

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

Testimony On
House Bill 738 and House Bill 746
By
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On Behalf of the Office of the Ohio Consumers' Counsel
September 23, 2020

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 – and the sponsors and co-sponsors of House Bills 738 and 746 – for this opportunity to testify as a proponent of these bills. 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.

FirstEnergy (and its former generation subsidiary) like to make money the old-fashioned way – by convincing government to give it other people's money. Business has been good, with FirstEnergy collecting \$10 billion dollars in subsidies from Ohioans since Ohio's landmark electric deregulation law in 1999. OCC's Subsidy Scorecard shows that, since 1999, consumers have paid Ohio electric utilities nearly \$15 billion in subsidies. The Subsidy Scorecard is attached. The billion-dollar subsidy that Ohioans will pay to FirstEnergy's former power plant subsidiary (now called Energy Harbor) is just the latest subsidy at consumer expense.

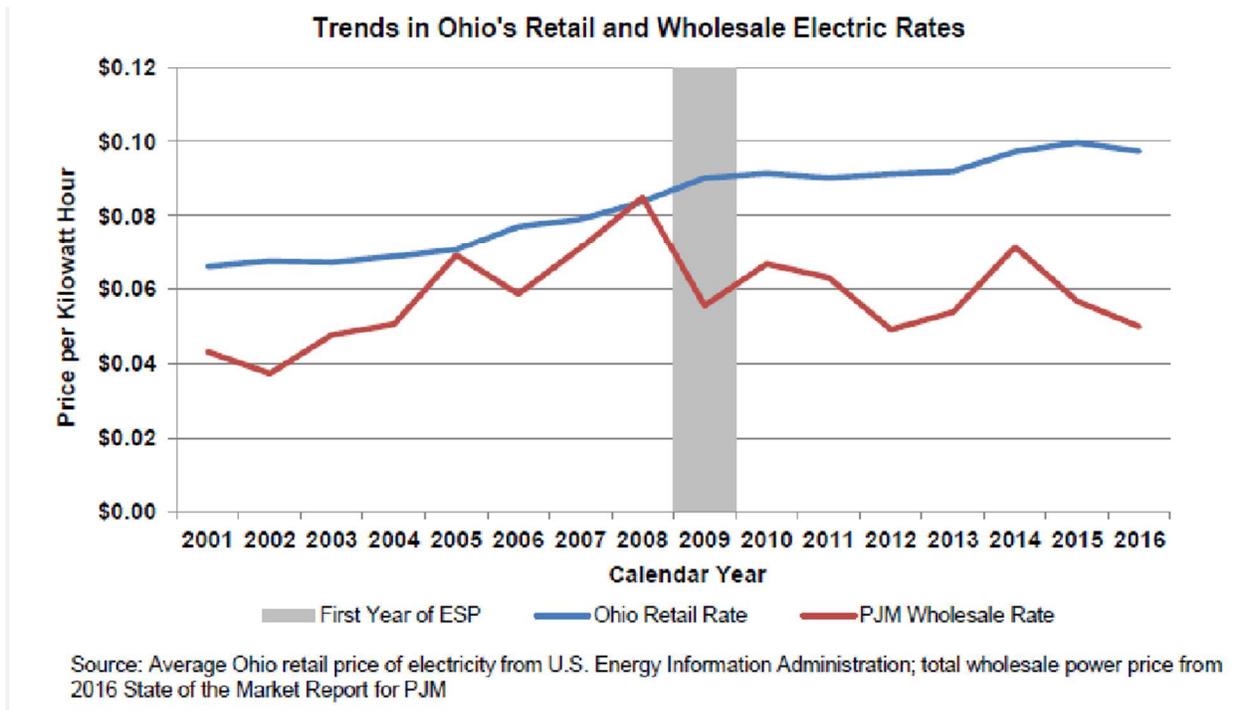
It is painful for consumers that FirstEnergy returned to seek more subsidies for these two nuclear plants given that consumers paid FirstEnergy \$7 billion to transition its power plants to competition under the 1999 law that was to end subsidies. The expectation then, under Revised Code 4928.38, was that consumers would not pay power plant subsidies in the future. But as the old expression goes, the more things change, the more they remain the same.

