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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 2  
(1\_136\_0333-1)  
136<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Reineke

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### SUMMARY

#### Changes affecting the standard service offer

- 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.
- Authorizes an EDU to create necessary regulatory assets or liabilities for the resolution of any outstanding under-collection or over-collection of funds under PUCO-authorized riders that will cease after the termination of the EDU's ESP.
- Modifies the MRO process.
- Prohibits electric utilities (EUs) from providing any competitive retail electric service (CRES) 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.
- Amends the definition of EDU to state that EDUs cannot own or operate an electric generating facility.
- Eliminates the corporate separation requirements for EUs that are in the business of supplying both a noncompetitive and a competitive retail electric service in Ohio, since the bill prohibits EUs from providing competitive retail electric service designated as such prior to the bill's effective date.
- Modifies the corporate separation requirements that remain applicable to EUs regarding unfair competitive advantage and abuse of market power.
- Repeals the prohibition against an EDU selling or transferring any generating asset without approval of the Public Utilities Commission (PUCO).

- Requires PUCO to review each MRO application 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.
- Repeals provisions in sections amended by the bill that no longer serve a purpose or have no applicability.

## **Utility ratemaking law changes**

### **EDU rate case requirement**

- Requires each EDU to file a rate case application regarding distribution service not later than December 31, 2029.

### **Rate case: property used and useful, valuation, and rates**

- Makes various changes to the law governing rate increases with respect to utility property, regarding how it is reported to PUCO, valued, determined to be used and useful, and regarding its valuation effect on rate determinations.
- Permits electric light companies to propose a fully forecasted test period as an alternative for determining utility revenue and expenses in a rate increase application.

### **Allowance for construction work in progress (CWIP)**

- Repeals all construction work in progress (CWIP) provisions of utility property valuation law that allow PUCO, in its discretion, to include in the valuation of utility property a reasonable allowance for CWIP for a construction project that is at least 75% complete.

### **“Cost recovery mechanism” added to existing utility rate provisions**

- Adds “cost recovery mechanism” to several ongoing provisions of ratemaking law for utility rates that lists “rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental.”

### **Deadline to issue rate case decision**

- Requires PUCO to issue an order approving or denying a rate case application not later than 275 days after the date the application is filed.

### **Rate case discovery limitation**

- Prohibits PUCO, in a rate case, from allowing new discovery beginning not later than 215 days after the rate case application is submitted.

### **Mini rate case proceeding**

- Requires PUCO to adopt rules to create a mini rate case proceeding, which is available to EDUs solely to collect capital expenditures for economic development purposes that were not included in an approved rate case.

## **Repeal of obsolete Ohio coal tax credit**

- Repeals provisions regarding the obsolete law for the Ohio coal tax credit in the public utility excise tax law.

## **Priority investment areas**

- Authorizes local governments to petition the Director of Development to designate a brownfield or former coal mine as a priority investment area (PIA), within which property tax and siting incentives are provided for certain gas and electric utility projects.
- Requires the Power Siting Board (PSB) to adopt rules providing for the accelerated review of certain gas and electric utility projects located in an approved PIA.

## **Consumer choice billing program**

- Creates the Consumer Choice Billing (CCB) Program to be administered by PUCO which will do the following:
  - Allow suppliers (both CRES and competitive retail natural gas (CRNG) suppliers) to offer consumers consolidated billing of retail electric or natural gas services for all electric or natural gas charges, including an EDU's or NGC's distribution and transmission charges;
  - Enhance consumer protections for consumers who select a supplier and elect to be billed by that supplier for all charges for electric or natural gas service;
  - Increase competition in supplier marketplaces;
  - Develop direct and transparent relationships between consumers and suppliers.
- Subjects PUCO and suppliers, EDUs, and NGCs that elect to participate in the program to requirements established for the program.
- Requires PUCO to adopt rules to authorize CCB and accomplish the program's purposes, and rules to implement the CCB program itself, which must include, for example, rules to require a supplier to do the following:
  - Apply for a new or amended PUCO certification that also authorizes the supplier's participation in the program;
  - Maintain a current and valid PUCO certification (if applying for an amended certification) and, prior to offering or providing CCB, submit to PUCO a statement affirming that the applicant will not offer or provide CCB without such certification and PUCO authorization.
  - Maintain certain financial assurances depending on if the supplier is a CRES or CRNG supplier.
  - Certify that the applicant's certification has not been revoked during the previous five-year period along with agreeing to various other requirements.

- Requires PUCO, not later than 45 days after the bill's effective date, to issue an order requiring EDUs and NGCs to prepare a CCB implementation plan, which will be subject to PUCO approval.
- Requires each EDU and NGC, not later than 180 days after PUCO has adopted the CCB rules, to submit its implementation plan to PUCO, which must demonstrate how the EDU or NGC will meet the CCB requirements established by rule along with including various other components that will require PUCO approval.
- Allows PUCO, if necessary, to approve an implementation plan on an expedited basis.
- Requires an EDU or NGC to maintain a record of recoverable CCB costs as regulatory assets which must be recovered in the EDU's or NGC's next rate case application.
- Requires PUCO, not later than one year after the date the CCB rules are adopted, to issue a CCB report to the standing committees of the House of Representatives and the Senate with primary responsibilities for utility legislation.
- Requires the report described immediately above to detail the status of the program and include certain statistics and information along with any information to determine whether modifications to CCB qualifications or requirements are necessary to improve shopping for retail electric and natural gas service in the state.
- Allows PUCO to impose penalties on a supplier for violating any provision of the program, subject to notice and hearing, which may include a fine or revocation of a supplier's certification or participation in the program.
- Makes a supplier responsible for fraudulent, deceptive, or other unlawful marketing acts performed by an agent of the supplier and may face the same penalties described above if the agent violates any of the program's provisions.
- Allows PUCO to impose penalties on an EDU or an NGC that violate any of the program's rules.

## **Electric and natural gas supplier certification**

- Requires PUCO to establish rules to require ESC and CRNG suppliers to maintain financial assurances sufficient to protect customers, EDUs, and NGCs from default.
- Allows an EDU and NGC to set reasonable standards for its security and the security of its customers through financial requirements set in its tariffs.
- Repeals the requirement that a retail natural gas supplier may be required to provide a performance bond sufficient to protect customers and NGCs from default.

## **Consumer protections**

### **Small commercial customers of electric service**

- Provides that consumer protections under continuing law apply to "small commercial customers" which are certain customers that receive electric service pursuant to a

nonresidential tariff if the customer's demand for electricity generally does not exceed 25 kilowatts within the last 12 months.

