

Before
The Ohio House of Representatives
Energy and Natural Resources Committee
Testimony on Substitute House Bill 6

Presented by Michael Haugh
On Behalf of the
Office of the Ohio Consumers' Counsel
May 8, 2019

Hello Chair Vitale, Vice-Chair Kick, Ranking Member Denson and members of the Committee.

Thank you for this opportunity to testify.

My name is Michael Haugh. I have served OCC as a past Assistant Analytical Director and now as a consultant. I am testifying for the Office of the Ohio Consumers' Counsel. The Consumers' Counsel is the state's representative for millions of residential utility customers. My background includes nearly 25 years in the energy industry, working on both the regulated and deregulated sides of the energy markets in government and private industry.

Subsidies are "contagious," according to PJM's Independent Market Monitor and watchdog, Dr. Bowring. He is correct. When subsidizing one form of generation, like nuclear power plants, others will line up for their presumed share of the public till. Subsidies will spread as government embarks on the challenge of outthinking the competitive market, redistributing wealth and deciding who is a worthy recipient of corporate welfare at public expense. By the time the Ohio Air Quality Development Authority (OAQDA) makes its status report to the General Assembly In 2029 (lines 233-236), Ohioans will have paid an astounding \$3 billion in

subsidies to various generators. And the OAQDA is merely providing a report. The bill has no sunset on Ohioans' funding of power plant subsidies and the Ohio culture of anti-competitive subsidies for electricity. The cure for these contagious subsidies is to not enact this legislation.

The Ohio Consumers' Counsel commends the General Assembly for its landmark law in 1999 that deregulated power plants. The General Assembly gave consumers the benefit of a competitive power plant market with lower prices and higher innovation. Years later, a FirstEnergy Vice-President emphasized these benefits in testimony before the Ohio House Public Utilities Committee: "...competitive markets work. They deliver the lowest price over the long-term to consumers, and the proof is undeniable." (Testimony of Leila Vespoli, October 19, 2011)

PJM summarized the benefits of power plant competition in its recent Annual Report for 2018. The following PJM graphic (from the Annual Report, page 16) shows the consumer benefits of power plant competition. Those benefits include significant reductions in electricity prices and air pollution:

VALUING MARKETS BY THE NUMBERS



Furthermore, it has been said that the total effect of the legislation will be a reduction in consumers' electric bills. But the bill would need a major rewrite for that to occur.

The General Assembly's 1999 law is working for Ohio families and businesses. Deregulation of power plants has contributed to competitive wholesale markets producing billions of dollars in savings for Ohio electric customers. Researchers at The Ohio State University and Cleveland State University concluded in 2016 that Ohioans saved over \$15 billion between 2011 and 2015 from competition. They projected savings of over \$15 billion between 2016 and 2020. ([link https://engagedscholarship.csuohio.edu/urban_facpub/1416/](https://engagedscholarship.csuohio.edu/urban_facpub/1416/))

In a 2017 Fiscal Note for House Bill 247, the Legislative Service Commission presented a graph showing a decrease in PJM's wholesale electric rates since 2008. (See Attachment 1, page 2.) Unfortunately for consumers, the LSC graph shows a rise in Ohio retail electric prices since 2009. LSC noted "the lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under [electric security plans]." The electric security plans in Ohio's 2008 energy law were a step back from the 1999 law and have cost Ohioans plenty. They are examples of why making consumers pay subsidies to bail out nuclear power plants is a bad idea.

New generation is being built in Ohio, leveraging the state's plentiful natural gas reserves that offer some of the lowest natural gas prices in the world. Low natural gas prices will be reflected in lower electric rates for Ohioans, if government interference in the competitive market is minimized. Unlike subsidies that shift business risks to consumers, investors are bearing the risk for these new Ohio power plants in the competitive market. Over 3,100 MW of new natural gas plants are currently producing electricity in Ohio, with another 7,800 MW in various stages of planning. A map of new generation is Attachment 2 to this testimony. According to federal data, Ohio is seventh among states in new power plant generation. (See Attachment 3) Ohio should

avoid disrupting its progress in power plant development with this legislation for state government to pick winners and losers in the market.