The jewel for consumers in the 1999 electric deregulation law is power plant competition. That competition lowers electric prices and increases innovation for the benefit of Ohio consumers. Market competition, not government, should decide where capital will be deployed for future innovation in power plants.

Frankly, we think the government should abstain from interfering in the market, with prime examples of interference being the subsidizing of nuclear and coal power plants in House Bill 6. We are agnostic on fuel source, and find it particularly dismaying that Ohio is favoring dirty, uneconomic 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.

In November 2017, the Legislative Services Commission prepared the following chart regarding then House Bill 247 by Representative Romanchuk. The chart shows how the regional wholesale power plant market (red line) is working to lower electric prices for Ohioans but the Ohio retail market (blue line) is not. See how LSC shows the regional wholesale rate declining

while the Ohio retail rate is rising. The LSC report is attached.



The House Bill 6 subsidies for the two former FirstEnergy nuclear plants will be \$150 million per year through 2027. The bill also continued the PUCO's bailout of the 1950s OVEC coal power plants through 2030, at public expense, to the tune of \$444 million in total. The bill also subsidizes large utility-scale solar plants at about \$20 million per year through December 31, 2027.

House Bill 6 also contains a so-called "decoupling" subsidy for FirstEnergy. We describe this subsidy as *the other bailout*. Decoupling is a ratemaking measure that decouples, or in other words separates, a utility's revenues from its sales. Utilities would say it helps encourage them to offer energy efficiency programs by having consumers pay the utility for revenues it loses due to consumers using energy efficiency. Utilities like (or love) decoupling when their revenues are declining. That's because, as stated, their regulator can require payments from consumers to make the utilities whole for their reduced revenues.

In justifying decoupling, utilities like to say that decoupling is balanced in that it could result in a payment to customers if revenues are higher and not just a payment to utilities if its revenues are lower. But it virtually never happens that consumers get a payment. That's because decoupling tends to be implemented in a one-sided way to help utilities at consumer expense. For example, we don't think it's mere coincidence that House Bill 6 allows FirstEnergy to decouple to a reference year (2018) that had some of the highest temperatures on record (meaning also higher electric sales revenues). We're not fans of decoupling charges but House Bill 6 has maybe the worst example of decoupling we've ever seen for consumers. House Bill 6 decoupling for FirstEnergy lacks any alleged redeeming quality such as being driven by support for energy efficiency programs (which are canceled in House Bill 6). Indeed, FirstEnergy's CEO recently referred to the decoupling benefit as helping the company be "recession proof."

The Ohio Manufacturers' Association estimates that FirstEnergy could charge consumers a total of about \$355 million over six years through 2024 (or longer until FirstEnergy files a distribution rate case) for this decoupling bailout. OMA's analysis can be found at this link: [https://ohiomfg.informz.net/ohiomfg/data/images/-%20OMA%20MEMO%20-%20HB%206%20Decoupling%20-%20FINAL%20\(Aug.%202014,%202020\).pdf](https://ohiomfg.informz.net/ohiomfg/data/images/-%20OMA%20MEMO%20-%20HB%206%20Decoupling%20-%20FINAL%20(Aug.%202014,%202020).pdf) In a repeal of House Bill 6, consumers should be freed from funding this outrageous decoupling benefit for FirstEnergy.

For these reasons and before we even get to the subject of the United States Criminal Complaint regarding House Bill 6, we support a repeal of House Bill 6. But we do also support House Bills 738 and 746 for a very prompt repeal because the bill is now *tainted*. FirstEnergy, a key player in the House Bill 6 process both as the former owner of the nuclear plants and as a

cheerleader for the bill, is prominently referenced in the Criminal Complaints (though FirstEnergy has not been charged with a crime to date).

