# House Public Utilities Committee

A History of Deregulation, Senate Bill 3
and the Status of the Current Situation

Submitted by:
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**TESTIMONY OF JANINE MIGDEN-OSTRANDER**
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**ON**
**A HISTORY OF DEREGULATION**
**SENATE BILL 3 AND**
**THE STATUS OF THE CURRENT SITUATION**
**NOVEMBER 14, 2007**

Good afternoon. I am Janine Migden-Ostrander, the Consumers' Counsel and statutory representative of Ohio's 4.5 million residential customers, the largest group of customers, contributing to approximately 40 percent of the utilities' revenues. My testimony today will provide you with the residential customers' perspective on the regulatory history over the last decade.

The importance of a strong regulatory process or a correctly designed competitive market is highlighted first by acknowledging at the outset, that consumers are protected through either proper regulation or effective competition. The theory of regulation of the utility monopoly is that, in exchange for a guaranteed service territory that provides a captive customer base, utilities are provided an opportunity to earn a reasonable profit while regulatory oversight modifies the behavior of the utility to ensure non-discriminatory, quality service at reasonable rates. The theory of competition for electric generation service is that the drive to obtain customers disciplines providers to offer lower prices and better service than other providers and the opportunity for customers to switch suppliers eliminates discrimination. The worst scenario is a deregulated monopoly in which customers are not protected by regulation or competition.

## Pre-S.B. 3 Comprehensive Regulation

Up until the time of deregulation of electric generation which began implementation on January 1, 2001, Ohio utilities were governed by comprehensive rate and service quality regulation over generation service. Rate increases were subject to a rate case, a nine month process that included a report by the Staff of the Public Utilities Commission of Ohio (PUCO or Commission) and the opportunity for intervenors to conduct discovery to ensure a fair exchange of information and data. The rate case afforded the opportunity to look at all revenues and expenses, including the utility's rate of return, or profit level, in order to establish a just and reasonable rate. Each category of cost was examined and rate increases were based on costs whose origins could be verified and then justified for their merit. With the exception of fuel costs, all cost categories were addressed in the rate case process in Ohio. Automatic adjustment clauses were limited and existed only for the purpose of addressing fuel costs under the theory that fuel costs are volatile and waiting until the next rate case did not provide timely recovery to the utility for such variable costs.

In the 1970's, utilities embarked on the expensive undertaking of new power plant construction. New construction costs skyrocketed above estimates, causing large rate increases as the Commission allowed the cost overruns to be passed on to consumers.

For example, the Zimmer power plant jointly owned by CG&E (now Duke Energy Ohio), Dayton Power and Light, and CSO&E (now Columbus Southern Power) was originally scheduled to go on line in 1975 for a cost of $240 million as a nuclear plant, but instead went on line eighteen years later as a coal plant at a cost to customers of over $3 billion. For the First Energy companies, the Perry nuclear power plant went on line in 1986 at a cost of over $4 billion. Moreover, the two nuclear power units at Beaver Valley cost a combined total of $5.1 billion. Unit 1 went online in 1976 and cost $600 million while Unit 2 began operating in 1987 for a cost of $4.5 billion. These high costs, especially those in Northern Ohio, resulted in high electric rates in a region of the U.S. that had experienced relatively low electric rates. The result was a burden on the economy of Northern Ohio and on its residents.

As a result of this extensive and costly nuclear construction in Northern Ohio, rates increased dramatically with rates in the Toledo area almost double the rates in southeast Ohio. All customers were feeling the adverse impact of these costs, but large industrial customers were especially vocal. They argued that an act of geography should not determine rates. Further, the rate disparities hurt their ability to compete with manufacturers in areas where electric rates were lower since many businesses at that time in Ohio were energy intensive. In order to level the playing field, the industrials began their advocacy for deregulation of generation services. The OCC at the time had concerns regarding whether markets would be created for residential customers, but eventually supported deregulation.

