



Office of the Ohio Consumers' Counsel

**Before
The Ohio Senate
Finance Committee**

Testimony on Substitute House Bill 110 – OCC Budget

**Bruce Weston, Ohio Consumers' Counsel (Agency Director)
Office of the Ohio Consumers' Counsel**

May 18, 2021

Hello Chair Dolan, Vice Chair Gavarone, Ranking Member Sykes, and Members of the Committee. I hope you and your colleagues are well. Thank you for this opportunity to testify about the Consumers' Counsel's services to millions of Ohio residential utility consumers. I also appreciate the consideration of the Senate General Government Budget Committee, where OCC testified on April 27th.

I am Bruce Weston, the Ohio Consumers' Counsel. The OCC Governing Board and I appreciate your consideration. The Board Chair is Mike Watkins, now retired from the Fraternal Order of Police. The Board Vice-Chair is Stuart Young of Young's Jersey Dairy Farm. Larry Sauer is the Deputy Consumers' Counsel.

The Agency's Mission is to "advocate for Ohio's residential utility consumers through representation and education..." Therefore, the budget provides the funding for our services regarding consumers' electric, natural gas, telephone, and water utility services from investor-owned utilities. OCC's budget is funded by assessments on utilities, not taxes. Our consumer advocacy last year was framed by the pandemic's health and financial crises and the utility consumer issues related to the House Bill 6 scandal. Please call me if OCC may help with consumer issues involving legislation or constituents.

My September 2020 budget proposal to the Administration (and later to the House) was for an increase of \$700,000. That would increase OCC's budget for its consumer services from \$5.54 million to \$6.24 million. The Administration proposed a \$100,000 increase (which I appreciate). Also, I am grateful that the House adopted that \$100,000 increase in the version of the budget bill that it passed on April 21, 2021. (Lines 71308 to 71312) I respectfully ask that the Senate pass a \$700,000 increase. Attached is amendment SC2190, as drafted by LSC, which could be used for the \$700,000 increase.

Also, the Administration adopted language to clarify that the existing \$150 stipends to the OCC Board members for attending Board meetings (usually every two months) may be paid for virtual meetings. The House then used amended language to make a similar change. (Lines 83278 to 83282) It would be preferable for the Senate to adopt the Administration's earlier language on that issue.

Here is background regarding the budget increase. The Kasich Administration (with utility industry support)¹ initiated a nearly \$3 million cut in OCC's budget in 2011. The resulting OCC budget of \$5.64 million ten years ago (after the \$3 million decrease) is the same level in Substitute House Bill 110 today. OCC last had a budget increase in 2007. OCC's budget was above \$9 million in 2002. OCC's budget today is lower than its budget 24 years ago for consumer advocacy involving lawyered-up utilities.

The Agency's structure is as follows. The Attorney General appoints the nine-member bipartisan Governing Board. The Board appoints the Consumers' Counsel (Agency Director) and Deputy. OCC has four departments. They are: Legal (with attorneys for representing consumers); Analytical (with technical staff such as for analysis in accounting, economics, etc.); Public Affairs for (education, our website, media, etc.) and Operations (for HR, fiscal, IT, etc.). OCC presently has 31 employees and is seeking to re-fill a number of needed positions for our consumer advocacy, which would bring the staff up to about 35 employees, plus temporary staff and consultants. I appreciate OCC staff's dedicated services to Ohioans. Our website is at www.occ.ohio.gov. Our Twitter handle is @OCC4Consumers.

An example of an OCC Board resolution is attached. It is the Board's proposal for reform to require refunds to consumers for utility charges found improper by the Ohio Supreme Court. Also, the attached pie chart shows how electric consumers have been denied about \$1.5 billion in refunds since 2009. Former Supreme Court Justice Pfeifer described the denial of refunds for consumers as "unconscionable," in a dissent.²

The attached Subsidy Scorecard reflects our opposition to charging Ohioans for electric subsidies, showing about \$14.7 billion in subsidies charged to electric consumers since 2000. And attached is an example of our fact sheets for educating consumers, this one being about avoiding scams.

