

Before
The Ohio House of Representatives
Public Utilities Committee
Testimony on House Bill 247

Presented by Michael Haugh
On Behalf of the
Office of the Ohio Consumers' Counsel
October 23, 2019

Hello Chair Callender, Vice Chair Wilkin, Ranking Member Smith and members of the Committee. Thank you for this opportunity to testify.

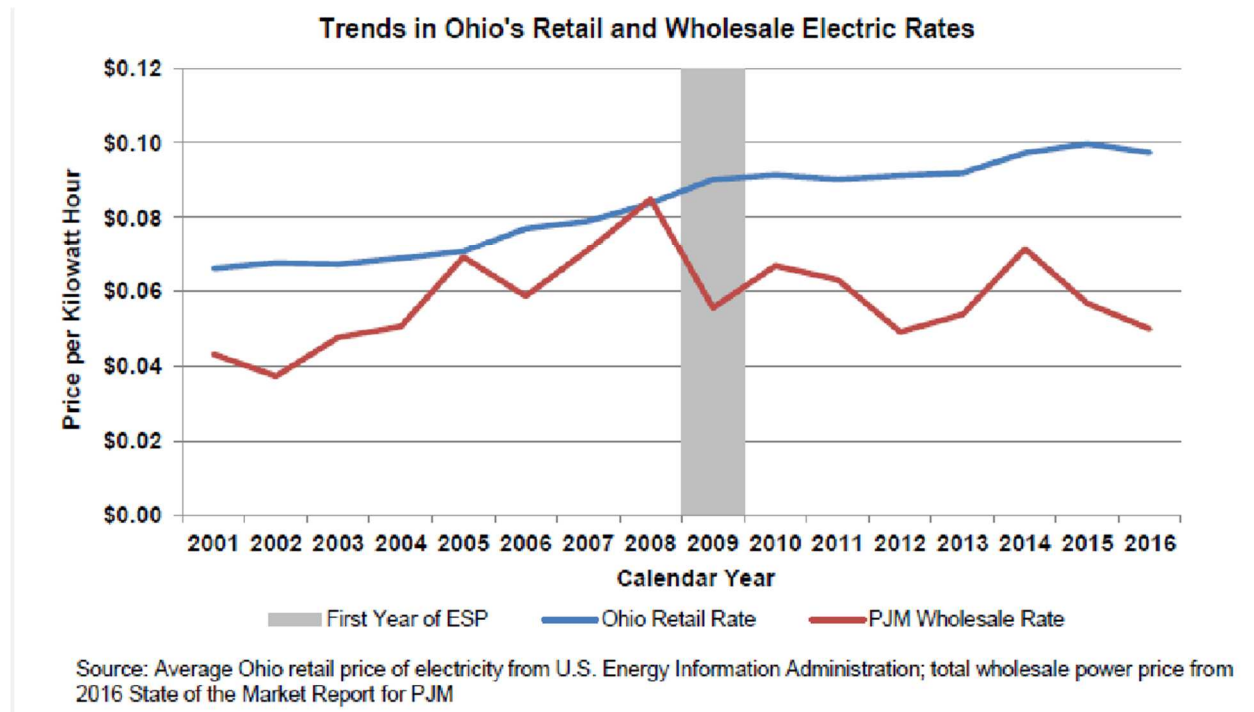
My name is Michael Haugh. I am testifying on behalf of the Office of the Ohio Consumers' Counsel (OCC), where I provide consulting services for OCC's consumer advocacy. The Consumers' Counsel is the state's representative for over four million residential utility customers. My background is nearly 25 years in the energy industry, working on both the regulated and deregulated sides of the energy markets in government and private industry. OCC looks forward to working with the Bill sponsor and others on this legislation.

Consumers' Counsel Weston commends the General Assembly's landmark law in 1999 that replaced monopolies with deregulated electric generation. (Am. Sub. S.B. 3 – 123rd). The 1999 law gave consumers the benefits of competition among power plants with lower prices and higher innovation. As documented in a recent report prepared for the Northeast Ohio Public Energy Council, competition has saved Ohioans billions of dollars on their electric bills.

(link: https://www.nopec.org/media/1573/19nop32-whitepaper_web.pdf) Competition protects consumers by shifting the risks of new technology and innovation from utility consumers to the providers.

Respectfully, this legislation is a step backwards from the competitive markets that serve consumers. OCC's concerns are twofold.

First, the Bill continues and expands the use of electric security plans from the 2008 energy law. (Am. Sub. S.B. 221 – 127th) That is a problem for consumers. The 2008 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 the so-called “riders,” and higher charges for paying subsidies to monopoly utilities. This anti-consumer outcome is depicted in the following graph from the Legislative Service Commission, showing decreasing federal wholesale electric prices but increasing Ohio retail electric prices:



The LSC graph was created for a Fiscal Note regarding another House Bill 247, the Bill from last session. (Link: <https://www.legislature.ohio.gov/download?key=8111&format=pdf>) Last session's H.B. 247 would have eliminated electric security plans. OCC supported that legislation. We recommend that this current legislation either avoid using electric security plans or eliminate such plans.

