

**Before**

**The Ohio House of Representatives  
Public Utilities Committee**

**Opponent Testimony on Substitute House Bill 317**

**By**

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**On Behalf of the**

**Office of the Ohio Consumers' Counsel**

**May 31, 2022**

Hello Chair Hoops, Vice-Chair Ray, Ranking Member Smith, and Committee members. I hope you and your colleagues are well.

Consumers' Counsel Bruce Weston and I thank you and the bill sponsor (Rep. Wilkin) for this opportunity to present opponent testimony on Substitute House Bill 317. We previously testified on March 2, 2022 and April 6, 2022 in opposition to the bill. At those times, we noted our appreciation that the bill includes some consumer protections. Those include some new regulations in the bill and the elimination of some inadequate regulations in current law.

However, our consumer protection concerns continue with Amendment 3173 that OCC received Friday afternoon. The Amendment should not allow charges to consumers for subsidies. Also, OCC continues to oppose the bill.

Amendment 3173 would enable utilities to charge their consumers for more subsidies. In the name of economic development, the Amendment would allow utilities to violate the venerable consumer protection principle of "used and useful" in O.R.C. 4909.15. That law prohibits utilities from charging consumers unless the investment is used and useful to consumers for utility service.

But in an interesting use of language, the Amendment declares transmission plant built for future use to be used and useful. (Lines 63-64) It's not really used and useful according to a recent Supreme Court decision from PUCO Case 18-1205. Basically, the Amendment would overrule years of precedent and law. The utilities would get to charge consumers for the cost of these projects before a single megawatt is transmitted over the lines – and maybe years before a single megawatt is transmitted. Attached is OCC's Subsidy Scorecard.

Representative Troy's Amendment 2694 solves an important consumer issue in the bill. The Amendment expands the bill's meager timeline for calculating the amount of refunds owed to consumers when the Supreme Court reverses a PUCO decision. The Amendment would start the calculation of refunds owed consumers on the date when utilities begin to charge consumers. This reasonable approach would repay consumers for the full amount their utility improperly charged them. And the Amendment would stop the pain for electric consumers – that now is at \$1.5 billion and counting in denied refunds since 2008. We strongly support Rep. Troy's Amendment. See the attached chart for denied refunds.

The fairness and reform in Amendment 2964 can be contrasted with the unfairness of HB317 version 2489-1. There, on lines 45-46, HB317 would protect utilities from having to refund much to consumers. Refunds would be limited to amounts charged after the Court's decision, a very small increment of time that the PUCO can address without this law.

In reality, the anti-refund provision in HB317 will operate in favor of utilities. It will prevent the Court or the PUCO from overturning or distinguishing the outdated precedent of the 1950's Court decision on refunds. The bill's anti-consumer refund provision alone should preclude support for this bill. The bill's refund provision is a Trojan Horse.

HB317 proponents would claim that the bill limits what consumers could lose in denied refunds. On lines 34-39 of version 2489-1, the legislature would give the Ohio Supreme Court a deadline. The Court would have just 180 days for hearing and deciding an appeal from the PUCO. But it's not clear that the Court would find that short timeline workable. In fact, years ago the legislature tried something similar in enacting O.R.C. 4903.20. That law requires appeals from the PUCO to "be taken up and disposed of by the court out of their order on the docket." It is not clear that this similarly designed statute, in effect to this day, has limited losses for consumers.

Further, even if the Court reverses the PUCO in 180 days, utilities can collect a lot of money from consumers in that time – money that consumers will never get back under this bill. Add to those 180 days the 150 days that the bill allows for the PUCO to sit on applications for rehearing (which delays appeals). (Lines 26-29) The utilities' cash-register bells will be ringing with consumers' money.

Representative Troy's Amendment 2695 would address the PUCO's delay by limiting the PUCO's time to decide applications for rehearing to just 90 days. We support it.

One of the most important protections for energy consumers is the standard offer that the legislature required of utilities. The standard offer has been a competitively bid source of electricity and natural gas for consumers through auctions. But IGS and Direct Energy have been trying to increase what standard offer consumers pay relative to what marketer consumers pay. Recently the PUCO rejected this marketer enrichment scheme in Case 20-585. Now this anti-consumer marketer initiative has found a home in HB317 to overrule the PUCO. (Lines 766-770) It may explain why there has been marketer support for this bill.

This anti-consumer provision is disguised in the bill as avoiding “double recovery.” (Line 770) Similar to the anti-consumer refund provision in the bill, raising prices for standard offer consumers should earn strong opposition for a bill. If anything, consumer protection regarding energy marketing should mean legislation to ban: door-to-door energy sales; teaser rates; contracts that automatically renew (“evergreen”) at higher rates; and unconscionable charges.

Lines 915-917 of Sub. HB317 (version 2489-1) allow utilities to charge consumers for distribution system upgrades relating to customer investment in microgrids and electric vehicle charging stations. That is a bad result for consumers who could be charged to subsidize others’ investments. This provision may explain why the bill has support from environmental groups.

However, any utility upgrades to support these private investments in microgrids and charging stations should be paid by either the investor or those benefiting from the investment. The PUCO generally agreed with such an approach in its Aug. 29, 2019 *Power Forward* policy report, at page 19. There, the PUCO said “the Commission believes that the EV charging stations should operate within the sphere of a competitive marketplace, especially for home and private business charging.” The consumers of a monopoly utility such as AEP should not be forced to pay for distribution upgrades to subsidize private investment in microgrids and electric vehicle charging. The developers of these projects should be required to pay their way.

