

House Bill 317  
Opponent Testimony of Charles W. Keiper II before  
The Ohio House of Representatives  
House Public Utilities Committee  
April 6, 2022

Chairman Hoops, Ranking Member Smith, Sponsor Wilkin and members of the House Finance Committee, I appreciate the opportunity to testify again in opposition to HB 317.

My name is Chuck Keiper. I come before you as the CEO and Executive Director of the Northeast Ohio Public Energy Council (NOPEC). NOPEC is a non-profit council of governments that provides retail electricity and natural gas aggregation service to customers from more than 240 member communities throughout 19 counties in the state of Ohio. NOPEC serves just over 1 million residential and small business customers.

NOPEC continues to oppose the current version of HB 317 (version 8). As I stated in my previous testimony of March 2, 2022, while being advertised as a pro consumer bill that eliminates Electric Security Plans (ESPs), one source of significant consumer dissatisfaction with the Public Utilities Commission of Ohio's (PUCO) regulation of Ohio utilities, it unfortunately simply replaces ESPs with yet another new name, Alternative Regulation Plan (ARP). This bill continues to codify into law provisions that are significantly more harmful to hard working Ohio consumers and small business owners. At a time when scandals involving utility regulatory practices have been unfolding almost daily, with calls for utility regulatory reform and when Ohioans are questioning the amount of influence utility companies exercise over their regulator and the Ohio Legislature, this bill sets the wrong policy in this State. For the reasons that follow, NOPEC believes this bill is a significant step in the wrong direction and respectfully requests that this Committee hit the pause button on this bad bill and start over to accomplish utility reform to truly benefit Ohio consumers.

At first glance, the bill's elimination of the problematic ESP's seems to be a good thing for Ohio consumers. But, as is often the case, the devil is in the details and the details of this revised bill are very bad for Ohio consumers. The current ESP statute contains the ability of Ohio investor-owned utilities to obtain real time rate recovery (return of and on their capital and other expenditures) on about any expense they incur in between the time periods between filing of traditional cost of service PUCO distribution rate cases as long as their earnings are not "significantly excessive." That term, incidentally, is undefined in Ohio law and leaves consumers at significant risk. At least one Ohio investor-owned utility has not filed a traditional PUCO rate case in over 13 years and currently has over two dozen riders it charges to Ohio consumers. Under current rules, utilities can, and do, avoid the public scrutiny of base rate cases for years on end. Many choose instead to patch together a series of riders that maximize their profits while minimizing public input into how and why charges are assessed.

This revised bill would now require regulated utilities to file a base rate case every 5 years after the starting date of the utility's first approved Alternative Regulation Plan. While NOPEC supports this concept, revised HB 317, most unfortunately, allows utilities to continue to have riders approved largely in the same way that ESP's operate under current regulations, as long as their earnings are not "excessive." "Excessive" is proposed to be defined as 250 basis points (2.5%) above the utilities' authorized rate of return. Further, the revised version of this bill (version 8) now allow the utilities to

include not only a 3% annual escalation on their riders, but now an even higher escalator clause, **the higher of** the annual rate of Consumer Price Index inflation or 3%, regardless of cost increases, during the period of the ARP. So, without public scrutiny, without regulatory oversight, and without the requirement to demonstrate need, this proposed rider system would guarantee that consumers pay an ever escalating series of fees that would grow to significantly above the utilities authorized rate of return. I don't know about how the Committee members view this, but NOPEC believes this is an egregious and entirely unacceptable abuse of the rate paying public. But what does this really mean? It is always challenging to put these concepts into terms our minds can grasp. So let me help by doing a little math.

Let's say a regulated utility has an approved rate of return that would generate \$100 million a year in profits for its riders allowed under this bill. If you add the 2.5% rate of additional return permitted by this bill and the additional minimum 3% annual escalation allowed, the first year's profits go up to \$105.6 million or more than 5% above the approved rate of return. In year 2 the escalation raises that to \$109 million – 9% over the approved rate of return. This continues year after year until in year 5, if the utility's ARP is for 5 years, it will have grown to almost \$19.9 million – or just under 20% above the utility's approved rate of return. And this is just the minimum amount of the increase - with inflation currently at over 7%, these increases could be double these amounts. Why is that a problem you may wonder. Even under the current unacceptable ESP rules, there is no annual rate escalator on utility riders. By the way, base rate cases already take into account things like inflation on wage, equipment and supply costs when establishing a utility's base rate in the first place. Allowing this unnecessary and unfair additional annual increase allows utilities to receive an annual compounding of profits that is, frankly, unnecessary, and excessively burdensome to consumers.

