OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

H.B. 128
134th General Assembly

Final Analysis

Click here for H.B. 128's Fiscal Note

Version: As Passed by the General Assembly

Primary Sponsors: Reps. Hoops and Stein

Effective date: June 30, 2021

Rocky Hernandez, Attorney

SUMMARY

Repeal of nuclear provisions of H.B. 6

- Repeals the following provisions established under H.B. 6 of the 133rd General Assembly:
  - The requirement that an electric distribution utility (EDU) must collect a per-customer monthly charge on all ratepayers in Ohio to subsidize credits for nuclear resources; and
  - The provision that disallows future reductions in the taxable value of tangible personal property of certain electric companies.

Renewable energy credit changes to H.B. 6

- Changes the term "renewable" to "solar" in all the provisions governing the renewable energy credit program enacted under H.B. 6.
- Lowers the charges that an EDU may impose on retail electric customers in Ohio for solar resource credits, reflecting the elimination of the nuclear resource credit program and related customer charges.
- Makes changes regarding the Solar Generation Fund's (SGF's) administration and the deposit of charges collected from retail customers.
- Permits the Ohio Air Quality Development Authority, subject to Controlling Board approval, to use up to $300,000 per fiscal year from the SGF for program administrative costs, beginning January 1, 2021 (FY 2022), and ending June 30, 2029 (FY 2029).
- Permits the Authority, subject to Controlling Board approval, to use up to $300,000 in SGF funds in FY 2022 for program administrative costs incurred in FYs 2020 and 2021.

- Requires the Authority to re-review and approve applications for qualifying solar resources that applied to receive payments for solar energy credits, so long as the application was made before March 1, 2020.
- Relieves the re-reviewed and approved qualifying solar resources from meeting the deadlines for quarterly reports of the megawatt hours produced by the resource that passed before the act's June 30, 2021, effective date.

Decoupling provision changes to H.B. 6

- Repeals the ability of an EDU to file an application with the Public Utilities Commission (PUCO) to implement a decoupling mechanism for calendar year 2019 and thereafter regarding energy efficiency and peak demand reduction (EE/PDR) programs.
- Terminates any H.B. 6 decoupling mechanism for EE/PDR approved prior to the act's June 30, 2021, repeal of the decoupling mechanism provision, and prohibits any related amount, charge, mechanism, or rider from being assessed or collected from customers.

Electric distribution utility excessive earnings test

- Repeals the requirement established under H.B. 166 of the 133rd General Assembly that PUCO consider total earned return on common equity for affiliated Ohio EDUs operating under a joint electric security plan (ESP) when conducting the quadrennial and annual significantly excessive earnings test (SEET) reviews for those EDUs.
- Repeals the H.B. 166 provision that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its annual SEET review of ESP adjustments.

Customer refunds

- Requires the following to be promptly refunded to customers and allocated to customer classes in the same proportion as originally collected:
  - The full amount of revenues collected from customers under the decoupling mechanism established under H.B. 6 for calendar year 2019, and thereafter, regarding EE/PDR programs (repealed as described above);
  - The amounts of money collected from customers resulting from, or attributable to, amendments made to the law by H.B. 166 regarding quadrennial and annual SEET reviews.

Reconsideration of PUCO orders

- Requires PUCO to reconsider any order or determination it made under the law as amended by H.B. 166 regarding quadrennial and annual SEET reviews, and to issue new orders or determinations in compliance with this act's provisions.

Power Siting Board

- Requires the Power Siting Board to submit to the General Assembly, by December 1, 2021, a report, and any legislative recommendations, on whether current requirements for the planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers.
- To complete the report, requires the Board to consult with JobsOhio and permits it to consult with, or be assisted by, PJM Interconnection Regional Transmission Organization L.L.C., PJM's independent market monitor, and other interested stakeholders, such as transmission owners.

DETAILED ANALYSIS

Overview

The act repeals provisions established under H.B. 6 of the 133rd General Assembly regarding (1) nuclear resource payments, the nuclear resource credit program, and the associated monthly electric customer charges, (2) decoupling mechanisms, and (3) reductions in the taxable value of tangible personal property of certain electric companies.

