BEFORE THE SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
SENATOR BILL REINEKE, CHAIRMAN

TESTIMONY
OF
JOHN SERYAK
OMA ENERGY ENGINEER

December 10, 2024

Chair Reineke, Vice-Chair McColley, Ranking Member Smith, and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to provide testimony today on Substitute House Bill 79 (HB79). My name is John Seryak, and I am the founder of Runnerstone, an energy consultancy providing accurate, unbiased information on energy policy, regulations, and market matters; and Go Sustainable Energy, a customer-oriented energy consulting firm. I serve as the energy engineer to The Ohio Manufacturers' Association (OMA) on whose behalf that I offer testimony today.

The OMA represents Ohio's robust manufacturing sector, with approximately 1,300 members of all sizes. Energy is of paramount importance to Ohio's manufacturing competitiveness; therefore, Ohio's energy policy is of great significance to the OMA. Energy efficiency has long been a critical and successful management strategy for manufacturers to lower their electric costs, while simultaneously reducing need for costly electric grid investments.

However, the OMA has serious reservations with certain provisions of HB79 that have not been addressed. As it is now written, HB79 could be counter-productive, empowering electric utilities at the expense of customers, with only a mirage of environmental progress. Our top concerns are that:

- HB79 gives electric utilities new power to control manufacturer-owned electric generation, especially renewable energy plants, including the ability to shut down customer-owned solar and wind without the owner's consent.
- HB79 partially restores the notorious House Bill 6 decoupling policy, now calling it lost distribution revenue.
- HB79 includes "paper only" definitions of energy efficiency, a past tactic used to game efficiency programs to profit utilities while providing little real energy reductions.

First, HB79 gives electric utilities new power to control manufacturer-owned electric generation, especially renewable energy plants that utilities do not own. The utility could over-ride and shut-down this competitively-owned generation, including rooftop solar. Specifically, HB79 states that any utility that offers an energy savings program is required to offer a plan to:

"… reduce demand or impacts of intermittent resources on the grid, which plan shall require working in coordination with electric services companies."

It is important to know that "intermittent resources" is an industry term that means renewable energy generation, but could include electric vehicle charging, battery storage, or gas-fired turbines at customer sites. As such, this plain-looking provision

could offer electric utilities expansive new anti-competitive powers. The provision stands out as odd - utility control of intermittent resources has little ability to create energy savings and there is no explanation for why it is included with efficiency programs. Plainly put, HB79 should not be passed for this reason alone.

Secondly, HB79 partially restores the notorious House Bill 6 (HB6) decoupling provision, this time using the term “lost distribution revenue”. The terms “lost distribution revenue” and “decoupling” have been used interchangeably and to obfuscate corrupt give-aways to the electric utilities.

The lost distribution revenue provision will allow utilities to charge customers back for the costs that customer’s efficiency investments just saved. This makes no sense, and there is little evidence that decoupling and lost distribution revenue mechanisms actually encourage energy efficiency. Moreover, electric utilities are already guaranteed to recover all of their costs through base distribution rates.

HB6’s decoupling provision was repealed for good reasons. It does not need to come back in pieces.

Lastly, HB79 continues a pattern of creating definitions of energy "savings" that are anything but. Loose definitions of energy savings in law erodes important customer and environmental protection. For example, HB79 defines a type of energy savings as "behavioral energy savings":

"…energy savings that occurs as a result of a change in a residential retail electric customer's pattern of electricity use."

This definition is problematic, as many things can change a retail electric customer's pattern of electricity use. For example, a family taking a summer vacation would have a resulting drop in their summertime electricity use, and hence a change in their “pattern of use”. Under HB79, these non-efficiency "savings" can be counted by the utility towards their savings target, towards lost distribution revenue, and program fees. In other words, the utility can profit significantly from this efficiency definition, while customers and the environment make no real gain.

I have attached with my testimony a memorandum further detailing my concerns with these problematic provisions.

Thank you, Mr. Chairman and members of the committee. I am happy to answer any questions you have.

RUNNERSTONE
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MEMORANDUM

May 11, 2023

To: The Ohio Manufacturers' Association

From: John A Seryak, PE (Runnerstone)

Efficiency Bill Gives Utilities Control of Customer-Owned Renewables; Partially Restores HB6 Decoupling Charges

Key Points

- House Bill 79 (HB79) provides for "utility control…to reduce impacts of intermittent resources on the grid". This gives utilities control over competitively owned renewable energy - authority that a state government can grant under recent FERC Order 2222.
- With this new power, utilities could shut-down manufacturer-sited renewable energy and other intermittent resources without the owner's consent.
- HB79 also changes the policy of the state to encourage the electric utilities to offer voluntary energy efficiency programs funded by customers plus profit.
- HB79 partially restores the notorious House Bill 6 decoupling giveaway with "lost distribution recovery".
- HB79 would allow utilities to count on paper "efficiency" that has no real impact. Utilities could then profit from this faux efficiency by inflating lost distribution revenue and program fees, a past tactic.

