

Before
The Ohio Senate
Energy and Public Utilities Committee
Testimony on Senate Bill 346
By
Jeff Jacobson, Strategic Insight Group
On Behalf of the Office of the Ohio Consumers' Counsel
November 10, 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 – and the sponsors of Senate Bill 346 – for this opportunity to testify as a proponent of this bill to repeal House Bill 6. Last year we testified seven times 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.

Since the enactment of House Bill 6 there have been a U.S. Criminal Complaint,¹ arrests, a change in the House Speakership, two guilty pleas, and FirstEnergy's firings of its CEO and two Vice Presidents. FirstEnergy announced that the terminations of its executive leadership were for violations of "certain FirstEnergy policies and its code of conduct."

FirstEnergy (and its former generation subsidiary) like to make money the old-

¹ <https://assets.documentcloud.org/documents/6999130/Ohio-House-complaint.pdf>

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 attached *Subsidy Scorecard* shows that, since 1999, consumers have paid Ohio electric utilities nearly \$15 billion in subsidies. The billion-dollar subsidy that Ohioans will pay for FirstEnergy’s former power plant subsidiary (now called Energy Harbor) is just the latest subsidy at consumer expense.

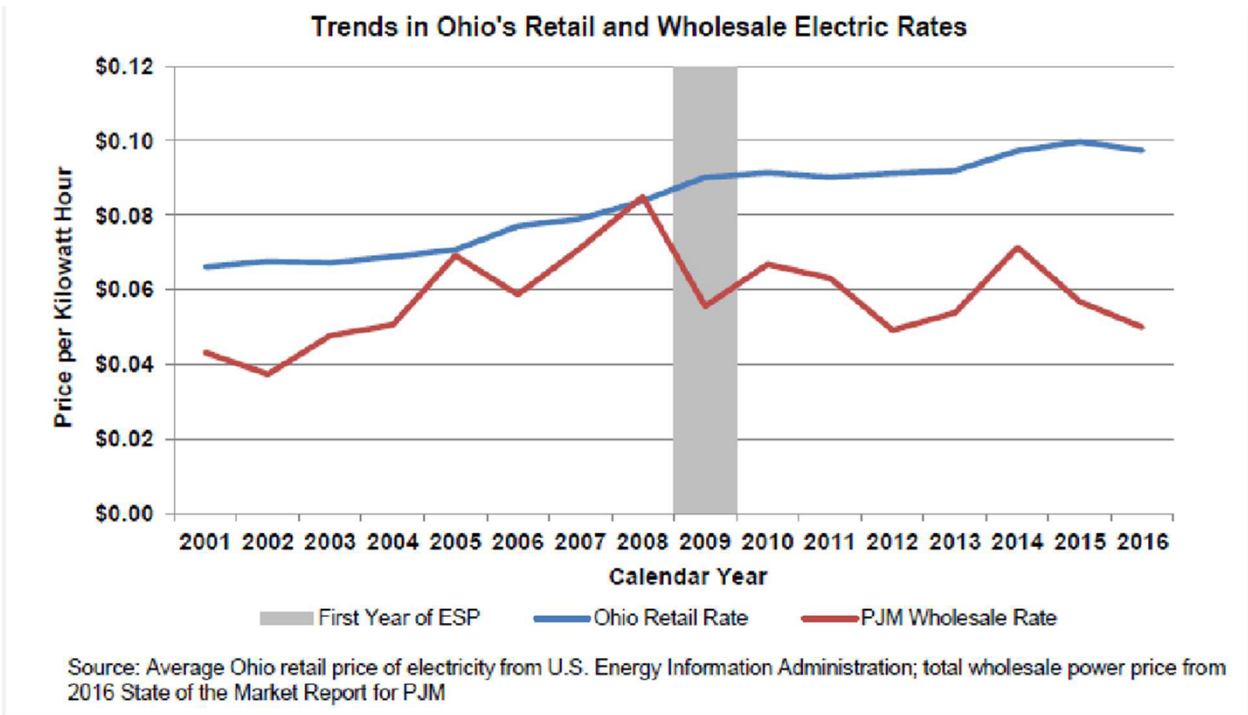
It is unfortunate for consumers that FirstEnergy returned to seek more subsidies for these two nuclear plants given that consumers paid FirstEnergy \$7 billion to transition its power plants to competition *under the 1999 law that was to end subsidies*. The expectation then, under Revised Code 4928.38, was that consumers would not pay power plant subsidies in the future. But as the old expression goes, the more things change, the more they remain the same. And paying massive subsidies for FirstEnergy is more of the same for two million FirstEnergy consumers.

The jewel for consumers in the 1999 electric deregulation law is power plant competition. That competition lowers electric prices and increases innovation for the benefit of Ohio consumers. Market competition, not government, should decide where capital will be deployed for future innovation in power plants. Ultimately, the market will show the way to the future, including with renewable energy.

Frankly, we think the government should abstain from interfering in the market, with prime examples of interference being the subsidizing of nuclear and coal power plants in House Bill 6. We are agnostic on fuel source, and find it particularly dismaying that Ohio is favoring uneconomic, polluting coal plants by subsidizing them at consumer

expense, whether by House Bill 6 or by the past actions of the PUCO. The market is favoring natural gas power plants, among others, 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, as its price declines and innovations occur in related technologies including battery storage.