**Senate Bill 3**

When Senate Bill 3 passed, it created a reasonable framework for competition. The key elements were as follows:

- A five year market development period to transition into the competitive market.
- A five year overall rate cap with a 5% generation rate decrease for residential customers;
- A requirement that the utilities become distribution companies by corporately separating their generating assets and observing codes of conduct so that the distribution companies would not favor their affiliated companies.
- Totally bypassable charges for generation service (i.e. generation charges would come from only a supplier selected by the customer) that would permit suppliers to market retail electric service to all customers; In other words, the customer should have been able to avoid the utility's generation charges if they received the service from an alternative supplier.
- Stranded cost recovery, which was divided into two categories:
    - The generation portion of stranded costs was defined as the generation costs that were unrecoverable in the market. The generation stranded costs, set for recovery over a five year period, were designed to permit the utility to recover its uneconomic investments in power plants.
    - The separate regulatory portion of stranded transition costs were recoverable over no more than a ten year period (through 2010) through a

regulatory transition charge and were designed to compensate the utilities for costs they had incurred but which had been deferred pursuant to Commission decisions for future recovery.
    - These stranded costs were nonbypassable, so customers who selected an alternative generation provider still had to pay them.
- An energy efficiency revolving loan fund was created to provide low interest loans for energy efficiency.

**Implementation of Senate Bill 3 by the PUCO**

While the legislature established a well-reasoned framework, too many of the details were left for rulemaking at the Public Utilities Commission of Ohio. The implementation of Senate Bill 3 created a structure in which a market could not function. First, the utilities collectively requested $11 billion in stranded cost recovery – most of which was granted by the Commission without a hearing on these costs to investigate the reasonableness of these alleged costs or to verify the accuracy of the claims. A hearing however was held on the reasonableness of the stipulations which some parties entered into. As a result of the extremely generous recovery of stranded costs, customers in parts of the state were unable to take advantage of competition on a sustained basis. This is because the stranded costs which were overstated, were nonbypassable.

While the stranded cost issue was fundamentally the greatest barrier to competition, there were a number of other issues that plagued the competitive market, many in the area of operational support that occurred during the course of rulemaking. These included requiring switching fees to be paid to utilities when a customer switched suppliers, mandating aggressive and at times duplicative guarantees from suppliers against default and loose codes of conduct. Because there was a tremendous amount of discretion granted to the Commission in establishing these rules, it was difficult, if not impossible to challenge them before the Joint Committee on Agency Rule Review (JCARR). In order to challenge a rule before JCARR, the challenging party must demonstrate, pursuant to R.C. 119.03(I), either that (i) the rulemaking agency (e.g. PUCO) exceeded the scope of its authority, (ii) the rule conflicts with another rule promulgated by the same or another agency, (iii) the rule conflicts with the legislative intent in enacting the statute, or (iv) the rulemaking authority failed to prepare a complete and accurate rule summary. Therefore, decisions that are deferred to the Commission for rulemaking generally remain in effect.

Other problems included the fact that at the outset of retail competition in Ohio, the wholesale market was not sufficiently developed in the absence of the effective introduction of regional transmission organizations ("RTOs"). The choice of Ohio's electric utilities of two different RTOs (i.e. the MISO headquartered in Indianapolis and PJM headquartered near Philadelphia, Pennsylvania), which was supported by the PUCO before FERC, created a host of additional problems in the state that was divided between two RTOs, making transactions more costly and difficult. Over the last eight years, progress has been made in the wholesale market, and transactions have increased to facilitate more liquid markets.

Despite these problems, competition did successfully develop for a number of commercial and industrial customers during the market development period. Further, through government aggregation, the Northern Ohio Public Energy Council successfully put together a program that provided savings to a substantial number of residential customers. Unfortunately, due to a combination of a reduced shopping credit and increased MISO charges, the supplier was unable to continue providing service through the term of its arrangement. What the NOPEC experience demonstrates is that retail residential customers can save money but only if the market structure is developed properly.

**The Rate Stabilization Plans**

S.B. 3 required that at the end of the Market Development Period, which ended December 31, 2005, utilities were required to provide a standard service offer rate as well as a competitively bid rate. Because there was uneven retail competition throughout Ohio, the PUCO decided that Ohio was not ready for the implementation of S.B. 3 provisions. This PUCO conclusion was based, in part, on its failure to distinguish between development of wholesale and development of retail markets. Because the PUCO's framework for the retail market was unsuccessful, the PUCO concluded that the wholesale market did not work. Then, as now, Ohio faced the realization that while competition could be a benefit for part of the State, it would not work for the whole State. Conversely a regulatory commanded pricing result was not beneficial for Northern Ohio. Armed with fears of a competitive market, the PUCO put in place rate stabilization plans (RSPs) with three stated goals: to provide rate stability for customers, revenue stability for the utilities, and to promote competition. The RSPs were successful in promoting revenue stability for utilities, and they were a failure in promoting competition since competition that developed during electric transition plan years dramatically declined.

