OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 2
136th General Assembly

# Bill Analysis

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**Version:** As Reported by Senate Energy

**Primary Sponsor:** Sen. Reineke

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## SUMMARY

### Changes affecting the standard service offer

- Requires an electric distribution utility's (EDU's) standard service offer (SSO) to be established only as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory.
- Authorizes an EDU to create necessary regulatory assets or liabilities for the resolution of any outstanding under-collection or over-collection of funds under PUCO-authorized riders that will cease after the termination of the EDU's ESP.
- Modifies the MRO process.
- Prohibits electric utilities (EUs) from providing any competitive retail electric service (CRES) in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date.
- Amends the definition of EDU to state that EDUs cannot own or operate an electric generating facility.
- Eliminates the corporate separation requirements for EUs that are in the business of supplying both a noncompetitive and a competitive retail electric service in Ohio, since the bill prohibits EUs from providing competitive retail electric service designated as such prior to the bill's effective date.
- Modifies the corporate separation requirements that remain applicable to EUs regarding unfair competitive advantage and abuse of market power.
- Repeals the prohibition against an EDU selling or transferring any generating asset without approval of the Public Utilities Commission (PUCO).

- Requires PUCO to adopt rules and issue orders in MRO proceedings to encourage and promote large-scale governmental aggregation in Ohio, and consider the effect of large-scale governmental aggregation of nonbypassable generation charges in the context of an MRO.
- Repeals provisions in sections amended by the bill that no longer serve a purpose or have no applicability.

# Utility ratemaking law changes

## EDU rate case requirement

- Requires each EDU to file a rate case application regarding distribution service not later than December 31, 2029, and at least every three years thereafter.

## 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 forecasted test period that proposes base rate changes for three consecutive 12-month periods, with each 12-month period subject to a true-up, 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.

## Deadlines for rate cases

- Requires PUCO to meet the following deadlines for rate case applications for an increase filed after the bill's effective date:
  - Determine whether an application is complete not more than 45 days after the application is filed;
  - Issue a written PUCO Staff report on an application within 180 days after the application is determined complete;
  - Issue an order on an application within 320 days after the application is determined complete.
- Permits a public utility to request a temporary increase, or a party to the proceeding to request a temporary decrease, if PUCO has not issued an order on the utility's rate increase application after 290 days from when the application is determined complete, which is subject to refund.

### Rate case discovery limitation

- Prohibits PUCO, in a rate case, from allowing new discovery beginning not later than 215 days after the rate case application is submitted.

### Repeal of obsolete Ohio coal tax credit

- Repeals provisions regarding the obsolete law for the Ohio coal tax credit in the public utility excise tax law.

### Economic development and transmission billing programs

- Permits PUCO to approve certain programs related to economic development or transmission billing in a rate case to increase rates.

## Priority investment areas

- Authorizes local governments to petition the Director of Development to designate a brownfield or former coal mine as a priority investment area (PIA), within which property tax and siting incentives are provided for certain gas and electric utility projects.
- Requires the Power Siting Board (PSB) to adopt rules providing for the accelerated review of certain gas and electric utility projects located in an approved PIA.

## Electric and natural gas supplier certification

- Requires PUCO to establish rules to require electric services companies (ESCs) and Competitive retail natural gas suppliers (Competitive RNGS) to maintain financial assurances sufficient to protect customers, EDUs, and natural gas companies (NGCs) from default.
- Allows an EDU and NGC to set reasonable standards for its security and the security of its customers through financial requirements set in its tariffs.
- Repeals the requirement that a Competitive RNGS may be required to provide a performance bond sufficient to protect customers and NGCs from default.

## Consumer protections

### Small commercial customers of electric service

- Provides that consumer protections under continuing law apply to "small commercial customers" which are certain customers that receive electric service pursuant to a nonresidential tariff if the customer's demand for electricity generally does not exceed 25 kilowatts within the last 12 months.

### Notice of CRES and CRNGS supplier rate changes

- Requires a CRES or competitive retail natural gas service (CRNGS) supplier that offers certain customers a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate to send two notices containing certain information regarding the conversion to affected customers.

- Requires the notices described immediately above to be sent by standard U.S. mail as follows:
  - 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.
- Requires CRES and CRNGS suppliers to provide an annual notice, by standard U.S. mail, to customers that have entered into a contract with the supplier that has converted to a variable rate informing the customers that they are subject to a variable rate and that fixed rate contracts are available.
- Requires PUCO, not later than 150 days after the bill's effective date, to implement the notice requirement provisions described in the proceeding sections that must include:
  - Requiring the use of clear and unambiguous language;
  - Designing the notices in a way to ensure they cannot be confused with marketing materials.

## Customer account information

- Requires PUCO to adopt rules to ensure that EDUs and NGCs process a customers' change in CRES supplier or Competitive RNGS by using customer account information, which is a unique EDU or NGC number or other customer identification number used by the EDU or NGC to identify a customer and their account record.
- Allows a customer who consents to a change of supplier to not provide customer account information to the supplier if the customer provides a valid form of identification to establish the customer's identity accurately.

## Power Siting Board

### Deadlines for nonaccelerated PSB certificate applications

- Requires the PSB Chairperson to determine whether an application of environmental compatibility and public need complies with all application requirements not more than 45 days after the application is filed.
- Reduces the time within which the PSB must hold a public hearing on a certificate application to not less than 45 days nor more than 60 days after receiving the application.
- Changes the time for the PSB Chairperson to submit a written report on an application to not less than five days prior to the application's hearing.
- Requires the PSB to issue a certificate of environmental compatibility and public need not later than 120 days after the application is determined in compliance with all application requirements.

### Accelerated review if no further consent needed

- Requires PSB to adopt rules for the accelerated review of major utility facilities located on (1) property owned by the applicant, (2) property under a lease with a term of 25 years or more with the applicant, (3) an easement or right-of-way, or (4) a combination thereof, if no further consent for the construction is required by any person or entity besides the PSB.

## Electric storage systems

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

## Solar energy credit program repeal

- Repeals provisions of law that allowed for certain solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) to receive payments for solar energy credits.
- Prohibits, on the bill's effective date, EDUs from collecting any charge authorized for the solar energy credit provisions the bill repeals and the remittance of any of the funds collected to any owner or operator of a qualifying solar resource.
- Transfers any remaining funds in the Solar Generation Fund to the School Energy Performance Contracting Loan Fund.

## Loans for school energy conservation and savings measures

- Allows a board of education of a city, exempted village, local, or joint vocational school to apply to the Ohio Facilities Construction Commission (OFCC) for a loan from amounts in the Solar Energy Performance Contracting Loan Fund to pay certain energy conservation measure installment contracts and energy saving measure contracts, including for the installation of solar panels.
- Establishes the School Energy Performance Contracting Loan Fund as a custodial fund, administered by OFCC, to fund such loans.
- Specifies certain loan terms, such as that the loan has 2% annual interest.

## Legacy generation resource recovery repeal

- Repeals the provisions of law that allowed for an EDU to recover certain prudently incurred costs related to legacy generating resources, such as the Ohio Valley Electric Company (LGR/OVEC), through a charge on each customer's monthly electric utility bill.
  - Prohibits any EDU from collecting the LGR/OVEC charge from any customer beginning on the bill's effective date.
  - Prohibits an EDU from applying for, and PUCO from authorizing, another LGR/OVEC rider.

- Requires PUCO to continue any investigation of LGR/OVEC commenced under current law for purposes of determining the prudence and reasonableness of the actions of EDUs with ownership interests in LGR/OVEC.

