



COUNCIL OFFICE

# CITY OF AVON LAKE, OHIO

150 AVON BELDEN ROAD • AVON LAKE, OHIO 44012-1699

Telephone: (440) 930-4121

TESTIMONY OF ROBERT K. JAMES

MEMBER OF THE AVON LAKE CITY COUNCIL

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND ANTITRUST LAW

**“The Obama Administration's Regulatory War on Jobs, the Economy, and America’s  
Global Competitiveness”**

**February 28, 2013**

I would like to thank Chairman Bachus, Ranking Member Cohen, and the other members of the subcommittee for inviting me to testify today. My name is Rob James, and I am a member of the City Council of Avon Lake, Ohio, where I represent the residents of Ward 1. In addition, I am the chairman of the Public Service Committee, a member of the Economic Development Committee, and a former member of the Environmental Committee for City Council. Avon Lake, Ohio is a beautiful community of over 23,500 residents on the shores of Lake Erie, approximately twenty miles west of Cleveland.

Although I am currently an attorney in private practice, I have previously served as an assistant attorney general for the Office of the Ohio Attorney General, where I represented the State of Ohio and numerous state officials and agencies, including the

Ohio Environmental Protection Agency. My work as an assistant attorney general included enforcing environmental laws and regulations and ensuring that the natural resources of Ohio were protected. However, I am here today because I think it is important that Congress understands the impact of federal regulation, and specifically federal environmental regulation, on local communities such as Avon Lake.

### **Introduction**

Almost exactly a year ago, on February 29, 2012, GenOn Energy, Inc. announced that it would close the coal and fuel-oil fired electric generating plant in Avon Lake in 2015. The Avon Lake Generating Station is capable of generating 734 megawatts, providing baseload electric capacity and load-following capability to the grid, as well as essential peaking capacity and black start capability. This facility plays an important role in providing a reliable and affordable supply of electricity.

The reasons behind the closure are clear. GenOn stated that the closure was a result of the rising costs associated with EPA's regulations, and the fact that the overwhelming costs associated with complying with the rules could not be recovered by continuing to operate the facility.<sup>1</sup> In particular, GenOn cited the EPA Mercury and Air Toxics Standards ("MATS") rule as the primary reason motivating the Avon Lake deactivation. At the time of the announcement, the Avon Lake facility was the largest of the GenOn fleet announced to be closed.

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<sup>1</sup> "GenOn Reports 2011 Results and Announces Expected Deactivation of Generation Units," GenOn Energy, Inc. press release, February 29, 2012, accessed February 26, 2013, [http://phx.corporate-ir.net/phoenix.zhtml?c=124294&p=irol-newsArticle\\_print&ID=1667152&highlight=](http://phx.corporate-ir.net/phoenix.zhtml?c=124294&p=irol-newsArticle_print&ID=1667152&highlight=).

On July 22, 2012, NRG Energy, Inc. and GenOn announced that they would combine the two companies, and on December 14, 2012 the merger was completed, leaving NRG as the successor company. Despite the merger, NRG has publicly stated that the Avon Lake Generating Station “remains as scheduled to be deactivated in 2015.”<sup>2</sup> Although NRG has left open the possibility of re-evaluating the projected deactivation of the facility, and there is the prospect that the small oil-fired boiler may remain operational, the unavoidable truth remains that the Avon Lake facility will likely be deactivated in 2015.

While some may celebrate the closure of these types of facilities based on broader policy objectives, the loss of power plants as a consequence of federal regulation have a very real impact on the communities in which they are located. These are not just abstract costs. The families of my community have to absorb these significant losses.

### **Impact on the City of Avon Lake**

The most immediate impact of the closure will be on the 80 people employed by the Avon Lake facility. The type of quality jobs at the Avon Lake plant are increasingly hard to find in our country, let alone in Ohio and in the greater Cleveland area. But this is about more than just the jobs of the people employed at the plant; instead, it is about the ripple effect that harms an entire community. In present dollars, closure of the Avon Lake generating facility will cost the City of Avon Lake \$69,878.62 in income taxes, and \$291,977.00 in property taxes per year.

