Before
The Ohio House Public Utilities Committee

Testimony on House Bill 351
(Repeal of Coal-Plant Bailout for AEP, Duke and AES/DP&L in House Bill 6)

Jeff Jacobson, Strategic Insight Group
On Behalf of the Office of the Ohio Consumers' Counsel

September 29, 2021

Hello Chair Hoops, Vice-Chair Ray, Ranking Member Smith, and Committee members. I hope you and your colleagues are well.

Consumers' Counsel Weston and I thank you and the bill sponsors (Rep. Lanese and Rep. Stoltzfus) for this opportunity to testify in support of House Bill 351 and competitive power plant markets. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio residential utility consumers. OCC testified seven times against tainted House Bill 6 (H.B. 6). And we've now testified eleven times to repeal it.

OCC thanks the legislature for repealing the FirstEnergy/Energy Harbor nuclear bailout and the FirstEnergy decoupling subsidy in House Bill 6. And we thank you for repealing the profits benefit for FirstEnergy that was slipped into the 2019 budget bill, House Bill 166.

Please continue that progress for consumer protection by passing House Bill 351. The bill will close another bad chapter of House Bill 6 by ending the coal plant subsidies that began with the subsidy culture at the PUCO and continued in the legislature.

At the outset, those who want the OVEC coal power plants to continue operating should please take note: *Passage of H.B. 351 is not expected to result in closure of the plants.* Fitch Ratings, in its Feb. 26, 2021 Rating Action Commentary on OVEC, stated that: "Fitch does not expect a direct impact to OVEC if Ohio House Bill 6 (H.B. 6) is repealed. H.B. 6 codified the recovery by the Ohio-regulated utilities of their OVEC costs but does not alter the utilities' obligation to pay OVEC as per the terms of the legally enforceable [Inter-Company Power Agreement]."

Even OVEC acknowledged something similar. In its June 15, 2021 Senate testimony on S.B. 117, OVEC testified that: "The provisions within H.B. 6 related to the Legacy Generation Rider do not provide any direct benefit to OVEC." So state government's H.B. 6 legislation to give Ohioans' hard-earned money to AEP, Duke and AES is merely corporate welfare without a need.

The issues of fuel diversity and the Texas power outage were raised at last week's hearing as reasons to keep the OVEC coal plants open. But there is not a need to debate those issues for H.B. 351, given the bill is not expected to result in closure of the OVEC plants.

Regrettably, the H.B. 6 coal plant subsidy has made things even worse for consumers than the PUCO's generous subsidy to the utilities. The H.B. 6 coal-plant bailout has an extended subsidy period that is far beyond the PUCO's original timeline. The Ohio Manufacturers' Association projects the H.B. 6 subsidy will cost Ohioans $700 million by 2030.[1] This $700 million in projected charges to consumers is in addition to the subsidies the PUCO allowed AEP, Duke and DP&L to charge.

Subsidizing the AEP, Duke and AES/DP&L shares of the OVEC coal power plants (one in Indiana and one in Ohio) has the double whammy of increasing Ohioans' electric bills and increasing air pollution. Making Ohioans subsidize these utilities for the OVEC plants may be the worst of the bad H.B. 6 subsidies. That subsidy should never have started but it should end with House Bill 351. The current amount of H.B. 6 bailout charges and supported air pollution can be viewed on the home page of OCC's website (http://www.occ.ohio.gov/).

In this regard, the Ohio Energy Group testified about H.B. 6 repeal in September 2020. In that testimony before the House Select Committee on Energy Policy and Oversight, OEG's witness responded to questioning by saying "OVEC is a thorny problem…. What benefit do customers get from OVEC? Not really much. No. It's a burden…." Regarding OVEC's investment in the installation of scrubbers, OEG's witness said "that was a bad decision … cost a lot of money and they're not economic."[2] We agree.

It was in 2006 when AEP, Duke, DP&L, and others decided to extend the OVEC agreement until 2030. In 2011, they again decided to extend the agreement, until 2040. As the coal plants became unprofitable, AEP, Duke and DP&L came looking to state government to make consumers pay subsidies to cover these utility losses.

But in 1999, the Ohio legislature chose markets instead of monopolies for generation of electricity. O.R.C. 4928.38 states that "**the utility shall be fully on its own in the competitive market**." (Emphasis added.) Diverging from that law has led to the cancellation of at least two gas plant projects, as a reaction to H. B. 6 subsidies. That cost the state more than a billion dollars in new investment.[3]

Attached is OCC's Subsidy Scorecard. It shows the subsidies that Ohioans have been made by their government to pay since electric deregulation in 1999.