The Consumers' Counsel's consumer protection advocacy saves money for Ohioans on their utility bills. Here are some examples.

In the recent AEP rate case (Case 20-585), we reached a settlement with AEP, the PUCO Staff and others this year. Instead of the rate increase that AEP proposed, we reached a compromise for a rate decrease for residential electric consumers, that could save them millions of dollars if the settlement is adopted by the PUCO Commissioners. Another example is the process we initiated in 2018 (Cases 12-1842 and 18-1419) to protect consumers in Dominion's area from rip-offs involving high charges by some energy marketers (ranging up to nearly four times Dominion's own gas offer price). The issue was known as the "monthly variable rate." We settled the case with Dominion, the PUCO Staff and others, which the PUCO adopted last year. I appreciate the efforts of AEP and other stakeholders in the electric rate case and appreciate the efforts of Dominion and others to settle the gas marketing case.

¹ The Columbus Dispatch, "Kasich friends in high demand," J. Hallett (May 23, 2011).

² *In re Columbus Southern Power Co.*, 138 Ohio St.3d 488, 2014-Ohio-462, ¶62 (dissent) (February 13, 2014).

Another significant example of saving consumers money involves our efforts to protect electric consumers from the subsidy culture of the PUCO and electric utilities. For example, we and others filed at FERC [FERC Case EL-16-33 (AEP) and Case EL-16-34 (FirstEnergy)] in 2016 to overturn massive PUCO subsidies involving billions of dollars for FirstEnergy and AEP (PUCO Cases 14-1297, 13-2385 and 14-1693). FERC then invalidated the PUCO's subsidy orders. Those cases involved so-called power purchase agreements that would have been in effect for years. Another example is that we and others appealed and obtained an Ohio Supreme Court decision (Court Cases 2017-1444 and 2017-1664) overturning the PUCO's allowance of the infamous "*distribution modernization charge*" for FirstEnergy. The Court's overturning of the FirstEnergy charge led to the ending of a similar subsidy charge to DP&L's consumers. And then OCC alone succeeded in an appeal (Court Case 2019-961) to protect the opportunity for consumer refunds where the PUCO under-counted FirstEnergy's profits by excluding distribution modernization revenues from the profits calculation in Case 18-857.

Returning to our proposed budget increase, the \$700,000 would help restore our purchasing power, that has been eroded in recent years, for consumer advocacy. This purchasing power has been eroded by the state "parity" salary increases that the Agency has adopted and by increases for employee benefits costs. When I testified in the House Subcommittee in February, OCC was absorbing about \$580,000 annually. Now added to this amount will be costs related to the Administration's unfreezing of another state parity increase to be effective in April. We certainly appreciate that this state parity increase will help employees; it will also cost OCC about \$70,000 more annually. The "parity" reference means that non-union state employees can receive the increases that are in the collective bargaining agreements. Additionally, we want to offset the \$100,000 budget reduction initiated by the Kasich Administration in fiscal year 2018.

In conclusion, we are competing on behalf of consumers against *lawyered-up utilities* and others in ratemaking and policymaking forums. That does cost money. The \$60 million that FirstEnergy reportedly spent in connection with House Bill 6 is about eleven times OCC's budget for all our consumer advocacy in a year. Another example is that in AEP's recent rate case application, it proposed charging consumers about \$325,000 for its legal and other costs of presenting its case to the PUCO.

That concludes my testimony. Thank you for your consideration.

_____ moved to amend as follows:

1 In line 71310, delete "\$5,641,043 \$5,641,043" and insert
2 "\$6,241,043 \$6,241,043"

3 In line 71311, add \$600,000 to each fiscal year

4 In line 71312, add \$600,000 to each fiscal year

5 The motion was _____ agreed to.

6 SYNOPSIS

7 **Office of Consumers' Counsel**

8 **Section 245.10**

9 Increases DPF appropriation item 053601, Operating
10 Expenses, by \$600,000 in each fiscal year from \$5,641,043 to
11 \$6,241,043.



