

TESTIMONY OF ROBERT KELTER
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OHIO SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE
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Good morning Chairman Peterson, ranking member Williams and members of the committee. Thank you for the opportunity to testify before you today. Given that the Committee has some new members, I want to start today by telling you briefly about the Environmental Law and Policy Center (ELPC) and my personal background. ELPC is a regional environmental organization that operates around the Midwest, including Ohio. As an environmental organization we have a strong belief in consumer protection, and we support balanced energy policies that benefit both consumers and the environment. I have been at ELPC for more than a decade and have litigated numerous cases at the Ohio Public Utilities Commission, 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.

One of the things I've learned through the years is that utilities are always looking for a way to make money, and a way to work things into legislation where it may not be readily apparent what they've actually done. Along these lines, as Senator Romanchuk explained last week, that seems to be the case with what FirstEnergy worked into H.B. 6 regarding decoupling.

Foremost, the purpose of decoupling is to compensate utilities for losing revenue driven by customers participating in utility run energy efficiency programs. The energy efficiency programs help customers use less energy and lower their bills. When customers use less energy, it can potentially lower utility profits. Thus, Ohio utilities have sought decoupling to compensate them for running energy efficiency programs that help customers save.

To understand decoupling, we should first explain how the Commission sets rates. The simple explanation is that the Commission takes the utility's costs to run the company and divides it by the number of kilowatt hours it expects to sell, and that gives you the price customers pay per kWh (in the 10-12 cent per kWh range). That price allows the utility to recover its cost and earn a reasonable profit. Once the price is set though, it stays in place until the utility comes in for another rate case and the Commission takes a fresh look at costs and projected sales. If utilities over earn they keep the extra profit, and if they under earn they lose that profit for the year. Thus, if a utility sells more electricity than expected it may end up earning higher profits than projected, and if it sells less than anticipated its profits will be lower.

This process actually incentivizes the utilities to sell as much electricity as they can, which ultimately means more power plants and more spending on transmission and distribution. When the legislature directed utilities to run energy efficiency programs, that meant the utilities had a conflict in that the more electricity they sold the more money they made – but now they were being told to sell less electricity.

In order to address that situation policymakers came up with the concept of decoupling, which is essentially a true-up at the end of the year. It provides for utilities to be made whole if energy

efficiency programs cause a revenue short fall, and if done properly it also provides a customer a refund in the event that there's a hotter than expected summer and the utilities sell more electricity than projected. What FirstEnergy did in H.B. 6 was to lock in the baseline year, the year to compare sales and make an adjustment, as 2018 – the hottest year in recent times.

The purpose of decoupling is to strike a balance to protect the utility and customers, so that if Ohioans experience a very hot summer and utility revenues increase beyond expectations then the customers get some money back. If you choose the hottest summer you can, you essentially guarantee the utilities will collect more revenue than the Commission envisioned in a rate case. Essentially, FirstEnergy rigged the game. Hence, former FirstEnergy CEO Chuck Jones boasted to analysts that decoupling made the utility part of the business recession proof.

Given that in H.B. 6 the legislature eliminated the energy efficiency targets, it only makes sense to eliminate the true up that compensates utilities for running efficiency programs. There is no longer any reason to true up revenue to make up for lost sales driven by the utilities' efforts to help customers lower their bills.

That being said, ELPC wants to emphasize that utilities that offer voluntary energy efficiency programs that help customers lower their bills should not be prevented from requesting decoupling when they seek approval of those programs. The way we read S.B. 10 is that it ends current decoupling programs and prohibits utilities from getting decoupling in Electric Security Plan (ESP) cases. Given the way decoupling works, any decoupling provisions should be done in a rate case and not in an ESP case, and the Commission must have the proper time to analyze the decoupling proposal to ensure it protects customers.

In the final analysis, H.B. 6 eliminated the energy efficiency programs while at the same time giving utilities a very one-sided decoupling opportunity. The elimination of current decoupling programs and the prohibition against utilities attempting to get decoupling in ESP cases protect consumer interests, and ELPC supports S.B. 10.

That being said, ELPC closes today by emphasizing that S.B. 10 only addresses a small part of the H.B. 6 scandal. The current law still bails out nuclear plants and pays for the bailout with revenue from the elimination of energy efficiency programs that helped consumers lower their bills and renewable energy programs that moved Ohio towards a clean energy future. Essentially, FirstEnergy robbed the bank of hundreds of millions of dollars, and S.B. 10 forces them to give back only a small percentage of the haul. We urge the Committee to take the additional steps needed to review H.B. 6 in its entirety, and regardless of what it does with the nuclear plants, restore the energy efficiency and renewable energy policies in a form that benefits customers.

Thank you, and I am happy to answer any questions.