

**Senate Bill 102**  
**Proponent Testimony of Joe Price**  
**On Behalf of the Ohio Energy Group**  
**Before the Senate Energy and Public Utilities Committee**  
May 23, 2023

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Chairman Reineke, Vice Chair McColley, Ranking Member Smith, and fellow distinguished Members of the Senate Energy and Public Utilities Committee, I am here today to give proponent testimony regarding S.B. 102.

My name is Joe Price and I serve as Executive Director for the Ohio Energy Group (OEG). OEG is a trade organization formed in 2003 by large energy-intensive industrial companies with one or more plants in Ohio to promote low-cost, reliable electric power. Our 26 members<sup>1</sup> spend more than \$1 billion annually on gas and electricity and we provide more than 55,000 good paying direct jobs in Ohio.

OEG is appreciative of the work of the bill sponsor and the members of this Committee to repeal the existing Electric Security Plan (ESP) statute and replace it with a modernized ratemaking process that is fair to both customers and the investor-owned electric utilities. For OEG member companies, energy represents one of the largest costs in their manufacturing processes. As such, we also view the utilities as suppliers of an essential service – after all, we cannot manufacture our products and succeed in a fiercely competitive global marketplace without affordable and reliable electricity.

OEG supports S.B. 102 because the legislation achieves the desired balance in both protecting customers and providing a reasonable framework for utilities to continue investing to keep the grid safe, reliable, and secure. You may hear from some organizations that S.B. 102 will result in higher power rates or less reliability – when compared to the status quo under current law, this is simply untrue. Consider this: for some OEG companies, a change of merely one-tenth of one penny per kilowatt-hour is more than \$1 million per year. So, *if* the legislation was going to hurt affordability or reliability, OEG would actively *oppose* the legislation, not support it as we do today.

There are essentially three buckets of costs when it comes to electricity: generation (power plants), transmission, and distribution. Under the bill, generation will continue to be a competitive service. Any customer that wants to shop for generation may continue to shop at any time, effectively receiving a market price just as they do today. Any customer that chooses not to shop for generation will continue to receive service through the utility-provided Standard Service Offer (SSO). The bill codifies the existing competitive auction process for supplying SSO customers, meaning that even non-shopping customers will continue to receive a market-based price.

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<sup>1</sup> Current OEG membership: Air Products and Chemicals, Inc., Amsted Rail Company, Inc., ArcelorMittal, Cargill, Incorporated, Charter Steel, Cleveland-Cliffs Inc., Ford Motor Company, GE Aviation, General Motors LLC, Greif, Inc., Howmet Aerospace Inc., Johns Manville, JSW Steel USA, Inc., Linde Inc., Martin Marietta Magnesia Specialties, LLC, Materion Corporation, Messer LLC, Molson Coors Beverage Company, Nature Fresh Farms USA LLC, North Star BlueScope Steel LLC, POET Biorefining, PTC Alliance Holding Corporation, Stellantis (fka Fiat Chrysler), Three Rivers Energy LLC, TimkenSteel Corporation and Worthington Industries.

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The second bucket, transmission costs, will continue to be recovered through annually adjusted riders. Transmission costs are set by FERC and PJM and while each state is free to set its own method of cost recovery (base rates or rider), no state has authority to cap those costs under the doctrine of federal preemption and the Supremacy Clause. So, while critics may accurately point out that the bill does nothing to cap transmission riders, the State of Ohio does not have the authority to do so.

The third bucket, distribution costs, is where the legislation makes the most significant changes. Distribution is the last-mile of service and is not market-based or competitive – we only have one set of poles and wires going down the street. The legislation effectively puts new limits on the use of distribution riders while also requiring periodic distribution rate cases. Specifically, electric utilities would be required to file a base rate case at least once every five years but would be free to file rate cases more frequently at its discretion.

While mandatory regular rate cases should benefit consumers, the bill also makes some commonsense reforms to the rate case process to the benefit of the utilities, such as firmer deadlines on rate case decisions (365 days) and elimination of outdated provisions like the requirement that rate changes be published in the printed newspapers. The bill also allows for the use of a future test year, a process allowed in Indiana, Kentucky, Pennsylvania, Alabama, Florida, Connecticut, Illinois, Michigan, Minnesota, Wisconsin, as well as FERC/PJM for transmission. The use of a future test year could potentially result in a utility over-projecting its costs, which is why S.B. 102 requires that the future test year investment, revenues, and expenses be trued-up using actual figures (lines 594-597).

