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Office

H.B. 772
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 772's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Rep. Romanchuk

Local Impact Statement Procedure Required: No

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Highlights

- The bill repeals select provisions enacted in H.B. 6 of the 133rd General Assembly. Specifically, it:
 - Repeals the Nuclear Generation Fund and the Renewable Generation Fund, both of which are custodial funds;
 - Repeals the charges scheduled to be implemented in January 2021 to raise \$170 million per year from electric distribution utility customers;
 - Repeals the nonbypassable statewide charge paid by retail electric customers for utilities' ownership stakes in the Ohio Valley Electric Corporation (OVEC);
 - Restores the administrative duties of the Ohio Air Quality Development Authority to those that existed prior to H.B. 6, reducing its future expenditures for administering the custodial funds and payments to electric generating facilities.
- The bill provides refunds to customers for amounts collected in 2020 for two separate charges authorized by H.B. 6 – the statewide OVEC charge and the decoupling mechanism.
- The bill affects utility compliance costs, so state agencies and local governments, as utility customers, will likely see reductions in costs of purchasing electric utility services.
- The bill declares itself to be an emergency measure; therefore, it goes into immediate effect upon its enactment.

Detailed Analysis

The bill makes numerous changes to codified laws governing electric distribution utilities (EDUs). Ohio's six EDUs offer essential electric service to consumers under an electric security plan (ESP) approved by the Public Utilities Commission of Ohio (PUCO). These state-regulated plans enable EDUs to recover prudently incurred costs of providing service. Additional state policy objectives are often recovered in the form of "riders" on customers' monthly electric bill. The principal fiscal effect of this bill is on EDUs' compliance costs and the associated riders that recoup the costs of these policy directives from ratepayers.

Table 1 below summarizes by category the three prominent utility compliance costs affected by H.B. 772. The three primary changes are to (1) the Clean Air Fund rider, (2) the Legacy Generation rider, and (3) all varieties of decoupling mechanisms, including the iteration authorized by H.B. 6. A brief description of each category will follow. Following that are sections explaining the fiscal effects on the Ohio Air Quality Development Authority and on the Low Income Heating Assistance Program.

EDU	Annual Savings for All Customers	Monthly Savings for Typical Residential Customer
AEP Ohio	\$100,241,994	\$2.67
Cleveland Electric Illuminating	\$48,769,019	\$2.44
Dayton Power and Light	\$26,266,651	\$1.43
Duke Energy Ohio	\$44,779,806	\$2.10
Ohio Edison	\$53,570,245	\$1.87
Toledo Edison	\$18,478,371	\$2.22
Total	\$292,106,087	\$2.26

Note: Annual amounts in table are estimated using calendar year 2020 rider collections. Estimated annual savings amounts, especially those related to the decoupling mechanisms could vary substantially in future years.

H.B. 772 does not affect H.B. 6 changes to the energy efficiency savings requirements, the renewable portfolio standard, the property tax treatment of smaller (i.e., under 20 megawatts) renewable energy projects, or specialty rate schedules that EDUs implemented for county fairs and agricultural societies.

Financial support for nuclear power plants and solar farms

H.B. 772 repeals the legal basis for a new customer charge that would otherwise begin in January 2021. The prospective charge, which is referred to as the "Clean Air Fund rider" in PUCO proceedings, would financially support two Ohio-based nuclear power plants and certain utility-scale, solar energy electric generating facilities. Under H.B. 772, customers would not be charged up to \$170 million per year, from 2021 through 2027. The intended recipients would not

receive these proceeds, which would have been dedicated to the nuclear power plants (\$150 million) and qualifying solar farms (\$20 million). Proceeds of this rider were to be deposited into two custodial funds established by H.B. 6, prior to distribution to these intended recipients: the Nuclear Generation Fund and the Renewable Generation Fund. The two funds are eliminated by H.B. 772. Table 2 estimates the reduction in compliance costs paid by Ohio’s six EDUs under the bill. The table also identifies the reduction in the amount paid by the typical residential customer for this rider, which H.B. 6 capped at 85¢ per month.

Table 2. Estimated Savings and Monthly Impact of Repealing the Clean Air Fund Rider		
EDU	Total Annual Rider Reductions, All Customer Classes	Monthly Residential Rider
AEP Ohio	\$54,481,884	85¢
Cleveland Electric Illuminating	\$27,113,621	85¢
Dayton Power and Light	\$18,021,197	85¢
Duke Energy Ohio	\$26,485,346	85¢
Ohio Edison	\$33,348,937	85¢
Toledo Edison	\$10,549,014	85¢
Total	\$170,000,000	85¢

Source: PUCO Case No. 20-1143-EL-UNC

Ohio Valley Electric Corporation

Prior to H.B. 6, three EDUs separately obtained PUCO approval for an ESP that included funding for the Ohio Valley Electric Corporation (OVEC). The rider charged customers for the deficits that EDUs incurred through their ownership stakes in OVEC. H.B. 6 repealed these separately imposed riders and replaced them with a single rider applicable to all six EDU territories. Beginning in January 2020, the new “Legacy Generation rider” applied a statewide rate to various customer classes (e.g., residential) in every territory. Current law enables EDUs to incur recoverable costs (via the Legacy Generation rider) through December 31, 2030. H.B. 772 repeals the legal basis for the Legacy Generation rider, and prohibits PUCO from reinstating the previous OVEC-specific riders.

