TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
IN SUPPORT OF HOUSE BILL 247
OHIO HOUSE PUBLIC UTILITIES COMMITTEE
TUESDAY, JANUARY 16, 2018

Chairman Cupp, Ranking Member Ashford and members of the Committee, thank you for the opportunity to testify today. My name is Robert Kelter and I am a senior attorney at the Environmental Law and Policy Center (ELPC). While ELPC is an environmental organization, it has a strong consumer background and supports balanced energy policies that benefit both consumers and the environment. Before coming to ELPC, I was the Director of Litigation at the Citizens Utility Board in Illinois where I represented Illinois consumers in the deregulation process that Illinois went through shortly before Ohio took similar steps. Prior to that I practiced in Washington D.C. where I worked on the federal Energy Policy Act of 1992, which opened up the wholesale electric market for competition.

ELPC testifies today as strong proponents of H.B. 247. This is extremely important legislation that will have great benefits for consumers, even if it may be too esoteric for the public to truly appreciate. While H.B. 247 has many good provisions, my testimony today will focus on the elimination of the electric security plan (ESP) cases. In order to understand this legislation, I want to talk about some of the background behind the transition of the market to wholesale competition.

First, I want to start with the Energy Policy Act of 1992, which created the competitive wholesale market. Before 1992, not only did utilities own all the power plants, they had complete control over the transmission and distribution system. Utilities could decide if and when they wanted to allow wholesale transactions over their wires. The Energy Policy Act forced utilities to carry power over their lines so that power plant owners could sell their power

to whoever wanted to buy it. In order to ensure that the market operated fairly, Congress gave the Federal Energy Regulatory Commission authority to create regional transmission organizations (RTOs). The RTOs are responsible for overseeing wholesale competition in their region, and most importantly, for ensuring reliability in the region.

Ohio operates in the PJM RTO and PJM sets the capacity guidelines, dispatches electricity from the power plants, and makes sure the lights stay on at peak times. Hence, while I have heard legislators, PUCO commissioners and utilities talk about the importance of reliability and ensuring the power stays on for Ohioans, that responsibility falls squarely on the FERC and PJM.

In 2008, when the legislature passed SB 221 which created the ESPs, it did so to protect reliability and give the utilities some leeway to protect customers from high rates if needed. Specifically, with the utilities no longer owning and controlling power plants as they had in the traditional utility monopoly model, the concern was to add protection over just having utilities use an auction to provide power. Unfortunately, the ESP law has loopholes that the utilities have used to take actions that harm consumers and have nothing to do with reliability. In essence, the utilities have tried to keep uneconomic and unneeded power plants open, and utilized loopholes that brought in extraneous issues having nothing to do with the plants at issue in order to get parties to sign bad settlements. I won't go through the details of those deals, but my testimony has an attachment that lays out some egregious examples. Simply put, utilities have abused reliability provisions to harm competition and undermine sensible regulation, when PJM has said keeping open power plants is not necessary or needed.

Recent history has shown that the wholesale market has worked fine without the ESP provisions. The most important thing we do for customers is make sure that the utilities use a

fair auction process that provides the lowest price possible for their customers. With the elimination of the ESP cases, the law still requires that the utilities purchase power for customers through auctions that provide all the benefits of the wholesale electric market under the market-rate offer (MRO) provision of the law. As long as we make sure that auction process works, and we let PJM do its job, we are in fact protecting customers. Many of you are staunch believers in markets, and in this case, the market works.

Finally, my while my focus today has been on the ESP cases, I do want to add that in order to provide even greater competition and customer benefit, Ohio utilities' parent companies should divest their generation. When the parent companies own the plants, the utilities do less to promote efficiency in order to boost sales. There is simply no way around this fact.

The ESP cases have caused nothing but problems and their elimination, while not necessarily something that customers will be directly aware of, will provide immeasurable customer benefits.

EXAMPLES OF UTILITY ABUSES OF THE ESP LAW

- **FirstEnergy ESP IV (Case No. 14-1297-EL-SSO)**: In its most recent ESP case, FirstEnergy sought (among a list of other items) PUCO approval of cost recovery for uneconomic coal and nuclear plants owned by FirstEnergy's generation affiliate – effectively, a financial bailout – in the form of a contract requiring FirstEnergy's distribution customers to purchase the output of those plants. FirstEnergy offered handouts to a number of parties to get them to sign onto a stipulation including that provision, resulting in the out-of-context approval of the following provisions that should have received thorough vetting through separate proceedings:

    - FirstEnergy agreed to pay nearly a million dollars in payments to a handful of trade groups (such as Council of Smaller Enterprises and the Association of Independent Colleges and Universities of Ohio), ostensibly for education and outreach about FirstEnergy's energy efficiency programs, with little to no evidence as to what these groups would do with the money or whether their efforts would be a cost-effective use of ratepayer money. Normally these types of payments to third parties are proposed and reviewed in a utility's energy efficiency case, where the PUCO can consider their merits in the context of an entire efficiency plan.

    - FirstEnergy received approval of a proposal for it to recover additional revenue – potentially millions of dollars – from ratepayers based on customers' independent steps to become efficient, outside of any programs run by FirstEnergy to help customers save energy. While the PUCO has previously authorized utilities to recover the money they would have made on electricity sales that are "lost" when efficiency programs actually help customers save energy, in this case the Commission never explained why the utility should get this extra money when it was not actually doing anything to help customers.

    - FirstEnergy agreed to provide at least $3 million in funding for several local low-income groups to establish a new "Customer Advisory Agency" serving FirstEnergy's residential customers, with no other guidelines for its expenditure other than that the Agency would seek "to ensure the preservation and growth of the competitive market in Ohio."

- **AEP Power Purchase Agreement case (Case No. 14-1693-EL-RDR)**: AEP filed this case to implement a "placeholder" rider approved by the PUCO in AEP's 2013 ESP case, No. 13-2385-EL-SSO. Like FirstEnergy, AEP was seeking PUCO approval of a bailout for uneconomic coal plants owned by its generation affiliate, along with its ownership share of the OVEC coal plants.

    - AEP agreed to an $8 million payment to IEU Ohio**,** an industry trade group, in side agreement, ostensibly to settle other pending cases, but in fact linked to non-

opposition to coal bailouts that IEU Ohio had previously argued would significantly raise ratepayer costs.

- AEP agreed to increase its payments to industrial customers for providing interruptible load, at a rate above the market price for such demand response.

- The PUCO approved a bailout to AEP for its interest in OVEC as part of the stipulation, after having disapproved the exact same bailout as not in the best interests of customers when AEP proposed it as a standalone provision in the 2013 ESP case.