

TESTIMONY ON BEHALF OF VISTRA ENERGY CORPORATION
BEFORE THE JOINT HEARING OF THE
PENNSYLVANIA SENATE CONSUMER AFFAIRS & PROFESSIONAL LICENSURE
&
ENVIRONMENTAL RESOURCES & ENERGY COMMITTEES

May 1, 2019

Good morning Chairman Tomlinson, Chairwoman Boscola, Chairman Yaw, Chairman Yudichak, members of the Senate Consumer Protection & Professional Licensure & Senate Environmental Resource & Energy Committees. My name is Curt Morgan and I am the President and CEO of Vistra Energy. I appreciate the opportunity to submit written testimony in opposition to expanding the state's alternative energy portfolio standards statute to include nuclear generating facilities.

First, let me introduce the company I am proud to lead. Vistra Energy is an integrated power company with a significant retail electric and gas business and electric generation assets across the United States, including the Commonwealth of Pennsylvania. Vistra's retail brands currently serve approximately 2.9 million residential, commercial, and industrial customers across five states, and our generation fleet totals approximately 41,000 megawatts of highly efficient generation capacity, with a diverse portfolio of natural gas, nuclear, coal, solar, and energy storage facilities, including one of the lowest-cost, most reliable, and highest safety-rated nuclear plants in the country. Vistra operates in 12 states and six of the seven competitive markets in the nation, with about 5,400 employees.

While Vistra is a relatively new name to Pennsylvania, our employees and our facilities are not. We provide over 1,900 MW of generation capacity through our three natural gas-fueled plants located in the Commonwealth:

- Ontelaunee (600 MW, online 2002), in Reading, Pennsylvania
- Fayette (726 MW, online 2003), in Masontown, Pennsylvania
- Liberty (607 MW, online 2002), in Eddystone, Pennsylvania

Our family of companies located in the Commonwealth is proud to support the communities where our employees and customers live, work, and grow. We take pride in being a good neighbor and strengthening the places where we serve customers, where our valued employees live, and where we call home.

Vistra recently launched a new retail electricity brand called Brighten Energy in Pennsylvania to supply renewable energy to socially conscious consumers looking for an affordable way to make a difference. We also expanded the existing retail brand Dynegy into the residential market in Pennsylvania. Now both retail brands will serve Commonwealth residential and small businesses, and Dynegy will also serve large commercial and industrial businesses.

Vistra is also in the process of acquiring Crius Energy, a competitive electric and gas retail provider, with an anticipated transaction close in the second quarter of 2019. Crius has roughly 1 million customers across 19 U.S. states, including approximately 105,000 customers in Pennsylvania, and the company provides retail natural gas and electric services through the Pennsylvania Gas & Electric, Public Power Energy Supplier, and TriEagle Energy brands. Following the close of the transaction, Vistra will have an estimated 4 million retail customers. Consistent with Vistra's commitment to invest in the states where it operates, including Pennsylvania, the company is currently in the process of opening a retail sales office located outside of Philadelphia in King of Prussia. We also expect to make material investments in the Commonwealth on renewables and to grow our retail business. Of course, what happens with the issue of nuclear subsidies will impact our desire to make these investments. A fair and level playing field is essential to investing in any market.

Pennsylvania is one of the most important and diverse energy states in the U.S., and Vistra is committed to providing its residents with innovative, customer-centric retail electricity, along with safe, reliable, and efficient power generation. We care about ensuring that the PJM market remains one of the most well-functioning markets in the nation, which is why we feel strongly about participating in the dialogue regarding nuclear subsidies within an expanded Alternative Energy Portfolio Standard program and whether they make sense.

Act 213 of 2004 was signed into law on November 30, 2004, establishing an alternative energy portfolio standard for Pennsylvania to drive investment, job creation and economic development opportunities throughout the Commonwealth. The law took effect on February 28, 2005 and required that an annually increasing percentage of electricity sold to Pennsylvania retail customers by electric distribution companies and electric generation suppliers should be derived from alternative energy resources. The law established a 15-year schedule for complying with its mandates with the percentage of Tier I, Tier II and solar PV alternative energy resources that were required to be included in sales to retail customers to gradually increase over this period. According the PA PUC's website, there are more than 27,385 alternative energy suppliers participating in the Pennsylvania alternative energy credit program, who have driven investment, created jobs and enhanced economic development opportunities in this Commonwealth since its inception. AEPS is working as it was intended to and continues to enhance the Commonwealth's economy and investment in alternative energy resources. Marginalizing the success of the program by expanding the intent and purpose of the AEPS statute to use energy policy to address environmental issues through the creation of a new Tier III that strictly benefits the Commonwealth's nuclear industry is not prudent and I appreciate the opportunity to explain why.

