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## Bill Analysis

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### SUMMARY

#### Utility law changes

##### **EDU rate case application every five years**

- Requires an electric light company (ELC) to file a rate case application regarding distribution service at least every five years beginning not later than five years after the effective date of the bill.

##### **Rate case notice changes**

- Under the public utility ratemaking law, changes the number of notices a utility must publish after filing an application for an increase in any rate, tracker, joint rate, toll, classification, charge, or rental from one printed in a newspaper and a second published on the newspaper's website to just one notice on the newspaper's website.
- Repeals, among other related provisions, the requirements that the application notice must include instructions for electronic access to the application or other documents on file with the Public Utilities Commission of Ohio (PUCO) and that the first notice must be made in its entirety and the second notice may be abbreviated.
- Reduces the number of times PUCO must publish a hearing notice regarding a utility's application for a rate increase from one printed in a newspaper of general circulation in the affected service area and a second published on the newspaper's website to just one notice on the newspaper's website.
- Repeals the requirement that the hearing notice must state prominently the total amount of the revenue increase requested in the application for the rate increase.
- Repeals, among other related provisions, the requirements that the first notice for a hearing must be made in its entirety and the second publication may be abbreviated.
- Regarding a public utility rate case proposal that appears to PUCO to be unjust or unreasonable, repeals the requirements that (1) PUCO publish a notice of a hearing one

time in a newspaper of general circulation in each county in the service area affected by the application and (2) that a written notice of hearing date be sent to the utility.

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

- Makes various changes to the law governing rate increases with respect to utility property, regarding (1) how it is reported to PUCO, valued, determined to be used and useful or projected to be used and useful as of the date certain and (2) its valuation effect on rate determinations.
- Permits electric light companies to propose a fully forecasted test period as an alternative method for determining utility revenue and expenses in a rate increase application.
- Requires PUCO, when determining the cost to the utility of rendering public utility service as part of fixing just and reasonable rates, to determine payroll costs and whether such costs together are reasonable when compared to market rates.

### **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.

### **“Tracker” added to existing utility rate provisions**

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

### **Other rate case application requirements**

- Adds several requirements that apply to a company’s rate case application, including for example, that (1) all work papers supporting an application must be filed with the application in electronic format, with formulas intact, (2) except for PUCO staff, limits rounds of written discovery and questions during each round, (3) any party and PUCO staff are entitled to file testimony, and (4) PUCO staff are not subject to discovery.
- Repeals the requirement that PUCO, after a hearing to determine whether proposed rates in an application are just and reasonable, must, “where practicable, issue an appropriate order within six months from the date the application was filed.”

### **PUCO staff report**

- Requires, not later than 150 days after the application filing, PUCO staff to make and file in the rate case a written report of recommendations, including all work papers in electronic format with all formulas intact.
- Repeals the requirement that a written report of the facts of a rate case application be made and filed with PUCO within a reasonable time as determined by PUCO and a copy sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and other persons as PUCO deems interested.

- Modifies the ongoing requirement that PUCO investigate the facts of an application, to prohibit applicant investments that have previously deemed prudent from being included in the investigation for the purpose of establishing prudence.

### **Objections to staff report**

- For objections filed not later than 30 days after a staff report's filing date, requires (1) any party that filed objections to file testimony supporting those objections not later than 45 days after the report's filing date and (2) PUCO staff to file testimony supporting their recommendations regarding the application not later than 75 days after that filing date.
- For objections filed within the time periods specified in the bill, allows (1) PUCO to file testimony addressing the objections not later than 75 days after the report's filing date and (2) the utility to file any rebuttal testimony not later than 90 days after that filing date.

### **Application hearing**

- Requires PUCO to set the matter of an application's final hearing for not later than 120 days after the filing date of the staff report.
- Repeals the provision that requires a pre-hearing conference between all parties, intervenors, and PUCO staff if objections are filed to an investigation report in a case involving more than 100,000 customers.
- Repeals, for objections filed timely after the staff report is filed, the requirement that the application must be promptly set down for hearing of testimony before PUCO or referred to an attorney examiner designated by PUCO to take all testimony and objections offered by any interested party.
- Repeals the provision requiring PUCO to fix, and to give ten days' written notice of, the time and place to take testimony to all parties and repeals the requirement that a full and complete record of testimony noting all objections made and exceptions taken by any party or counsel be made and signed by the attorney examiner and filed with PUCO.
- Repeals the requirements that (1) a quorum of PUCO commissioners must consider the attorney examiner's recommended opinion and order in an open, formal, public proceeding prior to PUCO formally considering an application and rendering an order and (2) PUCO must issue an order "respecting the prayer of the application as seems just and reasonable" after that proceeding.

### **Request for temporary rate increase**

- If a proceeding for a public utility's rate case application has not been concluded and a PUCO opinion and order issued by 365 days after the application's filing date, specifies that the rates proposed by the utility must go into effect temporarily without refund and remain in effect until modified by a PUCO decision on the merits of the application.
- Requires the modified rates to apply prospectively.

- Repeals the requirement that, if a PUCO order for an application has not been entered at the expiration of 275 days, an increase, not to exceed the proposed increase, goes into effect upon the utility filing with PUCO a bond or letter of credit with an affidavit promising to refund, with interest, any amounts collected over the final rate in the final PUCO order.
- Specifies that an application is approved by operation of law, if PUCO does not enter an opinion and order within 545 days from the rate case application's filing date.

### **Rate case application notices for certain utility rates**

- Requires a public utility that has more than 100,000 customers to notify PUCO of its intent to file an application under the utility ratemaking law to increase rates or the law allowing a water-works company to petition PUCO to fix its water utility rates upon the failure of the municipal legislative authority, by ordinance, to fix those rates.
- Requires such notices to be filed with PUCO not later than 30 days prior to filing the application described above and requires the notices to include certain information to be included in the application such as the proposed valuation of the utility's property, proposed date certain, and proposed test period.

### **Trackers requested in rate applications**

- Permits an ELC to include a request for approval of a tracker in a rate case application to increase rates for the purpose of collecting the revenue requirement for distribution infrastructure investments and distribution operations and maintenance expenses.
- Permits PUCO to approve a distribution investment tracker (DIT), a storm response tracker (SRT), and up to two cyber security and regulatory trackers (CSRTs) and establishes several separate requirements for each type of tracker.
- Specifies that a DIT collects the revenue requirement relating to distribution infrastructure investments designed to maintain or improve safety, reliability, system efficiency, security, or grid resiliency.
- Specifies that an SRT collects the revenue requirement relating to distribution infrastructure investments and distribution operations and maintenance expenses necessitated by weather events not reflected in rates that constitute major events as determined by PUCO.
- Specifies that up to two CSRTs may collect the revenue requirement relating to distribution infrastructure investments or distribution operation and maintenance issues relating to "single issues consistent with state policy."
- Grants PUCO authority to reduce the amount of, or terminate, a tracker by order, on its own motion, or upon good cause shown, if the tracker, on a normalized basis, caused the ELC to earn a rate of return on equity on distribution rate base that is greater than 250 basis points more than most recently authorized.
- Not later than 90 days after the bill's effective date, requires PUCO to adopt rules and public notice requirements for trackers and exempts these rules from the regulatory limitation in existing law.

