



Office of the Ohio Consumers' Counsel

**Before
The Ohio House of Representatives
Public Utilities Committee**

**Opponent Testimony on House Bill 79
Substitute Versions I_135_0392-2 and I_135_0392-3
(Regarding Utility Charges to Consumers and Energy Efficiency)**

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On Behalf of the Office of the Ohio Consumers' Counsel**

June 21, 2023

Hello Chair Stein, Vice-Chair Blasdel, Ranking Member Weinstein, and Committee members. I hope you and your colleagues are well. I am testifying on behalf of the Office of the Ohio Consumers' Counsel, for Ohio residential utility consumers.

Consumers' Counsel Weston and I thank you and the Committee members for this opportunity to present opponent testimony on House Bill 79. This testimony addresses substitute bill version I_135_0392-2 ("dash-2"), released on June 7, 2023, and substitute bill version I_135_0392-3 ("dash-3"), released on June 20, 2023. As this testimony was due in writing on June 20th, there was little time for review of the dash-3 version – so we may have more commentary in the future.

Energy efficiency is a good thing. It is also something that Ohioans can obtain in the market from competitive businesses. Ohioans can obtain energy efficiency without involvement of monopoly utilities who will profit at consumer expense from the programs in this bill. And Ohioans can obtain energy efficiency without the charges on their electric bills that will result from HB79.

The dash-3 bill seems worse for consumers than the dash-2 bill. But the substitute versions are similar or identical in many respects to the as-introduced version of House Bill 79 that OCC opposed in testimony on May 3rd. OCC continues to recommend that, for the protection of consumers, the bill should *not* be enacted into law.

Interestingly, for a brief time per the dash-2 bill, the utility ratemaking gimmick of deferrals was removed from the bill. (Dash-2, lines 154-166) That would have been an improvement for consumers.

But, on June 20th, the dash-3 version *reinstated* utility deferral accounting that was in the as-introduced version of the bill. (Dash-3, lines 173-179) That is bad for consumers, as OCC testified on May 3rd.

The dash-3 bill should have built upon the removal of deferrals by also removing utility profits (so-called incentives), removing any form of decoupling (including lost revenues) and by removing the automatic enrollment of all residential consumers into the program, among other things. (Dash-3, lines 124, 125-131, 370-376) Also bad is that in the dash-3 bill, these add-on charges to consumers are still exempt from the monthly rate caps. (Lines 287-290, 300-306, and 450-453)

And worse for consumers is that the decoupling/lost revenue charges are not limited to revenues lost due to energy efficiency under the bill. That means the utilities can be expected to charge consumers for reduced revenues whatever the reason (other than due to weather). This result is somewhat like the “recession-proofing” FirstEnergy’s fired CEO described for its infamous decoupling (and later repealed) charge in House Bill 6. And the bill apparently lacks any review to protect consumers from charges relating to decoupling/lost revenues that could result in excess utility profits.

In the dash-2 and dash-3 bills, the PUCO is allowed to choose between lost revenues and decoupling. For consumers, that provision is something of Hobson’s choice. Consumers can be expected to lose either way. You might hear from proponents that decoupling, unlike lost revenues, is a rate mechanism that can lead to a *credit* on consumers' utility bills if utility sales exceed a base period level. Don't be misled.

Experience with an AEP decoupling charge (known as PTBAR) did not produce a credit for consumers in about ten years of use. *It always produced a charge for AEP at consumer expense, not a credit for consumers.* When AEP's decoupling charge was eliminated in a settlement by AEP, OCC and others, the PUCO wrote this in its Order: "The Stipulation, after a final reconciliation, also eliminates the PTBAR, which, *while theoretically could have provided a credit on customer bills, has historically been a charge on customer bills.*" [PUCO Order, Case 20-585, p. 62 (Nov. 17, 2021) (emphasis added).] Note the word “theoretically,” which is very different than actually.

The dash-3 version does require a hearing at the PUCO. (Dash-3, Lines 155-156). That is good. But the bill’s anti-consumer provisions cannot be overcome at a hearing. That is bad.

In addition to those concerns, there is the unfair disparity between customer classes. Residential consumers and smaller businesses are automatically enrolled in the programs. (Dash-3, lines 370-376) But mercantile (bigger business) customers get to choose whether to enroll. Specifically, the bill allows that “Mercantile customers shall be automatically opted out...” of the program. (Dash-3, Lines 350-354) Another disparity is that mercantile customers, if they opt in, can leave the program after just a year. (Dash-3, Lines 366-369) But residential and smaller business customers are automatically opted-in for up to five years or the length of the approved energy efficiency portfolio (unless they opt out at the beginning). Dash-3, Lines 187-188. 370-372) 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.

We are also concerned with the asymmetrical case process in House Bill 79 that unfairly favors utilities against 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. (Dash-3, Lines 180-186) Essentially, the utility can veto the ruling of its regulator (the PUCO), by withdrawing its application, if the PUCO "modifies" it. Consumers should have the same right or no party should have such veto power.

In conclusion, House Bill 79 and the dash-2 and dash-3 bills, as drafted, are replete with nuanced, anti-consumer terms for utility ratemaking. It is difficult to even know all the consumer problems that might become apparent once the utilities and the PUCO interpret the bill in case processes. For consumer protection, the Committee respectfully should vote "no" on House Bill 79.

Thank you for your consideration.