H.B. 772 requires the “the full amount of revenues collected from customers through an amount, charge, mechanism, or rider established under [R.C.] 4928.148” be promptly refunded upon the enactment of the bill. This language refers to proceeds collected under the Legacy Generation rider, which are separately grouped within the “Current Law” columns in Table 3. The total savings estimated in Table 1 incorporate the savings from repealing these current law amounts. The bill also prohibits the previous OVEC riders from being “revived, reimposed, reestablished, or in any way reinstated.” The prospective impact of that prohibition is best summarized under the “Previous Structure” columns in Table 3.

Table 3. OVEC-specific Charges for 2020 With and Without H.B. 6

EDU	Current Law (H.B. 6)		Previous Structure (Prior to H.B. 6)	
	Total EDU Costs	Residential Rider	Total EDU Costs	Residential Rider
AEP Ohio	\$24,627,280	58¢	\$45,699,165	\$1.18
Cleveland Electric Illuminating	\$12,328,309	58¢	\$0	\$0
Dayton Power and Light	\$8,245,454	58¢	\$11,235,620	74¢
Duke Energy	\$12,013,254	58¢	\$20,636,853	91¢
Ohio Edison	\$15,516,982	58¢	\$0	\$0
Toledo Edison	\$4,840,360	58¢	\$0	\$0
Total	\$77,571,639	58¢	\$77,571,639	63¢

Notes: Both scenarios assume Ohio EDUs responsible for 33.83% of OVEC's \$229.3 million annual deficit. Current law reflects Legacy Generation rider terms approved by PUCO in Case No. 19-1808-EL-UNC. Previous structure reflects OVEC-specific riders formerly authorized by PUCO, as adjusted for the 2020 revenue requirement. Monthly residential rider assumes consumption of 833 kilowatt-hours (kWh).

Background

OVEC operates two coal-fueled plants along the Ohio River and each of its “sponsoring companies” are entitled to their specified share of all net power and energy produced by OVEC’s two generating stations. In return, the sponsoring companies must pay their share of all of OVEC’s costs resulting from the ownership, operation, and maintenance of its generation and transmission facilities. Among the dozen sponsoring companies are three Ohio EDUs: Ohio Power Company (19.93% ownership stake), Duke Energy Ohio (9.0%), and Dayton Power and Light Company (4.9%).

Prior to H.B. 6, three EDUs received their OVEC-specific costs through riders with various dates for their scheduled expiration: October 31, 2023 (Dayton Power and Light), May 31, 2024 (AEP Ohio; the Ohio Power Company is a subsidiary of AEP), and May 31, 2025 (Duke Energy Ohio). H.B. 772 prohibits EDUs from reimposing the previous riders or any other OVEC-related cost recovery mechanism.

In theory, the three separate OVEC riders and the Legacy Generation rider operate as a “hedge.” In the event that OVEC’s revenues exceed its costs for a given year, ratepayers would have received a credit rather than a charge. The hedge aspect, as proposed by EDUs, suggests that OVEC’s costs are largely stable and uncorrelated with the price of natural gas, which is a large determinant of Ohio’s on-peak power prices. Since the riders were implemented, they have only yielded charges to customers.

Revenue decoupling mechanism

H.B. 772 repeals the legal basis for all varieties of revenue decoupling charges. Revenue decoupling mechanisms preceded H.B. 6, and several EDUs gained PUCO approval for an iteration prior to the enactment of H.B. 6. The three FirstEnergy EDUs¹ jointly applied for their own decoupling mechanism in 2018, but were denied approval by PUCO.² Later, these three EDUs gained approval for a unique decoupling mechanism codified by H.B. 6. Table 4 summarizes the annual rider collections forecasted by EDUs in their most current filings. All of these decoupling mechanisms would be repealed under H.B. 772, and the amounts collected by the three FirstEnergy EDUs would be promptly refunded per Section 6 of the bill.

EDU	Total Rider Collections in 2020, All Customer Classes	Monthly Residential Rider in 2020
AEP Ohio	\$21,132,830	\$1.24
Cleveland Electric Illuminating	\$9,327,089	\$1.01
Dayton Power and Light	\$0	\$0
Duke Energy Ohio	\$6,281,206	67¢
Ohio Edison	\$4,704,326	44¢
Toledo Edison	\$3,088,997	79¢
Total	\$44,534,448	83¢

