



**Before
The Ohio Senate
Public Utilities Committee
Testimony on Senate Bill 310**

**By
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April 30, 2014**

Chairman Seitz, Vice Chairman LaRose, Ranking Minority Member Kearney, and members of the Senate Public Utilities Committee, thank you for allowing testimony on this Bill that affects Ohio's 4.2 million residential electric customers.

I am Bruce Weston, the Ohio Consumers' Counsel. I thank the Chairman and Members for the process on these issues.

For your consideration, I recommend a number of revisions to the Bill, for purposes of consumer protection. My recommendations are:

1. Thaw the freeze. I appreciate, in concept, the idea of a Study Committee. It would be preferable, however, to not freeze the energy efficiency and renewable benchmarks while the study of the benchmarks is in progress.

Any changes to the 2008 energy law could be made after the Study Committee completes its report.

2. The study of Senate Bill 221 could incorporate some of the format of the study of the Florida energy efficiency law by the Florida Legislature. The Florida study included an analysis by a separate entity that took input from stakeholders.
3. The scope of the study (of Senate Bill 221) should be broadened to include the examination of other issues in the 2008 energy law that tilt the balance of ratemaking in favor of Ohio's electric utilities and against Ohio's electric customers.
4. If shared savings are allowed, then the electric utilities should be restricted to charging customers for shared savings on the energy efficiencies that exceed the statutory benchmarks. This restriction should apply to protect customers even if benchmarks are eliminated and the utilities continue to offer programs. And shared savings, if allowed, should be capped at a level to protect customers.
5. The Bill should protect consumers from paying so-called "lost" transmission and distribution revenues to electric utilities.
6. The Bill's requirement to list the costs of benchmark compliance on customers' electricity bills should be expanded to include listing the benefits of energy efficiency programs.
7. Consumers should be protected from paying charges while the Ohio Supreme Court decides if those charges are lawful and reasonable.

1. The Freeze (and Related Matters)

In lines 530 through 534, the cumulative energy efficiency benchmark is frozen at 4.2 percent. This provision of Senate Bill 310 is premature. That is, Senate Bill 310 freezes the cumulative energy efficiency mandate at 4.2 percent prior to the completion of any study that could determine whether a freeze or other action is warranted. Similarly, the Bill freezes the renewable energy benchmark at 2.5 percent. The benchmarks should continue during the study as in current law.

Continuing the energy efficiency benchmarks during the study can also be justified by the benefits of the programs. For example, Dayton Power & Light stated that: “In keeping with the energy efficiency goals of Ohio Senate Bill 221, DP&L launched a series of energy-efficiency programs in 2009 designed to help customers save energy and money. DP&L believes that these efforts to-date have been a success.”¹

It should be noted that the 2008 law allows the Public Utilities Commission of Ohio (PUCO) to act if the benchmarks need to be revised. R.C. 4928.66(A)(2)(b)) allows the PUCO to amend annual benchmarks if a utility cannot “reasonably

¹ *In the Matter of the Application of The Dayton power and Light Company for Approval of Its Energy Efficiency and Peak Demand Reduction Program Portfolio Plan for 2013 through 2015*, PUCO Case No. 13-833-EL-POR et al., Portfolio Plan (Apr. 15, 2013) at 5.

achieve the benchmarks due to regulatory, economic, or technological reasons beyond its reasonable control.”

While the PUCO has this authority to change the benchmarks, some have expressed an interest in changing the energy efficiency benchmarks in the law. In this regard, the benchmarks could be revised to eliminate the two percent annual increases that commence in 2019 and limit increases to one percent per year.

2. The Study

Lines 679 to 743 of the Bill create an “Energy Mandates Study Committee” to study Ohio’s renewable energy, energy efficiency, and peak demand reduction mandates. This review process could be improved by having a separate entity review and report on Senate Bill 221, with the input of the stakeholders.

In 2012, the Florida Legislature directed the Florida Public Service Commission in consultation with the Florida Department of Agriculture and Consumer Services, to contract for an independent evaluation to determine whether Florida’s energy efficiency law remained in the public interest.² To gain a “fresh, independent” look at their law, the Florida Legislature selected the research consortium of the

² See http://warrington.ufl.edu/centers/purc/docs/FEECA_FinalReport2012.pdf, Evaluation of Florida’s Energy Efficiency and Conservation Act (hereinafter “FEECA Evaluation Report”) at 1.

