

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

Opponent Testimony on Substitute House Bill 317

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

Consumers' Counsel Weston and I thank you and the bill sponsor (Rep. Wilkin) for this opportunity to present opponent testimony on Substitute House Bill 317. We appreciate that the bill does include some consumer protections. Those include some new regulations in the bill and the elimination of some inadequate regulations in current law. But the consumer protections in HB317 are outweighed by some big-ticket measures in the bill that will harm consumers or leave them unprotected.

The title of this bill is "Repeal electric security plans: revise electric service law." Repealing the electric security plans from the 2008 law would be a good thing for consumers. The so-called "security" in those plans was for utilities, not consumers.

Unfortunately, HB317 falls short for Ohioans because it replaces electric security plans with so-called "competitive power plans." The new HB317 plans would retain one of the most anti-consumer features of the old plans – the add-on charges known as "riders."

For example, a rider is what the PUCO used to subsidize and bail out the OVEC coal plants owned by AEP, Duke and AES, at consumer expense. And a rider was what the PUCO was going to use to bail out FirstEnergy's nuclear plants at consumer expense, until FERC put an end to it. Of course, among the provisions of HB6 that were most expensive and detrimental to consumers were a FirstEnergy nuclear plant bailout to replace the failed rider and a now codified and permanent version of the OVEC coal bailout rider. OCC's subsidy scorecard is attached.

Moreover, the new plan name, "competitive power plans," is a misnomer. The plans should be, but are not limited to creating the utilities' competitively-bid standard offers that have been good for consumers. Far from it, the so-called *competitive* power plans allow utilities, with PUCO approval of riders, to charge consumers for *monopoly* distribution services. General rate cases, not riders, should be used for setting monopoly distribution charges. The bill continues the bad approach of riders from the 2008 law.

Riders represent single-issue ratemaking. Traditional ratemaking requires the utility to open up its books in a general rate case for a full discussion of how all costs and revenues have changed. Areas where costs have gone up can be offset by other areas where costs may have come down. That's good and more fair for consumers. Single-issue ratemaking, on the other hand, enables the PUCO and utilities to cherry-pick areas to reopen where costs have risen. At consumer expense, of course. HB317 allows utilities and the PUCO to continue circumventing the more fair process of using general rate cases for monopoly service rate increases.

HB317 does incorporate a periodic general rate case into the use of riders in the new plans. But that is not enough. For consumer protection, riders for monopoly services should be banned by the legislature, as they were mostly banned prior to the utility-friendly ratemaking in the 2008 law.

In this regard, HB317 allows the PUCO to let utilities charge consumers for "distribution infrastructure expansion, improvement or replacement." (Lines 808-809) These riders could include, among other things, charges for battery storage, grid modernization, smart city technologies and distribution infrastructure upgrades. These measures may sound nice but they can involve billions of dollars of utility charges to Ohio consumers. The limited requirement for a periodic rate case is inadequate to protect consumers from utility cherry-picking and gold-plating through riders.

The bill caps the riders at three percent of total distribution revenue. (Lines 820-824) On the surface a cap seems consumer-friendly. But at the utility-friendly PUCO this process essentially institutionalizes annual utility rate increases for consumers that could amount to hundreds of millions of dollars every year. And, to make matters worse for consumers, the cap allows compounding of rate increases. (Lines 820-824)

Moreover, HB317's riders give the PUCO discretion that is much too broad in electric utility ratemaking, with minimal standards. Given the regulatory scandal involving FirstEnergy and the highest level of the PUCO, this is hardly the time to be rewarding the PUCO with greater discretion for regulation of monopoly utilities.

Indeed, now is a time to be removing PUCO discretion. Even before the scandal the PUCO at times misused its authority, creating a utility-subsidy culture at consumer expense. That included granting FirstEnergy the infamous "distribution modernization" charge, which was not required to be used on either distribution or modernization—and the Supreme Court declaring the PUCO's decision unlawful. That decision wrongfully cost Ohioans nearly half a billion dollars which have never been refunded, despite the Court's decision. Instead, the FirstEnergy system, whose holding company stands charged with a federal corruption crime, got to keep all the money that had already been collected from consumers unlawfully. Respectfully, the PUCO has amply demonstrated why it should not be trusted with broad discretion for ratemaking in this or any bill.

