

**Before**  
**The Ohio House of Representatives**  
**Energy and Natural Resources Subcommittee on Energy Generation**  
**Testimony on House Bill 6**

**Presented by Michael Haugh**  
**On Behalf of the**  
**Office of the Ohio Consumers' Counsel**  
**April 24, 2019**

Hello Co-Chair Stein, Co-Chair O'Brien and members of the Subcommittee. Thank you for this opportunity to testify.

My name is Michael Haugh. I am testifying for the Office of the Ohio Consumers' Counsel, 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.

The Ohio Consumers' Counsel commends the General Assembly's landmark law in 1999 that deregulated power plants, to give consumers the benefit of a competitive power plant market with lower prices and higher innovation. We appreciate that, on October 19, 2011, FirstEnergy Executive Vice President and General Counsel Leila Vespoli testified before the Ohio House Public Utilities Committee that "...competitive markets work. They deliver the lowest price over the long-term to consumers, and the proof is undeniable."

This legislation is a step backwards for consumers from the 1999 law. The legislation would subsidize nuclear power plants and other plants. For consumer protection, the Ohio Consumers' Counsel recommends that you not enact this legislation.

Separate from these subsidies, the other part of the legislation is said to reduce rates by opting out consumers from paying for energy efficiency and renewable energy credits. The opt out provision is said, on average, to more than offset the rate increase for subsidizing power plants. Dayton Power and Light customers, however, would still pay a net rate increase. In this testimony I will explain why these two parts of the bill don't work for Ohio consumers.

The General Assembly's deregulation of power plants has contributed to competitive wholesale markets producing billions of dollars in savings for Ohio electric customers. Researchers at The Ohio State University and Cleveland State University concluded that Ohioans saved over \$15 billion between 2011 and 2015 from competition. They projected savings of over \$15 billion between 2016 and 2020. (link [https://engagedscholarship.csuohio.edu/urban\\_facpub/1416/](https://engagedscholarship.csuohio.edu/urban_facpub/1416/))

The attached Legislative Service Commission Fiscal Note from last session for H.B. 247 contains a graph showing a decrease in PJM wholesale electric rates since 2008. (See Attachment 1, page 2) The electric wholesale markets are working to bring customers reliable, lower cost power. Unfortunately for consumers, the LSC graph shows a rise in Ohio retail electric prices since 2009. LSC noted "the lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under ESPs."

New generation is being built in Ohio, leveraging the state's plentiful natural gas reserves with some of the lowest natural gas prices in the world. Investors, not customers, are bearing the risk

for these new power plants in the competitive market. Over 3,100 MW of new natural gas plants are currently producing electricity in Ohio, with another 7,800 MW in various stages of planning. A map of new generation is Attachment 2 to this testimony.

These new power plants are participating in the PJM wholesale markets. The subsidizing of nuclear and other generation in House Bill 6 undermines the competitive market that attracts new investment and benefits consumers in Ohio.

The Davis-Besse and Perry nuclear plants are not needed for the regional wholesale markets. PJM, the electric grid operator, has procured more than enough power to serve consumers for the next three years. And PJM's procurement for the 2021/2022 planning year has been successful without including the Davis-Besse and Perry plants in the mix. The PJM capacity auction has a reserve of 21.5%, 5.7% above the target reserve margin. (See Attachment 3) Ohio is a net importer of power from this regional grid. That is not a concern for consumers. Ohio is part of a multi-state market that brings the most efficient and lowest cost power to customers.

Subsidies disrupt markets and in turn harm Ohio customers. Since 1999, consumers have paid Ohio electric utilities over \$15 billion in subsidies, as shown on the attached subsidy scorecard. (See Attachment 4) FirstEnergy customers have already paid at least \$6.9 billion in power plant subsidies, including for the two Ohio nuclear plants eligible for subsidies under this legislation.

Clean air is obviously good. But this legislation has the government picking winners and losers in the competitive marketplace. That is not good. A massive Ohio subsidy for old nuclear power plants can result in investors looking elsewhere for building new power plants.

This bill interferes in the competitive market with a bailout of nuclear power plants. We share the view in the *AARP Policy Book 2019-2020* to “exclude subsidies or bailouts of generation facilities.” <https://policybook.aarp.org/node/4361>.

