



Senate Energy and Public Utilities Committee
Substitute Senate Bill 102
December 5, 2023

Chairman Reineke and members of the Senate Energy and Public Utilities Committee, thank you for the opportunity to provide written proponent testimony on Substitute Senate Bill 102 (Sub. SB 102).

The Alliance for Energy Choice is an Ohio non-profit corporation that seeks to promote fairness and competition in electric utility service. The Alliance advocates for free-market solutions that will ensure an adequate and fairly priced supply of electric power to Ohio's residents, businesses, and industries. The Alliance also advocates for policies that do not favor one supplier or one form of energy over another.

Members of the Alliance strongly support the intent of Sub. SB 102 as it seeks to update Ohio's electric regulatory laws to make them more reflective of the current market environment. Eliminating Electric Security Plans (ESPs) is a simple, straightforward, market-based approach to procuring the Standard Service Offer (SSO) supply for EDUs and provides for a more comprehensive review of non-supply related charges – more commonly known as riders – via traditional distribution rate cases.

Ohio's transition to a competitive retail electricity market has been a successful one and the benefits of it are well-documented. Chiefly, the state's ratepayers have saved billions of dollars since the Ohio Legislature restructured the market with Senate Bill 3 in 1999. The state's competitive retail electricity market has also given rise to significant new generation investments in our state, as well as in innovative new energy technologies and services. These additional benefits continue to attract new business investment, stimulate economic growth, and spur job creation in multiple sectors all over the state.

However, certain ratemaking provisions that were later enacted in 2008 as part of Senate Bill 221 (SB 221) are still in current law; they are anti-competitive and bad for Ohio ratepayers. Our membership is encouraged that Sub. SB 102 proposes to eliminate the most anti-competitive and anti-ratepayer of these provisions, ESPs. Doing so will properly rebalance the interests of Ohio's Electric Distribution Utilities (EDUs), other market participants, and the state's ratepayers, thus furthering the state's successful transition to a more fully competitive retail electricity market. What is more, ESPs are an outdated regulatory tool no longer needed now that the EDUs have moved into compliance with the requirements of Ohio law by divesting their generation assets.

Lower average electricity prices should translate to lower electric bills on average for Ohio families and businesses, but the ESP statute has time and again led to routine rate increases for the EDUs. This results in ratepayers having to pay more than they otherwise would be for their electricity. Ohio's experience has demonstrated that rider after rider has been continually layered onto Ohio ratepayers' electric bills to the point where the retail price they pay is no longer reflective of the true cost of delivering electricity to homes and businesses in Ohio. This legislation is a major step toward limiting the EDUs' ability to routinely adjust the rates paid by consumers of all types, while also helping to stabilize the price that ratepayers pay for electric utility service.

ESPs, which were initially touted as mechanisms that would protect ratepayers from significant rate increases, have resulted in the exact opposite. EDUs now charge customers prices for electricity generation that do not reflect their costs as the process allows them to raise rates on favorable terms.

Distribution rate cases, however, ensure that all potential rate increases are properly scrutinized as a cost-benefit analysis is conducted during those proceedings on behalf of ratepayers as to the merit of potential future rate increases. The only true manner in which to ensure that ratepayers are being fairly charged for the provision of safe, reliable, adequate electric utility service is through conducting regular distribution rate cases. Each EDU would be required to undergo at least one distribution rate case every five years under the terms of this bill.

The ESP process has effectively become a recurring settlement negotiation between various interested parties and PUCO Staff where they consider a wide range of proposals and their associated costs on a one-off basis. Many of the proposals have absolutely nothing to do with securing the lowest competitive market price available for SSO supply and are well outside the statutory framework established by SB 221. What is more, SB 221 explicitly gave the EDUs veto authority over the ESP process, whereby they can unilaterally withdraw any ESP with which they are not satisfied. It is unconscionable that a regulated entity has the express legal means to overrule its regulator to the detriment of Ohio customers and all other parties that have standing in rate matters before the PUCO.

Consequently, rather than a clean, straightforward, market-based approach to securing reliable electric service for SSO ratepayers, the ESP process is instead a muddled conglomeration of distribution and supply related costs, and other unrelated proposals, all of which are to the benefit of the EDU. The right mechanism for dealing with non-supply issues is a distribution rate case where the proper level of examination is given to all EDU costs associated with the distribution rates that will ultimately be borne by ratepayers. This is the longstanding means of ensuring EDUs earn an adequate return for necessary investments in their systems that are just and reasonable.

