



Office of the Ohio Consumers' Counsel

Before
The Ohio Senate
Energy and Public Utilities Committee

Testimony on Senate Bill 44
(Repeal of Nuclear Power Plant Subsidies in House Bill 6)

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On Behalf of the Office of the Ohio Consumers' Counsel

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Hello Chair Peterson, Vice-Chair Schuring, Ranking Member Williams, and Committee members. I hope you and your colleagues are well. Thank you for this opportunity to testify as an interested party on Senate Bill 44. 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 – which has come to symbolize crony-capitalism and corporate welfare. And we've now testified seven times to repeal it. Attached is OCC's Subsidy Scorecard that shows the costly subsidies (for consumers) of the government's intrusion into the electric market since Ohio deregulation in 1999.

SB44 would repeal the nuclear bailout earlier sought by FirstEnergy/Energy Harbor. That anticompetitive subsidy should be repealed. It should be repealed for the protection of Ohio consumers and the competitive power plant market that serves consumers through lower prices and greater innovation. In this regard, it has been reported that at least a couple of natural gas power plants were canceled in the wake of HB6, with the loss of their considerable investment in the Ohio economy.

The bill would continue certain subsidies for solar power. OCC does not recommend subsidies for electric generation.

Other unwarranted HB6 benefits for FirstEnergy (to consumers' detriment) should be repealed. Accordingly, we appreciate that, in Senate Bill 10, the FirstEnergy recession-proofing (as its fired CEO described decoupling) would be repealed. And SB10 would repeal the FirstEnergy profits benefit that, at consumer expense, was slipped into the 2019 state budget bill (HB166).

The nuclear subsidy that SB44 would repeal is just one of the bad deals for making consumers subsidize power plants in HB6. The bailout of the outmoded, uneconomic, and polluting coal power plants (the two OVEC plants) shared by AEP, DP&L, and Duke may rate as even worse than the nuclear bailout. The coal bailout should be repealed. And the PUCO should be prohibited from reinstating the coal plant subsidy.

Moreover, a refund requirement should be enacted, to return to consumers the coal subsidy they were charged under HB6. The HB6 money counter on OCC's website home page (www.occ.ohio.gov) shows that the HB6 coal subsidy has cost Ohioans about \$100 million to date – which SB44 should require to be refunded. That subsidy is preventing the competitive market from benefiting Ohioans with lower electric bills and a cleaner planet.

That there should not only be repeals of HB6 but also enactment of refunds to consumers for any HB6 charges (such as coal plant subsidies) is underscored by the sorry history of the lack of refunds for Ohio utility consumers. Attached is an OCC pie chart showing refunds denied to electric consumers since the 2008 energy law, after the Supreme Court invalidated various charges. For example, FirstEnergy got to keep nearly a half-billion dollars without refunding the money to consumers, after the Ohio Supreme Court threw out its so-called distribution modernization charge. In that case, the Court invalidated the PUCO's order, but there were no refunds because the PUCO had earlier voted to protect FirstEnergy by denying an OCC/OMA motion to make FirstEnergy's charges refundable.

Additionally, there is an unfortunate provision in House Bill 6, Section 5 (O.R.C. 4928.75), that diverts some federal financial assistance away from consumers who desperately need it. It involves the federal Home Energy Assistance Program (HEAP) funds. House Bill 6 requires the Ohio Development Services Agency to seek a waiver from the federal government. This waiver request required by HB6 would enable the diverting of some HEAP funds away from consumers for bill-payment assistance, toward subsidizing low-income weatherization.

What many struggling Ohioans need now, in the pandemic and in the years of its aftermath, is financial assistance and plenty of it, not weatherization. SB44 should have Ohio *lead with its heart* to repeal this provision of HB6. Repeal would protect this important financial assistance for Ohioans who are in desperate need of money during the health and financial crisis and its aftermath.

As a final point, House Bill 6 should be considered against the backdrop of the related scandal. U.S. Attorney David DeVillers described the scandal as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.... This was pay to play."¹

Standard and Poor's assessed FirstEnergy this way, in connection with the scandal:

We believe these violations at the highest level of the company are demonstrative of insufficient internal controls and a cultural weakness. We view the severity of these violations as significantly outside of industry norms and, in our view, they represent a material deficiency in the company's governance.²

¹ USA Today, "Ohio House Speaker Larry Householder arrested in \$60 million bribery case," by S. Coolidge, D. Horn and J. Balmert (June 21, 2020). <https://www.usatoday.com/story/news/politics/2020/07/21/ohio-house-speaker-larry-householder-arrested-bribery-case-source/5478219002/>

² "S&P downgrades FirstEnergy following \$1.95B draw on revolving credit facility," S&P Global Market Intelligence, by U. Khalid (Nov. 25, 2020).

In this regard, the HB6 scandal included that the Speaker of the House was arrested and replaced by a new Speaker. Some others have pleaded guilty to crimes. FirstEnergy's CEO and other executives were fired, apparently related to the scandal. And the PUCO Chair resigned, after events that included FirstEnergy's November 19, 2020 filing of a Form 10-Q referencing its transaction with an Ohio government official.

Now, after all the carnage of the scandal and the major commitment of state resources to enacting and repealing HB6, it is reported that Energy Harbor may not want or may not need its billion-dollar nuclear power plant subsidy and apparently will not find repeal of it to be a problem. Respectfully, the Ohio public and this Committee should hear directly from Energy Harbor, under oath, in a public hearing. And, respectfully, this Committee or the Senate should conduct an investigation, in the public light, into House Bill 6. That investigation should include if Ohio government, the public or others were misled by FirstEnergy, Energy Harbor or others on the subject of whether the Davis-Besse and Perry nuclear plants ever needed the HB6 subsidy and whether they would have closed in the absence of the subsidy.

Thank you for your consideration.

SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024

FirstEnergy **\$10.2 Billion**



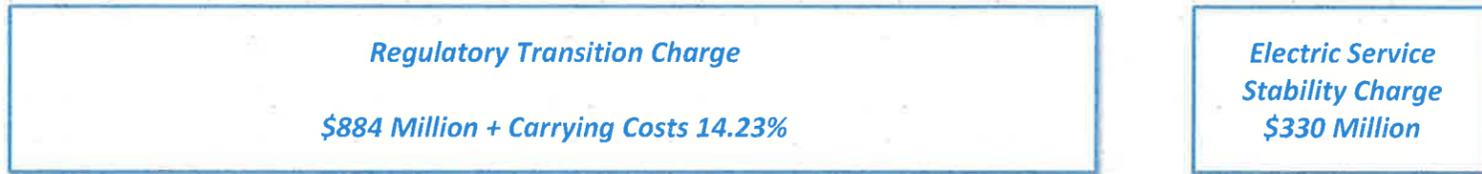
DP&L **\$2.0 Billion**



AEP Ohio **\$1.8 Billion**



Duke Ohio **\$1.21 Billion**



\$639 Million
Estimated to be collected from
customers 2019 - 2024 based on approved riders

\$15.23 Billion
Collected from customers
2000 - 2018

* : 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.

OHIOANS DENIED \$1.5 BILLION IN ELECTRIC REFUNDS SINCE 2009