The use of these annual automatically escalated riders, **now the higher of the annual CPI rate or 3%**, on top of allowing utilities to earn 2.5% above their PUCO authorized rate of return set in a rate case before triggering the "excessive" test, is a serious challenge for hard working Ohio consumers and small business owners, many of whom are struggling to make ends meet. NOPEC respectfully points out that these two unbelievably pro utility provisions are not typical in utility ratemaking in other states throughout our nation, and for good reason. In my little example, over 5 years, this hypothetical utility would have collected an extra minimum \$60 million and if inflation continues at current rates, potentially twice as much, automatically from consumers above its approved rate of return. In the real world, where utilities post earnings in the hundreds of millions or billions of dollars annually, this plan will cost Ohio consumers and small businesses an unreasonable amount of additional money that will reach into the tens of millions of dollars each and every year - forever. Does that seem like something the average hard-working Ohioan would ask you to support? I think we all know that the answer to that question is a resounding "NO"!

The provisions in this revised bill that deal with refunds remain unacceptable. While NOPEC appreciates that this revised version now requires the Ohio Supreme Court to render a decision on a PUCO appeal within 180 days of the notice of appeal, this change does not remove our strong opposition. Currently, the Ohio Supreme Court policy is to not require refunds for prior periods of utility charges approved by the PUCO that are later judged by the Supreme Court to be unlawful, unjust or unreasonable. This results in big consumer rip offs, the most recent example being the PUCO's approval in 2017 of the First Energy Ohio utilities "Distribution Modernization Rider" (DMR). The DMR was a charge approved by the PUCO in the amount of over \$170 million per year that did not require the utilities to spend a single dollar on service, property or equipment. Rather, it was designed to boost the

utilities' credit rating. Upon appeal by NOPEC, the Ohio Consumers' Counsel and others, the Ohio Supreme Court declared the DMR to be unlawful in June of 2019. After an unsuccessful rehearing by the utilities was denied by the Court in August 2019, future amounts to be collected under the illegal Rider then stopped. But the over \$470 million paid by Ohio consumers from 2017 until August 2019 for the illegal DMR charges already collected was kept by the utilities who didn't spend a penny of those funds to modernize its power grid. No refunds occurred and consumers were left holding the bag.

Ohio law should be changed to state that any utility charges collected that are subsequently determined by the Ohio Supreme Court to be unlawful, unreasonable, or unjust should be subject to **refund from the first date the illegal charge was collected**. This practice is what is done at the federal level at the Federal Energy Regulatory Commission, and in many states in the country. But this revised version of HB 317 would actually codify the current unfair to consumer practice of no refunds for periods of time prior to the Ohio Supreme Court's determination that a charge is illegal, even if the date of the Ohio Supreme Court's opinion may be obtained more quickly under this bill. That means that HB 317 would knowingly allow, and codify into Ohio law, the fleecing of Ohio residential and small business consumers instead of making a true improvement for consumers by making illegal charges subject to refund from the first date the illegal charge was collected. Even worse, by codifying this wrong anti-consumer refund provision, it strips future Ohio Supreme Courts from changing its policy regarding retroactive refunds of illegal utility charges. This is very bad policy for this Legislature, and I ask you once again, does this seem like something the average hard working Ohioan would ask you to support? On behalf of NOPEC's 240 member communities and over one million Ohio customers, we would answer that question with another loud and resounding "NO"!

House Bill 317 is bad public policy. In the wake of possibly the very worst utility scandal and consumer abuse in the history of the State of Ohio, House Bill 317 sends the wrong message, and unnecessarily would enrich utility companies on the backs of hard working Ohioans and small business owners. NOPEC again, as we did on March 2, 2022, requests this Committee reconsider the harm that will arise with the adoption of this bill and asks the Committee to consider our comments about important provisions in this bill that should be changed to both protect Ohioans and improve the PUCO regulatory landscape. We appreciate the opportunity to provide this testimony. Thank you.