## **Repeal of obsolete Ohio coal tax credit**

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

## **Intervenors in PUCO proceedings**

- Adds a new requirement for determining who may intervene in a PUCO proceeding by specifying that any person who may be “adversely and directly affected” by a proceeding may intervene, which differs from the current law requirement that specifies that any person who may be “adversely affected” may intervene in the proceeding.
- Adds the requirement that PUCO must also consider any interest a prospective intervenor has as a “consumer, customer, or competitor” when ruling on applications to intervene in its proceedings by considering the nature and extent of the prospective intervenor’s interest.

## **Discovery rights in PUCO proceedings**

- Specifies that discovery in a PUCO case is limited to “any nonprivileged matter that is relevant and proportional to the needs of the proceeding.”

## **Appeal of final PUCO order**

- Repeals the provision granting authority to the Ohio Supreme Court to permit any interested party to intervene by cross appeal in an appeal to reverse, vacate, or modify a final PUCO order.

## **PUCO rehearings and appeals**

- Specifies that, if PUCO does not affirm, abrogate, or modify an original order within 150 days from the date granting a rehearing, the order is affirmed by operation of law.

## **Notices for PUCO orders, rehearings, and appeals**

- Requires notices of every PUCO order to continue to be served in the manner prescribed by PUCO, but repeals the requirement that the service be given by United States mail.
- Repeals the requirements that notices for a rehearing be “given by regular mail” and notices for an order denying a rehearing or an order made after a rehearing be served “forthwith by regular mail.”
- Repeals the requirement that notice of appeal be served, unless waived, upon the PUCO chairperson, or in the event of the chairperson’s absence, upon any PUCO commissioner, or by leaving a copy at the PUCO Columbus office.

## **Refunds of improper public utility charges**

- Requires all revenues collected from customers by a public utility as part of a rider or rate mechanism, rather than through base rates, to be subject to refund, notwithstanding the refund prohibition under current law, if the Ohio Supreme Court later finds the rider or rate mechanism to be unreasonable, unlawful, or otherwise improper.

- Specifies that such charges are subject to refund from the date of the Supreme Court's decision until the date when PUCO, to implement the Court's decision, makes changes to the rider or mechanism to implement new rates.
- Specifies that PUCO must order the refunds in a manner designed to be allocated to customer classes in the same proportion as the charges were originally collected.
- Requires PUCO to determine how to allocate any remaining funds that cannot be refunded for any reason.

### **Regulatory assets and liabilities**

- If, on a public utility's books and records, PUCO authorizes a deferral of operations and maintenance expenses as a regulatory asset, requires PUCO to allow the utility to accrue carrying costs at the utility's most recently approved long-term cost of debt provided that the utility applies for authorization within one year of beginning to incur the expenses.
- If PUCO allows recovery of all or a portion of the regulatory asset, requires PUCO to allow continued accrual and collection of carrying charges on the unrecovered balance at the utility's approved long-term cost of debt under its most recent base rate case.
- If, on a public utility's books and records, PUCO requires the utility to create a regulatory liability, specifies that PUCO must require the utility to accrue carrying costs at its most recently approved long-term cost of debt.
- If PUCO requires all or a portion of the regulatory liability to be credited to customers, specifies that PUCO must require, on the balance not yet credited, continued accrual of carrying charges on the unrecovered balance at the utility's approved long-term cost of debt under its most recent base rate case.
- Requires carrying charges for regulatory assets to accrue until the entire regulatory asset and all carrying costs have been recovered and carrying charges for regulatory liabilities to accrue until the entirety of the regulatory liability and all carrying costs have been credited to customers.
- Requires a utility to seek PUCO authorization before a regulatory asset is recovered from customers or a regulatory liability is credited to customers.

### **Settlement of matters pending before PUCO**

- Prohibits an electric distribution utility (EDU) or its affiliate, to induce any party to a PUCO proceeding to enter into a settlement of a matter pending before PUCO, from making a cash payment to that party without PUCO finding that the party's expenditure of those funds is in the public interest or entering into any agreement or any financial or private arrangement with that party relating to the proceeding that is not made part of the public case record.
- Allows PUCO, notwithstanding the prohibition described above, to do the following:
  - Reasonably allocate costs among, and design rates within, rate schedules;
  - Approve reasonable rates designed for particular customers or classes of customers;

- Approve a resolution of a proceeding regarding complaints against public utilities;
- Approve a reasonable arrangement between a utility and a customer regarding, for example, charges, classification of service, or a financial device practicable or advantageous to the parties.

### **Electric utility reliability performance standards**

- Requires PUCO to set annual reliability performance standards for each electric utility (measured by the “system average interruption duration index” and the “system average interruption frequency index”) to be set every five years beginning not later than 12 months after the bill’s effective date, unless PUCO orders otherwise.
- Requires PUCO to consider specified factors when setting reliability performance standards, including system design, technical advancements, and service area geography; the utility’s average actual performance for the five years preceding the proceeding to set the standards; and surveys of customers’ expectations of reliable service.
- Requires PUCO to incorporate a reasonable variance to reflect projected annual changes in performance and, when establishing the variance, to consider factors such as projected variations in annual outages caused by weather variation, events beyond the utility’s control, and planned development of distribution infrastructure technology affecting performance.
- Requires PUCO to adopt rules regarding electric utility reporting of performance under the reliability standards, the exclusion of outages from reliability indices, and remedial measures for utilities not achieving the same performance standard for two consecutive years and exempts these rules from the regulatory restriction limitation in existing law.

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## DETAILED ANALYSIS

### Utility law changes

The bill makes various changes to Ohio public utility law, including changes to the frequency of electric light company (ELC) rate cases, rate case notices, rate base and costs of rendering service, rate case applications, trackers (that function similar to riders), and various other Public Utilities Commission of Ohio (PUCO) powers, responsibilities, and duties.

