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Substitute Bill Comparative Synopsis

Sub. H.B. 317

134th General Assembly

House Public Utilities

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (I_134_1936-7, adopted September 22, 2021)	Latest Version (I_134_2489-1)
Ohio Supreme Court action on appeals of Public Utilities Commission (PUCO) cases	
Decision deadline for appeals of PUCO cases	
No provision.	Requires the Supreme Court to render a decision not later than 180 days after an appeal is filed, if any party files with the Court an appeal of a Public Utilities Commission (PUCO) order and specifies that the deadline does not apply to an appeal of a Power Siting Board decision (<i>R.C. 4903.131</i>).

Previous Version (I_134_1936-7, adopted September 22, 2021)	Latest Version (I_134_2489-1)
Rate case filing requirement	
EDU distribution service rate case application frequency	Requires an electric distribution utility (EDU) to file a distribution service rate case application at least one time during the term of each competitive power plan (CPP) approved by PUCO, the terms for which may not exceed five years. See below. (R.C. 4909.181 and 4928.143(B)(2).)
Rate case application: rider under-collection/over-collection	
No provision.	For an EDU that has an electric security plan (ESP) that expires after the bill's effective date, requires any under- or over-collection of funds authorized for recovery by a rider under that ESP to be addressed in the EDU's first distribution rate case that occurs after the ESP's expiration (R.C. 4928.1410).
Standard service offer (SSO)	
Plan required to provide SSO	
Requires an EDU to file an application with PUCO for approval of a CPP to comply with the law that an EDU must provide consumers within its certified territory a standard service offer of all competitive electric generation services necessary to maintain essential electric service to consumers (R.C. 4928.141 and 4928.143(A)).	Requires an EDU to file an application with PUCO for approval of a standard service offer plan (SSO plan) to comply with the law that an EDU must provide consumers within its certified territory a standard service offer of all competitive electric generation services necessary to maintain essential electric service to consumers (R.C. 4928.141 and 4928.142(A)(1)).

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SSO offered in case of supplier default	
Specifies that, excluding SSOs established before the bill's effective date and that are still in effect, an EDU's SSO to which a failing supplier's customers default must be provided under the <i>SSO established under a CPP</i> (R.C. 4928.14(A)(1)).	Modifies this provision to require such customers to default to an EDU's <i>SSO established under an SSO plan</i> (R.C. 4928.14(A)(1)).
SSO plan application to be filed prior to ESP expiration	
No provision.	Requires an EDU with an ESP in effect on the bill's effective date to submit an SSO plan application prior to the ESP's expiration and prohibits an SSO plan from taking effect prior to the ESP's expiration (R.C. 4928.142(A)(2)).
Cross references to SSO	
Includes cross references to Section 4928.143 of the Revised Code in existing law provisions that refer to the SSO established under a CPP (R.C. 4928.144, 4928.148, 4928.17, and 4928.20).	Changes the Revised Code cross references in those provisions to Section 4928.142 of the Revised Code to reflect the change to an SSO under an SSO plan (R.C. 4928.144, 4928.148, 4928.17, 4928.20, and 4928.542).
Competitive Power Plan (CPP)/SSO Plan requirements	
CPP/SSO plan: electric generation service vs. <i>retail</i> electric generation service	
Requires a CPP to include provisions related to the supply and pricing of competitive electric generation service through an SSO (R.C. 4928.143(A)(1)).	Requires the <i>SSO plan</i> to include provisions related to the supply and pricing of competitive <i>retail</i> electric generation service (R.C. 4928.142(B)).

