



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 247**

132nd General Assembly  
As Introduced

Rep. Romanchuk

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### **BILL SUMMARY**

- Requires an electric distribution utility's (EDU's) standard service offer (SSO) to be established only as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory.
- Modifies the MRO process.
- Prohibits electric utilities (EUs) from providing any competitive retail electric service in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date.
- Prohibits an EU and affiliated entities from owning and controlling any installed generation capacity in Ohio, beginning January 1, 2019, and requires EUs to submit plans to the Public Utilities Commission (PUCO) for divestiture of generation assets.
- Expands PUCO authority under current law to address violations of the corporate separation requirements for EUs to cover violations of the divestiture requirements in the bill.
- Eliminates the corporate separation requirements for certain EUs that are in the business of supplying both a noncompetitive and a competitive retail electric service in Ohio.
- Modifies the corporate separation requirements that remain applicable to EUs that are in the business of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service regarding unfair competitive advantage and abuse of market power.

- Requires that all charges paid by customers to a public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges.
- Repeals provisions in sections amended by the bill that no longer serve a purpose or have no applicability.

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## **CONTENT AND OPERATION**

### **Changes affecting the standard service offer (SSO)**

#### **Elimination of electric security plans**

The bill requires an electric distribution utility's (EDU's) standard service offer (SSO) to be established only as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory.<sup>1</sup> An SSO is an offer of all the competitive retail electric services that are necessary to maintain essential electric service that an EDU is required to provide to its customers (1) who did not shop for their own electric generation supplier or (2) whose supplier defaulted and the customer did not obtain a new supplier.<sup>2</sup> Under current law, an EDU may establish its SSO as an ESP or an MRO.

The bill requires that an ESP that was approved prior to the bill's effective date must continue to serve as an EDU's SSO until an MRO is approved.<sup>3</sup> The bill provides that if a competitive generation supplier defaults and the EDU's ESP is still in effect, the customer subject to the default will be served under that ESP until the customer chooses an alternative supplier or until the EDU's MRO is authorized.<sup>4</sup> The bill prohibits an ESP that is approved after June 1, 2017, from extending beyond June 1, 2020.<sup>5</sup>

Since the bill eliminates ESPs, the bill also repeals or amends all other provisions of the Revised Code addressing or affecting ESPs.<sup>6</sup>

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<sup>1</sup> R.C. 4928.141(A)(1) and 4928.142(A); R.C. 4928.143 (repealed).

<sup>2</sup> R.C. 4928.14 and 4928.141.

<sup>3</sup> R.C. 4928.141(A)(1) and (2).

<sup>4</sup> R.C. 4928.14(C).

<sup>5</sup> R.C. 4928.141(A)(2).

<sup>6</sup> R.C. 4928.14, 4928.141, 4928.142, 4928.143 (repealed), 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542.



## Changes affecting the market-rate offer

The bill generally retains the MRO process under current law providing for (1) the EDU to file an application with the Public Utilities Commission (PUCO) prior to initiating a competitive bidding process for the EDU's MRO, (2) the MRO to be competitively bid in accordance with certain requirements under continuing law, (3) the PUCO to determine within 90 days of the application's filing date whether the EDU and its MRO meet all requirements, (4) the EDU to initiate its competitive bidding process if the PUCO determines all requirements are met, and (5) the PUCO to select the EDU's MRO from the least-cost bid winner or winners.<sup>7</sup> The also bill makes (4) above mandatory instead of discretionary as provided under current law (MRO competitive bidding *must be* initiated – instead of *may be* initiated – if the PUCO determines all requirements are met).<sup>8</sup>

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

- The requirement that an EDU withdraw its application, as an alternative to timely remedying a deficiency, if the PUCO finds that the MRO does not meet MRO requirements.<sup>9</sup>
- The limitation that an EDU not initiate the competitive bidding process for at least 150 days after an application's filing if (1) the PUCO finds that the MRO does not meet MRO requirements, (2) the EDU remedies the MRO deficiency, (3) the PUCO determines the remedied application meets the MRO requirements, and (4) the MRO was filed simultaneously with an ESP application.<sup>10</sup>
- The blended price requirements for EDUs that directly owned operating generating facilities that were used and useful as of July 31, 2008.<sup>11</sup>
- The restriction that an EDU may not ever file or be required to file an ESP application if its initial MRO application is approved.<sup>12</sup>

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<sup>7</sup> R.C. 4928.142(A) to (C).

<sup>8</sup> R.C. 4928.142(B).

<sup>9</sup> R.C. 4928.142(B)(3).

<sup>10</sup> R.C. 4928.142(B)(3).

<sup>11</sup> R.C. 4928.142(D) and (E).

<sup>12</sup> R.C. 4928.142(F).



