

**ROBERT KELTER
SENIOR ATTORNEY
ENVIRONMENTAL LAW AND POLICY CENTER
HOUSE PUBLIC UTILITIES COMMITTEE HB 247
OPPONENT TESTIMONY
OCTOBER 23, 2019**

Chairman Callender, Vice Chair Wilkin, Ranking Member Smith and members of House Public Utilities Committee, thank you for the opportunity to provide opponent testimony to House Bill 247.

ELPC has focused on energy issues since its inception, and I have litigated utility cases in a number of states and before the Federal Energy Regulatory Commission for over thirty years. Additionally, I drafted or reviewed numerous pieces of legislation during that period and I've never seen a piece of legislation quite like HB 247. I say this because the bill has so many consequences that aren't clear from reviewing the legislation, and it quietly undermines basic principles of utility regulation and consumer protection. I believe the bill will have a number of unintended consequences that are harmful to consumers. ELPC believes that the competitive market will deliver clean energy benefits to customers, with community solar a prime example, but that HB 247 will diminish these benefits.

Before reviewing the details of the bill, we should recognize that competition in the electric market in Ohio has worked for customers. Prices are down, bills are down and utilities have focused on delivering power rather than building and running power plants. Utilities should stay focused on their role, and the fewer goods and services they offer and the more we rely on free market competition to drive down the prices of those goods and services, the greater the benefits for customers. This bill uses the concept "smart grid as an excuse to allow utilities to leverage their monopoly power to undercut competitive markets for various products and services. ELPC will focus today on three major concerns:

- 1) The risk that customers will pay millions of dollars for smart grid investments that provide little benefit.
- 2) The risk that at their utility's urging, individual customers will buy products and services they do not actually need or that don't provide real value.
- 3) The risk of cross subsidization.

Rather than review the bill section by section, I will highlight a few areas that are the most troubling.

First, ELPC wants to address the smart grid provisions of the bill. Section 4928.01(39) defines "Smart grid" in an expansive way that allows the utilities carte blanche to invest customer money in a number of new areas without first demonstrating that consumers would benefit. The competitive market either provides or will provide many of these products and services.

Moreover, utility affiliates can already compete to provide customers the products and services this bill addresses. This definition of “smart grid” specifically includes:

(c) energy storage or battery functions. Energy storage and batteries falls in between delivery service and generation. There has been no demonstration that energy storage should be owned by utilities instead of being a competitive service. Storage facilities replace generation, and the competitive market can provide the same innovation and price declines it has with new generation.

(k) community solar facilities. Ohio does need more flexible options for effectively aggregating demand from those who don’t have the right roof, or don’t own their own homes, to support long-term investments in local solar. In other states, ELPC has been engaged in developing regulatory mechanisms to allow the market to serve that niche through structured but competitive procurements. Why limit this market to monopoly wires utilities without discussion of how to allow the private market to compete to most effectively provide this service to customers?

(i) electric vehicle charging stations. As far as electric vehicle charging stations, AEP already has an EV charging station program that has been quite successful by rebating charging stations. There is no reason for utilities to own charging stations. In fact, just the opposite. The technology is rapidly changing, but when utilities own the charging stations their customers pay them off over a period of 15-20 years, when the stations will likely be obsolete in only 3-5 years. Specifically allowing utilities to own charging stations virtually guarantees a non-competitive system where customers will overpay and be stuck using obsolete chargers.

DP&L’s proponent testimony states, “While utilities already can implement smart grid technologies, often there are debates about what should or should not be included in such mechanisms.” DP&L highlights the point that it’s not clear what should be included in smart grid deployment, but under the current law the Commission protects customers by reviewing company proposals and determining whether a product or service should be included in the utility’s monopoly investments with regulated rate recovery. This bill would remove that consumer protection and incentivize monopoly utilities to classify every supposedly “smart grid” technology under the sun as a product or service they can provide at ratepayer expense, plus of course a return on investment to the utility.