Resolution

Governing Board of the Office of the Ohio Consumers' Counsel

In Support of Legislation for Regulatory Reform to Protect Consumers by Enabling Refunds of Improper Utility Charges

- WHEREAS,** Electricity, natural gas, telephone, and water services are essential for Ohioans; and
- WHEREAS,** Ohio consumers should have utility services that are adequate, reliable, safe, and reasonably priced; and
- WHEREAS,** In 1999, the Ohio General Assembly enacted Senate Bill 3, the electric deregulation law, to give Ohioans the benefits of power plant competition, among other things; and
- WHEREAS,** In 2008, the Ohio General Assembly enacted Senate Bill 221, which created new ratemaking processes (including so-called "electric security plans") that favor electric utilities and disfavor residential consumers with a result of electric consumers paying above-market subsidies and other charges; and
- WHEREAS,** Under a 60-year old Ohio Supreme Court precedent, consumers are denied refunds of utility charges even if the charges to consumers are later determined by the Ohio Supreme Court or other authorities to be improper; and
- WHEREAS,** On June 19, 2019, the Ohio Supreme Court ruled that FirstEnergy's PUCO-approved charge for its so-called "distribution modernization rider" is unlawful;

WHEREAS, In its ruling that the charges FirstEnergy collected from consumers are unlawful, the Supreme Court denied refunds (about \$456 million) to consumers because the PUCO originally declined to make the charges subject to refund (despite the Ohio Consumers' Counsel and the Ohio Manufacturers' Association jointly asking the PUCO to make the charges refundable); and

WHEREAS, Since 2009 (the year after the 2008 electric deregulation law), Ohio consumers of electric utilities have been denied about \$1.2 billion in PUCO-approved utility charges that the Supreme Court has found to be improper.

THEREFORE, BE IT RESOLVED, that the Governing Board of the Office of the Ohio Consumers' Counsel urges the Ohio General Assembly to enact consumer protection legislation to enable refunds of improper utility charges.

