February 11, 2025

Chair Holmes
Rep. Klopfenstein

Re: OCC Proponent Testimony on H.B. 15

Thank you for the opportunity to provide testimony on these important energy matters that the Committee is grappling with. I attach testimony from the Office of the Consumers' Counsel that supports the passage of H.B. 15. H.B. 15 is a step in the right direction and will do much to achieve an energy policy for the state that supports economic growth, increases personal well-being and improves the quality of life for Ohio families and businesses.

OCC's testimony covers a lot of ground. To assist you in navigating our rather lengthy testimony, I offer you the gist of OCC's testimony in bulleted form, along with the corresponding pages:

- H.B. 15 benefits consumers by continuing to deregulate power plants. Deregulation has worked for consumers. (Page 3)

- H.B. 15 rightfully excludes utility ownership of power plants so that the competitive market can continue to bring lower prices and greater innovation to consumers. Allowing utilities back into the generation market, with their funding from captive ratepayers, will interfere with the competitive market. (Page 3)

- H.B. 15 benefits Ohioans by ending the costly, consumer funded subsidies of the two coal plants owned in part by AEP, AES Ohio, and Duke. There is no reason to continue these subsidies. The end date of the subsidies should be the effective date of the bill. (Page 4)

- H.B. 15 repeals electric security plans and relies on market-based competition to provide generation service. That is a good thing that gets rid of the many costly riders and subsidies that have been charged to consumers under the PUCO-approved plans. (Page 8)

- H.B. 15 preserves the standard service offer that is essential to protect consumers. The standard service offer acts as a default service option for consumers choosing not to shop. It also provides a useful price to compare. (Page 9)

- The consumer choice billing program appears duplicative of current billing programs offered by utilities, causing consumers to pay twice for the same service. Marketers, not consumers, should pay for this program. (Page 10)

I look forward to presenting my testimony at the Committee Hearing on Wednesday, February 12, 2025.

Thank you.

Office of the Ohio Consumers' Counsel

Before
The Ohio House of Representatives

Energy Committee

Testimony on House Bill 15
(Amend competitive retail electric service law)

Maureen Willis, Agency Director
Ohio Consumers' Counsel

On Behalf of the Office of the Ohio Consumers' Counsel

February 12, 2025

Hello Chair Holmes, Vice-Chair Klopfenstein, Ranking Member Glassburn, and Committee members. I hope you and your colleagues are well. Thank you for this opportunity to testify as a proponent of House Bill 15.

My name is Maureen Willis. I am the Ohio Consumers' Counsel, the Director of OCC. OCC is the state agency that has been the voice for Ohio residential utility consumers for almost fifty years. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio's 4.5 million residential utility consumers.

OCC supports H.B. 15 and thanks Rep. Klopfenstein for his work on this consumer protection legislation. The legislation restores the General Assembly's vision in 1999 to deregulate power plants to bring the benefits of electric competition to Ohio utility consumers. That vision was impaired by the 2008 Energy law when so-called electric security plans were created with their increased involvement of government regulators.

In my testimony I will touch upon the most significant aspects of H.B. 15 as they affect Ohio utility consumers. I appreciate the opportunity to provide testimony on these important energy matters and look forward to continued dialogue with members.

Overview:

OCC supports the Mission Statement of this Committee enumerated by Chair Holmes. We all want Ohio's energy policy to support strong economic growth, increase personal well-being, and improve the quality of life for all Ohio citizens.

Under Ohio law, Ohioans are entitled to necessary and adequate utility service at reasonable rates.[1] State electric policy also requires that at-risk consumers [2] be protected and that the state's

[1] Ohio Revised Code 4905.22.

[2] Ohio Revised Code 4928.02-(L).

competitiveness in the global economy be facilitated.[3] House Bill 15 will help achieve these state policies.

For too long, the regulatory environment in Ohio has heavily favored utilities over consumers. Ohioans deserve legislation that restores fairness and balance to this system. H.B. 15 is a step in the right direction.

H.B. 15 goes "back to the future" by restoring the General Assembly's vision in 1999 for power plant deregulation and the benefits of competition for consumers. That vision was impaired in the 2008 Energy Law with the creation of the so-called electric security plans with their increased involvement of government regulators. The 2008 Energy law contained a dramatic shift –favoring monopoly utilities over consumers – in the ratemaking process that affects the electric bills for millions of Ohio consumers and businesses. The result for consumers has been more charges in the form of so-called "riders" and higher charges for paying subsidies to monopoly utilities. Under this legislation the electric security plans with their add-on charges and subsidies would end.

H.B. 15 also repeals the costly coal plant subsidies to Ohio utilities for two coal plants, Kyger Creek and Clifty Creek. These are the so-called "OVEC" (Ohio Valley Electric Corporation) plants. These coal subsidies to AEP, AES and Duke were codified under tainted H.B. 6. These coal subsidies are charged to Ohioans across the state through a charge known as the "Legacy Generation Resource Rider." *Importantly, getting rid of the coal plant subsidies will not mean the coal plants will shut down or jobs will be lost.* [4]

Since 2020, these coal plant subsidies have cost consumers $433 million.[5] These coal plant subsidies cost Ohioans $440,000 a day.[6] The subsidies need to end now and not linger on collecting millions more from Ohioans over the next several years. Refunds to consumers for these subsidies would also be a good addition to this legislation.

H.B. 15 preserves the utility standard service offer, the safety net for consumers. This is important for consumers because it allows consumers who do not want to shop for generation to nonetheless benefit from the competitive electric market. H.B. 15 also strengthens governmental aggregation programs which are another safe way for consumers to save money on their electric bill.

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[3] Ohio Revised Code 4928.02-(N).

[4] The OVEC power plants operate under the contractual arrangement between with the OVEC Corporation and the owners of the OVEC power plants, including the three Ohio electric distribution utilities. According to a Duke executive, the OVEC plants will continue to run even if the subsidies from consumers end. *See* Spiller Testimony before the Ohio House Public Utilities Committee (HB 260) May 22, 2024. "Those assets owned and operated by OVEC will continue to operate with or without that legacy generation rider." *See* Ohio Channel video, time marker 42:06 at https://www.ohiochannel.org/video/ohio-house-public-utilities-committee-5-22-2024?start=2526.

[5] This $433 million is the real time running total shown at OCC web counter as of February 10, 2025. *See* OCC website (https://www.occ.ohio.gov/), for a real-time counter showing the cumulative collection of the OVEC subsidy since 2020.

[6] *Id.*

Aggregation is a cost-effective means to get a substantial number of residential consumers to participate in the competitive market. By bringing together a large number of consumers, aggregators are able to achieve better pricing than individual consumers could obtain on their own. Aggregation has been a success for consumers who want to shop for their energy services, but don't' have the time or inclination to participate in the market through individual retail contracts.

H.B. 15 also continues to preclude utilities from owning generation. Allowing utilities back into the generation market, with guaranteed ratepayer funding, will destroy the competitive market which is working to bring consumers lower electricity prices and greater innovation. Deregulation of power plants works for Ohio families and businesses. Deregulation has contributed to competitive wholesale markets producing billions of dollars in savings for Ohio electric consumers. Researchers at Cleveland State University concluded that Ohioans had saved over $37 billion since 2011 due to deregulation and are on course to save another $2.7 billion in 2024. *See* https://www.nopec.org/media/iancc405/24nop032-wp_summary-page_r2_hi_20nov2024.pdf).

H.B. 15 also introduces some protections for consumers shopping for their gas or electric supply. It addresses the very common problems that consumers encounter when they sign a contract with a beginning low fixed price (teaser rate) for utility service. Such consumer protection is welcome. But more is needed to prevent consumers from being taken advantage of by unscrupulous marketers. Ohioans would benefit if H.B. 15 included the additional protection provided by a ban on door-to-door marketing to consumers. Existing PUCO rules do not provide sufficient protection.

I suggest a few clarifications or modifications regarding certain provisions of this legislation for your consideration. These suggested changes, if adopted, can offer additional consumer protection and further reduce utility costs for Ohio families and businesses.

CONTINUED DEREGULATION OF POWER PLANTS

The Ohio Consumers' Counsel commends the General Assembly for its landmark law in 1999 that deregulated power plants. Before Ohio's 1999 deregulation law, the PUCO was responsible for ensuring power plant reliability for Ohio consumers. That process created a challenge for state government to review massive utility investments in power plants and the related charges to consumers.

That old structure is to be distinguished from the current (and better) approach where Ohioans benefit from the far greater energy resources that can be called upon in the PJM region for reliability. And Ohioans have benefited from competition (instead of state regulation) for better prices and greater innovations. A FirstEnergy Vice-President emphasized these benefits in testimony before the Ohio House Public Utilities Committee: "…competitive markets work. They deliver the lowest price over the long-term to consumers, and the proof is undeniable." (Testimony of Leila Vespoli, October 19, 2011).

Power plants should remain a competitive market offering without monopoly utilities "competing" at the expense of their captive consumers.

REPEAL OF COAL SUBSIDIES

Subsidies disrupt markets and in turn harm Ohio consumers. We share the anti-bailout view of AARP. The AARP Policy Book 2019-2020 contains AARP's policy to "exclude subsidies or bailouts of generation facilities." (*See* https://policybook.aarp.org/node/4361.)

Others, including the General Assembly, have endorsed this assessment. One of the key consumer protections of the 1999 electric deregulation law is Ohio Revised Code 4928.38. It states: "The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market." (Emphasis added.) Those are words to live by, for electric deregulation and consumer protection.

