

Before  
The Ohio House of Representatives  
Select Committee on Energy Policy and Oversight

Testimony on House Bill 798

By

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On Behalf of the Office of the Ohio Consumers' Counsel

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Hello Chair Hoops, Vice-Chair Abrams, Ranking Member Leland and members of the House Select Committee on Energy Policy and Oversight. I hope you and your colleagues are well. Consumers' Counsel Weston and I thank you for this opportunity to testify on House Bill 798, which revisits House Bill 6. Last year we testified seven times against the now tainted House Bill 6. We appreciate Speaker Cupp's appointment of this Select Committee to take a fresh look at the issues involved in House Bill 6.

House Bill 798 has good and bad provisions for millions of Ohio consumers. We appreciate the good and ask for improvements for the bad.

The good for consumers is that the bill would end or prevent the corporate welfare to FirstEnergy, at public expense, for so-called decoupling in House Bill 6 and for higher utility profits in House Bill 166. (Respectively, lines 610 and 491 etc.) Thank you!

The bad for consumers is that the bill allows the corporate welfare in House Bill 6, at public expense, for subsidizing uneconomic coal and nuclear plants. And it has an inadequate, albeit new, audit mechanism for ascertaining if the nuclear subsidy is even needed. (Line 147 etc.) OCC's Subsidy Scorecard shows that, since 1999, consumers have paid Ohio electric utilities nearly \$15 billion in subsidies. The Subsidy Scorecard is attached.

Also, the bad for consumers is that the bill fails to repeal the provision in House Bill 6, in O.R.C. 4929.75, for diverting some desperately needed federal funds (in the Home Energy Assistance Program) away from helping at-risk Ohioans with utility bill payment assistance. Instead, recipients such as landlords would be subsidized for weatherization in low-income housing. In the middle of a pandemic where the need is so great for so many Ohioans who have so little, this provision in House Bill 6 is even more problematic, if not shameful. Please help these Ohioans pay their utility bills and avoid disconnection. H.B. 772 got this issue right by repealing it from H.B. 6. Please be a voice for helping at-risk Ohioans who lack a voice, and repeal this part of House Bill 6.

Additionally, beginning on line 250 there is a somewhat obscure provision addressing a need to protect consumers from paying too much for so-called supplemental transmission projects. That's a good subject for consumer protection but not a good solution. The bill merely provides for a report by the Power Siting Board and allows a whole year for its preparation. At a minimum, the report should be submitted within four months of this bill's enactment and there should be some requirement for a state agency to thereafter begin a rulemaking on the subject, for consumer protection.

Before elaborating further on some of those points, there is another matter. That we are here today is due to a federal Criminal Complaint that is alleged to involve actors including FirstEnergy, a prime supporter of House Bill 6. (FirstEnergy has not been charged with a crime.) Indeed, FirstEnergy has now terminated its CEO and other senior executives. And the nuclear subsidy is for the former FirstEnergy subsidiary, FirstEnergy Solutions, now separated as Energy Harbor. It therefore should be imperative that the Committee call on FirstEnergy and Energy Harbor to both appear here in the people's House. Before this Committee they should publicly state the reasons for their continued support of House Bill 6, if they do still support it. And they should explain the need, if any, for a billion dollar nuclear bailout. Plus, they should

take questions from the Committee about any role they had in the tainting of House Bill 6.

The elimination of the so-called decoupling subsidy for FirstEnergy is good for consumers. Other protections are needed. (Line 610 etc.) The PUCO should be barred from reinstating decoupling for FirstEnergy. And there should be a requirement for refunds to consumers for the decoupling charges they paid to date, as provided for in House Bill 772.

Regarding coal subsidies, it is particularly dismaying that Ohio is favoring the polluting uneconomic OVEC coal plants by subsidizing them at consumer expense, whether by House Bill 6 or by the past actions of the PUCO. Right now the market is favoring natural gas power plants, which is good for synergy with Ohio's own gas resources and for low electricity prices to Ohio families and businesses. In the not too distant future, we expect the competitive market will support more renewable energy without subsidies, as its price declines and innovations occur in related technologies including battery storage. The mere requirement that utilities make a "good faith effort" (line 552) to divest the OVEC coals plants, which seems redundant of current regulatory expectations, has no teeth and thus is not a consumer protection. At a very minimum the coal subsidy should be on a strict phase-out plan to reach zero coal subsidies charged to consumers, by 2023.