The Bill opts customers out of paying for the utility energy efficiency programs (lines 376-383) that were established in the 2008 energy law. This opt out would effectively end the utilities’ programs which contribute to clean air. Based on the electric utilities’ own reports to the PUCO on savings from the energy efficiencies programs for 2017, customers saved over \$600 million. Total annual savings to customers by utility for 2017: AEP \$171.9 million, Duke \$108.4 million, DP&L: \$101.7 million and FirstEnergy: \$225 million. If the programs are not continued under the legislation, customers will annually lose hundreds of millions of dollars in savings.

Therefore, for consumer protection, we oppose this legislation and the subsidies that customers would be charged under it. But, if the legislature decides to enact it, we suggest the following improvements for consumer protection:

**I. Remove the Decoupling Mechanism and Related Terms that Will Cost Consumers Money.**

The “decoupling” provision in lines 517-557 of the Bill would prevent customers from receiving some or all of the promised rate reductions in the Bill. Utilities likely will interpret this provision to allow a guarantee, in future years, of all revenue collected from customers in 2018. These revenues would include the costs and utility profits from energy efficiency programs in operation in 2018. Customers currently pay up to \$288 million per year for energy efficiency program costs and utility profits (shared savings), plus additional amounts for so-called lost revenues. Under the Bill, utilities could cancel all of their energy efficiency programs but still try to charge

customers over \$288 million per year. Customers would be paying hundreds of millions of dollars for nothing.

Additionally, lines 384-397 of the Bill allow utilities to continue charging customers for renewable programs, despite the Bill's opt-out provision. This, as with decoupling, is concerning for consumers and the premise that they will receive lower utility bills. For example, some utilities have long-term contracts to purchase renewable energy for many years into the future. Customers would continue to pay for those contracts under the Bill. Customers would be required to continue paying many millions of dollars per year for renewable programs while at the same time paying subsidies into the Clean Air Fund. This result is contrary to the customer savings promised in the Bill.

## **II. Customer Payments of Power Plant Subsidies Should be Limited to Funding Only Nuclear Plants.**

The Bill should not subsidize any power plants. But if the Bill is to be enacted, then solely nuclear power plants should be subsidized. Further, only nuclear plants located in Ohio should receive subsidies through electricity rates charged to Ohioans. Limiting the subsidy to nuclear power plants would significantly reduce the amount of the subsidy collected from Ohioans. The current Bill would result in approximately \$300 million per year in subsidies to be collected from Ohio customers, but that amount should be reduced by roughly half to only subsidize nuclear plants. Based on the Bill's \$9.25/MWh credit (lines 431-432), Ohio's nuclear plants could collect approximately \$160 million in subsidies, provided the generation owner shows need as recommended later in my testimony. This amount should be the limit Ohio customers can be charged to subsidize these nuclear plants. This reduced subsidy should result in a reduction to the customer charge in this Bill. (See Bill lines 362-375)

**III. Power Plants Should have to Prove a Financial Need, Without Excessive Profits, to Qualify for Subsidies from Ohio Consumers.**

This Bill should require generation owners to prove a need for the \$9.25 per MWh subsidy. This proof should include that the power plants would not have excessive profits funded by customers.

**IV. Power Plants Should be Physically Located in the State of Ohio to Qualify for Subsidies Paid by Customers.**

Owners of out of state power plants, such as FirstEnergy or its successor, might claim that the Bill's language allows using subsidies from consumers for those power plants. The Bill should limit the opportunity for receiving subsidies to only generating plants physically located in Ohio. Also, if an in-state plant receives subsidies from the PUCO, another state or the federal government, then that plant should be ineligible for subsidies in this Bill. For example, FirstEnergy and others are asking the General Assembly of Pennsylvania to consider a nuclear generation bailout bill. Multiple customer-funded subsidy payments to the same facility should not be allowed.

**V. The Bill's Flat Subsidy Charges Should be Replaced with a Uniform Subsidy Charge Per Kilowatt Hour, for Fairness Between Residential, Smaller Businesses and Large Industrial Customers.**

The customer charge for this program should be on a consumption basis, not a flat monthly charge (lines 364-375). For each megawatt generated, emissions are released. Customers causing the emissions should pay the associated costs. The Bill would have residential and commercial class customers each paying roughly 42% of the cost while the industrial class only pays 16%. Energy usage by class in Ohio for 2018 was approximately 36% for residential, 31% for

commercial and 34% industrial ( <https://www.puco.ohio.gov/puco/index.cfm/industry-information/statistical-reports/electric-customer-choice-switch-rates-and-aggregation-activity/>). Charging customers on a per kWh basis is a more equitable allocation of costs and avoids the effect of a regressive tax on residential consumers and smaller businesses.