State government should stop propping up old inefficient power plants, that cannot compete in the wholesale markets, at consumer expense. The market development period ended a decade ago. But Ohio utilities still have their hands out for corporate welfare from state government, at public expense. The coal subsidy for the two coal plants is preventing the competitive market from benefiting Ohioans with lower electric bills and a cleaner planet.

The financial burden of coal subsidies collected by AEP, AES and Duke on all Ohioans is enormous and well-documented, as recognized by Bill Sponsor Klopfenstein. Since the coal subsidies were written into law in 2020, Ohioans will have paid close to half a billion dollars to Duke, AES Ohio and AEP through the first half of 2025.[7] The coal subsidies are costing utility consumers $440,000 a day.[8]

Before I offer OCC's thoughts on an ending date to the coal subsidies, I want to quickly dispel some misconceptions you may have about these coal subsidies.

- Contrary to what you may have heard, the coal plant subsidies paid by utility consumers are not used to support the operation of the plants. These subsidies serve no purpose other than to line the pockets of the three Ohio electric utilities that own a share of the plants.

- The two coal plants operate and will continue to operate without subsidies from utility consumers. According to a Duke executive, the plants will continue to run even if the subsidies from consumers end.[9] This is not about preserving jobs or electricity generation for Ohioans.

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[7] OCC estimates that, from February 2020 through June 2025, the three electric distribution utilities, AEP, Duke and AES Ohio, have collected $495 million in OVEC subsidies under H.B. 6. This amounts to an average annual OVEC subsidies of $90 million over the five- and half-year period.

[8] *See* OCC website: https://www.occ.ohio.gov/.

[9] *See* Duke Executive Spiller's Testimony before the Ohio House Public Utilities Committee (HB 260) May 22, 2024. "Those assets owned and operated by OVEC will continue to operate with or without that legacy generation

- The existence and the operation of the coal plants does little to address the possible "surge" in energy demand from data centers and other economic development in Ohio. The energy produced by the plants is not dedicated to Ohio but gets bid into the regional power market that Ohio belongs to.

- The coal plant subsidies have not worked as a hedge against rising electricity prices, despite claims otherwise. The two Eisenhower era plants (one in Indiana) are outdated and inefficient. They produce power at a cost that is higher (sometimes much higher) than the market price of electricity. That is not expected to change in the future, even with higher market prices for electricity.[10]

H.B. 15 is right to end these coal subsidies. The coal subsidy should be repealed. And the PUCO should be prohibited from reinstating the coal plant subsidy. Let the market work.

As background, currently, three Ohio investor-owned utilities currently have an ownership interest in OVEC, as "sponsoring" companies, Ohio Power (19.93%), AES (4.9%) and Duke Energy Ohio (9%), for a total ownership of 33.8%. In October 1952, OVEC was formed to provide electric service to uranium enrichment facilities being constructed by the Atomic Energy Commission in Southern Ohio under an Inter-Company Power Agreement. OVEC's two generating plants began operations in 1955. The power agreement with the government was to last through December 31, 2002. On December 29, 2000, however, the U.S. Department of Energy notified OVEC that it would be cancelling the power agreement on April 30, 2003. Since April 30, 2003, the power and capacity from OVEC has been sold into the wholesale electric markets.

It was in 2006 when AEP, Duke, DP&L, and others decided to extend the OVEC agreement until 2030. And again, in 2011, they decided to extend the agreement – this time until 2040. As the coal plants became unprofitable, AEP, Duke and DP&L came looking to state government to make consumers pay subsidies to cover these utility losses.

The PUCO answered that call. The PUCO allowed AEP, Duke and AES to collect money from consumers to subsidize the utilities' losses, after finding that the subsidies were permitted under the electric security plan law. When the PUCO originally granted the coal plant subsidy, PUCO Chair Asim Haque wrote "This should not be perceived as a blank check, and consumers should not be treated like a trust account." [11] It is too bad for Ohio consumers that Chair Haque's words

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rider." *See* Ohio Channel video, time marker 42:06 at https://www.ohiochannel.org/video/ohio-house-public-utilities-committee-5-22-2024?start=2526.

[10] This was recently confirmed by Fitch, a bond rating agency. Fitch concluded that "While regional demand growth (especially from data centers) may tighten energy markets, Fitch expects OVEC's all-in costs to exceed prevailing merchant power prices, making the plants uneconomical for the foreseeable future."

[11] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement*, PUCO Case 14-1693-EL-RDR, Opinion and Order, Concurring Opinion of Chairman Haque at p.5 (March 31, 2016); http://dis.puc.state.oh.us/TiffToPDf/A1001001A16C31B40932C01840.pdf

have not been heeded by the PUCO or the legislature. By 2030, H.B. 6 will have provided that "blank check" to AEP, Duke and AES for $700 million, according to OMA in a 2020 study.[12] And that does not include the many millions of dollars consumers were made to pay for the coal plants under PUCO subsidies prior to H.B. 6.

The PUCO's external auditors who reviewed these subsidy charges revealed that the plant owners do not limit costs enough, as they often run the plants when the wholesale electric prices do not cover the plants' variable costs. The auditor of AEP's OVEC subsidy charge stated "The OVEC plants are offered into the PJM DA [day ahead] market as 'must run,' there are times during which the PJM DA prices [do] not cover the variable rates of running the plants."[13] Two separate auditors have recommended the OVEC Operating Committee meet more frequently to "prevent plants from running when energy prices are too low to cover variable costs."[14] AEP responded to the auditor's recommendation by saying it "felt the current meeting schedule was adequate and they do not plan to make any changes."[15] Meanwhile consumers are losing money. It is obvious the coal plant owners would be making better business decisions if they owned their losses instead of having a bailout from consumers, courtesy of H.B. 6. The H.B. 6 subsidies have worsened the coal plants' response to the market by removing the market's discipline for increasing efficiencies or decreasing expenses. Consumers bear the cost.

AEP is the loss leader for making consumers pay its OVEC coal plant subsidies. While AEP's Ohio share of OVEC is 19.93%, AEP utilities in the region own more than 40% of the two OVEC plants. So, when you think about who the driver is for the coal plant subsidies from state government at consumer expense, especially think about AEP.

H.B. 6 codified these coal plant subsidies, taking them out from under the PUCO's discretionary rulings. H.B. 6 guaranteed the subsidies beginning January 1, 2020, and extended charges to consumers until 2030. The claimed reason for subsidizing these coal plants that are relics of the 1950's is "national security." To explain why the connection to national security ended long ago for these plants, I have attached testimony from the Industrial Energy Users in this chamber on June 6, 2017. There is no present national security interest that justifies making Ohioans pay AEP, DP&L and Duke to subsidize these inefficient and dirty-air plants. Subsidizing these plants is unfair to Ohio families and businesses who pay for the subsidy.

In this regard, the Ohio Energy Group testified about H.B. 6 repeal in September 2020. In that testimony before the House Select Committee on Energy Policy and Oversight, OEG's witness

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[12] "Ohio's Costly – and Worsening – OVEC Situation," J. Seryak and P. Worley (November 12, 2020); https://www.ohiomfg.com/wp-content/uploads/Ohios-Worsening-OVEC-Situation-11.9.2020-Final.pdf

[13] Audit of the OVEC Power Purchase Agreement of Ohio Power Company" at p. 52, by London Economics, PUCO Case No. 18-1759-EL-RDR (September 16, 2020); https://dis.puc.state.oh.us/TiffToPDf/A1001001A20I17B31207C02236.pdf

[14] *Id*. at page 53.

[15] *Id*. at page 10.

responded to questioning by saying "OVEC is a thorny problem.... What benefit do customers get from OVEC? Not really much. No. It's a burden...."[16] We agree.

A utility should "be fully on its own in the competitive market," as we quoted above from O.R.C. 4928.38. That means markets, not utility monopolies (and subsidies), should determine what consumers pay for power plant generation. The coal plant subsidies in tainted House Bill 6 for AEP, Duke and AES/DP&L should be repealed for consumer protection. That repeal should result in lower electric bills and less air pollution.

The next question is when the coal subsidies should end. The answer should be now, or in the parlance of the bill, on the effective date of the bill (just like the Solar Generation Fund ends with the bill's effective date). These H.B. 6 subsidies should not continue to be collected from consumers through the end of the currently existing utility plans. The H.B. 6 coal subsidies are charges that have nothing to do with the utilities' approved electric security plans.[17] Since the passage of H.B. 6, the subsidies have been collected in separate PUCO cases, outside of the utilities' electric security plans.

Extending the coal subsidies beyond the effective date of House Bill 15 will be very costly for Ohio's utility customers. If the coal subsidies continue through the end of Ohio utilities' approved ESPs, it will add another $240 million to Ohioans' electric bills.[18]

The sooner the H.B.6 subsidies are repealed, the better. Ohio's utility consumers have borne the financial burden of these plants far too long.

I would also urge you to consider writing into H.B. 15 refunds to consumers for the coal subsidies paid for by consumers under tainted H.B. 6.[19] Refunds to consumers for these charges would do much to restore the public's trust in their Ohio government. The H.B. 6 scandal has

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[16] Testimony of Mike Kurtz for the Ohio Energy Group, House Select Committee on Energy Policy and Oversight (September 23, 2020) (answering questions following his prepared testimony) http://ohiochannel.org/video/ohio-house-select-committee-on-energy-policy-and-oversight-9-23-2020 (at video time marker 2:26:46).

[17] The Legacy Generation Resource Rider was first established in PUCO Case No. 19-1808-EL-UNC, Entry (November 21, 2019). The Entry stated "*In accordance with applicable legislative directives, the Commission establishes a replacement nonbypassable rate mechanism for the retail recovery of net legacy generation resource costs pursuant to R.C. 4928.148 for the period beginning January 1, 2020 and extending up to December 31, 2030.*" The subsequent update of the rider was filed by the electric distribution utilities individually. *For example*, AEP's updates were filed in PUCO Case No. 20-1118-EL-RDR.

