Before
The Ohio House of Public Utilities Committee

Opponent Testimony on Substitute House Bill 317 (L134_2489-2)

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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 sponsor (Rep. Wilkin) for this opportunity to present opponent testimony on Substitute House Bill 317. My name is Mike Haugh. I'm the Analytical Director at the Office of the Ohio Consumers' Counsel. My background is working in the energy industry and in government.

We testified on March 2, 2022 and April 6, 2022 in opposition to previous versions of the bill (and submitted testimony for the May 31, 2022 hearing that was canceled). Earlier, we noted our appreciation that the bill included some consumer protections. But we also testified that there were detrimental provisions in the bill for consumers that outweighed any consumer benefits, leading OCC to oppose the bill. In not repeating any continued concerns from our three earlier testimonies, we are not conceding such issues.

We received a new version of the bill (L134_2489-2) Thursday afternoon. Based on our preliminary analysis over the weekend, OCC's opposition to this legislation has increased. This version of the bill has even more changes to benefit utilities and others to the detriment of consumers. Respectfully, we recommend that you not report the bill out of Committee.

We understood that the original purpose of the bill was to protect consumers by eliminating the electric security plans in the 2008 energy law and adding pro-consumer reforms. If that was the purpose, it's not recognizable in this version of the bill. This version would rewrite longstanding regulatory principles and practices to favor utilities at the expense of consumers. This bill should be a non-starter.

We begin with a proposal for balanced regulatory reform. The approach is not to start over with an ambitious, untested plan for a new regulatory regime. The approach is to fix the anti-consumer provisions in R.C. 4928.143 and certain other regulations. The 14 years of consumers' bad experience with electric security plans informs how to make significant improvements in the law. Our proposal also includes changes to some of the other statutes where utility reform is needed. Here is a non-exhaustive list of reforms:

- Rescind what is in essence the utility veto power over PUCO orders in ESP cases. (R.C. 4928.143(C)(2)(a))
- Require refunds to consumers for utility excessive profits and not merely for "significantly" excessive profits. (R.C.4928.143(F))
- Require the ESP "more favorable in the aggregate test" to be a quantitative test without considering qualitative factors. (R.C. 4928.143(C)(1))
- Rescind the PUCO's authority to approve riders (add-on charges) in an ESP. (R.C. 4928.143(B)(2))
- Require utility refunds to consumers when the Supreme Court or others invalidate a PUCO-approved charge that the utility is collecting.
- Limit the PUCO to 75 days to make a ruling on the merits after an application for rehearing is filed. (R.C. 4903.10)
- Require in settlements that: the PUCO must consider whether there is a sufficient "diversity" of interests, including broad consumer interests, among the parties who settled; prohibit the PUCO from considering the settlement as a "package" in making its decision; and prohibit the PUCO from approving settlements where a utility has paid cash or cash equivalents to a party signing the settlement
- Clarify that the PUCO staff is subject to discovery when it participates as a party in a case (R.C. 4903.082)

As for the new version of House Bill 317, here are more specific comments. The bill on lines 96-104 continues to protect utilities from having to refund charges invalidated by the Supreme Court. Refunds to consumers would be unreasonably limited to refunding amounts collected after the Court's decision. That's way too limited of a refund and is similar to the current unfair situation. Also, the bill limits refunds merely to riders (lines 98-99), but should apply to any rate.

Lines 70-95 allow electric utilities to book, for later collection from consumers, interest (carrying charges) on certain utility investment, with the interest calculated at the level approved in the utility's last rate case. With constant change in financial markets the last-approved long-term debt rate should only be used if it was approved by the PUCO in the past three years. If the rate was approved more than three years earlier, it should be recalculated based on the electric utility's current weighted average cost of long-term debt. This provision appears to be intended to thwart a pending appeal on the issue by OCC and NOPEC. There, the PUCO allowed the utility to essentially keep the difference between its lower actual debt cost and the higher outdated (13 years) debt cost that it is booking.

