Before the
Senate Public Utilities Committee
Wednesday, October 30, 2013
2:30 PM
Finance Hearing Room

Senate Bill 58
Interested Party Testimony of
Cheryl L. Roberto
Associate Vice President, Smart Power Initiative
On Behalf of the
Environmental Defense Fund

Introduction

Chairman Seitz, Vice Chairman Larose, Ranking Member Gentile and distinguished members of the Committee, I appreciate the opportunity to appear before you today to offer what I am hopeful you will find to be a constructive critique of Senate Bill 58. My name is Cheryl Roberto and I serve as the Associate Vice President, Smart Power Initiative for the Environmental Defense Fund (EDF).

At EDF, we work to solve the most critical environmental problems facing the planet using market-based solutions. We use a uniquely effective approach, drawing on science economics, partnerships and ardent bi-partisanship. We are a non-profit and accept no donations from any corporations. This eliminates conflicts of interest and allows us to evaluate the issues on their merits.

EDF is not your typical environmental advocacy organization. We have a long history of working collaboratively with corporate partners beginning in 1990 when EDF was the first environmental group to work collaboratively with a leading corporation partnering with McDonalds to reduce the company's solid waste, including those foam "clamshell" containers. We recognize that technological innovations like hydraulic fracturing have unlocked vast U.S. reserves of natural gas, which has the potential to create jobs, increase domestic energy security and reduce climate pollution. We know that natural gas comes with its own set of serious risks to public health and the environment. EDF's immediate goal is to make sure that new energy investments, including new natural gas plants and their supply chain, are cleaner and safer. To achieve this, we have joined with stakeholders, committed to safe, environmentally responsible shale resource development, including other environmental organizations, foundations, and energy companies such as Chevron to create the Center for Sustainable Shale Development in Pittsburgh.

EDF is U.S. based environmental advocacy organization with an international reach. We are proud to have 10,000 members in Ohio. I am one of those members. From Ohio, I lead EDF's Smart Power Initiative, a national effort in which we work with utilities, commissions, legislatures, governors and other stakeholders in the nine[i] states in which more than half of the US electricity is produced and consumed to reform utility regulation so that customers can

choose clean energy. The policies we promote include: aligning market incentives to reward investments in clean energy; ensuring that the market values clean resources fairly; improving access to consumer data, consumers and the grid; advancing new clean energy financing mechanisms; and optimizing electric grid efficiency.

Prior to joining EDF, I served as a commissioner on the Public Utilities Commission here in Ohio. This experience offers me unique insight into the particular challenges you are contemplating in the context of Senate Bill 58. While at the commission, I was instrumental in developing the rules implementing Senate Bill 221 and led our combined heat and power project. Within the National Association of Regulatory Utility Commissioners (NARUC), I served as vice chair of the Critical Infrastructure Committee, a member of the Electricity Committee, on the board of directors for the National Regulatory Research Institute, and on the Task Force for Environmental Regulation and Generation. I was tapped by NARUC to co-chair the National Electricity Forum 2012, a national conference addressing cutting-edge issues and potential collaborations to successfully modernize the nation's electricity infrastructure. I served and continue to serve on the executive group for the SEEAction network, a national network of more than 200 utilities, financial service companies, energy service companies, commissioners, and consumer advocates working toward the goal of achieving deployment of all cost-effective energy efficiency by 2020. I was requested by the Federal Energy Regulatory Commission (FERC) to testify at the Technical Conference on Reliability of the Bulk Power System. The testimony that I prepared received the unanimous, bi-partisan support of my colleagues on the Public Utilities Commission. Prior to my appointment to the commission, I served for six years as either the Director or Deputy Director for Operations for the City of Columbus Department of Public Utilities. My duties there included running the City's electric distribution utility.

Senate Bill 58: A Timely Review of Retail Electric Competition

The nation's electricity system stands a transformative crossroads which was not fully apparent to us in 2008 when S.B. 221 was passed. In just five years' time, we have seen a massive and dynamic reduction in the price of natural gas as a result of developments in hydraulic fracturing of shale. By all appearances, abundant domestic natural gas will be our

reality for the foreseeable future, making natural gas in many instances a cheaper alternative for electricity generation than coal. Beyond the price advantage of natural gas, aging coal-fired generation plants built decades ago (75% of all coal-fired plants in the United States are more than 30 years old with a typical total useful life of 40 years[ii]) face challenges meeting new environmental regulations. Even nuclear power faces economic challenges from the availability of natural gas. We are seeing fuel changes for centralized electricity generation that were not anticipated just five years ago.