It has been over 20 years since the Pennsylvania electric market was restructured to allow for competition. By all accounts, the restructured electric market has worked well with lower prices and improved reliability, while also more effectively protecting consumers from poor performance and investment decisions made by market participants. In fact, there have been several bankruptcies and many bad investments in the competitive electric business since restructuring and not one captive ratepayer has been adversely exposed. Compare that to the approximately \$8.5 billion of stranded costs recovered as part of electric restructuring from captive ratepayers by regulated utilities for their purported overspend on nuclear plants in Pennsylvania. In addition, there's an estimated nearly \$9 billion of over-recovery beyond the book value of those same nuclear assets paid for by many of the same ratepayers and allowing for a double recovery of stranded costs.

As policymakers, you are faced with a two-fold question: 1) should you continue the failed past practice of allowing for direct, out-of-market subsidies paid for by captive ratepayers to support purportedly uneconomic nuclear facilities; or 2) should markets be allowed to function competitively with proper oversight to ensure fair and equitable treatment of market participants and customers?

The nuclear plant owners have recently admitted that this is not about near-term profitability of the nuclear plants in Pennsylvania except possibly the Three Mile Island nuclear facility which is a 45-year old, highly inefficient, single unit plant that has likely reached its economic life. Rather, they have tried to paint a false sense of urgency with the threatened closures of Three Mile Island and Beaver Valley, both of which purposely did not participate in the previous PJM capacity auctions. Interestingly, our own analysis suggests Beaver Valley should be profitable on its own into the future, as well as Limerick, Peach Bottom, and Susquehanna nuclear power plants. The issue before you is not an easy one, and we offer our thoughts and insights garnered from competing in Pennsylvania and other markets to assist you in this important debate.

There has been a lot of rhetoric from a number of high-profile people on this matter creating further confusion, but I urge you to make the decision on any legislation based on the facts and with due respect to the entire competitive market, including full disclosure of the profitability of these facilities. I find it quite ironic that certain elected officials, who championed restructured electric markets to protect consumers and enjoyed the benefits of electric competition during their tenures in office, have decided to support out-of-market subsidies that will undoubtedly be detrimental to the competitive markets and expose captive ratepayers, once again, to the performance of individual companies and assets with no evidence of need.

Vistra understands the desire of Pennsylvanians for clean sources of energy and the legislature's desire to enact policy to that effect. However, we believe that the best way to accomplish these goals is to let the competitive market work and to allow consumers to choose the path to a cleaner energy portfolio that works best for them. We have seen the power of competition to accomplish these goals across the markets where we compete. Economics are already forcing the closure of higher-emitting, inefficient, and uneconomic coal plants, which is fostering the introduction of newer, cleaner, and more efficient

sources of energy. In fact, the Commonwealth has seen significant coal plant closures and job loss without any intervention from government, nor has there been any stranded cost recovery or decommissioning payments from captive ratepayers. In addition, many other businesses have closed over the years in Pennsylvania with no bailout from the government. The same should hold true with nuclear facilities that cannot compete or fail to compete.

Subsidies are usually reserved for nascent technologies to allow them to build scale to compete, and then the subsidies expire. This clearly is not the case for these nuclear plants that are using 1970s nuclear technology. Alarmists have tried to paint a picture that the U.S. will lose its nuclear edge if some of the older, lower-performing nuclear facilities close. This is just not the case given the antiquated technology used in nearly all civilian nuclear facilities in the U.S. and the fact that there are approximately 100 active civilian nuclear units in the country – twice that of the country with the second-highest number of nuclear units. In fact, only about 20 U.S. nuclear units are at risk of closure. In addition, some have attempted to make reliability and resiliency of the power system as support for nuclear subsidies. This argument, too, is not supported by the facts, as the PJM market and FERC have dispelled any of these concerns. If the Pennsylvania Legislature has a particular concern about the electric wholesale market, it should consider market-based solutions in which all companies can participate instead of picking winners and losers while exposing ratepayers to the strategies and performance of individual companies.

At its core, this issue isn't about clean energy, consumers, workers, resiliency, reliability, or local impacts—it is about the bottom line of at least three already profitable nuclear plants. Furthermore, these three nuclear facilities have significant opportunities to improve their performance and improve profitability when compared to other U.S. nuclear facilities, and House Bill 11 would take away the competitive pressure for the facilities to compete and improve efficiency like all other businesses in the Commonwealth. Even worse, if legislation is enacted, the three nuclear facilities could reap the benefits from both the bailout payments and operational improvements. Any time government intervenes in a competitive sector of the economy, it creates unknown and unintended adverse consequences, including the ripple effect on other valuable resources, such as forcing early retirements. Any nuclear

bailouts in Pennsylvania could have this potential impact on more efficient, natural gas-fueled electric facilities that have very important attributes for electric markets, especially with their ability to ramp quickly and balance the output from intermittent renewables.

