



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 102
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Wilkin

Reid J. Fleeson, Attorney

Kathleen A. Luikart, Research Analyst

CORRECTED VERSION*

SUMMARY

Utility ratemaking

Utility ratemaking law changes

EDU rate case application every five years

- Requires an EDU to file a rate case application regarding distribution service every five years beginning not later than five years after the effective date of the bill.
- Requires each EDU that has not filed a distribution rate case application during the five-year period prior to the bill's effective date to file a rate case application not later than six months after that date.

Rate case notice changes

- Under the public utility ratemaking law, changes the number of notices a utility must publish after filing an application for an increase in any rate, rate mechanism, joint rate, toll, classification, charge, or rental from one printed in a newspaper and a second published on the newspaper's website to just one notice on the newspaper's website.
- Repeals, among other related requirements, the requirements that the application notice must include instructions for electronic access to the application or other documents on file with PUCO and that the first notice must be made in its entirety and the second notice may be abbreviated.
- Reduces the number of times PUCO must publish a hearing notice regarding a utility's application for a rate increase from one printed in a newspaper of general circulation in

* Corrects a typographical error in the dot points.

the affected service area and a second published on the newspaper's website to just one notice on the newspaper's website.

- Repeals the requirement that the hearing notice must state prominently the total amount of the revenue increase requested in the application for the rate increase.
- Repeals, among other related requirements, the requirements that the first notice for a hearing must be made in its entirety and the second publication may be abbreviated.
- Regarding a public utility rate case proposal that appears to PUCO to be unjust or unreasonable, repeals the requirements that (1) PUCO publish a notice of a hearing one time in a newspaper of general circulation in each county in the service area affected by the application and (2) that a written notice of hearing date be sent to the utility.

Rate case: property used and useful, valuation, and rates

- Makes various changes to the law governing rate increases with respect to utility property, regarding how it is reported to PUCO, valued, determined to be used and useful, and regarding its valuation effect on rate determinations.
- Permits electric light companies to propose a fully forecasted test period as an alternative for determining utility revenue and expenses in a rate increase application.

Allowance for construction work in progress (CWIP)

- Repeals all construction work in progress (CWIP) provisions of utility property valuation law that allow PUCO, in its discretion, to include in the valuation of utility property a reasonable allowance for CWIP for a construction project that is at least 75% complete.

“Rate mechanism” added to existing utility rate provisions

- Adds “rate mechanism” to several ongoing provisions of ratemaking law for utility rates that lists “rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental.”

Other rate case application requirements

- Adds several requirements that apply to a company's rate case application, including for example, that (1) all work papers supporting an application must be filed with the application in electronic format, with formulas intact, (2) except for PUCO staff, limits rounds of written discovery and questions during each round, (3) any party and PUCO staff are entitled to file testimony, and (4) PUCO staff are subject to discovery.
- Repeals the requirement that PUCO, after a hearing to determine whether proposed rates in an application are just and reasonable, must, “where practicable, issue an appropriate order within six months from the date the application was filed.”
- Repeals the requirement that a written report of the facts of a rate case application be made and filed with PUCO within a reasonable time as determined by PUCO and a copy

sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and other persons as PUCO deems interested.

- Requires, not later than 150 days after the application filing, PUCO staff to make and file in the rate case a written report of recommendations, including all work papers in electronic format with all formulas intact.

Request for temporary rate increase

- If a proceeding for a rate case application has not been concluded and a PUCO opinion and order issued by 275 days after the application's filing date, allows a public utility to request an increase, which temporarily remains in effect until modified by PUCO order and is subject to refund.
- Prohibits a temporary increase from exceeding the midpoint of the rates recommended in the PUCO staff report for the rate application.
- Repeals the requirement that, if a PUCO order for an application has not been entered at the expiration of 275 days, an increase, not to exceed the proposed increase, goes into effect upon the utility filing with PUCO a bond or letter of credit with an affidavit promising to refund, with interest, any amounts collected over the final rate in the final PUCO order.
- For any amounts collected under a temporary rate increase that exceed the amounts authorized by the PUCO final order, removes the requirement that the increase be subject to refund, if PUCO does not enter the opinion and order within 365 days from the application's filing date for a rate increase.

Rate case application notices for certain utility rates

- Requires a public utility that has more than 100,000 customers to notify PUCO of its intent to file an application under the utility ratemaking law regarding rates set for a municipal corporation or the law allowing a water-works company to petition PUCO to fix its water utility rates upon the failure of the municipal legislative authority, by ordinance, to fix those rates.
- Requires such notices to be filed with PUCO not later than 90 days prior to filing the application described above and requires the notices to include certain information to be included in the application such as the proposed valuation of the utility's property, proposed date certain, and proposed test period.

Interim distribution mechanism (IDM)

- Permits an electric light company to file with PUCO an application (not considered a rate increase application under utility ratemaking law) for approval of an interim distribution mechanism (IDM), which allows a company to collect the revenue requirement associated with distribution infrastructure investments.
- Permits an electric light company with an IDM to file for another IDM so long as the application is filed not sooner than the 12 months after the filing date of its most recent

IDM application, but prohibits PUCO from authorizing more than three IDMs for any single company tariff in effect at any time.

- Requires PUCO to adopt rules and establish a procedural schedule with an evidentiary hearing not later than 14 days after receiving an IDM application and to authorize an IDM, only if it is just and reasonable and does not result in revenues in excess of the requirement to cover certain infrastructure costs.
- Requires PUCO to consider any benefits the company's investments contribute to the company's distribution grid and to customers and any resulting incremental cost savings.
- Requires each IDM to be allocated to base distribution rate classes consistent with the revenue requirement allocation in the company's most recent base rate application.
- Prohibits an IDM from collecting more than 4.0% of the PUCO-approved base distribution revenue requirement (to the extent that it is based on expenditures for investments necessary for safety, reliability, system efficiency, security, or resiliency purposes) and requires each IDM to be trued up annually subject to this limitation.
- Permits PUCO to approve certain IDM investments, including distribution-related capital expenditures that meet criteria specified in the bill such as expenditures that are investments that are used and useful or projected to be used and useful in rendering public utility service not later than 12 months after the application's filing date.
- Requires a PUCO order for an electric light company's application for a base rate increase to provide for the termination of any existing IDM authorized for the company to the extent the underlying investments of the IDM are to be recovered through base rates approved in the application subject to the order.
- Establishes a deadline of 180 days after an IDM application's filing date by which PUCO must take action, and if PUCO does not do so, the application goes into immediate effect and is subject to refund, including interest, but also specifies that the application is not subject to refund, if PUCO fails to issue an order by 275 days after that date.
- Allows PUCO to extend the deadlines described above if the company caused a delay in the application proceeding.
- Grants PUCO the authority to reduce the amount of, or terminate, an IDM if it determines that the IDM, on a normalized basis, caused a company's rate of return on equity on distribution rate base greater than 250 basis points more than the return on equity most recently authorized for the company in a base rate case application.
- Requires an electric light company to (1) provide notice of its IDM to affected customers, (2) include the notice with, or on, each affected customer's first bill containing the IDM, and (3) list, on all customer bills that it sends, the individual customer cost of the IDM for the applicable billing period.

Repeal of obsolete Ohio coal tax credit

- In the utility ratemaking law, repeals provisions regarding the obsolete law for the Ohio coal tax credit in the public utility excise tax law.

Competitive Retail Electric Service (CRES)

Repeal of current law options for providing an SSO

- Repeals electric security plans (ESPs) and market rate offers (MROs) under which an EDU provides customers in its certified territory a standard service offer (SSO) for competitive retail electric generation service.
- For an EDUs' ESPs in effect on the bill's effective date:
 - Requires an ESP with a termination date before June 1, 2024 to continue the ESP until that date;
 - Permits an ESP with a termination date after June 1, 2024 to continue the ESP until its termination date; and
 - Permits an ESP without a specific termination date to continue it until not later than June 1, 2024.
- Requires the continuing ESPs to operate in accordance with all applicable PUCO orders and rules and any law that existed and applied to the ESP prior to the bill's effective date.
- Prohibits an EDU from extending an ESP after its termination, and also prohibits the EDU from applying for a new ESP.
- Permits PUCO to amend its rules to meet the requirements under the bill and the ESP continuation and termination date provisions described above.
- Allows an EDU to create necessary regulatory assets or liabilities, along with carrying costs at the EDU's weighted average cost of debt, for any outstanding under- or over-collection of funds under riders if it has an existing ESP that creates or continues riders and to the extent that those riders cease to exist after the ESP's termination.
- Requires that the resolution of under-collection or over-collection of funds under the riders described above to be addressed in the EDU's first distribution rate case that occurs after the ESP's expiration.

