

Jeff Jacobson
Strategic Insight Group, Ltd.
(For the Ohio Consumers' Counsel)

December 9, 2020

Via Email

The Honorable Steve Wilson, Chair
Energy and Public Utilities Committee
The Ohio Senate

Re: Correction for Consumers' Counsel's Testimony on H.B. 772

Dear Chair Wilson and Members of the Energy and Public Utilities Committee,

Thank you for the opportunity to testify today on H.B. 772. I am writing to correct one statement in my testimony today for the Consumers' Counsel. On testimony page four we stated that "House Bill 772 will repeal that anti-consumer budget-bill provision protecting FirstEnergy profits." H.B. 772 does not, in fact, include repeal of this provision in H.B. 166. (We do hope such a repeal of this FirstEnergy profits issue can be added to H.B. 772 for consumer protection.)

OCC's original testimony is attached to this letter. We respectfully request for accuracy that this letter, with the original testimony attached, be posted in the place of the OCC testimony currently posted on the Committee's web page. We apologize for any inconvenience. Thank you.

Sincerely,



Jeff Jacobson
(For the Ohio Consumers' Counsel)

cc: Members of the Senate Energy and Public Utilities Committee
Bruce Weston, Ohio Consumers' Counsel

Attachment

Before
The Ohio Senate
Energy and Public Utilities Committee

Testimony on House Bill 772

By

Jeff Jacobson, Strategic Insight Group

On Behalf of the Office of the Ohio Consumers' Counsel

December 9, 2020

Hello Chair Wilson, Vice-Chair McColley, Ranking Member Williams and members of the Senate Energy and Public Utilities Committee. I hope you and your colleagues are well. Consumers' Counsel Weston and I thank you for this opportunity to testify as a proponent of House Bill 772, sponsored by Rep. Romanchuk. We testified seven times last year and this is our fourth time testifying this year against the now tainted House Bill 6. Attached is the Resolution opposing House Bill 6, by the Consumers' Counsel Board. Also attached is Consumers' Counsel Weston's letter to the Senate recommending a prompt repeal of House Bill 6.

House Bill 772 would place Ohio back on track with its 1999 vision of power plant competition that benefits consumers with lower prices and greater innovation. And House Bill 772 is an appropriate governmental response to the scandal of tainted House Bill 6.

Since the enactment of House Bill 6 there have been a U.S. Criminal Complaint, arrests, a change in the House Speakership, two guilty pleas, FirstEnergy's firings of its CEO and others, and the PUCO Chair resigned. FirstEnergy announced that the termination of its executive leadership was for violations of "certain FirstEnergy policies and its code of conduct." The credit ratings service, Standard & Poor's, recently wrote the following about FirstEnergy (that lobbied for Ohioans by the millions to pay a billion for its nuclear power plants, now owned by Energy Harbor):

We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly outside of industry norms and, in our view, they represent a material deficiency in the company's governance." (Khalid, U., "S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility, S&P Global Market Intelligence (Nov. 25, 2020).)

House Bill 772 sends the right government message to bad actors in the energy industry or in any industry.

Energy Harbor, which is the current beneficiary of the billion-dollar public subsidy, has not appeared in the House or Senate to publicly defend the subsidy since the hearings began on repeal. Energy Harbor's CEO should be required to appear before the legislative committees to answer questions and sign a detailed statement, under oath, that it needs a subsidy and how much of a subsidy it needs to keep each of the nuclear plants open. That's especially appropriate for any alternative to House Bill 772, like House Bill 798. Ohioans that OCC represents would likely have to sign such a document just to obtain a small loan. Interestingly, Energy Harbor published a "financial outlook" that projects a half-billion dollars or more of profits yearly for the next three years.

The case for repeal is further underscored by another event. Energy Harbor announced a stock buy-back requiring hundreds of millions of dollars despite it allegedly being a financially challenged company in need of a customer-funded bailout for nuclear power plants. In this regard, House Bill 772 rightly cuts through these issues by outright banning charges to consumers for nuclear subsidies (instead of leaving consumers at risk to the vagaries of what already seems an

ineffective audit standard and process in H.B. 798).