To the end-use consumer, legislative proposals like House Bill 11 and Senate Bill 510 could increase electricity costs for Pennsylvanians by more than \$500 million a year, indefinitely, to benefit already profitable nuclear plants at the expense of Pennsylvania ratepayers. This is above and beyond the billions of dollars of bailouts, mentioned above, previously paid for by Pennsylvanians for future nuclear decommissioning and stranded costs from initial overspending on the nuclear facilities.

Let me contrast this with the approach that Vistra has taken in the competitive wholesale and retail markets where we operate. We have taken a proactive approach when it comes to making certain our power plants continue to be economically viable. In response to market challenges, we launched our Operations Performance Initiative (OPI) investing several million dollars in our plants to enable them to compete in any market environment. OPI is an exhaustive effort to identify and capture opportunities across all aspects of our electric generation business. We evaluate revenue, fuel, operation and maintenance expenditures, capital expenditures, inventory management, and more. We also implement best practices and operational excellence processes across our fleet of more than 50 facilities.

As an example, Comanche Peak, our nuclear power plant in Texas, reduced costs significantly through the OPI process, and it continues to be among the lowest-cost, if not the lowest cost, nuclear plants in the country. These improvements were achieved in part by empowering employees to suggest better ways of doing things and rewarding them for their ideas. With the backdrop that Texas will not support nuclear subsidies, it was imperative that we put Comanche Peak in the most competitive position as possible. We firmly believe in the competitive market, and our employees work extremely hard every day to ensure our plants are the safest and most efficient in the country. We have implemented OPI at our three highly efficient natural gas-fueled plants in Pennsylvania and believe the legislature in the Commonwealth should insist on the highest performance from the nuclear plants before considering any subsidies. This highlights the failure of the proposed legislation. In order to make the proper

decision, the Pennsylvania Legislature should insist on open hearings through the Pennsylvania Public Utility Commission (PUC) with expert testimony, benchmarking analysis, and a full and open view of each plant's economics. In addition, there should be an annual review of these details by the PUC to consider the ongoing need for the subsidies. In the end, it will be an adulteration of the competitive wholesale electric market in the Commonwealth.

As you consider whether these nuclear facilities are deserving of further subsidization by Pennsylvanians, we offer the following questions to assist in your due diligence. We believe full transparency is paramount to the legislative process on this matter so both citizens and legislators know exactly what deal is being struck:

- Can the nuclear generators detail the due diligence they have conducted to determine the financial viability of their assets before requesting Pennsylvania utility customers subsidize their nuclear facilities?
- Do these generators agree that it is reasonable and appropriate for the Pennsylvania Legislature to conduct proceedings to thoroughly and publicly review their financial data to verify their need for a subsidy?
- According to the independent PJM Market Monitor, all of the nuclear facilities in Pennsylvania, except Three Mile Island, are expected to make significant profits in the next three years. Why should the electric consumers of Pennsylvania pay the owners of these facilities billions of dollars more when they are already expected to earn hundreds of millions of dollars in profit over the next three years?
- Will these actions create financial distress for other generators and other industries that also contribute important attributes to the electric market (such as flexibility and reliability) and Pennsylvania economy?
- Many businesses/industries have failed in the Commonwealth due to market and technological changes, suffering significant job loss (e.g., steel, coal generation), without government intervention. Instead of holding onto the past, Pennsylvania moved forward, embraced the future and is flourishing. Why should the Commonwealth go back to the old regime of captive ratepayers for nuclear plants?

- Why should the ratepayers of Pennsylvania not demand a recoupment of the over-recovery of stranded costs before they further subsidize the nuclear facilities?
- Why should Pennsylvanians not insist on understanding how the facilities benchmark against other nuclear plants and insist on any performance improvements before considering subsidies?
- If we are to believe the assertions put forth by the nuclear industry that the issue before you is an environmental one, as opposed to being a profitability issue, how do they reconcile the significant environmental footprint of nuclear waste at each site and do these companies commit to decommissioning their sites without requesting further funds from the Commonwealth?

Again, I appreciate the opportunity to share Vistra's insights with regards to expanding the current AEPS statute through the creation of a new Tier III that subsidizes the Commonwealth's nuclear industry, which will deter investment and innovation in the development and deployment of new alternative energy resources. All we are asking is to have fair and equitable competitive markets and the adoption of sound public policies that do not pick winners and losers in the competitive energy marketplace based on speculative scenarios and questionable narratives without proper due diligence and oversight. I look forward to continuing to work with the Pennsylvania Senate on this issue and will make myself available to answer any questions the Committees may have during future deliberations on this or any