Standard Service Offer plan (SSO plan)

- Requires EDUs to apply to PUCO for approval of a standard offer plan (SSO plan) and requires an EDU with an ESP in effect on the bill's effective date to submit an SSO plan application prior to the expiration of its ESP, which when approved will not take effect until the ESP expires.

- Requires PUCO to initiate a proceeding and issue an order to approve or modify and approve an SSO plan application not later than 180 days after the application's filing date.
- Requires an approved SSO plan to have a minimum term of three years and a maximum term of five years.
- Requires PUCO to authorize:
 - Cost recovery, through annually reconciled transmission riders, of nonmarket transmission costs imposed on an EDU by the Federal Energy Regulatory Commission;
 - Programs for customers that align retail rate recovery with EDU transmission and transmission-related costs and programs that allow customers to be billed directly for transmission service by a competitive retail electric service (CRES) provider;
 - Programs for energy-intensive industrial customers to implement cost-effective economic development, job retention, and interruptible rate programs that enhance distribution and grid reliability;
 - Lease financing arrangements for distribution or transmission-related equipment and lease financing arrangements to promote economic development;
 - Cost recovery for an EDU's economic development electric transmission infrastructure projects held for future use.
- Allows an EDU to recover all direct and indirect costs that it incurs to support or provide its SSO and requires those costs to be recovered through an SSO price.
- Entitles each utility to full and timely recovery of exact SSO costs including costs for acquiring energy and capacity, costs associated with conducting, administering, and implementing the competitive bidding process, costs for independent consultants, and all direct or indirect costs to support or provide the SSO.
- Prohibits double recovery of any direct costs allocated to the SSO price and allow PUCO to authorize a credit rider to avoid double recovery.
- Permits PUCO to authorize any just and reasonable phase-in of any EDU rate or price under an SSO, as enacted by the bill, or ESP under current law.

Miscellaneous CRES

PUCO authority over certain riders or rate mechanisms

- Provides that nothing in the bill limits PUCO authority to implement, maintain, or modify riders or rate mechanisms recovering costs imposed on a utility by a governmental authority or which recover costs upon which the utility earns no rate of return.

Electric energy storage system for wholesale market

- Prohibits an EDU from using an electric energy storage system to participate in the wholesale market if the EDU purchased or acquired that system for distribution service.

Competitive affiliate generating facility ownership

- Permits a competitive affiliate of an EDU to own or operate an electric generating facility, but may not be subsidized by the EDU.

Electric services companies financial assurances

- Requires PUCO to establish rules requiring electric services companies to maintain financial assurances sufficient to protect customers and EDUs from default, including rules specifically allowing EDUs to set security standards through tariffs.

Competitive retail electric service consumer protections

- Specifies that CRES consumer protections in existing law and administrative rules apply to small commercial customers and all other customers set forth in the rules.

Fixed introductory electricity rate expiration notices

- Requires a CRES provider that contracts with a residential or small commercial customer for a fixed introductory rate that later converts to a variable rate to mail notices to such customers.

Renewable energy compliance payment

- Modifies the requirement that PUCO annually adjust the compliance payment for failure to comply with renewable energy resource benchmarks to no longer require that the adjustment reflect changes to the Consumer Price Index.

Percentage of income payment program plan

- Eliminates language providing that only bidders that are PUCO-certified CRES providers may participate in the auction to supply CRES to percentage of income payment plan program (PIPP) customers.

Public Benefits Advisory Board report

- Repeals provisions related to a report that the Public Benefits Advisory Board was required to submit to various state officials by December 15, 2015.

Changes to reflect ESP repeal

Governmental aggregation of electricity

- Eliminates language permitting a legislative authority to elect not to receive standby service from an EDU on behalf of customers that are part of its governmental aggregation under the current ESP law.

- Revises language regarding rules to encourage and promote large-governmental aggregation.

Legacy generation resource

- Applies the prohibition against EDU use of legacy generation resource output to supplying an EDU's SSO established under the bill and an ESP under current law.

CRES corporate separation law

- Applies the prohibition against an electric utility providing both a noncompetitive retail electric service and a CRES without a PUCO approved corporate separation plan, except as provided in the SSO law established by the bill.

Electric securitization and financing orders

- Modifies "phase-in costs" eligible for securitization and recovery bonds through a financing order.
- Permits an EDU filing a financing order application with PUCO to also restate or incorporate by reference information that the EDU filed with a SSO under the bill, or MRO and ESP under current law.
- Grants standing to participate in financing order proceedings to parties that participated in SSO proceedings established by the bill where phase-in costs were approved.

Competitive Retail Natural Gas Service

Economic development project cost recovery

- Includes the costs of planning, obtaining the right-of-way for, and constructing economic development projects held for future use as costs for which a natural gas company may file an application with PUCO to recover under an infrastructure development rider.
- Adds a project that has received funding under the brownfield remediation program as an economic development project for which a natural gas company may file an application with PUCO for approval.

Supplier financial assurances

- Requires PUCO to establish rules requiring competitive retail natural gas suppliers (RNGS) to maintain financial assurances sufficient to protect customers and natural gas companies from default, including rules specifically allowing natural gas companies to set security standards through tariffs.
- Eliminates language providing that a RNGS may be required to provide a performance bond sufficient to protect consumers and natural gas companies from default.

Fixed introductory natural gas rate expiration notices

- Requires a competitive retail natural gas service provider that contracts with a residential or nonmercantile commercial customer for a fixed introductory rate that later converts to a variable rate to mail notices to such customers.

Miscellaneous PUCO provisions

Regulatory restrictions redemption exemptions

- Exempts certain rules required to be adopted by PUCO from the regulatory restriction limitation in existing law.

PUCO rehearings

- Except during a state of emergency declared by the Governor, requires PUCO to render a final decision on the merits of a rehearing on an issue not later than 150 days after granting a rehearing under the procedures for rehearings granted to parties to a proceeding after PUCO issues an order.
- Specifies that if PUCO fails to render a decision in the 150 days as required, the rehearing on the issue must be considered denied by operation of law.

Refunds of improper public utility charges

- Requires all revenues collected from customers by a public utility as part of a rider or rate mechanism, rather than through base rates, to be subject to refund, notwithstanding the refund prohibition under current law, if the Ohio Supreme Court later finds the rider or rate mechanism to be unreasonable, unlawful, or otherwise improper.
- Specifies that such charges are subject to refund from the date of the Supreme Court's decision until the date when PUCO, to implement the Court's decision, makes changes to the rider or mechanism to implement new rates.
- Specifies that PUCO must order the refunds in a manner designed to be allocated to customer classes in the same proportion as the charges were originally collected.
- Requires PUCO to determine how to allocate any remaining funds that cannot be refunded for any reason.

Regulatory assets and liabilities

- If, on a public utility's books and records, PUCO authorizes a deferral as a regulatory asset, requires PUCO to allow the utility to accrue carrying costs at the utility's most recently approved long-term cost of debt.
- If PUCO allows recovery of all or a portion of the regulatory asset, requires PUCO to allow continued accrual and collection of carrying charges on the unrecovered balance at the utility's approved long-term cost of debt under its most recent base rate case.

- If, on a public utility’s books and records, PUCO requires the utility to create a regulatory liability, specifies that PUCO must require the utility to accrue carrying costs at its most recently approved long-term cost of debt.
- If PUCO requires all or a portion of the regulatory liability to be credited to customers, specifies that PUCO must require, on the balance not yet credited, continued accrual of carrying charges on the unrecovered balance at the utility’s approved long-term cost of debt under its most recent base rate case.
- Requires carrying charges for regulatory assets to accrue until the entire regulatory asset and all carrying costs have been recovered and carrying charges for regulatory liabilities to accrue until the entirety of the regulatory liability and all carrying costs have been credited to customers.

Settlement of matters pending before PUCO

- Prohibits an EDU or its affiliate, to induce any party to a PUCO proceeding to enter into a settlement of a matter pending before PUCO, from making a cash payment to that party or entering into any agreement or any financial or private arrangement with that party that is not made part of the public case record.
- Allows PUCO to (1) reasonably allocate costs among, and design rates within, rate schedules, (2) approve reasonable rates designed for particular customers or classes of customers, and (3) approve a resolution of a proceeding regarding complaints against public utilities, notwithstanding the prohibition described above.

