



**BEFORE THE SENATE ENERGY COMMITTEE
SENATOR BRIAN M. CHAVEZ, CHAIRMAN**

SUBSTITUTE SENATE BILL 2 INTERESTED PARTY TESTIMONY

**TESTIMONY
OF
KIM BOJKO
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Chairman Chavez, Vice Chair Landis, Ranking Member Smith, and Members of the Senate Energy Committee, my name is Kim Bojko and I am a partner with Carpenter Lipps LLP. I specialize in energy, public utilities, and regulatory law, as well as energy policy, and have been practicing in this area for over 26 years. I am here today on behalf of the Ohio Manufacturers' Association (OMA) as an interested party to Substitute Senate Bill 2, Version 4 (Sub. S.B. 2) as accepted on March 11, 2025.

While this bill addresses many key energy policy components, it is important to not overturn decades of ratemaking law that has stood the test of time and provided important protections to customers. As I stated last week, words matter and every change to the current ratemaking law will have lasting impacts on customers' bills and will likely result in some unintended consequences.

For example, the language authorizing electric utilities to forecast their test years in rate cases will incentivize utilities to forecast higher projected costs and lower projected revenues, leading to increases in customers' bills. Additionally, language in the bill allows projected used and useful determinations, requiring customers to pay for electric facilities that are not yet used and useful in the provision of service to customers. This change eliminates an important customer protection in current law and will increase costs to customers. The true-up mechanism is insufficient as the electric utilities will be allowed to collect inflated projected costs from customers and will not return such costs until after the completion of the true-up. The true-up could also lead to more litigation regarding what costs and revenues were actually incurred and received and what capital expenditures were actually invested and are used and useful in the provision of service to customers. This in essence could be a mini rate case.

Additional language of concern would allow electric utilities to request annual increases (discretionary) to their forecasted rates to earn a return on projected projects that were already included in the forecasted test year. More specifically, the new language authorizes the utilities to increase the "base rate revenue requirement," which will increase customers' rates, to account for the utility's profit on forecasted capital expenditures for projected assets. The new language allows utilities to do this in years 2 and 3.

While this provision triggers a true-up after years two and three, the true-up is only of forecasted plant additions and would not refund the utility's profit if the project is never constructed or the project costs less. The bill requires the PUCO to "take into account the rate of return that the utility projects to earn on the investments," but does not require any true-up of the return for the actual investment made. The true-up for years two and three also does not require a true-up based on revenues received. Importantly, the true-

up would occur through a rider, it would not adjust the rate base revenue requirement to reflect actual rate base. This would result in an inflated rate base and revenue requirement.

Allowing rates to increase every year based on forecasted projects and then trueing up any rate base additions the following year after a true-up case occurs will not result in rate certainty for customers and will eliminate any rate stability between rate cases. Coupled with the requirement to file rate cases every three years, customers' rates will also change in year 4; thereby resulting in customers' rates changing every year and sometimes customers' bills could change twice in a year depending on any true-ups that may occur that are collected or refunded through the rider mechanism.

You have heard that other states allow forecasted test years for utilities. However, there is a difference between forecasted data that is trued up to actual prior to new rates being established and forecasted test years that are not trued up until after rates go into effect. Additionally, states that may have a forecasted test year also have significant consumer protections in place, none of which exist in the current version of Sub. S.B. 2.

The current ratemaking statutory scheme is not broken. When the utilities need to increase their rates to operate or earn a higher return, they file a rate case and will continue to do so.

Nonetheless, an alternative to the forecasted test period would be to allow the electric utilities to do the same ratemaking scheme that the natural gas, sewer, and water utilities are allowed to do today under current law. In filing for a rate increase, the non-electric utilities are authorized today to:

1. Use more months of projected test year data;
2. Make adjustments in year two for known and measurable changes reasonably expected to occur; and
3. Choose a date certain at the end of the test year.

Currently, electric utilities are not authorized to select a date certain at the end of the test year as the date certain can be no later than the date the application is filed. The electric utilities also do not have the ability to adjust rates in year two for known and measurable changes. Affording the electric utilities more flexibility and projections under the current law for other utilities is a viable ratemaking alternative that is known to the PUCO and stakeholders and could be implemented more quickly and efficiently.

Another provision included in the recent version of Sub. S.B. 2 that we discussed last week would allow a competitive service to be provided by a regulated utility without the

protection of corporate separation rules and law. While the provision has been narrowed, it would still allow the regulated utilities to own and operate generation if they made a filing (not received approval) for such an arrangement prior to the passage of the bill. OMA continues to have concerns about regulated monopolies owning generation, even if it is only for a handful of projects.

As an alternative, revising this language to existing projects or projects that have been approved by the PUCO would be an improvement to protect the competitive markets and customers. It is important to keep in mind that Ohio's corporate separation laws exist to prevent unfair competitive advantage and the abuse of market power. Allowing electric utilities to own competitive generation directly contravenes the purposes of deregulation and corporate separation by allowing ratepayer subsidies to support monopolistic utilities' provision of an unregulated competitive service, which would be anti-competitive and thwart competitive on-site deals that customers might have entered into with third parties.

While the substitute bill still contains a few concerning provisions that I have outlined, the OMA supports the language ensuring the continuation of certain customer programs on a non-discriminatory basis to foster economic development, transmission, and demand response programs, which are important tools to reduce transmission costs for all customers and alleviate grid constraints during peak periods. The OMA also supports the repeal of electric security plans and HB 6 subsidies.

Lastly, the OMA urges the committee to consider adding language requiring heat maps of the utilities' electric systems, which could allow power generators and customers to more timely determine where constraints on the system exist and where they could locate without extensive infrastructure upgrades. Similarly, it would allow power generators to know where competitive power generation is needed.

Mr. Chairman and members of the committee, that concludes my testimony. I would be happy to answer any questions you may have.