



Office of the Ohio Consumers' Counsel

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

Testimony on House Bill 247

**By
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**On Behalf of the
Office of the Ohio Consumers' Counsel**

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Good afternoon Chair Cupp, Vice-Chair Carfagna, Ranking Member Ashford, and members of the House Public Utilities Committee. Thank you for the opportunity to testify on this consumer protection legislation. And thank you to the Bill sponsor, Representative Romanchuk, for this proposal to reform electric ratemaking in Ohio.

My name is Bruce Weston. I am the Ohio Consumers' Counsel, the director of the state agency that represents 4.5 million residential utility consumers.

The legislation is a large step "back to the future" toward restoring the General Assembly's vision in 1999 for power plant deregulation and the benefits of competition for consumers. That vision was impaired in the 2008 energy law with the creation of the so-called electric security plans with their increased involvement of government regulators. This Bill would correct for that by ending the plans.

The 2008 energy law allowed for the pricing of generation service by giving utilities and the PUCO the choice of a market rate offer or the alternative of an electric security plan. Market rate offers would emphasize competitive pricing and de-emphasize government regulation. Electric security plans would emphasize government involvement in electric rates. Market rate offers were more like capitalism. Electric security plans were more like crony capitalism. Unfortunately, electric security plans and government regulation have won out. There has never been a market rate offer adopted under your 2008 law. This Bill will end that and get electric deregulation back on the track of the 1999 law.

There is a lot not to like about electric security plans. I discussed some of the problems for consumers and power plant competitors when I appeared before you on November 14 for an informational presentation at the invitation of Chair Cupp.

The list of problems this legislation will solve for consumers and competitors begins with subsidies. Utilities use electric security plans to obtain subsidies from their customers. The 1999 law was about market pricing, after a transition period. Many of the utilities did well with the transition, collecting above-market transition charges under the law. I have attached a subsidy scorecard showing those subsidies. But the subsidies were to end. Unfortunately for consumers, the subsidies have not ended. You can see that on the subsidy scorecard by looking at some of the charges after 2008.

Your predecessors enacted an excellent statute (R.C. 4928.38) in the 1999 law that utilities were to be “fully on [their] own in the competitive market.” Electric security plans are being used to circumvent that law. The Federal Energy Regulatory Commission and the Ohio Supreme Court have done well to impose some limits on the PUCO’s granting of the subsidies. But your action is needed to resolve the problem.

But subsidies for utilities are just one problem with electric security plans. The subsidies are begetting more subsidies (or financial awards) for those who sign settlements with utilities in the cases. For example, in Dayton Power and Light's recent settlement of its electric security plan there are not only subsidies proposed for power plants but also subsidies or financial awards for credit support, automakers, interruptible rate customers, as well as some cash payments to parties. Additionally, the pending AEP Electric Security Plan settlement has subsidies for power plants and electric vehicle charging stations.

There has been some suggestion that electric security plans are needed for economic development. They're not. You've given the PUCO separate authority for that. And in electric security plan cases what passes as "economic development" can itself be part of the problem of the subsidy culture where utilities seek to acquire signatures on settlements for their subsidies with financial offers to others. What it highlights is that the PUCO's settlement process needs your reform.

Other problems with electric security plans include the so-called "riders." The riders you've heard about are add-on charges that the 2008 law allows utilities to cherry-pick by using single-issue ratemaking. That ratemaking is an exception to Ohio rate case law that otherwise would require utility expenses, revenues, plant, and profit to be considered together in a case. The utilities are the only stakeholders that can propose riders. It should not surprise that the electric utilities have not proposed on their own a rider for reducing electric bills as a result of the recent federal corporate tax reduction. (The PUCO has opened a case on its own initiative.)

The riders highlight a related problem – that the electric security plans also allow for charges for distribution service. That allows utilities to avoid the consumer protections for ratemaking that exist in law governing distribution rate increases.

There's more. The 2008 energy law allows electric utilities to charge consumers for excessive profits. That was an unfortunate exception to Ohio law. The 2008 law merely limits utilities from charging consumers for significantly excessive profits.