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CPP/SSO plan: amendments to competitive bidding process, retail cost allocation, and rate design	
Allows PUCO to amend the competitive bidding process, rate allocation, and rate design that were implemented prior to the bill's effective date as necessary to result in just and reasonable rates (<i>R.C. 4928.143(A)(1)</i>).	Applies this provision to the <i>SSO plan</i> and changes it to allow PUCO to amend the prior competitive bidding process, <i>retail cost allocation</i> (instead of <i>rate allocation</i>), and rate design as necessary to result in just and reasonable rates except with regard to the recovery of, through the SSO price, all costs associated with the SSO as described below (<i>R.C. 4928.142(B)</i>).
CPP/SSO plan: cost recovery through SSO price	
Requires all direct and indirect costs the EDU incurs to support or provide its SSO to be recovered through the SSO price under its CPP (<i>R.C. 4928.143(A)(1)</i>).	Requires recovery of all such direct or indirect costs the EDU incurs to be recovered through the SSO price under its <i>SSO plan</i> (<i>R.C. 4928.142(C)</i>).
CPP/SSO plan: SSO costs eligible for full and timely cost recovery	
Specifies that, in a CPP, each EDU is entitled to full and timely recovery of all costs associated with its SSO, including recovery of the exact cost of: <ul style="list-style-type: none"> ▪ Acquiring energy and capacity; ▪ Costs associated with conducting, administering, and implementing the competitive bidding process; ▪ Costs for independent consultants; and ▪ All other direct or indirect costs incurred to support or provide the SSO. (<i>R.C. 4928.143(A)(1)</i> .)	Specifies that these SSO related costs are costs for which each EDU is entitled to full and timely recovery under an <i>SSO plan</i> (<i>R.C. 4928.142(C)</i>).

Previous Version (I_134_1936-7, adopted September 22, 2021)	Latest Version (I_134_2489-1)
CPP/SSO Plan/Alternative Regulation Plan (ARP) proceedings	
CPP replaced with SSO plan and ARP	
No provision.	Replaces the CPP requirements of I_134_1936-7 with similar requirements of the SSO plan and ARP, except with the differences described below (<i>R.C. 4928.142 and 4928.143</i>).
PUCO proceeding: CPP/SSO plan	
Requires PUCO to initiate a proceeding and issue an order to approve, or modify and approve, a CPP application not later than 275 days after the application's filing date (<i>R.C. 4928.143(B)(1)</i>).	Requires PUCO to initiate a proceeding and issue an order to approve, or modify and approve, an <i>SSO plan</i> application not later than <i>180 days</i> after the application's filing date (<i>R.C. 4928.142(E)</i>).
PUCO proceeding: ARP	
No provision.	Permits an EDU that has an approved SSO plan to also file an application with PUCO for approval of an ARP and requires PUCO to initiate a proceeding and issue an order to approve, modify and approve, or <i>deny</i> the plan application not later than 275 days after the application's filing date (<i>R.C. 4928.143(A) and (B)(1)</i>).
Standard for PUCO approval: CPP/ARP	
Specifies that PUCO must approve or modify and approve a CPP, if it accurately reflects the EDU's cost of capital, results in rates that are just and reasonable, and furthers the state policies for competitive retail electric service (<i>R.C. 4928.143(B)(1)</i>).	Requires PUCO to approve or modify and approve an <i>ARP</i> , if it accurately reflects the EDU's cost of capital, results in rates that are just and reasonable, and furthers <i>one or more</i> of the state policies for competitive retail electric service (<i>R.C. 4928.143(B)(1)</i>).

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Plan term length: CPP/SSO plan/ARP	
Limits an approved CPP to a term that does not exceed five years (<i>R.C. 4928.143(B)(2)</i>).	Requires the following terms for an SSO plan and an ARP: <ul style="list-style-type: none"> ▪ For an SSO plan, a minimum of three years and a maximum of five years; ▪ For an ARP, a minimum of two years and a maximum of five years. <i>(R.C. 4928.142(F) and 4928.143(B)(2))</i> .
Effective date of approved CPP/ARP	
No provision.	For an EDU that has an ESP in effect on the bill's effective date, prohibits the EDU's approved ARP from taking effect until after the ESP's expiration (<i>R.C. 4928.143(B)(2)</i>).
Provisions a CPP/ARP may include	
CPP/ARP: alternative rate recovery mechanisms	
Permits an EDU to establish alternative rate recovery mechanisms (which may include distribution riders) for distribution <i>and transmission</i> costs in addition to the base rate recovery approved in a distribution rate case under the ratemaking law (<i>R.C. 4928.143(A)(2)(a)</i>).	Permits an EDU to establish alternative rate recovery mechanisms (which may include distribution riders) limited to distribution costs (and not transmission costs) and the base rate recovery approved in a distribution rate case under the ratemaking law (<i>R.C. 4928.143(A)(1)</i>).

