

# Electric

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## Overview

In 2014, the Office of the Ohio Consumers' Counsel (OCC) continued to advocate for affordable electric rates for Ohioans. Ohioans were paying electric prices that were higher, on average, than residential electricity prices in 32 other states in 2014, according to information from the U.S. Energy Information Administration.

One OCC objective is for Ohioans to save money from the historically low energy prices in the marketplace. Obtaining the benefits of competition is consistent with the Ohio General Assembly's enactment of Senate Bill 3, a 1999 law. That law transformed the state from regulated rates to market-based electric generation pricing.

Regulation in Ohio has continued to diverge from traditional rate cases to single-issue ratemaking cases. Traditional rate cases protect customers by review of all aspects of utility operations affecting customers, including utility profits. Single-issue cases typically focus on a single charge or cost that the utility is seeking to increase on customers' bills.

Additionally, several electric utilities asked the Public Utilities Commission of Ohio (PUCO) to require customers to guarantee profits for certain deregulated power plants. The Consumers' Counsel recommended protecting customers from paying these subsidies that were proposed at a time when electricity generation should be provided in competitive markets.

With billions of dollars at stake for consumers in utility proposals for higher rates, OCC participated in many electric cases in 2014. In one case alone, Duke Energy's customers were protected from paying \$729 million in rate increases.

These electric cases were at the PUCO, the Ohio Supreme Court and the Federal Energy Regulatory Commission. Also, in testimony before the Ohio General Assembly, the Consumers' Counsel made recommendations that would protect the monthly bills of utility customers.

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## **AEP, Duke and FirstEnergy seek guaranteed profits for deregulated power plants**

In 2014, American Electric Power (AEP), Duke Energy, and FirstEnergy asked the PUCO to approve long-term agreements that would guarantee profits for deregulated power plants at the consumer's expense.

Under Ohio law, what utilities charge for power plants is to be determined by the competitive electricity market, not guaranteed by the government regulator.

OCC and others recommended that the PUCO deny the proposed "Power Purchase Agreements." The electric utilities' proposals were the latest in a succession of in-

dustry proposals seeking government protection from competitive markets, at the expense of consumers.

In recent years, the markets would have provided consumers with historically low energy prices. Instead, electric customers have paid billions during the shift from regulated power plants to deregulated generation, since 1999. The new proposals sought by the utilities could have customers paying billions more.

OCC filed the testimony of experts that FirstEnergy's proposal alone could cost customers more than \$3 billion over the 15-year period of the agreement. The PUCO will hold a hearing in 2015.

The PUCO decided AEP's proposal on February 25, 2015, denying the proposed "Power Purchase Agreement." However, the PUCO gave guidance for future proposals.

*AEP, Case Nos. 14-1693-EL-RDR, 13-2385-EL-SSO; Duke, Case No. 14-841-EL-SSO; FirstEnergy, Case No. 14-1297-EL-SSO*

## **Duke customers protected from \$729 million in rate increases**

Duke Energy's 690,000 electric customers were spared an overall increase of \$729 million. That occurred in February 2014, when the PUCO denied the utility's request for additional money. If approved, the request would have added \$150 to \$200 per year to customers' bills for three years.

OCC and others asked the PUCO to dismiss Duke's request because it violated a settlement agreement that OCC, the PUCO Staff, Duke and others signed in 2011. The settlement allowed Duke to collect \$330 million in "electric service stability charges" that Duke claimed it needed to be protected against losses due to competition for generation service.

In exchange for that charge, OCC and others obtained as part of the settlement that a series of auctions would be held to set generation prices according to the competitive market. That agreement allowed customers to take advantage of historically low market prices for electricity. The first auction resulted in a 17.5 percent rate decrease for customers.

However, after the PUCO approved a significant capacity cost increase for AEP Ohio, Duke filed a similar proposal to collect capacity costs from its customers. Capacity costs generally relate to the fixed cost of power plants that can produce electricity.

Duke asked for an additional \$729 million in charges, even though the 2011 agreement had barely taken effect. OCC and others, including businesses, industrial customers, and the City of Cincinnati, asked the PUCO to reject Duke's request.

The PUCO rejected Duke's request to impose this rate increase on customers.

*Duke, Case No. 12-2400-EL-UNC*

## **FirstEnergy's overcharges for renewable energy appealed to Ohio Supreme Court**

In December 2013, FirstEnergy appealed, to the Ohio Supreme Court, a PUCO decision that it had overcharged its customers for renewable energy. In February 2014, the Consumers' Counsel also appealed the PUCO's decision.

Under a 2008 Ohio law, electric utilities are required to purchase a portion of their generation supply from renewable energy sources. The law also allows utilities to recover the costs of these purchases from customers if the purchases are determined to be reasonable.

There was activity in the appeals in 2014. OCC requested that FirstEnergy be required to credit its customers more than the \$43.4 million in overcharges, plus interest, that the PUCO had ordered for crediting back to customers. OCC is not permitted to say precisely how much more in overcharges it recommended that FirstEnergy return to customers. FirstEnergy claims the information is a confidential trade secret and must be kept from the public domain.