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<sup>2</sup> Bryan Wroten, “Power plant still scheduled to close despite GenOn merger,” *The Press*, August 1, 2012, accessed February 26, 2013, <http://2presspapers.northcoastnow.com/power-plant-still-scheduled-to-close-despite-genon-merger/>.

This loss of taxes does not just represent the loss of general revenue used to fund the city and its programs. Significantly, a sizeable portion of the property taxes collected is used to fund Avon Lake paramedics and emergency medical services. The loss of \$71,827.06 annually from the EMS budget, which is the amount that would be lost from the closure, would reduce the EMS operating budget by half.

In particular, the loss would be realized by the inability to fund critical items ranging from paramedic supplies (i.e. cardiac medications, oxygen, oxygen masks, heart monitors), ambulance maintenance and repair, fuel, insurance, the purchase of ambulances, and the training and education of paramedics. With respect to personnel costs, it may eliminate one of the eight paramedics funded by property tax revenues, which represents a 12.5% reduction in the paramedic work force.

In addition to the taxes paid by the Avon Lake power plant, NRG and its predecessor GenOn have donated various equipment and training to the Avon Lake Fire Department and EMS. For instance, the Fire Department has received a thermal imaging camera, with an approximate value of \$7,200, which assists firefighters to see heat in limited visibility, locating victims and the exact location of the fire more rapidly. Additionally, the Fire Department has been given a piercing nozzle, which has a value of nearly \$6,000, and is used in firefighting to penetrate steel and other materials to combat hidden or inaccessible fires, and well as firefighting foam, worth several thousands of dollars, which helps extinguish flammable and combustible liquid fires.

Despite the announced closure, NRG has continued to play an active role in the community, most recently becoming a lead sponsor of the 24<sup>th</sup> Annual Charity Ball of

Community Resource Services (“CRS”), which is the chief health and welfare assistance organization in Avon Lake as well as the adjacent municipality of Avon. The charity ball is among the largest fundraising effort for CRS. The mission of CRS is to diminish the effects of poverty in Avon and Avon Lake by providing basic needs assistance and individualized resource and referral services.

Thus, the closure would directly affect ability of the City of Avon Lake to effectively deliver an emergency paramedic and firefighting service to its 23,500 residents. The closure will also indirectly affect the health and welfare of Avon Lake residents through the loss of charitable giving to such worthwhile organizations as CRS.