[18] This amount is calculated using a monthly collection of $7.5 million (i.e. annual collection of $90 million calculated from the $495 million collected over the five and half year period of 2020 to the first half of 2025) and the respective shares of AEP (58.91% or $4.418 million), Duke (26.60% or $1.995 million), and AES Ohio (14.48% or $1.086 million) based on their shares of the electricity generated by the two OVEC power plants. If the coal subsidies are extended through the end of the utilities' electric security plans, AES Ohio will collect 14 additional months of coal subsidies, and AEP and Duke will collect 35 additional months of coal subsidies.

[19] In a related vein, money collected from consumers for the Solar Generation Fund charge that has not been used should be refunded to consumers.

been described as "likely the largest bribery, money laundering scheme ever perpetrated against the people of the state of Ohio.... This was pay to play."[20]

The General Assembly can turn the clock back, as it did with other provisions of tainted H.B. 6. For instance, through House Bill 128 (134th General Assembly) the decoupling provision written into H.B. 6 was repealed and refunds were required for decoupling charges collected from consumers. Subsequently, FirstEnergy did refund the money collected and with interest to consumers. Refunds of the coal subsidies paid under tainted H.B. 6 can be legislated and should be. This is a needed protection given the sorry history of the lack of refunds for Ohio utility consumers. Attached is an OCC pie chart showing $1.5 billion in refunds denied to electric consumers since the 2008 energy law, after the Supreme Court invalidated various PUCO-approved charges.

REPEAL OF ELECTRIC SECURITY PLANS

OCC has been a strong advocate of regulatory reform of electric security plans.[21] OCC supports the repeal of the electric security plan statutes as soon as possible.

Electric security plans allow utilities to charge consumers for costly "riders." Riders are add-on charges that allow utilities to cherry pick expenses and investments for expedited recovery with limited review. That ratemaking is an exception to Ohio rate case law that otherwise requires utility expenses, revenues and profits to be considered together in a case. Standard ratemaking does not allow such riders. Under an electric security plan, there is almost no limit on the type of riders the electric utilities can ask for. Our recent tally shows that Ohio Power has twenty-eight riders, Duke has thirty-eight riders, and AES has fourteen riders. The FirstEnergy Utilities take the prize with 46-48 riders.

Utilities also use electric security plans to obtain millions of dollars in subsidies from their consumers. These subsidies come in many sizes, shapes, and forms: lost revenues, decoupling, stability riders, distribution modernization charges, credit support, etc. OCC's subsidy scorecard gives you an idea of the magnitude of the subsidy problem for utility consumers, with its $15.5 billion tally of subsidies paid for by consumers over the years (2000 to 2025). Approximately $3.7 billion is for subsidies paid under electric security plans implemented in 2009 and later and the OVEC coal subsidies under H.B. 6; about $11.8 billion reflects subsidies consumer paid to transition to deregulation. I have attached OCC's subsidy scorecard for reference.

There's more not to like about electric security plans. The 2008 Energy Law allows electric utilities to charge consumers for excessive profits- just not "significantly excessive profits." That was an unfortunate modification to Ohio law which otherwise gives utilities only an opportunity to earn a "fair and reasonable" amount of profit based on current market conditions.

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[20] 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/.

[21] *See, for example*, Consumers' Counsel Maureen Willis's testimony on Senate Bill 143 on January 23, 2024 in https://www.occ.ohio.gov/testimony/sb-143/2024-01-23.

The 2008 Energy Law also allows electric utilities to withdraw their electric security plans if they don't like the outcome of a PUCO order. It gives the utility a veto over the regulator and serves as an oversized bargaining chip that is used against other stakeholders. Ohio law does not give any other stakeholder this option to reject a PUCO decision.

There has been some talk that electric security plans are needed for economic development. They're not. You've given the PUCO separate authority for that. And in electric security plan cases what passes as "economic development" can itself be part of the problem of the subsidy culture where utilities seek to get signatures on settlements for their subsidies with financial offers to others.

It's time to put a stop to this pro-utility, anti-consumer ratemaking. Ending these plans will go a long way in providing needed financial relief to Ohioans who are facing affordability challenges.

H.B. 15 allows current electric security plans to continue till their scheduled end. AES consumers would pay electric security plan rates through August 2026. AEP and Duke consumers will pay electric security plan rates through May 2028.[22] FirstEnergy consumers pay electric security plan rates under FirstEnergy's fourth electric security plan, which is in effect until its next electric security plan is approved. FirstEnergy has filed a new plan that has yet to be approved. Its pending plan would end in May 2028.

For clarity and to give much needed relief to utility consumers paying electric security plan rates, we suggest that H.B. 15 be amended to allow the plans to end as scheduled, but in no event later than 5/31/2028.

PRESERVATION OF THE STANDARD SERVICE OFFER

The electric utility's standard service offer is essential to protect consumers. The standard service offer is the generation price that has been set either through a market rate offer or an electric security plan. While not perfect, the standard service offer is important to consumers. First, it is a default price option for generation service if consumers choose not to shop or if shopping is not available to them. Second, the standard service offer has been a useful price-to-compare (a benchmark) for consumers who are considering other choices. The utilities' standard offer has been a competitive success story for consumers over many years.[23] The utilities' standard offers are a result of the fierce competitive bidding by suppliers to serve consumers. Consumers get the benefit of a market rate offer without the challenges of door-to-door sales, telemarketing and so forth.

[22] Duke has an ESP pending with an end date of May 2028 that has not been approved by the PUCO.

[23] *See, e.g.*, a recent Wall Street Journal story reflecting the importance of standard offers for consumers and that may marketer consumers are losing compared to the standard offers: https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623. *See also* a similar Columbus Dispatch story based on Columbia Gas data showing that, in the aggregate, marketer consumers are losing compared to Columbia's standard offer:
https://www.dispatch.com/article/20160404/NEWS/304049819

Energy marketers oppose utilities' standard offers as can be seen in the "principles" of the Retail Energy Supplier Association. There, the marketers' association states that: "Default service should be …viewed as transitional, with a date certain set to achieve full retail energy competition where all customers are served by competitive suppliers and local distribution utilities are not involved in retail supply."

The standard service offer is a safety net for consumers that must be preserved to protect consumers. Care must be taken to avoid loading up the standard service offer with costs that really belong to energy marketers. Requiring utility consumers to fund energy marketer costs is a consumer-funded subsidy that contributes to higher utility bills for consumers.

That brings us to the provision in H.B. 15 that establishes a new, untested Consumer Choice Billing Program, administered by the PUCO (*See* Lines 612-621, 2109-2114, and 2181-2497). Under this program energy marketers can elect to provide consolidated billing services, even though billing services are already being provided by regulated utilities and have been paid for by all utility consumers. The costs of the duplicative billing program would be paid for (subsidized) by Ohio families and businesses through utilities' distribution rates (Lines 2376-2380). That is unfair and unreasonable.

It is wrong to charge consumers for a new billing system when they have already paid for the utilities' billing system. This would be a double charge to consumers for a service related to competitive generation paid for under regulated utility rates. And costs related to a marketers' consumer billing services are costs that rightly should stay with the marketer.

If the consumer choice billing program goes forward, creating additional costs, the costs should be borne by the cost causer -- marketers, not by captive consumers of the electric distribution utility. For consumer protection, please do not require utility consumers to pay for duplicative billing systems of a marketer. This will only result in higher prices for Ohio families and businesses to fund greater profits for marketers.

CONCLUSIONS

To summarize, the current Ohio statutes allowing electric security plans and coal plant subsidies benefit utilities but at too great a cost to everyday Ohioans. The best way forward for protecting Ohioans and for growing the Ohio economy is to fully repeal the electric security plans statutes and end the unneeded coal plant subsidies. Doing so will provide significant financial relief to millions of Ohio citizens and businesses. Over time, House Bill 15 will enable a modern and constructive regulatory framework.

There is little doubt that many challenges lie ahead in ensuring all Ohio citizens have reliable and affordable energy. It will be a long and winding journey. House Bill 15 is certainly a positive step forward.

Thank you again for this critical consumer protection legislation. I will be happy to answer your questions.

Senate Bill 155

Senate Public Utilities Committee

Prepared Statement of Sam Randazzo
General Counsel
Industrial Energy Users-Ohio

June 8, 2017

Mr. Chairman, Ranking Member Williams, Members of the Senate Public Utilities Committee, I am Sam Randazzo. I am here today in my capacity as General Counsel for the Industrial Energy Users-Ohio ("IEU-Ohio"). IEU-Ohio is a trade association that was created more than 25 years ago to help Ohio businesses address issues affecting the price and availability of energy. I have included a list of IEU-Ohio's members in Appendix A, attached to my testimony.

The purpose of my testimony is to discuss Senate Bill 155 ("SB 155") as it has been presented to the Committee by Senator Terhar and share some suggestions with this Committee that may be useful as you develop a final version of the legislation. My perspective on this topic is that of a person who has walked the Ohio energy beat for most of the time since the Ohio Valley Electric Corporation ("OVEC") began operating its generating plants in Ohio and Indiana.

