



**Am. Sub. House Bill 166  
Interested Party Testimony  
Ohio Senate Finance Committee, the Honorable Matt Dolan, Chair  
May 23, 2019**

Chairman Dolan, Vice Chair Burke, Ranking Member Sykes, and members of the Senate Finance Committee, thank you for the opportunity to provide testimony on Amended Substitute House Bill 166.

The OMA supports the state's balanced budget requirement and we commend you for your work toward that constitutional requirement. Our testimony today on general government issues is limited to a provision of the bill that does not heavily impact state finances, but certainly does impact household and business finances.

As the state's largest business association representing manufacturers, which, collectively, make the largest GDP contribution of any Ohio business sector, we offer concerns with a costly change to Ohio utility law.

Am. Sub. H.B. 166 pending before the Senate Finance Committee includes a House amendment to PUCO governing statute O.R.C. section 4928.143. This language is anti-consumer. The Ohio Manufacturers' Association urges its removal via attached amendment language.

**Practical Effect**

The House-added language would require the PUCO to consider the total earned return on common equity of all three distribution utilities of FirstEnergy when applying the significantly excessive earnings test (SEET).

Currently, the PUCO must perform the test on a utility by utility basis to determine if individual utilities have over earned. Under the test, if a utility has over earned, the utility must refund the excess earnings to its customers.

With this proposed change, if one distribution utility in a family of distribution utilities is over earning, it will offset an affiliated distribution utility that is not as profitable. The amendment would allow FirstEnergy to shield a utility that is excessively earning by offsetting those excessive profits with an affiliated utility that is not as profitable, allowing the parent company to retain profits that are otherwise required to be given back to customers. This would eliminate a customer protection that was enacted as part of Ohio's ratemaking statutes.

The ramification is that FirstEnergy will not have to refund monies to customers for one of its utilities if that utility is over earning. This amendment will provide the opportunity for FirstEnergy to reap another windfall.

## **Background**

The Significantly Excessive Earnings Test (SEET) was contained in comprehensive energy reform legislation (SB 221) more than a decade ago. The SEET is the lynchpin of the bill's consumer rate protections. Utilities may not charge rates that generate "significantly excessive earnings." Profits earned by a utility above the "significantly excessive" threshold must be refunded to customers.

In the years since enactment, the PUCO has twice defined over 17% return on equity to trigger SEET customer refunds (The Ohio Manufacturers' Association and numerous other parties contested that level as overly generous). Regrettably for customers, the Ohio SEET profit threshold is greater than in many competitor states and has allowed Ohio's electric distribution utility companies to reap greater profits from captive distribution customers than in other states where ROE is typically much lower.

The SEET applies to utility costs and profits stemming from Electric Security Plan (ESP) rate cases (EPSs were also a mechanism created in SB 221). ESPs are filed by electric distribution utilities to provide a variety of services in exchange for distribution charges on customer bills.

Customers are increasingly unified that these two ratemaking provisions are anti-competitive and unfair – and bad for consumers and Ohio's economy. A broad-based coalition of electricity consumers has been supportive of legislative efforts (HB 247, 132<sup>nd</sup> General Assembly) to improve customer protections by eliminating ESPs. ESPs have become mechanisms for all manner of utility charges and are not subject to PUCO scrutiny that would assure ratepayers of just and fair costs.

## **Conclusion**

The amendment to the SEET does nothing to protect customers. Instead the amendment protects only FirstEnergy's distribution utility companies at the expense of their customers. The amendment allows FirstEnergy to realize rapacious profits from Ohio customers. For these reasons, we urge the Senate to strip the unjustified and inequitable amendment from Amended Substitute House Bill 166.

\_\_\_\_\_ moved to amend as follows:

1 In line 95 of the title, delete "4928.143,"

2 In line 316, delete "4928.143,"

3 Delete lines 55450 through 55702

4 In line 76068, delete "4928.143,"

5 The motion was \_\_\_\_\_ agreed to.

6 SYNOPSIS

7 **Electric utility significantly excessive earnings**

8 **R.C. 4928.143**

9 Removes a provision that would have required the Public  
10 Utilities Commission (PUCO), when determining whether an  
11 electric distribution utility had or is likely to have  
12 significantly excessive earnings, to use, for affiliated  
13 utilities that operate under a joint electric security plan, the  
14 total of the utilities' earned return on common equity.

15 Also removes a provision that would have permitted the  
16 PUCO, in making its determination of whether a utility had  
17 significantly excessive earnings, to consider the revenue,  
18 expenses, or earnings of any affiliate that is an Ohio electric  
19 distribution utility.