Before the Ohio Senate Energy and Public Utilities Committee

Interested Party Testimony Regarding Senate Bill 315

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Good morning Chairwoman Jones, Vice-Chairman Balderson, Ranking Member Schiavoni, and members of the Senate Energy and Public Utilities Committee. I am Wilson Gonzalez, a Senior Energy Policy Advisor with the Office of the Ohio Consumers' Counsel (OCC). Thank you for allowing me to appear before you today to discuss the as-introduced version of Senate Bill 315 (SB 315 or the Bill) and some of its provisions that may impact Ohio's residential utility consumers. The Office of the Ohio Consumers' Counsel is the statutory representative of those consumers, and regularly appears before the Public Utilities Commission (PUCO or Commission) on their behalf.

SB 315 addresses many aspects of Ohio's energy industry. OCC supports some of the provisions in SB 315; however, we are concerned with the potential impact other provisions may have on Ohio's residential utility consumers.

OCC strongly supports energy efficiency as a tool that provides benefits to Ohio's utility customers. Energy efficiency gives customers a way to control their energy usage and thereby reduce their energy costs, among its many benefits. For those reasons, OCC supports the Bill's efforts to improve energy efficiency in state-owned buildings and to revamp the state's advanced energy fund.

OCC also supports the provision in SB 315 that increases the penalty for entities that are liable for natural gas pipeline accidents. There have been several recent high profile natural gas

pipeline incidents in the U.S., including in Ohio. Protection of Ohioans warrants the Bill's increase in the penalties for noncompliance, from $500,000 to $1 million. In this regard, there were recent increases in the federal civil penalties related to pipeline accidents, from $1 million to $2 million.

OCC has four concerns regarding SB 315 that we encourage this Committee to address in the Bill. These issues relate to energy efficiency, Long-Term Forecast Reports, PUCO-ordered electric infrastructure improvements, and the definition of the smart grid.

I. A Fair Baseline Should Be Maintained for Preserving Energy Efficiency Programs.

The amount of energy efficiency savings an electric utility must achieve, under SB 221 (127th General Assembly), is a percentage of that utility's rolling three-year average of total electricity sales (known as the baseline). SB 315 would change the law determining how this baseline is calculated. The statutory words "normalized kilowatt hour sales" would be replaced with "normalized kilowatt <u>hours distributed to retail customers</u>." (The language proposed in SB 315 is underlined.)

This seemingly innocuous change may be interpreted as removing from the baseline any electricity sales to the largest customers who are served off transmission voltage lines. This exclusion would reduce Ohio's commitment to energy efficiency by reducing the amount electric utilities need to achieve each year by more than 10 percent. Such a result would be detrimental to the development of energy efficiency in Ohio.

<u>Recommendation:</u>

OCC proposes that the Committee retain the current statutory language without the changes in SB 315. Alternatively, language should be added to SB 315 to clarify that electricity sales resulting from customers who receive their electricity solely over the transmission grid would

still be included in the baseline for energy efficiency compliance. (See Attachment 1 for proposed language to include this recommendation in an amendment.)

II. Resource Planning Should Be Used in Determining Whether a Proposed Power Plant Is Needed.

SB 315 clarifies that if an electric utility is trying to charge customers for building a new power generating facility, the utility would first need to show, as a part of its Long-Term Forecast Report, that the project is needed to serve customers. Long-Term Forecast Reports provide multi-year information on energy demand, peak load, reserves, and a general description of the resource plan to meet overall energy demand. OCC supports this clarification in SB 315.

But the Bill would remove the words "resource planning projection" from what the utility must provide to the PUCO and parties, under this section of current law. The resource plan is a key component of this public process for determining the sources of power to serve Ohioans, and should not be eliminated. The resource plan provides important information regarding the most cost effective energy resources available to meet a utility's demonstrated energy needs.

Ohio law requires an electric utility to file a resource plan if it is seeking to collect from its customers the cost of building a new power generation facility. Some utilities may seek to charge their customers the cost of building power plants while construction is in progress (called Construction Work in Progress or CWIP). These charges to customers would likely be through a non-bypassable charge. Non-bypassable charges are charges that are paid for by all customers, even if customers choose to purchase their electricity generation from a competitive provider. In this regard, competitive retail electric service providers would have to price their own offers to customers in a manner that could overcome the non-bypassable utility generation charges. These charges hinder the further development of competitive retail electric competition—and the related benefits for customers—in Ohio.

To continue the development of Ohio's competitive electricity market, proposals to make customers pay a non-bypassable charge for new generation plants should be carefully reviewed

as a part of the Long-Term Forecast Report. Any utility's request that the PUCO require customers to pay for the utility's new power plant should be scrutinized to determine if the utility needs the plant to serve customers and if building the plant is the most cost-effective option for customers. This review should take place at the PUCO as part of the Long-Term Forecast Report and resource plan. An attempt to avoid this process could harm Ohio customers.

Recommendation:

The deleted words "resource planning projections" should be re-inserted in the Bill and clarifying language should be added to the Long Term Forecast Report Section. (See Attachment 1 for proposed language to include this recommendation in an amendment.)

III. The Proposed Review of Transmission and Distribution Infrastructure Should Be Removed.

SB 315 introduces a new section, R.C. 4928.111, which would require the PUCO to evaluate the transmission and distribution infrastructure in the state and to "order any necessary upgrades, additions, or improvements…." OCC is concerned about this section for three reasons.