Attachment B to my testimony contains a number of questions and answers which I have prepared to provide you with: (1) information on the history of the OVEC, a public utility subject to the jurisdiction of the Public Utilities Commission of Ohio ("PUCO"); (2) information on the wholesale relationship between OVEC's Indiana, Kentucky and Ohio operations and the electric distribution utilities ("EDU") that seem to support the current version of SB 155; and, (3) information that indicates the potential for the current version of SB 155 to give these EDUs the right to privatize the reward and socialize the risk associated with their for-profit business relationship with OVEC, which would have ended long ago but for their voluntary election to twice extend a contract (the Inter-Company Power Agreement or "ICPA") which now runs into June 2040 as a result of extensions in 2004 and again in 2011. These extensions of the ICPA occurred well after the federal government pulled out of the nuclear enrichment project in Piketon, Ohio and well after Ohio and the federal government established laws and regulations calling for the electric generation business to be competitive, devoid of "captive customers" and stand on its own in the marketplace.

The current version of SB 155 would socialize the business and financial risks which these for-profit EDUs elected to sign up for (and twice extend) by requiring retail customers having no connection to or responsibility for OVEC to pay the EDUs the difference between the OVEC-related costs the EDUs incur because of the ICPA and the revenue they would obtain by selling their share of the OVEC electricity production at a market-based price (this difference is the "above-market OVEC costs").

After profiting from their chosen relationship with OVEC for many decades and extending the life of this profit opportunity, these EDUs now want customers to step into their EDU shoes because, as is the case with a lot of older coal and nuclear generating plants, the OVEC generating plants in Ohio and Indiana are not as competitive as they once were.

SB 155 will not make the OVEC generating plants more competitive; it just transfers to customers, and away from the EDUs or their affiliates, the financial responsibility for the challenges the OVEC plants are facing.

Now, if you have heard me testify previously, you know that I could drone on for hours and provide you with mountains of "geeky" information in support of the position on the current version of SB 155 that I have just summarized. But the purpose of my testimony today is not to "pile on" or "beat a dead horse".

Rather, I will use the balance of my testimony to offer some suggestions on how SB 155 could be improved and made fairer to customers while establishing a framework that would incentivize OVEC, OVEC's shareholders and the Sponsoring Companies[1] to develop and implement actions to address the underlying problems with the OVEC generating plants in Indiana and Ohio.

The suggestions are presented in order based on preference; the first suggestion is the most preferred.

The suggestions assume that any enabling legislation would end any previously authorized mechanism for OVEC-related costs that has been approved by the PUCO.

Suggestion 1 – Leverage the PUCO's Accounting Authority

As I have already mentioned, OVEC is a public utility (a one-customer public utility) subject to the PUCO's jurisdiction. Among other things, the PUCO supervises the accounting practices of public utilities and can authorize public utilities to adopt accounting practices dealing with the matching of expenses and revenue. More specifically, the PUCO can authorize a public utility to defer recognition of an expense (regulatory asset) or revenue (regulatory liability). This accounting authority provides a means of stretching out or phasing in the recognition of expenses and revenue so as to avoid abrupt or uneven impacts in a particular time period that would otherwise control but for the use of deferral accounting. In some cases, the PUCO has already authorized EDUs to defer OVEC-related costs.

The OVEC-related costs that show up at the EDUs originate at OVEC. So, this suggestion calls for the PUCO to permit OVEC to defer above-market costs and then amortize the deferred costs through the application of OVEC's dividends and any gain on the sale of electricity produced by the OVEC generating plants in Ohio and Indiana, the operation of OVEC's transmission assets and retail sales OVEC either makes or

[1] The Sponsoring Companies are identified in Appendix B.

arranges for its remaining customer. Since OVEC is a public utility subject to the jurisdiction of the PUCO, OVEC can request this accounting treatment from the PUCO under current law; **no legislation is required to implement this suggestion**.

This suggestion, if implemented, would avoid the above-market **or below-market** OVEC-related costs hitting the books of the EDUs so that their earnings are not affected by their OVEC relationship.

This suggestion, if implemented, would not tag innocent-bystander-customers with the above-market OVEC-related costs and would not give them the benefit of below-market OVEC-related costs.

This suggestion, if implemented, would continue to place responsibility for addressing OVEC-related challenges with OVEC's shareholders and the Sponsoring Companies including the EDUs that support the current version of SB 155. Based on a report issued by Moody's Investment Service which I discuss in Appendix B to my testimony, it appears that OVEC's shareholder and the Sponsoring Companies have started a process to "modernize" the various OVEC-related agreements. I strongly recommend that you not do anything in SB 155 that weakens the incentives that OVEC's shareholder and the "Sponsoring Companies" currently have to proactively identify and remedy problems that may negatively affect OVEC's going-forward viability. Among other things, these problems include a highly leveraged capital structure (mostly debt capital) and relatively high interest rates for the debt. Some of the older debt is maturing and as this debt matures, OVEC should be able to reduce its weighted average cost of debt and thereby reduce its "fixed costs".

Suggestion 2 – Make Any OVEC-Related Retail Charge Bypassable

The electric generation business is a competitive business in Ohio and as a result of the regulatory structure that has been put in place at the federal level. This Ohio and federal structure gives customers the right to select their generation supplier (a

Competitive Retail Electric Services or "CRES" provider). If a customer obtains generation supply from a CRES provider, the cost of the generation supply available from the EDU (the default supplier) is avoided (bypassable) by the customer.

This suggestion, if implemented, would make any OVEC-related charge approved by the PUCO fully avoidable by customers.

This suggestion, if implemented, would continue to place some responsibility for addressing OVEC-related challenges with OVEC's shareholders and the Sponsoring Companies including the EDUs that support the current version of SB 155.

Suggestion 3 – Cap Any OVEC-Related Retail Non-Bypassable Charge and Sunset the Burden Transferred to Customers

Over objections, the PUCO has approved riders for the recovery of OVEC-related costs. The current OVEC-related rider for AEP-Ohio (also known as Ohio Power Company) costs a "typical" residential customer (1000 kilowatt hours per month) about $2.50 per month. To illustrate how this suggestion might work, I will use this $2.50 per month amount.

Under this suggestion, a non-bypassable charge capped at no more than $2.50 per customer per month would be established and the non-bypassability feature would end (sunset) by no later than December 31, 2023. The above-market OVEC-related costs (exclusive of any return on equity) that hit an EDU's books would be deferred with the capped non-bypassable charge used to amortize the resulting regulatory asset (exclusive of any return on equity). The actual charge per month could be less than $2.50 if the actual net OVEC-related deferred costs could be amortized through a lesser charge but never greater than $2.50 per month. Any OVEC-related above-market costs remaining on the books of the EDUs as of December 31, 2023 would be subject to amortization exclusively through the application of any dividends received from OVEC and any gain made on the sale of the OVEC generation supply in the wholesale market.

This suggestion, if implemented, would limit and make any non-bypassable OVEC-related charge approved by the PUCO certain and predictable for customers. Beyond a "transition period", the innocent-bystander customers would be off the hook for the above-market OVEC-related costs which hit the EDUs books as a result of their decision to extend the ICPA.

This suggestion, if implemented, would continue to place some responsibility for addressing OVEC-related challenges with OVEC's shareholders and the "Sponsoring Companies" including the EDUs that support the current version of SB 155.

Thank you for the opportunity to share information and our perspective on the current version of SB 155 with you. I hope my testimony, the information and the suggestions are useful.

In my remaining time, I will do my best to answer any questions.

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Appendix A

IEU-OHIO'S MEMBER COMPANIES

Abbott Nutrition
Airgas, Inc.
AMAC Enterprises, Inc.
American Greetings Corporation
American Manufacturing Inc.
Anheuser-Busch Companies, Inc.
Appvion, Inc.
Area Aggregates, LLC
ASHTA Chemicals Inc.
Ashtabula Rubber Co.
Aurora Plastics, Inc.
Automation Plastics Corporation
Avalon Precision Casting Company, LLC
Avon Lake Regional Water
Barberton Steel Industries
Bescast, Inc.
Burton Rubber Processing
BWX Technologies, Inc.
ClarkDietrich Building Systems
Cleveland Cavaliers
Cleveland Indians
Cleveland Museum of Natural History
Cobra Plastics, Inc.
Component Repair Technologies, Inc.
Cristal USA Inc.
DRS Industries Inc.
Duramax Marine, LLC
Energizer Manufacturing, Inc.
Eramet Marietta Inc.
Falcon Foundry Company
Federal Metal Company, The
Ferriot, Inc.
Flambeau, Inc.
Glen-Gery Corporation
Globe Metallurgical, Inc.
GoldKey Processing, Inc.
Independent Franchises DBA McDonald's
Iten Industries
J.H. Routh Packing Company
Jack Thistledown Racino
Jacobson Manufacturing LLC
Jet Rubber Company
John Carroll University
Kent Elastomer Products, Inc.
Kent State University
Kraton Polymers U.S. LLC
Landmark Plastic Corporation
Lincoln Electric Company
Marathon Petroleum Company
Mar-Bal Incorporated
McGean-Rohco, Inc.
Mercury Plastics, Inc.
MetalTek International
MICA
Miceli Dairy Products, Inc.
Milliron Iron & Metal, Inc.
Mondeléz International
Neff-Perkins Company
Norman Noble, Inc.
Ohio Star Forge Co.
P.H. Glatfelter Co.
Paulo Products Company
Plastipak Packaging Inc.
Pressure Technology, Inc.
Quaker City Castings
Quintus Landlord LLC
Rothenbuhler Cheesemakers, Inc.
RTS Companies, Inc.
Saint Gobain Companies
Sajar Plastics, LLC
Salem-Republic Rubber Company
Sauder Woodworking Co.
Tate & Lyle Americas, Inc.
TimkenSteel Corporation
Toledo Refining Company, LLC
Tri-Cast Ltd.
Trilogy Plastics
U. S. Steel Seamless Tubular Operations, LLC
U.S. Casting Company, Inc.
University of Akron
USG Corporation
Vallourec Star
Viking Forge Corporation
Welded Tubes, Inc.

