Before
The Ohio House of Representatives
Public Utilities Committee

Testimony on House Bill 178

Presented by Jeff Jacobson
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On Behalf of
Office of the Ohio Consumers' Counsel
and
Northeast Ohio Public Energy Council

May 9, 2017

Hello Chair Seitz, Vice Chair Carfagna, Ranking Minority Member Ashford, and members of the Committee.

My name is Jeff Jacobson. I am here representing the Office of the Ohio Consumers' Counsel, the state's representative of four million residential utility consumers. I am also representing the Northeast Ohio Public Energy Council (NOPEC), the largest retail governmental aggregator of electric customers in Ohio and nationally, with about 500,000 electric customers in the FirstEnergy service area.

I am testifying in opposition to H.B. 178 to protect nearly two million residential consumers from each paying up to approximately $1,000 on average in subsidies to FirstEnergy over 16 years (approximately $5.00 per month) and to protect the competitive market for power plants that provides benefits of competition to Ohioans.

First, just a bit about my background: I am a former member of the Ohio House and Senate. In 1999, I voted for electric deregulation, Senate Bill 3, like most all my colleagues—though I will admit to not understanding it well at the time. I had more to do with getting Senate Bill 221 enacted in 2008, and deserve part of the blame for the slowness of Ohio's transition to full power plant competition by the decisions we made in that bill.

Today, of the 50 states and the District of Columbia, Ohio has the 18th highest average residential rate for electricity—meaning 33 states have lower residential rates. (See Attachment 1) Of the restructured states—those who have moved towards the free market—Ohio has the second highest residential price increases from 2008 to 2016. (See Attachment 2)

Ohio has these higher electricity costs for consumers despite being awash in shale oil and natural gas that have given us historically low gas prices, that the U.S. Energy Information Administration has projected to be relatively stable for a couple decades or more. Not surprisingly, Ohio has a growing number of new gas-fired power plants under construction. (See Attachment 3)

Competition is working in the electric generation market. A recent study[1] by The Ohio State University and Cleveland State University researchers found about $12 billion in consumer savings from the utilities' competitively bid standard service offers during 2011 to 2015. And the researchers project another $12 billion to be saved in the next five years because of having the market-based standard service offer. Moreover, having the ability for consumers

[1] Thomas et al., Electricity Customer Choice in Ohio: How Competition Has Outperformed Traditional Monopoly Regulation (2016), page 3.
http://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=2420&context=urban_facpub

to band together by community for government aggregation has been one of the key successes of the 1999 law for benefiting consumers, with total shopping savings of more than $3 billion in the same time period. We thank the Ohio General Assembly for giving consumers those benefits of the competitive electric generation market.

But there is a problem that is preventing Ohio families and businesses from realizing the full benefits of lower prices in the market. That problem is the continuing requests by Ohio electric utilities—now years after the 1999 deregulation law's transition period ended—for consumers to pay subsidies above the market price of electricity. Attached to this testimony is a "subsidy scorecard" from the Consumers' Counsel. That shows the subsidies that Ohioans have paid and are currently paying to their electric utilities—totaling nearly $15 billion overall from 2000 to the present. (See Attachment 4)

The bulk of these subsidies were paid as transition charges during the first ten years after deregulation was adopted. But in the past several years there have been instances of utilities asking for and being granted new subsidies.

And now these utility efforts to increase the cost of electricity for Ohioans have come to the General Assembly. FirstEnergy is asking for passage of a bill that would make about two million residential FirstEnergy consumers pay up to $300 million per year, for up to 16 years (or up to about $1,000 per customer). This rate increase proposal is said to be for nuclear power plants owned by FirstEnergy.

Three years ago, FirstEnergy asked for approval of a plan allegedly to stabilize rates, that the Consumers' Counsel and NOPEC calculated would cost consumers $3.5 billion or more over eight years, or upwards of about $1,000 per each of two million consumers. And Ohio regulators approved the essence of the plan, known as a power purchase agreement. But then, stakeholders including OCC asked the Federal Energy Regulatory Commission to protect customers from the plan's anti-competitive effects. The Federal Commission stepped in to prevent the subsidy, requiring FirstEnergy to prove that its plan did not negatively impact the electric markets or consumers. That ended FirstEnergy's power purchase subsidy plan.