#### **ELC rate case application every five years**

The bill requires an ELC (company that supplies electricity for light, heat, or power to consumers in Ohio, including transmission service) to file a rate case application regarding distribution service every five years beginning not later than five years after the effective date of the bill.<sup>1</sup>

#### **Rate Case notice changes**

##### ***Application filings***

The bill requires a utility to publish a notice upon the filing of an application for an increase in any rate, joint rate, toll, classification, charge, or rental (referred to as “rate” in this analysis), as well as a tracker (discussed in detail below) under Ohio’s utility ratemaking law. As required by the bill, the utility must publish one notice of the application on the website of a newspaper published and in general circulation throughout the territory in which the public utility operates and directly affected by the matters referred to in the application.

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

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<sup>1</sup> R.C. 4909.181.

- The notice must include instructions for direct electronic access to the application or other documents on file with PUCO;
- The first publication of the notice must be made in its entirety and may be a preprinted insert in the newspaper;
- The second publication may be abbreviated so long as the notice in the first publication is posted in its entirety on the newspaper's website (if the newspaper has a website) and PUCO's website, and if certain other requirements are met.<sup>2</sup>

### **Hearings**

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

With this change, the bill repeals the requirements that:

- The hearing notices must be published by PUCO for two consecutive weeks in a newspaper of general circulation in the service area;
- The notice must state prominently the total amount of the revenue increase requested in the application;
- The first publication of the notice must be made in its entirety and may be a preprinted insert in the newspaper;
- The second publication of the notice may be abbreviated if the first notice is posted in its entirety on the newspaper's website (if the newspaper has a website) and PUCO's website, and if certain requirements are met.<sup>3</sup>

### **Hearings for unjust or unreasonable rate application proposals**

If it appears to PUCO, during its review of a public utility rate case application, that proposals in a utility's application appear to be unjust or unreasonable, current law requires PUCO to schedule a hearing at which the burden of proof is on the utility to show that the proposals are just and reasonable. The bill retains the hearing requirement but repeals the requirements that PUCO give notice of the hearing by (1) sending written notice of the hearing date to the utility and (2) publishing a notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application.<sup>4</sup>

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<sup>2</sup> R.C. 4909.19(A).

<sup>3</sup> R.C. 4903.083.

<sup>4</sup> R.C. 4909.18.

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

### **Property valuation and rates**

Under continuing law, PUCO fixes and determines just and reasonable rates using a public utility's property valuation. With respect to an ELC that chooses to file a fully forecasted test period, the bill requires that PUCO determine the valuation of the property projected to be used and useful during the fully forecasted test period in rendering the public utility service for which rates are to be fixed and determined. With respect to a natural gas, water-works, or sewage disposal system company, or an ELC that chooses not to file a fully forecasted test period, PUCO must determine the valuation as of the date certain of the public utility's property that is used and useful or is projected to be used and useful as of the date certain, in rendering the public utility service for which PUCO is to fix and determine rates.<sup>5</sup>

### **Property valuation report**

The bill changes the law governing a public utility's valuation report of property used and useful. The report is required to be filed with an application for an increase in rates and used to determine rates under the application.

#### ***Two types of property valuation reports***

The bill creates a property valuation report for ELCs that have a fully forecasted test period. The new report is similar to the existing law property valuation report required for all utilities filing rate cases. The bill also provides for the existing law valuation report to continue to apply to all other public utilities. As in current law, PUCO must prescribe the form and details of both valuation reports and what those reports must contain.

#### ***ELC with a fully forecasted test period***

With respect to an ELC that chooses to file a fully forecasted test period, the property valuation 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. But, the detailed facts required by the bill to be in the report only address (1) property projected to be held, used and useful for rendering utility service, or leased to or used by the ELC, or (2) money the ELC is projected to receive. The current law requirement regarding the detailed facts (which the bill continues to apply to other public utilities) includes (1) property actually held, used and useful, or leased to or used by the utility and (2) money the utility may have received.

The valuation in the report is to be determined during the fully forecasted test period.

#### ***Other public utilities***

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 by each public utility used and useful for the service and convenience of the public. Or, with respect to a natural gas, water-works, or sewage disposal system company, the report must include all the kinds and classes of property

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<sup>5</sup> R.C. 4909.15(A)(1)(a) and (b).

with the value of each projected to be owned or held *as of the date certain*, by the utility used and useful, or, projected to be used and useful as of the date certain, for the service and convenience of the public. Projected valuation and value in the report is to be determined as of the date certain.<sup>6</sup>

With respect to the report requirements for all other utilities, it appears that a conflict may exist regarding projected used and usefulness by the date certain. The application for an increase in rates requires all ELCs to file a report of their property that is projected to be used and useful as of the date certain.<sup>7</sup> The PUCO valuation report requirements do not permit ELCs that do not file a fully forecasted test period to include property projected to be used and useful in the report.<sup>8</sup> This may need correction.

### ***Fully forecasted test period***

The bill permits ELCs to propose a fully forecasted test period as an alternative for a rate increase application. Under current law, the test period that may be proposed to determine public utility revenues and expenses is any 12-month period beginning not more than six months prior to the application filing date and ending not more than nine months after that date. The new “fully forecasted test period” must utilize a reasonably forecasted rate base, revenues, and expenses for the first 12 months that new rates will be in effect.

Initially, rates for the fully forecasted test period must be set using the 13-month average rate base ending in the last month of the test period, based on the end-of-month balance for the 12 consecutive calendar months of the test period plus the end-of-month balance for the month immediately prior to the beginning of the forecasted test period.

Final rates for this 13-month average test period must use the lower of forecasted plant investment or actual plant investment. The bill requires forecasted plant investment versus actual investment to be trued up via a rate mechanism approved by PUCO. The fully forecasted test period is to commence not later than 365 days after the application’s filing date.<sup>9</sup> This is in contrast with the bill’s requirement that the date certain for an ELC that files a fully forecasted test period is not later than the application filing date. This provides a possible yearlong period between the date certain and when the test period may begin.

### ***Test period and date certain for all utilities***

The bill requires, instead of permits (as under current law), all other utilities to propose the current law test period (described above). The bill repeals the law requiring the test period proposed by the utility to be the test period, unless PUCO otherwise orders. Electric light companies that file a fully forecasted test period must use a date certain that is not later than

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<sup>6</sup> R.C. 4909.04, 4909.041, 4909.042, 4909.05, 4909.06, 4909.07, 4909.08, and 4909.156.

<sup>7</sup> R.C. 4909.18(A). The bill also authorizes PUCO, when setting rates, to value the property that is projected to be used and useful on the date certain of ELCs that do not file a fully forecasted test period. (R.C. 4909.15(A)(1)(a) and (c)).

<sup>8</sup> R.C. 4909.05.