Second, the Bill elevates monopolies over competitive markets for certain energy-related products and services. That is a problem for consumers. These products and services include some for use behind the electric meter (in consumers' homes and businesses). Behind-the-meter offerings are not part of the utility monopoly, but are open to competition for consumers. The Bill allows electric monopolies to encroach upon this non-utility space, with charges to their millions of captive monopoly customers. The better approach for bringing lower prices and greater innovations to Ohioans for these energy-related products and services is to further a competitive market.

Regarding OCC's first concern above, here are recommendations for amendments to the Bill regarding electric security plans (subject to our primary recommendation to eliminate electric security plans):

- Require refunds to consumers when the Ohio Supreme Court overturns a PUCO charge. Since 2009, the Ohio utility customers have been denied over a billion dollars in refunds of charges that were invalidated by the Ohio Supreme Court. Attachment 1 to my testimony shows the refunds that consumers have been denied. The Ohio Supreme Court has commented that legislation is one way to solve this issue for consumers.
- Protect customers from paying for any *excessive* utility profits and not just "significantly" excessive profits as the 2008 law (R.C. 4928.143(E)) now reads. (Lines 710-730, 738-768)
- Eliminate what is the unfair utility veto power in electric security plan cases. Under R.C. 4928.143(C)(2)(a), the utility can reject a PUCO decision by withdrawing its application if it doesn't like the PUCO's decision. The electric

monopoly can reject a PUCO order that adopts a consumer recommendation, but consumers cannot reject a PUCO order that adopts a utility recommendation. It's unfair. (Lines 662-667)

- Fix what was intended to be a consumer protection test for approving electric security plans in R.C. 4928.143(C)(1). But it fails that in practice. The solution is to clarify the law so that only *quantitative* factors, not *qualitative* factors, are used to consider the existing requirement that an electric security plan be more favorable for consumers than a market rate. (Lines 647 – 655)
- Reform the PUCO settlement process. End utility payments of cash or cash equivalents to induce parties to sign settlements.
- Limit utilities' so-called riders. These single-issue rates allow utilities to cherry-pick charges to add to customers' bills. In this regard, AEP has been vocal in its support for H.B. 247. Attachment 2 to my testimony is an AEP chart showing that its operations under Ohio regulation have produced the highest profit of any other AEP affiliated utility in the country. Attachment 3 to my testimony is OCC's chart, based on AEP's data, showing that AEP's operations under Ohio regulation have produced the highest residential bills of any other AEP affiliated utility in the country. Consumers need protection from the ratemaking in the 2008 law, not an expanded use of that ratemaking in this Bill. (Lines 606 - 634.)

As stated above, OCC's second concern is that this Bill would change Ohio law to allow monopoly utilities to offer certain products and services, some of which are already available to customers by competitive suppliers. For consumer protection, that change should not be made.

In fact, the PUCO commented about maintaining the market for behind the meter services in its Power Forward Report at page 23 (link: <https://www.puco.ohio.gov/industry-information/industry-topics/powerforward/powerforward-a-roadmap-to-ohios-electricity-future/>):

Therefore, for behind the meter grid modernization customer applications, it is recommended that the current retail marketplace structure should prevail. Assigning the opportunity for behind the meter customer applications to competitive forces, whether CRES providers, third-party technology or other trusted customer advisors, is consistent with traditional behind the meter limitations on regulatory jurisdiction. These competitors could include EDU affiliates with appropriate corporate separation safeguards to eliminate the possibility of competitive advantage.

Some of the items in the Bill, such as lighting controls and energy monitoring devices (lines 418-419), are readily available in stores. This is not a situation where some of these products and services would be unavailable to the public in the absence of monopoly providers.

Other products, such as electric vehicle charging stations, community solar, microgrids and “intelligent city designs,” would only help a small subset of customers. If electric monopolies are allowed to enter the market and charge their millions of captive customers for offerings, all customers would have to subsidize the service or product for a few customers. As another problematic example, low-income customers could have to fund public electric vehicle charging for owners of Tesla’s and BMW’s.

If a local government desires specialized equipment for its electric distribution system, there are companies providing these products and services. These non-utility competitors do not receive subsidies from utility customers to fund projects and these competitors should not have to compete against utility monopolies charging customers for subsidies.

Competitive markets allow customers to shop for the products and services they desire and pick the one that best fits their needs at the lowest competitive price. Utilities should not be permitted to use their monopoly or market power to interfere with the competitive markets.

Electric utilities are responsible for safe and reliable delivery of electricity to their customers. The utilities’ smart grids, for which Ohio customers have already paid hundreds of millions of dollars, should be used as a conduit for all competitive suppliers (with non-discriminatory access) for serving customers behind the meter. The Bill enables monopoly utilities to provide a number of items that have no bearing on their provision of safe and reliable electric service. A few such items are individual and aggregated demand response (lines 413-414), energy

monitoring and control devices (line 418), lighting controls (line 419), warranty and repair services (line 420), electric vehicle charging stations (line 421), community solar facilities (line 423) and “other technologies so classified by the public utilities commission” (lines 401-402).