But FirstEnergy persisted. FirstEnergy presented more proposals to state government until Ohio regulators awarded it $204 million per year for at least three years (and maybe more). FirstEnergy was allowed to charge consumers for a so-called "distribution modernization rider" that doesn't require consumers' money to be spent on modernizing the distribution grid. Since January 1, 2017, FirstEnergy's customers have been paying for that charge.

And now, not satisfied with the new $204 million annual subsidy for at least three years, and after receiving $9.8 billion in subsidies for its transition to competition from 2001 to 2010 FirstEnergy is back. This time the ask is for up to nearly $5 billion more for Ohioans to subsidize. Respectfully, you should stop this cycle of subsidies and give consumers more of the benefit of competition intended under the 1999 law.

On April 25, 2017, FirstEnergy testified that the government should make two million Ohioans pay up to about $1,000 each, on average, for the nuclear plants to protect what FirstEnergy asserts to be Ohio's energy security and diversity. But just six years ago FirstEnergy testified to the opposite point before this Committee: that Ohio's energy security was not about diversifying types of electric generation. (See Attachment 5: Testimony of Leila Vespoli, "Competitive Markets Work," October 11, 2011). In that testimony, FirstEnergy spoke of "ensur[ing] adequate and affordable supplies of generation for Ohio's future"—which it described as "the only meaningful definition of Ohio's energy security.” (FirstEnergy Testimony, Attachment 5 at p. 2) FirstEnergy said that “the real problem with subsidized generation is that regulators would be picking the ‘winners’ and ‘losers’ in the energy market. We’ve been down that road before, and the results weren’t pretty.” (FirstEnergy Testimony, Attachment 5 at p. 5) FirstEnergy’s 2011 testimony statements were true then and just as true now, even though FirstEnergy’s position has now changed.

There are other problems as well. H.B. 178’s requirements that the plant owner maintain its corporate headquarters in Ohio if it has one here and maintain a certain employment level sounds good but accomplishes little. Corporate headquarters is undefined, but even should FirstEnergy’s generation affiliate be acquired by another company or otherwise move its headquarters out of state, the bill doesn’t allow or require the PUCO to withhold credits or do anything. And since FirstEnergy has made clear its intention to sell these plants, it is telling that the legislation does not say that an out-of-state purchaser has to move any jobs here or maintain any sort of Ohio presence. Interestingly, the provision could be said to discourage an Ohio corporation from buying the nuclear plants as it arguably requires more from them than it does from non-Ohio purchasers.

Also, the bill’s requirement that the owner maintain a similar level of employment as other similarly situated plants has no enforcement mechanism, says nothing about what those employees are paid or what jobs they are doing. It just talks about “employment levels.”

FirstEnergy also talks about the jobs that would be lost if these plants would close. I certainly do not discount the hardship faced by individuals who lose their jobs. But it is worth noting that Ohio Revised Code Section 4928.31(A)(4) required electric utilities in their transition plans (when FirstEnergy got $9.8 billion of consumer's money for transition) to help their employees with their transition.[2]

Even if these plants were to close, Ohio has about eight new power plants that are in different stages of planning and construction. Those plants will have to be run economically and will have no ability to obtain a similar subsidy from Ohioans. They will employ Ohioans, pay Ohio local taxes, and if they clear the regional market, will cost Ohioans less than the two nuclear plants, if those two plants cannot be run economically.

So what then might this consumer bailout of FirstEnergy and its investors be about? FirstEnergy's financial challenges for its generation affiliate increased with its $4.7 billion acquisition of Allegheny Energy in Pennsylvania about 5 years ago. It is our understanding that FirstEnergy agreed to absorb $3.8 billion of Allegheny's debt and to pay a stock premium of approximately between 22 and 36 percent. Allegheny's generating fleet was almost all coal-fired, and FirstEnergy closed down a number of generating units after it made this unfortunate acquisition.

If FirstEnergy's generation affiliate declares bankruptcy, another company could buy and operate these two plants and keep the vast bulk of the jobs intact. Even were H.B. 178 to pass, FirstEnergy's generation affiliate might still declare bankruptcy, as FirstEnergy's CEO has indicated in several investor calls in the past months. In that event, the $300 million annual subsidy for 16 years will go to the buyer of the plants and whatever extra that purchaser pays for the plants will just end up helping the lenders, bondholders, and shareholders make more money than they would otherwise make..

