ 14

**Table 3. OVEC Subsidy Cost to Customers**

### Decoupling

H.B. 6 also created a decoupling mechanism that is estimated to benefit FirstEnergy to the tune of about \$355 million through 2024 but could be extended in perpetuity<sup>3</sup>. If continued absent a rate case and change in law, FirstEnergy could collect about \$750 million through 2030. These estimates may even be conservative. In 2021, FirstEnergy’s decoupling rider, Rider CSR, will increase by \$85 million, collecting \$102 million from customers in just that one year.

H.B. 798 terminates this decoupling mechanism 60 days after the bill’s effective date. If H.B. 798 were signed in mid-December of 2020 with an emergency clause, FirstEnergy’s decoupling mechanism would be terminated in mid-February of 2021. This late termination would allow FirstEnergy to collect about \$13 million in 2021 for decoupling.

H.B. 798 also does nothing to end decoupling provisions that other utilities are receiving. While these decoupling provisions were not created by H.B. 6, they were created in PUCO proceedings at the electric utilities request *because of* state mandated energy-efficiency requirements. H.B. 6 ended the state mandated efficiency requirements and purported to end all the associated costs. Currently, Duke and AEP Ohio have decoupling riders that remain in place, justified originally by energy efficiency programs that will soon no longer exist.

The cost of decoupling for each territory for 2021, based on H.B. 798, is shown below in Table 4. Statewide decoupling will cost Ohio’s residential and small commercial and industrial sector over \$41 million in 2021.

<sup>3</sup> Seryak, J. and Worley, P., “H.B. 6 Decoupling Provision - \$355 Million for FirstEnergy through 2024, Possibly Millions More”, Memorandum to The Ohio Manufacturers’ Association, August 20<sup>th</sup>, 2020.

AEP Ohio Power (\$/year)	AEP Columbus Southern (\$/year)	DP&L (\$/year)	Duke (\$/year)	FE Ohio Edison (\$/year)	FE Toledo Edison Cost (\$/year)	FE CEI Cost (\$/year)	Total Decoupling (\$)
\$ 11,186,560	\$ 9,948,590	\$0	\$6,281,206	\$ 6,504,470	\$ 2,261,689	\$ 5,410,550	\$41,593,065

**Table 4. Total and Per Territory 2021 Decoupling Cost**

The cost of decoupling for typical customer types is shown in Table 5 and Table 6.

Category	Load Factor (%)	Example Typical Energy Use (kWh/year)	Example Typical Demand (kW)	AEP Ohio Power Cost (\$/year)	AEP Columbus Southern Cost (\$/year)	DP&L Cost (\$/year)	Duke Cost (\$/year)
Small	40%	1,000,000	285	\$ 207	\$ 1,190	\$ -	\$ 2,097
Medium	50%	7,500,000	1,712	\$ 1,554	\$ 8,923	\$ -	\$ 15,728
Large	60%	100,000,000	19,026	\$ -	\$ -	\$ -	\$ -
Extra Large	80%	1,000,000,000	142,694	\$ -	\$ -	\$ -	\$ -
Lodging	60%	708,400	135	\$ 147	\$ 843	\$ -	\$ 1,486
School	35%	487,790	159	\$ 101	\$ 580	\$ -	\$ 1,023
Restaurant	50%	206,544	47	\$ 43	\$ 246	\$ -	\$ 433
Small Retail	35%	156,332	51	\$ 32	\$ 186	\$ -	\$ 328
Church	20%	45,245	26	\$ 9	\$ 54	\$ -	\$ 95
Residential		10,013		\$ 15	\$ 15	\$ -	\$ 17

**Table 5. 2021 Decoupling Cost to Customers in AEP, Duke, and DP&L**

Category	Load Factor (%)	Example Typical Energy Use (kWh/year)	Example Typical Demand (kW)	FE Ohio Edison Cost (\$/year)	FE Toledo Edison Cost (\$/year)	FE Cleveland Electric Illuminating Cost (\$/year)
Small	40%	1,000,000	285	\$ 347	\$ 117	\$ 391
Medium	50%	7,500,000	1,712	\$ 2,228	\$ 857	\$ 2,533
Large	60%	100,000,000	19,026	\$ -	\$ -	\$ -
Extra Large	80%	1,000,000,000	142,694	\$ -	\$ -	\$ -
Lodging	60%	708,400	135	\$ 181	\$ 118	\$ 207
School	35%	487,790	159	\$ 185	\$ 103	\$ 208
Restaurant	50%	206,544	47	\$ 57	\$ 36	\$ 65
Small Retail	35%	156,332	51	\$ 56	\$ 32	\$ 63
Church	20%	45,245	26	\$ 23	\$ 12	\$ 26
Residential		10,013		\$ 5	\$ 6	\$ 7

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**Table 6. 2021 Decoupling Cost to Customers in First Energy Territories, as Modified by H.B. 798**

<sup>4</sup> First Energy territory costs are pro-rated assuming that the decoupling provision will be active for approximately 1.5 months prior to H.B. 798 taking effect.



# KEY VOTE ALERT

## Vote Against HB 798 Provisions

The Ohio Manufacturers' Association urges you to vote against attaching HB 798, sponsored by Rep. Jim Hoops, to HB 264 or any other legislation.

Earlier this month, the OMA provided [opponent testimony](#) detailing its many concerns with HB 798. As noted in our testimony, HB 798 will thrust \$2.1 billion in government-mandated expenses onto Ohio businesses and families through 2030. About \$1.2 billion of that figure comes from potential Clean Air Fund charges, \$700 million or more for OVEC subsidies, and more than \$200 million in potential decoupling charges to AEP Ohio and Duke customers.

An [analysis](#) conducted for the OMA estimated the total annual cost of HB 798 to various Ohio customers – your constituents – as follows:

	Ohio Power Cost (\$/year)	Columbus Southern Cost (\$/year)	DP&L Cost (\$/year)	Duke Cost (\$/year)	Ohio Edison Cost (\$/year)	Toledo Edison Cost (\$/year)	CEI Cost (\$/year)
Small Mfg.	\$ 4,604	\$ 5,587	\$ 2,684	\$ 6,526	\$ 3,991	\$ 3,991	\$ 3,991
Medium Mfg.	\$ 34,532	\$ 41,900	\$ 20,130	\$ 48,945	\$ 29,933	\$ 29,933	\$ 29,933
Large Mfg.	\$ 43,952	\$ 43,952	\$ 26,829	\$ 44,272	\$ 39,894	\$ 39,894	\$ 39,894
Extra Large Mfg.	\$ 43,952	\$ 43,952	\$ 26,829	\$ 44,272	\$ 39,894	\$ 39,894	\$ 39,894
Lodging	\$ 3,262	\$ 3,958	\$ 1,901	\$ 4,623	\$ 2,827	\$ 2,827	\$ 2,827
School	\$ 2,246	\$ 2,725	\$ 1,309	\$ 3,183	\$ 1,947	\$ 1,947	\$ 1,947
Restaurant	\$ 951	\$ 1,154	\$ 554	\$ 1,348	\$ 824	\$ 824	\$ 824
Small Retail	\$ 720	\$ 873	\$ 420	\$ 1,020	\$ 624	\$ 624	\$ 624
Church	\$ 208	\$ 253	\$ 121	\$ 295	\$ 181	\$ 181	\$ 181
Residential	\$ 39	\$ 39	\$ 24	\$ 42	\$ 24	\$ 24	\$ 24

Annual Cost of HB 798 to Customers

While the OMA appreciates that lawmakers have recognized HB 6's flaws, HB 798 falls well short of protecting customers or markets. Moreover, HB 798 fails to address the [three main reasons why lawmakers should repeal and reform HB 6 provisions](#) yet this year to restore the public's trust.

To ensure a more competitive energy policy, the OMA continues to call for passage of HB 772, legislation by Rep. Mark Romanchuk that would repeal and reform HB 6's harmful provisions, [saving customers](#) an estimated \$3 billion over the next decade.

Now is the time to restore Ohioans' trust. Now is the time to ensure Ohio is equipped to succeed in the post-pandemic recovery. Please vote against any effort to approve HB 798 or its provisions – and instead support the timely passage of HB 772.

Thank you.

Contact: Ryan Augsburger  
OMA Staff  
614-348-1227

Rob Brundrett  
OMA Staff  
614-348-1233



**BEFORE THE SENATE ENERGY & PUBLIC UTILITIES COMMITTEE  
SENATOR BOB PETERSON, CHAIRMAN**

**TESTIMONY  
OF  
KIM BOJKO  
PARTNER, CARPENTER LIPPS & LELAND  
OMA ENERGY COUNSEL**

**FEBRUARY 2, 2021**

Mr. Chairman and members of the Senate Energy and Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter, Lipps, and Leland, where I specialize in public utility law. I also serve as energy counsel to both The Ohio Manufacturers' Association (OMA) and the OMA Energy Group. I appreciate the opportunity to present proponent testimony on Senate Bill 10 (SB 10).

The OMA represents the manufacturing sector of Ohio. We boast approximately 1,300 members – of all sizes. It is impossible to competitively operate a modern manufacturing facility without affordable and reliable power. Our membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is very important to Ohio's manufacturing competitiveness.

The OMA was an opponent of House Bill 6 (HB 6). OMA and its members testified numerous times in opposition to the anti-consumer and anti-competitive provisions of the bill now tied to the pending bribery investigation by the Southern District of Ohio's U.S. Prosecutor's Office.

During the waning days of the 133<sup>rd</sup> General Assembly, the OMA testified on several different pieces of legislation that addressed the repeal of HB 6. Last year, the OMA supported then Representative Romanchuk's House Bill 772 as the most comprehensive approach to address the problems presented by HB 6.

Today, the OMA continues to push for a legislative package that would repeal HB 6 in a manner that protects customers and markets. Then and now we suggest a repeal bill that contains the following elements:

- Repeal the Clean Air Program and rider created by HB 6 to subsidize the nuclear power plants and select renewable energy projects, which publicly available data, including from Energy Harbor itself, proves are not needed.
- Repeal the OVEC rider created by HB 6 that continues to subsidize the two old coal plants, including one in Indiana, owned by a consortium of energy companies known as the Ohio Valley Electric Corporation and prevent the PUCO from enacting a new OVEC rider without explicit approval from the General Assembly.
- Repeal the decoupling mechanism in HB 6 that benefits FirstEnergy by rewarding it with unearned income at the expense of customers. A repeal package should also require FirstEnergy to immediately refund the full amount of those ill-gotten gains to customers.

- Require the PUCO and the Ohio Air Quality Development Authority to eliminate or rescind any mechanism, charge, rule, or order enacted, authorized, or issued to implement an anti-market provision of HB 6.

The OMA also presented opponent testimony to the Significantly Excessive Earnings Test (SEET) that was included in the last General Assembly's operating budget bill, House Bill 166 (HB 166).

We are pleased SB 10 repeals both the SEET revision and the decoupling provisions and requires utilities to refund these ill-gotten gains to customers, the victims of these provisions. We think SB 10 is a good start to rebalance the relationship between customers and utilities. However, we would urge the Senate to push harder to protect customers and markets by including all the above-mentioned recommendations now in SB 10, and not wait for subsequent legislation.

### **Decoupling**

In general, a decoupling mechanism separates a utility's revenue from the volume of electricity that it delivers. Consequently, a decoupling mechanism ensures that a utility's revenue target is reached, regardless of how much electricity is sold.

Traditional decoupling mechanisms were included in Senate Bill 221 (SB 221) as a tool to help make the utilities whole from reduced sales resulting from state-mandated energy efficiency programs. Decoupling is used to remove the disincentive in order to promote energy efficiency. While legislative proponents touted HB 6 as the law that would lower customers' bills by eliminating energy efficiency mandates and the costs associated therewith, decoupling mechanisms enable the utilities to charge customers for lost distribution revenue associated with energy efficiency programs that no longer exist. Since these mandated utility-administered energy efficiency programs were repealed in HB 6 without repealing corresponding decoupling riders, customers were left taxed without any benefit. We applaud SB 10's inclusion of a repeal of the decoupling mechanisms associated with non-existent energy efficiency programs.

The HB 6 created decoupling mechanism goes far beyond traditional decoupling, benefitting only the FirstEnergy utilities to the tune of \$102 million in 2021 alone (an increase from \$17 million in 2020). The HB 6 decoupling mechanism has zero correlation with energy efficiency, demand reduction, or anything else of value to customers or a legitimate policy goal. It was devised pure and simple to provide a windfall to the FirstEnergy utilities' regulated monopolies.

Then CEO Chuck Jones famously told investors months after passage of HB 6 that the decoupling mechanism made FirstEnergy "somewhat recession proof." As Senator Romanchuk pointed out in his testimony, FirstEnergy is guaranteed to receive its 2018

distribution revenue, which is \$978 million annually, regardless of consumer usage for the foreseeable future. FirstEnergy will also receive an additional \$66.5 million per year in “lost distribution” revenue, above and beyond the \$978 million in base distribution revenue. By making this change, FirstEnergy successfully transfers risk to its customers.

Characteristic	Typical Decoupling Mechanism	HB 6 Decoupling Mechanism
Utility revenue recovered from ratepayers	Average sales year	Very high sales year
Overcharges	Credited to customers	Unlikely to be credited to customers
Revenue requirement reevaluation	Next scheduled distribution rate case	No scheduled distribution rate case (could be in perpetuity)
Joint policy initiatives	Energy efficiency programs, distributed generation programs	None
Effected utilities	Available to all state-regulated electric distribution utilities	Just FirstEnergy utilities
Regulatory process allowing customer engagement	Yes	No

**Table 1. Typical Decoupling vs H.B. 6 Decoupling Design Features**

I’ve incorporated a table in my testimony contrasting the HB 6 created decoupling mechanism from traditional or typical decoupling mechanisms. Additionally, I have attached an OMA commissioned analysis by energy consultant RunnerStone that outlines in depth decoupling and the provisions in HB 6.

### **Significantly Excessive Earnings Test**

The original SEET was contained in comprehensive energy reform legislation (SB 221) more than a decade ago. The SEET is the lynchpin of SB 221’s consumer rate protections, prohibiting utilities from charging rates that generate “significantly excessive earnings.” Profits earned by a utility above the “significantly excessive” threshold must be refunded to customers.

In the years since enactment, the PUCO has twice defined greater than 17% return on equity as the threshold to trigger SEET customer refunds (OMA and numerous other parties contested that level as overly generous). Regrettably for customers, the Ohio SEET profit threshold is greater than in many competitor states and has allowed Ohio’s electric utilities to reap greater profits from captive customers than in other states where return on equity is typically much lower.

The SEET applies to utility profits stemming from Electric Security Plan (ESP) cases (EPSs were also a mechanism created in SB 221). ESPs are filed by electric distribution utilities to provide a variety of services in exchange for distribution charges on customer bills.

Customers are increasingly unified that these two ratemaking provisions are anti-competitive and unfair and bad for consumers and Ohio's economy.

Prior to HB 166 of the 133<sup>rd</sup> General Assembly, the PUCO was required to perform SEET on a utility-by-utility basis to determine if individual utilities over earned. Under the test, if a utility over earned, the utility refunded the excess earnings to its customers.

But HB 166 changed the SEET and required the PUCO to consider the total earned return on equity of all three distribution utilities of FirstEnergy collectively when applying the SEET.

With the HB 166 change, if one distribution utility in a family of distribution utilities is over earning, it will offset an affiliated distribution utility that is not as profitable. The bill allowed FirstEnergy to shield a utility that is excessively earning by offsetting those excessive profits with an affiliated utility that is not as profitable, allowing the parent company to retain profits that are otherwise required to be given back to customers. This eliminated a customer protection that was enacted as part of Ohio's ESP ratemaking statutes.

The ramification is that FirstEnergy does not have to refund monies to customers for one of its utilities if that utility is over earning.

This provision did nothing to protect customers. Instead, it protected only the FirstEnergy utilities at the expense of their customers. We fully support its inclusion in SB 10.

### **Conclusion**

While SB 10 is a good first step in the right direction, the Senate would do well to consider including the additional enumerated provisions to help protect customers and markets from the indefensible policies enshrined in HB 6.

We thank Senator Romanchuk for sponsoring this important legislation to protect and grow Ohio manufacturing.

Thank you. I would be happy to answer any questions.

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## MEMORANDUM

Date: September 17, 2020

To: The Ohio Manufacturers' Association

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

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

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H.B. 6 has well-known provisions that affect Ohio's nuclear power plants, coal power plants, select solar power plants, and energy efficiency. Less well-known is a confusing decoupling provision. Fortunately, FirstEnergy's CEO put the effect of the provision in plain language for its investors:

“essentially it takes about one-third of our company and I think makes it somewhat recession-proof”<sup>1</sup>

As a result of this decoupling provision, FirstEnergy could collect about \$355 million in unearned revenue through 2024. Ratepayers will incur higher electricity costs with no associated benefits. Moreover, a unilateral ruling from the PUCO could extend FirstEnergy's decoupling at the utility's discretion. This could, for example, cost FirstEnergy customers an additional \$400 million if extended from 2025 through 2030.<sup>2</sup>

Decoupling can be a legitimate policy when carefully implemented with best practices and coupled to other state policy objectives. However, H.B. 6's decoupling provision does not follow best practices, nor does it advance any state policy goal. The table below shows a comparison of the design features of a typical decoupling mechanism and those of FirstEnergy's HB6-enabled decoupling mechanism.

<sup>1</sup> <https://www.utilitydive.com/news/firstenergy-nears-proposal-to-decouple-ohio-utility-revenues-electricity-c/566610/>

<sup>2</sup> Memorandum to The Ohio Manufacturers' Association, “H.B. 6 Decoupling Provision - \$355 Million for FirstEnergy through 2024, Possibly Millions More”, [https://ohiomfg.informz.net/ohiomfg/data/images/-%20OMA%20MEMO%20-%20HB%206%20Decoupling%20-%20FINAL%20\(Aug.%2014,%202020\).pdf](https://ohiomfg.informz.net/ohiomfg/data/images/-%20OMA%20MEMO%20-%20HB%206%20Decoupling%20-%20FINAL%20(Aug.%2014,%202020).pdf).

Characteristic	Typical Decoupling Mechanism	HB 6 Decoupling Mechanism
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Joint policy initiatives	Energy efficiency programs, distributed generation programs	None
Effected utilities	Available to all state-regulated electric distribution utilities	Just FirstEnergy utilities
Regulatory process allowing customer engagement	Yes	No

**Table 1. Typical Decoupling vs H.B. 6 Decoupling Design Features**

In the remainder of this memo we review the policy behind decoupling and further describe differences between H.B. 6’s decoupling provision and typical decoupling provisions.

### Decoupling Basics

Electric utility monopolies are motivated to increase their profits, like any business. However, electric utility monopolies do not compete for new customers or with new products to increase profits. Instead, monopoly electric utilities receive a government-administered return on and of its investments. Overtime, this traditional model has incited utilities to overbuild to increase its financial return. The more a utility builds, the greater its total return.

The utility recovers its costs and return - the sum of which is called the revenue requirement - through charges on electricity sold (kWh), charges on customer peak power needs (kW), and customer service charges set in rate cases which have been historically held every 3 to 10 years. However, because customer kWh and kW are not constant in any given year, a utility will collect more or less than its revenue requirement in years between rate cases. A utility would prefer to over-collect between rate cases. This dynamic incents utilities to actively discourage customer energy-efficiency and on-site generation. By driving up customer consumption between rate cases, utilities can increase their profits. As a result, utility cultures and practices can form that actively discourage customer energy-efficiency and on-site generation adoption. Utilities can actively discourage customer energy management through their electric tariff designs, interconnection policies, and account management culture.

Simply put, traditional electric utility monopolies are incited to overbuild, oversell, and discourage customer energy management and choice.

Importantly, competitive markets have been an effective policy antidote for the distorted economic incentives of monopolies. Competitive markets have been employed for power generation. However, they have not been employed for electric distribution companies (the “wires” companies).

While electric distribution utilities were originally competitive during the very early years of the industry, today, it is typical for distribution companies to be government-granted monopolies.

Absent readily competitive markets for “wires” companies, some states have implemented decoupling to combat utility overbuilding and overselling. Traditional decoupling requires a utility to true-up its collected revenue between rate cases to its revenue requirement. As a result, where true decoupling is in place, the utility is not incented to over-sell electricity between rate cases, because it would have to refund customers for over-collection. Constraining energy sales thus also limits overbuilding, which is driven by sales forecasts. And, if sales for some reason are too low, the utility is also protected. Subsequently, decoupling has several goals:

1. Protects customers and automatically issues customer rate decreases or credits between rate cases in case of over-collection;
2. Allows distribution utilities to recover prudent costs to provide distribution service;
3. Encourages the distribution utility to be more cost-efficient with their operational costs and capital costs; and
4. Reduces the distribution utility’s opposition to customer choice around energy efficiency and on-site generation.

Decoupling policies are often jointly implemented with state policies to encourage energy efficiency and on-site generation. Sometimes these proactive policies are desired, especially where local utilities have strong anti-efficiency and anti-customer choice cultures. Common sense and recent experience tell us that an anti-customer choice culture persists within Ohio’s utilities.

### **H.B. 6’s Decoupling Provision Design Features**

H.B. 6’s decoupling provision is missing or distorts important design features of a typical decoupling mechanism and will not have the intended effect of a true decoupling policy. In this sense, it is decoupling in name only. In effect, it is a semi-permanent over-charge policy that allows FirstEnergy’s utilities to profit. And, currently, it is only FirstEnergy’s utilities that profit.

There are best practices when designing decoupling. FirstEnergy’s decoupling does not follow those best practices.

#### Very High Utility Sales and Customer Overcharges

A typical decoupling mechanism pegs a utilities revenue requirement to a typical year of capital and operational expenses. H.B. 6 severely distorted this approach by instead prescribing FirstEnergy’s revenue requirement to the revenue it received in a peak sales year, 2018. Note, it was not based on the revenue requirement for 2018, which is based on expected costs, but, instead, it was based on the actual revenue FirstEnergy received. FirstEnergy had higher sales in 2018 as compared to other years, partially due to abnormally high temperatures which increased customer consumption. By prescribing 2018 as a representative year, this inflates the revenue requirement, which increases customer bills with no associated benefits.

Moreover, FirstEnergy's decoupling mechanism includes no revenue adjustments, and its resulting significantly excessive profits are unlikely to be capped. Typically, there are adjustments required for situations such as unseasonable weather, major changes in number of customers, or economic recession. Such adjustments are to mitigate the risk to customers of the distribution utility receiving windfall profits from circumstances that make an actual year much different than the representative or "test" year. These adjustments are in place to handle the very circumstance we are facing in 2020. COVID-19 has significantly reduced customer consumption and peak usage than a typical year, causing the distribution utility to receive less revenue. Yet, since FirstEnergy's decoupling plan includes no adjustments, FirstEnergy can receive greater profit due to the economic downturn, which increases customer bills with no associated benefits. Despite the economic downturn, the H.B. 6 decoupling mechanism will allow FirstEnergy to receive the same record revenue that it received in 2018.

Additionally, unusual revenue was also included in the H.B. 6 decoupling provision. Typically, decoupling establishes the revenue requirement based on typical operational and capital costs. FirstEnergy's decoupling provision also included so-called "lost revenue" from energy efficiency programs from the past as revenue they also need in the future. This so-called lost revenue equals approximately \$66 million per year, potentially in perpetuity. Put proverbially, FirstEnergy is having its cake and eating it too.

Moreover, a near simultaneous law change governing FirstEnergy's significantly excessive profits will allow FirstEnergy utilities to keep profits that previously may have been refunded to customers.<sup>3</sup>

### Joint Policy Initiatives

As discussed, decoupling is often paired by lawmakers with policies that advance customer energy-efficiency or customer-sited distributed generation. FirstEnergy CEO Chuck Jones even referenced energy efficiency to justify this decoupling provision, saying it "Allows us to continue to promote energy efficiency with our customers so that they can get the benefit of that without impacting our base revenues."<sup>4</sup> This is a curious statement as H.B. 6 simultaneously ended the requirement for Ohio's distribution utilities to achieve energy efficiency savings. And, FirstEnergy proactively suspended the bulk of their energy-efficiency programs early, in January 2020, even though they were under no requirement to do so. The other Ohio utilities, which have not implemented the H.B. 6 decoupling mechanism, offered efficiency programs through 2020. Furthermore, FirstEnergy also has taken no steps to offer non-mandated efficiency programs in 2020 as Jones' statement may suggest.

The H.B. 6 decoupling provision furthers none of Ohio's policy goals.

<sup>3</sup> Memorandum to the Ohio Manufacturers' Association Energy Group, "Impact of the 2019 FirstEnergy SEET Amendment", <https://www.ohiomfg.com/wp-content/uploads/OMA-Memos-SEET-Combined-CLL-and-RS-Aug-20-2020.pdf>.

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

### Effectuated Utilities

H.B. 6's decoupling provision does not apply statewide. H.B. 6 included some eligibility limitations to the decoupling provision that have constrained its application to other utilities. For example, the provision states that revenue recovery be "recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending on December 31, 2018." As it happens, only FirstEnergy has implemented a decoupling mechanism and is receiving decoupling revenues based on the H.B. 6 provision. Duke is not eligible for the decoupling mechanism and AEP Ohio and DP&L have not yet implemented an H.B. 6 decoupling mechanism (although AEP Ohio has tried).

### Regulatory Process with Customer Engagement

Typically, the details of a decoupling mechanism will be determined within a regulatory process that allows customer intervention. H.B. 6's decoupling provision prescribed considerable detail without customer input. The design process was non-transparent and non-representative.

Finally, the PUCO issued a ruling on its own accord after the passage of H.B. 6, which gives FirstEnergy discretion on when it next files a distribution rate case. H.B. 6's decoupling provision's term is limited to its current distribution rate case. Thus, the PUCO's ruling could allow the H.B. 6 decoupling provision to extend in perpetuity. We expect that FirstEnergy will do so, so long as decoupling is more financially beneficial to it than what could be achieved with a new rate case.



**BEFORE THE SENATE ENERGY & PUBLIC UTILITIES COMMITTEE  
SENATOR BOB PETERSON, CHAIRMAN**

**TESTIMONY  
OF  
KIM BOJKO  
PARTNER, CARPENTER LIPPS & LELAND  
OMA ENERGY COUNSEL**

**FEBRUARY 23, 2021**

Mr. Chairman and members of the Senate Energy and Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter, Lipps, and Leland, where I specialize in energy and public utility law. I also serve as energy counsel to both The Ohio Manufacturers' Association (OMA) and the OMA Energy Group. I appreciate the opportunity to present interested party testimony on Senate Bill 44 (SB 44).

The OMA represents the manufacturing sector of Ohio. We boast approximately 1,300 members – of all sizes. It is impossible to competitively operate a modern manufacturing facility without affordable and reliable power. Our membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is very important to Ohio's manufacturing competitiveness.

The OMA was an opponent of House Bill 6 (HB 6). OMA and its members testified numerous times in opposition to the anti-consumer and anti-competitive provisions of the bill now tied to the pending bribery investigation by the Southern District of Ohio's U.S. Prosecutor's Office.

Harmful provisions of HB 6 included the following:

- A. Clean Air Fund/Subsidies for Nuclear Plants: HB 6's "crown jewel" was a \$150 million-a-year subsidy for the owner of Ohio's two nuclear power plants. This subsidy, financed by Ohio's electric consumers, cannot be justified – especially since publicly available financial data and the owner's proposed \$800 million stock buyback have demonstrated that the subsidy was and is not needed. An additional \$20 million subsidy for select solar plants brings this subsidy total to \$170 million annually.
- B. Decoupling (Profit Guarantees): The bill's decoupling mechanism provided FirstEnergy utilities with 2018 revenue levels (plus at least an additional \$66 million each year), regardless of the amount of electricity sold. The data and analyses demonstrate how HB 6 authorized the FirstEnergy utilities to collect \$355 million through 2024 – and hundreds of millions more in later years – from Ohio's electric customers. (FirstEnergy CEO told investors this provision would make the company "somewhat recession proof.")
- C. OVEC Subsidies: HB 6 provided additional subsidies for the utility owners of the Ohio Valley Electric Corporation (OVEC) coal plants – subsidies estimated to be worth \$700 million through 2030. One of the two plants is in Indiana.

Senate Bill 10 was recently unanimously passed by the Ohio Senate and removed the decoupling provisions of HB 6 along with the modified Significantly Excessive Earnings Test (SEET) passed in House Bill 166 that specifically benefits the FirstEnergy utilities at the detriment of ratepayers.

SB 44 takes the next step. The bill removes all the provisions regarding the nuclear resource credit program. Since mid-2019 the OMA has provided information regarding the Federal Energy Regulatory Commission's long awaited Minimum Offer Price Rule (MOPR). We cautioned this committee of the obstacle posed by MOPR. In June of 2019, OMA stated: "This is a real, probable, and possibly unintended consequence of H.B. 6 – that Ohio's nuclear power plants will be ineligible to compete in wholesale capacity auctions and will likely be further impaired financially by this loss in revenue."<sup>1</sup> Regrettably, those cautions were not heeded. Now, as we predicted, Energy Harbor is requesting a repeal of these unneeded provisions less than two years after an acrimonious fight in the General Assembly that left a trail of destruction including the arrests of five individuals.

During the waning days of the 133<sup>rd</sup> General Assembly, the OMA testified on several different pieces of legislation that addressed the repeal of HB 6. Last year, the OMA supported then Representative Romanchuk's House Bill 772 as the most comprehensive approach to address the problems presented by HB 6. We still believe that would be the best approach to protect Ohio's business and residential customers.

While SB 44 and SB 10 are good first steps to repealing portions of HB 6, which were established under questionable circumstances and continue to be under federal and state investigations, OMA encourages the Senate to go further and repeal the entirety of the expensive and unneeded Clean Air Fund and the OVEC rider that continues to subsidize two old coal plants, including one in Indiana, and prevent the PUCO from enacting a new OVEC rider without explicit approval from the General Assembly.

## **Conclusion**

SB 44 takes the next step following SB 10's good first step. We would encourage the committee to go further by eliminating other subsidies from HB 6. This body has a great opportunity to finish the job and help protect customers and competitive markets from some of the indefensible policies enshrined in HB 6.

Thank you. I would be happy to answer any questions.

<sup>1</sup> See <https://www.ohiomfg.com/wp-content/uploads/HB-6-Memo-on-Nuclear-Plant-Revenue-7.16.19-JS-rev.pdf>



**BEFORE THE HOUSE PUBLIC UTILITIES COMMITTEE  
REPRESENTATIVE JIM HOOPS, CHAIRMAN**

**TESTIMONY  
OF  
KIM BOJKO  
PARTNER, CARPENTER LIPPS & LELAND  
OMA ENERGY COUNSEL**

**FEBRUARY 23, 2021**

Mr. Chairman and members of the House Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter, Lipps, and Leland, where I specialize in energy and public utility law. I also serve as energy counsel to both The Ohio Manufacturers' Association (OMA) and the OMA Energy Group. I appreciate the opportunity to present proponent testimony on House Bill 128 (HB 128).

The OMA represents the manufacturing sector of Ohio. We boast approximately 1,300 members – of all sizes. It is impossible to competitively operate a modern manufacturing facility without affordable and reliable power. Our membership includes many of the largest, most sophisticated energy users in the state. Some of our members consume the same amount of electricity as a medium-sized city. In short, energy is very important to Ohio's manufacturing competitiveness.

The OMA was an opponent of House Bill 6 (HB 6). OMA and its members testified numerous times in opposition to the anti-consumer and anti-competitive provisions of the bill now tied to the pending bribery investigation by the Southern District of Ohio's U.S. Prosecutor's Office.

Harmful provisions of HB 6 included the following:

- A. Clean Air Fund/Subsidies for Nuclear Plants: HB 6's "crown jewel" was a \$150 million-a-year subsidy for the owner of Ohio's two nuclear power plants. This subsidy, financed by Ohio's electric consumers, could not be justified – especially since publicly available financial data and the owner's proposed \$800 million stock buyback demonstrated that the subsidy was and is not needed. An additional \$20 million subsidy for select solar plants brought this subsidy total to \$170 million annually.
- B. Decoupling (Profit Guarantees): The bill's decoupling mechanism provided the FirstEnergy utilities with 2018 revenue levels (plus at least an additional \$66 million each year), regardless of the amount of electricity sold. The data and analyses demonstrate how HB 6 authorized the FirstEnergy utilities to collect \$355 million through 2024 – and hundreds of millions more in later years – from Ohio's electric customers. (FirstEnergy CEO told investors this provision would make the company "somewhat recession proof.")
- C. OVEC Subsidies: HB 6 provided additional subsidies for the utility owners of the Ohio Valley Electric Corporation (OVEC) coal plants – subsidies estimated to be worth \$700 million through 2030. One of the two plants is in Indiana.

During the waning days of the 133rd General Assembly, the OMA testified on several different pieces of legislation that addressed the repeal of HB 6. Last year, the OMA

supported then Representative Romanchuk's House Bill 772 as the most comprehensive approach to address the problems presented by HB 6. We still believe that would be the best approach to protect Ohio's business and residential customers.

Nonetheless, while not addressing all of the issues that we raised about HB 6 over the past two years, HB 128 begins the process of rebalancing Ohio's utility laws between customers and utilities.

HB 128 eliminates the Clean Air Fund subsidies for Ohio's two nuclear plants and select solar projects in the state. Since mid-2019, the OMA has provided members of the General Assembly information regarding the Federal Energy Regulatory Commission's long awaited Minimum Offer Price Rule (MOPR). At that time, we cautioned of the obstacle posed by MOPR, stating that the nuclear plants would not be able to participate in the capacity auctions with a state subsidy in the law. More specifically, in June of 2019, OMA explained: "This is a real, probable, and possibly unintended consequence of H.B. 6 – that Ohio's nuclear power plants will be ineligible to compete in wholesale capacity auctions and will likely be further impaired financially by this loss in revenue."<sup>1</sup> We are pleased to see that others now agree with our initial analysis regarding the rule.