When the PUCO originally granted the coal plant subsidy, PUCO Chair Asim Haque wrote "This should not be perceived as a blank check, and consumers should not be treated like a trust account."[4] It is too bad for Ohio consumers that Chair Haque's words have not

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[1] "Ohio's Costly – and Worsening – OVEC Situation," J. Seryak and P. Worley (November 12, 2020); https://www.ohiomfg.com/wp-content/uploads/Ohios-Worsening-OVEC-Situation-11.9.2020-Final.pdf

[2] Testimony of Mike Kurtz for the Ohio Energy Group, House Select Committee on Energy Policy and Oversight (September 23, 2020) (answering questions following his prepared testimony); http://ohiochannel.org/video/ohio-house-select-committee-on-energy-policy-and-oversight-9-23-2020 (at video time marker 2:26:46).

[3] "HB6 fallout: $1.5 billion in natural gas-power plant investments pulled from Ohio," M. Williams Columbus Dispatch August 24, 2019 https://www.dispatch.com/business/20190823/hb6-fallout-15-billion- in-natural-gas-power-plant-investments-pulled-from-ohio

[4] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement*, PUCO Case 14-1693-EL-RDR, Opinion and Order, Concurring Opinion of

been heeded by the PUCO or the legislature. By 2030, H.B. 6 will have provided that "blank check" to AEP, Duke and AES for $700 million, according to OMA. And that sum does not include the many millions of dollars consumers were made to pay by the PUCO for the coal plant subsidies prior to H.B. 6.

Another reason to repeal the coal plant subsidy is the mis-reliance in H.B. 6 on PUCO audits for consumer protection (in O.R.C. 4928.148(A)(1)). The PUCO Staff's utility-friendly regulation can be seen in a recent PUCO audit of pre-H.B. 6 subsidies for AEP. There, recently obtained public records (emails) show that the PUCO Staff asked its auditor to use a "milder tone and intensity" regarding the draft audit report on AEP's OVEC subsidies. (See Attachment with 9/8/20, 2:59 pm email from PUCO Staff) An example of the auditor's tone and intensity that was not mild enough for the utility-friendly PUCO Staff was this key consumer protection sentence that was deleted from page 10 of the audit report: "Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers." (See attachment with 9/8/20, 2:59 pm email from PUCO Staff)

Then, on September 11, 2020, the auditor (London Economics Inc. or "LEI") emailed the PUCO Staff that it would be removing a key consumer protection sentence from page 10 of the draft audit report, as follows: "However, LEI's analysis shows that the OVEC contract overall is not in the best interest of AEP Ohio ratepayers." (See Attachment with 9/11/20, 12:17 pm email from auditor LEI) The deleted sentence would have been the audit report's most protective sentence for AEP consumers. The audit report was filed five days later on September 16, 2020 – without the consumer protection sentence. AEP wins; consumers lose.

Also note that AEP is the loss leader for making consumers pay its OVEC coal plant subsidies. While AEP Ohio's share of OVEC is 19.93%, AEP utilities in the region own nearly 40% of the two OVEC plants. So, when you think about who is most vested in the coal plant subsidies from state government at consumer expense, especially think about AEP in addition to Duke and DP&L.

It is perhaps not mere coincidence that AEP – a prime recipient of consumer subsidies for coal plants under H.B. 6 – has shown its highest profits right here in Ohio. AEP's most recent financial Fact Book for 2020 is showing that its highest profits, among all of its distribution utilities in the country, are in Ohio.[5] (See Attachment) Another recent AEP chart shows its Ohio utility is making the second-highest profits of any AEP utility.[6] (See Attachment.) That is not good news for AEP Ohio consumers who pay for utility profits and to subsidize AEP for OVEC.

In conclusion, Ohio deregulation was a watershed moment for electric consumers in 1999. But twenty years later, AEP, Duke and AES still have their hands out for corporate welfare at public expense. Please pass H.B. 351 to repeal the H.B. 6 hand-outs. Thank you for your consideration.