Statement of Sam Randazzo
Appendix B

Senate Bill 155

Ohio Valley Electric Corporation Q & A

Q 1. What is the Ohio Valley Electric Corporation ("OVEC") and who owns OVEC?

A. OVEC is an Ohio corporation which owns and operates facilities for the generation, transmission and sale of electric power and energy in Ohio and owns and operates facilities for the transmission of electric power and energy in Kentucky. It was organized by ten participating companies which are all owners of OVEC's capital stock to supply, with fifteen Sponsoring Companies, the entire power requirements of the gaseous diffusion plant near Portsmouth, Ohio. The gaseous diffusion plant was originally owned and operated by the United States Atomic Energy Commission until January 19, 1975 and from that date until September 30, 1977 by the United States Energy Research and Development Administration which, under the Energy Reorganization Act of 1974, succeeded to certain functions of the Atomic Energy Commission, and thereafter by the United States Department of Energy ("DOE").[2]

Below are additional descriptions of OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation that are taken from documents generated by OVEC.

> Ohio Valley Electric Corporation (OVEC) and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation (IKEC), …, were organized on October 1, 1952. The Companies were formed by investor-owned utilities furnishing electric service in the Ohio River Valley area and their parent holding companies for the purpose of providing the large electric power requirements projected for the uranium enrichment facilities then under construction by the Atomic Energy Commission (AEC) near Portsmouth, Ohio.
>
> OVEC's Kyger Creek Plant at Cheshire, Ohio, and IKEC's Clifty Creek Plant at Madison, Indiana, have nameplate generating capacities of 1,086,300 and 1,303,560 kilowatts, respectively. These two generating stations, both of which began operation in 1955, are connected by a network of 705 circuit miles of 345,000- volt transmission lines. These lines also interconnect with the major power transmission networks of several of the utilities serving the area.

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[2] PUCO Case No. 01-482-EL-AIS, OVEC's Application and Statement, pages 1 and 2 http://dis.puc.state.oh.us/TiffToPDf/CA_2IN$_F1PBG7N_.pdf

The current Shareholders and their respective percentages of equity in OVEC are:

Allegheny Energy, Inc.	3.50%[3]
American Gas & Electric Company, Inc. [holding company – now AEP]	39.17%
Buckeye Power Generating, LLC	18.00%
The Dayton Power and Light Company	4.90%
Duke Energy Ohio, Inc.	9.00%
Kentucky Utilities Company	2.50%
Louisville Gas and Electric Company	5.63%
Ohio Edison Company	.85%
Ohio Power Company [Columbus Southern]	4.30%
Peninsula Generation Cooperative	6.65%
Southern Indiana Gas and Electric Company	1.50%
The Toledo Edison Company	4.00%

These investor-owned utilities and affiliates of generation and transmission rural electric cooperatives comprise the Sponsoring Companies and currently share the OVEC power participation benefits and requirements in the following percentages:

Allegheny Energy Supply Company LLC[4]	3.01%
Appalachian Power Company	15.69%
Buckeye Power Generating, LLC	8.00%
The Dayton Power and Light Company	4.90%
Duke Energy Ohio, Inc.	9.00%
FirstEnergy Solutions Corp.	4.85%
Indiana Michigan Power Company	7.85%
Kentucky Utilities Company	2.50%
Louisville Gas and Electric Company	5.63%
Monongahela Power Company	.49%
Ohio Power Company	19.93%
Peninsula Generation Cooperative	6.65%
Southern Indiana Gas and Electric Company	1.50%[5]

[3] Contrary to suggestions that the current owners are "stuck" with their OVEC positions, Allegheny Energy Inc. ("Allegheny") sold (prior to the acquisition by FirstEnergy Corp. and in 2004) a portion of its equity OVEC position (9%) to Buckeye Power Inc. ("Buckeye"). Buckeye paid $102 million in cash and assumed approximately $37 million in debt. See https://www.sec.gov/divisions/investment/opur/filing/35-27897.htm (last visited June 1, 2017). Allegheny Energy Inc. ("Allegheny") was acquired by FirstEnergy Corp. in 2011 and Allegheny's remaining OVEC equity position was acquired as part of that transaction. https://www.firstenergycorp.com/content/fecorp/about/company_history.html.

[4] As a result of electric restructuring legislation in Ohio, Pennsylvania and Maryland, Allegheny transferred ownership or control over the generating assets of its utility operating companies providing service in these states to Allegheny Energy Supply LLC which was subsequently acquired by FirstEnergy Corp. when FirstEnergy Corp. acquired Allegheny. In a similar fashion, FirstEnergy Solutions became a Sponsoring Company. Had Duke Energy Ohio, The Dayton Power and Light Company and Ohio Power complained with Ohio law and transferred their OVEC positions to another affiliated but unregulated entity (as FirstEnergy and Allegheny did) or to an unaffiliated entity (as Allegheny did), they would not today retain any OVEC-related obligations.

[5] https://www.ovec.com/OVECHistory.pdf

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OVEC was formed by fifteen sponsoring companies, all public electric utility companies, for the sole purpose of supplying the United States Atomic Energy Commission, currently the Department of Energy (DOE), with all the electrical energy needed for the operation of its uranium enrichment plant located near Portsmouth, Ohio. The large amount of energy required for the process of uranium enrichment, however, is beyond the capacity of OVEC alone. To ensure that it could meet its obligations under the power agreement with the DOE, OVEC entered separate power agreements with IKEC and the fifteen sponsoring companies.

According to the IKEC-OVEC power agreement, the entire output of power IKEC generates is sold to OVEC. Under OVEC's power agreement with the fifteen sponsoring companies, the companies sell electricity to OVEC when the demands of the DOE exceed the amount OVEC can generate and purchase from IKEC. Additionally, the agreement permits the sponsoring companies to purchase surplus electricity from OVEC, when the demands of the DOE fall below the total amount OVEC can generate and purchase from IKEC.[6]

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On July 1, 1993, the uranium enrichment processing responsibilities of the United States Government were transferred from the Department of Energy (DOE) to the United States Enrichment Corporation (USEC). At that time, USEC was a wholly owned government corporation and an agency and instrumentality of the United States of America. OVEC modified the DOE Power Agreement in 1993 to permit the DOE to resell the OVEC power to USEC. On July 28, 1998, USEC became a publicly held company through the transfer of the federal government’s ownership in USEC to the private sector. On September 29, 2000, the DOE notified OVEC that the DOE Power Agreement would terminate no later than April 30, 2003. Also, the DOE notified OVEC that the DOE entitlement to power would reduce to specified levels until reaching zero on August 31, 2001. On September 1, 2001, the Sponsoring Companies became entitled to 100% of the Companies’ generating capacity under the terms of the ICPA.[7]

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[6] http://law.justia.com/cases/indiana/tax-court/1992/02t10-9104-ta-00014-2.html

[7] OVEC 2004 FERC Form 1, page 123.1
https://www.ovec.com/OVECFERC/OVEC2004FERCForm1Annual.pdf

The Sponsoring Companies purchase power from OVEC according to the terms of the Inter-Company Power Agreement (ICPA").[8]

Q 2. Why is the percentage of equity ownership different than the percentages reflecting the Sponsoring Companies' participation benefits and obligations?

A. This is the result of the age of the OVEC structure, changes that have taken place over the last 60 plus years and internal decisions made within the various holding company structures. For example, the holding company American Electric Power ("AEP") did not exist until 1958. The predecessor holding company, American Gas & Electric Company ("AG&E") originally held the common equity shares in OVEC and had 39.17% of the total common equity. This occurred when AG&E was headquartered in New York City. When it came time to develop the benefits and obligations shares, it appears that AEP (the holding company) pushed down the benefits and obligations to affiliated operating companies.

Also, when the OVEC structure was put together, Columbus Southern Power Company was not owned by AEP. AEP's acquisition of Columbus Southern Power Company was not completed until 1983 and this is when AEP moved its corporate headquarters to Columbus, Ohio. [9]

In any event, the equity ownership shares as well as the relative shares of benefits and obligations established for the "Sponsoring Companies" are all the result of voluntary subscriptions and contracts that have been modified repeatedly since the 1950s.

Q 3. There have been claims that the OVEC structure has "national security interest" implications. Do these claims provide a complete view of the historical record?

A. No.

It is true that the uranium enrichment process eventually established in Piketon, Ohio was initially intended and expected to meet the needs of our nuclear weapons program. However, this original purpose quickly gave way in the mid-1960s to a plan to meet the expected commercial demand for nuclear fuel.[10] And the relationship to any federal or national purpose ended in 2003 following the notice of termination issued by the DOE in 2000.

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[8] OVEC 2005 FERC Form 1, page 123.1
https://www.ovec.com/OVECFERC/OVEC2005FERCForm1Annual.pdf

[9] https://www.aep.com/about/history/

[10] https://en.wikipedia.org/wiki/Portsmouth_Gaseous_Diffusion_Plant

Q 4. Since OVEC was created to meet the electricity needs of the Atomic Energy Commission (eventually DOE and United States Enrichment Corporation or "USEC"), was the federal government obligated to compensate OVEC for the cost of satisfying those needs?