## **VI. Eliminate the Utility Purchased Power Agreements in the Bill.**

Section 4928.47 (lines 476 through 516) should be eliminated. The Bill's provision to "facilitate and encourage" purchased power agreements between the utility and customers could ultimately result in captive monopoly customers paying millions of dollars to subsidize these agreements, which are instead supposed to be subject to competitive forces.

Services at a customer's premise after the utility's meter (such as wind, solar, and battery storage) are deregulated and should be competitive. Allowing the local utility to fund such agreements with captive customer dollars will afford the utility an unwarranted and unfair competitive advantage. These customer-funded subsidies will be destructive of the markets for these services and of the consumer benefits of lower prices and higher innovation that come with competition. The business risk for these agreements should remain with the customer entering into such agreements and the utility.

Moreover, this section of the proposed law allows customers entering these agreements to avoid other charges, such as the clean air charge, and any remaining charges, including remaining renewable and energy efficiency charges. The charges these customers avoid can increase rates to the other remaining customers. These provisions of the Bill should be eliminated.

**VII. The Subsidy Program Should be Reviewed Every Five Years, Subsidies Should Have a Near-Term End Date, and Subsidies Should not be Allowed as a Permanent Business Model for Power Plants.**

To protect consumers, the Bill should be modified to include a comprehensive five-year review of this program by the Public Utilities Commission of Ohio. The five-year review should include an assessment as to whether this subsidy program should be continued, and the PUCO should have authority to end it. Above-market subsidies to uneconomic generating facilities are contrary to power plant competition envisioned in the 1999 deregulation law. Customer-funded subsidies should not be tolerated as a long-term business model for power plants in Ohio.

**VIII. Additional Consumer Protections.**

This Bill proposes a second look at the 2008 law (SB 221), by effectively eliminating the energy efficiency and renewable energy programs. But there are other provisions of the 2008 law that are more important to change for consumer protection and to achieve lower electric bills. For starters, the General Assembly should eliminate electric security plans that themselves have enabled anti-competitive subsidies charged to Ohioans by electric utilities. AEP consumers, for example, have paid dearly for electric security plans and the lack of refunds. In this regard, Attachment 5 is a chart based on AEP's own data showing that it charges its Ohio residential consumers higher electric bills than it charges its consumers in any other state. Attachment 6 is AEP's own chart showing that it charges its Ohio consumers the highest profit of any profit that AEP makes anywhere else in the country.

Short of eliminating electric security plans, there are specific elements of the law that should be changed. Those elements for change include but are not limited to provisions allowing electric utilities: to charge consumers for excessive profits (just not "significantly" excessive profits); to



withdraw (essentially veto) an electric security plan if the utility doesn't like the PUCO's modifications to a plan; to create and cherry-pick unlimited "riders" (charges) for customers to pay; and to propose qualitative factors and not just the quantitative factors of prices for the PUCO to consider in comparing an electric security plan to a market rate.

Separate from the anti-consumer ratemaking in the 2008 law, another major problem that is costing consumers money is the Ohio Supreme Court's precedent against refunds to consumers for utility charges found to be unlawful. The Court has noted the unfairness of the lack of refunds for consumers and observed that it is a matter for the legislature to address. Ohio utility consumers have lost over \$849 million for lack of refunds since 2008.

In sum, Ohioans have paid billions of dollars to electric utilities to transition to a competitive market. At a time when Ohioans should be reaping the benefits of low cost, reliable power, segments of the energy industry continue to push for subsidies and bailouts that are harmful to customers and destructive of the competitive markets that benefit customers. To close with another quote from FirstEnergy Executive Vespoli's 2011 testimony in this chamber: "At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply cannot afford...missteps that would saddle our customers with higher-than-market prices for electricity." I urge you to protect millions of Ohioans by not enacting this legislation.

Thank you for your time and consideration.



# OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 247 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Rep. Romanchuk

**Local Impact Statement Procedure Required:** No

**Subject:** Revise policies applicable to electric utilities

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### State & Local Fiscal Highlights

- The bill has no direct fiscal effect on expenditures for state agencies or political subdivisions, but the bill might have the indirect effect of changing electricity costs if electric security plans are eliminated. Should retail electric rates increase or decline as a result of H.B. 247, there could be a corresponding impact in commercial activity tax revenue paid by affected utilities. Revenue from the tax is allocated primarily to the GRF.