In terms of customers' rates, these RSPs further expanded the "opaque box" where rates were not based on clear costs and could not be traced or verified. The RSPs established mechanisms where utilities could be guaranteed cost recovery for undisclosed and poorly defined costs. These RSPs were a product of negotiations, some of them bilateral that did not involve all interested parties, and did not present balanced and fair results among all the parties. Moreover, these settlements were quickly executed and in some instances, before OCC had the opportunity to complete its discovery and analysis. Without being armed with the information and data that it needed to engage in fair negotiations on behalf of the residential customers it represents, OCC could not participate in meaningful discussion to resolve these cases.

The FirstEnergy RSP was egregious. In that plan, FirstEnergy touted that rates would not change for the 2006 through 2008 period. Technically, that was true, but lifting the veil on this ruse revealed the depth of the costs customers were required to bear. To begin, FirstEnergy requested and the PUCO granted the utility a rate stabilization charge designed to compensate FirstEnergy for being the provider of last resort. While there was nothing in the law to permit this charge, it was nevertheless permitted. This rate stabilization charge, not coincidentally, was equal to the generation transition charge that had been set to recover stranded costs associated with ownership of uneconomic generating facilities. Such stranded costs, for all Ohio utilities, were set to terminate at the end of 2005 as a matter of law. So while the generation rates stayed the same, customers were deprived of a reduction in rates equal to $15 to $19 per month. All totaled, FirstEnergy will collect approximately $3 billion in rate stabilization charges from customers over the three year RSP period. To put this in perspective, the utility collected a charge of approximately $.025 per kilowatt hour from Toledo Edison customers, twenty-five times more than AEP's $.001 per kilowatt hour charge.

In addition to the recovery of these charges, a related settlement allowed FirstEnergy to defer recovery of fuel charges which were unknown at the time. Those charges we now know could amount to $390 million which the FirstEnergy has filed to recover at this time as a result of an appeal to the Supreme Court of Ohio by an industrial customer. Further, an additional $450 million in distribution charges could be deferred. To add insult to injury, competition was made an even more remote possibility because the shopping credit under FirstEnergy's rate plan – also known as the price to beat, actually *declined* while all costs were rising. This flew in the face of the Commission's goal of fostering competition.

Finally, FirstEnergy was the only utility that attempted to comply with the law by holding an auction bidding process to develop a competitive bid price. Unfortunately, the competitive bid was designed for failure. In the bid process, the Commission determined the price marketers would have to beat. Both OCC and the marketers argued that the Commission had undervalued FirstEnergy's fuel costs and that made the price to beat too low. Suppliers came in with a bid price of 5.45 cents which the Commission declared was too high. FirstEnergy's rate plan was accepted and the auction results never materialized into an offer to customers. Shortly thereafter, FirstEnergy filed a fuel price which was higher than the PUCO estimated and which produced a rate higher than the competitive marketers' price. Of further note is the interesting fact that FirstEnergy's generation affiliate, FirstEnergy Solutions did not participate in the bid process and even without its participation, the auction was oversubscribed by unaffiliated suppliers. This demonstrated there were an ample number of suppliers willing to come into Ohio to serve customers.

In the case of AEP, the utility was allowed annual increases in generation rates of three percent for Columbus Southern Power and seven percent for Ohio Power with the ability to increase rates an average of an additional four percent per year. Under the plan, Columbus Southern Power's rates could increase by 21 percent while Ohio Power's increased by 33 percent over the three year period. AEP was also invited to file for recovery of costs for its proposed integrated gasification combined cycle coal power plant (IGCC) which has led to customers paying $23 million for design and engineering work before a shovel was even in the ground. This decision, which was appealed by my office to the Supreme Court of Ohio, set the stage to transfer the costs and risks for power plant construction from the shareholders where it had traditionally resided over the last century, to the customers and violated long held laws regarding customers paying for power plants when they were "used and useful" in providing service.