## Refunds for utility charges

- Requires all revenues collected from customers by a public utility as part of a rider or rates that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the Supreme Court be subject to refund from the date of the Court's decision until PUCO makes changes to the rider or rates to implement the decision.
- Directs PUCO within 30 days of the Court's opinion to order the payment of refunds to customers and determine how to allocate any remaining funds that cannot be allocated.

## Settlement of matters pending before PUCO

- Prohibits an EDU or its affiliate, except as authorized by PUCO in certain instances, to induce any party to a PUCO proceeding to enter into a settlement of a matter pending before PUCO by (1) making a cash payment to that party or (2) entering into any agreement or any financial or private arrangement with that party that is not made part of the public case record.

## Self-generators

- Modifies the definition of "self-generator" in the CRES law to mean an entity that owns or hosts an electric generation facility on property the entity controls that produces electricity primarily for the owner's consumption and that meets other requirements, such as the facility connects directly to the owner's side of the meter.

## Mercantile customer self-power systems

- Allows for the creation of mercantile customer self-power systems, which provide electric generation service to one or more mercantile customers.
- Requires the PUCO to adopt rules to implement the mercantile customer self-power systems law that are applicable to EDUs.

## Electric light company exemption

- Exempts a self-generator or mercantile customer self-power system from classification as an "electric light company" applicable to various provisions of law.

## Certified Territories Act exemption

- Exempts certain services provided after the bill's effective date by a mercantile customer self-power system or to an electric load center acting as a self-generator from classification as "electric service" for purposes of an electric supplier's generally exclusive right to provide electric service within its certified territory.

## EDU behind the meter electric generation

- Allows an EDU to supply behind the meter electric generation service if the behind the meter electric generation facilities the EDU intends to use were in operation prior to the bill's effective date.
- Prohibits an EDU from recovering certain costs associated with behind the meter electric generation service from retail electric service customers that are not receiving behind the meter electric generation service from the EDU.
- Prohibits an EDU from offering direct, associated inducements for contracting with the EDU for any behind the meter electric generation service.
- Directs PUCO to periodically audit all EDUs that provide any behind the meter electric generation service to ensure compliance with the above requirements.

## Prohibition against settlements to close generating facilities

- Prohibits any person from entering into a settlement to abandon, close, or shut down (1) a base load electric generating facility or (2) a generating plant owned or operated by a public utility.

## Local zoning authority over certain facilities

- Grants a board of county commissioners, board of zoning appeals, board of township trustees, and legislative authority of a municipal corporation power over the placement of any anaerobic digester or other small electric generating facility.

## Linear generators

- Adds as a renewable energy resource in the CRES law a linear generator.

## Expedited return to SSO

- Requires an EDU to complete within three business days a certified request from a CRES supplier under a service agreement, voluntarily entered into by a mercantile customer, authorizing an expedited return to the EDU's SSO.
- Requires PUCO to adopt rules governing the process for the expedited return to the SSO, and allow EDUs to recover associated administrative costs through reasonable fees assessed to CRES suppliers.
- Exempts an EDU from liability for a dispute arising from the expedited return to the SSO if the EDU acts in accordance with PUCO rules.

## Public utility tangible personal property taxation

- Exempts from local property taxes the tangible personal property (TPP) of electric utilities that is used to generate electricity or convert energy and is first used in business in Ohio after 2025.
- Modifies the classification and taxation of TPP used to store and release electricity.

- Reduces the percentage of new electric utility TPP used to transmit and distribute electricity subject to tax, often called the "assessment percentage."
- Reduces, from 88% to 25%, the assessment percentage applicable to new pipe-line company property.
- Specifies that a TPP and real property tax exemption for certain renewable energy projects, including payments in lieu of taxes paid pursuant to that exemption arrangement, continues despite the bill's changes.

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# DETAILED ANALYSIS

## Summary

The bill makes various changes to Ohio law governing electric utilities. First, the bill amends the Competitive Retail Electric Service (CRES) law by repealing electric security plans (ESPs) under which electric distribution utilities (EDUs) could establish their standard service offer (SSO). Instead, the bill requires EDUs to use a market-rate offer (MRO) to establish the SSO. The bill also makes various changes to the utility ratemaking law, such as requiring each EDU to file a rate case application regarding distribution service not later than December 31, 2029, and permitting electric light companies to propose a forecasted test period to determine utility revenue and expenses in a rate case application. The bill authorizes local governments to petition the Director of Development to designate a brownfield or former coal mine as a priority investment area, within which property tax and siting incentives are provided for certain gas and electric utility projects.

Further, the bill makes changes regarding electricity and natural gas supplier certification, establishes new consumer protections, imposes deadlines on the Power Siting Board (PSB) and requires an accelerated review of certain applications, and addresses electric storage systems. The bill also repeals the Solar Generation Program which allows the owners and operators of qualifying solar resources to receive payments from the Ohio Air Quality Development Authority for solar energy credits, and transfers remaining money for that program to the School Energy Performance Contracting Loan Fund for use in providing loans to schools to pay certain energy efficiency contracts. The bill repeals the legacy generating resource provisions passed in H.B. 6 of the 133rd General Assembly.

Additionally, the bill requires customers to be refunded for certain charges paid to a public utility that are later found to be improper by the Supreme Court. The bill modifies the definition of "self-generator," allows for the creation of mercantile customer self-power systems, and exempts both from classification as an "electric light company" under the public utility law. Various provisions concerning EDU behind the meter electric generation, closing certain electric generating facilities, expedited return to the SSO, and local zoning authority over certain facilities are also included.

Finally, the bill modifies the law regarding local property taxes imposed on tangible personal property (TPP) of public utilities.

# Changes affecting the standard service offer

## Elimination of ESPs

The bill requires an EDU's SSO to be established only as a MRO by eliminating the ESP option and making the MRO mandatory.[1] An SSO is an offer of all the CRES that are necessary to maintain essential electric service that an EDU is required to provide to its customers (1) who did not shop for their own electric generation supplier or (2) whose supplier defaulted and the customer did not obtain a new supplier.[2] Under current law, an EDU may establish its SSO as an ESP or an MRO.

The bill requires that an ESP that was approved prior to the bill's effective date must continue to serve as an EDU's SSO until an MRO is approved to be effective. Additionally, each ESP approved before the bill's effective date must extend through the final SSO auction delivery period approved by PUCO under the ESP as of the bill's effective date, and must then terminate.[3] The bill provides that if a competitive generation supplier fails to provide retail electric generation service to customers in the EDU's certified territory and the EDU's ESP is still in effect, the customer will default, after reasonable notice, to that ESP until the customer chooses an alternative supplier or until the EDU's MRO is authorized.[4]

Since the bill eliminates ESPs, the bill also repeals or amends all other provisions of the Revised Code addressing or affecting ESPs.[5]

## ESP rider regulatory assets or liabilities

The bill authorizes an EDU to create necessary regulatory assets or liabilities, along with carrying costs at the utility's weighted average cost of debt, for the resolution of any outstanding under-collection or over-collection of funds under PUCO-authorized riders that will cease after the termination of the EDU's ESP. The resolution of the regulatory assets or liabilities must be addressed in the EDU's first distribution rate case that occurs after the ESP's expiration.[6]

## Changes affecting the MRO

The bill generally retains the MRO process under current law providing for (1) the EDU to file an application with the Public Utilities Commission (PUCO) prior to initiating a competitive bidding process for the EDU's MRO, (2) the MRO to be competitively bid in accordance with certain requirements under continuing law, (3) PUCO to determine within 90 days of the application's filing date whether the EDU and its MRO meet all requirements, (4) the EDU to

[1] R.C. 4928.141(A)(1) and 4928.142(A); R.C. 4928.143, repealed.