TABLE OF CONTENTS

Utility ratemaking	12
Utility ratemaking law changes.....	12
EDU rate case application every five years	12
Rate Case notice changes.....	13
Application filings	13
Hearings.....	13
Ongoing notice requirements	14
Hearings for unjust or unreasonable rate application proposals	14
Rate case: property used and useful, valuation, and rates.....	14
Property report.....	14
Fully forecasted test period.....	15
Test period and date certain for all utilities	15
Property valuation and rates.....	16
Allowance for construction work in progress (CWIP)	16
“Rate mechanism” added to existing utility rate provisions	16
Adjustments to rates	17

Rescission, alteration, amendment of a PUCO order.....	17
Report filed with rate application	17
Other rate case application requirements	17
Six-month deadline for PUCO to issue order	18
PUCO staff report	18
Request for temporary rate increase.....	19
Rate case application notices for certain utility rates.....	19
Interim distribution mechanism (IDM)	20
IDM application process and requirements	20
4% limitation for collections under an IDM	21
Eligible distribution-related infrastructure investments.....	21
IDM termination	21
Deadlines for PUCO action	22
PUCO authority to reduce IDM	22
IDM notice to customers	22
Repeal of obsolete Ohio coal tax credit	23
Competitive retail electric service (CRES).....	23
Repeal of current law options for providing an SSO.....	23
Status of existing ESPs	23
Authority to create regulatory assets or liabilities.....	24
PUCO rules.....	24
Standard Service Offer plan (SSO plan)	24
SSO plan application.....	25
SSO plan features PUCO must authorize	25
Riders	25
Programs for customers	25
Programs for energy-intensive industrial customers.....	25
Lease financing arrangements.....	26
Economic development electric transmission infrastructure projects	27
EDU cost recovery under an SSO plan.....	27
PUCO to ensure no double recovery.....	28
Phase-in costs	28
PUCO authority over certain riders or rate mechanisms	28
Electric energy storage system for wholesale market.....	28
Competitive affiliate generating facility ownership	29
Electric services companies financial assurances	29

CRES consumer protections.....	29
Fixed introductory electricity rate expiration notices	29
Renewable energy compliance payment.....	30
Percentage of income payment program plan.....	30
Public Benefits Advisory Board report.....	31
Changes to reflect ESP repeal	31
Governmental aggregation of electricity	31
Legacy generation resource	32
CRES corporate separation law	32
Electric securitization and financing orders	32
Competitive Retail Natural Gas Service	33
Economic development project cost recovery	33
Supplier financial assurances	33
Fixed introductory natural gas rate expiration notices.....	34
Miscellaneous PUCO provisions	34
Regulatory restriction reduction exemption	34
PUCO rehearings.....	35
Refunds of improper public utility charges	35
Refund prohibition under current law	36
Regulatory assets and liabilities.....	36
Settlement of matters pending before PUCO	37
Electric distribution utility definition change.....	37

DETAILED ANALYSIS

Utility ratemaking

Utility ratemaking law changes

The bill makes various changes to Ohio public utility ratemaking law as described below.

EDU rate case application every five years

The bill requires an electric distribution utility (EDU) to file a rate case application regarding distribution service every five years beginning not later than five years after the effective date of the bill.¹ Each EDU that has not filed a distribution rate case application during

¹ R.C. 4909.181.

the five-year period prior to the bill's effective date must file a rate case application not later than six months after that date.²

Rate Case notice changes

Application filings

The bill requires a utility to publish a notice upon the filing of an application for an increase in any rate, rate mechanism, joint rate, toll, classification, charge, or rental under Ohio's utility ratemaking law. As required by the bill, the utility must publish one notice of the application on the website of the newspaper.

The bill repeals the requirement that the notice be published "forthwith . . . in a form approved by [the Public Utilities Commission (PUCO)], once a week for two consecutive weeks in a newspaper published and in general circulation throughout the territory in which such public utility operates and directly affected by the matters referred to in said application." It also repeals the requirement that:

- The notice must include instructions for direct electronic access to the application or other documents on file with PUCO;
- The first publication of the notice must be made in its entirety and may be a preprinted insert in the newspaper;
- The second publication may be abbreviated so long as the notice in the first publication is posted in its entirety on the newspaper's website (if the newspaper has a website) and PUCO's website, and if certain other requirements are met.³

Hearings

PUCO must hold public hearings for all cases involving applications for rate increases submitted under the utility ratemaking law. The hearings must take place in each service area with a population exceeding 100,000 that is affected by the rate case. Similar to the notice changes described above, the bill requires PUCO to publish the notice on the website of a newspaper of general circulation in the service area.

With this change, the bill repeals the requirements that:

- The hearing notices must be published by PUCO for two consecutive weeks in a newspaper of general circulation in the service area;
- The notice must state prominently the total amount of the revenue increase requested in the application;
- The first publication of the notice must be made in its entirety and may be a preprinted insert in the newspaper;

² Section 5.

³ R.C. 4909.19(A).

- The second publication of the notice may be abbreviated if the first notice is posted in its entirety on the newspaper's website (if the newspaper has a website) and PUCO's website, and if certain requirements are met.⁴

Ongoing notice requirements

Unchanged by the bill are (1) the requirements that PUCO determine the notice format and content of application and hearing notices and consider the costs and technological efficiencies in making its determination and (2) the provision that defects in the notice publication do not affect the legality or sufficiency of published notices if PUCO substantially complies with the notice requirements.⁵

Hearings for unjust or unreasonable rate application proposals

If it appears to PUCO, during its review of a public utility rate case application, that proposals in a utility's application appear to be unjust or unreasonable, PUCO must schedule a hearing at which the burden of proof is on the utility to show that the proposals are just and reasonable. The bill retains the hearing requirement but repeals the requirements that PUCO give notice of the hearing by sending written notice of the hearing date to the utility and publish a notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application.⁶

Rate case: property used and useful, valuation, and rates

Property report

The bill changes the requirements for an application for an increase in rates regarding the report of utility property used and useful by the public utility making the application. Under continuing law, the report is required to be filed with the application and will be used to determine rates under the application. The bill adds electric light companies to the public utilities (natural gas, water-works, and sewage disposal companies) required to file a report of their property that is used and useful, or projected to be used and useful as of the date certain. The bill also adds that the used and useful determination can also be made during the test period if the test period is a fully forecasted test period (see discussion below) and is filed by an electric light company.⁷

PUCO must prescribe the form and details of the valuation report of the utility property and continuing law provides what the report must contain. The bill provides that, with respect to an electric light company that chooses to file a fully forecasted test period, the report must include all the kinds and classes of property, with the value of each, owned, held, or projected to be owned or held during the test period, by the utility for the service and convenience of the

⁴ R.C. 4903.083.

⁵ R.C. 4903.083 and 4909.19(A).

⁶ R.C. 4909.18.

⁷ R.C. 4909.18(A).

public. The valuation in the report is to be determined during the fully forecasted test period. With respect to all other public utilities, the report must include all the kinds and classes of property, with the value of each, owned, held, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be owned or held as of the date certain, by each public utility used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, for the service and convenience of the public. Projected valuation and value is to be determined as of the date certain.⁸

With respect to the report requirements for all other utilities, it appears that a conflict may exist regarding projected used and usefulness by the date certain. The application for an increase in rates requires all electric light companies to file a report of their property that is projected to be used and useful as of the date certain. The PUCO valuation report requirements do not. This may need correction.

Fully forecasted test period

The bill permits electric light companies to propose a fully forecasted test period as an alternative for a rate increase application. Under current law, the test period that may be proposed to determine public utility revenues and expenses is any 12-month period beginning not more than six months prior to the application filing date and ending not more than nine months after that date. The new “fully forecasted test period” must utilize a reasonably forecasted rate base, revenues, and expenses for the first 12 months that new rates will be in effect. Initially, rates must be set using the 13-month average rate base ending in the last month of the test period, based on the end-of-month balance for the 12 consecutive calendar months of the test period plus the end-of-month balance for the month immediately prior to the beginning of the forecasted test period. Final rates for this 13-month average test period shall use the lower of forecasted plant investment or actual plant investment, actual revenues, and actual expenses. Forecasted plant investment, forecasted revenues, and forecasted expenses versus actual investment, actual revenues, and actual expenses must be trued up via a rate mechanism approved by PUCO. The fully forecasted test period is to commence not later than the application’s filing date.⁹

Test period and date certain for all utilities

The bill requires, instead of permits (as under current law), all other utilities to propose the current law test period (described above). The bill repeals the law requiring the test period proposed by the utility to be the test period, unless PUCO otherwise orders. All other utilities also must use a date certain that is not later than the application filing date, except that natural

⁸ R.C. 4905.491, 4909.04, 4909.041, 4909.042, 4909.05, 4909.052, and 4909.06. It appears the amendment to R.C. 4905.491, which is a cross-reference change, is likely an error since PUCO would not likely establish the rate base of a municipal water-works or sewage disposal company that has been acquired using an electric light company’s rate base. A corrective amendment would address this issue.

