

**Before**  
**The Joint Committee on Agency Rule Review**  
**In Opposition to The Ohio Air Quality Development Authority's**  
**Proposed Rules OAC 3706-4-01, 3706-4-02, 3706-4-03, 3706-4-04, 3706-4-05**

**Joint Testimony by:**

**Ryan Augsburger, Ohio Manufacturers' Association**

**Jeff Jacobson, Office of the Ohio Consumers' Counsel**

**December 9, 2019**

Hello Chair Callender and members of the Committee. Thank you for this opportunity to testify.

I am Ryan Augsburger, Vice President & Managing Director of Public Policy Services for the Ohio Manufacturers' Association (OMA). The OMA is Ohio's largest statewide business association comprised solely of manufacturers advocating to protect and grow manufacturing. And I am Jeff Jacobson of Strategic Insight Group, testifying on behalf of the Office of the Ohio Consumers' Counsel (OCC). OCC is the state's representative for millions of residential utility customers. Respectfully, this testimony is in opposition to proposed rules by the Ohio Air Quality Development Authority (OAQDA). The proposed rules are for implementing the nuclear and renewable power plant subsidies created by Am. Sub. House Bill 6 of the 133<sup>rd</sup> General Assembly (HB 6 Rules).

As stated in its Procedure Manual, the Joint Committee on Agency Rule Review (JCARR) reviews proposed new, amended and rescinded rules of state agencies to ensure they do not exceed their rule-making authority. JCARR can make a recommendation to invalidate rules if it finds a violation of one or more of the six items listed on its website.<sup>1</sup> The consumer concern presented in this testimony is that the OAQDA violated one of the six prongs in the submission of its proposed HB 6 Rules, being that there is a conflict with the legislative intent.

As background, HB 6 creates a subsidy for nuclear power plants and certain renewable power plants, at the expense of Ohio consumers. A qualifying power plant would receive a credit for each megawatt of electricity it produces.

In this regard, R.C. 3706.63 specifically states: "Not later than January 1, 2020, the Ohio air quality development authority shall adopt rules under Chapter 119. of the Revised Code that are necessary to implement sections 3706.40 to 3706.65 of the Revised Code." R.C. 3706.61(A) presents an opportunity for consumer protection, by requiring the Public Utilities Commission of Ohio (PUCO) to conduct a "retrospective management and financial review of the owner or operator..." of a qualifying nuclear power plant that receives the subsidies. R.C. 3706.61(D) states that OAQDA "shall consider the findings of the review and may cease or reduce payments

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<sup>1</sup> <http://www.jcarr.state.oh.us/about>

for nuclear resource credits...” under certain circumstances. Unfortunately for consumers, OAQDA’s proposed HB 6 Rules do not address this statutory intent for how it will incorporate the PUCO’s review (audit report) into its processes.

Therefore, the proposed HB 6 Rules should address how the OAQDA will incorporate the PUCO’s audit report into its processes. The OAQDA’s rules should include transparency and due process for public input on the use of the PUCO’s audit report.

If the PUCO’s audit report is left unaddressed by OAQDA’s rules, then consumers could be denied the protection of the audit in OAQDA’s processes. OAQDA should propose a rule allowing for refunds to consumers if they paid subsidy charges that are later identified in the audit report as improper. Just since 2009, Ohio electric consumers have been denied more than \$1 billion as a result of the PUCO failing to make utility charges -- that the Ohio Supreme Court later ruled to be unlawful -- subject to refund. (See attachment) In the absence of rules, the General Assembly’s statutory requirement for the PUCO to send an audit report to OAQDA could be relegated to meaninglessness for Ohio consumers. Simply put, the OAQDA’s rules do not provide for it to do anything at all with the audit report it receives from the PUCO, which is contrary to the statutory purpose of including the requirement.

In conclusion, please give consumers the protection of the PUCO audit report that is to be sent to OAQDA. The HB 6 Rules should be invalidated, toward achieving future rules that fulfill the legislative intent of HB 6 for the consumer protection of a PUCO audit that OAQDA reviews, considers and acts upon.

Thank you for your time and consideration.

# NON-REFUNDABLE CHARGES TO OHIOANS