### **Notice of CRES and CRNG service supplier rate changes**

- Requires a CRES or CRNG service supplier that offers certain customers a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate to send two notices containing certain information regarding the conversion to affected customers.
- Requires the notices described immediately above to be sent by standard U.S. mail as follows:
  - The first notice must be sent not earlier than 90 days, and not later than 60 days, prior to the expiration of the fixed rate.
  - The second notice must be sent not earlier than 45 days and not later than 30 days prior to the expiration of the fixed rate.
- Requires CRES and CRNG service suppliers to provide an annual notice, by standard U.S. mail, to customers that have entered into a contract with the supplier that has converted to a variable rate informing the customers that they are subject to a variable rate and that fixed rate contracts are available.
- Requires PUCO, not later than 150 days after the bill's effective date, to implement the notice requirement provisions described in the proceeding sections that must include:
  - Requiring the use of clear and unambiguous language;
  - Designing the notices in a way to ensure they cannot be confused with marketing materials.

### **Customer account information**

- Requires PUCO to adopt rules to ensure that EDUs and NGCs process a customers' change in CRES or CRNG supplier by using customer account information, which is a unique EDU or NGC number or other customer identification number used by the EDU or NGC to identify a customer and their account record.
- Allows a customer who consents to a change of CRES or CRNG supplier to not provide customer account information to the supplier if the customer provides a valid form of identification to establish the customer's identity accurately.

### **Power Siting Board**

#### **Time to issue a decision**

- Requires the PSB to issue a certificate of environmental compatibility and public need not later than 120 days after the application is filed.
- Reduces the time within which the PSB must hold a public hearing on a certificate application to not less than 45 days nor more than 60 days after receiving the application.

## **Replacement of a major utility facility certification**

- Provides that the replacement of an existing major utility facility with a like facility constitutes the construction of a major utility facility that requires a certificate issued by the PSB.

## **Electric storage systems**

- Prohibits an EDU from using any electric storage system to participate in the wholesale market if the EDU purchased or acquired that system for distribution service.

## **Solar energy credit program repeal**

- Repeals provisions of law that allowed for certain solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) to receive payments for solar energy credits.
  - Prohibits, on the bill's effective date, EDUs from collecting any charge authorized for the solar energy credit provisions the bill repeals and the remittance of any of the funds collected to any owner or operator of a qualifying solar resource.

## **Legacy generation resource recovery repeal**

- Repeals the provisions of law that allowed for an EDU to recover certain prudently incurred costs related to legacy generating resources, such as the Ohio Valley Electric Company (LGR/OVEC), through a charge on each customer's monthly electric utility bill.
  - Allows, despite the repeal of the law, for a rider or cost recovery mechanism for a LGR/OVEC authorized under an EDU's ESP in effect on the bill's effective date to continue to collect from customers until the termination of the ESP.
  - Provides, once the rider is terminated, that the EDU cannot apply for, and PUCO cannot authorize, another LGR/OVEC rider.

## **Refunds for utility charges**

- Requires that all charges paid by customers to a public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by PUCO or the Supreme Court be promptly refunded to the customers who paid the charges.

## **Self-generators**

- Modifies the definition of "self-generator" in the CRES law to include an entity that owns or hosts an electric generation facility on property the entity controls that is installed or operated by a third party.

## **Mercantile customer self-power systems**

- Allows for the creation of mercantile customer self-power systems, which provide electric generation service to one or more mercantile customers.
- Requires the PUCO to adopt rules to implement the mercantile customer self-power systems law.

## Electric light company exemption

- Exempts a self-generator or mercantile customer self-power system from classification as an “electric light company” for purposes of the public utility law.

## Electric generation property tax exemption

- Exempts from local property taxes the tangible personal property of electric utilities that is used to generate electricity and is placed into service after the bill takes effect.

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## DETAILED ANALYSIS

### Summary

The bill makes various changes to Ohio law governing electric utilities. First, the bill amends the Competitive Retail Electric Service (CRES) law by repealing electric security plans (ESPs) under which electric distribution utilities (EDUs) could establish their standard service offer (SSO). Instead, the bill requires EDUs to use a market-rate offer (MRO) to establish the SSO. The bill also makes various changes to the utility ratemaking law, such as requiring each EDU to file a



rate case application regarding distribution service not later than December 31, 2029, and permitting electric light companies to propose a fully forecasted test period to determine utility revenue and expenses in a rate case application. The bill authorizes local governments to petition the Director of Development to designate a brownfield or former coal mine as a priority investment area, within which property tax and siting incentives are provided for certain gas and electric utility projects. The bill creates the Consumer Choice Billing Program and sets rules for how that program will work.

Further, the bill makes changes regarding electricity and natural gas supplier certification, establishes new consumer protections, provides for Power Siting Board (PSB) certification of replacements of major utility facilities and limits the time for the PSB to make a decision, and addresses electric storage systems. The bill also repeals the Solar Generation Program which allows the owners and operators of qualifying solar resources to receive payments from the Ohio Air Quality Development Authority for solar energy credits. The bill repeals the legacy generating resource provisions passed in H.B. 6 of the 133<sup>rd</sup> General Assembly.

Additionally, the bill requires customers to be refunded for all charges paid to a public utility that are later found to be improper by PUCO or the Supreme Court. The bill modifies the definition of “self-generator,” allows for the creation of mercantile customer self-power systems, and exempts both from classification as an “electric light company” under the public utility law.

Finally, the bill exempts certain electric utility property from local property taxes.

## **Changes affecting the standard service offer**

### **Elimination of ESPs**

The bill requires an EDU’s SSO to be established only as a MRO by eliminating the ESP option and making the MRO mandatory.<sup>1</sup> An SSO is an offer of all the competitive retail electric services (CRES) 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 fails to provide retail electric generation service to customers in the EDU’s certified territory and the EDU’s ESP is still in effect, the customer will default, after reasonable notice, to that ESP until the customer chooses an alternative supplier or until the

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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).

