



**Before
The Ohio House
Public Utilities Committee
Testimony on Amended Substitute Senate Bill 310**

**By
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Hello Chairman Stautberg, Vice Chairman Roegner, Ranking Minority Member Williams, and members of the House Public Utilities Committee. Thank you for allowing testimony on this Bill that affects Ohio's 4.2 million residential electric customers. I am Bruce Weston, the Ohio Consumers' Counsel. For your consideration, I recommend a number of revisions to the Bill, for purposes of consumer protection.

I support the concept of a study of the 2008 energy law. The study should be broadened to include provisions in the 2008 law that tilt the balance of ratemaking

in favor of Ohio's electric utilities and against Ohio's electric customers. Those provisions can lead to higher utility bills for consumers. The issues of energy efficiency and renewable energy are just a small part of the 2008 law. (In fact, energy efficiency is a benefit that can counteract the upward pressure on consumers' rates from these other problematic provisions of the law.) A list of these issues that affect Ohioans' utility bills is attached to my testimony, in a document jointly developed with the Ohio Manufacturers' Association. Ohioans are already paying more on average for electricity than residential consumers in 32 other states.¹ Ohio can do better for consumers, and the improvements to the 2008 energy law, as proposed in the attachment, can help reduce electricity costs for Ohioans.

Further, the study of the 2008 law could incorporate some of the format of the study of the Florida energy efficiency law by the Florida Legislature. The Florida study included an analysis, based on input from interested parties, by a separate entity (that was once associated with The Ohio State University).

¹ See U.S. Energy Information Administration, EIA Electric Power Monthly with Data for August 2013 (October 2013) at 119, Table 5.6B (http://www.eia.gov/electricity/monthly/current_year/october2013.pdf).

In addition, please allow the existing energy efficiency and renewable energy benchmarks to remain in place, without the two-year freeze. The Senate improved the Bill by providing for the reinstatement of the benchmarks after two years, in the absence of a change in the law. What still remains of the freeze should be thawed. Energy efficiency can save money for customers. Also, freezing and unfreezing energy efficiency programs can be problematic for the continuity of efficiency services that businesses offer.

In this regard, various Ohio electric utilities have made statements over time that the energy efficiency programs from the 2008 law have been successful at saving money. For example, Dayton Power & Light stated that: “In keeping with the energy efficiency goals of Ohio Senate Bill 221, DP&L launched a series of energy-efficiency programs in 2009 designed to help customers save energy and money. DP&L believes that these efforts to-date have been a success.”² It is unfortunate that—beginning with the time when Substitute Senate Bill 58 was introduced—the electric utilities have not appeared in public hearings to provide information about their positions (on energy efficiency) to Members and to answer Members’ questions.

² *In the Matter of the Application of The Dayton power and Light Company for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2013 through 2015*, PUCO Case No. 13-833-EL-POR et al., Portfolio Plan (Apr. 15, 2013) at 5.

It should be noted that the 2008 law already allows the Public Utilities Commission of Ohio (PUCO) to reduce benchmarks, if needed.³ While the PUCO has this authority itself to change the benchmarks, the benchmarks could be revised in the law to reduce the two percent annual increases that commence in 2019.

I appreciate that this Bill has been characterized as having a focus on consumers. And the focus has included an objective of saving money for consumers. To meet the objective of saving money for consumers, the law should especially limit or eliminate utility charges to consumers for shared savings and lost revenues that are connected to energy efficiency programs. If shared savings are to be allowed, then the electric utilities should be restricted to charging customers for shared savings on only the energy efficiency that exceeds the statutory benchmarks. This restriction should apply to protect customers even if benchmarks are eliminated someday and the utilities then offer “voluntary” energy efficiency programs. And shared savings, if allowed, should be capped at a level to minimize charges to consumers.

The Bill also broadens what can be counted as energy efficiency under the 2008 energy law, to make it easier for utilities to meet the mandates. But making it

³ R.C. 4928.66(A)(2)(b)) allows the PUCO to amend annual benchmarks if a utility cannot “reasonably achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.”

easier for utilities to meet the mandates can result in less program benefits for consumers while utilities make more profit.