We are agnostic on fuel source, and find it particularly dismaying that Ohio is favoring dirty, uneconomic coal plants by subsidizing them at consumer expense, whether by House Bill 6 or by the past actions of the PUCO. The Ohio Manufacturers' Association has projected that the H.B. 6 coal subsidy could cost Ohioans about \$700 million through 2030. House Bill 772 has the best solution, which is to end the H.B. 6 subsidies of these coal power plants that Ohioans are paying to OVEC owners AEP, DP&L and Duke. And, given the subsidy culture at the PUCO, House Bill 772 would rightly bar the PUCO from reinstating the coal subsidy.

Right now the market is favoring natural gas power plants, which is good for synergy with Ohio's own gas resources and for low electricity prices to Ohio families and businesses. In the not too distant future, we expect the competitive market will support more renewable energy without subsidies, as its price declines and innovations occur in related technologies including battery storage.

Another good thing about House Bill 772 is that it would end the so-called decoupling subsidy for FirstEnergy that is at great consumer expense. FirstEnergy's terminated CEO referenced decoupling as a form of recession-proofing – for FirstEnergy of course. We don't think it's mere coincidence that House Bill 6 allows FirstEnergy to decouple to a reference year (2018) that had some of the highest temperatures on record (meaning also higher electric sales revenues). We're not fans of decoupling charges but House Bill 6 has maybe the worst example of decoupling we've ever seen for consumers.

The Ohio Manufacturers' Association estimates that FirstEnergy could charge consumers a total of about \$355 million over six years through 2024 (or longer until FirstEnergy files a distribution rate case) for this decoupling bailout. Even more fair, House Bill 772 requires refunds to consumers for the decoupling and coal charges they paid under House Bill 6. H.B. 798 lacks

that consumer protection, leaving FirstEnergy to keep and enjoy its H.B. 6 decoupling charges to date. Since the 2008 energy law, Ohio consumers have lost more than a billion dollars in denied refunds after the Supreme Court invalidated PUCO orders.

The benefits bestowed on FirstEnergy in House Bill 6 were part of a trilogy of legislation in the House. On a similar timeline, FirstEnergy received a future benefit for its profits in the state budget bill (Enrolled Am. Sub. House Bill 166, pages 1393-1394). And House Bill 246 was then introduced as (bad) legislation to “reform” OCC (and the PUCO), after OCC announced its opposition to House Bill 6 and to the budget bill provision benefiting FirstEnergy. House Bill 772 will repeal that anti-consumer budget-bill provision protecting FirstEnergy profits. (H.B. 798 will also repeal it.)

In supporting repeal, we are also moved by our revulsion at the effort that helped subvert the referendum process for Ohioans. That subversive effort contributed to denying Ohioans their rightful opportunity to vote on repealing House Bill 6.

Regarding the negative impact of House Bill 6 on the market, its passage already drove out investors from two Ohio natural gas plants. One was the Lordstown Energy Center’s 940 MW natural gas-fired plant (in Lordstown, Ohio) and the other was the Troy Generation Facility’s 700 MW dual fuel plant (in Luckey, Ohio).

House Bill 772 also would have Ohio lead with its heart to support financial assistance to Ohioans who are in desperate need of money during the current health and financial crisis. Many Ohioans and their families lack adequate funds for food, rent, healthcare, utilities, and heating. For the protection of so many who are in need, House Bill 772 would repeal Section 5 of House Bill 6. That is an unfortunate provision requiring the Ohio Development Services Agency to seek a waiver from the federal government that would result in allowing money needed for low-income energy assistance to be partly diverted to subsidize low-income weatherization. The funds at issue

are for the federal Low-Income Home Energy Assistance Program (“HEAP”). Weatherizing a home (that likely would be done for a landlord, not for the consumer) is a far greater expenditure of the limited HEAP funds per consumer than bill payment assistance. That means using HEAP funds for weatherization helps just a fraction of the Ohioans who can be helped using HEAP for bill payment assistance during these desperate times for many. To protect Ohioans in need, House Bill 772 rightly would repeal this provision of House Bill 6.

