TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO ENERGY AND PUBLIC UTILITIES COMMITTEE
IN SUPPORT OF SB 102
TUESDAY, MAY 23, 2023

Good morning Chair Reineke, Vice Chair McColley, Ranking Member Smith and members of the committee. My name is Robert Kelter and I'm a senior attorney at the Environmental Law and Policy Center (ELPC). Thank you for the opportunity to testify today. ELPC is a regional environmental organization with offices in Ohio, Illinois, Michigan, Wisconsin and Iowa. We have litigated numerous cases at the Ohio Public Utilities Commission, as well as other Commissions around the Midwest. I've litigated many rate cases over the years, and many ESP cases in Ohio. Thus, our testimony today brings that knowledge of both how Ohio operates and how other states handle these issues.

In order to properly understand the implications of SB 102, I think it's important to understand the utilities business model, and how regulation has worked in Ohio compared to other states. Hence, I want to go over a few background issues that I hope will add helpful perspective to this discussion.

In exchange for serving customers as monopolies, utilities are subject to regulation by the PUCO. The most important duty the Commission has is setting the rates. The law allows the utilities to recover prudently incurred costs and earn a rate of return on their capital investments. For example, if the utility wants to build a new transformer it recovers the cost in a rate case, it earns a rate of return on the investment, and it depreciates the transformer over a period of about 20 years. That return on the capital investments is the utility's profit.

The Commission sets rates through rate cases. In a rate case the Commission looks at all of a utility's costs and revenues, and determines how much money the utility recovers from customers each year. Once it determines that amount, it divides by the number of kilowatts the utility expects to sell and comes up with a rate. For ease of example let's say 10 cents per kWh.

Once the Commission sets that 10 cent per kWh rate and the Company puts it into effect, it will either be overearning or under earning each year based on its actual sales to customers. At any given time, if the utility's sales go down or its costs go up it can come in for a new rate case. The utility chooses and controls this process. Technically, the Commission could bring a utility in if it believes it's overearning, but in never does so. This is not only true in Ohio, it's true in all states. The utilities control the process. The glaring example of the imbalance is FirstEnergy which has not filed a rate case since 2007. If FirstEnergy was underearning and wanted higher rates, it would have been in numerous times since then. But, under current Ohio law it doesn't need to

expose itself to that kind of analysis of its costs and revenues – it just adds riders in its Electric Security Plan (ESP) cases.

ESP cases allow utilities to build infrastructure and create new programs without coming in for a rate case. They then recover those costs through riders attached to customers' bills that merely add new costs without examining the utility's overall profits.

For example, AEP is using its 2023 ESP case to fund a $95 million fiber optic cable project. The Commission still reviews the project for prudency, but it does so in a vacuum – not in the context of the utility's other spending and revenue as it would do in a rate case. In total, AEP estimates that its 2023 proposal would increase the average residential customers' bills from $156 to $186 or $30/month over the next 6 years, which translates to $360/year. These projects add up over time and if the PUCO approves AEP's latest ESP case, by 2030 AEP would recover 50% of its total distribution revenue in riders. To average Ohioans, many struggling to pay already high electric bills, this increase significantly increases their burden.

This latest iteration of SB 102 doesn't fix the system completely, but it certainly improves it. ELPC's preference would be to get rid of the riders completely as the original version of this bill did, but we've listened to the debate and understand the legislature's desire to allow utilities to increase spending in some areas without rate cases. SB 102 allows utilities to add three new riders to bills over the course of five years, with a cap of 4% of base rates per rider. Then at the end of every five year period the utility has to come in for a rate case.

Given that the utilities can still use riders, the question becomes does this version of SB 102 improve the system? And ELPC believes that the answer to that question is **yes**, because the legislation changes two critical things. First, it creates a check on the system through an excessive earnings test that prohibits utilities from earning excessive profits from adding riders. Section 4928.143(C) requires an annual Commission audit to ensure that the utilities don't earn more than 250 basis points (2.5%) above their approved return on common equity.

Second, and perhaps more importantly because overearning 2.5% every year adds up, the utilities must come in for a rate case once every 5 years (the course of their competitive power plan). This means that the Commission can give the utilities the kind of comprehensive review that ensures customers get fair value for utility spending. And this is the part the utilities really don't like. This is where former Chair Randazzo stepped in for FirstEnergy to keep it from having to come in for a rate case in 2024. Current Commissioner Dan Conway has explained the importance of these periodic reevaluations of utility's potential profits:

> In an era where our electric distribution utilities are making increasingly substantial investments the costs of which they recover through riders, as is the case for the First Energy Companies, I believe it is important to conduct rate cases on a periodic basis in order to comprehensively evaluate those utilities'

> revenue requirements. **The risk of not conducting regular comprehensive reviews, and leaving the decision solely up to the EDU regarding whether and when to conduct such a review, particularly during periods of low inflation, low interest rates, and technological innovation, is that the rate base will over-recover the portion of costs that is responsible to recover.**

Case No. 19-361, Conway Dissent, Jan. 15, 2020 (emphasis added). And to be clear, this was a 2019 case involving FirstEnergy's Distribution Modernization Rider, where FirstEnergy wanted to get rid of a rate case that wasn't scheduled for another five years. In a sense, FirstEnergy's actions in working with Chair Randazzo to avoid a rate case five years down the road speak louder than words.

This is a balanced bill

As I previously noted, the bill does not eliminate riders and Senator Wilkin has made every effort to make this a balanced bill. The utilities have indicated that the rate case process needs reform and we agree. SB 102 significantly streamlines several aspects of the rate case, including speeding up the time for the Commission to issue a final order so the utilities can recover costs more quickly. It also reduces the utilities' burden regarding the large amounts of discovery in rate cases. Ultimately, it continues to allow riders but with limits and safeguards.

Finally, I want to note that the bill has an important fix to a problem that many customers who shop for electricity on the competitive market face. Often times competitive suppliers offer customers a fixed price for a term of a few months and then adjust the price to a market rate. Few customers understand what this means, and the market rate can a significant price increase, even doubling bills. SB 102 requires the competitive suppliers to give customers at least two notices of a pending price adjustment, so that they can shop again or return to the utility for a lower rate.

I want to close today by emphasizing how important this bill is to customer protection. Utilities, by nature, want to do everything they can to increase profits. The current rider situation goes too far, and Ohio consumers pay the price. This bill brings back some reasonable balance. The bill is not perfect, but critics who argue it doesn't go far enough so we shouldn't do it at all, are truly making the perfect the enemy of the good. A few critics have compared this bill to HB 6. Any comparisons between this bill and HB 6 are misguided, and they distract from the discussion of the merits. This bill adds numerous important consumer protections to the current system, and ELPC urges you to pass it. Thank you and I'm happy to answer any questions.