BEFORE THE HOUSE PUBLIC UTILITIES COMMITTEE
REPRESENTATIVE JIM HOOPS, CHAIRMAN

TESTIMONY
OF
KIM BOJKO
ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION

November 29, 2022

Chair Hoops, Vice-Chair Ray, Ranking Member Smith, and members of the House Public Utilities Committee, my name is Kim Bojko and I am a partner with the law firm Carpenter, Lipps, and Leland where I head up the Firm's energy and utility practice group. I have specialized in regulatory, energy, and public utility law and energy policy for approximately 25 years. I am here today on behalf of the Ohio Manufacturers' Association (OMA). I serve as the chief energy counsel for the OMA.

The OMA is a mission-driven organization comprised of Ohio's manufacturing leaders, many of which are Ohio's largest energy consumers.

The OMA adopts public policy positions on legislation as a community of manufacturers. Our positions are based on guiding principles, data-driven research and analysis, and member input.

The OMA is opposed to the latest version of House Bill 317 (l_123_2489-2) (hereinafter referred to as "HB 317" or "the sub bill").

Like the prior eight versions, HB 317 is a monopoly's policy wish list. But the latest version of the bill is a completely new piece of legislation that would not only continue above-market charges, awarding the electric utilities with profits between rate cases, HB 317 completely upends the traditional ratemaking process for all regulated utilities, not just electric utilities.

The sub bill also rewards competitive sellers of electricity by driving up the standard service or default rate paid by customers who do not shop for generation, creating headroom to make sales.

Instead of saving customers money, HB 317 would:

- Increase customers' distribution costs by authorizing new interim distribution riders that could equal up to 12% of an electric utility's base distribution revenue in certain years;
- Authorize other new interim distribution riders that are not capped;
- Significantly alter the traditional ratemaking process for all regulated utilities;
- Limit discovery and parties' participation in rate cases;
- Weaken customer protections;
- Allow cash settlement payments in complaint cases; and
- Allow utilities to own customer-sited renewable generation and energy storage systems.

Manufacturers oppose the bill because it does not protect customers from a ratemaking process that has been abused.

The Electric Security Plan or ESP process was originally established via legislation in 2008 as a temporary measure to prevent rate shock on generation charges as utilities continued the transition to a mature deregulated market. Since its creation, however, the ESP process has turned into a mechanism that regulated utilities use to increase costs through numerous above-market charges added to customers' bills.

Unfortunately, the sub bill does not end above-market charges. HB 317 folds ESPs into the electric utility's standard service offer plan; seems to authorize distribution riders to be created and implemented through rate cases for all utilities; and authorizes interim riders to be implemented outside of rate cases for electric utilities. The new ratemaking formulas and mechanisms are neither competitive nor capable of deterring the abuses of the ESPs.

The new charges created will be layered on top of traditional distribution charges. Simply put, the sub bill will increase customers' costs while reducing customer protections.

The new interim distribution mechanisms or IDM riders coupled with the standard service offer plan would allow unfettered utility infrastructure and investments in products and services that may not be useful to maintaining distribution systems – and that allow the monopoly utilities to undermine competitive markets. The analysis appended to my testimony includes examples of expanding utility cost recovery, effectively giving a blank check to utilities….all at customers' expense.

Electric vehicle (EV) technology is rapidly commercializing, and Ohio is fortunate to have a robust, diverse automotive industry. The conversion to EVs is both a threat and opportunity to Ohio as the number two ranked assembly state for cars and trucks and the number one state for automotive components manufacturing. The OMA supports state policies to aid manufacturers as they adapt to the changing technology. With the ability to store electricity, EVs also promise to play a role in competitive electric markets as a distributed energy resource. To fully unlock EV potential in Ohio, we will need electric tariff reforms and pro-consumer, market-oriented responses to FERC's recent Order 2222 – which allows distributed energy resources such as electric vehicle batteries to participate in wholesale electric markets.

HB 317 does not provide needed market-based reforms for customers and new technologies like EVs. Instead, it uses utility infrastructure projects as a vehicle for new,

unknown, utility costs – a blank check for the monopoly. EVs, with their batteries, can lower utility system costs. Yet HB 317 only recognizes increases to system costs – and utility revenues. HB 317 also allows utilities to own customer-sited renewable generation and energy storage systems.

