Before
The Ohio House of Representatives

Public Utilities Committee

Testimony on House Bill 260
(Regards public utilities and competitive retail electric service)

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Hello Chair Stein, Vice-Chair Blasdel, Ranking Member Weinstein, and Committee members. I hope you and your colleagues are well. Thank you for this opportunity to testify on this important utility legislation. In the interest of time, I will address some (but not all of) OCC's many concerns with the bill.

My name is Maureen Willis. I am the Ohio Consumers' Counsel, the Director of OCC, the state agency that represents 4.5 million residential utility consumers. I am testifying as an opposing party.

I urge you not to pass this legislation that caters to the interest of utilities, making every day consumers pay even higher utility rates. While the bill does call for greater use of traditional rate cases, it greatly harms consumers by impairing certain key elements of the rate case process. Standard ratemaking would change and not in a good way for consumers.

Electric security plans with their problematic riders should end; H.B. 260 allows those plans to continue and makes it worse by allowing more riders (trackers) that consumers must pay.

The mandatory five-year rate case filing requirement (Lines 1273 -1277), considered as a linchpin of this legislation, does not provide regulatory reform that solves the problem for consumers. The real solution is to completely get rid of electric security plans with their many add-on charges ("trackers").

Riders or trackers allow utilities to cherry pick expenses and investments for expedited recovery with limited review. This ratemaking is an exception to Ohio rate case law that otherwise requires utility expenses, revenue, plant, and profits to be considered together in a case. Under standard ratemaking only those costs and investments prudently incurred and that are used and useful (at date certain) in providing utility service can be charged to consumers.

Under electric security plans, there is almost no limit to riders the electric utilities can charge consumers. DP&L has 14 riders, Ohio Power has 28 riders, Duke has 38 riders and the FirstEnergy Utilities take the prize with 46-48 riders per utility.

The riders highlight a related problem – that electric security plans also allow for charges to consumers for distribution service. That allows utilities to avoid the consumer protections in standard ratemaking that apply to distribution service.

FirstEnergy's Ohio utilities have not filed a base rate case since 2007. But they have continuously increased charges to consumers over the years through distribution riders such as the Delivery Capital Recovery (DCR) Rider. OCC estimates FirstEnergy has collected approximately $2.8 billion in distribution charges from 2012 to 2022.[1] Requiring FirstEnergy to come in every five years does not fix the problematic practice of utilities collecting hundreds of millions of dollars from consumers through trackers.

Not only does the legislation not fix the problem, it makes matters worse by allowing electric utilities to add up to four new trackers through a utility's distribution rate case. (Lines 947–1178). And a few of the trackers – the storm rider tracker and the distribution investment tracker-- already exist and collect charges from consumers through PUCO-approved electric security plans. Under this bill, the PUCO **must approve** the trackers requested, subject to annual reviews. Currently riders can be proposed by utilities only as part of an electric security plan with the PUCO retaining discretion to approve or disapprove the rider.

The bill does limit how much utilities can charge consumers each year for the distribution tracker (4% of base distribution revenue requirement) (Lines 989-992) and the cyber security and regulatory trackers (2% of base distribution revenue requirement). (Lines 1134-1137). These annual limits, when applied to Ohio utilities' revenue requirements from their most recent distribution cases, are eye-opening:

Utility	Distribution Tracker (at 4% cap)	Cyber Security & Regulatory Trackers (at 2% cap)	Total Annual Charge to Consumers
AEP	$39.8 million	$19.9 million	$ 59.7 million
AES	$12.8 million	$ 6.4 million	$ 19.2 million
CEI	$18.6 million	$ 9.3 million	$ 27.9 million
Duke	$23 million	$11.5 million	$ 34.5 million
Ohio Edison	$23 million	$11.5 million	$ 34.5 million
Toledo Edison	$ 7.8 million	$ 3.9 million	$ 11.7 million
		Total	$187.5 million

[1] This is based on the data in Table 56 (at page 139) of the 2022 DCR Compliance Audit cited in Footnote 12. The 2022 DCR annual collection is estimated to be $356,402,004 prorated to the 11-month collection of $326,701,837.

The trackers, in total, would have allowed Ohio utilities to collect up to $187 million from consumers last year.

H.B. 260 morphs standard ratemaking into a much more profitable venture for the utilities, to the detriment of consumers. One way it does so is through favorable treatment of a utility's operations and maintenance expenses.

