

**TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO HOUSE PUBLIC UTILITIES COMMITTEE
IN SUPPORT OF HB 317
WEDNESDAY, APRIL 6, 2021**

Good morning Chair Hoops, Vice Chair Ray, Ranking Member Smith and members of the committee. My name is Robert Kelter and I'm a senior attorney at the Environmental Law and Policy Center (ELPC). Thank you for the opportunity to testify today. ELPC is a regional environmental organization with offices in Ohio, Illinois, Michigan, Minnesota, Wisconsin and Iowa. We have litigated numerous cases at the Ohio Public Utilities Commission, as well as other state Commissions around the Midwest.

I've already testified on this bill and explained our broad position that ELPC opposes putting riders on customers' bills, either through ESP cases or Alternative Regulation cases. But, that HB 317 represents a reasonable compromise that moves us in the right direction.

Part of the power that utilities hold is that once the Commission sets the rates in a rate case, then the utilities can look for ways to both increase revenues and cut costs that improve their profits beyond what the Commission used to set the rates. The rate case is really the only time the Commission analyzes utility service and spending, to see if the utility provides just and reliable service at a reasonable cost. Hence, allowing the utilities to come in between rate cases and use the ESP cases to add riders to customers' bills throws a wrench into the system.

Let me give you an example. Utility A comes in for a rate case in 2015. In its test year it states it will need to recover the cost for 200 employees who drive around and read meters. In 2018 Utility A files an ESP case that includes a grid modernization rider replacing the old meters with new automated meters that provide the utility customer usage information, and eliminate the need for employees to go around and read meters. But, the ESP adds the new expense for the meters without taking away the revenue Utility A collects for the meter readers. Until the next rate case the utility still collects the costs of the salaries of those 200 employees.

Most importantly, the way the law works today utilities come in for rate cases whenever they want to come in. Absent a Commission order bringing a utility in—which is extraordinarily rare¹—the ball is in their court, and the best real-life example of this is FirstEnergy.

¹ ELPC notes that although the Commission can order Utilities to file applications for rate increases, our research finds that it has done so only once in the last 20 years in the FirstEnergy case discussed herein. From the early 2000s to present, all rate cases brought by major electric Utilities, including AEP, Duke Energy, and Dayton Power & Light (AES), have been voluntary or as a result of agreed stipulations.

FirstEnergy last came in for a rate case in 2007. Then, on October 12, 2016 the Commission issued an Order in Case. No. 14-1297 approving FirstEnergy's distribution modernization rider and stating, "We do note, however, that, by the end of ESP IV, it will have been 17 years since the Companies' last distribution rate case, and we direct the Companies to file a distribution rate case at that time." In essence, the Commission is allowing FirstEnergy to replace all of its meters, and add a rider on customers' bills. But, to balance that out the Company must come in for a rate case in 2024.

Flash forward to 2019, still five years before the rate case. We know from the HB 6 scandal that part of what FirstEnergy wanted Chair Randazzo to do, was undo the Commission Order that FirstEnergy come in for a rate case in 2024. The fact that FirstEnergy was worried about coming in for a rate case in 2024 five years before the fact, tells you everything you need to know. FirstEnergy was overearning, and it knew it would continue overearning through 2024. Moreover, if something unforeseen happened and FirstEnergy started underearning, it could come in for a rate case whenever it wanted.

This latest iteration of HB 317 doesn't fix the system completely, but it certainly improves it. ELPC's preference would be to get rid of the riders completely as the original version of this bill did, but we've listened to the debate and understand the legislature's desire to allow utilities to increase spending in some areas without rate cases. However, the legislation changes two critical things. First, it creates a check on the system through an excessive earnings test that prohibits utilities from earning excessive profits from adding riders. Section 4928.143(C) requires an annual Commission audit to ensure that the utilities don't earn more than 250 basis points (2.5%) above their approved return on common equity.

Second, and perhaps more importantly because overearning 2.5% every year adds up, the utilities must come in for a rate case during the course of their first alternative regulation plan and every five years thereafter. This means that the Commission can give the utilities the kind of comprehensive review that ensures customers get fair value for utility spending. A Commission dissent in a recent First Energy case where former Chair Randazzo pushed the Commission to let FirstEnergy avoid coming in for a rate case in 2024 said it best. The dissent emphasized the following:

In an era where our electric distribution utilities are making increasingly substantial investments the costs of which they recover through riders, as is the case for the First Energy Companies, I believe it is important to conduct rate cases on a periodic basis in order to comprehensively evaluate those utilities' revenue requirements. **The risk of not conducting regular comprehensive reviews, and leaving the decision solely up to the EDU regarding whether and when to conduct such a review, particularly during periods of low inflation, low interest rates, and technological innovation, is that the rate base will over-recover the portion of costs that is responsible to recover.**

Case No. 19-361, Conway Dissent, Jan. 15, 2020 (emphasis added).

One of the issues that utilities have raised is that rate cases are expensive, and a burden on both the Commission and the customers who pay for the rate case. But ELPC believes that the facts don't bear this out. First, a typical rate case costs in the \$1-\$3 million range depending on the utility, with AEP's most recent case costing \$1.6 million. To put that in perspective, AEP collected revenues of \$2.6 billion in 2020 and the rate cases will only be every five years. Second, the Commission's primary responsibility is to set rates. Hence, asking them to do so every five years does not unduly burden the Commission. To put this in perspective, Wisconsin law requires rate cases every two years for its regulated utilities.

Finally, we note that AEP itself signed a stipulation in its 2016 ESP case that took a different position than it takes today. The Stipulation states "It is contemplated that new distribution rate cases will be filed every fifth year following the next AIR (rate) case filing, at which time the DIR baseline, if the DIR is still in use, will be reset in a manner consistent with the new rate base. (Joint Ex. 1 at 4-5.)" Source: [16-1852 Order Approving Stipulation; 16-1852 Stipulation](#). AEP committed to bring a rate case by June 1, 2020 and did so in 20-0585-EL-AIR. This Stipulation is consistent with what HB 317 would require.

I will close today by emphasizing that HB 317 represents a substantial improvement over the current ESP law. Under the current law the utilities can come in for ESP case after ESP case, and add rider after rider with no review of the utility's costs and revenues. The utilities have used this system to their advantage for years. The balance in Ohio has gotten far too tilted in favor of the utilities, and this bill brings back some reasonable balance. We urge the Committee to pass this bill, and add the consumers protections around rates. Thank you and I'm happy to answer any questions.