

PUBLIC TESTIMONY OF JANINE MIGDEN-OSTRANDER

ON SUB. S.B. 2

BEFORE THE OHIO SENATE ENERGY COMMITTEE

Chairman Chavez and Members of the Committee,

My name is Janine Migden-Ostrander. I am the former Consumers' Counsel for the State of Ohio, having held that position from April, 2004 through September, 2011. I also served as a Principal at the Regulatory Assistance Project advising governments and regulators on clean energy policy. Currently, I am a Fellow at Pace University Law School, Energy and Climate Center. I am offering this testimony, however, on my own behalf and as a resident of Ohio. My testimony will cover several points:

- Support for Sec. 4905.321 ORC to require refunds for utility overcharges after a PUCO-approved charge has been found to be unlawful by the Ohio Supreme Court;
- Support for the repeal of the OVEC surcharges that have cost Ohioans \$445,679/day;
- Support for ending the Electric Security Plans; and,
- Reinstatement of Energy Efficiency Standards.

1. Requiring Refunds for Overcharges after a PUCO Decision is found to be Unlawful

I commend the legislature for finally addressing this issue as it is long overdue and I strongly urge the passage of this provision to prevent the travesty that the current situation has caused. According to OCC, customers have paid \$1.5 billion in refunds since 2009. This is money that utilities collected as a result of an Order from the Public Utilities Commission that was later found to be unlawful. When I was Consumers' Counsel, I fought to have this corrected, but was unfortunately unsuccessful. The Supreme Court had ruled that they believed this inequity should be corrected but also held the legislature had to fix it. So, it is good to see the legislature doing that now. When you think about what the \$1.5 billion could have been used for by consumers over the years, to help stave off a disconnection for nonpayment or to pay for needed household goods, it is sad to see that the utilities have been able to pocket their money that they were not entitled to. At the end of the day, this is money that is due them and should be returned with interest in the same way utilities charge customers for interest on expenditures they make that are not recovered until a later date.

2. Repeal of the OVEC Surcharge

To date, Ohioans have paid approximately \$450 million to subsidize two uneconomic coal plants – one of which is not even located in Ohio! This has been more of a tax than it has been a payment for generation that has provided a value or service to most customers. With the exception of this charge, Ohio law requires that for a utility to recover the cost of generation,

that generation must be used and useful, which is not the case for a good portion of the citizens of this state. The continuation of this charge has been unconscionable in that it has requires customers to subsidize utilities that receive generous rates of returns for power that is uneconomic and that continues to pollute the air and contribute to global warming by releasing approximately 58 million tons of carbon dioxide so far and rising.

If you take the \$1.5 billion in lost refunds and add that to the charge for the OVEC corporate welfare, the sum is approximately \$2 billion that utilities have been able to take from customers' – your constituents – pockets without any benefit being derived by those customers. When consideration is given to the fact that approximately 1 in 10 customers may be disconnected from electric or gas service because they don't have enough money to pay their bills, these spurious charges become reprehensible. How many disconnections could have been averted? How many Ohioans didn't have enough food to eat or went without medicine to pay their electric bill? Or, how many of those Ohioans could have used that money to pay for a myriad of things that they may have needed for their households? These decisions that translate into healthy bonuses for corporate executives come at a cost to every day families working hard to make ends meet.

3. Termination of Electric Security Plans (ESP)

Electric Security Plans were never good for consumers and as the Consumers' Counsel when SB 221 passed, which enacted these provisions, we opposed it. ESP's allowed distribution companies to recover large sums of money with little scrutiny and gave a lot of power to utilities to control the process. A straight competitive bid process for generation with utilities recovering distribution costs through traditional rates will return Ohio to a competitive market that is closer to what was envisioned when SB 3, the retail bill on competition originally passed in 1999.

When I was the Consumers' Counsel and would oppose an ESP settlement, some of the utilities would tell me that if I didn't support it, they might choose to go to the market. My response was always the same: Please do, because if the utilities thought for one second that they could make more money for their shareholders by going to market instead of filing an ESP, they would have done that. They never did

4. Reinstitution of Energy Efficiency Standards

When HB 6 passed, the power plant subsidies were paid for by eliminating energy efficiency programs. The energy efficiency and demand reductions requirements of HB 221 should be added back in and continued from where it was interrupted so that Ohioans can enjoy the benefits of energy efficiency and demand response programs. When looking to the portfolio of resources to meet Ohio's growing energy needs (due in large part to the location of data centers in Ohio), energy efficiency is the least cost option when compared to renewable energy, fossil fuel and nuclear resources. Not only does it lower system costs, but every participating customer will enjoy a reduction in their monthly energy bill because they are using less. It is the

best conservation tool for reducing wasted electricity and keeping costs down for residents and businesses alike.

Utilities in this state have not sufficiently tapped distributed energy resources such as demand response. Demand response programs can send price signals to customers that match the cost to the utility at a given time to the price the customer pays. Most of the state has smart meters and therefore, the utilities can record the customer's usage in 15-minute intervals so that customers can be offered time of use rates with on-peak and off-peak rates that are reasonably and fairly designed. Utilities can also install chips on a voluntary basis that allows the utility to cycle down air conditioning for example for a 15-minute interval every hour or so. This can help the utility manage peak load on hot day and avoid rolling black outs. The customers who participate in these programs receive a discount to compensate them for their reductions. Note, that without these programs, utilities need to bring on line peaking plants or purchase scarce power in the market which can be very expensive. Because utility rates anticipate these episodes in the flat kwh charge, customers in general pay more for electricity in order to cover these frequent events. When rates are set based on the cost to utilities, all customers save.

In conclusion, I urge you to retain the provisions in Substitute Senate Bill 2 that are discussed in my testimony above and to amend the language to include the energy efficiency and demand response standards.

Thank you for your consideration of my testimony.

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