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Bill Analysis

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SUMMARY

- Permits electric distribution utilities (EDUs) to offer customer-focused energy services or products (CFESPs), which may include energy efficiency, energy monitoring, electric vehicle charging stations, the installation and management of smart grid technology, and other items.
- Expands the definition of “smart grid” under current law.
- Requires, for an EDU to offer CFESPs, that either:
 - The PUCO has approved those CFESPs under certain sections of continuing law; or
 - The CFESPs are optional, the EDU maintains separate accounting for the CFESPs, and the EDU does not include incremental costs directly related to the CFESPs in base distribution rates but instead recovers incremental costs through charges to customers who elect to subscribe to those services.
- Permits an EDU’s electric security plan to include provisions for the EDU’s recovery of costs for CFESPs and smart grid technology deployment, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on smart grid technology deployment.
- Lifts the corporate separation requirements that currently apply to the offering of a product or service other than retail electric service, effectively allowing an EDU to offer such a product or service directly, rather than through a fully separated affiliate.
- States that notwithstanding continuing corporate separation law, PUCO approval of an EDU’s proposed action, plan, product or service offering, or initiative under certain sections of continuing law fully satisfies the corporate separation requirements.
- Requires an alternative corporate separation plan to provide for “functional separation” rather than functional separation requirements authorized by the PUCO for an interim period.

- Makes a number of changes to state policy, including changes pertaining to the emergence of CFESPs, products and services other than retail electric service, and residential customer use of energy efficiency programs and alternative energy resources.
- Authorizes nonbypassable electric riders for: (1) infrastructure development costs for state and local economic development projects and (2) facilities of mercantile customers that are locating or expanding in Ohio.

DETAILED ANALYSIS

Electric distribution utilities (EDUs) to offer services/products

Which services and products may be offered

The bill permits an electric distribution utility (EDU) to offer customer-focused energy services or products (CFESPs).¹ The bill defines CFESPs as services or products to or for the benefit of customers. The bill states that CFESPs may include any of the following:

- Services related to energy reliability and resiliency;
- Curtailment and individual customer and aggregated demand response activities;
- Energy efficiency or reduction;
- Energy storage or battery functions;
- Energy management;
- Energy monitoring and control technologies;
- Lighting controls and other smart controls;
- Warranty and repair services;
- Electric vehicle charging stations;
- Microgrids;
- Community solar energy facilities;
- Energy-related physical security and cybersecurity;
- The installation, financing, leasing, or management of technology, data, and devices related to CFESPs;
- The installation and management of smart grid technology to facilitate “such services.”²

¹ R.C. 4928.17(B); conforming change in R.C. 4928.34(B).

² A corrective amendment may be needed to add the term “products” with respect to the installation and management of the smart grid technology.

The bill adds to the definition of “smart grid” under current law. Presently, “smart grid” is defined as capital improvements to an EDU’s distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use.

First, the bill adds that “smart grid” includes capital investment in equipment deployed in conjunction with an EDU’s distribution infrastructure that facilitates intelligent city designs, such as traffic sensors, infrastructure monitoring equipment, data management systems, and similar technology.

Second, the bill adds that “smart grid” may also mean the deployment, adaptation, replacement, or subsequent reinforcement of any technology that facilitates the storage, control, or delivery of electric energy. The bill further provides that this deployment, adaptation, replacement, or reinforcement may include all of the following:

- Advanced metering;
- Automation of system functions;
- Battery technology;
- Demand response and other energy management technologies;
- Distribution automation;
- Electric vehicle charging stations and associated equipment or infrastructure;
- Energy monitoring and control devices;
- Lighting controls and other smart controls;
- Microgrids;
- Physical and cybersecurity technologies;
- Volt-VAR optimization and similar technologies;
- Any other technologies so classified by the Public Utilities Commission (PUCO).

Under current law, advanced metering and automation of system functions are classified as *capital improvements* that qualify as “smart grid.” The bill, on the other hand, appears to categorize advanced metering and automation of system functions as *deployment, adaptation, replacement, or reinforcement* that qualify as “smart grid.”³

Requirements for the offering of services and products

The bill requires that if an EDU offers CFESPs (which the bill states may include the deployment of smart grid technology on a customer’s premises), either:⁴

³ R.C. 4928.01(A)(39) and (40).

⁴ R.C. 4928.17(B).

1. The EDU must receive approval from the PUCO to offer those services⁵ under certain sections of continuing law (governing reasonable arrangements, rate cases, electric security plans, and energy efficiency and peak demand reduction programs⁶); or
2. All of the following requirements must be met:
 - a. The CFESPs are optional for customers.
 - b. The EDU maintains separate accounting for the CFESPs (see **COMMENT 1**).
 - c. The EDU does not include incremental costs directly related to the CFESPs in base distribution rates but instead recovers incremental costs of the services through charges to customers who subscribe to those services.⁷ The bill does not define “incremental costs.”