[2] Division (A)(4) provides that a transition plan shall include: "An employee assistance plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter."

By transferring business risk, the effect of this bill is to convert customers into investors. But customers should not have to bear the risks of FirstEnergy investors. In a capitalist society like the United States, investors, bondholders, and lenders voluntarily take risks for the potential rewards. Customers already paid $9.8 billion to FirstEnergy in the early years after deregulation for the transition from regulated generation to unregulated generation. That was an extraordinary, but temporary measure to help the utility and its investors pare their risk, that should not be repeated now to the detriment of two million Ohio families and businesses.

Please listen again to the words of FirstEnergy from six years ago:

> At FirstEnergy, we made every effort to meet the letter and spirit of the new law – devoting significant resources to prepare our company, employees and customers for competitive markets.
>
> But more important, all of our generation-related investments – including the risks that accompany them – are now borne by our shareholders, not by customers. … This change has made us better – leaner, more efficient, and more customer-focused.
>
> Since 1999, our competitive subsidiary FirstEnergy Solutions, has invested nearly $6.4 billion in its generating fleet while adding more than 900 megawatts of power. That's the equivalent of a large, baseload power plant – and, once again, we've brought that additional capacity online *at no risk to consumers*. (FE testimony, 3-4)

FirstEnergy understood and touted to this committee that under the new law its shareholders, not its customers, bear the risk for its business decisions.

That is no less right today than it was six years ago. The risk for FirstEnergy's business decisions belongs with people who invested or lent money to FE. That risk should not be transferred involuntarily to the two million Ohioans who live in FirstEnergy's territory. Enough is enough.

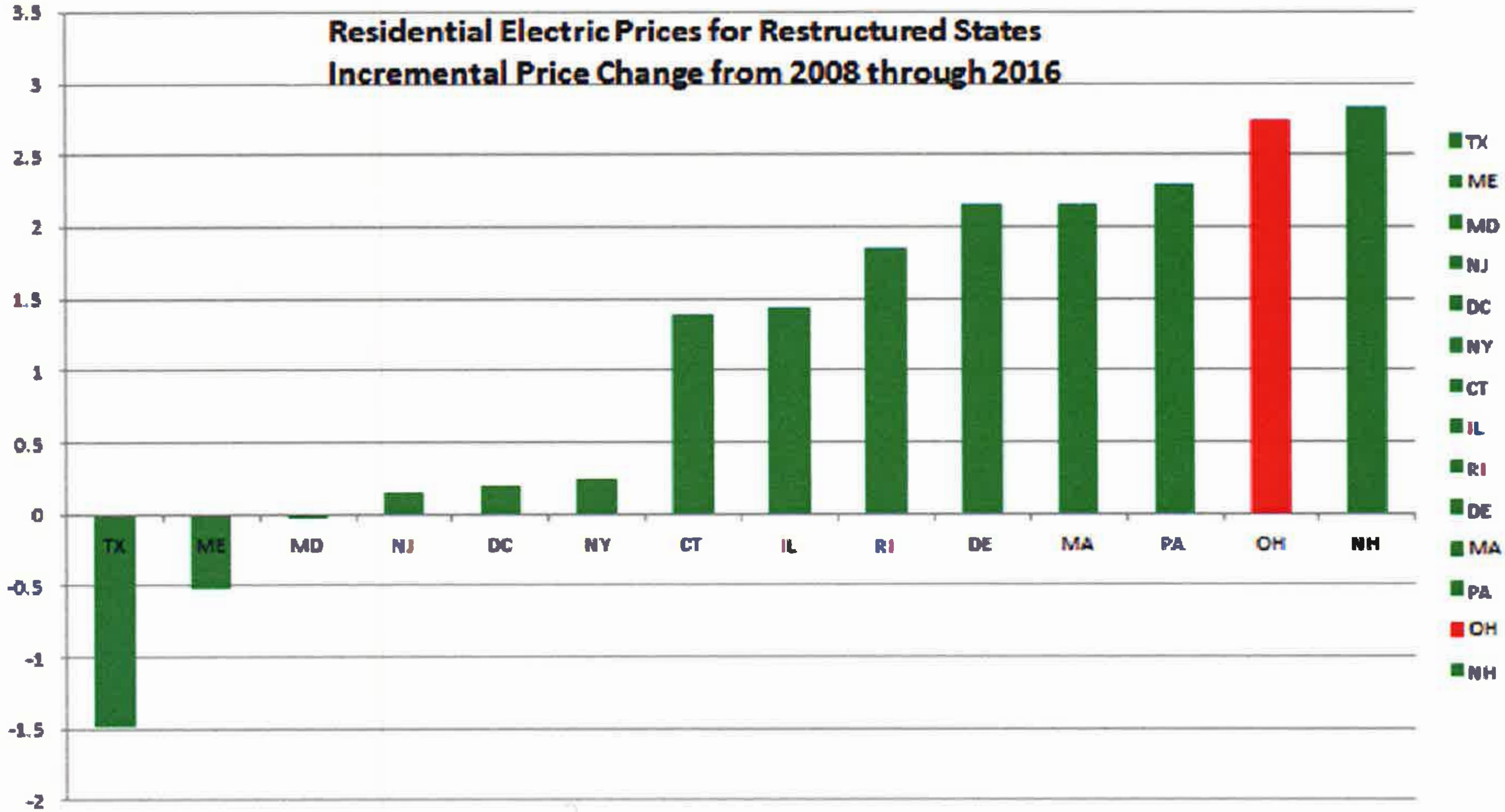
Chairman Seitz and members of the Public Utilities Committee, I urge you to protect two million Ohioans, businesses and families, in FirstEnergy territory by rejecting House Bill 178.

