Synopsis of House Committee Amendments[*]

Mary S. Connor *Legislative Service Commission*

S.B. 221

127th General Assembly
(H. Public Utilities)

Traditional regulation

Removes the authority for the Public Utilities Commission (PUCO) to reinstate traditional regulation of generation service.

State electric service policy

Modifies the current policy objective regarding anticompetitive subsidies between noncompetitive and competitive retail electric services or subsidies from such services to a non-retail electric service by specifically including a prohibition against the recovery of any generation-related costs through distribution or transmission rates.

Removes the reference to just and reasonable rates in the state policy objective of ensuring retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

Removes the policy objective of precluding imbalances in knowledge and expertise among parties in a retail electric service proceeding to eliminate the appearance of disproportionate influence by any of those parties.

Removes the objective of ensuring that consumers and shareholders share the benefits of electric utility investment in facilities supplying retail electric generation service.

Changes the objective of protecting at-risk populations when considering the implementation of any new advanced energy technology so that it refers to protecting such populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

Standard service offers (SSOs)

Requires the first SSO application of a utility to be an electric security plan (ESP), but allows a utility to file an ESP and market rate offer (MRO) simultaneously, even for its first SSO application.

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[*] This synopsis does not address amendments that may have been adopted on the House floor.

Prohibits a utility for which a MRO has been approved from ever filing, or being authorized or required to file, an ESP.

Requires all electric distribution utilities to file a SSO application before January 1, 2009, and, in effect, grandfathers Dayton Power and Light's current rate plan into its first ESP.

Authorizes the PUCO to order under a MRO or ESP a just and reasonable phase-in of any electric distribution utility rate or price, inclusive of carrying charges, as necessary to ensure rate or price stability for consumers, and requires the order also to provide for the creation of regulatory assets, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount, and their collection through a nonbypassable surcharge on that rate or price, and further states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service does not limit that phase-in authority.

Limits the contracts and agreements that a utility must make available to a requesting party during a MRO or ESP proceeding to only those between the electric distribution utility and a party to the proceeding.

Requires that the requisite competitive bidding process for an MRO provide for (1) open, fair, and transparent competitive solicitation, (2) clear product definition, (3) standardized bid evaluation criteria, (4) oversight by an independent third party, and (5) evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners, and expressly states that no generation suppliers can be prohibited from bidding.

Requires that all costs incurred by the utility as a result of or related to the competitive bidding process or to procuring generation service to provide the MRO, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, be timely recovered through the MRO price by means of a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms.

Requires that, for PUCO approval, a MRO competitive bidding process meet the criteria that (1) the utility or its transmission service affiliate belongs to at least one Federal Energy Regulatory Commission (FERC)-approved regional transmission organization (RTO); or there otherwise is comparable and nondiscriminatory access to the electric transmission grid, (2) any such RTO has a market-monitor function and the ability to take actions to identify and mitigate market power or the utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power, and (3) a published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

Requires the PUCO to select the least-cost bid winner or winners of the MRO competitive bidding process and makes the selected bid or bids the utility's SSO unless (1) any portion of the bidding process was undersubscribed, (2) there were three or fewer bidders, or (3) at least 25% of the load was not bid upon by one or more persons other than the electric distribution utility.

Removes the provisions that, in a MRO order, the PUCO must prescribe such requirements as it considers necessary for the utility to implement applicable objectives of the state electric policy and that the order can provide the procedural and substantive terms and conditions for periodic PUCO review of the approved offer, which review must provide for the reconciliation of the MRO price to ensure that the price is just and reasonable as to each customer class and consistent with the state electric policy.

Provides for "Transitional MROs," under which a utility that directly owns, in whole or in part, operating electric generating facilities that had been used and useful in Ohio, can "ramp up to market" by bidding out over five years an increasing portion (at least 50% in the fifth year) of its SSO load and will operate under a MRO price that is a blend of the bid price and the utility's most recent SSO price, adjusted upward or downward relative to the jurisdictional portion of any known and measurable changes from the level of prudently incurred fuel, purchased power, or environmental costs or costs attributable to supply and demand portfolio requirements.

Excludes transition costs from that most recent SSO price and allows the PUCO to adjust that price by such just and reasonable amount necessary to address any emergency threat to the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the SSO is not confiscatory.

Allows the PUCO to affect the slope of a utility ramp up to market under a Transitional MRO by acting to alter, prospectively and not more often than annually, the portions of its SSO load that the utility can bid out and the length of time up to ten years that the blended price must be charged, for the purpose of mitigating any effect of an abrupt change in the utility's MRO price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration.

Changes the nature of an ESP application from an application based on changes in a utility's generation service-related costs to an application that must contain provisions regarding generation service and can contain provisions on anything else regarding SSO service, including, for example, (1) transmission service, (2) distribution service, (3) securitization of a rate phase-in, (4) decommissioning, derating, or retirement of a generating facility, and (5) economic development, job retention, and energy efficiency programs, the costs of which programs can be allocated across all customers classes of the utility and its electric distribution affiliates.