The last item could be the most problematic issue for consumers, as it puts no limit on the products and services for which the monopoly utilities could potentially charge to customers. At a minimum, these items – and especially the last catch-all item – should be amended out of the bill.

Another problem is the Bill allows utility monopolies to provide certain services to consumers at incremental cost, if the PUCO approves. (Lines 816-820) Competitors can’t compete at this incremental price point. This provision could impede or destroy competition for these products and services. This could drive out competitors and ultimately give the utility market power or a monopoly for those products and services, with resulting higher prices and lower innovation. Under current Ohio law (R.C. 4928.17), an electric utility’s fully separated affiliate(s) can offer such products or services. Existing law should be retained for allowing electric monopoly affiliates, not the monopolies, to offer the products and services. Lines 812-832 should be removed from the Bill.

Unlike utilities, their affiliates cannot charge monopoly customers for their products and services. That arrangement for utility affiliates protects customers and the competition that serves customers. The PUCO Power Forward Report recognized and addressed this issue on page 23, where it stated:

Markets will develop where opportunities exist. However, without the safety net of regulated recovery mechanisms to reduce investment risk, markets will develop at different paces dictated by the scope of opportunity for return on investment and economic margin. It is possible that social policy may dictate a faster pace, a jump start, or assisted development in what would otherwise be an underserved

customer segment. In these circumstances, where market development is slower than the pace desired by implementation of a desired social policy, it may be advisable to permit EDU market participation behind the meter for a limited period, with as minimal a scale possible to advance that social policy.

Competitive markets should be promoted over monopolies where practicable and effective for serving consumers.

Finally, the Bill should be amended to delete Section 4928.25 (lines 886-920). That Section allows a utility to apply for construction of a substation facility and extension of transmission or distribution facilities for individual mercantile customers. But the Bill allows the costs to plan, develop and construct the facilities to be collected from and subsidized by all utility customers. Then, upon completion, the facility that all customers paid for and subsidized would be given to the individual mercantile customer to own. Millions of Ohio customers are already paying millions of dollars annually (through so-called “riders”) to subsidize large corporate customers for economic development. This subsidy culture that has developed in Ohio utility ratemaking, at consumer expense, should be limited or ended.

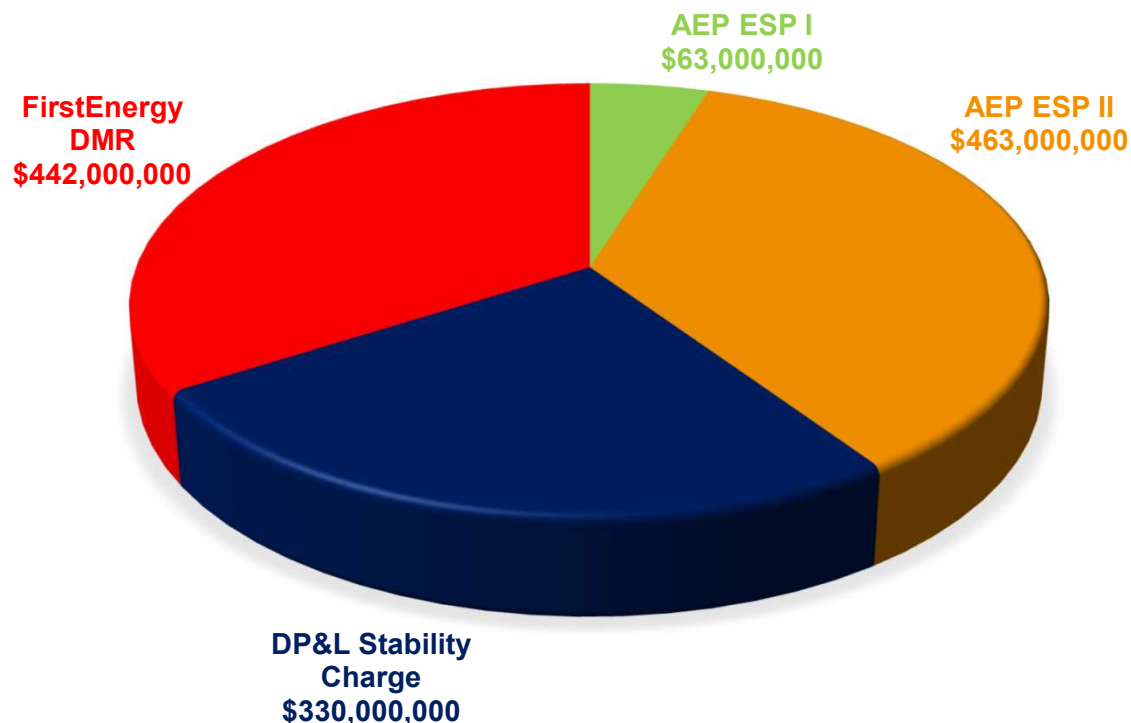
Ohio electric utility customers have already paid billions of dollars in generation subsidies as shown on OCC’s Subsidy Scorecard (Attachment 4 and link: http://www.occ.ohio.gov/sites/default/files/subsidy-scorecard_n.pdf). This Bill will allow monopoly utilities to expand their reach with subsidies into additional competitive markets, at consumer expense.

