



HB 393 – Requires refunds for utility customers for unlawful charges
Sponsor Testimony
Representative Rachel Baker

Chairman Stein, Vice Chair Blasdel, Ranking Member Weinstein, and members of the House Public Utilities Committee, thank you for the opportunity to provide sponsor testimony on House Bill 393.

HB 393 is a reintroduction of the bi-partisan HB 260 from last General Assembly. This bill addresses a bipartisan issue and matter of fairness for Ohioans.

This legislation would require all charges paid by customers to a public utility that are later found to be improper to be fully refunded to the customers.

The Ohio Supreme Court case from 1957, *Keco Industries Inc v. Cincinnati Suburban Bell Tel Co*, lies at the heart of this bill. In this decision it was stated that under Ohio’s revised code section 4905.32, “a utility has no option but to collect the rates set by the commission and is clearly forbidden to refund any part of the rates so collected.”

The Court has recognized, however, that consumers may be due refunds if charges are collected subject to refund, meaning the PUCO orders utilities to file tariffs that include refund language. Historically, the PUCO has been reluctant to do this, though in recent transmission cases, they have ordered tariff language to be included allowing for limited refunds, typically only related to certain types of charges (“reconcilable” riders). Interestingly, the Ohio Consumer Council has an appeal pending (S.Ct. Case No.2023-111) which is seeking a refund to AES consumers for stability charges collected under PUCO-approved tariffs that contained refundability language. Even though this language was included in this case, the PUCO and AES oppose those refunds.

So why is this legislation needed? Currently, if a court decision finds that collected charges are improper, PUCO practice is to allow refunds beginning the day of the Court decision or shortly thereafter until the charges stop. Often by this time, the improper charges have been being collected for many years. I’ll provide a concrete example - FirstEnergy’s Ohio utilities collected a Distribution Modernization Rider (DMR) from consumers for 32 months (from 1/1/2017 to 8/31/2019) collecting in total, \$458 million. In June 2019, the Court found the charge was unlawful and unreasonable. Approximately \$30 million of the DMR charges were refunded to consumers for the two-month period following the Court’s decision until the charges were stopped. In this instance, 93% (\$428 million out of \$458 million) of the charges that the Court found were unlawful or improper were not returned to consumers and served as a windfall to FirstEnergy. And this is just one example. Since 2009, the Ohio Consumers Council has evidence of \$1.5 billion of refunds that have been warranted but denied because of this legislative section. Refunds to consumers should be for the entire improper amount that the consumers have paid.

Without this legislation, when a rate payer believes a utility charge was improper, they can take the case to the courts, even to the highest court in our state, and may even win the case – but the courts are required to uphold the ORC section 4905 and not require repayment of this improper charge.

At a moment with electricity costs are at an all-time high, consumers need to be able to trust that their rates are fair and that their hard-earned money is protected against bad actors. We are facing a time when the general public is losing confidence in lawmakers and losing confidence in regulatory bodies, and at the same time our PUCO and utility legislation is at the center of the largest corruption scandal in the state, this is the right time to show Ohioans that we are serving them and to pass this commonsense bill.

Mr. Chairman, members of the committee, thank you again for allowing me to present sponsor testimony on HB393. I would be happy to take any questions at this time.