## Prohibition against providing competitive service outside of an SSO

The bill prohibits electric utilities (EUs) from providing any competitive retail electric service in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date. The bill explicitly requires that EUs continue to supply SSOs to consumers in Ohio.<sup>13</sup> "Competitive retail electric service" is a component of retail electric service that is deemed competitive under Ohio statutory law or an order of the PUCO. All retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an EU are competitive.<sup>14</sup>

### Definition of an electric utility

The bill changes the definition of EU applicable to the prohibition to mean "an electric light company that has a certified territory and is engaged on a for-profit basis in the business of supplying *at least* a noncompetitive retail electric service in this state." Current law, however, defines an EU as "an electric light company that has a certified territory and is engaged on a for-profit basis *either* in the business of supplying a noncompetitive retail electric service in this state or in the business of supplying both a noncompetitive and a competitive retail electric service in this state." An EU is also defined under continuing law to exclude a municipal electric utility and a billing and collection agent.<sup>15</sup>

### Applicability of the prohibition to electric distribution utilities

The bill's prohibition extends to EDUs because an EDU is an EU that supplies at least retail electric distribution service.<sup>16</sup>

### Future designation of competitive retail electric services

The effect of limiting the prohibition to services deemed or classified as competitive *prior* to the bill's effective date is that if a different service is deemed or classified as competitive in the future, an EU could provide that service outside of an SSO. And the PUCO has continuing authority to declare the following additional services as competitive: retail ancillary, metering, or billing and collection service.<sup>17</sup>

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<sup>13</sup> R.C. 4928.04(A) and (B).

<sup>14</sup> R.C. 4928.01(A)(4) and (B); R.C. 4928.03, not in the bill.

<sup>15</sup> R.C. 4928.01(A)(11).

<sup>16</sup> R.C. 4928.01(A)(6).

<sup>17</sup> R.C. 4928.04(A) and 4928.041(A).



## **Divestiture of generation assets**

### **Market power mitigation plans**

The bill requires every EU to file a market power mitigation plan with the PUCO not later than 60 days after the bill's effective date. The plan must provide for generation assets to be divested in any of the following manners, to be completed by December 31, 2018:

- The sale of generation assets owned and controlled by the EU or by an affiliated entity to a nonaffiliated entity;
- The exchange of generation assets with a nonaffiliated entity located in another state;
- The auction of generation capacity entitlements as part of a capacity auction;
- The sale of the right to capacity to a nonaffiliated entity for at least four years, beginning on January 1, 2019;
- Any reasonable method of mitigation for divestiture of generation assets.

The plan must be in a form prescribed by the PUCO and must provide information that the PUCO finds reasonably necessary to evaluate the plan.

The bill requires the PUCO to approve, modify, or reject the plan not later than 100 days after the date that the plan is filed. The bill requires the PUCO to consider all of the following in making its determination:

- Whether the reasonable value of the generation assets is likely to be received on disposition;
- The effect of the plan on the EU's federal income taxes;
- The effect of the plan on current and potential competitors in the generation market;
- Whether the plan is consistent with the public interest.

The bill permits an EU to request to amend an approved market power mitigation plan, which the PUCO may modify on a showing of good cause.

The bill permits the PUCO, if an EU's market power mitigation plan is not approved before January 1, 2019, to order the EU or, as applicable, an affiliated entity to auction generation capacity entitlements, subject to PUCO approval, until a plan is

approved. The auction must be held not later than 60 days after the date that the PUCO issues the order.<sup>18</sup>

## **Prohibition against owning and controlling installed generation capacity**

### **Prohibition**

The bill prohibits an EU and affiliated entities from owning and controlling any installed generation capacity located in Ohio, beginning January 1, 2019.<sup>19</sup>

### **Enforcing the prohibition**

The bill grants the PUCO jurisdiction to determine whether an EU has violated the prohibition against owning or controlling installed generation capacity in Ohio. The bill also grants remedial authority to the PUCO regarding such violations. The bill grants the jurisdiction and remedial authority by expanding the authority the PUCO has under current law to address violations of the corporate separation requirements for EUs. That jurisdiction and remedial authority includes the following:

- Authority to determine a violation of the divestiture requirements and of any PUCO order or rule issued under those requirements;<sup>20</sup>
- Authority to (1) examine the books, accounts, or other records of the EU or its affiliates as may relate to the businesses for which corporate separation is required under the divestiture requirements of the bill and the continuing corporate separation requirements (see **COMMENT**), (2) investigate relevant EU and affiliate operations as may relate to those businesses, and (3) investigate the interrelationships of those operations;
- Authority regarding the divestiture requirements to (1) issue orders directing EU or affiliate compliance, (2) modify an order and order the EU or affiliate to comply with the modified order, (3) suspend or abrogate an order, in whole or part, and (4) issue restitution orders against the EU or affiliate to pay a person injured by a violation or failure to comply;
- Imposing a forfeiture on the EU or affiliate of up to \$25,000 per day per violation of the divestiture requirements;

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<sup>18</sup> R.C. 4928.28, 4928.281, and 4928.30.

