

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

Opponent Testimony on Substitute House Bill 317

Jeff Jacobson, Strategic Insight Group

On Behalf of the

Office of the Ohio Consumers' Counsel

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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. We previously testified on March 2, 2022 in opposition to the dash-7 version of the bill. At that time, we noted our appreciation that the bill includes some consumer protections. Those include some new regulations in the bill and the elimination of some inadequate regulations in current law.

But we also testified that there were consumer detriments in the bill that outweigh any consumer benefits. Our consumer protection concerns remain with the most recent version of this bill (L134_2489-1) that OCC received Friday afternoon. OCC continues to oppose the bill.

Since we last testified OCC has realized that two sentences in the bill are an undermining of the utilities' standard offers. That is a major problem for consumers that we had not previously identified. The language seemingly comes from the energy marketers. The language could result in higher prices for standard offer consumers to fund lower prices for the marketers' consumers.

In the new version of the bill, the problematic language is on Lines 766-770. The language is as follows: "[t]he commission should ensure that any direct or indirect costs allocated to the standard service offer price are not recovered twice from distribution customers. Under the section, the commission may authorize a credit rider to avoid such double recovery." Note this scheme does not mean energy marketers will compete more by lowering their prices to consumers. The effect is to give the marketers more *headroom*, which they can use to make higher profits instead of lowering prices. Please remove this provision (Lines 766 – 770) from the bill.

We did not initially realize the consumer problem because the sentence suggests it is protecting consumers from double charges. But we now realize the true intention is something like what IGS and Direct Energy recently sought at the PUCO.

In AEP's rate case last year, marketers IGS and Direct Energy asked the PUCO to approve a similar approach to increasing what AEP's standard offer consumers pay relative to what marketer consumers pay. OCC settled the rate case with AEP and others and OCC opposed the marketers' plan. OCC rejects the marketers' notion that there are so-called double charges in the standard offer. Fortunately for consumers, the PUCO rejected the marketers' request. Here is a link to the PUCO's Order (see paragraphs 184 and 185 on pages 79-80):

<https://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=f81357bc-95ac-4cb5-85dd-9fa55a73b993>

The utilities' standard offers have been a competition success story for consumers over many years. It's an example of the legislature's electric deregulation working for consumers. The utilities' standard offers are the result of the fierce competitive bidding by suppliers to serve standard offer consumers.

Here is a link to a recent Wall Street Journal story reflecting the importance of standard offers for consumers and that many marketer consumers are losing compared to the standard offers:

<https://www.wsj.com/articles/electricity-deregulation-utility-retail-energy-bills-11615213623>

Here is a link to a similar Columbus Dispatch story based on Columbia Gas data showing that, in the aggregate, marketer consumers are losing compared to Columbia's standard offer. <https://www.dispatch.com/article/20160404/NEWS/304049819>

The energy marketers' opposition to the utilities' standard offers can be seen in the "principles" of the Retail Energy Supplier Association. There, the marketers' association states that: "Default service should be...viewed as transitional, with a date certain set to achieve full retail energy competition where all customers are served by competitive suppliers and local distribution utilities are not involved in retail supply." Please remove the marketer language from the bill. (Lines 766 – 770)

The new bill version contains another attempt to address the problem of the \$1.5 billion in utility refunds that electric consumers have been denied just since 2008. The bill tells the Supreme Court of Ohio to render a decision in appeals from the PUCO in just 180 days. (Lines 34 – 39) This idea seems intended to shorten the appeal process so as to limit the time that potentially unlawful PUCO-approved charges are collected from consumers.

It is not clear that the legislature telling the Supreme Court how to manage its docket will have the bill's intended result. And we note with appreciation that in recent years the Court has played a key role in protecting the integrity of utility regulation for the public

against liberties taken by the PUCO for utilities. In any event, once again the refund provision in the bill is something of a Trojan Horse that, by its existence, will prevent real opportunities for reform at the PUCO and the Court on the refund issue. The bill should be changed to provide consumers with refunds of all the money they paid for unlawful charges.

Lines 915-917 make a subtle change but open up more concerns for consumers. The lines allow for riders to pay for distribution upgrades for electric vehicle charging stations. First, electric vehicle charging stations should be a privately-owned competitive (non-monopoly) business. And it should not be subsidized at the expense of utility consumers through a utility rider. If a competitive company wishes to build an electric vehicle charging station, it should pay for all distribution upgrades for the facility. Please remove this language.

The bill now allows utilities to increase the 3% cap on riders (aka add-on charges) if the rate of inflation is greater than 3%. (Lines 918-923) That language only exacerbates the inadequacy of a rider system for protecting consumers. And it is moving Ohio in the direction of discredited formula ratemaking. If a utility is experiencing a financial hardship, Ohio law has long allowed it to offer proof to the PUCO by filing a general rate case under R.C. 4909.18 with a financial emergency request under R.C. 4909.16. The predecessor of FirstEnergy filed such cases in the late 1980's and the PUCO ruled that the utilities had failed to prove their need for emergency cash. The rider increase language should be deleted.

Another new addition to the bill now gives *gas utilities* a benefit at consumer expense (in what was originally an *electric* ratemaking bill). (Lines 2062-2064) New language allows gas utilities to recover costs for construction of economic development projects "held for future use." This language is another assault on traditional ratemaking, at consumer expense. Specifically, it undermines the consumer protection in R.C. 4909.15 that prevents utilities from charging consumers for plant unless the plant is "used and useful" to consumers. The timing of this language is interesting given that it appears after the Supreme Court recently overturned a PUCO decision for misapplying the used and useful standard in allowing Suburban Natural Gas to charge consumers for the entire length of a pipeline. Please remove this language

In sum, the consumer protections in HB317 are outweighed by the consumer risks. OCC's concerns regarding single-issue ratemaking riders, customer refunds, excessive profits, and special benefits (such as transmission) for large customers continue. For consumer protection, please do not enact HB317 as currently drafted.

Thank you for your consideration.