Office of the Ohio Consumers' Counsel

Before
The Ohio House of Representatives
Public Utilities Committee

Opponent Testimony on House Bill 79
(Regarding Utility Charges to Consumers and Energy Efficiency)

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Hello Chair Stein, Vice-Chair Blasdel, Ranking Member Weinstein, and Committee members. I hope you and your colleagues are well.

Consumers' Counsel Weston and I thank you and the bill sponsors (Rep. Seitz and Rep. Sweeney) for this opportunity to present opponent testimony on House Bill 79. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio residential utility consumers.

This bill is similar to House Bill 389 from last session. Jeff Jacobson testified twice for OCC in opposition to House Bill 389. OCC's commentary for improving that bill for consumers was not adopted in that bill or in new House Bill 79.

Energy efficiency is a good thing. It is also something that Ohioans obtain in the competitive market from businesses. Ohioans can obtain energy efficiency without government legislation, without the involvement of monopoly utilities and without the charges on their electric bills that will result from HB79.

OCC strongly recommends conservatism in legislation that would increase utility rates that Ohioans pay. This bill is advertised as an energy efficiency bill. But it contains very favorable ratemaking for utilities at consumer expense. So it's also a utility ratemaking bill.

A better approach for green energy would be to repeal the coal-plant subsidy to AEP, Duke and AES in House Bill 6. Repealing the coal-plant subsidy in House Bill 6 would protect consumers from pro-utility, anti-competitive ratemaking and the forced support for coal-plant air and ground pollution.

Two of the claimed consumer protections in the substitute bill are a $1.50 cap on residential monthly charges and an opportunity for consumers and smaller businesses to opt out. (Line 309; line 350) But these consumer protections do not live up to their

advertising. Note that OCC is not supporting a $1.50 cap as reasonable, even if it were a hard cap.

The claimed $1.50 monthly billing cap is not a cap. By the terms of the bill, it can be exceeded by four different charges to consumers. These extra charges to consumers are: (1) utility profits (incentives); (2) utility lost distribution revenues; (3) utility cost deferrals; and (4) costs of evaluation of the program.

None of these charges to consumers should be allowed above the so-called cap. The first three charges should not be allowed at all.

First, HB79 enriches electric utilities with charges to Ohioans for profits (so-called incentives). (Lines 261-270) That's in addition to charges for the cost of the energy efficiency programs. Worse, utilities can charge consumers for profits above the cap. (Line 269)

There were outrageous amounts of utility profits (so-called shared savings) charged to consumers for energy efficiency under the 2008 energy law. HB6 ended those profits charges when it repealed the energy efficiency programs. The profits charges should be removed from HB79. It would then be interesting to gauge the utilities' level of interest in green energy if they could not charge Ohioans for profits.

Second, the bill contains a form of decoupling, known as a lost revenues charge. (Lines 126-132; 284-285). Lost revenues is a ratemaking mechanism that is similar to the anti-consumer decoupling charge that FirstEnergy was given in House Bill 6. It's actually worse than decoupling because in theory (though maybe not much in practice), regular decoupling is supposed to have the potential to provide a credit to consumers instead of a charge. Decoupling was repealed after the FirstEnergy and House Bill 6 scandals. Recall that FirstEnergy's fired CEO referred to the HB6 decoupling charge as utility recession-proofing (at consumer expense of course). Worse, utilities can charge consumers for their so-called lost revenues above the (porous) cap. (Line 284)

One other nuance is that the mercantile customers might pay for lost revenues even though they are opted out. That seems because of the wording on lines 285 to 287. Similarly, residential and smaller business consumers who opt out might still be made to pay for lost revenues. Mercantile customers should pay for lost revenues if utilities charge any other customers for lost revenues.

Third, the bill allows utility deferral accounting. The use of deferrals can be a way for utilities to circumvent a limitation of some sort. In HB79, utilities could use deferrals to exceed the $1.50 cap. (Lines 168-169) OCC generally opposes it when deferrals are used to enable higher utility charges to consumers.

Fourth, in lines 420 to 427, utilities can charge consumers in excess of the cap for "reasonable costs for evaluation, measurement, and verification…."

The Legislative Service Commission performed a bill analysis. But LSC did not quantify these extra charges to consumers.

AEP's witness Jon Williams was asked by a Committee member at the April 26th proponent hearing what the bill could cost consumers. *Mr. Williams replied that he could not answer that question.*

Then there is the issue of opting consumers in or out. "Mercantile customers shall be automatically opted out…" of the program. (Lines 327-328) But residential customers and nonresidential retail customers (smaller businesses) are automatically enrolled in the program with merely "the option to opt out of portfolio participation and cost recovery for the portfolio…." (Lines 349-352) Another disparity is that mercantile customers, if they opt in, can leave the program after just a year. (Lines 343-346) But residential and smaller business customers are automatically opted in for up to five years. (Line 179)

These disparities between customer classes should be eliminated. Residential and smaller business consumers should be treated the same for enrollment as mercantile customers. That means all customers should be *automatically opted out* of the energy efficiency program. But if residential and smaller business customers are to be automatically opted in, then mercantile customers should also be opted in.

Another anti-consumer nuance in the bill is related to the test for whether the program is cost-effective. Utility charges to consumers for profits "shall not count toward the net cost of the portfolio…." (Lines 267-268) And utility charges to consumers for lost revenues "shall not count toward the net cost of the portfolio…." (Lines 282-283) Further, the program evaluation costs "shall not be considered as portfolio costs…." (Line 424) Accordingly, the true cost of the program is being understated by HB79 and will not be reflected in the bill's cost-effectiveness test. That is unfair.

Also problematic is that HB79 favors utilities with its unbalanced case process. It is unfair to consumers. The bill empowers the *utility* to withdraw its energy efficiency application, *after a PUCO order*, if it does not like how the PUCO ruled on its and various parties' proposals. Essentially, the utility can veto the ruling of its regulator (the PUCO), by withdrawing its application, if the PUCO "modifies" it.

But the PUCO may be modifying the utility's application to adopt protections advocated by OCC or others. (Line 175) It is a backwards process that gives the utilities unfair leverage over consumer parties and the PUCO in both settlement negotiations and litigation. Legislative delegation of authority should be to the PUCO and OCC, not to the utility monopolies. Alternatively, the state consumer advocate (OCC) should be given a reciprocal right to reject the PUCO's order.

Former PUCO Commissioner Cheryl Roberto wisely wrote about the unfairness of such a utility veto, in a separate opinion involving FirstEnergy's right to withdraw its electric security plan under the 2008 law. She wrote:

> I have no reservation that the parties are indeed capable and knowledgeable but, because of the utility's ability to withdraw, the remaining parties certainly do not possess equal bargaining power in an ESP action before the Commission. The Commission must consider whether an agreed-upon stipulation arising under an ESP represents what the parties truly view to be in their best interest - or simply the best that they can hope to achieve when one party has the singular authority to reject not only any and all modifications proffered by the other parties but the Commission's independent judgment as to what is just and reasonable. (See PUCO Case Nos. 08-935-EL-SSO, et al. Second Opinion and Order (March 25, 2009)).

In conclusion, we note that the bill is replete with nuanced, anti-consumer terms for utility ratemaking. It is difficult to even know all the nuances that might become apparent, against the interest of consumers, if the bill were enacted and then implemented by the PUCO. We recommend for consumer protection that the Committee vote "no" on House Bill 79. Thank you for your consideration.