The bill also repeals the FirstEnergy utilities' decoupling provisions and removes the modification to the Significantly Excessive Earnings Test included in House Bill 166, last General Assembly's operating budget bill. Finally, the bill also provides for a transmission study.

While these are necessary provisions, we would urge this committee to continue the repeal of other utility friendly provisions contained in HB 6, most notably the subsidies for OVEC. HB 6 codified and extended the subsidy for OVEC through 2030. OVEC owns two legacy, uneconomical power plants, Clifty Creek in Indiana and Kyger Creek in Ohio. The OVEC subsidy currently collects tens of millions of dollars each year from customers of AEP Ohio, Duke, and DP&L. FirstEnergy customers are now receiving new charges for the first time to subsidize OVEC, due to provisions in HB 6.

HB 128 is a positive step in the right direction, repealing many of the bad provisions of HB 6. OMA supports the bill, however, as stated above, we would highly encourage this body to take the next step and repeal the OVEC subsidies in HB 6 as well.

Thank you. I would be happy to answer any questions.

<sup>1</sup> See <https://www.ohiomfg.com/wp-content/uploads/HB-6-Memo-on-Nuclear-Plant-Revenue-7.16.19-JS-rev.pdf>



## An Analysis of Ohio Nuclear Plant Profitability Under House Bill 6

The Ohio House of Representatives recently passed House Bill 6 (H.B. 6), a major rework of Ohio's electricity policy. H.B. 6 would significantly affect customer costs and how electricity markets function in Ohio. Energy counsel for The Ohio Manufacturers' Association (OMA), Kim Bojko of Carpenter Lipps & Leland, has separately provided a [legal analysis](#) on what H.B. 6 does and how it works.

In summary, H.B. 6 creates excessive profit for Ohio's nuclear plants of up to \$330 million per year over the six-year term of the Clean Air Program. In this memo we examine the nuclear plants' profitability, multiple compensation mechanisms for nuclear power plants in H.B. 6, how the bill would trigger special treatment of the nuclear plants' capacity revenue, and forthcoming changes in wholesale electricity markets that create additional revenue for nuclear plants.

### Nuclear Plant Profitability

H.B. 6 was passed with the purported intent to keep Ohio's two nuclear power plants, Davis-Besse and Perry, up and running. The owner of these two nuclear plants, FirstEnergy Solutions (FES), is currently going through bankruptcy proceedings. However, FES is expected to emerge from bankruptcy financially solvent. And the financial well-being of FES is not necessarily reflective of the financial viability of its nuclear power plants. Thus, questions remain:

- How financially viable are the nuclear power plants presently?
- And will the nuclear power plants emerge from bankruptcy in a better financial position?

### Ohio's Nuclear Plants' Excessive Profit Under House Bill 6

- Currently plants may not need financial support.
  - Dr. Paul Sotkiewicz estimates \$72 million annual profit presently.
- H.B. 6 may contribute to excessive profits of an estimated \$330 million a year.
  - Of that, \$150 million a year from Clean Air Credits.
- H.B.6 triggers changes in capacity auctions.
  - Plants removed from capacity auction - \$82 million a year.
  - Possible \$157 million a year in State of Ohio capacity revenue envisioned by FES.
- Other changes to PJM electricity market include energy market rule changes - \$33 million a year.

Two authoritative sources have addressed the nuclear power plants' profitability. PJM's Independent Market Monitor releases an annual "State of the Market" report, which includes financial surplus or shortfall of PJM's 18 nuclear power plants.

We have reproduced the Independent Market Monitor's estimates in the table below. The Monitor estimates that three of PJM's 18 nuclear plants are losing money, while the other 15 are profitable.

**Table 7-42 Nuclear unit forward annual surplus (shortfall) (\$ in millions)<sup>56</sup>**

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

*Table 1: Independent Market Monitor Estimates of Nuclear Power Plant Annual Financial Surplus or Shortfall.*

There are several insights to glean from this analysis. First, Ohio participates in the regional PJM electricity market, and most nuclear power resources in this market will continue to operate and be profitable. In other words, Ohio's access to low-carbon nuclear power is not significantly at risk.

Another insight is that FES's two Ohio nuclear plants are estimated to lose \$93 million in 2021. While this is a significant loss, it is substantially less than the \$165 million annual payment expected from the Clean Air Program created under H.B. 6.

### **Estimates of Nuclear Power Plant Annual Financial Surplus or Shortfall**

The Independent Market Monitor cannot disclose specific power plant financial data, and so Table 1 presents estimates. Thus, the Monitor relies on average operating costs data from the Nuclear Energy Institute to estimate operating costs, as well as public data on

energy production and wholesale electricity market prices to estimate revenue. The estimated operating costs reflect typical single unit nuclear plant costs. If FES's nuclear plants are losing more money than this estimate, it would demonstrate that they are not operating their plants as efficiently as the industry average. This means the Clean Air Program would be compensating for below-average operating performance, not just the benefits of nuclear power.

Another separate financial analysis was completed by Dr. Paul Sotkiewicz, former chief economist for PJM. Dr. Sotkiewicz's financial analysis shows that post-bankruptcy, the Davis-Besse and Perry nuclear plants will likely turn an annual profit. Dr. Sotkiewicz estimates the annual profit to be \$28 million for Davis Besse and \$44 million for Perry, for a combined profit of \$72 million annually<sup>1</sup>.

Dr. Sotkiewicz's estimates differ from the Independent Market Monitor's for two main reasons. First, Dr. Sotkiewicz accounts for the nuclear plants' financial situation post-bankruptcy. Second, Dr. Sotkiewicz relies on specific financial filings of these nuclear power plants.

These financial estimates call into question the following:

- Do the Davis-Besse and Perry nuclear power plants need financial assistance?
- Does the Clean Air Program over-compensate the nuclear power plants?
- Is the Clean Air Program compensating poor business decisions, in addition to the environmental benefits of nuclear power?

## **H.B. 6 Revenue Streams for Nuclear Plants**

H.B. 6 creates a Clean Air Program, financed by charges applied to each customer of an Ohio investor-owned utility (AEP Ohio, DP&L, Duke, and the FirstEnergy companies). Each year the Clean Air Program will pay \$9 for each MWh of electricity produced by nuclear power plants. According to the U.S. Energy Information Administration (EIA), over the past three years, Davis-Besse produced 7,216,607 MWh on average, and Perry generated 10,390,121 MWh on average. However, HB 6 provides for total compensation to the nuclear plants at \$150 million per year.

Therefore, it is estimated that under the Clean Air Program, the nuclear plants would be compensated as follows:

*7,216,607 MWh (Davis-Besse) + 10,390,121 MWh (Perry) = 17,606,728 MWh*

*17,606,728 MWh x \$9 /MWh (Clean Air Credit) = \$158,460,552/year*

*Annual compensation = \$150,000,000 /year*

Nuclear power plant output will vary from year to year, depending on the plants' refueling schedule and up-time.

<sup>1</sup> "The Market and Financial Position of Nuclear Resources in Ohio", Dr. Paul Sotkiewicz, E-Cubed Policy Associations, LLC. Table 12

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## H.B. 6 Triggered Capacity Auction Changes

H.B. 6 not only sets into sequence a series of reactions in the wholesale electricity market, which will affect Ohio's electricity prices, but also how the nuclear power plants are compensated for electricity, and the level of that compensation. At the heart of this set of reactions are forthcoming changes to PJM's electric capacity auction. The capacity auction is the mechanism by which PJM assures enough electricity resources are available for the grid system at times of peak demand. Please note that capacity payments are an important part of overall economic viability for a power plant.

However, PJM is also charged with ensuring a fair and level playing field for power plants competing for capacity payments. This is especially true now, as PJM is consistently exceeding its reliability goal and there is an abundance of power plants on the grid, with even more new entrants waiting.

With this abundance of generation, uneconomic power plants may be unable to compete and receive a capacity payment. As a result, some uneconomic power plants are seeking subsidies from their respective states to remain viable. This undermines the integrity of the market. And the Federal Energy Regulatory Commission (FERC) has thus deemed PJM's capacity auction as unjust and unreasonable. FERC has issued guidelines, with time for comment, that essentially will wall-off generating plants that receive materially significant state subsidies from participating the PJM's capacity auction.

In simple terms, if H.B. 6 passes, Ohio's nuclear power plants would be removed from PJM's capacity auction, and they would lose the ability to earn this revenue. We estimate this lost revenue potential at around \$82 million a year, as shown in the calculation below:

*894 MW (Davis-Besse) + 1,256 MW (Perry) = 2,150 MW (combined capacity)*  
*2,150 MW x \$105 /MW-day (3-year average capacity price) x 365 days/year = \$82 million/year*

This is a real, probable, and possibly unintended consequence of H.B. 6 – that Ohio's nuclear power plants will be ineligible to compete in wholesale capacity auctions and will likely be further impaired financially by this loss in revenue. This is probably an untenable financial position for the nuclear plants.

Fortunately, there is no need for speculation. FirstEnergy Solutions has already provided comment on these rules, including advice on how Ohio can make up for this unexpected loss of revenue. Specifically, FES states that credits for zero emissions for nuclear plants are "not intended to provide resources with sufficient revenue, in the absence of a capacity payment, to make continued operation viable"<sup>2</sup>.

This is to say, FES intends to ask for capacity payments in addition to Clean Air Credit payments. Because PJM will not provide these capacity payments, the state of Ohio would need to do so, and Ohio ratepayers would need to cover this cost. FES has provided an example of around \$200 /MW-day compensation for capacity. At this rate, Ohio would need to create the following additional revenue for the nuclear power plants:

<sup>2</sup> FERC Docket EL18-178, Initial Comments of FirstEnergy Solutions Corp., Page 10

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*2,150 MW x \$200 /MW-day (3-year average capacity price) x 365 days/year = \$157 million/year*

Note: H.B. 6 does not create a mechanism for Ohio to set capacity prices, collect the costs from ratepayers, or pay the payment to generators.

### **Other Changes in PJM's Electricity Market**

While the nuclear plants will not be eligible for capacity payments from PJM, they will still participate in PJM's energy markets, which compensate generators for the electricity they produce, as opposed to the peak capacity. The energy markets, too, are undergoing rule changes that are expected to create increased revenue for nuclear power plants – specifically, changes to the Operating Reserve Demand Curve included in PJM's Price Formation Filing.

According to the Independent Market Monitor, nuclear power plants will receive an additional \$15,344 /MW-year<sup>3</sup> due to changes in the Operating Reserve Demand Curve. This would create an additional \$33 million/year for Ohio's nuclear power plants:

*2,150 MW x \$15,344 /MW-year = \$33 million/year*

PJM is also investigating carbon pricing for its market. While it is too early to say if a rule would pass, how it would work, and what revenue it would create for Ohio's nuclear plants, one can assume there is the possibility of future payments for carbon-free generation.

### **Excessive Profits Potential**

H.B. 6 thus sets up significant excessive profit potential for Ohio's nuclear plants. For example, should the nuclear power plants be profitable post-bankruptcy, and should Ohio create a capacity payment to replace PJM's for the nuclear plant, Ohio's nuclear plants would have the following annual profits:

*\$72 million/year (post-bankruptcy profit) + \$150 million/year (Clean Air Program revenue) - \$82 million/year (capacity auction lost revenue) + \$157 million/year (Ohio set capacity revenue) + \$33 million/year (PJM price formation changes) = \$330 million/year*

If we use the Independent Market Monitor's estimates of the two nuclear plants' financial losses – and we assume that Ohio does not create a capacity price and payment mechanism for the plants – the net annual profits of the nuclear plants under H.B. 6 are still \$16.5 million.

### **Conclusions and Findings**

Based on the above data, Ohio policymakers should take into consideration the following questions:

- Do the nuclear plants truly need financial support, post-bankruptcy?

<sup>3</sup> Monitoring Analytics, "ORDC Simulation Results: Version 2", Table 20.

- Does H.B. 6 create excessive profits for the nuclear power plants?
- Can Ohio's payments to the nuclear power plants be lowered if the plants start receiving additional revenue from energy markets?
- Will Ohio be asked, or required, to create a capacity payment mechanism for the nuclear power plants to replace the probable loss of PJM capacity payments to the nuclear power plants?



## **House Bill 128 Sponsor**

Vice-Chair Ray, Ranking Member Smith and members of the House Public Utilities Committee thank you for allowing myself and Representative Dick Stein to give sponsor testimony on House Bill 128. This is a legislative package that is the result of extensive hearings, conversations, and feedback from the 133<sup>rd</sup> General Assembly and the current 134<sup>th</sup> General Assembly.

We, along with others both Republicans and Democrats did support HB 6 when it was brought up for a vote last year. We felt this was a way to save the nuclear plants and save over 4,000 jobs in the State of Ohio and make sure we continue to have clean power and a diversified energy portfolio. It also was projected to save the ratepayer an estimated \$2.3 billion over the term of the legislation.

However, when the story broke about the scandal and what was happening behind the scenes I, along with every member of this General Assembly was angry, disgusted and disappointed in what we were hearing. Those who voted for the bill voted for what was in the bill and discussed in committee hearings. We did not vote for what was happening behind the scenes and in a room somewhere outside the Statehouse. The people of this State have entrusted us to represent them here in Columbus in an honorable way by making the best decisions based on the information we have for the issues we have before us. Well that trust was taken advantage of and as you are well aware by reading the stories in the media and will continue to read those stories in the media those who have allegedly broken that trust, if found guilty, will pay dearly.

Today we are here before you to ask you to join us in supporting this legislation that will continue to move the State of Ohio forward in the energy sector to make sure Ohioans will have reliable, diversified and low cost energy. This legislation is simple and will do the following things:

### **Repeals the nuclear and solar subsidy**

Since the enactment of House Bill 6, several changes affecting nuclear energy policy have taken place at the federal level. One, the Federal Energy

Regulatory Commission (FERC) applied the Minimum Offer Price Rule (MOPR) to state-subsidized generation in PJM which has diluted the nuclear credit support program included in House Bill 6. Second, Congress and the Biden Administration have signaled enacting some type of federal support for nuclear plants. These changes have made the subsidy no longer necessary to maintain operations at Ohio's two nuclear plants, Davis-Besse and Perry.

In regards to the solar program, when House Bill 6 passed the House, there were only six utility scale solar projects sited by the Ohio Power Siting Board (OPSB). Today, there are almost 25 projects in some form of development at the OPSB and more are expected to follow. This industry also receives support from a federal tax credit which was again extended in the most recent federal omnibus spending package. Therefore, in order to not pick winners and losers in the solar industry, we have decided to end that program as well.

### **Repeals the HB 6 decoupling provision**

House Bill 128 would end the HB 6 decoupling provision and require the PUCO to order refunds to FirstEnergy ratepayers. The cost of this provision has grown in the past year from an estimated \$17 million in 2020 to around \$115 million in 2021.

As a result of this bill, it is estimated FirstEnergy ratepayers will receive a refund of around \$20 million for the partial collection in 2021. This provision is similar in-concept to the as passed by committee House Bill 798 from last General Assembly and the as passed by Senate committee Senate Bill 10.

### **Repeals the SEET (Significant Excessive Earnings Test) provision from HB 166**

The bill removes the SEET provision contained in the budget from the 133<sup>rd</sup> General Assembly and requires any potential benefit to be refunded to ratepayers. This language is similar both to the as passed by committee House Bill 798 from last General Assembly and the as passed by Senate committee Senate Bill 10.

### **OSPB transmission report**

In recent years, electric transmission system owners have significantly increased their investment in transmission facilities. According to a 2018

report by the Brattle Group, U.S. transmission investments by FERC regulated providers increased from \$2 billion a year in the 1990s to \$20 billion a year over the last five years. Further, they project \$120 to \$160 billion of investments over the next decade.

This legislation would require the Ohio Power Siting Board, in consultation with JobsOhio and PJM, and require least one public meeting, to submit a report to the General Assembly, not later than December 1, 2021, on whether the current requirements for planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers.

In closing, House Bill 128 will result in further ratepayer protections and rate decreases for some Ohio ratepayers over current law. This is the result of the elimination of the FirstEnergy decoupling provision (~\$115 million per year), the elimination of the nuclear and solar subsidies (\$170 million per year), and setting up future legislation to control the rapid growth of transmission costs.

Thank you again for allowing me the opportunity to present HB 128 to you today. We would be happy to answer questions.

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## MEMORANDUM

Date: December 21, 2020

To: The Ohio Manufacturers' Association

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

RE: Ohio's Nuclear Generation Fund and the Minimum Offer Price Rule (MOPR)

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It has been reported in the news media that certain legislators in Ohio's General Assembly are claiming that Energy Harbor, the owner of two nuclear power plants in Ohio, is lobbying lawmakers to be given the option to accept or deny nuclear resource credits from the state<sup>1</sup>. The nuclear resource credits were created for Energy Harbor's nuclear plants in 2019's controversial H.B. 6, the law that is at the center of a federal racketeering case.

The Nuclear Generation Fund and its credits would be continued in the proposed H.B. 798, which recently passed the House Select Committee on Energy Policy and Oversight. According to the media, Energy Harbor is concerned that nuclear resource credits would trigger the Minimum Offer Price Rule (MOPR) in PJM's wholesale electricity markets for its nuclear plants. Being subject to the MOPR would make it more difficult for the nuclear plants to bid into the market, potentially depriving the power plants of earned revenue.

The OMA communicated this issue in its January 2020 communication "FERC's December 2019 Order on State Subsidies"<sup>2</sup>. The MOPR order was issued over a year ago.

Ohio's General Assembly is at this date still debating a replacement for H.B. 6, and thus information on the dynamic between the nuclear resource credits and the MOPR is timely and critical. Below we present key considerations for manufacturers and policymakers:

- The nuclear plants do not need subsidies - If the reporting is true, Energy Harbor's request of a choice on whether to receive nuclear resource credits implies that the nuclear plants do not actually need the credits. This undermines the core premise of H.B. 6 and H.B. 798, which was that the nuclear resource credits were needed to keep the nuclear plants operating. Significant evidence is available that the nuclear plants do not need subsidies, including Energy Harbor's statements to its own investors and the Nuclear Regulatory Commission<sup>3</sup>.

<sup>1</sup> <https://www.cleveland.com/open/2020/12/energy-harbor-seeks-option-of-turning-down-hb6-nuclear-bailout-money.html>

<sup>2</sup> <https://www.ohiomfg.com/wp-content/uploads/FERC-Order-on-State-Subsidies-Impact-to-Manufacturers-January-2020.pdf>

<sup>3</sup> <https://ohiomfg.informz.net/ohiomfg/data/images/-/%20OMA%20MEMO%20->

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- Proposed changes to H.B. 798 would allow Energy Harbor to choose profit through government subsidies, rather than competition – Without the justification that subsidies are needed to keep the plants operating, H.B. 798 becomes a vehicle for Energy Harbor to choose profiting from government subsidies instead of earning profit in competitive markets. A reported legislative change by Rep. Bill Seitz would allow the company to decide “...whether it is better to go for the subsidy, then the audit, or to go for their chances in the capacity market.”<sup>4</sup> Allowing Energy Harbor this choice at its discretion deprives Ohio’s electricity customers of regulatory protection and oversight of that important decision.
- Legislative changes allowing Energy Harbor a choice to receive nuclear resource credits may not exempt the nuclear plants from the MOPR – Allowing Energy Harbor the choice of whether to receive nuclear resource credits for its nuclear plants appears to be designed to exempt the nuclear plants from the MOPR. Indeed, the MOPR has a “competitive exemption”, wherein a power resource could certify that it will not accept state subsidies it is eligible to receive, and in doing so, would be exempt from the MOPR. However, Ohio’s nuclear plants are in a precarious situation due to H.B. 6 in that they may be ineligible for this “competitive exemption”, no matter if they are given a choice on whether to receive the subsidies. According to PJM:

“Resources that are no longer entitled to a State Subsidy that nonetheless are deemed to be Capacity Resources with State Subsidy because they have not cleared an RPM Auction since they last received a State Subsidy also are not eligible for the competitive exemption and would be required to submit a Sell Offer in accordance with the MOPR.”<sup>5</sup>

Energy Harbor’s Ohio nuclear units fit the description of a resource ineligible for a competitive exemption.

This is because the plants have already earned a “state subsidy” and have not since cleared a capacity auction. This may be surprising to Ohio’s policymakers and followers of energy policy, as H.B. 6’s Nuclear Generation Fund charges to customers and dispersal of funds to the nuclear plant owners are set to begin in 2021.

[%20Three%20Reasons%20Why%20-%20Repeal%20and%20Reform%20of%20HB%206%20Before%202021%20\(Dec.%202020\)%20\(FINAL\)%20-%20last%20edit%20JS.pdf](#)

<sup>4</sup> <https://www.cleveland.com/open/2020/12/energy-harbor-seeks-option-of-turning-down-hb6-nuclear-bailout-money.html>

<sup>5</sup> “Compliance Filing Concerning the Minimum Offer Price Rule, Request for Waiver of RPM Auction Deadlines, and Request for an Extended Comment Period of at Least 35 Days”, <https://pjm.com/directory/etariff/FercDockets/4443/20200318-er18-1314-003.pdf>, Page 44.

However, the nuclear resource credits are legislated to be earned in 2020. A corporation that uses accrual accounting would account for revenue when it is earned, not when it is received. Thus, Energy Harbor could have booked the nuclear resource credits as revenue in 2020.

Further, no RPM Auction occurred in 2020. This makes Ohio's nuclear plants a resource "not cleared an RPM Auction since they last received a State Subsidy." As such they are may be ineligible to receive a competitive exemption, and thus this proposed change to H.B. 798 would not remedy the issue.

- H.B. 6 and H.B. 798 are a threat to the ongoing ability of the nuclear plants to earn revenue – H.B. 6 and H.B. 798's Nuclear Generation Fund are a liability to the nuclear plant owners, as they are now subject to the MOPR and may be challenged to compete for capacity revenue in PJM. It is important for policymakers to know that once a power plant is subject to the MOPR, it cannot just "un MOPR" itself. It will continue to be subject to the MOPR even if its state subsidy is eliminated or sunsets, until that power resource clears a capacity auction at MOPR set prices. The MOPR set prices are relatively high for single-unit nuclear plants, and thus these nuclear plants may struggle to clear auctions and receive capacity revenue if they are subjected to the MOPR.
- The General Assembly has limited time to prevent the nuclear plants from being subject to the MOPR – PJM has scheduled its next capacity auction for May 2021. The MOPR order will apply to this capacity auction. Power resources will need to provide PJM bidding information prior to the auction date. The nuclear resource credits may have been accrued by Energy Harbor as revenue in 2020. For the nuclear plants to not be subject to the MOPR in May 2021, they will need to have demonstrate that they are not in receipt of a state subsidy by that time, and that they will not receive a state subsidy going forward.
- H.B. 772 would remedy the issue for the nuclear plant owners – H.B. 772 eliminates the Nuclear Generation Fund created by H.B. 6 in total. The elimination of the Nuclear Generation Fund would remove the state subsidy accrued to Energy Harbor, which in turn should allow the nuclear plants to compete in the forthcoming May 2021 PJM capacity auction. This would provide the nuclear plant the opportunity to earn revenue in the PJM capacity market and relieve Ohio ratepayers from financing the unnecessary subsidy during this economically challenging time.



# FERC's December 2019 Order on State Subsidies

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

January 30, 2020

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

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

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

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

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

### **Impact to Manufacturers**

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

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

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

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

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

### **Impact to Electricity Markets**

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

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

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

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

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

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

**Table 1: PJM Proposed Minimum Prices**

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

The impact on electricity prices then depends on several things:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- HB6-Favored Solar Energy Plants – HB6 creates a Renewable Generation Fund which will pay \$9 per MWh for renewable energy credits (RECs) for select solar projects. These solar projects have not yet been built and will thus almost certainly be subject to the MOPR and are unlikely to clear the PJM capacity auction. Moreover, given the choice, solar photovoltaic (PV) projects may prefer to receive capacity revenue over the renewable energy credit revenue. For example, a 1 MW solar PV project in central Ohio would receive about \$12,500 in capacity revenue<sup>3</sup>. That same 1 MW of solar PV would receive \$11,150<sup>4</sup> from the Renewable Generation Fund. As such, renewable projects of any scale may choose to receive

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

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

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

PJM capacity revenue over HB6 subsidies.

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

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

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

Importantly, FirstEnergy Solutions had publicly credited the HB6 subsidies it is receiving for its nuclear plants for *indirectly* allowing it to subsidize the Sammis coal plant<sup>5</sup>. According to FES comments, the Sammis coal plant cleared 1,233 MW in the most recent PJM capacity action<sup>6</sup>. Thus, HB6 has indirectly put \$54 million in annual capacity revenue at risk for the Sammis coal plant.

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

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

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

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

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

### **Impact to Technology Mix**

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

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





**VIA EMAIL**

December 22, 2020

Ryan Augsburger  
Ohio Manufacturers' Association  
33 N. High Street, 6th floor  
Columbus, Ohio 43215-3005

Re: Subsidies to First Energy nuclear plants

Dear Mr. Augsburger:

I have included your questions and the Independent Market Monitor's (IMM) answers. Please let me know if you have any follow up questions.

1. It is our understanding that a state-sponsored financial audit of a state-subsidized power plant would not in and of itself create a MOPR exemption for the power plant. Is this correct?

**Answer:** Correct. A state sponsored financial audit would not alone or in conjunction with anything else create a MOPR exemption.

2. It is our understanding that if state subsidies are reduced by the state as a result of a financial needs assessment based on audit results, this would not create a MOPR exemption for the power plant. Is this correct?

**Answer:** Correct. There is no threshold defined for state subsidies in the MOPR provisions.

3. It is our understanding that if a power plant or capacity resource can choose whether or not to receive the state subsidies which they are eligible to receive, this resource may receive a Competitive Exemption from the MOPR, so long as it elects to forego all state subsidies. Is this correct?

**Answer:** Correct. A competitive exemption may be requested no later than 30 days prior to the auction.

4. It is our understanding that some resources, though, cannot receive a Competitive Exemption. These are resources that PJM describes as "Resources that are no longer entitled to a State Subsidy that nonetheless are deemed to be Capacity Resources with State Subsidy because they have not cleared an RPM Auction since they last received a State Subsidy also are not eligible for the competitive exemption and would be required to submit a Sell Offer in accordance with the MOPR." Is this correct?

**Answer:** Correct. See OATT Attachment DD Section 5.4(h-1)(4)(A).

5. Ohio's nuclear power plants began earning state subsidies based on the plant's generation output in 2020. The subsidy cash payments are not to begin until 2021. The cash payments could be further delayed by a law modification until 2022, though the year in which the payments are earned - 2020 - is not changed. However, our understanding is that timing of the cash payment is not relevant, and that based on accrual accounting, the plants would have already booked the state subsidies as revenue beginning in 2020, as revenue is booked in the year in which it was earned. We thus interpret that the nuclear plants have already received a state subsidy beginning in 2020. Is this a fair interpretation?

**Answer:** If the subsidies were earned in 2020 and obligated to be paid under the law then it is the IMM's view that the subsidies were received. There are no provisions in the tariff for returning previously received subsidies.

6. Based on this understanding, we would conclude that Ohio's nuclear power plants have received a state subsidy but have not cleared a capacity auction since they last received a State Subsidy, and are thus not eligible for the competitive exemption per PJM's description above, and will be subject to the MOPR. Is this a fair interpretation?

**Answer:** Per the response to question 5, if the subsidy was received in 2020 and if the units have not subsequently cleared in an RPM Auction, the competitive exemption is not available.

The relevant tariff provision says:

Notwithstanding the foregoing, the competitive exemption is not available to Capacity Resources with State Subsidy that (A) are owned or offered by Self-Supply Entities unless the Self-Supply Entity certifies, subject to PJM and Market Monitor review, that the Capacity Resource will not accept a State Subsidy, including any financial benefit that is the result of being owned by a regulated utility, such that retail ratepayers are held harmless, (B) are no longer entitled to receive a State Subsidy but are still considered a Capacity Resource with State Subsidy solely because they have not cleared an RPM Auction since last receiving a State Subsidy, or (C)...

7. If so, we also conclude that providing the nuclear plant owners a delayed choice on whether to receive the cash payment of the state subsidies would not in itself create eligibility for a Competitive Exemption. We surmise that the state subsidy must be eliminated, or forgone, in such a manner as that the nuclear plant owners can demonstrate they have removed the subsidy value from their 2020 books, prior to the next capacity auction in May 2021. Is this a fair interpretation?

**Answer:** If the subsidies were earned and owed under the law then it is the IMM's view that the subsidies were received, regardless of the timing of the cash payment. There are no

Ryan Augsburger  
December 22, 2020  
Page 3 of 3

provisions in the tariff for returning previously received subsidies. The tariff does not explicitly address accrual versus cash accounting for state subsidies.

Sincerely,

A handwritten signature in black ink that reads "Joseph Bowring". The signature is written in a cursive, slightly slanted style.

Joseph Bowring  
Independent Market Monitor for PJM

# Redesigning the Ohio Utility Around the Customer: **Customer Centricity in Rapidly- Changing Energy Environment**



*Timothy W. Ling, P.E.  
Corp. Environmental Director  
Plaskolite, LLC.*

*Denis George  
Manager – Energy  
The Kroger Co.*

*Anthony J. Smith, P.E.  
Category Manager-Energy Supply  
Marathon Petroleum Company*



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# – Changing Energy Landscape

- “Politicization” of Energy
  - Climate change/global warming excuse
  - “Holy Grail” energy = 100% renewables
  - “Correct” energy = Electricity, hydrogen
  - “Incorrect” energy = Fossil fuels
  - “Somewhat correct” energy = Nuclear
  - Energy efficiency mandates



PLASKOLITE<sup>2 of 181</sup>★



# – Changing Energy Landscape

- Shale revolution
  - Electric fuel switch from coal to natural gas
- Advancements in energy technologies
  - More efficient & cost effective (e.g., LED lighting, solar, wind, batteries, CHP, transmission lines)
  - Higher adoption of controls and automation



PLASKOLITE<sup>3 of 181</sup>★



# – Changing Energy Landscape

- From monopoly to free market
  - Vertically integrated to distributed generation
  - Regional transmission grids
  - Arrival of large, competitive, non-utility energy services companies
  
- Covid-19



PLASKOLITE 4 of 181 ★



# — Brief Recap - 2019

- HB 6 (Callender) passes
- Ballot initiative defeated
- HB 246 (Vitale) introduced
- HB 247 (Stein) introduced



PLASKOLITE 15 of 181 ★



# – Brief Recap - 2020

- PUCO implements HB 6-related riders
- HB 6 arrests on 7/21/20
  - Speaker Householder + 4 others
  - 2 guilty pleas on 10/29/20
- HB 6 fallout
  - FE terminations on 10/29/20 & 11/9/20
  - PUCO Chair Randazzo resigns 11/20/20
  - Preservation vs. repeal efforts



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# – Question 1



What message does HB 6, and its fallout, convey to Ohio's electric customer?

(Smith, George, Ling)



PLASKOLITE



# – Question 2



In a utopian world, what does the ideal competitive landscape look like in Ohio from your viewpoint?

Is there another market that's getting it right?

(George, Ling, Smith)



PLASKOLITE



# – Question 3



What is your perspective on the potential changes/challenges involved with:  
**SB 221 (2008, ESP, RPS) ?**

(Ling, Smith, George)



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# – Question 4



What is your perspective on the potential changes/challenges involved with:

**HB 6 (2019) ?**

**HB 772 (2020) & HB 798 (2020) ?**

(Smith, George, Ling)



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# – Question 5



What is your perspective on the potential changes/challenges involved with:  
**MOPR (Dec. 2019) ?**

Specifically, is it handicapping your decision-making?

(George, Ling, Smith)



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# – Question 6



What is your perspective on the potential changes/challenges involved with:  
**Acceleration of Transmission System Upgrades ?**

(Ling, Smith, George)



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# – Question 7



How can we get more customers engaged in Ohio's energy regulatory climate?

(Smith, George, Ling)



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# — Final Thoughts

- Increasing electrical costs challenge Ohio manufacturing competitiveness
- Identify risks to further energy cost increases
- Be involved @ PUCO, Legislature, & PJM



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# — Final Thoughts

- **ALARMED** at government actions on Ohio's energy costs
- Try to make your Ohio government more accountable to its citizens, **NOT** utilities
- Customers/manufacturers **UNITED** against utilities re-monopolization



# – Tip Of The Day



**DON'T SWEAT THE  
“STUFF” YOU CAN'T  
CONTROL ...**

**SWEAT THE  
“STUFF” THAT  
YOU CAN  
CONTROL !!!**



PLASKOLITE 16 of 181 ★



# — Burning Questions



PLASKOLITE



# Energy Engineering Report

OMA ENERGY COMMITTEE – FEBRUARY 2021



- Utility efficiency programs - gone!
  
- Plenty of resources for manufacturers
  - Growing private market of products and solution providers
  - Municipal electric distribution companies still fair game for incentives
  - State government technical assistance – Energy Efficiency Program for Manufacturers
  - PJM capacity payments for efficiency projects
  - OAQDA – Clean Air Resource Center, financing plus sales tax and property tax deductions
  
- The OMA!
  - Our technical team is your phone-a-friend
  - Contact [rschuessler@gosustainableenergy.com](mailto:rschuessler@gosustainableenergy.com) or [jseryak@gosustainableenergy.com](mailto:jseryak@gosustainableenergy.com) for assistance

# Decoupling: A \$1 billion problem hiding in plain site

“A decoupling mechanism shall recover an amount equal to the base distribution revenue and revenue resulting from implementation of section 4928.66 of the Revised Code, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan under section 4928.143 of the Revised Code, as of the twelve-month period ending in December 31, 2018”

AKA



# Decoupling: A \$1 billion problem hiding in plain site



- ❑ Conservatively - \$355 million through 2024, around \$750 million through 2030
  - ❑ \$1 billion tag is reasonable
- ❑ FirstEnergy CEO on an investor call: “..essentially it takes about one-third of our company and I think makes it somewhat recession-proof”
- ❑ Some manufacturers would pay tens of thousands extra per year
- ❑ One customer would have paid >\$100k – their intervention group supported HB6

Collection Year	Base Distribution Revenue	Decoupling	Lost Revenue Decoupling	Total Decoupling
2020	\$ 21,916,065		\$ (4,795,659)	\$ 17,120,406
2021	\$ 35,382,840		\$ 66,495,247	\$ 101,878,087
<b>Year-over-Year Increase</b>	<b>\$ 13,466,776</b>		<b>\$ 71,290,905</b>	<b>\$ 84,757,681</b>

# Decoupling: A billion problem hiding in plain site



- ❑ Decoupling didn't result in charges for everyone – but problems grow
- ❑ Decoupling was a precedent
  - ❑ Another utility tried to expand decoupling to manufacturer classes, since
  - ❑ Decoupling can start small – but grow to significant costs
  - ❑ Can be used to cover for weather, economic conditions, efficiency, distributed generation, etc.
  - ❑ Concept could be reworked to apply to trans, generation, etc.

