**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

|  |  |  |
| --- | --- | --- |
| In the Matter of the Commission’s Investigation of the Implementation of the Federal Infrastructure and Jobs. | )  )  ) | Case No. 22-755-AU-COI |

**CONSUMER PROTECTION COMMENTS**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

The Infrastructure Investment and Jobs Act (the “Act”) was signed into law by President Joe Biden on Nov. 15, 2021.[[1]](#footnote-3) The bill contains $1.2 trillion in total funding ($550 billion of which is new spending) for various infrastructure purposes, including roads and bridges, broadband, drinking water resources, airports, electrical vehicles, and more.[[2]](#footnote-4) The Council of State Governments analysis shows that there is $73 billion in funding allocated for power grids and utilities improvements and $12.5 billion for electric vehicle chargers and buses.Power grid and utility improvements are tied as the third largest funding source in the bill.

The PUCO has invited interested stakeholders to provide comments on implementing the Act, including regarding funding for a number of competitive grants and revolving loan programs. OCC appreciates the opportunity to do so, given that important consumer protection matters are at issue. As described by the PUCO, these matters include preventing outages and enhancing the resilience of the electric grid.[[3]](#footnote-5) We recommend that the PUCO also address consumer protection by making sure that goals for the grants applied for are consumer-oriented and stated up-front, mechanisms are established to monitor the grants, and clear guidance is provided about how the grants will be handled for rate making purposes.

# II. Consumer Protection Recommendations

The Act funds a number of competitive grants and revolving loan programs nationwide. They include:

**Power Grids**

* Funds the creation of **four clean hydrogen hubs** to generate electricity – $8 billion.
* Subsidizes current **nuclear power plants** – $6 billion.
* Establishes new competitive grants to **enhance resilience of the electrical grid** – $5 billion over five years.
* Adds funding to the [Weatherization Assistance Program](https://www.energy.gov/eere/wap/weatherization-assistance-program) – $3.5 billion in fiscal year 2022.
* Creates competitive grant for **modernizing energy infrastructure** – $3 billion over five years.
* Establishes revolving loan fund for **replacement or enhancement of electrical transmission**lines – $2.5 billion over five years.
* Adds funding to and expands the [**Energy Efficiency and Conservation Block Grant**](https://www.energy.gov/eere/wipo/energy-efficiency-and-conservation-block-grant-program) **Program** – $550 million in fiscal year 2022.
* Establishes competitive grants for **enhancing energy efficiency in schools**, including improvements, repairs or renovations to lower energy costs – $500 million over five years.
* Allocates funding for **capital improvements to existing hydroelectric power facilities** to improve grid resiliency, dam safety and lower environmental impact – $553 million.
* Adds funding to incentivize **hydroelectric power generation** – $125 million.
* Creates a **transmission facilitation program** for eligible projects like creating or replacing transmission lines, increasing transmission capacity or connecting microgrids to larger corridors – $50 million over five years.

**Electric Vehicles (EVs)**

* Establishes federal funding for **EV charger infrastructure** – $7.5 billion.
* Establishes federal funding for **EV school buses** – $5 billion.
* Establishes grants for states for **battery processing** – $3 billion over five years.
* Creates an EV working group to provide **recommendations on integrating EVs into the energy system** and **orders a demonstration project to use EVs as decentralized energy storage**and a **study of the environmental impacts of EV use.[[4]](#footnote-6)**

1. **For consumer protection, the PUCO should take a proactive approach to how Ohio’s regulated utilities participate in the Act’s grant process.**

We encourage Ohio’s regulated utilities to participate in the grant process under the Act. But the PUCO must be proactive in protecting consumers through the process. Goals for the grants applied for should be consumer-oriented and stated up-front, mechanisms should be established to monitor the grants, and clear guidance should be provided about how the grants will be handled for rate making purposes.