Although the act repeals the nuclear resource credit and payment program, it retains, with some modification, the renewable energy credit program. And, under the act, references to "renewable" resources and credits are changed to "solar" resources and credits.

The act also amends the law regarding electric security plans (ESPs) by eliminating certain provisions established under H.B. 166 of the 133rd General Assembly that related to the significantly excessive earnings test (SEET), which curbs the ability of the Public Utilities Commission (PUCO) to use certain revenues in the earnings calculations.

The act further requires the refund of revenues and money collected from customers under the decoupling mechanism and SEET provisions described above as they existed prior to June 30, 2021, which is the act's effective date. And, the act requires PUCO to reconsider any orders or decisions made in relation to the SEET as amended prior to that date.

Finally, the act requires the Power Siting Board to submit to the General Assembly a report related to planning of the power transmission system.

Repeal of nuclear provisions of H.B. 6

The act repeals certain provisions of H.B. 6. Below is a summary discussion of the repealed provisions, and a link to LSC's Final Analysis of H.B. 6, for a more detailed discussion of the repealed provisions.

Payments for nuclear resources

The act repeals all of the in-state nuclear resource payment provisions enacted in H.B. 6. The repeal includes all provisions related to the per-customer monthly charges that an electric distribution utility (EDU) must collect starting January 1, 2021, and ending December 31, 2027, to subsidize the nuclear resources. The act, in turn, repeals the nuclear resource credit

program, including provisions regarding the application for, the issuance of, and the payment for, nuclear resource credits administered primarily by the Ohio Air Quality Development Authority (OAQDA). A detailed discussion of the repealed law is available on pages 11 to 16 of LSC's Final Analysis of H.B. 6, available here.[1]

Tangible Personal Property

The act repeals the H.B. 6 provision that disallows any future reduction in the taxable value of tangible personal property of an electric company that receives payments for nuclear resource credits. A detailed discussion of the repealed law can be found on page 26 of LSC's Final Analysis of H.B. 6, available here.[2]

Renewable energy credit changes

Although the act repeals the nuclear resource credit program and all its operative provisions, it essentially retains the renewable energy credit program. But, the act makes various changes to that program and its operative provisions as described below.

Terminology change

The act changes the term "renewable" to "solar" in all provisions governing the renewable energy credit program enacted under H.B. 6. As a result, "qualifying solar resources" may obtain "solar energy credits" from customer charges deposited into and then paid from the "Solar Generation Fund" (SGF). This change is more apparent than real, simply because qualified renewable resources under H.B. 6 and the act can only be certain solar facilities.[3]

Solar generation charge

The act lowers the charges that an EDU may impose on retail electric customers in Ohio for renewable energy credits, reflecting the elimination of the nuclear resource credit program and related customer charges to meet the revenue requirements for the repealed program. The act retains the solar charge in an amount necessary to meet an annual $20 million revenue requirement. The act, in turn, reduces the maximum monthly charge imposed to meet the revenue requirement from 85¢ to 10¢ per month for residential customers and from $2,400 to $242 per month for industrial customers.[4]

Solar Generation Fund

The act clarifies that all the customer charges collected for solar energy credits are to be deposited into the SGF by OAQDA, in consultation with PUCO. It also places the SGF under the

[1] R.C. 3706.40 to 3706.49, 3706.55, and 3706.59; R.C. 3706.53 and 3706.61, repealed by the act.

[2] R.C. 5727.231, repealed by the act.

[3] R.C. 3706.40 to 3706.59, 4928.642, and 4928.645.