The change in fuel for large or utility-scale electricity generation units, however, is not even the most significant part of the transformation. The very model of centralized, utility-scale generation itself is no longer sacrosanct. The costs of distributed generation technologies such as solar photovoltaic, battery storage, fuel cells, geothermal energy systems, wind, and micro turbines are falling with renewable options becoming available near where natural gas prices were just a few years ago. Energy productivity is rising. In the last 40 years, the United States has experienced a 300% increase in economic output with less than a 50% increase in energy used to produce it.[iii] The U.S. Energy Information Administration (EIA) projects that average energy use per person will decline between 2011 and 2040.[iv] In our digital world, consumers are less tolerant of power interruptions which wreak havoc with our equipment. Falling natural gas prices reduce the operational costs of natural gas fueled combined heat and power systems. Customers are increasingly interested in how distributed generation, on its own or working in concert with the power from the grid, can meet their needs for energy and greater reliability. Increased integration of intermittent renewable sources, such as wind, means that distributed resources including demand response have added value to the operators of the centralized grid – also driving interest in investment and adoption of distributed resources. The Edison Electric Institute, the association representing all U.S. investor-owned electric companies published a report earlier this year acknowledging and describing this "disruptive challenge" to the model upon which our electric service has been based for the past century.[v]

Changes in the energy landscape in Ohio are significant. Each of the monopoly electric utilities (or "wires" utilities) purchases the load it requires to serve its customers through

auction or it is on a pathway to do so. Ohio consumers in the Duke Energy and AEP territories are increasingly able to participate in a two-way relationship with their utilities through technology platforms enabled by smart meter installation. Duke Energy has installed 426,000 smart meters. AEP has installed 110,000[vi] and recently filed plans[vii] with the Public Utilities Commission to add 900,000 more. Consumers with this technology platform will progressively gain more options to choose how, when, and whether they will use electricity and from what source. Consumers served by Duke Energy and AEP are already enjoying briefer outages due to a more responsive distribution system informed by smart grid investments. Consumers are participating in energy efficiency opportunities and enjoying savings at levels we have never seen before.

An assessment released last November and conducted by Collaborative Economics on behalf of the EDF, concludes that Ohio has enjoyed a rapid expansion of manufacturing and jobs in advanced energy. Ohio has successfully leveraged public and private efforts to stimulate demand for advanced energy products and services, foster advanced energy innovation, and help the region capture economic benefits from advanced energy sector growth. Ohio policy makers from both sides of the aisle, in adopting Senate Bills 3, 221, and 315, set the stage to stimulate markets for advanced energy which has paid off in new economic development.[viii]

Senate Bill 58: Seize the Opportunity to Develop Ohio's Energy Market

The introduction of Senate Bill 58 presents an opportunity to enhance Ohio's ability to capture innovation through a platform for competitive markets free from barriers to competition. Unfortunately, in its current design it fails to achieve this goal. As proposed, Senate Bill 58 would turn back the advances made over the past 14 years to open competitive markets and would operate to reverse those gains. Instead of harnessing future economic opportunity it would pull Ohio backward through anti-competitive and costly retrenchment.

The goal: a platform for market competition

While the electricity market has been restructured in Ohio, "wires" utilities are not free market competitors. They remain monopolies – enjoying a state-granted right to serve captive customers exclusively. In return for that right of exclusivity, what should we expect? We propose to you that the role of economic regulation for monopoly "wires" utilities in Ohio's restructured environment must be to ensure that they provide a platform for competitive retail electric services.

The former vertically integrated system was based upon centralized generation fired by tax-subsidized fossil fuels[ix] with transmission and distribution lines providing a one-way delivery system to meet customers' needs. The entire system was constructed with very little risk to private capital because the companies enjoyed state-granted monopoly rights to serve together with a safe, regulated return on investment (which is why utility stocks were called "widows and orphans stocks"). With the electrification of the United States, year after year load growth made large-scale generation an economically efficient choice. For a century, our energy needs were met by state-granted monopolies to serve. Corporate affiliates of the "wires" utilities still own the generating plants built through rate of return regulation which are located at all of the best sites – near load centers and transmission line access (which they own as well).[x]

In this time of transformation, however, from a one-way power delivery network to a two-way flow of both power and information when load growth is modest or flat and distributed generation alternatives are becoming cost competitive, the monopoly "wires" utilities must become a platform for integration of the full range of competitive and innovative retail electric services. In order for customer choice to become truly operative, customers must receive information about their usage (when and how much electricity they use) and price signals indicating moment-by-moment the changing price of electricity. Distributed resource alternatives must be given a fair chance to compete and smoothly integrated into the grid with no preference given to the incumbent centralized generation. The diversity of options will provide opportunities to customers to hedge risk for both price and reliability (customers may

find that their electric vehicle may be plugged back into their home to provide power to ride out storm outages and to obtain the most efficient prices for electricity service.