University of Florida’s Public Research Center and Program for Resource Efficient Communities, and the National Regulatory Research Institute to conduct the evaluation.³ As part of the study, several focus groups were convened to identify the range of issues and concerns that different stakeholders might have concerning the law.⁴

3. The Scope of the Study

Senate Bill 310, on lines 679 through 743, proposes that the “Energy Mandates Study Committee” review Ohio’s energy efficiency and renewable energy standards, and conduct a cost-benefit analysis. The scope of the study should be broadened to examine ratemaking issues in Senate Bill 221 that tilt the balance of ratemaking against Ohio’s electric consumers and in favor of electric utilities. In the first Attachment to this testimony, there is a list and discussion of recommendations by the Consumers’ Counsel and the Ohio Manufacturers’ Association. These are recommendations for improving the 2008 energy law to protect customers of electric utilities. While these issues would be appropriate for study, these issues would also be appropriate for addressing right now in this Bill for revising the 2008 law.

³ FEECA Evaluation Report at 4.

⁴ FEECA Evaluation Report at 7.

4. Limiting or Eliminating Charges for Shared Savings

If shared savings are allowed, then the electric utilities should be restricted to charging customers for shared savings on only the energy efficiencies that exceed the statutory benchmarks. This restriction should apply to protect customers even if benchmarks are eliminated and the utilities continue to offer programs. And shared savings, if allowed, should be capped at a level to protect customers. In this regard, the Industrial Energy Users-Ohio recently described (in testimony before this Committee) AEP-Ohio's shared savings award as a "bounty." And the Industrial Energy Users-Ohio also expressed concern that Senate Bill 310 would automatically extend the cost recovery associated with utilities' currently approved portfolio plans (including shared savings) beyond their expiration dates.⁵ We share this concern. And we are concerned that the Bill could allow utilities to extend the period of settlements that we and others negotiated with utilities, when the settlements by their terms do not provide for extension.

5. Limiting or Eliminating Charges for Lost Revenues

A mechanism for lost distribution or transmission revenues allows a utility to charge customers for the revenues it does not collect when customers save money through the utility's energy efficiency programs. Instead of lost revenue

⁵ Reforming Ohio's Portfolio Mandates Senate Bill 310, IEU-Ohio Testimony of Sam Randazzo, (April 8, 2014) at 8 and 9.

collection, decoupling programs should be considered, which provides a more fair result for consumers.

6. Information for Customers on Utility Bills

Senate Bill 310, on lines 653 through 676, requires the itemization of costs for energy efficiency and renewable energy on customers' bills. Customers' bills should also inform customers that energy efficiency programs can yield savings.

7. Consumers should be protected from paying charges while the Supreme Court decides if those charges are lawful and reasonable.

The law should provide residential customers protection from paying charges as part of their utility bills while the Supreme Court of Ohio decides whether those charges are lawful and reasonable. For example, last February, AEP was permitted to keep \$368 million (plus carrying charges) that it had collected from customers from 2009 to 2011 even though the Supreme Court determined that AEP's original rate proposal was unjustified. (The second attachment to this testimony is a news story on this subject.) A legislative solution, specific to the Consumers' Counsel, could be made by clarifying R.C. 2505.12 to provide for a stay of utility charges without the posting of a bond in our appeals of PUCO decisions. R.C. 2505.12 exempts the State from giving a bond in connection with appeals. (We believe that this statute should already exempt the Consumers' Counsel from a requirement to

post a bond.) Current law (R.C. 4903.16) requires a bond to obtain a stay of a PUCO order by the Supreme Court. The Consumers' Counsel, a state agency, does not have the resources to post such a bond. This imbalanced process for staying PUCO orders, where utilities can obtain stays and we cannot, should be cured by the Legislature.

Ohioans are already paying more on average for electricity than residential consumers in 32 other states.⁶ Ohio can do better for consumers, and improvements to Senate Bill 221 can help reduce electricity costs for consumers.

That concludes my testimony. Thank you again for the opportunity to make recommendations on issues important to Ohio's electric consumers.

⁶ See U.S. Energy Information Administration, EIA Electric Power Monthly with Data for August 2013 (October 2013) at 119, Table 5.6B (http://www.eia.gov/electricity/monthly/current_year/october2013.pdf).



Priorities for Improving Senate Bill 221 to Protect Customers of Electric Utilities

Senate Bill 221 (SB 221) contains some provisions that tilt the balance of ratemaking against Ohio's electric customers and in favor of electric utilities. Here are six ways to bring more balance to SB 221 for Ohio customers:

- 1. Problem:** Under SB 221, a utility is not required to refund excessive profits to customers. Only if the utility's profits are deemed "significantly excessive" is the utility required to refund the amount of over-earnings to its customers.

Consumer Protection: Modify the language of SB 221 to require any utility that earns "excessive" profits to refund to customers the full amount of any excess profits – not just those deemed "significantly excessive."
- 2. Problem:** SB 221 permits a utility to effectively "veto" PUCO orders in an electric security plan (ESP) case.

