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H.B. 317
(1_134_2489-1)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 317's Bill Analysis](#)

Version: In House Public Utilities

Primary Sponsor: Rep. Wilkin

Local Impact Statement Procedure Required: No

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Highlights

- The bill authorizes limited refunds to electric utility customers if the Ohio Supreme Court finds the utility's rates to be unreasonable, unlawful, or improper. This provision could yield refunds to the state and to political subdivisions in such a circumstance.
- The bill designates Standard Service Offer (SSO) plans as the sole type of electric ratemaking plan available to state-regulated public utilities. Local governments, state agencies, and public institutions of higher education are consumers of electricity, but this bill does not have a direct effect on their expenditures.

Detailed Analysis

The bill repeals the two types of electric ratemaking plans available under current law: (1) electric security plans (ESPs), and (2) market rate offers (MROs). The bill substitutes the Standard Service Offer (SSO) plan as the exclusive option under which an electric distribution utility (EDU) provides essential electric service to consumers. No EDUs currently are operating under an MRO. Instead, all are under ESPs approved by the Public Utilities Commission of Ohio (PUCO). Under the bill, an SSO plan approved by PUCO must not take effect until the EDU's ESP expires.

In general, ESPs enable EDUs to recover their costs from consumers as well as a return on equity. The three major components of electric bills in Ohio are the price of generation, transmission, and distribution of that electricity. Distribution is the component that is most affected by state regulation. Distribution lines are the lower voltage lines usually mounted on utility poles or buried underground and used to deliver electricity to homes and businesses.

Composition of SSO

The bill specifies components of an SSO plan. It must incorporate several existing aspects implemented by PUCO: (1) a competitive bidding process, (2) retail cost allocation, and (3) rate design. However, PUCO may amend these established ratemaking methodologies, “as necessary to result in just and reasonable rates.” The bill further specifies that, “all direct and indirect costs that the utility incurs to support or provide its standard service offer shall be recovered through the standard service offer price. Each utility shall be entitled to full and timely recovery of all costs associated with its” SSO. PUCO must ensure that costs are not recovered twice from distribution customers, and PUCO may authorize a credit rider to avoid such double recovery. An SSO plan must have a minimum term of three years and a maximum term of five years. The bill prescribes a 180-day deadline for PUCO to consider an EDU’s SSO application and to issue an order to approve or modify and approve the application.

“Alternative regulation plan” as supplement to SSO

The bill permits EDUs to file an application for PUCO approval of an alternative regulation plan (ARP), if the EDU has an approved SSO plan. An ARP may propose alternative rate mechanisms (colloquially referred to as “riders”) applied to customers’ electric bills, which are in addition to the base distribution rates approved for the EDU under continuing law in R.C. 4909.18.

If an EDU applies to PUCO for an ARP, the Commission must issue an order “to approve, modify and approve, or deny” no later than 275 days after the application’s filing date. Nevertheless, PUCO must approve or modify and approve an application if it finds that the ARP “accurately reflects the utility’s cost of capital, results in rates that are just and reasonable, and furthers one or more of the policies of this state as set forth in section 4928.02 of the Revised Code.”

Any ARP approved under the bill must have a minimum term of two years and a maximum term of five years. No ARP can take effect until after an EDU’s ESP expires.

The bill enumerates a nonexclusive list of prospective ARP riders. Please refer to R.C. 4928.143 for unabridged details. The following purposes are generally eligible for cost recovery:

1. Distribution costs, such as distribution infrastructure expansion, improvement, or replacement, with growth in cost recovery limited to the greater of 3% or the percentage increase in the consumer price index (CPI) applied to the EDU’s total distribution revenue from the previous year;
2. Annually reconciled transmission riders, and programs for energy-intensive customers that align retail rate recovery with how transmission and transmission-related costs are imposed on, or charged to, the utility (or programs that allow such customers to be billed directly for transmission service by a competitive retail electric service provider;
3. Cost-effective economic development, job retention, or interruptible rate programs, provided that such programs currently in existence on the bill’s effective date may only be terminated or modified on a gradual basis;
4. A capital lease financing arrangement with its customers or potential customers that are mercantile customers;

5. Utilization of funding under the “Infrastructure Investment and Jobs Act,” to invest in distribution infrastructure for the purpose of promoting economic development in the utility’s service territory and provide benefits to its customers.

Limited refunds to utility customers

The bill subjects all rates, fares, or any other charges paid by customers to a public utility as part of a rider or tracking mechanism, rather than through base rates, that are later found to be unreasonable, unlawful, or otherwise improper by the Ohio Supreme Court to refund. Refunds are to be paid for charges collected from the date of the issuance of the Court’s decision until the date when, on remand, PUCO makes changes to the rider or mechanism to implement new rates to implement the Court’s decision. Under current law, a charge determined to be unlawful generally is discontinued without refunds being paid. This provision could reduce electric rates for the state and for local governments under the relevant circumstances.