A. Yes.

In fact, the OVEC/DOE/USEC agreement, as it existed in 2000, stated that DOE could only reduce its contractual obligation if the Sponsoring Companies wished to take the power that was otherwise committed to DOE. The OVEC/DOE/USEC agreement as it existed in 2000 also permitted (but did not obligate) OVEC to waive DOE's/USEC's contractual obligations to pay all the costs of additions to, and replacements of, OVEC's facilities provided the waiver was accompanied by an agreement by the Sponsoring Companies to take the OVEC output that was otherwise committed to DOE/USEC.

On May 24, 2000, DOE/USEC and OVEC entered into a supplement to their original agreement that allowed DOE to reduce its contract demand and compensation obligation to OVEC with the Sponsoring Companies agreeing to take the generation output otherwise committed to DOE/USEC. As part of that supplemental agreement, OVEC and the Sponsoring Companies agreed to provide DOE/USEC with compensation reflecting the value of the OVEC generation in the market at a time when the market price of electricity was substantially above the cost of the OVEC supply.[11] In other words, this 2000 supplemental agreement between OVEC and DOE/USEC was revenue neutral to OVEC (it received the same cost-based compensation either way) but it allowed DOE/USEC and the Sponsoring Companies to profit because of the difference between the cost-based price they paid for the OVEC output and the much higher market-based price for which the OVEC output was sold in the wholesale electric market.[12]

The 2000 supplement to the original OVEC and DOE/USEC agreement was characterized by some stakeholders as an attempt to monetize the market value of OVEC output that DOE/USEC elected not to use. Because of the alleged implications of this proposed contract modification, which took place after DOE/USEC announced closure of the Ohio enrichment operations in favor of the operations in Kentucky, Congressman Ted Strickland formally urged the PUCO to initiate an investigation. Congressman Strickland alleged that the proposed contract modification was facilitating DOE/USEC efforts to evade responsibilities to continue operation of the gaseous diffusion plant. And, he also alleged that the PUCO had a responsibility to "…ensure that the Power Contract continues to serve the public interest." [13]

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[11] OVEC Application, PUCO Case No. 00-940-EL-AEC at pages 6 and 7, (May 31, 2000) https://dis.puc.state.oh.us/TiffToPDf/JKXA7ZA1KFTA7XP3.pdf

[12] OVEC Application, PUCO Case No. 00-940-EL-AEC at pages 6 and 7, (May 31, 2000) https://dis.puc.state.oh.us/TiffToPDf/JKXA7ZA1KFTA7XP3.pdf

[13] Motion and Memorandum of Congressman Ted Strickland, PUCO Case No. 00-940-EL-AEC (August 16, 2000) http://dis.puc.state.oh.us/TiffToPDf/EE5DVSQ7JQYGQFWL.pdf

The concerns raised by Congressman Strickland and others, including Governor Bob Taft, Senator Mike DeWine and Senator George Voinovich, were eventually resolved by USEC agreeing to provide community and worker benefits outlined in an agreement filed with the PUCO.[14] And the PUCO then approved the 2000 supplement to the original OVEC and DOE/USEC agreement.[15]

In early 2001, DOE offered to provide the Sponsoring Companies increased access to OVEC's firm generating capacity through August 31, 2001 (on which date the DOE planned to cease purchasing OVEC generated power). This transfer of power entitlement was offset by transferring the liability for specific unpaid capital improvement debt from the DOE to the Sponsoring Companies. As a result, the Sponsoring Companies agreed to assume $76.6 million of the DOE debt and interest costs. OVEC billed this balance of debt and interest costs for capital improvements to the Sponsoring Companies over the period June 2001 through April 2003 (the termination date of the DOE Power Agreement).[16]

Q 5. Why was the PUCO involved in the approval of the 2000 supplement to the original OVEC and DOE/USEC agreement?

A OVEC is a public utility as defined in R.C. 4905.02 and, as such, is subject to the jurisdiction of the PUCO. OVEC had and has one customer. The original service and compensation arrangement (a "reasonable arrangement" under R.C. 4905.31) between OVEC and its one customer was approved by the PUCO in 1953 in PUCO Case No. 23,719 and that arrangement has been modified numerous times since. Each modification of that reasonable arrangement and any termination of that reasonable arrangement must receive PUCO approval before it can become effective.

To the extent that any proposed modification of the OVEC and DOE/USEC reasonable arrangement might affect the interests of OVEC's shareholders or the Sponsoring Companies, they could have sought to intervene and participate in the required PUCO proceeding and also sought relief from the PUCO just as Congressman Strickland did.

Q 6. When did the DOE and OVEC contract end?

A. On September 29, 2000, DOE sent OVEC a notice of cancellation and the power supply contract ended on April 30, 2003. Again, this notice and cancellation occurred well before the Sponsoring Companies and OVEC agreed to extend the term of the ICPA.

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[14] Joint Motion for Expedited Approval, PUCO Case No. 00-940-EL-AEC (November 21, 2000) https://dis.puc.state.oh.us/TiffToPDf/EEG3Z6JHWTTBYH4O.pdf

[15] PUCO Case No. 00-940-EL-AEC, Finding and Order (November 21, 2000) https://dis.puc.state.oh.us/TiffToPDf/YIS482TWV2VD1WE@.pdf

[16] OVEC 2004 FERC Form 1, page 123.1 https://www.ovec.com/OVECFERC/OVEC2004FERCForm1Annual.pdf

Q 7. Did DOE have to pay OVEC to end the contract?

A. Yes.

While DOE had the right to terminate the contract, it still had obligations to compensate OVEC for costs that remained on OVEC's books.

> On September 29, 2000, the DOE notified OVEC that the DOE Power Agreement would terminate no later than April 30, 2003. Also, the DOE notified OVEC that the DOE entitlement to power would reduce to specified levels until reaching zero on August 31, 2001. On September 1, 2001, the Sponsoring Companies became entitled to 100% of the Companies' generating capacity under the terms of the ICPA.
>
> Under the terms of the DOE Power Agreement, OVEC was entitled to receive a "termination payment" from the DOE to recover unbilled costs upon termination of the agreement. The termination payment was related to unbilled postretirement benefit costs and a portion of the estimated generating plants' closure costs. In addition, OVEC had retained monies from undistributed antitrust and investment tax credit proceeds that were due to the DOE upon termination of the DOE Power Agreement. During December 2003, OVEC reached a settlement with the DOE, and, as a result of the settlement agreement, during February 2004, OVEC received a net settlement payment of approximately $97.5 million.[17]

Q 8. Is OVEC still involved in supplying electricity to DOE for use at the Piketon, Ohio operations?

A. Yes and, again, this is the result of an agreement which required approval by the PUCO.

In order to give DOE time to negotiate arrangements for the supply of electricity to the Piketon, Ohio operations after the termination of the OVEC and DOE/USEC contract, OVEC and DOE agreed to enter into a Letter Agreement dated April 29, 2003 for the temporary supply of electricity. Under this letter agreement, OVEC agreed to arrange electricity supply to satisfy DOE's ongoing electricity needs. This arrangement required OVEC to charge market-based prices based on solicitations from various suppliers.[18]

Through numerous PUCO modifications to the OVEC and DOE/USEC reasonable arrangement, DOE was able to reduce and then terminate its contract responsibilities to OVEC and obtain PUCO approval of an arrangement between OVEC

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[17] OVEC FERC 2004 Form 1, page 123.1
http://www.ovec.com/OVECFERC/OVEC2004FERCForm1Annual.pdf

[18] OVEC Application, PUCO Case No. 03-1168-EL-AEC (May 16, 2003)
http://dis.puc.state.oh.us/TiffToPDf/P40$SU68XIIXFKKD.pdf

and DOE that allows DOE to shop for its electricity supplier and pay market-based prices. OVEC helps DOE procure electricity in the marketplace to meet a demand that does not exceed 50 megawatts.[19]

Q 9. Is OVEC still helping DOE obtain electricity in the market place rather than be supplied from the OVEC facilities?

A. Yes.

As indicated above, the termination of the shopping arrangement between DOE and OVEC requires PUCO approval. On May 7, 2015, OVEC filed an application with the PUCO to obtain, if needed, the PUCO's authorization to terminate the shopping arrangement with DOE. The OVEC application stated that upon termination, DOE would obtain its electricity from another provider subject to OVEC's continuing obligation to provide transmission service.[20]

The PUCO has not acted on OVEC's May 7, 2015 application and the case is still open. In fact, on January 15, 2016, Ohio Power Company filed a motion to intervene in this proceeding for the purpose of staking out a claim that it has the exclusive right to provide electricity to DOE.[21] The most recent pleading in the case was filed on March 2, 2017.[22]

Q 10. If the legislation is enacted, would it cause Ohio retail electric customers to be responsible for the business and financial risk associated with the IKEC electric generating plants in Indiana?

A. Yes. And the Indiana generating capacity is greater than the amount located in Ohio. It is important to note that these generating plants were not built to meet the needs of retail customers located in Ohio.

Q 11. Has the original ICPA between OVEC and the Sponsoring Companies been changed from time to time?

A. Yes.

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[19] OVEC Application, PUCO Case No. 05-624-EL-AEC at 2 (May 11, 2005) http://dis.puc.state.oh.us/TiffToPDf/I0AH8IAABSLNL1NV.pdf

[20] OVEC Application, PUCO Case No. 15-0892-EL-AEC (May 7, 2015) http://dis.puc.state.oh.us/TiffToPDf/A1001001A15E07B65327D90377.pdf

[21] Ohio Power Company Motion to Intervene and Memorandum in Support, PUCO Case No. 15-0892-EL-AEC (January 15, 2016) http://dis.puc.state.oh.us/TiffToPDf/A1001001A16A15B45240B05564.pdf

[22] OVEC Notice to the Commission of the Fifth Amendment to Termination Agreement, PUCO Case No. 15-0892-EL-AEC (March 2, 2017) http://dis.puc.state.oh.us/TiffToPDf/A1001001A17C02B54453B00510.pdf

The original ICPA had a 50 year term[23] and was scheduled to end in the mid-2000s. However, in 2004, an Amended and Restated ICPA was unanimously approved by the Sponsoring Companies and OVEC extended the term of the ICPA for an additional 20 years from March 13, 2006 to March 31, 2026.[24]. Subsequent to this extension, the Sponsoring Companies and OVEC agreed to extend the term of the ICPA until June 30, 2040. These voluntary extensions of the ICPA occurred well after agreement between OVEC and DOE terminated.

