



Office of the Ohio Consumers' Counsel

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**Before  
The Ohio Senate  
Energy and Natural Resources Committee**

**Testimony on Substitute House Bill 114  
(Renewable Energy and  
Energy Efficiency Standards)**

**Christopher Healey  
Assistant Consumers' Counsel  
Office of the Ohio Consumers' Counsel**

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Hello Chair Balderson, Vice-Chair Jordan, Ranking Minority Member O'Brien, and members of the Committee. I am Christopher Healey, an attorney for the Office of the Ohio Consumers' Counsel, where my focus is on consumer advocacy regarding alternative energy. Consumers' Counsel Weston thanks Chair Balderson and the Committee for this opportunity to testify. The issues in this Bill affect millions of Ohio electric customers. I am testifying today on the energy efficiency provisions of the Bill.

The Ohio Consumers' Counsel supports energy efficiency as a way for Ohioans to save money. In this regard, we support energy efficiency that Ohioans employ on their own in the market without government-ordered utility programs. And we support a reasonable level of energy

efficiency through government-ordered utility-run programs. Regardless of whether utility-run programs are mandated or voluntary under the law, Ohio consumers should be protected from paying too much for energy efficiency programs. And that includes that Ohioans should be protected from paying excessive utility profits on energy efficiency.

For 2015, when the mandates were not even applicable, Ohioans paid over \$200 million for electric energy efficiency programs. Over \$53 million of that amount was for utility profits. And that does not account for the millions of dollars Ohioans paid for natural gas energy efficiency (which has no detailed statutory authorization or rules).

As referenced, the utilities charge customers not only for the costs of running the programs (administrative costs, marketing, and product rebates), but also for profits – obliquely referred to as "shared savings." FirstEnergy and Dayton Power & Light are also currently charging their consumers for so-called lost distribution revenues (and Duke charges its nonresidential customers for lost revenues). This means that consumers are paying both for the costs (including profits) of the programs and for the revenues that the utilities might lose as a result of the programs. Ohio customers could easily pay \$1 billion over the next four years for the electric utilities' PUCO-approved energy efficiency programs. And many consumers do not participate in the utility programs but pay for the energy efficiency rebates that other consumers receive.

We therefore recommend the following changes to the Bill, for allowing consumers an opportunity to benefit from utility energy efficiency programs while protecting consumers from paying too much for the programs. And our recommendations for limiting what utilities can charge consumers should respectfully be adopted whether the programs are mandated or voluntary.

First, there should be an annual limit on the amount that utilities can charge customers for energy efficiency program costs, utility profits, and lost revenues. A cap equal to a maximum of 4% of each utility's annual revenues would allow significant funding for energy efficiency programs while protecting customers from the rising costs of energy efficiency. The PUCO, however, should have the discretion to impose a lower cap. It is particularly important to include a cap in the law because FirstEnergy is claiming that the PUCO currently lacks the legal authority to impose a cap.<sup>1</sup>

Second, there should be limits in the Bill on the profits that utilities can charge Ohio consumers. Consumers should be protected by limiting customer funding of utility profits on energy efficiency to no more than 8% of reasonable program costs. In 2015, Ohioans paid their electric utilities an additional 39% to 57% for profit, above the cost of the energy efficiency programs. (Note that these figures reflect how much more consumers paid utilities in charges; these figures are not utility rates of return.)

Here is a chart showing the high charges for utility profits that Ohio consumers (and businesses) paid to their electric utilities in 2015:<sup>2</sup>

<u>Utility</u>	<u>2015 Program Costs</u>	<u>2015 Profits</u>	<u>2015 Profits as % of Program Costs</u>
AEP	\$65.1 million	\$31.1 million	47.8%
DP&L	\$18.0 million	\$7.0 million	38.9%
FirstEnergy	\$27.3 million	\$15.6 million	57.0%

<sup>1</sup> See PUCO Case No. 16-743-EL-POR, FirstEnergy Post-Hearing Brief at 59 (Feb. 21, 2017), available at <http://dis.puc.state.oh.us/DocumentRecord.aspx?DocID=dc9be149-e173-4ae7-80f4-e8acb363ad4a>.

