

**TESTIMONY OF ROBERT KELTER  
ENVIRONMENTAL LAW AND POLICY CENTER  
OHIO SENATE ENERGY AND PUBLIC UTILITIES COMMITTEE  
IN SUPPORT OF SB 102  
TUESDAY, DECEMBER 5, 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, Minnesota, 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 Electric Security Plan (ESP) cases in Ohio. Thus, our testimony today brings that knowledge of both how Ohio operates and how other states handle these issues.

Before I get into the substance of my testimony today, I want to say something about the complaints I've heard about this bill from the detractors. It's not a perfect bill, it doesn't go as far as I would like in changing the system. But, it certainly represents a major improvement over the current framework and we urge the Senate to pass it.

In order to properly understand the implications of SB 102, I think it's important to understand the utilities' business model, which will help explain the need for reform of the ESP cases. 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 for building a reliable system, 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 based on a test year, and determines how much money the utility recovers from customers each year. Once it determines that amount, it divides by the number of kilowatt-hours (kWh) 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, the utilities actual costs change. Some things the utilities do cost less than they estimated, and some cost more. The theory is that all those increases and decreases balance each other out for a while, and then when expenses increase enough a utility comes in for a rate case.

The utility chooses if and when to come in for a rate case. Technically, the Commission could bring a utility in if it believes it's overearning, but in reality it never does so. This is not only true for the PUCO, it's true for all state Commissions. 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 for rate cases 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).

Highlighting the importance of this issue, as we all know, yesterday the U.S. Attorney finally indicted former PUCO Chair Sam Randazzo. And a major part of the bribery scheme involved FirstEnergy's desire to avoid coming in for a rate case. In fact, in 2019 FirstEnergy asked Chair Randazzo to fix an order in a previous case to undo an ESP settlement requiring it to come in for a rate case in 2024. The U.S. Attorney's release yesterday states:

It is alleged that in November 2019, Randazzo included language in a PUCO Opinion and Order that would address an issue for the energy company that was slated to happen in 2024. *"Stock is gonna get hit with Ohio 2024. Need Sam to get rid of the 'Ohio 2024 hole,"* an energy executive text message read. Another executive messaged, in part: *"I spoke with Sam today. Told me 2024 issue will be handled next Thursday."* The next Thursday, the PUCO decision included language alleviating the 2024 issue.

This bears repeating, **in 2019 one of FirstEnergy's top priorities was avoiding a rate case in 2024.** This speaks for itself.

The 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 add to its Distribution Investment Rider by \$ 226 million in 2025, \$ 256 million in 2026 and \$ 286 million in 2027 – and this is a settlement with Staff that significantly reduced AEP's original proposal. The Commission still reviews the grid investments for prudence, 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.

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 Senator Romanchuk's bill does, 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.

I want to close today, with a quote from Commissioner Dan Conway who used to represent AEP in private practice before joining the Commission:

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).

In the final analysis here, I hope we don't lose sight of the importance of addressing a major flaw in the system because this bill isn't perfect. The primary question should be, "does this version of SB 102 improve the system for customers?" And ELPC believes that the answer to that question is clearly **yes**. Thank you and I'm happy to answer any questions.