Authorizes the PUCO to approve an ESP if its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under a MRO application.

Allows a utility to withdraw its ESP application if the PUCO modifies and approves it and, in that event, requires the PUCO to issue a transitional order for the utility until another ESP or a MRO is approved for the utility.

Requires that, if the PUCO approves an ESP that contains a surcharge regarding construction work in progress for an electric generating facility or an environmental expenditure or for a new (post 1/1/2009) used and useful generating facility or a surcharge regarding the costs of such a facility, it must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

Requires that, if an ESP has a term longer than three years, the PUCO must test the ESP in the fourth year and, as applicable, every fourth year thereafter, to determine whether it continues to be favorable both in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under a MRO application, and authorizes the PUCO to terminate the ESP if the test results are in the negative, although it must permit the continued deferral and phase-in, and collection, of any amounts that occurred prior to that termination.

Authorizes an ESP to contain provisions regarding bypassability, requires that any construction work in progress allowance requested under an ESP be nonbypassable for the life of the facility, allows an ESP to provide a nonbypassable, life-of-the-facility surcharge for the costs of any new (on or after 1/1/2009) used and useful generating facility that is owned or operated by the utility and sourced through a competitive bid process, allows an ESP to provide a nonbypassable surcharge for the collection of regulatory asset deferrals arising from a rate or price phase-in under an ESP or MRO, provides that costs incurred by a utility for complying with the bill's alternative energy requirements are bypassable, and prohibits customers of current municipal utilities from being charged any surcharge, service termination charge, exit fee, or transition charge by an electric distribution utility.

Provides that a mercantile customer that commits its demand-response or other customer-sited capabilities for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs may be exempted from any cost recovery mechanism otherwise applicable to that customer, if the PUCO determines the exemption reasonably encourages such customers to so commit those capabilities.

Governmental aggregation

Lengthens the time between no-fee, customer, opt-out opportunities for customers of an electric automatic governmental aggregation to a maximum of three years.

Special contracts

Authorizes under special contract law the filing of a financial device to recover costs incurred in conjunction with economic development and job retention, the bill's peak demand reduction and energy efficiency programs, advanced metering, and government mandates.

Authorizes a mercantile customer or a group of those customers to establish a reasonable arrangement with a utility under special contract law.

Provides that special contracts must be submitted to the PUCO by application for its approval.

Line extensions

Requires the PUCO to adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and any requisite substations and related facilities that are requested by nonresidential customers of electric utilities.

RTOs

Extends to a FERC-approved RTO that is responsible for maintaining reliability in all or part of Ohio the requirements to (1) consent to Ohio court jurisdiction and service of process and (2) designate an agent.

Price risk management

Authorizes a state official or the legislative or other governing authority of a county, city, village, township, park district, or school district to enter into an energy price risk management contract.

Divestiture

Prohibits an electric distribution utility from selling or transferring a generating asset without prior PUCO approval, removes any limitation on divestiture by an electric utility that is not a distribution utility, and removes the current law's provision that a utility's authority to divest is subject to the provisions of public utility law relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.

State bonds

Removes all Ohio Air Quality Development Authority and related provisions.

Carbon sequestration

Removes all provisions regarding carbon sequestration.

Self-generation

Provides that a "self-generator" under Electric Restructuring Law need not own a generating facility, rather, it can host it on its premises.

Alternative energy

Extends the alternative energy resource requirement to electric services companies in addition to electric distribution utilities currently covered by the requirement.

Changes the amount of the requisite alternative energy supply, by basing that supply on the total kWhs sold to retail consumers instead of total kWhs supplied to all consumers.

Removes the end date of 2025 for the bill's alternative energy requirements and provides that the requirements continue in perpetuity.

Allows to be counted as an alternative energy resource a mercantile customer-sited advanced energy or renewable energy resource that is integrated into a distribution utility's demand-response, energy efficiency, or peak demand reduction programs.

Requires that, to be counted toward the alternative energy requirement, an advanced or renewable resource have a placed-in-service date of 1/1/1998, and allows a mercantile customer-sited resource to be new or existing.

Changes the clean coal technology component of the definition of "advanced energy resource" to mean clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials Standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society.

Includes in the advanced energy definition (1) any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility and (2) demand-side management and any energy efficiency improvement.

Requires that, to qualify as a renewable energy resource, hydropower must be produced by a hydroelectric generating facility that meets certain water quality, fish and wildlife, cultural resource, and recreational resource standards.

Allows to be counted as a renewable resource a storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak.

Allows as a renewable resource fuel derived from solid wastes through fractionation, biological decomposition, or other process that does not principally involve combustion.

Allows to be counted as a renewable resource energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors.

Requires that at least half of the renewable energy requirement be met from facilities located in Ohio, with the remainder being resources that can be shown to be deliverable into Ohio.