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CPP/ARP: “distribution infrastructure expansion, improvement, or replacement” definition	
Defines “distribution infrastructure expansion, improvement, or replacement” as including battery storage for distribution service and distribution infrastructure upgrades to accommodate customer investment in microgrids and in electric vehicle charging (R.C. 4928.143(A)(2)(a)(i)).	Includes in the definition, “electric energy storage” for distribution service instead of “battery storage” for distribution service and changes distribution infrastructure upgrades to accommodate customer investment in microgrids and in electric vehicle charging stations (R.C. 4928.143(A)(1)(a)).
CPP/ARP: cost cap increase adjusted based on inflation rate	
No provision.	Allows the 3% cost cap on the annual increase for cost recovery under distribution riders to be adjusted, if the rate of inflation for the preceding 12 months, as measured by the Consumer Price Index (CPI), exceeded 3%, and specifies that the annual increase must not exceed the percentage of the rate of inflation measured by the CPI (R.C. 4928.143(A)(1)(b)).
CPP/ARP: transmission cost recovery rider	
Allows a CPP to authorize full and timely transmission and transmission-related cost recovery through annually reconciled transmission riders, including recovery of <i>ancillary and congestion costs</i> and costs imposed on or charged to the EDU by the Federal Energy Regulatory Commission (FERC) or a regional transmission organization (RTO), or similar organization, <i>but excluding costs for balancing and operating reserves</i> (R.C. 4928.143(A)(2)(b)).	Limits cost recovery for transmission riders to non-market-based transmission and transmission-related costs and costs imposed or charged by FERC, an RTO, or a similar organization. Does not expressly provide for recovery of ancillary and congestion costs and does not specifically exclude recovery for costs for balancing and operating reserves. (R.C. 4928.143(A)(2).)
CPP/ARP: capital lease financing arrangements	
Allows a CPP to authorize the EDU to enter into capital lease financing arrangements with mercantile customers through a PUCO-approved reasonable arrangement (created under current law in section 4925.31	Adds, for such a capital lease financing arrangement, the condition that specifies that mercantile customers are not responsible for paying the full cost of the capital investments, <i>if the EDU is fully and timely</i>

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of the Revised Code) to promote economic development and under which the mercantile customers are not responsible for paying the full cost of the capital investments (R.C. 4928.143(A)(2)(e)(i) and(ii)).	<i>reimbursed for the capital investments through a rate or rider mechanism (R.C. 4928.143(A)(5)(b)).</i>
CPP/ARP: capital lease financing arrangements and right to purchase or sell equipment	
No provision.	Specifies that the capital lease financing arrangement provisions do not prohibit (1) a nonresidential customer's right to purchase or sell distribution or transmission related equipment or (2) a bilateral contract between an EDU and nonresidential customer to purchase or sell such equipment (R.C. 4928.143(A)(5)(b)).
CPP/ARP: Distributed energy resource aggregation for market participation	
Allows an EDU, under a CPP, to aggregate the distributed energy resources of its SSO customers for participating in the wholesale market, consistent with FERC orders and regulations (R.C. 4928.143(A)(2)(f)).	No provision.
Provisions related to competitive retail electric service	
Prohibition against battery/electric energy storage in wholesale market	
Prohibits an EDU from <i>bidding</i> into the wholesale market the energy from any <i>battery storage system</i> that the EDU <i>invested in</i> for distribution service (R.C. 4928.149).	Prohibits an EDU from <i>using any electric energy storage system</i> to participate in the wholesale market, if the EDU <i>purchased or acquired</i> that system for distribution service (R.C. 4928.149).

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Governmental aggregation: SSO plan and ARP nonbypassable generation charges	
No provision.	Modifies the governmental aggregation law to specify that PUCO must consider the effect of large-scale governmental aggregation of nonbypassable generation charges that are established under an SSO plan and ARP after the bill's effective date (<i>R.C. 4928.20(K)</i>).
Percentage of Income Payment Plan (PIPP)	
<p>Restores the PIPP auction provision of the law in effect prior to the enactment of H.B. 64 of the 131st General Assembly to aggregate PIPP customers for the purpose of competitively auctioning the supply of competitive retail electric generation service for PIPP customers, but unlike the prior law, <i>requires rather than permits</i> the Director of Development to aggregate PIPP customers for this purpose.</p> <p>Specifies that, to meet this requirement, the competitive supply of retail electric service for PIPP customers must be obtained through the SSO offered through a CPP.</p> <p>Restores the prior law requirement that any difference between Universal Service Fund revenues and savings resulting from a competitive auction for the supply of electric service to PIPP customers be reinvested in the Targeted Energy Efficiency and Weatherization Program.</p> <p>Provides transition language addressing procurement of retail electric service for PIPP customers before and after the bill's effective date.</p> <p><i>(R.C. 4928.54 and 4928.55; Section 6.)</i></p>	No provision.

