



Before
The Ohio Senate
Public Utilities Committee
Testimony Regarding Substitute Senate Bill No. 58

By
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Chairman Seitz, Vice Chairman LaRose, Ranking Minority Member Gentile, and members of the Senate Public Utilities Committee, thank you for inviting testimony on this legislation that affects Ohio's 4.2 million residential electric customers. I am Bruce Weston, the Ohio Consumers' Counsel. I appreciate that the intention for the Bill has been described as good for customers. But, as currently drafted, the Bill falls short for protecting Ohio consumers. Therefore, the Office of the Ohio Consumers' Counsel (OCC) opposes Substitute Senate Bill 58 as currently drafted. My testimony today relates to the energy efficiency provisions of the Bill and focuses on some of the ways the Bill works against Ohio's residential electric consumers. In this regard, I make recommendations for improving the Bill.

Senate Bill 58 makes energy efficiency more costly for Ohio consumers and more profitable for Ohio utilities. And the Bill provides new benefits for some industrial customers while forgoing protections for residential and other smaller customers.

I recommend the elimination of four provisions in the Bill that are harmful to Ohio residential consumers. In the near future, I will provide a more complete list of recommendations for improving the Bill. My four recommendations are:

1. Consumers should not have to pay for higher utility profits for energy efficiency.
2. Consumers should not have to make utilities whole for energy efficiency savings by paying so-called “lost” transmission and distribution (“T&D”) revenues.
3. Consumers should not have to pay utilities for the Bill’s expanded new definition of what constitutes savings from energy efficiency.
4. Consumers should not be at risk to lose protections achieved prior to the Bill through settlements or litigation on efficiency, as a result of the Bill allowing utilities to modify pending or approved applications “in their sole discretion.”

1. Consumers should not have to pay for higher utility profits for energy efficiency.

In Lines 1759 to 1776, consumers would have to pay electric utilities for energy efficiency savings (referred to as “shared savings incentives”) whether or not utilities meet the benchmarks. The Bill requires customers to pay the utilities a percentage of the net benefits of energy efficiency programs. This Bill provision is extremely generous to utilities, at 33.3 percent. This provision means that for every \$100 million the energy

efficiency programs save customers,¹ the utility would reward itself by taking \$33.3 million from customers.²

But it gets worse for Ohio consumers. Consumers also would be required to pay for the utilities' taxes on their profit from the percentage payment. The utilities would take an additional \$20 million from customers for every \$100 million in efficiency savings. The 33 percent and the tax effect together mean that customers forgo more than half of the energy efficiency benefits by paying them as profits to the utility.

The highest percentage profit that a utility has received in a PUCO case is 13 percent, after taxes. In a typical PUCO case, the issue is whether to pay a utility an incentive to provide more efficiency than the statutory benchmark. In the Bill, the utility will be paid whether or not the benchmark is even met. The Bill will give utilities a much more favorable outcome in PUCO cases. In the interest of customer protection, this provision should be eliminated from the Bill.

2. Consumers should not have to make utilities whole for energy efficiency savings by paying so-called "lost" transmission and distribution ("T&D") revenues.

Through energy efficiency programs, consumers benefit themselves and other customers by using fewer kilowatt hours. The revenues that utilities do not collect from consumers because of the reductions in usage are so-called "lost" transmission and

¹ For determining utility profit, the Bill would codify the test that provides more utility profit (the Utility Cost Test) instead of the Total Resource Cost Test that produces more fair results for consumers.

² Under SB 221, the latest utilities' energy efficiency portfolio budgets are: FirstEnergy, \$249 million; American Electric Power, \$274 million; Duke Energy of Ohio, \$169 million; and Dayton Power and Light, \$63 million.

distribution revenues. Lines 1627 to 1629 and 1756 to 1758 of the Bill allow the utilities to choose whether to charge consumers for these so-called “lost” revenues.