EDU's MRO is authorized.<sup>4</sup> The bill prohibits an ESP that was approved before the effective date of the bill's amendments to extend beyond the termination date of the ESP's term.<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>

### **ESP rider regulatory assets or liabilities**

The bill authorizes an EDU to create necessary regulatory assets or liabilities, along with carrying costs at the utility's weighted average cost of debt, for the resolution of any outstanding under-collection or over-collection of funds under PUCO-authorized riders that will cease after the termination of the EDU's ESP. The resolution of the regulatory assets or liabilities must be addressed in EDU's first distribution rate case that occurs after the ESP's expiration.<sup>7</sup>

### **Changes affecting the MRO**

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) 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 PUCO determines all requirements are met, and (5) PUCO to select the EDU's MRO from the least-cost bid winner or winners.<sup>8</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 PUCO determines all requirements are met).<sup>9</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 PUCO finds that the MRO does not meet MRO requirements.
- The limitation that an EDU cannot initiate the competitive bidding process for at least 150 days after an application's filing if (1) PUCO finds that the MRO does not meet MRO requirements, (2) the EDU remedies the MRO deficiency, (3) PUCO determines the

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<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, 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542; R.C. 4928.143, repealed.

<sup>7</sup> R.C. 4928.1410.

<sup>8</sup> R.C. 4928.142(A) to (C).

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

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>

### **Prohibition against providing competitive service outside of an SSO**

The bill prohibits EUs from providing any CRES 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 a PUCO order. 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 EU and EDU**

The bill changes the definition of EU 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. The bill's prohibition against providing CRES outside of an SSO extends to EDUs because, under continuing law, an EDU is an EU that supplies at least retail electric distribution service. The bill further adds to the EDU definition, however, that an EDU cannot own or operate an electric generating facility.<sup>15</sup>

### **Future designation of CRES**

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. PUCO has continuing authority to

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<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).

<sup>13</sup> R.C. 4928.041.

<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)(6) and (11).

declare the following additional services as competitive: retail ancillary, metering, or billing and collection service.<sup>16</sup>

## **Changes to corporate separation requirements**

### **Requirements not applicable to certain EUs**

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 corporate separation requirements would still apply.

Under current law, an EU can be engaged in the business of supplying both a noncompetitive retail electric service and a competitive retail electric service, so long as a corporate separation plan meeting certain requirements of utility law are met. Because the bill prohibits an EU from providing a CRES other than through an SSO, eliminating the corporate separation requirement means that the EU generally cannot provide both a noncompetitive retail electric service and a competitive retail electric service even by following a corporate separation plan. However, as mentioned above (see **“Future designation of CRES”** above), the prohibition on EUs providing CRES applies only to retail electric service deemed competitive prior to the effective date of the bill.<sup>17</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>18</sup>

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

In conjunction with the change to the definition of an EDU (discussed above) that states EDUs cannot own or operate electric generating, 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. Additionally, the prohibition against PUCO approving part of an EU’s transition plan if the transition plan would constitute an abandonment

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<sup>16</sup> R.C. 4928.041(A); R.C. 4928.04(A), not in the bill.

<sup>17</sup> R.C. 4928.01(A)(11), 4928.041, and 4928.17(A).

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

of service is no longer subject to the requirement that PUCO approve the selling or transferring of generation assets.<sup>19</sup>

## **Large-scale governmental aggregation**

The bill amends Ohio law governing governmental aggregation to require 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 PUCO to adopt rules and issue orders in proceedings under the MRO and SSO requirements to encourage and promote large-scale governmental aggregation in Ohio. The requirement that PUCO consider the effect of large-scale governmental aggregation of certain nonbypassable generation charges in the context of an ESP when adopting large-scale governmental aggregation rules is repealed. 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>20</sup>

## **Governmental aggregation ESP standby service**

The bill repeals a provision which permitted a legislative authority that formed or is forming governmental aggregation to elect not to receive standby service under an ESP, subject to certain requirements.<sup>21</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 purpose. The bill also repeals various other provisions of the utility law that no longer have applicability or that serve no purpose.<sup>22</sup>

## **Utility ratemaking law changes**

The bill makes various changes to Ohio public utility ratemaking law as described below.

### **EDU rate case requirement**

The bill requires each EDU to file a rate case application regarding distribution service not later than December 31, 2029.<sup>23</sup>

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<sup>19</sup> R.C. 4928.17(E) and 4928.34(B).

<sup>20</sup> R.C. 4928.01(A)(13) and 4928.20(J).

<sup>21</sup> R.C. 4928.20(J), repealed.

<sup>22</sup> R.C. 4928.05, 4928.141, 4928.17(A) and (E), and 4928.20(A).

<sup>23</sup> R.C. 4909.181.

## **Rate case: property used and useful, valuation, and rates**

### **Property report**

The bill changes the requirements for an application for an increase in rates regarding the report of utility property used and useful by the public utility making the application. Under continuing law, the report is required to be filed with the application and will be used to determine rates under the application. The bill adds that the used and useful determination can also be made during the test period if the test period is a fully forecasted test period (see discussion below) and is filed by an electric light company.<sup>24</sup>

PUCO must prescribe the form and details of the valuation report of the utility property and continuing law provides what the report must contain.

### ***Fully forecasted report***

The bill provides that, with respect to an electric light company that chooses to file a fully forecasted test period, the report must include all the kinds and classes of property, with the value of each, owned, held, or projected to be owned or held during the test period, by the utility for the service and convenience of the public. The valuation in the report is to be determined during the fully forecasted test period.

The following facts must be included in the report in detail:

1. The original cost of each parcel of land owned, and projected to be owned, and in use during the test period, and also whether acquired by direct purchase, donation, eminent domain, or otherwise;
2. The actual acquisition cost, not including periodic rental fees, of rights-of-way, trailways, or other land rights projected to be held during the test period, by virtue of easements, leases, or other forms of grants of rights as to usage;
3. The original cost of all other kinds and classes of property projected to be used and useful during the test period, in rendering service to the public;
4. The cost of property constituting all or part of a project projected to be leased to or used by the utility during the test period and not already included in (3) (above), excluding any interest directly or indirectly paid by the utility for the property, whether or not capitalized;
5. The cost to a utility, in PUCO's discretion and in a reasonable amount as it determines, of property constituting all or part of a project projected to be leased during the test period, under a lease purchase agreement or a leaseback and not included in (3) (above), excluding any interest directly or indirectly paid by the utility for the property, whether or not capitalized;
6. The proper and adequate reserve for depreciation PUCO determines reasonable;

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<sup>24</sup> R.C. 4909.18(A).

7. Any sums of money or property the utility is projected to receive during the test period, as total or partial defrayal of the cost of its property;
8. The valuation of the property of the utility, which shall be the sum of the amounts under (1) to (5) (above), less the sum of the amounts contained in the report under (6) and (7) (above).