To conclude, FirstEnergy (and its former generation subsidiary, now Energy Harbor) like to make money the old-fashioned way – by convincing government to give them other people’s money. Business has been good, with FirstEnergy collecting \$10 billion dollars in subsidies from Ohioans since Ohio’s landmark electric deregulation law in 1999. OCC’s Subsidy Scorecard shows that, since 1999, consumers have paid Ohio electric utilities nearly \$15 billion in subsidies. The Subsidy Scorecard is attached. At this point, enough is more than enough.

The “business” of public bailouts for energy companies should be shut down, and House Bill 772 does that. Market competition, not government, should decide where to allocate capital. Increasingly the market will send capital to renewable companies. See “The New Energy Giants are Renewable Companies,” Bloomberg Green, by Eckhouse, et al. (Nov. 30, 2020).

House Bill 772 strikes the right tone for this moment in time, in repealing billion-dollar subsidies to coal and nuclear power plants. Ohio should stick to its pro-market deregulation law. Ohio should send a clear message of disapproval about the scandal. And Ohio should reflect the current social context of an ongoing health and financial crisis where many Ohioans lack adequate money for food, rent, healthcare, and energy. The bill’s chief alternative, House Bill 798, falls short. Please enact House Bill 772.

Thank you.



Resolution

Office of the Ohio Consumers' Counsel Governing Board

In Support of an Independent and Strong Consumers' Counsel Governing Board and Office of the Ohio Consumers' Counsel for Representation of Ohioans Within and Outside the State for Lower Prices and Adequate Residential Public Utility Services

and

In Opposition to Substitute House Bill 246 That Would Politicize and Weaken the Utility Watchdog Role of the Consumers' Counsel Governing Board and the Office of the Ohio Consumers' Counsel and Would Allow Further Weakening of Regulatory Protections for Ohio Utility Consumers

- WHEREAS,** Electricity, natural gas, telephone, and water utility services are essential for Ohioans in general and for at-risk populations in particular; and
- WHEREAS,** House Bill 246 was introduced on May 14, 2019, with a claimed intention to "reform and modernize" the Office of the Ohio Consumers' Counsel and the Public Utilities Commission of Ohio; and
- WHEREAS,** A year later, on May 28, 2020, the House Public Utilities Committee accepted Substitute House Bill 246 for consideration; and
- WHEREAS,** Sub. H.B. 246 would weaken the independence of the Consumers' Counsel Governing Board and politicize it by reconstituting its membership to have six of its nine members appointed (three each) by the House Speaker and Senate President instead of nine appointments by the Ohio Attorney General; and

WHEREAS, Sub. H.B. 246 would weaken the utility watchdog role of the Ohio Consumers' Counsel by, among other things, creating a mission that limits its representation of consumers to matters before the PUCO without specifying other consumer forums including, but not limited to, FERC, PJM, FCC, Bankruptcy Court, U.S. Courts of Appeal, and even the Ohio General Assembly; and

WHEREAS, Sub. H.B. 246 would weaken the utility watchdog role of the Ohio Consumers' Counsel by, among other things, giving the PUCO authority to limit its consumer advocacy in cases where the PUCO finds it is duplicating, repeating or delaying; and

WHEREAS, Sub. H.B. 246 would allow the further weakening of state regulatory protections for consumers of electric utility monopolies by giving the PUCO the authority to grant even more alternative regulation, without the requirement of a hearing, after electric consumers have paid significant subsidies as a result of the alternative regulation of electric security plans under the 2008 energy law that already eroded the balance of traditional ratemaking and favored electric utilities in the ratemaking process; and

WHEREAS, Sub. H.B. 246 would allow the further weakening of state regulatory protections for consumers of water utility monopolies by giving the PUCO the authority to grant alternative regulation, without the requirement of a hearing, after water consumers have been subject to system improvement charges and other legislative changes that already eroded the balance of traditional ratemaking and favored water utilities in the ratemaking process; and

WHEREAS, An independent and strong Consumers' Counsel Governing Board and Ohio Consumers' Counsel, as was intended when created by the General Assembly in 1976, are needed for the protection of millions of Ohioans.

THEREFORE, BE IT RESOLVED, that the Consumers' Counsel Governing Board supports an independent and strong Governing Board and Office of the Ohio Consumers' Counsel, as was intended when created by the General Assembly in 1976, for representation of millions of Ohio utility consumers within and outside the state for lower prices and adequate residential public utility services.