1. **Goals for the grants should be consumer-oriented.**

In Michigan Docket U-21227, AEP’s affiliate Indiana Michigan Power Company commented that efforts should be prioritized to identify funding opportunities that have the potential to ***lower costs for consumers*** and improve grid reliability and resiliency. We support these goals.

An opportunity to achieve these goals relates to energy costs and grid reliability. Currently consumers are under intense pressure from rising energy cost, particularly from natural gas price increases. Further, as witnessed during the June 2022 AEP outages, grid reliability is important for consumers. Grants awarded under the Act should provide a path to help stabilize energy costs while improving grid reliability.

Another opportunity to achieve these goals relates to capital and operation and maintenance costs. There are currently a number of riders that target infrastructure investment and grid reliability. Before charging consumers for any grid reliability projects Ohio utilities should seek grants under the Act to cover capital and operation and maintenance costs. In dockets where utilities are proposing to charge consumers for such capital or operation and maintenance costs, utilities should be required by the PUCO to seek out grants in lieu of charging consumers for any projects that fall under the Act. Too often utilities view consumers as their checkbook without looking for alternative funding sources that are available. The Act provides dollars that can benefit consumers. Ohio utilities should utilize them.

1. **Monitoring the grants, with full transparency and accountability, is needed for consumer protection.**

Public funds are being made available for electric infrastructure improvement. We encourage their use. But with the use of public funds comes the need for monitoring and transparency for accountability and consumer protection. We have seen programs offered by utilities that show future consumers savings, “supported” by consumer-friendly cost-benefit studies, that instead cost consumers far more than the projected benefits. For example, in 1954 the Atomic Energy Commission chairman is reported to have predicted that within 15 years nuclear power would make electricity “too cheap to meter.”[[5]](#footnote-7) That prediction has not born out.[[6]](#footnote-8) Of course, predicted consumer benefits have not materialized as a result of other energy industry programs, either.[[7]](#footnote-9) It can be difficult to hold utilities to their predicted consumer benefits. Proper monitoring and establishing up front rate treatment could go a long way to mitigating some of this risk faced by consumers and to delivering the consumer benefits promised.

A separate portal should be created and linked to the PUCO website to facilitate monitoring and transparency in consumers’ interest. At minimum, the portal should track the amount of funds that were granted to each utility, the purpose of the funds, a timeline on when the funds will be deployed, and how those funds are being used to benefit and/or lower costs for utility consumers. Utilities should also provide a report to the PUCO and OCC outlining the grants applied for, the grants awarded, and projects resulting from the awarded grants. Such monitoring and transparency would highlight the Act’s benefits and assure for all interested parties that the funds obtained from grants are being used for their stated purposes.

Additionally, the PUCO needs to establish and outline an independent audit process upfront, so the appropriate data can be collected, shared, and reviewed by all interested parties. The audit process should focus on how grant money was spent and on cost recovery (if any). Regarding cost recovery, for example, if matching funds are provided by a utility there should not be a presumption that those costs will be recovered unless the used and useful standard is met. The audit could be performed by an outside auditor and should be made available to interested parties, along with work papers, for comment. The audit should also review grants utilities could have utilized but did not pursue. The collection of any matching costs from consumers should not be through a single-issue ratemaking process. It should be subject to a base rate case. Base rate cases provide more consumer protection than single-issue ratemaking cases. Further, a substantial portion of the funding under the Act is being provided upfront through grants. This eliminates any need for potential collection from consumers through a rider.

1. **Utilities obtaining grants should protect consumers through Rate Making offsets.**

OCC encourages Ohio’s regulated utilities to pursue grants under the Act. But the funds, if secured, should be used to benefit consumers – not shareholders. Most if not all of the major utilities operating in Ohio charge consumers for infrastructure improvement (above and beyond base rates).[[8]](#footnote-10) Any grant money secured under the Act for infrastructure improvement should offset/decrease consumers’ obligation to pay infrastructure improvement and grid reliability charges. Such ratemaking will lessen the burden on consumers to pay for these improvements. Otherwise, the Act could be used as tool by the regulated utilities to obtain or increase the rider charges (for infrastructure improvement, electric charging stations or any other purposes).