The report must separately show the property projected to be used and useful to, or held by the utility, during the test period, and such other items PUCO considers proper. PUCO may require an additional report showing the extent to which the property is projected to be used and useful during the test period. All reports must be filed with PUCO for the information of the Governor and the General Assembly.

### ***All other reports***

With respect to all other public utilities, the report must include all the kinds and classes of property, with the value of each, owned, held, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be owned or held as of the date certain, by each public utility used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, for the service and convenience of the public. Projected valuation and value is to be determined as of the date certain.<sup>25</sup>

### ***Fully forecasted test period***

The bill permits electric light companies to propose a fully forecasted test period as an alternative in a rate increase application. Under current law, the test period that may be proposed to determine public utility revenues and expenses is any 12-month period beginning not more than six months prior to the application filing date and ending not more than nine months after that date. The new “fully forecasted test period” must utilize a reasonably forecasted rate base, revenues, and expenses for the first 12 months that new rates will be in effect. Initially, rates must be set using the 13-month average rate base ending in the last month of the test period, based on the end-of-month balance for the 12 consecutive calendar months of the test period plus the end-of-month balance for the month immediately prior to the beginning of the forecasted test period. Final rates for this 13-month average test period shall use the lower of forecasted plant investment or actual plant investment, actual revenues, and actual expenses. Forecasted plant investment, forecasted revenues, and forecasted expenses versus actual investment, actual revenues, and actual expenses must be tried up via a cost recovery mechanism approved by PUCO. The fully forecasted test period is to commence not later than the application’s filing date.<sup>26</sup>

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<sup>25</sup> R.C. 4909.04, 4909.041, 4909.042, 4909.05, 4909.052, 4909.06, and 4909.173.

<sup>26</sup> R.C. 4909.15(C)(1).



### ***Test period and date certain for all utilities***

The bill requires, instead of permits (as under current law), all other utilities to propose the current law test period (described above). The bill repeals the law requiring the test period proposed by the utility to be the test period, unless PUCO orders otherwise. All other utilities also must use a date certain that is not later than the application filing date, except that natural gas, water-works, and sewage disposal companies have a date certain that can be as late as the end of the test period. The bill further provides that all other utilities may propose adjustments to the revenues and expenses for any changes that are, during the test period or 12-month period following, reasonably expected to occur, and provide the adjustment data to PUCO no later than 90 days after the adjustment data becomes known. The bill further provides that after PUCO issues a final order on the adjustment, the utility must submit proposed reconciliation adjustments to PUCO to pay refunds to customers for overpayments resulting from the adjustments. The utility must identify and quantify individually, any proposed adjustments.<sup>27</sup>

### **Property valuation and rates**

Under continuing law, PUCO fixes and determines just and reasonable rates in part by using property valuation. With respect to an electric light company that chooses to file a fully forecasted test period, the bill requires that PUCO determine the valuation of the property projected to be used and useful during the fully forecasted test period in rendering the public utility service for which rates are to be fixed and determined. With respect to a natural gas, water-works, or sewage disposal system company, or an electric light company that chooses not to file a fully forecasted test period, PUCO shall determine the valuation as of the date certain of the property of the public utility that is used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, is projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.<sup>28</sup>

### **Allowance for construction work in progress (CWIP)**

The bill repeals all provisions related to construction work in progress (CWIP) provisions of the law that are related to utility property valuation. Currently, the law allows PUCO, in its discretion, to include in the valuation of utility property a reasonable allowance for CWIP for a construction project that is at least 75% complete and prohibits the allowance from exceeding 10% of the total valuation of the property, not including such allowance for CWIP. Current law includes other CWIP conditions such as, for example, no CWIP, as it relates to a particular construction project, may be reflected in rates for a period exceeding 48 consecutive months beginning on the date initial rates reflecting CWIP become effective, except for certain specified exceptions.<sup>29</sup>

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<sup>27</sup> R.C. 4909.15(C)(1)(b) and (2) and (D), and 4909.191.

<sup>28</sup> R.C. 4909.07, 4909.08, 4909.15(A) and 4909.156.

<sup>29</sup> R.C. 4909.15(A).



## **“Cost recovery mechanism” added to existing utility rate provisions**

Ongoing law requires public utilities to file a written application with PUCO to establish any “rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting [these].” The bill extends this application requirement to “cost recovery mechanisms.”

Similarly, the bill adds “cost recovery mechanism” to other provisions of the utility ratemaking law that apply to a “rate, joint rate, toll, classification, charge, or rental” (referred to as “rate” in this analysis).<sup>30</sup> “Cost recovery mechanism” is a term that is not defined in the law or bill, but is used elsewhere in current Ohio utility law to describe a method of charging utility customers to recover specified costs incurred by the utility.<sup>31</sup>

### **Adjustments to rates**

The bill also adds “cost recovery mechanism” to the list of rates that PUCO may change under certain circumstances. Specifically, if PUCO is of the opinion (after a hearing and utility test periods and allowable utility gross annual revenue determinations are made) that the cost recovery mechanism is, or will be, unjust, unreasonable, unjustly discriminatory or preferential, or in violation of law, or that the maximum public utility cost recovery mechanism is insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, PUCO may fix and determine the just and reasonable cost recovery mechanism and order such just and reasonable rate or cost recovery mechanism to be substituted for an existing one. Under the bill, as with the other rates, if PUCO makes the determination and issues an order as described above, (1) no change in the cost recovery mechanism may be made without the order of PUCO and (2) any other cost recovery mechanism is prohibited.<sup>32</sup>

### **Rescission, alteration, amendment of a PUCO order**

The bill allows PUCO to rescind, alter, or amend an order that fixed a “cost recovery mechanism” upon application of any person or public utility and after notice to the parties and an opportunity for a hearing. Current law permits this process of rescissions, alterations, or amendments to PUCO orders that fixed any rate, charge, toll, rental, classification, or service, or any other PUCO order.<sup>33</sup>

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<sup>30</sup> R.C. 4909.15, 4909.156, 4909.17, 4909.18, and 4911.15.

<sup>31</sup> R.C. 4928.66 and 4929.25, not in the bill.

<sup>32</sup> R.C. 4909.15(E).

<sup>33</sup> R.C. 4909.15(F).

## **Report filed with rate application**

The bill modifies requirements for the report that must accompany an application filed with PUCO for an increase in rates by also applying this reporting requirement to applications for an increase in a “cost recovery mechanism.”<sup>34</sup>

## **Deadline to issue rate case decision**

PUCO is required by the bill to issue an order approving or denying a rate case application not later than 275 days from the date the application is filed. If PUCO fails to issue an order within 275 days, the rate case application is deemed approved by operation of law.