<sup>9</sup> R.C. 4909.15(C)(1)(a).

the application filing date, and natural gas, water-works, and sewage disposal companies have a date certain that may not be later than the end of the test period. No date certain is provided for electric light companies that do not file a fully forecasted test period.

The bill further provides that all utilities, except for ELCs that file a fully forecasted test period, may propose adjustments to the revenues and expenses for any changes that are, during the test period or 12-month period following, reasonably expected to occur. The utility must identify and quantify individually, any proposed adjustments.<sup>10</sup>

### **Property determination to include software as service**

For all ELCs, the bill requires PUCO to include the utility's cost of software as a service when determining the original cost of kinds and classes of property (1) projected to be used and useful during the test period for electric utilities that choose to file a fully forecasted test period or (2) used and useful as of the date certain for electric utilities that choose not to file a fully forecasted test period.<sup>11</sup>

### **Determining cost of rendering public utility service**

The bill adds a requirement to the process of fixing and determining just and reasonable rates. When determining the cost to the utility of rendering public utility service, PUCO must determine payroll costs and whether such costs together are reasonable when compared to market rates. Under the bill, payroll costs include labor, employee benefits, payroll taxes, and incentive compensation.<sup>12</sup>

### **Allowance for construction work in progress (CWIP)**

The bill repeals all provisions related to construction work in progress (CWIP) provisions of the law that are related to utility property valuation. Currently, the law allows PUCO, in its discretion, to include in the valuation of utility property a reasonable allowance for CWIP for a construction project that is at least 75% complete and prohibits the allowance from exceeding 10% of the total valuation of the property, not including the allowance for CWIP. Current law includes other CWIP conditions such as, for example, no CWIP, as it relates to a particular construction project, may be reflected in rates for a period exceeding 48 consecutive months beginning on the date initial rates reflecting CWIP become effective, except for certain specified exceptions.<sup>13</sup>

### **“Tracker” added to existing utility rate provisions**

Ongoing law requires public utilities to file a written application with PUCO to establish any rate, or to modify, amend, change, increase, or reduce any existing rate, or any regulation or practice affecting it.<sup>14</sup> The bill extends this application requirement to “trackers.”

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<sup>10</sup> R.C. 4909.15(C)(1)(b) and (2) and (D).

<sup>11</sup> R.C. 4909.043.

<sup>12</sup> R.C. 4909.157.

<sup>13</sup> R.C. 4909.15(A).

<sup>14</sup> R.C. 4909.18.

Similarly, the bill adds “tracker” to other provisions of the utility ratemaking law that apply to a rate.<sup>15</sup> The term “tracker” refers to three types of trackers for which an ELC may request PUCO approval in a rate case application and under which revenue requirements may be collected (See “**Trackers requested in rate applications**” described below).

### ***Adjustments to rates***

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

This provision also specifies that such adjustments must be made with due regard to the value of all property of the public utility and repeals the phrase “actually used and useful for the convenience of the public” with respect to that property.

The bill does not add “trackers” to the types of charges considered when determining whether they are “insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable,” but the bill’s subsequent references to making adjustments based on this determination includes “trackers.” If the omission of “trackers” in this instance is not intended, a correction may be needed to ensure the clarity of this provision.<sup>16</sup>

### ***Rescission, alteration, amendment of a PUCO order***

The bill allows PUCO to rescind, alter, or amend an order that fixed a “tracker” upon application of any person or public utility, and after notice to the parties and an opportunity for a hearing. Current law permits this process of rescissions, alterations, or amendments to PUCO orders that fixed rates.<sup>17</sup>

### ***Report filed with rate application***

The bill modifies requirements for the exhibits that must accompany an application filed with PUCO for an increase in rates by also applying this requirement to applications for an increase in a “tracker.”<sup>18</sup>

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<sup>15</sup> R.C. 4909.15(A), (E), and (F), 4909.156, 4909.18, 4909.19, and 4909.42.

<sup>16</sup> R.C. 4909.15(E).

<sup>17</sup> R.C. 4909.15(F).

<sup>18</sup> R.C. 4909.18(A).

## Other rate case application requirements

The bill adds the following requirements that apply to a company's rate case application:<sup>19</sup>

- All work papers supporting a company's application must be filed with the application in electronic format, with formulas intact;
- Prefiled testimony must (1) be filed under oath or, for representatives of a corporation, other association, or governmental agency, be accompanied by a signed certification of the preparer that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry, and (2) become automatically part of the proceeding record;
- Except for PUCO staff, each party in the case, including the company, is:
  - Limited to issuing not more than three rounds of written discovery prior to, and not more than three rounds after, the filing of the staff report of recommendations ("**PUCO staff report**," below);
  - Limited to not more than 50 questions, including subparts, during each round.
- Each response to a discovery request must include the name of the person responsible for responding to the questions;
- Each response to a discovery request must be answered under oath, or for representatives of a corporation, other association, or governmental agency, accompanied by a signed certification of the preparer that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry;
- PUCO staff are not subject to discovery;
- Any party and PUCO staff are entitled to file testimony;
- PUCO must hold a single hearing, at which all witnesses who filed direct or rebuttal testimony are subject to cross-examination.<sup>20</sup>

## Six-month deadline for PUCO to issue order

The bill repeals the requirement that PUCO, after a hearing to determine whether proposed rates in an application are just and reasonable, must, "where practicable, issue an appropriate order within six months from the date the application was filed."<sup>21</sup>

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<sup>19</sup> The bill refers to a "company" and not a "public utility" regarding the rate case application requirements added in R.C. 4909.46. Only a public utility is subject to utility rate-making law. A corrective amendment may be necessary.

<sup>20</sup> R.C. 4909.46.

<sup>21</sup> R.C. 4909.18.

## **PUCO staff report**

Ongoing law requires PUCO to investigate the facts set forth in a rate case application. But, the bill prohibits investments made by the applicant that have previously been deemed prudent to be included in the investigation for the purpose of establishing prudence.

The bill requires PUCO staff to make and file in the rate case a written report of recommendations, including all work papers in electronic format with all formulas intact. The PUCO staff report must be filed in the case not later than 150 days after the application's filing. The bill repeals the existing law requirement that a written report be made and filed with PUCO within a reasonable time as determined by PUCO and a copy sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to other persons as PUCO deems interested.<sup>22</sup>

### **Objections to staff report**

The bill specifies the following if objections are filed not later than 30 days after the staff report is filed:

- Not later than 45 days after the report's filing date, any party that filed objections must also file testimony in support of those objections;
- Not later than 75 days after the report's filing, PUCO staff must file testimony supporting their recommendations regarding the application filed and may file testimony addressing the objections filed;
- Not later than 90 days after the report's filing date, the utility may file any rebuttal testimony.