Additionally, please be concerned about the choices utilities are allowed during the period of the freeze, at their “sole discretion.” (Lines 1471-1472) The utilities would be allowed, as one option, to continue their energy efficiency plans during the freeze. That means a settlement agreement the Consumers’ Counsel signed with others, such as our settlement in November 2011 with AEP, could be continued beyond the intended end date of 2014. The terms of this settlement with AEP, for example, contain a limitation on the settlement’s future use. The 2011 settlement agreement allows AEP to charge consumers a lot of money for shared savings, which was not bargained-for to continue beyond 2014. Please amend the Bill to allow parties that settled cases to retain our opportunity to recommend no shared savings or stricter limits on shared savings, to protect Ohio consumers from such charges. And please do not allow for the utilities’ to have the “sole discretion” to choose between continuing plans or amending plans.

The Bill, on lines 1010 through 1034, requires the itemization of costs for energy efficiency and renewable energy on customers’ bills. Customers’ bills should also

include information for customers that energy efficiency programs can save them money.

That concludes my testimony. Thank you again for the opportunity to make recommendations on issues important to electric consumers in 4.2 million Ohio households.



Priorities for Improving Senate Bill 221 to Protect Customers of Electric Utilities

Senate Bill 221 (SB 221) contains some provisions that tilt the balance of ratemaking against Ohio's electric customers and in favor of electric utilities. Here are six ways to bring more balance to SB 221 for Ohio customers.

1. **Problem:** Under SB 221, the utility is not required to refund excessive profits to customers. Only if the utility's profits are deemed "significantly excessive" is the utility required to refund the amount of over-earnings to its customers. *R.C. 4928.143(E), (F)*

Consumer Protection: Modify the language of SB 221 to require any utility that earns "excessive" profits to refund to customers the full amount of any excess profits – not just those deemed "significantly excessive."

2. **Problem:** SB 221 permits a utility to effectively "veto" PUCO orders in an electric security plan (ESP) case. *R.C. 4928.143(C)(2)(a)*

Consumer Protection: Eliminate the provision in SB 221 that grants a utility the privilege to withdraw its application for an electric security plan if the PUCO modifies the plan.

3. **Problem:** SB 221 allows a utility to include above-market, nonbypassable generation/stability charges (e.g., rate stabilization charges, provider of last resort charges) in an electric security plan even though the utility is or will be operating in a competitive marketplace for generation. *R.C. 4928.143(B)(2)(d)*

Consumer Protection: Modify the language of SB 221 to expressly prohibit utilities from collecting above-market, nonbypassable generation/stability charges from customers.

4. **Problem:** The electric security plans permitted under SB 221 are no longer needed. These plans allow utilities to charge for costs other than market prices for generation at a time when Ohioans should be benefitting now (14 years after the 1999 enactment of Senate Bill 3, Ohio's electric restructuring legislation) from the current low market price for electricity. *R.C. 4928.143*

Consumer Protection: Eliminate the SB 221 language that allows utilities to file ESPs.

5. **Problem:** SB 221 prescribes as the standard for PUCO approval of an electric security plan that its pricing and other terms and conditions be "more favorable in the aggregate" than the expected results that would apply otherwise. PUCO consideration of qualitative factors (and not just quantitative factors) means that utilities can more easily obtain approval of their plans. *R.C. 4928.143(C)(1)*

Consumer Protection: Modify the language of SB 221 to explicitly limit the "more favorable in the aggregate" test to solely quantitative factors.

6. **Problem:** Under SB 221 an electric utility has been allowed to keep what it charged customers even after the Ohio Supreme Court finds the charges to be unjustified. (In a new development on May 14, 2014, the Ohio Supreme Court did not require the posting of a bond when it granted a motion for a stay of the PUCO order that allowed Duke to charge its customers for the cleanup of long closed manufactured gas plants. The stay (which will prevent Duke from charging customers for pollution cleanup costs while the appeal is pending) was jointly requested by the Consumers' Counsel, Ohio Manufacturers' Association, the Kroger Co. and Ohio Partners for Affordable Energy.)

Consumer Protection: Modify the language of SB 221 to give customers the same financial protection a utility can obtain during the appeals process. This change will allow customers to obtain a refund of utility charges they paid when the Ohio Supreme Court reverses a PUCO order and finds such charges to be unlawful.

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