⁹ R.C. 4909.15(C)(1)(a).

gas, water-works, and sewage disposal companies have a date certain that can be as late as the end of the test period. The bill further provides that all other utilities may propose adjustments to the revenues and expenses for any changes that are, during the test period or 12-month period following, reasonably expected to occur. The utility must identify and quantify individually, any proposed adjustments.¹⁰

Property valuation and rates

Under continuing law, PUCO fixes and determines just and reasonable rates using property valuation. With respect to an electric light company that chooses to file a fully forecasted test period, the bill requires that PUCO determine the valuation of the property projected to be used and useful during the fully forecasted test period in rendering the public utility service for which rates are to be fixed and determined. With respect to a natural gas, water-works, or sewage disposal system company, or that is an electric light company that chooses not to file a fully forecasted test period, PUCO shall determine the valuation as of the date certain of the property of the public utility that is used and useful or, is projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.¹¹

Allowance for construction work in progress (CWIP)

The bill repeals all provisions related to construction work in progress (CWIP) provisions of the law that are related to utility property valuation. Currently, the law allows PUCO, in its discretion, to include in the valuation of utility property a reasonable allowance for CWIP for a construction project that is at least 75% complete and prohibits the allowance from exceeding 10% of the total valuation of the property, not including the allowance for CWIP. Current law includes other CWIP conditions such as for example, no CWIP, as it relates to a particular construction project, may be reflected in rates for a period exceeding 48 consecutive months beginning on the date initial rates reflecting CWIP become effective, except for certain specified exceptions.¹²

“Rate mechanism” added to existing utility rate provisions

Ongoing law requires public utilities to file a written application with PUCO to establish any “rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting [these].” The bill extends this application requirement to “rate mechanisms.”

Similarly, the bill adds “rate mechanism” to other provisions of the utility ratemaking law that apply to a “rate, joint rate, toll, classification, charge, or rental” (referred to as “rate” in

¹⁰ R.C. 4909.15(C)(1)(b) and (2) and (D).

¹¹ R.C. 4909.15(A).

¹² R.C. 4909.15(A).

this analysis).¹³ “Rate mechanism” is a term that is not defined in the law or bill, but is used elsewhere in current Ohio utility law to describe a method of charging utility customers to recover specified costs incurred by the utility.¹⁴

Adjustments to rates

The bill also adds “rate mechanism” to the list of rates that PUCO may change under certain circumstances. Specifically, if PUCO is of the opinion (after a hearing and utility test periods and allowable utility gross annual revenue determinations are made) that the rate mechanism is, or will be, unjust unreasonable, unjustly discriminatory or preferential, or in violation of law, or that the maximum public utility rate mechanism is insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, PUCO may fix and determine the just and reasonable rate mechanism and order such just and reasonable rate or rate mechanism to be substituted for an existing one. Under the bill, as with the other rates, if PUCO makes the determination and issues an order as described above, (1) no change in the rate mechanism may be made without the order of PUCO and (2) any other rate mechanism is prohibited.¹⁵

Rescission, alteration, amendment of a PUCO order

The bill allows PUCO to rescind, alter, or amend an order that fixed a “rate mechanism” upon application of any person or public utility and after notice to the parties and an opportunity for a hearing. Current law permits this process of rescissions, alterations, or amendments to PUCO orders that fixed any rate, charge, toll, rental, classification, or service, or any other PUCO order.¹⁶

Report filed with rate application

The bill modifies requirements for the report that must accompany an application filed with PUCO for an increase in rates by also applying this reporting requirement to applications for an increase in a “rate mechanism.”¹⁷

Other rate case application requirements

The bill adds the following requirements that apply to a company’s rate case application:

- All work papers supporting a company’s application must be filed with the application in electronic format, with formulas intact;
- Except for PUCO staff, each party in the case, including the company, is:

¹³ R.C. 4909.15(A), (E), and (F), 4909.156, 4909.18, 4909.19, and 4909.42.

¹⁴ R.C. 4928.148.

¹⁵ R.C. 4909.15(E).

¹⁶ R.C. 4909.15(F).

¹⁷ R.C. 4909.18(A).

- Limited to issuing not more than three rounds of written discovery prior to, and not more than three rounds after, the filing of the staff report of recommendations described below;
- Limited to not more than 50 questions, including subparts, during each round.
- Each response to a discovery request must include the name of the person responsible for responding to the questions and must be (1) answered under oath, or (2) for representatives of a corporation, other association, or governmental agency, accompanied by a signed certification of the preparer that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry, and (3) filed in the PUCO docketing system;
- PUCO staff are subject to discovery;
- Depositions must be taken only with PUCO authorization based on a finding of extraordinary circumstance, and limited to those issues found by PUCO to be relevant and necessary to the proceeding;
- Any party and PUCO staff are entitled to file testimony;
- Any party is entitled to file rebuttal testimony;
- PUCO must hold a single hearing, at which all witnesses who filed direct or rebuttal testimony are subject to cross-examination;
- Cost increases or decreased outside of the company's control, such as storm damage or tax law changes, may be deferred for later recovery or refund outside of the rate case process through an accounting order.¹⁸

Six-month deadline for PUCO to issue order

The bill repeals the requirement under the utility ratemaking law that PUCO, after a hearing to determine whether proposed rates in an application are just and reasonable, must, "where practicable, issue an appropriate order within six months from the date the application was filed."¹⁹

PUCO staff report

Ongoing law requires PUCO to investigate the facts set forth in a rate case application. But, the bill repeals the requirement that a written report be made and filed with PUCO within a reasonable time as determined by PUCO and a copy sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as PUCO deems interested. Instead, the bill requires PUCO staff to make and file in the rate case a written report of recommendations, including all work papers in electronic format with

¹⁸ R.C. 4909.46.

¹⁹ R.C. 4909.18.

all formulas intact. The PUCO staff report must be filed in the case not later than 150 days after the application's filing.²⁰

Request for temporary rate increase

Under the bill, if a proceeding for a rate case application has not been concluded and a PUCO *opinion* and order entered at the expiration of 275 days from the application's filing date, the public utility may request an increase, which goes into effect temporarily and remains in effect until modified by PUCO order based on the merits of the application. The PUCO-modified rates apply retroactively. A temporary increase must not exceed the midpoint of the recommended by the staff report described above and is subject to refund. Under current law, PUCO must enter an "order," but under the bill, PUCO must enter an "opinion and order."

The bill repeals the requirement that, if an application proceeding has not been concluded and a PUCO order entered at the 275-day expiration date, an increase not to exceed the proposed increase goes into effect upon the public utility filing a bond or letter of credit with PUCO. The bill also repeals the requirement that the bond or letter of credit must be payable to the state for the use and benefit of the customers affected by the proposed increase or change and that must be accompanied with a signed affidavit with a promise on behalf of the utility to refund, with interest, any amounts collected over the amount determined in the final PUCO order for the rate case application.

Under the bill, if PUCO does not enter an *opinion* and order within 365 days from the application's filing date for a rate increase, a public utility has no obligation to make a refund of any amounts collected after the 365th day, which amounts exceed the amounts authorized by the PUCO final order. This differs from current law, which removes the refund obligation if PUCO does not enter a *final* order within 545 days from the date of filing.²¹

Rate case application notices for certain utility rates

The bill requires a public utility that has more than 100,000 customers to notify PUCO of the utility's intent to file with PUCO an application (1) for an increase in rates or (2) to set just and reasonable water rates the public utility may charge if a municipal corporation fails to regulate the rates. Under the bill, the notice of intent must be made not later than 90 days prior to filing the application and must include the number of customers of the utility and the proposed (1) valuation of the utility's property, (2) date certain, (3) rate of return for the utility, (4) cost to the utility of rendering public utility service, and (5) test period to be included in the application.²²

²⁰ R.C. 4909.19(B) and (C).

²¹ R.C. 4909.42.

²² R.C. 4909.43(C); R.C. 4909.35, not in the bill.

Interim distribution mechanism (IDM)

The bill permits an electric light company to file an application with PUCO for approval of an interim distribution mechanism (IDM). An IDM, under the bill, allows a company to collect the revenue requirement associated with distribution infrastructure investments. An IDM application must contain information prescribed by PUCO, and a single IDM application may include any combination of investments as described below.

If a company has a PUCO authorized IDM, the company may file for another IDM so long as the application is filed not sooner than the 12 months after the filing date of the company's most recent IDM application. However, the bill expressly prohibits PUCO from authorizing more than three IDMs for any single company tariff in effect at any time.

IDM applications filed under the bill are not considered an application to increase rates.²³

IDM application process and requirements

The bill establishes certain requirements for the IDM application process and requires PUCO to adopt rules and public notice requirements as it considers necessary to carry out the bill's IDM provisions.²⁴

Not later than 14 calendar days after filing an IDM application, PUCO must establish a procedural schedule with an evidentiary hearing. Under the bill, PUCO may only authorize an IDM, if the IDM is just and reasonable and if it does not result in revenues in excess of the requirement to cover "infrastructure costs" that are:

- Associated with distribution-related infrastructure investments (described below) that are not already reflected in the affected schedules filed by the company; and
- Either incurred before the company's application filing date or are projected to be incurred not later than 12 months after the application date.²⁵

Under the bill, "infrastructure costs" include depreciation, property taxes, debt service, and a fair and reasonable rate of return on equity, equivalent to the rate of return on equity most recently authorized for the company in a rate case application on the filing date valuation of that particular infrastructure.²⁶

PUCO, in its application review, must consider factors that include any benefits the company's investments contribute to the company's distribution grid and to customers and any incremental cost savings resulting from such investments.