- ❑ Decoupling creates revenue and profit without a corresponding customer product or service
  - ❑ Attention shifts from customers to regulators
- ❑ Some inaccurate media – “slipped in”, “last minute”

## Takeaways

- ❑ OMA flagged it in the introduced version of HB6.
- ❑ A \$1 billion give-away is a problem.
- ❑ That decoupling sets precedents for more costs is a problem.
- ❑ That almost nobody saw it is a big problem.

- ❑ FERC’s Minimum Offer Price Rule (MOPR) addresses how state subsidies skew PJM’s competitive capacity auction price formation
- ❑ All throughout HB6, we expressed MOPR concerns
  - ❑ Worries originally were worse, that HB6 was setting Ohio up to trend towards something more like Texas with more isolated reliability planning, from May 2019:

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

- ❑ December 2019 FERC ruling was a surprise – MOPR language was different. We said it tips HB6 on its head:

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

January 30, 2020

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

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

FERC’s order is a direct response to a trend of state subsidization of uneconomical power plants, including those benefitting from the recently passed Ohio House Bill 6 (HB6). The FERC order is a giant stick against state subsidies, and tips HB6 on its head: Rather than improve the economic position of select Ohio (and Indiana) power plants, the HB6 subsidies now jeopardizes these same power plants from competitively earned revenue in the wholesale electric capacity market. In fact, by charging Ohio’s ratepayers hundreds of

- ❑ Ohio’s nuclear power plants will, still, be MOPR’d – in May of 2021 - without action by the General Assembly.
  
- ❑ A choice of the subsidy doesn’t exempt the nuclear plants from MOPR
  - ❑ Ohio’s nuclear plants would not be eligible for a competitive exemption right now
  - ❑ They have already earned the subsidy on 2020’s generation
  - ❑ A power plant that earns a subsidy in 2020 that is obligated to paid under law will be ineligible for the competitive exemption
  
- ❑ An audit of the plants and subsidy doesn’t create a MOPR exemption
  
- ❑ A “unit specific exemption” could be obtained, but would mean the subsidy isn’t needed for plants to offer the price

# Ohio's Costly and Worsening OVEC Situation

- ❑ OVEC sells power for less than it costs to generate it, and has since 2012
  
- ❑ State subsidies could amount to \$1.5 billion in charges to Ohioans through 2040
  - ❑ \$159 million from prior PUCO rulings
  - ❑ \$700 million due to HB 6
  - ❑ \$700 million more from 2031-2040
  
- ❑ OVEC power output down 39% since 2010



<http://wikimapia.org/1361692/Indiana-Kentucky-Electric-Corporation-Clifty-Creek-Power-Plant>

# Ohio's Costly and Worsening OVEC Situation

- ❑ OVEC employment down 20% since 2015
- ❑ OVEC carbon emissions equivalent to two nuclear power plants' worth of emissions offset
- ❑ OVEC chooses to run at a loss for certain times, against PUCO audit recommendations
- ❑ Important HB6 didn't lower aggregate costs we're paying to OVEC
  - ❑ Many customers costs went up

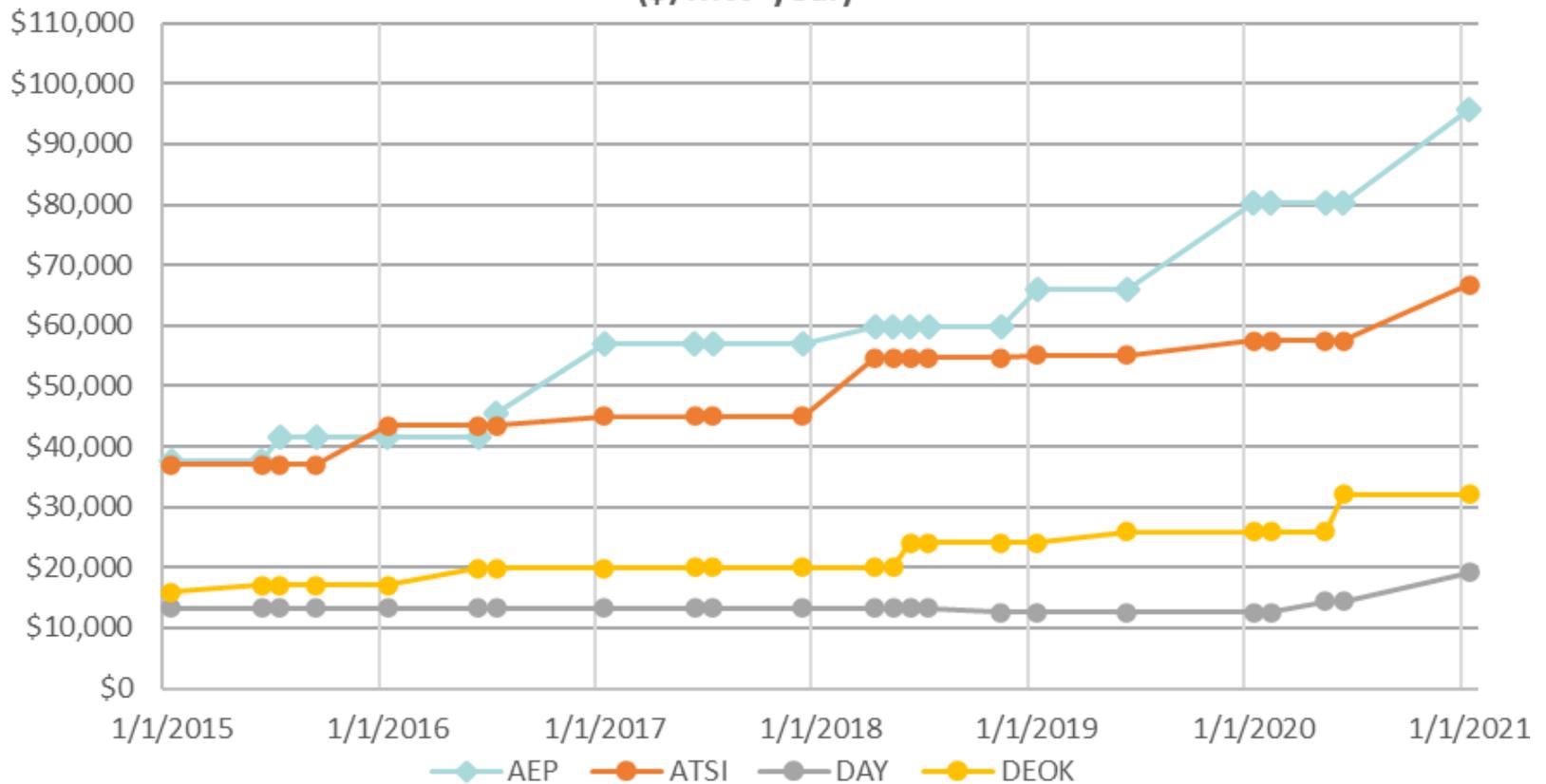


<http://wikimapia.org/1361692/Indiana-Kentucky-Electric-Corporation-Clifty-Creek-Power-Plant>

# Transmission, BTCR Pilot, Winter Peaks



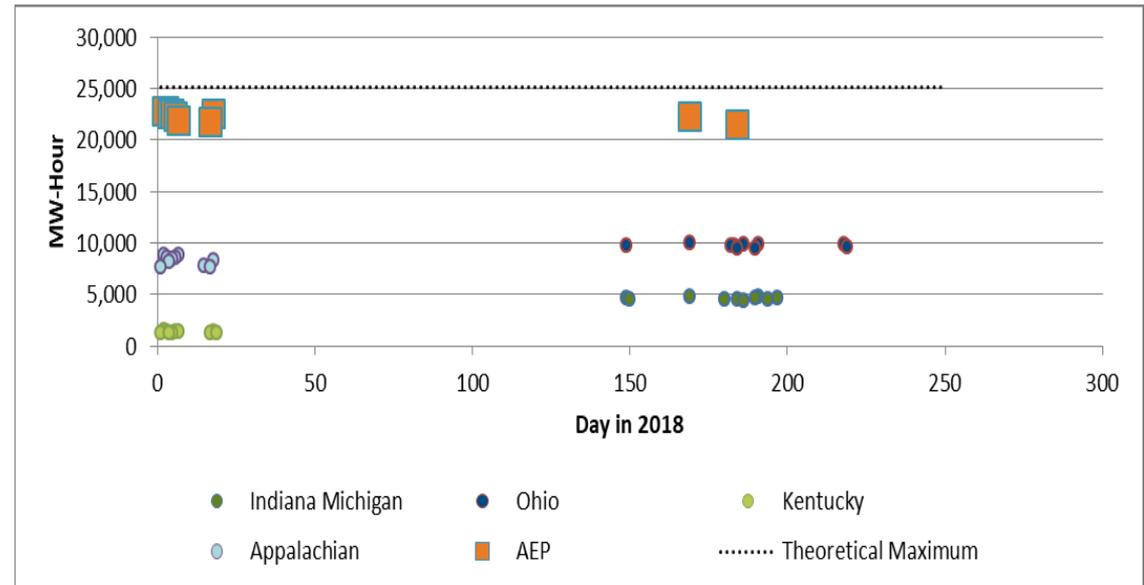
### Network Integration Transmission Service Rate (\$/MW-year)



# Transmission, BTCR Pilot, Winter Peaks

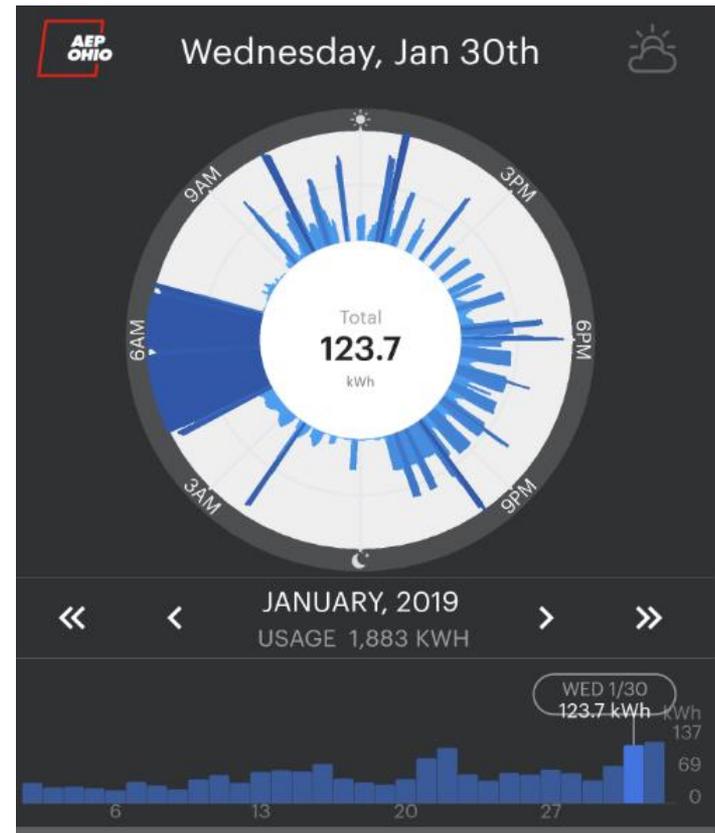


- AEP Transmission peaks in the winter about half of the time
- Drivers
  - Polar vortexes
  - Warmer, southern regions
  - Electrification



# Transmission, BTCR Pilot, Winter Peaks

- ❑ January 30<sup>th</sup>, 2019 – bitter cold
- ❑ All electric home with rooftop solar
- ❑ My electric home will peak at 23.2 kW
- ❑ My same home can ride comfortably through a winter peak at 0.08 kW
- ❑ I have no incentive to keep load off of the grid at peak times, but I definitely have the capability



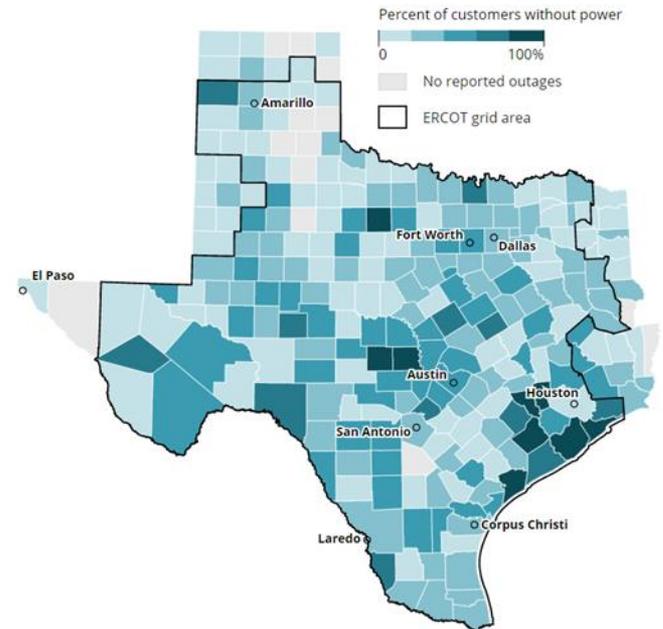
# The Mess that's Texas

❑ It's not just Texas – there have been plentiful grid failures recently

❑ Simple story – supply couldn't meet demand

1. Could they have planned for extreme cold?
2. Could electric load have been limited?
3. Could electric generation been kept online?
4. Could electricity have been imported?
5. Could policy and regulation have been barriers to any of the above?

❑ “It was seconds and minutes” from a blackout that “could have occurred for months” – Bill Magness, ERCOT President



# Blast from the Past: OMA Energy Committee, 9/18/2014



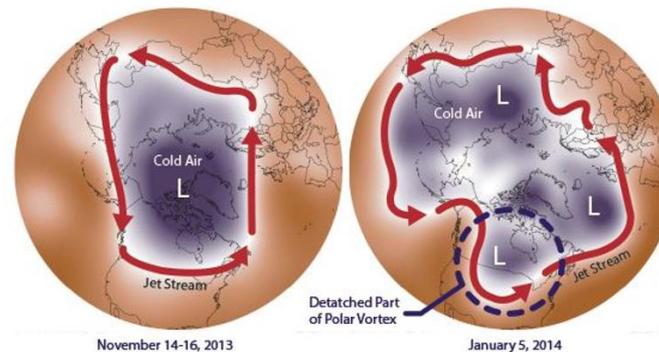
- Winter peak record @ **141,846 MW**
- Power plant failures – **40,200 MW (22%)**
- **1,667 MW to spare** (500 MW synchronized (ready to go within 10 min), 1,167 MW primary reserves (available in 10 min))

## The Problem – The Polar Vortex

We actually want a *strong* polar vortex to stay warm?

The breaking off of part of the vortex is what defines a polar vortex event. But it actually occurs when the vortex is weaker, not stronger. That might sound weird—but it actually makes sense. Normally, when the vortex is strong and healthy, it helps keep a current of air known as the jet stream traveling around the globe in a pretty circular path. This current keeps the cold air up north and the warm air down south.

But without that strong low-pressure system, the jet stream doesn't have much to keep it in line. It becomes wavy and rambling. Put a couple of areas of high-pressure systems in its way, and all of a sudden you have a river of cold air being pushed down south along with the rest of the polar vortex system.



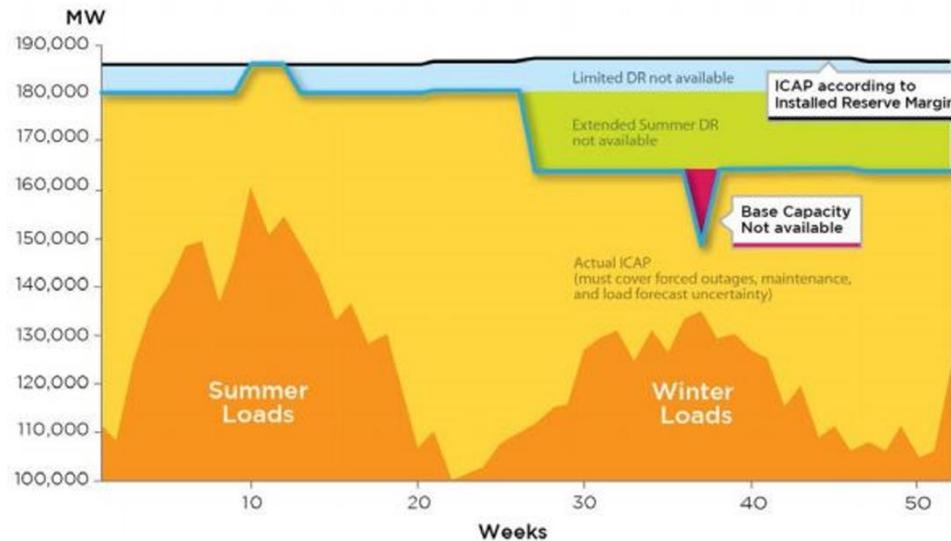
<http://scijinks.jpl.nasa.gov/polar-vortex/>

# Blast from the Past: OMA Energy Committee, 9/18/2014



## Polar Vortex Capacity Problem: Three Contributing Factors

1. Record peak in electric demand
2. Demand response not organized for winter
3. Base capacity power plant failures



# Blast from the Past: OMA Energy Committee, 9/18/2014



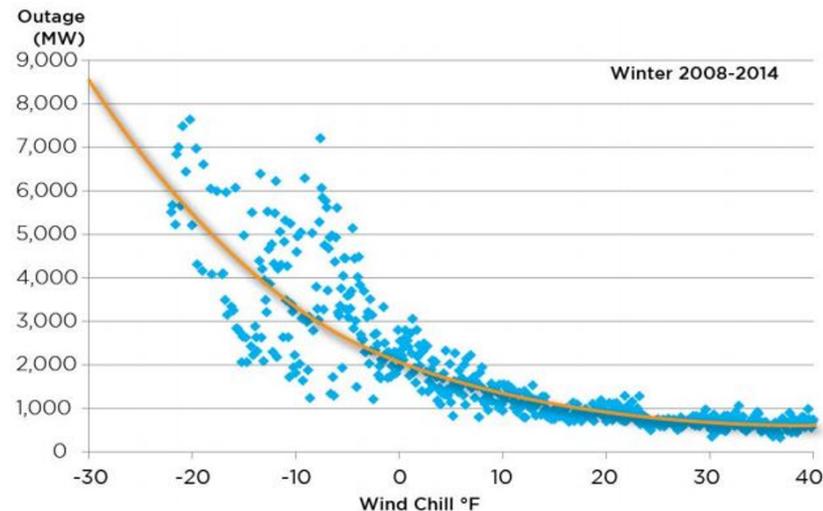
- Jan 7<sup>th</sup> around -15 F
  - 40,100 MW outage
- Jan 29<sup>th</sup> around -10 F
  - 29,000 MW outage
- Weather was unusual
- Outages were unprecedented

## Cold Weather – Unusual or Unprecedented?



Problem Statement on PJM Capacity Performance Definition

Figure 6: Wind Chill vs. Forced Outage – Western PJM



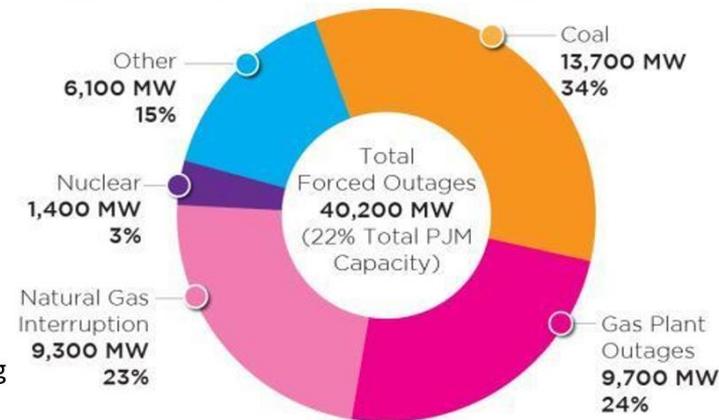
# Blast from the Past: OMA Energy Committee, 9/18/2014



## Power Plant Outages - Unprecedented

- What failed?
  - Coal, gas failure, gas interrupted, nuclear...everything
- Reasons for failure
  - Natural gas supply interruption
  - Frozen equipment (condensate lines, boiler controls)
  - Frozen coal
  - Fuel delivery issues due to weather
  - Emissions equipment freezing (water injection systems)
  - Frozen limestone, hydrogen leaks
  - Secondary process issues
  - Some units not operated since summer

Figure 3: January 7 Evening Peak (7 p.m.) Forced Outage



# Blast from the Past: OMA Energy Committee, 9/18/2014



- PJM did act, by creating the Capacity Performance product
- Market pricing was also a factor
- Subsequent Polar Vortex performance was significantly better in PJM
- The multi-state PJM capacity market, with interconnections, has some advantages
- ...but remember the fall of 2019 demand response call...
- There are more chapters to this book. And a long list of unheeded warnings about the electric system.



## PJM Solution: A New Capacity Product – “Capacity Performance”

- Capacity Performance
  - Generation
  - Demand response
  - Energy efficiency
  - Storage
- Availability
  - All year, any hours of the day
  - 16 hours/day, up to 3 days in a row
    - Expected to have fuel on-site or firm transportation
    - Expected to have appropriate O&M investments
  - Start time – depends on whether base-load, interday cycling, intraday cycling
- Pricing
  - Based on winter coincident peaks, two cost-allocation methods proposed, one based on winter PLC
- Penalties
  - Location marginal price

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MEMORANDUM

To: OMA Energy Committee  
From: Kim Bojko, OMA Energy Counsel  
Re: Energy Committee Report  
Date: February 25, 2021

**Active Administrative Actions in which OMAEG is Involved:**

**American Electric Power (AEP):**

- **New Distribution Rate Case Filed –NOI (Case No. 20-585-EL-AIR)**
  - On April 29, 2020 AEP filed a notice of intent to file an application to increase its distribution rates.
  - On May 18, 2020, OMAEG intervened to protect members from being charged unreasonable rates.
  - On June 8, 2020, AEP filed an application to increase its base distribution rates by 3.5%. AEP sought to continue existing riders, including the Distribution Investment Rider (DIR). In addition, AEP requested to delay the implementation of the rates purportedly due to concerns over COVID-19, but failed to mention its deferral authority for COVID-19 expenses or request to implement a H.B. 6 decoupling mechanism to increase rates to 2018 levels until the new distribution rates become effective. Lastly, AEP proposed a set of voluntary demand-side management (DSM) programs which contain a mandatory “administrative fee.”
  - On November 18, 2020, the PUCO Staff filed their report, which included a recommended revenue requirement of \$901,428,666 to \$921,950,845, as opposed to AEP’s requested amount of \$1,065,876,000. OMAEG will submit its objections advocating for reasonable rates and opposing any anticompetitive proposals included in the application.
  - On December 18, 2020, OMAEG filed its objections to the Staff Report.
  - Settlement discussions are in progress.
- **Application to Initiate gridSMART Phase 3 Project (Case No. 19-1475-EL-RDR)**
  - AEP filed to initiate phase 3 of its smart grid deployment project, which it claims will expand reliability benefits of Distribution Automation Circuit Reconfiguration (DACR) to additional distribution circuits, the energy efficiency and retail power cost savings of Volt-Var Optimization (VVO), and complete Advanced Metering Infrastructure (AMI) deployment.

- OMAEG has intervened in this case in order to protect members' interests.
- On September 9 and September 25, 2020 OMAEG filed comments asserting that AEP's proposal to install, own, and operate a fiber network not related to modernizing the distribution system and to require its customers to subsidize those investments is unlawful, anticompetitive, against the policy of the state, and should be rejected.
- Awaiting further action by the PUCO.
- **Application for Establishment of Renewable Reasonable Arrangements With Multiple Non-Residential Customers (Case No. 19-2037-EL-AEC)**
  - On November 15, 2019, AEP filed to allow implementation of a significant number of MWs as part of the approved commitment for AEP to develop 900 MW of renewable generation resources in Ohio, without a general finding of need for the solar wind resources that the Company requested in Case No. 18-501-EL-FOR. As part of a future Amended Application to be filed in this proceeding, AEP Ohio plans to request that the PUCO approve each of the individual reasonable arrangements.
  - On January 2, 2020, the PUCO suspended the proceeding until further notice.
- **OVEC Rider Audit (Case Nos. 18-1004, et al.)**
  - OMAEG intervened in the audit of AEP's Ohio Valley Electric Corporation (OVEC) Rider to ensure that AEP only collects costs that were prudently incurred and in customers' best interests.
- **AEP Requests Updates to its BTCR (Case No. 21-53-EL-RDR)**
  - AEP filed an application to update its Basic Transmission Cost Rider (BTCR), a nonbypassable mechanism through which AEP recovers non-market based transmission charges from its customers. AEP requested that the new rates become effective the first cycle of April 2021.

**Duke Energy Ohio (Duke):**

- **Application to Adjust Rider PF (Case No. 19-1750-EL-UNC)**
  - On April 15, 2020 and May 15, 2020, OMAEG and other stakeholders submitted comments on Duke's request to recover costs associated with its Infrastructure Modernization Plan from customers in its Power Forward Rider (Rider PF). OMAEG asserted that Duke's deferral request is improper and that Duke unlawfully sought recovery of past costs. OMAEG also stated that utility ownership of competitive products or services would violate Ohio public policy. Duke's request for mandatory new service and requirement for separate meters for its Commercial Level II program would unnecessarily increase rates for customers.
- **MGP Remediation Rider (Case Nos. 17-596-GA-RDR, et al.)**
  - On March 31, 2017, Duke filed an application to recover 2016 costs for investigation and remediation of its Manufactured Gas Plant (MGP) site. In Duke's natural gas distribution case (Case No. 12-1685-GA-AIR), the PUCO approved up to \$55.5 million for investigation and remediation costs incurred from January 2008 through December 2012.

- OMAEG filed reply comments regarding Duke's proposed MGP Rider to collect costs from customers for the remediation of gas plants which are no longer in service. In those comments, OMAEG argued that the parties to these cases are entitled to a hearing on these issues, that Duke should continue exploring cost recovery from other parties to mitigate the burden on customers, and that any cost recovery should be carefully audited and only persist for a limited duration.
- Duke has now sought to recover its MGP remediation costs incurred since 2013 through 2018 from customers, requesting an additional \$45.8 million.
- Staff issued Staff reports recommending that \$23.3 million be disallowed and not recovered from customers.
- On May 10, 2019, Duke filed a motion to continue the recovery of Rider MGP costs at the then current rate. OMAEG and others opposed Duke's attempt to seek recovery of these costs without a full hearing process on the appropriateness of the proposed recovery.
- On July 23, 2019, Duke informed the PUCO that its recovery of remediation costs is complete and filed revised tariffs setting the MGP rider to zero.
- On August 13, 2019, the PUCO consolidated all of the cost recovery cases, 2013 through 2018, and set a procedural schedule. The PUCO also denied Duke's request to continue the MGP rider during the pendency of the cases and set the rider to zero, which will result in cost savings to customers.
- A hearing was held in November 2019, where OMAEG and other parties presented evidence demonstrating that Duke is not entitled to recover certain remediation costs related to 2013 through 2018, including costs incurred remediating the Ohio River and Kentucky.
- Awaiting PUCO decision.
- **2019 MGP Adjustment (Case Nos. 20-0053-GA-RDR, et al.)**
  - On April 30, 2020, Duke filed another application to increase rates for its Manufactured Gas Plant Rider (MGP) to recover another year (2019) of investigation and remediation costs.
  - On July 23, 2020, the PUCO Staff filed a report recommending a total disallowance of \$27.1 million from the total of \$85.2 million that Duke proposed for the ongoing MGP recovery from 2013-2019.
  - On August 21, 2020, Duke filed unsolicited comments on the PUCO Staff's report disagreeing that it should only be allowed to recover remediation costs for certain geographic areas. Duke also opposed Staff's proposal to offset \$50.5 million in insurance proceeds against costs incurred. Duke wants to hold the proceeds until remediation of the sites is complete and collect its current expenses from customers.
  - As in the other cases, OMAEG intervened to protect members from these extraordinary, unlawful costs.
- **University of Cincinnati Unique Arrangement Application (Case No. 18-1129-EL-AEC)**

- The University of Cincinnati (UC) filed an application for a unique arrangement centered around UC's ability to interrupt a portion of its electric load. Under the proposed arrangement, UC would commit to interrupting up to 54.7 MW when certain conditions are met in exchange for a credit against its monthly distribution charges. The credit would be capped at \$2.3 million annually and \$12.8 million over the 7-year term. This credit would be paid for by other Duke customers. UC does not propose any capital investments or employment commitments as part of the proposed arrangement.
- OMAEG intervened and filed comments on August 9, 2018.
- Parties are awaiting a procedural schedule.
- **EE/PDR Recovery Case (18-0397-EL-RDR)**
  - Duke filed an application to recover costs related to compliance with energy efficiency mandates and lost distribution revenues.
  - OMAEG intervened in the case to protect the interests of its members as Duke attempts to recover additional costs from customers.
  - The PUCO approved Duke's request for recovery of program costs, lost distribution revenue and performance incentives related to Duke's EE/PDR programs for 2017. PUCO excluded from recovery incentive pay, dining, sponsorships, labor, employee and other expenses. The PUCO noted that Rider EE-PDR is subject to reconciliation as the result of annual audits by the PUCO.
  - Duke sought rehearing on August 30, 2019, seeking to recover the disallowed costs on the grounds that incentive pay and other employee incentives are not tied to "financial goals," which was opposed.
  - Awaiting PUCO decision.
- **Duke Proposes New EE/DSM Programs (Case Nos. 20-1444-EL-POR, et al.)**
  - On October 9, 2020, Duke proposed a new residential EE program for 2021 that will be paid for through a nonbypassable recovery mechanism. Duke proposed using its former Rider DSM to recover the costs associated with the Program and creating a Joint Benefit Recognition Mechanism to recover 4.5% of after tax avoided transmission and distribution costs (i.e., lost distribution revenue). Duke estimated the total Program costs collected from residential customers would be \$5.99 million, but capped the recovery at \$7.0 million.
- **The PUCO Removes Duke's EE Cost Cap and Reduces Shared Savings (Case No. 16-576-EL-POR)**
  - Based upon a recent decision from the Supreme Court of Ohio, the PUCO removed a cost cap of \$38.6 million that it previously imposed on Duke's recovery from customers for 2018 and 2019 EE/PDR costs and shared savings. However, the PUCO reduced Duke's maximum allowable shared savings for 2017-2020 to \$7.8 million (pre-tax) annually from \$12.5 million. Lastly, the PUCO prohibited Duke (and other EDUs) from recovering lost distribution revenue after December 31, 2020, even if the

lost distribution revenue is attributed to energy savings achieved in 2018, 2019, or 2020.

- Duke requested reconsideration of the PUCO order, which OMAEG opposed explaining that Duke, and other EDUs, lack statutory authority to recover lost distribution revenue after the termination of their respective EE riders.
- On January 13, 2021, the PUCO granted itself more time to evaluate Duke's request for rehearing.
- **OVEC Rider Audit (Case No. 20-167-EL-RDR)**
  - On January 11, 2021, OMAEG intervened in the audit of Duke's OVEC Rider to ensure that customers are assessed only costs that were prudently incurred and in customers' best interests.
  - OMAEG submitted reply comments asserting that Duke failed to meet its burden of proof in demonstrating that the roughly \$24 million in OVEC costs collected from customers in 2019 were prudently incurred.

