



David F. Proaño
Regulatory Counsel
dproano@bakerlaw.com
216.861.7834

Lori Herf
Legislative Advisor
lherf@bakerlaw.com
614.462.2667

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**Before
The Ohio House of Representatives**

**Public Utilities Committee
Testimony on House Bill 260
(Regards public utilities and competitive retail electric service)**

**David F. Proaño, Baker & Hostetler, LLP
Regulatory Counsel to Ohio Energy Leadership Council**

Interested Party Testimony on Behalf of the Ohio Energy Leadership Council

May 8, 2024

Chair Stein, Vice-Chair Robb Blasdel, Ranking Member Weinstein, and Committee members. My name is David Proaño, and I am a partner representing clients on energy and utility matters at the law firm of Baker & Hostetler, where I have practiced law for 20 years. My testimony today is on behalf of my client, Ohio Energy Leadership Council, as an interested party in House Bill 260.

As will be discussed in my testimony, House Bill 260 is almost entirely on the side of the electric utilities and will harm consumers and businesses in the State of Ohio unless the bill is substantially modified. As a brief preview, the bill's introduction for the first time in the history of Ohio of fully forecasted test years and the deletion of a date certain requirement will tilt the scales heavily in favor of the electric utilities in rate cases. The bill also introduces even more unnecessary riders, which the bill calls trackers, to Ohio's rate-making process. There are other problems with the bill, but these are the main ones.

Make no mistake about it. House Bill 260 is a pro-utility bill with provisions that will only benefit the utilities, and most of the provisions in it are entirely unnecessary to address the issue of electric utilities going decades between rate cases.



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Relevant to my testimony, my practice is devoted in substantial part to representing clients before the Public Utilities Commission of Ohio in rate cases and utility matters, including electric utility distribution rate cases and electric security plan cases. Since October 2022, I have served as regulatory counsel to the Ohio Energy Leadership Council, known as OELC, which is the premier trade association in Ohio that represents the interests of large commercial and industrial customers in Ohio.

For more than four decades, OELC has represented energy-intensive manufacturing, industrial, institutional, information technology and retail businesses on utility matters in Ohio. Our members include steel companies, chemical processing companies, materials and equipment manufacturers, educational institutions, retail business establishments, petroleum refiners, recycling and scrap steel companies, and many other businesses across the State of Ohio. Our members collectively spend billions of dollars on annual energy expenditures and consume over 3.8 billion kWh in electricity in Ohio each year, or the equivalent electricity usage of over 365,000 residential homes in Ohio, and our members are located in each of the four major electric utility service territories in Ohio.

As major contributors to Ohio's economy, our members utilize their energy expertise to advocate for fair and transparent energy rates and promote reliable and reasonable utility service. Our mission, quite simply, is to keep Ohio's energy and utility costs competitive for existing and new businesses that fuel Ohio's economy and jobs. Because OELC supports transparency and accountability in the PUCO ratemaking process, we support instituting a legal requirement that Ohio's electric utilities file regular rate cases and prohibiting agreements that are not made part of the public record in a PUCO case. OELC also supports many of the changes that will modernize and streamline the PUCO rate-making process, including reasonable limits on discovery, a faster case schedule, and a requirement that the PUCO render a decision and determine applications for rehearing within reasonable time periods.



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That said, I will frankly discuss three aspects of House Bill 260 that are giveaways to Ohio's electric utilities, and explain why they will hurt Ohio's businesses, consumers and Ohio's economy, including fully forecasted test years, the elimination of a date certain requirement, and these trackers.

First, House Bill 260 permits Ohio's electric utilities to use fully forecasted test periods. In rate cases, the test period is used to evaluate and determine the revenues and expenses in providing public utility service in Ohio over a twelve-month period. The current law in Ohio already permits partially forecasted test periods, precisely to deal with the issue of regulatory lag. Under the current law, the utility can propose a test period that ends *nine* months after the application filing date. That is more than sufficient to deal with any timing differences between the proposed test period and when rates go into effect. Further, the timing issue can be addressed by requiring PUCO decisions within a more abbreviated timeframe, which this bill does.

But under House Bill 260, Ohio's electric utilities can use a fully forecasted test period that covers a 12-month period as late as one full year after the rate application is filed. What that means, in practice, is that the electric utilities can rely entirely on their own forecasts of revenues and expenses up to two years in the future to set their rates for Ohio ratepayers. That is significant because it is considerably more difficult to analyze and potentially challenge revenues and expenses based on the utility's own forecasts. The utilities will have every incentive to ensure their forecasted expenses and revenues favor higher utility rates to ensure they maximize their returns in Ohio for their investors. It would be very naïve to believe otherwise.