Recovery of costs, shared savings, and rate of return

The bill permits an EDU’s deployment of smart grid technology and provision of CFESPs to be done through the EDU’s electric security plan. The bill allows the electric security plan to include a long-term energy delivery infrastructure modernization plan for the EDU or any plan providing for the EDU’s recovery of costs of CFESPs and smart grid technology deployment, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on smart grid technology deployment.⁸

As part of its determination as to whether to allow deployment of smart grid technology or the provision of CFESPs in an electric security plan, the PUCO must examine the reliability of the EDU’s distribution system and ensure that customers’ and the EDU’s expectations are aligned and that the EDU is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.⁹

Corporate separation requirements for EDUs

Lifting of corporate separation requirements for certain offerings

The bill lifts, under certain circumstances, corporate separation requirements that are currently imposed on EDUs and their affiliates. Under continuing law, an EDU may offer *noncompetitive* retail electric services. “Retail electric service” includes any service involved in supplying or arranging for the supply of electricity to consumers, from the point of generation to the point of consumption. The PUCO generally determines which services are competitive

⁵ A corrective amendment may be needed to add the term “products” regarding the required PUCO approval.

⁶ R.C. 4928.143; R.C. 4905.31, 4909.18, and 4928.66, not in the bill.

⁷ A corrective amendment may be needed to add the term “products” regarding the election to subscribe.

⁸ A corrective amendment may be needed to add a reference to CFESPs.

⁹ R.C. 4928.143(B)(2)(h).

and which are noncompetitive. Under continuing law, a noncompetitive service that an EDU provides is distribution service.¹⁰ But, under existing law, if the EDU wants to *also* offer (1) a *competitive* retail electric service (CRES), such as power marketing or power brokerage, or (2) a product or service other than retail electric service, then the EDU must do so through a fully separated affiliate and under a corporate separation plan approved by the PUCO.

The bill lifts the corporate separation requirements for (2), above, effectively allowing an EDU to supply a product or service other than retail electric service (see **COMMENT 1**). An EDU would still not be able to supply a CRES unless it did so through a fully separated affiliate.¹¹

PUCO-approved actions, plans, and offerings satisfy requirements

The bill states that notwithstanding the corporate separation requirements (as amended by the bill and in continuing law), PUCO approval of an EDU's proposed action, plan, product or service offering, or initiative under certain sections of continuing law (governing reasonable arrangements, market-rate offers, renewable energy requirements, and energy efficiency and peak demand reduction programs¹²) fully satisfies the corporate separation requirements.¹³

Exceptions to corporate separation requirements

The bill states that there are exceptions to the corporate separation requirements in sections of continuing law governing the renewable energy requirements and energy efficiency and peak demand reduction programs (see **COMMENT 2**).¹⁴

Alternative corporate separation plans

The bill modifies requirements for alternative corporate separation plans. Under continuing law, a corporate separation plan for the provision of a CRES typically must meet seven requirements: (1) it provides for the provision of the CRES through a fully separated affiliate of the EDU, (2) it includes separate accounting requirements, (3) it includes the code of conduct as ordered by the PUCO under rules, (4) it includes other measures as are necessary to effectuate state policy, (5) it satisfies the public interest in preventing unfair competitive advantage and preventing the abuse of market power, (6) it is sufficient to ensure that the EDU will not extend any undue preference or advantage to any affiliate, division, or part of its own business engaged in supplying the CRES, and (7) it is sufficient to ensure that any such affiliate, division, or part will not receive undue preference or advantage from any affiliate, division, or part of the business engaged in supplying the noncompetitive retail electric service.

¹⁰ R.C. 4928.01; R.C. 4928.04, not in the bill.

¹¹ R.C. 4928.17(A); O.A.C. 4901:1-21-01, not in the bill.

¹² R.C. 4905.31, 4928.142, 4928.64, and 4928.66, not in the bill.

¹³ R.C. 4928.17(G).

¹⁴ R.C. 4928.17(A).

However, under current law, the PUCO may approve a corporate separation plan that does not meet requirements (1) through (4) but that complies with functional separation requirements that the PUCO authorizes for an interim period. Such an alternative plan must also provide for ongoing compliance with state policy. (Presumably, it must also meet requirements (5) through (7), though this is unclear under current law.)