#### **Impact on the Avon Lake City School District and Other Educational Institutions**

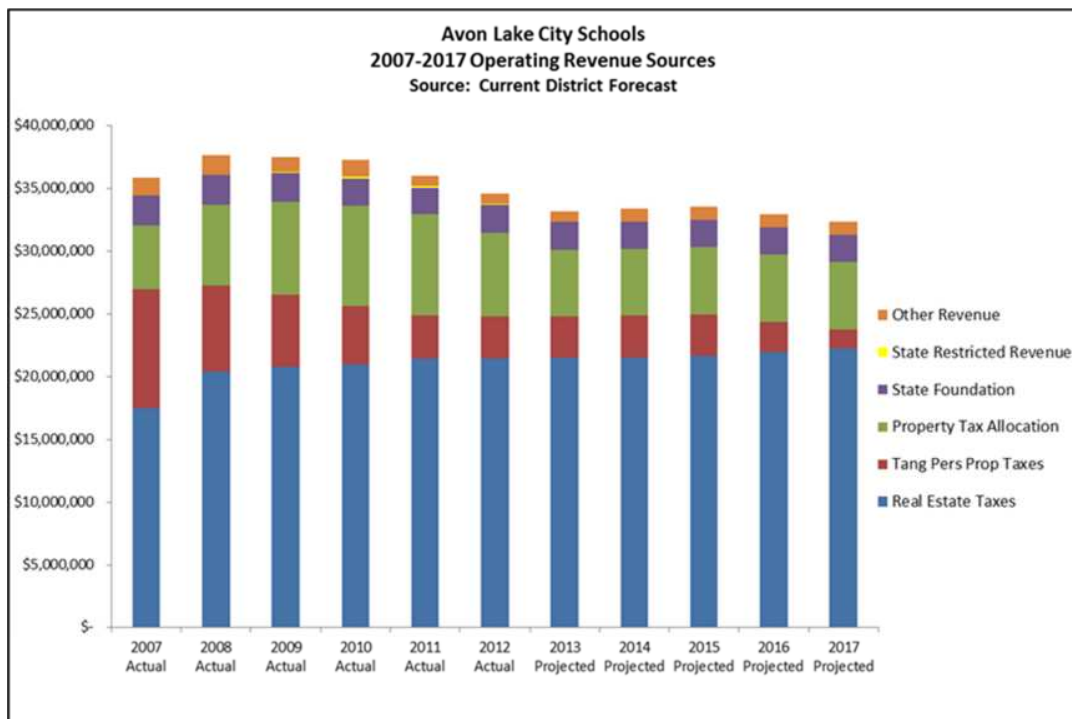
Even more concerning is the impact the closure will have on the Avon Lake City School District. The Avon Lake City School District currently has an enrollment of approximately 3834 students. In fiscal year 2012, it had 249 teachers, of whom 100% percent are state certified, and 70% have master’s degrees or higher. In addition, the district had another 257 non-teaching staff, which includes administrative assistants, custodians, bus drivers, and other employees.

In 2012, 93% of Avon Lake graduates enrolled in a two year college, four year college, or in the military, and 70% of the students received college credit before graduating. Moreover, the students earned approximately \$17 million in scholarship awards for college.

Not surprisingly, Avon Lake City School District has been rated as “Excellent” or better by the State of Ohio for the past ten consecutive years. Last year, the district

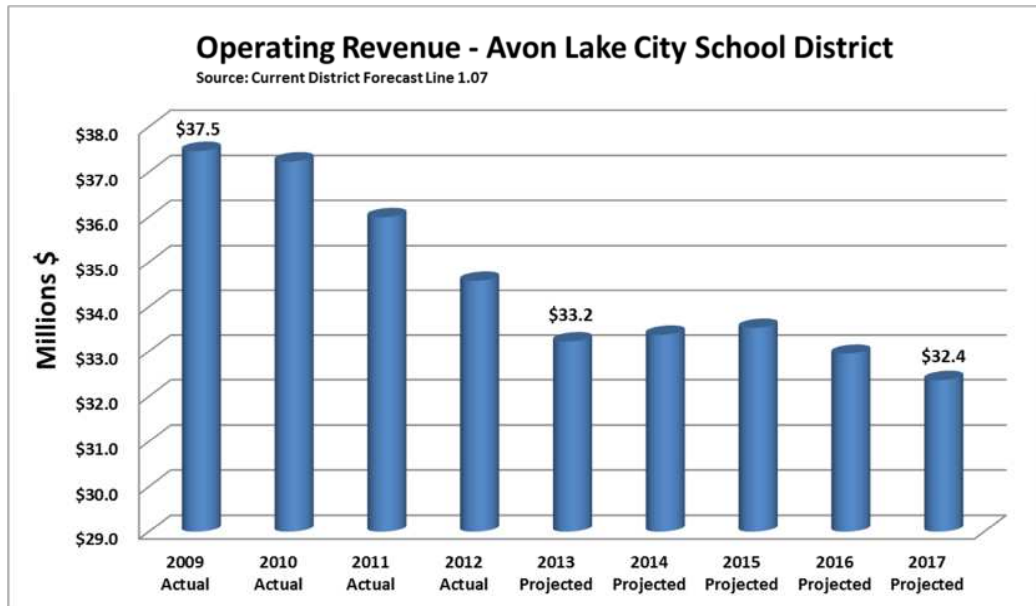
earned an “Excellent with Distinction,” which is Ohio’s highest rating. Of 937 school districts in the state, Avon Lake ranks 25<sup>th</sup>, or in the top 2.5% of all districts.