[4] R.C. 3706.46; R.C. 3706.53, repealed by the act.

administration of OAQDA and requires OAQDA to request the Treasurer of State to create the account for the SGF.[5]

Under the act, OAQDA may use, subject to Controlling Board approval, up to $300,000 from the SGF to pay for program administrative costs each fiscal year beginning July 1, 2021 (FY 2022), and ending June 30, 2029 (FY 2029). The act also allows OAQDA to use, in FY 2022, and subject to Controlling Board approval, SGF funds for administrative costs incurred in FYs 2020 and 2021, in amounts up to $300,000 for each of those fiscal years.[6]

Application for solar energy credits

Notwithstanding the February 1, 2020, application deadline and the March 31, 2020, OAQDA approval deadline under continuing law, the act requires OAQDA to re-review and approve an application from a qualifying solar resource that applied to receive payments for solar energy credits, so long as the application was submitted before March 1, 2020.[7] Under previous law, only applications received prior to February 1, 2020, were to be reviewed, with OAQDA issuing decisions before March 31, 2020.[8]

In addition, the deadlines for quarterly reports of the megawatt hours produced by the resource that passed before the act's June 30, 2021, effective date do not apply to a qualifying solar resource whose application for credits is approved as described above.[9] The first five report deadlines have already passed (April, July, and October 7, 2020, and January and April 7, 2021).[10]

Decoupling provision changes of H.B. 6

Decoupling

The act repeals the decoupling provisions enacted in H.B. 6 . Generally, these provisions gave an EDU the ability to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. Under the decoupling mechanism, the base distribution rates for residential and commercial customers were decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements, excluding program costs and shared savings, and recovered pursuant to an approved ESP, as of the 12-month period ending December 31, 2018.[11]

---

[5] R.C. 3706.49.

[6] R.C. 3706.491.

[7] R.C. 3706.551(A).

[8] R.C. 3706.41 and 3706.43.

[9] R.C. 3706.551(B).

[10] R.C. 3706.45.

[11] R.C. 4928.471, repealed by the act.

A detailed discussion of the repealed law can be found on page 24 of LSC's Final Analysis of H.B. 6, available here.

The act also prohibits any decoupling mechanism established under H.B. 6 from remaining in effect on and after the act's June 30, 2021, effective date, and prohibits any amount, charge, mechanism, or rider related to this decoupling provision from being assessed or collected from customers.[12]

Customer decoupling refunds

The act requires customer refunds of the full amount of the revenues collected under the H.B. 6 decoupling provisions. Refunds must be made promptly to customers from whom they were collected and must be allocated to customer classes in the same proportion as originally collected.

The decoupling refunds must be made notwithstanding any other provision in Ohio utility law, including continuing law that prohibits public utilities from refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.[13]

EDU excessive earnings test

The act modifies the law that requires PUCO to determine if EDUs that operate under an ESP are likely to have or have had excessive earnings. Determinations are made through a significantly excessive earnings test (SEET). Under the act, when determining how significantly excessive earnings are assessed, PUCO may no longer do the following:

- Use the total earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted every four years.[14] (See "**Quadrennial reviews for significantly excessive earnings**" below.)
- Use the total of the utilities' earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted in reviews of annual ESP adjustments.[15] (See "**Annual reviews for significantly excessive earnings**" below.)

The act removes the provision, enacted by H.B. 166, that allowed PUCO, in its SEET reviews for annual ESP adjustments, to consider, "directly or indirectly, the revenue, expenses, or earnings of" any EDU affiliate that is an Ohio EDU. The act revives prior law that prohibits PUCO from considering these factors for "any affiliate or parent company."[16] The effect of this

[12] Section 4.

[13] Section 5.

[14] R.C. 4928.143(E).

[15] R.C. 4928.143(F).

[16] R.C. 4928.143(F).

change is that the factors PUCO considers for individual Ohio EDU affiliates during a review may no longer be reviewed in combination with the other affiliate EDUs.

Background

Under the competitive retail electric service law, EDUs must provide consumers "on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." EDUs must apply to PUCO to establish the standard service offer through a market rate offer (MRO) or an electric security plan (ESP).[17]

No EDUs are operating under an MRO. Cleveland Illuminating Company, Ohio Edison Company, and Toledo Edison Company are FirstEnergy companies that operate under a joint ESP.[18]

SEET reviews

Quadrennial reviews for significantly excessive earnings

Ongoing law requires PUCO to review each ESP with a term exceeding three years, in the fourth year, and if applicable every four years thereafter. One of the review's purposes is to determine whether the prospective effect of an EDU's ESP is substantially likely to provide the EDU with a return on common equity that is "significantly in excess of the return on common equity that is likely to be earned by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings will not occur.[19]

Annual reviews for significantly excessive earnings

Under continuing law, PUCO also must review ESP adjustments following the end of each annual period of an ESP to determine if the adjustments resulted in excessive earnings. This SEET determination is measured by whether earned return on common equity of the EDU is "significantly in excess of the return on common equity that was earned during the same period by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings did not occur.[20]

Actions after SEET results

If, after a SEET for a four-year review, PUCO finds that continuation of the ESP would result in significantly excessive earnings, it may terminate the ESP after providing notice and a

[17] R.C. 4928.141, not in the act.