In November 2017, the Legislative Services Commission prepared the following chart regarding then House Bill 247 by Representative Romanchuk. The chart shows how the regional wholesale power plant market (red line) is working to lower electric prices for Ohioans but the Ohio retail market (blue line) is not. Note how LSC shows the regional wholesale rate declining while the Ohio retail rate is rising. The LSC report is attached.



The House Bill 6 subsidies for the two former FirstEnergy nuclear plants will be \$150 million per year through 2027. The bill also continued the PUCO's bailout of the 1950s OVEC coal power plants through 2030, at public expense, at a price tag of nearly a half-billion dollars or more. The bill also subsidizes large utility-scale solar plants at about \$20 million per year through December 31, 2027.

House Bill 6 also contains a so-called "decoupling" subsidy for FirstEnergy. The decoupling subsidy gets less attention than the power plant subsidies, but it is *the other bailout*. Decoupling is a ratemaking measure that decouples, or in other words separates, a utility's revenues from its sales. Utilities would say it helps encourage them to offer energy efficiency programs by having consumers pay the utility for revenues it loses due to consumers using energy efficiency. Utilities like (or love) decoupling when their revenues are declining. That's because, as stated, their regulator can require payments from consumers to make the utilities whole for their reduced revenues.

In justifying decoupling, utilities like to say that decoupling is balanced in that it could result in a payment to customers if revenues are higher (and not just a payment to utilities if their revenues are lower). But it virtually never happens that consumers get a payment. That's because decoupling tends to be implemented in a one-sided way to help utilities at consumer expense. For example, we don't think it's mere coincidence that House Bill 6 allows FirstEnergy to benefit by decoupling to a reference year (2018) that had some of the highest temperatures ever recorded (meaning also higher electric sales revenues for FirstEnergy). 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 House Bill 6 decoupling for FirstEnergy lacks any alleged redeeming quality such as being driven by

support for energy efficiency programs (which are canceled in House Bill 6). It is corporate welfare at its worst. Indeed, FirstEnergy's former (and recently terminated) CEO referred to the decoupling benefit as helping the company be "recession proof." No doubt many Ohioans suffering from the pandemic emergency would like to be recession-proof.

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. OMA's analysis can be found at this link: <https://ohiomfg.informz.net/ohiomfg/data/images/-%20HB%206%20Decoupling%20101%20Memo%20-%209.17.2020%20-%20FINAL.pdf>

In a repeal of House Bill 6, consumers should be freed from funding this outrageous decoupling subsidy for FirstEnergy.

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 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.

For these reasons and before we even get to the subject of the United States Criminal Complaint regarding House Bill 6, we support a repeal of the bill. But we are here today to support Senate Bill 346 for a prompt repeal of House Bill 6 because House Bill 6 is *tainted* by the allegations contained within the federal Criminal Complaint, as

the Governor has said. FirstEnergy, a key player in the House Bill 6 process both as the former owner of the nuclear plants and as a beneficiary of the bill, is understood to be prominently referenced in the Criminal Complaints (though FirstEnergy has not been named or charged with a crime to date). FirstEnergy obviously thinks it was involved in something bad regarding House Bill 6 because it just fired its top executives after an internal investigation by its Board. And in the attached filing at the Securities and Exchange Commission, FirstEnergy acknowledged that it is being investigated by the Securities and Exchange Commission for possible securities law violations and that it is at risk of potential criminal or civil liabilities and sanctions.

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

Now, we know some have said that House Bill 6 saves consumers money, because it eliminates the charges for green energy mandates for renewables and energy efficiency. But we are guided by two concerns. First, we don't think a goal of ending the green energy mandates justifies enabling the government and a big utility to interfere in the competitive market for power plant competition, as in House Bill 6. Second and more importantly, this tainted bill must be repealed – and repealed promptly – out of respect for the public in whose name these processes of their state government are conducted.

Further, we don't think the case has been adequately made that the calculation of the cost savings of House Bill 6 favor its retention. The Legislative Services Commission acknowledged, in questions about its testimony before the House Select Committee on September 10, 2020, that its May 20, 2020 fiscal analysis does not account for the

savings that consumers receive from energy efficiency. And LSC then also acknowledged on questioning that its analysis does not account for the negative impact on the market resulting from power plant subsidies.

Regarding the negative impact of House Bill 6 on the market, its passage already drove out investors from two Ohio natural gas plants: the Lordstown Energy Center's 940 MW natural gas-fired plant (see attached news story) and the Troy Generation Facility's 700 MW dual fuel plant (in Luckey, Ohio). Both were cancelled. Those cancellations mean a loss of \$1.6 billion of investment in Ohio, along with lost jobs.

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, we recommend that this Committee require FirstEnergy and Energy Harbor to both soon publicly testify before the Committee.

Note that renewable energy is a good thing that should compete in the market on its merits. We think increasingly it will succeed in the market.

