**House Public Utilities Committee**
**House Bill 260**
**Written Opponent Testimony**
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My name is Kim Bojko and I am a partner with Carpenter Lipps LLP. I have been practicing energy and utilities law for over 25 years and serve as the chief energy counsel for the Ohio Manufacturers' Association (OMA). Unfortunately, I could not be with you in person today, but I appreciate the opportunity to provide written opponent testimony on House Bill 260 (HB 260), as amended, on behalf of 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.

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.

Lawmakers now propose to stack the deck in the utilities' favor even more by limiting customers' rights and further increasing customers' costs. HB 260 proposes to add more above-market charges to customers' bills through new distribution riders while thwarting challenges to rate increases.

Although HB 260 is pending before the Ohio House under the guise of improving the rate case process and reinstating full rate cases every five years, the bill would do quite the contrary. Not only will HB 260 not allow for a full and complete rate case record and improved process, HB 260 completely upends the traditional ratemaking process for all regulated utilities, not just electric utilities, in favor of the utilities and at the expense of customers. HB 260 also does not return to the days of traditional rate cases where complete and full rate cases were the mechanism by which the PUCO and stakeholders reviewed the propriety of the rates being charged to customers by utilities and established the totality of a utility's rates that were authorized to be collected from customers going forward.

Rather, HB 260 retains ESPs and above-market charges, continues OVEC subsidies, and

increases distribution costs by authorizing four new distribution riders, which are in addition to the establishment of distribution rates by a new ratemaking process that limits customers' and other stakeholders' due process rights. Although one of the sponsors of the bill stated that the four new distribution riders "should minimize the high-stakes nature of the ESP for utilities," there is no requirement to do so in this bill, nor does the bill incentivize any such action. The electric utilities can continue to obtain significant above-market charges through the ESP proceedings when the utilities' books are not open and will be allowed to charge more through the four new riders on an expedited basis.

Importantly, although the sponsors of the bill only reference electric utilities and seem to imply that this bill only affects electric utilities, it does not. The changes to the traditional ratemaking statutes proposed in the bill will also apply to natural gas, water, and sewer utilities.

**Instead of improving the rate case process and protecting customers, HB 260:**

- Increases customers' distribution costs by authorizing four new distribution riders (called Investment Trackers) plus a return:
    - Distribution Investment Tracker (4% cap of an electric utility's base distribution revenue);
    - Storm Response Investment Tracker (No cap—unlimited);
    - Cybersecurity Investment Tracker (2% cap of an electric utility's base distribution revenue); and
    - Regulatory Investment Tracker (2% cap of an electric utility's base distribution revenue).
- Mandates that any amounts that remain in three of the four new trackers that are not collected under the cap or otherwise not collected be deferred for later recovery through another tracker or future base rates.
- Mandates that carrying costs be accrued for all deferrals until the entire regulatory asset and carrying costs are collected from customers.
- Significantly alters the traditional ratemaking process for all regulated utilities.
    - Authorizes fully forecasted test periods and allows utilities to collect money for facilities and investments that are not used and useful to customers.
    - Modifies property valuations for utility property.
    - Modifies date certain valuation for electric utilities.
    - Authorizes utilities to collect costs for software as a service.
    - Requires PUCO to include in payroll costs the cost for labor, benefits, taxes, and incentive compensation, and to consider whether such costs together are reasonable when compared to market rates (currently incentive compensation is excluded).

    - Requires PUCO Staff to issue its Staff Report within 150 days of the filing of the application, regardless of whether the investigation is complete and regardless of whether the utility thwarted the investigation.
    - Requires intervenors that file objections to also file testimony within 45 days of Staff Report.
    - Requires Staff to file testimony within 75 days of Staff Report.
    - Authorizes the utilities to file rebuttal testimony within 90 days of Staff Report.
    - Mandates that the PUCO schedule a hearing not later than 120 days after Staff Report.
    - Gives the PUCO more time to issue a decision (allows 365 days; currently 275 days).
    - Gives the PUCO more time to issue a ruling on rehearing (allows 150 days; currently 30 days).
- Eliminates due process rights for parties.
    - Limits the number of intervenors in rate cases (changes who has standing in cases).
    - Limits discovery and parties' participation in rate cases.
    - Limits notice to customers of rate case filings.
- Weakens customer protections and eliminates important checks and balances.
    - Eliminates used and useful standard, allowing utilities to collect costs from customers for property that is projected to be used and useful to customers (i.e., allows cost recovery from customers for infrastructure development to prospective sites without known customers and regardless of whether the facilities are ever used).
    - Prohibits the PUCO from deeming prior investments to be imprudent if they were previously deemed prudent.
    - Eliminates the requirement for the attorney examiner to make a full and complete record of the proceeding.
    - Eliminates requirement of the PUCO to consider the case in an open and public proceeding.
    - Allows utilities to put rates into effect without a refund and without a bond if PUCO does not timely act.
- Does not fully address *Keco* and resolve the refund issue (codifies current practice).
- Modifies PUCO process and methodology for setting annual reliability performance standards, which will weaken standards.

    - Mandates that the PUCO exclude *any* outages from the reliability indices (this modification will weaken the standards and performance of the utility).

- Creates a new requirement to file a rate case every five years (it is not a reinstatement of an old requirement as some have stated).
- Allows the PUCO to approve programs for only industrial customers to implement economic development, job retention, or interruptible rate programs that enhance grid reliability. The term "industrial" is not defined in the bill, but this could result in discriminatory treatment among businesses.
- Allows the PUCO to approve mandatory energy efficiency and weatherization programs for residential customers.

Although the new Investment Trackers are touted to be better than those allowed in ESPs for capital investments, the bill does not eliminate or limit ESPs or the similar capital investment riders already approved through ESPs. The bill also does not eliminate or prevent future capital investment riders through ESPs, and does not limit the amounts that can be collected from customers.

Moreover, the bill contains cost-cap loopholes. The new provision for a forecasted test year is one for which regulated utilities have lobbied hard – and commercial and industrial groups have called bad policy that would result in increased utility rates to customers.

Bottom line, HB 260 would be a bad deal for Ohio manufacturers and an unwise policy for the state. It is another windfall for Ohio utilities. Thank you for the opportunity to submit this written testimony.