In supporting repeal, we are also moved by our revulsion at the effort that helped subvert the referendum process for Ohioans. That subversive effort contributed to denying Ohioans their rightful opportunity to vote on repealing House Bill 6.

Now, we know some have said that House Bill 6 saves consumers money, because it eliminates the charges for green energy mandates for renewables and energy efficiency. We get the point. But we are guided by two concerns. First, we don't think a goal of ending the green energy mandates justifies legislation enabling the government and a big utility to interfere in the competitive market for power plant competition. Second and more importantly, this tainted bill must be repealed – and repealed promptly – out of respect for the public in whose name these processes of their government are conducted.

Further, we don't think the case has been adequately made that the calculation of the cost savings of House Bill 6 favor its retention. The Legislative Services Commission acknowledged, in its testimony on September 10, 2020, that its July 31, 2019 fiscal analysis does not account for the savings that consumers receive from energy efficiency. And LSC then also acknowledged that its analysis does not account for the negative impact on the market resulting from power plant subsidies.

Regarding the negative impact of House Bill 6 on the market, its passage already drove out investors from two Ohio natural gas plants: the Lordstown Energy Center's 940 MW natural gas-fired plant (in Lordstown, Ohio) and the Troy Generation Facility's 700 MW dual fuel plant (in Luckey, Ohio). Both were cancelled in the last twelve months. Those cancellations mean a

loss of \$1.6 billion of investment in Ohio, as described at this link:

<https://www.naturalgasintel.com/another-ohio-natural-gas-fired-power-plant-canceled-nuclear-subsidies-blamed/>

The case for repeal is further underscored by another event. Energy Harbor announced a stock buy-back requiring hundreds of millions of dollars despite it allegedly being a financially challenged company in need of a customer-funded bailout for nuclear power plants.

With regard to subsidies, we don't think there should be a subsidy in a mandate today for renewable energy. Renewable energy is a good thing that should now compete in the market on its merits. We think increasingly it will succeed in the market.

Also, while energy efficiency is a good thing, we prefer an approach to energy efficiency where consumers shop on their own in the market for their energy efficiency measures, without big utilities and government arranging it. We particularly object to the utilities charging consumers for profits (so-called "shared savings") on their energy efficiency programs. The legislature has allowed utility energy efficiency profits in the 2008 energy law and the PUCO has liberally granted it (up until very recently). Examples of this imposition on consumers' electric bills includes energy efficiency profits of \$25.7 million by AEP, \$7.0 million by DP&L, \$10.3 million by Duke, and \$12.7 million by FirstEnergy, just in 2018.

So we support House Bills 738 and 746 for an immediate repeal, especially given the background of the U.S. criminal allegations on top of the anti-consumer power plant subsidies. *House Bill 6 is tainted and it should go.* Even if the allegations turn out not to be crimes, the federal government's information is revealing of undue influence by FirstEnergy and possibly one or more other utilities, and the extreme efforts to defeat the ballot initiative at the cost of

Ohioans' right to vote. There is always an opportunity later, after a repeal, for the legislature to fine-tune other issues.

But having said that, we would also favor another approach – that of immediately repealing the coal and nuclear power plant subsidies, along with simultaneously fixing certain other problems for consumers. In this regard, the repeal of the coal subsidies in Section 1 (ORC 4928.148) of House Bill 6, should also include a provision barring the PUCO from reinstating its own subsidy of the coal plants at consumer expense. *Ohio should be done with making Ohioans subsidize coal power plants.*

Also as stated, in Section 1 (ORC 4928.471) of House Bill 6, the decoupling provision for FirstEnergy is *the other bailout*. It is unfair to make Ohioans pay (in the words of FirstEnergy CEO Chuck Jones) to “recession proof” FirstEnergy. Decoupling should be repealed.