[2] R.C. 4928.14 and 4928.141.

[3] R.C. 4928.141(A)(1) and (2).

[4] R.C. 4928.14(C).

[5] R.C. 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542; R.C. 4928.143, repealed.

[6] R.C. 4928.1410.

initiate its competitive bidding process if PUCO determines all requirements are met, and (5) PUCO to select the EDU's MRO from the least-cost bid winner or winners.[7] The also bill makes (4) above mandatory instead of discretionary as provided under current law (MRO competitive bidding *must be* initiated – instead of *may be* initiated – if PUCO determines all requirements are met).[8]

The bill, however, eliminates the following provisions from the MRO requirements under current law:

- The requirement that an EDU withdraw its application, as an alternative to timely remedying a deficiency, if PUCO finds that the MRO does not meet MRO requirements.
- The limitation that an EDU cannot initiate the competitive bidding process for at least 150 days after an application's filing if (1) PUCO finds that the MRO does not meet MRO requirements, (2) the EDU remedies the MRO deficiency, (3) PUCO determines the remedied application meets the MRO requirements, and (4) the MRO was filed simultaneously with an ESP application.[9]
- The blended price requirements for EDUs that directly owned operating generating facilities that were used and useful as of July 31, 2008.[10]
- The restriction that an EDU may not ever file or be required to file an ESP application if its initial MRO application is approved.[11]

## Prohibition against providing competitive service outside of an SSO

The bill prohibits EUs from providing any CRES in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date. The bill explicitly requires that EUs continue to supply SSOs to consumers in Ohio.[12] "Competitive retail electric service" is a component of retail electric service that is deemed competitive under Ohio statutory law or a PUCO order. All retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an EU are competitive.[13]

## Definition of an EU and EDU

The bill changes the definition of EU to mean "an electric light company that has a certified territory and is engaged on a for-profit basis in the business of supplying at least a

[7] R.C. 4928.142(A) to (C).

[8] R.C. 4928.142(B).

[9] R.C. 4928.142(B)(3).

[10] R.C. 4928.142(D) and (E).

[11] R.C. 4928.142(F).

[12] R.C. 4928.041.

[13] R.C. 4928.01(A)(4) and (B); R.C. 4928.03, not in the bill.

noncompetitive retail electric service in this state." Current law, however, defines an EU as "an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the business of supplying both a noncompetitive and a competitive retail electric service in this state." An EU is also defined under continuing law to exclude a municipal electric utility and a billing and collection agent. The bill's prohibition against providing CRES outside of an SSO extends to EDUs because, under continuing law, an EDU is an EU that supplies at least retail electric distribution service. The bill further adds to the EDU definition, however, that an EDU cannot own or operate an electric generating facility.[14]

### Future designation of CRES

The effect of limiting the prohibition to services deemed or classified as competitive *prior* to the bill's effective date is that if a different service is deemed or classified as competitive in the future, an EU could provide that service outside of an SSO. PUCO has continuing authority to declare the following additional services as competitive: retail ancillary, metering, or billing and collection service.[15]

## Changes to corporate separation requirements

### Requirements not applicable to certain EUs

The bill eliminates the corporate separation requirements for certain EUs that are in the business in Ohio of supplying a noncompetitive and a competitive retail electric service. If an EU is in the business of supplying noncompetitive retail electric service and supplying a product or service other than retail electric service, the corporate separation requirements would still apply.

Under current law, an EU can be engaged in the business of supplying both a noncompetitive retail electric service and a competitive retail electric service, so long as a corporate separation plan meeting certain requirements of utility law are met. Because the bill prohibits an EU from providing a CRES other than through an SSO, eliminating the corporate separation requirement means that the EU generally cannot provide both a noncompetitive retail electric service and a competitive retail electric service even by following a corporate separation plan. However, as mentioned above (see "**Future designation of CRES**" above), the prohibition on EUs providing CRES applies only to retail electric service deemed competitive prior to the effective date of the bill.[16]

### Unfair competitive advantages and the abuse of market power

The bill makes a change to the corporate separation requirements that would still apply to EUs supplying a noncompetitive retail electric service and a product or service other than retail electric service. The bill eliminates the requirement that the EU's corporate separation plan satisfy the public interest in "preventing unfair competitive advantage." Instead, the bill just

[14] R.C. 4928.01(A)(6) and (11).

[15] R.C. 4928.041(A); R.C. 4928.04(A), not in the bill.

[16] R.C. 4928.01(A)(11), 4928.041, and 4928.17(A).

retains the requirement that the plan satisfy the public interest in "preventing the abuse of market power." With respect to PUCO rules establishing limitations on affiliate practices solely for the purpose of maintaining a separation of the affiliate's business from the EU's business to prevent unfair competitive advantage, the bill replaces "unfair competitive advantage" with "abuse of market power." Under continuing law, "market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.[17]

### Sale or transfer of generation assets

In conjunction with the change to the definition of an EDU (discussed above) that states EDUs cannot own or operate electric generating, the bill repeals a provision from the corporate separation requirements that prohibits an EDU from selling or transferring any generating asset it wholly or partly owns without prior PUCO approval. Additionally, the prohibition against PUCO approving part of an EU's transition plan if the transition plan would constitute an abandonment of service is no longer subject to the requirement that PUCO approve the selling or transferring of generation assets.[18]

## Large-scale governmental aggregation

The bill amends Ohio law governing governmental aggregation to require PUCO to adopt rules and issue orders in proceedings under the MRO and SSO requirements to encourage and promote large-scale governmental aggregation in Ohio. The requirement that PUCO consider the effect of large-scale governmental aggregation of certain nonbypassable generation charges in the context of an ESP when adopting large-scale governmental aggregation rules is also extended to require such consideration in the context of an MRO. Governmental aggregation refers to a municipal corporation, township, or county that aggregates retail electric loads in their jurisdiction in order to enter into an agreement for the sale or purchase of electricity for those loads.[19]

## Governmental aggregation ESP standby service

The bill repeals a provision which permitted a legislative authority that formed or is forming governmental aggregation to elect not to receive standby service under an ESP, subject to certain requirements.[20]

## Repeal of obsolete provisions

The bill repeals, only in Revised Code sections amended by the bill, provisions referencing the starting date of competitive retail service, as they no longer serve a purpose. The bill also

[17] R.C. 4928.01(A)(18) and 4928.17(A)(2) and (B).

[18] R.C. 4928.17(E) and 4928.34(B).

[19] R.C. 4928.01(A)(13) and 4928.20(J), as retabulated under the bill.

[20] R.C. 4928.20(J), repealed.

repeals various other provisions of the utility law that no longer have applicability or that serve no purpose.[21]

# Utility ratemaking law changes

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

## EDU rate case requirement

The bill requires each EDU to file a rate case application regarding distribution service not later than December 31, 2029, and at least every three years thereafter.[22]

## 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 that the used and useful determination can also be made during the forecasted test period if an electric light company proposes a forecasted test period (see discussion below).[23]

PUCO must prescribe the form and details of the valuation report of the utility property and continuing law provides what the report must contain.

#### *Forecasted report*

The bill provides that, with respect to an electric light company that chooses to file a 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 public. The valuation in the report is to be determined during the forecasted test period.

The following facts must be included in the report in detail:

1. The original cost of each parcel of land owned, and projected to be owned, and in use during the test period, and also whether acquired by direct purchase, donation, eminent domain, or otherwise;
2. The actual acquisition cost, not including periodic rental fees, of rights-of-way, trailways, or other land rights projected to be held during the test period, by virtue of easements, leases, or other forms of grants of rights as to usage;
3. The original cost of all other kinds and classes of property projected to be used and useful during the test period, in rendering service to the public;

[21] R.C. 4928.05, 4928.141, 4928.17(A) and (E), and 4928.20(A).

