

MEMORANDUM

To: Senator Seitz, Chairman of the Senate Public Utilities Committee

From: Ohio Manufacturers' Association
Office of the Ohio Consumers' Counsel
Ohio Partners for Affordable Energy
Ohio Environmental Council
Ohio Advanced Energy Economy
Ohio Hospital Association
Environmental Defense Fund
SolarVision, LLC
Mom's Clean Air Force
National Wildlife Federation
Lake Erie Energy Development Corporation

CC: Members of the Senate Public Utilities Committee

Re: Substitute Senate Bill 58 Amendment

Date: November 15, 2013

The Ohio Manufacturers' Association, Office of the Ohio Consumers' Counsel, Ohio Partners for Affordable Energy, the Ohio Environmental Council, Ohio Advanced Energy Economy, the Ohio Hospital Association, the Environmental Defense Fund, SolarVision, LLC, Mom's Clean Air Force, National Wildlife Federation, and Lake Erie Energy Development Corporation respectfully submit the attached amendment to Substitute Senate Bill 58 (Sub. S.B. 58). The intent of the amendment is to modify the language of Sub. S.B. 58 in order to:

- Retain the energy efficiency and renewable energy resource standards contained in current Ohio law in order to:
 - Protect economic development opportunities that have been created since the establishment of the current energy efficiency and renewable standards.
 - Maintain the integrity and usefulness of energy efficiency measures.
 - Protect the important reductions in energy use and the resulting savings to customers created by the current energy efficiency standards.
 - Continue to encourage the efficient use of energy resources.

- Further develop the alternative energy industry in Ohio, which creates important jobs, permits Ohio to diversify its energy supply, and guides the state toward energy independence.
- Eliminate unprecedented, unjustifiable cost recovery for utilities.
- Continue to advance important consumer protections.
- Incorporate important provisions into the large customer opt-out program:
 - Eliminate the requirement to adopt an energy management system.
 - Require only cost-effective energy efficiency programs be implemented.
 - Remove costly measurement and verification protocols and only require that which is necessary to meet or exceed such protocols accepted by PJM.
 - To compensate customers for their energy efficiency savings achieved, require that those savings be bid into PJM's capacity market.

For additional information or inquiries, please contact Kim Bojko at 614.365.4124 or bojko@carpenterlipps.com or Ryan Augsburger at 614.629.6817 or raugsburger@ohiomfg.com, or representatives of our organizations. Thank you.

Sub. S.B. 58
As Pending in S. Public
Utilities
LSC 130 0592-6

Topic: EE/PDR customer option; remove all other amendments

_____ moved to amend as follows:

In line 23, delete all after "That" and insert "section	1
4928.66 be amended and sections 4928.661, 4928.662, 4928.663,	2
4928.664, 4928.665, and 4928.666"	3
Delete lines 24 through 36	4
In line 37, delete "and 4928.6660"	5
Delete lines 38 through 2747 and insert:	6
" Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric	7
distribution utility shall implement energy efficiency programs	8
that achieve energy savings equivalent to at least three-tenths of	9
one per cent of the total, annual average, and normalized	10
kilowatt-hour sales of the electric distribution utility during	11
the preceding three calendar years to customers in this state. An	12
energy efficiency program may include a combined heat and power	13
system placed into service or retrofitted on or after the	14
effective date of the amendment of this section by S.B. 315 of the	15
129th general assembly, <u>September 10, 2012</u> , or a waste energy	16
recovery system placed into service or retrofitted on or after the	17

~~same date~~ September 10, 2012, except that a waste energy recovery system described in division (A)(38)(b) of section 4928.01 of the Revised Code may be included only if it was placed into service between January 1, 2002, and December 31, 2004. For a waste energy recovery or combined heat and power system, the savings shall be as estimated by the public utilities commission. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025. For purposes of a waste energy recovery or combined heat and power system, an electric distribution utility shall not apply more than the total annual percentage of the electric distribution utility's industrial-customer load, relative to the electric distribution utility's total load, to the annual energy savings requirement.

(b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

(2) For the purposes of divisions (A)(1)(a) and (b) of this section:

(a) The baseline for energy savings under division (A)(1)(a) of this section shall be the average of the total kilowatt hours

the electric distribution utility sold in the preceding three
calendar years, and the baseline for a peak demand reduction under
division (A)(1)(b) of this section shall be the average peak
demand on the utility in the preceding three calendar years,
except that the commission may reduce either baseline to adjust
for new economic growth in the utility's certified territory. The
commission shall exclude from the baselines the load and usage of
any customer that has elected to opt out under sections 4928.661
to 4928.666 of the Revised Code.

(b) The commission may amend the benchmarks set forth in
division (A)(1)(a) or (b) of this section if, after application by
the electric distribution utility, the commission determines that
the amendment is necessary because the utility cannot reasonably
achieve the benchmarks due to regulatory, economic, or
technological reasons beyond its reasonable control.