The trend in PUCO cases is against the utilities’ collection of lost revenues or for limiting the collection of lost revenues. This direction was signaled, in part, in a 2011 Concurring Opinion of the PUCO Chairman. He stated: “I will be most reluctant to approve any future proposals which include the collection of lost distribution revenues resulting from the statutory mandates for energy efficiency savings and peak demand reduction.”³

The treatment of utility lost transmission and distribution revenues in the Bill would have consumers paying their utilities a lot of money. Here are examples of the Bill’s impact. Based on our calculations, customers will pay the utility over \$22 in lost revenues for every compact florescent light bulb that is installed as part of a utility’s energy efficiency program. For a longer lasting LED bulb of similar wattage, our calculations are that consumers will pay more than \$54 in lost revenues per bulb. The details of these calculations are in an attachment to my testimony. This result would equate to hundreds of millions of dollars added to Ohioans’ electric bills.

3. Consumers should not have to pay utilities for the Bill’s expanded new definition of what constitutes savings from energy efficiency.

In Lines 2008 to 2031 and 2043 to 2054, the Bill increases how much credit a utility may claim from an energy efficiency measure. Here again, the Bill recedes from PUCO

³ *FirstEnergy's Energy Efficiency Portfolio Case*, Case No. 09-1947-EL-POR, Opinion and Order, Concurring Opinion of the PUCO Chairman (March 23, 2011).

standards (these contained in the Ohio Technical Reference Manual) that are more protective of customers.⁴ The Bill also counts savings from actions not necessarily undertaken or financed by the utility, such as savings from power plant upgrades retroactive to 2006, water consumption reductions, recycled glass, natural gas or solar thermal.

This liberal definition of savings also exacerbates the higher costs for consumers under the above two issues (related to paying the percentage of savings and paying for lost revenues). By diluting the energy efficiency standard, the Bill can save customers from paying some costs for energy efficiency. But, for reasons I have described, customers will likely pay much more as a result of other provisions.

4. Consumers should not be at risk to lose protections achieved prior to the Bill through settlements or litigation on efficiency, as a result of the Bill allowing utilities to modify pending or approved applications “in their sole discretion.”

The Bill diminishes the PUCO’s authority to balance the interests of customers and utilities in the ratemaking process, and increases the utilities’ control over these issues. My above points are examples. As another example, the Bill gives utilities the discretion to modify pending or approved efficiency applications “in their sole discretion.” (Lines 1782 to 1796) This discretion would allow utilities to conform the results in PUCO cases to more lucrative provisions of Substitute Senate Bill 58.

⁴ *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Finding and Order, Case No. 09-512-GE-UNC (October 15, 2009).

Also, the Bill effectively could overturn a recent PUCO order that required the FirstEnergy utilities to bid a significant amount of their existing and planned energy efficiency capacity savings into the PJM regional capacity market. (Lines 2173-2193) This PUCO ruling that favors the use of energy efficiency to bid into the PJM market is another way that energy efficiency saves money for customers. The Bill excuses the utilities from having to bid planned energy efficiency into the PJM capacity market, instead allowing the utilities to bid only existing efficiency. The Bill thus could significantly lower the amount of electricity savings bid into the capacity market. Bidding is important for consumers because the more electricity savings a utility bids in, the more revenue the utility receives from PJM. That revenue is credited back to customers through the energy efficiency rate. In addition, more energy efficiency resources bid into the PJM capacity auction can place downward pressure on capacity prices that are charged to Ohio consumers.

Other Issues:

The Bill provides a streamlined opt-out for certain industrial customers. The opt-out means that some industrial customers can choose not to pay for the utilities' energy efficiency programs. (Lines 1910 to 1914) It appears that the industrial customers' implementation of energy efficiency may be discretionary. (Lines 1938 to 1942) There may be a form of opt-out for industrial customers that can balance their and other customers' interests, but the Bill has not achieved the balance. The streamlined opt-out, as proposed for large industrial customers, is not fair. It is not fair because those industrial customers can benefit from the energy efficiency impacts on wholesale energy and capacity markets that are paid for by other customers.

My positions on energy efficiency have been informed, to some extent, by the positions taken by some of the industrial customers in PUCO energy efficiency cases. In those cases, some industrial customers opposed how utilities were profiting from energy efficiency at customer expense. I continue to appreciate those positions of certain industrial customers. But it is difficult to reconcile certain of those positions to protect all customers in PUCO cases with industrial support that codifies and exacerbates these problems for customers in the Bill.