Current law provides that if the PUCO does not issue an order after 275 days on a rate case application that requests an increase on any rate, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same, then an increase not to exceed the proposed increase goes into effect if the public utility files a bond or a letter of credit. The bond or letter of credit is filed with the PUCO and is payable to the state for the use and benefit of the customers affected by the proposed increase or change. The bond or letter of credit provides for customer refunds for amounts collected exceeding the rate in the PUCO's final order on the matter. But, if the PUCO has not entered a final order within 545 days after the application is filed, the utility has no obligation to issue refunds for amounts collected after the 545<sup>th</sup> day.<sup>35</sup>

## **Rate case discovery limitation**

The bill prohibits PUCO, in a rate case, from allowing new discovery beginning not later than 215 days after a rate case application is submitted.<sup>36</sup>

## **Mini rate case proceeding**

The bill directs PUCO to adopt rules to create a mini rate case proceeding, including prescribing filing requirements. An EDU is permitted to file a mini rate case application with PUCO. A mini rate case proceeding is limited solely to collecting capital expenditures of the EDU for economic development purposes that were not included in an approved application for a full rate case.<sup>37</sup>

## **Repeal of obsolete Ohio coal tax credit**

The bill repeals the provisions regarding the obsolete law that allowed an Ohio coal tax credit that had been applied against an electric company's tax liability first in the public utility excise tax law and then, effective January 1, 2002, reestablished in the corporation franchise tax law. Under the corporation franchise tax, which is no longer imposed, an electric company was

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<sup>34</sup> R.C. 4909.18(A).

<sup>35</sup> R.C. 4909.42.

<sup>36</sup> R.C. 4903.27.

<sup>37</sup> R.C. 4909.47.

allowed a nonrefundable credit against the tax for Ohio coal used in any of its coal-fired electric generating units after April 30, 2001, but before January 1, 2010.<sup>38</sup>

## **Priority investment areas**

The bill authorizes a county, municipal corporation, or township to petition the Director of Development to designate a brownfield or former coal mine sites as a priority investment area (PIA), within which utility TPP dedicated to transporting or transmitting electricity or natural gas will be exempt from TPP taxation for five years. The designation also triggers accelerated review of electric generation or transmission projects and gas pipeline projects by the PSB.

### **Designation**

A local government initiates the process for establishing a PIA by adopting legislation requesting the designation from the Director of Development. The legislation must identify the area of the proposed PIA, which must encompass either a brownfield, i.e., a vacant or underused area affected by industrial or commercial pollution, or a former coal mine within the subdivision's territory. If the Director determines that the area meets certain qualifications that the Director prescribes by rules, including prioritizing the designation of areas negatively impacted by the decline of the coal industry, the Director will designate the area as a PIA.

The Director must render a decision within 90 days, but the PIA designation is automatically approved if the Director misses that deadline. The Director must inform the PUCO, PSB, and Tax Commissioner after a PIA designation has been approved.<sup>39</sup>

### **Tax exemption**

The bill exempts from property tax TPP that is used to transport or transmit electricity or natural gas that placed into service within an approved PIA. The exemption begins for the tax year after the TPP is placed into service and applies for five total years.<sup>40</sup>

### **Accelerated PSB review**

The bill requires the PSB to adopt rules providing for the accelerated review of a construction certificate application for construction of any of the following in an approved PIA:

- An electric generating plant and associated facilities;
- An electric transmission line and associated facilities;
- Gas pipeline infrastructure.

PSB must render a decision on an application for the above structures in a PIA not later than 45 days after receipt of the application. If PSB fails to render a decision within 45 days, the

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<sup>38</sup> R.C. 4909.15(A)(4)(b).

<sup>39</sup> R.C. 122.161.

<sup>40</sup> R.C. 5727.76.

application must be considered approved by operation of law and a certificate must be issued to the applicant.

Further, the rules PSB adopts must also include rules that prioritize applications for construction on areas negatively impacted by the decline of the coal industry.

Current law allows for a PSB accelerated review for construction certificates for a major utility facility related to a coal research and development project, and certain transmission lines, generating facilities, and gas pipelines.<sup>41</sup>

## **Consumer Choice Billing Program**

The bill creates the Consumer Choice Billing (CCB) Program to be administered by PUCO, and subjects PUCO, EDUs, CRES suppliers, NGCs, and competitive retail natural gas (CRNG) suppliers that elect to participate to the requirements established for the program by the bill's provisions. The bill states the program's purpose is to do the following:

- Permit suppliers (defined as CRES or CRNG suppliers) to offer consumers consolidated billing of retail electric or natural gas services for all electric or natural gas charges, including an EDU's or NGC's distribution and transmission charges;
- Enhance consumer protections for consumers (defined as residential, commercial, and industrial retail electric or natural gas service customers) who select a supplier and elect to be billed by the supplier for all charges for electric service or natural gas service;
- Increase competition in supplier marketplaces;
- Develop direct and transparent relationships between consumers and suppliers.

The bill further requires PUCO to adopt rules to authorize CCB and accomplish the program's purposes.<sup>42</sup>

### **CCB Program rules**

The bill requires PUCO to adopt rules to implement the program that require a supplier to do the following:

- Apply for a new or amended PUCO certification under current law that also authorizes the supplier's participation in the program;
- If the applicant (i.e., the supplier) is applying for an amended PUCO certification, maintain a current and valid certification and, prior to offering or providing CCB, submit to PUCO a statement affirming that the applicant will not offer or provide CCB without such certification and PUCO authorization to provide CCB under the program;
- Maintain the following, in addition to meeting applicable financial assurances required by PUCO certification provisions of current law:

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<sup>41</sup> R.C. 4906.01(D) and 4906.03(E) to (G).

<sup>42</sup> R.C. 4928.081, 4929.201, 4933.51(B) to (E), and 4933.52.