### **FirstEnergy:**

- **FirstEnergy Revenue Decoupling Case (Case Nos. 19-2080-EL-ATA)**
  - On November 21, 2019, FirstEnergy filed an application for approval of a decoupling mechanism pursuant to H.B. 6. H.B. 6 authorizes an electric distribution utility to file an application to implement a decoupling mechanism.
  - FirstEnergy used its 2018 revenues as a baseline from which future rates will be determined. Staff recommended that FirstEnergy's baseline be weather-normalized to protect against high over collections in years with average weather.
  - On January 15, 2020, the PUCO approved the decoupling without the modification that Staff requested, stating that it lacked authority to do so.
  - On June 17, 2020, the PUCO directed FirstEnergy to re-file its tariffs so as to not limit reconciliation of the decoupling rider exclusively on the finding of double recovery.
  - On November 3, 2020 FirstEnergy re-filed its tariffs with the refund language consistent with the PUCO's June 17 Order.
  - On December 30, 2020, the PUCO reinstated the requirement that FirstEnergy must file a rate case at the end of its current ESP (May 31, 2024). Per H.B. 6, the decoupling mechanism must terminate once new distribution rates become effective and accordingly, FirstEnergy's H.B. 6 decoupling mechanism can no longer last in perpetuity.
  - On February 1, 2021, the Attorney General announced that the State and FirstEnergy reached a settlement in which FirstEnergy would set its Decoupling Rider rates to zero for 2021 in exchange for the State staying all actions in its H.B. 6 civil lawsuit. The PUCO unanimously approved FirstEnergy's application on February 2, 2021.
- **Rider DSE Update (Case Nos. 14-1947-EL-RDR, et al.)**

- FirstEnergy filed tariff pages reflecting changes to its Demand Side Management and Energy Efficiency Rider (Rider DSE). Rider DSE recovers costs associated with energy efficiency, peak demand reduction, and demand side management programs and is subject to an annual audit by the Commission. FirstEnergy’s filing does not appear to be consistent with the PUCO’s stated expectation that Rider DSE adjustments following the implementation of the Amended Portfolio Plan would reflect lower costs to customers.
- A Staff report was issued on February 28, 2019, and the PUCO set a procedural schedule with FirstEnergy’s testimony due June 22, 2020, and a hearing scheduled for December 14, 2020.
- On November 2, 2020, the PUCO ordered that the evidentiary hearing be rescheduled to a date set by subsequent entry.
- On December 1, 2020, the PUCO Staff filed testimony recommending that FirstEnergy be required to recalculate its lost distribution revenue using a maximum of three years for program years 2014-2018. Staff further recommended that FirstEnergy be prohibited from recovering various out of period expenses that FirstEnergy sought to recover during the review years.
- **Corporate Separation Case (Case No. 17-0974-EL-UNC)**
  - PUCO initiated a review of FirstEnergy’s compliance with the PUCO’s corporate separation rules. FirstEnergy is the first utility to undergo this review process.
  - Comments and reply comments were filed.
  - On April 29, 2020, PUCO directed interested persons to file supplemental comments regarding the audit report by May 29, 2020, and supplemental reply comments by June 15, 2020.
  - Comments and reply comments were filed regarding the FirstEnergy utilities’ provision of competitive services, FERC’s classification of shared-service employees, the use of the “FirstEnergy” name by the Company’s competitive affiliates, and whether FirstEnergy’s unregulated generation affiliate is a barrier to retail electric competition.
  - On November 4, 2020, the PUCO initiated an audit of the FirstEnergy Utilities’ compliance with corporate separation laws and regulations. The audit will be a part of the existing proceeding reviewing the FirstEnergy Utilities’ compliance with corporate separation laws and rules and the Utilities’ corporate separation plans. The PUCO explained that its actions were in response to FirstEnergy Corp. providing information to federal regulators indicating that it was launching an internal investigation and that its employees’ actions violated the company’s “code of conduct.”
  - On January 27, 2021, the PUCO selected an auditor and stated that the audit report will be filed on or before June 21, 2021.
  - OMAEG is considering intervening in this matter to protect its members’ interests.
- **PUCO Review of FirstEnergy H.B. 6 Spending (Case No. 20-1502-EL-UNC)**

- On September 15, 2020, the PUCO opened a case to review, not a formal Commission-ordered investigation, of FirstEnergy’s political and charitable spending related to H.B. 6. and the subsequent referendum effort. The PUCO directed FirstEnergy to show cause by September 30, 2020 that the cost of these activities were not included, directly or indirectly, in any rates or charges paid by customers.
- On September 30, 2020, FirstEnergy filed a brief response to the order to show cause, stating that it would be impossible to include H.B. 6 costs in customers’ rates as the existing base rates came into existence well before H.B. 6 was enacted and that the inclusion of political or charitable costs in riders would be a clear violation of PUCO precedent.
- OMAEG intervened to protect members against any H.B. 6 costs that may have been included in FirstEnergy’s rates or charges.
- FirstEnergy attempted to prevent OMAEG, and nearly every other intervenor, from participating in the review and argued that OMAEG lacked standing, which OMAEG firmly opposed.
- Subsequently, FirstEnergy sought to limit lawful discovery in the review, which OMAEG also opposed. The PUCO announced that a prehearing conference will occur to address the discovery dispute.
- On January 7, 2021, a prehearing conference was held where the PUCO clarified the scope of depositions noticed in the case.
- On January 27, 2021, Environmental Groups requested that the PUCO expand its review of FirstEnergy’s involvement in the H.B. 6 scandal.
- **2018-2019 SEET Case (Case Nos. 19-1338-EL-UNC, et al.)**
  - On July 15, 2019 and May 15, 2020 FirstEnergy filed applications seeking a determination that it did not have “significantly excessive earnings” for calendar years 2018 and 2019, respectively. FirstEnergy failed to include roughly \$134.7 million in after-tax revenue from its Distribution Modernization Rider (DMR) despite the Supreme Court of Ohio’s ruling invalidating the DMR.
  - In addition, H.B. 166 amended the PUCO governing statute to require the PUCO to consider the total earned return on equity (ROE) of all affiliated distribution utilities operating a joint ESP. Consequently, FirstEnergy is able to shield one of its overearning distribution utilities by including the ROE of its less profitable affiliate distribution utility in the significantly excessive earnings test (SEET) calculation.
  - OMAEG intervened to advocate that the PUCO return to customers any earnings that are excessive or unlawful.
  - On September 4, 2020, the PUCO granted OMAEG intervention and scheduled a hearing for January 5, 2021.
  - On October 29, 2020, the PUCO denied OCC’s interlocutory appeal requesting a delay of the procedural schedule until the Supreme Court renders a decision in the pending 2017 FirstEnergy SEET Case. However, the PUCO cited COVID-19 challenges and

will reschedule the hearing in a subsequent entry (but it will not commence prior to May 3, 2021).

- On January 12, 2021, the PUCO consolidated FirstEnergy's 2017-2019 SEET Cases with the Quadrennial Review of FirstEnergy's ESP.
- **New Consumer Group Files PUCO H.B. 6 Complaint Against FirstEnergy (Case No. 20-1756-EL-CSS)**
  - The Citizens' Utility Board of Ohio, a consumer nonprofit, filed a H.B. 6-related complaint against FirstEnergy with the PUCO regarding FirstEnergy's decoupling mechanism, compliance with corporate separation laws, and potential impropriety with former PUCO Chair Randazzo.
- **The PUCO Orders New DMR Audit (Case No. 17-2474-EL-RDR)**
  - In response to a request from the Office of the Ohio Consumers' Counsel (OCC), the PUCO opened a new audit of the FirstEnergy Utilities' distribution modernization rider (DMR) to determine whether any of the DMR charges already collected (that the Court stated could not be refunded to customers even though the rider was deemed unlawful) were used to improperly fund H.B. 6 efforts.
- **The PUCO Orders FirstEnergy to File New Rate Case by May 31, 2024 (Case No. 19-361-EL-RDR)**
  - On December 30, 2020, the PUCO denied a request from the Environmental Law & Policy Center (ELPC) to vacate the PUCO's order and conduct new proceedings in the DMR Extension Case. . However, the PUCO, upon its own initiative, reinstated the requirement that the FirstEnergy Utilities must file a new rate case by the conclusion of ESP IV on May 31, 2024. This decision will have the effect of terminating the H.B. 6 decoupling mechanism when new rates go into effect per the rate case.

#### **Dayton Power & Light (DP&L):**

- **Electric Security Plan (Case Nos. 16-395-EL-SSO, et al.)**
  - DP&L filed an amended application on October 11, 2016, proposing to withdraw its Reliable Electricity Rider (RER) request. Instead, it sought a Distribution Modernization Rider (DMR) for a term of seven years to recover \$145 million per year from customers.
  - DP&L and certain intervening parties reached a settlement, which was opposed by numerous other intervening parties, including OMAEG.
  - On March 13, 2017, a new settlement was reached between a majority of the parties, including PUCO Staff and OMAEG (as a non-opposing party). Under the new settlement, DP&L will receive \$105M/year for 3 years from customers, with an option to request a two-year extension. The Distribution Investment Rider (DIR-B) rider was eliminated (which had been estimated to cost consumers \$207.5M), and DP&L agreed to convert the forgone tax sharing liabilities to AES Corporation into equity payments (estimated by DP&L to be a \$300M gain for customers). DP&L will also provide several OMAEG members the economic development rider (EDR) credit of

\$.004/kWh. For OMAEG members that do not qualify for the EDR credit, DP&L agreed to slightly discount those members' previous rates. Thus, those members will receive a collective total of \$18,000 per year in shareholder dollars to compensate them for the increase in rates.

- After a hearing, the PUCO approved the settlement, but also modified it to include non-bypassable OVEC recovery. OMAEG filed an application for rehearing, arguing that this modification was unjust, unreasonable, and unlawful.
- The PUCO denied rehearing on its decision to modify the settlement.
- Interstate Gas Supply, Inc. (IGS) withdrew from the settlement and reopened the proceedings based upon the PUCO's modification to make OVEC recovery non-bypassable.
- After IGS' withdrawal, the PUCO held a hearing on the reopened proceeding. OMAEG participated in that hearing as a non-opposing party along with Staff, DP&L, and several other parties. OCC, who had opposed the settlement, has appealed the PUCO's modified approval of the settlement to the Supreme Court of Ohio.
- In light of the Court's decision regarding FirstEnergy's credit support rider, the PUCO ordered DP&L to eliminate its DMR rider.
- As a result of the PUCO's order, DP&L withdrew from its ESP, which the PUCO approved, and DP&L reverted to a prior "blended" ESP containing favorable elements of its past ESPs.
- OMAEG and others challenged the blended ESP. Rehearing is pending.
- On May 12, 2020. The Supreme Court Ohio granted OCC's request to dismiss its appeal of DP&L's Distribution Modernization Rider (DMR). OCC opted to not pursue the matter in light of DP&L withdrawing its ESP and the PUCO eliminating the DMR rider.
- **Application to Establish a Distribution Modernization Plan (Case Nos. 18-1875-EL-GRD, et al.)**
  - Pursuant to its ESP Stipulation, DP&L filed an application to establish a distribution modernization plan. DP&L asks the PUCO to approve over \$600 million in cost recovery for the implementation of this plan. DP&L offers speculative benefits that customers will purportedly receive from this plan and states that it is advancing the PUCO's goals established in the PowerForward initiative.
  - Given that the enabling ESP Stipulation has been withdrawn, DP&L has re-initiated settlement discussions for this case based on a smart grid rider approved in an earlier case. DP&L is no longer attempting to tie this case with its DMR Extension case.
  - On October 23, 2020, DP&L and several parties, including OMAEG, filed a global settlement agreement with the PUCO to resolve multiple DP&L proceedings. The PUCO established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.
  - A hearing regarding the Joint Stipulation occurred on January 11, 2021.

- On February 12, 2021, OMAEG submitted its post-hearing brief urging the PUCO to approve the global settlement.
- **Distribution Decoupling Costs (Case No. 20-140-EL-AAM)**
  - The June 18, 2018 Stipulation and Recommendation from that Distribution Rate Case established that DP&L was authorized to implement “Revenue Decoupling.” Recovery would occur through the Decoupling Rider that was established in DP&L's third Electric Security Plan case ("ESP III") (Case No. 16-0395-EL-SSO, et al.), which DP&L withdrew. Given this withdrawal, the PUCO ruled that DP&L could no longer implement the decoupling.
  - On January 23, 2020, DP&L requested accounting authority to defer its distribution decoupling costs that it would have been otherwise able to recover under ESP III.
  - OMAEG intervened and submitted comments asserting that DP&L had no authority to implement a decoupling mechanism after it withdrew its ESP III and that it would be unreasonable for the PUCO to allow DP&L to unilaterally reap benefits from a settlement agreement that it breached.
  - The PUCO established deadlines for the filing of testimony and ordered a prehearing conference to occur on March 25, 2021.
  - Settlement discussions are in progress.
- **SEET (Case No. 20-0680-EL-UNC)**
  - On April 1, 2020, DP&L requested a determination that its current ESP passes the Significantly Excessive Earnings Test (SEET) and More Favorable in the Aggregate Test over the forecast period of 2020-2023.
  - OMAEG intervened to protect members from excessive charges.
  - On July 1 and July 16, 2020, OMAEG submitted comments and reply comments asserting that DP&L failed to meet its burden of proof in demonstrating that its earnings were not excessive.
  - The SEET Case is a part of the global settlement agreement that DP&L, OMAEG, and other signatory parties filed with the PUCO on October 23, 2020. The PUCO established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.
  - A hearing regarding the Joint Stipulation occurred on January 11, 2021.
  - On February 12, 2021, OMAEG submitted its post-hearing brief urging the PUCO to approve the global settlement.
- **SEET II (Case No. 20-1041-EL-UNC)**
  - On May 15, 2020, DP&L filed an application requesting a finding that its 2019 earnings passed the SEET test.
  - On July 2, 2020, OMAEG intervened to protect members' interests.
  - The SEET II Case is a part of the global settlement agreement that DP&L, OMAEG, and other signatory parties filed with the PUCO on October 23, 2020. The PUCO

established a procedural schedule to review and take testimony on the settlement agreement, with a hearing date set for January 11, 2021.

- A hearing regarding the Joint Stipulation occurred on January 11, 2021.
- On February 12, 2021, OMAEG submitted its post-hearing brief urging the PUCO to approve the global settlement.
- **New Distribution Rate Case Filed –NOI (Case No. 20-1651-EL-AIR)**
  - On October 30, 2020, DP&L provided notice that in the next month it will file an application to increase its base distribution rates. DP&L proposed a test year of June 1, 2020 through May 31, 2021 and a date certain of June 30, 2020.
  - On November 30, 2020, DP&L filed its application requesting a ROR of 7.71%, which includes a 10.5% ROE. Accordingly, DP&L requested to increase its revenue requirement by \$120.8 million
  - Awaiting the PUCO Staff to file its report, which will trigger a 30-day statutory deadline for OMAEG to file its objections.
- **OVEC Rider Audit (Case No. 20-167-EL-RDR)**
  - On January 5, 2021, OMAEG intervened in the 2019 audit of DP&L’s Ohio Valley Electric Corporation (OVEC) Rider to ensure that customers are only assessed costs that were prudently incurred and in their best interests.
  - OMAEG submitted [reply comments](#) asserting that DP&L failed to meet its burden of proof in demonstrating that the roughly \$11 million in OVEC costs collected from customers in 2019 were prudently incurred.
  - On February 1, 2021, OMAEG filed a pleading opposing DP&L’s efforts to avoid attending a deposition.

### **Statewide:**

- **PUCO COVID-19 Emergency Orders (Case No. 20-591-AU- UNC)**
  - On March 12, 2020, PUCO directed public utilities to review their disconnection policies and other practices and promptly seek approval to suspend any requirements that might impose a "service continuity hardship" on customers or create unnecessary risks associated with spreading the virus. The PUCO also encouraged municipalities and cooperatives that are beyond their jurisdiction to take similar actions. The Order also empowered Chair Sam Randazzo and Vice Chair Beth Trombold to act individually on behalf of the full five-member PUCO for the duration of the emergency.
  - The PUCO and Ohio Power Siting Board (OPSB) tolled any time period in an order, statute, or rule requiring PUCO or OPSB to act upon a pending application or filing during the declared emergency and fourteen days after. The tolling does not apply to automatic approval of filings to suspend service disconnection or reconnection requirements.
  - On March 13, 2020, PUCO extended the Winter Reconnect Order through May 1, 2020. The PUCO’s Order does not eliminate customers’ payment obligations.

- On March 20, 2020, the PUCO ordered the suspension of utilities’ non-essential activities during the COVID-19 emergency. The Order does not relieve utilities of the obligation to address safety concerns.
- On April 8, 2020, the PUCO extended its March 12, 2020 emergency Order by an additional 30 days.
- On April 8, 2020, the PUCO authorized eligible utilities to obtain loans through the Federal Paycheck Program without receiving additional PUCO approval. The program authorizes up to \$349 billion in forgivable loans to enable small businesses to retain employees during the COVID-19 emergency. Utilities with fewer than 500 employees are eligible.
- On April 22, 2020, in response to the state of emergency, the PUCO temporarily waived requirements regarding provisional medical certification of commercial drivers. The waiver expires on June 30, 2020.
- On June 1, 2020, the PUCO and OPSB terminated the suspension of deadlines requiring them to act on applications during the COVID-19 emergency.
- On June 17, 2020, the PUCO terminated the suspension of door-to-door marketing services, pursuant to requirements and best practices issued by state and local health authorities.
- On July 3, 2020, the PUCO granted water transportation companies waivers from Ohio Adm. Code provisions that would enhance COVID-19-related burdens. On July 29 and August 31, 2020, the PUCO extended these waivers.
- **Review of Interconnection Services Rules (Case No. 18-884-EL-ORD)**
  - The PUCO opened a proceeding to review the PUCO’s rules governing interconnection services, scheduled a workshop to discuss changes to those rules, and sought comments from stakeholders.
  - On March 13, 2020, OMAEG filed comments addressing costs, access to data, and the formation of a stakeholder group on distributed energy resources (DERs).
  - On April 3, 2020, OMAEG filed reply comments asserting that allocation of distribution system upgrade costs should take into consideration system benefits. OMAEG requested that more data from the interconnection process be accessible, recommended the formation of a working group on interconnection issues, and that the PUCO clarify that a DER is permitted on adjacent property.
- **PUCO Investigation into CRES Contracts (Case No. 14-0568-EL-COI)**
  - The PUCO issued an order setting out its “fixed-means-fixed” guidelines which provide that CRES providers may not include a pass-through clause in a contract labeled as a fixed rate, pass-through provisions must be labeled as variable or introductory rates, regulatory-out clauses must be marked in “plain language,” and CRES providers had until January 1, 2016 to bring products into compliance with the fixed-means-fixed guidelines. On rehearing, the PUCO punted the determination of remaining issues, including whether small commercial customers should be more stringently defined, to a future rulemaking proceeding.

- Rehearing is pending.
- **Nuclear Bailout Bill (H.B. 6)**
  - The Ohio General Assembly passed a bill that effectively serves as a bailout for nuclear generation. OMAEG actively participated throughout the hearing process regarding this proposed legislation, including various members and legal counsel offering testimony opposing the bill. The bill was amended several times, and each amendment included provisions that would impose unreasonable costs on customers in order to subsidize uneconomic generation.
  - The Governor signed into law H.B. 6 on July 23, 2019, which means that customers will be forced to subsidize failing nuclear and coal facilities. The mechanics of the increase in charges to customers has been left to the PUCO, which will now open proceedings to establish new rates and rules in light of H.B. 6.
  - Not enough signatures were gathered to place the referendum on the ballot as required by the Ohio Constitution. Challengers went to federal court to obtain an extension, but it was punted to the Supreme Court of Ohio to resolve what the federal court considered a “state question.”
  - Appellants Ohioans Against Corporate Bailouts voluntarily dismissed their appeal, explaining that the group did not have sufficient money to continue the appeal. Efforts to repeal H.B. 6 by veto measure have ended.
  - Following the \$1 billion ratepayer-funded nuclear bailout that Ohio legislators passed last year, Energy Harbor LLC, formerly FirstEnergy Solutions, has moved to spend an additional \$300 million to repurchase the company’s stock. On May 8, 2020, Energy Harbor LLC’s board of directors voted to increase authorization for its stock buyback program from \$500 million to \$800 million. The company can buy back its stock at any time until August 26, 2020. This benefit to corporate shareholders comes after FirstEnergy Solutions declared bankruptcy and lobbied aggressively for the H.B. 6 subsidy, which will increase rates for Ohio customers.
  - In light of the H.B. 6 scandal, repeal efforts are underway.
  - On February 16, 2021, FirstEnergy Corp. issued an H.B. 6-related press release stating that it is not seeking to collect lost distribution revenue from residential and commercial customer pursuant to its electric security plan, is limiting participation in politics, and is searching for a Chief Ethics and Compliance Officer.
  - On February 22, 2021, FirstEnergy Corp. reached an agreement with the New York State Common Retirement Fund (NYSCRF), a shareholder of the company and the third largest public pension fund in the United States. Under the deal, FirstEnergy Corp. will publicly disclose all spending on political parties, candidates, and ballot measures semi-annually through May 2024. Additionally, FirstEnergy Corp. agreed to disclose all political payments over \$25,000 to any trade association or organization that drafts or endorses model legislation. However, the agreement states that FirstEnergy Corp.’s disclosures will “not encompass lobbying spending” and the agreement appears to only apply to the company’s political spending going forward. In exchange for the increased disclosure, NYSCRF will

withdraw five shareholder proposals seeking the release of FirstEnergy Corp.'s political and lobbying spending.

- **H.B. 6 Implementation Issues**

- OAQDA Rulemaking

- OAQDA requested written comments on its proposed rules. As established in H.B. 6, the rules provide for utility ratepayer funding of two newly created funds – the nuclear generation and renewable generation funds. OMAEG and OCC were the only entities that filed written comments by the published deadline. OMAEG filed comments requesting clarification and supplementation, to ensure that the proposed rules are complete and allow for adequate and transparent reporting and accountability regarding the nuclear and renewable generation program and funding mechanism.

- OAQDA issued a memorandum rejecting all comments, stating that its rules comply with the minimal requirements of H.B. 6 and OMAEG's and OCC's comments address considerations outside the scope of rules.

- Subsequently, OAQDA held a public hearing regarding its proposed rules on November 18, 2019. OMAEG presented its previously filed written comments at the hearing. AEP provided oral and written comments, requesting a rule clarification that the nine dollar per megawatt hour payment created in H.B. 6 does not strip the underlying renewable or green attribute in the power so that customers may count the renewable energy as green power or use it for sustainability purposes. FES provided written comments stating that the rules met the minimum requirements of H.B. 6 and rebutted OMAEG's proposed accountability and transparency provisions. Hillcrest Renewables also provided oral comments agreeing with OMAEG's comments regarding the importance of transparency and accountability and requested a rule modification allowing entities to opt-in and out of the program.

- OVEC Recovery Mechanism (Case No. 19-1808-EL-UNC)

- PUCO Staff proposed to establish a nonbypassable rate mechanism to recover the prudently incurred costs related to OVEC through a newly created legacy generation resource rider (LGR Rider) on customers' bills. Staff proposed to charge the LGR Rider and establish the monthly cap on a "per month per customer account/premise." OMAEG argued that H.B. 6 explicitly used the terms "per customer" to differentiate from a "per account" or "per meter" cap, while OEG and IEU-Ohio commented that Staff's proposed methodology largely complies with the requirements in H.B. 6.

- On November 21, 2019, despite the mandate that the PUCO implement a per customer cap, the PUCO established a nonbypassable mechanism that is collected on a "per customer account" basis and which creates only one nonresidential monthly cap. The PUCO also determined that the program was not subject to a refund if H.B. 6 is invalidated.

- OMAEG challenged the decision, which was denied in January.

- Clean Air Fund Rider (Case No. 20-1143-EL-UNC)
  - On June 9, 2020, the PUCO Staff filed a proposal regarding the allocation and rate design for the utilities to collect \$170 million from customers annually to fund the Clean Air Fund Rider (Rider CAF) to subsidize the Ohio nuclear plants, now owned by Energy Harbor, and five solar arrays.
  - On June 17, 2020, OMAEG intervened and filed comments recommending an alternative rate design and that the PUCO adhere to H.B. 6’s plain language.
  - On August 26, 2020, the PUCO established the nonbypassable recovery mechanism, which will become effective January 2021, and adopted Staff’s allocation and rate design proposal. As OMAEG warned in its comments, the likely result will be that similarly situated nonresidential customers will be charged disparate rates depending on the number of residential customers in their service territory and which service territory their business operations are located in. The PUCO unlawfully included Commercial Activity Taxes in (Rider CAF) and failed to ensure that customers are not being charged “abrupt and excessive charges” or provide for a refund/reconciliation in the tariff language, as H.B. 6 requires.
  - OMAEG requested that the PUCO reconsider its decision, which the PUCO denied on October 21, 2020.
  - In November 2020, the EDUs filed their respective Rider CAF rates and as OMAEG warned, the rates vary significantly with DP&L’s proposed rates being much lower than those of the other EDUs.
  - OMAEG is considering appealing the PUCO’s order and requesting that the Court stay the collection of the H.B. 6 nuclear subsidies.
  - On December 17, 2020, OMAEG [requested](#) that the Supreme Court of Ohio suspend the collection of the \$170 million annual H.B. 6 subsidies. Ohio Attorney General Dave Yost filed in support of OMAEG.
  - Pursuant to the injunction issued by the Franklin County Court of Common Pleas, the PUCO vacated its August 26, 2020 Entry establishing the H.B. 6 Clean Air Fund Rider and authorizing the collection of up to \$170 million annually from customers in H.B. 6 subsidies.
- **PUCO Solicited Comments Regarding Future of Energy Efficiency Programs (Case No. 17-1398-EL-POR)**
  - The PUCO requested comments from interested persons regarding the appropriate steps to be taken with respect to energy efficiency programs once the statewide cap of 17.5 percent, set by H.B. 6, has been reached. Staff has been tracking the EDUs’ progress towards the benchmark, and has been filing periodic reports regarding that progress.
  - The PUCO solicited comments from interested persons on: (1) whether the PUCO should terminate the energy efficiency programs once the statutory cap of 17.5 percent has been met; and (2) whether it is appropriate for the EDUs to continue to spend

ratepayer provided funds on energy efficiency programs after the statutory cap has been met.

- On November 25, 2019, OMAEG and other stakeholders submitted comments regarding the future of Energy Efficiency programs for FirstEnergy and the other EDUs since implementation of H.B. 6.
- OMAEG argued that the EDUs should continue their Energy Efficiency programs through December 31, 2020, with programs continuing as economically appropriate thereafter.
- The PUCO agreed with OMAEG and others and concluded that H.B. 6 and the public interest require all of the utilities' EE Programs to continue through 2020. The PUCO, however, determined that there should be an orderly wind-down of the programs beginning on September 30, 2020 to minimize any recovery of costs associated with the programs after 2020. The PUCO directed the EDUs to honor any application for EE programs approved prior to September 30, 2020 and to cease accepting applications for direct rebate programs on September 30, 2020. The PUCO also ordered the EDUs to notify customers beginning April 1, 2020 that EE applications will no longer be accepted as of September 30, 2020 and stated that any programs that do not involve a direct rebate to consumers should continue only until September 30, 2020 in order to ensure that all activities are completed by December 31, 2020.
- On September 4, 2020, in light of the impending EE wind-down, the PUCO waived the Ohio Adm. Code requirement that each EDU must file a new portfolio program by September 1 of each year.
- On November 18, 2020, the PUCO directed the EDUs to file proposed revised tariffs by December 1, 2020 for their respective EE program cost recovery riders, setting the riders to zero, effective January 1, 2021. Once the cumulative saving cap has been met on December 31, 2020, the EE cost recovery riders must terminate. The sole exception to this termination is the reconciliation between revenue collected and compliance efforts occurring prior to December 31, 2020. Each EDU will be authorized to file tariffs to implement the final reconciliation once the PUCO has approved the EDUs proposed final reconciliations. Lastly, The PUCO ordered that no cost recovery mechanism will be authorized beyond the period required to complete the final reconciliation.
- **Stakeholder Input to Improve OPSB Siting Process**
  - The OPSB held informal stakeholder discussions to learn how to improve public participation in the siting process, technical application requirements, and construction compliance efforts.
  - On March 10, 2020, the OPSB held its first stakeholder meeting. Stakeholders raised concerns about applicant costs, delays between certification and construction for wind and solar projects, and the appropriate level of private company involvement with the OPSB process. The Board also heard various proposals to increase public input, including the extension of the 90-day window following the public information meeting process. Stakeholders also discussed how increased flexibility could improve the application process for transmission lines for wind projects. It was further

suggested that for transmission projects generally, there should be a higher level of scrutiny for need and an earlier determination of need.

- On March 11, 2020, the OPSB held its second stakeholder meeting. Stakeholders stated that the Board should ensure it has adequate resources to conduct independent assessments on project impacts, using actual data from the area. Stakeholders urged that the pre-application conference be mandatory, held in the project area, and run by the OPSB with the developer present. It was stated that everyone, not just leaseholders, needs an opportunity to provide input, especially on wind projects. Stakeholders discussed that there are no siting regulations for solar projects, whereas there are specific requirements for wind projects. It was argued that OPSB should verify that the developer satisfies each condition post-certification and this information should be docketed and made public. Stakeholders asserted that decommissioning plans should be fully developed, giving communities a clear idea of when they will be funded.
- On May 12, 2020, the OPSB held its third stakeholder discussion. Stakeholders made several comments recommending what the Board should examine in its process including: the cumulative effect of multiple projects in a single area; the long-term impact of wind turbines; warranty and merchantability issues; promises of financial gains made to school districts; multigenerational land use issues; reporting requirements once sites are operating; the selection process for expert testimony; and taxation issues regarding pipeline developers.
- Next, OPSB will open a formal rulemaking docket in early 2021 and hold public workshops to solicit ideas from interested parties.
- OPSB will then issue draft rules and solicit formal public comments prior to issuing final rules. OMAEG attended the workshops and will make recommendations for improvement to the rules as appropriate, including an improved transmission siting process in an attempt to control the costs of supplemental transmission projects being passed on to customers.
- **The PUCO Approved Suvon's CRES Power Broker & Aggregator Application (Case No. 20-0103-EL-AGG)**
  - On April 22, 2020, over the objections of many stakeholders raising concerns of corporate separation violations among the FirstEnergy companies, including the regulated utilities, the PUCO approved Suvon, LLC's, also known as FirstEnergy Advisors, application for certification as a Competitive Retail Electric Service (CRES) power broker and aggregator.
  - OCC appealed the PUCO's decision to the Supreme Court of Ohio arguing that the PUCO unlawfully denied stakeholders' evidentiary and due process rights and incorrectly determined that FirstEnergy Advisors had the requisite capabilities to provide aggregation services.
- **OPSB Authorizes Construction of OSU'S CHP Facility (Case No. 19-1641-EL-BGN)**
  - On September 17, 2020, the Ohio Power Siting Board (OPSB) approved The Ohio State University's (OSU) application to construct a natural gas powered combined heat and power (CHP) facility on its Columbus campus.

- In a concurring opinion, Chairman Randazzo commended OSU for maintaining its CHP proposal in the face of opposition and noted that the CHP facility “will allow for credible and significant emissions reductions and put waste heat (a renewable resource in Ohio) to useful work.”
- On January 1, 2021, the PUCO denied the Sierra Club’s application for rehearing, finding that the application was procedurally deficient and that the PUCO’s order already sufficiently addressed Sierra Club’s substantive arguments.
- **PUCO Chairman Randazzo Resigns**
  - Sam Randazzo has resigned as PUCO Chair, days after the FBI searched his Columbus home as part of an investigation into the H.B. 6 scandal. The day before the Chair’s resignation, in a new filing with the U.S. Securities and Exchange Commission, FirstEnergy Corp. described a \$4 million payment made in early 2019 to an entity associated with an individual subsequently appointed as a state official directly involved in regulating the FirstEnergy Utilities, including with respect to distribution rates.
  - Under Ohio law, PUCO Vice Chairman Trombold will be the acting PUCO Chairman until a new chair is named. The PUCO Nominating Council is required to make recommendations on a new commissioner to Governor DeWine within 30 days.
  - On January 20, 2021, Governor Mike DeWine rejected the entire list of candidates provided by the PUCO Nominating Council to replace former PUCO Chair Sam Randazzo after his resignation. Under Ohio law, after the Governor has reconvened the council and the council has provided the Governor with a second list of four nominees, the Governor must make his appointment from one of the names on the first or second list within thirty days.
  - Additionally, the council met on January 22, 2021 and recommended the following individuals to fill a vacancy once Commissioner Deters’ term expires on April 10, 2021: Angela Amos, Dennis Deters (for a consecutive term), Ronald Russo, and Stephen Serraino.
  - In a new filing with the United States Securities and Exchange Commission, FirstEnergy Corp. stated that it now believes “that payments under the consulting agreement” with an unnamed regulator responsible for overseeing the FirstEnergy Utilities’ distribution rates “may have been for purposes other than those represented within the consulting agreement.”
- **State of Ohio Files H.B. 6 Lawsuits (Case Nos. 20CV-6281, et al).**
  - On September 23, 2020, Ohio Attorney General Dave Yost filed a civil lawsuit in the Franklin County Court of Common Pleas regarding the H.B. 6 scandal. The lawsuit names fourteen Defendants, including FirstEnergy Corporation, FirstEnergy Service, FirstEnergy Solutions, Energy Harbor, and Larry Householder. The Defendants face allegations of corruption, money laundering, and bribery. The State of Ohio is seeking monetary damages and to prevent the Defendants (including parent companies, subsidiaries, and assigns) from profiting from H.B. 6 or holding government offices or engaging in political activities in Ohio for eight years

- The judge overseeing the State of Ohio’s civil lawsuit regarding the H.B. 6 scandal denied the State’s preliminary request on First Amendment grounds, which sought to prevent Defendants from making political contributions or publicly speaking about the modification, repeal, or replacement of H.B. 6 through the end of 2020. Subsequently, FirstEnergy Corp. and its affiliates requested that the court dismiss the case. The State must file a response to the request for dismissal by December 7, 2020.
  - On November 13, 2020, Ohio Attorney General Dave Yost filed a related lawsuit to prevent the collection and distribution of H.B. 6’s nuclear generation fee.
  - On December 21, 2020, Judge Brown of the Franklin County Court of Common Pleas issued several injunctions to prevent the H.B. 6 subsidy charges from becoming effective on January 1, 2021.
  - On January 13, 2021, Ohio Attorney General Dave Yost requested that the Franklin County Court of Common Pleas enjoin FirstEnergy from collecting approximately \$102 million from customers in 2021 through the H.B. 6 Decoupling Rider.
  - On February 1, 2021, the Attorney General [announced](#) that the State reached a settlement with FirstEnergy regarding its H.B. 6 decoupling revenues. Shortly after, FirstEnergy filed a very simple application requesting that the PUCO set its Decoupling Rider rate to \$0, without much explanation or detail. The effect of this application appears to prevent FirstEnergy from collecting \$102 million in decoupled revenues from customers in 2021. However, the setting of the rider’s rate to zero does not eliminate FirstEnergy’s Decoupling Rider or prevent other utilities from applying for a decoupling mechanism under H.B. 6.
  - On February 2, 2021, the PUCO held a meeting and unanimously approved FirstEnergy’s application. In exchange for FirstEnergy filing its application, the Attorney General agreed to stay discovery and other actions in the State’s civil lawsuit against FirstEnergy until the federal criminal H.B. 6 investigation is complete.
  - The cities of Columbus and Cincinnati requested that the Franklin County Court of Common Pleas allow Dayton and Toledo to join the cities’ related H.B. 6 civil suit against FirstEnergy Corp. and others (see 20- CV-007005).
- **Supreme Court Rules that the PUCO Improperly Excluded DMR Revenues from FirstEnergy 2017 SEET Calculation (Slip Opinion No. 2020-Ohio-5450)**
    - Under SEET, the PUCO must determine annually whether a utility excessively earned under its electric security plan. On December 1, 2020, the Supreme Court of Ohio granted the Office of the Ohio Consumers’ Counsel’s (OCC) appeal and ruled that the PUCO improperly excluded the FirstEnergy Utilities’ Distribution Modernization Rider (DMR) revenues from the 2017 SEET.
    - The Court held that the PUCO’s order was unreasonable because it cited no language from the SEET statute justifying the exclusion of the DMR revenues and that, according to precedent, the DMR constituted an “adjustment” and must be included in the SEET.

