

**Before  
The Ohio Senate  
Finance Committee**

**Testimony on Substitute House Bill 33 (Non-Budget Issues Harming Utility Consumers)**

**Jeff Jacobson, Strategic Insight Group  
On Behalf of  
Office of the Ohio Consumers' Counsel**

**June 8, 2023**

Hello Chair Dolan, Vice Chair Cirino, Ranking Member Sykes, and members of the Committee. I hope you and your colleagues are well.

Thank you for this opportunity to testify on behalf of Ohioans. Today we are recommending – for fairness to utility consumers – that new language on natural gas infrastructure (lines 83163-83312) in Tuesday’s Substitute bill be removed. The language should be considered in a stand-alone bill. Removing this language will protect millions of Ohioans in their service from natural gas utilities such as Dominion, Columbia Gas, Duke, and CenterPoint.

Having said that, we are grateful for consumer protection that amendment HC1121 was not included in the Substitute bill. That amendment would have exempted submeterers from PUCO regulation, to the detriment of consumers. And it would have enabled certain benefits for utilities to the detriment of consumers. Further, we appreciate that consumers will be protected by the removal of House-passed language allowing subsidy charges related to electric vehicle charging.

However, the new language in the Substitute bill on natural gas infrastructure is problematic for utility consumers. It enables gas utilities to collect even more subsidies from Ohio utility consumers for infrastructure development, without adequate ratemaking protections for consumers. Under current law, gas utilities like Dominion may charge consumers up to \$1.50 per month for economic development projects. (R.C. 4929.162)

But under Substitute HB 33 it appears that Dominion, Columbia Gas, Duke, CenterPoint and others could charge consumers up to \$3.00 per month for gas infrastructure costs. And, as I describe below, it seems the utilities can use deferral accounting to circumvent the claimed \$3.00 limit on charges. Specifically, the gas utilities could charge millions of Ohioans up to \$1.50 per month for the planning, development and construction of gas infrastructure projects, prior to the projects even being approved. (Lines 83191-83195) And gas utilities could charge consumers an additional \$1.50 per month for utility connection costs for PUCO-approved economic development projects. (Lines 83196-83199) Also, the utilities can charge consumers for guaranteed profit with these monthly infrastructure rider charges. (Lines (83200-83203)

Further, Substitute HB 33 appears to allow the gas utilities to use deferral accounting (with interest accrued) to collect infrastructure development costs that exceed the monthly cap.

Deferral accounting can serve as an anti-consumer way for utilities to get around regulatory limits on their charges to consumers. In this instance, the deferral accounting seems designed to enable more charges to consumers for infrastructure development charges that exceed the monthly cap for planning, development, and construction of the gas infrastructure projects. (Lines 83235-83242) The unlimited deferral period to collect more infrastructure development charges from consumers (Lines 83221-83231) appears to circumvent the \$3.00 per month cap the bill otherwise provides. (Lines 83235-83242)

Additionally, the standard for approving the utilities' charges to consumers for these infrastructure development costs *seems to abandon longstanding regulatory protections for consumers*. That is bad for consumers. Under the language in the sub bill, the PUCO can approve the utilities' infrastructure planning, construction, and development charges so long as the costs, excluding the profit component allowed to the gas utility, are projected to generate profits that do not exceed the utility's most recently PUCO-approved return on equity. (Lines 83297-83303) *In other words, the bill's new ratemaking standard apparently abandons the venerable used and useful and prudence standards that Ohio law currently requires. Those standards protect consumers from paying too high rates to utilities like Dominion, Columbia Gas, Duke and others.* As stated, the new standard is merely keyed to charges not being allowed to exceed the utility's PUCO-approved return on equity. So as long as the PUCO doesn't allow the utility to make too-high profits, the PUCO has the power to approve customers being charged for things that aren't of value to them. Those could be things with no substantive, objective standard separating good ideas from bad. And the utilities' charges to consumers for costs can be made without the requirement in current law that they be beneficial to consumers as "used and useful."