²³ R.C. 4909.173(A) and (D).

²⁴ R.C. 4909.173 to 4909.178.

²⁵ R.C. 4909.173(B)(1) and (2).

²⁶ R.C. 4909.173(F).

Under the bill, the revenue requirement for each IDM must be allocated to base distribution rate classes that are consistent with the revenue requirement allocation established in the company's most recently approved rate case application. The bill also requires that each IDM be trued up annually, subject to the 4.0% limitation described below.²⁷

4% limitation for collections under an IDM

The bill prohibits an IDM from collecting more than 4.0% of the PUCO-approved base distribution revenue requirement in the company's most recent rate case application. The limitation is applied to the extent that an IDM is based on expenditures for investments that are necessary for maintaining or improving safety, reliability, system efficiency, security, or resiliency purposes.²⁸

Eligible distribution-related infrastructure investments

PUCO may approve certain distribution-related investments for an IDM. Such investments include distribution-related capital expenditures that meet all of the following criteria:

- The investments are, or are projected to be, used and useful in rendering public utility service not later than 12 months after the date of filing the IDM application;
- The investments are any of the following:
 - Determined necessary by PUCO for maintaining or improving safety, reliability, system efficiency, security, or resiliency purposes;
 - Related to external conditions or circumstances that were not reasonably foreseeable at the time the company files its most recent intent to file an application for a rate increase, including (1) capital expenditures for the installation of replacement plant necessitated by weather or other factors outside of the company's control that cause damage to existing infrastructure, (2) unreimbursed capital expenditures made by the company for facility relocation required by a governmental entity due to a street or highway project, (3) Capital expenditures made by the company to comply with any consent decree, final order, or final rule of any local, state, or federal agency or legislative body.²⁹

IDM termination

If PUCO issues an order regarding an electric light company's application for a rate increase, the order must provide for the termination of any IDM authorized for the company to the extent the underlying investments of the IDM are then being recovered through base rates

²⁷ R.C. 4928.173(B)(3), (4), and (6).

²⁸ R.C. 4928.173(B)(5) and (C)(2)(a).

²⁹ R.C. 4909.173(C).

for the application subject to the order. The termination must occur as of the effective date of the rate increase.³⁰

Deadlines for PUCO action

The bill establishes deadlines by which PUCO must take action on an IDM application. If PUCO fails to issue a final order not later than 180 days after a company application's filing date, the IDM application goes into effect immediately and is subject to refund, including interest as determined under Ohio's Commercial Transactions Law. PUCO must prescribe how the refund is to be accomplished.³¹ Although not expressly stated in the bill for this deadline, presumably amounts subject to refund would be any amount that exceeds the amounts authorized by the PUCO's final order.

If PUCO fails to issue a final order not later than 275 days after the application's filing date, the company is not obligated to refund amounts that exceed the amounts authorized by the PUCO's final order and are collected after the 275th day and ending on the date of the final order.³²

Under the bill, PUCO may extend the 180-day and 275-day deadlines described above if PUCO finds that the company that filed the application caused a delay in the application proceeding. The bill allows the deadline extension to be commensurate with the delay caused by the utility.³³ "Utility" likely refers to the electric light company, but an amendment to the bill may be needed for clarification of the bill's intent.

PUCO authority to reduce IDM

The bill grants PUCO the authority (by PUCO order and on its own motion or upon good cause shown) to reduce the amount of, or terminate, an electric light company's IDM. PUCO may take this action if it determines that the IDM, on a normalized basis, has caused the company to earn a rate of return on equity on distribution rate base that is greater than 250 basis points more than the rate of return on equity most recently authorized for the company in a base rate case application under the ratemaking law.³⁴

IDM notice to customers

Under the bill, an electric light company must provide notice to each affected customer, if PUCO has authorized an IDM for the company. The notice must be with, or on, each affected

³⁰ R.C. 4909.173(E).

³¹ R.C. 4909.174(A); R.C. 1343.03, not in the bill.

³² R.C. 4909.174(B)

³³ R.C. 4909.174(C).

³⁴ R.C. 4909.175.

customer's first bill containing the IDM. The company also must list, on all customer bills that it sends, the individual customer cost of the IDM for the applicable billing period.³⁵

Repeal of obsolete Ohio coal tax credit

The bill repeals the provisions regarding the obsolete law that allowed an Ohio coal tax credit that had been applied against an electric company's tax liability first in the public utility excise tax law and then, effective January 1, 2002, reestablished in the corporation franchise tax law. Under the corporation franchise tax, which is no longer imposed, an electric company was allowed a nonrefundable credit against the tax for Ohio coal used in any of its coal-fired electric generating units after April 30, 2001, but before January 1, 2010.³⁶

Competitive retail electric service (CRES)

Repeal of current law options for providing an SSO

The bill repeals electric security plans (ESPs) and market rate offers (MROs), the two current law options under which an EDU may provide customers a standard service offer (SSO). (Although EDUs may provide an SSO through an ESP or an MRO, no EDUs currently are operating under an MRO.)³⁷ In place of ESPs and MROs, the bill requires EDUs to apply to PUCO to establish an SSO offer through a standard service offer plan (SSO plan), which becomes an EDU's only option for offering an SSO to customers.³⁸ See "**Standard Service Offer plan (SSO plan)**" below.

An SSO is an offer of competitive retail electric service necessary to maintain essential electric service that EDUs are required to provide consumers. Under ongoing law, an EDU is required to provide an SSO to customers within its certified territory. The customers provided an SSO are those who have not (1) shopped for an electric generation supplier or (2) obtained a new supplier after the customers' supplier defaulted.³⁹

Status of existing ESPs

Although the bill repeals the ESP law, the bill does not immediately terminate existing ESPs in effect on the bill's effective date. Under the bill, an EDU with an existing ESP must continue the plan as follows:

- If the ESP has a specified termination date that is before June 1, 2024, the EDU must continue the ESP until the plan's termination date;

³⁵ R.C. 4909.177.

³⁶ R.C. 4909.15(A)(4)(b).

³⁷ R.C. 4928.14, amended by the bill to repeal ESPs and replace them with SSO plans; R.C. 4928.142 and 4928.143, repealed. Note that the bill reenacts R.C. section numbers 4928.142 and 4928.143 with different content.

³⁸ R.C. 4928.01(A)(44), 4928.14, and 4928.142(A)(1).

³⁹ R.C. 4928.141, 4928.142(B), and 4928.143; R.C. 4928.03, not in the bill.

- If the ESP has a termination date that is after June 1, 2024, the EDU may continue the ESP until the plan's termination date;
- If the ESP does not have a specified termination date, the EDU may continue that plan until not later than January 1, 2024.⁴⁰

The ESPs that continue must operate in accordance with all applicable PUCO orders and rules and any law that existed and applied to the ESP prior to the bill's effective date. The bill prohibits an EDU from extending an ESP after its termination, and prohibits the EDU from applying for a new ESP.⁴¹

Authority to create regulatory assets or liabilities

The bill allows an EDU to create necessary regulatory assets or liabilities, along with carrying costs at the EDU's weighted average cost of debt, if it has an existing ESP under which PUCO authorized the creation or continuation of riders and to the extent that those riders cease to exist after the ESP's termination. The regulatory assets or liabilities created are for the resolution of any outstanding under-collection or over-collection of funds under these riders. The bill requires that the regulatory assets or liabilities be addressed in the EDU's first distribution rate case that occurs after the ESP's expiration.⁴²

PUCO rules

The bill expressly permits PUCO to amend its rules to meet the bill's requirements including the requirements of continuing an existing ESP until its termination and prohibiting the extension of terminated ESPs or the application for a new ESP.⁴³

Standard Service Offer plan (SSO plan)

The bill requires an EDU to establish an SSO plan, which must include provisions that relate to the supply and pricing of electric generation service through an SSO for customers who do not shop for competitive retail electric generation service. The SSO plan's provisions, with certain exceptions regarding cost recovery described below, must incorporate the PUCO's competitive bidding process, retail cost allocation, and rate design that were implemented by PUCO and in effect immediately prior to the bill's effective date. The bill permits PUCO to amend the competitive bidding process, retail cost allocation, or rate design as necessary to result in just and reasonable rates.⁴⁴

⁴⁰ R.C. 4928.14(A) and Section 4(A)(1).

⁴¹ Section 4(A)(2).

⁴² R.C. 4928.1410.

⁴³ Section 4(B).

⁴⁴ R.C. 4928.142(B).