Starting on line 583 the bill starts to dismantle decades of regulatory law. The changes would allow electric utilities to fully forecast the test year expenses and revenues for ratemaking. Currently, electric utilities must use a combination of actual and forecasted data for expenses and revenues. By eliminating the need for the utility to file actual data, utilities can charge consumers rates that may have no tie to the electric utility's actual cost to serve consumers. And there is no true-up that can refund overcharges to consumers resulting from the use of the projected data.

Similarly, Lines 194-255 allow the utilities to use projected (not actual) electric utility investment for calculating rates to consumers. A current consumer protection is that a utility's investment ("rate base") must be used and useful in providing service to consumers during the test year. While the bill does allow for a true up mechanism (Lines 591-597) one year after the initial rates are set, it appears that consumers could be denied refunds for potentially too-high rates paid during the one-year period.

This bill continues, to the detriment of consumers, single-issue ratemaking for utility distribution investment (lines 707-852). This single-issue ratemaking allows utilities to cherry-pick charges to consumers without considering any offsetting or decreasing expenses. And the bill allows the pancaking of distribution riders so that consumers could be charged for three riders at one time (Lines 720-722). So the bill is burdening consumers with even more of this type of rider.

For example, distribution investment riders have been costly to consumers. In 2021, AEP charged consumers over $30 million through its Distribution Investment Rider. This bill actually allows utilities to charge consumers even more with its generous 4% "limit" on distribution charges relative to a utility's distribution revenues. Under the 4% limit, AEP could have charged consumers over $40 million. Consumers of FirstEnergy and Duke also pay millions of dollars through distribution investment riders.

Examining a utility's return on equity (profit) in connection with charges to consumers for this rider (lines 825-835) offers questionable consumer protection. That's because the bill merely provides that the PUCO "may" (not shall) reduce rates or end the rider if profits are too high.

The bill presents another problem for consumers. The charges become automatically approved and not subject to refund if the PUCO does not rule in 275 days. (Lines 821-824)

The bill eliminates more consumer protections in lines 1113-1158, by severely limiting an intervenor's ability to analyze a utility's request for a rate increase. The bill limits intervenors to just three rounds of discovery, limited to 50 questions, before the PUCO Staff Report is filed and another three rounds after the Staff Report is filed. The bill also limits depositions – which are a key fact-finding tool for case preparation – except where the PUCO "finds extraordinary circumstances." (Lines 1144-1148), The monopoly utilities' rate case filings can involve thousands of pages of information and tens or hundreds of millions of dollars in potential charges. So the current law for "ample discovery" from the 1983 reform law is still needed by consumers and is part of the regulatory quid pro quo that goes with being a monopoly utility.

Lines 1724 and 1800-1805 allow transmission utilities to either join a Regional Transmission Organization or just "contract with" an RTO. But this provision allows utilities to charge their consumers an extra profit of 0.5% at consumer expense. The intent of this provision seems to be for nullifying OCC's pending consumer complaint at FERC to stop this unnecessary profits charge.

Lines 37-53 remove the requirement for electric utilities to publish notice of public hearings for rate cases in newspapers, instead only requiring notice to be posted on "the website of a newspaper." At a minimum, there should be a requirement to notify the public though social media and other means.

Lines 967-969 prevent the PUCO and parties from investigating the prudence of investment that was previously determined to be prudent. This provision may be intended as a shield against repeal of the House Bill 6 OVEC subsidy for AEP, Duke and AES. It could be claimed that the PUCO and parties are precluded from reviewing the prudence of OVEC charges if the PUCO resumes the charge after a repeal of House Bill 6.

This bill should solve a problem where the legislature's intention to save money for PIPP consumers and Ohioans who fund PIPP is not being fulfilled. Because ODOD and the PUCO are allowing utilities to bill higher charges than standard offers to PIPP consumers, the law should be clarified. Our view is that the law is clear, but something needs to be done now to protect consumers given the approach of ODOD and the PUCO. The law is R.C. 4928.54 and 4928.542.

In conclusion, please do not enact HB317. The consumer benefits in this version of HB317 are limited and are far outweighed by the consumer detriments. Moreover, the ramifications of various language in this bill in this bill are not necessarily apparent. Accordingly, we may identify additional concerns upon further review.

Thank you for your consideration.