The bill maintains the PUCO's ability to approve a corporate separation plan that does not meet requirements (1) through (4), but requires the alternative plan to provide for "functional separation" rather than functional separation requirements authorized for an interim period. The bill maintains the requirement that alternative plans provide for ongoing compliance with state policy.¹⁵

Corporate separation plans and state policy

The bill repeals current law that requires an EDU's corporate separation plan to be consistent with state policy, but maintains two very similar provisions of continuing law: (1) a requirement that a corporate separation plan *include measures necessary to effectuate* state policy and (2) a requirement that a corporate separation plan *provide for ongoing compliance with* state policy.¹⁶

Changes to state policy

The bill makes the following changes to state policy:

- It adds that the current policy of ensuring the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs must be done in a manner consistent with the chapter of law that is amended, in part, by the bill.
- It adds to the current policy of recognizing the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment that it is also state policy to recognize the continuing emergence of CFESPs through the development and implementation of flexible regulatory treatment.
- It repeals the current state policy of ensuring effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a product or service other than retail electric service, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.
- It adds to the current policy of encouraging the education of small business owners in Ohio regarding the use of, and encouraging the use of, energy efficiency programs and

¹⁵ R.C. 4928.17(D).

¹⁶ R.C. 4928.17(A) and (D).

alternative energy resources in their businesses that it is also state policy to encourage this education and use for residential customers in their homes.¹⁷

Electric riders

For state or local infrastructure development costs

The bill grants an EDU “timely” recovery of infrastructure development costs necessary to support or enable a state or local economic development project, including any project approved, certified, or funded by “the agency.” The bill does not specify which agency this refers to. The bill defines “infrastructure development costs” as any cost of infrastructure development, including, if applicable, an allowance for funds used during construction. The bill defines “infrastructure development” as the planning, development, and construction of substation facilities and extensions of transmission or distribution facilities that an EDU owns and operates and the performance of load studies.

The bill requires the EDU, before beginning the infrastructure development, to file a notice with the PUCO that contains all of the following:

- A description of the economic development project;
- A summary of the infrastructure development costs;
- A statement from the state or local entity involved that the infrastructure development is necessary to support or enable the economic development project.

The costs are to be recovered through a nonbypassable rider charged to all distribution customers regardless of whether the infrastructure development is used and useful at the time constructed.¹⁸

For facilities for mercantile customers

The bill grants an EDU “timely” recovery of all costs of planning, developing, and constructing facilities for a mercantile customer that is newly locating or expanding operations in Ohio, and has a forecasted monthly peak demand of five megawatts or more. The costs are to be recovered through a nonbypassable rider charged to all distribution customers.

Following the completion of construction, the bill requires the mercantile customer to own and maintain the facilities.¹⁹

Under continuing law, a mercantile customer is a commercial or industrial customer that consumes electricity for nonresidential use and consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.²⁰

¹⁷ R.C. 4928.02.

¹⁸ R.C. 4928.25(A), (B), and (C).

¹⁹ R.C. 4928.25(A) and (D).

²⁰ R.C. 4928.01(A)(19).

COMMENT

1. It is unclear whether an EDU may offer CFESPs (1) directly and not through an affiliate, (2) only through a fully separated affiliate, or (3) directly under certain circumstances and through an affiliate under other circumstances.

The bill does provide relief from corporate separation requirements for an EDU to offer a product or service that is not retail electric service.²¹ However, neither the bill nor current law provides a list of which products or services do *not* qualify as retail electric service, so the full scope of the relief is unclear. It is possible that the CFESPs that the bill permits EDUs to offer (e.g., the deployment of cybersecurity technology) would not be considered retail electric service.²² Therefore, the bill's relief from corporate separation requirements may be an effort to ensure that an EDU can offer the CFESPs discussed above directly, rather than through an affiliate.

However, the bill specifies that a corporate separation plan may be filed with the PUCO under current law requiring corporate separation *or under the bill's provisions permitting the offering of CFESPs*. The bill's provisions permitting the offering of CFESPs do not, however, refer to the filing of a corporate separation plan with the PUCO. These provisions merely state that in certain circumstances, requirements for the offering of CFESPs must be reflected in the EDU's "subsequent corporate separation plan."²³ The bill does not explain what the corporate separation plan would be subsequent to.

Finally, the bill contains requirements for the offering of CFESPs that apply only if the PUCO has not approved the EDU's offering under certain sections of continuing law. And those requirements include the EDU maintaining "separate accounting" for the CFESPs. It is not clear whether this separate accounting refers to the EDU's own accounting, or separate accounting under a corporate separation plan.²⁴

In conclusion, if it is assumed that a CFESP is *not* retail electric service, then the bill appears to be at least unclear and perhaps in conflict as to whether a corporate separation agreement is required for the provision of those CFESPs.

2. The bill states that there are exceptions to the corporate separation requirements in sections of continuing law governing the renewable energy requirements and energy efficiency and peak demand reduction programs.²⁵ However, these sections are not amended by the bill and do not currently appear to contain exceptions to the corporate separation requirements.

²¹ R.C. 4928.17(A).

²² R.C. 4928.01(A)(39) and (40) and 4928.17(A).

²³ R.C. 4928.17(B) and (C).

²⁴ R.C. 4928.17(B).

²⁵ R.C. 4928.17(A).

HISTORY

Action	Date
Introduced	05-15-19