The bill repeals the current law provision that requires a pre-hearing conference between all parties, intervenors, and PUCO staff if objections are filed to an investigation report in a case involving more than 100,000 customers. Also repealed by the bill is the requirement applying to objections filed with PUCO within 30 days after the report is filed that specifies that the application must be promptly set down for hearing of testimony before PUCO or referred to an attorney examiner designated by PUCO to take all testimony with respect to the application and objections offered by any interested party.<sup>23</sup>

### **Application hearing**

Under ongoing law, if no party interested files an objection to the report within 30 days after its filing, PUCO must fix a date within ten days for the final hearing on the application. The bill requires PUCO to set the matter for hearing not later than 120 days after the filing date of the report.<sup>24</sup>

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<sup>22</sup> R.C. 4909.19(B).

<sup>23</sup> R.C. 4909.19(C).

<sup>24</sup> R.C. 4909.19(C)(1) and (D).

The bill repeals the provision requiring PUCO to fix the time and place to take testimony and to give ten days' written notice of the time and place to all parties. Ongoing law requires the taking of testimony to begin on the date "fixed in the notice" and continue from day to day until completed.<sup>25</sup>

Also repealed is the requirement that a full and complete record of testimony noting all objections made and exceptions taken by any party or counsel must be made and signed by the attorney examiner and filed with PUCO. And, the bill repeals the provision requiring that prior to PUCO formally considering an application and rendering an order, a quorum of PUCO commissioners must consider the attorney examiner's recommended opinion and order in an open, formal, public proceeding in which an oral overview and explanation is presented. The bill further repeals the requirement that, after the open, formal, and public proceeding, PUCO must issue an order "respecting the prayer of the application as seems just and reasonable" to PUCO.<sup>26</sup>

### **Request for temporary rate increase**

Under the bill, if a proceeding for a rate case application has not been concluded and a PUCO *opinion* and order entered at the expiration of 365 days from the application's filing date, rates proposed by the public utility go into effect temporarily without refund, apply prospectively, and remain in effect until modified by PUCO decision based on the merits of the application. Under current law, PUCO must enter an "order," but under the bill, PUCO must enter an "opinion and order."

The bill repeals the requirement that, if an application proceeding has not been concluded and a PUCO order entered at the expiration of 275 days from the application's filing date, an increase not to exceed the proposed increase goes into effect upon the public utility filing a bond or letter of credit with PUCO. The bill also repeals the requirement that (1) the bond or letter of credit must be payable to the state for the use and benefit of the customers affected by the proposed increase or change, (2) the bond or letter of credit must be accompanied with a signed affidavit with a promise on behalf of the utility to refund, with interest, any amounts collected over the amount determined in the final PUCO order for the rate case application, (3) the refund must be in the form of a temporary reduction in rates following the final PUCO order, (4) refunds must be accomplished as prescribed in the order, and (5) PUCO must exercise continuing and exclusive jurisdiction over the refunds.

Under the bill, if PUCO does not enter an *opinion* and order within 545 days from the application's filing date for a rate increase, the application is considered approved by operation of law. Because temporary increases are not subject to refund under the bill, the bill also repeals the current law provision specifying that a public utility has no obligation to make a refund of any amounts exceeding the amounts authorized by the PUCO final order that are collected after the 545<sup>th</sup> day from the date of filing.<sup>27</sup>

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<sup>25</sup> R.C. 4909.19(D).

<sup>26</sup> R.C. 4909.19(D).

<sup>27</sup> R.C. 4909.42.

## Rate case application notices for certain utility rates

The bill requires a public utility that has more than 100,000 customers to notify PUCO of the utility's intent to file with PUCO an application (1) for an increase in rates or (2) to set just and reasonable water rates the public utility may charge if a municipal corporation fails to regulate the rates. Under the bill, the notice of intent must be made not later than 30 days prior to filing the application and must include the number of customers of the utility and the proposed (1) valuation of the utility's property, (2) date certain, (3) rate of return for the utility, (4) cost to the utility of rendering public utility service, and (5) test period to be included in the application.<sup>28</sup>

## Trackers requested in rate applications

The bill permits an ELC to include, in a rate increase application, a request for approval of three types of trackers to collect the revenue requirement for distribution infrastructure investments and distribution operations and maintenance expenses: distribution investment tracker (DIT), storm response tracker (SRT), and cyber security and regulatory tracker (CSRT).<sup>29</sup> All have nearly identical provisions, with minor differences relating to the purpose of each. All three, however, are set out in their entirety below.

### DIT

A DIT may be requested to collect the revenue requirement relating to distribution infrastructure investments designed to maintain or improve safety, reliability, system efficiency, security, or grid resiliency.

For an ELC that chooses not to file a fully forecasted test period, the DIT investments become used and useful after the date certain. For an ELC that chooses to file a fully forecasted test period, the DIT investments become used and useful and are not included in the plant investment used in final rates established in the ratemaking law.<sup>30</sup>

Distribution infrastructure investments eligible for recovery through a DIT must include distribution capital investments. To the extent that they support the maintenance or improvement of reliable electric service, distribution infrastructure investments eligible for recovery also include common, general, and intangible assets allocable to distribution service under the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts.<sup>31</sup>

The bill requires the revenue requirement collected by the DIT to include the following:

- Depreciation;
- Property taxes, commercial activity taxes, and other applicable taxes;

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<sup>28</sup> R.C. 4909.43(C); R.C. 4909.35, not in the bill.

<sup>29</sup> R.C. 4909.173, 4909.174, and 4909.175.

<sup>30</sup> R.C. 4909.173(A).

<sup>31</sup> R.C. 4909.173(B).

- A fair and reasonable rate of return on the current period actual distribution rate base equivalent to the rate of return authorized for base distribution rates in the rate proceeding in which the ELC requests DIT approval.<sup>32</sup>

### ***Calculation and distribution of DIT collections***

The bill establishes the revenue requirement to be collected under the DIT as the difference in the revenue requirement on the current period distribution-related rate base and the revenue requirement on the distribution-related rate base included in the existing base rates. And, the revenue requirement collected must be allocated to base distribution rate classes consistent with the allocation of base distribution rates approved in the rate case proceeding.