Another concern with the infrastructure development charge to consumers is that the Substitute bill is not only designed like a tax on millions of Ohio consumers, but it is a regressive type of tax. It favors big business customers. Under the bill, some of the largest companies in Ohio if not in the country, would just pay the same \$3.00 monthly for the subsidy as residential consumers pay. That charge is a mere pittance for such large companies. It is unfair to residential consumers. Larger companies should pay their proportionate share to fund the program.

In sum, the new gas infrastructure language is complex and parts are troubling. The issue deserves more study and time, for legislators and stakeholders, than addressing this now at the eleventh hour of the budget bill. There should be the usual process of sponsor, proponent and opponent testimony. That should include hearing from Dominion, Columbia Gas, Duke, and other utilities. There should be the detailed analysis by the Legislative Service Commission. The gas infrastructure language and its charges to consumers should be removed and considered in a stand-alone bill.

Finally, a caveat is that our testimony was prepared with less than a day to analyze the Substitute bill, so there was not the time we needed to fully develop our testimony and provide other input to you. Also, attached is a letter from the Ohio Manufacturers' Association expressing concern to the Speaker of the House about the infrastructure language in the House-passed budget bill.

Thank you for your consideration of these consumer issues.



April 25, 2023

The Honorable Jason Stephens, Speaker  
The Honorable Allison Russo, Minority Leader  
The Honorable Jay Edwards, Finance Chair  
The Honorable Jeff LaRe, Finance Vice Chair  
The Honorable Bride Rose Sweeney, Finance Ranking Member

**VIA EMAIL**

Dear Speaker Stephens, Minority Leader Russo, Chair Edwards, Vice Chair LaRe, and Ranking Member Sweeney:

As the state's largest business association representing manufacturers, which, collectively contribute more to Ohio's Gross Domestic Product than any Ohio business sector, we again express concerns with costly new Ohio utility-related provisions included in Sub. House Bill 33 (HB 33). While this language would not heavily impact state finances, it would certainly impact household and business finances.

Substitute HB 33 includes a provision that creates new utility statutes – sections 4928.85, 4928.86, 4928.88, and 4928.89 – applicable to electric distribution utilities. Collectively, this language (as amended) subjects customers of electric utilities to new costs and removes important customer protections.

Certainly, economic development and infrastructure investment are important to our state's economy, and the OMA supports such projects and investment in the state of Ohio. However, as proposed, the language regarding cost recovery for such projects is problematic.

It is important to note that under current law, public utilities may recover new infrastructure costs from customers if they can demonstrate to the Public Utilities Commission of Ohio (PUCO) that such charges are "used and useful" to its customers and were prudently incurred. This important standard has served to balance the needs of public utilities and customers for decades. HB 33 enables electric utilities to bypass the "used and useful" standard, layering on a new above-market charge on customers' power bills.

The electric utilities are already poised to benefit from recovery of costs associated with infrastructure expansion. This new language grants electric utilities swift cost recovery from customers for all net costs associated with infrastructure development and economic development projects, including funds used during construction, depreciation, a return on equity, ongoing operation and maintenance expenses, tax expenses, project planning costs, and right of way costs. Cost recovery from customers is to make the electric utility whole after they have already received funds from the All Ohio Future Fund for the economic development projects.

However, the amount of money to be collected – and the method of collection from customers to support potential site-ready economic development projects that may never come to fruition or

infrastructure that may never be used – is unlimited and unspecified. This would leave much discretion to the electric utilities and PUCO to choose which businesses are winners and losers.

More specifically, there are no caps on spending or cost recovery from customers or guidance as to how the costs will be allocated or collected. The broad types of costs that can be recovered for an infinite number of projects and infrastructure upgrades from electric utilities would be unwieldy for customers.

The new law will increase customers' electric bills, erode important customer protections, and enable electric utilities to get paid for potential "economic development" or "infrastructure" projects that might never be used.

The OMA urges the House to refrain from making significant changes to public utility law inside of the state's operating budget and to instead evaluate modifications through a comprehensive, transparent committee process. On behalf of Ohio's manufacturing industry, we urge the removal of these troubling provisions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Augsburger".

Ryan Augsburger  
President, The Ohio Manufacturers' Association

cc: Ms. Brittney Colvin, Majority Chief of Staff  
Mr. Jordan Plottner, Minority Chief of Staff