- Subsequently, the Court concluded that OCC demonstrated prejudice because customers are only protected if the PUCO conducts a valid SEET, but found that OCC cannot show that a refund is warranted until a new SEET is conducted. Lastly, the Court ordered the PUCO to conduct a new SEET proceeding in which it includes the DMR revenues in the analysis.
- **Supreme Court Rules that the PUCO Applied Incorrect Test in Submetering Case (*In re Complaint of Wingo v. Nationwide Energy Partners*, Slip Opinion No. 2020-Ohio-5583)**
  - The PUCO dismissed a complaint against Nationwide Energy Partners (NEP), a submetering company, finding that the PUCO lacked jurisdiction over businesses not acting as “public utilities.” On appeal, the Court held that the PUCO improperly created its own test to determine whether the submeterer is a public utility and failed to examine the relevant statutes. Accordingly, the Court sent the case back to the PUCO and ordered the PUCO to apply the statutory test to determine whether it could hear the claims against NEP

### Federal Actions

#### FERC:

- **MOPR Expansion (Docket EL16-49)**
  - On March 21, 2016, Dynegy and others filed a complaint against PJM requesting that the Minimum Offer Price Rule be expanded to apply to existing resources.
  - The complaint aims to protect against AEP and FirstEnergy offering the subsidized affiliate generating units into the capacity market below costs, which will suppress capacity prices.
  - Dominion, American Municipal Power, and others filed a motion to dismiss on mootness grounds given FERC’s order rescinding the waiver on affiliate sales restrictions granted to AEP, FirstEnergy, and their unregulated generating affiliates.
  - The Independent Market Monitor claims that the issues are not moot given the Staff’s proposal adopted in the FirstEnergy ESP IV case for a DMR, and the pending DP&L DMR proposal.
  - In a 3-2 decision, FERC found that PJM’s current tariff is unjust, unreasonable, and unduly discriminatory because it fails to account for state policies that subsidize favored sources of generation, thus disrupting the competitive wholesale market. FERC is now considering how to best address state subsidies provided to certain generation resources in order to avoid market disruption.
  - OMAEG joined several other industrial consumer groups in filing comments and reply comments urging FERC to adopt measures to account for out-of-market subsidies. Those comments were filed on October 2, 2018 and November 6, 2018, respectively.
  - On December 19, 2019, FERC ordered that subsidized generation resources (with some exceptions) could only bid into the wholesale capacity auctions subject to the

FERC-determined Minimum Offer Price Rule (MOPR), which sets an offer price floor for each resource class. By broadening the definition of “subsidy,” more generation resources that bid into the PJM auctions are now subject to the MOPR.

- The OVEC plants, Ohio nuclear plants, H.B. 6-subsidized renewable facilities and possibly Sammis will be subject to MOPR.
- On April 16, 2020, FERC denied requests for rehearing and clarification of its Order, finding that PJM’s then-existing tariff was unjust and unreasonable.
- Shortly after, several parties, including Energy Harbor LLC, filed Petitions for Review in the D.C. Circuit Court regarding FERC’s orders establishing a replacement rate and denying requests for rehearing and clarification of the determination that the MOPR was unjust and unreasonable.
- In July 2020, intervenors requested that the Seventh Circuit Court of Appeals transfer petitions for review of FERC’s PJM MOPR orders pending in that court to the D.C. Circuit.
- In an October 2020 order, FERC determined that competitive, non-discriminatory state default auctions and revenue from Fixed Resource Requirement (FRR) capacity plans are not “state subsidies” subject to the expanded Minimum Offer Price Rule (MOPR). FERC also ordered that replacement capacity restrictions for state subsidized resources include transactions within a portfolio as well as bilateral transactions.
- FERC then directed PJM to submit a compliance filing no later than November 16, 2020 revising: (1) resource exemptions from the MOPR; (2) sellers’ requirements to notify PJM of material change in subsidy status; and (3) provisions determining when a resource that claims a competitive exemption and then accepts a state subsidy will forfeit its capacity revenue. FERC granted PJM waivers from several tariff provisions relating to the timing and pre-auction processes of the base residual auction (BRA) but prohibited PJM from commencing the BRA schedule until FERC issues a subsequent order on a compliance filing in another proceeding.
- Subsequently, the Independent Market Monitor for PJM requested that FERC provide an exact definition of FRR revenues and clarify that additional revisions are necessary to address FERC’s directive regarding replacement capacity transactions.
- On January 19, 2021 FERC accepted PJM’s additional compliance filing effective October 15, 2020, with the exception of one provision regarding the market seller offer cap. FERC determined that PJM’s proposed tariff language regarding the resource-specific offer price floor and the market seller offer cap exceeded the directives of the compliance order. Accordingly, FERC directed PJM to file another compliance filing removing the provision from the tariff.

## **FERC Rulemaking**

- **Proposed Grid Reliability and Resiliency Rule (Docket RM18-1)**
  - FERC considered a rule proposed by the Secretary of Energy that would subsidize inefficient and failing coal plants in the name of promoting grid reliability and

- resiliency. In reality, however, the proposed rule would only act as a subsidy to prop up failing generators at the expense of electric customers.
- OMAEG filed comments opposing the proposed rule and supporting the arguments of other manufacturing coalitions.
  - FERC agreed with OMAEG and others and rejected the proposed rule. FERC concluded that the record did not support the claim that the grid faces reliability or resiliency threats from the retirement of inefficient generation, and, even if a problem existed, FERC explained that the proposed solution was contrary to FERC's longstanding commitment to markets and market-based solutions and did not satisfy the legal requirements for the creation of a new rule. Instead, FERC defined resiliency and sought comments and data from the regional transmission organizations and independent system operators regarding their resiliency challenges on a regional basis.
  - Rehearing is pending.
  - On February 18, 2021, FERC upheld its January 18, 2018 Order which terminated the proceeding. FERC determined that the arguments for rehearing lacked legal support and that the January 2018 Order adequately acknowledged stakeholders' concerns. Nonetheless, FERC concluded that the threshold issue of whether the RTO/ISO tariffs were unlawful had not been met and therefore it could not consider the proposed rule.
  - **Proposed PJM Tariff Revisions to Address Impacts of State Public Policies (Docket ER18-1314)**
    - On April 9, 2018, PJM filed an application to address state public policies. PJM advocated for two different approaches to addressing these issues.
    - The PUCO filed comments advocating the rejection of PJM's approach and retention of the status quo. The PUCO noted that capacity market has recently been overhauled and that PJM has not substantiated its comments. The PUCO further pointed out that PJM failed to provide cost impacts on customers. The PUCO advocates that PJM should maintain the status quo until a better approach is found.
    - OMAEG joined several other industrial and commercial customer groups in filing comments and reply comments that urged FERC to adopt measures that account for out-of-market payments received by some generation resources under policies pursued by individual states. These anticompetitive payments disrupt the competitive wholesale market that, when left undisturbed, works to benefit customers.
    - On June 22, 2020, the PUCO submitted comments on PJM's compliance filings to implement the expanded MOPR in its capacity market. PUCO requested that FERC reconsider its inclusion of state default auctions in the definition of "state subsidy." The PUCO opposed PJM's proposal to require that each Demand Response registration be associated with one-end customer location. Lastly, the PUCO encouraged FERC to resolve outstanding MOPR-related issues so that PJM can conduct a Base Residual Auction for 2022/2023.
    - On October 15, 2020, FERC ordered that state default auctions are not "state subsidies" subject to the expanded MOPR, directed PJM to file compliance tariffs no later than November 16, 2020, and prohibited PJM from commencing the BRA

schedule until FERC issues a subsequent order on a compliance filing in another proceeding.

▪ **Grid Resilience in RTOs and ISOs (Docket AD18-7)**

- FERC opened this proceeding to evaluate bulk power system resilience. PJM filed comments that advocated a broader approach to system resilience and asserting that PJM should be involved in improving resilience.
- The PUCO filed reply comments that supported PJM's position in favor of a broader approach to system resilience, but also urged FERC to avoid adopting PJM proposals without acknowledging the state and local role in the process. The PUCO believes that resilience is already considered in existing reliability standards and does not want ratepayers to be burdened by a new approach to resilience through increased charges without receiving any benefits.

▪ **FES Bankruptcy Proceeding**

- On March 31, 2018, FirstEnergy Solutions Corporation (FES) filed for bankruptcy in the United States Bankruptcy Court.
- FES announced an agreement that would provide for FES and its creditors to release all claims against FirstEnergy (including FirstEnergy's non-debtor affiliates, directors, employees, and professionals) in return for receiving \$1.645 billion in value flowing from FirstEnergy to FES. This agreement is contingent on approval by the boards of FirstEnergy Corp. and Allegheny Energy Supply Company LLC, as well as the United States Bankruptcy Court in the FES bankruptcy proceeding. While the specific claims that are being released have not yet been publicly described, the size of this proposal indicates that FirstEnergy must have significant concerns about litigation arising from its transactions with FES over the years. A version of this that released claims of FES and only other creditors who opted into the release was ultimately approved.
- FES filed a motion for approval of its sale to Exelon Generation Company (Exelon), the parent company of Constellation Energy, which was later withdrawn.
- The bankruptcy court agreed to allow FES to abandon its contracts with two money-losing OVEC plants. This could cause OVEC charges for AEP, Duke, and DP&L customers to increase.
- FES filed a term sheet that contained provisions of an agreement with the Official Committee of Unsecured Creditors, the Ad Hoc group of Pollution Control Notes, the Ad Hoc group of Mansfield bond holders, and certain holders of rejection damage claims. In the next few months, FES will file a Restructuring Support Agreement (RSA), which will contain FES' complete restructuring plan.
- The judge rejected FES' proposed settlement release of FirstEnergy Corp. from its decommissioning and environmental obligations to the government. The judge determined that this proposed release made the plan unconfirmable, which means that FES had to develop a new plan for its exit from bankruptcy. This triggered the renegotiation of the FirstEnergy bankruptcy settlement.

- FES submitted a new bankruptcy settlement plan. The judge refused to confirm the plan unless the unions voluntarily agreed to a new collective bargaining agreement or FES goes through the difficult process to reject a collective bargaining agreement.
- FES union workers reported that they had reached an agreement with FES creditors to retain their pensions, wages, and benefits.
- In a win for consumers in Ohio, the Sixth Circuit overturned the Bankruptcy Court decision that enjoined FERC from taking any actions with respect to the OVEC contract and that authorized rejection of the OVEC contract through bankruptcy.
- The Sixth Circuit found the Bankruptcy Court’s injunction on FERC was overly broad in prohibiting any action by FERC related to the OVEC contract and that the Bankruptcy Court erred in approving the rejection of the contract based solely on whether the OVEC contract was burdensome on FES.
- The Sixth Circuit remanded the cases to the Bankruptcy Court to reconsider FES’ attempt to walk away from the OVEC contract under a “heightened standard,” taking into account the impact on the public (including customers) and not just whether the OVEC contract is burdensome on FES.
- FES received final approval of its Bankruptcy Plan, which became effective February 27, 2020 after the bankruptcy court issued the final approval necessary on February 25, 2020, just days before FES’ nuclear outage was scheduled. FES asked the court to issue an expedited ruling, claiming that it needed the plan to take effect prior to the scheduled nuclear outage on February 29, 2020. FES claimed (without providing detail) that a number of challenges existed, which could prevent the debtors from emerging from bankruptcy during a nuclear outage, if the plan was not approved prior to the outage. This means that FirstEnergy’s shares in FES were cancelled and FES is now owned by the various bankruptcy creditors. After FES’s Chapter 11 plan became effective, the company changed its name to Energy Harbor, LLC.
- On February 14, 2020, FERC authorized certain transactions to implement FES and its public utility subsidiaries’ reorganization plan filed in the Northern District of Ohio’s Bankruptcy Court regarding the disposition of facilities and acquisition of securities. FERC specifically stated that its order does not address FES’ proposed rejection of certain FERC-jurisdictional power purchase agreements (OVEC) as part of its review under section 203 of the Federal Power Act (“FPA”).
- On May 18, 2020, FES entered into a proposed settlement with OVEC under which it would maintain its responsibilities under the OVEC agreement.
- On June 15, 2020, a federal bankruptcy court approved the settlement agreement between Energy Harbor and OVEC. Energy Harbor will assume the role and obligations of FES in the OVEC contract as of June 1, 2020. Energy Harbor will pay OVEC \$32.5 million in exchange for OVEC permanently withdrawing the lawsuit.
- In light of the H.B. 6 scandal, the judge presiding over Energy Harbor’s bankruptcy case has ordered that the millions of dollars in fees and expenses for the utility’s outside law firms be held until November to provide the U.S. Attorney an opportunity to weigh in on how to proceed.

- The Environmental Law & Policy Center, Environmental Defense Fund, Ohio Citizen Action, and the Ohio Environmental Council requested that the Sixth Circuit direct the bankruptcy court that confirmed FES' reorganization plan in October 2019 to consider suspending the execution of the reorganization due to the H.B. 6 scandal.
- On January 17, 2021, Energy Harbor and the law firm of Akin Gump Straus Hauer & Feld requested an emergency six-month delay in responding to racketeering-related interrogatories requested by the judge overseeing the Bankruptcy Proceeding. The following day a hearing on the request was held and the judge agreed to the six-month delay.
- **U.S. Attorney Initiates H.B. 6 Prosecution (Case No. 1:20-MJ-00526)**
  - The U.S. Attorney for the Southern District of Ohio initiated a criminal prosecution against former Ohio House of Representatives Speaker Larry Householder, along with four other individuals and Generation Now, a 501(c)(4) organization, for allegedly engaging in a bribery scheme to pass the H.B. 6 nuclear bailout.
  - On February 5, 2021, Generation Now, the dark money group that Representative Larry Householder allegedly controlled, filed a guilty plea in the U.S. District Court for the Southern District of Ohio. Generation Now is the third party to have pled guilty in the federal criminal H.B. 6 proceeding along with lobbyist Juan Cespedes and political consultant Jeff Longstreth.
- **FERC Electric Transmission Incentives (Docket RM20-10-000)**
  - FERC recently released a Notice of Proposed Rulemaking (NOPR) which will almost certainly increase transmission rates for all electric consumers. The FERC NOPR proposes giving financial rewards to companies that build electric transmission projects. Specifically, the NOPR proposes allowing transmission owners to receive up to a 250-basis point adder to their current transmission return on equity. Since 2012, electric transmission costs have increased more than 52%. The FERC NOPR established a comment deadline of July 1, 2020.
  - In April 2020, OMAEG joined 60 other consumer groups in requesting an extension to protect customers from unwarranted transmission rate increases as customers deal with challenges associated with the COVID-19 emergency. The motion requests that FERC delay the comment process, by extending the comment deadline to the earlier of 30 days after the national emergency is lifted or October 1, 2020.
  - On May 15, 2020, FERC denied the request to delay and the deadline to comment on the NOPR remains July 1, 2020.
  - OMAEG joined the American Manufacturers' comments on FERC's NOPR and advocated for transmission incentive policies that ensure just and reasonable rates for the benefit of consumers.
  - The PUCO also submitted comments on FERC's NOPR and recommended limited incentives to avoid unnecessary overinvestment in the transition grid.
- **Columbia Transmission Rate Case (Docket RP20-1060)**
  - On July 31, 2020, Columbia filed a rate case with FERC to recoup roughly \$3 billion in capital and operational expenses associated with its transmission system.

- OMAEG has joined the case to protect members' interest.
- A prehearing conference will occur on October 7, 2020 to establish a procedural schedule and discuss other relevant matters.
- A procedural schedule was established. Intervenor testimony is due March 26, 2021, a hearing will commence on June 17, 2021, and an initial decision will be issued on November 17, 2021.

# Electricity Market Update

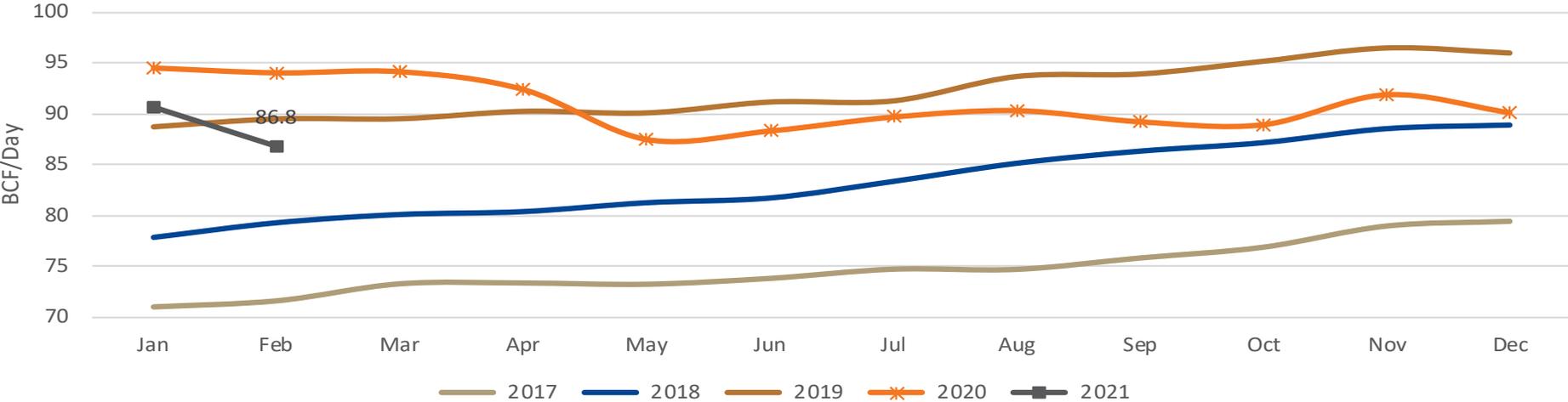
February 25, 2021



scioto energy

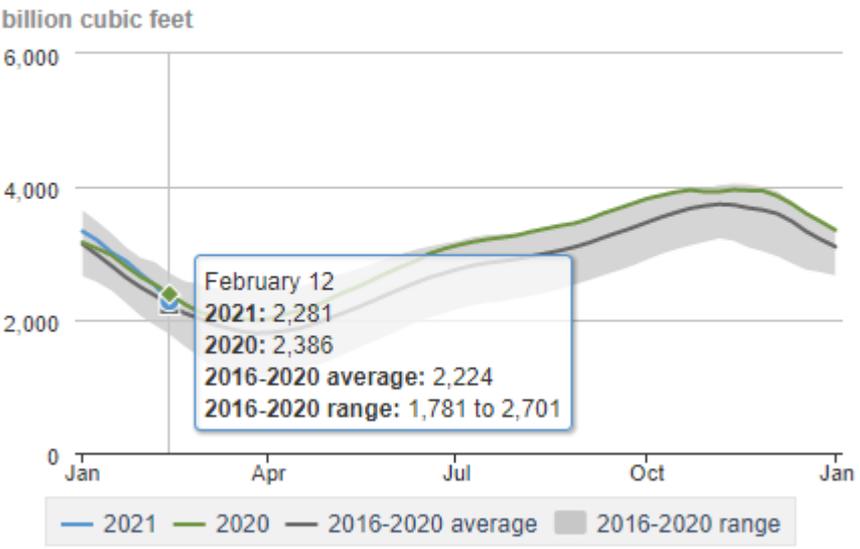
# Natural Gas Production

US Production of Dry Natural Gas: EIA 2021 Forecast Ave: 90.5 BCF/Day  
Current 2021 Ave: 86.8 BCF/Day

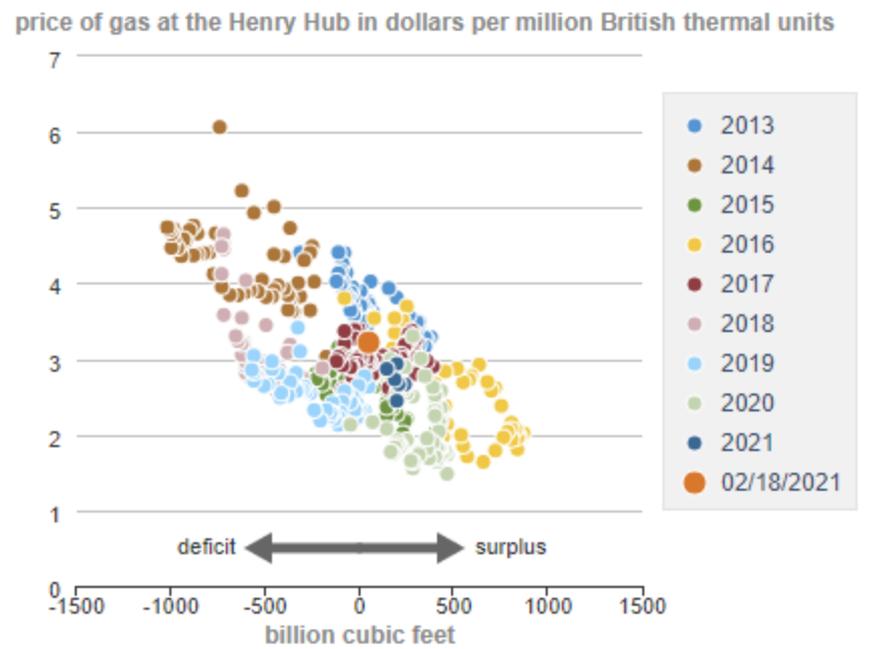


# Natural Gas Storage

## Lower 48 weekly working gas in underground storage

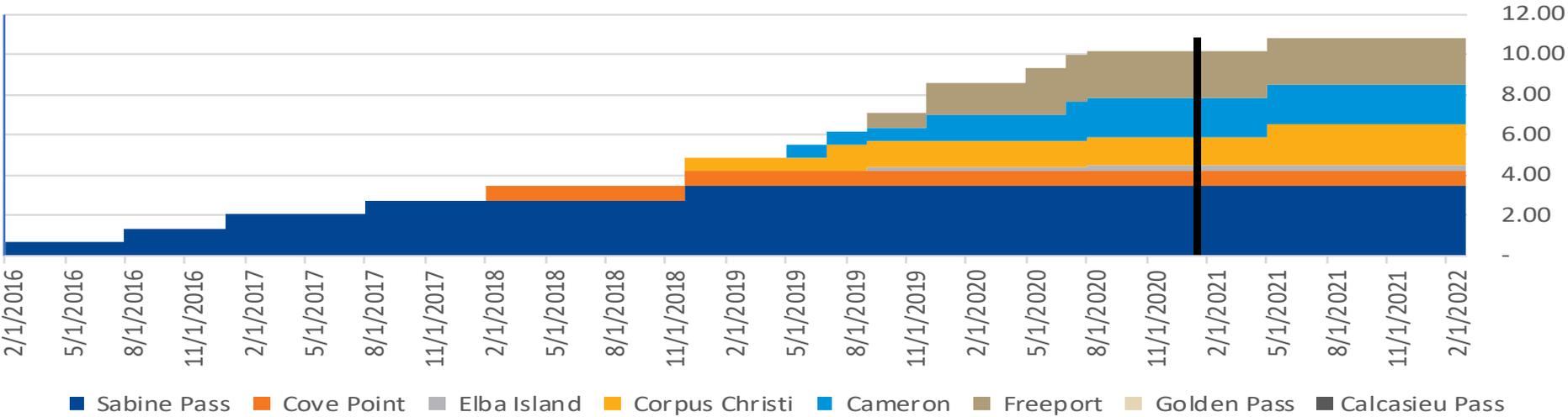


## Lower 48 weekly working gas stocks, minus five-year average, and near-month futures prices



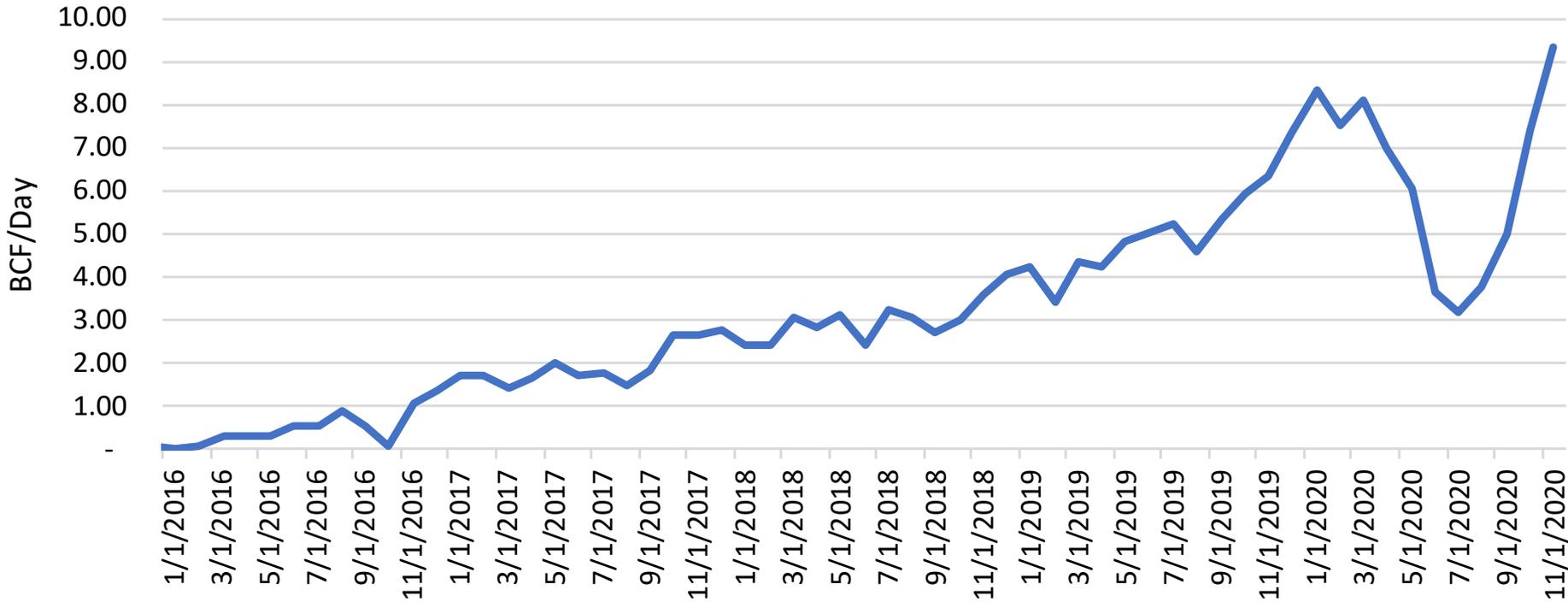
# LNG Projected Exports

US Liquefaction FERC-Authorized Export Quantity by Facilities (Bcf/Day)



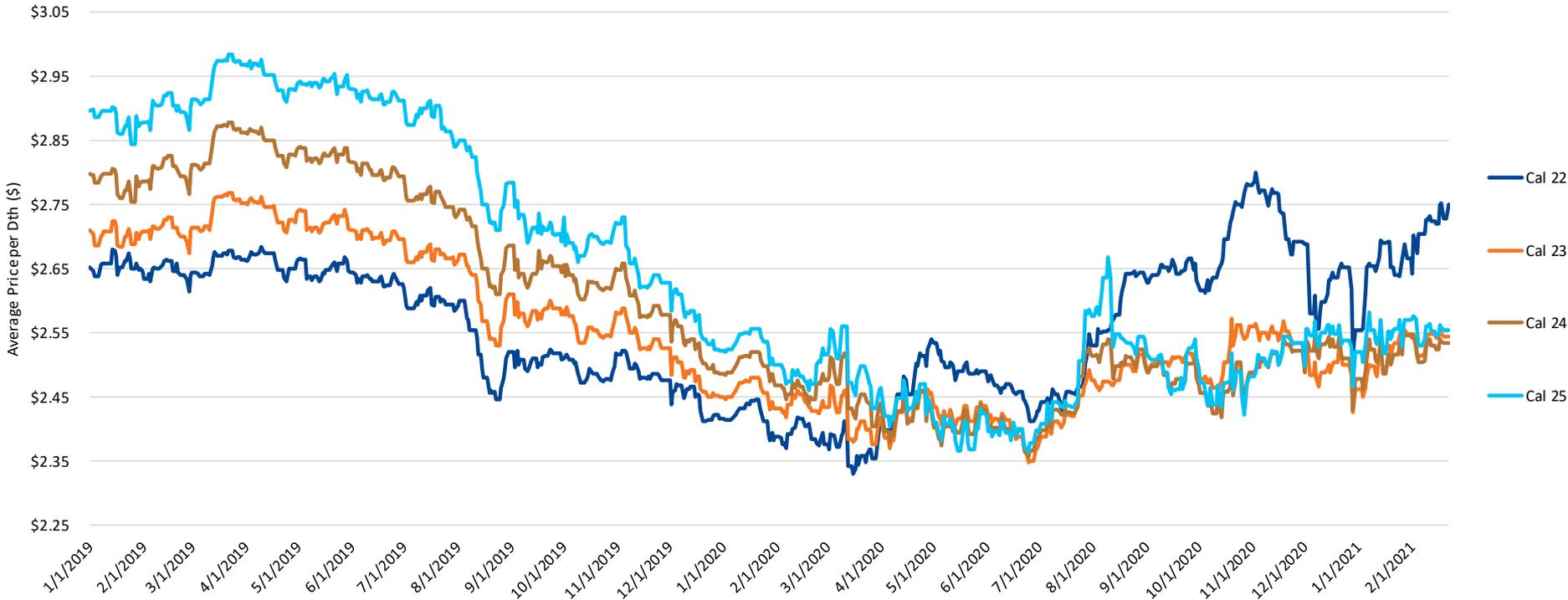
\*Updates Quarterly

## Liquefied U.S. Natural Gas Exports



# NYMEX Natural Gas Forwards

### NYMEX Average Wholesale Prices



# PJM AD Hub Electricity Forwards

## AEP Dayton Hub Annual Average Wholesale Prices

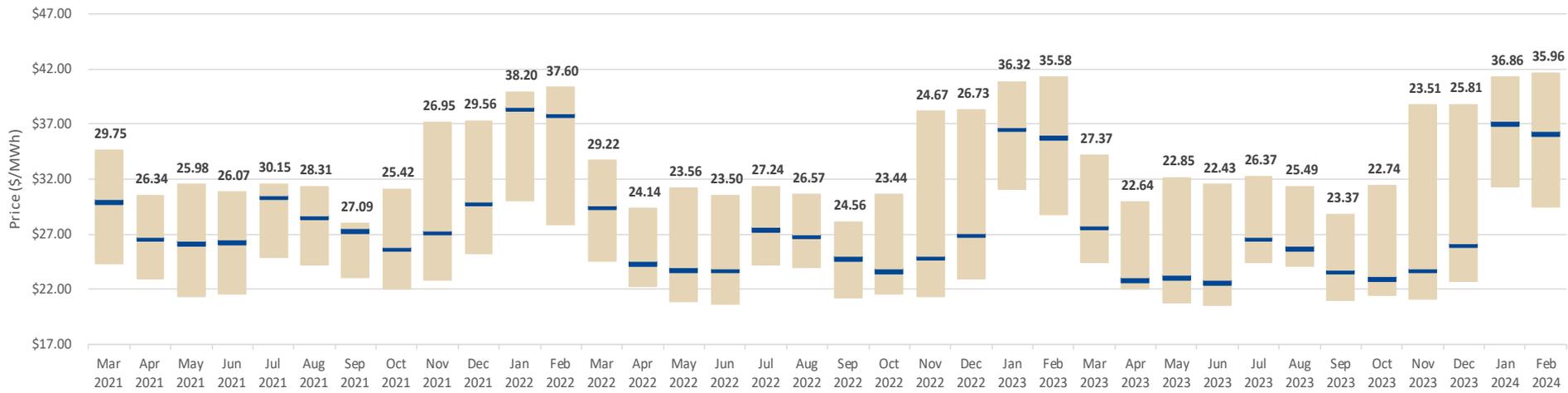


# PJM AD Hub Electricity Forwards

Power RTC \$ / MWh on 02.22.21					
From	1/1/2017	1/1/2018	1/1/2019	1/1/2020	1/1/2021
To	2/22/2021	2/22/2021	2/22/2021	2/22/2021	2/22/2021
Cal Year	2022	2023	2024	2025	2026
Current Price	\$ 27.45	\$ 26.21	\$ 26.59	\$ 27.33	\$ 28.48
Maximum Price	\$ 30.22	\$ 30.87	\$ 29.22	\$ 28.99	\$ 30.07
Minimum Price	\$ 24.69	\$ 24.54	\$ 24.75	\$ 26.70	\$ 28.47
Date of Maximum	12/28/2017	3/25/2018	5/20/2019	1/18/2021	1/18/2021
Date of Minimum	7/8/2019	7/8/2019	7/8/2019	3/23/2020	2/19/2021
Compared to Low	11.2%	6.8%	7.4%	2.4%	0.0%