Senate Bill 58 is described as relating to the provisions for energy efficiency and alternative energy in Senate Bill 221. But Senate Bill 58 is related to another part of Senate Bill 221—what Ohioans will pay for electric service. When considering in Senate Bill 58 whether utilities should be allowed to charge more to customers for energy efficiency, it should be recognized that there are a number of very favorable ratemaking provisions that were provided to utilities in Senate Bill 221. For example, it would be better for Ohioans if electric utilities were not allowed to retain excessive earnings (as only “significantly” excessive earnings are limited). (O.R.C. 4928.143(F)) It would be better for Ohioans if electric utilities were not allowed to, in effect, veto PUCO decisions that set the standard-offer price that electric customers pay. (O.R.C. 4928.143(C)(2)(a)) And, last but not least, it would be better for Ohioans if, fourteen years after the 1999 enactment of Senate Bill 3 for electric restructuring, all Ohioans were benefiting from the current low market price for electricity. But many Ohioans are paying above-market prices for electricity.

That concludes my testimony. Thank you again for this opportunity to make recommendations on issues of importance to Ohio electric consumers.

SB 58 Utility Energy Efficiency Profit (AKA Shared Savings Utility Incentive) Example
DPL Portfolio Plan Incentive Modified Per Proposed Legislation

	2013-2015	
Benefits of Energy Efficiency Programs		
(1) Net Benefits Using the Utility Cost Test (UCT) Codified in SB 58 (1)	\$ 124,750,442	← Net Utility Benefit
(2) Net Benefits Using the Total Resource Cost Test (TRC)(2)	\$ 46,947,820	← Net Societal Benefit of Programs
(3) 33.3% Utility Profit (Also Known As Shared Savings Incentive) [(1)x33.3%]	\$ 41,541,897	
(4) After-Tax Treatment of Utility Profit [(3)/63% tax gross up]	\$ 65,939,519	← Utility Profit Under SB 58
(5) Traditional Utility Incentive Mechanism Advocated by OCC(3) [(2)* 10%]	\$ 4,694,782	← Typical Utility Profit Nationwide
DPL Energy Efficiency Budget For 2013-2015 (page 10 of Portfolio Plan)	\$ 62,543,701	

(1)The UCT is a benefit-cost test which measures the net benefits of a program from the utility perspective and excludes any costs incurred by the participating consumer paying the incremental costs of the more efficient measure.

* Project Net Benefits from DP&L 2013-2015 Portfolio Plan (page 91)

Case No. 13-833-EL-POR

(2) The TRC is a comprehensive benefit-cost test which measures the net benefits of a program based on the total costs of the program, including both the participatings' customers' costs, and the utility's costs.

(3) Assumes 10 percent pre-tax profit rate and net benefits using TRC.

Conclusions:

1. Utility Profit (Reward) higher than net societal benefits.
2. Customers pay more in Profit (reward) than they pay for utility energy efficiency programs.

SB 58 Transmission & Distribution Lost Revenues Example
20 Watt Compact Florescent Lightbulb ("CFL") installed in 2009

(1) Annual savings* (kWh)	62.2
(2) Life of CFL Measure (yrs)*	9.18
(3) Life of LED Light Bulb (yrs) per manufacturers estimate	22
(4) Approximate Distribution Charge (¢/kWh)	0.03
(5) Approximate Transmission Charge (¢/kWh)	0.01
(6) Total Lost T & D CFL (kWh) (1)x(2)	571.0
Total Lost T&D Revenue Charged Consumers per CFL (6)x[(3)+(4)]	\$ 22.84
(7) Total Lost T & D LED (kWh) (1)x(3)	1,368
Total Lost T&D Revenue Charged Consumers per LED Light Bulb (7)x[(3)+(4)]	\$ 54.74



* Case No. 09-512-GE-UNC, Ohio Technical Reference Manual pages 11-13, adjusted for more expansive "as found" savings definition.