The Davis-Besse and Perry nuclear plants are not needed for the regional wholesale markets. The market is providing PJM, the electric grid operator, with more than enough power to serve consumers for the next three years. And PJM's procurement for the 2021/2022 planning year has already been successful without including the Davis-Besse and Perry plants in the mix. PJM states as follows in its 2018 Annual Report at page 12:

In April, PJM released its analysis of planned deactivations for three nuclear plants in Ohio and Pennsylvania owned by FirstEnergy Solutions. The analysis determined that the plants can deactivate without risking the reliability of electric service and concluded that any power delivery issues resulting from the closure of the 908 MW Davis-Besse Nuclear Power Station, and 1,268 MW Perry Nuclear Plant in Ohio ... can be alleviated through transmission expansions already planned for the system and timely completions of new projects.

We understand that PJM has identified those transmission expansions as a mere \$24 million, related to deactivations of Ohio's nuclear plants. That can be compared to billions of dollars of subsidies under this Legislation.

Ohio is a net importer of power from the regional grid. That is not a concern for Ohio electricity consumers. Ohio is part of a multi-state market that brings the most efficient and lowest cost power to Ohio families and businesses. Low-cost power provides benefits to all Ohio electric customers and, in turn, helps Ohio's economy.

Subsidies disrupt markets and in turn harm Ohio customers. Since 1999, consumers have paid Ohio electric utilities over \$15 billion in subsidies, as shown on the attached subsidy scorecard. (See Attachment 4) FirstEnergy customers have already paid at least \$6.9 billion in power plant subsidies, including for the two Ohio nuclear plants eligible for subsidies under this legislation.

Clean air is obviously good. But having state government choose outcomes in the competitive marketplace is not good. The massive Ohio subsidy for old-technology nuclear power plants can result in investors looking outside of Ohio for building new power plants.

We share the anti-bailout view of AARP. The *AARP Policy Book 2019-2020* contains AARP's policy to "exclude subsidies or bailouts of generation facilities."

<https://policybook.aarp.org/node/4361>. In a press release on April 26, 2019 opposing the Bill, AARP State Director Barbara Sykes stated "we are firmly opposed to this for all Ohioans, but especially for those age 50+ who are living on fixed incomes." (Attachment 5)

There are some additional problems with this bill that warrant not enacting it or correcting it.

I. The Decoupling Mechanism and Related Terms Will Cost Consumers Plenty

New Subsection D (lines 594-599) helps to limit the adverse effects of the decoupling provision on Duke Energy customers. But more changes are needed to protect other utility customers and ensure that they receive some or all of the promised rate reductions. Utilities likely will interpret the decoupling provision (lines 552-564) to allow a guarantee, in future years, of all revenues and profits collected from customers at levels established in 2018 (not just revenue associated with energy efficiency and renewable programs in operation in 2018.) Customers currently pay up to \$288 million per year just for energy efficiency program costs and utility profits (shared savings), plus additional amounts for so-called lost revenues.

Additionally, lines 395-409 of the Bill allow utilities to seek collection of costs related to renewable energy credit purchases from customers, even if customers do not opt in. (Lines 388-394) This could allow a utility to charge customers for the decoupling mechanism for these programs while at the same time receiving funds from the Clean Air Fund, essentially resulting

in double collection of these revenues. This, as with decoupling, is concerning for consumers and the premise that they will receive lower utility bills.

II. If Energy Efficiency Plans are Allowed to Continue There Should Be More Consumer Protections

Energy Efficiency programs can provide many benefits to customers. Utilities have touted hundreds of millions of dollars in savings annually. At the same time utilities are charging customers hundreds of millions of dollars in profit (shared savings) for these programs. Profits charged by each utility in 2018 were \$25 million for AEP, \$4 million for Duke, \$9 million for DP&L and \$12 million for FirstEnergy. That is over \$50 million in profits for these programs. It should be noted that DP&L charged customers \$9 million in profits on \$20 million in program costs. If the energy efficiency programs are to continue there needs to be specific statutes limiting costs and profits charged to consumers by utilities. Profits for utilities offering these programs reduces the effectiveness of the programs and the ability for customers to take control of their bills.