For PUCO Staff or intervening parties seeking transparency, accountability and fairness in the rate-making process, fully forecasted test years make those goals considerably harder. Challenging fully forecasted test periods will require challenging the utility's forecasting assumptions and challenging business judgments about what will happen or be required in the future to maintain public utility service. It would put the PUCO in the hard position of deciding whether or not to accept the utility's forecasts when, in reality, the actual expenses and



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revenues may turn out to be considerably different. This is completely contrary to providing transparency and accountability in Ohio's rate-making process.

Don't just take my word for it. The proponents of House Bill 260 repeatedly cite Michigan as an example of a state uses fully forecasted test years to set electric utility rates. Michigan got rid of historic test years in 2008 in favor in fully forecasted test years, and by all accounts that experiment has gone badly. Just last month, Michigan State Senator Jim Runestad, a Republican representing western Oakland County in Michigan, introduced Michigan Senate Bill 812 which, according to an April 9 press release from Senator Runestad, "would require utility companies to once again rely on actual costs when requesting rate increase approval from the [Michigan Public Service Commission] instead of future projections that have been allowed since 2008."¹ In his press release, Senator Runestad goes on to explain, and I quote, "Utility companies have been allowed to propose rate increases on best guesses instead of actual data and it's no surprise that this make-believe system has resulted in higher bills for customers." Runestad goes on to say, "A utility has nothing to lose by overestimating its costs and everything to gain because projected test years shift business risks away from utilities to the bank accounts of ratepayers. When actual costs are lower than predicted, it's the utility company — not the customers — who receives the benefit."

I could not say it any better, and shouldn't we learn from Michigan's mistake? There is empiric evidence as well of the failure of fully forecasted test years to save consumers money in Michigan. As of January 2024, according to the federal government's U.S. Energy Information Administration, Michigan was the 11th most expensive state in the country for the average retail price of electricity for the residential sector, at 18.34 cents per kWh. I ask whether that is where this committee wants Ohio to end up. Pennsylvania, also a state cited by the bill proponents as using a fully forecasted test year, is not far behind Michigan as the 14th most expensive state, at an average rate of 17.39 cents per kWh. As of that

¹ Source, April 9, 2024 press release by Senator Runestad, available at <https://www.misenategop.com/runestad-looks-to-rein-in-rising-utility-costs-with-new-bill/>.



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same month, Ohio is #18 at 15.58 cents per kWh.² I would urge this committee to avoid supporting a bill that will undoubtedly only serve to increase rates for Ohio consumers.

Now, through an amendment that was proposed today, House Bill 260 would direct the Commission to true up rates based on actual normalized expenses and revenues for that forecasted test period through an audit. Here is the fundamental problem with this attempt to fix this bill. Under the abbreviated timeline for rate cases set forth in this bill, the PUCO must enter an order in a rate case within 365 days of the application, or the rate increases sought by the utility will automatically go into effect on a temporary basis. Recall that Day 365 from the filing date is when a utility can commence its fully forecasted test period. In other words, to avoid this automatic rate increase by operation of law, the PUCO will have to make a decision by Day 365, *before* there is *any* actual data on test year expenses or revenues, and before that data can be provided to the PUCO.

Accordingly, rates will go into effect based on the forecasted test year at that point, and actual data on test year expenses or revenues will not be ready for another year at least, because the utility will need to actually operate through that test year first. Then, once the PUCO has the data, more than a year after the rates come into effect, there is an unspecified audit and true up process which will take some amount of time. What happens then? Since base distribution rates are not subject to refund, this cannot possibly help the ratepayers since we should fully expect utilities to forecast expenses and revenues in a way that maximizes rate increases. Thus, under a best-case scenario, rates may be adjusted prospectively once the fully forecasted test year is over, an audit is done, parties have taken their positions, and the PUCO makes a decision on the record in the audit proceeding. In the meantime, ratepayers will be paying the utility based on a forecasted test year, perhaps for years.

² Source: U.S. Energy Information Administration, State Profiles, available at <https://www.eia.gov/state/rankings/?sid=US#/series/31>.