Also, while energy efficiency is a good thing, we prefer an approach to energy efficiency where consumers shop on their own in the market for their energy efficiency measures, without big utilities and government arranging it. We particularly object to the utilities charging consumers for profits (so-called "shared savings") on their energy efficiency programs. The legislature allowed utility profits on energy efficiency in the 2008 energy law and the PUCO has liberally granted it (up until very recently). Examples of this imposition on consumers' electric bills include energy efficiency profits of \$25.7 million by AEP, \$7.0 million by DP&L, \$10.3 million by Duke, and \$12.7 million by

FirstEnergy, just in 2018.

So we support Senate Bill 346 for an immediate repeal, especially given the background of the U.S. criminal allegations on top of the anti-consumer power plant and decoupling subsidies. *House Bill 6 is tainted and it should go*. Even if not all the allegations turn out to be crimes, the federal government's information is revealing of undue influence by FirstEnergy and possibly one or more other utilities, and there unfortunately were extreme efforts to defeat the ballot initiative at the cost of Ohioans' right to vote.

But having said that, we prefer the repeal approach in House Bill 772 by Representative Romanchuk. House Bill 772 would, among other things, repeal the coal subsidy, the nuclear power plant subsidy and the decoupling subsidy. Also, House Bill 772 would prohibit the PUCO from reinstating the subsidy for the uneconomic, polluting OVEC coal power plants. And the bill would require that *refunds* be made to consumers for the subsidies they paid for the coal plants and decoupling under House Bill 6. Making Ohioans subsidize coal plants is bad for consumers' pocketbooks and bad for the environment. House Bill 772 is competitively neutral, as it would not subsidize power plants or restore the formerly mandated utility programs for energy efficiency and renewable energy.

House Bill 772 also would repeal Section 5 of House Bill 6, which is a provision requiring the Ohio Development Services Agency to seek a waiver from the federal government regarding assistance to low-income Ohioans. This waiver is to enable ODSA to increase the use of the federal Low-Income Home Energy Assistance Program ("HEAP") funds for subsidizing weatherization. But that weatherization subsidy reduces

HEAP funds available for utility bill assistance to help keep at-risk Ohioans connected to their utility service, especially during the emergency of the pandemic and its aftermath. The primary concern here should be to keep at-risk Ohioans *connected* to their energy utility services. That is accomplished by HEAP bill payment assistance much more so than weatherization. Many of our fellow Ohioans are in desperate need of money during the pandemic, so bill payment assistance is especially needed now. 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. To protect Ohioans in need, House Bill 772 rightly would repeal this provision of House Bill 6.

As mentioned, another issue in the House Bill 6 trilogy is the budget bill (House Bill 166) provision that could allow FirstEnergy to retain excess profits at consumer expense. The provision is in Revised Code Section 4928.143(E). That budget bill provision should also be repealed, such as by House Bill 740.

Thank you for your time and consideration.



Resolution

Office of the Ohio Consumers' Counsel Governing Board

In Support of the Ohio General Assembly's Vision for an Energy Future Based on Competition by Power Plants, Not Subsidies by Consumers. And In Support of a Strong and Independent Office of the Ohio Consumers' Counsel to Represent and Educate Residential Utility Consumers for Consumer Protection

- WHEREAS,** Electricity, natural gas, telephone, and water services are essential for Ohioans; and
- WHEREAS,** Ohio consumers should have retail electric service that is reliable, safe and reasonably priced; and
- WHEREAS,** The Ohio General Assembly deregulated power plants in 1999 to give Ohio families and businesses the benefits of lower prices and higher innovation through power plant competition, among other things; and
- WHEREAS,** Despite deregulation, Ohio consumers have paid more than \$15 billion in subsidies to the electric utilities since 1999; and
- WHEREAS,** House Bill 6 was introduced on April 12, 2019, to mandate subsidies of power plants (including nuclear plants), at a cost to Ohioans of \$300 million annually with no end date for the subsidies; and
- WHEREAS,** House Bill 246 was introduced on May 14, 2019, to "reform and modernize" the Office of the Ohio Consumers' Counsel (and the PUCO); and


WHEREAS, a strong and independent Office of the Ohio Consumers' Counsel is needed for the protection of millions of residential utility consumers and residential consumers of other PUCO-regulated providers in Ohio.

THEREFORE, BE IT RESOLVED, that the Governing Board of the Office of the Ohio Consumers' Counsel supports power plant competition and deregulation as envisioned by the Ohio General Assembly in 1999 to deliver lower prices and higher innovation to consumers.

THEREFORE, BE IT FURTHER RESOLVED, that the Governing Board of the Office of the Ohio Consumers' Counsel opposes any legislation (including House Bill 6) that would charge Ohio utility consumers (contrary to deregulation and the competitive generation markets that have emerged) to subsidize any type of generation (including nuclear power plants).

THEREFORE, BE IT FURTHER RESOLVED, that the Governing Board of the Office of the Ohio Consumers' Counsel opposes any legislation that would result in reductions, limits or weakening of the services and independence of the Office of the Ohio Consumers' Counsel for protection of millions of Ohio residential consumers.

I verify that this Resolution has been approved by the Governing Board of the Office of the Ohio Consumers' Counsel, this 21st day of May 2019.