Thank you for your time and consideration.

NON-REFUNDABLE CHARGES TO OHIOANS

2009 AEP ESP I

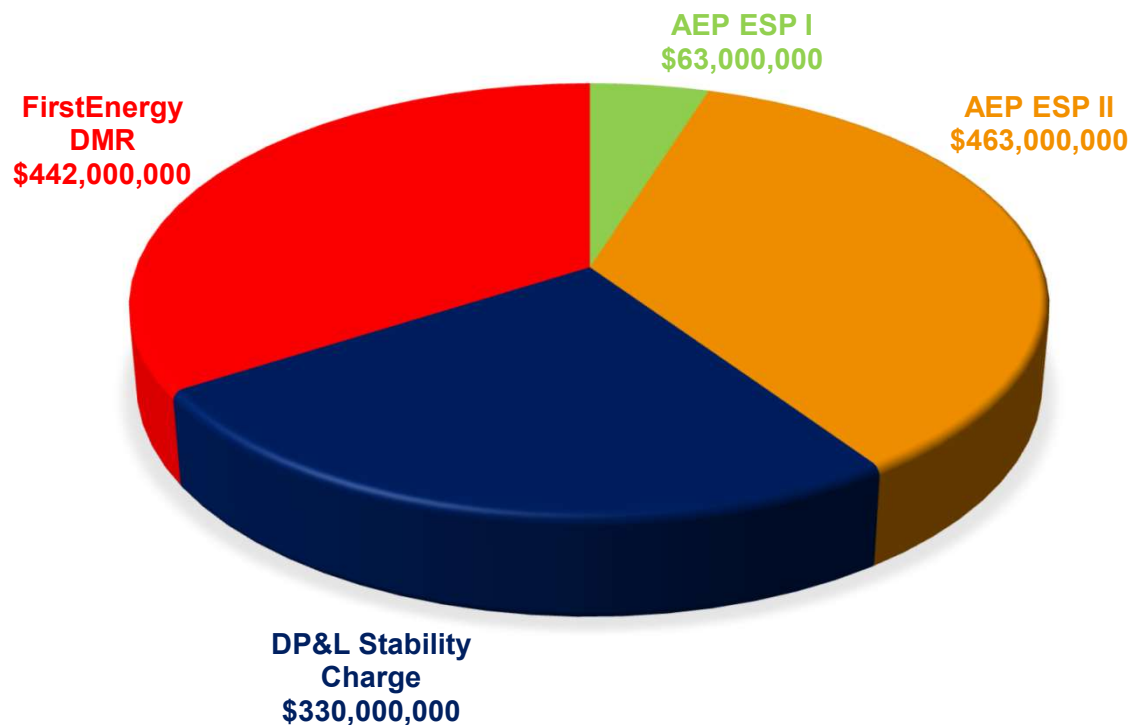
The court held that PUCO unlawfully set rates to allow the utility to collect 12 months of revenue over a nine-month period, ruling this as unlawful retroactive ratemaking.



NON-REFUNDABLE CHARGES TO OHIOANS

2014 AEP ESP II

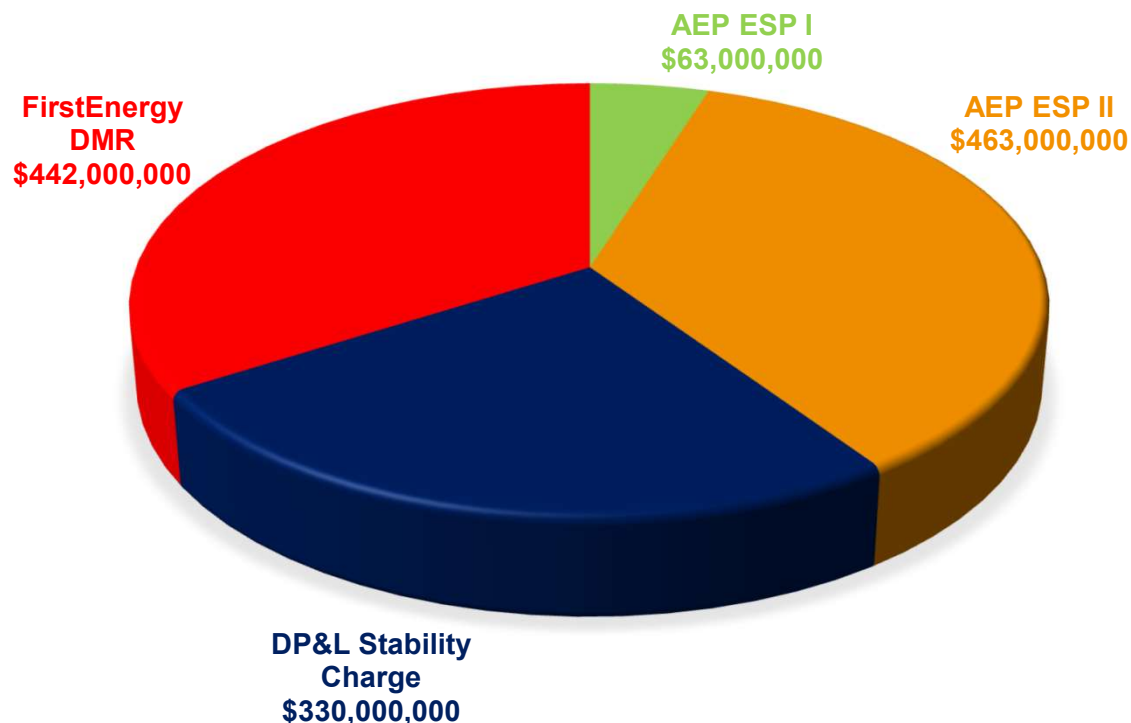
The Court held that AEP has collected \$463 million in provider of last resort charges from customers without evidence to support the charges.