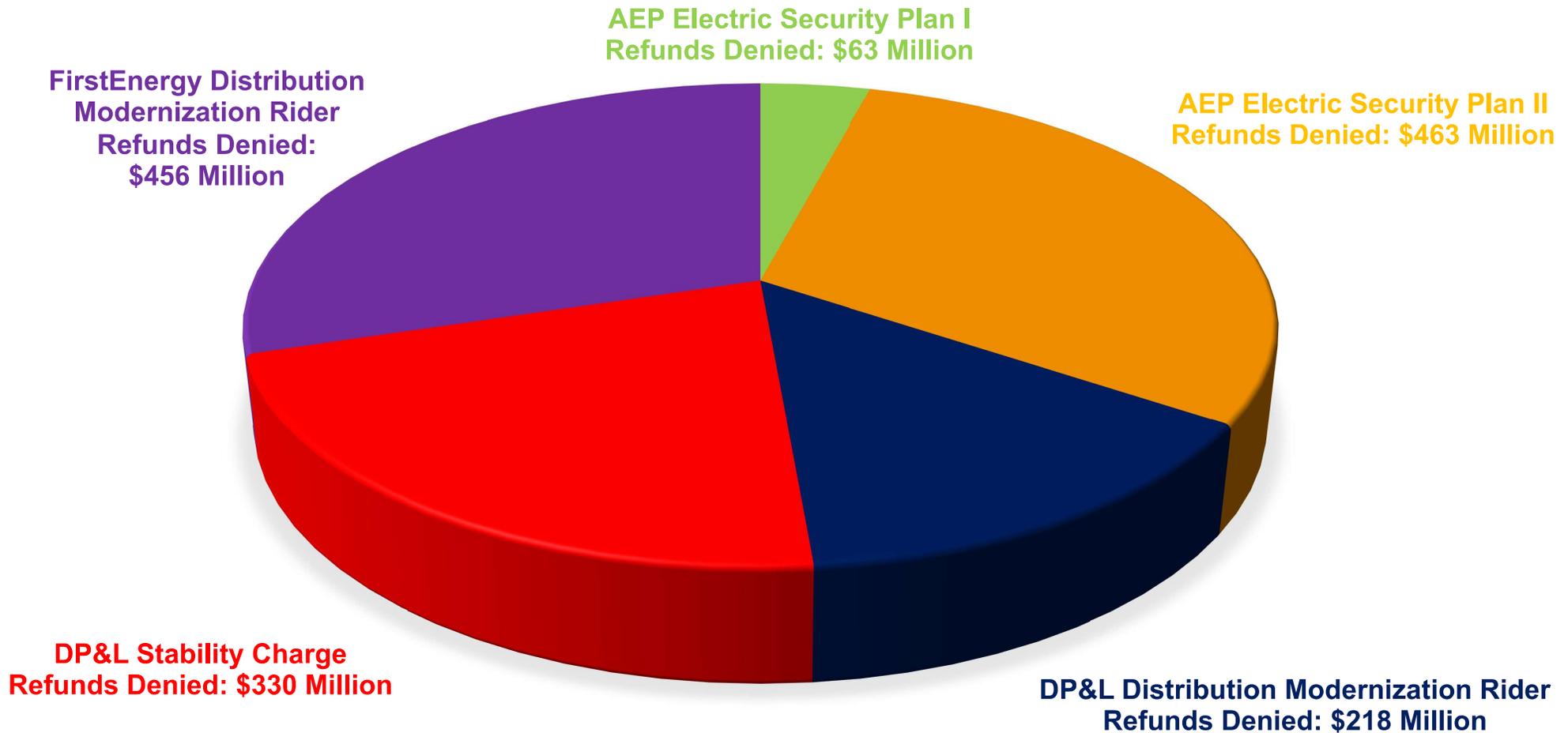
AND, BE IT FURTHER RESOLVED, that the Governing Board of the Office of the Ohio Consumers' Counsel urges the Public Utilities Commission of Ohio to make utility charges subject to refund in the event the Ohio Supreme Court or other authorities find the charges to be improper.

I verify that this Resolution has been approved by the Governing Board of the Office of the Ohio Consumers' Counsel, this 16th day of July 2019.



Michael Watkins, Chairman
Governing Board of the Office of the Ohio Consumers' Counsel

OHIOANS DENIED \$1.5 BILLION IN ELECTRIC REFUNDS SINCE 2009



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

SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

2000 2002 2004 2006 2008 2010 2012 2014 2016 2018 2020 2022 2024 2026 2028 2030

FirstEnergy

\$10.2 Billion



DP&L

\$1.5 Billion



AEP

\$1.8 Billion



Duke

\$1.2 Billion



B=Billions; M=Millions

Rev. 04/14/21



Office of the Ohio Consumers' Counsel

Your Residential Utility Consumer Advocate

CONSUMER FACT SHEET

Office of the Ohio Consumers' Counsel

65 East State Street
7th Floor, Columbus, OH
43215

TWITTER:
@OCC4Consumers

E-MAIL:
occ@occ.ohio.gov

WEBSITE:
www.occ.ohio.gov

HOW TO AVOID UTILITY SCAMS AND FRAUD

Scams targeting consumers are a widespread problem. There are hundreds of known scams, and new ones are always emerging. The Office of the Ohio Consumers' Counsel (OCC), your residential utility consumer advocate, has developed this fact sheet to help you avoid common utility scams.

What is a scam?

A scam is a scheme that involves tricking people into giving away their personal information or money to a fraudulent individual or company. Consumers become scam victims when they pay for fraudulent products or services or compromise their personal or account information.