Another key concern for consumers is the pro-utility refund language in this bill. (Lines 35-51) The concern arises because of the limitation on the time period for which refunds

are available to consumers following an appeal. The appeals process may take years while consumers are paying an illegal charge. Under HB317, the refund is calculated merely from the time of the Supreme Court's ruling until the PUCO stops the charge. This is a very short – too short – period of time for calculating refunds. And the PUCO has itself made charges subject to refund once it receives the Supreme Court's reversal order.

Of the \$1.5 billion in refunds that were denied to electric consumers since the 2008 law, only a small fraction of that would have been refunded to consumers under this bill. We continue to recommend that refunds for charges that are found by the Ohio Supreme Court to be unlawful should be refundable from the date the charges were first collected. Attached is a chart on denied refunds.

Worse, this new language against refunds to consumers would likely thwart the possibility of obtaining real refund reform in a future Supreme Court case or even at the PUCO. That's because codifying the refund language in HB317 that protects utilities would become controlling against any possible future decisions by the Court or the PUCO that could reform the current precedent against refunds.

Our opposition to this HB317 refund provision is similar to our concerns over HB6's codification of the OVEC coal subsidy charges that had been authorized by the PUCO. By codifying coal plant bailouts, the legislature prevented the potential for the Ohio Supreme Court to revisit its precedent and overturn the PUCO's coal subsidy order. And the language also prevents a future PUCO from ending the AEP/Duke/AES OVEC coal charges such as when their electric security plans expire.

The utilities' offering of cash and cash equivalents to gain supporters signatures in PUCO settlements is a serious problem for consumers (and for justice). Unfortunately, the new version of HB317 took a step backwards on this issue. By removing "directly or indirectly" from line 985, the bill will allow utility payments for gaining settlement signatures to be hidden. That is because utility payments to non-parties affiliated with settlement parties can hide the transactions from public disclosure. That is a serious problem. It is a problem that we believe has occurred in the past. The words at issue should be reinserted to protect consumers, and keep the process more honest and transparent.

This version of the bill requires side deals to be part of the public record (lines 986-988). That is good for justice. But current law already requires side deals to be disclosed through prehearing discovery, so this change is merely incremental. There should be significant penalties added to HB317 for those violating this required disclosure. For example, it seems the PUCO may have identified a FirstEnergy failure to disclose.

HB317's claimed protection against excessive utility profits lacks enough protection for consumers. Under the new version of the bill, utilities are allowed 250 basis points or 2.5 percent above their authorized return on equity before they must refund excessive profits. This percentage may seem like a small amount. But, for example, a company

like AEP Ohio with over \$2.7 billion in equity (AEP 2020 FERC Form 1) could charge consumers an additional \$63 million in profits before requiring refunds.

A welcome addition to this version of the bill is the disclosure requirement on teaser rates offered by marketers (lines 551-559). But the bill does not go far enough. Teaser rates lead to consumers seeing exorbitant increases in their electric bills. Marketers offer low teaser rates and then later increase rates, sometimes dramatically, over time. Teaser rates should be banned to protect consumers. And other consumer protections from marketers are needed. We understand from shadow-billing, such as by AEP, that in the aggregate consumers pay much more to marketers for electricity than to utilities.

The bill does require the PUCO to render a final decision within 150 days after granting rehearing. That is helpful for justice at the PUCO. The PUCO has abused rehearing timelines, with some extended time periods for resolving rehearing requests. In a recent Dominion gas case, the PUCO took more than a year to consider OCC and NOPEC's rehearing requests (PUCO Case No. 19-468-GA-ALT). Also, in a Dayton Power & Light electric security plan case, the PUCO delayed for an outrageous 16 months to rule on a rehearing request (PUCO Case No. 08-1094-EL-SSO), delaying OCC's appeal for Dayton-area consumers. These PUCO delays can cost consumers millions of dollars. 150 days is still too long of a delay. The PUCO should be given 90 days, at most, to rule on rehearing requests.

In sum, the consumer protections in HB317 are far outweighed by the consumer risks. For consumer protection, we urge you not to pass the bill in its current form but to make the bill better for Ohio's consumers by adopting OCC's recommended changes.