Establishes yearly benchmarks for renewable energy resources, eventually stabilizing at 12.5% beginning in 2024, including yearly benchmarks for a solar energy carve-out that stabilize at 0.5% beginning in 2024.

Establishes an annual cost cap that is a function of whether compliance with the alternative energy resource benchmarks would result in an annual, estimated, average net increase in the total amounts paid by the utility's customers and due to the cost of the renewable energy resources, to exceed 3% of the total amounts paid by each customer class in the previous calendar year for all costs of generation, transmission, distribution, metering, taxes, and all other costs comprising customer bills.

Authorizes the PUCO to make a force majeure determination regarding all or part of a utility's or company's compliance with a minimum renewable energy resource benchmark and to require the utility or company to make solicitations for renewable energy resource credits as part of its default service before the force majeure determination will be made.

Authorizes the PUCO to enforce the renewable energy and solar energy resource benchmarks through the assessment of compliance payments.

Authorizes the PUCO to approve a revenue decoupling mechanism for an electric distribution utility if the mechanism reasonably aligns the interests of the utility and its customers in favor of energy efficiency or energy conservation programs.

Energy efficiency

Makes the baseline standard used to determine compliance with the bill's energy efficiency requirement the energy savings determined relative to the total, annual average, and normalized kWh sales during the preceding three years.

Establishes an energy efficiency minimum slightly exceeding 22% by the end of 2025, based on annual percentage benchmarks.

Sets an overall total peak demand reduction requirement for electric distribution utilities by the end of 2018 of 7.75%, with a benchmark reduction of 1% in 2009 and 0.75% each year through 2018, and, for evaluating peak demand reductions, by setting a baseline of the average peak demand in the preceding three years.

Requires the Ohio House and Senate energy standing committees to make recommendations to the General Assembly regarding future peak demand reduction targets after 2018.

Allows the PUCO to reduce the energy efficiency and peak demand baselines to adjust for new economic growth in the utility's certified territory.

Authorizes the PUCO to amend the efficiency and peak demand benchmarks if necessary because the utility cannot reasonably comply due to regulatory, economic, or technological reasons beyond the utility's reasonable control.

Authorizes PUCO enforcement of energy efficiency and peak demand reduction compliance through the assessment of forfeitures.

Requires that compliance with the energy efficiency and peak demand reduction benchmarks be measured by including the effects of all demand-response programs for mercantile customers of the utility and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward or downward by appropriate loss factors.

Specifies that programs implemented by a utility to meet the bill's energy efficiency and peak demand reduction requirements can include demand-response programs, customer-sited programs, and transmission and distribution infrastructure improvements that reduce line losses.

Requires that the bill's mercantile customer commitment provisions be applied to include facilitating a commitment of customer-sited integration efforts pursuant to a statutory special contract.

Prohibits utility or customer-sited energy efficiency or peak demand reduction programs or improvements from conflicting with any statewide building code adopted by the Board of Building Standards.

Requires the Governor's Energy Advisor periodically to submit a written report to the General Assembly and report in person to and as requested by the House and Senate standing committees responsible for energy efficiency and conservation issues regarding initiatives undertaken by the Advisor and state government pursuant to a recent Executive Order (2007-02S, "Coordinating Ohio Energy Policy and State Energy Utilization").

Advanced Energy Fund (AEF) assistance

Credits to the AEF administered by the Department of Development all compliance payments or forfeitures paid under the bill's alternative energy and energy efficiency provisions.

Makes eligible for AEF assistance certain projects of any Edison Technology Center, Ohio university or group of Ohio universities, not-for-profit corporation formed to address issues affecting the price and availability of electricity and having members that are small businesses, independent group located in Ohio having the express objective of educating Ohio's small businesses regarding renewable energy and energy efficiency, and any small business located in Ohio that utilizes an advanced energy project or participates in an energy efficiency program, and modifies the definition of an "advanced energy project" to reflect those eligibility provisions and the bill's definitions of advanced energy resources and renewable energy resources.

Net metering

Removes current law's 1% limitation on the availability of net metering opportunities under electric utility contracts and tariffs.

Establishes specifications of net metering contracts for hospitals that are different from contracts for other customer-generators.

Emissions

Requires the PUCO to adopt rules establishing greenhouse gas emissions reporting and carbon dioxide control planning requirements for generating facilities located in Ohio, owned or operated by a public utility subject to PUCO jurisdiction, and emitting greenhouse gases, including facilities in operation on the bill's effective date.

Natural gas

Authorizes approval, under current law's alternative regulation provisions but not as an application to increase rates (and therefore not subject to hearing), of a revenue decoupling mechanism for a natural gas utility in conjunction with a plan establishing, continuing, or expanding energy efficiency or energy conservation programs, and prohibits the bill being construed as supporting a claim or finding that an application for such a conservation-related plan filed before the bill's effective date *is* an application to increase rates.

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