

**BEFORE THE  
PUBLIC UTILITIES COMMITTEE  
OF THE OHIO HOUSE OF REPRESENTATIVES**

**REP. PETER STAUTBERG, CHAIRMAN**

**AM. SUB. SENATE BILL 310  
TESTIMONY  
OF  
KIM BOJKO, PARTNER  
CARPENTER LIPPS & LELAND LLP  
OHIO MANUFACTURERS' ASSOCIATION ENERGY COUNSEL**

**MAY 14, 2014**

Chairman Stautberg, Vice Chairman Roegner, Ranking Member Williams, and members of the House Public Utilities Committee, my name is Kim Bojko. I am a partner with the law firm Carpenter Lipps & Leland, and I lead the firm's energy and utilities practice.

I am testifying today on behalf of The Ohio Manufacturers' Association (OMA) to describe OMA's concerns about various provisions of Am. Sub. S.B. 310 (SB 310), which was adopted last week by the Ohio Senate. The Senate-adopted version of the bill is a modified version of an earlier proposal to roll back Ohio's energy efficiency and renewable energy standards, established by enactment of Am. Sub. S.B. 221 (SB 221) in 2008.

In particular, the OMA is concerned about the bill's potential negative impact on customers' energy costs and manufacturing competitiveness.

Over the years, Ohio has created a regulatory framework that balances the interests of utilities and customers. That framework has evolved from monopoly utilities providing all components of regulated electric service--to restructuring of the industry and separating out the generation function and removing generation from regulation--to somewhere in the middle. During the transition to a fully competitive market, SB 221 was enacted, modifying the restructuring process that had been established by Am. Sub. S.B. 3 (SB 3) in 1999, creating options for the electric utilities as they transitioned to competition. The scope of SB 221 was broad and addressed a range of topics, beyond those begin discussed today by SB 310.

Unfortunately, SB 221 contains some provisions that tilt the state's regulatory framework in favor of the monopoly electric distribution utilities at the expense of consumers and consumer protection. The result in the ratemaking

process is higher electricity prices for consumers and higher profits for the utilities.

Here are a few examples of utility-friendly and consumer-unfriendly provisions in SB 221:

- Under SB 221, if a utility is determined to have earned profits deemed “excessive,” the utility is not required to return the excess earnings to customers. Only if the utility’s earnings are deemed “significantly excessive” is the utility required to refund the amount of over-earnings to its customers.
- 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 (ESP) even though the utility is operating in a competitive marketplace for generation.
- SB 221 allows a utility to assess distribution-related charges in an ESP even though an ESP, by definition, is concerned with the supply and pricing of electric generation service.
- SB 221 allows a utility to include recovery from customers for lost distribution revenues in an ESP – in effect allowing the utility to be paid for electricity it did not deliver.
- SB 221 permits a utility to effectively “veto” PUCO orders modifying the utility’s ESP.

- SB 221 allows a utility to collect and keep costs even if the Ohio Supreme Court reverses a PUCO order finding it to be unlawful – but customers are afforded no such protection.

Each of these provisions unbalances the regulatory field in favor of the utilities and away from their customers. Taken together, the provisions cede too much market power to the monopolies and should be reformed.

Unfortunately, SB 310 does not address these cost-increasing features of current Ohio law, but only addresses issues related to the energy efficiency and renewable energy standards established by SB 221. The OMA welcomes a fair and analytically rigorous review of all provisions of SB 221, not just a select few.

Additionally, OMA welcomes a fair review of the operation and effect of the energy efficiency and renewable energy standards. The Public Utilities Commission of Ohio (PUCO) routinely reviews such standards and the programs offered by the utilities to satisfy the standards. This is accomplished in a case before the PUCO with the input of the utilities, stakeholders, and the PUCO Staff. The regulatory process before the PUCO has been working well and should be continued.

OMA agrees that much has changed in the past seven years since enactment of SB 221. For example, the development of remarkable new technologies such as hydraulic fracturing technologies is unlocking new resources of natural gas and oil, and innovations are rapidly lowering costs in wind, solar, battery and other advanced energy technologies. These technologies are transforming U.S. and global energy markets. Just as the state recognized new technologies for energy efficiency, such as combined heat and power systems (CHP) and waste energy recovery systems by enacting S.B. 315, it is critical for the state's future economic vitality that Ohio markets participate in

these transformations. The energy standards help assure that Ohio will do so, rather than getting locked into a single electric utility business model.