To realize the economic and environmental gains made possible by harnessing this transformation and not blocking it, the monopoly "wires" system must be scrubbed of all artifacts of its former bias toward not only its corporate affiliates but toward centralized generation. A truly level competitive playing field means that the monopoly "wires" system is motivated only to meet its customers' needs. Its success would be based upon the access it provides to the full range of cost-effective solutions - whether from centralized generation or a distributed resource, including generation, demand response, and energy efficiency.

If we fail to get regulation of the monopoly "wires" utility right, Ohio will fall behind other states. Technologies and opportunities that we cannot imagine today will not be built or available here. Imagine if protectionist legislation had been adopted to block wireless and internet adoption in Ohio, even though these technologies were adopted in other states. What technology applications and price choices would our families and businesses not be able to enjoy today? Getting regulation of monopoly "wires" in Ohio right means ensuring that they provide a platform for the full range of market competition for retail electric services free from market barriers.

A pathway to a platform for market competition

In considering what legislative changes, if any, are indicated, we urge you to consider this framework: whether any change could be proposed or has been proposed which would operate to remove a barrier to competition arising from the existing monopoly or from an artifact of the former vertically integrated monopoly. In order evaluate whether a legislative intervention is indicated, ask the following three questions:

- What is the precise barrier to competition observed?
- Does it arise from the fact that the "wires" utility remains a monopoly or as a holdover effect from monopoly vertical integration?
- If it represents a barrier from monopoly status, what is a/the solution?

Using this framework to consider the provisions of Senate Bill 58, there are opportunities to remove barriers which were not taken and there are provisions which will operate to entrench barriers to competition.

To achieve the vision of a competitive and innovative energy sector, Senate Bill 58 could, but does not, as proposed, do the following:

Free Corporate Structure of Anti-Competitive Conflicts

Observed barrier: Monopoly "wires" utilities share senior management, investors, and a board of directors with their affiliate competitive generation company and their affiliate federally regulated transmission company. This corporate structure creates inherent and insurmountable conflicting mixed economic incentives. High performance by the monopoly "wires" utility in creating a platform for competition for the full range of retail electric services can only serve to disadvantage the sister affiliate. While the monopoly "wires" utility should be endeavoring to level the playing field between centralized generation and distributed generation, fossil-fuel generation and renewable generation, and energy and energy efficiency, the generation affiliates' economic success is built upon entrenching reliance upon existing fossil-fuel fired centralized generation. Competing financial interests put the affiliates at odds. When permitted to compete on a level playing field at the wholesale level, traditional generation will be and has been bumped off the stack by demand response, renewables, and energy efficiency.[xi] We should expect no less in our retail competitive environment.

This corporate dilemma is documented in SEC statements by FirstEnergy[xii] in which it acknowledges that its competitive energy services segment derives its revenue from the sale of generation which is exposed to market risk including energy efficiency and demand response. As discussed earlier, Duke Energy and AEP have undertaken and are undertaking substantial investment in technology to support customer choice and access to information in the form of smart meters. At the same time, FirstEnergy's monopoly "wires" utility has eschewed investing in enabling technology, leaving its customers blind to the meaningful energy usage data which would empower them to participate in market choices. Strategic under-investment in infrastructure circumventing access obligations is classic anti-competitive behavior.[xiii] Additionally, after investigation, the Commission's expert found that FirstEnergy subjected its

captive customers to procurement of renewable energy credits at prices of which it should have been aware reflected significant economic rents and were excessive. FirstEnergy's monopoly "wires" utility has been found by the Commission to have made procurement decisions which were not prudent or reasonable for renewable energy requiring FirstEnergy to refund in excess of $43 million dollars to its captive customers. The Commission acknowledged in its review that FirstEnergy purchased renewable energy credits from its affiliate.[xiv] Of all monopoly "wires" utilities in Ohio, FirstEnergy has been the least successful in delivering energy efficiency opportunities to its captive customers. Under-investment, imprudent choices, lowest performing energy efficiency programs which harm customers but protect FirstEnergy's generation and transmission assets, these are logical responses from a corporate structure subject to inherent internal economic conflict.