Introduction

House Bill 79 (HB79) has been introduced in the Ohio General Assembly. The bill's main objective is to establish the ability for electric utilities to offer energy efficiency and conservation programs funded by customers. The savings programs would be designed for all customers. Larger mercantile customers will be automatically opted out[1], with an option to opt-in to the programs. Thus, the energy savings programs will likely be targeted to residential customers and small businesses, including small manufacturers, but could serve larger businesses in some cases. Efficiency programs of this nature have been commonplace throughout the nation, and can be run by state agencies, non-profits, competitive businesses, and often by electric utilities. The effectiveness of energy efficiency programs can be dependent on the competency of the program administrator. A customer opt-out provision in HB79 offers some protection for individual customers from ineffective program administration by a utility.

[1] A mercantile customer uses 700,000 kWh/year or more of electricity, which equates to more $70,000 in annual electricity costs. Or a mercantile customer is any account that is part of a national account. This means businesses with many locations are mercantile customers.

Unfortunately, HB79 contains provisions that produce no energy savings but give electric utilities new authority and new profits, including:

- Control over customer-sited renewable energy, any renewable energy "on the grid," and other intermittent power resources;
- Partial restoration of the notorious House Bill 6 "decoupling" provision, an aim of past utility corrupt actions; and
- Increased profits for electric utilities due to loose "efficiency" definitions that can allow paper only claims of energy efficiency, enabled through lost distribution revenue, loopholed rate caps, a ten percent profit for utilities, and 20% of any wholesale market revenue due to customer efficiency.

Utility Control of Customer-Sited Renewable Energy Generation

Under HB79, any utility that offers an energy savings program is required to offer a plan to:

> *"... reduce demand or impacts of intermittent resources on the grid, which plan shall require working in coordination with electric services companies."*

It is important for manufacturers and policymakers to know that "intermittent resources" is an industry term that means renewable energy generation.[2] However, some could argue that other power resources like customer-sited generation, batteries, EV chargers, customer demand response, and even smart thermostats are types of intermittent resources. As such, this plain-looking provision could offer electric utilities expansive new anti-competitive powers.

The provision stands out as odd - utility control of intermittent resources has little ability to create energy savings and there is no explanation for why it is included with efficiency. There is more to worry about. This provision does not limit utility control to just the program participants' renewable energy generation but may apply broadly to any renewable energy "on the grid." This means any customer-sited generator or independently owned renewable energy plants can be controlled by the utility if it is deemed an intermittent resource. This effectively gives the monopoly utility operating control over competitive, renewable resources. This control could include shutting off renewable energy, including behind the meter customer-sited resources, without the owner's consent.

The thought that utilities might desire to operate and control renewable power resources that they do not own is not mere conjecture. In fact, this very question is already before Ohio's state government because of the Federal Energy Regulatory Commission's (FERC) Order 2222. FERC Order 2222 opens wholesale electricity markets to "distributed energy resources," an industry term inclusive of "intermittent resources."

In its compliance filing to FERC, PJM leaves it to each state's regulatory authority to determine the role of the electric distribution utility. In doing so, PJM allows ample discretion for state governments to determine who should aggregate the operation and control of these resources, and how to ensure these

[2] " Intermittent output usually results from the direct, non-stored conversion of naturally occurring energy fluxes such as solar energy, wind energy, or the energy of free-flowing rivers (that is, run-of-river hydroelectricity)", US Energy Information Administration, Glossary of Terms, https://www.eia.gov/tools/glossary/index.php?id=i

resources do not create distribution grid reliability issues, as we detailed in our October 2022 memo "FERC Order 2222 Opens Electricity Markets to Customer-Generators, Utility Role Uncertain"[3].

Worryingly, state governments may allow electric distribution utilities to serve as DER aggregators under FERC 2222[4]. Thus, there is concern that HB 79 may be positioning electric monopolies to capture this nascent market. FERC shared this concern, noting electric distribution utilities have interest in seizing control of renewable energy in its order, saying:

> *"Moreover, several distribution utilities seek more than review capability and...(that they) should have the authority to make decisions regarding the participation of a distribution energy resource aggregation."*

Similarly, PJM warns of electric distribution utility "conflict of interest"[5]. Both FERC and PJM, however, do not settle this conflict of interest, and instead ask states to settle the conflict. Thus, Ohio government will be required to decide if an electric distribution utility may serve as a DER aggregator under FERC 2222, and Ohio government will need to create or approve interconnection rules for electric distribution utilities regarding distributed energy resources participating in wholesale electric markets.