III. The Bill's Flat Subsidy Charges Harms Residential and Small Commercial Customers, and should be Replaced with a Uniform Subsidy Charge Per Kilowatt Hour, for Fairness Between All Customers

The customer charge for this program should be on a consumption basis, not a flat monthly charge (lines 365-383). For each megawatt generated, emissions are released. Customers causing the emissions should pay the associated costs. The Bill would have residential and commercial class customers each paying roughly 42% of the cost while the industrial class only pays 16%. Energy usage by class in Ohio for 2018 was approximately 36% for residential, 31% for commercial and 34% industrial. (<https://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/>)

Charging customers on a per kWh basis is a more equitable allocation of costs and avoids the effect of a regressive tax on residential consumers and smaller businesses.

IV. Eliminate the Utility Purchased Power Agreements in the Bill

Section 4928.47 (lines 510-551) should be eliminated. The Bill's provision to "facilitate and encourage" purchased power agreements between the utility and customers could ultimately result in captive monopoly customers paying millions of dollars to subsidize these agreements for unregulated services, which are instead supposed to be subject to competitive forces. Ohio's subsidy culture for electricity should end.

Services at a customer's premise after the utility's meter (such as wind, solar, and battery storage) are deregulated and should be competitive. Allowing the local utility to fund such agreements with captive customer dollars will afford the utility an unwarranted and unfair competitive advantage. These customer-funded subsidies will be destructive of the markets for these services and of the consumer benefits of lower prices and higher innovation that come with competition. The business risk for these agreements should remain with the customer entering into such agreements and the utility. While it is clear that those are the terms for renewable energy services arrangements ((lines 627-631), those terms do not apply to purchased power agreements. The customer-protective provisions under lines 627-631 for renewable arrangements should apply to purchased power agreements.

Moreover, this section of the proposed law (lines 530 to 543) allows customers entering these agreements to avoid other charges, such as the clean air charge, and any remaining charges, including remaining renewable and energy efficiency charges. The charges these customers avoid would increase rates to the other remaining customers to make up the difference.

Moreover, this provision gives the parties to the agreement an advantage over other competitive

providers whose customers must continue to pay these charges. These provisions of the Bill should be eliminated.

V. Subsidies Should End Within Five Years; Subsidies Should not be Allowed as a Permanent Business Model for Power Plants

This version of the Bill includes a review of the subsidy program in 2029 (lines 233 to 236), but the review should instead be a sunset and the sunset should be within five years. By 2029, Ohioans will have already funded about \$3 billion under the Bill. Leading up to three-year mark of the massive subsidies, the PUCO should determine if subsidies should continue for up to two more years. Customer-funded subsidies should not be tolerated as a long-term business model for power plants in Ohio.

VI. Additional Consumer Protections

This Bill, in effect, allows for utilities to get back into the business of owning power plants. (Lines 515-529) Electric utilities were banned from re-monopolizing power plants, under the 1999 law. Power plants should remain a competitive market without monopoly utilities “competing” at the expense of their captive customers. In this regard, the Bill is flawed for consumer protection because it reintroduces charges to captive utility customers without reinstating regulatory oversight that traditionally would accompany such charges. For example, the bill lacks a requirement for subsidy seekers to prove they lack profits or for PUCO review of profits being charged to customers by the subsidized entities.

Also, while considering this major rewrite of Ohio law the General Assembly should eliminate electric security plans These plans from the 2008 law have enabled anti-competitive subsidies charged to Ohioans by electric utilities.

Short of eliminating electric security plans, there are specific elements of the law that should be changed. Those elements for change include but are not limited to provisions allowing electric utilities: to charge consumers for excessive profits (just not “significantly” excessive profits); to withdraw (essentially veto) an electric security plan if the utility doesn’t like the PUCO’s modifications to a plan; to create and cherry-pick unlimited “riders” (charges) for customers to pay; and to propose qualitative factors instead of the quantitative factors of market prices for the PUCO to consider in comparing an electric security plan to a market rate.

Separate from the anti-consumer ratemaking in the 2008 law, another major problem that is costing consumers money is the Ohio Supreme Court’s precedent against refunds to consumers for utility charges found to be unlawful. The Court has noted the unfairness of the lack of refunds for consumers and observed that it is a matter for the legislature to address. Ohio utility consumers have lost over \$849 million for lack of refunds since 2008.