The Duke rate stabilization plan established four categories of charges under which the utility could file for rate increases. Thus, a mechanism for allowing unknown cost increases was established in this case. The result has been a series of proceedings that have required OCC to direct a disproportionate amount of its resources towards representing the residential consumers. The pending legislation, with the number of allowable increases in separate proceedings (assuming hearings to protect customers, not guaranteed in the current version), could cause an enormous amount of litigation. The original Duke RSP proceedings limited OCC's opportunities to conduct discovery and approval was rushed such that the PUCO could not fully support its decision before the Supreme Court of Ohio. Despite the stated goal of stabilizing rates, the generation rates have fluctuated and increased at times by almost 40 percent. Moreover, the process of allowing increases for four broad categories of costs permits single issue ratemaking which allows the utility to increase rates based upon selected cost increases without attention to costs that have decreased and could be used to offset cost increases.

In the DP&L case, negotiations in 2003 (which included OCC) resulted in an agreement to extend the electric transition plan to the end of 2005 as provided in Ohio law. The agreement also contained terms limiting the standard service offer rates that DP&L could charge through the end of 2008. DP&L later filed to increase generation rates beyond those agreed to in the 2003 settlement and OCC objected to the increases on the basis that the original settlement should have been honored. Nevertheless, the Commission sided with DP&L, thereby undermining OCC's confidence that it could count on enforcement of the terms of a settlement that dealt with even a relatively short period of time.

Appeals of RSP cases resulted in reversals, in part, in three of these cases and another PUCO decision was vacated. The Supreme Court of Ohio's reversals were based upon the Commission's limiting customer options, the denial of OCC discovery that was directed at uncovering side deals, rate-setting based upon a utility proposal that was not supported as part of a hearing, and a decision that mixed charges for generation service with those for distribution service. An attachment to my testimony provides more details on the Court decisions. An additional, noteworthy case remains pending before the Court regarding the Commission's approval of AEP's proposal to receive guaranteed cost recovery for a planned power plant whose costs have increased enormously since the tentative proposal was originally submitted to the PUCO. All in all, the process for the rate plans provided an uneven playing field by failing to allow all intervenors ample opportunity to prepare their case.

Our present circumstance results from the collapse of competition under the RSPs, plans that were hostile to competition that began during the market development period. Ohio is faced with the same dilemma that it faced three years ago, and we need choices. Customers are entitled to fair and reasonable rates, derived through prudent utility management, that are affordable.

We need to recognize that one size does not fit all and that if we insist on one path and one path only, there will be uneven results statewide with winners and losers. OCC believes all customers statewide should win as the result of legislative action. That means doing a side-by-side comparison of an electric security plan rate with a market rate. It means recognizing that for some customers the best option may be the electric security plan, while for others it may be a market rate. The goal should be to protect the consumers of this State.

I thank this committee for the opportunity to present OCC's views here today and we look forward to doing so in future hearings. I am available to answer questions.

## ATTACHMENT: OHIO SUPREME COURT DECISIONS

**<u>Relevant Excerpts</u>**

### 1. *OCC v. PUCO* (Sept. 5, 2007), 114 Ohio St.3d 340 (appeal from PUCO Case No. 05-27-EL-AIR involving a stipulation by Dayton Power & Light).

OCC argued, among other things, that Dayton Power & Light's ("DP&L") placement of a rate-stabilization surcharge in a distribution service-tariff rider for collection violates the intent of Ohio's electric-industry-restructuring legislation. OCC said that it was contrary to Ohio law and policy for the Commission to, essentially, re-bundle generation and distribution components.

In remanding the case so that the Commission could issue an order that DP&L adjust the location of appropriate generation charges from distribution-service tariffs to generation-service tariffs, the Ohio Supreme Court stated:

> The cornerstone of SB 3 was the requirement that electric utilities unbundle the three major components of electric service – generation, distribution, and transmission. See R.C. 4928.31(A)(1) and 4928.34(A)(1) through (7). * * * With the advent of customer choice of electric-generation service under SB 3, "it became necessary for electric utilities to unbundled the three service components and their own components, so that customers could evaluate offers from competitive generators." See *Midgen-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451 * * * .

