**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Establishing the Nonbypassabe Recovery Mechanism for Net Legacy Generation Resource Costs Pursuant to R.C. 4928.148.  | )))) | Case No. 19-1808-EL-UNC |

**REPLY COMMENTS ON BEHALF OF RESIDENTIAL CONSUMERS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) is determining how customers across Ohio should be charged to subsidize two uneconomic coal power plants (partly owned by AEP, DP&L and Duke), as a result of Am. Sub. H.B. 6 (“H.B. 6”). The Coal Subsidy Charge is to be paid by all electric utility consumers in Ohio to subsidize these coal plants, located in Ohio and Indiana, owned by utility members of the Ohio Valley Electric Corporation (“OVEC”). The coal subsidy is supposed to replace the current coal subsidies that AEP, Duke, and DP&L are charging customers through various PUCO-approved OVEC riders. The PUCO Staff proposed that the Coal Subsidy Charge include two parts. Those parts are (1) a statewide charge on the bills of all utility consumers of AEP, DP&L, Duke and FirstEnergy, and (2) an adjustment mechanism so that the consumers’ money is given to the utilities (AEP, DP&L, and Duke) that have an ownership interest in the Ohio and Indiana coal plants.

On October 17, 2019, the Office of the Ohio Consumers’ Counsel (“OCC”) filed Comments for residential consumers. OCC recommended that the PUCO protect residential consumers by adopting a fair rate design that does not over-allocate to residential consumers

the burden of subsidizing the coal plants. Comments were also filed by the Ohio Hospital Association (“OHA”), the Ohio Manufacturers Association Energy Group (“OMAEG”), FirstEnergy[[1]](#footnote-2), Environmental Advocates[[2]](#footnote-3), and the OVEC Utilities[[3]](#footnote-4). OCC files these Reply Comments on behalf of Ohio’s residential electric utility consumers.

# II. RECOMMENDATIONS

## Consumers cannot be charged unless and until the OVEC Inter-Company Power Agreement is approved by the Federal Energy Regulatory Commission.

The Environmental Advocates assert that customers can only be charged, under House Bill 6, for the prudently incurred costs of the OVEC plants. Prudently incurred costs are only those costs “allocated pursuant to a power agreement approved by the federal energy regulatory commission \* \* \*.”[[4]](#footnote-5) According to the Environmental Advocates, OVEC previously contended that the OVEC Inter-Company Power Agreement (“OVEC Agreement”) was not subject to Federal Energy Regulatory Commission (“FERC”) review when the OVEC Agreement was extended in 2011.[[5]](#footnote-6) FERC agreed that the OVEC Agreement was not subject to FERC review.[[6]](#footnote-7) Therefore, there is no such power agreement approved by FERC regarding the OVEC coal plants.

The Environmental Advocates are correct. AEP, DP&L, Duke, and FirstEnergy cannot charge Ohio customers to subsidize the two Ohio and Indiana coal plants because the OVEC Agreement is not approved by FERC. The PUCO should uphold the words of the General Assembly.[[7]](#footnote-8)

## To protect consumers, the PUCO should prevent shifting of costs from non-residential to residential consumers to subsidize the coal plants in Ohio and Indiana.

To protect consumers, the PUCO should prohibit the shifting of costs from non-residential consumers to residential consumers to subsidize the OVEC coal plants. OHA and OMAEG assert that the PUCO should impose the monthly cost cap for non-residential customers on a per-customer basis.[[8]](#footnote-9) OCC makes no recommendation regarding whether the non-residential cost cap should be assessed on a per-customer or per-account basis. However, if the PUCO adopts a per-customer cost cap, any remaining uncollected revenue should be assessed to non-residential customers.

For example, OHA asserts that if the full charge is applied to each of the multiple accounts of a small rural hospital in southeastern Ohio, the impact would be $72,000 per year to the hospital.[[9]](#footnote-10) However, if the PUCO adopts a per-customer cap, then that hospital would only pay $1,500 per year despite its multiple accounts. So, if the PUCO adopts a per-customer cap on charges, that single hospital would pay $70,500 less revenue to the utilities. In this scenario, the PUCO should ensure that the remaining $70,500 is paid only by other non-residential consumers (and not by residential consumers).

Further, if payments to utilities by non-residential customers are at their $1,500 cap, but residential customers are paying below their $1.50 cap, the PUCO should ensure that residential customers are not forced to pay more to utilities to make up what the non-residential customers have avoided paying. Generally, the PUCO Staff’s proposal to allocate the rider based on 50% energy and 50% of the 5CP (coincident peak) demand should prevent this. But if energy consumption above 833,000 kWh is considered on a per-customer basis and excluded from the rate design, then costs could be shifted from non-residential customers to residential consumers.

