

Before the Ohio Senate Energy and Public Utilities Committee

Testimony on Senate Bill 10

February 2, 2021

Chairman Peterson, Vice Chair Schuring, Ranking Member Williams and members of this Committee, thank you for this opportunity for the Northeast Ohio Public Energy Council (NOPEC) to submit testimony in enthusiastic support of SB 10.

NOPEC is a non-profit regional council of governments based in Solon, Ohio comprised of over 220 Ohio county, municipality and township members in 22 Ohio counties. We provide governmental electricity and natural gas aggregation service to over 900,000 Ohio residential and small business utility customers, of which about a half million NOPEC electric customers are located in the FirstEnergy electric distribution utility service territories of Cleveland Electric Illuminating Company and Ohio Edison Company. We have been operating for over 20 years since the Ohio Legislature deregulated the electricity commodity part of Ohio's electricity bills in 1999 in SB 3. We receive no taxpayer funding and charge no fees to our member Ohio political subdivision members. We also provide other programming for our members and their residents, including low cost PACE loans, grants for energy efficiency and other energy projects, and consumer advocacy regarding the utility rates paid by our customers.

NOPEC's member communities, and our customers, are struggling in this unprecedented once a century global health and financial pandemic crisis. Many of our communities have been forced to cut expenses and services to balance their budgets. Many of our customers are facing not only health insecurity, but also job insecurity and really hard times in making monthly housing, food and utility payments. A number of our member communities are among the poorest communities in the country. Against that backdrop, while Ohio investor owned utilities should have the opportunity to earn a reasonable rate of return and level of profits, they should not be able to earn "recession proof" earnings, and certainly not "significantly" excessive profits.

By repealing the decoupling provisions of HB 6, and the companion special provision included in the HB 166 budget bill allowing the 3 FirstEnergy Ohio utilities to "average" their earnings for the Significantly Excessive Earnings Test (SEET), the Legislature has the opportunity right now to help Ohioans keep their electric rates from increasing unfairly. Importantly, this bill not only prevents future collection of these unfair charges on the distribution part of customers' electric bills, but also provides for refunds to customers for money that they have already paid for these unjust charges. NOPEC believes strongly that when Ohio utilities charge Ohioans fees or charges that are later found by the Ohio Supreme Court or the Ohio Legislature to be unlawful, unjust, unfair or unreasonable, the remedy should be refunds going back retroactively, not just stopping them prospectively. According to Ohio Consumers' Counsel statistics, since

2009, Ohio utility consumers have been denied over \$1.5 billion in refunds that have been ruled to be unlawful.

The most recent example of this grossly unfair practice of no refunds for illegal charges involved the First Energy Ohio utilities' so called "Distribution Modernization Rider (DMR)". The DMR did not require the utilities to spend any money on any facilities or equipment to modernize their distribution system; rather the purpose of the rider was to provide credit support to the utilities. NOPEC and the Ohio Consumers' Counsel appealed the PUCO Order issued in 2017 that authorized the DMR, and in June of 2019, the Ohio Supreme Court agreed with us and found the DMR charge to be unlawful. Collection of the DMR stopped after August 2019, but hundreds of millions of this illegal charge collected from hard working Ohioans between 2017 and 2019 were kept by the utilities as there was no refund mechanism. NOPEC commends the sponsors of SB 10 for including the refund provisions for decoupling charges and SEET calculations contained in this bill.

NOPEC would like to make two additional points in connection with SB 10. First, SB 10 has nothing to do with the generation subsidies that are contained in HB 6, as this bill affects only the distribution rate part of Ohioans' electric bill. We understand that dealing with the HB 6 generation subsidy debate is an important policy issue in this legislative session, but all legislators can support correcting a mistake made in HB 6 and HB 166 dealing with electric utility distribution rates without having to decide at this time on generation subsidy policies in Ohio. Second, it is imperative that the Legislature pass SB 10 immediately. Not only do struggling Ohioans desperately need the reduction on their electric bills that this bill will deliver, but the PUCO has a pending FirstEnergy Ohio utilities case involving the SEET issues and needs the Legislature's precise direction and clarity on the SEET calculation and refunds that this bill provides. So, please pass SB 10 now.

Thank you for your consideration.