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UPDATED VERSION*

SUMMARY

Infrastructure improvement surcharge

- Changes the law governing waterworks and sewage disposal system company infrastructure improvement surcharges, imposed on customers to recover costs for capital improvements to infrastructure plant, to do the following:
 - Adds the requirements that the capital improvements be (1) prudent and (2) properly classified in the Uniform System of Accounts (USOA) adopted by the National Association of Regulatory Utility Commissioners (NARUC), instead of just used and useful in rendering public utility service;
 - Includes capital improvements consisting of the replacement of an existing plant included in *accounts under NARUC's USOA* instead of including specific listed facilities.
- Permits a surcharge to include capital expenditures made to comply with any consent decree, final order, or final rule of the U.S. or Ohio Environmental Protection Agency.
- Extends surcharge eligibility to include as a “replacement of an existing plant” any replacement that results in an upgrade or improvement to the previously existing plant if it is prudent, qualifies for recovery, and performs the same or similar function as the plant replaced.
- Permits a waterworks or sewage disposal system company with \$250,000 or more of annual operating income to impose, subject to refund, its proposed infrastructure

* This version updates the effective date.

improvement surcharge of certain companies if the Public Utilities Commission fails to issue a final order on the surcharge within 180 days.

- Delays infrastructure improvement surcharge termination by operation of law to no later than December 31, 2036.

Hazardous waste incinerators

- Creates two limited exceptions to the moratorium against modifications to hazardous waste incinerator installation and operation permits.

Public water system asset management program

- Eliminates the requirement that a transient noncommunity water system demonstrate the technical, managerial, and financial capability to comply with the Safe Drinking Water Law through implementation of an asset management program.
- Prohibits the Director of Environmental Protection from adopting or enforcing any rules requiring a transient noncommunity water system to implement, prepare, or complete an asset management program.
- Eliminates the requirement that the operator of a transient noncommunity water system include information regarding the system's asset management program when applying to install a new water well.

Residential PACE lien priority

- Specifies that the priority for a residential PACE lien is:
 - Always subordinate to a first mortgage, regardless of when that mortgage is recorded with the county recorder;
 - Subordinate to all other liens recorded prior to the recordation of the residential PACE lien;
 - Superior to all other liens recorded after the recordation of the residential PACE lien.
- Specifies that a residential PACE lien is a lien for a residential PACE (property assessed clean energy) loan, which is a loan to pay for the installation of cost effective energy improvements on a homeowner's qualifying residential real property and is repayable by the homeowner through a special assessment.

DETAILED ANALYSIS

Infrastructure plant costs recovered by surcharge

The act makes changes to what is included as infrastructure plant costs recoverable under an infrastructure improvement surcharge by a waterworks company (company in the business of supplying water through pipes or tubing, or in a similar manner, to Ohio consumers) or sewage disposal system company (company in the business of sewage disposal through pipes or tubing, and treatment works, or in a similar manner, in Ohio) that is a public utility.

Under continuing law, unchanged by the act, either type of company may apply for a surcharge to recover plant costs. The Public Utilities Commission (PUCO) may approve the surcharge if PUCO determines it is just and reasonable, and is sufficient, but does not exceed, the revenue requirement necessary to recover the plant costs and provide a fair and reasonable rate of return on the plant.¹

Prudent and properly classified

Under the act, capital improvements to infrastructure plant, to be eligible for the surcharge, must be determined by PUCO to be (1) prudent, (2) used and useful in rendering public utility service, and (3) properly classified in the Uniform System of Accounts (USOA) adopted by the National Association of Regulatory Utility Commissioners (NARUC) as identified in the Ohio Administrative Code. Former law required only that PUCO determine the improvements to be used and useful.²

Waterworks company capital improvements

Below is a table comparing the changes made by the act regarding the waterworks company capital improvements that may be included in the surcharge.³