Chairman Haque at p.5 (March 31, 2016); http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=bc75003b-e885-4346-8ba5-af7dc3cb06b3

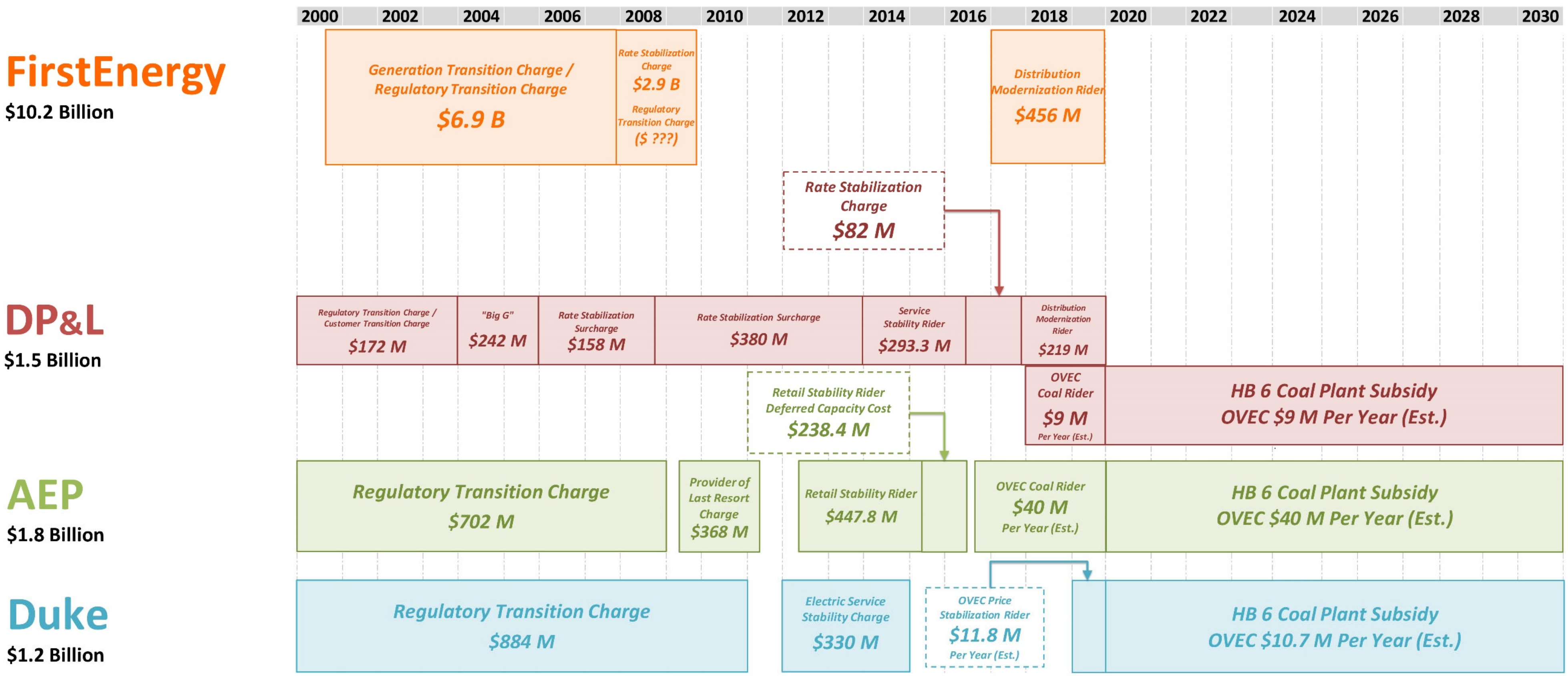
[5] 2020 AEP Fact Book at p. 14, 55th EEI Financial Conference (November 9-10, 2020); https://www.aep.com/Assets/docs/investors/eventspresentationsandwebcasts/2020EEIFactbook.pdf

[6] American Electric Power "1ST QUARTER 2021 EARNINGS RELEASE PRESENTATION" dated April 22, 2021 page 6 https://www.aep.com/newsroom/resources/earnings/2021- 04/1Q21EarningsReleasePresentation.pdf

$14.7 Billion
Charged to Customers
(2000 - 2019)

SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -



B=Billions; M=Millions

Rev. 04/14/21

From:	Marie Fagan
To:	Christopher, Mahila
Cc:	Windle, Rodney
Subject:	RE: Draft AEP Ohio OVEC Audit
Date:	Tuesday, September 8, 2020 3:42:14 PM
Attachments:	image001.png image002.png image003.png image004.png image005.png image007.png

Okay, thanks v much for the head start

From: mahila.christopher@puco.ohio.gov <mahila.christopher@puco.ohio.gov>
Sent: Tuesday, September 8, 2020 2:59 PM
To: Marie Fagan <marie@londoneconomics.com>
Cc: rodney.windle@puco.ohio.gov
Subject: RE: Draft AEP Ohio OVEC Audit

Hi Marie,
Please find attached Staff's initial comments on LEI's latest draft of the AEP Ohio, 2018-2019 PPA rider audit final report. This may help you get a head start on Staff's editorial suggestions. The comments can be discussed further at tomorrow's meeting.