First, the new section would require the PUCO to order investments in transmission facilities that the Commission believes are necessary. This change conflicts with federal jurisdiction over transmission infrastructure, which is in the domain of the Federal Energy Regulatory Commission.

Second, the new section contains many of the same provisions as those found in the current R.C. 4905.38. The new statutory language, in part, requires the PUCO to consult with electric distribution utilities and an applicable regional transmission organization. But the PUCO can, and possibly does, engage in this activity already. Under current law (R.C. 4905.38) the PUCO may order "repairs, improvements, or additions to the plant or equipment of any public utility…in order to promote the convenience or welfare of the public…or in order to secure

adequate service or facilities…." The current language of R.C. 4905.38 is expansive, applying to "plant or equipment…in order to promote the convenience or welfare of the public…." Thus, the new statutory section proposed in the Bill is not needed to provide the PUCO with the authority to order electric distribution infrastructure improvements, because the PUCO already has that authority.

Lastly, the proposed new section, unlike the law it would displace, would unfortunately allow the PUCO to make decisions about expensive electric plants without taking into consideration the welfare of the public or the reasonableness or prudence of the costs that customers would have to pay. In this regard the current law is better because it requires the PUCO to "promote the convenience or welfare of the public…" Promoting the public convenience or welfare is an important concept to guide the PUCO's decision-making towards balancing the interests of the utility and those of the public.

Recommendation:

The new section, proposed as R.C. 4928.111, should be eliminated from SB 315. Proposed R.C. 4928.111 is duplicative of R.C. 4905.38 and less protective for the public, regarding the PUCO's authority to order electric infrastructure improvements. (See Attachment 1 for proposed language to include this recommendation in an amendment.)

IV. The Definition of "Smart Grid" Is Too Broad and Should Be Amended to Protect Ohio Customers.

The Bill defines smart grid as "capital improvements to an electric distribution utility's distribution infrastructure, including, but not limited to, advanced metering and automation of system functions." This definition is too broad, and includes all capital improvements in distribution systems regardless of their function.

Congress, in the Energy Independence and Security Act of 2007, specified ten objectives that would be achieved by smart grid systems. These objectives focus on the increased use of digital information and controls to improve reliability, security, and efficiency of the electric grid; dynamic optimization of grid operations and resources, with full cyber-security; deployment and integration of distributed resources and generation, including renewable resources; development and incorporation of demand response, demand-side resources, and energy-efficiency resources; and extensive use of "smart" technologies and devices (i.e., real-time, automated, interactive technologies that optimize the physical operation of appliances and consumer devices) not only by the utility but also by customers.

The smart grid definition should allow for the inclusion of technologies that could become part of the future smart grid, even if those advancements are not known today. But, in its current context, utilities might use the Bill's language to claim that anything from replacing a utility pole, to extending a distribution line, to purchasing unrelated information technology could be considered "smart grid" by statute.

The definition of smart grid should be narrowed by specifying the intent of smart grid investments. Smart grid investments should be geared towards improving the reliability, efficiency, resiliency of the distribution and transmission grid and reduce energy demand or use.

The Bill's broad definition of smart grid could harm consumers by providing utilities an accelerated opportunity to collect infrastructure costs from customers through charges that are totally unrelated to legitimate smart grid investments. These unrelated costs should be reviewed in the PUCO's regular rate-making process.

Ohio customers should not have to pay for costs labeled as "smart grid" that do not result in the intended purpose of building a smarter electricity grid.

Recommendation:

The Committee should adopt an amendment that refines the definition of "smart grid" in SB 315. The definition would be clearer if it included the intended purpose or goal for capital improvements, as they relate to the smart grid. (See Attachment 1 for proposed language to include this recommendation in an amendment.)

Conclusion

Thank you for the opportunity to testify today with regard to Ohio's energy policy. I have provided recommendations in four areas of SB 315 for strengthening the Bill for Ohio's residential utility consumers. I would be happy to answer any questions.

Attachment 1
Proposed Amendment Language for SB 315

1. The Baseline for Determining the Amount of Energy Efficiency

This amendment would ensure that all electricity sales (except wholesale) are included in the baseline for determining the amount of energy efficiency needed to meet Ohio's standard.

In line 5041 after the word "kilowatt" insert the words "hour sales"
In line 5042 delete the words "hours distributed"

2. Resource Planning Requirements

This amendment would clarify that an electric utility seeking to charge customers for the construction of a new power generation facility in Ohio needs to file a resource plan evaluating all cost-effective supply and demand-side options.

In line 4673 after the word "on" insert the words "resource planning projections in".
In line 4693 after the word "on" insert the words "resource planning projections in".
In line 5279 after the word "forecasting" insert "and resource planning, including making a finding of whether there is need for a generating facility that an electric distribution utility seeks to charge customers for pursuant to 4928.143."

3. The Proposed Review of Transmission and Distribution Infrastructure

This amendment would remove the jurisdictional conflict and in some cases duplicative language that requires the PUCO to order transmission and distribution upgrades that may not be within the public interest.

Delete lines 4619 through line 4628.

OR, in the alternative:
In line 4625 delete the word "shall" and insert "may"
In line 4627 after the word "service," insert "promote the convenience or welfare of the public,"

4. The Definition of Smart Grid

This amendment would clarify that utility investments that are unrelated to the development of the smart grid are not eligible for accelerated cost recovery from customers under the guise of "smart grid" investments.

In line 4545 after the word "infrastructure" insert "that improve reliability, efficiency, resiliency, or reduce energy demand or use."