The bill prohibits the DIT from collecting, on an annual basis, more than an incremental 4% of the base distribution revenue requirement approved in the rate case proceeding.<sup>33</sup>

### ***Quarterly report***

The ELC is required to file a quarterly report with PUCO regarding the revenue requirement eligible for collection under the DIT.<sup>34</sup>

### ***Revenue requirement recovery***

PUCO must allow, subject to annual review and reconciliation, the recovery of the revenue requirement collected under a DIT. Under the bill, PUCO, in its annual review, must determine whether the distribution infrastructure investments made by the company during the year under review were used and useful and prudent. PUCO is required to offset the revenue requirement to be collected under the DIT by any reasonably certain cost savings realized from the related distribution infrastructure investments.<sup>35</sup>

### ***Future applications for rate increase***

The bill specifies that when considering an ELC's subsequent application for a rate increase, PUCO must include the date certain plant in service balance of used and useful distribution infrastructure investments being recovered through the DIT in the new, approved base distribution rates. If PUCO approves new base distribution rates in such a proceeding that reflects investments recovered up to that point through a tracker, the existing DIT must be adjusted accordingly to avoid any double recovery of the same investment.<sup>36</sup>

## **SRT**

An ELC may request PUCO approval for an SRT. An approval of an SRT allows collection of the revenue requirement relating to distribution infrastructure investments and distribution

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<sup>32</sup> R.C. 4909.173(C).

<sup>33</sup> R.C. 4909.173(D) to (F).

<sup>34</sup> R.C. 4909.173(G).

<sup>35</sup> R.C. 4909.173(H).

<sup>36</sup> R.C. 4909.173(I) and (J).

operations and maintenance expenses that are necessitated by weather events not reflected in base distribution rates that constitute major events, as determined by PUCO.

For an ELC that chooses not to file a fully forecasted test period, the SRT investments must be used and useful after the date certain. For an ELC that chooses to file a fully forecasted test period, the SRT investments must be used and useful and must not be included in the plant investment used in final rates established in the ratemaking law.<sup>37</sup>

Distribution infrastructure investments eligible for recovery through an SRT must include distribution capital investments and common, general, and intangible assets allocable to distribution service under FERC Uniform System of Accounts.<sup>38</sup>

The bill requires the revenue requirement collected by the SRT to include the following:

- Depreciation;
- Property taxes, commercial activity taxes, and other applicable taxes;
- A fair and reasonable rate of return authorized for base distribution rates in the rate proceeding in which the ELC requests SRT approval;
- Eligible distribution operations and maintenance expenses.<sup>39</sup> (The bill does not expressly state what qualifies as an eligible expense for an SRT, but under the bill, SRT approval allows the company to collect the revenue requirement for distribution and operating expenses. Presumably, PUCO will determine what expenses are eligible.)

### ***Collections for revenue requirement***

Under the bill, the revenue requirement collected under an SRT must be allocated to base distribution rate classes consistent with the allocation of base distribution rates approved in the rate case proceeding. However, the revenue requirement collected under an SRT may not include any amounts otherwise collected in base rates, the DIT, or another tracker.<sup>40</sup>

### ***Semi-annual report***

The ELC is required to file a semi-annual report with PUCO regarding the revenue requirement eligible for collection under the SRT.<sup>41</sup>

### ***Revenue requirement recovery***

PUCO must allow, subject to annual review and reconciliation, the recovery of the revenue requirement collected under an SRT. Under the bill, PUCO, in its annual review, must determine whether the eligible distribution infrastructure investments made by the ELC were

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<sup>37</sup> R.C. 4909.174(A).

<sup>38</sup> R.C. 4909.174(B).

<sup>39</sup> R.C. 4909.174(C)(1).

<sup>40</sup> R.C. 4909.174(C)(2) and (D).

<sup>41</sup> R.C. 4909.174(E).

used and useful and whether the eligible distribution operations and maintenance expenses were prudently made and incurred.<sup>42</sup>

### ***Future applications for rate increase***

The bill specifies that when considering an ELC's subsequent application for a rate increase, PUCO must include the date certain plant in service balance of used and useful distribution infrastructure investments being recovered through the SRT in the new, approved base distribution rates. If PUCO approves new base distribution rates in such a proceeding that reflects investments recovered up to that point through a tracker, the existing SRT must be adjusted accordingly to avoid any double recovery of the same investment or expenses.<sup>43</sup>

### ***Regulatory assets and liabilities upon SRT termination***

At the time an SRT terminates, the bill requires the following to occur:

- Any amounts that remain to be collected and are not incorporated into base distribution rates must be deferred as a regulatory asset;
- Any amounts that remain to be credited and are not incorporated into base distribution rates will be a regulatory liability.

Regulatory assets and liabilities may be recovered or credited to customers through a new SRT, base distribution rates, or another PUCO-authorized mechanism.<sup>44</sup>

## **CSRT**

In addition to a DIT and SRT, the bill also allows an ELC to request approval for up to two CSRTs to collect the revenue requirement relating to distribution infrastructure investments or distribution operation and maintenance issues relating to "single issues consistent with state policy." The terms "single issues" and "state policy" are not defined by the bill.

For an ELC that chooses not to file a fully forecasted test period, the CSRT investments must be used and useful after the date certain. For an ELC that chooses to file a fully forecasted test period, the CSRT investments must be used and useful and must not be included in the plant investment used in final rates established in the ratemaking law.<sup>45</sup>

Distribution infrastructure investments eligible for recovery through a CSRT must include distribution capital investments and common, general, and intangible assets allocable to distribution service under FERC Uniform System of Accounts.<sup>46</sup>

The bill requires the revenue requirement collected by a CSRT to include the following:

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<sup>42</sup> R.C. 4909.174(F).

<sup>43</sup> R.C. 4909.174(G) and (H)(1).

<sup>44</sup> R.C. 4909.174(H)(1)(a) and (b) and (2).

<sup>45</sup> R.C. 4909.175(A).

<sup>46</sup> R.C. 4909.175(B).

- Depreciation;
- Property taxes, commercial activity taxes, and other applicable taxes;
- A fair and reasonable rate of return, equivalent to the rate or return authorized for base distribution rates in the rate proceeding in which the ELC requests CSRT approval;
- Eligible distribution operations and maintenance expenses.<sup>47</sup> (The bill does not expressly state what qualifies as an eligible expense for a CSRT, but under the bill, CSRT approval allows the company to collect the revenue requirement for distribution and operating expenses. Presumably, PUCO will determine what expenses are eligible.)