Moreover, another section of House Bill 6 should be repealed now. Section 5 of House Bill 6 is a provision requiring the Ohio Development Services Agency to seek a waiver from the federal government regarding assistance to low-income Ohioans. This waiver is to enable ODSA to increase the use of the federal Low-Income Home Energy Assistance Program (“HEAP”) funds for subsidizing weatherization. But that weatherization reduces HEAP funds available for utility bill payment assistance for at-risk Ohioans. The primary concern here should be to keep at-risk Ohioans connected to their energy utility services, which is accomplished by HEAP bill payment assistance much more so than weatherization. Please note that many of our fellow Ohioans are especially in desperate need of money during the pandemic, so bill payment assistance is especially needed now. Further, weatherizing a home (that the low-income consumer potentially does not even own) is a far greater expenditure of the HEAP subsidy per consumer than bill payment assistance. That means using HEAP funds for weatherization helps

just a fraction of the consumers who can be helped using HEAP for bill payment assistance. The provision should be repealed.

Finally, there is an issue involving a “cousin” of House Bill 6. In the budget bill (H.B. 166) last year, there was a provision for Revised Code Section 4928.143(E) to benefit FirstEnergy regarding how its profits that consumers pay are calculated. That budget bill provision should also be repealed. House Bill 740 is good legislation that would solve the problem for consumers and it should be incorporated into the repeal of House Bill 6.

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).

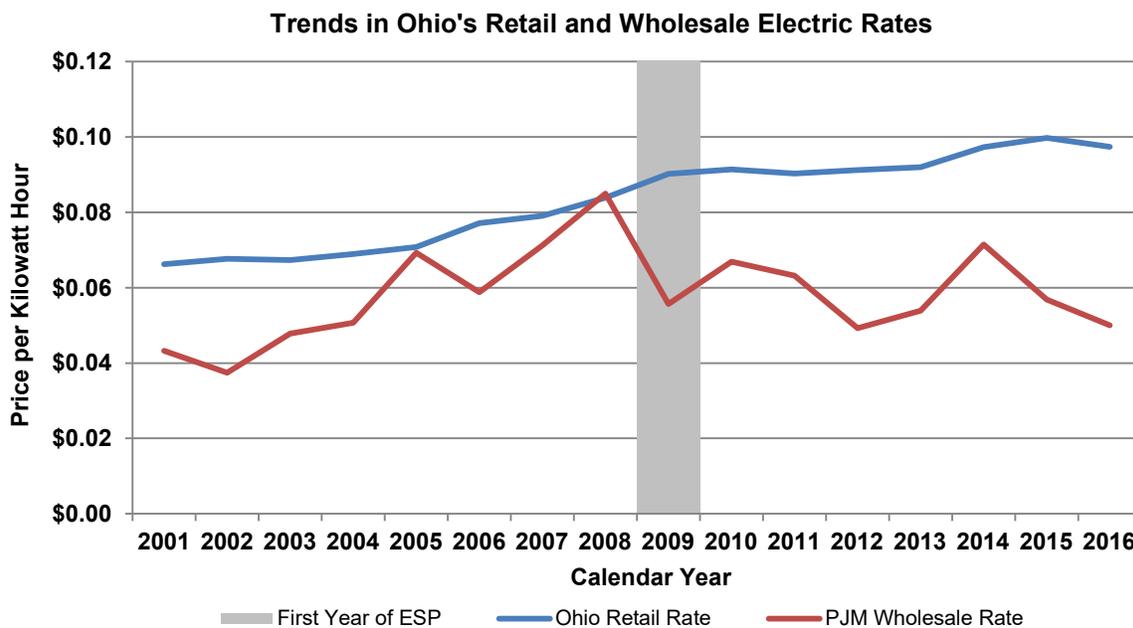
Elimination of electric security plans

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.