<sup>2</sup> 2015 is the most recent year for which information is available for each of Ohio's electric distribution utilities. Duke is not listed because it signed a settlement that jointly resolved the amount of profit it would make from energy efficiency programs for 2013, 2014, 2015, and 2016.

As this chart shows, for every \$2 that customers were charged for energy efficiency programs in 2015, they paid roughly another \$1 in profits to their utility. And these charges were assessed to customers during 2015 when the mandates were not even applicable. This scenario has somewhat improved for consumers more recently. But unfortunately for consumers, energy efficiency programs in Ohio have become a profit center for utilities when the focus should instead be on well-run programs that benefit as many customers as possible by lowering their electric bills.

To help protect consumers, we also recommend that you remove lines 2109-2115 from the Bill. Those lines allow utilities to charge customers for profits even in years when the utilities fail to meet the statutory minimum energy savings. In fact, under the Bill as written, a utility could potentially charge customers for profits (shared savings) in a year in which it had no energy efficiency programs at all. The practice that would allow such charges is known as "banking." A utility should not be permitted to collect from customers higher profits for energy efficiency measures that were undertaken in previous years.

The Bill should also be amended to preclude utilities from charging customers for utility profits based on energy efficiency savings and peak demand reductions that customers achieved on their own – without utility-run programs. Lines 1965-1968 of the Bill provide that energy efficiency savings from energy intensity reductions will not count for purposes of profits (shared savings) "if the savings were not the direct result of an electric distribution utility's energy efficiency programs." This consumer protection should be extended to all profits (shared savings), not just to consumption decreases that result from energy intensity reductions. It is inappropriate to allow utilities to charge higher electric bills to consumers for economic decisions that consumers make on their own (outside of the utilities' programs). If consumers spend money on their own for

energy efficiency in the marketplace (outside of the utility programs), then utilities should not be allowed to charge essentially a tax for utility profits on that consumer spending.

Third, the legislation should include an opt-out for residential customers, similar to the one that is currently available for non-residential customers. Our recommendation is for the Bill to be amended to give the Consumers' Counsel the authority to opt out from program participation all residential customers of a utility, subject to providing advance notice to the utility and the PUCO to allow for program planning.

Fourth, the legislation should prohibit utilities from charging for energy efficiency programs through a fixed charge on consumers' electric bills. AEP initially proposed such a charge in a recent case. Energy efficiency charges on customers' bills should be based on the amount of energy that the consumer used. A fixed charge discourages customers from reducing their usage, which should be the whole point of utility-run energy efficiency programs.

Finally, and importantly for low-income Ohioans, Section 7 of the Bill should be removed. This section of the Bill would require the Ohio Development Services Agency to allocate 25% of funds from the federal Low-Income Home Energy Assistance Program (HEAP) to low-income weatherization projects – at the expense of the vital use of the funds for assisting low-income Ohioans with payment of their energy utility bills. The highest and best use of HEAP funds should be for assisting the neediest Ohioans with bill payments for maintaining their utility service (especially during Ohio's winter heating season). The need for assisting the neediest Ohioans with their utility bill payments is reflected in recent data showing there were approximately 450,000 residential utility consumers disconnected by electric and natural gas utilities between June 1, 2016 and May 31, 2017.

Moreover, this issue of HEAP weatherization funding has already been addressed in section 259.80 of the recent Ohio budget bill, Amended Substitute House Bill 49. During the budget bill process, there was a similar proposal to increase weatherization spending to 25% of HEAP funds and to correspondingly reduce bill payment assistance to Ohioans in need. The Ohio Senate then removed the issue involving HEAP funds from the version of the budget bill that it passed – and the Senate should similarly remove the provision from House Bill 114. (The final budget bill, as passed by the Ohio General Assembly, was modified to allocate 20% of HEAP funding for weatherization.) In any event, the issue was recently addressed in the budget bill and should be removed from further consideration here.

In closing, thank you again for the opportunity to make recommendations on behalf of Ohio utility consumers.