### ***Collections for revenue requirement***

Under the bill, the revenue requirement collected under a CSRT may not include any amounts otherwise collected in base rates, the DIT, or another tracker.<sup>48</sup>

The bill prohibits any authorized CSRT from collecting on an annual basis more than an incremental 2% of the base distribution revenue requirement approved in the rate case proceeding.<sup>49</sup>

### ***Semi-annual report***

The ELC is required to file a semi-annual report with PUCO regarding the revenue requirement eligible for collection under any authorized SRT.<sup>50</sup>

### ***Revenue requirement recovery***

PUCO must allow, subject to annual review and reconciliation, the recovery of the revenue requirement collected under a CSRT. Under the bill, PUCO, in its annual review, must determine whether the eligible distribution infrastructure investments made by the ELC were used and useful and whether the investments and eligible distribution operations and maintenance expenses were prudently made and incurred. PUCO is required to offset the revenue requirement to be collected under any CSRT by any reasonably certain cost savings realized from the related distribution infrastructure investments or distribution operations and maintenance expenses.<sup>51</sup>

### ***Future applications for rate increase***

The bill specifies that when considering an ELC's subsequent application for a rate increase, PUCO must include the date certain plant in service balance of used and useful distribution infrastructure investments being recovered through any CSRT in the new, approved base distribution rates. If PUCO approves an increase in new base distribution rates in such a proceeding that reflects investments recovered up to that point through a tracker, the existing

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<sup>47</sup> R.C. 4909.175(C)(1).

<sup>48</sup> R.C. 4909.175(C)(2).

<sup>49</sup> R.C. 4909.175(D).

<sup>50</sup> R.C. 4909.175(E).

<sup>51</sup> R.C. 4909.175(F).

CSRT must be adjusted accordingly to avoid any double recovery of the same investment or expenses.<sup>52</sup>

### ***Regulatory assets and liabilities upon CSRT termination***

At the time a CSRT terminates, the bill requires the following to occur:

- Any amounts that remain to be collected and are not incorporated into base distribution rates must be deferred as a regulatory asset;
- Any amounts that remain to be credited and are not incorporated into base distribution rates will be a regulatory liability.

Regulatory assets and liabilities may be recovered or credited to customers through a new CSRT, base distribution rates, or another PUCO-authorized mechanism.<sup>53</sup>

### **PUCO authority to reduce or terminate trackers**

PUCO has the authority to reduce the amount of, or terminate, a DIT, SRT, or CSRT under the bill, during the period such a tracker is authorized. PUCO may do this, by order, on its own motion, or upon good cause shown. A tracker reduction or termination may occur if PUCO determines that the tracker, on a normalized basis, has caused the ELC to earn a rate of return on equity on distribution rate base that is greater than 250 basis points in excess of the rate of return on equity most recently authorized for the company in an application for a rate increase under the utility ratemaking law.<sup>54</sup>

### **Rules and notice requirements for trackers**

The bill requires PUCO to adopt rules and public notice requirements as it considers necessary to carry out the bill's provisions regarding the trackers permitted by the bill. The rules and notice requirements must be adopted not later than 90 days after the bill's effective date.

Rules adopted under the bill are exempt from the regulatory restriction limitation in existing law. Current law, unchanged by the bill, prohibits state agencies, including PUCO, from adopting a new regulatory restriction unless the agency simultaneously removes two or more existing regulatory restrictions until June 30, 2025. State agencies are also required to achieve a 30% total regulatory restriction reduction by that date. Regulatory restrictions are state agency rules that include words such as "shall," "require," and "prohibit."<sup>55</sup>

### **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

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<sup>52</sup> R.C. 4909.175(G) and (H)(1).

<sup>53</sup> R.C. 4909.174(H)(1)(a) and (b) and (2).

<sup>54</sup> R.C. 4909.176.

<sup>55</sup> R.C. 4909.178; R.C. 121.95 to 121.952, not in the bill.

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.<sup>56</sup>

### **Intervenors in PUCO proceedings**

By specifying that any person who may be adversely *and directly affected by* a PUCO proceeding may intervene in the proceeding, the bill limits the authority in current law that allows any other person who may be adversely affected by a PUCO proceeding to intervene.

Current law requires PUCO consider several criteria when ruling on applications to intervene in its proceedings. The first criterion is that PUCO must consider the nature and extent of the prospective intervenor's interest. The bill adds the requirement that when considering that interest, PUCO must also consider any interest a prospective intervenor has *as a consumer, customer, or competitor*.<sup>57</sup>

### **Rights of discovery in PUCO cases**

Ongoing law regarding PUCO hearings specifies that parties and intervenors in the PUCO case must be granted "ample rights of discovery." The bill specifies that discovery rights are limited to discovery of "any nonprivileged matter that is relevant and proportional to the needs of the proceeding."<sup>58</sup>

### **Appeal of final PUCO order**

Under ongoing law, any party to a proceeding may file with PUCO a notice of appeal to reverse, vacate, or modify a final PUCO order. The notice must set forth the order appealed from and the errors complained of. The bill repeals the provision that grants authority to the Ohio Supreme Court to permit any interested party to intervene by cross appeal.<sup>59</sup>

### **PUCO rehearings and appeals**

Under the bill, if PUCO does not affirm, abrogate, or modify an original order within 150 days from the date granting a rehearing, the order is affirmed by operation of law.<sup>60</sup>

#### **Notice requirements**

The bill amends current law regarding notice procedures for (1) PUCO orders, (2) applications for, granting, or denying rehearings, and (3) granting appeals to a PUCO order.

- The bill requires notices of every PUCO order to continue to be served in the manner prescribed by PUCO, but repeals the requirement that the service be by United States mail.<sup>61</sup>

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<sup>56</sup> R.C. 4909.15(A)(4)(b).

<sup>57</sup> R.C. 4903.221.

<sup>58</sup> R.C. 4903.082.

<sup>59</sup> R.C. 4903.13.

<sup>60</sup> R.C. 4903.10.

<sup>61</sup> R.C. 4903.15.

- The bill retains the requirement that PUCO must provide notice of a rehearing, but repeals the requirement that the notice be given by regular mail.<sup>62</sup>
- PUCO must continue to provide, to all parties who have entered an appearance in the PUCO proceeding, notice of an order denying a rehearing or an order made after a rehearing. But, the notice no longer will have to be “served forthwith by regular mail.”<sup>63</sup>
- Repeals the requirement regarding a notice of appeal against PUCO to reverse, vacate, or modify a final PUCO order that the notice of appeal be served, unless waived, upon the PUCO chairperson, or in the event of the chairperson’s absence, upon any PUCO member, or by leaving a copy at the PUCO Columbus office.<sup>64</sup>

### **Refunds of improper public utility charges**

Under the bill, all revenues collected from customers by a public utility as part of a rider or rate mechanism, rather than through base rates, are subject to refund, if the Ohio Supreme Court later finds the charges to be “unreasonable, unlawful, or otherwise improper.” Riders or rate mechanisms found to be improper by the Court are subject to refund from the date of the issuance of the Court’s decision until the date when, on remand, PUCO, to implement the Court’s decision, makes changes to the rider or mechanism to implement new rates.