On this point, OMAEG proposes to apply the 833,000 kWh limit on a per-customer basis. OMAEG’s proposal would shift costs from non-residential customers to residential customers. That is unfair to residential consumers. If the PUCO adopted OMAEG’s proposal, fewer kWh would be attributed to non-residential customers, which would reduce their revenue responsibility for paying the utilities. These non-residential consumers would pay less, at the expense of other consumers, because their kWh consumed over 833,000 kWh on a per-customer basis would be ignored for calculating the amount of their payment. OMAEG states:

“a customer’s consumption at each site or account within an EDU service territory should have its monthly kilowatt-hour usage aggregate and applied to the cents per kwh rate for usage up to 833,000 kWh per month for purposes of determining the customer’s revenue responsibility associated with the LGR Rider. The aggregated monthly consumption from the customer’s facilities would be applied to the proposed rate design so that the first 833,000 kWh/month of aggregated consumption would receive the LGR Rider charge.”

By attributing less energy to non-residential customers under the 50/50 energy-demand allocation, more energy will be attributed to residential consumers – thus shifting costs to residential consumers. Again, it is wrong to make the residential consumers of AEP, DP&L, Duke, and FirstEnergy subsidize more of the coal plant costs.

Accordingly, the PUCO should reject OMAEG’s proposal. While OCC takes no position on whether the rate cap should be assessed to non-residential customers on a per-account or per-customer basis, the PUCO should reject OMAEG’s proposal to aggregate the kWh usage among a customer’s accounts for the purpose of allocating the revenue requirement. The language of H.B. 6 contains no limit on the kWh to be considered when determining the allocation of the revenue requirement. For purposes of determining charges to consumers, the PUCO should ensure that the revenue requirements remain solely with the classes to which they are allocated. In no event should residential customers be required to make up any shortfall of the subsidy payments to utilities from the non-residential classes.

## To protect consumers from ever-increasing charges, the PUCO should reject the Utilities’ proposals to impose carrying charges on residential consumers for deferrals.

Both FirstEnergy and the OVEC Utilities propose that the PUCO should approve a carrying charge, assessed to consumers at the Utilities’ cost-of-debt, to charge to consumers for any deferral that is not collected from consumers within 12 months.[[10]](#footnote-11) The PUCO should reject this proposal. Customers will already be on the hook for millions of dollars to subsidize these coal plants in Ohio and Indiana. The PUCO should not add insult to injury by authorizing the utilities to charge consumers carrying costs on deferrals. Further, as noted by OCC in its initial comments, if the PUCO authorizes a reconciliation by 2030 for the deferrals, the $1.50 rate cap should remain in place to protect consumers.

# III. CONCLUSION

For consumer protection, the PUCO should adopt OCC’s proposals regarding the Coal Subsidy Charges.[[11]](#footnote-12) The subsidies of H.B. 6 should be calculated to minimize the burden of the charges to residential consumers.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of these Reply Comments were served on the persons stated below via electronic transmission, this 28th day of October 2019.

 */s/ Bryce McKenney*

 Bryce McKenney

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The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. “FirstEnergy” refers to The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company. [↑](#footnote-ref-2)
2. “Environmental Advocates” refers to Ohio Environmental Council, Natural Resources Defense Council, Sierra Club, and Environmental Law and Policy Center. [↑](#footnote-ref-3)
3. “OVEC Utilities” refers to Ohio Power Company, Duke Energy Ohio, Inc., and The Dayton Power and Light Company. [↑](#footnote-ref-4)
4. Environmental Advocates Comments at 2, quoting Am. Sub. H.B.6 (emphasis added). [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. *Id.* [↑](#footnote-ref-7)
7. *Id.* [↑](#footnote-ref-8)
8. OHA Comments at 3-4; OMAEG Comments at 4-6. [↑](#footnote-ref-9)
9. OHA Comments at 5. [↑](#footnote-ref-10)
10. FirstEnergy Comments at 3; OVEC EDU Comments at 6. [↑](#footnote-ref-11)
11. OCC notes that its recommendations are in the context of a proper implementation of House Bill 6 and are not a change from OCC’s general positions that consumers should be protected by competitive power plant markets without charges for subsidies. [↑](#footnote-ref-12)