



June 22, 2017

Hon. Ryan Smith, Representative
Chair, House Finance Committee

Hon. Scott Oelslager, Senator
Chair, Senate Finance Committee

Hon. Scott Ryan, Representative

Hon. Gayle Manning, Senator

Hon. Jack Cera, Representative

Hon. Mike Skindell, Senator

Re: Senate Omnibus Budget Language Enabling Electric Utility Rate Increases

Dear Members of the Conference Committee on House Bill 49:

We respectfully ask your consideration to remove from the Senate version of the budget bill a late, anti-consumer addition that enables utilities to increase electric rates for Ohio families and businesses based on maintaining utility credit ratings.

The undersigned write on behalf of Ohio residential utility consumers, many businesses that make products in Ohio and employ people, residential and business aggregation consumers, and others.

The new language passed by the Senate will enable utilities to charge Ohio families and businesses many millions of dollars in subsidies to support utility credit ratings.

The proposed language that should be removed from the budget bill does not merely codify current PUCO practice, as apparently is claimed by an electric utility. In fact, the language reverses rulings of the Ohio Supreme Court, that last year overturned PUCO decisions allowing utility charges to customers for financial stability for electric utilities: <https://supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-ohio-1608.pdf> (at page 9); <https://supremecourt.ohio.gov/rod/docs/pdf/0/2016/2016-ohio-3490.pdf>. Additionally, the Senate language could interfere with customer appeals now pending in the Ohio Supreme Court, to protect Ohioans from electric rate increases.

Also, just last fall, the PUCO approved a proposal to collect \$204 million per year in subsidy charges from FirstEnergy's captive customers when FirstEnergy faced a credit downgrade due to business decisions and competitive market issues affecting its unregulated affiliate. That PUCO decision will likely be appealed to the Ohio Supreme Court, to protect customers from higher

electric bills, because it is an unlawful generation subsidy under current Ohio law. And it allows the utility to collect unlawful transition charges long after the market development period ended under the 1999 deregulation law.

Moreover, there should be the opportunity to be heard on matters of this importance and impact to Ohio's utility consumers. This opportunity should start with the introduction of a stand-alone bill, LSC review, and then public testimony and input before a vote.

On behalf of the utility consumers we represent in the State of Ohio, we appreciate the opportunity to be heard on this important economic issue to our State, and respectfully request the Conference Committee to remove this provision.

Respectfully,

/s/ Bruce Weston, Agency Director
Office of the Ohio Consumers' Counsel

/s/ Charles W. Keiper, Executive Director
Northeast Ohio Public Energy Council

/s/ Chris Ferruso, Legislative Director
National Federation of Independent Businesses

/s/ Ryan Augsburger, Vice President and
Managing Director of Public Policy Services
Ohio Manufacturers' Association

/s/ Jennifer Klein, President
Ohio Chemical Technology Council

/s/ Trey Addison, Associate State Director
AARP

Attachment A (proposed amendment)

cc: Governor Kasich

waste heat from electricity-producing engines or combustion 79380
turbines and that simultaneously uses the recovered heat to 79381
produce steam, provided that the facility was placed into service 79382
between January 1, 2002, and December 31, 2004. 79383

(39) "Smart grid" means capital improvements to an electric 79384
distribution utility's distribution infrastructure that improve 79385
reliability, efficiency, resiliency, or reduce energy demand or 79386
use, including, but not limited to, advanced metering and 79387
automation of system functions. 79388

(40) "Combined heat and power system" means the coproduction 79389
of electricity and useful thermal energy from the same fuel source 79390
designed to achieve thermal-efficiency levels of at least sixty 79391
per cent, with at least twenty per cent of the system's total 79392
useful energy in the form of thermal energy. 79393

(B) For the purposes of this chapter, a retail electric 79394
service component shall be deemed a competitive retail electric 79395
service if the service component is competitive pursuant to a 79396
declaration by a provision of the Revised Code or pursuant to an 79397
order of the public utilities commission authorized under division 79398
(A) of section 4928.04 of the Revised Code. Otherwise, the service 79399
component shall be deemed a noncompetitive retail electric 79400
service. 79401

Sec. 4928.143. (A) For the purpose of complying with section 79402
4928.141 of the Revised Code, an electric distribution utility may 79403
file an application for public utilities commission approval of an 79404
electric security plan as prescribed under division (B) of this 79405
section. The utility may file that application prior to the 79406
effective date of any rules the commission may adopt for the 79407
purpose of this section, and, as the commission determines 79408
necessary, the utility immediately shall conform its filing to 79409
those rules upon their taking effect. 79410

(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code:

(1) An electric security plan shall include provisions relating to the supply and pricing of electric generation service. In addition, if the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the plan as authorized under that division.