Solution: Senate Bill 58 should resolve this conflict by requiring "full ownership" corporate separation. Senate Bill 3 required corporate separation but permitted the possibility that it could be achieved through functional or structural corporate separation. Now that all of the monopoly "wires" utilities in the state are or soon will be acquiring energy on a competitive basis and given the inherent conflict that remains when less than full ownership corporate separation is achieved, it is time to remove the corporate separation loophole from Senate Bill 3. To illustrate how this could work, a potential draft amendment is attached as Attachment 1.

Open Billing System

Observed barrier: Monopoly "wires" utilities have a direct relationship with their customers through their billing systems. The billing system is open for competitive retail electric suppliers. It is not, however, open to competitive financial providers or competitive energy service providers. Even though competitive providers are willing to offer financial products and energy services which would enable customers to invest their own money in cost-effective energy efficiency upgrades at no upfront cost and pay for them over time, these providers are not permitted access to the billing system to service these loans. As they operate today, the monopoly "wires" utilities preferentially provide access to their billing systems to energy

providers while not providing the same access to energy efficiency or financial services providers.

Solution: As proposed, SB 58 does not include an on-bill repayment program. We recommend opening the billing system to "On Bill Repayment" offerings. These products enable a customer to use private capital to choose to meet their energy needs in the manner that works best for them. No rate payer or utility dollars are involved.

Compensate the Monopoly "Wires" Utility for Providing a Competitive Platform

Observed barrier: Current regulatory rate structures continue to reward monopoly "wires" behavior consistent with the former structure of vertically integrated, centralized generation. The utilities have an opportunity to enhance earnings in three ways: (1) reduce their expenses below those documented during the last rate case; (2) sell more electricity than was captured in the billing determinants in the last rate case; or (3) invest in capital infrastructure. None of these opportunities provides a clear avenue for the utilities to earn more for providing unfettered access to competitive retail electricity choices or for providing "negawatt" services such as demand response and energy efficiency.

Solution: Free the utility to be innovative. Reward the monopoly "wires" utilities for performance consistent with their responsibility to provide a platform for competitive energy services. The following are features of monopoly "wires" operations that support a competitive platform:

- A partnership between the utility and "prosumers" (proactive consumers engaged not only in the consumption of a product or service but in its design or development) – with each party both buying and selling electricity and electrical services.
- The utility fully and timely recovers distribution system costs. All utility customers should pay the value of the distribution systems to them whether receiving electricity from or contributing electricity to the grid.
- The utility should pay for benefits it receives from customer-sited resources taking into account all the value it provides the system including the value of deferring distribution

resources like substations and transformers, peak power prices where appropriate, and hedging benefits.

- The utility must invest in the technology to make both the grid and consumers smarter about the flow of electricity with sensors, telecommunications, and computer technology. The rate of return on these investments must be tied to providing benefits to consumers and the environment.
- The utility must make their customer data available to third party vendors, within privacy limits approved by the customers. Utilities should facilitate the use of customer data by third party vendors to develop energy applications for the customer.
- The system needs to be open up to third party innovation. Utilities must provide an open platform on a non-discriminatory basis to clean technology third party providers. The system should provide payments to the utility for each time a third party innovation or the equivalent of a clean energy "app" is sold to give utilities incentives to maximize penetration of clean energy apps.
- Rules for Interconnection for third party generation including roof top solar and microgrids should be easy and predictable and be able to be completed quickly.
- The utility should be provided the ability to retain earnings when operational costs are reduced through enhanced distribution system efficiency.
- The utility should have an ability to earn more for superior performance (including metrics related to increased customers' competitive access to a broader range of energy services.)

What Senate Bill 58 would do but should not:

<u>Cap Access to Utility Procured Cost-Effective Energy Efficiency</u>

If operating an open and competitive market platform, monopoly "wires" utilities would function as an unbiased energy service procurement agent on behalf of the customer. They would provide customers access to the full range of energy service options, allowing customers to choose. Provided equal access, customers would likely choose the most cost-effective alternative to meet their needs from any combination of products; including being empowered

and supported by their monopoly "wires" utility to purchase all of the cost-effective energy efficiency they wished.