Thank you.

U.S. Energy Information Administration Data: Table 5.6.B. Average Retail Price of Electricity to Ultimate Customers by End-Use Sector, by State, Year-to-Date through December 2016 (Cents per kWh)

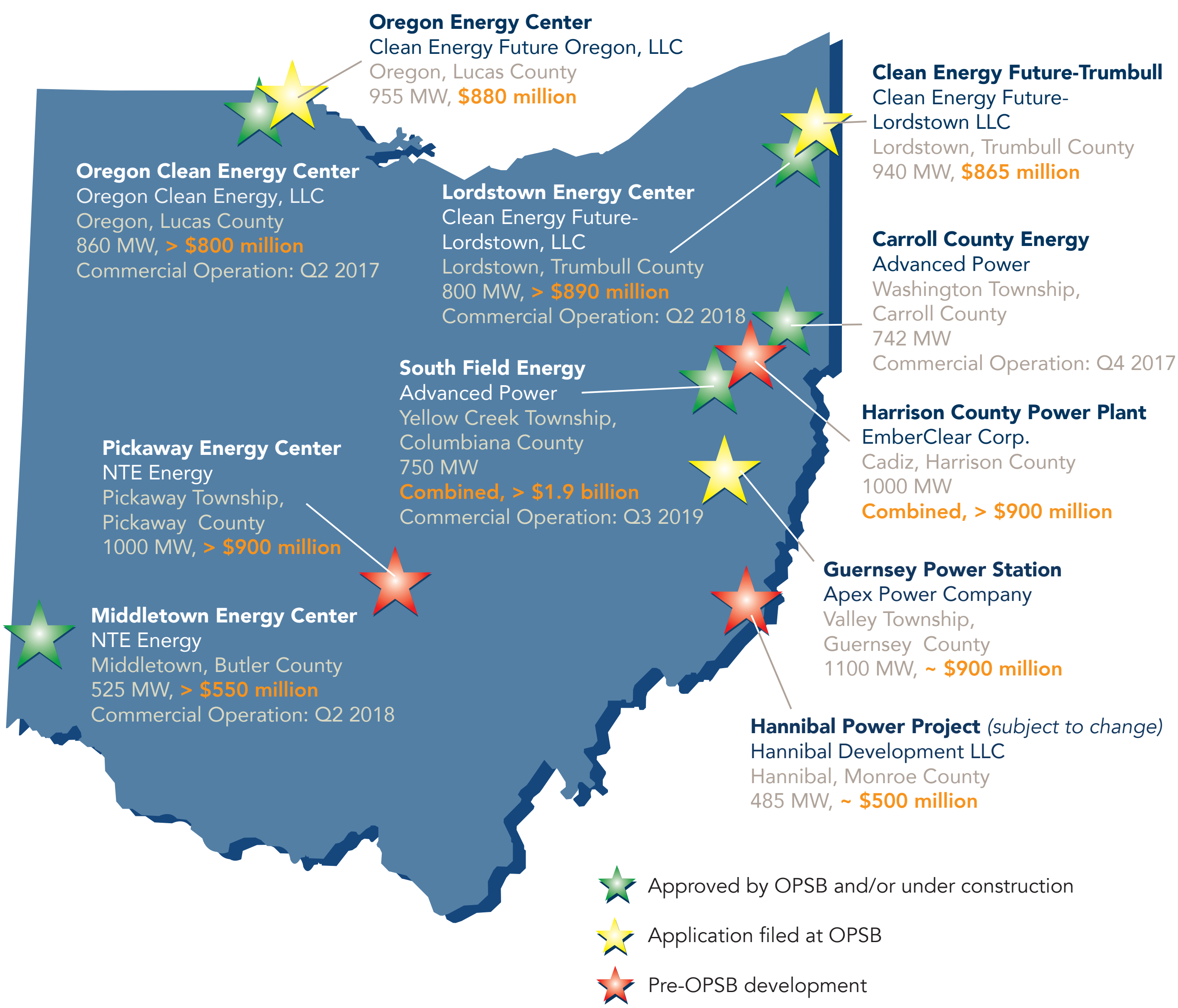
Residential

	State	December 2016 YTD
1	Washington	9.09
2	Louisiana	9.33
3	North Dakota	9.62
4	Arkansas	9.82
5	Idaho	9.93
6	West Virginia	10.08
7	Oklahoma	10.14
8	Kentucky	10.24
9	Tennessee	10.30
10	Nebraska	10.60
11	Oregon	10.66
12	Montana	10.88
13	Utah	10.88
14	Wyoming	10.97
15	South Dakota	11.08
16	Missouri	11.21
17	Mississippi	11.27
18	North Carolina	11.28
19	Virginia	11.37
20	Georgia	11.54
21	Texas	11.56
22	Indiana	11.57
23	Florida	11.58
24	Iowa	11.63
25	Alabama	11.70
26	Minnesota	12.12
27	Colorado	12.12
28	Arizona	12.13
29	Kansas	12.34
30	New Mexico	12.47
31	Illinois	12.50
32	South Carolina	12.57
33	Nevada	12.76
34	Ohio	12.80
35	District of Columbia	12.99
36	Delaware	13.42
37	Pennsylvania	13.64
38	Maryland	13.82
39	Wisconsin	14.11
40	Michigan	14.42
41	Maine	15.61
42	New Jersey	15.81
43	California	16.99
44	Vermont	17.09
45	New Hampshire	18.50
46	New York	18.54
47	Rhode Island	19.29
48	Alaska	19.83
49	Massachusetts	19.83
50	Connecticut	20.94
51	Hawaii	29.60
	U.S. Total	12.67



