

**Before
The Ohio House of Representatives
Public Utilities Committee**

**Testimony on House Bill 389
(Regarding Utility Charges to Consumers for Energy Efficiency)**

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Hello Chair Hoops, Vice-Chair Ray, Ranking Member Smith, and Committee members. I hope you and your colleagues are well.

Consumers' Counsel Weston and I thank you and the bill sponsors (Rep. Seitz and Rep. Leland) for this opportunity to present opponent testimony on House Bill 389. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio residential utility consumers.

Energy efficiency is a good thing. It is also something that Ohioans can obtain in the competitive market from businesses. Ohioans can obtain it without legislation, without the involvement of utilities and without higher charges on their electric bills that will result from HB 389. (For at-risk Ohioans, financial assistance should be provided for utility services.) OCC strongly recommends conservatism in legislation that would increase utility rates that Ohioans pay. Further, a better approach for green energy purposes (and for Ohioans' electric bills) would be to enact HB 351. HB 351 would end the tainted HB 6 subsidy for coal power plant pollution that Ohioans are paying to AEP, Duke and AES.

Two of the intended consumer protections in the bill are stated to be a \$1.50 cap on residential monthly charges and an opportunity for consumers and smaller businesses to opt out. These protections are inadequate, as I will explain.

The legislation would allow electric utilities to conduct and charge millions of Ohio consumers for new energy efficiency programs after just repealing the programs in House Bill 6. Utilities would be allowed to charge consumers for program costs, profits (described now as "incentives" instead of the former "shared savings"), lost revenues (which is an especially bad form of decoupling), and deferrals (which is a long-favored way of utilities to later work around limits on present charges). Unfortunately, the bill would likely be interpreted to allow utilities to charge consumers above the \$1.50 cap (Lines 236-239) for lost revenues and deferrals and potentially also for profits.

The stated opportunity for consumers to opt out of the program (and its charges) is in reality quite limited. Consumers would be given a mere three weeks every five years to opt out. (Lines 270-275) Larger business consumers are given more favorable treatment than residential consumers and smaller businesses, where they are not in the program unless they opt in. (Lines 256-259) Even with this (limited) opt-out opportunity, we are concerned that utilities would still seek to charge opting-out consumers for lost revenues.

Examples of the need for consumer protections are as follows.

The monthly cap on charges should be a “hard” cap with no related charges allowed above the cap. The bill also contains a limit on total charges to consumers. (Lines 219-235) Similarly, the limit on total charges to consumers should be a hard limit, that includes all charges to consumers such as costs, profits, deferrals, and lost revenues.

The monthly cap is defined merely as an “**average**” limit on charges. (Line 237) The word “average” should be deleted. It should be a cap, period. The bill allows utilities to charge consumers for “**incentives**” (**profits**), with charges for incentives appearing to not be subject to the cap. (Lines 209-213) The incentives are similar to the so-called “shared savings” (profits) that utilities unfortunately charged to Ohioans under the repealed 2008 law’s energy efficiency programs. Charges to consumers for utility profits on energy efficiency should be barred, as further explained below. The bill allows the utility-friendly approach to “**defer**” costs above the cap and expressly allows utility deferrals to be used to exceed the rate cap. (Lines 143-147) The bill allows utilities to charge consumers for “**lost revenues**” (**which is worse for consumers than typical decoupling**). The charges for lost revenues appear to not be subject to the rate increase cap. (Lines 117-119, 214-218).

Despite all these charges, utilities can be expected to promote the energy efficiency programs as something they are offering to the public as “free.” They’re not free.

Regarding utility profits, HB 389 allows electric utilities to make Ohioans pay for millions of dollars of utility profits (so-called “incentives”), in addition to charges for the cost of the energy efficiency programs. (Lines 209-213) That is similar to the hundreds of millions of dollars in profits that the PUCO allowed utilities to charge consumers under the former required energy efficiency programs (now repealed by HB 6). Generally, OCC recommends protecting consumers from utility charges for add-on profits on energy efficiency measures. And energy efficiency costs are generally not a capital investment (like plant) on which utilities are allowed a profit on investment. Additionally, electric utilities already are receiving extremely favorable treatment under the 2008 energy law for profits, at consumer expense. There, unfortunately for consumers, the utilities have been allowed to charge consumers for excessive profits – and merely are not allowed to charge for “significantly” excessive profits. (O.R.C. 4928.143(F)) The provision for charging consumers for so-called incentives/profits should be removed from the bill.