Thank you for your consideration.

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

SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

\$1.36 Billion Projected
Charges to Customers
(2021 - 2030)

FirstEnergy

\$10.28 Billion

AES Ohio

(formerly DP&L)

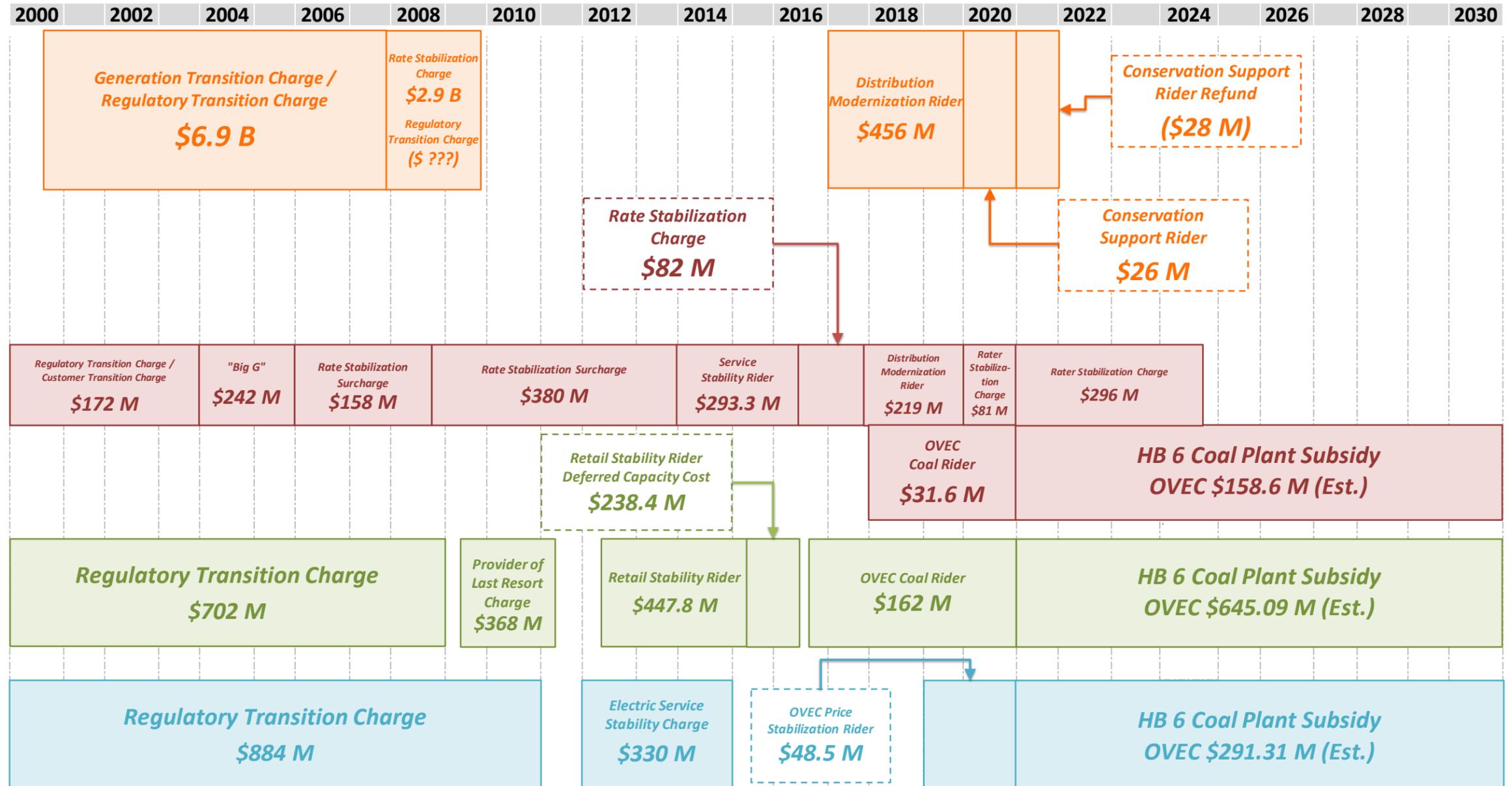
\$1.66 Billion

AEP

\$1.92 Billion

Duke

\$1.26 Billion



B=Billions; M=Millions

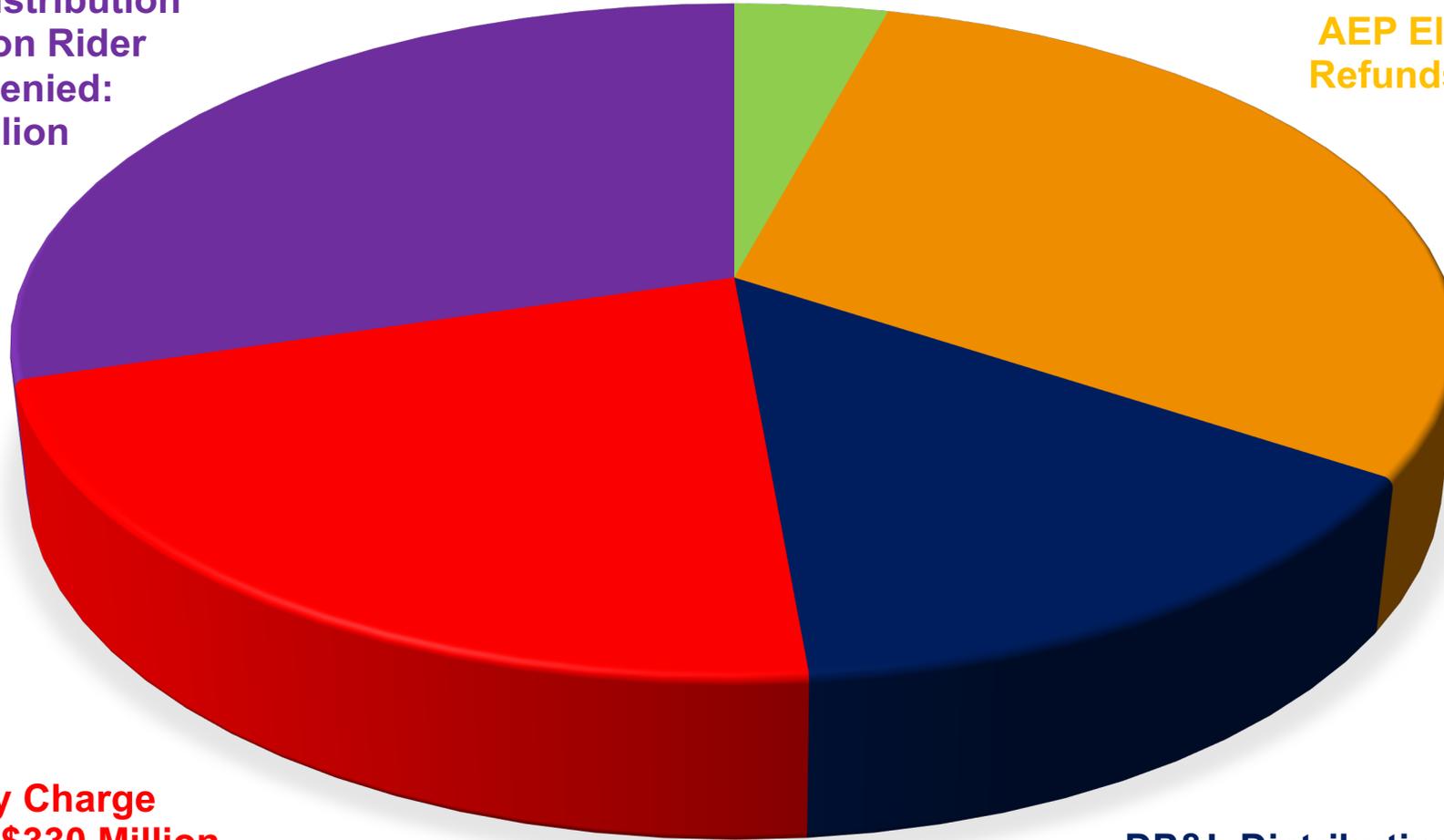
Rev. 10/25/2021

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