



Office of the Ohio Consumers' Counsel

**Before
The Ohio Senate**

Energy and Public Utilities Committee

**Testimony on Sub. House Bill 79
(Permit Electric Distribution Utility Establish Certain Portfolios)**

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On Behalf of the Office of the Ohio Consumers' Counsel

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Hello Chair Reineke, Vice-Chair McColley, Ranking Member Smith, and Committee members. I hope you and your colleagues are well.

Thank you and the Committee for this opportunity to present opponent testimony on Sub. H.B. 79.

My name is Maureen Willis. I am the Ohio Consumers' Counsel, the director of the state agency that represents 4.5 million residential utility consumers. I am testifying on behalf of these residential utility consumers.

Energy efficiency is a good thing. It is also something that Ohioans can obtain in the well-developed competitive market from businesses. Ohioans can obtain cost-effective energy efficiency without legislation, without the involvement of monopoly utilities and without the additional charges on their electric bills that will result from Sub. H.B. 79.

This legislation contains favorable ratemaking for utilities at consumer expense. It will create unneeded profits for the utilities in the name of energy efficiency. OCC strongly recommends conservatism in legislation that would increase utility rates that consumers pay. Affordability of utility rates is becoming a real issue for Ohioans.

A better approach for green energy and consumer savings would be to repeal the coal plant subsidy to AEP, Duke and AES in House Bill 6. Repealing the coal plant subsidy in House Bill 6 would eliminate the \$500,000 a day coal subsidy and would protect consumers from pro-utility, anti-competitive ratemaking and the forced support for coal plant air and ground pollution.

Sub. H.B. 79 allows for utility profits and lost revenues to be charged consumers for energy efficiency programs, increasing the costs of energy efficiency programs.

Sub. H.B. 79 is advertised as an energy efficiency bill. But it is more than that. As written, it creates a profit center for utilities, funded by utility consumers.

This bill contains favorable ratemaking for utilities at consumer expense. Specifically, this legislation allows utilities to charge consumers for (1) utility profits (incentives)(Lines 124 and 284-291) and (2) utility lost distribution revenues or decoupling revenues (Lines 125-135). These extra charges unnecessarily add to the costs of the energy efficiency paid for by consumers.

Utilities can collect the so-called utility incentive (profit) at ten percent of actual program costs on an after-tax basis (Lines 284-290). This utility incentive is unneeded and unreasonable. The utility typically makes little (if any) capital investment in running energy efficiency programs.

Separately, Sub. H.B. 79 allows the utility to keep twenty percent of the revenues received from energy savings that are bid into the wholesale market (Lines 323-327). Since the utility energy efficiency programs would be entirely paid for by utility consumers, these additional revenues from the wholesale market should flow back to consumers, not as additional profit to the utility.

The \$1.50 monthly cap for residential consumers fails to adequately protect consumers.

The proponents of the legislation claim there are adequate consumer protections included in the bill such as monthly rate caps for residential and small non-residential consumers (Lines 328-333). We disagree.

The claimed \$1.50 monthly billing cap for residential consumers is not really a cap. By the terms of the bill, the monthly cap can be exceeded by two different charges to consumers. These extra charges to consumers are: (1) utility profits (incentives) (Lines 284-291); and (2) utility lost distribution revenues or decoupling revenues (Lines 300-308).

But worse still, there is no credible estimate regarding the amount of these extra charges by either the utilities (such as AEP) or the Legislative Service Commission.¹ I urge you not to pass legislation before knowing its true costs to consumers. The \$1.50

¹ The Legislative Service Commission performed a bill analysis. But LSC did not quantify these extra charges to consumers. AEP's witness Jon Williams was asked by a House Public Utilities committee member at the April 26th proponent hearing what the bill could cost consumers. Mr. Williams replied that he could not answer that question. See the testimony of Nicholas Stallard (Office of Ohio Consumers' Counsel), May 3, 2023.

monthly cap on residential consumer or \$7.50 monthly cap on other consumers does not represent the true costs to consumers.

Sub. H.B. 79 is not really a voluntary energy efficiency program for residential consumers.

Proponents of the bill also claim that the energy efficiency programs under Sub. H.B. 79 are voluntary. This claim is overstated.

A residential utility consumer may choose, within a small window of time, not to participate in the utility energy efficiency program. But he or she will still have to pay the lost distribution revenues (or decoupling charges even if they opt out of the energy efficiency program (Lines 300-308). The opt out option does not make the energy efficiency program voluntary for consumers if they still pay for lost distribution revenues or decoupling.

We also have concerns regarding the process of opting out by residential consumers (Lines 370-391). A consumer will be sent two mailers and given one chance to opt out at the start of the program. If the consumer does not understand, disregards, or throws out the two mailers (as “junk mail”), then they are stuck with paying for the program for five years or the duration of the program. These conditions seem overly restrictive for a so-called voluntary program.

This legislation gives preferential treatment to mercantile consumers.

There is a disparity regarding automatic enrollment between residential consumers and mercantile consumers. Under the proposed legislation, “Mercantile customers shall be automatically opted out...” of the program. (Lines 350-354) But residential consumers and nonresidential retail consumers (smaller businesses) are automatically opted in. (Lines 370-376).

Another disparity is that mercantile customers, if they opt in, can leave the program after just a year. (Lines 366-369) But residential and smaller business consumers are automatically opted in for the length of the energy efficiency program, up to five years. (Lines 187-190 and 399-404).

This disparity between consumers should be eliminated. Residential and smaller business consumers should be treated the same as mercantile customers when it comes to energy efficiency opportunities. Residential consumers that want to participate in energy efficiency programs, should opt in, not default to opt out. And like mercantile consumers, residential consumers should be able to leave the program after a year if they desire.

Cost-effective energy efficiency is best achieved through a competitive market.

Ohio businesses, communities, and residential consumers have managed energy efficiency (or energy savings), on their own and can continue to do so, without a utility sponsored energy efficiency program. The market for energy efficient products and services is well developed and capable of meeting individual customer needs. Through this robust marketplace for energy efficiency improvements a utility consumer can make the best decision for his or her home or business, benefit from a lower bill, and consume less energy. All of this can be achieved in a cost-effective manner through the competitive market, without a utility program that is saddled with unknown costs and utility profits.

Conclusion

Energy efficiency is a good thing. It is also something that Ohioans can obtain in a cost-effective manner through the well-developed, competitive market from businesses. The decision of whether to engage in energy efficiency is a decision best left to individual consumers, without government's heavy hand and without the added costs that come when a utility is involved in the process.

Thank you for this opportunity to present my testimony. I will be happy to answer your questions.