

**TESTIMONY OF ROBERT KELTER
ENVIRONMENTAL LAW AND POLICY CENTER
OHIO SENATE ENERGY COMMITTEE
INTERESTED PARTY SB 2
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Good morning Chair Chavez, Vice Chair Landis, Ranking Member Smith and members of the committee. My name is Robert Kelter and I'm a managing 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, 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 rate cases and several ESP cases in Ohio. Thus, our testimony today brings that knowledge of both how Ohio operates and how other states handle these issues.

ELPC strongly supports eliminating the ESP cases and riders. In order to properly understand the implications of SB 2, I think it's important to understand the utilities' business model, and how regulation has worked in Ohio compared to other states. Hence, I want to go over a few background issues that I hope will add helpful perspective to this discussion.

In exchange for serving customers as monopolies, utilities are subject to regulation by the PUCO. One of the most important duties the Commission has is setting the rates. The law allows the utilities to recover prudently incurred costs 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, and determines how much money the utility recovers from customers each year. Once it determines that amount, it divides by the number of kilowatts 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, it will either be overearning or under earning each year based on its actual sales to customers and its actual costs of providing service. At any given time, if the utility's sales go down or its costs go up it can come in for a new rate case. The utility chooses when to come in for a rate case and controls this process. Technically, the Commission could bring a utility in if it believes it's overearning, but it never does so. This is not only true in Ohio, it's true in all states.

Under current Ohio law, if a utility wants to build a new project, it doesn't need to expose itself to the comprehensive analysis of its costs and revenues the Commission does in a rate case— it just adds riders in its Electric Security Plan (ESP) cases.

The utilities can recover costs for their projects through riders attached to customers' bills that merely add new costs without examining the utility's overall profits. The simplest example of this is that a utility wants to upgrade its grid with smart meters, and it proposes a plan to give all 1.5 million of its customers smart meters over a three year period. It comes in for an ESP case and tries to recover the costs through a rider. And when it does that, the Commission doesn't consider any of the utility's other costs and revenues. For example, once you have digital meters that report customer usage to the utility without needing a meter reader to come out to the customer's home the utility doesn't need all the meter readers, truckers, etc. that it used to need. Not only that, but maybe the utility has cut its costs in other areas. Maybe it was able to cut costs on tree trimming.

In a rate case, the Commission can give the utilities the kind of comprehensive review that ensures customers' rates truly reflect the utility's costs. And this is the part the utilities really don't like. Current Commissioner Dan Conway has explained the importance of periodic reevaluations of a utility's potential profits as follows:

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). And to be clear, this was a 2019 case involving FirstEnergy's Distribution Modernization Rider, where FirstEnergy wanted to get rid of a rate case that wasn't scheduled for another five years.

While SB 2 does not allow riders on customers' bills, it creates a loophole for utilities in Section 4909.47 by allowing for "mini rate cases." Like riders, the mini rate cases allow utilities to recover costs for major new projects without considering important savings factors. Moreover, the language sets no limits or parameters other than allowing the utility to collect capital expenditures for "economic development purposes." This vague standard creates a way for utilities to add unlimited costs to customers bills and the Senate should eliminate the mini rate case or strictly limit it in terms of dollars and types of projects.

Also, on the positive side of this bill, I want to note that the bill has an important fix to a problem that many customers who shop for electricity on the competitive market face.

Often times competitive suppliers offer customers a fixed price for a term of a few months and then adjust the price to a “market rate.” Few customers understand what this means, and the market rate can lead to a significant price increase, even doubling bills. SB 2 requires the competitive suppliers to give customers at least two notices of a pending price adjustment, so that they can shop again or return to the utility for a lower rate.

Before I close today, I want to talk about something this bill doesn’t do. At a time when PJM capacity prices are increasing, in addition to increasing supply from new plants we should be taking steps to encourage utilities to run programs to help reduce demand for electricity. Energy waste reduction programs offer customers discounts and rebates on energy efficient products and appliances that help customers reduce their usage. This translates to Ohio needing less generation and fewer power plants. It also means lower costs for customers because reducing demand is cheaper than generation. In fact, an overlooked provision of the current ESP law SB 2 eliminates, allows utilities to do energy efficiency in ESP cases.

The House passed HB 79 last session, which would have meant new and improved energy efficiency programs for Ohioans. That bill never got a vote in the Senate, but the Senate should revisit the demand reduction issues in the current version of SB 2. Reducing demand is cheaper than building new plants and making new grid investments and should be part of the mix. Thank you for your consideration of these important issues.