- If the applicant is a CRES supplier, bonding or financial assurances with PUCO for sales of electricity in the amount of \$250,000 or 10% of the applicant's annual gross receipts, whichever is greater;
- If the applicant is a CRNG supplier, bonding or financial assurances with each NGC in the service territory where the applicant provides service;
- Bonding or financial assurances with each EDU and NGC where the applicant plans to offer CCB in an amount equal to the sum of the two highest months of utility receivables in the previous 12 months.
- Certify that: (1) the applicant has not had its PUCO certification revoked during the previous five-year period, (2) for bills that include supplier charges and EDU or NGC charges, the applicant will comply with the standards for applicable billing practices and minimum service requirements under current law;
- Demonstrate that the applicant can meet the demands of increased consumer service and dispute resolution functions, including the operation of call centers, support of complex billing requirements, responsible execution of collection functions, quality assurance, and recordkeeping necessary to handle EDU and NGC charges that contribute to potential electric or natural gas service disconnections;
- Attest to the applicant's ability to comply with applicable requirements related to payment plans for utility service and to assist consumers with other payment plan options by employing new or existing consumer assistance programs prior to initiating the process for service termination;
- Agree to the following:
  - Purchase the receivables for regulated charges of an EDU or NGC, as applicable;
  - Timely inform PUCO of any material change or the cancellation of the bonding or financial assurances required in the above described rules;
  - Comply with the Ohio Administrative Rules regarding standards of conduct for suppliers and disclosures, marketing, and sales practice requirements for suppliers.

The bill further requires PUCO to adopt rules that do the following:

- Establish a process for an applicant to petition PUCO for authorization to provide CCB through a third party if the applicant meets the financial assurance and certification qualifications described above;
- Authorize a mechanism to create a bypassable billing service charge that:
  - Is wholly based on the fully unbundled direct and indirect costs of an EDU's or NGC's billing system;
  - Guarantees the recovery of all prudent investments in billing infrastructure;
  - May be imposed only after a PUCO-imposed prudency review that occurs prior to the implementation of CCB.

- Require an EDU and an NGC to timely furnish necessary billing data to suppliers participating in the program;
- Create a standardized form of consumer notice to be used when a supplier ceases to provide a particular type of billing or other service;
- Establish a CCB working group for stakeholders to draft tariff provisions, collect data, design business processes, configure electronic transactions, review similar programs in other states, define a comprehensive CCB education program to support the launch of CCB in Ohio, and consider any other relevant matters, including the process for disconnection or termination of utility service;
- Establish an electronic data exchange working group to develop proposed electronic transactions for an EDU, NGC, or supplier to exchange necessary consumption, billing, payment, and related data;
- Prohibit an EDU or NGC from requiring a supplier to purchase a consumer's arrears from the EDU or NGC;
- Prohibit an EDU or NGC from utilizing consumer information to: (1) market an EDU's SSO or NGC's standard choice offer, (2) research or market other services an EDU or NGC provides, (3) share information the EDU or NGC collected through electronic transactions that facilitate CCB with unregulated affiliates of the EDU, NGC, or any other nongovernmental entity.
- Establish the terms and conditions for the following:
  - A supplier to change a consumer's billing method to, or from, CCB and the corresponding content and timing of notifications to consumers;
  - For a consumer that is on budget billing with an EDU or NGC at the time of the switch to CCB;
  - A supplier's purchase of an EDU's or NGC's receivables, including prioritization for partial payments and a dispute resolution process;
  - Nonpayment by a CCB consumer, including the content of collection notices, purchase of arrears, unpaid charges, and limitations.
- A CCB consumer's participation in the percentage of income assistance program under current law.
- Establish fines or other penalties for violation of the CCB Program's rules and provisions.<sup>43</sup>

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<sup>43</sup> R.C. 4928.08, 4929.20, and 4933.54; R.C. 4928.10 and 4929.22, not in the bill.

The bill specifies further that a regulatory restriction contained in any of the rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.<sup>44</sup>

### **Implementation plan**

The bill requires PUCO, not later than 45 days after the bill's effective date, to issue an order requiring EDUs and NGCs to prepare a CCB implementation plan subject to PUCO approval. Not later than 180 days after PUCO has adopted the CCB Program rules described above, each EDU and NGC must submit its implementation plan to PUCO. The bill also allows PUCO to approve an implementation plan on an expedited basis, if necessary.

The bill specifies that the implantation plan must demonstrate how the EDU or NGC will meet the CCB requirements and must include all tariffs, agreements, processes, proposed cost recovery mechanisms, and other components that will require PUCO approval in accordance with PUCO's CCB order.<sup>45</sup>

### **CCB regulatory assets**

The bill requires an EDU or NGC to maintain a record of recoverable CCB costs as regulatory assets. The bill provides that such regulatory assets will be recovered in the EDU's or NGC's next rate case application under current law.<sup>46</sup>

### **CCB Program billing report**

The bill requires PUCO, not later than one year after the effective date of the CCB rules, to issue a CCB report to the standing committees of the Ohio House of Representatives and Senate with primary responsibility for utility legislation. The report must detail the status of the CCB Program and must also include:

- Statistics for the number of consumers who shop for retail electric and natural gas service;
- The number of and description of consumer complaints;
- The number of billing disputes and service terminations;
- Any other information needed to determine whether modifications to CCB qualifications or requirements are necessary to improve shopping for retail electric and natural gas service in the state.<sup>47</sup>

### **Penalties**

The bill allows for PUCO to impose penalties on a supplier that violates any program provision, rule, or requirement, subject to notice and a hearing. The potential penalties are:

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<sup>44</sup> R.C. 4933.54(D); R.C. 121.95 to 121.953, not in the bill.

<sup>45</sup> R.C. 4933.56(A).

<sup>46</sup> R.C. 4909.18 and 4933.56(B).

<sup>47</sup> R.C. 4933.58.

- A suspension or revocation of the supplier's participation in the CCB Program or the supplier's PUCO certification;
- A fine in an amount determined and imposed by PUCO, on a supplier for marketing practices that are fraudulent, deceptive, or otherwise unlawful.

The bill imposes responsibility on a supplier for a fraudulent, deceptive, or other unlawful marketing acts performed by an agent of the supplier. The bill allows for PUCO to impose any of the above-described penalties on the supplier if the agent violates a provision of the program. Further, PUCO may impose penalties on EDUs and NGCs that violate any of the requirements of the rules adopted as described above.<sup>48</sup>

## **Electric and natural gas supplier certification**

The bill requires PUCO to establish rules to require electric services companies (ESCs) and CRNG suppliers to maintain financial assurances sufficient to protect customers, EDUs, and NGCs from default. The rules must also specifically allow EDUs and NGCs to set reasonable standards for its security and the security of its customers through financial requirements set in its tariffs. With respect to CRNG suppliers, the new provisions for financial assurances replaces the current law provision allowing for a performance bond sufficient to protect NGCs and their customers.