114 Ohio St.3d at 345.

> We find that the evidence supports including actual generation costs in the generation-service tariffs. The commission's own expert on staff testified that it is technically appropriate under SB 3 to put the rate-stabilization charge in the generation-service tariffs. We share OCC's concern that once the industry moves past the rate-stabilization phase, the distinction between generation and distribution in the tariffs and rate structures will be too blurred to effectively apply SB 3.

114 Ohio St.3d at 346.

<u>Case Outcome</u>: Commission's order affirmed in part and reversed in part, and cause remanded.

**2.** ***OCC v. PUCO*** **(Nov. 22, 2006), 111 Ohio St.3d 300 (appeal from PUCO Case Nos. 03-93-EL-ATA, et al., involving Cincinnati Gas & Electric).**

In this case, OCC sought review of PUCO orders approving the stipulation of Cincinnati Gas & Electric Company ("CG&E") and its consumers regarding the utility's statutorily mandated plan to unbundle its services and adopting amendments to that stipulation proposed by the utility. OCC argued that the PUCO's order required a rate case. OCC also claimed that the Commission erred when it did not allow discovery of undisclosed agreements between CG&E and the signatory parties that were not made part of the stipulation. OCC contended that the denial of its discovery request constituted a violation of R.C. 4903.082 and Ohio Adm. Code 4901-1-16.

The Ohio Supreme Court disagreed that the proposal sought a rate increase and held that the procedures to adopt or alter a rate did not apply, but the Court found that PUCO violated R.C. 4903.09 by approving changes without a basis for its order. The Court also found that denying discovery of the utility's side agreements with other stipulation signatories was error because such agreements were not privileged and could be relevant to whether the stipulation was the result of "serious bargaining." See decision, 111 Ohio St.3d at 300.

The Court stated:

> The portion of the commission's first rehearing entry approving CG&E's alternative proposal is devoid of evidentiary support. There are no citations to the record supporting the commission's modifications on rehearing. In addition, the commission did not sufficiently set forth its reasoning for the changes on rehearing. Instead, it merely asserted, without further justification, that the modifications would provide rate certainty for consumers, ensure financial stability for CG&E, and further encourage the development of competitive markets.

111 Ohio St.3d at 307.

The Court further stated:

> We are also troubled that the commission's first rehearing entry set the "baseline" for determining certain cost components in the alternative proposal – the system-reliability tracker, annually adjusted component, and the "fuel and economy purchased power" component – without any record support and without any explanation. The commission did not clarify that it would review the reasonableness of expenditures in these categories by requiring CG&E to establish levels for these cost components for subsequent years. Nevertheless, the commission allowed CG& E to preset the amount of the annually adjusted component for 2005 and 2006 without record evidence or explanation. It is impossible to make

> any determination about the reasonableness of these components without evidence and explanation from the commission.

111 Ohio St.3d at 308.

The Court noted:

> We have held that the commission may modify orders as long as it justifies those changes. *Consumers' Counsel v. Pub. Util. Comm*. (1984), 10 Ohio St.3d 49, 50-51, 10 Ohio B. 312, 461 N.E.2d 303. "On the other hand, PUCO orders which merely made summary rulings and conclusions without developing the supporting rationale or record have been reversed and remanded." *MCI Telecommunications*, 32 Ohio St.3d at 312, 513 N.E.2d 337.

Specifically reversing the Commissions denial of OCC's motion to compel discovery, the Court stated:

> The remaining issue, which was not raised in *Constellation*, is whether the commission erred in denying discovery of side agreements requested by OCC as relevant to the first test of reasonableness: whether the settlement is a product of serious bargaining among capable, knowledgeable parties. We hold that the commission erred in this regard.
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> * * *
>
> The commission cannot rely merely on the terms of the stipulation but, rather, must determine whether there exists sufficient evidence that the stipulation was the product of serious bargaining. Any such concessions or inducements apart from the terms agreed to in the stipulation might be relevant to deciding whether negotiations were fairly conducted. The existence of concessions or inducement would seem particularly relevant in the context of open settlement discussions involving multiple parties such as those that purportedly occurred here. If there were special considerations, in the form of side agreements among the signatory parties, one or more parties may have gained an unfair advantage in the bargaining process. Therefore, we hold that the commission erred in denying discovery of this information based on lack of relevancy.