Moreover, EDUs will more closely monitor their expenses when they are required to justify them on a regular basis as opposed to continually avoiding distribution rate cases for long periods of time. Also, EDU cost structures by necessity will have to become more efficient and reflective of their current posture as they will no longer receive near automatic adjustments to their various riders through the ESP process. The distortion of the ESP process to add literally dozens of riders to ratepayer bills has disguised the actual cost of providing the SSO and allowed the EDUs to avoid regular distribution rate cases for decades. This bill will correct that and provide transparency to consumers and regulators alike as to the actual cost of service.

Rather than relying on riders, EDUs investing in grid modernization and other system improvements would have every incentive to file regular distribution rate cases to capture the value of and earn a return on those investments, while also being more transparent with ratepayers about the real impacts of those investments on their electric bills. The information provided within a distribution rate case proceeding by the EDUs to the PUCO for evaluation and a determination as to what is just and reasonable is completed using reasonably current information for the time period in question and thus, yields the most accurate, fair results for the EDUs and ratepayers alike.

As the bill continues to progress forward, our group supports the following specific provisions:

- Prohibiting EDUs from owning or operating an electric generating facility, other than a “Legacy Generation Resource” or a mercantile customer-sited renewable energy resource.
- Requiring an approved Standard Service Offer Plan (SSOP) to have a minimum term of three years and a maximum term of five years.
- Reducing drastically the number and types of “interim distribution mechanisms” (IDMs), formerly referred to as riders, for which EDUs may recover costs from their distribution customers via a SSOP.
- Capping the amount an EDU can collect through an IDM at 4% of its base distribution revenue requirement previously approved by the PUCO and requiring each IDM is trued up annually.
- Prohibiting the PUCO from authorizing more than three IDMs for an EDU in effect at any time.
- Requiring that EDUs must file a distribution rate case at least once every five years.
- Accelerating and streamlining key timelines associated with the distribution rate case process to expedite the issuance of a final opinion and order by the PUCO.
- Prohibiting an EDU or its affiliate to induce any party to a PUCO proceeding to enter into a settlement of a matter pending before the PUCO and from making a cash payment to that party or entering into any agreement or any financial or private arrangement with that party that is not made part of the public case record.
- Requiring a Competitive Retail Electric Supplier (CRES) to provide the PUCO with reasonable financial assurances sufficient to protect customers and EDUs from default in order to be certified.
- Requiring a Competitive Retail Natural Gas Supplier (CRNGS) to provide the PUCO with reasonable financial assurances sufficient to protect customers and Local Distribution Companies from default in order to be certified.
- Requiring CRES and CRNGS to provide their customers with written notifications prior to a contract expiring and before a fixed rate converts to a variable rate.
- Creating a definition for “small commercial customer.”

Including the aforementioned provisions in the bill will drastically improve upon the status quo with respect to the state’s electric regulatory environment, and greatly enhance the pro-competition and pro-customer aspects of Ohio’s competitive retail electricity market.

Additionally, we applaud reinsertion of the provision that was inadvertently removed in Sub. SB 102 prohibiting an EDU from using an electric energy storage system to participate in the wholesale market if the EDU purchased or acquired that system for distribution service.

In order to further improve the legislation, we would also recommend reinserting the provision removed in Sub. SB 102 requiring the PUCO to consider proper allocation of all direct and indirect costs associated with procurement of the SSO between shopping and non-shopping customers.

Accordingly, the Alliance urges the Ohio Senate to act on behalf of Ohio’s citizens and businesses to pass Sub. SB 102. Making this long overdue fix will enhance the state’s competitive retail electricity market,

level the playing field for other market participants, and protect ratepayers from incurring any further unnecessary non-supply related charges.

We appreciate this opportunity to submit written proponent testimony on Sub. SB 102 and look forward to continuing to work with the bill sponsor and the Committee to make this legislation as strong as possible. As always, please do not hesitate to contact us if you have any questions or would like further information regarding this document or the Alliance for Energy Choice.

The logo for the Alliance for Energy Choice features the text "Alliance for Energy Choice" in a green serif font. A yellow and orange swoosh underline is positioned beneath the text.

The Alliance for Energy Choice membership currently includes The Electric Power Supply Association, NRG, and Vistra Energy.