The ICPA is not subject to the PUCO's jurisdiction. It is subject to exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"). The FERC has ongoing jurisdiction over the ICPA and the authority to modify the ICPA to the extent such modification is shown to be lawful and reasonable.

The changes that have been made to the ICPA in the past indicate that it is possible to modify the Agreement when the Sponsoring Companies wish to do so. This history is inconsistent with the claim that the Sponsoring Companies are "stuck" in their current relationship with OVEC.

In any event and irrespective of whether the Sponsoring Companies are "stuck" with the OVEC relationship, they are in the OVEC relationship because of their individual and collective decisions to stay in the relationship long after it was clear that DOE was off the hook.

Since the practical effect of Senate Bill 155 is to modify the obligations of the OVEC shareholders and the Sponsoring Companies by transferring their business and financial risk to Ohio retail customers, it is reasonable to expect that, if enacted, the legislation will be challenged based on claims that it violates the Commerce Clause and is otherwise pre-empted by the authority delegated exclusively to FERC through the Federal Power Act.[25]

Q 12. If the Sponsoring Companies are losing money as a result of the ICPA, why would they agree to twice extend the term of the ICPA so that it is now scheduled to end on June 30, 2040?

A. As explained above, the Sponsoring Companies paid cost-based prices for their share of the OVEC output and then could sell their share of the output in the wholesale electric market. Until recently, this arbitrage opportunity created by the differential between the cost of the OVEC supply and the price the supply commanded in the wholesale market was profitable, thereby contributing to the earnings of the Sponsoring Companies that sold the OVEC output in the wholesale market. Testimony already

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[23] Kentucky Public Service Commission Case Nos. 2011-00099 and 2011-00100, Order at page 1(August 11, 2011) https://psc.ky.gov/order_vault/Orders_2011/201100100_08112011.pdf

[24] OVEC 2005 FERC Form 1, page 123.1
https://www.ovec.com/OVECFERC/OVEC2005FERCForm1Annual.pdf

[25] *Hughes v Talen Energy Marketing*, 578 U.S. __ (U.S. Supreme Court April 19, 2016).

given by proponents of the legislation confirms that the ICPA extensions occurred because the Sponsoring Companies were making money on the deal.

The Sponsoring Companies took advantage of the buy-low-sell-high opportunity they inserted in the relationship with OVEC and deprived OVEC of the benefits of the opportunity. Had the Sponsoring Companies not extended the ICPA, OVEC would have been able to sell its generation output in the wholesale market and use the above-cost proceeds to, among other things, pay down debt, bring its capitalization ratio into better balance and improve its financial health.

The OVEC generating stations are old coal-fired facilities. Like other old coal and nuclear plants, the OVEC facilities are now having a more difficult time selling the output and market prices have dropped significantly, thereby reducing cash flow. OVEC's capital structure is heavily leveraged; almost all of OVEC's capitalization consists of debt (about $1.5 billion in debt outstanding as of December 31, 2016) with embedded rates of interest that are above current rates. The highly leveraged financial structure of OVEC creates a fixed cost obligation that is harder to meet in current circumstances. And, as is also true with other older coal and nuclear plants, large federal subsidies and state mandates are bleeding cash flow away from the older coal and nuclear plants.

Q 13. In view of OVEC's history, is it reasonable to make Ohio retail electric customers responsible for any loss that the OVEC shareholders or Sponsoring Companies may incur as a result of their decisions to enter and then extend agreements establishing their rights and obligations?

A. No.

There is no good justification for making Ohio retail electric customers responsible for any loss that the OVEC shareholders or Sponsoring Companies may incur as a result of their decisions to enter and then extend agreements establishing their rights and obligations.

At the same time that the OVEC Sponsoring Companies are supporting legislation that would make Ohio retail customers responsible for the Sponsoring Companies' OVEC-related business and financial risks, some of the Sponsoring Companies are seeking non-bypassable charges from these same retail customers to cover the costs of new renewable generating facilities that, if built, will further reduce the market share and cash flow opportunity for generating plants like those owned by OVEC.

It is also important to note that making Ohio retail electric customers responsible for any loss that the OVEC shareholders or Sponsoring Companies may incur as a result of their decisions to enter and then extend agreements establishing their rights and obligations would not do anything to address the fundamental challenges that OVEC faces. The OVEC plants are old. In today's environment, they are struggling to compete for market share against newer, more efficient, generating technologies and heavily subsidized renewable technologies. The highly leveraged capital structure needs attention.

If Ohio retail electric customers are required to underwrite the OVEC shareholders or Sponsoring Companies as a result of their decisions to enter and then extend agreements establishing their rights and obligations, the OVEC shareholders or Sponsoring Companies will have weaker incentives to address the problems that have arisen as a result of their choices.

Q 14. Is there any indication that the OVEC shareholders and Sponsoring Companies realize that they need to modify their OVEC-related agreements?

A. Yes.

For some of the same reasons that OVEC is facing financial challenges, FirstEnergy Solutions ("FES") is also facing financial challenges. FES has suggested that it may submit itself to the federal bankruptcy process to resolve its challenges. Because FES is one of the OVEC Sponsoring Companies, FES' suggestion that it may resort to filing bankruptcy in combination with OVEC-related contracts that don't fit well with today's conditions and OVEC's highly leveraged capital structure have affected OVEC's investment ratings.

More specifically, and on December 20, 2016, Moody's Investment Services ("Moody's) downgraded OVEC's bond rating from Baaa3 to Ba1 with a negative outlook. In doing so, Moody's stated:

> This rating action was prompted by the recent downgrades of FirstEnergy Corp's (FirstEnergy) subsidiaries FirstEnergy Solutions Corp. (FES: Caa1 negative) and Allegheny Energy Supply Company, LLC (AES: B1 negative) which together are contractually obligated to cover about 8% of OVEC's expenditures.
>
> The downgrades of FES to Caa1 from Ba2 and AES to B1 from Ba1 followed FirstEnergy's announced intention to exit its merchant business entirely within 18 months, even if it requires a restructuring or bankruptcy at FES. Although the proportion of OVEC's revenues that are derived from FES (4.85%) and AES (3.01%) are relatively modest, the payment obligations under the Inter-Company Power Agreement (ICPA), which is the basis for OVEC's revenue, are several and not joint. In addition, in the event of a payment default, there is currently no requirement for the non-defaulting sponsor companies to "step-up" their payments to cover any shortfall.
>
> The rating action also considers the December 1st decision of the OVEC Board to begin funding a debt service reserve, and to form a strategic planning group to evaluate a possible modernization of the ICPA. We view

both of these developments as indicative of the Board's desire to support credit quality.

The strategic planning group will be tasked with reviewing possible ways to update the ICPA, including the potential creation of a step-up to cover sponsor shortfalls and/or requirements for credit assurance in the event of declining sponsor company credit quality. Any such changes to the ICPA would need to be approved by all of the sponsoring companies. In the interim, OVEC's funding of a $44 million reserve over 18 months beginning January 2017 should help to mitigate potential cash shortfalls. Absent these credit strengthening actions by the Board, OVEC's ratings could have moved down by more than one notch.

In the event of a payment default by FES or another sponsor, OVEC may suspend service to the defaulting entity; in which case, the energy and capacity allocated to the defaulting party would become available to the other sponsor companies, or to OVEC, to sell into the PJM Interconnection markets. Based on current market conditions, we estimate the revenues available from the sale of this capacity and energy into the market would cover only about 50% of OVEC's billable non-fuel expenses. As such, we expect the shortfall from a potential loss of FES revenue (4.85% of the total) could be in the range of about $6-10 million per year. While this amount appears manageable, there currently is no automatic means of funding the gap other than through draws on the OVEC revolver. Revolver usage requires a representation of no material adverse change, a credit negative, and would need to be repaid pro-rata by the sponsoring companies.[26]

The statement issued by Moody's is based on interviews that Moody's conducted with OVEC. Based on Moody's statement, it appears that efforts are presently underway to modernize the ICPA and address OVEC's credit issues.

The information provided by Moody's also provides an indication of how much the current OVEC structure and SB 155 might cost customers.

In Moody's statement, it indicates that the potential FES-related shortfall is in the range of $6 to $10 million per year with FES' share set at 4.85%. Using Moody's numbers, the total OVEC-related shortfall would be in the range of $124 to $206 million per year. Using the Sponsoring Companies percentages shown on page 2, the range for Ohio Power Company (19.93%) would be between $25 and $41 million per year, the range for Duke Energy Ohio (9%) would be between $11 and 18.5 million per year, the range for The Dayton Power and Light Company (4.9%) would be between $6 and $10 million per year and the range for Buckeye Power Generating LLC (18%) would be between $22 and $37 million per year. Summing the range for FES, Ohio Power, Duke Energy Ohio, Dayton Power and Light and Buckeye produces a range of between $70

[26] Moody's Investor Services, December 20, 2016 https://www.moodys.com/research/Moodys-downgrades-OVEC-to-Ba1-outlook-negative--PR_359882

million and $116.5 million per year. Of course, the actual shortfall associated with OVEC's above-market costs will depend on the level of OVEC's actual costs and the extent to which the actual costs are below or above the revenue produced by sales of the electricity generated by the OVEC units as well as the contractual responsibilities of OVEC's shareholders and Sponsoring Companies.