The OMA supports an “all of the above” energy policy for Ohio. The state, its citizens, and its businesses are best served by securing a diverse energy resource base. Those diverse resources include coal, natural gas, nuclear, and renewable resources, as well as the energy resources provided by energy efficiency and demand response programs. Just as with any investment portfolio, a diverse energy portfolio contains internal hedges against the risks that over-reliance on any one resource contains. This is the reason that the OMA supports, in general, energy efficiency and renewable energy standards.

According to every study presented in the Senate deliberations, the energy efficiency standards are saving customers a great deal of money. In fact, according to the Ohio utilities’ own filings with the PUCO,<sup>1</sup> every dollar invested in the utilities’ efficiency programs pays back at least two dollars in short-term benefits to their customers, and much more in the longer term. Electricity ratepayers across the state saved \$1.03 billion from 2009 to 2012 through the utility energy efficiency programs. The utilities projected \$4.15 billion in “lifetime” (10 years) benefits from this four-year period of energy efficiency projects. These savings result from utility efficiency program costs in those years of \$456 million.

While we support a thorough review of the standards, we have concerns about several of the bill’s provisions. Here are our major areas of concern, and our suggestions for improvement:

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<sup>1</sup> See attached chart.

**1. Energy efficiency requirements freeze.** SB 310 freezes energy efficiency at 2014 levels (4.2 percent) for two years, 2015 and 2016. Annual benchmarks will resume in 2017 on the same schedule outlined in SB 221, ending in 2027 (rather than 2025) if the legislature does not act to further freeze, reduce, or eliminate the standards. SB 310 allows the utilities to continue their energy efficiency programs in 2015 and 2016 at their sole discretion. The biggest concern with a freeze (assuming the freeze is not made permanent) is that it will create a stop/start effect that will confuse the marketplace and reduce energy savings during the period of the freeze.

Additionally, the manner in which this bill would freeze the standards would allow utilities that choose to continue their program during the period of the freeze to do so on their own terms and without customer input through a regulatory process. Also, it is unclear how profit – i.e., shared savings – would be awarded to the utilities during this period.

Concepts for improvement:

- Maintain continuity in utility energy efficiency programs through 2015 and 2016 to prevent costly disruptions to the infrastructure of energy efficiency programs and loss of the sunk costs in the utility supply chains.
- If the state goes forward with a two-year freeze, require the current PUCO stakeholder process regarding the terms under which each utility will implement the freeze. Some utilities might decide to continue their programs, and others might stop the programs. In both cases, stakeholders should be involved with the PUCO in determining implementation terms.

**2. Industrial opt-out.** SB 310 allows certain large energy users to opt out of paying the cost recovery rider for energy efficiency programs.

The OMA supports an energy efficiency program opt-out for large electricity users. Our studies demonstrate that the largest energy users benefit most from their own energy efficiency projects – and the least from utility efficiency programs. Large users continually integrate energy efficiency into their core business decisions, and have specialty processes that cannot be adequately addressed by utility programs. For these reasons, an energy efficiency opt-out for larger users is good public policy.

However, SB 310's industrial opt-out provision raises some concerns. First, if a utility elects to extend (rather than modify) its current energy efficiency plan during the period of the freeze, the opt-out option will not be available to that utility's large customers until 2017. If another utility decides to modify its program during the freeze, its large customers will be able to opt out in 2015. Consequently, the availability of an opt-out option could vary from one region of the state to another, creating an uneven playing field for competing manufacturers.

Second, opted-out customers would still receive price suppression benefits of the utility energy efficiency programs. However, other customers would not receive the benefit of any efficiency projects of opted-out customers, unless those projects are bid into the capacity markets.

Concepts for improvement:

- Protect smaller manufacturers, and other ratepayers, who will participate in and pay for the programs by tying the ability of a large user to opt-out of the energy efficiency rider to participation in regional

capacity auctions, either on their own or through a third party, to ensure that any efficiency savings they do achieve is captured in the capacity markets.

- Allow any opt-out decision to be at the sole discretion of the large customer beginning in 2015, rather than of the utility, as it currently is in SB 310.

**3. Utility bill line items.** SB 310 requires utilities to include on customers' electric bills the total, itemized cost to customers of compliance with the state's energy efficiency and renewable energy standards. This provision would paint for the customer an incomplete and misleading picture of both the true and relative cost of energy efficiency and renewable energy. SB 310 requires electric bills to include the costs of energy efficiency and renewable energy – but nothing about the benefits of these resources. Additionally, there is no provision for enabling customers to compare the costs of energy efficiency and renewable energy to other energy resources. Thus, the provision is more political than comparative, and provides no value to the customer.