Senate Bill 58 would corrupt this open competitive platform and establish preferential procurement of energy over energy efficiency by the monopoly "wires" utilities. Under Senate Bill 58, monopoly "wires" utilities would continue to procure, on behalf of their captive customers, unlimited volumes of energy through the competitive auction process and in doing so spend an unlimited amount of money. Senate Bill 58, however, would ration the energy efficiency that the monopoly "wires" utility could make available for customer choice. So while the typical price per kWh for energy procured on behalf of customers through these auctions has ranged around $0.06/kWh and the energy efficiency procured on behalf of the customers has cost less than half that amount, Senate Bill 58 would prevent the monopoly "wires" utility from procuring as much as it could find. Energy efficiency could double in cost and still be an advantageous choice for the monopoly "wires" utilities' captive customers but Senate Bill 58 would block the utilities procurement of all available cost-effective energy efficiency. Despite recent gains in energy efficiency stimulated by Senate Bill 221, the economic analysis conducted by the monopoly "wires" utilities themselves demonstrate that there is far, far more cost-effective energy efficiency available.[xv]

Recommendation: Senate Bill 58 should establish as state policy codified in section 4928.02(A) of the Revised Code that it is the policy of this state ensure the availability to consumers adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, including cost-effective energy efficiency. There is no advantage to competitive markets in Ohio to create a bias for energy procurement over energy efficiency procurement. It is the antithesis of retail competition. Senate Bill 58 should not cap energy efficiency procurement.

Weaken Existing Well-Performing Market

Senate Bill 58 would adopt counting conventions for energy efficiency which are at odds with every other state and every other existing market such that they are no longer compatible with the 13-state definition in use within PJM wholesale market. This anomaly creates a one-state market for energy efficiency – a move particularly at odds with Senate Bill 58's effort to

eliminate the one-state renewable market. It undermines opportunities for aggregation of savings for participation in the PJM markets. Energy service providers working in Ohio will need to develop new and different protocols for Ohio from every other state in which they work, adding transaction costs for energy efficiency investments and degrading the value of energy efficiency investments by Ohio businesses. Financial markets will place risk premiums on these atypical market conditions, undercutting opportunity for continued market development. Markets function best with uniformity and transparency, where a kWh is a kWh and a kWh saved is a kWh saved.

Recommendation: Senate Bill 58 would best serve competitive markets by retaining existing definitions for energy efficiency. There is no advantage to competitive markets in Ohio to create aberrant definitions for energy efficiency.

Sanction Continuation of Anti-Competitive Generation Subsidies

"Reasonable" or "unique" arrangements are artifacts of vertically integrated electric utilities. They were suitable, before restructuring, when unused capacity in a baseload generation plant could be put to use. The utility was able to recover fixed costs of generation, all other ratepayers were off the hook from contributing to recover for the unused capacity, and the "reasonable" arrangement customer (usually a large industrial energy user) was able to receive electricity at rates below tariff generation rates in return for using the electricity in a manner consistent with generation infrastructure needs. In the post-restructured world, however, the monopoly "wires" utilities purchase all of the generation which they provide to customers at auction. They earn no revenue on the sale and merely pass-through the costs. Any costs not recovered from the "reasonable" arrangements customer must be recovered from the remaining customers. Any current reasonable arrangement is nothing more than agreement by the utility with the approval of the commission that the remaining ratepayers are going to pay a portion of the bill for the customer who has the "reasonable" arrangement. The payment is quite simply an anti-competitive generation subsidy borne by the remaining ratepayers. Senate Bill 58 entrenches these anti-competitive subsidized payments and extends their value to the subsidized customer by forbidding the commission from requiring that the subsidized electricity

be used efficiently. Thus, remaining ratepayers are forced to pay the electric bills of the industrials and Senate Bill 58 blocks any attempt by the commission to ensure that the electricity is used responsibly. Examples of industrial customers with "reasonable" arrangements for these subsidized payments include: ASHTA Chemicals Inc.,[xvi] Eramet,[xvii] Ormet,[xviii] Globe Metallurgical, Inc.,[xix] Marathon,[xx] Timken,[xxi] V&M Star,[xxii] and Republic Steel has a request pending.[xxiii]

Recommendation: Senate Bill 58 would best serve competitive markets, if it were to eliminate all provisions relating to reasonable arrangements. There is no advantage to competitive markets in Ohio to provide further anti-competitive subsidies to large industrial users.

Include Unrelated Subject Matter

Senate Bill 58 includes additional provisions which may reflect important public policy objectives and may perhaps be appropriate for other areas of government intervention. They in no manner, however, represent evidence of a barrier to normal market operation arising from either the existing monopoly "wires" utility or the prior vertically integrated utility monopoly. As such, they have nothing to do with the economic regulation of the monopoly "wires" utility by the commission.