NON-REFUNDABLE CHARGES TO OHIOANS

2016 DP&L Stability Charge

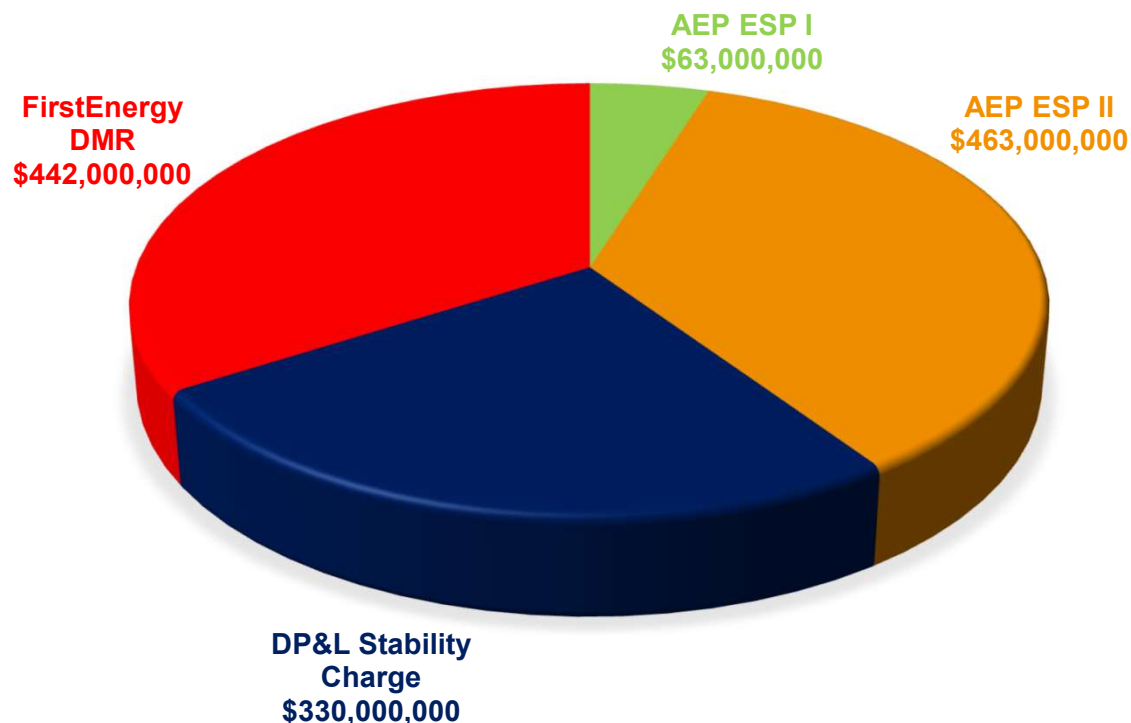
DP&L collected approximately \$330 million in subsidies for DP&L's power plants through its so-called stability charge before the Court ruled the collection was unlawful.