Source: U.S. Energy Information Administration

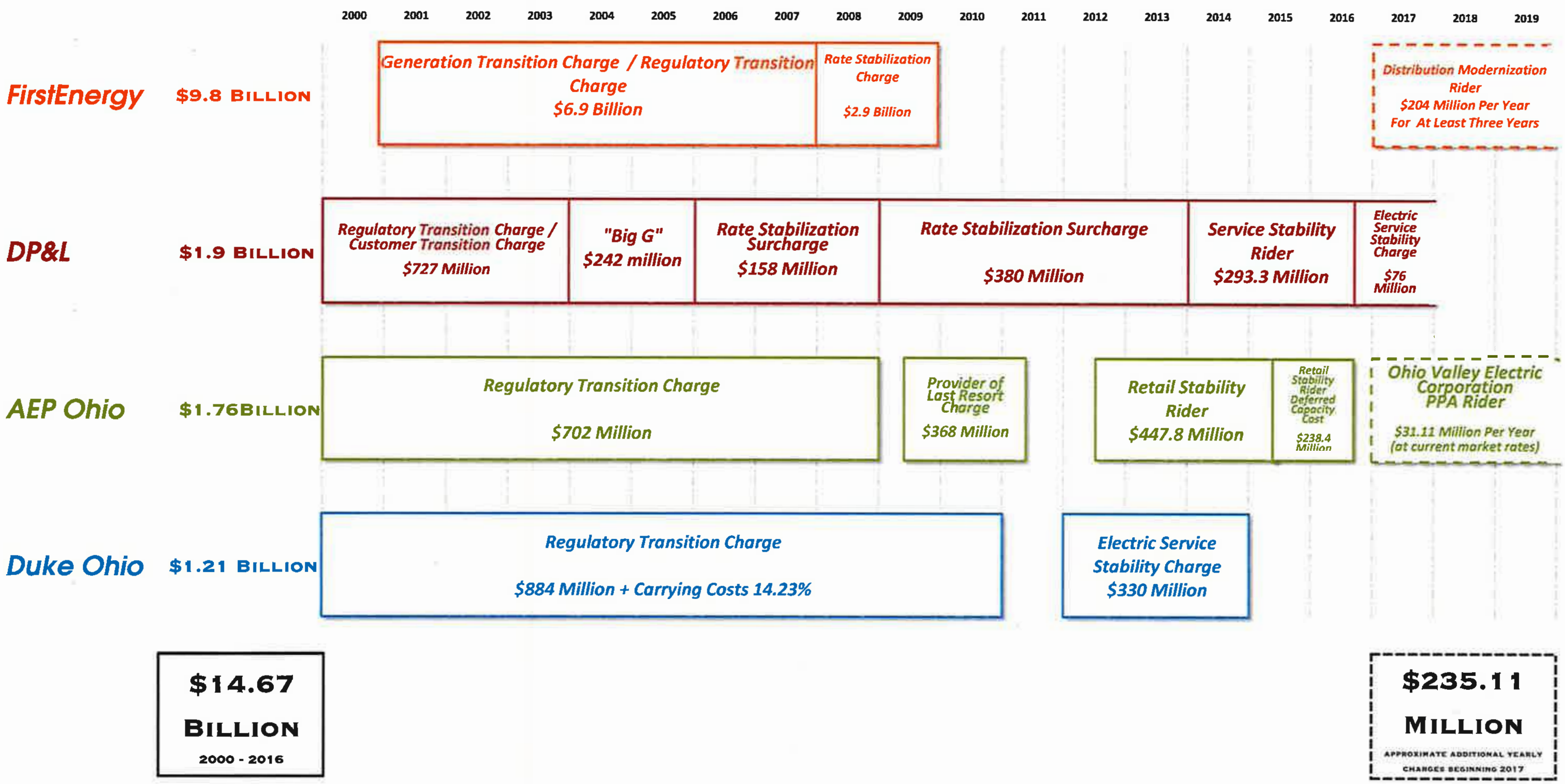
Attachment 3



Compiled by Bricker & Eckler LLP

Attachment 4

SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS



House Public Utilities Committee

Competitive Markets Work

Submitted by:
Leila L. Vespoli
Executive Vice President and General Counsel
FirstEnergy

October 19, 2011

Chairman Stautberg, Ranking Minority Member DeGeeter, members of the Committee – good morning. I'm Leila Vespoli, Executive Vice President and General Counsel of FirstEnergy, which is the parent company of three electric distribution utilities in Ohio – Ohio Edison, The Illuminating Company and Toledo Edison – and of our competitive subsidiary, FirstEnergy Solutions.

I'm pleased to be here today to talk about what Ohio has done right in creating an effective structure for providing customers with lower prices for electric generation, and where we can do more to maintain and expand competitive markets for electricity in the years ahead.

Specifically, my testimony will focus on three key points:

- First, with respect to electric generation, competitive markets work. They deliver the lowest price over the long-term to customers, and the proof is undeniable. Moreover, they will continue to ensure adequate and affordable supplies of generation for Ohio's future – which, in my mind, is the only meaningful definition of Ohio's energy security.

- Second, measures that restrict customer shopping or subsidize one electric generator over another are throw-backs to monopoly regulation. Such efforts that pick "winners" and "losers" in the energy market would create obstacles to private investment in generation and increase prices for customers.

