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H.B. 317
(l_134_1936-7)
134th General Assembly

# Fiscal Note & Local Impact Statement

Click here for H.B. 317's Bill Analysis

**Version:** In House Public Utilities

**Primary Sponsor:** Rep. Wilkin

**Local Impact Statement Procedure Required:** No

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## Highlights

- The bill creates competitive power plans (CPPs) and makes them the sole type of electric ratemaking plan available to state-regulated public utilities. Local governments, state agencies, and public institutions of higher education are consumers of electricity, but this bill does not have a direct effect on their expenditures.

## Detailed Analysis

The bill repeals the two types of electric ratemaking plans available under current law: (1) electric security plans (ESPs), and (2) market rate offers (MROs). The bill creates competitive power plans (CPPs) and makes them the exclusive option under which an electric distribution utility (EDU) provides customers a standard service offer (SSO).

No EDUs currently are operating under an MRO. Instead, all are under ESPs approved by the Public Utilities Commission of Ohio (PUCO). In general, ESPs enable EDUs to recover their costs from consumers as well as a return on equity. The three major components of electric bills in Ohio are the price of generation, transmission, and distribution of that electricity. Distribution is the component that is most affected by state regulation. Distribution lines are the lower voltage lines usually mounted on utility poles or buried underground and used to deliver electricity to homes and businesses.

The substantial majority of "riders" approved by PUCO and currently applied to customers' electric bills pertain to the distribution of electricity rather than the generation or transmission of the electricity. By eliminating ESPs, the bill could reduce the number of riders charged to customers and potentially lower their overall electricity expenditures. Nevertheless, the bill permits EDUs to "establish alternative rate recovery mechanisms for distribution and transmission costs, which recovery shall be in addition to the base rate recovery approved for the electric distribution utility." These rate recovery mechanisms (e.g., riders) may be authorized for the "recovery of reasonable and prudent capital investments and related operation and maintenance expenses; carrying costs; incremental depreciation and incremental property taxes for distribution infrastructure expansion, improvement, or replacement and for any program that is legally required to comply with any commission order or rule or with any order or regulation of another governmental entity having jurisdiction over the utility." The bill also permits EDUs to authorize "economic development, job retention, or interruptible rate programs," but it imposes limits on modifying such programs currently in existence on the bill's effective date. Finally, the bill permits EDUs to recover transmission and transmission-related costs, which are principally approved by the Federal Energy Regulatory Commission (FERC), and imposed on EDUs by the regional transmission organization. Currently, EDUs levy a rider on customers' bills to recover transmission costs, albeit not necessarily the same scope of costs proposed by the bill.

Under the bill, a CPP must (1) accurately reflect the utility's cost of capital, (2) result in rates that are just and reasonable, and (3) further the policies of this state as set forth in R.C. 4928.02. The term of a CPP cannot exceed five years. The bill imposes a 3% annual cost cap for enumerated riders under the CPP. The CPP will be subject to an "excessive earnings" test, which differs from the test under current law because it codifies a definitive threshold for excessive earnings. Excessive earnings shall be measured according to whether the earned return on common equity of the utility is greater by 250 basis points or more than the return on common equity most recently authorized by PUCO.

The bill creates a provision for utility refunds, which would apply to ESPs under current law as well as the prospective CPPs. It permits utility refunds for customers during a window of time beginning with the date the Ohio Supreme Court issues a decision declaring a charge paid by customers "to be unreasonable, unlawful, or otherwise improper."

Although the bill repeals the ESP law, the bill does not terminate ESPs that are in effect on the bill's effective date. Under the bill, an EDU with an existing ESP either:

1. Must continue the plan until the plan's termination date, if the ESP has a specified termination date; or
2. May continue the plan until not later than January 1, 2024, if the ESP does not have a specified termination date.[1]

The bill continues the current practice of requiring the electric supply for Percentage of Income Payment Plan (PIPP) customers to be competitively bid. However, the bill ends the practice by which the PIPP customers' load is separately auctioned from the EDU's SSO load.