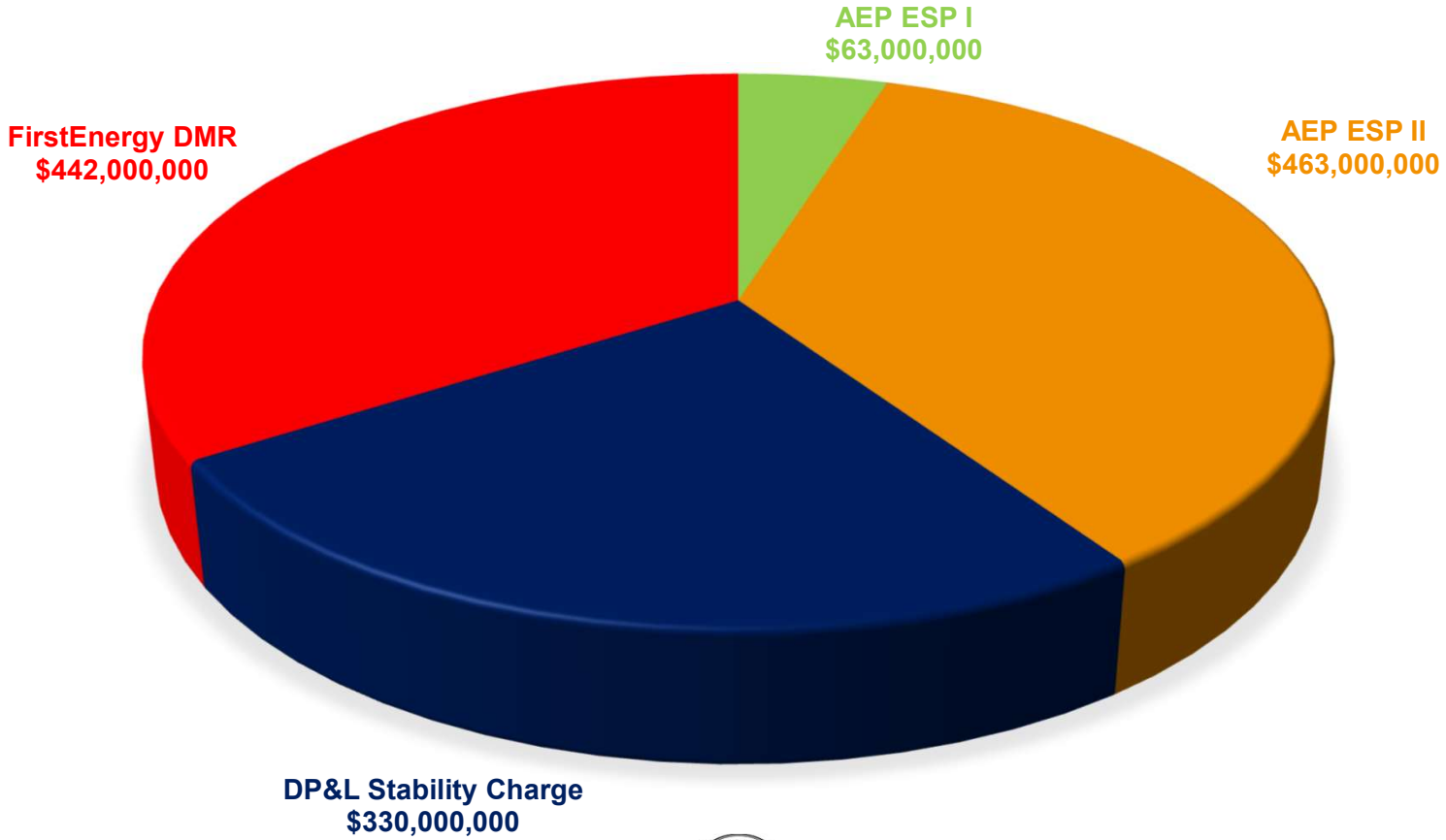
NON-REFUNDABLE CHARGES TO OHIOANS

2019 FirstEnergy DMR

The FirstEnergy so-called Distribution Modernization Rider collected \$442 million in charges from customers before the Court Ruled the charge was unreasonable and unlawful.