- Third, governmental aggregation is the jewel of Senate Bill 3 – a proven way to deliver significant savings on electric generation to large numbers of residential and small business customers. Toward that end, we should pursue every effort to extend this channel to more Ohioans.

Keep Competitive Markets Working

Regarding competitive markets for electric generation, we already know that they work because these markets have resulted in lower electric generation prices and less risk for Ohio customers. That's good news for businesses and homeowners looking for every opportunity to stretch their limited resources.

Today, every customer of FirstEnergy's Ohio utilities is getting the benefits of competition for electric generation. Our utilities conduct wholesale auctions in which many suppliers compete to provide generation at the lowest price for customers who choose not to shop. In addition, customers are free to shop with competitive suppliers and get an even better price – and many customers are choosing to do that. These customers saved an estimated $100 million in 2010 through competitive markets for electric generation. Right now, 2.3 million Ohioans – including more than 200,000 businesses – are saving money through electric competition. In addition, competitive suppliers are lining up to do more, with more than 40 registered suppliers in Ohio standing ready to bring additional savings to customers.

These and other benefits validate the good judgment of Ohio's legislators when they established competitive markets for electricity in our state – first in 1999 through Senate Bill 3, and then again in 2008 through changes made with Senate Bill 221.

This first display illustrates how our industry was restructured by Senate Bill 3, making generation a competitive business. The idea was that competitive markets for electric generation, instead of utility monopolies, would drive innovation, efficiency and investment – and, most important, deliver the lowest price to customers over time.

At FirstEnergy, we made every effort to meet the letter and spirit of the new law – devoting significant resources to prepare our company, employees and customers for competitive markets.

Among other changes, we structurally separated our regulated and unregulated operations so our power plants are no longer owned by our electric distribution companies. But more important, all of our generation-related investments – including the risks that accompany them – are now borne by our shareholders, not by customers. This includes the significant investments we've made in environmental controls at our generating plants. This change has made us better – leaner, more efficient, and more customer-focused.

Since 1999, our competitive subsidiary, FirstEnergy Solutions, has invested nearly $6.4 billion in its generating fleet while adding more than 900 megawatts of power. That's the equivalent of a large, baseload power plant – and, once again, we've brought that additional capacity online *at no risk to customers*.

These are just a few of the many benefits that competitive markets for electricity are bringing to Ohio. Unfortunately, several ill-conceived proposals such as restrictions that effectively cap shopping have the potential to undermine these markets and drive up prices for certain effectively captive customers.

Eliminate Shopping Caps and Other Obstacles

For example, there is one proposal wherein a utility is seeking to be allowed to effectively cap shopping by limiting the amount of market-priced capacity available to suppliers over the next three years. Once these caps are reached, third-party suppliers would be forced to buy capacity from the company at prices that would be more than four times the market value. This is simply an attempt to restrict shopping and to force customers to pay the utility's above-market rate. The stated rationale for imposing this servitude on customers is that the utility needs time to "transition" to market – a transition the company has had more than 10 years to make.

The price tag for this protectionist approach would be significant – especially when you consider how the arbitrary shopping cap would negatively impact governmental aggregation.

We're also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio's energy security –

that our state could experience outages if it doesn't generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located.

The second display highlights PJM and MISO – regional transmission organizations that are charged with maintaining adequate supplies of wholesale power to serve the energy needs of nearly 100 million customers within their footprints. As you can see, these footprints extend far outside Ohio – so a power plant in one state can serve customers in any number of other states if it is economical to do so.

Even when utilities were vertically integrated – with centralized control of distribution, transmission and generation – new siting decisions involving power plants were always based on key factors such as available water, space and fuel sources. That's why even under the previous regulated model, power plants formerly regulated by the PUCO weren't necessarily built in Ohio. Some were built in Pennsylvania or West Virginia to serve customers in Ohio.

Even if Ohio's energy security were an issue – which it is not – our state imports less electricity today than it did under the previous regulated model, largely due to the significant amount of generation that has been added since competitive markets were established in Ohio. From 2005 to 2009, Ohio imported an average of 10 percent of its total electricity needs, compared with 17 percent in 1990.