Deadlines for regulatory and judicial decisions

Continuing law permits any party who has entered an appearance in a PUCO proceeding to apply for a rehearing in respect to any matters determined in the proceeding, after any order has been made by the Commission. If PUCO grants a rehearing, the bill requires it to render a final decision on the merits of the issue no later than 150 days after that granting date. Absent a decision, the bill specifies that the rehearing is considered to be denied.

The bill also imposes a time frame on Ohio Supreme Court decisions, if any party files an appeal of a PUCO order with the Court pursuant to continuing law. Under the bill, the Court must render a decision within 180 days after the appeal is filed.

Significantly excessive earnings test

The ARP will be subject to an “excessive earnings” test, which differs from the test under current law applicable to ESPs because it codifies a definitive threshold for excessive earnings. Excessive earnings shall be measured according to whether the earned return on common equity of the utility is 250 basis points (or more) greater than the return on common equity most recently authorized by PUCO.

If the utility had excessive earnings, PUCO must require the utility to return to customers the amount of the excess by prospective adjustments to customers’ bills. In making its determination of excessive earnings, PUCO must not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.

“Reasonable phase-in” and other continuity issues

The bill adopts a standard for PUCO authorizing “any just and reasonable phase-in of any electric distribution utility rate or price” for SSOs, that in current law applies to ESPs and MROs. The standard allows the Commission to authorize the costs to be deferred and later collected through a nonbypassable surcharge, inclusive of any carrying charges.

Elsewhere, the bill addresses a different aspect of expiring ESPs. Any under collection or over collection of funds authorized for recovery pursuant to a rider under that ESP, and pending at the time of the plan’s expiration, must be addressed in the EDU’s first base distribution rate case that occurs after the plan’s expiration.

Although the bill repeals the ESP law, the bill does not terminate ESPs that are in effect on the bill's effective date. Under the bill, an EDU with an existing ESP either:

1. Must continue the plan until the plan's termination date, if the ESP has a specified termination date; or
2. May continue the plan until no later than January 1, 2024, if the ESP does not have a specified termination date.¹

Base distribution rate case

The bill requires each EDU that has not filed a rate case application regarding distribution service under R.C. 4909.18 during the five-year period prior to the effective date of the bill to file such a rate case no later than six months after the effective date of the bill. This provision would apply to the three FirstEnergy EDUs, as their last relevant application filing occurred on June 7, 2007 in Case No. 07-551-EL-AIR. On the other hand, Duke Energy filed its most recent application on October 1, 2021 in Case No. 21-0887-EL-AIR; Dayton Power and Light filed on November 30, 2020 in Case No. 20-1651-EL-AIR; AEP Ohio filed on June 1, 2020 in Case No. 20-585-EL-AIR.

Natural gas company regulation

Separately, the bill modifies laws surrounding natural gas companies. Specifically, it expands the definition of eligible costs that may be recovered under an infrastructure development rider to include (1) the costs of planning, obtaining the right of way for, and constructing economic development projects held for future use and (2) projects that have received funding under the Brownfield Remediation Program.

Synopsis of Fiscal Effect Changes

The substitute bill (I_134_2489-1) makes a number of changes to the bill, most of which have no direct fiscal effect, though they may potentially indirectly affect electric utility rates paid by the state and local governments. The following paragraphs highlight the changes that could have a direct fiscal effect.

- The substitute bill restores the existing protocol for competitive bidding auctions that was modified in the previous substitute bill (I_134_1936-7). Consequently, it re-imposes costs incurred by the Department of Development for auctions it administers on behalf of Percentage of Income Payment Plan (PIPP) customers. In practice, the Department reimburses the Public Utilities Commission of Ohio (PUCO) for supervising this competitive bidding requirement.
- The substitute bill requires an electric distribution utility (EDU) to address any under or over collection of funds authorized for recovery by a rider under an electric security plan (ESP) expiring after the bill's effective date. The reconciliation must occur in the EDU's first base rate distribution case occurring after the ESP's expiration date. This provision could lead to a direct effect on amounts paid by the state and local governments for electricity service.

¹ As of this writing, the provision applies to AES Ohio (formerly the Dayton Power and Light Company).

- The substitute bill potentially increased the 3% cost cap on the annual increase in distribution riders authorized by an alternative regulation plan (ARP) by adjusting it upward to match the rate of inflation if inflation exceeded 3% in a given year. The prior version (I_134_1936-7), which labeled the equivalent of a Standard Service Offer (SSO) as a “competitive power plan,” did not incorporate any inflation adjustment to the 3% cost cap.
- The substitute bill does not expressly provide for as many transmission and transmission-related costs to be recovered from electric ratepayers.
- The substitute bill adds provisions affecting natural gas companies and the scope of costs that may be recovered under certain ongoing riders.