### Detailed Fiscal Analysis

H.B. 247 revises several state policies governing electric utilities. For a complete explanation of the changes, refer to the LSC Bill Analysis. The topics highlighted below are those that are most likely to have an indirect fiscal effect on governmental revenues and expenditures. The bill does not have a direct effect on state agencies or political subdivisions, but it could impact the electricity prices paid by these entities as well as state tax receipts collected from electric distribution utilities (EDUs).

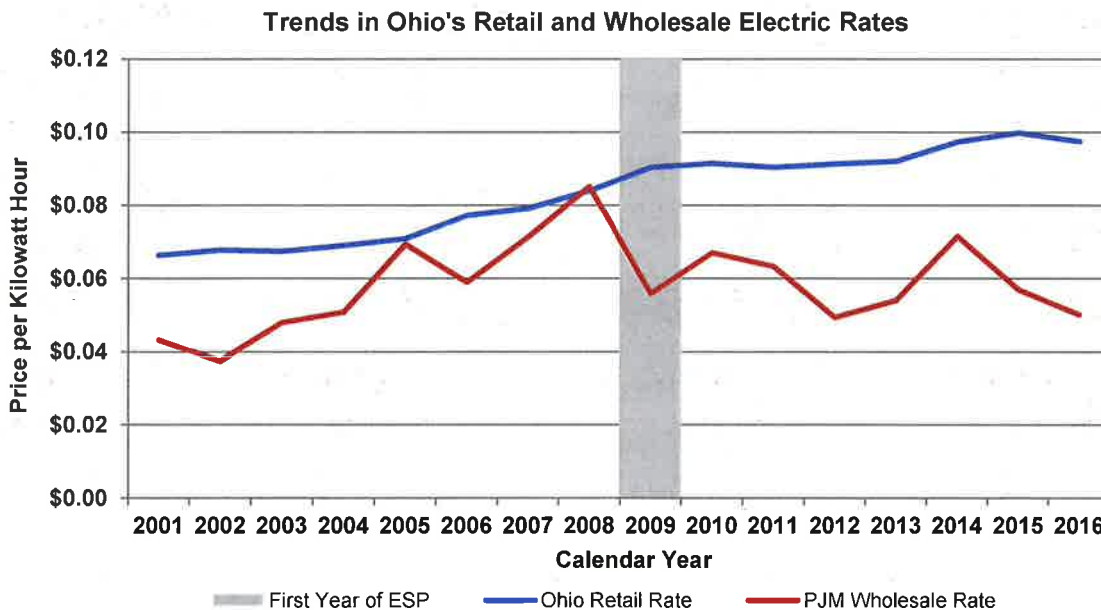
#### Elimination of electric security plans

H.B. 247 requires an EDU's standard service offer (SSO) to be established only as a market rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory. Under current law in R.C. 4928.141, an EDU must provide consumers within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143. The MRO is determined through a competitive bidding process in which generation suppliers submit their least-cost bids.

Existing law governing an ESP permits numerous rate components, but does not explicitly specify the rate calculation. The only substantive requirement is that the plan must be "more favorable in the aggregate as compared to the expected results" of an

MRO.<sup>1</sup> In practice, the Public Utilities Commission of Ohio (PUCO) evaluates the quantitative and qualitative benefits when determining whether the proposed ESP is more favorable than the expected MRO.<sup>2</sup> Moving to market-based rates would almost certainly change the rates that customers, including the state and local governments, pay for electricity. Current market conditions exhibit retail rates for electricity in Ohio that are significantly higher than wholesale rates (see chart below), which suggests the most likely impact of moving to market-based rates would initially be downward.

The chart below illustrates trends in Ohio's average retail electric rate and the wholesale rates reported by the regional transmission organizer, PJM. Both retail and wholesale rates grew in the earliest years of the centrally organized market operated by PJM, but the subsequent downturn in wholesale prices has not been reflected in retail rates paid by Ohio customers. The lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under ESPs. However, other external factors may be relevant. For example, the emergence of a large amount of unconventional natural gas production (i.e., shale gas) started in 2006-2007. The resulting drop in natural gas prices began in 2009 under the combined impacts of low electricity demand during the economic recession and a significant increase in supply.<sup>3</sup>



Source: Average Ohio retail price of electricity from U.S. Energy Information Administration; total wholesale power price from 2016 State of the Market Report for PJM

<sup>1</sup> R.C. 4928.143(C)(1).