SSO plan application

The bill requires EDUs to apply to PUCO for approval of a SSO plan. An EDU with an ESP in effect on the bill's effective date must submit an SSO plan application prior to the expiration of its ESP. Under the bill, an approved SSO plan will not take effect until the ESP expires.

Under the bill, PUCO must initiate a proceeding and issue an order to approve or modify and approve an SSO plan application not later than 180 days after the application's filing date. An approved SSO plan must have a minimum term of three years and a maximum term of five years.⁴⁵

SSO plan features PUCO must authorize

As described below, the bill requires PUCO to authorize certain riders, programs, lease financing arrangements, and cost recovery for certain infrastructure projects held for future use.

Riders

PUCO must authorize full and timely cost recovery of all nonmarket transmission costs imposed on the EDU by the Federal Energy Regulatory Commission. The recovery must be through annually reconciled transmission riders.⁴⁶

Programs for customers

Under the bill, PUCO must authorize programs for customers that do either of the following:

- Align retail rate recovery with how transmission and transmission-related costs are imposed on, incurred by, or charged to the EDU;
- Allow such customers to be billed directly for transmission service by a competitive retail electric service provider.⁴⁷

Programs for energy-intensive industrial customers

The bill requires PUCO to authorize programs for energy-intensive industrial customers to implement cost-effective economic development, job retention, and interruptible rate programs that enhance distribution or transmission grid reliability. The bill specifies that such programs currently in existence on the bill's effective date may only be terminated or modified on a gradual basis that avoids abrupt or significant rate impacts on participating customers, and it allows the programs' costs to be allocated across all classes of customers and across those of utilities in the same holding company system.⁴⁸ The bill does not define "energy-intensive" or

⁴⁵ R.C. 4928.142(A), (E), and (F).

⁴⁶ R.C. 4928.143(A).

⁴⁷ R.C. 4928.143(B).

⁴⁸ R.C. 4928.143(C).

specify parameters for determining whether an industrial customer is an “energy-intensive” customer.

Lease financing arrangements

The bill also requires PUCO to authorize lease financing arrangements that an EDU enters into with its customers, or potential customers, that are mercantile customers. (Under current law, unchanged by the bill, a “mercantile customer” is a commercial or industrial customer that consumes electricity for nonresidential use and consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.⁴⁹)

Under the bill, lease financing arrangements must be for distribution or transmission-related equipment, including transformers and substations. The arrangements do not require prior approval from PUCO.

Mercantile customers participating in such arrangements must pay for all direct and indirect costs of the EDU’s capital investment and related expenses through periodic lease payments to the EDU. The burden of proof is on the EDU to demonstrate that the financing arrangement are fully paid for by its mercantile customers, which the EDU must do in its distribution rate case.⁵⁰

The bill also permits an EDU to enter lease financing arrangements under the ongoing law allowing reasonable arrangements to promote economic development. Under economic development lease financing arrangements, participating mercantile customers are not responsible for paying the full cost of capital investments under those arrangements, if the EDU is fully and timely reimbursed through a rate or rider mechanism. PUCO must approve, approve with conditions, or deny this type of arrangement not later than 120 days after it is filed with PUCO under the reasonable arrangement law.

This provision for economic development lease financing arrangements does not prohibit a nonresidential customer’s right to purchase or sell “equipment” described for lease financing arrangements as described above nor does it prohibit a bilateral contract between a nonresidential customer and an EDU to purchase such “equipment.”⁵¹ However, it is not clear whether the equipment is limited to “capital investments,” the broad term used in Revised Code Section 4928.143(D)(2) or the distribution or transmission-related equipment, including transformers and substations, listed in Revised Code Section 4928.143(D)(1).

⁴⁹ R.C. 4928.01(A)(19) and 4928.143(D).

⁵⁰ R.C. 4928.143(D)(1).

⁵¹ R.C. 4928.143(D)(2).

The bill protects ratepayers in the event of a mercantile customer's default regarding a lease financing arrangement by specifying that ratepayers will not be responsible for any costs resulting from the default.⁵²

Economic development electric transmission infrastructure projects

PUCO must authorize cost recovery for the EDU's economic development electric transmission infrastructure projects held for future use. But the bill caps the cost recovery that an EDU may receive for the projects. Under the bill, the total amount that an EDU is authorized to collect from ratepayers for the revenue requirement for these projects may not exceed the greater of \$5 million or 0.05% of the EDU's total PUCO-authorized revenue requirement for transmission.⁵³

Cost recovery for the projects may only be authorized for sites that are certified by the Director of Development under ongoing law for the Brownfield Remediation Program or SiteOhio Certification Program. And, recovery may only be for projects for which the EDU, in its SSO plan application to PUCO, provides evidence that demonstrates that the project is supported by JobsOhio and the Department of Development. Evidence may be in the form of a letter of support.

Project costs eligible for recovery are project planning and construction costs, contribution-in-aid-of construction costs that may be waived as part of these projects based on the expected system benefits of projected additional electric load, and the costs associated with obtaining the right-of-way for such projects.⁵⁴

Under the bill, any property installed or constructed by an EDU for such a project are considered to be used and useful for purposes of determining the valuation of property under the utility ratemaking law. Cost recovery must occur through:

- The EDU's economic development cost recovery rider, or any similar mechanism during the period when the property for the project is held for future use and before it starts providing electric service to an end use customer; and
- The EDU's standard transmission tariffed rates, after the property is in use and starts providing electric service to an end use customer.⁵⁵

EDU cost recovery under an SSO plan

The bill establishes what may be recovered under an SSO plan. Under a plan, all direct and indirect costs that an EDU incurs to support or provide its SSO must be recovered through

⁵² R.C. 4928.143(D)(3).

⁵³ R.C. 4928.143(E)(4).

⁵⁴ R.C. 4928.143(E)(1) and (2).

⁵⁵ R.C. 4928.143(E)(3).

an SSO price. And, each EDU is entitled to full and timely recovery of all costs associated with its SSO. Those costs include the exact cost of the following:

- Acquiring energy and capacity;
- Costs associated with conducting, administering, and implementing the competitive bidding process;
- Costs for independent consultants;
- All other direct or indirect costs incurred to support or provide the SSO.⁵⁶

PUCO to ensure no double recovery

PUCO is required by the bill to ensure that any direct costs allocated to the SSO price are not recovered twice from distribution customers. The bill permits PUCO to authorize a credit rider to avoid double recovery.⁵⁷

Phase-in costs

The bill alters current law to permit PUCO to authorize any just and reasonable phase-in of EDU rates or prices established under an SSO, as established by the bill, or an ESP, under current law, as necessary to ensure rate or price stability for consumers. Existing law allows PUCO to authorize phase-in costs of an EDU rate or price under an MRO or ESP.⁵⁸

PUCO authority over certain riders or rate mechanisms

The bill provides that it does not limit PUCO authority to implement, maintain, or modify riders or rate mechanisms recovering: (1) costs imposed on a utility by a government authority or (2) costs upon which the utility earns no rate of return.⁵⁹

Electric energy storage system for wholesale market

The bill prohibits an EDU from using any electric energy storage system to participate in the wholesale market if the EDU purchased or acquired that system for distribution service. The term “electric energy storage system” is undefined.⁶⁰

⁵⁶ R.C. 4928.142(C).

⁵⁷ R.C. 4928.142(D).

⁵⁸ R.C. 4928.144.

⁵⁹ R.C. 4928.147.

⁶⁰ R.C. 4928.149.

Competitive affiliate generating facility ownership

The bill permits a competitive affiliate of an EDU to own or operate an electric generating facility, but may not be subsidized by the EDU.⁶¹ Existing law generally prohibits an electric utility from supplying a noncompetitive retail electric service and a CRES without a PUCO-approved corporate separation plan.⁶²

Electric services companies financial assurances

The bill requires PUCO to establish rules requiring an electric services company (ESC) to maintain financial assurances sufficient to protect customers and EDUs from default. An ESC in this context means an electric light company engaged in the business of supplying or arranging for the supply of only a competitive retail electric service (CRES) to customers, excluding a power broker or aggregator. PUCO rules must also allow EDUs to set reasonable standards for the company's and its customers' security using financial requirements set in its tariffs. Continuing law provides that a CRES provider must be certified by PUCO and provide a financial guarantee sufficient to protect customers and EDUs from default.⁶³

CRES consumer protections

The bill specifies that CRES consumer protections in existing law and administrative rules apply to small commercial customers and all other customers set forth in PUCO rules. Consumer protections in existing law, unchanged by the bill, include, for example, contract disclosure, service termination disclosure, and minimum customer bill content requirements.