Recommendation: Provisions unrelated to market barriers arising from the existence of monopoly utilities should be removed from Senate Bill 58. These include but are not limited to:

- increasing use of post-consumer recycled glass
- reducing water usage
- reducing BTUs consumed by a fuel other than electricity

Undermine PUCO

Observation: Ohio, as has every other state, legislatively established authority for monopoly public utility regulation through the operation of a public utility commission. Ohio commissioners must have demonstrated experience in economics, law, finance, accounting, engineering, physical or natural sciences, natural resources, or environmental studies. They

must be recommended by a nominating council to the Governor for appointment. The Governor's nominee must be approved through the advice and consent of the Senate. No more than three commissioners may be affiliated with the same party. The commission is supported by expert staff. The commission follows its precedents such that change in policy occurs in predictable incremental fashion. The nature of a commission permits a more flexible, nimble response than can be achieved through legislation. While far from perfect, this form of regulation offers the most effective vehicle for thoughtful and deliberative economic regulation. This form of regulation also allows the commission to respond more rapidly to changing industry conditions than the legislature is able to respond, as demonstrated by the nine-year gap between Senate Bill 3 and Senate Bill 221, and the five-year gap between Senate Bill 221 and Senate Bill 58. Senate Bill 58 would operate both to overturn existing commission decisions and to shackle future commission discretion to the detriment of Ohio's economic health.

Senate Bill 58 overturns practical implementation decisions made by the commission with regard to the role of energy efficiency and how it should be counted. These decisions were made after extensive public input, retention of a national consulting firm with expertise in this subject matter, staff guidance, and months of deliberation, including in response to multiple requests for rehearing by IEU-Ohio and FirstEnergy. In the end, ten commissioners – three Republicans, three Democrats, and four independents over the course of the leadership of both Chairman Schriber and Chairman Snitchler supported the counting standards[xxiv]. After denying numerous rehearing requests by FirstEnergy, the Ohio Supreme Court upheld the commission' policy directive that monopoly "wires" utilities should seek to provide all cost-effective energy efficiency available to their customers.[xxv] Senate Bill 58 also overturns long-held responsibilities for prudent review and oversight.

Recommendation: Preserve the commission's ability to perform its oversight functions. Consider with healthy skepticism reversal of policy positions thoughtfully developed and reviewed by the body to which you have entrusted discretion for economic regulation of monopoly utilities and which has performed this role successfully for the past hundred years.

Impair Environmental Compliance Opportunities

Unrelated to competitive market operation but worthy of note, Senate Bill 58 would operate to complicate, if not entirely destroy, Ohio's ability to utilize existing energy efficiency and renewable standards as a compliance pathway for impending Greenhouse Gas regulations for existing coal-fired power plants. The U.S. EPA is required to establish Greenhouse Gas regulations pursuant to Section 111(d) of the Clean Air Act. All indications are that it would entertain a state proposal capturing and accounting for Greenhouse Gas emission reductions in other areas of the economy for application to coal-fired generation plant emissions. Thus, a robust energy efficiency and renewables benchmark in a form recognizable to a broader market would become the pathway by which some of Ohio's coal-fired generation may stay on line.

Recommendation: Senate Bill 58 should establish as state policy codified in section 4928.02 of the Revised Code that it is the policy of the state to ensure the availability to consumers of all cost-effective energy efficiency. It should also align its definitions of energy efficiency with those of the PJM market.

Conclusion

Senate Bill 58, as it is currently structured, misses opportunities to remove identified barriers to competition arising from the existing wires monopoly or artifacts of generation monopoly. What is more unfortunate, however, is that it would reverse competitive market gains already put in motion by Senate Bills 3, 221, and 315.

In light of the transformative changes occurring within the energy services industry, we advise you to continue to trust your commission but to provide to them clear direction and authority to ensure that monopoly "wires" utilities provide a platform for competition for all forms of energy services. These policies should include:

- set utilities on a path to full ownership corporate separation

- use fact-based economic analysis to set performance standards (including acquisition of all-cost effective energy efficiency and customer access to all demand side resources)
- align utility earnings with quality of performance
- open the door to on bill repayment

We urge you to categorically reject legislative proposals in Senate Bill 58 which would:

- establish anti-competitive caps on energy efficiency acquisition
- prop up anti-competitive customer-funded, subsidized electricity provided through "reasonable" arrangements
- establish an unproductive single-state energy efficiency market
- prevent the commission from performing its oversight and review responsibilities of monopoly wires utilities
- divert economic regulation of a monopoly to subject matter which is inappropriate and ill-suited to the function of the commission's oversight of monopoly "wires" utilities

Thank you for your consideration. We are hopeful that you will take this opportunity to advance competition for energy services markets in Ohio leading to both a stronger economy and healthier environment.

