



OEC [Action Fund]

**Proponent Testimony
Ohio House Bill 260 (Lanese/Troy)
Ohio House Public Utilities Committee
May 26, 2021**

Good morning Chair Hoops, Vice Chair Ray, Ranking Member Smith; I am Miranda Leppla, Vice President of Energy Policy for the Ohio Environmental Council (OEC) Action Fund. Thank you for allowing me to provide proponent testimony on Ohio House Bill 260 (HB 260). While I wish I could present this testimony in person to be able to have a more meaningful dialogue with you, the ongoing pandemic prevents me from safely doing so, and virtual testimony is still not an option.

Our organization, celebrating its 52nd anniversary this year, works to secure healthy air, land and water for all who call Ohio home. The OEC Action Fund supports House Bill 260 because permitting utilities to keep Ohioans' dollars collected through charges later deemed improper is unfair to Ohio utility customers and will stymie investment in a cleaner energy future. Allowing utilities to keep customer dollars after those charges have been deemed improper means dollars that customers could have used to invest in energy efficiency and other methods of reducing their carbon footprint stay with the utility instead. Permitting corporate utilities to keep customer funds also means Ohioans' money winds up in the pockets of utility shareholders instead of being used to push utilities to find ways to incentivize cleaner energy generation and delivery. HB 260 is an important step toward real accountability for utilities and to ensure the Public Utilities Commission of Ohio (PUCO) is deeply examining each and every charge on customers' bills before approving them, and this bill will put Ohio on a better track toward a clean energy future.

HB 260 would require the PUCO to order refunds of utility charges paid by customers when the Ohio Supreme Court or other authority later finds the charges to be unreasonable, unlawful, imprudent, or otherwise improper, and requires it to be refunded with interest accruing from the time the charge was paid. As the law currently stands, Ohio utilities have no real consequence for asking the PUCO for and collecting questionable charges on customers' bills because the utilities get to keep the funds regardless of the outcome of any additional legal challenge to the legality of those charges. This is because of a 1957 case, *Keco Industries v. Cincinnati & Suburban Bell Telephone Co.*, related to charges collected in the telecom industry. *Keco* held that under Ohio Revised Code § 4905.32, "a utility has no option but to collect the rates set by the commission and is clearly forbidden to refund any part of the rates so collected."¹ The Ohio Supreme Court has, on a number of occasions, ruled that utility rates approved by the PUCO were unlawfully approved to the detriment of hardworking Ohioans, but those charges weren't refunded.

¹ *Keco Indus., Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957).

According to research done by the Ohio Consumers' Council, Ohioans have paid \$1.5 billion in electric charges since 2009 that were later determined unlawful, but because of *Keco*, Ohioans don't get those dollars back. In a recent example from 2019, FirstEnergy customers were denied close to half a billion dollars in refunds of a PUCO-approved charge that the Ohio Supreme Court found to be unlawful.² This charge was purportedly to upgrade FirstEnergy's distribution system, which in theory would have allowed newer technologies to come online that could have helped Ohioans reduce their energy consumption, and move the FirstEnergy grid toward cleaner options and a more resilient distribution system. However, the "distribution modernization rider" charge didn't require FirstEnergy to spend a single penny of the funds collected from Ohio customers to upgrade the distribution system. The charge was a sham, and the Ohio Supreme Court ruled it unlawful--yet, Ohioans weren't permitted to receive refunds of their money.

This result comes about because of R.C. 4905.32 and the case law upholding it. It has a direct impact on Ohioans' pocketbooks, and shows the extreme power utilities have over the ratemaking process. While Ohio Supreme Court justices have recognized, both in majority opinions upholding the *Keco* precedent, and in dissents, that failure to permit refunds is unreasonable and "unconscionable",³ this matter is out of their hands and must be resolved by the legislature through a bill such as HB 260. This is why the OEC Action Fund is supporting HB 260 and commends Representatives Lanese and Troy for introducing a common sense, consumer-focused bill to remedy this long standing problem.

It is critical that we hold our utilities accountable and only permit lawful charges to be levied on Ohioans. Permitting utilities to keep Ohioans' hard-earned money after a charge has been deemed unreasonable, unlawful, imprudent, or otherwise improper, will mean utilities continue to push the boundaries on what charges they request and slow progress toward a cleaner, modernized grid. The OEC Action Fund advocates for a healthy environment, and we need a healthy regulatory system that balances the needs of Ohioans and our utilities to ensure we're moving toward a cleaner, more equitable future for all Ohioans, and preventing collection of charges from Ohioans that aren't necessary or proper. That is why OEC Action Fund urges you to support HB 260.

Thank you again for the opportunity to submit testimony, and our team looks forward to working with you on sound and balanced energy policy for the state.

² <https://www.cleveland.com/politics/2019/08/puco-reverses-disputed-firstenergy-charge-but-customers-wont-really-get-a-refund.html>

³ *In re Application of Columbus S. Power Co.*, 138 Ohio St.3d 448, 2014-Ohio-462.