As used in the bill, "small commercial customer" means any customer that receives electric service pursuant to a nonresidential tariff and the customer's demand for electricity does not exceed 25 kilowatts (KW) within the last 12 months. However, "small commercial customer" excludes a customer who either: (1) manages multiple electric meters and, within the last 12 months, the electricity demand for at least one meter is 25 KW or more, or (2) has, at the customer's discretion, aggregated the demand for the customer-managed meters.⁶⁴

Fixed introductory electricity rate expiration notices

The bill requires a CRES provider that enters into a contract with a residential or small commercial customer for a fixed introductory rate that later converts to a variable rate to mail two notices to each customer containing all of the following information:

- The fixed rate is expiring under the contract;

⁶¹ It is unclear whether the bill prohibits EDU subsidization of the competitive affiliate of the EDU, or EDU subsidization of the electric generating facility owned by the affiliate. An amendment could clarify the ambiguity.

⁶² R.C. 4928.17 and 4928.171.

⁶³ R.C. 4928.01(A)(9) and 4928.08.

⁶⁴ R.C. 4928.101; R.C. 4928.10, not in the bill.

- The expiration date of the fixed rate;
- The rate to be charged upon conversion to a variable rate;
- The PUCO website, as a comparison tool, that lists rates offered by CRES providers;
- A statement explaining that appearing on each customer's bill is a price-to-compare notice listing the EDU's SSO price.

The first notice must be sent not earlier than 90 days, and not later than 60 days, prior to the expiration of the fixed rate. The second notice must be sent not earlier than 45 days, and not later than 30 days, prior to the expiration of the fixed rate.

Additionally, a CRES provider must also mail an annual notice to each residential and small commercial customer with a contract that has converted to a variable rate after the expiration of a fixed introductory rate informing the customer that they are currently subject to a variable rate and that other fixed rate contracts are available.

PUCO must adopt rules to implement the notice requirements above not later than 150 days after the effective date of the bill. These rules must, at a minimum, require the notices to: (1) use clear and unambiguous language to enable the customer to make an informed decision, and (2) be designed in a way to ensure the notice cannot be confused with marketing materials.⁶⁵

Renewable energy compliance payment

The bill modifies the requirement that PUCO annually adjust the compliance payment for EDU or ESC under compliance or noncompliance with renewable energy resource benchmarks to no longer require that the modification be to reflect any change in the Consumer Price Index. Instead, PUCO is required only to annually adjust the compliance amount. Existing law, unchanged by the bill, requires EDUs and ESCs to provide certain amounts of their electricity generation requirements from qualifying renewable energy resources and solar energy resources. "Qualifying renewable energy resources" means certain energy sources, such as solar or wind energy, that meet requirements, such as being placed in service on or after January 1, 1998, or is a small hydroelectric facility.⁶⁶

Percentage of income payment program plan

The bill eliminates language providing that only bidders that are certified as CRES providers by PUCO may participate in the auction to supply CRES to percentage of income payment program plan (PIPP) customers. Existing law, unchanged by the bill, prohibits electric

⁶⁵ R.C. 4928.102.

⁶⁶ R.C. 4928.01(A)(37) and 4928.64.

utilities, electric services companies, electric cooperatives, and governmental aggregators from providing a CRES to consumers without PUCO certification.⁶⁷

Additionally, the current PIPP law specifies that winning bids selected during the process to procure the CRES supply for low-income customers must reduce the cost of the program relative to the otherwise applicable SSO established under an MRO and ESP. The bill changes the provision to apply only to an SSO under the bill, reflecting the elimination of the MRO and ESP.⁶⁸

Public Benefits Advisory Board report

The bill repeals provisions related to a report that the Public Benefits Advisory Board was required to submit to various state officials by December 15, 2015. The report was required to contain the annual amount of revenue collected or forecasted to be collected from customers for purposes of supporting the universal service fund and the low-income customer assistance programs, as well as recommendations for changes. The Board was permitted to obtain professional services to prepare the report. The Director of Development, PUCO, and each EDU was required to promptly respond to requests from the Board for information needed to prepare the report. State officials required to receive the report included, for example, the Governor, President of the Senate, and Speaker of the House.⁶⁹

Changes to reflect ESP repeal

Because it eliminates ESPs, the bill repeals all the various provisions of ESP law throughout the Revised Code.⁷⁰

Governmental aggregation of electricity

The bill eliminates language in the governmental electric load aggregation law that permits a legislative authority, on behalf of customers that are a part of its governmental aggregation, to elect not to receive standby service from an EDU under the current ESP law. Continuing law permits municipalities, townships, and counties to aggregate the electric load located in their respective jurisdictions, provided that certain requirements are met.

Under continuing law, PUCO is required to adopt rules to encourage and promote large-scale governmental electric aggregation. However, the bill modifies the law surrounding these rules to:

⁶⁷ While the bill eliminates language specifying that only certified CRES providers may bid to provide CRES to PIPP customers, the bill does not change the requirement that an entity must be certified before providing CRES in the first place. If the bill intends to eliminate the requirement that bidders in PIPP auctions be certified CRES providers, an amendment may be necessary.

⁶⁸ R.C. 4928.08(B)(1), 4928.54, and 4928.542.

⁶⁹ R.C. 4928.581 to 4928.583, repealed by the bill.

⁷⁰ R.C. 4928.142 and 4928.143.

- Eliminate language that required PUCO to immediately review rules adopted for such purposes that were in effect on July 31, 2008;
- Change language in current law requiring PUCO to consider the effect of large-scale governmental aggregation of any nonbypassable generation charges within the context of an ESP, to now generally require such consideration regardless of context.⁷¹

Legacy generation resource

The bill retains the prohibition in current law against an EDU using the output from a legacy generation resource in supplying its SSO, but specifies that the prohibition applies to SSO plans under the bill and ESPs under the law as it existed prior to the bill's effective date.

Ongoing law requires (1) PUCO to establish a nonbypassable rate mechanism for a legacy generation resource (including Ohio Valley Electric Corporation (OVEC) facilities), and (2) an EDU bid the output from a legacy generation resource into the wholesale market.⁷²

CRES corporate separation law

Current law prohibits, except as provided under the MRO and ESP law and the law governing the transition to competitive retail electric service, an electric utility from supplying a noncompetitive retail electric service and a CRES directly or through an affiliate without a PUCO approved corporate separation plan. The bill modifies this prohibition to apply except only as provided in the SSO law established by the bill.⁷³

Electric securitization and financing orders

Under the existing law governing the securitization of certain phase-in costs of an EDU and the issuance of phase-in-recovery bonds under a PUCO-issued financing order, "phase-in costs" include costs authorized by PUCO to be securitized or deferred as regulatory assets under ratemaking proceedings and proceedings for SSOs using MROs and ESPs. The bill modifies "phase-in costs" to:

- Include costs securitized or deferred as regulatory assets under the SSO law, as established by the bill, or existing MRO and ESP law;
- Exclude certain construction and environmental costs and a nonbypassable surcharge of an electric generating facility owned at least in part by an EDU that are authorized under an ESP as the law existed prior to the effective date of the bill or certain electric generating facility operational costs approved for recovery according to the SSO law established by the bill, or existing MRO and ESP.

⁷¹ R.C. 4928.20.

⁷² R.C. 4928.148.

⁷³ R.C. 4928.17; R.C. 4928.31 to 4928.40, not in the bill.

The bill permits an EDU filing a financing order application with PUCO to restate or incorporate by reference any information that the EDU filed pursuant to a rate case, SSO, under law established by the bill, or MRO or ESP under current law. Current law allows such a restatement or incorporation by reference for a rate case, MRO, or ESP.

Additionally, the bill grants standing to participate in a PUCO proceeding regarding an electric financing order application to any party that participated in SSO proceedings established by the bill where phase-in costs were approved. Continuing law also grants standing in these proceedings to any party that participated in ratemaking proceedings, MRO proceedings, or ESP proceedings where phase-in costs were approved.⁷⁴

Competitive Retail Natural Gas Service

Economic development project cost recovery

The bill includes the costs of planning, obtaining the right-of-way for, and constructing economic development projects held for future use as prudently incurred infrastructure development costs of economic development projects for which a natural gas company may file an application with PUCO to recover using an infrastructure development rider (IDR). Current law provides only that the company may file with PUCO for an IDR to recover prudently incurred infrastructure development costs of one or more economic development projects.

Further, the bill adds a project that has received funding under the brownfield remediation program as an economic development project for which a natural gas company may file an application with PUCO for approval. Current law includes a project certified under the SiteOhio certification program by the Department of Development as an economic development project. Under existing law, unchanged by the bill, the brownfield remediation program is administered by the Director of Development to award grants for the remediation of brownfield sites (meaning certain types of property where expansion or redevelopment is complicated by hazardous substance or petroleum) throughout Ohio.⁷⁵

Supplier financial assurances

The bill requires PUCO to establish rules requiring a competitive retail natural gas supplier (RNGS) to maintain financial assurances sufficient to protect customers and natural gas companies from default. A RNGS in this context means a person engaged in the business of supplying or arranging for the supply of a competitive retail natural gas (CRNG) service to nonmercantile customers, excluding a broker or aggregator. PUCO rules must also allow natural gas companies to set reasonable standards for the company's and its customers' security using financial requirements set in its tariffs. Continuing law provides that a CRNG service provider must be certified by PUCO and provide reasonable financial assurances sufficient to protect customers and retail natural gas companies from default.