Thus, there is a choice for Ohio. On one hand, the utilities' role could be defined as being an agnostic integrator of new distributed and intermittent resources. This agnostic utility role could support markets and competition through transparent data sharing with clear operating standards to ensure grid reliability, while owners retain control and operation of their investment. One the other hand, the state could defer to the utilities' role as a monopoly, operating and controlling power resources owned by others.

It seems that HB79 is making that choice for Ohio. By requiring utilities to control any intermittent resources on the grid, HB 79 is positioning the monopoly utility to have control over privately owned, competitive power generation. This would certainly undermine competitive markets, as it takes control away from the owners and investors of intermittent, distributed power resources.

Partial Restoration of HB6 Decoupling

Lost distribution revenue, a type of "decoupling," has been a major policy goal of FirstEnergy and was a key component of the bribery scandal surrounding House Bill 6. Also, decoupling policies have proliferated in recent years across the country with mixed results[6], and are often favored by utilities. While Ohio's other electric utilities may be interested in continuing decoupling policies, the past mischief to

[3] "FERC Order 2222 Opens Electricity Markets to Customer-Generators, Utility Role Uncertain", Memorandum to The Ohio Manufacturers' Association, October 7, 2022. https://ohiomfg.informz.net/ohiomfg/data/images/FERC%20Order%202222%20Runnerstone%20Memo%20-%2010.7.22.pdf

[4] Order No. 2222 Compliance Filing of PJM Interconnection, L.L.C., Motion for Extended Comment Period, Feb. 1st, 2022, see page 19, "...market participation agreements for distributed energy resource aggregators should not preclude distribution utilities".

[5] "Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators", Department of Energy Federal Energy Regulatory Commission, RM18-19-000, see page 216, paragraph 284.

[6] Cappers, P., Satchwell, A., Dupuy, M., and Linvill, C., "The Distribution of U.S. Electric Utility Revenue Decoupling Rate Impacts from 2005 to 2017", Berkeley Lab, February 2021. electricutilitydecouplingmechanismsintheunitedstates_brief_final.pdf (lbl.gov)

inflate decoupling costs through "lost distribution revenue" warrants skepticism of any proposed decoupling policy.

HB79 would achieve this electric utility goal by allowing a utility to collect "lost distribution revenues" as part of their energy savings plan. These lost distribution revenues, which can be substantial, are not counted toward the net cost of the program - it is effectively profit to the utilities, above and beyond other incentives and revenue sharing the utilities would receive under HB79. Moreover, lost distribution revenue would be collected from all customers, even if the customer has opted-out of the utility's energy savings program.

Background

Some of Ohio's electric utilities continued to collect decoupling revenue under Ohio's Energy Efficiency Resource Standard (EERS) law well after their energy efficiency programs ended. There are some distinctions that should be made here. First, Ohio's electric utilities do not currently offer efficiency programs. It is commonly touted that Ohio's electric utility efficiency programs ended because Ohio's EERS was repealed by House Bill 6 - but this is misleading. Ohio's EERS was not repealed but was instead truncated at a cumulative efficiency goal of 17.5%[7], a savings achieved already by Ohio's utilities. In other words, Ohio's efficiency goals are still in place, they've just been met, and thus utilities do not need to offer any additional programs to meet their goals. By doing this, House Bill 6 was able to effectively eliminate efficiency programs, while still preserving "decoupling" authority, a mechanism that financially benefits electric utilities, but not their customers.

As stated, some Ohio electric utilities still have decoupling in place under the EERS language in Ohio Revised Code 4928.66.[8] Thus, utilities do not need any new law to authorize decoupling. They have collected millions of dollars from customers for efficiency savings with their decoupling mechanism, regardless as to whether they have efficiency programs. This begs the question, why does HB79 then include a lost distribution revenue mechanism?

Noticeably, FirstEnergy implemented their decoupling mechanism differently than other utilities, with a "lost distribution revenue" mechanism approved in its scandal-tainted fourth Electric Security Plan (ESP)[9]. FirstEnergy was able to inflate its annual lost distribution revenue collections far beyond what its utility peers were collecting through decoupling. This is likely partly due to changes to how FirstEnergy "counted" efficiency savings included in Senate Bill 310 of the 130th Ohio General Assembly, for example, from so-called "customer action programs".

By 2018, FirstEnergy was collecting $66.5 million per year in lost distribution revenues, more than their program profits, more than their efficiency rebates to customers, and more than their program administration cost. It was an extremely expensive component of their efficiency "programs". Rather than

[7] Ohio Legislative Service Commission Final Analysis of H.B.6 of 133rd General Assembly, https://www.legislature.ohio.gov/download?key=13060&format=pdf
[8] AEP Ohio - Pilot Balancing Throughput Adjustment Rider, Duke - Distribution Decoupling Rider, AES Ohio - Distribution Decoupling Rider
[9] Opinion and Order, "In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan.", Case. No. 14-1297-EL-SSO.

save customers from these undue costs, House Bill 6 codified them into law, and a curious ruling by the PUCO extended the collection indefinitely[10].