## Background

Under current law, R.C. 4928.141 provides that an EDU must provide consumers within its certified territory an SSO of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143.

[1] As of this writing, the provision applies to AES Ohio (formerly the Dayton Power and Light Company).

If an EDU applies for an ESP, current law[2] requires PUCO to determine whether the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of the same, is more favorable in the aggregate as compared to the expected results that would otherwise apply for an MRO under R.C. 4928.142. The Supreme Court of Ohio has determined that R.C 4928.143(C)(1) does not bind PUCO to a strict price comparison, but rather instructs the Commission to consider pricing, as well as all other terms and conditions. Therefore, PUCO must ensure that the ESP as a total package is considered, including both a quantitative and qualitative analysis. Many distribution riders are also recoverable under an MRO. However, some riders in an ESP do not offer clear quantitative advantages to customers.

In the past, PUCO approved riders with various types of intended qualitative benefits, such as (1) rate stability for customers, (2) enabling EDUs to proactively improve reliability by improving distribution infrastructure, (3) provisions for economic development, and (4) low-income assistance. The bill authorizes distribution riders for a number of purposes, so it is unclear how many of the existing distribution riders would be prohibited under a CPP.

## Cost of generation and transmission largely independent of PUCO

Generation prices in ESPs for every EDU are set through a competitive bidding process (CBP). In recent years, PUCO has declared that generation rates under a CBP are equivalent to those under an MRO. The bill requires the CBP to be used for future CPPs. The table below shows the generation prices applicable to the most recent seven-year period. Separately, statistics from the U.S. Energy Information Administration show that the average retail price of electricity in Ohio declined by 3.9% from the third quarter of 2016 to the second quarter of 2021. This decrease in the average retail price is notably smaller than the decreases in generation prices shown in the table. Potentially, the bill could yield higher customer savings if it resulted in retail electric rates more closely mirroring the cost of generation.

| Average Price per MWh of SSO Load Through EDUs' Respective SSO Auctions | | | | |
|---|---|---|---|---|
| 12-month Delivery Period Ending | AEP Ohio | AES Ohio (formerly Dayton Power & Light) | Duke Energy Ohio | FirstEnergy's three EDUs |
| May 31, 2017 | $52.37 | $56.57 | $55.21 | $50.05 |
| May 31, 2018 | $51.14 | $50.33 | $52.78 | $50.62 |
| May 31, 2019 | $49.35 | $49.07 | $50.31 | $49.15 |
| May 31, 2020 | $47.38 | $47.30 | $48.85 | $47.98 |
| May 31, 2021 | $42.17 | $42.70 | $46.57 | $44.09 |
| May 31, 2022 | $44.79 | $44.77 | $45.45 | $46.46 |

Note: Tranche-weighted average price of winning bids for all 100 tranches applicable to a given delivery year.
Sources: LBO tabulation of auction results from the following websites:
AEP Ohio, http://aepohiocbp.com/index.cfm?s=background&p=previousResults
AES Ohio, https://www.aes-ohioauction.com/Results.aspx
Duke Energy Ohio, https://www.duke-energyohiocbp.com/Results.aspx
FirstEnergy's EDUs, https://www.firstenergycbp.com/Results.aspx

[2] R.C. 4928.143(C)(1).

Transmission is the part of electric service that deals with transporting electricity from the place of generation to the place on the grid where the power is being consumed. The cost of transmission is determined by formula rates aimed to recover the utility's cost of investment, maintenance, and operating costs in transmission infrastructure. As noted above these costs are approved by FERC.

# Synopsis of Fiscal Effect Changes

- The substitute bill (l_134_1936-7) likely reduces the auction costs incurred on behalf of Percentage of Income Payment Plan (PIPP) customers, so the Department of Development would no longer be required to reimburse the Public Utilities Commission of Ohio (PUCO) for supervising this competitive bidding requirement.
- Increasing the threshold for the excessive earnings test has the potential to increase future costs of purchasing electricity for ratepayers, including the state and political subdivisions.

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