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EDU definition: mercantile customer-sited renewable energy resource exclusion	
No provision.	Changes the EDU definition also to specify that an EDU is an electric utility that does not own or operate a mercantile customer-sited renewable energy resource. (Current law permits EDUs to enter into an agreement, with a mercantile customer or a group of mercantile customers to construct a customer-sited renewable energy resource in Ohio that will provide the customer or group with a material portion of its electricity requirements.) <i>(R.C. 4928.01(A)(6); R.C. 4928.47, not in the bill.)</i>
Consumer Price Index definition	
No provision.	Removes an erroneous cross reference to section 101.27 of the Revised Code in the existing law renewable energy standards ¹ and defines "consumer price index" in the competitive retail electric service law as "the consumer price index prepared by the United States Bureau of Labor Statistics (U.S. city average for urban wage earners and clerical workers: all items, 1982-1984=100) or if that index is no longer published, a generally available comparable index" <i>(R.C. 4928.01(A)(44) and 4928.64(C)(2)(b)).</i>

¹ The cross reference to R.C. 101.27 that appears in R.C. 4928.64(C)(2)(b) does not include a definition of the term "consumer price index."

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Provisions for PUCO proceedings, including CPP/ARP proceedings	
Economic development using “Infrastructure Investment and Jobs Act” funding: separate application and PUCO proceeding	
No provision.	Allows an EDU to file an application through a separate proceeding for PUCO approval of the funding under the federal “Infrastructure Investment and Jobs Act” to invest in distribution infrastructure to promote economic development in the EDU’s service territory and provide benefits to the EDU’s customers (R.C. 4905.322).
Prohibition against certain agreements in CPP proceedings vs. all PUCO proceedings	
<p>Prohibits an EDU from doing either the following to induce any intervening party in a CPP proceeding to enter into a stipulation for a matter pending with PUCO:</p> <ul style="list-style-type: none"> ▪ Making a cash payment to that party; ▪ Entering into an agreement or any financial or private arrangement with that party that is not made a part of the public case record. <p>Provides, as exceptions to the prohibition against cash payments, that PUCO may (1) reasonably allocate costs among rate schedule, (2) reasonably design rates within a rate schedule, or (3) approve reasonable rates designed for particular customers or classes of customers.</p> <p>(R.C. 4928.143(B)(3)(a) and (b).)</p>	<p>Alters the prohibition as follows:</p> <ul style="list-style-type: none"> ▪ Applies it to an EDU’s affiliate in addition to an EDU and to a settlement instead of a stipulation; ▪ Makes it applicable to PUCO proceedings, including rate cases and proceedings under the Competitive Retail Electric Service Law (instead of just CPP proceedings); ▪ Makes the three PUCO rate exceptions applicable to the entire prohibition (not just the cash payments to a party). <p>(R.C. 4905.331).</p>

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Competitive retail electric and natural gas service providers	
Competitive retail electric service (CRES) bond does not affect collateral or security requirements	
No provision.	Specifies that the surety bond required of electric service companies (ESCs) (other than power brokers and aggregators) providing competitive retail electric service (CRES) for certification to provide CRES does not alter, diminish, or otherwise impact the obligation of the ESC to post collateral or issue other forms of security to the EDU in accordance with the EDU's tariffs (<i>R.C. 4928.08(B)(2) and (3)</i>).
Competitive retail natural gas service (CRNGS) financial assurance and bond do not affect collateral or security requirements	
No provision.	Specifies that the financial assurances and surety bond required of retail natural gas suppliers (RNGS) (other than brokers and aggregators) providing competitive retail natural gas service (CRNGS) for certification to provide CRNGS do not alter, diminish, or otherwise impact the obligation of the retail natural gas supplier to post collateral or issue other forms of security to the natural gas company in accordance with the company's tariffs (<i>R.C. 4929.20(A)(2) and (3)</i>).
Exemption of power brokers, brokers, and aggregators from financial guarantees	
No provision.	Exempts power brokers and aggregators from being ESCs subject to the surety bond for certification to provide CRES. Exempts brokers and aggregators from being RNGSs subject to the financial assurances and surety bond for certification to provide CRNGS. (<i>R.C. 4928.08(B)(3) and 4929.20(A)(3)</i>).