At present, Avon Lake City School District collects \$1.8 million in utility taxes alone, and potentially another \$1.5 million in real and tangible personal property taxes based on the future use of the property. The potential loss of nearly \$3.3 million dollars *each year* would have an unimaginable effect on Avon Lake’s schools. Based on fiscal year 2012 revenue of \$34,941,153.00, a loss of \$3.3 million equates to a 9.4% reduction. Revenues for fiscal years 2013 and 2014 are forecast to be even lower, so the reduction will likely be even greater. This projected loss to the school district can be summarized in the following chart:



Notably, these projections *only* take into account the loss of revenue from the utility tax, and not the potential loss of real and tangible personal property taxes as it is

difficult to project the future use and potential devaluation of the property. The loss of \$1.8 million annually in revenue can starkly be observed in this chart:



The significant decline in operating revenue from 2012 to 2017 can clearly be seen, which largely represents the loss of taxes from the Avon Lake power plant.

Continuing loss of revenue may require the reduction of up to 51 full-time employees by the 2014-2015 school year. Inevitably, these reductions would result in an increase in class sizes. For instance, kindergarten classes currently average 20 to 25 students per class, but with reductions, class size may exceed 30 students. Educational opportunities may be reduced or eliminated, such as Advanced Placement classes, dual credit classes with the local community college, and electives for all age groups, including art, music, physical education, and college preparatory classes. The district has already prepared for the worst by reducing 15 full-time equivalent positions for the 2013-2014 school year.

Not only will the loss of revenue directly impact the ability of the schools to provide the high quality of education that it currently offers, but many of the programs offered by the school for students with the greatest needs would be lost. The loss of the Avon Lake power plant could force the school district to end, for example, outreach services at the Cleveland Clinic Learner Center for Autism that help meet the needs of autistic students without having to send them to outside placement; no-cost programs at Applewood Center, which helps children and teens who are struggling with depression, anxiety, Attention Deficit Hyperactivity Disorder, the effects of trauma or abuse, or are having behavioral difficulties at home or in school; anonymous counseling and awareness programs from the Lorain County Alcohol and Drug Abuse Services, and a program through Genesis House and Teen Street Team to assist students in talking to their peers about abuse.

In addition to the Avon Lake School District, it should be noted that other educational institutions will also feel the loss of tax revenue from the closure of the Avon Lake power plant, including the Avon Lake Public Library and the Lorain County Joint Vocational School District. The Avon Lake Public Library is projected to lose upwards of \$100,557.88 per year in property tax revenue, a loss of nearly 3% of its revenue, and the Lorain County Joint Vocational School District will see a decrease of \$87,988.15, a decrease of 2.59%.

As Avon Lake School District Superintendent Robert Scott has noted, these losses are “devastating,” especially in light of the fact that the school district is already having to reduce the number of teachers in schools because of state budgetary issues.



Numerous additional losses will be realized by the district from both state and local sources, such as:

2007-2011	State Decrease: Continued phase out of Tangible Personal Property Tax
2010	State Decrease: 8.9% in State Foundation
2010	Local Decrease: 4.79% reduction in Avon Lake property valuation (Lorain County Triennial Update)
2011	Local Decrease: Power Plant devaluation resulted in more than \$1,200,000 decrease for the District
2012	State Decrease: \$710,158 in Tangible Personal Property Tax Hold Harmless Reimbursements
2012	State Decrease: \$710,158 in Public Utility Personal Property Tax Hold Harmless Reimbursements
2012	Local Decrease: 6% reduction in Avon Lake property values (Lorain County Reappraisal)
2013	State Decrease: \$710,158 in Tangible Personal Property Tax Hold Harmless Reimbursements
2013	State Decrease: \$710,158 in Public Utility Personal Property Tax Hold Harmless Reimbursements
2015	Local Decrease: Power Plant projected to close in April 2015
2016	Local Decrease: Partial Impact of Power Plant Closing Realized
2017	Local Decrease: Full Impact of Power Plant Closing Realized