Scam information is also available from the Ohio Attorney General, www.ohioattorneygeneral.gov, and the Federal Trade Commission, www.consumer.ftc.gov.

Common scam tactics

Imposters pretending to be from your utility company may demand immediate payment by threatening to disconnect your service. Scammers may also seek access to your home or personal information or make other false claims about products and services or special programs to help pay utility bills.

Emergency payment scams.

Beware of anyone claiming you will be disconnected if you do not pay

immediately. Utilities are required to provide prior notice well before services can be disconnected for non-payment and do not disconnect service outside normal business hours.

Utility companies do not require immediate payment by prepaid debit card or gift card or contact you for personal information. If you are told your account is past due, check your account's status online or call the customer service number listed on your utility bill. Learn about your rights from OCC's Your Guide to Energy Disconnection and Reconnection at www.occ.ohio.gov.

Utility worker imposters. Someone may claim to be at your home to reset, repair, replace or inspect your meter or other utility-related devices. If utility employees or authorized contractors have a legitimate need to access your home, you will be notified in advance with time to confirm the appointment. Utility service or equipment related charges will typically be added to your bill.

After widespread power outages a scammer may offer to restore power for an upfront fee. Utilities do not require payment to restore service after a natural disaster or related outages. Learn more, including about the critical customer list, from OCC's Power Outages: Safety Tips and Consumer Rights fact sheet at www.occ.ohio.gov.

HOW TO AVOID UTILITY SCAMS AND FRAUD

CONSUMER FACT SHEET

The Office of the Ohio Consumers' Counsel (OCC), the residential utility consumer advocate, represents the interests of 4.5 million households in proceedings before state and federal regulators and in the courts.

The state agency also educates consumers about electric, natural gas, telephone and water issues.

For more information, please visit the OCC website at www.occ.ohio.gov.



The Office of the Ohio Consumers' Counsel is an equal opportunity employer and provider of services.

False refunds or discounts. You may be promised refunds, free products, or services. Always thoroughly check out claims before providing any information or allowing a stranger into your home. If a legitimate overpayment has occurred, your account will be credited without any need to provide or verify utility account information.

Caller ID spoofing. "Spoofing" technology can be used to change the readout appearing on Caller ID. Do not answer calls when you are unsure. Hang up if a call seems suspicious. Do not call questionable or unverified numbers. Contact your utility with the number found on your bill.

Door-to-door. Scammers posing as utility representatives or as natural gas or electric service suppliers have been reported. Always ask to see a picture ID and check them out before allowing anyone to enter your home. Be cautious about sharing any personal information, including utility bills.

Avoid being scammed

Be aware of common tactics and use these best practices to avoid fraud.

Protect personal information. Utilities will not contact you to ask for your personal or account information. Be wary about sharing or verifying sensitive information like account numbers, credit card information or any personal information. Do not show your utility bill to anyone claiming to need to check or verify charges.

Be cautious. Be wary of allowing an unknown salesperson into your home. Be cautious of calling unfamiliar numbers. Hang up on callers who ask you to press a number or dial a toll-free phone number.

Take your time. Scammers often use high pressure tactics and want you to act fast, so you cannot verify their claims. Review your bills monthly and question unfamiliar charges.



Report scams

If you suspect fraud contact local law enforcement. The Attorney General's Office can also address utility scams. Call 1-800-282-0515, or complete their online complaint form at www.ohioattorneygeneral.gov. A form can also be printed and mailed to:

**Office of the Attorney General
Consumer Protection Section**
30 E. Broad St., 14th Floor
Columbus, Ohio 43215

Direct questions and complaints about utility services, including scams, to the Public Utilities Commission of Ohio. File informal complaints via their online complaint form at www.puco.ohio.gov, call 1-800-686-7826, or write to them at:

**Public Utilities
Commission of Ohio**
Attn: CSD
180 E. Broad St.
Columbus, Ohio 43215-3793