One of several important lessons from HB 6 is that it is critical to ask the electric monopolies questions – questions such as: "How much will distribution system upgrades cost? Where are upgrades needed? Why weren't the hundreds of millions of dollars in smart grid funds sufficient for these upgrades? If EV batteries can lower electric system costs and improve reliability, shouldn't HB 317 have provisions for new customer savings, instead of new customer costs?"

While economic development is good for Ohio, new customer charges on electric bills for utility-run, "voluntary" energy efficiency programs, or economic development and job retention programs for undefined and unlimited programs are not. Customers will be left holding the bag for these utility programs that are not related to delivering power. The various costs included in HB 317 are simply too broad and would create more above-market charges for customers, raising rates and hurting Ohio's manufacturing competitiveness. Additionally, existing Ohio law specifically allows for economic development and job retention programs and a defined process exists.

A second reason for our opposition: The bill fails to place Ohio on a path to long-term market-based competition by unnecessarily eliminating the current construct of the Market Rate Offer or MRO.

Eliminating the existing ESPs and replacing them with a market-rate offer is sound energy policy. Now that a robust competitive market has fully developed in Ohio, it is time to eliminate the temporary measure and move to a fully competitive market to bring the competitive benefits of free markets to customers.

The third reason for our opposition: The bill does not effectively protect customers by requiring utilities to issue refunds to customers when a utility has been found to have improperly charged captive customers.

The new section is not a true refund provision and fails to correct the caselaw established by the Keco decision.

While HB 317 appears to partially address the issue, it is really only codifying the current process. The PUCO typically requires charges that are part of a rider – that are

later deemed unlawful – to be refunded from the date of the issuance of the Supreme Court of Ohio's decision finding the rider to be unlawful.

This provision does not address the issue of a utility collecting unlawful charges until the PUCO issues a final appealable decision and the Court issues a decision. The OMA believes the point of a refund provision is to protect customers from paying charges that the Court deems unlawful.

When those PUCO decisions are finally overturned, customers are not and have not been able to receive refunds of the money collected that has been deemed unlawful because of Keco. Allowing the PUCO 150 days to rule on the merits of an application for rehearing does not correct this scenario. Remember, PUCO is required under existing law to issue an order granting or denying rehearing within 30 days, but the PUCO simply grants itself more time. Modifying R.C. 4903.10 to eliminate the PUCO's current practice and loophole in the law would be a better approach.

A fourth reason for our opposition: The bill doubles down on HB 6 provisions, codifying subsidies paid by customers to Ohio's electric monopolies for the OVEC power plants, one of which is in Indiana.

The bribery-fueled HB 6 aimed to force customers to pay utilities hundreds of millions of dollars for nothing in return, including unnecessary handouts to nuclear power plant owners, profit padding decoupling charges, and anti-market subsidies for OVEC. The utilities have testified at the General Assembly that OVEC doesn't even receive the handout – they do. And the handout has no impact on whether OVEC stays open or closes. (Earlier in the session, both the House and the Senate wisely acted to repeal two of the three HB 6 subsidies. However, the third major subsidy remains and would be further protected under HB 317.)

Until OVEC is repealed, the Ohio legislature has decreed that all businesses (and residences) connected to the four investor-owned electric utilities will be required to subsidize these two dirty power plants that contribute unneeded electrons to the grid that supplies our state.

A fifth and new reason for our opposition: The bill pending before the committee significantly alters the traditional ratemaking process for all regulated utilities, including electric, gas, water and sewer utilities.

Portions of HB 317 apply to all regulated utilities, significantly altering how rate cases are processed and heard, including limiting parties' rights to due process. More specifically, for all regulated utilities, HB 317 modifies utilities' property valuation in

ratemaking, eliminates or reduces notice requirements, and revises the application process. It limits the scope of the review and investigation, discovery, and parties' participation in rate cases. HB 317 also eliminates the requirement for the PUCO to make a decision on the application that seems just and reasonable to the PUCO, and it authorizes the approval of deferrals outside of the rate case process. Moreover, HB 317 authorizes rates to take effect temporarily *without refund* if a PUCO decision has not been issued within one year, and, if no PUCO order is issued within 545 days, the application is deemed approved without PUCO adoption.

