

## 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

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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](mailto:bojko@carpenterlipps.com) or Ryan Augsburger at 614.629.6817 or [raugsburger@ohiomfg.com](mailto: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
" <b>Sec. 4928.66.</b> (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 <del>the</del>	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
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<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.