The real problem with subsidized generation is that regulators would be picking the "winners" and "losers" in the energy market. We've been down that road before, and the results weren't pretty. For example, in the past our utilities in Pennsylvania and New Jersey were required to purchase power from Non Utility Generators, with contracts extending up to two or three decades. In our Pennsylvania service area alone, customers have paid $1.5 billion over market prices for this subsidized generation. At a time when Ohio is exploring every opportunity to create jobs and grow our economy, we simply cannot afford similar missteps that would saddle our customers with higher-than-market prices for electricity.

Let me offer a final example of the unintended consequences of subsidized generation. FirstEnergy Solutions is currently reviewing a plan to transform an old limestone mine in Norton, Ohio, into a Compressed Air Energy Storage, or CAES, facility. With the volume of nine Empire State Buildings, the site was identified by a leading developer of natural gas storage facilities as the best among more than 70 potential sites in the nation for supporting CAES technology. It would be scalable – from approximately 270 megawatts all the way up to 2,700 megawatts – and, more important, would support the operation of intermittent renewable sources such as wind by compressing air at night and standing ready to serve load on peak. However, it is highly unlikely that we would consider moving forward with this project if the plant would have to compete against subsidized generation in Ohio.

Extend Governmental Aggregation to More Ohioans

Rather than creating new obstacles to competitive markets, I believe lawmakers and regulators should build on efforts such as governmental aggregation that already are delivering lower prices for electric generation to Ohioans.

As you may know, governmental aggregation is an effective way for local communities to combine their residents and small businesses into a single, large buying group. With this significant buying power, municipalities can then shop for the best deal on electric generation on behalf of all its citizens. This process is currently providing savings on electricity to nearly 1.2 million Ohioans. In addition, ballots scheduled for the upcoming election in November would authorize governmental aggregation for more than 100 additional communities representing 450,000 residential and 15,000 small commercial customers.

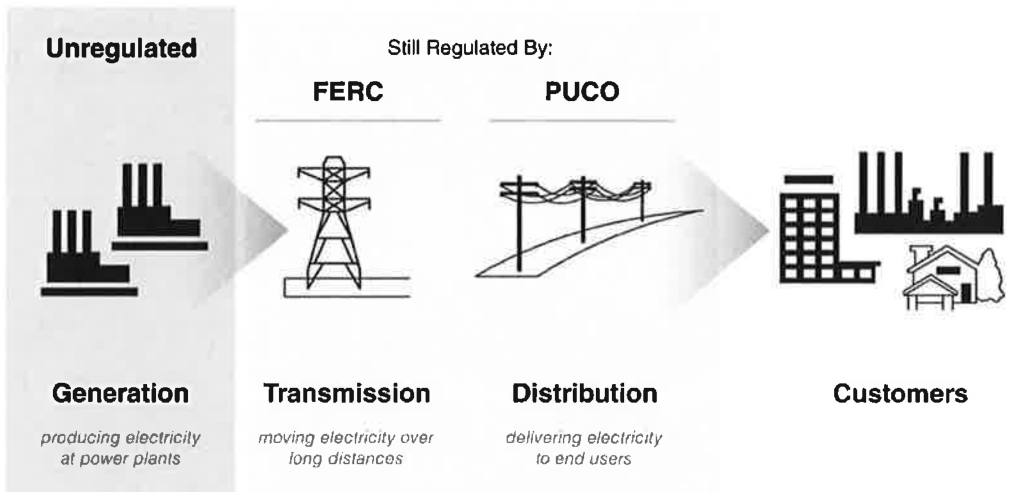
However, because of the way one utility plan is contrived, there will be limited – if any – opportunities for residential customers and no opportunities for small business customers to benefit from governmental aggregation.

The fact is, these and other restrictions can only undermine competitive markets that already are bringing significant savings to customers throughout Ohio. Simply put, we have the right structure in place. We just need to keep those markets working to continue delivering real savings to homes and businesses throughout our state. That's one of the best strategies I can think of to create jobs and promote economic development in Ohio.

As always, FirstEnergy remains committed to working with the Committee and the Ohio General Assembly. Thank you again for allowing me to address you today. I would be pleased to answer your questions.

Attachment A:

Generation is a competitive business; transmission and distribution remain regulated



MISO and PJM – FERC Regulated

Large, regional transmission organizations coordinate movement of wholesale electricity