(2) The plan may provide for or include, without limitation, any of the following:

(a) Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes;

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility's cost of constructing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the

expenditure. No such allowance for generating facility 79443
construction shall be authorized, however, unless the commission 79444
first determines in the proceeding that there is need for the 79445
facility based on resource planning projections submitted by the 79446
electric distribution utility. Further, no such allowance shall be 79447
authorized unless the facility's construction was sourced through 79448
a competitive bid process, regarding which process the commission 79449
may adopt rules. An allowance approved under division (B)(2)(b) of 79450
this section shall be established as a nonbypassable surcharge for 79451
the life of the facility. 79452

(c) The establishment of a nonbypassable surcharge for the 79453
life of an electric generating facility that is owned or operated 79454
by the electric distribution utility, was sourced through a 79455
competitive bid process subject to any such rules as the 79456
commission adopts under division (B)(2)(b) of this section, and is 79457
newly used and useful on or after January 1, 2009, which surcharge 79458
shall cover all costs of the utility specified in the application, 79459
excluding costs recovered through a surcharge under division 79460
(B)(2)(b) of this section. However, no surcharge shall be 79461
authorized unless the commission first determines in the 79462
proceeding that there is need for the facility based on resource 79463
planning projections submitted by the electric distribution 79464
utility. Additionally, if a surcharge is authorized for a facility 79465
pursuant to plan approval under division (C) of this section and 79466
as a condition of the continuation of the surcharge, the electric 79467
distribution utility shall dedicate to Ohio consumers the capacity 79468
and energy and the rate associated with the cost of that facility. 79469
Before the commission authorizes any surcharge pursuant to this 79470
division, it may consider, as applicable, the effects of any 79471
decommissioning, deratings, and retirements. 79472

(d) Terms, conditions, or charges relating to limitations on 79473
customer shopping for retail electric generation service, 79474

bypassability, standby, back-up, or supplemental power service, 79475
default service, carrying costs, amortization periods, and 79476
accounting or deferrals, including future recovery of such 79477
deferrals, as would have the effect of stabilizing or providing 79478
certainty regarding retail electric service; 79479

(e) Automatic increases or decreases in any component of the 79480
standard service offer price; 79481

(f) Consistent with sections 4928.23 to 4928.2318 of the 79482
Revised Code, both of the following: 79483

(i) Provisions for the electric distribution utility to 79484
securitize any phase-in, inclusive of carrying charges, of the 79485
utility's standard service offer price, which phase-in is 79486
authorized in accordance with section 4928.144 of the Revised 79487
Code; 79488

(ii) Provisions for the recovery of the utility's cost of 79489
securitization. 79490

(g) Provisions relating to transmission, ancillary, 79491
congestion, or any related service required for the standard 79492
service offer, including provisions for the recovery of any cost 79493
of such service that the electric distribution utility incurs on 79494
or after that date pursuant to the standard service offer; 79495

(h) Provisions regarding the utility's distribution service, 79496
including, without limitation and notwithstanding any provision of 79497
Title XLIX of the Revised Code to the contrary, provisions 79498
regarding single issue ratemaking, a revenue decoupling mechanism 79499
or any other incentive ratemaking, and provisions regarding 79500
distribution infrastructure and modernization incentives for the 79501
electric distribution utility. The latter may include a long-term 79502
energy delivery infrastructure modernization plan for that utility 79503
or any plan providing for the utility's recovery of costs, 79504
including lost revenue, shared savings, and avoided costs, and a 79505

just and reasonable rate of return on such infrastructure 79506
modernization. As part of its determination as to whether to allow 79507
in an electric distribution utility's electric security plan 79508
inclusion of any provision described in division (B)(2)(h) of this 79509
section, the commission shall examine the reliability of the 79510
electric distribution utility's distribution system and ensure 79511
that customers' and the electric distribution utility's 79512
expectations are aligned and that the electric distribution 79513
utility is placing sufficient emphasis on and dedicating 79514
sufficient resources to the reliability of its distribution 79515
system. 79516

(i) Provisions under which the electric distribution utility 79517
may implement economic development, job retention, and energy 79518
efficiency programs, which provisions may allocate program costs 79519
across all classes of customers of the utility and those of 79520
electric distribution utilities in the same holding company 79521
system. 79522