---

[i] Texas, Pennsylvania, Ohio, North Carolina, New York, New Jersey, Illinois, Florida, and California.
[ii] http://www.eia.gov/energy_in_brief/article/age_of_elec_gen.cfm
[iii] America's Energy Resurgence: Sustaining Success, Confronting Challenges, Bipartisan Policy Center's Strategic Energy Policy Initiative, February 2013, p. 6 ("Bipartisan Policy Center Report") http://tinyurl.com/crp7uxm
[iv] Annual Energy Outlook 2013, released April 15-May 2, 2013 http://www.eia.gov/forecasts/aeo/chapter_market_trends.cfm
[v] Kind, Peter *Disruptive Challenges: Financial Implications and Strategic Responses to a Changing Retail Electric Energy Business* (EEI, January 2013). http://www.eei.org/ourissues/finance/Documents/disruptivechallenges.pdf
[vi] http://www.puco.ohio.gov/puco/index.cfm/consumer-information/consumer-topics/smart-grid-in-ohio/
[vii] Case No. 2013-24.
[viii] Ohio's Advanced Energy Journey (Clean Energy Development Series, November 2012) http://business.edf.org/sites/business.edf.org/files/AdvancedEnergy_OH_Nov2012.pdf
[ix] Dinan, Terry M. *Testimony Federal Financial Support for Fuels and Energy Technologies Before the Subcommittee on Energy Committee on Science, Space, and Technology* (U.S. House of Representatives,

March 13, 2013) http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-12-EnergyTechnologies.pdf

[x] Testimony of Chairman Todd A. Snitchler before the House of Representatives Policy and Legislative Oversight Committee on electric generation delivered October 15, 2013. http://www.puco.ohio.gov/emplibrary/files/media/testimony/House%20Policy%20and%20Legislative%20Oversight%20Testimony%20101513.pdf

[xi] See PJM capacity auction results. http://www.pjm.com/~/media/about-pjm/newsroom/2013-releases/20130524-pjm-capacity-auction.ashx

[xii] FirstEnergy, Form 10-Q, for the quarter ending June 30, 2013, p. 62. http://www.sec.gov/Archives/edgar/data/1031296/000103129613000034/fe-06302013x10q.htm

[xiii] OECD Reports. Report on Experiences with Structural Separation (OECD Competition Committee, 2011) p. 15 http://www.oecd.org/daf/competition/50056685.pdf

[xiv] In re: Alternative Energy Rider, Case No. 11-5201-EL-RDR (Opinion and Order, August 7, 2013) http://dis.puc.state.oh.us/TiffToPDf/A1001001A13H07B41149F98309.pdf

[xv] See Robert, Cheryl & Noah C. Dormady, The Costs of Inefficiency: Ignoring Ohio's Energy Efficiency Potential (Policy Paper, The Glenn School Of Public Affairs) http://glennschool.osu.edu/research/policy/cost-of-inefficiency/The%20Costs%20of%20Inefficiency%20-%20Dormady3.pdf

[xvi] See PUCO Dockets 94-2069-EL-AEC and 12-1494-EL-AEC (pending).

[xvii] See PUCO Docket 09-0516-EL-AEC.

[xviii] See PUCO Docket 09-0119-EL-AEC.

[xix] See PUCO Dockets 13-1170-EL-AEC; 08-0884-EL-AEC.

[xx] See PUCO Dockets 10-2777-EL-AEC

[xxi] See PUCO Docket 10-3066-EL-AEC.

[xxii] See PUCO Docket 09-80-EL-AEC.

[xxiii] See PUCO Docket 13-1913-EL-AEC.

[xxiv] See *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC. Commissioners Rhonda Hartman Fergus (R), Cheryl L. Roberto (D), Valerie A. Lemmie (I), Paul A. Centolella (D), Chairman Alan R. Schriber (I) signed the order on October 15, 2009 http://dis.puc.state.oh.us/TiffToPDf/A1001001A09J15B23707E63875.pdf and again upon rehearing on June 16, 2010 except that Commissioner Fergus had retired and Commissioner Steven D. Lesser joined the order http://dis.puc.state.oh.us/TiffToPDf/A1001001A10F16B35448J58817.pdf; and Commissioners Asim Z. Haque (I), Lynn Slaby (R), M. Beth Trombold (I), Steven D. Lesser (D), and Chairman Todd Snitchler (R) affirmed the order on second rehearing on July 31, 2013 http://dis.puc.state.oh.us/TiffToPDf/A1001001A13G31B35836H76445.pdf