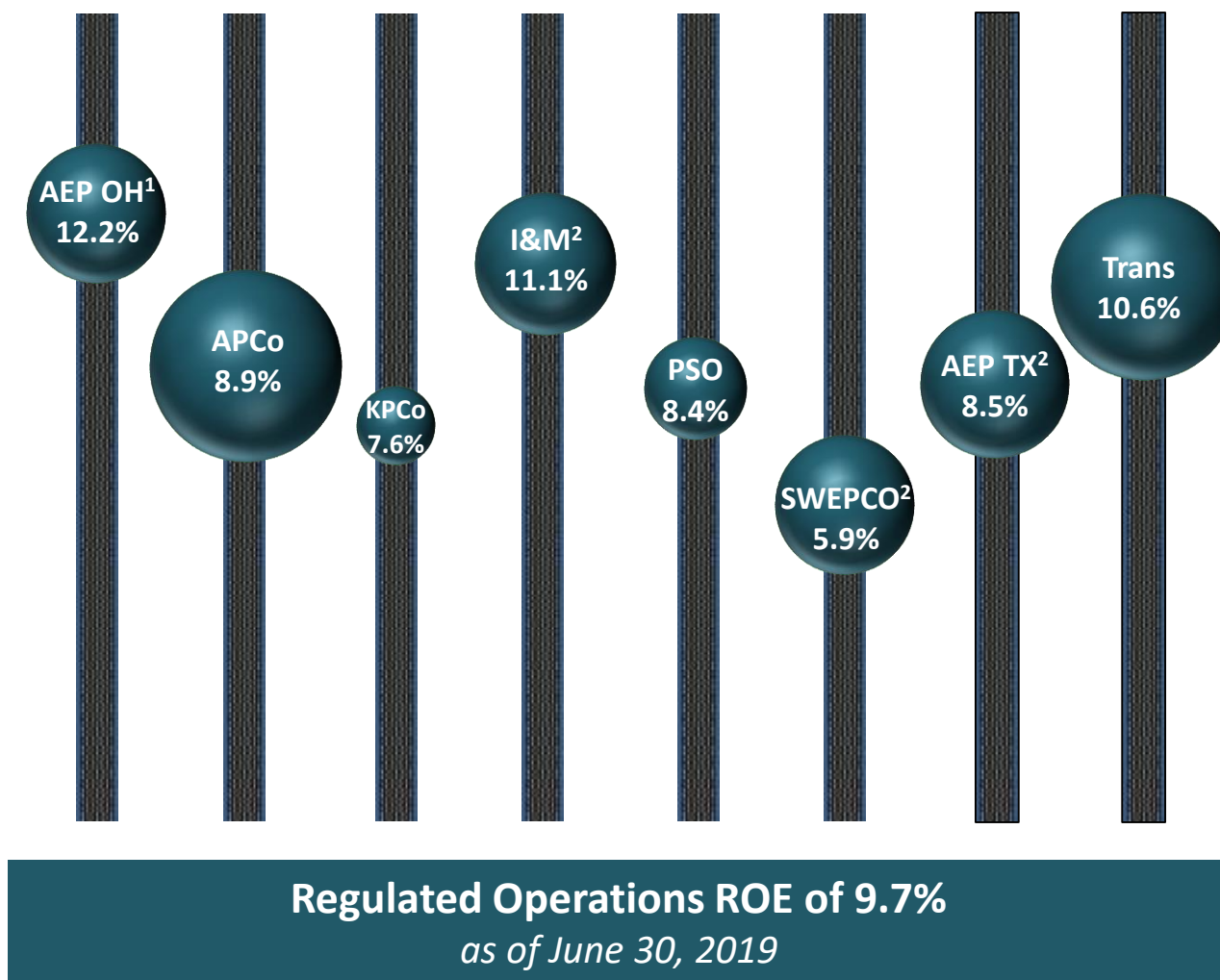
NON-REFUNDABLE CHARGES TO OHIOANS



Regulated Returns

Twelve Months Ended 6/30/2019 Earned ROE's (non-GAAP operating earnings, not weather normalized)

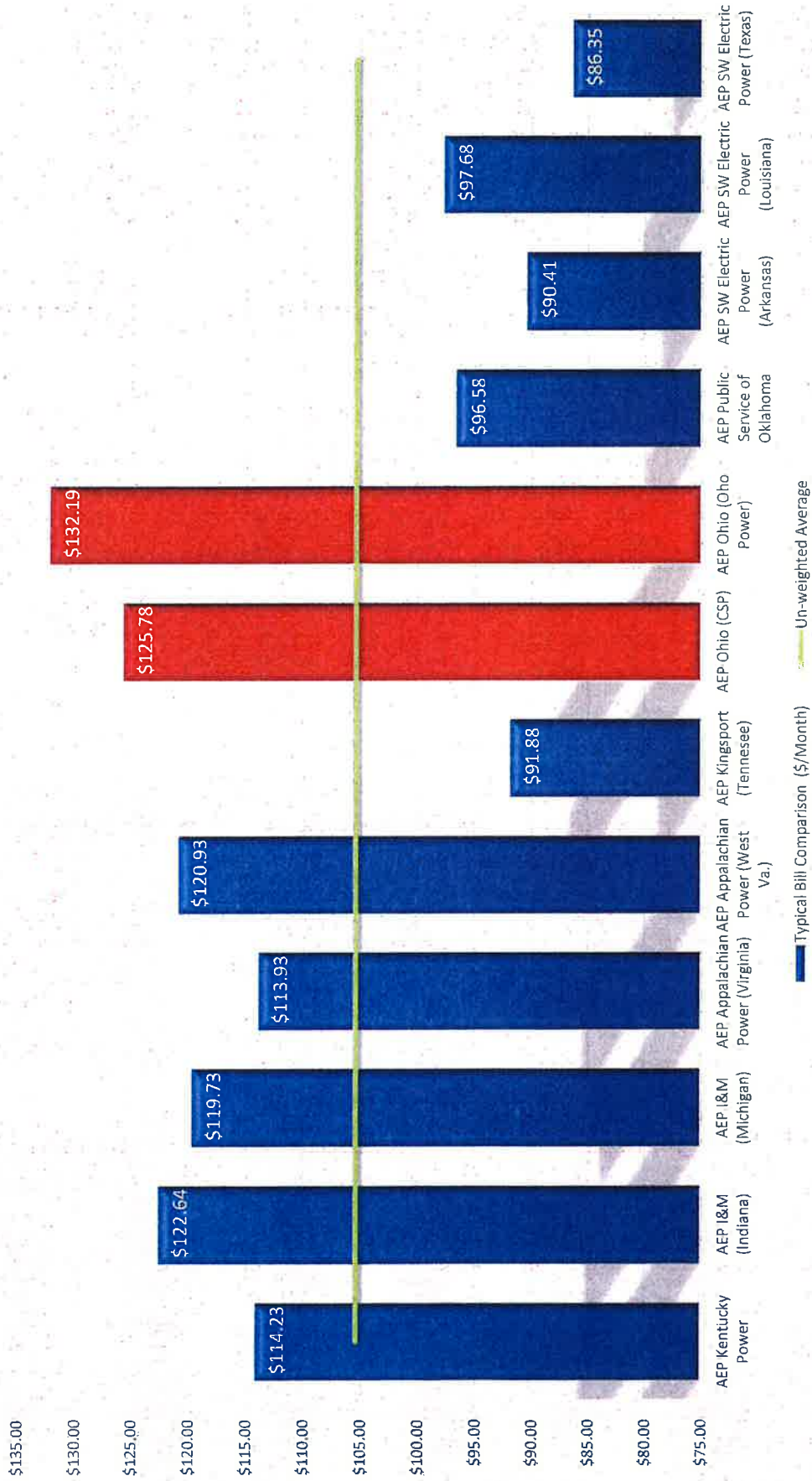
Attachment 2



¹ Adjusted to reflect ROE after roll-off of legacy items | ² Current base rate cases