[22] R.C. 4909.181.

[23] R.C. 4909.18(A).

4. The cost of property constituting all or part of a project projected to be leased to or used by the utility during the test period and not already included in (3) (above), excluding any interest directly or indirectly paid by the utility for the property, whether or not capitalized;
5. The cost to a utility, in PUCO's discretion and in a reasonable amount as it determines, of property constituting all or part of a project projected to be leased during the test period, under a lease purchase agreement or a leaseback and not included in (3) (above), excluding any interest directly or indirectly paid by the utility for the property, whether or not capitalized;
6. The proper and adequate reserve for depreciation PUCO determines reasonable;
7. Any sums of money or property the utility is projected to receive during the test period, as total or partial defrayal of the cost of its property;
8. The valuation of the property of the utility, which shall be the sum of the amounts under (1) to (5) (above), less the sum of the amounts contained in the report under (6) and (7) (above).

The report must separately show the property projected to be used and useful to, or held by the utility, during the test period, and such other items PUCO considers proper. PUCO may require an additional report showing the extent to which the property is projected to be used and useful during the test period. All reports must be filed with PUCO for the information of the Governor and the General Assembly.

### *All other reports*

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.[24]

### *Forecasted test period*

The bill permits electric light companies to propose a forecasted test period as an alternative in 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 "forecasted test period" requires the electric light company to propose annual base rates for three consecutive 12-month periods in a single forecasted test period application. During the first 12-month period, the company may propose a reasonably forecasted rate base

[24] R.C. 4909.04, 4909.041, 4909.042, 4909.05, 4909.052, 4909.06, 4909.173, and 4909.174.

during a 13-month average, revenues, and expenses for the first 12 months that new base rates will be in effect. For the second 12-month period, the base rate revenue requirement must be adjusted for the return of, and return on, incremental rate base additions approved by PUCO in the initial application. In the third 12-month period, the base rate revenue requirement may be adjusted for the return of, and return on, incremental rate base additions approved by PUCO in the initial application. The bill does not specify when the forecasted test period is to commence.

Additionally, the bill requires, for each 12-month period, forecasted plant investment, forecasted revenue, and forecasted expenses versus actual investment, actual revenue, and actual expenses to be trued up via PUCO-approved cost recovery mechanism.

Each true-up process must include an adjustment to actual for the rate of return that the company is authorized to earn on the actual investments made. The company must also provide PUCO with actual financial information during the true-up process to ensure accuracy. PUCO is required, as part of the true-up process, to include only rate base components that have been found by the commission to be used and useful in rendering public utility service.[25]

### *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 orders otherwise. All other utilities also must use a date certain that is not later than the application filing date, except that natural 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, and provide the adjustment data to PUCO no later than 90 days after the adjustment data becomes known. The bill further provides that after PUCO issues a final order on the adjustment, the utility must submit proposed reconciliation adjustments to PUCO to pay refunds to customers for overpayments resulting from the adjustments. The utility must identify and quantify individually, any proposed adjustments.[26]

## Property valuation and rates

Under continuing law, PUCO fixes and determines just and reasonable rates in part by using property valuation. With respect to an electric light company that chooses to file a forecasted test period, the bill requires that PUCO determine the valuation of the property projected to be used and useful during the 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 an electric light company that chooses not to file a 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, with respect to a natural gas, water-works,

[25] R.C. 4909.15(C)(1)(a).

[26] R.C. 4909.15(C)(1)(b) and (2) and (D), and 4909.191.

or sewage disposal system company, 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.[27]

## 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 such 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.[28]

## Deadlines for rate cases

### Complete application, PUCO Staff report, and order on application

The following deadlines are established for PUCO for rate case applications for an increase filed on or after the bill's effective date:

- PUCO must determine whether an application is complete not more than 45 days after the application is filed, and if that deadline is not met, then the application is deemed complete by operation of law;
- A written report of the PUCO Staff investigation of an application must be made, filed with PUCO, and sent to various persons, including the applicant, within 180 days after the application is determined complete;
- PUCO must issue an order on an application within 320 days after the application for an increase on any rate, rate mechanism, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice is determined complete, and if that deadline is not met, then the application is deemed approved by operation of law.

### Temporary rate change

If, after the effective date of the bill, the PUCO does not issue an order after 290 days from when a rate case application is determined complete that requests an increase on any rate, rate mechanism, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice, then the utility may request a temporary increase and any party to the proceeding may request a temporary decrease that goes into, and remains in, effect until modified in accordance with PUCO's determination on the merits of the application. This temporary increase or decrease cannot exceed the midpoint of the rates recommended in the PUCO Staff report and is subject to refund.

[27] R.C. 4909.07, 4909.08, 4909.15(A) and 4909.156.

[28] R.C. 4909.15(A).

### Current law for deadlines

Current law (for applications for an increase on any rate, rate mechanism, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice filed prior to the bill's effective date) provides that if the PUCO does not issue an order after 275 days since a rate case application is filed, then an increase not to exceed the proposed increase goes into effect if the public utility files a bond or a letter of credit. The bond or letter of credit is filed with the PUCO and is payable to the state for the use and benefit of the customers affected by the proposed increase or change. The bond or letter of credit provides for customer refunds for amounts collected exceeding the rate in the PUCOs final order on the matter. But, if the PUCO has not entered a final order within 545 days after the application is filed, the utility has no obligation to issue refunds for amounts collected after the 545th day.

Additionally, current law requires PUCO Staff to make and file a written report on a rate increase application within a reasonable time after the application is filed.

Current law does not require PUCO to make a determination as to the completeness of a rate application.[29]

## Rate case discovery limitation

The bill prohibits PUCO, in a rate case, from allowing new discovery beginning not later than 215 days after the rate case application is submitted.[30]

## 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.[31]

## Economic development and transmission billing programs

The bill permits PUCO, when considering a rate increase application, to approve the following:

- Nondiscriminatory programs available for all energy-intensive customers to implement economic development, job growth, job retention, or interruptible rates that enhance distribution and transmission grid reliability and promote economic development;

[29] R.C. 4909.19, 4909.193, and 4909.42; Section 5.

[30] R.C. 4903.27.

[31] R.C. 4909.15(A)(4)(b).

- Nondiscriminatory programs for all mercantile customers that align retail rate recovery with how transmission costs are incurred by or charged to the EDU or programs that allow customers to be billed directly for transmission service by a CRES provider.

A "mercantile customer" under continuing law is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.[32]

# Priority investment areas

The bill authorizes a county, municipal corporation, or township to petition the Director of Development to designate a brownfield or former coal mine sites as a priority investment area (PIA), within which utility TPP dedicated to transporting or transmitting electricity or natural gas will be exempt from TPP taxation for five years. The designation also triggers accelerated review of electric generation or transmission projects and gas pipeline projects by the PSB.

## Designation

A local government initiates the process for establishing a PIA by adopting legislation requesting the designation from the Director of Development. The legislation must identify the area of the proposed PIA, which must encompass either a brownfield, i.e., a vacant or underused area affected by industrial or commercial pollution, or a former coal mine within the subdivision's territory. If the Director determines that the area meets certain qualifications that the Director prescribes by rules, including prioritizing the designation of areas negatively impacted by the decline of the coal industry, the Director will designate the area as a PIA.