[xxv] *In Re: Application of the Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company for Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanism*, Case No. 2011-2204 Ohio Supreme Court (July 9, 2012)

4928.17 Corporate separation plans.

(A) Except as otherwise provided in sections ~~[~~(B) HEREIN]4928.142 ~~or~~ 4928.143 ~~or~~ 4928.31 ~~to~~ 4928.40 ~~of the Revised Code and beginning on the starting date of competitive retail electric service, n~~[N]o electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service~~,~~. ~~unless the utility implements and operates under a corporate separation plan that is approved by the public utilities commission under this section, is~~

[(B) FOR PURPOSES OF COMPLYING WITH THIS SECTION AN ELECTRIC UTILITY SHALL FILE A COPORATE SEPARATION PLAN WITH THE PUBLIC UTILITIES COMMISSION WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS LAW PROVIDING FOR FULL OWNERSHIP SEPARATION IN THE SHORTEST REASONABLE TIME FRAME.] consistent with the policy specified in section 4928.02 of the Revised Code~~,~~[. UNTIL SUCH TIME AS THE COMMISSION APPROVES OR MODIFIES AND APPROVES A CORPORATE SEPARATION PLAN PURSUANT TO THIS SECTION, AN ELECTRIC UTILITY MAY CONTINUE TO OPERATE IN THIS STATE SO LONG AS IT IS IN COMPLIANCE WITH A CURRENT CORPORATE SEPARATION PLAN PREVIOUSLY APPROVED BY THE COMMISSION WHICH] ~~and~~ achieves all of the following:

(1) The plan provides, at minimum, for the provision of the competitive retail electric service or the nonelectric product or service through a fully separated affiliate of the utility, and the plan includes separate accounting requirements, the code of conduct as ordered by the commission pursuant to a rule it shall adopt under division (A) of section 4928.06 of the Revised Code, and such other measures as are necessary to effectuate the policy specified in section 4928.02 of the Revised Code.

(2) The plan satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power.

(3) The plan is sufficient to ensure that the utility will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in the business of supplying the competitive retail electric service or nonelectric product or service, including, but not limited to, utility resources such as trucks, tools, office equipment, office space, supplies, customer and marketing information, advertising, billing and mailing systems, personnel, and training, without compensation based upon fully loaded embedded costs charged to the affiliate; and to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in business of supplying the noncompetitive retail electric service. No such utility, affiliate, division, or part shall extend such undue preference. Notwithstanding any other division of this section, a utility's obligation under division (A)(3) of this section shall be effective January 1, 2000.

(~~B~~[C]) The commission ~~may approve, modify and approve, or disapprove a corporate separation plan filed with the commission under division (A) of this section. As part of the code of conduct required under division (A)(1) of this section, the commission~~ shall adopt rules pursuant to division (A) of section 4928.06 of the Revised Code regarding corporate separation and procedures for plan filing and approval. The rules shall include limitations on affiliate practices solely for the purpose of maintaining a separation

of the affiliate's business from the business of the utility to prevent unfair competitive advantage by virtue of that relationship. The rules also shall include an opportunity for any person having a real and substantial interest in the corporate separation plan to file specific objections to the plan and propose specific responses to issues raised in the objections, which objections and responses the commission shall address in its final order. Prior to commission approval of the plan, the commission shall afford a hearing upon those aspects of the plan that the commission determines reasonably require a hearing. The commission may reject and require refiling of a substantially inadequate plan under this section.

(~~C~~[D]) The commission shall issue an order approving or modifying and approving a corporate separation plan under this section, to be effective on the date specified in the order, only upon findings that the plan reasonably complies with the requirements of division (A) of this section and will provide for ongoing compliance with the policy specified in section 4928.02 of the Revised Code. However, for good cause shown, the commission may issue an order approving or modifying and approving a corporate separation plan under this section that does not comply with division (A)~~(1)~~ of this section but complies with such ~~functional~~ [STRUCTURAL] separation requirements as the commission authorizes to apply for an interim period prescribed in the order, upon a finding that such alternative plan will provide for ongoing compliance with the policy specified in section 4928.02 of the Revised Code.

(~~D~~][E]) Any party may seek an amendment to a corporate separation plan approved under this section, and the commission, pursuant to a request from any party or on its own initiative, may order as it considers necessary the filing of an amended corporate separation plan to reflect changed circumstances.

(~~E~~[F]) No electric distribution utility shall sell or transfer any generating asset it wholly or partly owns at any time without obtaining prior commission approval.