

Testimony by Erica McConnell
on behalf of the Environmental Law & Policy Center
House Bill 260
House Public Utilities Committee
May 22, 2024

Chairman Stein, Vice Chair Robb Blasdel, Ranking Member Weinstein, and members of the Committee, thank you for the opportunity to testify today as an interested party. My name is Erica McConnell and I am a Staff Attorney at the Environmental Law & Policy Center (ELPC). ELPC regularly intervenes in cases at the Public Utilities Commission of Ohio (PUCO) and we fully understand the urgent need for reform. We will support a bill that makes good progress on important issues even if, contrary to our preference, it continues to allow riders.

ELPC has worked closely with Senator Wilkin on SB 102 and we believe that the Ohio legislature needs to reform the ratemaking process to protect consumers. ELPC understands that the legislature today is not likely to go as far as we would like towards reforms, and we believe a compromise bill can benefit everyone.

ELPC has not taken a position yet on HB 260 for two reasons. First, we believe in some places we need stronger consumer protections. Second, we believe in some places the language in the bill should be simpler, and clearer. That said, we want to be clear today about the fundamental problem with trackers (today known as riders) and the importance of regular rate cases.

It's important to understand some fundamental principles of setting rates. The law allows the utilities to recover prudently incurred costs, but they make their profits earning a rate of return on their capital investments. For example, if the utility wants to build a new transformer, it recovers the cost in a rate case, it earns a rate of return on the investment, and it depreciates the transformer over a period of about 20 years. That return on the capital investment is the utility's profit.

The Commission sets rates through rate cases. In a rate case the Commission looks at all of a utility's costs and revenues, and determines how much money the utility recovers from customers each year. Once it determines that amount, it divides by the number of kilowatts the utility expects to sell and comes up with a rate. For ease of example let's say 10 cents per kWh.

Once the Commission sets that 10 cents per kWh rate and the Company puts it into effect, it will either be overearning or underearning each year based on its actual sales to customers and its costs. At any given time, if the utility's sales go down or its costs go up it can come in for a new rate case. The utility chooses and controls this process. Technically, the Commission could bring a utility in if it believes it's overearning, but it never does so. This is not only true in Ohio, it's true in all states. The utilities control the process. The glaring example of the imbalance is FirstEnergy which has not filed a rate

case since 2007, though it is expected to file one this month. If FirstEnergy was underearning and wanted higher rates, it would not have waited 17 years. But, under current Ohio law it doesn't need to expose itself to that kind of analysis of its costs and revenues – it just adds riders through its Electric Security Plan (ESP) cases.

ESP cases allow utilities to build infrastructure and create new programs without coming in for a rate case. They then recover those costs through riders attached to customers' bills that merely add new costs without examining the utility's overall profits. While HB 260 does not eliminate riders as ELPC would like, it limits the riders to 4% of a utility's rate base per year and it requires full blown rate cases every five years.

While we support that aspect of the bill we have concerns about a number of provisions in the bill, two of which we will focus on today. First, we do not support making it more difficult to intervene in rate cases. We do not agree with changing the standards for intervention. Second, we don't agree with some of the changes regarding discovery. We understand the desire to limit discovery, and support reasonable limits. But the proposed limits go too far, and there has to be a provision that allows the Commission flexibility when a utility provides inadequate responses to questions. Additionally, Staff acts as a party in cases and Staff should be subject to discovery like other parties.

We believe that this bill is a starting point that moves us in the right direction and we look forward in participating in further discussions. We thank the Committee for your work on the important issues HB 260 addresses.