The Director must render a decision within 90 days, but the PIA designation is automatically approved if the Director misses that deadline. The Director must inform the PUCO, PSB, and Tax Commissioner after a PIA designation has been approved.[33]

## Tax exemption

The bill exempts from property tax TPP that is used to transport or transmit electricity or natural gas that is placed into service within an approved PIA. The exemption begins for the tax year after the TPP is placed into service and applies for five total years.[34]

## Accelerated PSB review

The bill requires the PSB to adopt rules providing for the accelerated review of a construction certificate application for construction of any of the following in an approved PIA:

- An electric generating plant and associated facilities;
- An electric transmission line and associated facilities;

[32] R.C. 4909.192 and 4928.01(A)(19).

[33] R.C. 122.161.

[34] R.C. 5727.76.

- Gas pipeline infrastructure.

The PSB Chairperson must determine if such an application complies with all application requirements set by PUCO by rule not later than 45 days after receipt of the application. If the Chairperson does not issue a determination within 45 days, then the application is deemed in compliance by operation of law.

Additionally, PSB must render a decision on an application for the above structures in a PIA not later than 45 days after the application is found in compliance with all application requirements. If PSB fails to render a decision within 45 days, the application must be considered approved by operation of law and a certificate must be issued to the applicant.

Further, the rules PSB adopts must also include rules that prioritize applications for construction on areas negatively impacted by the decline of the coal industry.

Current law allows for a PSB accelerated review for construction certificates for a major utility facility related to a coal research and development project, and certain transmission lines, generating facilities, and gas pipelines.[35]

## Electric and natural gas supplier certification

The bill requires PUCO to establish rules to require electric services companies (ESCs) and competitive retail natural gas suppliers (Competitive RNGS) to maintain financial assurances sufficient to protect customers, EDUs, and natural gas companies (NGCs) from default. The rules must also specifically allow EDUs and NGCs to set reasonable standards for its security and the security of its customers through financial requirements set in its tariffs. With respect to Competitive RNGS, the new provisions for financial assurances replaces the current law provision allowing for a performance bond sufficient to protect NGCs and their customers.

Under current law, an ESC is defined as an electric light company engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a CRES in Ohio, and includes a power marketer, power broker, aggregator, or independent power producer, but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent. A RNGS is defined as any person that is, on a for-profit or not-for-profit basis, in the business of supplying or arranging for the supply of a competitive retail natural gas service to Ohio consumers that are not mercantile customers, and includes a marketer, broker, or aggregator, but excludes, for example, an NGC and a municipal utility.

For purposes of these provisions only, the bill excludes a power broker and aggregator from the definition of ESC, and broker and aggregator from the definition of RNGS. The bill specifies further that a regulatory restriction contained in the financial assurances rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.[36]

[35] R.C. 4906.01(D) and 4906.03(E) to (G).

[36] R.C. 4928.01(A)(9), 4928.08(B)(2) and (3) and (F), and 4929.20(A)(2) and (3) and (E); R.C. 121.95 to 121.953 and 4929.01(N), not in the bill.

# Consumer protections

## Small commercial customers of electric service

The bill extends consumer protections already established in current law to small commercial customers and to all other customers. Current law extends these consumer protections to "consumers in this state" without specifying which customers or specifically excluding certain customer classes. The bill defines "small commercial customer" as a customer that receives electric service pursuant to a nonresidential tariff if the customer's demand for electricity does not exceed 25 kilowatts within the last 12 months, but excludes any customer that does one or both of the following:

- Manages multiple electric meters and, within the last 12 months, the electricity demand for at least one of the meters is 25 kilowatts or more;
- Has, at the customer's discretion, aggregated the demand for the customer-managed meters.[37]

## Notice of CRES and CRNGS supplier rate changes

The bill requires CRES suppliers that offer residential customers or small commercial customers a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate, to send two notices to each such customer that enters into such a contract. The bill also imposes this same requirement on competitive retail natural gas service (CRNGS – which is any retail natural gas service that may be competitively offered to Ohio consumers by Ohio law or PUCO rule, order, or exemption) suppliers that offer such contracts to residential or non-mercantile commercial customers. The bill requires these notices to contain all the following:

- The fixed rate that is expiring under the contract;
- The expiration date of the contract's fixed rate;
- The rate to be charged upon the contract's conversion to a variable rate;
- PUCO's website, as a comparison tool, that lists rates offered by other CRES suppliers or CRNGS suppliers (whichever is applicable);
- A statement explaining that appearing on each customer's bill is a price-to-compare notice that lists the EDU's SSO for CRES suppliers, or, for CRNGS suppliers, the NGC's default rate for natural gas charged to customers who decide not to shop for a competitive supplier.[38]

### Timing and method for sending notices

The bill requires the notices be sent by standard U.S. mail as follows:

[37] R.C. 4928.101; R.C. 4928.10, not in the bill.

[38] R.C. 4928.102(A) and 4929.221(A).

- 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.[39]

### Annual notice

The bill requires a CRES supplier and a CRNGS supplier to provide annual notice, by standard U.S. mail, to each residential customer, small commercial customer, and non-mercantile commercial customer (whichever is applicable) that has entered into a contract with a supplier that has converted to a variable rate upon the contract's fixed rate expiring. The bill further requires this notice to inform the customer that the customer is currently subject to a variable rate and that other fixed rate contracts are available.[40]

### PUCO rulemaking

The bill requires PUCO, not later than 150 days after the bill's effective date, to adopt rules to implement the notice provisions described in the above sections, which must at minimum include the following requirements:

- The notice uses clear and unambiguous language to enable the customer to make an informed decision;
- To design the notices in a way to ensure that they cannot be confused with marketing materials.

The bill specifies further that a regulatory restriction contained in the notice rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.[41]

### Customer account information

The bill requires PUCO adopt rules to ensure an EDU and NGC processes a customer's change in CRES supplier or Competitive RNGS (whichever is applicable) by using customer account information (CAI). Under the bill, CAI is defined as a unique EDU or NGC number or other customer identification number used by the EDU or NGC to identify a customer and the customer's account record.

The bill further provides that a customer who consents to a change of supplier cannot be required to provide CAI to the supplier if the customer provides a valid form of government-issued identification issued to the customer or a sufficient alternative form of identification that allows the supplier to establish the customer's identity accurately.

[39] R.C. 4928.102(B) and 4929.221(B).

[40] R.C. 4928.102(C) and 4929.221(C).

[41] R.C. 4928.102(D) and (E) and 4929.221(D) and (E); R.C. 121.95 to 121.953, not in the bill.

The bill also specifies that a regulatory restriction contained in the CAI rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.[42]

# Power Siting Board

## Deadlines for nonaccelerated PSB certificate applications

The bill establishes the following deadlines that are applicable to applications for a certificate of environmental compatibility and public need from PSB under the regular, nonaccelerated process:

- The PSB chairperson must determine whether a certificate application complies with all application requirements not more than 45 days after the application is filed. If the chairperson does not issue a determination within this time period, the application is deemed in compliance by operation of law.
- PSB must hold a hearing on a certificate application not less than 45 days, nor more than 60 days, after receiving a complete application. Current law requires this hearing to be held not more than 60 days, nor more than 90 days, after receiving the compliant application.
- The PSB Chairperson must submit a written report to PSB and the applicant on an application not less than five days prior to the date the application is set for a hearing. Existing law requires the written report be submitted not less than 15 days prior to the hearing.
- PSB must render a decision on a certificate application not later than 120 days after the application is found in compliance with all application requirements. If PSB does not issue a decision within this time period, the application is deemed approved by operation of law and PSB must issue a certificate to the applicant subject to the conditions contained within the PSB staff report.

The bill retains existing law requirements regarding the application, such as that it includes a statement explaining the need for the facility.

