

# Electricity Ratemaking Reforms To Protect Consumers

The successes of Ohio's transition to a competitive market for electricity generation are now documented. They include billions of dollars in savings for standard-offer consumers, governmental aggregation and other shopping consumers, numerous robust new natural gas-fired generation plants planned and coming online, and more than adequate reserve margins for reliability as determined by the Regional Transmission Organization, PJM Interconnection.

Nonetheless, there are some ratemaking provisions in current law that are anti-competitive or unfair—and bad for consumers and Ohio's economy. A broad-based coalition of electricity consumers is working with legislators to resolve the concerns outlined in this document and thereby improve outcomes for consumers and for Ohio. The legislative solution we seek is enactment of House Bill 247 (Romanchuk, R-Ontario), which was introduced in the Ohio General Assembly on May 24, 2017.

## **PROBLEM #1: Customers Are Denied Refunds for Charges That Are Later Determined to Be Improper.**

Current law allows a utility to keep what it has collected from customers, even if the Supreme Court of Ohio determines the charges were improper.

**SOLUTION:** House Bill 247 would allow refunds to customers for all charges that are later found to be improper by the Supreme Court of Ohio or other authority.

## **PROBLEM #2: Utility Charges to Customers Under Electric Security Plans (ESPs)**

The ESPs, allowed in the 2008 energy law (SB 221), are enabling utilities to request of the Public Utilities Commission of Ohio (PUCO) customer charges that exceed market prices. The result: Ohioans may not benefit from the lower electric bills that should flow from the lower prices in competitive electricity markets. In Ohio's competitive electricity market, ESPs—essentially, rate plans for the supply and demand of electric generation—are unnecessary and should be eliminated. Instead, a market-based option should be used to price service to customers.

Eliminating ESPs will fix a number of provisions that are unfair and costly to Ohioans under current law, including the following:

- **Utilities Are Not Required to Refund Customers All of the Utilities' Excessive Profits.** Even if the PUCO determines that a monopoly electric utility has "excessive" profits, the utility is not required to return the excess profits to customers. Only if the utility's earnings are deemed "significantly excessive" is the utility required to refund the significantly excessive portion of profits to its customers.
- **Customers Are Charged for Non-Generation Charges in an ESP.** Utilities use ESPs to set the price of the standard service offer to customers. However, the law also permits a utility to propose additional distribution-related charges in an ESP. Utilities have used the law to collect a number of so-called distribution charges from customers through non-bypassable riders. (That is, customers cannot "shop around" charges that are non-bypassable.) But some of these riders have nothing to do with distribution service. For example, FirstEnergy

AARP

Ohio Farm Bureau

The National Federation of Independent Business/Ohio

Northeast Ohio Public Energy Council (NOPEC)

Office of the Ohio Consumers' Counsel

Ohio AgriBusiness Association

The Ohio Cast Metals Association

Ohio Chemistry Technology Council

Ohio Hotel & Lodging Association

The Ohio Manufacturers' Association

Ohio State Grange

was granted a “distribution modernization rider” to provide credit support to the corporation without a requirement to spend the consumers’ payments on distribution modernization. That is not the way a competitive, free-market system should work.

- **Customers Are Not Protected from Paying Too Much for Service Under an ESP.**

One consumer protection in the 2008 law provided that ESPs could not be approved unless the result is “more favorable in the aggregate” to customers when compared to the expected results from the market-rate option. But the PUCO has been considering both quantitative and qualitative factors to determine if the ESP is more favorable in the aggregate than a market rate—and the Supreme Court of Ohio has declined to prohibit the PUCO’s approach. The consideration of qualitative factors can allow above-market charges, and that has undermined the consumer protection that prices in ESPs should compare favorably to market prices.

- **Utilities Can Veto Any PUCO-Ordered Modification to Their ESPs.** If a utility doesn’t like a PUCO ruling that modifies its proposed ESP, the utility can withdraw its application. In effect, the 2008 law gave the utilities—but no other stakeholder—veto power in ESP cases. This is a decidedly anti-customer policy.

**SOLUTION:** House Bill 247 would eliminate language in Ohio law that permits utilities to file ESPs, which would eliminate above-market charges to customers now allowed in ESPs. Utilities then would provide customers the standard service offer through a competitive bidding process. Utilities’ distribution rates would continue to be set through distribution rate cases by the PUCO. This approach would allow the PUCO to review all expenses and revenues when a utility seeks a distribution rate increase, instead of the current approach that allows utilities to add charges to customers’ electric bills using single-issue riders.

### **PROBLEM #3: Customers Are Not Protected from Subsidizing the Operations of a Utility’s Corporate Affiliate.**

Prior to the 1999 deregulation law (Amended Substitute Senate Bill 3, enacted with strong bipartisan support), utilities owned and operated generation plants. SB 3 changed that, prohibiting utilities from owning generation. Rather than complete divestment of the generating plants, however, several of the utilities spun off the assets to a corporate affiliate. In recent years, the utilities have used the poor financial performance of their unregulated generation affiliates to seek above-market charges from captive customers.

**SOLUTION:** House Bill 247 would protect Ohio customers from new and expanded above-market charges by clarifying that Ohio’s 1999 deregulation law means utilities and their affiliates cannot own generation.

The forgoing proposals will protect consumers by restoring balance in the ratemaking process through repeal of unfair provisions in the 2008 law and making other changes. The proposals will prevent anti-competitive results from the law. And, limiting above-market charges will free up money for business expansion and job creation, spurring Ohio’s economy.