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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 102
135th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsor: Sen. Wilkin

Local Impact Statement Procedure Required: No

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Highlights

- Authorizing certain refunds to electric utility customers if the Ohio Supreme Court later finds certain charges to be unreasonable, unlawful, or improper could produce refunds to the state and local governments in such circumstances.
- The bill may minimally affect Public Utilities Commission expenditures, paid from the Public Utilities Fund (Fund 5F60). LBO staff are uncertain if it is more likely to result in a net increase or decrease in expenditures.
- The bill does not have any other direct effect on the state's and local governments' expenditures.

Detailed Analysis

Utility ratemaking, hearings, and notice requirements

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 bill's effective date. The bill specifies that each EDU that has not filed a distribution rate case application during 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. The bill makes various other changes to law governing utility ratemaking, including changes to notification requirements, valuation of property, allowances for construction work in progress, and standard service offers for electric generation. Many of these provisions have no fiscal effect and are not described in detail in this fiscal note; for a more detailed description of the bill provisions, please see the LSC bill analysis. Bill provisions that may have a significant fiscal effect on the state or local governments are described below.

The bill relaxes certain provisions of current law governing the Public Utilities Commission of Ohio (PUCO) issuing public notices. For example, it reduces the number of times PUCO must publish a hearing notice regarding an EDU application for a rate increase. However, the bill makes changes to time limits imposed on PUCO, for example giving PUCO staff 150 days from a rate case application filing to file a written report of recommendations regarding the application, but repealing a current law requirement that PUCO, after a hearing regarding just and reasonable rates, “where practicable, issue an appropriate order within six months from the date the application was filed.”

The bill specifies that if a proceeding for a rate case application has not been concluded and a PUCO opinion and order entered within 275 days of 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, and if there is an excess of temporary rates over the modified rates, the excess is subject to refund. The bill also modifies and eliminates certain requirements related to a request for a temporary rate increase.

The bill allows 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, but is limited to no more than 4.0% of the company’s most recent PUCO-approved base distribution revenue requirement. 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. The bill also specifies PUCO duties related to the IDM application process.

Competitive retail electric service (CRES)

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) for electric generation. Currently, no EDUs are operating under an MRO. 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. The bill does not immediately terminate existing ESPs in effect on the bill’s effective date, but imposes certain requirements to transition to new SSOs.

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. The bill requires PUCO to authorize certain riders, programs, lease financing arrangements, and cost recovery for certain infrastructure projects held for future use for an SSO plan. PUCO must also authorize full and timely cost recovery, through annually reconciled transmission riders, of all nonmarket transmission costs imposed on the EDU by the Federal Energy Regulatory Commission. The bill requires PUCO to ensure that any direct company costs allocated to the SSO price are not recovered twice from distribution customers, permitting PUCO to authorize credit riders to prevent double recovery.

Among other features of SSO plans, 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 also requires PUCO to authorize lease financing arrangements that an EDU enters into with its customers, or potential customers, that are mercantile customers,¹ for distribution or transmission-related equipment, including transformers and substations. The arrangements do not require prior approval from PUCO. And the bill requires PUCO to authorize cost recovery for the EDU's economic development electric transmission infrastructure projects held for future use, up to \$5 million or 0.05% of the EDU's total PUCO-authorized revenue requirement for transmission. 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. The bill also specifies project costs that are eligible for recovery.

Competitive retail natural gas service

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). The bill also 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.

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. An 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. 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 certain required information. The bill requires PUCO to adopt rules to implement the notice requirements above not later than 150 days after the bill's effective date.

Refunds of improper public utility charges

The bill specifies that 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." 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

¹ 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.

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.

Other provisions

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 bill permits a competitive affiliate of an EDU to own or operate an electric generating facility, so long as the EDU does not subsidize the facility.²

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. The bill specifies that CRES consumer protections in existing law and administrative rules apply to small commercial customers³ and all other customers set forth in PUCO rules.

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. The bill requires PUCO to adopt rules to implement the notice requirement not later than 150 days after the effective date of the bill. The bill specifies minimum requirements that must be included in such rules.

The bill modifies the requirement that PUCO annually adjust the compliance payment for an 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 amount of the compliance payment.

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.

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

² Existing law generally prohibits an electric utility from supplying a noncompetitive retail electric service and a CRES without a PUCO-approved corporate separation plan.

³ A 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, excluding customers who either: (1) manage multiple electric meters and, within the last 12 months, the electricity demand for at least one meter is 25 KW or more, or (2) have, at the customer's discretion, aggregated the demand for the customer-managed meters.

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.

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, and repeals current law provisions governing an obsolete Ohio coal tax credit.

Fiscal effect

The bill may affect PUCO expenditures, though LBO staff think any such effects would likely be minimal. Provisions relaxing notification requirements may reduce needed expenditures. Provisions imposing deadlines and otherwise modifying current PUCO duties may increase needed expenditures. No PUCO expenditures are paid from the GRF; they are mostly paid from the Public Utilities Fund (Fund 5F60).

Authorizing certain refunds to electric utility customers if the Ohio Supreme Court finds certain charges to be unreasonable, unlawful, or improper could produce refunds to the state and local governments in such circumstances.

The changes related to PIPP may increase the Department of Development's administrative costs to administer the PIPP program. Any such increase is likely minimal.

The bill's other provisions have no direct fiscal effect on the state or local governments. Specifically, the repeal of provisions related to the Ohio coal tax credit have no fiscal effect. However, some other provisions may potentially indirectly affect electric utility rates paid by the state and local governments.