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## MEMORANDUM

Date: October 8, 2019  
To: The Ohio Manufacturers' Association  
From: John Seryak, PE (RunnerStone, LLC)  
RE: House Bill 247 – Expansion of Regulated Utilities into Competitive Markets of Products and Services

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House Bill (HB) 247 was recently introduced to the Public Utilities Committee of the Ohio House of Representatives. HB 247 is notable, in that it allows for expansion of regulated utilities into existing and emerging competitive markets. It does so by allowing the regulated, monopoly electric distribution companies to offer products and services currently offered by competitive, private enterprise. HB 247 may be best summarized by one of its most striking set of provisions – it repeatedly eliminates language that safeguards markets, customers, and ratepayers from anti-competitive utility behavior.

### **Allowances for Anticompetitive Behavior**

HB 247 repeatedly changes language in the Ohio Revised Code that limits anti-competitive behavior by electric distribution utilities. For markets to function effectively, it is important to clearly delineate the responsibilities of Ohio's "wires only" electric monopolies, and alternately what products and services are to be offered by the competitive markets. For example, Ohio law has previously prohibited "anticompetitive subsidies flowing...to a product or service other than retail electric service" HB 247 eliminates the phrase "to a product or service other than retail electric service", thereby allowing anticompetitive subsidies. In three other locations, HB 247 strikes-through language protecting markets for products and services from anti-competitive behavior and undue influence.

### **Expansion of Regulated Utility Services into Existing Competitive Markets**

HB 247 expands the ability of the regulated electric distribution utility to offer customer-facing products and services. Markets for these behind-the-meter products and services already exist and are served by competitive enterprise. These products and services would include:

#### **HB 247**

- Allowance of anti-competitive utility behavior
- Illusory safeguards to markets, customers, and ratepayers
- Allows regulated distribution utility involvement in emerging markets, such as electric vehicle charging and batteries
- Allows regulated distribution utility involvement in existing markets, such as lighting installations, equipment financing, warranties, and energy management services
- Makes changes to utility cost recovery regarding the "used and useful" doctrine
- Allows socialized cost recovery for select privately-owned projects



- Load curtailment and demand response
- Energy efficiency
- Energy storage and batteries
- Energy management
- Energy monitoring and controls
- Lighting and other controls
- Warranty and repair services
- Electric vehicle charging stations
- Microgrids
- Community solar facilities
- Energy-related physical security and cybersecurity, reliability services, or resiliency services
- Installation of products and technology
- Financing, leasing, and management of products and technology

Under HB 247, the list of products and services a distribution utility would be able to offer is so expansive it covers nearly the entirety of private enterprise offerings to customers regarding their energy consumption. Alarmingly, many of these areas have fully developed markets, while the distribution utilities have no experience in the offering, such as installing lighting controls, offering warranty and repair services, and offering energy management services. These competitive markets also rapidly change, and the participants are regularly innovating. This entrepreneurialism produces successful outcomes for customers, but can also produce business failures, as ideas are tested by the market. Competitive markets are well suited for incorporating these rapid changes, allowing good businesses to grow and uneconomic concepts to fail. This high risk environment, however, does not match well with the distribution utility business model, which requires low risk, stability, and tried-and-true technologies in order to protect ratepayers, who bear the financial risk of the distribution utilities' decisions.

HB 247 does have some guardrails for how the distribution utility offers services and products to customers, including that the products and services are optional for customers, that separate accounting is maintained, and that incremental costs are not recovered through base rates. These protections are illusory however. Even if distribution utilities offerings are optional, it could produce a significant chilling effect on private investment in a competitive market, as the distribution utility has a distinct competitive advantage through its status as a regulated monopoly. Additionally, while the optional, incremental costs can be accounted for separately, there is no way of separating financial risks of these projects from the distribution corporation, short of actual corporate separation.

### **Expansion of Regulated Utility Services into Emerging Technologies and Markets**

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HB 247 also expands the ability of a distribution utility to offer smart grid technologies, but, specifically for “storage, control, or delivery of electrical energy.” Electric distribution utilities already can deploy and receive cost recovery for many of the items listed as smart grid technologies in HB 247. However, some technologies are listed as emerging, and arguably could be deployed by private enterprise and competitive markets, with the distribution utility playing the role of the “platform” for these products and services. HB 247 defines the following smart grid technologies:

- Technologies that distribution utilities already commonly deploy and receive cost recovery for
  - Advanced metering
  - Automation of system functions
  - Distribution automation
  - Physical and cybersecurity technologies
  - Volt-VAR optimization and similar technologies
- Emerging technologies that can be served by competitive enterprise
  - Battery technology
  - Electric vehicle charging stations
  - Microgrids
  - Intelligent traffic sensors
- Existing technologies and services already served by competitive enterprise
  - Demand response and other energy management technologies
  - Lighting controls and other smart controls

### **Changes to the Used and Useful Doctrine, Socialized Cost Recovery for Select Customer Projects**

HB 247 makes significant changes to how Ohio’s electricity infrastructure can be used for economic development. Specifically, under HB 247 the distribution utility is given authority to undertake “infrastructure development” for economic development interests. Presently, utilities may already conduct infrastructure development projects for economic development interests through the reasonable arrangement process. Important changes to existing practice that HB 247 proposes include allowing non-bypassable recovery of these costs from all ratepayers of the utility, regardless of whether the infrastructure is “used or useful.” Currently, a utility may not recover costs for equipment that is not used or useful. Thus, this is a concerning change in law.

Moreover, HB 247 goes on to allow non-bypassable cost recovery from all ratepayers of these infrastructure projects, which benefit single customers for economic development, and then the



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ownership of these new facilities is passed to the benefitting customer. This could allow an expansive amount of private facility investment to be shifted to the public sector and ratepayers.

### **Conclusion**

HB 247 would make unprecedented changes to how Ohio's electric distribution utilities could operate, largely at the expense of competitive markets. Quite literally, HB 247 allows anti-competitive behavior by the electric distribution utilities in existing and emerging markets. While some guardrails are proposed, the protection to markets, customers, and ratepayers is illusory.

HB 247 as proposed, however, should not be confounded with the promise of the technologies and services it addresses. The emerging technologies and services influencing customer energy use are a bright spot in the energy industry and Ohio's economy.