Under current law, an ESC is defined as an electric light company engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a CRES in Ohio, and includes a power marketer, power broker, aggregator, or independent power producer, but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent. A retail natural gas supplier is defined as any person that is, on a for-profit or not-for-profit basis, in the business of supplying or arranging for the supply of a CRNG service to consumers that are not mercantile customers, and includes a marketer, broker, or aggregator, but excludes, for example, an NGC and a municipal utility.

For purposes of these provisions only, the bill excludes a power broker and aggregator from the definition of ESC, and broker and aggregator from the definition of retail natural gas supplier. The bill specifies further that a regulatory restriction contained in the financial assurances rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.<sup>49</sup>

## **Consumer protections**

### **Small commercial customers of electric service**

The bill extends consumer protections already established in current law to small commercial customers and to all other customers. Current law extends these consumer protections to "consumers in this state" without specifying which customers or specifically excluding certain customer classes. The bill defines "small commercial customer" as a customer

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<sup>48</sup> R.C. 4933.59.

<sup>49</sup> R.C. 4928.01(A)(9), 4928.08(B)(2) and (3) and (F), and 4929.20(A)(2) and (3) and (E); R.C. 121.95 to 121.953 and 4929.01(N), not in the bill.



that receives electric service pursuant to a nonresidential tariff if the customer's demand for electricity does not exceed 25 kilowatts within the last 12 months, but excludes any customer that does one or both of the following:

- Manages multiple electric meters and, within the last 12 months, the electricity demand for at least one of the meters is 25 kilowatts or more;
- Has, at the customer's discretion, aggregated the demand for the customer-managed meters.<sup>50</sup>

### **Notice of CRES and CRNG service supplier rate changes**

The bill requires CRES suppliers that offer residential customers or small commercial customers a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate, to send two notices to each such customer that enters into such a contract. The bill also imposes this same requirement on CRNG service suppliers that offer such contracts to residential or nonmercantile commercial customers. The bill requires these notices to contain all the following:

- 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;
- PUCO's website, as a comparison tool, that lists rates offered by other CRES suppliers or CRNG service suppliers (whichever is applicable);
- A statement explaining that appearing on each customer's bill is a price-to-compare notice that lists the EDU's SSO for CRES suppliers, or, for CRNG service suppliers, the NGC's default rate for natural gas charged to customers who decide not to shop for a competitive supplier.<sup>51</sup>

### **Timing and method for sending notices**

The bill requires the notices be sent by standard U.S. mail as follows:

- The first notice must be sent not earlier than 90 days, and not later than 60 days, prior to the expiration of the fixed rate;
- The second notice must be sent not earlier than 45 days, and not later than 30 days, prior to the expiration of the fixed rate.<sup>52</sup>

### **Annual notice**

The bill requires a CRES supplier and a CRNG service supplier to provide annual notice, by standard U.S. mail, to each residential customer, small commercial customer, and nonmercantile

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<sup>50</sup> R.C. 4928.101; R.C. 4928.10, not in the bill.

<sup>51</sup> R.C. 4928.102(A) and 4929.221(A).

<sup>52</sup> R.C. 4928.102(B) and 4929.221(B).

commercial customer (whichever is applicable) that has entered into a contract with a supplier that has converted to a variable rate upon the contract's fixed rate expiring. The bill further requires this notice to inform the customer that the customer is currently subject to a variable rate and that other fixed rate contracts are available.<sup>53</sup>

### **PUCO rulemaking**

The bill requires PUCO, not later than 150 days after the bill's effective date, to adopt rules to implement the notice provisions described in the above sections, which must at minimum include the following requirements:

- The notice uses clear and unambiguous language to enable the customer to make an informed decision;
- To design the notices in a way to ensure that they cannot be confused with marketing materials.

The bill specifies further that a regulatory restriction contained in the notice rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.<sup>54</sup>

### **Customer account information**

The bill requires PUCO adopt rules to ensure an EDU and NGC processes a customer's change in CRES supplier or CRNG service supplier (whichever is applicable) by using customer account information (CAI). Under the bill, CAI is defined as a unique EDU or NGC number or other customer identification number used by the EDU or NGC to identify a customer and the customer's account record.

The bill further provides that a customer who consents to a change of supplier cannot be required to provide CAI to the supplier if the customer provides a valid form of government-issued identification issued to the customer or a sufficient alternative form of identification that allows the supplier to establish the customer's identity accurately.

The bill also specifies that a regulatory restriction contained in the CAI rules adopted as described above are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.<sup>55</sup>

## **Power Siting Board**

### **Time to issue a decision**

The bill requires the PSB to issue a decision on an application for a certificate of environmental compatibility and public need not later than 120 days after the application filing

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<sup>53</sup> R.C. 4928.102(C) and 4929.221(C).

<sup>54</sup> R.C. 4928.102(D) and (E) and 4929.221(D) and (E); R.C. 121.95 to 121.953, not in the bill.

<sup>55</sup> R.C. 4928.103 and 4929.222; R.C. 121.95 to 121.953, not in the bill.

date. If the PSB does not render a decision within the 120-time period, the application is deemed approved by operation of law and a certificate must be issued to the applicant.

The bill also reduces the time period within which the PSB must hold a hearing on a certificate application to not less than 45 nor more than 60 days after receiving the application, instead of not less than 60 nor more than 90 days in current law.

Continuing law, unchanged by the bill, prohibits the construction of an economically significant wind farm or major utility facility without a certificate of environmental compatibility and public need. Economically significant wind farm means wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of five or more megawatts but less than 50 megawatts, excluding: (1) any such wind farm in operation on June 24, 2008, and (2) one or more wind turbines and associated facilities that are primarily dedicated to providing electricity to a single customer at a single location and that are designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as measured at the customer's point of interconnection to the electrical grid.

A major utility facility means:

- Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 50 megawatts or more;
- An electric transmission line and associated facilities of a design capacity of 100 kilovolts or more;
- A gas pipeline that is greater than 500 feet in length, and its associated facilities, is more than nine inches in outside diameter and is designed for transporting gas at a maximum allowable operating pressure in excess of 125 pounds per square inch.

The definition excludes several types of facilities, including, for example, gas transmission lines over which an agency of the United States has exclusive jurisdiction, electric distributing lines and associated facilities as defined by PSB, and any manufacturing facility that creates byproducts that may be used in the generation of electricity as defined by PSB.<sup>56</sup>

### **Replacement of major utility facility certification**

The bill provides that the replacement of an existing major utility facility with a like facility, as determined by the PSB, constitutes the construction of a major utility facility that requires PSB certification. The bill also repeals the provision stating that a replacement with a like facility is not exempt from other state or local laws or regulations.<sup>57</sup>

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<sup>56</sup> R.C. 4906.01, 4906.04, 4906.07, and 4906.10; R.C. 4906.13 and 4906.20, not in the bill.

