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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 201
134th General Assembly

Bill Analysis

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Version: As Reported by House Energy and Natural Resources

Primary Sponsor: Rep. Stephens

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SUMMARY

- Guarantees that every person has the right to obtain:
 - Distribution service or retail natural gas service from a natural gas company capable of providing service to the person;
 - Competitive retail natural gas service from any competitive retail natural gas service supplier certified to provide that service to the person in that location; or
 - Propane from any energy dealer willing to provide propane to that customer in that location.
- Provides that the natural gas guarantees described above are:
 - Limited by public utilities law governing natural gas utilities and any regulations adopted under that law by the Public Utilities Commission (PUCO) and tariffs approved by PUCO; and
 - Subject to municipal corporation utility home rule authority granted under the Ohio Constitution.
- Provides that the propane guarantee described above is:
 - Limited by Ohio law governing propane, the Propane Council, and propane marketing, and any regulations adopted under that law by the Department of Agriculture; and
 - Subject to municipal corporation utility home rule authority granted under the Ohio Constitution.
- Bars any political subdivision by ordinance, resolution, building code, contractual provision, or other requirement from limiting, preventing, or prohibiting any consumer within its boundaries from using distribution services, retail natural gas service, or propane.

- Provides that, other than the limitations described above, a municipality's right to enter into and administer franchise agreements are not inhibited or restricted.
- States that the provisions establishing the guarantees and delineating political subdivision authority cannot prevent or limit a municipal corporation from exercising its authority regarding electric aggregation, securitization of electric distribution utility costs, and the Public Utilities Commission's Federal Energy Advocate and the Advocate's duties.
- States that the provisions establishing the guarantees and delineating political subdivision authority cannot limit a natural gas company's ability to provide service to new customers or to require free extensions of service.
- Provides that the bill promotes state policy to increase utilization of Ohio's indigenous energy resources, promote the availability of natural gas goods and services, and encourage the utilization of propane.

DETAILED ANALYSIS

Guarantee of access to natural gas service

The bill guarantees that every person has the right to obtain any available (1) distribution service or retail natural gas service from a natural gas company capable of providing service to the person in that location or (2) competitive retail natural gas services from any competitive retail natural gas service supplier certified to provide that service to the person in that location.¹ A "natural gas company" is a public utility that is engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers in Ohio.² This term excludes retail natural gas suppliers.³ The services guaranteed under the bill are defined as follows:

- "Distribution service," meaning the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas.⁴
- "Retail natural gas service," meaning commodity sales service, ancillary service, natural gas aggregation service, natural gas marketing service, or natural gas brokerage service.⁵

¹ R.C. 4933.41(A).

² R.C. 4933.40(B); R.C. 4929.01(G) and 4905.03(E), not in the bill.

³ R.C. 4929.01(G), not in the bill.

⁴ R.C. 4933.40(B); R.C. 4929.01(F), not in the bill.

⁵ R.C. 4933.40(B); R.C. 4929.01(M), not in the bill.

- “Competitive retail natural gas service,” meaning any retail natural gas service that may be competitively offered to consumers in Ohio as a result of approved schedules, or a rule, order, or exemption issued by the Public Utilities Commission (PUCO).⁶

This guarantee is subject to Ohio utility law governing natural gas service and utility companies and any regulations adopted under that law by PUCO and tariffs approved by PUCO, as well as the municipal corporation utility home rule authority granted under the Ohio Constitution.⁷

Under home rule, municipal corporations have the power to acquire, construct, own, lease, and operate a public utility to serve the municipal corporation or its inhabitants and others. This means that municipal corporations can own and control utilities and direct how they operate.⁸ Please see the Ohio Legislative Service Commission’s Members Brief “[Municipal Home Rule](#)” for a more detailed discussion of these constitutional provisions.

Guarantee of access to propane

The bill guarantees that every person seeking to obtain propane has the right to obtain it from any energy dealer willing to provide it to the customer in that location.⁹ An “energy dealer” means every retail dealer of fuel oil, propane, coal, wood, and kerosene.¹⁰

The propane guarantee is subject to Ohio law governing propane, the Propane Council, and propane marketing, and any regulations adopted under that law by the Department of Agriculture, as well as the municipal corporation utility home rule authority granted under the Ohio Constitution (see discussion above regarding the applicable home rule provision).¹¹

Prohibitions against political subdivisions

The bill prohibits a legislative or executive authority of a township, county, or municipal corporation from enacting any ordinance or resolution, or promulgating or imposing any building code, contractual provision, or other requirement, that limits, prohibits, or prevents residential, commercial, or industrial consumers within their boundaries from using (1) distribution service or retail natural gas service that would otherwise be available to a person under Ohio’s public utility law and regulations promulgated under those laws, or (2) propane.¹²

⁶ R.C. 4933.40(B); R.C. 4929.01(J), not in the bill.

⁷ R.C. 4933.41(B).

⁸ Ohio Constitution, Article XVIII, Sections 4 and 6.

⁹ R.C. 4933.41(A)(2).

¹⁰ R.C. 4933.40(C); R.C. 5117.01, not in the bill.

¹¹ R.C. 4933.41(B)(2).

¹² R.C. 4933.41(C).

Franchise authority not limited

Except for the limits imposed on counties, townships, and municipal corporations as described above (see “**Prohibitions against political subdivisions**”), nothing in the guarantees established by the bill is intended to inhibit or restrict a municipality’s right and ability to enter into and administer franchise agreements under municipal public utility home rule authority (described above) and the law governing the use of the municipal public way.¹³

Municipal corporation aggregation, securitization, and advocacy

The bill provides that nothing in its provisions establishing the guarantees and delineating political subdivision authority can be construed to limit a municipal corporation from exercising its authority under Ohio law governing the following:

- Aggregation of municipal corporation retail electric loads (R.C. 4928.20 and 4928.21);
- Securitization of costs for electric distribution utilities (EDUs) (R.C. 4928.23 to 4928.2318);
- The Public Utilities Commission’s (PUCO’s) Federal Energy Advocate and the Advocate’s duties (R.C. 4928.24).¹⁴

Natural gas company service

The bill provides that nothing in its provision establishing the guarantees and delineating political subdivision authority can be construed to limit a natural gas company’s ability to provide service to new customers or to require free extensions of service.¹⁵

Promotion of state policy

Lastly, the bill provides that the provisions establishing the guarantees and delineating political subdivision authority promotes state policy to increase utilization of Ohio’s indigenous energy resources, promote the availability of natural gas goods and services, and encourage the utilization of propane.¹⁶

¹³ R.C. 4933.41(D); R.C. 4939.01 to 4939.09, not in the bill.

¹⁴ R.C. 4933.41(F); R.C. 4928.20 to 4928.28, not in the bill. A technical amendment is needed to correct an LSC engrossing error. But, even if that amendment is adopted, the bill will appear to preserve municipal corporation authority in many areas of Ohio law in which a municipal corporation has no authority or the authority it has is irrelevant in relation to the bill. See R.C. 4928.20 to 4929.29.

¹⁵ R.C. 4933.41(E).

¹⁶ R.C. 4933.42; R.C. 1551.18 and 4929.02, not in the bill.

HISTORY

Action	Date
Introduced	03-10-21
Reported, H. Energy & Natural Resources	05-03-21