Continuing law, unchanged by the bill, prohibits the construction of an economically significant wind farm or major utility facility without a certificate of environmental compatibility and public need. Economically significant wind farm means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than 50 megawatts, excluding: (1) any such wind farm in operation on June 24, 2008, and (2) one or more wind turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer's point of interconnection to the electrical grid.

[42] R.C. 4928.103 and 4929.222; R.C. 121.95 to 121.953, not in the bill.

A major utility facility means:

- Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more;
- An electric transmission line and associated facilities of a design capacity of 100 kilovolts or more;
- A gas pipeline that is greater than 500 feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of 125 pounds per square inch.

The definition excludes several types of facilities, including, for example, gas transmission lines over which an agency of the United States has exclusive jurisdiction, electric distributing lines and associated facilities as defined by PSB, and any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by PSB.[43]

### Accelerated review if no further consent needed

The bill requires PSB to adopt rules for the accelerated review of a construction certificate application for a major utility facility if, at the time the application is filed, the construction will be located: (1) in whole on property owned by the applicant, (2) in whole on property under a lease with a term of 25 years or more with the applicant, (3) in whole or in part on an easement or right-of-way, or (4) any combination of such property, easement, or right-of-way. However, no accelerated application can be granted for the construction of a major utility facility located in whole or in part on property under a lease, easement, or right-of-way if additional consent for construction on the property, easement, or right-of-way is required by any person or entity other than the PSB.

PSB must render a decision on an accelerated application described above not later than 45 days after receipt of the application. If PSB does not render a decision within 45 days, the application is considered approved by operation of law and PSB must issue a certificate to the applicant.[44]

## Electric energy storage system

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.[45]

## Solar energy credit program repeal

The bill repeals the solar energy credit program, which allows qualifying solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) for payments from the Solar Generation Fund for credits received for generating electricity via solar energy. The

[43] R.C. 4906.01, 4906.06, 4906.07, and 4906.10; R.C. 4906.04, 4906.13 and 4906.20, not in the bill.

[44] R.C. 4906.02(D) and 4906.03(H).

[45] R.C. 4928.149.

provisions also allow for an EDU to collect a monthly charge from each retail customer in the state to produce a revenue requirement of $20 million annually for disbursement through the credit program.

The bill prohibits an EDU, beginning on the bill's effective date, from collecting any charge that was authorized pursuant to the solar energy credit program provisions the bill repeals. The bill further prohibits OAQDA from directing the State Treasurer to remit, and the Treasurer is prohibited from remitting, any money from the Solar Generation Fund to owners or operators of qualifying solar resources.

On the bill's effective date, or as soon as possible thereafter, the State Treasurer is directed to transfer the cash balance remaining in the Solar Generation Fund to the School Energy Performance Contracting Loan Fund, which fund and related program is discussed next.[46]

## Loans for school energy conservation and saving measures

The bill allows a board of education of a city, exempted village, local, or joint vocational school to apply to the Ohio Facilities Construction Commission (OFCC) for a loan from amounts in the Solar Energy Performance Contracting Loan Fund to pay for energy conservation measure installment payment contracts and shared-savings contracts.

### Energy conservation measure installment payment contracts

Current law allows a board of education of a city, exempted village, local, or joint vocational school district to enter into an installment payment contract for the purchase and installation of energy conservation measures. The board can issue signed notes of the school district specifying the terms of the energy conservation measure purchase and securing the deferred payments, with interest. In the resolution authorizing the notes, the board can annually levy and collect taxes without a vote of the district's electors, with certain limits, to pay the notes. Before entering into an energy conservation measure installment payment contract, the board must obtain a report of the costs and savings of the measures, make a finding that spending on the measures is not likely to exceed costs saved, and the OFCC determines the board's findings are reasonable and approves the contract.

The bill adds that a board of education can apply to the OFCC for a loan from the School Energy Performance Contracting Loan Fund to pay all or part of an energy conservation measure installment payment contract.

Existing law defines an "energy conservation measure" as an installation or modification of an installation in, or remodeling of, a building, to reduce energy consumption, including several installations such an automatic energy control systems and caulking and weatherstripping. The bill adds that "energy conservation measure" also includes solar panels.[47]

[46] R.C. 4928.64(B)(2), and 4928.645(C); R.C. 3706.40 to 3706.65 and 4928.642, repealed; Section 4(B) and Section 6.

[47] R.C. 3313.372; R.C. 133.06, not in the bill.

## Energy saving contracts

The board of education of a city, local, exempted village, or joint vocational school district is permitted under current law to enter into a shared-savings contract with any person experienced in the design and implementation of energy saving measures for buildings owned or rented by the board. A board entering into a shared-savings installment contract must also comply with all requirements for energy conservation measure installment payment contracts described above. "Energy saving measure" is defined as both: (1) the acquisition and installation, by purchase, lease, lease purchase, lease with an option to buy, or installment purchase, of an "energy conservation measure" (as defined for energy conservation measure installment payment contracts, above) and any attendant architectural and engineering consulting services, (2) architectural and engineering consulting services related to energy conservation. "Shared-savings contract" is defined, with certain exceptions, as a contract for one or more energy savings measures, which contract provides that all payments, with certain exceptions, to be a stated percentage of calculated savings of energy costs attributable to the energy saving measure over a defined period of time and are to be made only to the extent that such savings occur.

The bill allows a board of education to apply to the OFCC for a loan from the School Energy Performance Contracting Loan Fund to pay all or part of a shared-savings contract. And since "energy saving measure" includes an "energy conservation measure" that covers solar panels, a shared savings contract may pay for those too.[48]

## School Energy Performance Contracting Loan Fund

The School Energy Performance Contracting Loan Fund is created by the bill in the custody of the State Treasurer, but it is not part of the state treasury. Money in the fund is used for purposes of funding loans to school boards to pay all or part of an energy conservation measure installment payment contract or shared-savings contract (both described above). The fund consists of funds transferred from the Solar Generation Fund, repayments of loans, interest on amounts in the fund, and any appropriations, grants, or gifts made to the fund.

The fund is administered by OFCC, and OFCC must request the State Treasurer to create the account for the fund. The State Treasurer must distribute money in the fund in accordance with directions from OFCC.[49]

## Loan terms

OFCC may issue a loan to a board of education that applies with the following terms: (1) 2% annual interest, (2) the full loan amount, plus interest, must be repaid in not more than ten years from the issuance of the loan, (3) repayment begins six months after the installation of the energy conservation measures is complete or the implementation of energy savings measures is complete, and (4) any other provision considered appropriate by OFCC.

[48] R.C. 3313.373.

[49] R.C. 3313.378.

All repayment amounts on loans are made to OFCC, which must deposit all repayment amounts received in the School Energy Performance Contracting Loan Fund. If OFCC enters into a loan agreement, it must promptly direct the State Treasurer to remit money from the fund to the school as provided in the terms of the agreement. The bill specifies that nothing prohibits a board of education that receives a loan from utilizing any other energy efficiency program. OFCC is required to adopt rules to implement the loan requirements, including a loan application.[50]

## Legacy generation resource recovery repeal

The bill repeals provisions of law that allow an EDU to collect a monthly charge from each customer in the state to recover costs for a legacy generation resource, such as the Ohio Valley Electric Company (LGR/OVEC). For a more detailed discussion of the LGR/OVEC provisions of current law being repealed see pages 22-23 of LSC's analysis of H.B. 6 of the 133rd General Assembly available on the General Assembly's website: https://www.legislature.ohio.gov/.