Consumer Protection: Eliminate the provision in SB 221 that grants a utility the privilege to withdraw its application for an electric security plan if the PUCO modifies the plan.
- 3. Problem:** SB 221 allows a utility to include above-market, nonbypassable generation/stability charges (e.g., rate stabilization charges, provider of last resort charges) in an electric security plan even though the utility is or will be operating in a competitive marketplace for generation.

Consumer Protection: Modify the language of SB 221 to expressly prohibit utilities from collecting above-market, nonbypassable generation/stability charges from customers.
- 4. Problem:** The electric security plans permitted under SB 221 are not needed. These plans allow utilities to charge for costs other than market prices for generation at a time when Ohioans should be benefitting now (14 years after the 1999 enactment of Senate Bill 3, Ohio's electric restructuring legislation) from the current low market price for electricity.

Consumer Protection: Eliminate the SB 221 language that allows utilities to file electric security plans.
- 5. Problem:** SB 221 prescribes as the standard for PUCO approval of an electric security plan that its pricing and other terms and conditions be "more favorable in the aggregate" than the expected results that would apply otherwise. PUCO consideration of qualitative factors (not just quantitative factors) means that utilities can more easily obtain approval of their plans.

Consumer Protection: Modify the language of SB 221 to explicitly limit the "more favorable in the aggregate" test to solely quantitative factors.
- 6. Problem:** Under SB 221, an electric utility is allowed to keep what it already charged and collected from customers even after the Ohio Supreme Court finds the charges to be unjustified.

Consumer Protection: Modify the language of SB 221 to give customers the same financial protection a utility can obtain during the appeals process. This change will allow customers to obtain a refund of utility charges they paid when the Ohio Supreme Court reverses a PUCO order and finds such charges to be unjustified.

New law sought for utility rebates Needed after supreme court allowed AEP to keep unwarranted charges

Feb. 15, 2014 |

Written by

[Russ Zimmer](#)

Ohio's residential utility consumer advocate wants the Legislature to pass a law that would give regulators the ability to recover overpayments to utilities.

The push comes in response to Thursday's Supreme Court of Ohio ruling that allowed American Electric Power to keep \$368 million that it collected from customers between April 2009 and May 2011 for a charge the company couldn't justify to either the court or the Public Utilities Commission of Ohio.

PUCO declined in October 2011 to order AEP to return that money to its customers — in the form of reduced future charges — because the commission believed it lacked the authority to do so. On Thursday, the high court agreed.

In a dissent to the 5-2 opinion, Justice Paul Pfeifer called for the 1957 case that established the no-refund policy to be overturned. If the justices wanted to do that, however, they could have in Thursday's ruling, which leaves the Ohio General Assembly as a possible remedy.

One of the defeated parties in the Supreme Court case, the Office of the Ohio Consumers' Counsel, thinks state legislators should step up and pass a law that would expressly make refunds of excessive charges acceptable.

A legislative solution could be as simple as eliminating the legal requirement that necessitated a cash bond from the consumers' counsel to stop collections of AEP's charge while its validity was being determined by the courts, according to the counsel's spokesman, Marty Berkowitz.

In Justice Judith Ann Lanzinger's opinion for the majority, she writes that, if the counsel had sought a stay in April 2011, most of the charges that AEP's customers paid could have been avoided. The consumers' counsel, a publicly funded agency, believes that requirement is onerous for a party with limited means, Berkowitz said.

"This imbalanced process for refunds, where utilities have more protection than customers, should be cured by the Legislature," said Marty Berkowitz, spokesman for the consumers' counsel.

AEP spokeswoman Terri Flora on Thursday said she could understand why customers might regard the ruling as unfair but that the company still thinks the original charge was justified. Legislators are mostly taking a measured approach to the news.

Sen. Troy Balderson, R-Zanesville, a member of the Senate Public Utilities Committee whose district is mostly within AEP territory, said he needed to review the case before commenting.

A spokesman for House Republican leadership said House Speaker William Batchelder would want to discuss the issue within the party before taking a position. Gov. John Kasich, through a spokesman, also declined to wade into the issue immediately.

Members of the minority party in the Ohio House, however, pledged they would look into the issue.

“We will continue to explore legislative ways to protect consumers and to ensure that the PUCO will take a fair approach to balance consumer and utility interests — especially when customers are unfairly charged,” said Jordan Plottner, who speaks for the Ohio House Democratic Caucus.

From 2010 through the end of January, AEP has given more than \$500,000 in campaign contributions to the Republican and Democratic parties as well as the Ohio Supreme Court and state legislative and executive branch candidates, according to data kept by the Ohio Secretary of State’s Office. Records from the Ohio Lobbying Activity Center show the company has 10 lobbyists registered to meet with Ohio legislators on its behalf.