Id. at 321.

The Court concluded:

> In this matter, the commission made several modifications on rehearing without any reference to record evidence and without thoroughly explaining its reasons. The commission approved the infrastructure-maintenance-fund charge without evidentiary support or justification. The

> commission approved other modifications without citing evidence in the record and with very little explanation. The commission cannot justify the modifications made on rehearing merely by stating that those changes benefit consumers and the utility and promote competitive markets. The commission's reasoning and the factual basis supporting the modification on rehearing must be discernible from its orders.

11 Ohio St.3d at 309.

Case Outcome: Commission's orders affirmed in part and reversed in part, and cause remanded.

**3. OCC v. PUCO (May 24, 2006), 109 Ohio St.3d 511 (appeal from PUCO Case No. 04-169-EL-UNC involving American Electric Power).**

At issue was American Electric Power's ("AEP") rate stabilization plan. The Ohio Supreme Court held:

> Based on the second proposition of law in appellant's brief and our decision in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 109 Ohio St.3d 328, * * * the decision of the Public Utilities Commission is vacated, and the cause is remanded for further proceedings not inconsistent with that decision.

109 Ohio St.3d at 511.

Case Outcome: Commission's decision was vacated and the cause remanded for further proceedings not inconsistent with that decision.

**4. *OCC v. PUCO, Appellee, City of Maumee et al., Appellants v. PUCO, Appellee, OCC, v. PUCO* (May 3, 2006), 109 Ohio St.3d 328 (appeal from PUCO Case Nos. 03-2144-EL-ATA involving FirstEnergy).**

This case involved three separate appeals that were consolidated for review. The main issue in the case was whether the rate stabilization plan conformed to the statutory requirements as set forth in R.C. 4928.14. As the Court stated with regard to the parties that signed the settlement: "The only supporters of the rate-stabilization plan that signed the stipulation in this case other than the FirstEnergy operating companies [were] * ** the Ohio Hospital Association, Cargill, Inc., Industrial Energy Users – Ohio, the Ohio Energy Group, and the Ohio Partners for Affordable Energy. The first four parties represent[ed] large industrial customers, and Ohio Partners for Affordable Energy operates a weatherization program." 109 Ohio St.3d 328, at 335.