(c) Compliance with divisions (A)(1)(a) and (b) of this
section shall be measured by including the effects of all
demand-response programs for mercantile customers of the subject
electric distribution utility, all waste energy recovery systems
and all combined heat and power systems, and all such mercantile
customer-sited energy efficiency, including waste energy recovery
and combined heat and power, and peak demand reduction programs,
adjusted upward by the appropriate loss factors. Any mechanism
designed to recover the cost of energy efficiency, including waste
energy recovery and combined heat and power, and peak demand
reduction programs under divisions (A)(1)(a) and (b) of this
section may exempt mercantile customers that commit their
demand-response or other customer-sited capabilities, whether
existing or new, for integration into the electric distribution
utility's demand-response, energy efficiency, including waste
energy recovery and combined heat and power, or peak demand

reduction programs, if the commission determines that that 79
exemption reasonably encourages such customers to commit those 80
capabilities to those programs. If a mercantile customer makes 81
such existing or new demand-response, energy efficiency, including 82
waste energy recovery and combined heat and power, or peak demand 83
reduction capability available to an electric distribution utility 84
pursuant to division (A)(2)(c) of this section, the electric 85
utility's baseline under division (A)(2)(a) of this section shall 86
be adjusted to exclude the effects of all such demand-response, 87
energy efficiency, including waste energy recovery and combined 88
heat and power, or peak demand reduction programs that may have 89
existed during the period used to establish the baseline. The 90
baseline also shall be normalized for changes in numbers of 91
customers, sales, weather, peak demand, and other appropriate 92
factors so that the compliance measurement is not unduly 93
influenced by factors outside the control of the electric 94
distribution utility. 95

(d) Programs implemented by a utility may include 96
demand-response programs, smart grid investment programs, provided 97
that such programs are demonstrated to be cost-beneficial, 98
customer-sited programs, including waste energy recovery and 99
combined heat and power systems, and transmission and distribution 100
infrastructure improvements that reduce line losses. Division 101
(A)(2)(c) of this section shall be applied to include facilitating 102
efforts by a mercantile customer or group of those customers to 103
offer customer-sited demand-response, energy efficiency, including 104
waste energy recovery and combined heat and power, or peak demand 105
reduction capabilities to the electric distribution utility as 106
part of a reasonable arrangement submitted to the commission 107
pursuant to section 4905.31 of the Revised Code. 108

(e) No programs or improvements described in division 109

(A)(2)(d) of this section shall conflict with any statewide 110
 building code adopted by the board of building standards. 111

(B) In accordance with rules it shall adopt, the public 112
 utilities commission shall produce and docket at the commission an 113
 annual report containing the results of its verification of the 114
 annual levels of energy efficiency and of peak demand reductions 115
 achieved by each electric distribution utility pursuant to 116
 division (A) of this section. A copy of the report shall be 117
 provided to the consumers' counsel. 118

(C) If the commission determines, after notice and 119
 opportunity for hearing and based upon its report under division 120
 (B) of this section, that an electric distribution utility has 121
 failed to comply with an energy efficiency or peak demand 122
 reduction requirement of division (A) of this section, the 123
 commission shall assess a forfeiture on the utility as provided 124
 under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, 125
 either in the amount, per day per undercompliance or 126
 noncompliance, relative to the period of the report, equal to that 127
 prescribed for noncompliances under section 4905.54 of the Revised 128
 Code, or in an amount equal to the then existing market value of 129
 one renewable energy credit per megawatt hour of undercompliance 130
 or noncompliance. Revenue from any forfeiture assessed under this 131
 division shall be deposited to the credit of the advanced energy 132
 fund created under section 4928.61 of the Revised Code. 133

(D) The commission may establish rules regarding the content 134
 of an application by an electric distribution utility for 135
 commission approval of a revenue decoupling mechanism under this 136
 division. Such an application shall not be considered an 137
 application to increase rates and may be included as part of a 138
 proposal to establish, continue, or expand energy efficiency or 139

conservation programs. The commission by order may approve an
 application under this division if it determines both that the
 revenue decoupling mechanism provides for the recovery of revenue
 that otherwise may be forgone by the utility as a result of or in
 connection with the implementation by the electric distribution
 utility of any energy efficiency or energy conservation programs
 and reasonably aligns the interests of the utility and of its
 customers in favor of those programs.

(E) The commission additionally shall adopt rules that
 require an electric distribution utility to provide a customer
 upon request with two years' consumption data in an accessible
 form.

Sec. 4928.661. Any customer of an electric distribution
 utility that meets either of the following requirements may opt
 out of both the opportunity and ability to obtain direct benefits
 from the utility's compliance plan to meet the requirements of
 section 4928.66 of the Revised Code:

(A) The customer receives service above the primary voltage
 level as determined by the utility's tariff classification.

(B) The customer's account is subject to the self-assessing
 purchaser option under section 5727.81 of the Revised Code.