In addition to these significant ratemaking modifications, HB 317 provides additional goodies for electric utilities. It authorizes an electric utility to fully forecast its test year in a rate case and project whether facilities will be used and useful by the date certain and receive cost recovery for those facilities regardless of whether they are actually used and useful. It also creates new IDM riders that authorize an electric utility to collect the revenue requirement associated with distribution infrastructure investments, plus a rate of return. Please see the appended OMA analysis for more detail and a link to the specific modifications of venerable consumer protections.

Misconceptions

At this time, I'd like to address some points made by proponents that fall flat based on our analysis.

Although the sub bill purports to subject any annual increases to a 4% cost cap, only IDM riders related to safety, reliability, system efficiency, security, or resiliency purposes are capped at 4% of the base distribution revenue requirements approved in utility's most recent rate case (only the expenditures included in 4909.173(C)(2)(a) are capped). All other allowable IDM rider investments are not capped. So while the legislation purports to subject any annual increases to a cost cap, that cost cap is limited to only certain expenditures collected through the IDM riders. And even if the IDM concerns capped expenditures, an electric utility could have three interim riders totaling 12% of its base distribution revenue in year three, continuing until new distribution rates are approved in its next rate case. Costs associated with storm damage, relocation of facilities, manufactured gas plant clean-up, and general distribution plant investment are NOT capped and are undefined and unlimited in HB 317.

The bill also seems to authorize new, undefined distribution riders established through a rate case for all utilities that would not be subject to the 4% cost cap. Further, all transmission riders are undefined and unlimited and are not subject to the 4% cost cap. Moreover, HB 317 mandates the accrual of carrying costs on deferrals (currently, carrying costs are discretionary and only allowed under certain circumstances). Lastly, cost recovery for certain programs allowed under an ESP or prior version of HB 317 are now allowed to be collected under the utility's standard service offer. Therefore, the protections of the cost cap are understated and, in some cases, non-existent.

The OMA supports cost-effective economic development and a strong, competitive Ohio, which can attract businesses, projects, and investments in Ohio. But what role a utility should play and utility-administered economic development programs is a hotly debated subject. These programs are not to be confused with economic development programs administered by state and local governments.

Any utility-administered economic development program needs to be reasonable, cost-effective, non-discriminatory, and fair to all customers or potential customers. It also needs to be narrowly tailored as to not be anti-competitive or harm existing customers who have already invested in the state of Ohio.

Concluding Remarks

Mr. Chairman, we regret that the Committee is seriously considering HB 317 after all that has transpired in recent years. Manufacturing customers, like residential customers, have been paying more while utilities and select energy companies have been benefitting.

The latest draft moves even further away from meaningful pro-customer reform. We would be happy to continue to work with the Committee as we believe this bill is a trojan horse that only makes the current environment worse.

If lawmakers are interested in cleaning up the corruption, then the cleansing agent is readily available. Look no farther than HB 247 from the 132nd General Assembly. That bill correctly accomplishes the aspiration expressed by the sponsor to eliminate ESPs and make Ohio more competitive.

Mr. Chairman and members of the committee, thank you for considering these perspectives. I would be happy to answer any questions.

The Ohio Manufacturers' Association

ANALYSIS OF SUB. HOUSE BILL 317-9 (I_134_2489-2)

BACKGROUND

Anti-competitive, utility-driven policy reached a new low in Ohio with House Bill 6 (HB 6), which collapsed on the weakness of its own corruption. HB 6's political coalition has roots in the abusive Electric Security Plan (ESP) ratemaking process and increased profits to utilities.

Since its creation, the ESP process has turned into a windfall for regulated utilities. The utilities use the ESP mechanism to increase profits through numerous above-market charges added to customers' bills. Along with the notorious Keco precedent, which prevents customer refunds in many cases, ESPs stack the deck in favor of monopoly utilities at customers' expense.