Former law	The act
<p>Replacement of existing plant including:</p> <ul style="list-style-type: none"> ▪ Chemical feed systems; ▪ Filters; ▪ Pumps; ▪ Motors; ▪ Plant generators; ▪ Meters; ▪ Service lines; ▪ Hydrants; ▪ Mains; and ▪ Valves. 	<p>Replacement of <i>an</i> existing plant included in <i>accounts</i> (under NARUC's USOA):</p> <ul style="list-style-type: none"> ▪ 323 – Other power production equipment; ▪ 324 – Steam pumping equipment; ▪ 325 – Electric pumping equipment; ▪ 326 – Diesel pumping equipment; ▪ 327 – Hydraulic pumping equipment; ▪ 328 – Other pumping equipment; ▪ 332 – Water treatment equipment; ▪ 342 – Distribution reservoirs & standpipes; ▪ 343 – Transmission & distribution mains; ▪ 345 – Services; ▪ 346 – Meters; ▪ 347 – Meter installation; and

¹ R.C. 4909.172; R.C. 4905.02 and 4905.03, not in the act.

² R.C. 4909.172(C).

³ R.C. 4909.172(C)(1).

Former law	The act
	<ul style="list-style-type: none"> ▪ 348 – Hydrants.

Sewage disposal system company capital improvements

Below is a table comparing the changes made by the act regarding the sewage disposal system company capital improvements that may be included in the surcharge.⁴

Former law	The act
Replacement of existing infrastructure including: <ul style="list-style-type: none"> ▪ Chemical feed systems; ▪ Filters; ▪ Pumps; ▪ Motors; ▪ Sludge-handling equipment; ▪ Plant generators; ▪ Mains; and ▪ Lift stations. 	Replacement of <i>an existing plant</i> included in <i>accounts</i> (under NARUC's USOA): <ul style="list-style-type: none"> ▪ 352 – Collection sewers; ▪ 352.1 – Collection sewers – Force; ▪ 352.2 – Collection sewers – Gravity; ▪ 353 – Services to customers; ▪ 354 – Flow measuring devices; ▪ 355 – Flow measuring installations; ▪ 356 – Other collection plant facilities; ▪ 362 – Receiving wells; ▪ 363 – Electric pumping equipment; ▪ 364 – Diesel pumping equipment; ▪ 365 – Other pumping equipment; ▪ 372 – Treatment and disposal equipment; ▪ 373 – Plant sewers; ▪ 374 – Outfall sewer lines; and ▪ 375 – Other treatment and disposal plant equipment.

Replacement of an existing plant

The act defines “replacement of an existing plant” regarding waterworks and sewage disposal system company capital improvements (discussed immediately above) to include replacements that upgrade or improve the previously existing plant, provided that the

⁴ R.C. 4909.172(C)(2).

replacement plant is prudent, qualifies for recovery under the act, and performs the same or similar function or purpose as it did prior to the replacement.⁵

Other capital expenditures

The act also includes, as capital improvements that may be included in the surcharge, capital expenditures made by a waterworks or sewage disposal company to comply with any consent decree, final order, or final rule from either the U.S. or Ohio Environmental Protection Agency.⁶

Surcharge imposed pending PUCO approval

The act provides that a waterworks or sewage disposal system company with \$250,000 or more in annual operating revenues can, at the company's discretion, put its surcharge into effect if PUCO fails to issue a final order on the company's surcharge application within 180 days. The surcharge will take effect on the filing of the company's revised affected rate schedule, subject to refund of amounts collected in excess of those authorized by PUCO's final order.

All refunds must include interest at the rate required by Ohio law and be accomplished as PUCO prescribes in the final order. PUCO may require an undertaking to secure the refund if it finds it is warranted by the financial condition of the waterworks or sewage disposal system company.⁷

Surcharge termination by law

The act requires that all infrastructure improvement surcharges must terminate by operation of law no later than December 31, 2036, instead of December 31, 2025.⁸

Hazardous waste incinerators

In general, the Director of Environmental Protection is prohibited from issuing any new or modified hazardous waste incinerator installation and operation permit.⁹ The act creates two new limited exceptions to this moratorium that apply to modifications to an existing permit issued for a facility that was in operation prior to April 15, 1993.

First exception

The act specifies that the moratorium does not apply when:

⁵ R.C. 4909.172(C).