THEREFORE, BE IT FURTHER RESOLVED, that the Consumers' Counsel Governing Board opposes Substitute House Bill 246 because it would among other things: politicize and weaken the utility watchdog role of the Governing Board and the Office of the Ohio Consumers' Counsel by reconstituting the membership of, and appointments to, the Governing Board; limit the forums and role for the Consumers' Counsel's advocacy for millions of Ohioans; and weaken regulatory protections for electric and water consumers as a result of enabling more alternative regulation.

THEREFORE, BE IT FURTHER RESOLVED, that the Consumers' Counsel Governing Board supports real reforms that would limit the influence of utility special interests on outcomes for Ohio consumers including at-risk Ohioans.

I verify that this Resolution has been approved by the Governing Board of the Office of the Ohio Consumers' Counsel, this 17th day of June 2020.



Michael Watkins, Chair
Governing Board of the Office of the Ohio Consumers' Counsel



Office of the Ohio Consumers' Counsel

October 7, 2020

The Honorable Larry Obhof, Senate President
The Honorable Kenny Yuko, Minority Leader
The Honorable Steve Wilson, Chair of Senate Energy and Public Utilities Committee
The Honorable Rob McColley, Vice Chair of Senate Energy and Public Utilities Committee
The Honorable Sandra Williams, Ranking Member of Senate Energy and Public Utilities Committee
All Members of the Ohio Senate

Re: Repeal of House Bill 6

Dear President Obhof, Leader Yuko, Committee Chair Wilson, and Senate Members:

I hope you and your colleagues are well. This letter is to respectfully support Senate Bill 346 (sponsored by Senators O'Brien and Kunze) and to recommend its prompt passage to repeal tainted House Bill 6. Regardless of whether the alleged activities described in the U.S. Criminal Complaint are ultimately found to be criminal in connection with H.B. 6, the allegations show the undue influence of an unidentified company (understood to be FirstEnergy). That undue influence included, among other things, the process that preceded the bill's arrival in the Senate and the later signature-gathering process for the public's referendum right to vote for repeal. The need for repeal is now.

On September 23, 2020, per Committee invitation, OCC testified as a proponent of H.B. 738 and 746 for repeal of H.B. 6 (and also supported H.B. 740), before the House Select Committee on Energy Policy and Oversight – at this link: <https://bit.ly/2I3z95X>. Our House testimony (by Jeff Jacobson) also would have reflected support for H.B. 772 (by Rep. Romanchuk), had it then been introduced. The approach in H.B. 772 is worthy of your consideration for drafting Senate legislation to repeal H.B. 6. It is pro-consumer legislation for a number of reasons, including that it would completely end the anti-consumer, anti-environmental subsidization of two AEP/Duke/DP&L coal power plants by the General Assembly and by the PUCO. And it would prevent the anti-competitive subsidization of two nuclear power plants owned by Energy Harbor (formerly FirstEnergy Solutions). The details can be found at this link to H.B. 772: <https://bit.ly/2I6YCeP>.

Further, H.B. 772 would provide for refunds of subsidy charges paid by Ohioans under tainted H.B. 6 for coal power plants and for FirstEnergy's so-called "decoupling" that its CEO recently described as recession-proofing. (H.B. 772 does not restore the green energy mandates that H.B. 6 ended.) Our updated "Subsidy Scorecard" shows \$16.4 billion dollars of actual and projected electric subsidies (corporate welfare) at Ohioans' expense, at this link: <https://bit.ly/3liVzhH>. Ohio should support the competitive market and allow it to transition to the future with efficient natural gas plants and also renewable energy.

I urge your repeal of tainted House Bill 6 now by passing S.B. 346 or by passing a bill similar to H.B. 772 – for the public's confidence in the integrity of their government. Thank you. Stay well.

Sincerely,

Bruce Weston
Ohio Consumers' Counsel

Cc: Michael Watkins, Chair of Consumers' Counsel Governing Board
Larry Sauer, Deputy Consumers' Counsel
Jeff Jacobson

\$14.7 Billion
Charged to Customers
(2000 - 2019)

SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

FirstEnergy

\$10.2 Billion

DP&L

\$1.5 Billion

AEP

\$1.8 Billion

Duke