Stuart Young, Vice-Chair (Acting 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

\$1.7 Billion Projected
Charges to Customers
(2020 - 2030)

- ELECTRICITY CHARGES TO OHIOANS -

2000 2002 2004 2006 2008 2010 2012 2014 2016 2018 2020 2022 2024 2026 2028 2030

FirstEnergy

\$10.2 Billion

Generation Transition Charge /
Regulatory Transition Charge
\$6.9 B

Rate Stabilization Charge
\$2.9 B

Regulatory Transition Charge
(\$???)

Distribution Modernization Rider
\$456 M

Rate Stabilization Charge
\$82 M

Energy Harbor
(formerly FirstEnergy Solutions)
HB 6 Nuclear Plant Subsidy
\$150 M Per Year
TOTAL \$1.05 B

DP&L

\$1.5 Billion

Regulatory Transition Charge /
Customer Transition Charge
\$172 M

"Big G"
\$242 M

Rate Stabilization Surcharge
\$158 M

Rate Stabilization Surcharge
\$380 M

Service Stability Rider
\$293.3 M

Distribution Modernization Rider
\$219 M

Retail Stability Rider
Deferred Capacity Cost
\$238.4 M

OVEC Coal Rider
\$9 M
Per Year (Est.)

HB 6 Coal Plant Subsidy
OVEC \$9 M Per Year (Est.)

AEP

\$1.8 Billion

Regulatory Transition Charge
\$702 M

Provider of Last Resort Charge
\$368 M

Retail Stability Rider
\$447.8 M

OVEC Coal Rider
\$40 M
Per Year (Est.)

HB 6 Coal Plant Subsidy
OVEC \$40 M Per Year (Est.)

Duke

\$1.2 Billion

Regulatory Transition Charge
\$884 M

Electric Service Stability Charge
\$330 M

OVEC Price Stabilization Rider
\$11.8 M
Per Year (Est.)

HB 6 Coal Plant Subsidy
OVEC \$10.7 M Per Year (Est.)

B=Billions; M=Millions

Rev. 09/22/2020



OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 247 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Romanchuk

Local Impact Statement Procedure Required: No

Subject: Revise policies applicable to electric utilities

State & Local Fiscal Highlights

- The bill has no direct fiscal effect on expenditures for state agencies or political subdivisions, but the bill might have the indirect effect of changing electricity costs if electric security plans are eliminated. Should retail electric rates increase or decline as a result of H.B. 247, there could be a corresponding impact in commercial activity tax revenue paid by affected utilities. Revenue from the tax is allocated primarily to the GRF.

Detailed Fiscal Analysis

H.B. 247 revises several state policies governing electric utilities. For a complete explanation of the changes, refer to the LSC Bill Analysis. The topics highlighted below are those that are most likely to have an indirect fiscal effect on governmental revenues and expenditures. The bill does not have a direct effect on state agencies or political subdivisions, but it could impact the electricity prices paid by these entities as well as state tax receipts collected from electric distribution utilities (EDUs).

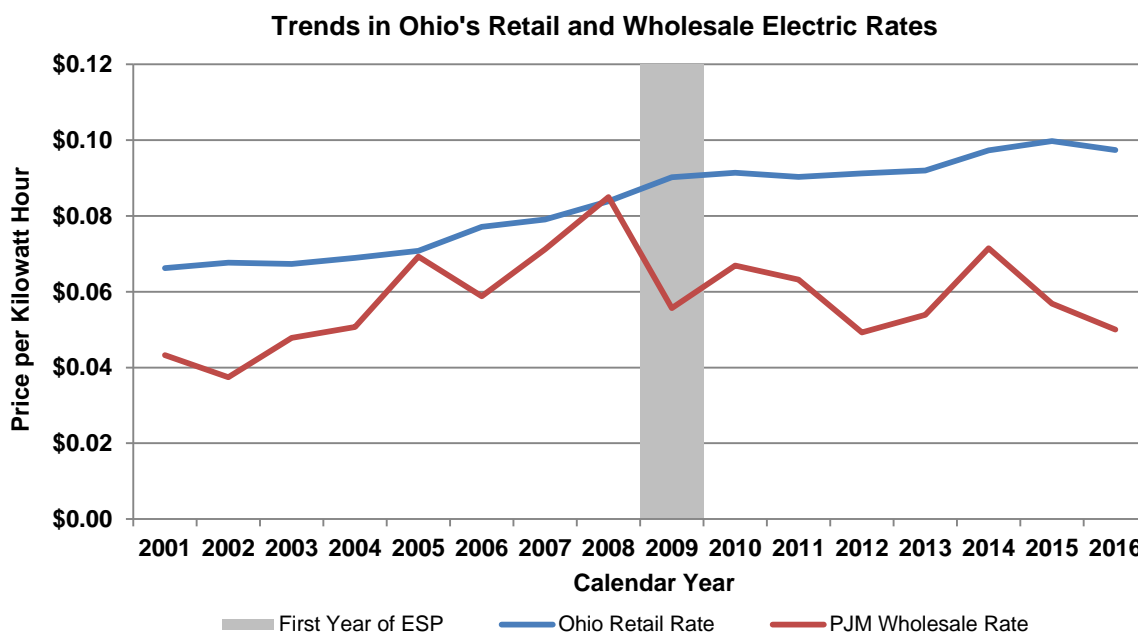
Elimination of electric security plans

H.B. 247 requires an EDU's standard service offer (SSO) to be established only as a market rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory. Under current law in R.C. 4928.141, an EDU must provide consumers within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143. The MRO is determined through a competitive bidding process in which generation suppliers submit their least-cost bids.