In sum, Ohioans have paid billions of dollars to electric utilities to transition to a competitive market, as shown on the attached subsidy scorecard. At a time when Ohioans should be reaping the benefits of low cost, reliable power, segments of the industry continue to push for subsidies and bailouts that are harmful to customers and destructive of the competitive markets that benefit customers. I urge you to protect millions of Ohioans by not enacting this legislation.

Thank you for your time and consideration.



OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 247 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Romanchuk

Local Impact Statement Procedure Required: No

Subject: Revise policies applicable to electric utilities

State & Local Fiscal Highlights

- The bill has no direct fiscal effect on expenditures for state agencies or political subdivisions, but the bill might have the indirect effect of changing electricity costs if electric security plans are eliminated. Should retail electric rates increase or decline as a result of H.B. 247, there could be a corresponding impact in commercial activity tax revenue paid by affected utilities. Revenue from the tax is allocated primarily to the GRF.

Detailed Fiscal Analysis

H.B. 247 revises several state policies governing electric utilities. For a complete explanation of the changes, refer to the LSC Bill Analysis. The topics highlighted below are those that are most likely to have an indirect fiscal effect on governmental revenues and expenditures. The bill does not have a direct effect on state agencies or political subdivisions, but it could impact the electricity prices paid by these entities as well as state tax receipts collected from electric distribution utilities (EDUs).

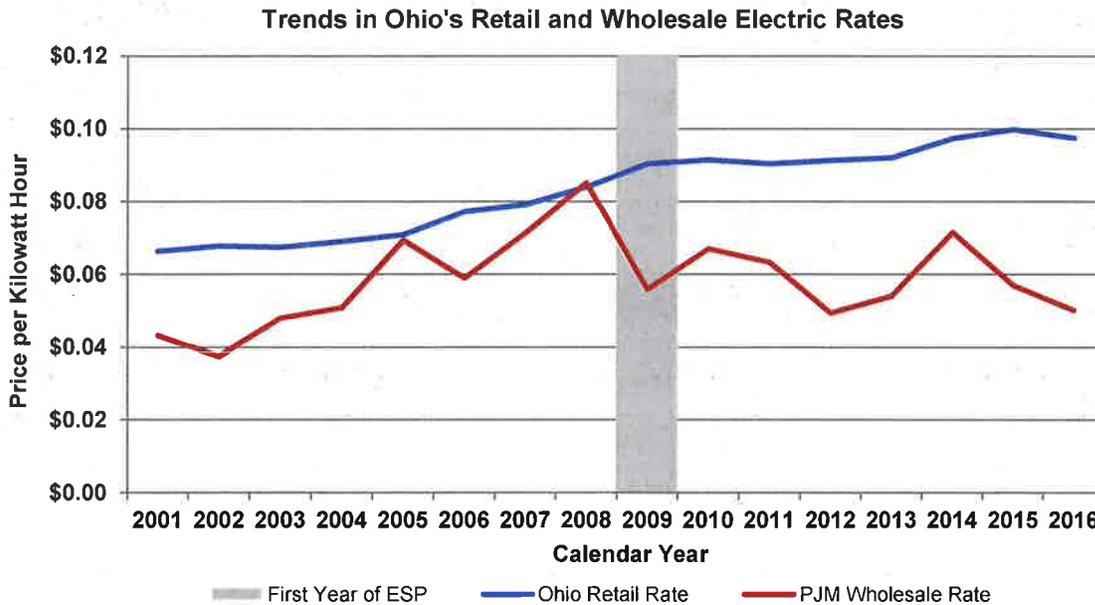
Elimination of electric security plans

H.B. 247 requires an EDU's standard service offer (SSO) to be established only as a market rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory. Under current law in R.C. 4928.141, an EDU must provide consumers within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143. The MRO is determined through a competitive bidding process in which generation suppliers submit their least-cost bids.

Existing law governing an ESP permits numerous rate components, but does not explicitly specify the rate calculation. The only substantive requirement is that the plan must be "more favorable in the aggregate as compared to the expected results" of an

MRO.¹ In practice, the Public Utilities Commission of Ohio (PUCO) evaluates the quantitative and qualitative benefits when determining whether the proposed ESP is more favorable than the expected MRO.² Moving to market-based rates would almost certainly change the rates that customers, including the state and local governments, pay for electricity. Current market conditions exhibit retail rates for electricity in Ohio that are significantly higher than wholesale rates (see chart below), which suggests the most likely impact of moving to market-based rates would initially be downward.