**If you could please note that Staff still needs final acquiescence from PUCO Admin. regarding the overall tone of the draft report!

Staff's main observation regarding the tone of the draft is the following:
•Milder tone and intensity of language would be recommended such as the language on page 10, para 3: "Therefore, keeping the plants running does not seem to be in the best interests of the ratepayers."
•Reduced subjectivity and level of detail/specifics would be required such as the language on page 26, para 2: "HB 6 also provides subsidies for two large nuclear power plants in Ohio, and for that reason is the center of a federal bribery investigation. First Energy Corporation and the company's political action committee, and Generation Now, a 501 (c) (4) non-profit group are charged with paying $60 million to advocate for the passage of HB 6. The case has led to federal charges against Ohio House Speaker Larry Householder and four associates."

I am attaching a redlined Word version of the draft for your perusal/review. If you could, please take a look and incorporate Staff's comments as far as possible? Please let me know of any questions, comments, and concerns.

Thank you

Mahila Christopher
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From: Christopher, Mahila
Sent: Tuesday, September 8, 2020 1:09 PM
To: Marie Fagan <marie@londoneconomics.com>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: RE: Draft AEP Ohio OVEC Audit

Hi Marie-
As per the RFP, the Final Report is due to be filed on the 16th of September:

1. Audit Proposals Due February 28, 2020
2. Award Audit March 11, 2020
3. Audit Conducted March 11, 2020 through September 1,
4. 2020 Draft Audit Report Presented to Staff September 1, 2020
5. Final Audit Report Filed with Commission September 16, 2020

Should Staff reach our edits to LEI by 2:00pm today, would it be possible for LEI to send an updated draft to the Company tomorrow?

Thank you

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From: Marie Fagan <marie@londoneconomics.com>
Sent: Tuesday, September 8, 2020 12:29 PM
To: Christopher, Mahila <mahila.christopher@puco.ohio.gov>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: RE: Draft AEP Ohio OVEC Audit

Okay, will do. Once we have your comments I'll have a good idea of how long it will take to address them, but I would guess we can complete it by the end of the week in any case, and likely sooner than that. So that means we can get the draft to Ed by this Friday 11th or maybe a day or so sooner, at least in electronic format. I think that the week that Ed wants for AEP Ohio review is reasonable, which means that they would get their review back to us by about Sept 18.th We would then address their comments (again, that should take a day or so, unless comments are extensive). Then we would provide you with the final report including workpapers the week of Sept. 21.
Best,
Marie

From: mahila.christopher@puco.ohio.gov <mahila.christopher@puco.ohio.gov>
Sent: Tuesday, September 8, 2020 9:32 AM

To: Marie Fagan <marie@londoneconomics.com>
Cc: rodney.windle@puco.ohio.gov
Subject: FW: Draft AEP Ohio OVEC Audit
Importance: High

Hi Marie,
Staff should be able to communicate our comments on the draft by tomorrow's meeting.
If you could, please assess Edward's question based on this and let me know if you have any concerns with his request for a week to review the draft for confidentiality and factual inaccuracies?

Thank you

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From: Edward J Locigno <ejlocigno@aep.com>
Sent: Tuesday, September 8, 2020 9:19 AM
To: Marie Fagan <marie@londoneconomics.com>
Cc: Andrea E Moore <aemoore@aep.com>; Christopher, Mahila <mahila.christopher@puco.ohio.gov>; Shelli A Sloan <sasloan@aep.com>; Steven T Nourse <stnourse@aep.com>
Subject: RE: Draft AEP Ohio OVEC Audit
Importance: High

Mahila/Marie

When can we expect the report to review for confidentiality and factual inaccuracies? We need a solid week really at least to review it. Please let me know. Thank you!