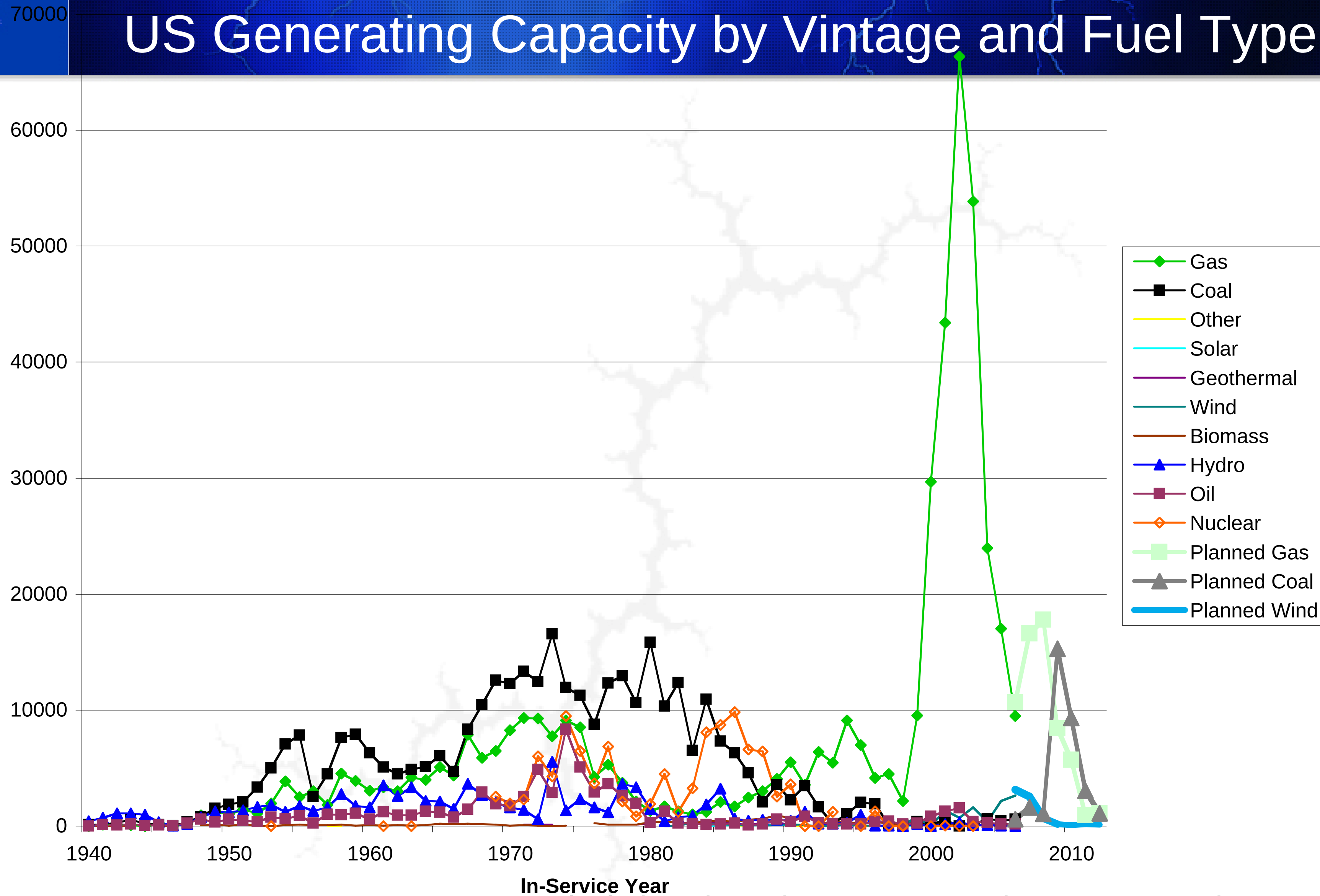
The Ohio Supreme Court further stated:

> * * * unlike the record in *Constellation*, the record here contains nothing to persuade us that a reasonable means for customer participation has been developed as required by R.C. 4828.14(B). The absence of a stipulation signed by customer groups factually distinguishes this case from *Constellation*. In *Constellation*, we also noted that "no entire customer class was excluded" from settlement negotiations * * * . * * * one very narrow exception contained in R.C. 4928.14(B) permits the commission to determine that a competitive-bidding process is not required. In *Constellation*, the customer groups, by stipulation agreed to accept a market-based standard service offer and waive any right to a price determined by competitive bid. Those facts are not present in this case. Rather, the PUCO itself made a unilateral decision to eliminate the offer to customers of a price determined through competitive bids as required by R.C. 4928.14(B). As FirstEnergy and the PUCO point out, R.C. 4928.14(B) states that the PUCO may dispense with a competitive-bidding process "if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed." They assert that the market is not yet fully developed to the point at which meaningful competitive bidding can take place and that the rate-stabilization plan accomplishes the same objectives. The rate-stabilization plan, however, does not allow for customer participation, which is mandated by statute and which the PUCO is not authorized to ignore.
>
> In contrast to the customer groups in *Constellation*, the customer groups here did not agree to the FirstEnergy rates, and most customer groups, including the OCC, which represents all residential customers, opposed them. Under these circumstances, the PUCO had no authority to adopt the rate-stabilization plan without also ensuring that a reasonable means for customer participation had been developed. While the PUCO has authority to dispense with a competitive-bidding process pursuant to R.C. 4928.14(B), if it does so, it must also ensure that "other means to accomplish generally the same option for customers is readily available in the market *and [that] reasonable means for customer participation is developed*." (Emphasis added.) R.C. 4928.14(B) Thus, in this case, the PUCO exceeded its authority by approving a rate-stabilization plan that did not meet these requirements. (Emphasis and notation in original.)