Second, ELPC wants to address Section 4928.17 which allows utilities to compete with unregulated businesses to supply products and services related to their electric supply. As subsection (B) lays out, “An electric distribution utility may offer customer-focused energy services or products, including any related deployment of smart grid technology on the customer’s premises...” This sounds innocuous enough, but it’s important to understand what it means, or perhaps more importantly the risk presented by its vagueness. To start, what does “customer-focused energy services or products” really mean – what products and services fit that description? Why does the utility need to offer these services, instead of its unregulated affiliate in a competitive market? How does it benefit consumers that the utility will now offer these products and services? Essentially, we need to understand exactly what products and services the utilities can offer if this bill passes; this was not made clear in the utilities’ proponent testimony from last week.

We know from experience all across the country that problems will arise here because consumers often have little knowledge about products and services related to the newly emerging “smart grid.” But, utilities have uniquely easy access to their captive customers, and the fact is that when their utility tells them they need these products for their safety or convenience, customers are more likely to purchase them than when solicited by a company that is not their hometown utility. The utilities’ testimony in support of this bill does not clarify what they really intend to offer customers, and there is no way to determine the likely effects on consumers or markets.

AEP’s testimony mentions an example of “energy bridge, which connects smart meters with home equipment; that technology can be more fully utilized through utility offerings of smart services.” However, AEP has already experimented with energy bridge in its regulated energy efficiency program that the Commission just cancelled. The results of that program show no customers savings – zero. And now AEP seems to want permission to sell that to customers as an unregulated product.

ELPC urges extreme caution. HB 247 could open the door for utilities to make unlimited profits on goods and services that customers may not benefit from purchasing. Moreover, the bill seems to assume that the Commission can adequately ensure that utilities do not spend captive customers’ money to subsidize this effort and get an unearned advantage over unregulated competitors, but that is nearly impossible for the Commission to police.

When I ran the legal department at the Citizens Utility Board (CUB) I saw the utility cross-subsidization first hand. The most egregious example was Nicor Gas, which turned its customer service department into a sales department for its products and services. Customers frequently call utilities with questions or concerns regarding their bills. Utilities receive hundreds and even thousands of such calls on a daily basis. CUB uncovered a scheme where Nicor turned its customer service center into a sales force. Nicor required its customer service representatives to sell customers insurance on their inside pipe connections (Comfort Guard) and other unregulated products. They offered big commissions and bonuses based on how many products the customer representatives sold and then based their performance reviews on the sales. Additionally, the company used captive customers’ regulated rates to subsidize the sales by using funds to train additional customer representatives that were now needed because the reps were spending all of their time selling products instead of actually helping customers. This is the very definition of cross subsidization by the regulated utility and could well be an unintended consequence of this bill

DP&L testifies, “HB 247 not only levels the playing field, it builds guardrails providing fairness and market confidence so that no utility may cross-subsidize its customer- focused energy services and products from other parts of its regulated business.” We submit that this legislation does the opposite. It provides no such protections; it invites cross-subsidization and opens the door for utilities to sell customers products that don’t pass Commission scrutiny and provide little consumer benefit.

Finally, ELPC wants to address Section 4928.25(B) which opens the door to for utilities to invest in “infrastructure development necessary to support or enable a state or local economic

development project...” While everyone supports economic development, there has been no explanation of what these projects might entail or what they might cost. Moreover, section (C) allows the utility to recover all of its cost “through a nonbypassable rider charged to all distribution customers...regardless of whether the infrastructure development is used and useful at the time constructed.” The “used and useful” standard is the foundation of consumer protection against wasteful utility spending. In my thirty year energy career, I have never seen a legislature take away that essential consumer protection. This provision essentially allows utilities to spend unlimited amounts of money on risky projects with little or no oversight, and no recourse.

ELPC concludes today by urging the committee to take a long look at the policy questions HB 247 raises about relying on markets and competition. Before we allow the utilities to build or sell any of these products and services, we should discuss the costs and benefits as well as the advantages and disadvantages of competition. Many of the members of this committee just spent the last year criticizing utility energy efficiency programs and chastising the utilities for their waste of customer money. This legislation grants blind trust to those same utilities and introduces unprecedented limits on Commission oversight of the new products and services they would be able to invest in or sell. ELPC urges you to slow down and examine what this legislation really does, and examine the policy implications. Thank you for the opportunity to testify today and I welcome your questions.