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

The refunds described above must be made notwithstanding the current Ohio utility law prohibiting refunds.<sup>65</sup>

### **Refund prohibition under current law**

Current law prohibits a public utility from (1) charging or collecting a different “rate, rental, toll, or charge” except as specified in the utility’s schedule filed with PUCO in effect at the time or (2) refunding or remitting all or any part of the rate, rental, toll, or charge, except as specified in the schedule and extended to all under like circumstances for like, or substantially similar, service.<sup>66</sup> In addition, the Ohio Supreme Court has found that under this law, “a utility has no option but to collect the rates set by the commission and is clearly forbidden to refund any part of the rates so collected.”<sup>67</sup>

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<sup>62</sup> R.C. 4903.10.

<sup>63</sup> R.C. 4903.11.

<sup>64</sup> R.C. 4903.13.

<sup>65</sup> R.C. 4905.321.

<sup>66</sup> R.C. 4905.32, not in the bill.

<sup>67</sup> *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257 (1957).

## Regulatory assets and liabilities

Under the bill, if PUCO authorizes a deferral of operations and maintenance expenses as a regulatory asset on a public utility's books and records, PUCO also must allow the utility to accrue carrying costs at the utility's most recently approved long-term cost of debt provided that the utility files an application for authorization within one year of beginning to incur the expenses. If PUCO allows recovery of all or a portion of the regulatory asset, then PUCO must allow the continued accrual and collection of carrying charges on the unrecovered balance at the utility's long-term cost of debt as approved under the utility's most recent rate case. Carrying charges must accrue until the entire regulatory asset and all carrying charges are recovered. Before a regulatory asset is recovered from customers, a utility is required to seek PUCO authorization.<sup>68</sup>

The bill also mandates that PUCO require a utility to accrue carrying costs at the utility's most recently approved long-term cost of debt, if PUCO requires the utility to create a regulatory liability on the utility's books and records. If PUCO requires all or a portion of the regulatory liability to be credited to customers, then PUCO must require (on the balance that has not yet been credited) the continued accrual of carrying charges at the utility's most recently approved long-term cost of debt. The bill further requires that the carrying charges must accrue until the entirety of the regulatory liability and all carrying costs have been credited to customers. And, a utility is required to seek PUCO authorization before a regulatory liability is credited to customers.<sup>69</sup>

## 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 without PUCO finding that the party's expenditure of those funds is in the public interest;
- Enter into any agreement or any financial or private arrangement with that party that is not made part of the public case record.

However, notwithstanding that prohibition, PUCO may (1) reasonably allocate costs among, and design rates within, rate schedules, (2) approve reasonable rates designed for particular customers or classes of customers, (3) approve a resolution of a proceeding regarding complaints against public utilities, and (4) approve a reasonable arrangement between a public utility and another public utility or its customers regarding, for example, charges, classification of service, or a financial device practicable or advantageous to the parties.<sup>70</sup>

For the purposes of the bill's changes regarding settlements, a "proceeding" includes a proceeding relating to retail electric service under the utility ratemaking law in

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<sup>68</sup> R.C. 4905.131(A) and (C).

<sup>69</sup> R.C. 4905.131(B) and (C).

<sup>70</sup> R.C. 4905.331(B) and (C); R.C. 4905.26 and 4905.31, not in the bill.

R.C. Chapter 4909 and a proceeding for a standard service offer under the competitive retail electric service law in R.C. Chapter 4928. And, as defined in the competitive retail electric service law, an “electric distribution utility” is an electric utility that supplies at least retail electric distribution service, and “retail electric service” is any service involved in supplying or arranging for the supply of electricity to ultimate consumers in Ohio, from the point of generation to the point of consumption.<sup>71</sup>

### **Electric utility reliability performance standards**

The bill requires PUCO to set annual reliability performance standards for each electric utility. Unless PUCO orders otherwise, the standards must be set every five years beginning not later than 12 months after the bill’s effective date.

The standards must be measured by the “system average interruption duration index” and the “system average interruption frequency index.” The system average interruption duration index equals the sum of all customer interruption durations divided by the total number of customers served by the electric utility. The system average interruption frequency index equals the sum of all customer interruptions divided by the total number of customers served by the electric utility.<sup>72</sup>

### **Factors for setting reliability performance standards**

PUCO must consider the following factors when setting reliability performance standards:

- The electric utility’s average actual performance for the five years preceding the commencement of a proceeding to set the standards;
- System design, technical advancements, and service area geography;
- Customer perception surveys designed to measure customer expectations of reliable service in terms of the system average interruption duration index and the system average interruption frequency index.

The bill also requires PUCO to incorporate a reasonable variance to reflect projected annual changes in performance. When establishing the reasonable variance, PUCO must consider such factors as projected variations in annual outages caused by weather variation, events beyond the utility’s control, and planned deployment of distribution infrastructure technology affecting the performance.<sup>73</sup> Presumably “affecting the performance” means affecting the *electric utility’s* performance.

### **PUCO rules**

PUCO must develop rules regarding (1) electric utility reporting of performance under the reliability performance standards, (2) the exclusion of any outages from the reliability

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<sup>71</sup> R.C. 4905.331(A); R.C. 4928.01(A)(6) and (27), not in the bill.

<sup>72</sup> R.C. 4905.221(A).

<sup>73</sup> R.C. 4905.221(B).

indices, and (3) remedial measures for electric utilities that “do not achieve the same performance standard for two consecutive years.”

Rules adopted under the bill are exempt from the regulatory restriction limitation in existing law. Current law regarding the regulation restriction limitation is described above under “**Rules and notice requirements for trackers.**”<sup>74</sup>

### **Possible reliability performance standard clarity issues**

“Electric utility” is not defined regarding the reliability performance standards described above. But, “electric utility” is defined under the competitive retail electric service law as an ELC 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 Ohio or both a noncompetitive and a competitive retail electric service in Ohio.<sup>75</sup> That definition does not apply to this provision. So, it is not clear to what entity the standards will apply.

It is also unclear what “not achieve the same performance standard for two consecutive years” means for the rules required for remedial measures regarding the reliability performance standards. The phrase likely refers to an electric utility not meeting minimum reliability performance standards for two years, but it could be revised to be more clear.<sup>76</sup>

## **HISTORY**

Action	Date
Introduced	09-12-23

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<sup>74</sup> R.C. 4905.221(C); R.C. 121.95 to 121.952, not in the bill.

<sup>75</sup> R.C. 4928.01, not in the bill.

<sup>76</sup> R.C. 4905.221(A)(1).