TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO HOUSE PUBLIC UTILITIES COMMITTEE
IN SUPPORT OF HB 317
WEDNESDAY, FEBRUARY 9, 2021

Good morning Chair Hoops, Vice Chair Ray, Ranking Member Smith and members of the committee. My name is Robert Kelter and I'm a senior attorney at the Environmental Law and Policy Center (ELPC). Thank you for the opportunity to testify today. ELPC is a regional environmental organization with offices in Ohio, Illinois, Michigan, Minnesota, Wisconsin and Iowa. We have litigated numerous cases at the Ohio Public Utilities Commission, as well as other Commissions around the Midwest. Thus, our testimony today brings that knowledge of both how Ohio operates and how other states handle these issues. We focus on clean energy issues and consumer protection, which we believe go hand in hand.

In order to properly understand the implications of HB 317, I think it's important to understand the utilities business model, and how regulation has worked in Ohio compared to other states. Hence, I want to go over a few background issues that I hope will add helpful perspective to the HB 317 discussion.

Foremost, and I think this is sometimes forgotten in Ohio, utilities are regulated monopolies. The state grants them monopolies to provide electric service, and the utilities agree to a regulatory framework that limits their profits to a reasonable level. Regulation by the Ohio Public Utilities Commission (PUCO) replaces competition and protects customers.

Second, and equally important the system lacks balance. The PUCO lacks the resources and experts to monitor the utilities, and the system depends on transparency and utility honesty. Commissioners and Commission Staffs do the best they can, but utilities have unlimited resources to spend on everything from expert witnesses and the best attorneys, to public relations campaigns. While regulators try protect customers, utilities constantly look for ways to make the highest profits possible. Hence, legislators need to set the rules in a way that effectively regulate the utilities.

Part of the power that utilities hold is that once the Commission sets the rates in a rate case, then the utilities can look for ways to both increase revenues and cut costs that improve their profits beyond what the Commission used to set the rates. The rate case is really the only time the Commission analyzes utility service and spending to see if the utility provides good service at a reasonable cost. It is also the only time the Commission looks at the utility's test year from the previous rate case to see if its projected costs and revenues are consistent with its actual costs and revenues. Hence, allowing the utilities to come in between rate cases and use the ESP cases to add riders to customers' bills throws a wrench into the system.

ELPC litigates utility cases in Illinois, Michigan, Iowa, Wisconsin, Indiana, and Minnesota and we've never seen a system that lets utilities do what they can do in Ohio, where they get approval to make the magnitude of investments they make here outside of a rate case. Moreover, while the law makes it appear that the Commission scrutinizes these investments, if the utility settles an ESP case through a stipulation then the Commission only approves the settlement – it never fully analyzes the spending. Utilities have used ESP cases for example, to invest hundreds of millions of dollars installing smart meters outside of rate cases.

This latest iteration of HB 317 doesn't fix the system completely, but it certainly improves it. ELPC's preference would be to get rid of the riders completely as the original version of this bill did, but we've listened to the debate and understand the legislature's desire to allow utilities to increase spending in some areas without rate cases.

Hence, the question becomes does this version of HB 317 improve the system? And ELPC believes that the answer to that question is yes, because the legislation changes two critical things. First, it creates a check on the system through an excessive earnings test that prohibits utilities from earning excessive profits from adding riders. Section 4928.143(C) requires an annual Commission audit to ensure that the utilities don't earn more than 250 basis points (2.5%) above their approved return on common equity.

Second, and perhaps more importantly because overearning 2.5% every year adds up, the utilities must come in for a rate case during the course of their competitive power plan. This means that the Commission can give the utilities the kind of comprehensive review that ensures customers get fair value for utility spending. A Commission dissent in a recent First Energy case where former Chair Randazzo pushed the Commission to let FirstEnergy avoid coming in for a rate case in 2024 said it best. The dissent emphasized the following:

> In an era where our electric distribution utilities are making increasingly substantial investments the costs of which they recover through riders, as is the case for the First Energy Companies, I believe it is important to conduct rate cases on a periodic basis in order to comprehensively evaluate those utilities' revenue requirements. **The risk of not conducting regular comprehensive reviews, and leaving the decision solely up to the EDU regarding whether and when to conduct such a review, particularly during periods of low inflation, low interest rates, and technological innovation, is that the rate base will over-recover the portion of costs that is responsible to recover.**

Case No. 19-361, Conway Dissent, Jan. 15, 2020 (emphasis added). And to be clear, this was a 2019 case involving FirstEnergy's Distribution Modernization Rider, where FirstEnergy wanted to get rid of a rate case that wasn't scheduled for another five years. In a sense, FirstEnergy's actions in working with Chair Randazzo to avoid a rate case five years down the road speak louder than words.

While ELPC supports HB 317, it still has room for improvement on some of the issues it addresses. One that stands out is Section 4905.321 which addresses customer refunds from money utilities collect in cases where the Supreme Court ultimately overturns a Commission order authorizing that collection. Under current statute customers receive no refund, and HB 317 orders refunds from the time the Supreme Court reverses the Commission until the date that the Commission actually sets a new rate. While the refund for the interim period improves the system, it does not go far enough. Customers should get refunded all of the money the utility improperly collects. Another is Section 4903.101, the rehearing provision that gives the Commission 150 days to issue an order after granting rehearing (which is on top of the 30 days they get under 4903.10 to decide whether to grant rehearing at all). This should be reduced to 90 days.

But even with these issues needing further work, HB 317 represents a substantial improvement over the current ESP law. Utilities, by nature, want to do everything they can to increase profits. The balance in Ohio has gotten far too tilted in favor of the utilities, and this bill brings back some reasonable balance. We urge the Committee to pass this bill and add the consumers protections around rates. Thank you and I'm happy to answer any questions.