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The current law in Ohio, which allows for the use of a partially forecasted test year, works just fine. This attempt to overhaul it in favor of the utilities under the semblance of requiring more regular rate cases should not be supported by this committee. Using actual revenues and actual expenses to set the rates of electric utilities in Ohio is fair for the utilities, fair for ratepayers, and provides greater transparency and accountability. And, Ohio already allows for the use of nine months of forecasted test year data in rate cases. This already brings operational data closer to the timing of new rates, and the regulatory lag issue is best addressed through frequent rate cases and timely PUCO decisions. If there is considerable regulatory lag, nothing in Ohio law prevents utilities from filing more frequent rate cases. It is entirely within their control.

Related to the introduction of a fully forecasted test year, another very concerning aspect of House Bill 260 is the elimination of the date certain requirement. In utility rate cases, the date certain is a snapshot date used to determine the value of the property of the public utility that is used and useful as of that date certain in providing public utility service. The PUCO then determines a fair and reasonable rate of return to the utility on that valuation as of that date certain.

House bill 260 would no longer use a date certain for utilities relying on fully forecasted test periods, which I fully expect will be every electric utility, but instead will determine value and valuation of the property used for public utility service using a thirteen-month average rate base ending in the last month of the fully forecasted test period, based on the end-of-month balance for the twelve consecutive calendar months of the test period plus the end-of-month balance for the month immediately prior to the forecasted test period. There are numerous problems with eliminating the date certain requirement. One significant problem is that it would be extraordinarily difficult for Staff of the PUCO or any intervening party to meaningfully challenge the valuation that the utilities are forecasting over two years out from the application filing date. Like the fully forecasted test year, Staff, intervening parties and the PUCO will be in a position of having to rely on forecasts prepared by the utility that are not actual numbers, tilting the rate case very much in favor of the utility.



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Again, the utility will have every incentive to push for the highest valuation possible over that forecasted test period, and then the utility can build out to those high valuations. This change does not at all foster transparency or more affordability in rate cases, but will only lead to higher utility rates in Ohio.

In current rate cases, there is a meaningful opportunity for staff and intervening parties, and by extension the Commission, to make a close examination of what property is actually being used and is useful for public utility service. The current use of a single date certain provides an avenue to meaningfully evaluate whether assets on the utility's books are actually being used, and are useful, for public utility service. While the bill, with some help from today's amendment, does have a true-up mechanism, as in the true-up for the forecasted test year, any true-up relating to valuation will come too late to help Ohio's ratepayers, because by that point the rates will have been in effect for a year or even many years depending on the suggested audit process. In my experience at the PUCO, audits can take months or even years to complete, which will only hurt ratepayers.³

Finally, the trackers. Currently, Ohio law for base distribution rate cases do not permit riders or trackers, and the utilities have done just fine on their revenues and profits. The introduction of trackers here is a benefit to the Ohio's electric utilities, plain and simple. The proponents say that it is to reduce regulatory lag. However, if utilities are required to file rates cases at least every five years, and since utilities have the discretion to file more frequently, there should be minimal regulatory lag. Further, shortening the time for the PUCO to issue decisions in rate cases is a good change, and will also reduce regulatory lag.

But the trackers are not necessary and will not decrease the number of riders in Ohio. That is because House Bill 260 does nothing to eliminate the ability of Ohio's electric utilities to secure riders through Ohio's electric security plan statute, Ohio Revised Code 4928.143. To be clear, House Bill 260 in no way

³ The current version of House Bill 260 also has conflicting provisions on the issue of the date certain. These conflicts were noted in the legislative analysis of the bill. *See* Amendments to Sec. 4909.15(A)(1)(a) and Sec. 4909.15(C)(2); *see also* Page 12 of the Bill Analysis from the Office of Research and Drafting.



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modifies Ohio's electric security plan statute, and in no way prevents Ohio's electric utilities from proposing even more riders through the current ESP statute. Thus, the utilities will get everything they possibly want. They can still propose riders through Ohio's ESP statute, which has no revenue caps for riders, and nothing in this bill would prohibit a utility from seeking distribution or major storm or cybersecurity or regulatory riders through an ESP filing.

In sum, if this committee wants to fix the problem of utilities going for decades between rate cases, then you can fix it very simply. All that is needed is a requirement that utilities file rate cases at least every five years. And if the committee wants to fix the problem of dozens of riders, then limit them to four trackers in the aggregate for both rate cases and ESP cases. There are some modernizing and streamlining provisions OELC does agree with in this bill, but the current House Bill 260 completely turns the current rate process on its head, and very much for the worst for Ohio's ratepayers.

For these reasons, the Ohio Energy Leadership Council respectfully urges that this committee not pass House Bill 260 out of this committee without substantial amendments that address these serious issues with the bill.

Thank you for your consideration. I welcome any questions from the committee.

D.F.P.