Parents and friends of the Avon Lake School District share similar sentiments with Mr. Scott. Deborah Ludwig, a parent of a student at Troy Elementary School, stated:

With the Avon Lake GenOn closing, it will highly impact the community's energy costs and quality of life. There are many unforeseen factors that will be generated by this plant's closing that will impact not only the residential establishments BUT also the Avon Lake School System. With the Federal Government continually raising the bar on EPA standards and in effect costing our energy plants upgrades that they cannot afford to make, the end result will be a wealth of empty and useless plants across the state, higher consumer costs and a downgrade on everyone's quality of life especially here in Avon Lake.

Kris Simecek, a parent of a student at Westview Elementary School, shares a similar perspective. She said:

My husband and I moved to Avon Lake over 20 years ago because of one specific reason - the quality of Avon Lake City Schools. Since then, we have raised four boys who all went through the Avon Lake school system. If GenOn closes, the economic impact on our high quality school system will be highly detrimental. The future of the school system, and therefore the future of the children of Avon

Lake, is dependent on consistent resources. As a mother, the health of my children is very important. If the closing of GenOn is the only way to improve the air quality and the health of our children and community, it should not be done to the detriment of those very same children and community members.

The loss of the Avon Lake power plant clearly represents an incredibly difficult challenge for the Avon Lake School District and other Avon Lake educational institutions. While the intended objective of clean air is important, the unintended consequence of the loss of revenue to the schools must be considered in promulgating any federal regulation, and especially environmental regulations.

#### **Impact on the Cost of Electricity**

In addition, consumers in Northeast Ohio are likely to pay more for their electricity. Catholic Charities of Cleveland has previously testified to Congress that the loss of power plants “would have a devastating effect on the people of Ohio and our country, particularly the poor and the elderly.”

The group attempted to quantify the impact of such closures as follows:

The overall impact on the economy in Northeast Ohio would be overwhelming, and the needs that we address at Catholic Charities in Ohio with the elderly and poor would be well beyond our capacity and that of our current partners in government and the private sector. In a recent study on Public Opinion on Poverty, it was reported that one-quarter of Americans report having problems paying for several basic necessities. In this study, currently 23% have difficulty in paying their utilities - that is, one out of four Americans.

Unfortunately, other communities in addition to Avon Lake are suffering from the costs of federal environmental regulation. In Ohio alone, nine other power plants

have announced that they will close, including Conesville, Muskingum River, Picway, Beckjord, Miami Fort, Ashtabula, Bay Shore, Eastlake, Lake Shore, and Niles. This represents a loss of 5,870 megawatts in just Ohio. Additional losses will be felt outside of Ohio, including Glen Lyn, Virginia; Muskegon, Michigan; and Upper Mount Bethel Township, Pennsylvania. In each of these communities, and all the other locations where plants are closing, it will be harder to pay for the schools, hospitals, and basic services that keep communities vibrant and healthy.

### **Conclusion**

As this subcommittee continues to evaluate the extent and impact of federal regulation, I hope that you will keep in mind communities like Avon Lake. While government regulation is appropriate in certain circumstances, the federal government must understand the consequences of its regulations on our communities. Places like Avon Lake need affordable and reliable electricity, a strong educational system, and opportunities for our economies to rebuild and grow. The U.S. economy is still struggling to recover, and Northeast Ohio is at the center of this struggle. We know that we can have clean air, good jobs, and reliable electricity – but only if policies are implemented based on sound analysis, and with full consideration of the real costs of the choices made by federal regulators.

Thank you again for the opportunity to testify today.