In-between rate cases, the utility would be permitted to use riders to collect some costs, just as they do today. However, unlike today, those riders would be significantly more limited in scope. For discretionary distribution investments, riders may be approved by the Public Utilities Commission of Ohio (PUCO) for maintaining or improving safety, reliability, system efficiency, security or resiliency (lines 774-776), but may not exceed four percent (4%) of utility's the base distribution revenue (lines 755-760).

Under current law, investment categories are broader and completely uncapped. Also, it is important to remember that the 4% is a ceiling, not a floor – it could be less than 4% but cannot be greater. If the utility is unable to fully recover its costs because of the cost cap, it is still free to file a rate case at any time. The utility would be permitted to file for these riders no more frequently than every 12-months and may have no more than three active at any time, meaning the maximum amount at any given moment for those categories of riders is 12%. Again, it could be less, but it can't be more.

In addition to these capped riders, the bill does allow for uncapped riders for certain costs that are outside of the utility's control. Specifically, uncapped riders may include costs for which the utility does not earn a profit (lines 1936-1940), or costs due to external conditions or were not reasonably foreseeable (lines 777-791). For example, the utility could recover costs via rider due to storm damage, the relocation of infrastructure necessary for building a road, or collecting the kilowatt-hour tax.

S.B. 102 also makes significant progress on numerous utility-policy “sore spots” that have accumulated over the years:

- Cash payments and “side deals” to induce settlements at PUCO would be prohibited. If groups need to get a cash payment from the utility to justify their intervention, they probably shouldn't be intervening in the first place. This can be a corrupting practice and is not commonplace in other states. Ohio would be wise to end these cash payments once and for all.

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- The Significantly Excessive Earnings Test (SEET) is dramatically improved by setting a statutory definition of “significantly excessive” profits at 250 basis points (or 2.5%) over the utility’s authorized rate of return on equity. This a genuine consumer protection, considering current law has resulted in a threshold as high as 18% after tax profit before a refund is due. Assuming an authorized rate of return of 10.0%, under this bill, the new limit for excessive profits would be 12.5%.
- The bill also prevents a buildup of large nonrefundable pots of money by resolving PUCO cases faster. The legislation establishes a 150-day “shot clock” on PUCO orders on rehearing, providing a faster path to the Supreme Court to resolve potentially unlawful charges. This is a partial fix to the infamous *Keco* decision.
- Utilities would no longer have the ability to unilaterally “veto” PUCO-approved rate plans – a power imbalance under current law. The veto threat is real and has been exercised in the past.

The bill also encourages manufacturing in the state by codifying existing PUCO-approved programs for cost-effective interruptible rates and transmission billing programs. Interruptible rates allow customers to provide a valuable reliability benefit to the grid in exchange for a discounted electric bill. For example, during Winter Storm Elliot on December 23-24, 2022, PJM and Ohio benefited when participating customers halted their operations for approximately 18 total hours, preventing a bad situation from being even worse. When a factory can pause its operations, it often has the effect of reducing demand by the equivalent of tens of thousands of residential homes.

The transmission pilots also provide a dual benefit of affordability and reliability by encouraging customers to voluntarily reduce their operations during anticipated periods of peak demand. When successful, these programs reduce overall transmission costs for all customers.

Finally, there are new economic development tools contained in the bill: the utility may provide lease financing arrangements with individual customers that allow the utility to front the capital for customer-owned transformers and substations, allowing the customer to repay those costs over time on their electric bill. Utilities would also be permitted to build economic development transmission lines for the purpose of preparing “shovel ready” sites, in line with the goal of the Governor’s proposed All Ohio Future Fund. These projects would need to be approved by PUCO, with the support of JobsOhio and the Department of Development, and program costs are capped at the greater of 0.5% of the utility’s transmission revenue requirement or \$5 million. Since many of the costs related to providing electricity are fixed, we all benefit by having more manufacturers in the state to help spread the costs across more ratepayers.

In many ways, *energy* policy is *manufacturing* policy. By creating new consumer protections, balanced ratemaking reforms, and enhanced tools for economic development, S.B. 102 is good energy policy, and therefore good manufacturing policy.

OEG urges the Committee’s full consideration and support for S.B. 102. I welcome any questions that you may have for me. Thank you.