Existing law governing an ESP permits numerous rate components, but does not explicitly specify the rate calculation. The only substantive requirement is that the plan must be "more favorable in the aggregate as compared to the expected results" of an

MRO.¹ In practice, the Public Utilities Commission of Ohio (PUCO) evaluates the quantitative and qualitative benefits when determining whether the proposed ESP is more favorable than the expected MRO.² Moving to market-based rates would almost certainly change the rates that customers, including the state and local governments, pay for electricity. Current market conditions exhibit retail rates for electricity in Ohio that are significantly higher than wholesale rates (see chart below), which suggests the most likely impact of moving to market-based rates would initially be downward.

The chart below illustrates trends in Ohio's average retail electric rate and the wholesale rates reported by the regional transmission organizer, PJM. Both retail and wholesale rates grew in the earliest years of the centrally organized market operated by PJM, but the subsequent downturn in wholesale prices has not been reflected in retail rates paid by Ohio customers. The lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under ESPs. However, other external factors may be relevant. For example, the emergence of a large amount of unconventional natural gas production (i.e., shale gas) started in 2006-2007. The resulting drop in natural gas prices began in 2009 under the combined impacts of low electricity demand during the economic recession and a significant increase in supply.³



Source: Average Ohio retail price of electricity from U.S. Energy Information Administration; total wholesale power price from 2016 State of the Market Report for PJM

¹ R.C. 4928.143(C)(1).

² Most recently in an October 20, 2017 Opinion and Order that adopted Dayton Power and Light Company's current ESP (PUCO Case No. 16-395-EL-SSO).

³ Further discussion of this dynamic can be found in the U.S. Department of Energy's "Staff Report to the Secretary on Electricity Markets and Reliability." <https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability>.

Commercial Activity Tax

H.B. 247 does not have a direct effect on Commercial Activity Tax (CAT) receipts, but if the bill changes electric charges for customers, Ohio's electric distribution utilities may remit more or less CAT revenue than they otherwise would absent the legislation. LSC cannot speculate on the potential indirect effect, but the table below provides the total CAT charges reported by EDUs in their most recent annual reports. The six utilities reported a combined total of \$20.3 million in CAT charges during calendar year 2016.

Under continuing law, the Commercial Activities Tax Receipts Fund (Fund 5GA0) consists of money arising from the CAT. The Department of Taxation's Revenue Enhancement Fund (Fund 2280) receives the first 0.75% of the money credited to that fund to defray the costs incurred by the Department. Of the remaining money in Fund 5GA0, 85% must be credited to the GRF, 13% to the School District Tangible Property Tax Replacement Fund, and 2% to the Local Government Tangible Property Tax Replacement Fund. Expenses of the latter two funds are fixed, with excess revenue transferred to the GRF, so the GRF would bear the full gain or loss of revenue after Fund 2280 gets its share.

Company-Reported CAT Charges During Calendar Year 2016	
Electric Distribution Utility	CAT Charged During 2016
Cleveland Electric Illuminating Company	\$2,473,429
Dayton Power and Light Company	\$2,725,934
Duke Energy Ohio, Inc.*	\$3,055,279
Ohio Edison Company	\$3,234,840
Ohio Power Company (AEP Ohio)	\$7,733,279
Toledo Edison Company	\$1,096,661
Total	\$20,319,422

*Company reported data adjusted by LSC using company's annual report to PUCO. The downward adjustment isolates CAT paid on behalf of electric utility receipts by excluding gas utility receipts.

Source: FERC Form No. 1: Annual Report of Major Electric Utilities

Refunds for utility charges

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges. PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

The refund provision may reduce costs to ratepayers, but LSC cannot predict the frequency (if any) with which this provision would be invoked in future years. If this language was in effect when a 2014 Ohio Supreme Court decision was issued, the ratepayers in American Electric Power's (AEP Ohio) two service territories would have

likely received refunds totaling \$368 million.⁴ At the time, the Ohio Supreme Court found that PUCO erred when it approved certain charges contained in AEP Ohio's first ESP, in effect from 2009 to 2011. Although the Supreme Court regarded those charges as unjustified, it did not order the money refunded to customers, citing existing statute and case law against retroactive ratemaking.

HB0247IN.docx/lb

⁴ Supreme Court Document Ohio Supreme Court Slip Opinion, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.

Security [FE / FirstEnergy Corp.](#) (337932107)

ISIN US3379321074

LEI 549300SVYJS666PQJH88

Form Type 8-K

File Date 2020-10-30

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): October 29, 2020

Commission File Number	Registrant; State of Incorporation; Address; and Telephone Number	I.R.S. Employer Identification No.
333-21011	FIRSTENERGY CORP (An Ohio Corporation) 76 South Main Street Akron OH 44308 Telephone (800) 736-3402	34-1843785

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.10 par value per share	FE	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.



Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Officer and Executive Director Appointments

On October 29, 2020, the Independent Review Committee of the Board of Directors (the “Committee”) of FirstEnergy Corp. (“FirstEnergy” or “the Company”) appointed Mr. Steven E. Strah to the position of Acting Chief Executive Officer and Mr. Christopher D. Pappas, a current member of the Board of Directors (the “Board”), to the temporary position of Executive Director, each effective as of October 29, 2020. Mr. Donald T. Misheff will continue to serve as Non-Executive Chairman of the Board. Mr. Strah, age 56, currently serves as President of the Company, a position he has held since May 2020. He previously served as Senior Vice President and Chief Financial Officer of the Company from 2018-2020, Senior Vice President and President of FirstEnergy Utilities from 2015-2018, and President at various FirstEnergy subsidiaries from 2001-2014. Mr. Pappas, age 65, currently serves as a Director of the Board. As Executive Director, Mr. Pappas remains an independent member of the Board, and will be responsible for the following:

- assist management in developing and maintaining relationships with stockholders, lenders and regulators and other external constituencies as appropriate;
- assist management as a spokesman (along with the Chairman and members of management of the Company) with those constituents;
- together with the Chairman, act as an additional liaison between the Acting Chief Executive Officer and other members of senior management, on the one hand, and the Board, on the other hand;
- together with the Chairman, coordinate the Board’s review of the permanent Chief Executive Officer position;
- work with the Acting Chief Executive Officer, the Chairman, an independent working group of the Board, as assisted by an independent compliance consultant, to assess and recommend appropriate enhancements for the Board’s review and approval, to the Company’s compliance and governance policies and procedures;
- together with the Board, engage with the Acting Chief Executive Officer and other members of senior management in general coordination of business oversight; and
- through Board activities in the ordinary course, regularly communicate with the Chairman to enhance the Board’s ability to discharge its duties.

The Board will determine the amount of additional compensation, if any, for Mr. Strah, Mr. Pappas, and Mr. Misheff as a result of these appointments and additional responsibilities at a later date.

Officer Terminations, Director Resignation and Related Matters

Mr. Strah’s appointment immediately follows the determination by the Committee to terminate the Company’s Chief Executive Officer, Charles E. Jones, together with two other executives: Dennis M. Chack, Senior Vice President of Product Development, Marketing, and Branding; and Michael J. Dowling, Senior Vice President of External Affairs. Each of the terminations were effective October 29, 2020. Mr. Jones also resigned from the Board, effective October 29, 2020. As a result of the terminations, each of the terminated executives forfeits or is otherwise ineligible to receive any grants, awards, or compensation pursuant to the Company’s Short-Term Incentive Program, the 2015 Incentive Compensation Plan, or the 2020 Incentive Compensation Plan. The Committee is considering whether recoupment, reductions or forfeiture of other grants, awards, and compensation may be warranted.

During the course of the Company's internal investigation related to the ongoing government investigations, the existence of which was previously disclosed in the Company's Form 10-Q for the period ended June 30, 2020, the Committee determined that each of the terminated executives violated certain Company policies and its code of conduct. Following the Committee's determination regarding these violations of certain Company policies and its code of conduct, the Company is re-evaluating its controls framework, which could include identifying one or more material weaknesses. Further, the internal investigation remains ongoing.

Related Party Disclosure

As previously disclosed, Mr. Kenneth A. Strah, brother of Mr. Steven E. Strah, serves as Director of Customer Contact Centers for the Company and its subsidiaries. Mr. Kenneth A. Strah has been employed by the Company since 1980. From January 1, 2019 through the date of this Current Report on Form 8-K (approximately 23 months), Mr. Kenneth A. Strah received compensation in the aggregate amount of approximately \$435,773.

Item 7.01 Regulation FD Disclosure

On October 29, 2020, the Company issued a press release regarding recently announced management changes, which is attached as Exhibit 99.1 hereto and incorporated herein by reference. The information set forth in and incorporated into this Item 7.01 of this Current Report on Form 8-K is being furnished pursuant to Item 7.01 of Form 8-K and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any of the Company's filings under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and regardless of any general incorporation language in such filings, except to the extent expressly set forth by specific reference in such a filing. The furnishing of this item 7.01 of this Current Report on Form 8-K shall not be deemed an admission as to the materiality of any information herein that is required to be disclosed solely by reason of Regulation FD.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit</u> <u>No.</u>	<u>Description</u>
99.1	Press Release dated October 29, 2020
104	Cover Page Interactive Data File (the cover page XBRL tags are embedded within the Inline XBRL document)

