Testimony of Leigh Herington

Regarding H.B. 247

Before the Ohio House Public Utilities Committee

December 5, 2017

Chairman Cupp, Vice-Chairman Carfagna, Ranking Member Ashford and members of the Ohio House Public Utilities Committee. My name is Leigh Herington. I come before you today on behalf of the Northeast Ohio Public Energy Council ("NOPEC"). NOPEC is a non-profit council of governments that provides retail electricity and natural gas aggregation service to customers in about 220 communities throughout 14 counties in Ohio. NOPEC serves approximately 500,000 residential and small business electricity customers who have saved over $275 million dollars in the past sixteen years through governmental aggregation supplied by NOPEC. NOPEC serves aggregation customers who receive their electric distribution service from The Cleveland Electric Illuminating Company ("CEI"), Ohio Edison Company ("OE") and AEP Ohio.

I am testifying today in support of H.B. 247, which would address serious shortcomings in current Ohio utility ratemaking which have resulted in higher than necessary electric rates to NOPEC customers.

I had the honor of serving in the Ohio Senate at the time electric deregulation became the law of Ohio in 1999. I also had the honor of serving as one of the seven members of the legislature who worked on Senate Bill 3 for 18 months before its passage.

At the time of SB 3's passage, most of us had no idea of the positive impact that electricity deregulation would have on the residents of the State of Ohio. And I want to thank you all for staying the course on promoting deregulation and opt-out governmental aggregation which has benefited residential customers and small businesses throughout the state in ways that would not have been possible without deregulation.

It was not until recently, however, that we were able to understand the full impact of deregulation in Ohio.

In November of last year, NOPEC released a white paper on Electricity Customer Choice in Ohio on “How Competition has outperformed traditional monopoly regulation” in Ohio. The study, conducted jointly by The Ohio State University John Glenn College of Public Affairs and the Cleveland State University Maxine Goodman Levin College of Urban Affairs, clearly articulates the benefits that have been derived from electric deregulation and opt-out governmental aggregation.

The study indicates that since 2011, a robust retail market for electricity has developed in Ohio. As a result, “deregulation of electricity has saved consumers an average of $3 billion per year, for a total of $15 billion over five years. Moreover, it is projected to continue to save consumers nearly that amount for the next five years, through 2020, totaling another $15 billion in savings.” For your benefit, I have submitted copies of this study for your further review and research.

Why is this study important for your review of H.B. 247? Well, for two very good reasons.

The first is that moving away from open competitive electric generation markets and back toward reregulation does not make sense for your constituents. Competition in the generation market has not only lowered prices, it has also improved system reliability, stimulated technical innovation, and has resulted in capital investment and entrepreneurship. There are now operating cost savings for Ohio employers, new sources of construction employment as new generation plants are built, and improved regional competitiveness as the relative price of electricity has declined. Deregulation has also reduced consumption (NOPEC study, page 12).

The second is that the study clearly indicates that the non-bypassable riders that have been approved as a result of Electric Security Plans authorized by S.B. 221 in 2008 have kept Ohio from being as competitive as it could have been. The cost of non-bypassable riders in Ohio has been rapidly rising and, as a result, they have become controversial, especially when they are used to support deregulated activities, such as power generation. These riders in Ohio now represent approximately 14 percent of a consumer's cost of electricity usage.

To put this regulatory problem in perspective, the FirstEnergy utilities have not undergone a formal distribution rate case proceeding at the PUCO since 2007, a decade ago. Instead of undergoing a traditional rate case review by the PUCO, the utilities have instead been allowed to automatically pass through costs by using riders approved as part of the utilities' ESP plan settlements. The riders are generally non-bypassable, and have grown substantially to encompass costs that are related to the utilities' affiliated power generating plants. An example of this is the Distribution Modernization rider put in effect this year by the FirstEnergy utilities in the amount of about $208 million per year. This rider was described by PUCO Staff as designed to improve the credit rating of FirstEnergy Corp. due to the financial problems of its unregulated generation subsidiary. The number of these riders has increased as well. For example, AEP Ohio currently has 18 non-bypassable riders. The FirstEnergy utilities each have 26 non-bypassable riders in their tariffs, although they appear as one line item on the customers' bill.

The Ohio Consumers' Counsel's office has estimated that these PUCO-approved above market charges have cost Ohio consumers more than $14 billion since 2000. The utility reforms that are included in H.B. 247 are needed, and NOPEC supports this bill.

This bill is also required because of how current law regarding ESP's in S.B. 221 has been interpreted. S.B. 221 requires that an ESP is to be "more favorable in the aggregate" than a Market Rate Offer ("MRO") to be approved by the PUCO. That was designed to be a consumer protection provision so that if it was cheaper to go to market, the utility would go forward with a MRO. However, due to PUCO and Ohio Supreme Court interpretations, the test has lost any consumer protection because the PUCO is able to use qualitative factors, instead of just quantitative factors, in applying the test so that the test has become subjective, not objective. This is a real flaw that this bill seeks to remedy by prohibiting future ESP's.

This bill also preserves the standard service offer, which has been important to the savings that have been achieved through electric deregulation.

Mr. Chairman, members of the Committee, thank you for the opportunity to present testimony on this Bill that means so much to those that you represent. I will be happy to answer any questions you may have.