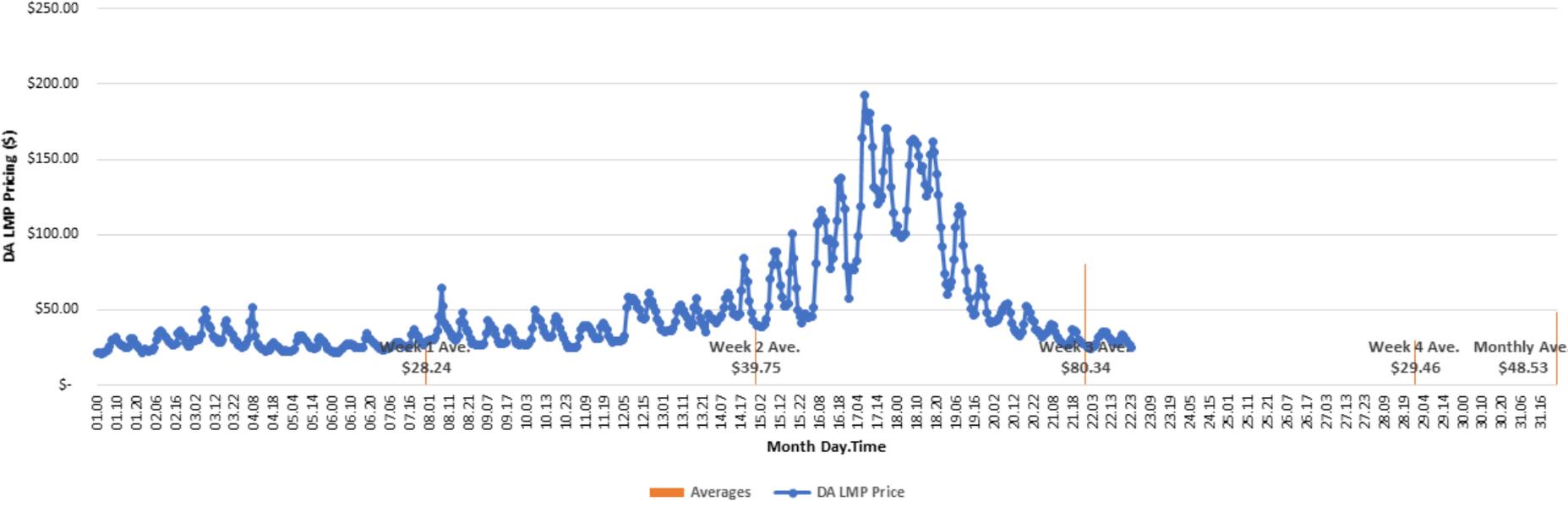
# PJM AD Hub Electricity Forwards

Electric Monthly Price Trend Analysis: Current Prices  
Data Range: 11.30.17 - 02.22.21



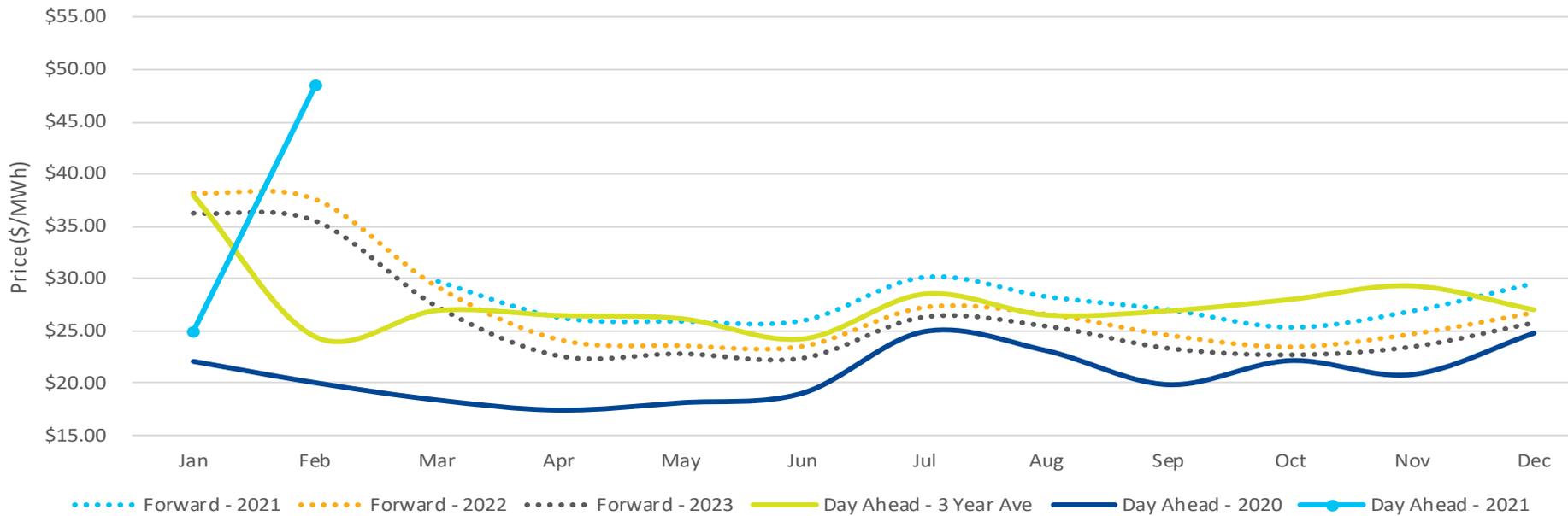
# PJM Day Ahead LMP – AEP Zone

## February DA LMP Pricing



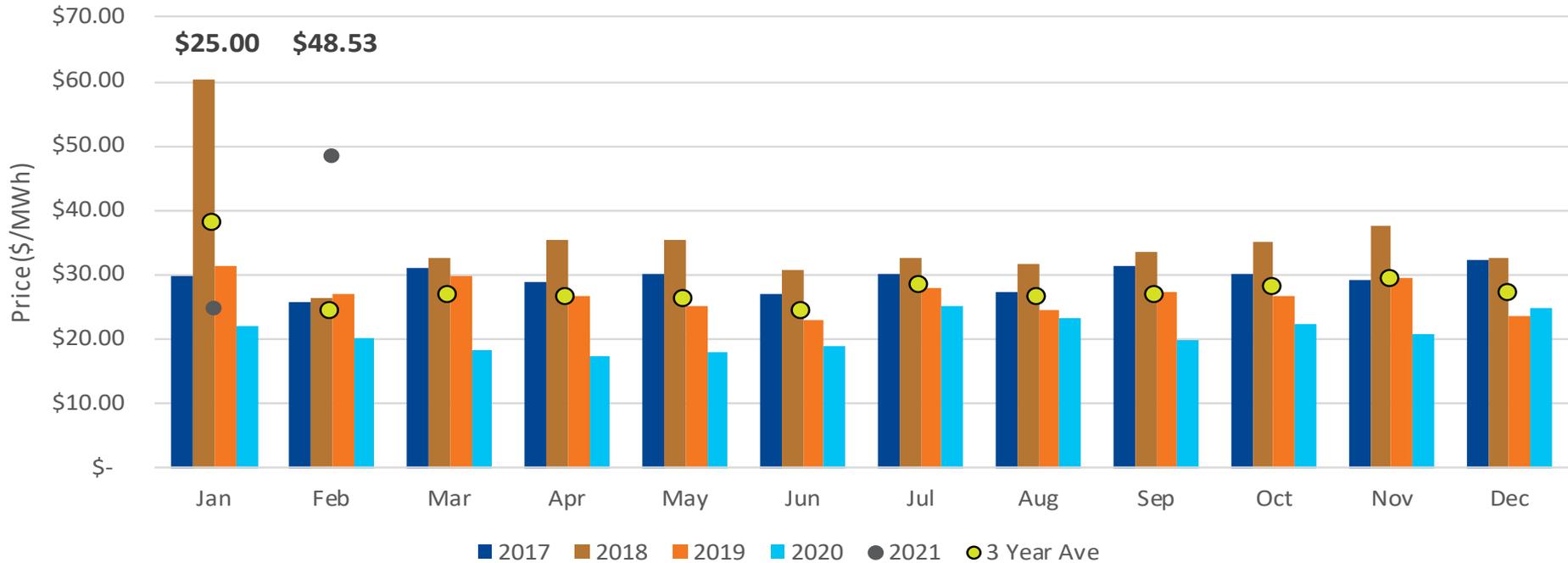
# PJM AD Hub Electricity Forwards

AEP Historical vs Forward Price as on 02.22.21



# PJM AD Hub Day Ahead LMP's

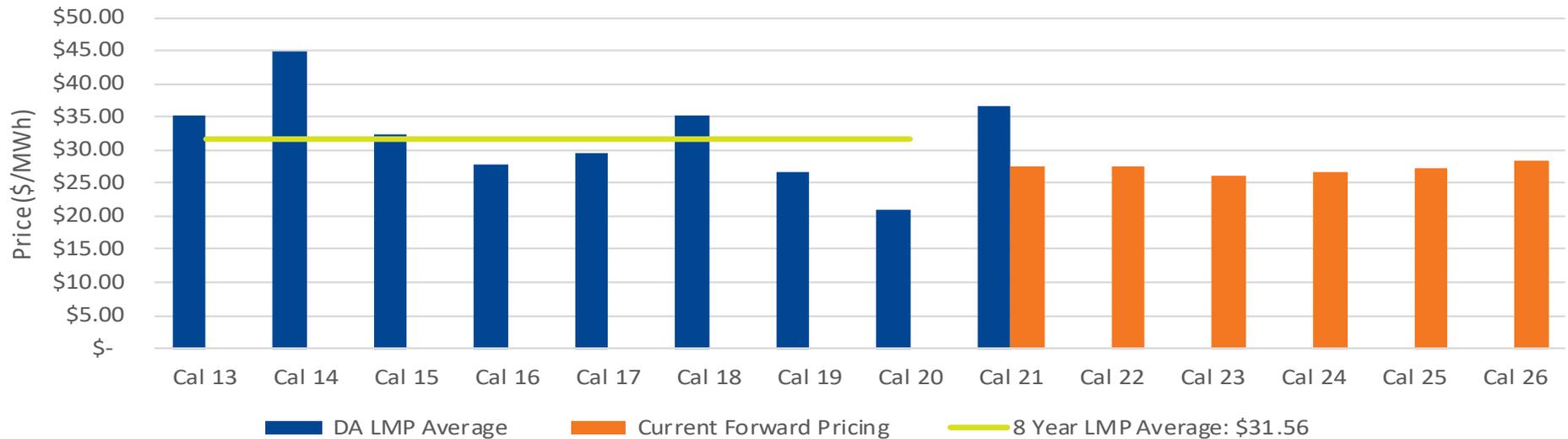
## DA LMP Averages with Monthly Average Pricing



\*Pricing listed for 2021 averages

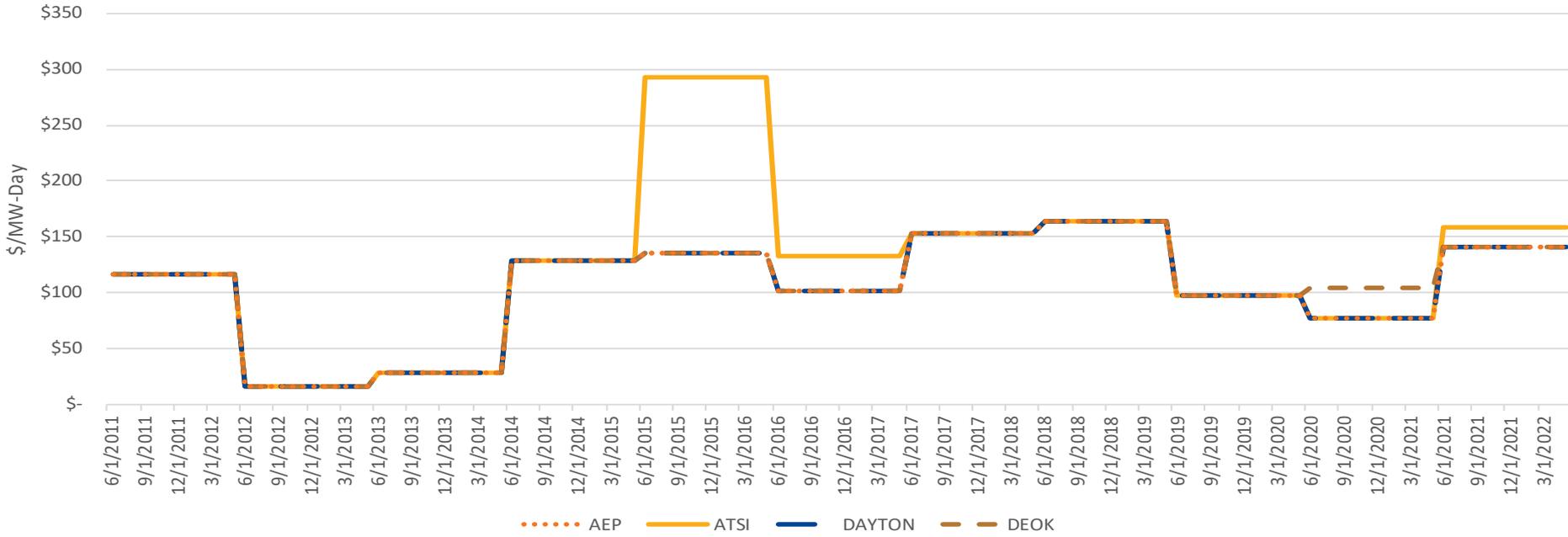
# PJM AD Hub Day Ahead LMP's

## Historical Day-Ahead Average Pricing Compared to 02.22.2021 Forward Pricing



# Capacity Auction Rates

PJM Capacity Auction Rate



\*Updates Quarterly



# PJM Capacity Auction Schedule

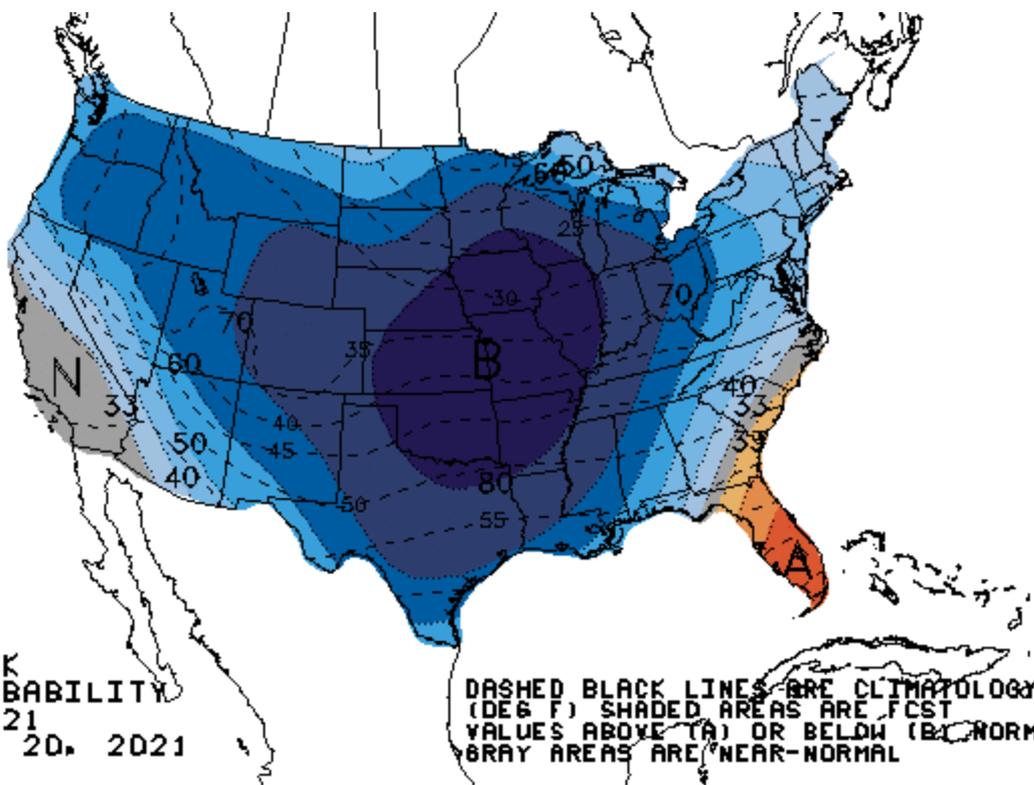
Delivery Year	Original BRA schedule	Revised BRA Schedule	IAs cancelled	
2022/2023	<b>May</b>	2019	May 2021	1 <sup>st</sup> and 2 <sup>nd</sup>
2023/2024		2020	December 2021	1 <sup>st</sup> and 2 <sup>nd</sup>
2024/2025		2021	June 2022	1 <sup>st</sup>
2025/2026		2022	January 2023	
2026/2027		2023	July 2023	
2027/2028		2024	 <b>May 2024</b>	

 Indicates auction is back on schedule

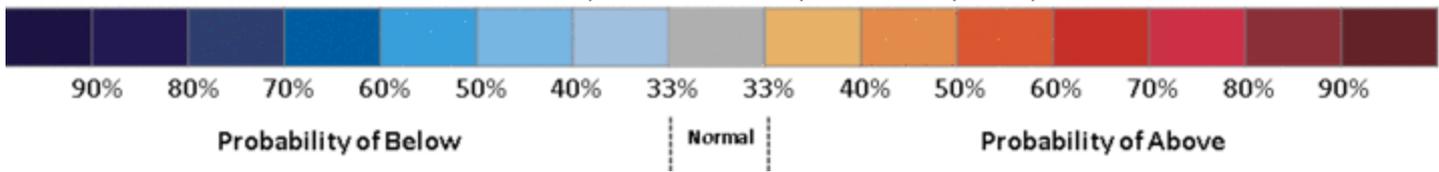
# Texas Energy Disaster



6-10 DAY OUTLOOK  
TEMPERATURE PROBABILITY  
MADE 10 FEB 2021  
VALID FEB 16 - 20, 2021

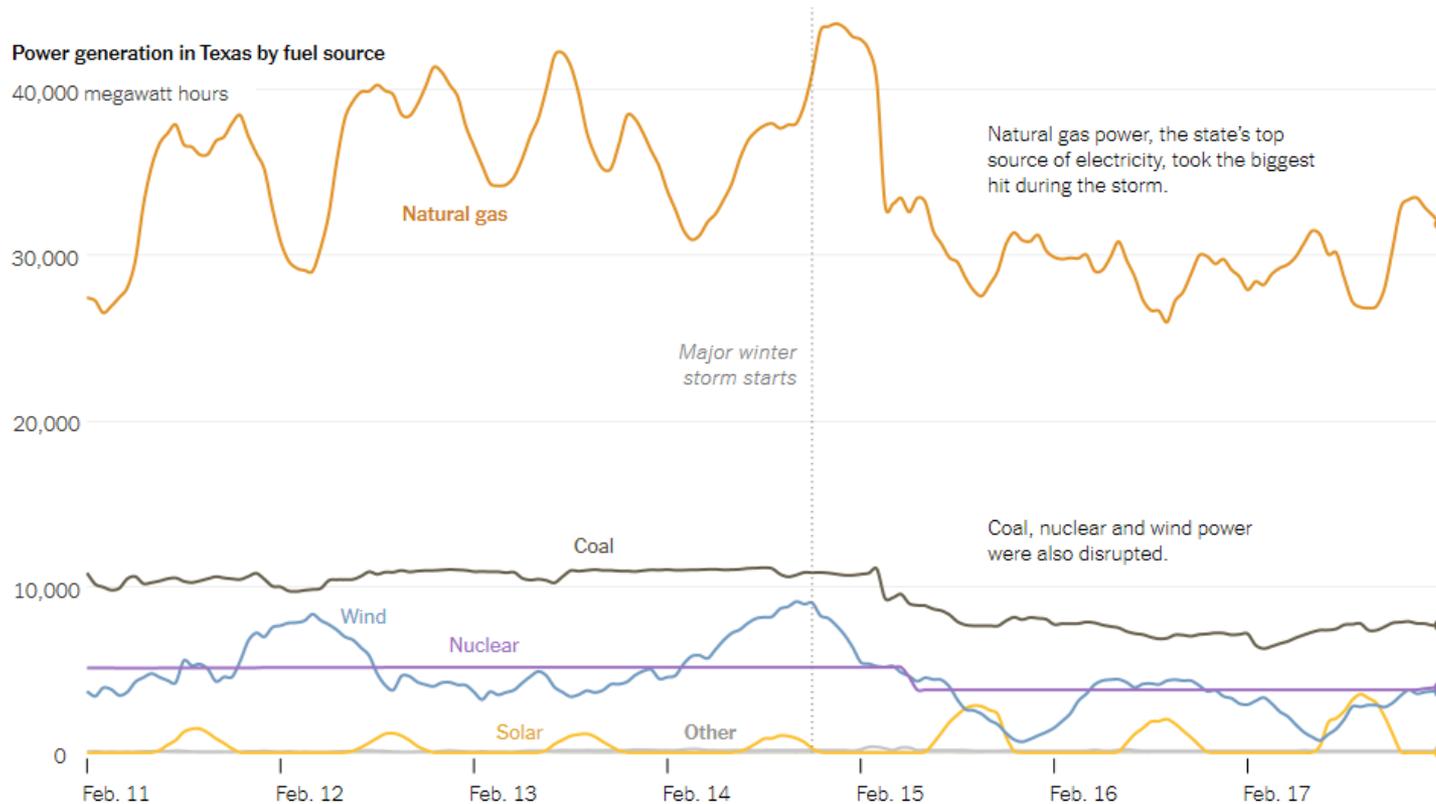


DASHED BLACK LINES ARE CLIMATOLOGY (DEG F) SHADED AREAS ARE FCST VALUES ABOVE (A) OR BELOW (B) NORMAL GRAY AREAS ARE NEAR-NORMAL



# Texas Energy Disaster

Fuel scarcity and mechanical breaks from all power sources lead to loss of 30,000 MW generation.



By The New York Times - Source: U.S. Energy Information System Hourly Electric Grid Monitor

## Result:

- Grid instability: Outages/ Rolling Blackouts
- \$9,000/MWh prices
- Natural gas spot prices reaching \$1250/dth
- ERCOT colleterial calls to suppliers
- Estimated 22 retail suppliers possible bankrupt:
  - Just Energy estimated loss of \$250 million
  - \$2000 per residential customer loss over 4 days
  - Pleas from suppliers to eliminate scarcity pricing
- Governor and Texas legislature investigating: seeking ways to reduce burden to customers

# Texas Energy Association for Marketers Plea to PUC

2. A manufacturing facility with approximately 1.7 MWs of load in a month. Its January bill was approximately \$19,000. That same 1.7 MW of load in February would cost nearly \$1,680,000. Again, just focusing on the 32 hours that are the subject of TEAM's request, normal load service during those hours would cost approximately \$450,000 (energy + ancillary services + reliability uplifts). If TEAM's request were granted, the bill for those hours would be reduced to approximately \$90,000 (energy + ancillary services + reliability uplifts).

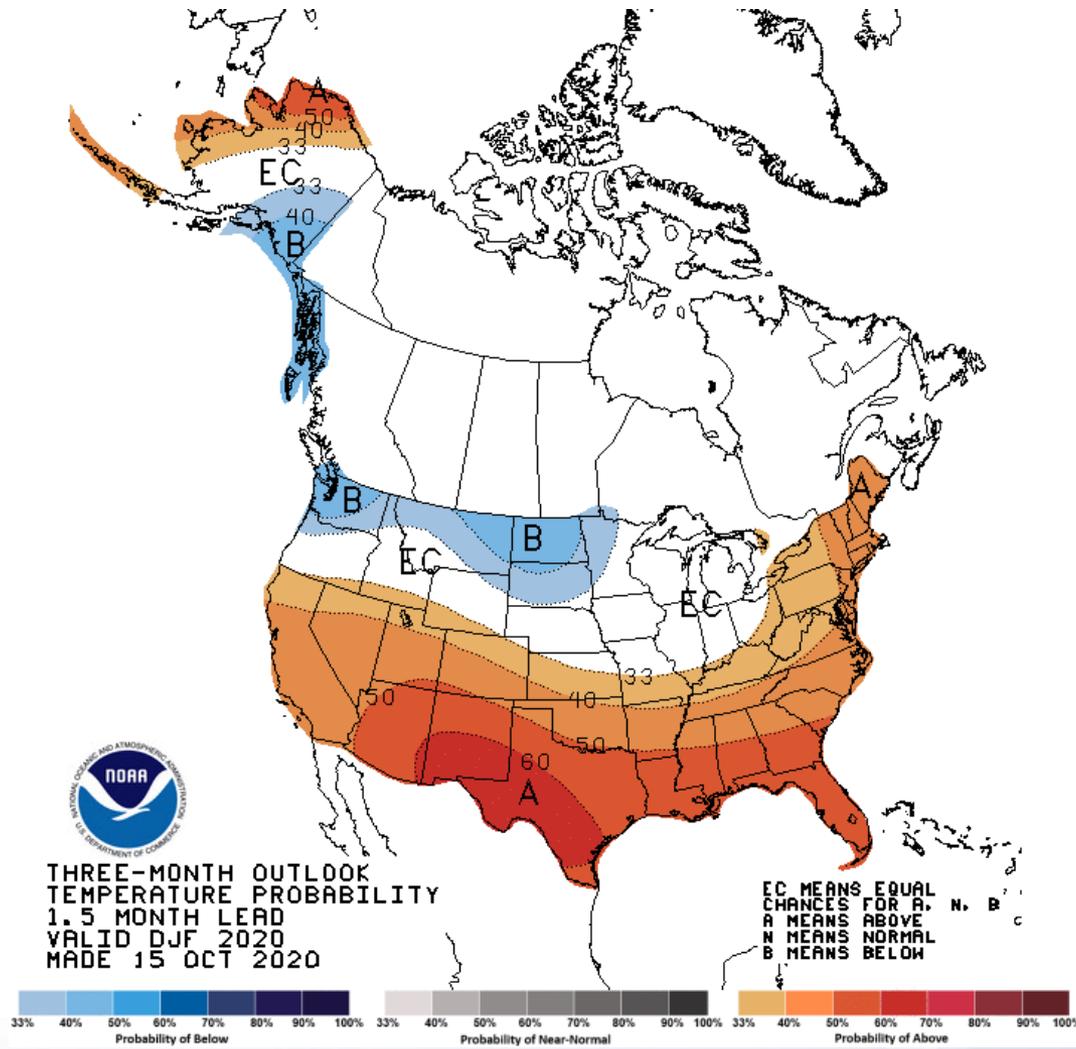
3. A large church, with approximately 700 kW of load in a month. Its January bill was approximately \$6,000. That same 700 kW of load in February would cost nearly \$540,805. Again, just focusing on the 32 hours that are the subject of TEAM's request, normal load service during those hours would cost approximately \$150,000 (energy + ancillary services + reliability uplifts). If TEAM's request were granted, the bill for those hours would be reduced to approximately \$30,000 (energy + ancillary services + reliability uplifts).

# **Natural Gas Update OMA Energy Committee**

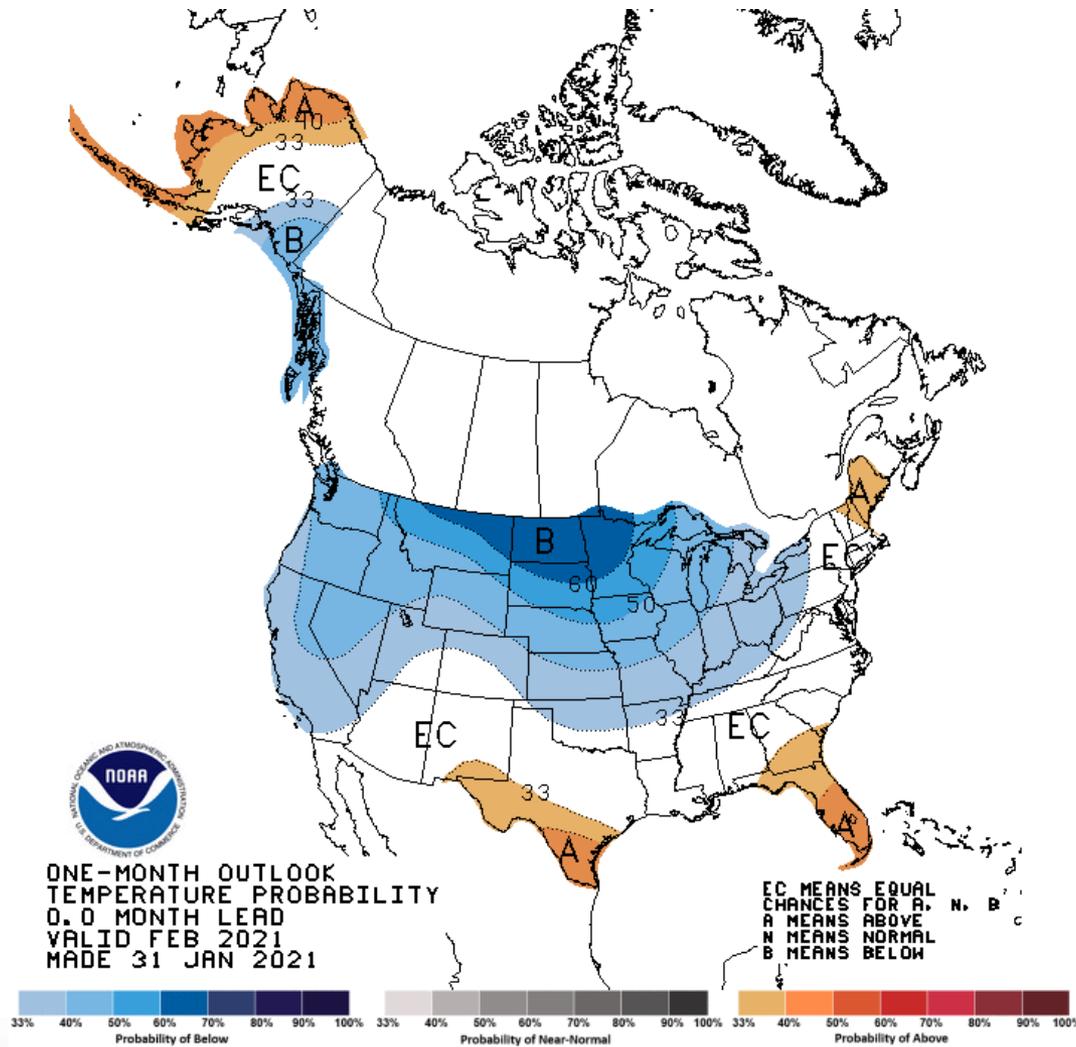
**Darin King  
NiSource/Columbia Gas of Ohio  
February 25, 2021**

# Weather & Outlook

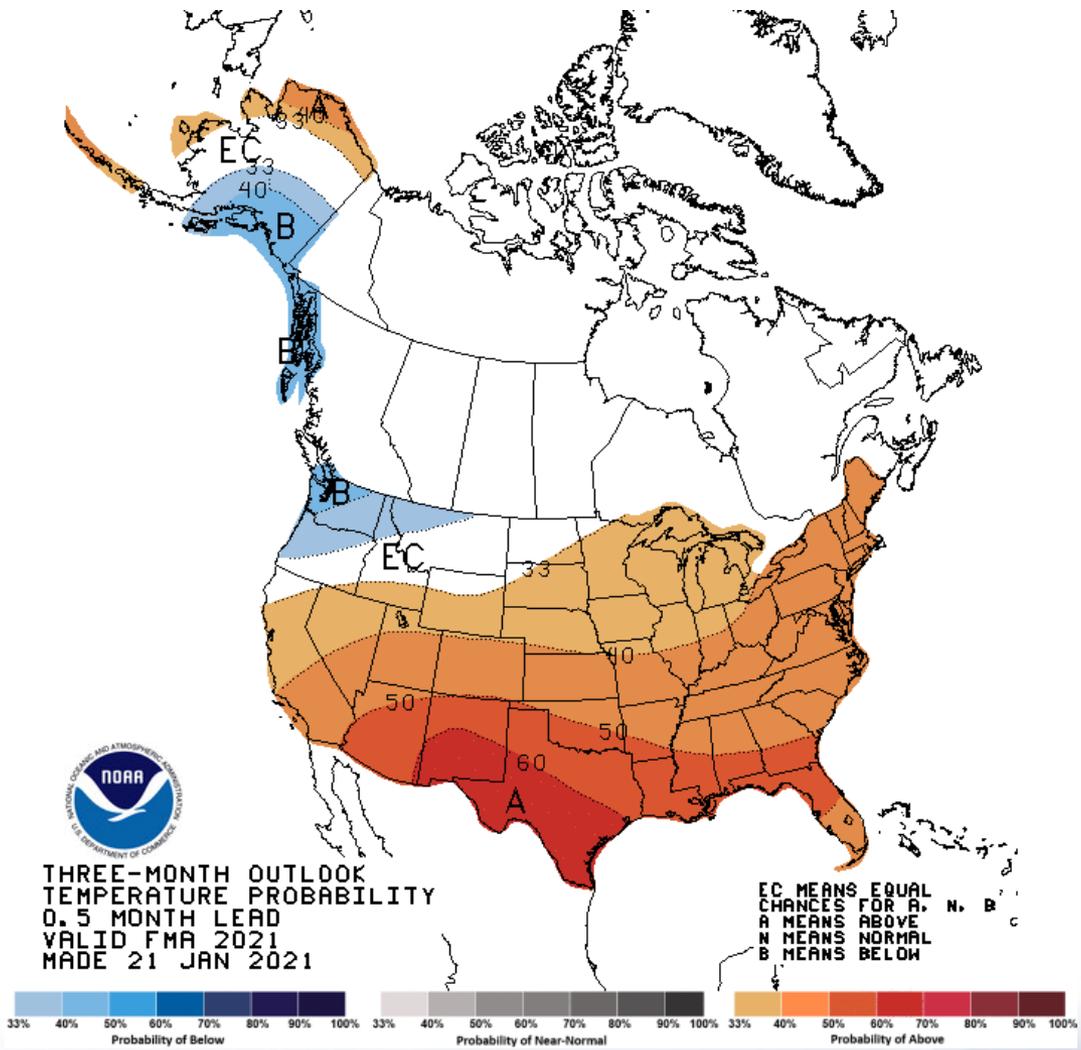
# NOAA Temperature Outlook: Dec, Jan, Feb



# NOAA Temperature Outlook: Feb Forecast



# NOAA Temperature Outlook: March - May

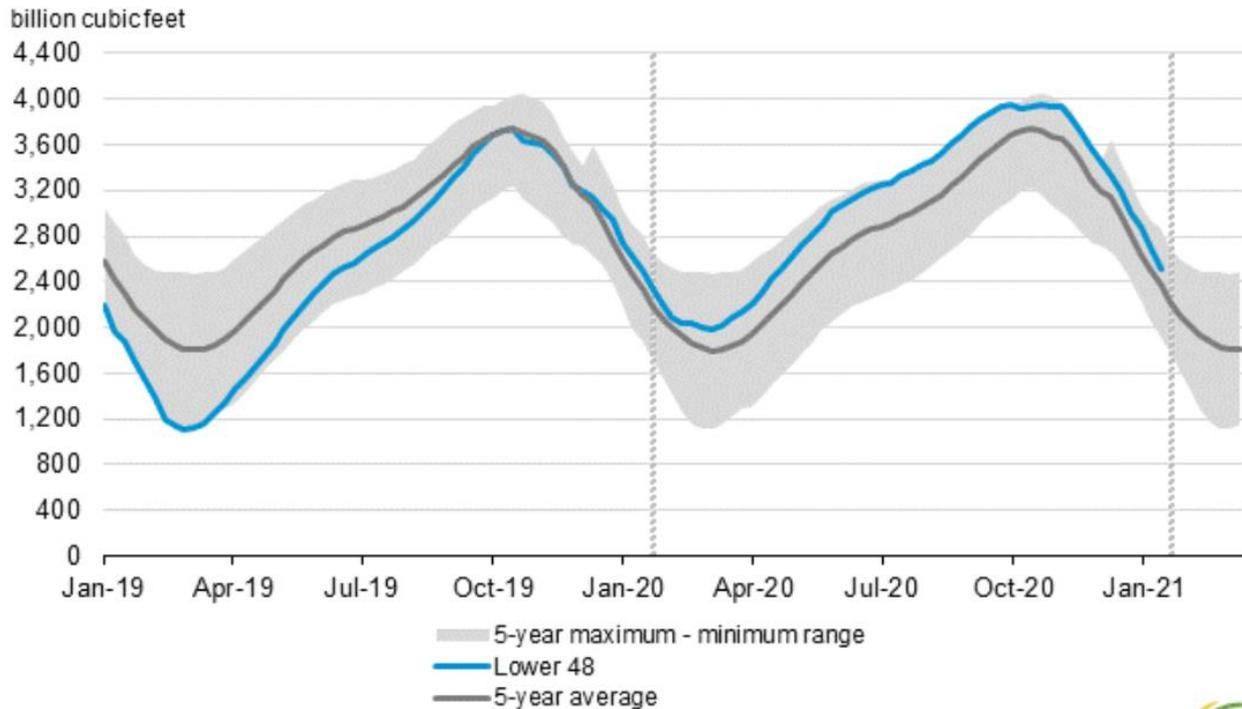


# Storage & Gas Pricing

# Storage

Working gas in storage was 2,281 Bcf as of Friday, February 5th, according to EIA estimates. Stocks were 9 Bcf lower than last year at this time, and 152 Bcf above the five-year average.