The 2008 law allows electric utilities to withdraw their electric security plans if they don't like the outcome of a PUCO order. It is like giving the utility a veto over the regulator, which essentially is also a veto over the positions of other stakeholders whose positions the PUCO might adopt to the utility's dislike. In 2009, then Commissioner Roberto wrote a separate opinion in a case to describe how this utility option creates an imbalance in negotiating power in settlements: "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." (PUCO Case 08-0935-EL-SSO, March 25, 2009). The law did not give any other stakeholder this option to reject a PUCO decision.

It gets worse. As I discussed with this Committee when invited to speak on the subject in November, the General Assembly enacted a protection in the 2008 law that outcomes for consumers in electric security plans were to be more favorable in the aggregate than outcomes under market rate offers. That standard would have given consumers some protection of the market. But the standard was undermined when the PUCO agreed with utilities that the determination of what is more favorable can include so-called "qualitative" factors and not strictly the quantitative factor of whether the electric security plan outcome is a better price for consumers.

There has been some mention that various stakeholders now seeking the end of electric security plans may have supported the concept in the 2008 energy law. Please note that, in the legislative process

for the 2008 law, the Consumers' Counsel warned in several testimonies in 2007 and 2008 that the ratemaking being proposed was problematic for consumers.

On that same subject, FirstEnergy's pro-market in October 2011 is to be appreciated. FirstEnergy stated to this committee as follows:

Regarding competitive markets for electric generation, we already know that they work because these markets have resulted in lower electric generation prices and less risk for Ohio customers. That's good news for businesses and homeowners looking for every opportunity to stretch their limited resources.

We're also concerned about any effort to subsidize certain generating facilities. Much of the rhetoric around these efforts involves a misguided notion of Ohio's energy security – that our state could experience outages if it doesn't generate as much energy as it consumes. This notion simply ignores how the electric grid operates, and how competitive markets always secure generation from the lowest-cost sources – no matter where they are located. (Testimony by Leila Vespoli at pages 3-5)

Another great consumer benefit of the Bill is it would preserve the utilities' competitively-bid standard offers for generation service. A marketer recently recommended eliminating this provision in the Bill. That is a bad recommendation for consumers. The standard offer gives consumers the benefit of a market rate option without the challenges of door-to-door sales, telemarketing and so forth. Researchers at Cleveland State and Ohio State concluded that customers have saved over \$12 billion through competitively bid standard service offers. That is more than three times the savings they calculated for consumer purchases from energy marketers.

In short, you would be solving a lot of problems and doing a lot of good for Ohioans by reforming the 2008 law to eliminate electric security plans.

You also would be doing a good thing by enacting the bill's provision to enable refunds for consumers when the Ohio Supreme Court or the PUCO later find utility charges to be unlawful. The

Court has noted the unfairness of the lack of refunds for consumers, and observed that it is a matter for the legislature to address. Ohio utility consumers have lost hundreds of millions of dollars for lack of refunds.

In conclusion, thank you again for your consideration of House Bill 247 and this opportunity to testify. The Ohio Consumers' Counsel supports the Bill and recommends its passage.

SUBSIDY SCORECARD - ELECTRIC UTILITY CHARGES TO OHIOANS

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023

FirstEnergy \$9.8 Billion

Generation Transition Charge / Regulatory Transition Charge
\$6.9 Billion

Rate Stabilization Charge
\$2.9 Billion

Distribution Modernization Rider
\$204 Million Per Year

DP&L \$1.9 Billion

Regulatory Transition Charge / Customer Transition Charge
\$727 Million

"Big G"
\$242 million

Rate Stabilization Surcharge
\$158 Million

Rate Stabilization Surcharge
\$380 Million

Service Stability Rider
\$293.3 Million

Rate Stabilization Charge
\$82 Million

Distribution Modernization Rider
\$315 Million

OVEC
\$24 Million (Est.)

AEP Ohio \$1.76 Billion

Regulatory Transition Charge
\$702 Million

Provider of Last Resort Charge
\$368 Million

Retail Stability Rider
\$447.8 Million

Retail Stability Rider Deferred Capacity Cost
\$238.4 Million

Ohio Valley Electric Corporation PPA Rider
\$42 Million Per Year (at current market rates)

Duke Ohio \$1.21 Billion

Regulatory Transition Charge
\$884 Million + Carrying Costs 14.23%

Electric Service Stability Charge
\$330 Million

\$14.283 Billion
Collected from customers
2000 - 2017

\$1.239 Billion
Estimated to be collected from
customers 2017 - 2023