Sec. 4928.662. Any customer electing to opt out under
 sections 4928.661 to 4928.666 of the Revised Code shall do so by
 providing a written notice of intent to opt out to the electric
 distribution utility from which it receives service and submitting
 a complete copy of the opt-out notice to the secretary of the
 public utilities commission.

(A) The notice provided to the utility shall include the

<u>following:</u>	168
<u>(1) A statement indicating that the customer has elected to opt out;</u>	169
<u>(2) The effective date of the election to opt out;</u>	171
<u>(3) The customer's account numbers for each account subject to opt out;</u>	172
<u>(4) The physical location of the customer's load center.</u>	174
<u>(B) The opt-out notice shall include a written election to opt out and a verified statement that affirms all of the following:</u>	175
<u>(1) That the customer has contracted with a third party energy efficiency aggregator or has an employee that is an internal energy efficiency expert capable of identifying and implementing cost-effective energy efficiency programs on its own;</u>	176
<u>(2) That the customer will identify and implement cost-effective energy efficiency programs;</u>	177
<u>(3) That the aggregator or expert utilizes measurement and verification protocols that meet or exceed measurement and verification protocols that are accepted by the PJM interconnection regional transmission organization, L.L.C. or any entity performing the functions identified in section 4928.12 of the Revised Code within this state;</u>	178
<u>(4) That the aggregator or expert will bid the energy efficiency savings the customer has achieved into the capacity market of the PJM interconnection regional transmission organization, L.L.C. or any entity performing the functions identified in section 4928.12 of the Revised Code within this state in order to compensate the customer for the energy</u>	179
	180
	181
	182
	183
	184
	185
	186
	187
	188
	189
	190
	191
	192
	193
	194
	195

<u>efficiency savings achieved.</u>	196
<u>Sec. 4928.663. Upon a customer's election to opt out under</u>	197
<u>sections 4928.661 to 4928.666 of the Revised Code, all of the</u>	198
<u>following apply:</u>	199
<u>(A) An account properly identified in the customer's verified</u>	200
<u>notice:</u>	201
<u>(1) Is not subject to cost recovery mechanisms established</u>	202
<u>under section 4928.66 of the Revised Code; and</u>	203
<u>(2) Is not eligible to participate in, or directly benefit</u>	204
<u>from, programs arising from electric distribution utility</u>	205
<u>compliance plans approved by the commission to meet the</u>	206
<u>requirements of section 4928.66 of the Revised Code.</u>	207
<u>(B) The customer is not eligible to participate in a cost</u>	208
<u>recovery exemption agreement under division (A)(2)(c) of section</u>	209
<u>4928.66 of the Revised Code.</u>	210
<u>Sec. 4928.664. (A) A customer subsequently may opt in under</u>	211
<u>section 4928.665 of the Revised Code after a previous election to</u>	212
<u>opt out under sections 4928.661 and 4928.662 of the Revised Code</u>	213
<u>if both of the following apply:</u>	214
<u>(1) The customer has previously opted out for a period of at</u>	215
<u>least three consecutive calendar years.</u>	216
<u>(2) The customer gives notice of its intent to opt in to the</u>	217
<u>public utilities commission and the electric distribution utility</u>	218
<u>from which it receives service. The customer shall give the notice</u>	219
<u>six months prior to the next calendar year of the utility's</u>	220
<u>compliance plan.</u>	221
<u>(B) A customer that opts in under this section shall maintain</u>	222

its opt-in status for three consecutive calendar years before 223
being eligible subsequently to exercise its right to opt out after 224
giving the utility notice six months prior to the next calendar 225
year of the utility's compliance plan. 226

Sec. 4928.665. Any customer electing to opt in under section 227
4928.664 of the Revised Code shall do so by providing a written 228
notice of intent to opt in to the electric distribution utility 229
from which it receives service and submitting a complete copy of 230
the opt-in notice to the secretary of the public utilities 231
commission. The notice shall include the following: 232

(A) A statement indicating that the customer has elected to 233
opt in; 234

(B) The effective date of the election to opt in; 235

(C) The customer's account numbers for each account subject 236
to opt in; 237

(D) The physical location of the customer's load center. 238

Sec. 4928.666. A customer that has elected to opt out retains 239
ownership rights to energy efficiency and demand reduction savings 240
the customer has achieved and shall bid the savings into the 241
capacity market of the PJM interconnection regional transmission 242
organization, L.L.C. or any entity performing the functions 243
identified in section 4928.12 of the Revised Code within this 244
state. 245

Section 2. That existing section 4928.66 of the Revised Code 246
is hereby repealed." 247

In line 1 of the title, delete all after "amend" and insert 248
"section 4928.66 and to enact sections 4928.661, 4928.662," 249

4928.663, 4928.664, 4928.665, and 4928.666 of the Revised Code	250
regarding an energy efficiency and peak demand reduction opt out	251
for certain customers."	252
Delete lines 2 through 22 of the title	253

The motion was _____ agreed to.