



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)

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 state¹. 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"². 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 Commission³.

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

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

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



- 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.”⁴ 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.”⁵

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](#)

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

⁵ “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.