EDWARD J LOCIGNO | **REGULATORY ANALYSIS & CASE MGR**
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1 RIVERSIDE PLAZA, COLUMBUS, OH 43215

From: Marie Fagan <marie@londoneconomics.com>
Sent: Wednesday, September 2, 2020 3:09 PM
To: Edward J Locigno <ejlocigno@aep.com>
Cc: Andrea E Moore <aemoore@aep.com>
Subject: [EXTERNAL] Draft AEP Ohio OVEC Audit

Dear Ed,
This is to confirm that LEI provided the draft OVEC audit report to the Commission Staff. The process now, as I understand it, is that Staff will review, and after that we will provide it to AEP Ohio for redacting. At that time, we can talk about a secure way to provide it to you, perhaps uploading to the data room.
Thank you for all your help with the audit.
Best,
Marie

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From: Christopher, Mahila
To: Marie Fagan
Cc: Windle, Rodney
Subject: RE: an edit needed for AEP Ohio OVEC final audit report
Date: Friday, September 11, 2020 1:58:00 PM
Attachments: image003.png
image002.png
image004.png
image005.png
image006.png

Hi Marie,
Thank you for the heads up. Staff would recommend that you share this proposed edit with the Company as well.

Let me know if you have any questions.

Mahila Christopher
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From: Marie Fagan <marie@londoneconomics.com>
Sent: Friday, September 11, 2020 12:17 PM
To: Christopher, Mahila <mahila.christopher@puco.ohio.gov>
Cc: Windle, Rodney <rodney.windle@puco.ohio.gov>
Subject: an edit needed for AEP Ohio OVEC final audit report

Hi Mahila,
I just realized there was an edit I wanted to make to page 10, where we said "However, LEI's analysis shows that the OVEC contract overall is not in the best interest of AEP Ohio ratepayers." that I missed in the last version of the report. I'll edit it when we get the version back from AEP Ohio next week-- I'll delete that sentence and tinker with the rest of the paragraph so it reads smoothly.
Best,
Marie

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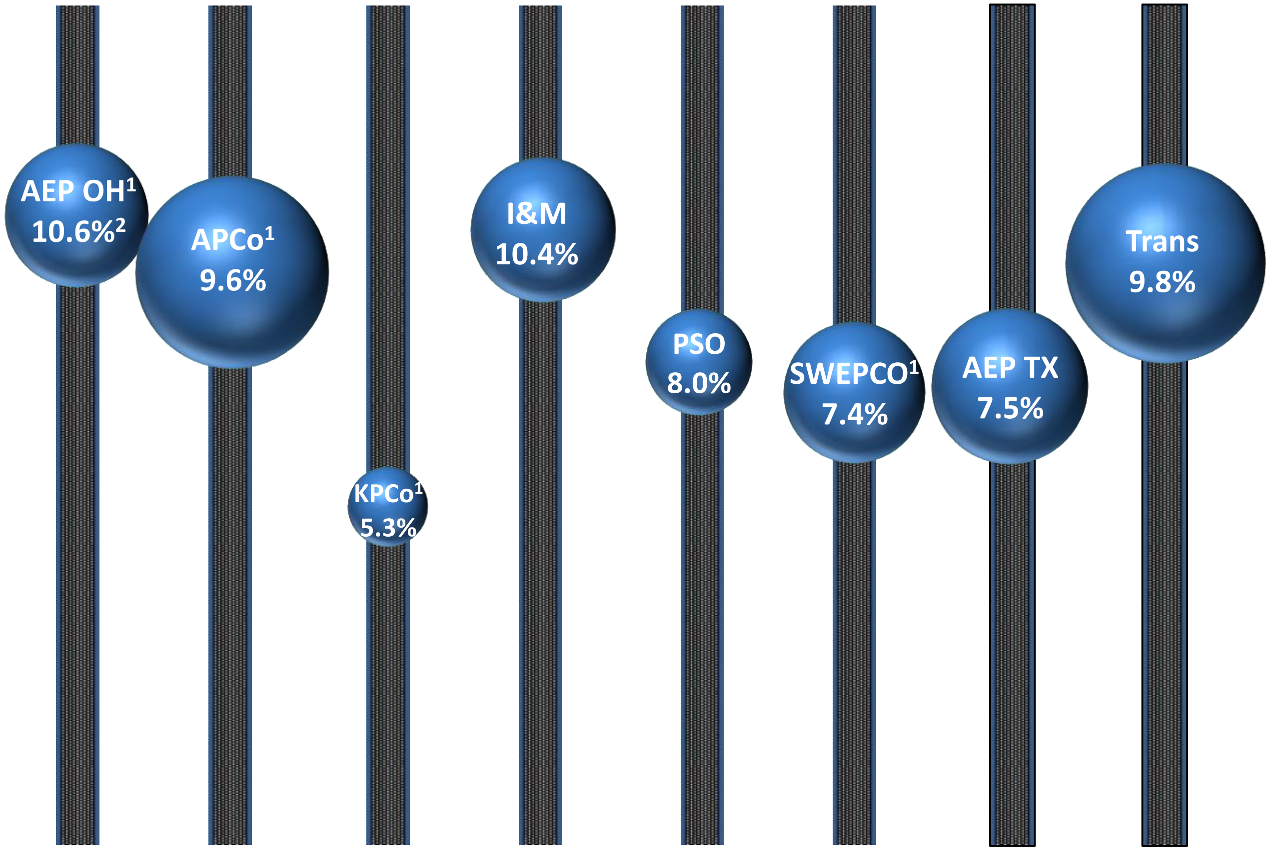
Regulated Returns