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



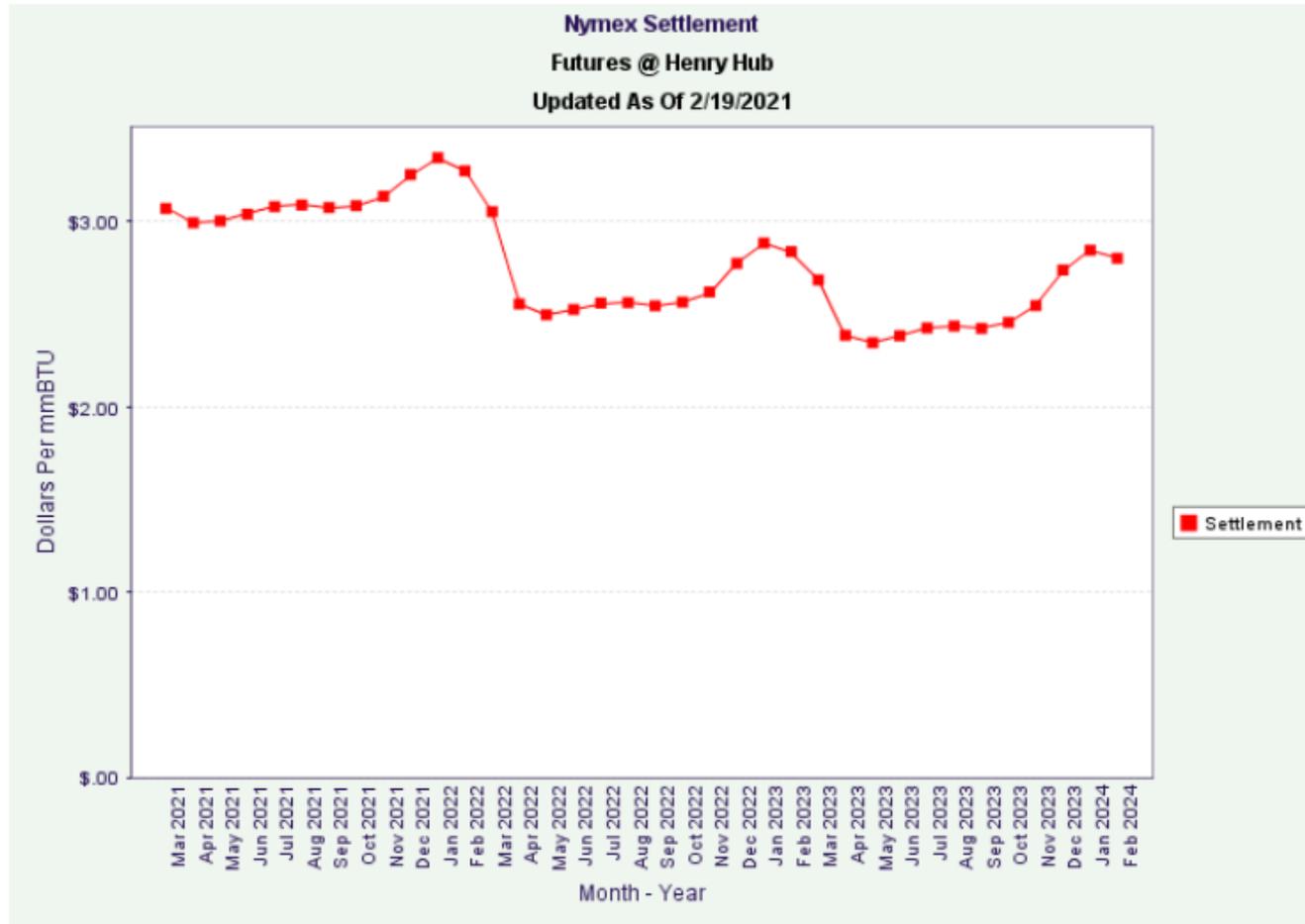
Source: U.S. Energy Information Administration



Note: The shaded area indicates the range between the historical minimum and maximum values for the weekly series from 2016 through 2020. The dashed vertical lines indicate current and year-ago weekly periods.

# Futures Settlement

## Nymex Strip

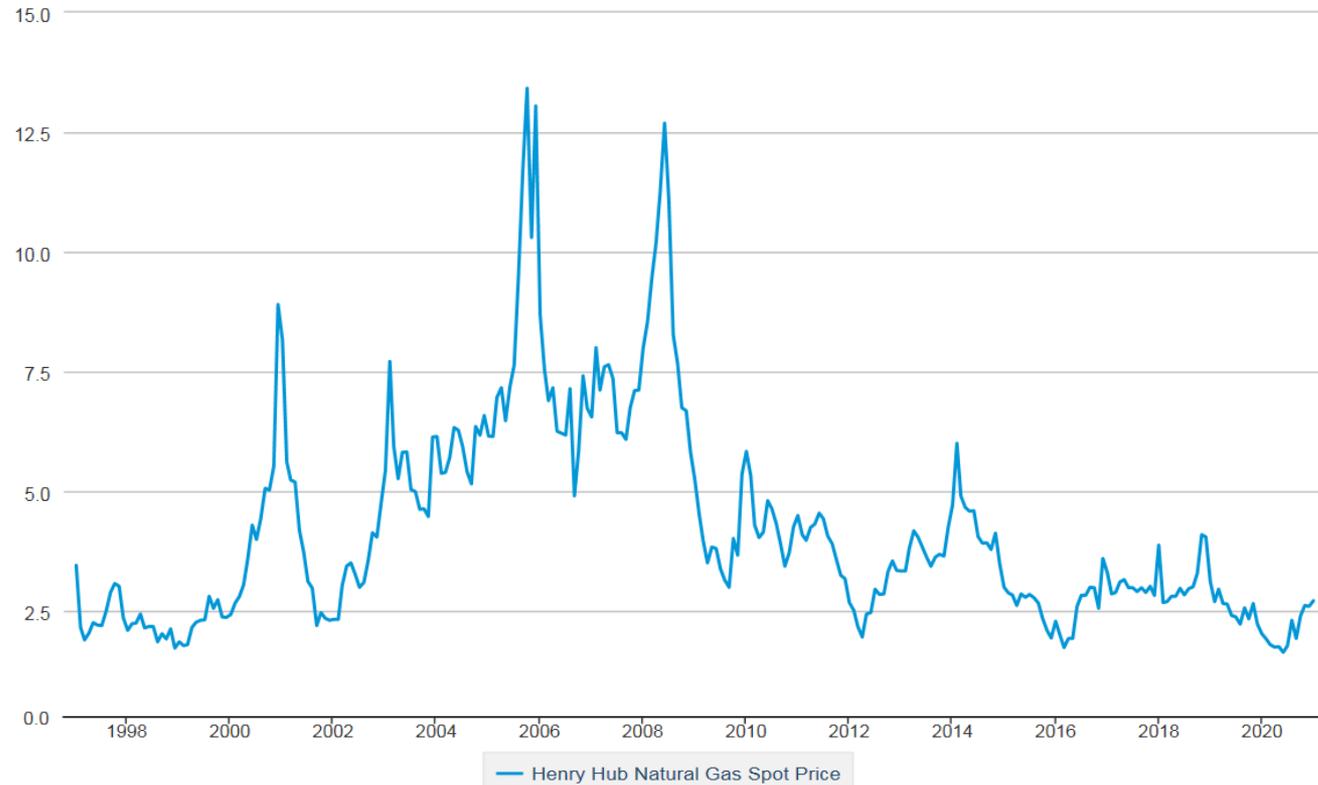


# NYMEX Prompt Month Settlement

Natural Gas Spot and Futures Prices (NYMEX)

[↓ DOWNLOAD](#)

\$/MMBTU



THOMSON REUTERS

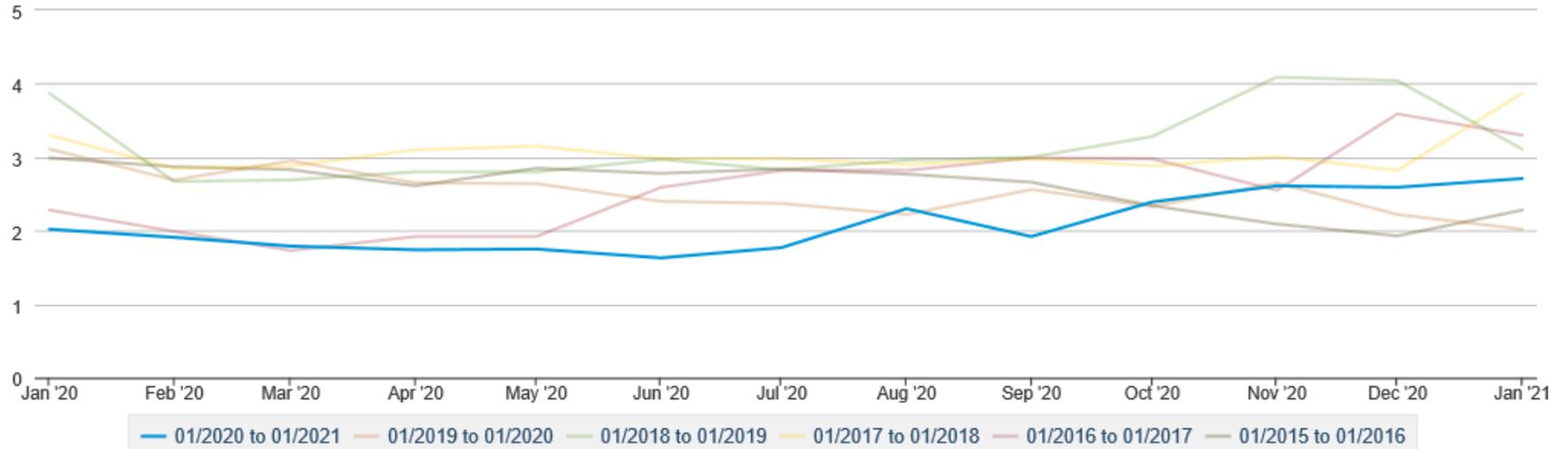
Source: U.S. Energy Information Administration

# NYMEX Prompt Month Settlement

## Henry Hub Natural Gas Spot Price

 DOWNLOAD

Dollars per Million Btu

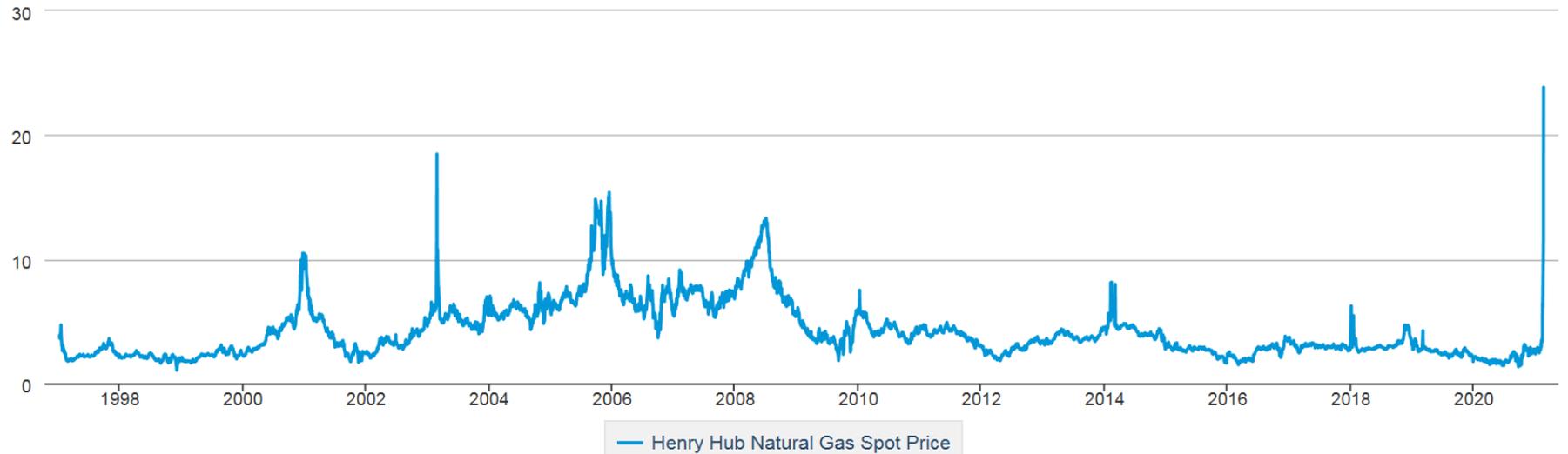


# NYMEX Spot Price History

## Henry Hub Natural Gas Spot Price

 [DOWNLOAD](#)

Dollars per Million Btu

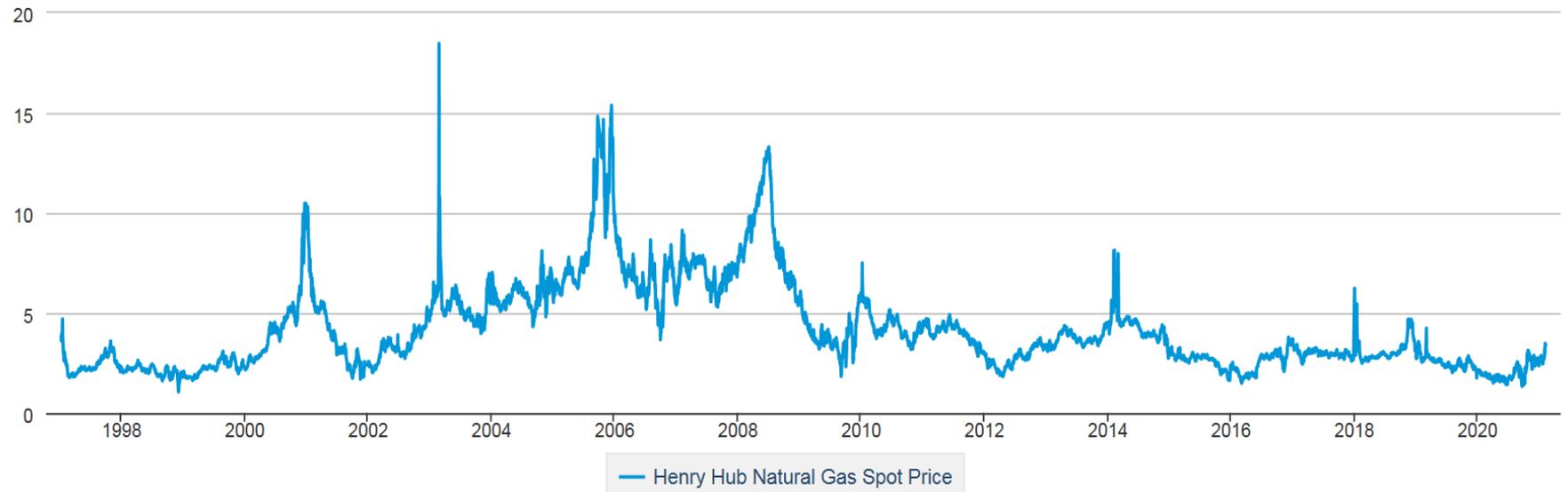


# NYMEX Spot Price History

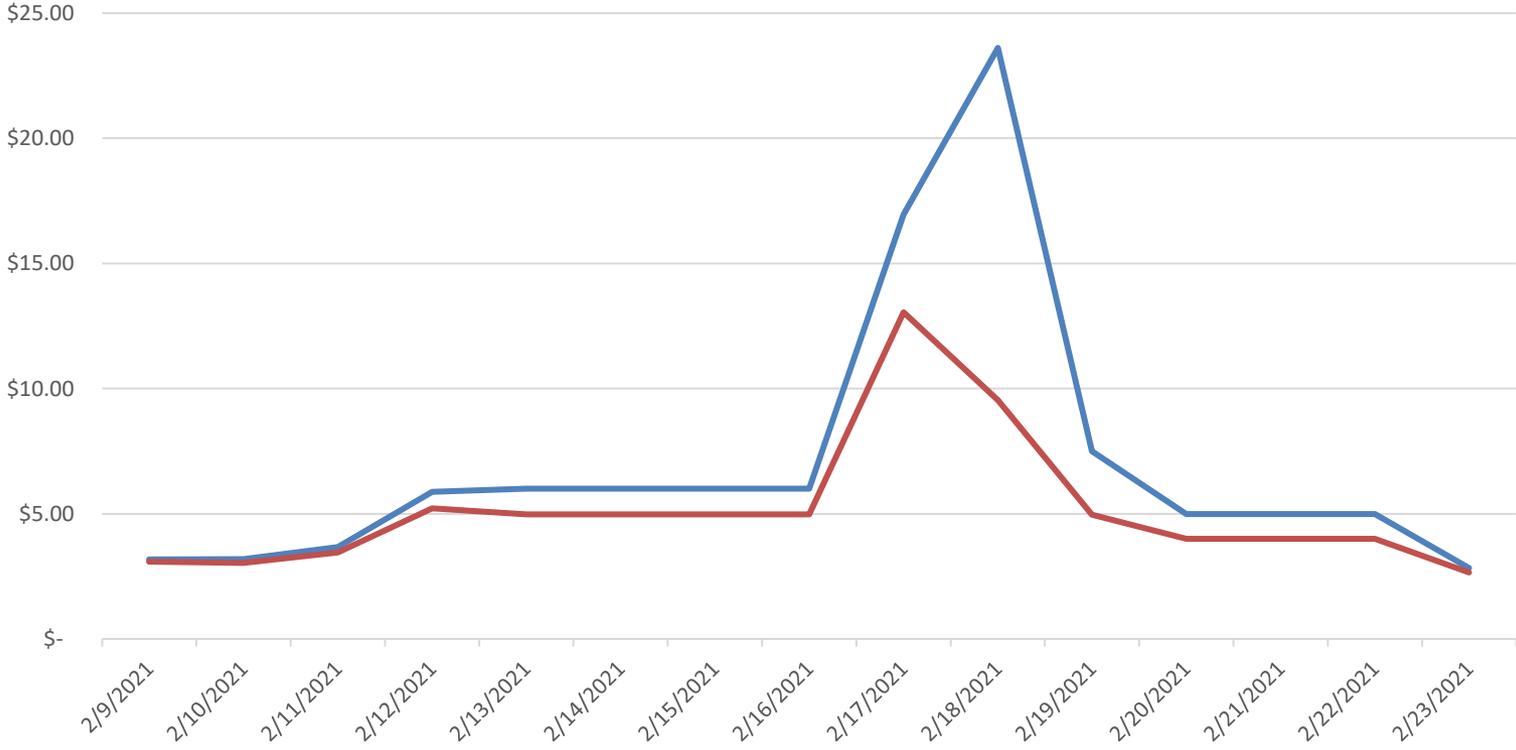
## Henry Hub Natural Gas Spot Price

 [DOWNLOAD](#)

Dollars per Million Btu



# NYMEX Spot Price Recent History



Henry Hub (IGBBL) Columbia Appalachia (IGBDE)

# NYMEX Term Pricing

<u>TERM</u>	<u>PRICE 11-24-20</u>	<u>PRICE 2-9-21</u>
3 month	\$2.84	\$ 3.08 (+0.24)
6 month	\$2.78	\$ 3.08 (+0.20)
12 month	\$2.79	\$ 3.14 (+0.35)
18 month	\$2.81	\$ 2.97 (+0.16)

[https://www.cmegroup.com/trading/energy/natural-gas/natural-gas\\_quotes\\_globex.html](https://www.cmegroup.com/trading/energy/natural-gas/natural-gas_quotes_globex.html)

# Select Hub Pricing – 2/23/21

<u>HUB LOCATION</u>	<u>12/2/20</u>	<u>2/23/21</u>	
Henry Hub	\$2.81	\$2.84	(\$0.03)
Houston Ship Channel	\$2.69	\$2.51	(\$0.18)
TCO Pool	\$2.34	\$2.66	(\$0.32)
Dominion South Point	\$2.02	\$2.46	(\$0.44)
TETCO M-2	\$2.08	\$2.48	(\$0.40)
TGP Zone 4	\$2.84	\$2.83	(\$0.01)

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

# Columbia SCO Pricing

(NYMEX Plus RPA)

## RPA

4/1/13 – 03/31/2014	\$1.29 per Mcf
4/1/14 – 03/31/2015	\$1.40 per Mcf
4/1/15 – 03/31/2016	\$1.29 per Mcf
4/1/16 – 03/31/2017	\$1.43 per Mcf
4/1/17 – 03/31/2018	\$1.45 per Mcf
4/1/18 – 03/31/2019	\$1.23 per Mcf
4/1/19 – 03/31/2020	\$1.18 per Mcf
4/1/20 – 03/31/2021	\$1.07 per Mcf
4/1/21 – 03/31/2022	\$1.70 per Mcf

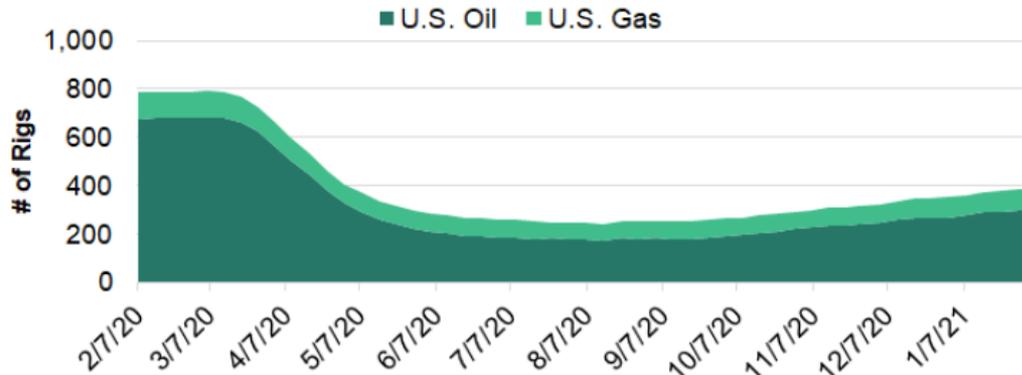


# Production, Demand, & Rig Count

# Rig Count 2/5/2021

## Weekly U.S. Oil & Gas Drilling Rig Summary As of 2/5/2021

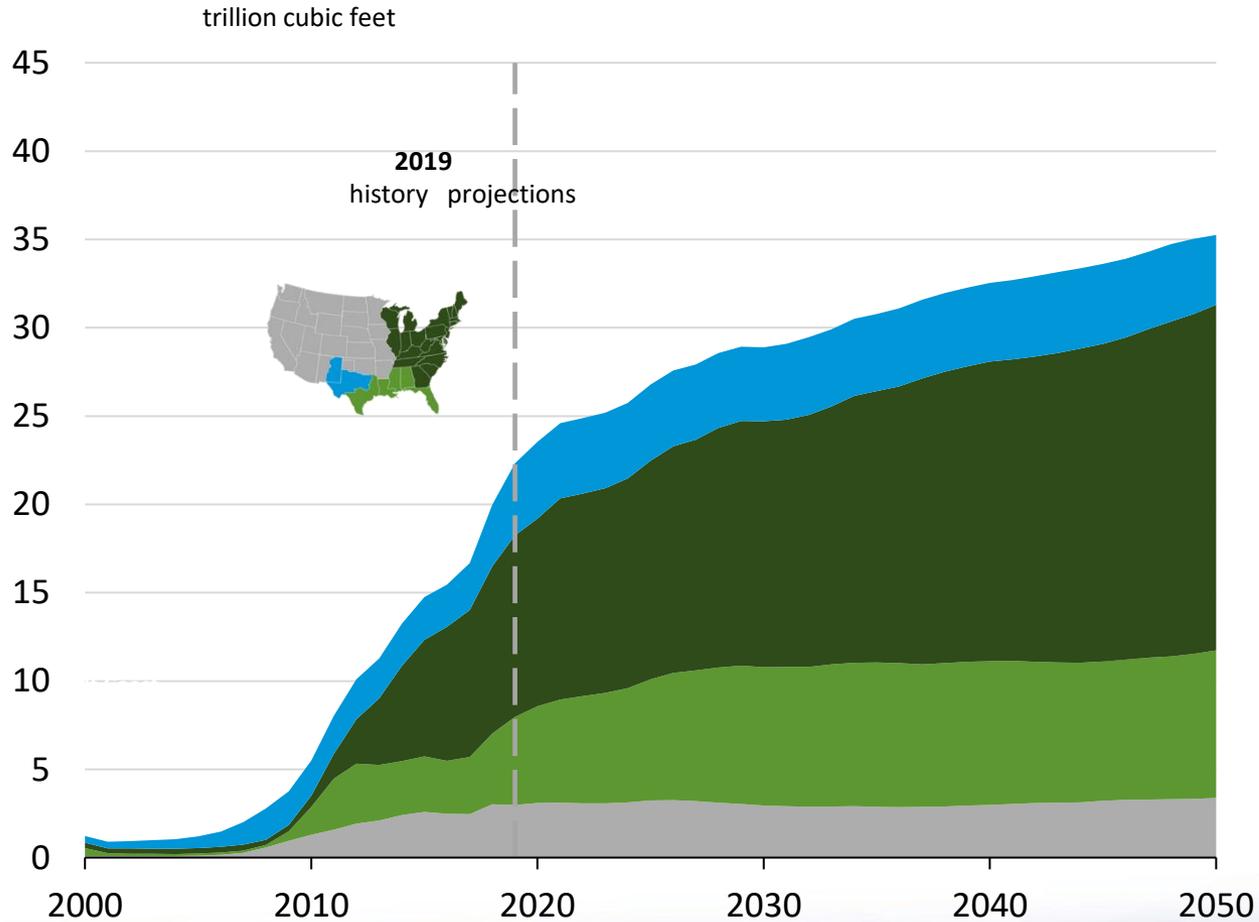
Rig Type	2/5/21	1/29/21	% Change Last Week	2/7/20	% Change Last Year
Oil	299	295	1%	676	-56%
Gas	92	88	5%	111	-17%
Disposal/Other	1	1	0%	3	-67%
Land	375	365	3%	767	-51%
Inland/Barges	1	3	-67%	0	--
Offshore	16	16	0%	23	-30%
Horizontal	354	344	3%	711	-50%
Vertical	20	22	-9%	33	-39%
Directional	18	18	0%	46	-61%
<b>Total U.S. Drilling Rigs</b>	<b>392</b>	<b>384</b>	<b>2%</b>	<b>790</b>	<b>-50%</b>



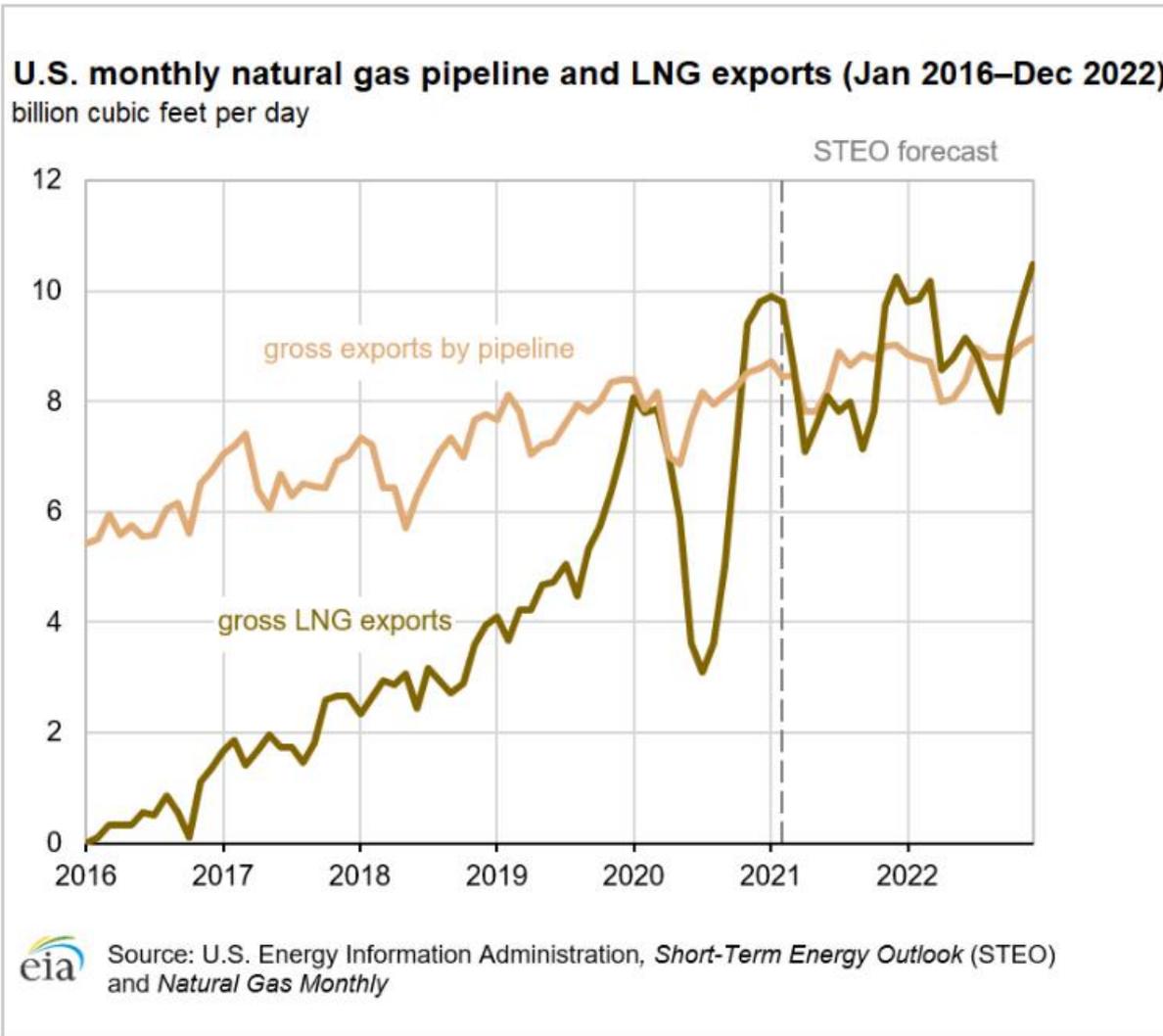
Source: Baker Hughes, NGL's Daily GPI calculations

# Eastern U.S. production of natural gas from shale resources

## AEO2020 dry shale gas production by region



# US Gas Production vs. Consumption



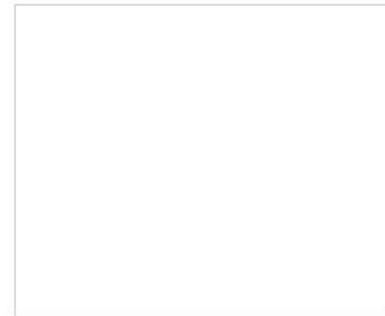
# Recent Developments

# New York City to Ban Natural Gas Hookups in New Buildings by 2030: Mayor

By Reuters, Wire Service Content Jan. 29, 2021, at 2:41 p.m.



