



OPPONENT TESTIMONY, HB 260, HOUSE PUBLIC UTILITIES COMMITTEE, 5.8.24

Chair Stein, Vice Chair Robb-Blasdel, Ranking Member Weinstein, and members of the House Public Utilities Committee, thank you for the opportunity to submit written opponent testimony for HB 260. My name is Hannah Kubbins and I am the Legislative Director for Americans for Prosperity – Ohio (AFP). AFP has a long track record of advocating for the consumer in Ohio. Accordingly, we oppose HB 260.

H.B. 260 puts further control in the hands of public utilities by allowing certain costs and expenses to be recovered outside of a general rate case and through an approved “tracker” mechanism.¹ It further limits the due process rights of parties to a general rate proceeding by limiting the number of written questions during the written discovery phase of a general rate proceeding.

TRACKERS IDENTIFIED IN THE LEGISLATION

- **Distribution Investment Tracker**

The bill language at Sec. 4909.173 (A) allows for a distribution investment tracker to collect the revenue requirement relating to certain distribution infrastructure investments designed to maintain or improve safety, reliability, system efficiency, security, or grid resilience. Section (B) states that distribution infrastructure investment eligible for recovery through a tracker described in (A) of the section will include distribution capital investments and, to the extent they support the maintenance or improvement or reliable electric service, common, general, and intangible assets allocable to distribution service under the Federal Energy Regulatory Commission (FERC) uniform system of accounts.

Section (C) of Sec. 4909.173 in the bill outlines the revenue requirement collected by the distribution investment tracker will include depreciation, property taxes and other applicable taxes, and “(a) fair and reasonable rate of return on the current period actual distribution rate base equivalent to the rate of return authorized for base distribution rates in the rate proceeding described in division (A) of this section.” (Bill Text, page 34, Lines 975-978).

¹ “A cost tracker allows a utility to recover its actual costs from customers for a specified function on a periodical basis outside of a rate case.” From: “The Two Sides of Cost Trackers: Why Regulators Must Consider Both,” Ken Costello, Principal, National Regulatory Research Institute, NRRI Teleseminar, October 27, 2009, 2:00 – 3:30 EDT, Abstract, p. iii; <https://ipu.msu.edu/wp-content/uploads/2020/04/Costello-NRRI-Trackers-2009.pdf>.

- **Storm Response Tracker**

Section 4909.174 of the bill allows a utility to request approval for a storm response tracker relating to distribution infrastructure investments and distribution operations and maintenance expenses necessitated by weather events not reflected in base rates that constitute major events.

- **Cyber Security and Regulatory Trackers**

Section 4909.175 of the bill allows up to two cyber security and regulatory trackers in addition to those outlined above.

ADDITIONAL LANGUAGE CONCERNING THE VARIOUS TRACKERS

The distribution investment tracker can collect on an annual basis up to four percent (4%) of the base distribution revenue requirement approved in a specified previous rate proceeding.

The storm response tracker and the cyber security and regulatory trackers can collect up to the rate of return authorized for base distribution rates approved in a specified previous rate proceeding.

OVERALL IMPACT OF THE TRACKER LANGUAGE IN THE BILL

Admittedly, while the bill requires a report to be filed with the public utilities commission outlining any adjustments to revenues and expenses that need to be made with respect to each tracker – i.e., a quarterly report concerning the distribution investment tracker and a semi-annual report with respect to the storm response and cyber security and regulatory trackers – this process will not afford the level of scrutiny that normally occurs during a general rate proceeding.

Most people have no idea what a “tracker” is and that appears to be precisely what the drafters of this bill are counting on. If folks don’t know what the bill is talking about, then how on earth can they challenge it? Answer: they can’t.

This bill uses the word “tracker” or “trackers” at least 59 times. Interestingly, current Ohio Code language appears to use the word “tracker” only once in the entire Code – at Section 4939.07. It is certainly interesting that such a small word can carry such a heavy load.

If passed, this bill will allow electric utilities to use the “tracker” mechanism to funnel tens of millions of dollars’ worth of costs and expenses to rate payers, all conveniently outside the purview of a general rate case. It is not inconceivable that costs and expenses under a distribution investment tracker could run into the hundreds of millions of dollars as those investments eligible for recovery through a distribution tracker include poles, wires, and a host of assets that are allocable to distribution service under the FERC uniform system of accounts.

LIMITS TO WRITTEN DISCOVERY

Section 4909.46 of the bill outlines certain restrictions to a company's application filed under section 4909.18 of the Revised Code. At (C) of the bill (Page 51, Lines 1470-1485) the bill states that each party "shall be limited" to issuing not more than three rounds of written discovery prior to the filing of the staff report of recommendations and not more than three rounds of written discovery after the filing of the report. Further, the language states that each party "shall be limited to not more than fifty questions, including subparts, during each round."

This language essentially cuts off a party's due process rights to cross-examine and question opposing parties during the written discovery phase.

It is not unreasonable in a rate case that dozens of questions could be targeted to a specific engineering or accounting issue. Most general rate cases contain hundreds if not thousands of pages. By statutorily limiting the amount of questioning that can be done during the written discovery phase of a rate case, the utility has further insulated itself and its decision making process by making it more difficult for its customers to question its operations while they foot the bill.

This language essentially tells the public: "We don't want you asking too many questions." And hence, the limits are included.

OVERALL EFFECT

This bill is bad for Ohio electric utility rate payers. We strongly encourage you to vote against H.B. 260.

Respectfully Submitted,

Hannah Kubbins

Legislative Director, Americans for Prosperity – Ohio

hkubbins@afphq.org