<sup>57</sup> R.C. 4906.04.

## Electric energy storage system

The bill prohibits an EDU from using any electric energy storage system to participate in the wholesale market, if the EDU purchased or acquired that system for distribution service.<sup>58</sup>

## Solar energy credit program repeal

The bill repeals the solar energy credit program, which allows qualifying solar energy resources to apply to the Ohio Air Quality Development Authority (OAQDA) for payments for credits received for generating electricity via solar energy. The provisions also allow for an EDU to collect a monthly charge from each retail customer in the state to produce a revenue requirement of \$20 million annually for disbursement through the credit program. For a more detailed discussion of the solar energy credit program and solar generation charge in current law, see [pages 4-5 of LSC's analysis of H.B. 128 of the 134<sup>th</sup> General Assembly](#) available on the General Assembly's website: <https://www.legislature.ohio.gov/>.

The bill prohibits an EDU, beginning on the bill's effective date, from collecting any charge that was authorized pursuant to the solar energy credit program provisions the bill repeals. The bill further prohibits OAQDA from directing the State Treasurer to remit, and the Treasurer is prohibited from remitting, any money from the Solar Generation Fund to owners or operators of qualifying solar resources.

The bill does not state what is to happen to the money already collected and deposited in the Solar Generation Fund.<sup>59</sup>

## Legacy generation resource recovery repeal

The bill repeals provisions of law that allow an EDU to collect a monthly charge from each customer in the state to recover costs for a legacy generation resource, such as the Ohio Valley Electric Company (LGR/OVEC). For a more detailed discussion of the LGR/OVEC provisions of current law being repealed see [pages 22-23 of LSC's analysis of H.B. 6 of the 133<sup>rd</sup> General Assembly](#) available on the General Assembly's website: <https://www.legislature.ohio.gov/>.

The bill allows, despite the repeal of the LGR/OVEC provisions, for a rider or cost recovery mechanism for an LGR/OVEC authorized under an EDU's ESP in effect on the bill's effective date to remain in effect until the termination date of the ESP. After the termination date of the ESP, the EDU cannot apply for, and PUCO cannot authorize, any rider or cost recovery mechanism for an LGR/OVEC.<sup>60</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 or the Supreme Court be promptly refunded to the customers who paid the charges. The PUCO must order these

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<sup>58</sup> R.C. 4928.149.

<sup>59</sup> R.C. 4928.64(B)(2) and 4928.645(C); R.C. 3706.40 to 3706.65 and 4928.642, repealed; Section 4(B).

<sup>60</sup> R.C. 4928.01(A)(41) and (42) and 4928.148, repealed; Section 4.

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 are later determined excessive, because they were collected pursuant to a PUCO-approved tariff. The bill makes clear that its refund requirement supersedes any provision of the Revised Code that would conflict.<sup>61</sup>

## **Self-generators**

The bill modifies the definition of “self-generator” in the CRES law to include an entity that owns or hosts an electric generation facility on property the entity controls and a facility that is installed or operated by a third party under a contract, including a lease, purchase power agreement, or other service contract. Current law defines a “self-generator” as an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner’s consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.<sup>62</sup>

## **Mercantile customer self-power systems**

The bill allows for the creation of mercantile customer self-power systems, which provide electric generation service to one or more mercantile customers. A mercantile customer self-power system may be owned or operated by a mercantile customer member, group of mercantile customer members, or an entity that is not a mercantile customer member. The PUCO is directed to adopt rules to implement the mercantile customer self-power systems law.

A “mercantile customer self-power system” is one or more electric generation facilities, electric storage facilities, or both, along with any associated facilities, that meet all of the following:

- Produce electricity primarily for the consumption of a mercantile customer member or a group of mercantile customer members;
- Connect directly to the mercantile customer member’s side of the electric meter;
- Deliver electricity to the mercantile customer member’s side of the electric meter without the use of an EDU’s distribution system or transmission system;
- Is located on a property owned or controlled by a mercantile customer member or the entity that owns or operates the mercantile customer self-power system.

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<sup>61</sup> R.C. 4905.321; 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).

<sup>62</sup> R.C. 4928.01(A)(32).

A “mercantile customer member” is a mercantile customer connected to a mercantile customer self-power system.<sup>63</sup>

### **Electric light company exemption**

The bill exempts a self-generator or mercantile customer self-power system from being considered an “electric light company” under the public utilities law. Current law already exempts a self-generator from being an electric light company solely for purposes of the CRES law.<sup>64</sup>

The PUCO regulates public utilities, including electric light companies, with certain exceptions (such as electric light companies that operate not-for-profit and municipally owned or operated public utilities).

Further, continuing law grants each “electric supplier” (defined as an electric light company, including nonprofit corporations, but excluding municipal and other local electric service providers) the exclusive right to furnish electric load to all electric load centers located within its PUCO-approved certified territory. Electric suppliers are also prohibited from providing electric service for electric load centers located within the territory of another electric load center.<sup>65</sup>

By exempting the facilities described above from being an “electric light company” it appears that these facilities would not be subject to general PUCO oversight or the prohibition against providing electric service within an electric supplier’s certified territory.

### **Electric generation property tax exemption**

Under continuing law, local property taxes extend to the tangible personal property (TPP) of electric companies. The bill exempts from taxation TPP used to generate electricity, but only if the TPP is placed into service on or after December 31 of the year the exemption takes effect.

The bill’s changes apply to electric companies, rural electric companies (i.e., electric cooperatives, and “energy” companies. An “energy” company is one that generates, transmits, or distributes electricity from a facility that (a) has a nameplate capacity of more than 250 kilowatts and (b) consists of wind turbines, solar panels, other renewable energy source, clean coal, or cogeneration technology.<sup>66</sup>

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<sup>63</sup> R.C. 4928.73.

<sup>64</sup> R.C. 4905.03, 4928.01(A)(7), and 4928.73.

<sup>65</sup> R.C. 4905.02, 4905.04, and 4933.81 to 4933.90, not in the bill.

<sup>66</sup> R.C. 5727.01, 5727.031, 5727.06, and 5727.11.

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## HISTORY

Action	Date
Introduced	01-22-25

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