109 Ohio St. 3d at 334 - 335.

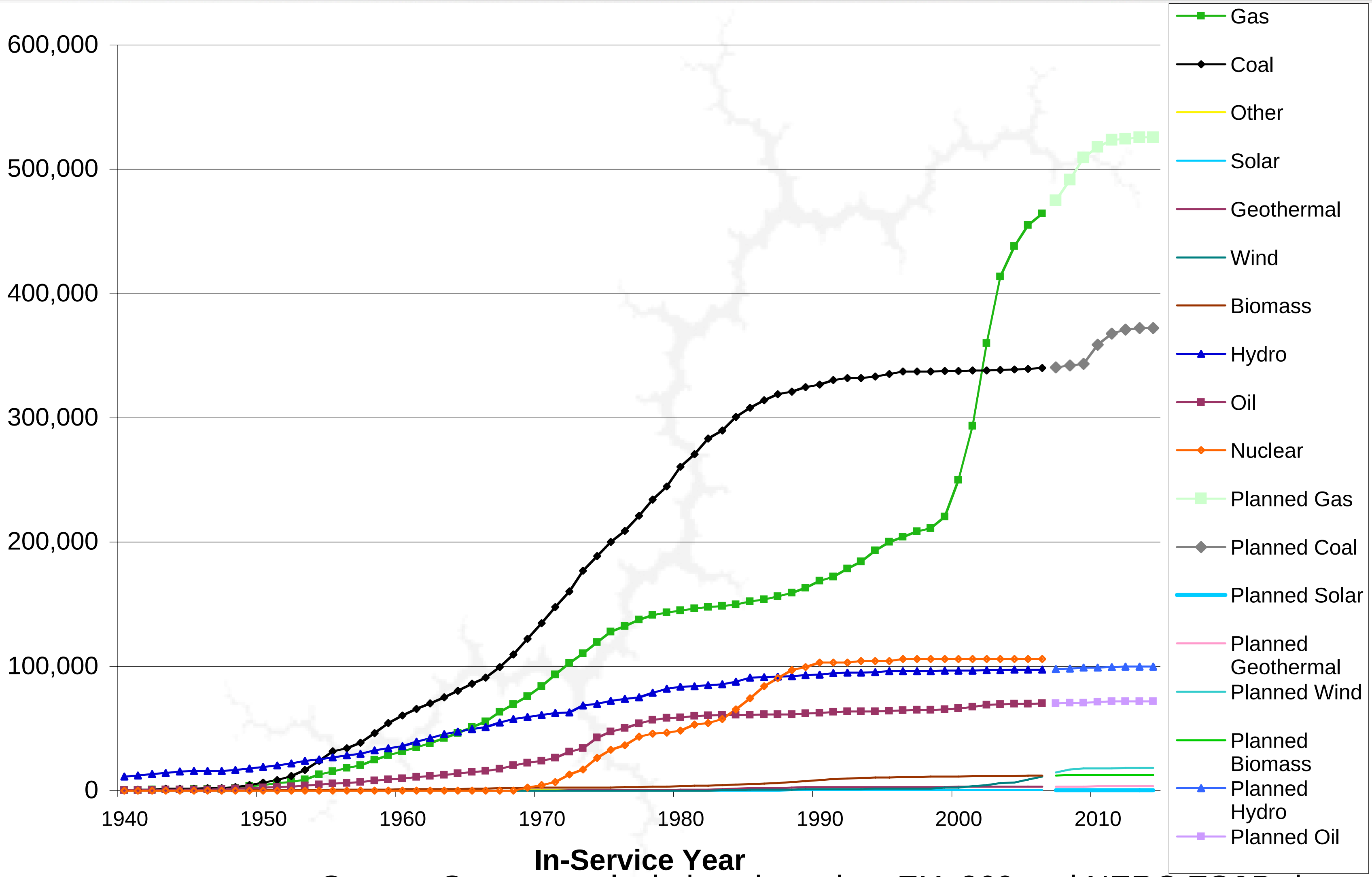
<u>Case Outcome</u>: That portion of the Commission's decision regarding the above plan was remanded for further consideration by the PUCO and its compliance with R.C. 4928.14(B). In all other aspects, affirmed.

# US Generating Capacity by Vintage and Fuel Type




Source: Synapse calculations based on EIA-860 and NERC ES&D data.

# US Generating Capacity: Cumulative by Vintage and Fuel Type




Source: Synapse calculations based on EIA-860 and NERC ES&D data.