Concepts for improvement:

- This provision should be eliminated. If, however, resource costs are included on customers' bills, consider directing the PUCO to:
  - Provide a comparison of total energy resource costs for different traditional and alternative resources, providing customers with an apples-to-apples comparison and enabling them to determine which resources are most cost-effective.



- Establish rules for utilities to display in customers' bills the costs and benefits of the multiple types of riders that affect the total charges to the customer.

**4. Expanded counting of energy efficiency.** SB 310 substantially broadens how energy efficiency would be defined with respect to what utilities can count toward compliance with the standards. For example, the bill permits utilities to count efficiency resulting from compliance with mandatory federal standards (for instance, deployment of home appliances that comply with federal energy standards). It also allows transmission and distribution infrastructure improvements that reduce line losses to count as energy efficiency projects, regardless of the intent or origin of the improvement. Some of the expanded counting provisions, like the two listed above, allow utilities to collect from customers lost revenue and “shared savings” (profits) on those activities without the utility doing any additional programs or by the utility upgrading its own system.

Under current law, energy efficiency programs approved by the PUCO are required to be “cost beneficial” for customers. SB 310’s expanded counting provisions sidestep the “cost beneficial” standard and water down the benefits customers receive for their investment in energy efficiency. Instead of spending dollars on well-designed programs that maximize the return on investment, these counting rules are designed to achieve the standard with efficiencies that already have been gained or would be achieved anyway without the standards. Once the utilities count these “savings,” there will be no need for offering the kind of energy efficiency programs that have proven to be so valuable to customers since SB 221 was enacted.

Concepts for improvement:

- Remove the bill's provisions for broadening what counts as energy efficiency.

**5. Renewable energy freeze.** SB 310 freezes renewable energy purchase requirements at 2014 levels for two years.

The provision jeopardizes the renewable energy investments that already have been made in Ohio in good faith reliance on the requirements of SB 221.

Concepts for improvement:

- Maintain continuity in utility renewable programs to prevent costly disruptions to the infrastructure and supply chain for renewable energy programs, within the 3 percent cost cap.

**6. "Energy Mandates Study Committee."** SB 310 calls for creation of a study committee of 12 legislators and the PUCO Chairman to produce a report that includes, among other things, a cost-benefit analysis of energy efficiency and renewable energy requirements, a recommendation for evidence-based standards in the future, potential benefits of an opt-in system, and a review of the risk of increased grid congestion due to the retirement of coal-fired power plants. This provision of SB 310 is problematic for two reasons. First, the committee does not include any stakeholders who are impacted by state energy policy and who have expertise in energy technology, financing and markets. Second, this provision does not provide any funding for research that will be needed to inform the study committee's work.

Concepts for improvement:

- Add stakeholders – including representatives of large and small manufacturers – to the Study Committee.
- Designate a funding mechanism to underwrite the research necessary to inform the Study Committee’s work.

While it may be in the state’s interest to have strong and productive public utilities, it is also important to protect, through legislation and regulation, consumers from the market power of monopoly utilities.

Mr. Chairman and members of the committee, that concludes my testimony today. I will be happy to entertain any questions you or other members of the committee may have.

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## OHIO UTILITIES ENERGY EFFICIENCY PROGRAMS PROGRAM SPENDING VS. SAVINGS

### AEP

Program spending (2009-2012)	\$158.06 million
Savings to date	\$366.95 million
Lifetime savings (from 2009-2012 program)	\$1.44 billion

### Dayton Power & Light

Program spending (2009-2012)	\$48.84 million
Savings to date	\$154.05 million
Lifetime savings (from 2009-2012 program)	\$534.43 million

### Duke

Program spending (2009-2012)	\$89.81 million
Savings to date	\$197.09 million
Lifetime savings (from 2009-2012 program)	\$705.19 million

### FirstEnergy

Program spending (2009-2012)	\$159.31 million
Savings to date	\$316.76 million
Lifetime savings (from 2009-2012)	\$1.47 billion

### TOTAL (all 4 utilities)

<b>Program spending (2009-2012)</b>	<b>\$456 million</b>
<b>Savings to date</b>	<b>\$1.03 billion</b>
<b>Lifetime savings (from 2009-2012 programs)</b>	<b>\$4.15 billion</b>

*Source: The customer energy savings data comes directly from utility status reports, which are filed every year with the Public Utilities Commission of Ohio and are available via the PUCO's online docketing system at <http://dis.puc.state.oh.us/>. The utilities' own reports verify annual energy savings and confirm that energy efficiency programs are saving customers money.*