<sup>19</sup> R.C. 4928.29.

<sup>20</sup> A technical requirement is needed to change a reference from "that section" to "those sections" (R.C. 4928.18(B)).



- Imposing treble damages for violation of the divestiture requirements.<sup>21</sup>

### **Amendment of market development period provisions**

The bill amends provisions governing the electric market development period to apply those provisions to the prohibition against owning and controlling installed generation capacity in Ohio. This amendment has little effect because the amended provisions no longer have any applicability. The electric market development period began on January 1, 2001, and likely ended approximately ten years later.<sup>22</sup>

### **Changes to corporate separation requirements**

#### **Requirements not applicable to certain electric utilities**

The bill eliminates the corporate separation requirements for certain EUs that are in the business in Ohio of supplying a noncompetitive and a competitive retail electric service. If an EU is in the business of supplying noncompetitive retail electric service and supplying a product or service other than retail electric service, the requirements would still apply.<sup>23</sup>

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

The bill makes a change to the corporate separation requirements that would still apply to EUs supplying a noncompetitive retail electric service and a product or service other than retail electric service. The bill eliminates the requirement that the EU's corporate separation plan satisfy the public interest in "preventing unfair competitive advantage." Instead, the bill just retains the requirement that the plan satisfy the public interest in "preventing the abuse of market power." With respect to PUCO rules establishing limitations on affiliate practices solely for the purpose of maintaining a separation of the affiliate's business from the EU's business to prevent unfair competitive advantage, the bill replaces "unfair competitive advantage" with "abuse of market power." Under continuing law, "market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.<sup>24</sup>

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<sup>21</sup> R.C. 4928.18; R.C. 4905.61, not in the bill.

<sup>22</sup> R.C. 4928.01(A)(28), 4928.31, 4928.34, and 4928.35; R.C. 4928.40(A), not in the bill.

<sup>23</sup> R.C. 4928.17(A).

<sup>24</sup> R.C. 4928.01(A)(18) and 4928.17(A)(2) and (B).

## **Sale or transfer of generation assets**

The bill repeals a provision from the corporate separation requirements that prohibits an EDU from selling or transferring any generating asset it wholly or partly owns without prior PUCO approval.<sup>25</sup>

## **Large-scale governmental aggregation**

The bill amends Ohio law governing governmental aggregation to require the PUCO to review each MRO application filed by an EDU to ensure that the application and resulting MRO does not contain any rate, price, term, condition, or provision that would have an adverse effect on large-scale governmental aggregation in Ohio. The bill also requires the PUCO to adopt rules and issue orders in proceedings under the MRO-SSO requirements to encourage and promote large-scale governmental aggregation in Ohio. Governmental aggregation refers to a municipal corporation, township, or county that aggregates retail electric loads in their jurisdiction in order to enter into an agreement for the sale or purchase of electricity for those loads.<sup>26</sup>

## **Refunds for utility charges**

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by the PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges. The PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

Current law contains a provision that has been interpreted by the Ohio Supreme Court to mean that the PUCO cannot order refunds of charges, even if those charges have been collected excessively. The bill makes clear that its refund requirement supersedes any provision of the Revised Code that would conflict.<sup>27</sup>

## **Repeal of obsolete provisions**

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

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<sup>25</sup> R.C. 4928.17(E).

<sup>26</sup> R.C. 4928.20(J).

<sup>27</sup> R.C. 4903.191; R.C. 4905.32, not in the bill; *In re Fuel Adjustment Clauses for Columbus S. Power Co.*, 140 Ohio St.3d 352, 358-359 (2014).



purpose. The bill also repeals various other provisions of the utility law that no longer have applicability or that serve no purpose.<sup>28</sup>

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## COMMENT

The bill expands the PUCO's authority, allowing it to examine the books, accounts, or other records of an EU or its affiliates as may relate to the businesses for which corporate separation is required under the divestiture requirements of the bill and the continuing corporate separation requirements.<sup>29</sup> This provision may need further amendment because the divestiture requirements of the bill do not require corporate separation. Without further amendment, it is not clear what the effect is of this grant of authority.

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## HISTORY

ACTION	DATE
Introduced	05-24-17

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<sup>28</sup> R.C. 4928.041(A)(1) and (2) (renumbered), 4928.05(A)(1) and (2) and (B), 4928.06(A) to (C), (E)(1) and (2), and (F), 4928.17(A) and (E), 4928.18(B), 4928.20(A), and 4933.81(F).

<sup>29</sup> R.C. 4928.18(B).