⁷⁴ R.C. 4928.23(J), 4928.231(C), and 4928.232(A).

⁷⁵ R.C. 4929.161 and 4929.163; R.C. 122.65(D), 122.6511, and 122.9511, not in the bill.

The bill also eliminates language providing that a RNGS may be required to provide a performance bond sufficient to protect customers and natural gas companies from default is eliminated.⁷⁶

Fixed introductory natural gas rate expiration notices

The bill requires a CRNG service provider that enters into a contract with a residential or nonmercantile commercial customer for a fixed introductory rate that later converts to a variable rate to mail two notices to each customer containing all of the following information:

- The fixed rate is expiring under the contract;
- The expiration date of the fixed rate;
- The rate to be charged upon conversion to a variable rate;
- The PUCO website, as a comparison tool, that lists rates offered by CRNG service providers;
- A statement explaining that appearing on each customer's bill is a price-to-compare notice listing the natural gas company's default rate for natural gas charged to customers who do not shop for a competitive supplier.

The first notice must be sent not earlier than 90 days, and not later than 60 days, prior to the expiration of the fixed rate. The second notice must be sent not earlier than 45 days, and not later than 30 days, prior to the expiration of the fixed rate.

Additionally, a CRNG service provider must mail an annual notice to each residential and nonmercantile commercial customer with a contract that has converted to a variable rate after the expiration of a fixed introductory rate that informs the customer that they are currently subject to a variable rate and that other fixed rate contracts are available.

PUCO must adopt rules to implement the notice requirements above not later than 150 days after the effective date of the section. These rules must, at a minimum, require the notices to: (1) use clear and unambiguous language to enable the customer to make an informed decision, and (2) be designed in a way to ensure the notice cannot be confused with marketing materials.⁷⁷

Miscellaneous PUCO provisions

Regulatory restriction reduction exemption

The bill exempts the following rules required to be adopted by PUCO from the regulatory restriction limitation in existing law:

⁷⁶ R.C. 4929.20; R.C. 4929.01(N), not in the bill.

⁷⁷ R.C. 4929.221.

- Rules and public notice requirements considered necessary by PUCO to carry out the interim distribution mechanism sections created by the bill (see “**IDM application process and requirements**” above).
- Rules to require electric services companies and competitive RNGS to maintain financial assurances sufficient to protect customers, EDUs, and natural gas companies from default, including specifically allowing an EDU or natural gas company to set reasonable standards for security through financial requirements set in the tariffs (see “**Electric services companies financial assurances**” and “**Supplier financial assurances**” above).
- Rules to implement required mail notices to certain CRES and CRNG customers who enter into contracts for a fixed introductory rate that converts to a variable rate upon expiration of the fixed rate (see “**Fixed introductory electricity rate expiration notices**” and “**Fixed introductory natural gas rate expiration notices**” above).
- Rules to encourage and promote large-scale governmental aggregation (see “**Governmental aggregation of electricity**” above).

Current law, unchanged by the bill, prohibits state agencies, including PUCO, from adopting a new regulatory restriction unless the agency simultaneously removes two or more existing regulatory restrictions until June 30, 2025. State agencies are also required to achieve a 30% total regulatory restriction reduction by June 30, 2025. Regulatory restrictions are state agency rules that include words such as “shall,” “require,” and “prohibit.”⁷⁸

PUCO rehearings

The bill amends current law regarding procedures for applying for and granting rehearings to parties to a proceeding after PUCO issues an order. Under the bill, except during a state of emergency declared by the Governor, PUCO must render a final decision on the merits of the issue not later than 150 days after granting a rehearing. And, if PUCO fails to render a decision within that time period, the rehearing on the issue must be considered denied by operation of law.⁷⁹

Refunds of improper public utility charges

Under the bill, all revenues collected from customers by a public utility as part of a rider or rate mechanism, rather than through base rates, are subject to refund, if the Ohio Supreme Court later finds the charges to be “unreasonable, unlawful, or otherwise improper.” Riders or rate mechanisms found to be improper by the Court are subject to refund from the date of the

⁷⁸ R.C. 4909.178, 4928.08(F), 4928.102(E), 4928.20(L), 4929.20(E), and 4929.221; R.C. 121.95 to 121.952, not in the bill.

⁷⁹ R.C. 4903.101; R.C. 4903.10, not in the bill.

issuance of the Court's decision until the date when, on remand, PUCO, to implement the Court's decision, makes changes to the rider or mechanism to implement new rates.

The bill requires PUCO to order the payment of refunds in a manner designed to allocate the refunds to customer classes in the same proportion as the charges were originally collected. The bill also requires PUCO to determine how to allocate any remaining funds (riders and rate mechanisms) that are subject to refund but cannot be refunded for any reason.

The refunds described above must be made notwithstanding the current Ohio utility law prohibiting refunds.⁸⁰

Refund prohibition under current law

Current law prohibits a public utility from (1) charging or collecting a different "rate, rental, toll, or charge" except as specified in the utility's schedule filed with PUCO in effect at the time or (2) refunding or remitting all or any part of the rate, rental, toll, or charge, except as specified in the schedule and extended to all under like circumstances for like, or substantially similar, service.⁸¹ In addition, the Ohio Supreme Court has found that under this law, "a utility has no option but to collect the rates set by the commission and is clearly forbidden to refund any part of the rates so collected."⁸²

Regulatory assets and liabilities

Under the bill, if PUCO authorizes a deferral as a regulatory asset on a public utility's books and records, PUCO also must allow the utility to accrue carrying costs at the utility's most recently approved long-term cost of debt. If PUCO allows recovery of all or a portion of the regulatory asset, then PUCO must allow the continued accrual and collection of carrying charges on the unrecovered balance at the utility's long-term cost of debt as approved under the utility's most recent base rate case. Carrying charges must accrue until the entire regulatory asset and all carrying charges are recovered.⁸³

The bill also mandates that PUCO require a utility to accrue carrying costs at the utility's most recently approved long-term cost of debt, if PUCO requires the utility to create a regulatory liability on the utility's books and records. If PUCO requires all or a portion of the regulatory liability to be credited to customers, then PUCO must (on the balance that has not yet been credited) require the continued accrual of carrying charges at the utility's most recently approved long-term cost of debt. The bill further requires that the carrying charges must accrue until the entirety of the regulatory liability and all carrying costs have been credited to customers.⁸⁴

⁸⁰ R.C. 4905.321.

⁸¹ R.C. 4905.32, not in the bill.

⁸² *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957).

⁸³ R.C. 4905.131(A).

⁸⁴ R.C. 4905.131(B).

Settlement of matters pending before PUCO

The bill prohibits an EDU or its affiliate from doing either of the following to induce any party to a PUCO proceeding to enter into a settlement of a matter pending before PUCO:

- Make a cash payment to that party;
- Enter into any agreement or any financial or private arrangement with that party that is not made part of the public case record.

However, notwithstanding that prohibition, PUCO may (1) reasonably allocate costs among, and design rates within, rate schedules, (2) approve reasonable rates designed for particular customers or classes of customers, and (3) approve a resolution of a proceeding regarding complaints against public utilities.⁸⁵

For the purposes of the bill's changes regarding settlements, a "proceeding" includes a proceeding relating to electric service under the utility ratemaking law in R.C. Chapter 4909 and a proceeding under a standard service offer plan established by the bill. And, "electric service" is "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state" and includes "retail electric service" as defined in the competitive retail electric service law as "any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption."⁸⁶

Electric distribution utility definition change

As amended by the bill, "electric distribution utility" is an electric utility that supplies at least retail electric distribution service and does not own or operate an electric generating facility, other than through (1) ownership of a mercantile customer-sited renewable energy resource, (2) participation in a power agreement approved by the Federal Energy Regulatory Commission that relates to a legacy generation resource, or (3) ownership of an energy storage system that is used for distribution reliability.⁸⁷

Under current law, a "legacy generation resource" is all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests, including the Ohio Valley Electric Corporation (OVEC).⁸⁸

⁸⁵ R.C. 4905.331(B) and (C).

⁸⁶ R.C. 4925.331(A).

⁸⁷ R.C. 4928.01(A)(6) and (27).

⁸⁸ R.C. 4928.01(A)(41).

The bill’s new definition of “electric distribution utility” has broad effect because it applies to (1) settlements described above and (2) all provisions within the competitive retail electric service law or cross references to that law.

HISTORY

Action	Date
Introduced	03-29-23