Followers of Ohio energy policy may find the terms "decoupling" and "lost distribution revenue" (LDR) confusing. This is because "decoupling" and "lost distribution revenue" have similar aims and are sometimes used interchangeably. There are other ways to decouple, such as with a "straight-fixed variable" billing mechanism. These interchangeable terms can be used to obfuscate intentions. For example, FirstEnergy internally referred to this lucrative mechanism as lost distribution revenue, but for public purposes chose to use the term "decoupling" in consultation with former Speaker Larry Householder to obfuscate their intentions and confuse lawmakers and the public. A now publicly released email from a former FirstEnergy executive stated:

> *"Some of our LDR fixes were considered to be politically problematic (by the Speaker's office) because the solutions made it clear we would continue to recover LDR. After some back and forth with the Speaker's office, we landed on the decoupling language that was included in the as-introduced bill."*

And

> *"We'd like it to remain 'under the radar' "*[11]

The HB6 decoupling provision was repealed in the aftermath of the arrest of Speaker Larry Householder and an FBI raid on the home of a former PUCO Chair. Ohio Attorney General Dave Yost sought to enjoin FirstEnergy from collecting $102 million of decoupling revenue from customers[12]. Because the term "decoupling" is now associated with the House Bill 6 scandal, it may be considered politically toxic and unsuitable for proposed legislation. Stakeholders and policymakers should beware of "lost distribution revenue" now coming back into use as a substitute for decoupling.

Paper-Only "Efficiency"

HB79 continues a pattern of creating definitions of energy "savings" that are anything but. Defining in law loose definitions of energy savings limits the ability of stakeholders to testify at the PUCO on efficiency program effectiveness, eroding an important customer and environmental protection. For example, HB79 defines a type of energy savings as "behavioral energy savings":

> *"...energy savings that occurs as a result of a change in a residential retail electric customer's pattern of electricity use."*

This definition is problematic, as many things can change a retail electric customer's pattern of electricity use. For example, a family that begins taking summer vacations would result in a drop in their summertime electricity use, and hence a change in their pattern of use. Another example would be a family whose children leave home. Similarly, this family's electric bill would see a drop in electricity use,

[10] "H.B. 6 Decoupling Provision - $355 Million for FirstEnergy through 2024, Possible Millions More", Memorandum to the Ohio Manufacturers' Association, August 17, 2020, https://www.ohiomfg.com/wp-content/uploads/HB-6-Decoupling-8.17.20.pdf.
[11] "FirstEnergy CEO Steven Strah emailed about "under the radar" House Bill 6 provision that cost Ohio ratepayers millions of dollars", https://www.energyandpolicy.org/firstenergy-ceo-steven-strah-emails/
[12] AG Yost Files Motion to Stop FirstEnergy from $102 Million Cash Grab - Ohio Attorney General Dave Yost, https://www.ohioattorneygeneral.gov/Media/News-Releases/January-2021/AG-Yost-Files-Motion-to-Stop-FirstEnergy-from-$102

and a change in their pattern of electricity use. In fact, any investment in energy-efficiency made by a homeowner, even without the assistance of a utility program, could be measured as a reduction in electricity use and a change in the customer's pattern of use. Under HB79, these non-efficiency "savings" can be counted by the utility towards their savings target. The utility could collect program fees for these savings. And the utility could collect lost-distribution revenue associated with the claimed savings. In other words, the utility can profit significantly from this efficiency definition, while customers and the environment make no real gain.

While there is merit in good behavioral energy savings programs, the language in HB79 is overly broad and could allow a very diluted and ineffective energy savings program. And, while behavioral energy savings cannot be counted from commercial or industrial customers in HB79, it is bad policy and precedent, nonetheless. Similarly concerning is the definition of "gross energy savings", which would allow a utility to count and profit from "savings" that are business-as-usual efficiency gains.

Manufacturers and policymakers should know that overly specific definitions of how to "count" efficiency in previous proposed legislation, notably Senate Bill 310 of Ohio's 130th General Assembly, were likely used to over-inflate lost distribution revenues in the past. Specifically, FirstEnergy may have relied in part on the "counting" definitions of SB310 to collect up to $66.5 million per year in lost distribution revenue by 2018. As we have shown, this was an exorbitant amount of revenue that FirstEnergy then attempted to lock in for future years through House Bill 6 by bribing legislators and regulators.

It is important to note that decoupling and lost distribution revenue, and definitions of how to "count" energy efficiency, work together. Decoupling and lost distribution revenue create the mechanism for revenue recovery, while changing definitions as to how efficiency is "counted" is the means to increase the amount of revenue recovered by a utility. The legislative language works together to create how, and how much, profit a utility can make through these means.