The chart below illustrates trends in Ohio's average retail electric rate and the wholesale rates reported by the regional transmission organizer, PJM. Both retail and wholesale rates grew in the earliest years of the centrally organized market operated by PJM, but the subsequent downturn in wholesale prices has not been reflected in retail rates paid by Ohio customers. The lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under ESPs. However, other external factors may be relevant. For example, the emergence of a large amount of unconventional natural gas production (i.e., shale gas) started in 2006-2007. The resulting drop in natural gas prices began in 2009 under the combined impacts of low electricity demand during the economic recession and a significant increase in supply.³



Source: Average Ohio retail price of electricity from U.S. Energy Information Administration; total wholesale power price from 2016 State of the Market Report for PJM

¹ R.C. 4928.143(C)(1).

² Most recently in an October 20, 2017 Opinion and Order that adopted Dayton Power and Light Company's current ESP (PUCO Case No. 16-395-EL-SSO).

³ Further discussion of this dynamic can be found in the U.S. Department of Energy's "Staff Report to the Secretary on Electricity Markets and Reliability." <https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability>.

Commercial Activity Tax

H.B. 247 does not have a direct effect on Commercial Activity Tax (CAT) receipts, but if the bill changes electric charges for customers, Ohio's electric distribution utilities may remit more or less CAT revenue than they otherwise would absent the legislation. LSC cannot speculate on the potential indirect effect, but the table below provides the total CAT charges reported by EDUs in their most recent annual reports. The six utilities reported a combined total of \$20.3 million in CAT charges during calendar year 2016.

Under continuing law, the Commercial Activities Tax Receipts Fund (Fund 5GA0) consists of money arising from the CAT. The Department of Taxation's Revenue Enhancement Fund (Fund 2280) receives the first 0.75% of the money credited to that fund to defray the costs incurred by the Department. Of the remaining money in Fund 5GA0, 85% must be credited to the GRF, 13% to the School District Tangible Property Tax Replacement Fund, and 2% to the Local Government Tangible Property Tax Replacement Fund. Expenses of the latter two funds are fixed, with excess revenue transferred to the GRF, so the GRF would bear the full gain or loss of revenue after Fund 2280 gets its share.

Company-Reported CAT Charges During Calendar Year 2016	
Electric Distribution Utility	CAT Charged During 2016
Cleveland Electric Illuminating Company	\$2,473,429
Dayton Power and Light Company	\$2,725,934
Duke Energy Ohio, Inc.*	\$3,055,279
Ohio Edison Company	\$3,234,840
Ohio Power Company (AEP Ohio)	\$7,733,279
Toledo Edison Company	\$1,096,661
Total	\$20,319,422

*Company reported data adjusted by LSC using company's annual report to PUCO. The downward adjustment isolates CAT paid on behalf of electric utility receipts by excluding gas utility receipts.

Source: FERC Form No. 1: Annual Report of Major Electric Utilities

Refunds for utility charges

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges. PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

The refund provision may reduce costs to ratepayers, but LSC cannot predict the frequency (if any) with which this provision would be invoked in future years. If this language was in effect when a 2014 Ohio Supreme Court decision was issued, the ratepayers in American Electric Power's (AEP Ohio) two service territories would have

