Office of the Ohio Consumers' Counsel

**Before**
**The Ohio Senate**
**Energy Committee**

**Testimony on House Bill 15, Dash 9**
**(Amend competitive retail electric service law)**

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**On Behalf of the Office of the Ohio Consumers' Counsel**

**April 29, 2025**

Hello Chairman Chavez, Vice Chair Landis, Ranking Member Smith, and Committee members. Thank you for this opportunity to testify as a Proponent of House Bill 15.

I am testifying on behalf of Ohio's 4.5 million residential utility consumers.

OCC supports H.B. 15 and thanks Rep. Klopfenstein for his work on this legislation. For too long, the regulatory environment in Ohio has heavily favored utilities over consumers. Ohioans deserve legislation that restores fairness and balance to this system. H.B. 15 is on a good path forward for essential regulatory reform.

However, we continue to urge the Committee to reconsider the refund provisions in H.B. 15, specifically Lines 600-619. When we say "reconsider" we mean delete it. The bill currently limits refunds to charges collected after a Supreme Court decision. This limitation will preclude your constituents from getting refunds for charges paid prior to the Court's ruling even when the Court finds the charges unlawful or unsupported. And it may have the unintended effect of interfering with consumer refunds in pending appeals where charges have been collected "subject to refund."

The refund problem is rather complex and predates H.B. 15. It stems from the Public Utilities Commission of Ohio (PUCO) repeatedly approving unlawful or unsupported charges without including effective "subject to refund" language to protect consumers.

For instance, the PUCO approved FirstEnergy's Distribution Modernization Rider (DMR) without refund protection, resulting in consumers paying $456 million even after the Ohio Supreme Court deemed the charges unlawful. Former PUCO Chairman Asim Haque provided candid insight into this regulatory failure.

In a 2019 text message related to FirstEnergy's DMR, Haque admitted to a FirstEnergy executive:

> "And knowing that it [the distribution modernization charge] would likely be found illegal and could not be refunded, I knew you would hold onto the funds."[1]

This is a clear example of regulatory capture, where regulators prioritized utility financial interests over their duty to protect the public. The result was that one million FirstEnergy consumers lost hundreds of millions of dollars with no recourse. And regulatory capture was in full swing under former PUCO Chair Randazzo, the successor to PUCO Chair Haque.

The limiting refund language in HB 15 is especially harmful when applied to pending appeals involving charges the PUCO has ordered collected "subject to refund." For example, if OCC wins its pending appeal challenging AES Ohio's stability charge, each Dayton-area consumer could receive about $312 in refunds/bill credits.

OCC's appeal[2] argues that the PUCO approved $76 million per year in stability charges to Dayton-area consumers even though AES provided no evidence that consumers were receiving any service. The PUCO, in a rare moment, allowed the charge to be collected subject to refund, "to the extent permitted by law."[3] Such a provision would generally allow consumers to receive refunds for all the charges collected, dating back to the PUCO's approval of the charges. If H.B. 15 becomes law as written, AES's half a million consumers could lose the refund opportunity that has been in the making since 2019.

It is understandable that legislators might have intended H.B. 15 to help consumers by ensuring that unlawful charges could at least be refunded after a court decision. However, because it limits refunds, H.B. 15 would deny consumers the opportunity to recover years of unlawful charges collected before the Court's decision — essentially locking in the harm caused by regulatory capture. Even when utilities collect unlawful charges under questionable regulatory approvals, consumers would have no way to be made whole.

Today, when the PUCO chooses to protect consumers, it can require "subject to refund" language in utility tariffs. But too often, the PUCO has failed to require effective refund protection, leaving consumers exposed. H.B. 15, however, would go even further. Even if the PUCO were to include refund clauses in tariffs moving forward, H.B. 15 would limit any refunds to revenues collected after a Court ruling — making refund clauses meaningless and leaving consumers permanently exposed.

We respectfully propose that you delete the refund provision altogether. Allow consumer refunds to occur if refundability is written into the PUCO-approved tariffs. This would continue

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[1] https://www.canarymedia.com/articles/enn/former-puco-chair-texted-he-knew-firstenergy-charge-was-likely-unlawful-but-company-would-keep-money-anyway.

[2] Ohio Supreme Court Case No. 2021-1473 https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2021/1473.

[3] The PUCO maintains that the provision is not sufficient to allow refunds and has argued that the charges must also be reconcilable.

the current minimal protection Ohio consumers have— consistent with what we believe are the legislators' good intentions in proposing the refund provision.

H.B. 15 makes significant strides in consumer protection and regulatory reform. However, the current refund provisions risk perpetuating past injustices where consumers bore the cost of unlawful utility charges without remedy. By deleting the refund limitation, the legislature can reinforce its commitment to fair and balanced utility regulation.

OCC will continue to advocate for comprehensive reform ensuring that utilities are held accountable for all unlawful charges, not just those collected after a court ruling or under tariffs subject to refund. We hope to work with members of the General Assembly in future consumer protection efforts in this regard.

Thank you for your attention to this matter and for your continued efforts to protect Ohio's utility consumers.