<sup>2</sup> Most recently in an October 20, 2017 Opinion and Order that adopted Dayton Power and Light Company's current ESP (PUCO Case No. 16-395-EL-SSO).

<sup>3</sup> Further discussion of this dynamic can be found in the U.S. Department of Energy's "Staff Report to the Secretary on Electricity Markets and Reliability." <https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability>.

## Commercial Activity Tax

H.B. 247 does not have a direct effect on Commercial Activity Tax (CAT) receipts, but if the bill changes electric charges for customers, Ohio's electric distribution utilities may remit more or less CAT revenue than they otherwise would absent the legislation. LSC cannot speculate on the potential indirect effect, but the table below provides the total CAT charges reported by EDUs in their most recent annual reports. The six utilities reported a combined total of \$20.3 million in CAT charges during calendar year 2016.

Under continuing law, the Commercial Activities Tax Receipts Fund (Fund 5GA0) consists of money arising from the CAT. The Department of Taxation's Revenue Enhancement Fund (Fund 2280) receives the first 0.75% of the money credited to that fund to defray the costs incurred by the Department. Of the remaining money in Fund 5GA0, 85% must be credited to the GRF, 13% to the School District Tangible Property Tax Replacement Fund, and 2% to the Local Government Tangible Property Tax Replacement Fund. Expenses of the latter two funds are fixed, with excess revenue transferred to the GRF, so the GRF would bear the full gain or loss of revenue after Fund 2280 gets its share.

Company-Reported CAT Charges During Calendar Year 2016	
Electric Distribution Utility	CAT Charged During 2016
Cleveland Electric Illuminating Company	\$2,473,429
Dayton Power and Light Company	\$2,725,934
Duke Energy Ohio, Inc.*	\$3,055,279
Ohio Edison Company	\$3,234,840
Ohio Power Company (AEP Ohio)	\$7,733,279
Toledo Edison Company	\$1,096,661
<b>Total</b>	<b>\$20,319,422</b>

\*Company reported data adjusted by LSC using company's annual report to PUCO. The downward adjustment isolates CAT paid on behalf of electric utility receipts by excluding gas utility receipts.

Source: FERC Form No. 1: Annual Report of Major Electric Utilities

## Refunds for utility charges

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges. PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

The refund provision may reduce costs to ratepayers, but LSC cannot predict the frequency (if any) with which this provision would be invoked in future years. If this language was in effect when a 2014 Ohio Supreme Court decision was issued, the ratepayers in American Electric Power's (AEP Ohio) two service territories would have

likely received refunds totaling \$368 million.<sup>4</sup> At the time, the Ohio Supreme Court found that PUCO erred when it approved certain charges contained in AEP Ohio's first ESP, in effect from 2009 to 2011. Although the Supreme Court regarded those charges as unjustified, it did not order the money refunded to customers, citing existing statute and case law against retroactive ratemaking.

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<sup>4</sup> Supreme Court Document Ohio Supreme Court Slip Opinion, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.







**2021/2022 RPM Base Residual Auction Results**

**Executive Summary**

The 2021/2022 Reliability Pricing Model (RPM) Base Residual Auction (BRA) cleared 163,627.3 MW of unforced capacity in the RTO representing a 22.0% reserve margin. Accounting for load and resource commitments under the Fixed Resource Requirement (FRR), the reserve margin for the entire RTO for the 2021/2022 Delivery Year as procured in the BRA is 21.5%, or 5.7% higher than the target reserve margin of 15.8%. This reserve margin was achieved at clearing prices that are between approximately 44% to 82% of Net CONE, depending upon the Locational Deliverability Area (LDA). The auction also attracted a diverse set of resources, including a significant increase in Demand Response and Energy Efficiency resources, additional wind and solar resources, and one new combined cycle gas resource.