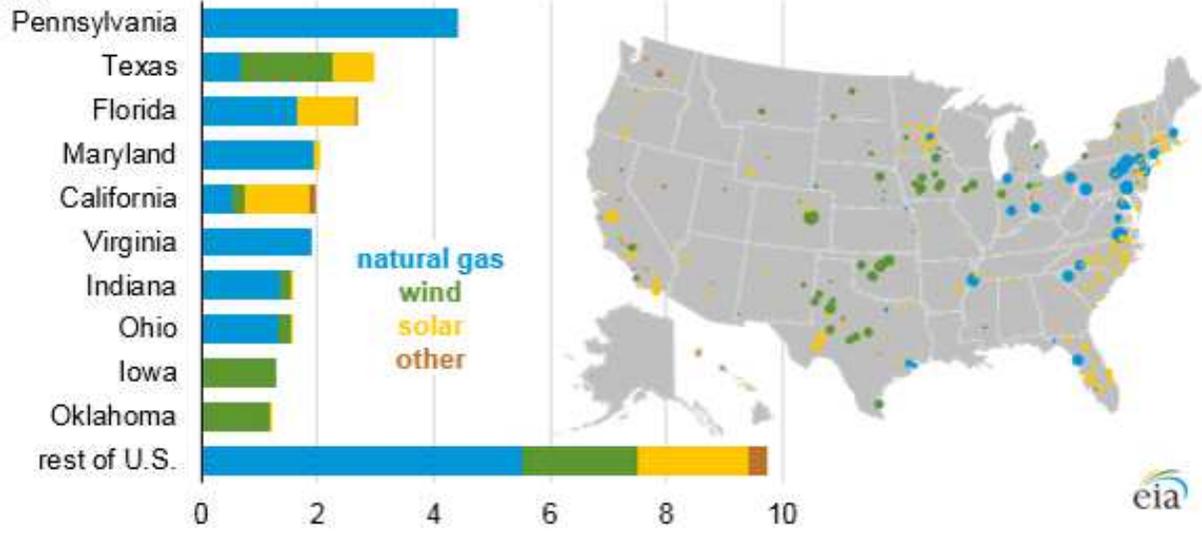
likely received refunds totaling \$368 million.⁴ At the time, the Ohio Supreme Court found that PUCO erred when it approved certain charges contained in AEP Ohio's first ESP, in effect from 2009 to 2011. Although the Supreme Court regarded those charges as unjustified, it did not order the money refunded to customers, citing existing statute and case law against retroactive ratemaking.

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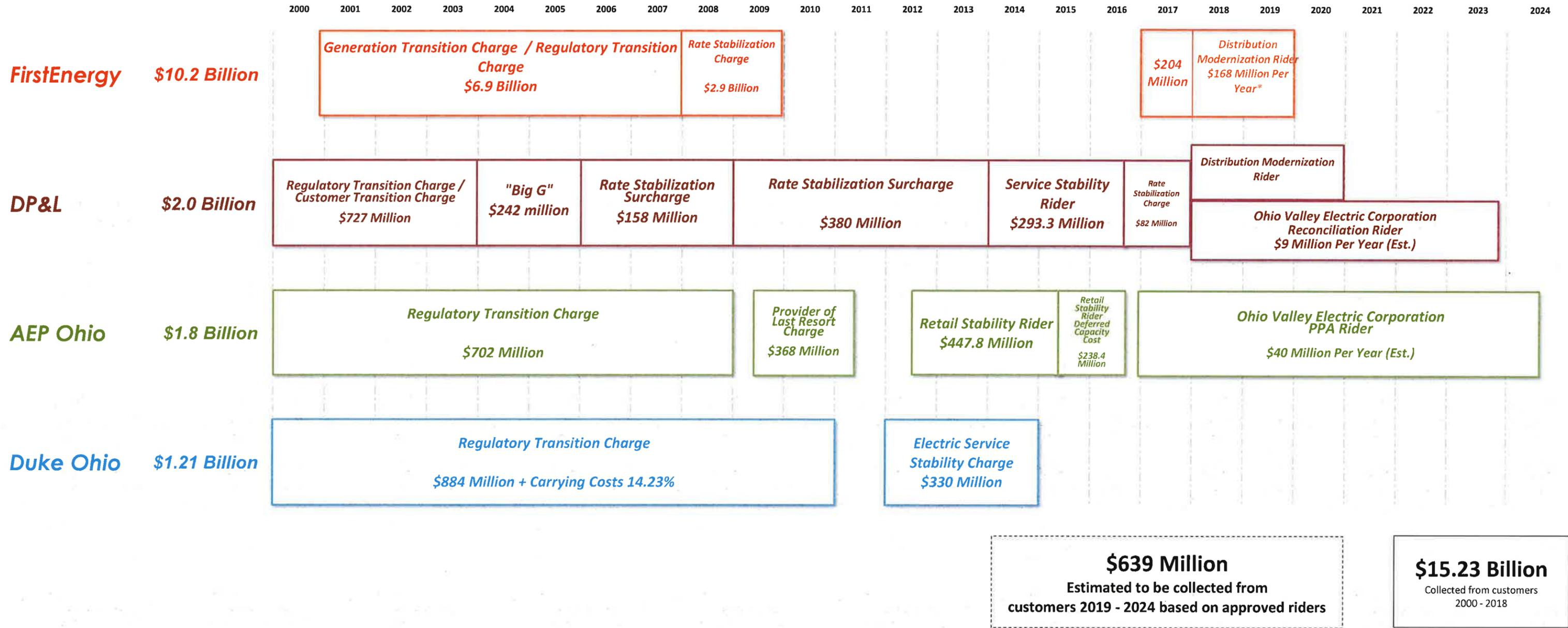
⁴ Supreme Court Document Ohio Supreme Court Slip Opinion, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.