As of the bill's effective date, EDUs are prohibited from collecting the LGR/OVEC charge from any of its retail customers. Additionally, EDUs cannot apply for, and PUCO cannot authorize, any rider or cost recovery mechanism for an LGR/OVEC.

PUCO is required to continue any investigation regarding LGR/OVEC commenced under current law to determine the prudence and reasonableness of the actions of the EDUs with ownership interests in LGR/OVEC, including their decisions related to offering the contractual commitment into the wholesale markets, and excluding from recovery those costs that PUCO determines imprudent and unreasonable.[51]

## Refunds for utility charges

The bill requires all revenues collected from customers by a public utility as part of a rider or rates that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the Supreme Court are subject to refund from the date of the issuance of the Court's opinion until the date when, on remand, PUCO makes changes to the rider or rates to implement the decision. PUCO must order repayment of these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected. The PUCO must determine how to allocate any remaining funds that cannot be refunded for whatever reason. The refund order and determination for how to allocate any remaining funds from PUCO must be issued not more than 30 days after the issuance of the Court's decision.

Current law contains a provision that has been interpreted by the Ohio Supreme Court to mean that the PUCO cannot order refunds of charges, even if those charges are later determined excessive, because they were collected pursuant to a PUCO-approved tariff.[52]

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[50] R.C. 3313.377.

[51] R.C. 4928.01(A)(41) and (42), and 4928.148, repealed; Section 4(A).

[52] R.C. 4905.321; R.C. 4905.32, not in the bill; *In re Fuel Adjustment Clauses for Columbus S. Power Co.*, 140 Ohio St.3d 352, 358-359 (2014).

## 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 these prohibitions, 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, (3) approve a resolution of a proceeding regarding complaints against public utilities, and (4) approve payments to any governmental entity, nonprofit organization, or other association for implementing low-income weatherization service programs, which payments are subject to the following conditions: (a) the payments are at a rate that is reasonably tailored to the costs of providing the program, (b) the payments are for programs that are subject to an existing or new audit procedure, and (c) the payments are not for low-income weatherization education programs.

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 or CRES law in R.C. Chapter 4928. "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 CRES 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."[53]

## Self-generators

The bill modifies the definition of "self-generator" in the CRES law to mean an entity that owns or hosts an electric generation facility on property the entity controls that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity and that meets all of the following:

- The facility that is installed or operated by a third party under a contract, including a lease, purchase power agreement, or other service contract;
- The facility connects directly to the owner's side of the electric meter;
- The facility delivers electricity to the owner's side of the electric meter without the use of an electric distribution utility's or electric cooperative's distribution system or transmission system.

Current law defines a "self-generator" as an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the

[53] R.C. 4905.331 and 4928.01(A)(27).

facility is installed or operated by the owner or by an agent under a contract.[54] It is not clear what impact the new definition will have regarding existing self-generators under the current law definition. There may be a question as to whether the changes described below under "**Electric light company exemption**" and "**Certified Territories Act exemption**" would apply to them.

## Mercantile customer self-power systems

The bill allows for the creation of mercantile customer self-power systems, which provide electric generation service to one or more mercantile customers. A mercantile customer self-power system may be owned or operated by a mercantile customer member, group of mercantile customer members, or an entity that is not a mercantile customer member. The PUCO is directed to adopt rules to implement the mercantile customer self-power systems law that are applicable to EDUs. Nothing in the bill prohibits an EDU or an electric cooperative from charging a mercantile customer for distribution or transmission service used by a mercantile customer.

A "mercantile customer self-power system" is one or more electric generation facilities, electric storage facilities, or both, along with any associated facilities, that meet all of the following:

- Produce electricity primarily for the consumption of a mercantile customer member or a group of mercantile customer members;
- Connect directly to the mercantile customer member's side of the electric meter;
- Deliver electricity to the mercantile customer member's side of the electric meter without the use of an EDU's or electric cooperative's distribution system or transmission system;
- Is located on either of the following:
  - A property owned or controlled by a mercantile customer member or the entity that owns or operates the mercantile customer self-power system, provided that the property is not located more than one mile from the customer or group of customers that consume the electricity produced by the facilities;
  - Land adjacent to a mercantile customer member if the facilities directly connect with the customer.

A "mercantile customer member" is a mercantile customer connected to a mercantile customer self-power system.[55]

## Electric light company exemption

The bill expressly exempts a self-generator (the bill's modification of which is discussed above) and mercantile customer self-power system from being considered an "electric light company" under the law governing PUCO general powers (R.C. Chapter 4905). The bill, in favor

[54] R.C. 4928.01(A)(32).

[55] R.C. 4928.73.

of the express exemption of self-generator, also eliminates its current law exemption from the definition of "electric light company" under the CRES law (R.C. Chapter 4928).[56] The exemption would also extend to other provisions of Ohio law that uses the electric light company definition, such electrical requirements and certification under Amusement Ride Safety law (R.C. 993.05), Asbestos Abatement (R.C. Chapter 3710), and Municipal Taxation of Electric Light Company Income (R.C. Chapter 5745).

The PUCO regulates public utilities, which include electric light companies, with certain exceptions (such as electric light companies that operate not-for-profit and municipally owned or operated public utilities). As a result of the exemption, self-generators and mercantile customer self-power systems are not public utilities subject to other laws addressing PUCO organization, hearings, railroad powers, and fixation of rates (R.C. Chapters 4901, 4903, 4907, and 4909); the Consumers' Counsel (R.C. Chapter 4911); and Use of the Municipal Public Way (R.C. Chapter 4939).

Further, continuing law (described in greater detail immediately below) grants each "electric supplier" (defined as an electric light company, including nonprofit corporations, but excluding municipal and other local government electric service providers) the exclusive right to furnish electric service to all electric load centers located within its PUCO-approved certified territory. Electric suppliers are also prohibited from providing electric service for electric load centers located within the territory of another electric load center.[57]

By exempting the facilities described above from being an "electric light company" it appears that these facilities would not be subject to the Certified Territories Act and its prohibition against providing electric service within an electric supplier's certified territory.

## Certified Territories Act exemption

Under the "Certified Territories Act," PUCO must create maps of the certified territory for each electric supplier and generally grants each electric supplier the exclusive right to furnish electric service (meaning retail electric service furnished to an electric load center for ultimate consumption, excluding furnishing electric power or energy at wholesale for resale) to all electric load centers located presently or in the future within its certified territory. Any electric supplier that renders electric service in violation of the Certified Territories Act is subject to various penalties, such as for example a forfeiture assessed by PUCO.

The bill exempts the following from being classified as "electric service" for purposes of the Certified Territories Act:

- In the case of a for-profit electric supplier, beginning after the effective date of the bill: (1) retail electric service provided to a mercantile customer member by its own mercantile customer self-power system, and (2) retail electric service provided to an electric load center to the extent the center is acting as a self-generator.

[56] R.C. 4905.03, 4928.01(A)(7), and 4928.73.

[57] R.C. 4933.81; R.C. 4905.02, 4905.04, and 4933.82 to 4933.90, not in the bill.

- In the case of a not-for-profit electric supplier, any new electric load centers going into service after the bill's effective date that use: (1) retail electric service provided to a mercantile customer member by its own mercantile customer self-power system, and (2) retail electric service provided to an electric load center to the extent the center is acting as a self-generator.

"Electric load center" means all the electric-consuming facilities of any type or character owned, occupied, controlled, or used by a person at a single location, which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered.[58]

## EDU behind the meter electric generation

The bill permits an EDU to supply behind the meter electric generation service, provided that any behind the meter electric generation facilities the EDU intends to use to supply such service were in operation prior the bill's effective date.

