

**TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO HOUSE PUBLIC UTILITIES COMMITTEE
IN SUPPORT OF HB 317
WEDNESDAY, FEBRUARY 9, 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 Commissions around the Midwest. Thus, our testimony today brings that knowledge of both how Ohio operates, and how other states handle these issues. We focus on clean energy issues and consumer protection, which we believe go hand in hand.

I've testified in favor of this legislation at previous hearings and ELPC continues to support the latest version of the bill. The bottom line is that the current system favors the utilities and allows them too much freedom to recover investments from customers without proper review. In the simplest terms the current system of adding riders in ESP cases with minimal restrictions benefits utilities at customers expense. Hence, while some utilities may oppose this, bill we encourage everyone to look carefully at their rationale for that opposition.

Under current law, utilities have the freedom to come in for rate cases whenever they want to raise rates. But if they don't want the Commission to review their finances in a comprehensive way, they can file an ESP case and just add riders to customers bills. This bill limits the riders in terms of their number and cost, and ensures that utility profits remain at reasonable levels when the Commission allows new 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.

In addition to the earnings test HB 317 requires utilities to come in for rate cases every five years to ensure they aren't earning excessive profits. It is important to understand 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 utilities provide good 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.

Even under HB 317, if the utilities take advantage of the riders this bill allows they can overearn up to 2.5% every year which adds up over time. Commissioner Conway's 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. He said 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). And to be clear, this was a 2019 case involving FirstEnergy's Distribution Modernization Rider, where FirstEnergy wanted to avoid a rate case that wasn't scheduled for another five years.

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. The current ESP system allows the utilities too much freedom to raise rates and this bill brings back some reasonable balance. We support this bill as it stands but will continue to meet with members and work to improve the bill. Thank you and I'm happy to answer any questions.