(C)(1) The burden of proof in the proceeding shall be on the 79523
electric distribution utility. The commission shall issue an order 79524
under this division for an initial application under this section 79525
not later than one hundred fifty days after the application's 79526
filing date and, for any subsequent application by the utility 79527
under this section, not later than two hundred seventy-five days 79528
after the application's filing date. Subject to division (D) of 79529
this section, the commission by order shall approve or modify and 79530
approve an application filed under division (A) of this section if 79531
it finds that the electric security plan so approved, including 79532
its pricing and all other terms and conditions, including any 79533
deferrals and any future recovery of deferrals, is more favorable 79534
in the aggregate as compared to the expected results that would 79535
otherwise apply under section 4928.142 of the Revised Code. 79536
Additionally, if the commission so approves an application that 79537

contains a surcharge under division (B)(2)(b) or (c) of this 79538
section, the commission shall ensure that the benefits derived for 79539
any purpose for which the surcharge is established are reserved 79540
and made available to those that bear the surcharge. Otherwise, 79541
the commission by order shall disapprove the application. 79542

(2)(a) If the commission modifies and approves an application 79543
under division (C)(1) of this section, the electric distribution 79544
utility may withdraw the application, thereby terminating it, and 79545
may file a new standard service offer under this section or a 79546
standard service offer under section 4928.142 of the Revised Code. 79547

(b) If the utility terminates an application pursuant to 79548
division (C)(2)(a) of this section or if the commission 79549
disapproves an application under division (C)(1) of this section, 79550
the commission shall issue such order as is necessary to continue 79551
the provisions, terms, and conditions of the utility's most recent 79552
standard service offer, along with any expected increases or 79553
decreases in fuel costs from those contained in that offer, until 79554
a subsequent offer is authorized pursuant to this section or 79555
section 4928.142 of the Revised Code, respectively. 79556

(D) Regarding the rate plan requirement of division (A) of 79557
section 4928.141 of the Revised Code, if an electric distribution 79558
utility that has a rate plan that extends beyond December 31, 79559
2008, files an application under this section for the purpose of 79560
its compliance with division (A) of section 4928.141 of the 79561
Revised Code, that rate plan and its terms and conditions are 79562
hereby incorporated into its proposed electric security plan and 79563
shall continue in effect until the date scheduled under the rate 79564
plan for its expiration, and that portion of the electric security 79565
plan shall not be subject to commission approval or disapproval 79566
under division (C) of this section, and the earnings test provided 79567
for in division (F) of this section shall not apply until after 79568
the expiration of the rate plan. However, that utility may include 79569

in its electric security plan under this section, and the 79570
commission may approve, modify and approve, or disapprove subject 79571
to division (C) of this section, provisions for the incremental 79572
recovery or the deferral of any costs that are not being recovered 79573
under the rate plan and that the utility incurs during that 79574
continuation period to comply with section 4928.141, division (B) 79575
of section 4928.64, or division (A) of section 4928.66 of the 79576
Revised Code. 79577

(E)(1) If an electric security plan approved under division 79578
(C) of this section, except one withdrawn by the utility as 79579
authorized under that division, has a term, exclusive of phase-ins 79580
or deferrals, that exceeds three years from the effective date of 79581
the plan, the commission shall test the plan in the fourth year, 79582
and if applicable, every fourth year thereafter, to determine 79583
whether the plan, including its then-existing pricing and all 79584
other terms and conditions, including any deferrals and any future 79585
recovery of deferrals, continues to be more favorable in the 79586
aggregate and during the remaining term of the plan as compared to 79587
the expected results that would otherwise apply under section 79588
4928.142 of the Revised Code. The commission shall also determine 79589
the prospective effect of the electric security plan to determine 79590
if that effect is substantially likely to provide the electric 79591
distribution utility with a return on common equity that is 79592
significantly in excess of the return on common equity that is 79593
likely to be earned by publicly traded companies, including 79594
utilities, that face comparable business and financial risk, with 79595
such adjustments for capital structure as may be appropriate. The 79596
burden of proof for demonstrating that significantly excessive 79597
earnings will not occur shall be on the electric distribution 79598
utility. If the test results are in the negative or the commission 79599
finds that continuation of the electric security plan will result 79600
in a return on equity that is significantly in excess of the 79601
return on common equity that is likely to be earned by publicly 79602

traded companies, including utilities, that will face comparable 79603
business and financial risk, with such adjustments for capital 79604
structure as may be appropriate, during the balance of the plan, 79605
the commission may terminate the electric security plan, but not 79606
until it shall have provided interested parties with notice and an 79607
opportunity to be heard. The commission may impose such conditions 79608
on the plan's termination as it considers reasonable and necessary 79609
to accommodate the transition from an approved plan to the more 79610
advantageous alternative. In the event of an electric security 79611
plan's termination pursuant to this division, the commission shall 79612
permit the continued deferral and phase-in of any amounts that 79613
occurred prior to that termination and the recovery of those 79614
amounts as contemplated under that electric security plan. 79615