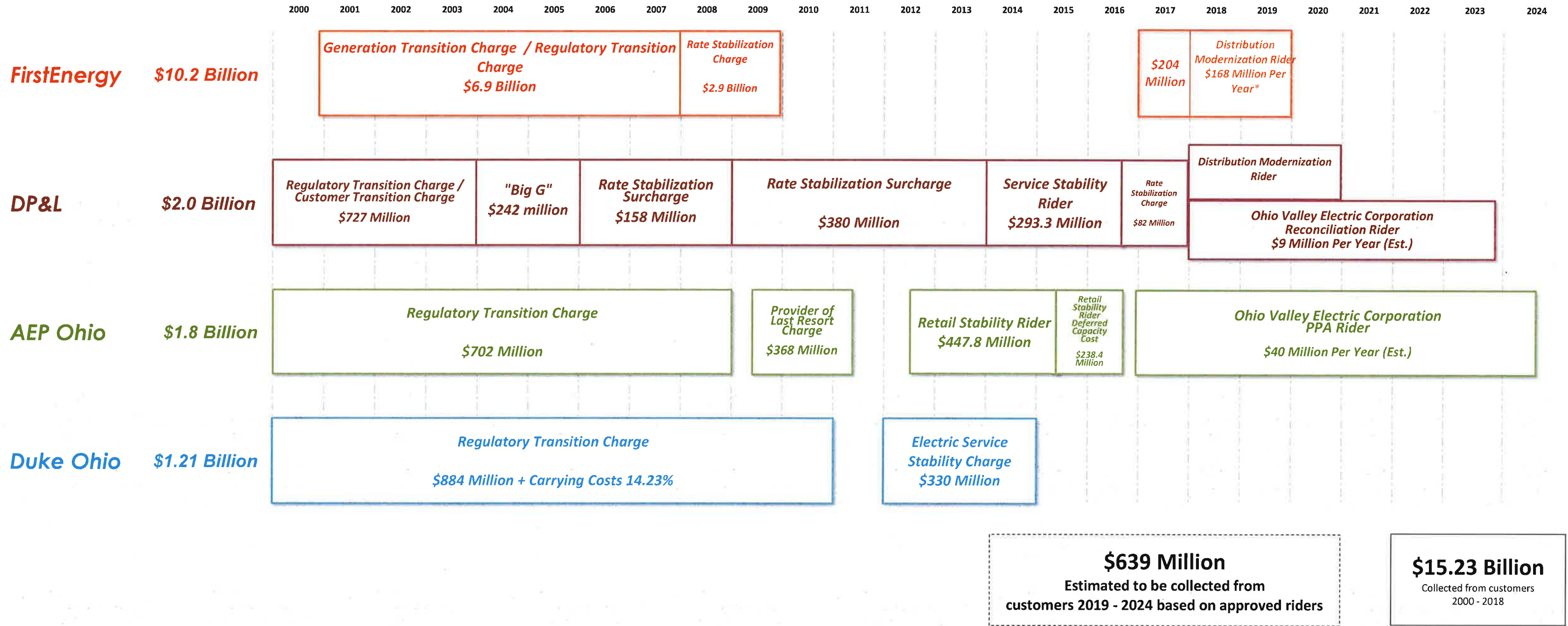
The 2021/2022 BRA is the second where PJM has procured 100% Capacity Performance (“CP”) Resources. CP Resources must be capable of sustained, predictable operation, and are expected to be available and capable of providing energy and reserves when needed throughout the entire Delivery Year. As was the case with the 2020/2021 BRA, the 2021/2022 BRA was conducted under the provisions of PJM’s Enhanced Aggregation filing (Docket ER17-367-000 & 001) which was accepted by FERC on March 21, 2017.

**2021/2022 BRA Resource Clearing Prices**

Resource Clearing Prices (RCPs) for the 2021/2022 BRA are shown in Table 1 below. The RCP for CP Resources located in the rest of RTO is \$140.00/MW-day. EMAAC, PSEG, BGE, ATSI and COMED were constrained LDAs in the 2021/2022 BRA with locational price adders, in regards to the immediate parent LDA, of \$25.73/MW-day, \$38.56/MW-day, \$60.30/MW-day, \$31.33/MW-day and \$55.55/MW-day, respectively, for all resources located in those LDAs. For comparison, the RTO’s resource clearing price in the 2020/2021 BRA was \$76.53/MW-day. Additionally, the MAAC, EMAAC, COMED and DEOK LDA were constrained LDAs in the 2020/2021 BRA with RCPs of \$86.04/MW-day, \$187.87/MW-day, \$188.12/MW-day and \$130.00/MW-day respectively.