In February 2014, the Supreme Court granted FirstEnergy's request to stop (stay) the return of the \$43.4 million that the PUCO had ordered. The stay is in effect until the Supreme Court decides the appeal.

*FirstEnergy, Case No. 11-5201-EL-RDR; Sup. Ct. Case 2013-2026*

## **AEP and DP&L consumers charged for storm repair costs**

In December 2012, AEP asked the PUCO for permission to charge its 1.5 million customers \$61.8 million to cover its repair costs for several large storms. It is believed to be the most expensive storm repair request in Ohio's history. One year later, AEP signed a settlement with the PUCO Staff and a number of non-residential parties that would allow AEP to charge customers \$54.8 million plus carrying charges. OCC recommended that the PUCO limit charges to consumers to \$23.6 million.

OCC asserted that the \$54.8 million proposed for charging customers did not reflect reasonable costs associated with storm restoration. OCC's experts testi-

fied that AEP did not consider other reasonable, less expensive options for storm restoration.

DP&L also proposed a Storm Cost Recovery Rider in December of 2012. DP&L sought to charge customers for major storm costs incurred in 2011 and 2012, as well as the costs from Hurricane Ike in 2008. The initial request was \$64 million and was later reduced to \$37 million.

On May 1, 2014, DP&L filed a settlement with the PUCO Staff and Kroger Co. to propose charging customers the amount of \$22.3 million. OCC did not sign the settlement, out of concern that customers would be charged much more than appropriate. OCC recommended that the charges for residential utility consumers be reduced to \$1 million and asserted that DP&L's historic profits were sufficient to cover the storm restoration costs.

The PUCO found both the AEP and DP&L settlements to be reasonable. The settlements were then adopted and approved, allowing the charges to customers.

*AEP, Case No. 12-3255-EL-RDR; DP&L, Case No. 12-3062-EL-RDR*

## **Consumer protections sought in review of 2008 energy law**

Consumer groups, businesses, environmental groups, and other stakeholders testified on legislation in the Ohio General Assembly in 2014 that would revisit parts of Ohio's 2008 energy law. Ohio's electric utilities did not present public testimony.

Senate Bill 310, which was adopted by the legislature on May 28, 2014, freezes for two years the state's targets for energy efficiency and renewable energy. The 2008 law provided for increasing energy efficiency and renewable energy in Ohio each year until 2025.

Senate Bill 310 also requires a panel of lawmakers to study the issues and provide a report to the General Assembly by the end of September 2015.

OCC testified before both the Ohio House and Senate Public Utilities Committees. OCC recommended that, instead of the two-year freeze, other parts of the 2008 energy law should be changed to provide consumer protections.

Those recommendations included ending the allowance in the law for electric utilities to charge consumers for excessive profits. The 2008 law merely disallows utilities from charging for "significantly" excessive profits. And OCC proposed an end to the practice of allowing electric utilities to bill consumers for charges above the market price of electricity.

OCC also recommended a law to require refunds to consumers when the Ohio Supreme Court determines that the PUCO allowed utilities to collect inappropriate charges. In February 2014, the Supreme Court held that even though AEP had collected \$368 million, plus carrying charges, from consumers in unjustified charges, the law did not allow for "retroactive ratemaking" to refund the money.

A complicating factor for consumers is that OCC has been unable to use a stay to stop the utility's collection of charges during an appeal. OCC cannot, as a practical matter, afford to post a bond with the Supreme Court to cover millions of dollars that the utility would not be collecting while an appeal is pending.

## **Protections needed for customers of resold public utility service**

Residents of some apartments, manufactured homes and other housing communities do not receive a bill from the local public utility for their utility services.

Instead, a landlord, park operator, condominium owners association, or other third party sometimes "resells" the public utility service to tenants and residents.

The resale of public utility service can result in higher bills than what customers would pay if they were billed directly by the local utility.

A series of newspaper stories highlighted this problem in October 2013. The stories reported that the practice of reselling public utility services has inflated some residential utility bills by as much as 40 percent, compared to those customers directly billed by a public utility.

In 2014, legislation was introduced in a number of bills (House Bills 422, 483, 545, 568 and 662) to address the higher charges for resold services that many customers were paying.

The Consumers' Counsel testified three times in 2014 on this issue. One testimony was before the House Finance and Appropriations Committee (HB 483, April 2014). The other two testimonies were before the House Public Utilities Committee (HB 422, 545, 568 and 662, December 2014). OCC recommended a number of consumer protections.

In testimony on December 2, 2014, OCC outlined seven principles for consumer protection on the reselling issue. Those consumer principles include price protections, disclosures about the resale of public utility service and remedies for any violations of the law.

On December 17, 2014, the House Public Utilities Committee approved Substitute House Bill 662. OCC hopes the passing of the bill in Committee will serve as momentum for a new bill in 2015 and a law that is much needed by many Ohioans.