Regarding the new provision for an audit of nuclear subsidies (line 147 etc.), requiring the PUCO to hire independent consultants and auditors is a step in the right direction. However, an additional audit expert whose assistance should be required to be sought is the PJM Independent Market Monitor ("IMM" or "Market Monitor"). The Market Monitor already is engaged in work of this sort on a daily basis. We understand that the Market Monitor, as part of his work, is willing to be part of such a state process.

Accordingly, results of any annual independent audit should be made available to the Market Monitor for review and verification prior to determining whether the funding for the

plants has covered the plants' operating costs. If the Market Monitor participates, it should be with the understanding that the IMM will provide the results of the IMM's review to the PUCO and interested parties. The Market Monitor's review should be complete and available prior to any stakeholder process regarding the independent audit.

Further, the audit requirement falls short in defining whether there is a need for any subsidy to be funded by utility consumers. (Lines 210-223.) The goal of this legislation is to maintain the power plants at the "lowest cost to consumers." (Lines 210-212.) The goal cannot be achieved with the vague reference to "an amount necessary to increase the net income or profit margin of the resource from a negative amount to not more than zero." (Lines 211-215.) The standard should be that customers' subsidies for a plant will be limited to the unit specific operating costs, as reported to the Nuclear Energy Institute ("NEI"). NEI is an industry group comprised of nuclear generation owners. NEI releases an annual report on the cost components of nuclear plants.

The costs reported to NEI include fuel, operating costs, and incremental capital expenditures by plant. The definition of the need for a subsidy should include only the revenues and operating costs associated with the individual units. These expenses are the actual costs of running the plants. If these expenses are covered the plants could stay open and the costs to consumers would be the minimum necessary to keep the plants open and preserve jobs at the plants. Any over-collections of these costs should be refunded back to customers.

"Net income" or "profit margin" is not defined in this bill. (Line 214.) Those terms could require customers to subsidize improper costs such as overhead, rent on headquarters, administrative costs and other costs that are not part of plant operating costs and are not needed to keep the plant up and running. The definition should be replaced with OCC's recommended standard, being operating costs etc.

Additionally, allowing depreciation expense is a big problem for consumer protection and for having a proper audit. (Lines 220-223.) Depreciation is a cost-of-service concept, but the focus should be on a market concept. Requiring customers to fund depreciation means they are having to take on the risks of devaluation and obsolescence, which should be a competitive market risk of the deregulated plant owner. Also, depreciation is not a cash flow expense but cash flow should be a focus. Shifting costs and risk to consumers for depreciation increases subsidies that customers are forced to provide. Thus it is inconsistent with H.B. 798's standard of "lowest cost to consumers." (Lines 210-212.)

Allowing for depreciation expense essentially devalues the consumer protection of an audit. Depreciation expense should not be included in the calculation of expenses to keep a plant operational through subsidies. And customers should not be required to pay for the nuclear plants' underfunded liabilities such as nuclear decommissioning funds or employee pension obligations.

Another big consumer problem of H.B. 798 is that it does not allow for a process with participation by representatives of the public and others, regarding the auditor's findings. For transparency and accountability, HB 798 should require a public, transparent process. That process should include an evidentiary hearing that allows parties to examine the audit findings and make recommendations. The bill should end the anti-competitive nuclear subsidies at consumer expense, but at a minimum it should have an improved audit mechanism consistent with our recommendations.

That completes my testimony for the Ohio Consumers' Counsel and millions of Ohio consumers. Thank you for your consideration.

