

**TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO SENATE HOUSE PUBLIC UTILITIES COMMITTEE
IN SUPPORT OF HB 317
WEDNESDAY, MAY 26, 2021**

Good morning Chairman Hoops, Vice Chair Ray, Ranking Member Smith and members of the committee. Thank you for the opportunity to testify before you today. H.B. 317 is an extremely important piece of legislation and I appreciate the opportunity to testify before you today. While, I've testified several times before this Committee over the years, it has generally been on policy issues related to clean energy. Today, I'm testifying on an issue that relates more to consumer protection, and fairness in the ratemaking process at the Public Utilities Commission of Ohio (PUCO). I have been at ELPC for more than a decade and have litigated numerous cases at the PUCO, as well as the state commissions in Illinois, Michigan, Wisconsin and Indiana. Before coming to ELPC, I spent twelve years at the Citizens Utility Board in Illinois where I focused on electric rate cases and consumer fraud issues.

The issue today revolves around rates, and the way the utilities have used the Electric Security Plan (ESP) process to circumvent the rate case process that forces them to match up costs and revenues. In February 2020 ELPC circulated a memo to legislative leaders that I have attached today. That memo takes a thorough comprehensive look at how the ESP process has directly benefited utilities at the expense of its customers.

In order to understand the flaws in the ESP process, you have to understand how the PUCO sets the rates customers pay. That rate case process looks at all of a utility's projected costs and expenses and comes up with a total amount of money the utility needs to recover from customers. The Commission approves that total, adds in a reasonable profit for utilities, and then it divides the dollar number by the utility's projected sales to arrive at a rate per kWh that customers pay on their bills. It's a balance between the costs and the revenues, plus a profit for the utility. And the burden of proof is on the utility.

Once the Commission sets the rate, it stays in place until the next rate case. Hence, as soon as a rate case ends the utility immediately starts taking steps to cut costs that will help it make more profit. For example, in a rate case the utility might ask for \$50 million per year for tree trimming, and then lo and behold it finds a way to cut that cost to \$25 million. Then it realizes it can make do without the new transformers in the rate case for five more years. And so on. While this process clearly has flaws, it also prevents the utility from making any major capital investments unless it can pay for that investment under its current rates.

The rate setting process protects consumers from paying additional expenses that utilities already cover because they've cut costs somewhere else. But under the ESP process, a utility can just come in for the case to set its Standard Service Offer price for

its default generation, and then add on a new expense collected in a rider. For example, the smart meters that help utilities cut down on billing costs and lower the time it takes to determine when customers have lost power due to a storm, cost hundreds of millions of dollars that utilities are collecting through ESP riders. Before the ESP legislation, the utilities would have to come in for a full rate case before charging customers hundreds of millions of dollars to pay for the meters. But with the ESP cases, the utilities just ask for a rider on the bill that recovers the new charge without a chance to for the Commission to see if the utility is over-charging for other items. There's no balancing to re-examine costs and revenues in their totality that happens in a rate case. Instead, the utility just adds that cost to the bill. And as Representative Wilkins noted, all of the utilities have used this loophole. Today, Ohio utility customers pay between 11 and 47 riders on their bill every month.

The effect of the ESP law has been that the utilities have added riders for almost any expense related to the grid. 4928.143(B)(h) at HB 317 p.13,14. Over the last decade they have spent and recovered billions of dollars without the review and scrutiny of a rate case. Moreover, the standard the Commission uses to evaluate an ESP makes it highly unlikely the PUCO will ever say no to utilities on these riders. In a rate case the utility has the burden of proof on every expense. In an ESP case the law only requires that the utility find that the ESP plan in its totality is "favorable in the aggregate." 4928.143 (C)(1) at HB 317 p.14,15. This lowers the bar substantially and has proven an extremely easy standard to meet. Finally, if a utility doesn't like the Commission Order it can simply withdraw the ESP Plan altogether. 4928.143(C)(2)(a). Hence, if ELPC litigates an ESP case and wins, all the utility has to do to change the outcome is withdraw the plan, and the Commission can't require any further action. This simply takes away the Commission's ability to regulate the utility.

Without going into further detail today, the ESP process needs reform. I urge you to read the memo ELPC drafted a year and a half ago. ELPC thanks the Sponsor for bringing this bill forward, and urges the legislature to pass HB 317.