

**HB 247 – Interested Party Testimony**  
**Jimmy Stewart, President, Ohio Gas Association**  
**Public Utilities Committee**  
**December 12, 2017**

Chairman Cupp, Vice Chairman Carfagna, Ranking Member Ashford and members of the House Public Utilities Committee, I am writing to express strong concerns with regard to a provision of H.B. 247 which would require utilities to refund PUCO-approved, lawfully collected charges if those charges were subsequently found to be imprudent or improper by the PUCO or Ohio Supreme Court. If the legislature were to pass this provision of law it would undo decades of ratemaking practices and violate the core principle of retroactive ratemaking. To the best of my knowledge, it would make Ohio the only state in the nation that would allow unfettered refunds of lawful rates.

On December 9, 1957, the Supreme Court of Ohio decided *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.* The Court held that public utilities should not be subject to retroactive ratemaking. The Court specifically held that public utilities are highly regulated and obligated to collect the rates that are approved by its regulatory body until such time that regulatory body or the Supreme Court rules otherwise. As recently as 2014, the Supreme Court confirmed again that “present rates cannot make up for utility revenues lost due to regulatory delay” (Majority opinion, Justice Judith Ann Lanzinger). Justice Lanzinger goes on to write that “...the court has consistently applied *Keco*... and refused to grant refunds in appeals of commission orders...*Keco* holds that rates set by the commission are lawful until such time as the court later finds that the commission erred in setting that particular rate.” Then-Justice, now-Chairman, Cupp joined that opinion.

As Justice Cupp surely recalls from his time on the Court, ratemaking is highly complex and carefully balanced. Utilities spend a great deal of time and resources in making applications to the PUCO for prudent recovery of costs associated with maintaining their infrastructure and delivering service to customers. Utilities are highly regulated and are given the opportunity to earn a reasonable rate of return approved by the PUCO. Utility shareholders can only be confident in their investment in a utility when they know that they can rely on the fact that when lawful rates are approved by the PUCO, those rates are irrevocably in place unless and until the PUCO or Ohio Supreme Court changes those rates on a prospective basis. Changing Ohio law to allow retroactive ratemaking and refunds would undermine utility investors as well as one of the responsibilities fundamental to the PUCO; to ensure that Ohio’s utilities maintain financial integrity. Additionally, retroactive ratemaking would undermine customers as well as they would pay higher prices. It would result in more rate cases being filed at the PUCO. Rate cases are expensive and the associated costs are paid by customers. Further, uncertainty in rates will cause utilities to pay more to attract the capital they need and impose yet more costs on utility customers.

These are not the only problems. The proposed change is entirely one-sided and would upset the existing legislative balance. The *Keco* Court recognized that while the lack of a refund “may seem inequitable” *in a given case*, on balance the legislative scheme was fair. Although on the back end, ratepayers might occasionally experience a delay in receiving a refund, on the front end utilities always suffer regulatory lag: they “may not charge increased rates during proceedings before the commission

seeking same and losses sustained thereby may not be recouped.” *Keco*, 166 Ohio St. 254, 259 (1957). Opening the door to immediate, retroactive refunds would be entirely inequitable without remedying the regulatory lag that is also a feature of the same statutes.

Finally, the solution does not fit the problem. To the extent there have been recent complaints regarding the rule against retroactive ratemaking, they have arisen in the context of electric-security-plan statutes. The ESP statutes do not apply to OGA or its members, and we take no position on whether any revisions are needed. But what is clear that these issues have arisen neither in proceedings involving natural gas companies nor in traditional rate proceedings. ESP proceedings have rules and standards entirely different than those applicable to traditional ratemaking, and it would be shortsighted to assume that a remedy purportedly intended to fix one problem won’t create a host of other ones. The provision overreaches and should be rejected.

In close, there will be occasions in which the PUCO or the Ohio Supreme Court will invalidate or change charges on a prospective basis. This is fair and reasonable. However, it is not fair or reasonable to upheave decades long legislative practice, case law and regulatory ratemaking by exposing Ohio utilities to retroactive ratemaking and subsequent refunds of lawfully approved charges.

On behalf of the Ohio Gas Association, I urge you to remove the retroactive ratemaking provision from H.B. 247.