FILE PHOTO: New York City Mayor Bill de Blasio, speaks during a news conference, following the outbreak of the coronavirus disease (COVID-19) in the Coney Island neighborhood of the Brooklyn borough of New York City, U.S., September 15, 2020. REUTERS/Brendan McDermid REUTERS



## GALLERIES

### NEWS

Cartoons on President Donald Trump



## Seattle mayor signs legislation to ban natural gas in some new buildings

The bill requires new commercial buildings and large multifamily buildings to use clean electricity for space and water heating to reduce greenhouse gas emissions.



Author: KING 5 Staff  
Published: 8:09 PM PST February 8, 2021  
Updated: 8:09 PM PST February 8, 2021



CRIME & COURTS

THURSDAY, FEBRUARY 4, 2021

## Berkeley natural gas ban faces pushback from California Restaurant Association



JOSHUA JORDAN/FILE

After the enactment of a natural gas ban, the California Restaurant Association filed a lawsuit against Berkeley. Both sides argued their cases during a hearing Tuesday.

Dec 15, 2020, 11:12am EST | 6,502 views

# California's Natural Gas Bans Are Drawing Fire From Black And Latino Leaders



**Robert Bryce** Contributor 

Energy

*I write about energy, power, innovation, and politics.*

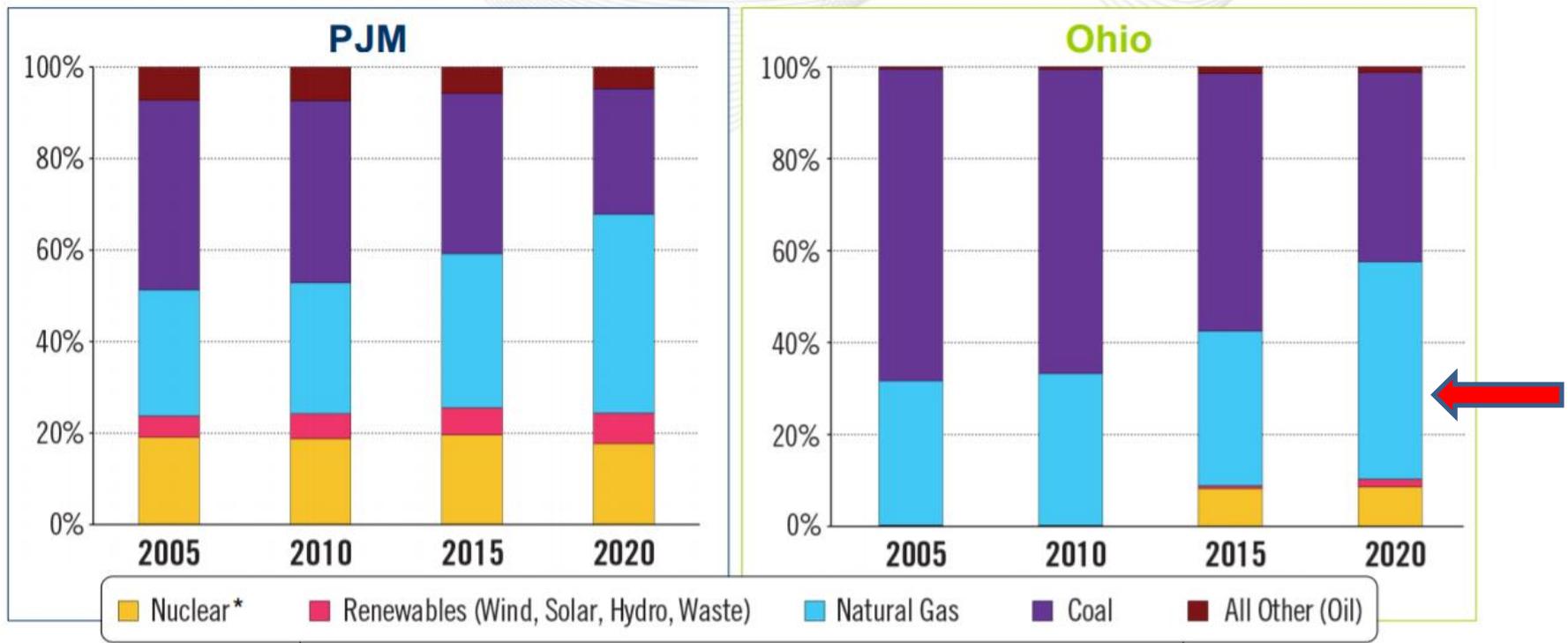


Forty communities in California have announced bans or restrictions on the use of natural gas in ... [\[+\]](#) TIM GRAHAM/GETTY IMAGES

# Historic Generation Mix



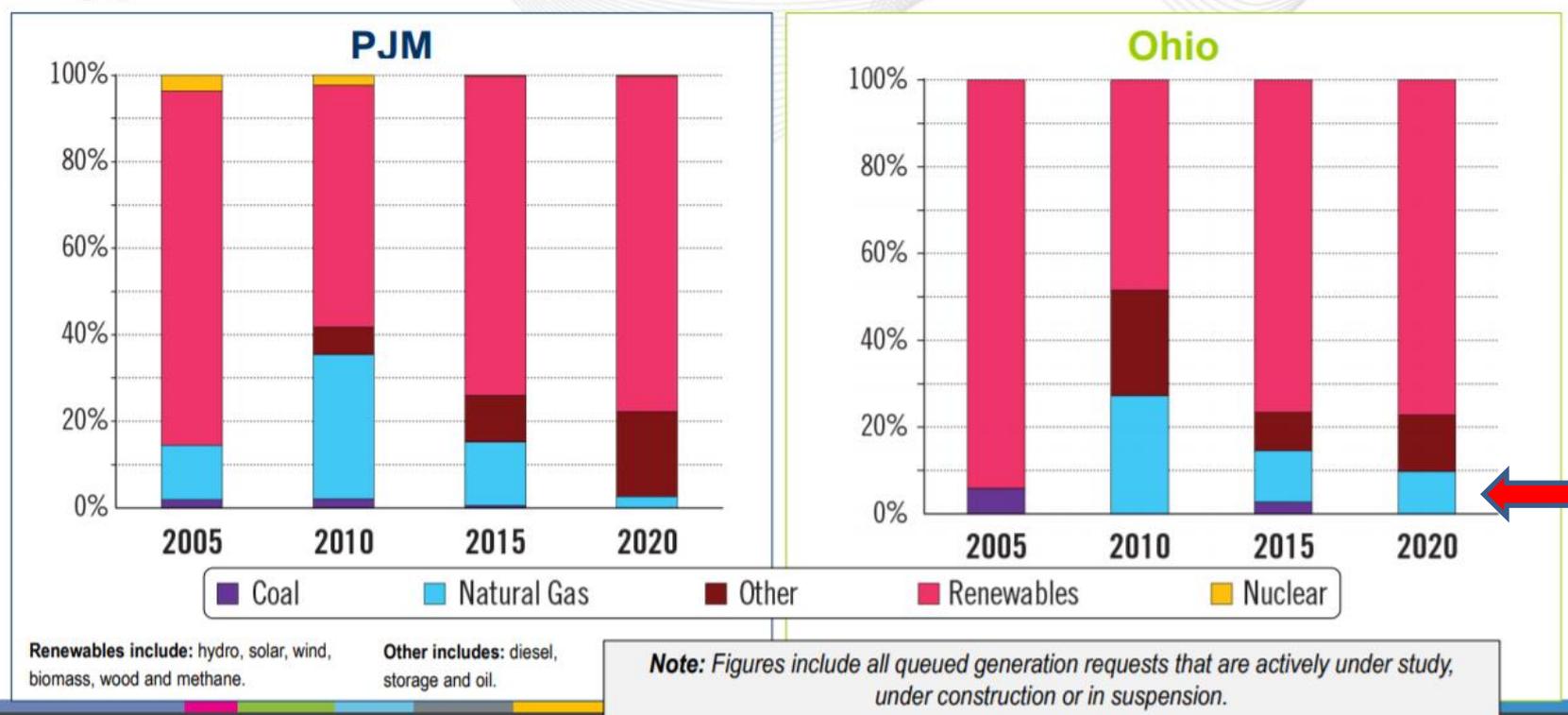
Installed Capacity Trend: Historic Generation Shift



# Generation Mix – In the Queue



## Queued Capacity Trend: Fuel Mix Shift Continues



# Political Developments Since January

- **Keystone XL**
- **Paris Accords**
- **Fracking Ban on Federal Land**
- **Texas Bans Natural Gas Exports**

# Petroleum Products Pricing

<b><u>TERM</u></b>	<b><u>PRICE 9/2020</u></b>	<b><u>PRICE 2/16/2021</u></b>
<b>Crude</b>	<b>\$ 41</b>	<b>\$ 60</b>
<b>Gasoline</b>	<b>\$ 2.16</b>	<b>\$ 1.80</b>
<b>Fuel Oil</b>	<b>\$ 1.19</b>	<b>\$ 1.70</b>
<b>Jet Fuel</b>	<b>\$ 1.16</b>	<b>\$ 1.63</b>

**Thank You**

## Energy

### First Step to HB 6 Repeal: Senate Passes Romanchuk Bill

February 19, 2021

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

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

Under SB 10, revenue collected under these provisions would be refunded. Anticipated decoupling costs for customers were **estimated** at \$17 million for 2020 and more than \$101 million for 2021 for all customer classes. SEET refund amounts are yet to be determined.

SB 10 now goes to the House for consideration. Meanwhile, Senate President **Matt Huffman** (R-Lima) has said he hopes to bring a nuclear subsidies repeal plan (**Senate Bill 44**) to the floor in about two weeks and that he **expects the repeal legislation to become law**.

These developments and more will be covered at the Feb. 25 OMA Energy Committee meeting. Guest speakers will be Sen. Romanchuk and Attorney General Dave Yost. **Register here.** *2/18/2020*

### Another Bill to Repeal HB 6 Nuclear Subsidies

February 19, 2021

Another bill has been introduced at the Statehouse to repeal the nuclear subsidies authorized by the scandal-plagued House Bill 6. Remarkably, the new legislation is sponsored by two of HB 6's strongest supporters in 2019.

**House Bill 128** was introduced by Rep. **James Hoops** (R-Napoleon) — chair of the House Public Utilities Committee — and Rep. **Dick Stein** (R-Norwalk), a vocal proponent of nuclear energy. The bill, which received its first hearing

this week, would rescind HB 6's \$150 million a year in subsidies provided to Energy Harbor, owner of Ohio's two nuclear power plants.

In short, HB 128 would:

- Repeal \$170 million in HB 6 generation subsidies, including \$20 million a year for a handful of solar plants;
- Eliminate the decoupling provision that locked in FirstEnergy revenue at record-setting 2018 levels (\$978 million); and
- End the change that reworked the “significantly excessive earnings” test to benefit FirstEnergy.

The sponsors of HB 128 say repeal of the subsidies is now necessary so the plants may continue to sell electricity into the PJM capacity market. (The OMA **spotlighted this issue** more than a year ago.)

The Senate, meanwhile, has its own subsidy-repeal plan in **Senate Bill 44**. *2/17/2021*

### FirstEnergy Ends Another Consumer Fee; More Questions Raised About \$4M Payment to Randazzo

February 19, 2021

FirstEnergy **announced** this week it was ending a “lost distribution revenue” fee the utility has collected since 2011. In addition, the utility said it was taking other “proactive steps” in an attempt to repair its reputation amid the House Bill 6/Larry Householder bribery and racketeering scandal. This comes **just two weeks** after FirstEnergy announced it would forego the decoupling fee authorized by HB 6.

Meanwhile, Cleveland.com reporter Andrew Tobias **reports** that in a new disclosure to federal regulators, FirstEnergy is bringing renewed attention to a questionable \$4 million payment the company made to former Public Utilities Commission of Ohio (PUCO) Chairman Sam Randazzo. The company now believes the payments “may have been for purposes other than those represented within the consulting agreement” that FirstEnergy had with Randazzo.

The discovery of the payment prompted FirstEnergy to fire its then-CEO and other top executives last fall. *2/18/2021*

## **PUCO Nominating Council Selects Six for Interviews**

February 19, 2021

Six individuals will be interviewed later today (Friday, Feb. 19) in round two of the search to find the next Public Utilities Commission of Ohio commissioner for a seat that opens in April. Last month, Gov. Mike DeWine **rejected the initial list** of four finalists submitted by the PUCO Nominating Council.

Those selected for interviews are:

- Daniel Shields, director of the Ohio Consumers' Counsel's analytical department (Independent);
- Jade Davis, vice president of external affairs for Cleveland-Cuyahoga County Port Authority (Democrat);
- Jenifer French, former Franklin County Common Pleas Court judge (Republican);
- Melissa Shilling, chair of the Environmental Review Appeals Commission (Republican);
- Nancy Hammond, former Fayette County Common Pleas Court judge (Republican); and
- Virginia King, Refining Sustainability Manager for Marathon Petroleum LP (Republican).

After conducting private interviews, the council will advance four finalists to the governor. The appointment is subject to Senate approval. *2/19/2021*

## **Cold Messes With Texas (and Its Electric Reliability)**

February 19, 2021

This week's massive winter storms and frigid temperatures wreaked havoc over much of the U.S. Texas has seen the most outages, with businesses and residences left in the dark and sending spot electric prices through the roof. Observers and pundits have been quick to point fingers at different electric generation technologies, regulatory constructs, energy policies, and even Texas' go-it-alone electrical grid. Could this happen in Ohio?

The 2014 polar vortex knocked out 40,200 megawatts (MW) of power generation in Ohio and the region. Nothing was spared. Natural gas, nuclear, and renewables all had failures. Coal was impacted heavily, with 13,700 MW of outages. However, Ohio's power stayed on because the Buckeye State is part of a 13-state power grid market called **PJM Interconnection**. (PJM is widely considered one of the premier grid and wholesale market structures in the world.)

Like other multi-state grids, PJM allows diverse generators from a multi-state region to bid into the capacity market, resulting in a significant reserve capacity (over 20% more power than needed). There were only sporadic outages in Ohio and other PJM states this week.

In contrast, Texas resisted joining a multi-state grid in favor of a **walled-off or island approach** so that only Texas generation can supply Texas markets. The Texas grid, operated by the Electric Reliability Council of Texas (ERCOT), is not subject to federal transmission regulations and does not have a capacity market that functions to assure adequate electricity supply, especially during peak events. During Ohio's House Bill 6 debate, some state lawmakers expressed condemnation of PJM in favor of a Texas-like model in which utilities and generators win and customers are exposed to considerable risk. But this week has served as another reminder that in times of extreme weather, PJM's multi-state regional market has kept the power on. *2/18/2021*

## EIA: Renewables Expected to Be Predominant Source of Electrical Generation by 2030

February 19, 2021

The U.S. Energy Information Administration (EIA) projects that the share of renewables in the U.S. electricity generation mix will increase from 21% in 2020 to 42% in 2050. According to the **EIA estimates**, renewables will collectively surpass natural gas by 2030 to be the predominant source of generation. Solar is expected to surpass wind by 2040 as the largest source of renewable generation. *2/15/2021*

## Senate Committee Takes First Step to Repeal HB 6's Decoupling Mechanism

February 12, 2021

This week, the Senate Energy and Public Utilities Committee voted 11-0 to approve OMA-supported **Senate Bill 10**, which would repeal an anti-consumer, anti-market provision of House Bill 6.

If enacted, SB 10 would rescind HB 6's decoupling provision, which FirstEnergy's former CEO in 2019 said **would make the company "somewhat recession proof"** by guaranteeing the company's revenue at 2018's record-setting levels (\$978 million a year).

The bill would also repeal the **"significantly excessive earnings"** provision authorized in the last state budget (HB 166) to allow FirstEnergy to avoid consumer-protecting profitability limits and related customer refunds.

The sponsor of SB 10, Sen. **Mark Romanchuk** (R-Mansfield) — who is a manufacturer — told *Hannah News Service* that other provisions of HB 6, including its nuclear and coal price supports, are still on the table and could appear in separate repeal legislation. *2/10/2021*

## Senate Bill 44 Would Kill HB 6's Nuclear Subsidies

February 12, 2021

There is other recently introduced legislation besides Senate Bill 10 (see separate story) that unwind House Bill 6. One such measure is **Senate Bill 44**, sponsored by Sens. **Jerry Cirino** (R-Kirtland) and **Michael Rulli** (R-Salem) to repeal HB 6's \$150 million annual nuclear

generation subsidies. The bill, which received its first hearing this week, would leave intact HB 6's \$20 million in annual subsidies for select solar projects.

*Gongwer News Service* reported that the sponsors of SB 44 said HB 6's subsidy payments "may be more of a liability to beneficiary Energy Harbor under ongoing and expected changes at the federal level — and that the company's fiscal footing should be healthier given its emergence from bankruptcy a year after HB 6's passage." *2/10/2021*

## Still More Developments in the HB 6 Drama

February 12, 2021

On Feb. 5, Generation Now — a dark money group that prosecutors allege was controlled by former Ohio House Speaker Larry Householder — **admitted guilt** in helping orchestrate the \$60 million racketeering scandal tied to the enactment of House Bill 6.

Meanwhile, there was further confirmation this week that the owner of Ohio's two nuclear power plants — Energy Harbor, a subsidiary of FirstEnergy — is **no longer interested** in receiving as much as \$1 billion in generation subsidies provided by the tainted energy law. The company is concerned that accepting subsidies would put it at a disadvantage when competing with non-subsidized electricity suppliers in the 13-state PJM energy market.

A federal rule blocks companies that receive state subsidies from being able to sell electricity in a market designed to provide extra energy capacity, if needed. The OMA **spotlighted this issue** more than a year ago. *2/9/2021*

## AG Yost Announces Decoupling Deal With FirstEnergy

February 5, 2021

On Feb. 1, Attorney General Dave Yost **announced** a "long-term settlement" with FirstEnergy, which has agreed to stop using a House Bill 6-authorized decoupling rider that would cost customers an extra \$102 million this year.

In a **radio interview this week**, Yost said FirstEnergy would ask the Public Utilities Commission of Ohio (PUCO) to zero out the

decoupling rider. Shortly after, the PUCO **announced** that the decoupling rates for FirstEnergy's Ohio distribution utilities had indeed been set to zero. (**This tracker** shows FirstEnergy has already collected \$27 million from the rider over the past year.)

This week's legal development comes after the OMA **for nearly two years** led efforts to oppose HB 6 — including its decoupling mechanism, which had guaranteed FirstEnergy and its subsidiary, Energy Harbor, profits of at least \$978 million in gross annual revenues.

It's also the second recent HB 6-related setback for FirstEnergy. In late December, **a Franklin County judge ordered** that \$170 million per year in HB 6's customer-funded subsidies could not be collected from customer bills. The OMA helped lead legal efforts to stop the collection of the new subsidies. *2/1/2021*

### **What's Next in Push to Repeal HB 6?** February 5, 2021

After **this week's legal developments** involving House Bill 6, many Ohioans are wondering what's next for the state's scandal-tainted energy law?

For now, the OMA's focus remains on enactment of **Senate Bill 10**, introduced by Sen. **Mark Romanchuk** (R-Ontario) to repeal anti-market, anti-consumer provisions of HB 6. The need for SB 10 to become law was highlighted in a *Gongwer News Service* **article**, in which OMA Energy Group counsel Kim Bojko is quoted as saying lawmakers should pass SB 10 to repeal HB 6's decoupling provision, despite the recent deal brokered by Attorney General Dave Yost (see separate story).

Bojko said: "FirstEnergy didn't apply to withdraw the rider. They didn't remove the rider. They just set it to zero. ... If it's set to zero it can be easily repopulated." She added that she had yet to see in writing where the company had agreed to not implement the rider in the future.

Meanwhile, Sens. **Michael Rulli** (R-Salem) and **Jerry Cirino** (R-Kirtland) have introduced **Senate Bill 44** to repeal the nuclear subsidies in HB 6. The OMA will offer analysis on this bill as well as SB 10 during its Feb. 25 Energy Committee meeting, which will be held

via Zoom. Members are **invited to register** now. *2/4/2021*

### **EIA: Gasoline, Diesel Prices to Increase Through 2022** February 5, 2021

Last year, U.S. average gasoline and diesel prices were the lowest they had been since 2016: \$2.17/gallon for gasoline and \$2.55/gallon for diesel. But the Energy Information Administration (EIA) expects that greater demand for transportation fuels **will lead to higher prices** during the next two years — including to an average \$2.74/gallon for on-highway diesel in 2022. *2/1/2021*

### **HB 6 Repeal Starts Anew in Ohio Senate** January 29, 2021

Sen. **Mark Romanchuk** (R-Ontario) on Jan. 27 **presented testimony** in support of his **Senate Bill 10** to repeal provisions of House Bill 6, the tainted nuclear subsidy law passed in 2019. Specifically, SB 10 repeals the decoupling and significantly excessive earnings test (SEET) provisions that were intended to benefit FirstEnergy, while closing the door on decoupling riders for other utilities.

"SB 10 is an important step forward to protect customers," said OMA president Ryan Augsburger. "We urge the Senate to strengthen the bill by repealing the Ohio Valley Electric Corporation (OVEC) subsidies that were also embedded in HB 6." Prompt passage of SB 10 is expected. *1/28/2021*

### **U.S. Attorney Leading HB 6 Investigation to Be Replaced** January 29, 2021

Political appointees who serve at the pleasure of the president customarily move on when there's a new occupant of the White House. This will be the case for **David DeVillers**, U.S. Attorney for the Southern District of Ohio, who has **conducted the investigation** into Ohio's largest bribery and racketeering scheme, while exposing its ties to House Bill 6. DeVillers charged former Speaker Larry Householder and others with serious crimes for their roles in the scandal.

The news of **DeVillers being replaced** was confirmed by Ohio's U.S. Senator Sherrod Brown (D). **The Columbus Dispatch** (subscription) reports that the prosecution of Householder and others will proceed after DeVillers has been replaced. *1/28/2021*

## **Don't Be Misled by This Energy Conference**

January 29, 2021

Manufacturers may have seen promotional materials for an energy conference that will be held virtually in mid-February. The promotional materials display the OMA logo. Please note that the OMA has not endorsed or authorized the use of our logo for this event.

Here's a better option: **Register now** for the OMA Energy Committee's Feb. 25 meeting via Zoom. You will learn accurate and valuable information to help you manage energy costs, while also being afforded the opportunity to contribute to the OMA's efforts to improve Ohio's energy policy. The OMA Energy Committee meets quarterly and is open to all members. Energy intensive manufacturers will want to consider membership in the **OMA Energy Group**. *1/28/2021*

## **EIA Predicts Less Power Generation From Natural Gas**

January 22, 2021

In its latest short-term projections, the U.S. Energy Information Administration (EIA) **forecasts** that generation from natural gas-fired power plants will decline by about 8% this year. If true, it would mark the first annual decline in natural gas-fired generation in four years. Generation from coal-fired plants is expected to increase by 14%, while generation from non-hydropower renewable energy sources is forecast to grow 18%. *1/21/2021*

## **Governor Wants Another List of Finalists for PUCO Chair**

January 22, 2021

In a rare move, Gov. Mike DeWine **this week rejected** the first round of nominees to replace former Public Utilities Commission of Ohio (PUCO) Chairman Sam Randazzo. As permitted by law, Gov. DeWine requested a second and final list from the **PUCO Nominating Council**.

*Hannah News Service* reported that the governor "said he will consider previous applicants as well as new ones," leaving the door open to further consideration of DeWine policy adviser Anne Vogel, consumer advocate Greg Poulos, and federal energy adviser Angela Amos. The list of applicants is now shorter since former Supreme Court of Ohio Justice Judith French was recently appointed director of the Ohio Department of Insurance.

The nominating council is scheduled to meet today (Friday, Jan. 22) to conduct interviews for a separate PUCO appointment as Commissioner Dennis Deters' term expires in April. *1/22/2021*

## **Biden Cancels Permit for Keystone XL Pipeline**

January 22, 2021

In one of his first actions from the Oval Office, President Joe Biden this week rescinded the federal permit for the Keystone XL pipeline, at least temporarily erecting a barrier to its progress.

In a **press release**, National Association of Manufacturers President and CEO Jay Timmons said: "Manufacturers are disappointed with the administration's decision to block this sustainable project, which can serve as a model for infrastructure of the future, and if not reconsidered, represents a missed opportunity for manufacturing workers in America." *1/20/2021*

## **Air Authority Complies With Courts, Blocking Collection of HB 6 Subsidy Charges**

January 15, 2021

The Ohio Air Quality Development Authority (OAQD), which oversees House Bill 6's nuclear subsidy program, this week complied with recent court orders to block the collection of the law's subsidies paid by consumers. A resolution adopted by the OAQD temporarily revokes and suspends the approval of Energy Harbor's application for subsidy payments under HB 6.

The OAQD's move follows last month's preliminary injunction granted by a Franklin County Common Pleas Court judge who blocked the Jan. 1 start of the law's subsidy charges.

The Ohio Supreme Court also **issued its own order** to prevent the commencement of the subsidy charges. The OMA was heavily involved in both legal proceedings. *1/13/2021*

### **AG Yost Seeks to Block HB 6 Decoupling Charges**

January 15, 2021

Consistent with the OMA's objections raised in 2019 and 2020, Ohio Attorney General Dave Yost this week **took legal action** to freeze another key provision of House Bill 6. **Gongwer News Service** (subscription) reports that Yost asked a Franklin County Common Pleas Court judge to block HB 6's decoupling mechanism, calling it "perverse" and "designed to allow FirstEnergy to overcharge its customers."

The decoupling provision was one of many reasons the OMA opposed HB 6 during its consideration in 2019. The law's language assures FirstEnergy utilities will be **made whole to revenue levels of 2018** — a peak year for the utility. "This guarantees FirstEnergy will receive its high-water-mark profits regardless of service levels, providing no accountability," Yost said.

In its comments supporting Yost's actions this week, the Office of Ohio Consumers' Counsel said that "two million consumers will be paying FirstEnergy about \$310,722 per day in 2021, compared to about \$51,259 per day in 2020. In other words, every day the legislature delays repealing HB 6, FirstEnergy gets another \$310,722 from consumers. What a deal!" *1/13/2021*

### **EIA Expects Higher Natural Gas Prices**

January 15, 2021

In its latest **Short-Term Energy Outlook**, the U.S. Energy Information Administration forecasts that the annual natural gas spot price at the Henry Hub will rise 0.98¢ per million British thermal units (MMBtu) to average \$3.01/MMBtu in 2021. The agency notes that natural gas hit its **lowest average price in decades** last year, but production has fallen amid those low prices. *1/13/2021*

### **PUCO, Supreme Court Act to Address HB 6 Concerns**

January 8, 2021

Last week, regulators at the Public Utilities Commission of Ohio (PUCO) **announced** a new audit of FirstEnergy. This was done in response to the criminal and civil cases tied to the state's nuclear subsidy law (House Bill 6). The PUCO granted a request by the Office of the Ohio Consumers' Counsel to reopen a case tied to FirstEnergy utilities' distribution modernization rider and to launch an independent third-party audit to ensure revenue from ratepayers was not improperly used to support HB 6.

The PUCO's action came just days after the Supreme Court of Ohio postponed the collection of \$170 million in fees authorized by HB 6 — a **direct result** of the legal challenge mounted by the **OMA Energy Group**. The stay provides another backstop of protection for consumers who, on Jan. 1, were supposed to start paying the subsidies authorized by HB 6. *1/4/2021*

## Energy Legislation

Prepared by: The Ohio Manufacturers' Association  
Report created on February 24, 2021

- HB10**      **REPEAL HB6 - REVISE ELECTRIC UTILITY SERVICE LAW (LELAND D)** To repeal Section 5 of H.B. 6 of the 133rd General Assembly to make changes regarding electric utility service law, to allow the implementation of energy waste reduction programs, and to repeal certain provisions of H.B. 6 of the 133rd General Assembly.  
*Current Status:* 2/17/2021 - House Public Utilities, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-10>
- HB18**      **REPEAL HB6 (LANESE L)** Repeal HB 6 of the 133rd GA  
*Current Status:* 2/17/2021 - House Public Utilities, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-18>
- HB47**      **ELECTRIC CAR CHARGING STATION GRANT REBATE (LOYCHIK M)** To require the Director of Transportation to establish an electric vehicle charging station grant rebate program and to make an appropriation.  
*Current Status:* 2/4/2021 - Referred to Committee House Transportation and Public Safety  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-47>
- HB87**      **EXEMPT UTILITY SUPPLY CONTRACTS FROM 10-YEAR MAXIMUM (STEPHENS J, JOHN M)** To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts.  
*Current Status:* 2/17/2021 - **BILL AMENDED**, House State and Local Government, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-87>
- HB118**      **REVISE CERTAIN WIND FARM/SOLAR FACILITY LAWS (RIEDEL C, STEIN D)** To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm and solar facility certificates.  
*Current Status:* 2/23/2021 - House Public Utilities, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-118>
- HB128**      **REPEAL HB6 (HOOPS J, STEIN D)** To make changes regarding electric utility service law, to repeal certain provisions of H.B. 6 of the 133rd General Assembly, and to provide refunds to retail electric customers in the state.  
*Current Status:* 2/23/2021 - House Public Utilities, (First Hearing)  
*State Bill Page:* <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-128>
- SB8**      **BROADBAND-ELECTRIC COOPERATIVE EASEMENTS (MCCOLLEY R)** Regarding broadband expansion, including access to electric cooperative easements and facilities, and to make an appropriation.  
*Current Status:* 2/17/2021 - Referred to Committee House Finance

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-8>

**SB10**      **REFUNDS TO ELECTRIC CUSTOMERS (ROMANCHUK M)** To terminate any approved decoupling mechanism, to modify the significantly excessive earnings determination for an electric security plan, and to provide refunds to retail electric customers in the state.

**Current Status:** 2/23/2021 - House Public Utilities, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-10>

**SB20**      **COUNTY UTILITY SUPPLY CONTRACTS (HACKETT R)** To exempt county utility supply contracts entered into under a joint purchasing program from the 10-year maximum period for such contracts and to declare an emergency.

**Current Status:** 2/23/2021 - Senate Local Government and Elections, (First Hearing)

**State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-20>

**SB29**      **ELIMINATE AUTO ENROLLMENT-UTILITY AGGREGATION (HOAGLAND F)** To eliminate automatic enrollment in governmental electric and natural gas aggregation programs.

**Current Status:** 2/23/2021 - Senate Energy and Public Utilities, (First Hearing)

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

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

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

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

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

**Current Status:** 2/23/2021 - Senate Energy and Public Utilities, (Third Hearing)

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

**SB52**      **WIND TURBINE SETBACKS (REINEKE W, MCCOLLEY R)** To require inclusion of safety specifications in wind farm certificate applications, to modify wind turbine setbacks, and to permit a township referendum vote on certain wind farm and solar facility certificates.

**Current Status:** 2/17/2021 - Senate Energy and Public Utilities, (First Hearing)

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

OMA Energy Committee - Feb 2021

Name	Company	Location
Kevin Abke	Ohio CAT	Perrysburg, OH United States
Matthew Allyn	Infinite Energy	Columbus, OH United States
Todd Altenburger	A E P Energy	Columbus, OH United States
Ryan R. Augsburger	The Ohio Manufacturers' Association	Columbus, OH United States
Bradley H. Belden	The Belden Brick Company	Canton, OH United States
Kimberly W. Bojko	Carpenter Lipps & Leland LLP	Columbus, OH United States
Daniel Bremer	Honda of America Manufacturing, Inc.	Marysville, OH United States
Rob Brundrett	The Ohio Manufacturers' Association	Columbus, OH United States
John M. Burke	O S C O Industries, Inc.	Portsmouth, OH United States
Maribeth Burns	The J.M. Smucker Company	Orrville, OH United States
Rachael Carl	The Ohio Manufacturers' Association	Columbus, OH United States
Brent Chaney	Vistra Energy	Irving, TX United States
Mickey Croxton	Plaskolite	Columbus, OH United States
Rodney V. Cundiff	Lima Refining Company	Lima, OH United States
Steve Dimon	AMG Vanadium LLC C/o 21 Consulting, LLC	Columbus, OH United States
Noah Dormady	The Ohio State University	Columbus, OH United States
Wyatt Elbin	B P America	Rawson, OH United States
Drew Felz	General Mills, Inc.	Washington, DC United States
Scott Frens	Fort Recovery Industries Inc.	Fort Recovery, OH United States
Denis George	The Kroger Co.	Cincinnati, OH United States
Ned Hill	The Ohio State University	Columbus, OH United States
Joseph Hollabaugh, Jr	Shumaker, Loop & Kendrick, LLP	Columbus, OH United States
Tyrel Jacobsen	AMG Vanadium LLC	Cambridge, OH United States
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Jamie Karl	The Ohio Manufacturers' Association	Columbus, OH United States
Darin King	Columbia Gas of Ohio	Toledo, OH United States
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Timothy Ling	Plaskolite	Columbus, OH United States
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Richard Loth	McWane Ductile-Ohio, A Division Of McWane, Inc.	Coshocton, OH United States
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Brent Rosebrook	PRO-TEC Coating Company	Leipsic, OH United States
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Jack Shaner	EnviroScience Inc.	Stow, OH United States
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Duane Steelman	Zaclon, LLC	Cleveland, OH United States
Samantha Summers	Whirlpool Corporation	Washington, DC United States
Robert W. Tansing	Athens Foods, Inc.	Brook Park, OH United States
Andrew R. Thomas	Levin College of Urban Affairs, Cleveland State University	Cleveland, OH United States
Justin Walder	Nutrien	Deerfield, IL United States
Steve Walker	The J.M. Smucker Company	Orrville, OH United States
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Chris Zeigler	API Ohio	Columbus, OH United States
Susan Zlajic	Cleveland-Cliffs, Inc.	Chicago, IL United States

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Name	Company	Location
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Total Participants      55