Q 15. In traditional ratemaking of the type that was practiced in Ohio prior to the electric restructuring legislation, were customers responsible for covering electric utility losses resulting from an equity investment in another corporation?

A. No.

For example, Columbus Southern Power Company ("CSP") held the stock of an affiliated company (Simco Inc.). Simco Inc. owned coal lands and it sold the coal lands realizing a net gain of $1.2 million on the sale. Some customer groups urged the Public Utilities Commission of Ohio ("PUCO") to require CSP to give CSP's customers the benefit of Simco Inc.'s gain on the sale of the coal lands. CSP successfully opposed this effort by arguing that the equity ownership in the coal mines was a "bellow the line transaction" and it had no legal or other duty to give all or any portion of the gain to its customers.[27]

Also, traditional utility regulation tested the ability of a utility to pass costs on to customers through things like prudency evaluations and the "used and useful" standard which required an investment to be used to meet the needs of customers before the investment could be included as part of the recoverable costs.

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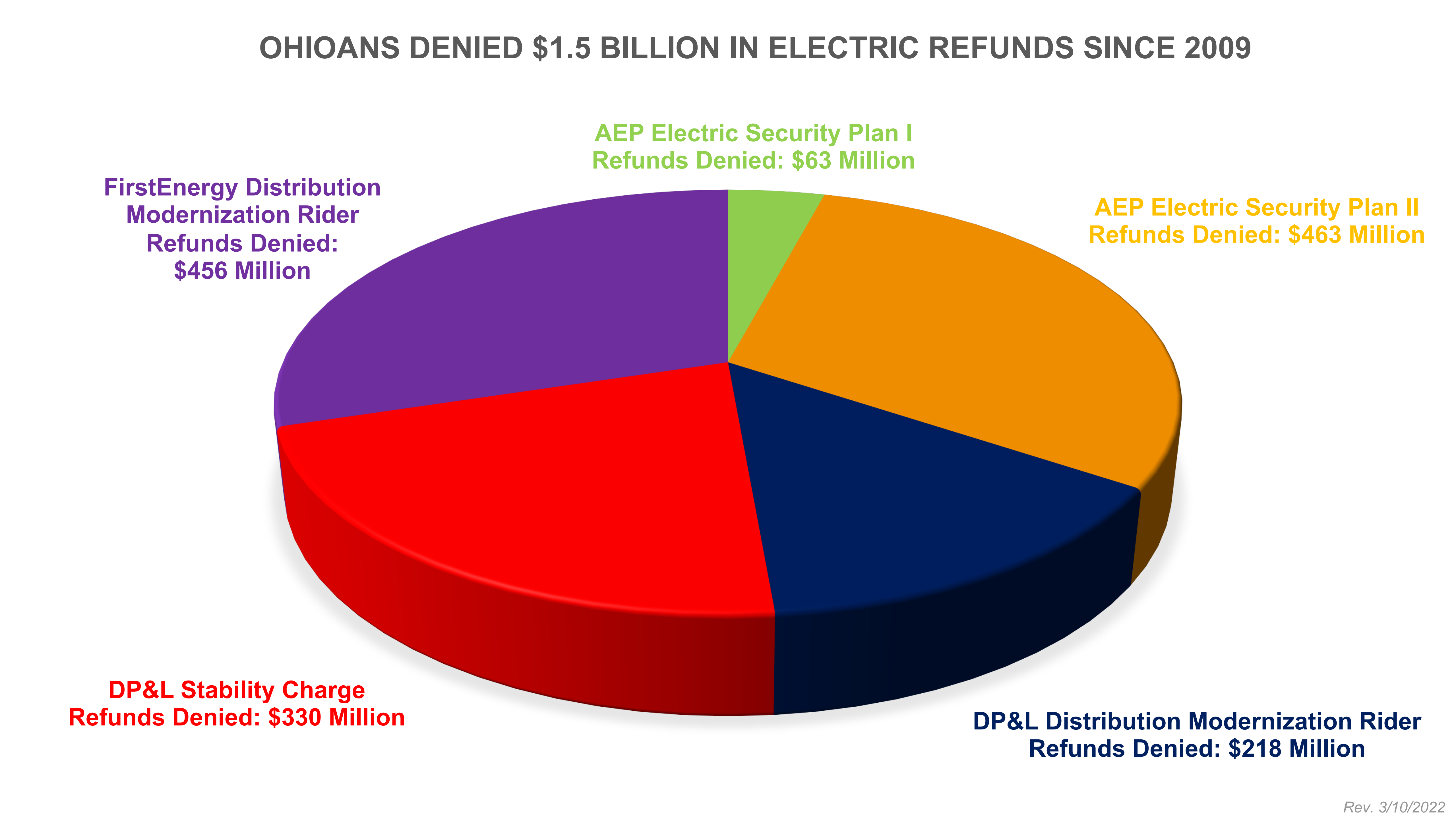
[27] *In the Matter of the Regulation of the Electric Fuel Component of Columbus Southern Power Company*, PUCO Case No. 88-102-EL-FAC, Finding and Order (October 28, 1988). In this proceeding, Columbus Southern Power Company (now part of Ohio Power Company) successfully argued that customers were not entitled to any portion of the gain on the sale of the coal lands because customers never purchased an interest in the assets, never were the legal owners of the assets and never were subject to the risks of ownership of the assets.

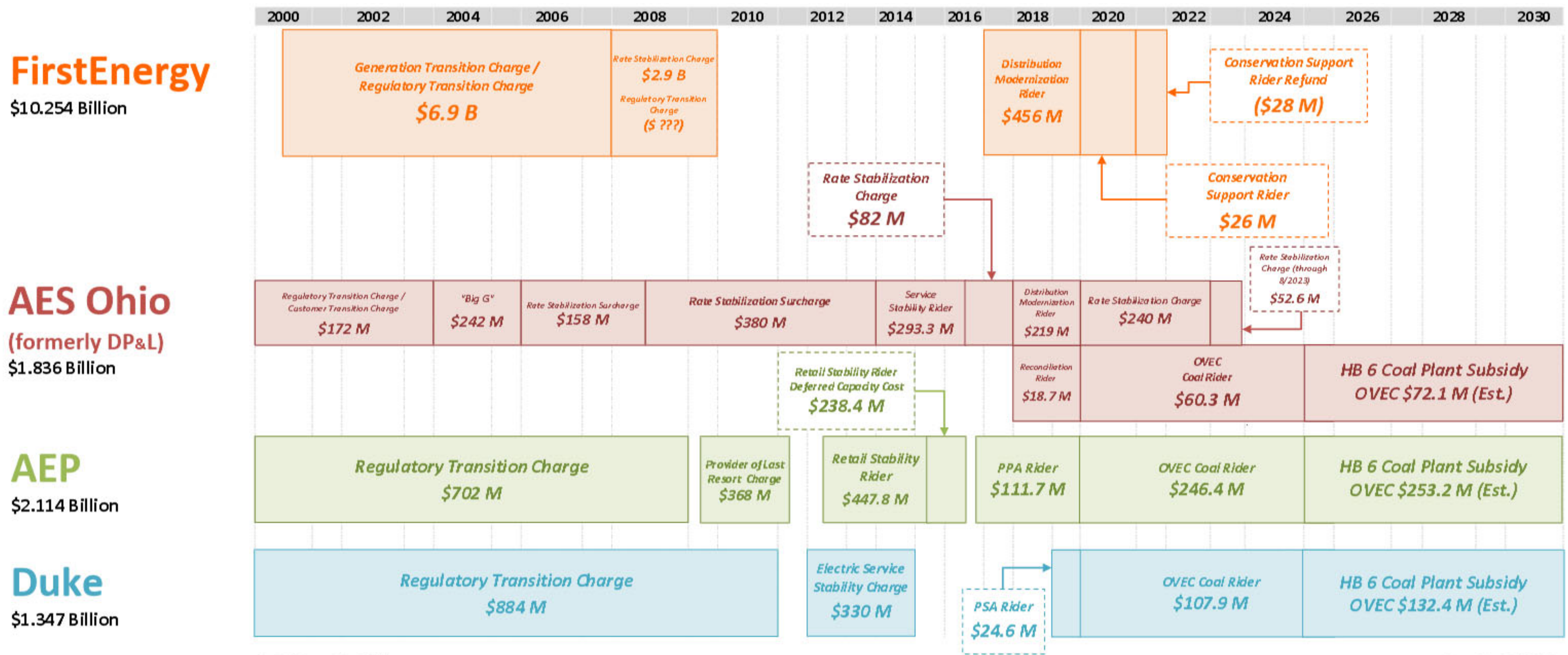

OHIOANS DENIED $1.5 BILLION IN ELECTRIC REFUNDS SINCE 2009
AEP Electric Security Plan I
Refunds Denied: $63 Million
FirstEnergy Distribution
Modernization Rider
Refunds Denied:
$456 Million
AEP Electric Security Plan II
Refunds Denied: $463 Million
DP&L Stability Charge
Refunds Denied: $330 Million
DP&L Distribution Modernization Rider
Refunds Denied: $218 Million
Rev. 3/10/2022

$15.55 Billion
Charged to Customers
(2000 - 2024)

SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

$457.7 Million Projected
Charges to Customers
(2025 - 2030)



B=Billions; M=Millions

Rev. 01/07/2025