Capacity Type	2021/22 BRA Resource Clearing Prices (\$/MW-day)					
	Rest of RTO	EMAAC	PSEG	BGE	ATSI	COMED
Capacity Performance	\$140.00	\$165.73	\$204.29	\$200.30	\$171.33	\$195.55

## SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS

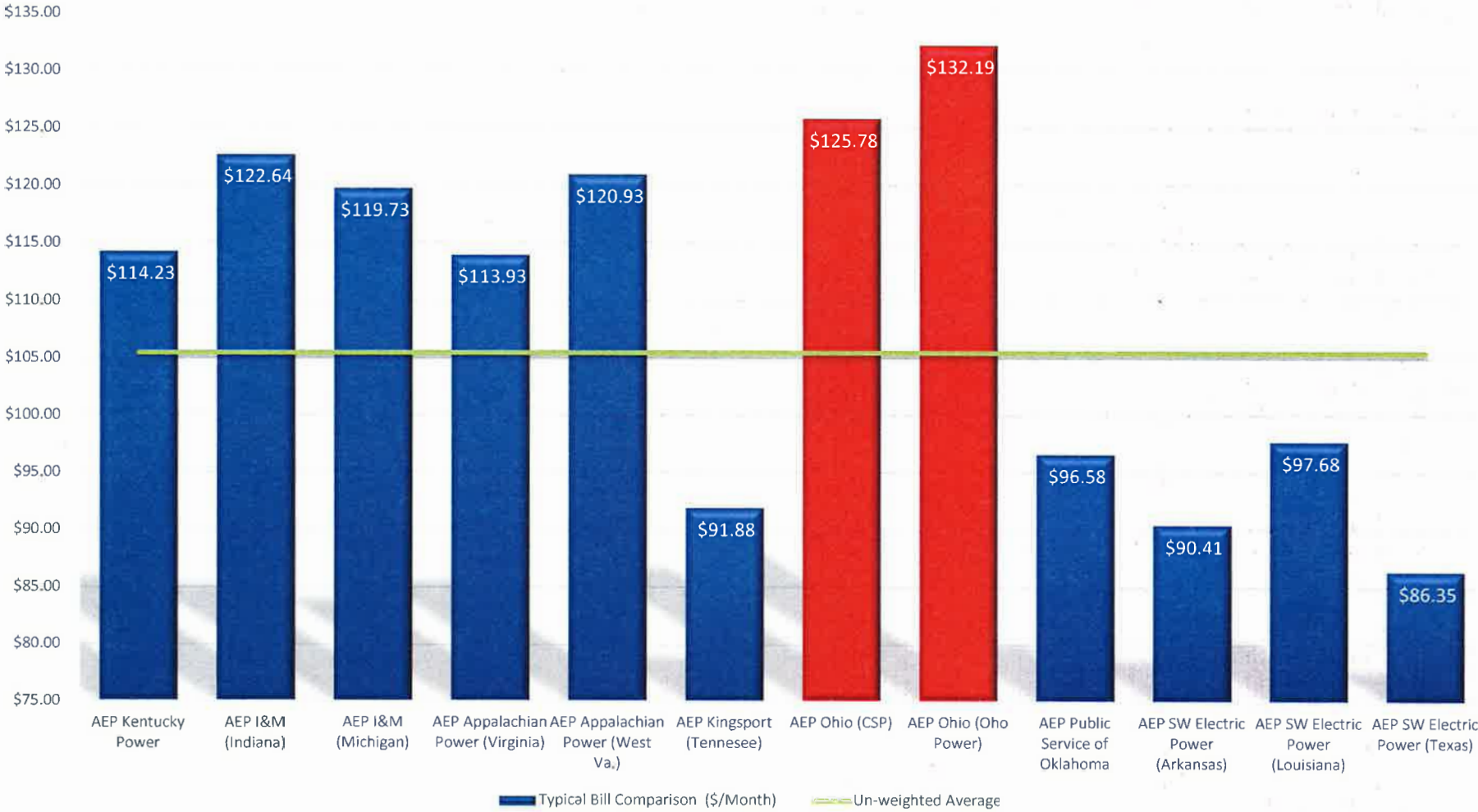


\* : FE has filed an application for an extension of the DMR for two years after the current DMR expires on December 2019.