Sphere size based on each company's relative equity balance

2017 Typical Bill Comparison (\$/Month)



**\$15.4 Billion
Charged to Customers
(2000 - 6/2019)**

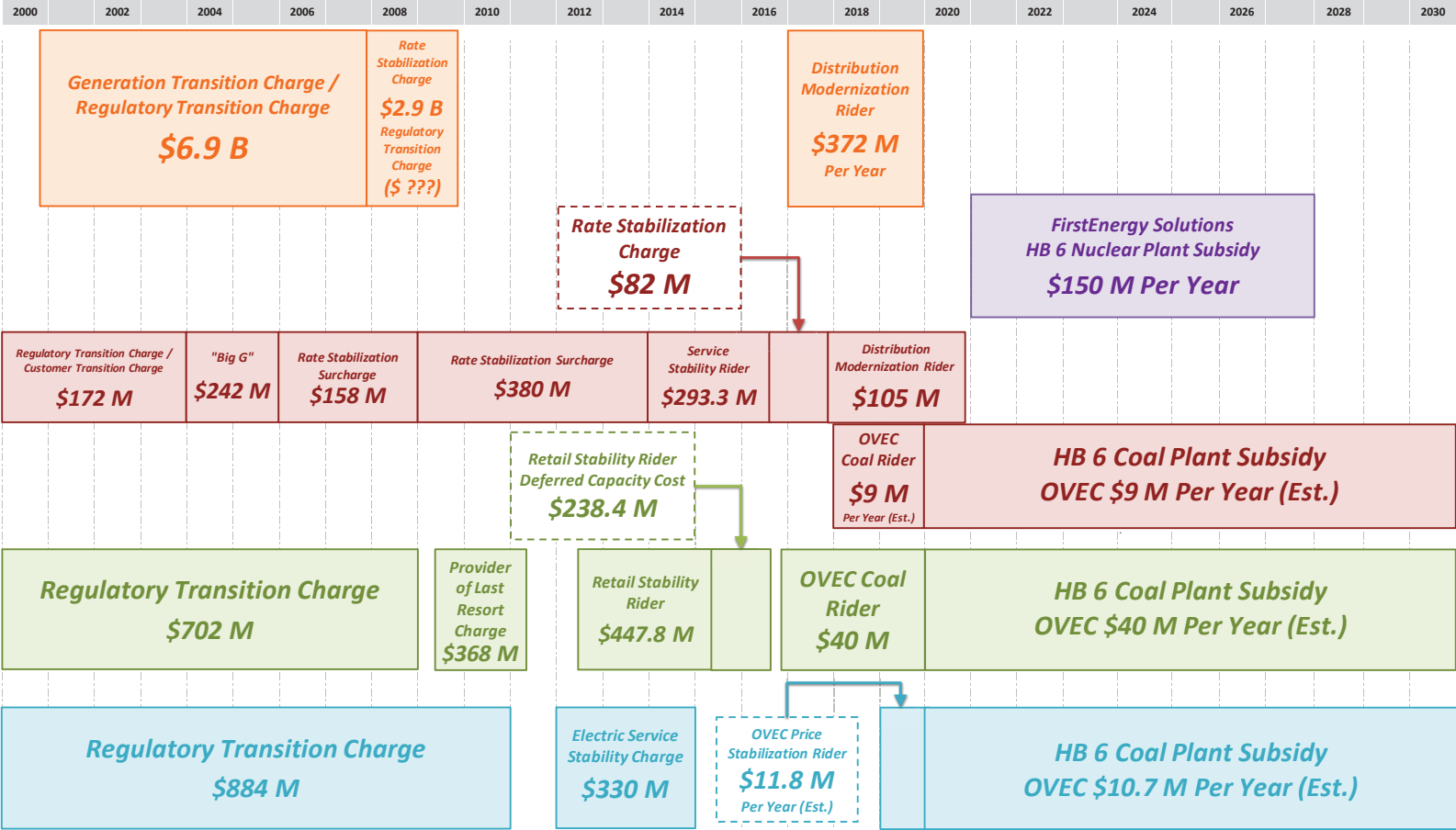
SUBSIDY SCORECARD

- ELECTRICITY CHARGES TO OHIOANS -

**\$1.9 Billion Projected
Charges to Customers
(7/2019 - 2030)**

FIRSTENERGY

\$10.2 Billion



DPL

\$2.0 Billion

AEP

\$1.8 Billion

DUKE

\$1.2 Billion

B=Billions; M=Millions