Regarding lost revenues, the bill allows electric utilities to make Ohioans pay for millions of dollars of so-called “lost revenues,” in addition to charges for the cost of the energy efficiency programs. (Lines 117-119, 214-218) A lost-revenues charge is similar to decoupling. (The most infamous decoupling charge was in tainted House Bill 6 for FirstEnergy, and is now repealed.) Lost revenues in ratemaking only operates as a charge to consumers, whereas decoupling (if allowed at all) should operate symmetrically where consumers could actually be given a credit if utility revenues increase. Unfortunately, recent decoupling charges by AEP and FirstEnergy only operated as charges to consumers. The charge to consumers for utility lost revenues should be removed from the bill. At a minimum, it should be changed to truly symmetrical decoupling where consumers, not just utilities, benefit at times. If lost revenues remains in the bill, the charge should be subject to the \$1.50 monthly cap on charges. Indeed, all charges to consumers that are related to the bill should be subject to the cap.

Regarding deferrals, the bill allows utilities to use the deferrals as a way of circumventing the \$1.50 cap, at consumer expense. (Lines 143-147) Deferral ratemaking is an anti-consumer mechanism that is overused at the utility-friendly PUCO. It allows utilities to defer costs for later collection, to circumvent consumer protections with limits on current charges. Deferral ratemaking should be disallowed. If allowed, it should be subject to the \$1.50 monthly cap on charges.

The bill allows utilities to make residential consumers and smaller businesses pay for government/utility energy efficiency programs (unless they opt out). But larger business consumers are exempt unless they opt in. (Lines 256-269) For fairness, all utility consumers should be treated the same regarding program participation, whether opt-in or opt-out.

In any event, the opt-out opportunity for consumers should be at least every two years (not merely every five years as in the bill). Also, a consumer should be allowed to opt out upon initiating new service. Further, the bill merely allows consumers 21 days to opt out from the postmark date on the utility notice (which means even less time after allowing for mail delivery, and if the utility envelope even bears a postmark). (Lines 280-283) Consumers should be allowed at least 60 days to opt out, after receiving a prominent notice from the utility of the opt-out opportunity. There should be several months of advance notices in consumers’ electric bills, including emails. Moreover, the bill should require it to be very easy for consumers to opt out, and not just by using a “postcard.” (Line 283-287) There should be an automated online opt-out form and an automated phone opt-out. As an example, here is a link for an online opt-out for AEP’s (unrelated) opportunity for consumers to opt out of AEP’s release of their personal contact information to energy marketers. Link:

<https://www.aepohio.com/company/about/choice/residential/shared-list>

Instead of making needed reforms of PUCO processes, the bill limits the opportunity for consumer advocacy and due process at the PUCO, to the benefit of utilities against

consumers. After the utilities file to implement their energy efficiency programs, the PUCO is required to conduct its process and issue an order within a mere 120 days. (Lines 132-142) It is very difficult to investigate and respond to proposals from lawyered-up utilities in general. But a 120-day timeline for consumers to investigate and make recommendations on the utilities' application – and for the PUCO to write and issue its order – prevents due process. The parties' review process should be at least 180 days with expedited utility responses to discovery, followed by 75 days for the PUCO to issue an order. Extensions should be allowed if the utilities are obstructing others' investigations.

Also problematic is that the bill favors utilities with one of the worst regulatory processes ever seen, which is right out of the unfair anti-consumer ratemaking of the 2008 energy law for electric security plans. The bill empowers the *utility* to withdraw its energy efficiency application, *after a PUCO order*, if it does not like how the PUCO ruled on its and various parties' proposals. Essentially, the utility can veto the ruling of its regulator (PUCO), if the PUCO adopts consumer protections or rejects the utility proposal. (Line 148-152) That is a backwards process that gives the utilities unfair leverage over the parties and the PUCO in both settlement negotiations and litigation. Legislative delegation of authority should be to the PUCO and OCC, not to the utility monopolies. Alternatively, the state consumer advocate (OCC) should be given a reciprocal right to reject the PUCO's order.

Former PUCO Commissioner Cheryl Roberto wisely wrote about the unfairness of such a utility veto, in a separate opinion involving FirstEnergy's right to withdraw its electric security plan under the 2008 law. She wrote:

I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest - or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable. (See PUCO Case Nos. 08-935-EL-SSO, et al. Second Opinion and Order (March 25, 2009)).

In conclusion, energy efficiency is a good thing. It is also widely available to consumers in the marketplace without the involvement of utilities. Alternatively, energy efficiency could be offered with the involvement of utilities at least partly on their own dime. It is unwarranted to implement another subsidized utility energy efficiency program at consumer expense (and just after the repeal of the program in House Bill 6). HB 389 is especially unnecessary for consumers with its utility-friendly provisions for increasing electric bills and for the PUCO's process. Thank you for your consideration.