Under the bill, if the PUCO allows operations and maintenance expenses to be deferred for later collection from consumers, it must allow the deferred expenses to accrue carrying charges (interest). (Lines 196-210). Consumers will pay interest to the utility on these expenses until the utility collects the expense. This allows utilities to earn added profits not currently available to them under standard ratemaking. These extra profits will be paid for by consumers through their utility rates.

And as an added bonus for utilities, several of the new trackers (storm tracker, cybersecurity and regulatory trackers) will require consumers to permanently pay interest on operations and maintenance expenses. Under the bill, "eligible" operations and maintenance expenses are part of the revenues collected from consumers under the trackers. (Lines 1050-1051,1128-1129). The trackers eventually become a permanent part of consumer rates when they are rolled into distribution rates as investment (rate base). (Lines 1072-1078, 1153-1159). Under standard ratemaking consumers pay for a return on and of rate base investment. The bill provides another way to squeeze more money out of consumers and into utility coffers.

H.B. 260 allows utilities to set rates based on fully forecasted expenses and investment. This removes important consumer protections in Ohio law that require utility rates to consumers based on actual date certain investment and test year expenses and revenues.

Allowing the electric utilities to use a fully forecasted test period for setting rates and trackers (Line 356-364, 614-682) is probably the most draconian provision of this legislation. It undermines the very foundation of public utility regulation in Ohio by taking away consumer protections currently written into the law.

The proposed language regarding the use of a fully forecasted test period is expansive. It would allow utility distribution rates and trackers to be set based on forecasted operating expenses, revenues, and investments. Consumers have not necessarily done well when ratemaking is based on utility projections. Use of projections is subjective and speculative.

While there is a rate true up for utility investment, the true up does not appear to apply to utility revenues and expenses. This seems to enable utilities to collect rates based on fully projected expenses and revenues that may bear little resemblance to actual

expenses incurred and revenues produced. And, contrary to the claim by some, the use of a fully forecasted test period is not common. Only a small minority of states allow it.[2]

The current Ohio rate case statutes (mainly Revised Code Chapter 4909) have worked well for many years. Electric utility investment is measured at date certain, reflecting actual, not projected investment. Electric utility expenditures are measured during a test year that includes a combination of actual and projected data instead of fully projected data.

The existing rate case statutes, even though not perfect, properly balance the interests of consumers and regulated utilities. They were enacted based on long-established regulatory principles and sound public policies to ensure fair rates for consumers, while providing utilities the opportunity to earn reasonable profits. There is little reason to fix something that is not broken.

H.B. 260 limits parties' discovery rights, precluding essential fact finding. The PUCO already has the authority to manage discovery.

The bill would limit the ample discovery rights of parties by only allowing discovery that "is relevant and proportional to the needs of the proceeding." (Lines 19-22). The bill also specifically limits written discovery to no more than three rounds of 50 questions prior to the Staff report and three rounds of 50 questions after the Staff report. (Lines 1470-1485). The bill also precludes discovery on the PUCO staff. (Lines 1486-1487).

These provisions favor and protect lawyered-up utilities over consumers because the utilities have most of the information that needs to be discovered. Instead, there ought to be a focus on protecting non-utility parties from utility delaying tactics and non-responsive answers on discovery.

The PUCO already has a process allowing utilities and others to seek protection from unreasonable discovery. If there is undue delay or burden caused by parties' discovery, the PUCO can put a stop to the delay.

Current Ohio law allows for "ample" discovery and that law should only be improved, not decimated. Improvements should include allowing discovery of the PUCO Staff and giving OCC subpoena power.

[2] According to a recent report *State Regulatory Evaluation – Energy* published by S&P Global, a vast majority of states (64%) use fully-historical test year, some states use a hybrid system (13%) and only 23% of states use a fully-forecasted test year.

In the interest of brevity, we conclude our testimony by listing below a few additional concerns that we have found while analyzing the bill. We are happy to provide the committee with more information on these topics:

- The legislation does not help consumers obtain full refunds for utility charges that are found to be unlawful or unreasonable by the Ohio Supreme Court. We appreciate HB 393 (Baker) and SB151 (Smith and Craig), [3] as bills that tackle and fully solve the refund issue for consumers.

- Deadlines for PUCO orders are helpful, but allowing proposed rates to go into effect, not subject to refund, is not.

- H.B. 260 places unneeded limits on intervention.

- The legislation changes service reliability standards that utilities must meet in a way that is less protective of consumers than current reliability standards.

For consumer protection, please do not enact H.B. 260 as currently drafted.
Thank you for your consideration. I welcome any questions from the committee.

[3] *See* https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_135/bills/sb151/IN/00/sb151_00_IN?format=pdf.