⁶ R.C. 4909.172(C)(4).

⁷ R.C. 4909.172(D).

⁸ R.C. 4909.172(G).

⁹ R.C. 3734.123(C).

- The application for the modified permit is for the installation of an improved air emission control system designed to achieve compliance with federal air regulations; and
- The application does not propose to increase the treatment capacity of the incinerator or the quantity of waste to be treated by it.¹⁰

Second exception

Next, the act specifies that the moratorium does not apply when:

- The application for the modification seeks to increase the treatment capacity of the hazardous waste incineration operations or the quantity of waste to be treated;
- The hazardous waste incinerator is at or near its actual maximum operating capacity on April 4, 2023, the act's effective date;
- The application for the modified permit is for the installation of an improved air emission control system designed to achieve compliance with federal air regulations;
- The owner or operator of the hazardous waste incinerator has not been issued any other permit allowing for the expansion of the hazardous waste incinerator or construction of a new hazardous waste incinerator.¹¹

Public water system asset management program

The act eliminates a requirement that transient noncommunity water systems demonstrate technical, managerial, and financial capability and implement an asset management program.¹² A transient noncommunity water system is a noncommunity public water system that does not regularly serve at least 25 of the same persons over six months per year and is not a community water system or a nontransient noncommunity water system.¹³ The act further prohibits the Director from adopting or enforcing rules requiring a transient noncommunity water system to prepare, implement, or complete an asset management program.¹⁴ Accordingly, the act eliminates the requirement that the operator of a transient noncommunity water system include information regarding the system's asset management program when applying to install a new water well.¹⁵

Under continuing law, all public water systems (other than transient noncommunity water systems) must demonstrate the technical, managerial, and financial capability of the

¹⁰ R.C. 3734.123(D).

¹¹ R.C. 3734.123(E).

¹² R.C. 6109.24(G)(2).

¹³ R.C. 6109.01(L).

¹⁴ R.C. 6109.24(G)(1).

¹⁵ R.C. 6109.072(B).

system to comply with the Ohio Safe Drinking Water Law by implementing an asset management program. An asset management program must include certain elements, including an inventory of system assets, emergency preparedness and contingency planning, and long-term funding strategies. The Director of Environmental Protection, at any time, can request that a public water system submit a written description of the system's asset management program. The system must comply with the request within 30 days. If a system fails to demonstrate its compliance capability, the Director may take any enforcement actions authorized for Safe Drinking Water Law violations, including suspending the system's ability to operate.¹⁶

Residential PACE lien priority

A residential PACE (property assessed clean energy) loan is the extension of financing that is offered to pay for the installation of cost effective energy improvements on a homeowner's qualifying residential real property (a single family residential dwelling, or other residential dwelling of three or fewer units) and that is repayable by the homeowner through a special assessment. A "residential PACE lien" is the encumbrance on that real property created by the special assessment for such a loan. Typically, the payments for a residential PACE loan are added as an additional amount on the homeowner's tax bill. The residential PACE lien stays with the property (even if the property is sold to a new homeowner) until the loan amount is paid in full. When the amount is paid in full, the lien is released from the property.

Prior law did not explicitly express the lien priority for residential PACE liens, however, it is likely they received the same treatment as other special assessments and unpaid property taxes, which is the highest priority of all liens, including a mortgage lien. The act, instead, specifies that a residential PACE lien is all of the following:

1. Subordinate to all liens on the qualifying residential real property recorded prior to the time the residential PACE lien is recorded;
2. Subordinate to a first mortgage on the qualifying property recorded after the residential PACE lien is recorded;
3. Subject to the preceding paragraph, superior to any other lien on the qualifying residential real property recorded after the residential PACE lien is recorded.

In the event of a foreclosure sale of a qualifying residential real property, the holders of any mortgages or other liens, including delinquent special assessments secured by residential PACE liens, are to receive proceeds in accordance with these priorities.

¹⁶ R.C. 6109.24.(G)(2).

HISTORY

Action	Date
Introduced	07-01-21
Reported, H. Public Utilities	05-11-22
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Passed Senate (23-8)	12-13-22
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