\*\* : DP&L has filed an application for an extension of the DMR for two years after the current DMR expires at the end of October 2020 and for an increase in the amount of collection from \$105 million to \$199 million.



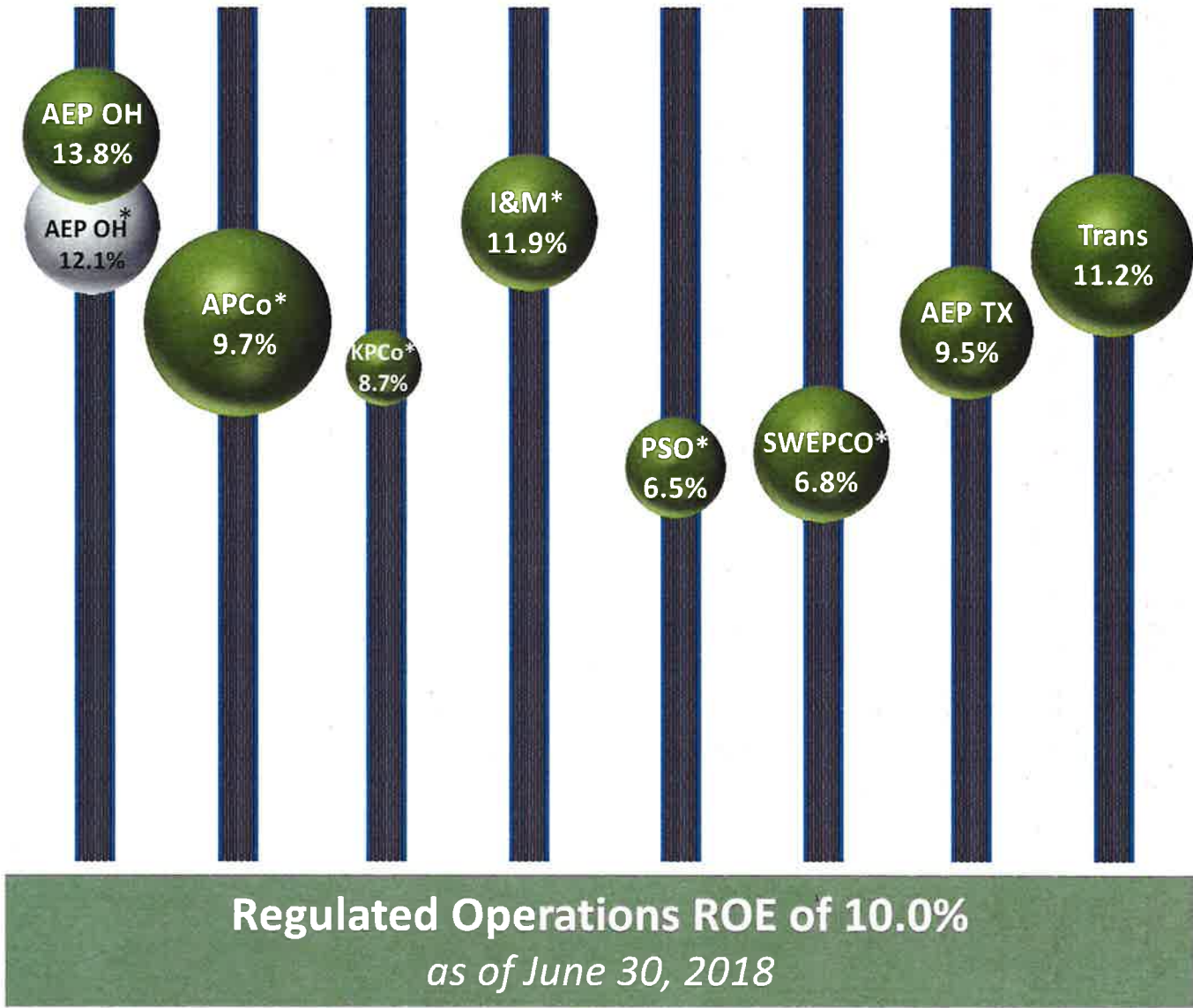
# 2017 Typical Bill Comparison (\$/Month)





# Regulated Returns

Twelve Months Ended 6/30/2018 Earned ROE's (non-GAAP operating earnings, not weather normalized)



\*AEP Ohio adjusted for SEET items. Base rate case orders in process or recently received at other operating companies.

Sphere size based on each company's relative equity balance