An EDU is prohibited from recovering any of the following costs through any rate, charge, or recovery from retail electric service customers that are not receiving behind the meter electric generation service from the EDU:

- Costs associated with supplying behind the meter electric generation service;
- Costs associated with any behind the meter electric generation service facility;
- Stranded costs associated with the closing of any behind the meter electric generation service facility or an end-use customer of the behind the meter electric generation service ceasing operations.

Additionally, an EDU is prohibited from offering direct, associated inducements for contracting with the EDU for any behind the meter electric generation service.

PUCO must periodically audit all EDUs that provide behind the meter electric generation service to ensure compliance with the requirements above.[59]

## Prohibition against settlements to close generating facilities

The bill prohibits any person from entering into a settlement to abandon, close, or shut down (1) a base load electric generating facility or (2) a generating plant owned or operated by a public utility. "Base load electric generating facility" is defined as an electric generating plant and associated facilities located in Ohio that primarily uses a nonrenewable fuel source to generate electricity, including natural gas and nuclear reaction, and that is not owned or operated by a public utility, municipal corporation, or electric cooperative.

[58] R.C. 4933.81; R.C. 4933.82 to 4933.90, not in the bill.

[59] R.C. 4905.311.

Current law, unchanged by the bill, prohibits a public utility from abandoning a generating plant without PUCO approval.[60]

## Local zoning authority over certain facilities

Current law grants a board of county commissioners, board of zoning appeals, board of township trustees, and legislative authority of a municipal corporation power with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm or small solar facility, or the use of land for those purposes. Additionally, existing law specifies that the designation of a small wind farm or small solar facility as a public utility does not affect its classification for state or local tax purposes.

The bill adds authority over an anaerobic digester or other small electric generating facility to the power granted to local authorities described above. The designation of an anaerobic digester or other small electric generating facility also does not affect its classification for state or local tax purposes.

An "anaerobic digester" is a facility used to treat organic materials, such as food waste, manure, and sewage sludge, to produce biogas and digestate. "Other small electric generating facility" means an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of less than 50 megawatts that is not a small wind farm, small solar facility, or anaerobic digester. "Small wind farm" is defined in current law as wind turbines and associated facilities that are not subject to PSB jurisdiction. Existing law defines "small solar facility" as solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than 50 megawatts.

As described above (see "**Power Siting Board**"), certain facilities, such as major utility facilities, must obtain a certificate of environmental compatibility and public need from PSB. Since neither an anaerobic digester nor other electric generating facility qualify as a "major utility facility," no PSB approval is needed to construct either facility.[61]

## Linear generators

The bill adds that a "renewable energy resource" in the CRES law includes a linear generator. A "linear generator" is defined as an integrated system consisting of oscillators, cylinders, electricity conversion equipment, and associated balance of plant components that meet the following criteria: (1) converts the linear motion of oscillators directly into electricity without the use of a flame or spark, (2) is dispatchable with the ability to vary power output across all loads, and (3) can operate on multiple fuel types including renewable fuels, such as hydrogen, ammonia, and biogas.

[60] R.C. 4905.23; R.C. 4905.20 and 4905.21, not in the bill.

[61] R.C. 303.213, 519.213, 713.081, and R.C. 4906.01; 4906.04, not in the bill.

"Renewable energy resource" is defined to mean several energy resources, such as, for example, solar photovoltaic or solar thermal energy or wind energy.[62]

# Expedited return to SSO

The bill requires an EDU to comply, within three business days, with a certified request from a CRES supplier under a service agreement, voluntarily entered into by a mercantile customer, that explicitly authorizes an expedited return of the customer to the EDU's SSO. PUCO must establish rules governing the process for the expedited return, including the content of the certified request and any notice to the affected customer, and permitting EDUs to recover the administrative costs of processing requests through reasonable fees assessed to CRES suppliers.

The EDU cannot be held liable for any disputes arising from the expedited return to the SSO, provided the EDU acts in accordance with PUCO rules.[63]

# Public utility tangible personal property (TPP) taxation

Under continuing law, local property taxes extend to the tangible personal property (TPP) of public utilities. The bill modifies the extent to which the property of the following four types of public utilities are taxed:

- Electric companies, i.e., companies that generate, transmit, or distribute electricity and are not rural electric companies or energy companies;
- Rural electric companies, i.e., electric cooperatives;
- Energy companies, i.e., companies that generates, transmits, or distributes electricity from a facility that has a nameplate capacity of more than 250 kilowatts and consists of wind turbines, solar panels, other renewable energy source, clean coal, or cogeneration technology;
- Pipe-line companies engaged in transporting gas, oil, or coal derivatives.

## Electric generation property exemption

The bill exempts from taxation TPP used to generate electricity or convert energy if it is first used in business in Ohio in 2026 or a future year. Other generation TPP remains subject to tax at 25% (rural electric companies) or 24% (electric and energy companies) of its value, while other energy conversion TPP remains subject to a 50% (rural electric companies), 25% (electric companies), or 85% (energy companies) assessment percentage.[64] Under continuing law, energy conversion TPP is generally designed to convert renewable energy sources, such as sunlight and wind, into electricity.[65]

[62] R.C. 4928.01(A)(37) and (42).

[63] R.C. 4928.105.

[64] R.C. 5711.01, 5727.01(R), 5727.031, 5727.06, and 5727.11.

[65] R.C. 5727.01(O).

### Taxation of energy storage systems

The bill reclassifies a subset of electric TPP as energy conversion equipment and production equipment, which, in essence, allows such property to qualify for the TPP tax exemption discussed above, provided the property is first used in Ohio in 2026 or after. Specifically, the reclassification applies to TPP used to store and release energy, which the bill refers to as an "energy storage system." This TPP has particular significance in the context of energy companies, where the bill lists it as a type of energy resource that energy companies can generate electricity from, along with wind, solar, clean coal, or cogeneration.[66]

### Assessment percentage reductions

Under continuing law, utility TPP, similar to real property, is taxed, or assessed, on only a portion of its true value. The bill lowers the assessment percentage that applies to new electric transmission and distribution TPP and new pipe-line company TPP.

#### Electric transmission and distribution TPP

First, the bill reduces the assessment percentage on property used to transmit or distribute electricity that is first subject to tax in Ohio in or after tax year 2027 to 25%. Under current law, this TPP is assessed at 50% (for rural electric companies) or 85% (for electric and energy companies) of its value. These higher percentages continue to apply to TPP first subject to tax before 2027.[67]

#### Pipe-line company TPP

Similarly, the bill reduces the assessment percentage, from 88% to 25%, on all TPP of a pipe-line company that is first subject to tax in or after 2027. All other pipe-line company TPP continues to be assessed at 88% of its value.[68]

## Applicability of renewable energy exemptions

Continuing law authorizes a real and TPP tax exemption for certain renewable energy projects. In general, a project seeking the exemption must (1) apply to the Director of Development to be certified as a qualifying project, (2) in some cases obtain the approval of a county in which the project will be located, (3) comply with certain deadlines and construction, safety, education, and labor requirements, and (4) make payments in lieu of taxes (PILOTs) to be distributed in the same manner as property taxes.

The bill specifies that an exemption and PILOTs continue to apply and be required despite any other modification made by the bill.[69]

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[66] R.C. 5727.01(D)(10), (J), (N), (O), (P), and (S).

[67] R.C. 5727.111(A), (E), and (H).

[68] R.C. 5727.111(D) and (I).

[69] R.C. 5727.75.

# HISTORY

| Action | Date |
|---|---|
| Introduced | 01-22-25 |
| Reported, S. Energy | 03-18-25 |

ANSB0002RS-136/ar