Forward-Looking Statements: This Form 8-K includes forward-looking statements based on information currently available to management. Such statements are subject to certain risks and uncertainties and readers are cautioned not to place undue reliance on these forward-looking statements. These statements include declarations regarding management's intents, beliefs and current expectations. These statements typically contain, but are not limited to, the terms "anticipate," "potential," "expect," "forecast," "target," "will," "intend," "believe," "project," "estimate," "plan" and similar words. Forward-looking statements involve estimates, assumptions, known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements, which may include the following: the results of the Company's ongoing internal investigation and evaluation of its controls framework, the extent and duration of COVID-19 and the impacts to our business, operations and financial condition resulting from the outbreak of COVID-19 including, but not limited to, disruption of businesses in our territories, volatile capital and credit markets, legislative and regulatory actions, the effectiveness of our pandemic and business continuity plans, the precautionary measures we are taking on behalf of our customers, contractors and employees, our customers' ability to make their utility payment and the potential for supply-chain disruptions; the risks and uncertainties associated with government investigations regarding Ohio House Bill 6 and related matters; the risks and uncertainties associated with litigation, arbitration, mediation and similar proceedings; legislative and regulatory developments, including, but not limited to, matters related to rates, compliance and enforcement activity; mitigating exposure for remedial activities associated with retired and formerly owned electric generation assets, including, but not limited to, risks associated with the decommissioning of TMI-2; the ability to accomplish or realize anticipated benefits from strategic and financial goals, including, but not limited to, executing our transmission and distribution investment plans, controlling costs, improving our credit metrics, strengthening our balance sheet and growing earnings; economic and weather conditions affecting future operating results, such as a recession, significant weather events and other natural disasters, and associated regulatory events or actions in response to such conditions; changes in assumptions regarding economic conditions within our territories, the reliability of our transmission and distribution system, or the availability of capital or other resources supporting identified transmission and distribution investment opportunities; changes in customers' demand for power, including, but not limited to, the impact of climate change or energy efficiency and peak demand reduction mandates; changes in national and regional economic conditions affecting us and/or our major industrial and commercial customers or others with which we do business; the risks associated with cyber-attacks and other disruptions to our information technology system, which may compromise our operations, and data security breaches of sensitive data, intellectual property and proprietary or personally identifiable information; the ability to comply with applicable reliability standards and energy efficiency and peak demand reduction mandates; changes to environmental laws and regulations, including, but not limited to, those related to climate change; changing market conditions affecting the measurement of certain liabilities and the value of assets held in our pension trusts and other trust funds, or causing us to make contributions sooner, or in amounts that are larger, than currently anticipated; labor disruptions by our unionized workforce; changes to significant accounting policies; any changes in tax laws or regulations, or adverse tax audit results or rulings; the ability to access the public securities and other capital and credit markets in accordance with our financial plans, the cost of such capital and overall condition of the capital and credit markets affecting us, including the increasing number of financial institutions evaluating the impact of climate change on their investment decisions; actions that may be taken by credit rating agencies that could negatively affect either our access to or terms of financing or our financial condition and liquidity; the risks and other factors discussed from time to time in our SEC filings. Dividends declared from time to time on FirstEnergy Corp.'s common stock during any period may in the aggregate vary from prior periods due to circumstances considered by FirstEnergy Corp.'s Board of Directors at the time of the actual declarations. A security rating is not a recommendation to buy or hold securities and is subject to revision or withdrawal at any time by the assigning rating agency. Each rating should be evaluated independently of any other rating. The foregoing factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements and risks that are included in our filings with the SEC, including but not limited to the most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q. The foregoing review of factors also should not be construed as exhaustive. New factors emerge from time to time, and it is not possible for management to predict all such factors, nor assess the impact of any such factor on FirstEnergy Corp.'s business or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statements. FirstEnergy expressly disclaims any current intention to update or revise, except as required by law, any forward-looking statements contained herein as a result of new information, future events or otherwise.

Christopher D. Pappas, Executive Director, said, “Steve’s deep knowledge of FirstEnergy’s business and significant operational experience, having served in various leadership roles at the Company, make him uniquely positioned to execute on our strategic priorities and lead FirstEnergy through this transition. I look forward to working with Steve as we build on the Company’s strong performance and continue to execute FirstEnergy’s long-term, customer-focused growth strategy to enhance value for shareholders.”

“I’m excited for the opportunity to lead FirstEnergy and I am deeply committed to the future of this company,” said Steven E. Strah, CEO of FirstEnergy. “I have seen firsthand the strong management team and deep bench of highly capable leaders across our organization, and I am confident in our ability to continue delivering value to our stakeholders as we remain intently focused on our business priorities through this transition and beyond. Together, we will advance our mission for the benefit of customers, communities, and our employees.”

About Steven Strah

Strah is a highly-respected energy executive, with 36 years of industry experience and a deep understanding of the FirstEnergy business. He was appointed President in May 2020 as part of the Company’s ordinary-course succession planning process. In this role, he oversaw FirstEnergy Utilities; Corporate Services and Information Technology; Finance; Product Development, Marketing and Branding; External Affairs; Rates and Regulatory Affairs; and Strategy. He began his career with The Illuminating Company in 1984 and served in a variety of utility leadership roles including regional president of Ohio Edison; vice president, Distribution Support; and senior vice president, FirstEnergy Utilities. He was elected senior vice president and chief financial officer in 2018.