[18] FirstEnergy Electric Security Plan (Case No. 14-1297-EL-SSO), available at http://dis.puc.state.oh.us/TiffToPDf/A1001001A16C31B41521H01842.pdf.

[19] R.C. 4928.143(E).

[20] R.C. 4928.143(F).

hearing. If, during an annual SEET review of ESP adjustments, PUCO finds that the adjustments, in the aggregate, did result in significantly excessive earnings, it must require the EDU to return to consumers the amount of the excess by prospective adjustments. The EDU, upon making the prospective adjustments, may terminate the ESP and immediately file an application for an MRO. Rates for the terminated ESP, by PUCO order, become the EDU's most recent standard service offer rate until the EDU submits a new ESP or MRO.[21]

Customer refunds regarding SEET

The act requires customer refunds of the amounts of money collected from customers resulting from, or attributable to, amendments made to the ESP laws described above regarding SEET. Refunds must be made promptly to customers from whom the money was collected and must be allocated to customer classes in the same proportion as originally collected.[22]

Reconsideration of orders and decisions regarding SEET

The act requires PUCO to reconsider any order or determination it made in compliance with the ESP laws prior to the act's June 30, 2021, effective date regarding SEET. The act further requires PUCO to issue new orders and determinations in compliance with the amendments this act makes to these provisions.[23]

Certain utility law not applicable

Refunds and reconsideration required above must be made notwithstanding any other provision in Ohio utility law, including the law that prohibits public utilities from refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.[24]

Power Siting Board

The act requires the Power Siting Board (PSB) to submit a report to the General Assembly on whether the current requirements for the planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers. PSB must hold at least one public meeting before completing the report, which must be submitted by December 1, 2021. When completing the required report, PSB:

- Must consult with JobsOhio;
- May consult with or request assistance from:
  - PJM Interconnection Regional Transmission Organization, L.L.C.;

[21] R.C. 4928.143(E) and (F).

[22] Section 6(A).

[23] Section 6(B).

[24] Section 6.

- PJM's independent market monitor; or
- Other interested stakeholders, such as transmission owners.

The report may include recommendations for legislative changes to ensure that transmission planning is cost effective and in the interest of consumers. It may include legislative recommendations regarding whether (1) the definition of a major utility facility should include an electric transmission line of a design capacity at or above 69 kilovolts and associated facilities the costs of which are recovered as a transmission asset by the transmission owners, (2) the criteria for an accelerated certificate application should be modified, (3) the certification process is sufficiently transparent, and (4) PSB should require certain factors for, or determine if the factors apply to, a transmission project certification application.

The application factors to consider under (4) are that:

- Alternative transmission projects were considered; and
- The project:
  - Was competitively bid or compared to the results of a competitive bid;
  - Has been considered in the context of the utility's larger transmission plan;
  - Has been considered in the context of the regional transmission planning process of PJM;
  - Could not have been deferred or redesigned to achieve the same operational result at a lower overall cost; and
  - Has provided historical information for an existing transmission project or information for a planned or proposed project.[25]

PSB, which operates within PUCO, is responsible for approving the siting of major utility facilities and certain wind farms and ensuring that they meet requirements specified in Ohio law.[26]

[25] R.C. 4906.105.

[26] R.C. 4906.02(A) and 4906.03, not in the act.

HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Public Utilities	03-10-21
Passed House (86-7)	03-10-21
Reported, S. Energy & Public Utilities	03-24-21
Passed Senate (33-0)	03-24-21
House concurred in Senate amendments (89-0)	03-25-21

20-HB128-134/ts