Twelve Months Ended 9/30/2020 Earned ROE's (non-GAAP operating earnings, not weather normalized)



Regulated Operations ROE of 9.0%

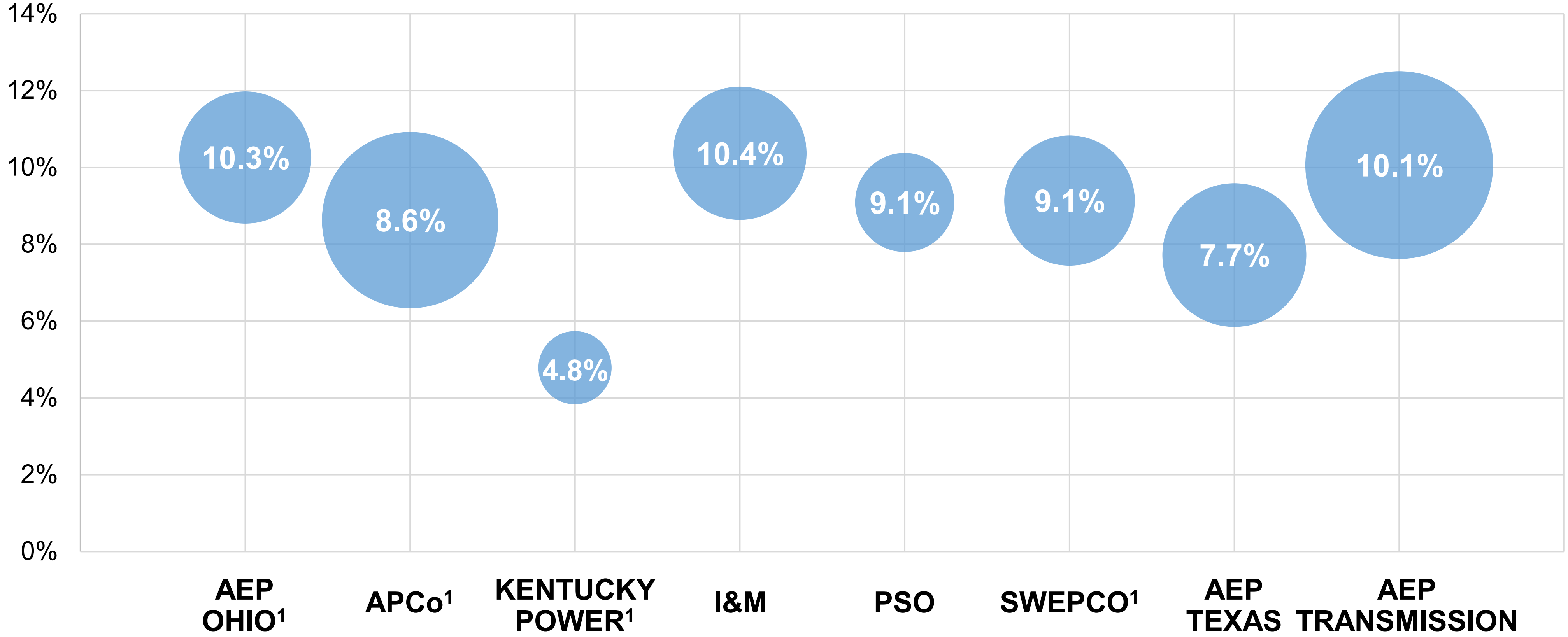
as of September 30, 2020

[1] Base rate cases pending I [2] AEP Ohio ROE at end of year expected to be in the 10% range

Sphere size based on each company's relative equity balance

Regulated Returns

Twelve Months Ended 3/31/2021 Earned ROE's
(non-GAAP operating earnings, not weather normalized)



Regulated Operations ROE of 9.1%
(as of March 31, 2021)

[1] Base rate cases pending/order recently received

Sphere size based on each company's relative equity balance