About Christopher Pappas

Pappas is the retired President and Chief Executive Officer of Trinseo S.A., a producer of plastics, latex and rubber. He served in this role from 2010 to 2019, and transitioned to the role of special advisor at Trinseo S.A., effective 2019. Pappas retired from Trinseo S.A. in May of 2019 and remained on the Trinseo S.A. board until his retirement in October 2020. Prior to Trinseo, he served in various leadership capacities at NOVA Chemicals Corporation, Dow Chemical, and DuPont Dow Elastomers. His extensive executive and board experience has equipped him with leadership skills and the knowledge of board processes and functions. Additionally, Pappas’ general corporate decision-making and senior executive experience provides a useful background for understanding the operations of FirstEnergy. Pappas served as a director for Allegheny Energy, Inc., from 2008 through FirstEnergy’s acquisition of Allegheny Energy in February 2011. He has been a director of FirstEnergy since September 2011 and also serves as a director and independent chairman of Univar Inc., a chemical distributor and provider.

Company Updates Time of Third Quarter Earnings Webcast

FirstEnergy will release financial results for the third quarter and first nine months of 2020 as planned before markets open on Monday, November 2. The conference call with financial analysts to discuss these results has been moved, and will take place at 9 a.m. EST that day.

Investors, customers and other interested parties are invited to listen to a live webcast of the call and view presentation slides via FirstEnergy's Investor Information website, www.firstenergycorp.com/ir. The webcast and presentation will be available for replay on the site for up to one year.

The company plans to post its third quarter presentation and supporting materials to the investor section of the website before markets open on November 2.

FirstEnergy is dedicated to safety, reliability and operational excellence. Its 10 electric distribution companies form one of the nation's largest investor-owned electric systems, serving customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York. The company's transmission subsidiaries operate approximately 24,500 miles of transmission lines that connect the Midwest and Mid-Atlantic regions. Follow FirstEnergy on Twitter [@FirstEnergyCorp](https://twitter.com/FirstEnergyCorp) or online at www.firstenergycorp.com.

(102920)

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Oct. 29, 2020

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Entity Address, State or Province	OH
Entity Address, Postal Zip Code	44308
City Area Code	(800)
Local Phone Number	736-3402
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Another Ohio Natural Gas-Fired Power Plant Canceled; Nuclear Subsidies Blamed

Jamison Cocklin

Clean Energy Future LLC has stopped efforts to build a third natural gas-fired power plant in Northeast Ohio, blaming the decision on nuclear power subsidies the state will provide to bankrupt subsidiaries of FirstEnergy Corp.

Clean Energy President William Siderewicz told *NGI* that plans for a \$1.1 billion facility in Lordstown, about 15 miles north of Youngstown, are “indeed now dead” after legislation establishing the subsidies became law last month.

The company developed the nearby 940 MW Lordstown Energy Center, a gas-fired facility that entered service late last year. A second plant in the village, the 940 MW Trumbull Energy Center is also still moving forward. Clean Energy began working on plans for a third plant in the area late last year.

However, in July, the Republican-controlled state legislature passed House Bill (HB) 6, which was quickly signed into law by Republican Gov. Mike DeWine, to provide \$150 million over seven years beginning in 2021 as aid for the Davis-Besse and Perry nuclear power plants.

Siderewicz said the third plant would have created 1,100 construction jobs during a three-year period. The project was never formally announced, but lawmakers from the region had noted that talks for a third plant were jeopardized at the time HB 6 passed.

The company also filed a permit application with the Ohio Environmental Protection Agency in June and said it had been working with grid operator

PJM Interconnection. Clean Energy said it has spent more than \$1 million on the project that will be written off as a loss.

For more than two years, the natural gas industry fought to stop the subsidies from passing. Abundant, low-cost gas supplies from the Appalachian Basin have made it difficult for nuclear and coal facilities to compete.

Cheap gas supplies have attracted an influx of developers, including Clean Energy, which has built plants across the state. More than \$11 billion has been invested by multiple companies to build more than 11,000 MW of gas-fired capacity in Ohio alone. Similar levels of investment have been made in nearby Pennsylvania.

Clean Energy's announcement follows another from New Jersey-based LS Power, which canceled a \$500 million plan to expand its 700 MW dual-fuel Troy Generation Facility in Luckey, OH. LS scrapped its plans to add 500 MW of capacity to the facility shortly after HB 6 was signed into law.

Siderewicz has been an outspoken critic of the nuclear subsidies, warning that they would lead to less investment in both renewable energy sources and gas-fired power in the state. He's involved with efforts to strike down the legislation with a statewide referendum. Ohio Attorney General Dave Yost, however, recently rejected the ballot initiative because of errors in its proposed summary language, sending organizers Ohioans Against Corporate Bailouts back to the drawing board.

The Ohio Independent Power Producers, which represents gas-fired plants, bemoaned Clean Energy's announcement, noting it comes at a time when the Mahoning Valley, a four-county region that includes Lordstown, needs it the most. Earlier this year, General Motors Co. shut down the Lordstown assembly plant, which for more than 50 years had manufactured vehicles and served as an economic backbone for the region; the closure led to the loss of more than 1,500 jobs.

The 900 MW Davis-Besse and the 1,268 MW Perry nuclear power plants are owned by FirstEnergy Solutions Corp., which filed for bankruptcy last year. The facilities employ more than 1,400 workers.