Lines 936-941 of Sub. HB317 allow energy-intensive customers to be billed directly for transmission costs. Currently each Ohio electric utility has a pilot program for large customers to be billed directly or to opt-out of the transmission riders. These pilot programs were approved by the PUCO with a *caveat*. The *caveat* is that the PUCO would examine the program to determine if consumers are paying for cost-shifting or subsidies to other consumers as a result of the large customers opting out.

After numerous requests by OCC for the PUCO to fulfill its commitment for a review, the PUCO recently committed to examining these pilot programs in, for example, Case 22-391. But coincidentally, just as the PUCO is finally acting to review any subsidy charges, HB317 could take the program decisions away from the PUCO. How convenient for large customers including some supporting this bill. The legislature should allow the PUCO’s review of possible subsidies etc. to proceed to conclusion (and to possible consumer protection) without interference from HB317.

In sum, consumer protections continue to be outweighed by consumer risks in HB317. The support of stakeholders for the bill can be at least partly understood by what policy, precedent or law will be overruled to their benefit in the bill. OCC’s opposition to this bill continues. Please do not enact HB317.

Thank you for your consideration.

**\$15.12 Billion**  
Charged to Customers  
(2000 - 2020)

# SUBSIDY SCORECARD

**\$1.31 Billion Projected**  
Charges to Customers  
(2021 - 2030)

- ELECTRICITY CHARGES TO OHIOANS -

## FirstEnergy

\$10.28 Billion

## AES Ohio

(formerly DP&L)

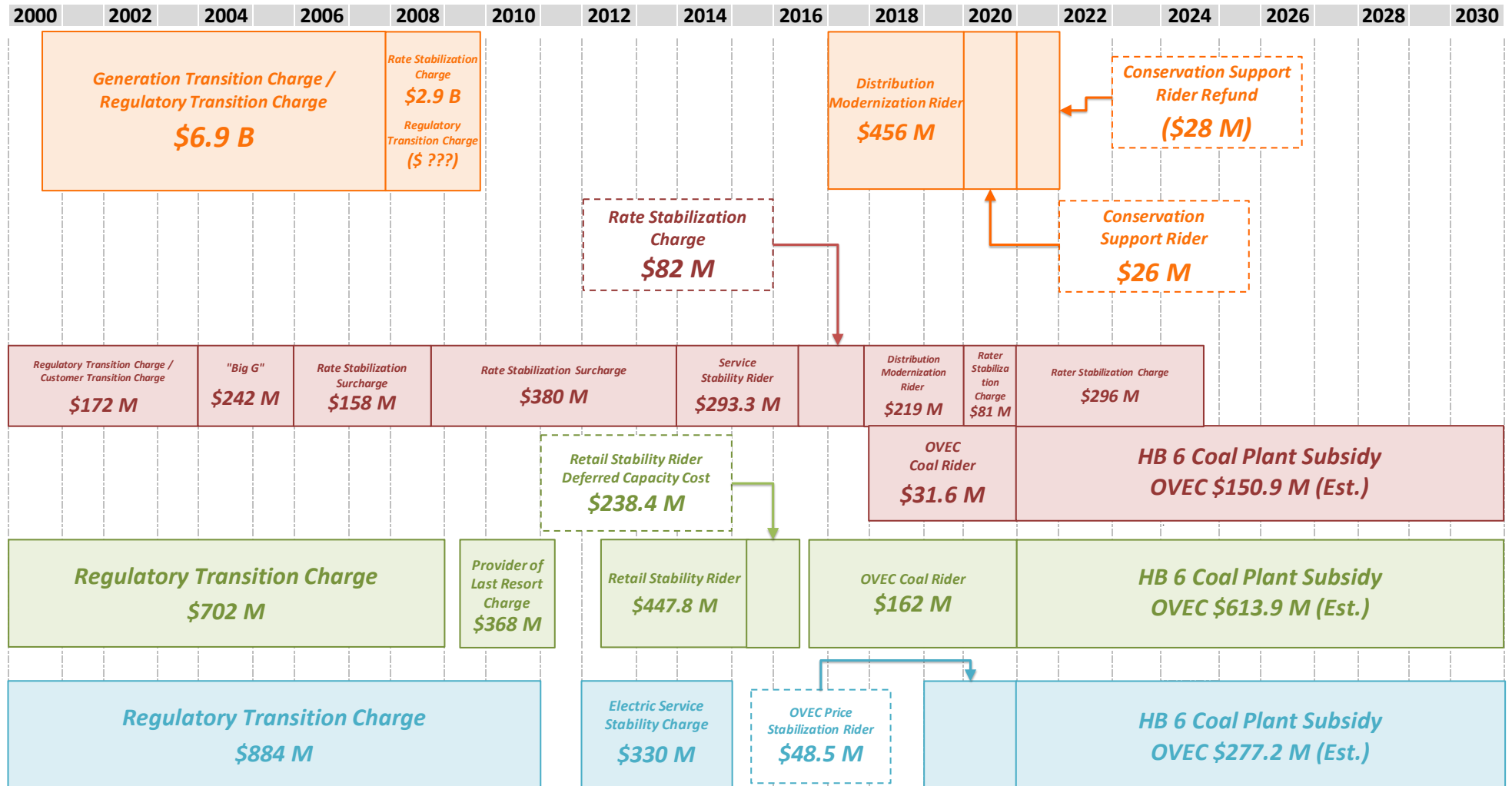
\$1.66 Billion

## AEP

\$1.92 Billion

## Duke

\$1.26 Billion



B=Billions; M=Millions

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## OHIOANS DENIED \$1.5 BILLION IN ELECTRIC REFUNDS SINCE 2009