U.S. electric generating capacity additions, 2018
gigawatts



SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS



* : FE has filed an application for an extension of the DMR for two years after the current DMR expires on December 2019.

** : DP&L has filed an application for an extension of the DMR for two years after the current DMR expires at the end of October 2020 and for an increase in the amount of collection from \$105 million to \$199 million.



FOR IMMEDIATE RELEASE

April 24, 2019

Contact: Michelle Shirer, 614-477-9891

mshirer@aarp.org

AARP Strongly Opposes Nuclear Bailout Bill

Unfair legislation forces all Ohio utility customers to pay \$300 million increase for failing business

COLUMBUS, OHIO – Today, AARP State Director Barbara A. Sykes announced AARP’s opposition to House Bill 6 that would saddle all Ohioans with a new, unfair and unnecessary annual \$300 million nuclear bailout tax.

Based on the legislation, one company, First Energy, stands to receive the majority of the newly created \$300 million Clean Air Program Fund.

“After the five previous attempts to bail out their failing business on the backs of the Ohio consumers, First Energy is at it again,” said Sykes. “Cleverly titled, The Ohio Clean Air Program, House Bill 6 was touted as a savings to residential and business customers. In reality the bill is filled with vague language, hidden legacy fees and a \$300 million nuclear bailout for two failing power plants in NE Ohio.”

“We are firmly opposed to this for all Ohioans, but especially for those age 50-plus who are living on fixed incomes,” said Sykes.

Analysis of the bill indicates that rather than seeing a cost reduction in their bills, as originally promised by the bill supporters, all Ohio utility customers will still be on the hook to pay for existing energy efficiency programs and contracts with no clear end to those fees.

“The idea that Ohio utility customers would be asked to not only bail out a profitable corporation, but also be required to pay legacy fees for conservation programs that may not exist in the future or provide consumer benefit is absurd and unfair,” said Sykes.

“Ohioans expect their elected leaders to be transparent about hidden costs in the form of legacy or mandatory fees, taxes and charges,” said Semanthie Brooks, an Akron-area resident and AARP Ohio Volunteer Executive Council member.

“The bill, as written today, does not deliver in a clear, identifiable way, any benefit to Ohio’s consumers, manufacturers or future. Instead it promises savings and jobs, but has no specific language outlining due process to ensure that will happen. It will actually increase utility bills and in a very unnecessary and unfair way,” said AARP Ohio Manager of Advocacy Luke Russell.

“Utility customers in Ohio expect to pay fair and reasonable prices for electricity- and not a dollar more. AARP will continue to fight unfair increases in utility rates in Ohio.”

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AARP is a nonprofit, nonpartisan organization, with a membership of more than 37 million, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. We advocate for individuals in the marketplace by selecting products and services of high quality and value to carry the AARP name as well as help our members obtain discounts on a wide range of products, travel, and services. A trusted source for lifestyle tips, news and educational information, AARP produces AARP The Magazine, the world's largest circulation magazine; AARP Bulletin; www.aarp.org; AARP TV & Radio; AARP Books; and AARP en Español, a Spanish-language website addressing the interests and needs of Hispanics. AARP does not endorse candidates for public office or make contributions to political campaigns or candidates. AARP Foundation is an affiliated charity of AARP that is working to win back opportunity for struggling Americans 50+ by being a force for change on the most serious issues they face today: housing, hunger, income and isolation. AARP has staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Learn more at www.aarp.org.