**\$14.7 Billion**  
Charged to Customers  
(2000 - 2019)

# SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

**\$1.7 Billion Projected**  
Charges to Customers  
(2020 - 2030)

## FirstEnergy

\$10.2 Billion

## DP&L

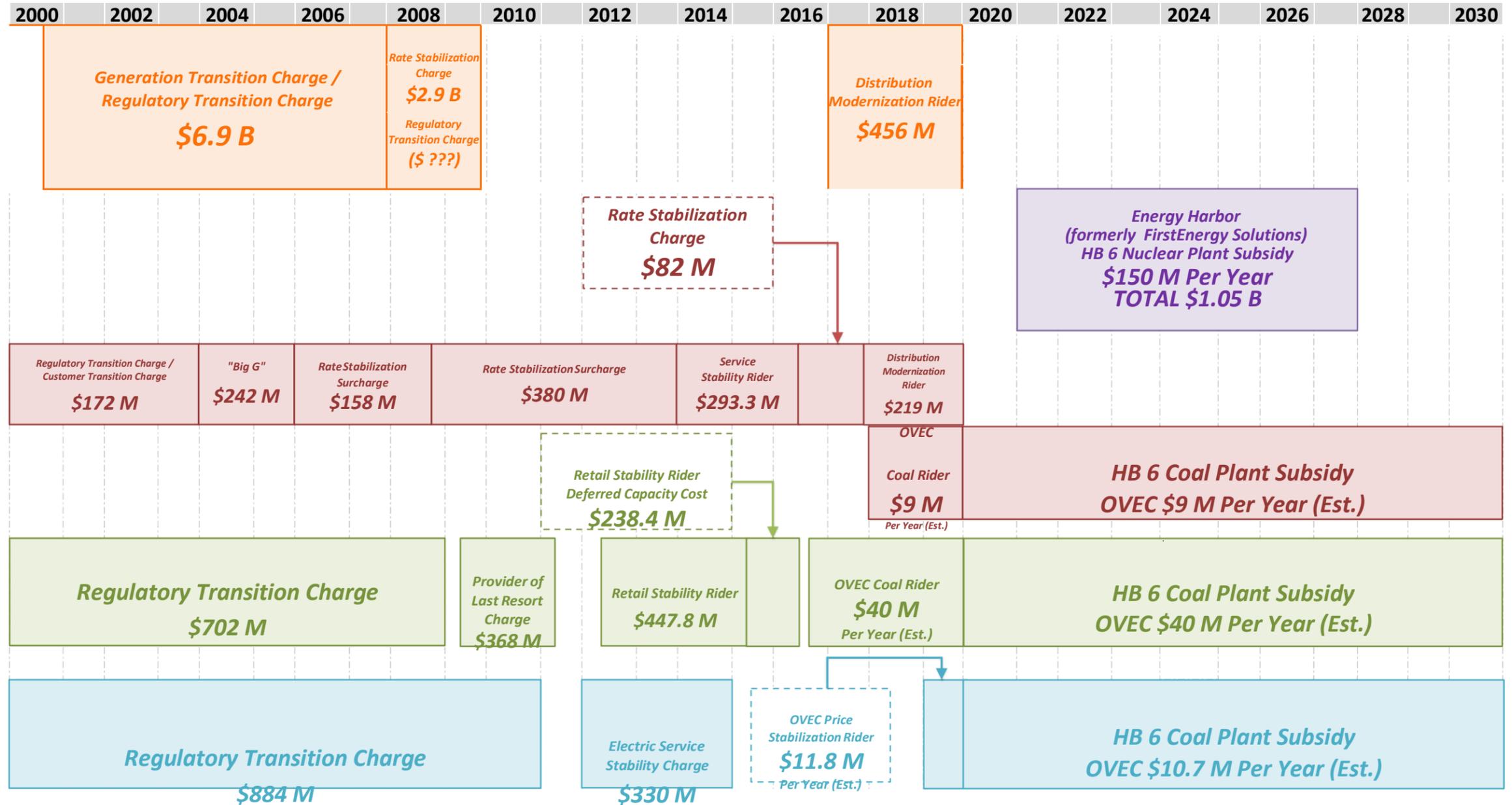
\$1.5 Billion

## AEP

\$1.8 Billion

## Duke

\$1.2 Billion



B=Billions; M=Millions

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