Substitute House Bill 317-9 (HB 317) is pending before the Ohio House on the premise of ending the abusive ESP process and excessive profits. But the latest version of the bill – now in its ninth version – is a completely new piece of legislation that would do quite the contrary. Not only will HB 317 continue above-market charges, awarding the electric utilities with profits between rate cases, HB 317 completely upends the traditional ratemaking process for all regulated utilities, not just electric utilities.

Instead of saving customers money, HB 317 would:

- Increase customers' distribution costs by authorizing new interim distribution riders that could equal up to 12% of an electric utility's base distribution revenue in certain years;
- Authorize other new interim distribution riders that are not capped;
- Significantly alter the traditional ratemaking process for all regulated utilities;
- Limit discovery and parties' participation in rate cases;
- Weaken customer protections;
- Allow cash settlement payments in complaint cases; and
- Allow utilities to own customer-sited renewable generation and energy storage systems.

The bill contains cost-cap loopholes. Disturbingly, a new provision for a forecasted test year is one for which regulated utilities have lobbied hard – and industrial groups have called bad policy that would result in increased utility rates to customers. Bottom line, this bill would be a bad deal for Ohio manufacturers and unwise policy for the state.

FIVE REASONS WHY HB 317 FAILS TO PROTECT CUSTOMERS

1. **HB 317 does not effectively repeal ESPs or the riders included in ESPs, failing to lower costs.**
   HB 317 folds ESPs into the electric utility's standard service offer plan; seems to authorize distribution riders to be created and implemented through rate cases for all utilities; and authorizes interim riders to be implemented outside of rate cases for electric utilities. The new ratemaking formulas and mechanisms are neither competitive nor capable of deterring the abuses of the ESPs. HB 317 would continue to allow utilities to layer costs on top of a customer's traditional distribution charges, including potentially new distribution riders, interim distribution riders, and unlimited and undefined transmission and transmission-related costs. The standard service offer plan, coupled with the modified ratemaking mechanism, would allow unfettered utility infrastructure and capital investments in products and services that may not be useful to maintaining distribution systems – and that allow the monopoly utilities to undermine competitive markets. HB 317 also allows carrying costs to be recovered from customers and costs for compliance programs and future projects. Click here for examples.

2. **HB 317 fails to place Ohio on a path to long-term, market-based competition by unnecessarily eliminating the current construct of the Market Rate Offer (MRO).**
   To create sound energy policy, Ohio should reject the proposed standard service offer plan, modifications to traditional ratemaking, and the creation of new distribution and transmission riders. Instead, Ohio should repeal existing ESPs and replace them with a market-rate offer model. Now that a competitive market has fully developed in Ohio, it is time to move to a fully competitive market to bring the benefits to customers. Click here for further details.

3. **HB 317 fails to require utilities to issue refunds to customers when a utility has been found to have improperly charged captive customers.**
   HB 317 deceptively purports to create a customer refund provision. In truth, it fails to correct the case law established by the Keco decision and does little to protect customers. Here is a more detailed explanation.

4. **HB 317 doubles down on HB 6's OVEC provisions, codifying subsidies paid by customers to Ohio's electric monopolies for 1950s coal plants, one of which is in Indiana.**
   HB 317, as it is pending before the House Public Utilities Committee, provides a haven for utility owners to continue receiving subsidies from customers. Here is an explanation of OVEC and why is this a bad deal for customers.

5. **HB 317 significantly alters the traditional ratemaking process for all regulated utilities, including electric, natural gas, and water and sewer utilities.**
   Portions of HB 317 apply to all regulated utilities, significantly altering how rate cases are processed and heard, including limiting parties' rights to due process. More specifically, for all regulated utilities, HB 317 modifies utilities' property valuation in ratemaking, eliminates or reduces notice requirements, and revises the application process. It limits the scope of the review and investigation, discovery, and parties' participation in rate cases. HB 317 also eliminates the requirement for the PUCO to make a decision on the application that seems just and reasonable to the PUCO, and it authorizes the approval of deferrals outside of the rate case process. Moreover, HB 317 authorizes rates to take effect temporarily without refund if a PUCO decision has not been issued within one year, and, if no PUCO order is issued within 545 days, the application is deemed approved without PUCO adoption.