**III. CONCLUSION**

The Act, if implemented properly, has the potential to benefit consumers. But upfront planning, monitoring, transparency, and accountability are critical to the long-term success of the projects.

Respectfully submitted,

Bruce Weston (0016973)

Ohio Consumers’ Counsel

*/s/ William J. Michael*

William J. Michael (0070921)

Counsel of Record

Connor D. Semple (0101102)

Assistant Consumers’ Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700

Columbus, Ohio 43215

Telephone: [Michael]: (614) 466-1291

Telephone: [Semple]: (614) 466-9565

[william.michael@occ.ohio.gov](mailto:william.michael@occ.ohio.gov)

[connor.semple@occ.ohio.gov](mailto:connor.semple@occ.ohio.gov)

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 12th day of September 2022.

*/s/ William J. Michael*

William J. Michael

Assistant Consumers’ Counsel

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

**SERVICE LIST**

|  |  |  |  |
| --- | --- | --- | --- |
| [john.jones@ohioAGO.gov](mailto:john.jones@ohioAGO.gov)  [jmchugh@painesville.com](mailto:jmchugh@painesville.com)  [dlewis@painesville.com](mailto:dlewis@painesville.com)  [ldalessandris@firstenergycorp.com](mailto:ldalessandris@firstenergycorp.com)  [rocco.dascenzo@duke-energy.com](mailto:rocco.dascenzo@duke-energy.com)  [jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)  [larisa.vaysman@duke-energy.com](mailto:larisa.vaysman@duke-energy.com)  [elyse.akhbari@duke-energy.com](mailto:elyse.akhbari@duke-energy.com)  [stnourse@aep.com](mailto:stnourse@aep.com)  [mjschuler@aep.com](mailto:mjschuler@aep.com)  opga@kdafirm.com | [khelfrich@ohioec.org](mailto:khelfrich@ohioec.org)  [ikaleps@ohioec.org](mailto:ikaleps@ohioec.org)  [talexander@beneschlaw.com](mailto:talexander@beneschlaw.com)  [slesser@beneschlaw.com](mailto:slesser@beneschlaw.com)  [dparram@bricker.com](mailto:dparram@bricker.com)  [rmains@bricker.com](mailto:rmains@bricker.com)  [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [wygonski@carpenterlipps.com](mailto:wygonski@carpenterlipps.com)  [christopher.hollon@aes.com](mailto:christopher.hollon@aes.com)  [knordstrom@theOEC.org](mailto:knordstrom@theOEC.org)  [ctavenor@theOEC.org](mailto:ctavenor@theOEC.org) | |  |
|  |  |  | |

1. Pub. L. No. 117-58. [↑](#footnote-ref-3)
2. *See id.* [↑](#footnote-ref-4)
3. Entry, August 10, 2022. [↑](#footnote-ref-5)
4. 4 <https://www.csg.org/-The> Council of State Governments. [↑](#footnote-ref-6)
5. *See* “Too Cheap To Meter: A History of the Phrase,” United States Nuclear Regulatory Commission,https://www.nrc.gov/reading-rm/basic-ref/students/history-101/too-cheap-to-meter.html. [↑](#footnote-ref-7)
6. *See, e.g.,* H.B. 6. [↑](#footnote-ref-8)
7. For example, HB 6 provided subsidies through 2030 for the Ohio Valley Electric Corp. Ohio residential consumers currently pay up to $1.50 per month for the subsidy. The OVEC payments continue to substantially fail the cost/benefit standards on a long-term basis. [↑](#footnote-ref-9)
8. These include Distribution Improvement Riders for each electric distribution company and Capital Expenditure Programs for all of the gas distribution companies. [↑](#footnote-ref-10)