(2) The commission may consider the utility's credit rating 79616
when testing an electric security plan under division (E)(1) of 79617
this section. 79618

(F) With regard to the provisions that are included in an 79619
electric security plan under this section, the commission shall 79620
consider, following the end of each annual period of the plan, if 79621
any such adjustments resulted in excessive earnings as measured by 79622
whether the earned return on common equity of the electric 79623
distribution utility is significantly in excess of the return on 79624
common equity that was earned during the same period by publicly 79625
traded companies, including utilities, that face comparable 79626
business and financial risk, with such adjustments for capital 79627
structure as may be appropriate. Consideration also shall be given 79628
to the capital requirements of future committed investments in 79629
this state. The burden of proof for demonstrating that 79630
significantly excessive earnings did not occur shall be on the 79631
electric distribution utility. If the commission finds that such 79632
adjustments, in the aggregate, did result in significantly 79633
excessive earnings, it shall require the electric distribution 79634

utility to return to consumers the amount of the excess by 79635
prospective adjustments; provided that, upon making such 79636
prospective adjustments, the electric distribution utility shall 79637
have the right to terminate the plan and immediately file an 79638
application pursuant to section 4928.142 of the Revised Code. Upon 79639
termination of a plan under this division, rates shall be set on 79640
the same basis as specified in division (C)(2)(b) of this section, 79641
and the commission shall permit the continued deferral and 79642
phase-in of any amounts that occurred prior to that termination 79643
and the recovery of those amounts as contemplated under that 79644
electric security plan. In making its determination of 79645
significantly excessive earnings under this division, the 79646
commission shall not consider, directly or indirectly, the 79647
revenue, expenses, or earnings of any affiliate or parent company. 79648

(G)(1) The commission, in a proceeding regarding an electric 79649
security plan, may establish or upwardly adjust the rates the 79650
electric distribution utility is authorized to collect from its 79651
customers to ensure that the utility achieves and maintains at 79652
least a minimum credit rating. The rate adjustment shall be in an 79653
amount that the commission determines is just and reasonable, as 79654
well as necessary for the utility to achieve and maintain a target 79655
credit rating determined by the commission. 79656

(2) When making a rate adjustment under this division, the 79657
commission shall do the following: 79658

(a) Consider the potential benefits over time from an 79659
improved credit rating; 79660

(b) Consider the need to provide safe, reliable, and stable 79661
utility service in the state; 79662

(c) Determine the target credit rating, which may be a higher 79663
credit rating than the minimum credit rating; 79664

(d) Consider any and all matters that may adversely affect 79665

the target credit rating; 79666

(e) Determine the form of a rate adjustment under this division; 79667
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(f) Determine the duration of the rate adjustment based on the time period necessary to achieve and maintain the target credit rating. 79669
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(3) A rate adjustment approved under this section is not a transition charge and shall not be subject to the limitations for such charges under division (A) of section 4928.141 or sections 4928.31 to 4928.40 of the Revised Code or to any limitation relating to corporate separation plans under section 4928.17 of the Revised Code. 79672
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(4) As used in this division, "minimum credit rating" means the lowest credit rating that is rated as investment grade by independent entities in the business of establishing credit ratings. 79678
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Sec. 4928.64. (A)(1) As used in this section, "qualifying renewable energy resource" means a renewable energy resource, as defined in section 4928.01 of the Revised Code that ~~has:~~ 79682
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(a) ~~Has~~ a placed-in-service date on or after January 1, 1998, ~~or with respect to;~~ 79685
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(b) ~~Is~~ any run-of-the-river hydroelectric facility, ~~that has~~ an in-service date on or after January 1, 1980; ~~a renewable energy resource~~ 79687
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(c) ~~Is~~ a small hydroelectric facility; 79690

(d) ~~Is~~ created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or 79691
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(e) ~~Is~~ a mercantile customer-sited renewable energy resource, 79694