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CRES and CRNGS fixed-to-variable rate contract notice requirements	
<p>Requires CRES and CRNGS providers that offer a customer a contract for a fixed introductory rate that converts to a variable rate upon the fixed rate's expiration to provide:</p> <ul style="list-style-type: none"> ▪ Two notices by standard U.S. mail at specified times to each customer that enters into such a contract that informs the customer of the fixed rate expiration date and the conversion to a variable rate; ▪ An annual notice by standard U.S. mail to each customer that has entered into a contract that has converted to a variable rate upon the expiration of the contract's fixed introductory rate to inform the customer that the customer is subject to a variable rate and that other fixed rate contracts are available. <p>(R.C. 4928.102(A) and (B) and 4929.221(A) and (B)).</p>	<p>Requires CRES providers that offer a <i>residential or small commercial customer</i> such a contract and CRNGS providers that offer a <i>residential or nonmercantile commercial customer</i> such a contract to provide the two notices and the annual notice to these customers.</p> <p>Specifies that the two notices provide the following information:</p> <ul style="list-style-type: none"> ▪ 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; ▪ The PUCO website that, as a comparison tool, lists rates offered by competitive providers; ▪ A statement explaining that appearing on each customer's bill is a price-to-compare notice that lists the utility's SSO price (for CRES customers) or the utility's default rate (for CRNGS customers who do not shop for a competitive supplier). <p>(R.C. 4928.102(A) to (C) and 4929.221(A) to (C).)</p>
CRES and CRNGS rules: contract rate notices	CRES and CRNGS rules: contract rate notices
<p>Requires PUCO to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) to implement the contract notice requirements described above not later than 120 days after the bill's effective date (R.C. 4928.102(C) and 4929.221(C)).</p>	<p>Changes the time period for adopting rules for contract notice requirements to not later than <i>150 days</i> after the bill's effective date and removes the requirement that the rules be adopted in accordance with the Administrative Procedure Act (R.C. 4928.102(D) and 4929.221(D)).</p>

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CRES and CRNGS rules: not subject to R.C. 121.95(F)	
No provision.	Specifies that PUCO rules regarding CRES and CRNGS contract notices are not subject to Revised Code Section 121.95(F), the provision requiring state agencies to remove two or more existing regulatory restrictions if the agency adopts a new regulatory restriction (<i>R.C. 4928.102(E) and 4929.221(E); R.C. 121.95, not in the bill</i>).
Natural gas companies	
Natural gas company: economic development project	
No provision.	Includes a project that has received funding under the Brownfield Remediation Program among those economic development projects for which a natural gas company may file an application for PUCO approval. (Existing law already includes a project applying for SiteOhio certification.) (<i>R.C. 4929.163</i> .)
Natural gas company: cost recovery under an infrastructure development rider	
No provision.	Includes the costs of planning, obtaining the right of way for, and constructing economic development projects held for future use among the prudently incurred infrastructure development costs that may be recovered in a natural gas company infrastructure development rider(<i>R.C. 4929.161</i>).

Previous Version (I_134_1936-7, adopted September 22, 2021)	Latest Version (I_134_2489-1)
Railroad rights of way	
<p>Railroad right-of-way crossings by public utilities</p> <p>Establishes a process under which a public utility (defined as a telephone company, electric light company, gas company, natural gas company, pipe-line company, water-works company, or sewage disposal company) must provide the owner of a railroad right-of-way with a written notice and a one-time \$1,000 fee, if the utility intends to construct a crossing (the placement and use of any public utility facility over, under, across, or parallel to a railroad right-of-way) and includes the provisions to:</p> <ul style="list-style-type: none">▪ Specify that the railroad must not charge the crossing fee if the crossing is located in a public right-of-way;▪ Permit construction of the crossing to begin 30 days after the railroad receives the notice unless the railroad files an appeal with PUCO, which, by order, must approve or deny the proposed crossing;▪ Allow the recording of a perpetual easement for crossings;▪ Specify that the bill does not impair the public utility's right to secure crossing rights by easement by eminent domain; and▪ Allow a railroad and public utility to continue under a crossing agreement that existed prior to the bill's effective date and to negotiate terms and conditions for, or the resolution of disputes regarding, a crossing. <p>(R.C. 4963.60 to 4963.80.)</p>	No provision.

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