   In addition to these significant ratemaking modifications, HB 317 provides additional goodies for electric utilities. It authorizes an electric utility to fully forecast its test year in a rate case and project whether facilities will be used and useful by the date certain and receive cost recovery for those facilities regardless of whether they are actually used and useful. It also creates new interim distribution mechanisms (IDM) that authorize an electric utility to collect the revenue requirement associated with distribution infrastructure investments, plus a rate of return. Here is a list of the significant changes proposed to the traditional ratemaking process.

MISCONCEPTIONS ABOUT THIS BILL

Some interested parties have stated the bill protects customers, but a more comprehensive reading of the practical effect of the reforms proves otherwise.

CUSTOMER COST CAPS

MYTH: HB 317 IMPOSES A COST CAP ON ALL COSTS AND RIDERS TO PROTECT CUSTOMERS FROM POSSIBLE RUNAWAY NEW CHARGES.

FACT: HB 317 creates new interim distribution riders (IDM) for electric utilities to recover past or future costs for distribution-related investments plus profit. Each electric utility is allowed to have three interim distribution riders in effect at one time, but each rider application may not be filed sooner than 12 months after the prior rider's application. IDM riders related to safety, reliability, system efficiency, security, or resiliency purposes are capped at 4% of the base distribution revenue requirements approved in utility's most recent rate case (only those expenditures included in 4909.173(C)(2)(a) are capped). All other allowable IDM rider investments are NOT capped. So while the legislation purports to subject any annual increases to a cost cap, that cost cap is limited to only certain expenditures collected through the IDM riders. And even if the IDM concerns capped expenditures, an electric utility could have three interim riders totaling 12% of its base distribution revenue in year three, continuing until new distribution rates are approved in its next rate case. Costs associated with storm damage, relocation of facilities, manufactured gas plant clean-up, and general distribution plant investment are NOT capped and are undefined and unlimited in HB 317.

The bill seems to authorize new, undefined distribution riders established through a rate case for all utilities that would not be subject to the 4% cost cap. Further, all transmission riders are undefined and unlimited and are not subject to the 4% cost cap. Moreover, HB 317 mandates the accrual of carrying costs on deferrals (currently, carrying costs are discretionary and only allowed under certain circumstances). Lastly, cost recovery for certain programs allowed under an ESP or prior version of HB 317 are now allowed to be collected under the utility's standard service offer. Therefore, the protections of the cost cap are understated and, in some cases, non-existent. Here is an example of how much customers' costs will be capped for only one provision of HB 317.

TRANSMISSION PROGRAMS FOR INDUSTRIAL CUSTOMERS

MYTH: HB 317 PROTECTS SOME CUSTOMERS FROM DOUBLE DIGIT TRANSMISSION CHARGE INCREASES BY CONTINUING TRANSMISSION PROGRAMS.

FACT: Programs that encourage competition, innovation, and create electric system benefits, such as transmission programs and allowing customers to take transmission service directly from their retail electric suppliers, should be expanded, not arbitrarily limited, as HB 317 appears to do. In other states, including Pennsylvania, all customers have access to transmission services and billing through competitive suppliers. Ohio lags on this important issue and this bill further narrows and discriminates which customers have access to competitive transmission. Moreover, HB 317 does nothing to contain the unfettered rise of transmission costs in parts of Ohio.

ECONOMIC DEVELOPMENT

MYTH: HB 317 IS NEEDED TO PROTECT THE CONTINUATION OF UTILITIES' ECONOMIC DEVELOPMENT PROGRAMS OF BENEFIT TO INDUSTRIAL CUSTOMERS AND OTHERS.

FACT: Existing Ohio law specifically allows for utility economic development and job retention programs and a defined process exists to create these programs. Any utility-administered economic development program needs to be reasonable, cost-effective, non-discriminatory, and fair to all customers or potential customers. It also needs to be narrowly tailored as to not be anti-competitive or hurt existing customers that have already invested in Ohio. The economic development program should also be well defined. HB 317 contains vague, undefined language regarding economic development programs.

A BETTER APPROACH GOING FORWARD: REAL REPEAL OF ESPs

HB 247 from the 132nd General Assembly enjoyed broad customer support but did not advance. That bill correctly accomplishes the aspiration expressed by the sponsor to eliminate ESPs and make Ohio more competitive. More about HB 247.