



**Before  
The Ohio Senate  
Energy and Natural Resources Committee**

**Testimony on Substitute House Bill 114  
by  
Christopher Healey**

**On Behalf of the  
Office of the Ohio Consumers' Counsel**

**June 20, 2018**

Hello Chair Balderson, Vice-Chair Jordan, Ranking Minority Member O'Brien, and members of the Committee. I am Christopher Healey, an attorney for the Office of the Ohio Consumers' Counsel, where my focus is on consumer advocacy regarding alternative energy. Consumers' Counsel Weston thanks Chair Balderson and the Committee for this opportunity to testify. The issues in this Bill affect millions of Ohio electric customers.

Energy efficiency is a good thing, which consumers can implement on their own or through utility programs. The Ohio Consumers' Counsel first testified on HB 114, in the House, on March 21, 2017. Our position then, as now, is that legislation should protect Ohio utility consumers from paying too much for utility energy efficiency programs. And legislation should protect consumers from paying too much for PUCO-authorized utility programs regardless of whether the programs are mandated or voluntary. Legislation should also protect Ohio utility consumers from paying too much for renewable energy.

**Energy Efficiency**

For energy efficiency, the bill should limit utility charges for profits (shared savings). As IGS testified on June 6, 2018, profits and various other charges are not providing program benefits to customers (which IGS described as “non-energy efficiency items”). IGS also testified that the cost of utility advertising and marketing should not be charged to consumers unless the ad references a specific energy efficiency program that consumers can use. That is a good point, and consumers should not have to pay for image advertising by utilities that want to market themselves as green.

A particularly costly effect for consumers can result from so-called “banking,” where utilities are allowed to bank kWh savings and apply those savings toward achieving or exceeding requirements in future years. To illustrate, Bill lines 1181-1188 could allow a utility to cancel all of its energy efficiency programs yet still charge consumers for profits in future years by using the banked savings. For consumer protection, we recommend that you remove these lines from the Bill.

We also recommend that you remove lines 1189-1197 from the Bill. Those lines provide a guarantee that utilities will profit from energy efficiency programs. At most, there should be an opportunity for profit—and charges to consumers for those profits should be limited. Whether to provide an incentive to utilities for more energy efficiency should remain at the discretion of the PUCO, as it is currently.

Next, we recommend amending the Bill to establish an annual limit of 4% (or less) of utility revenues, applicable to each utility, on the amount the utility’s consumers pay for energy efficiency programs. At a minimum, we recommend amending the Bill to grant the PUCO the authority to impose a limit on energy efficiency charges to consumers. This change is needed because FirstEnergy and environmental groups have appealed a PUCO order setting a limit (4% of revenues) on FirstEnergy’s charges to consumers for energy efficiency. It is claimed in the appeals that the PUCO lacks the authority to limit the charges (though we believe the PUCO has such authority).

We also recommend that lines 1033-1046 be removed from the Bill. These lines allow electricity marketers to be paid rebates from electric utilities for energy efficiency appliances that the marketers provide to their customers, instead of those rebates going directly to the customer. For consumer protection, all utility rebates that are funded by customers should be paid directly to customers.

Finally, we thank the Committee for its consumer protection in removing Section 7 from the House-passed version of the Bill (lines 2551-2565 in the House Bill). The deleted provision relates to the use of funds from the federal Home Energy Assistance Program, known as HEAP. Most HEAP funds are for bill-payment assistance to keep the neediest Americans (and Ohioans) connected to their essential energy utility services. The deleted provision would have taken money away from this vital bill-payment assistance and reallocated even more funding for low-income weatherization.

Weatherization, while helpful, does not ensure that an at-risk Ohioan will have the money to pay the utility to avoid disconnection, such as during the winter heating months. The risk of disconnection to public health and safety is reflected in the tragic deaths of two Ohioans in 2011, after their electric service was disconnected. It also should be noted that this issue was recently addressed with language in Section 259.80 of Amended Substitute House Bill 49 (the budget bill). We commend you for this important change to protect our neediest fellow Ohioans.

### **Renewable Energy**

Similar to how consumers get charged for energy efficiency programs, utilities charge customers for renewable energy through riders on their monthly bills. The House-passed version of the Bill (at lines 1352-1367) provided a limit on the amount that a utility could charge customers for renewable energy. The House-passed limit was a good consumer protection, and would improve the 2008 energy law, which the utilities view as giving them the discretion to charge more than a limit. To illustrate the need for a limit, FirstEnergy at one point charged consumers more than 15 times the

highest price paid anywhere else in the country for renewable energy credits. We recommend that the limit on charges to consumers be re-introduced into this Bill.

Finally, we recommend a consumer protection regarding refunds of improper utility charges for renewable energy. In this regard, the PUCO found that \$43 million of FirstEnergy's charges for renewable energy were imprudent. But FirstEnergy was able to keep the money after it appealed and obtained a ruling by the Supreme Court of Ohio that the refunds were not permissible.<sup>1</sup> The Bill should fix this unfairness for consumers by enabling refunds for renewable energy overcharges (or by enabling refunds of any improper charges).

Again, I thank the Committee for this opportunity to testify for consumer protections.

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<sup>1</sup> See *In re Ohio Edison Co.*, 2018-Ohio-229 (Jan. 24, 2018).