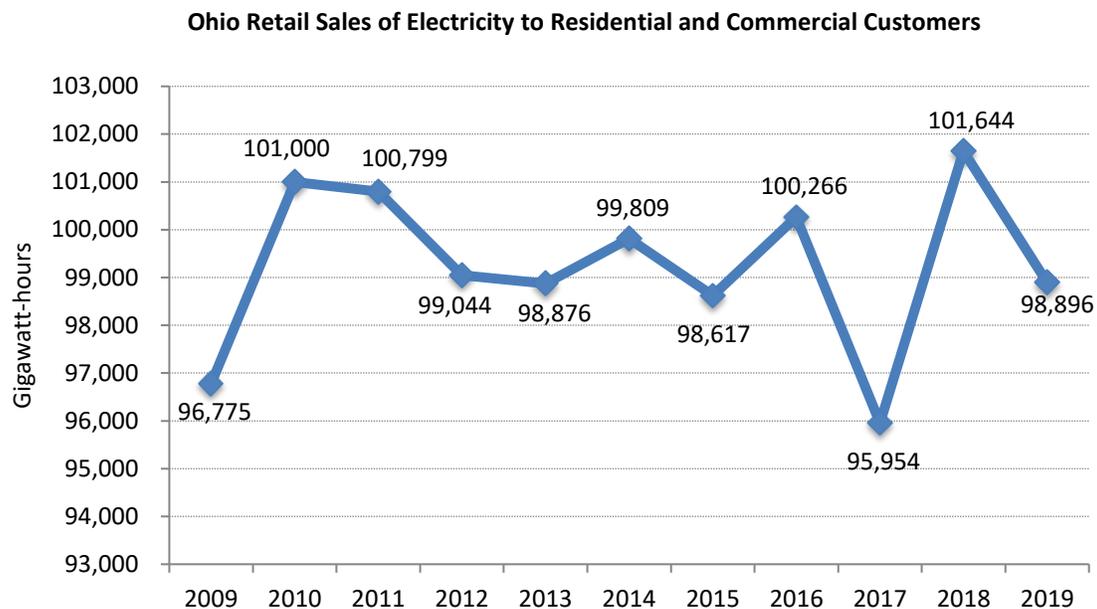
Source: PUCO Case Nos. 19-2080-EL-ATA (FirstEnergy's EDUs), 20-0530-EL-RDR (AEP Ohio), and 20-0574-EL-RDR (Duke Energy Ohio)

In general, a decoupling mechanism separates a utility's revenues from the volume of electricity it delivers. Consequently, a decoupling mechanism ensures that an EDU's revenue target³ is reached, regardless of how much electricity is sold. Energy efficiency and peak demand reduction requirements began in 2009, upon the enactment of S.B. 221 of the 127th General Assembly. Decoupling riders have subsequently been implemented for EDUs' residential and commercial customer base. As seen in the chart below, Ohio's overall consumption of electricity attributable to these consumers is largely flat, if not trending slightly downward once adjusted for weather (such an adjustment is excluded from the graph). For this reason, a decoupling mechanism often manifests as a customer charge, but it could provide a credit if consumption exceeds the baseline target. In practice, all decoupling riders have only yielded charges rather than credits for residential customers since their inception.

¹ Specifically, Cleveland Electric Illuminating, Ohio Edison, and Toledo Edison.

² Refer to PUCO Case No. 17-0334-EL-ATA.

³ The type of revenue target can vary, whether based on revenue per customer or an aggregate amount.



As of this writing, the H.B. 6 decoupling rider (or “Conservation Support rider”) only applies to the three FirstEnergy EDUs. Future receipts are measured against its 2018 base distribution revenues. AEP Ohio administers a “Pilot Throughput Balancing Adjustment Rider,” which uses the 12-month period ending May 31, 2011, as the baseline year for its revenue target (on a per-customer basis). Duke Energy’s customers pay a “Pilot Distribution Decoupling Rider,” which also uses a revenue-per-customer basis, but instead uses a baseline year ending March 31, 2017. The decoupling riders of AEP Ohio and Duke Energy further differentiate from the H.B. 6 version because they cap cost increases. PUCO limits annual increases attributable to those riders at 3% per customer class (and potential rate decreases are uncapped). As seen in Table 4, the five EDUs project that their decoupling riders will raise \$44.5 million in 2020 from residential and commercial customers.

FirstEnergy

The three FirstEnergy utilities operate under the same base distribution rates imposed in 2009, and this rate freeze will continue through May 31, 2024. Whereas PUCO previously required these EDUs to file an application for new base distribution rates by that date, the Commission later commented in November 2019 that such a requirement is “no longer necessary or appropriate.” Although PUCO made this pronouncement in a separate regulatory matter, the declaration has implications for the decoupling mechanism authorized by H.B. 6. The rider only expires once a utility gains PUCO approval for its “next” application of base distribution rates.

Given the other characteristics of the H.B. 6 decoupling rider, FirstEnergy lacks financial incentive to file such an application, as the rider will likely collect larger amounts after 2020. The Ohio Manufacturers’ Association submitted testimony to the House Select Committee on Energy Policy and Oversight suggesting ratepayers in the three FirstEnergy territories will collectively pay between \$76 million and \$83 million per year in decoupling charges. The anticipated collections for 2020 are suppressed by the presence of the energy efficiency and peak demand reduction (EE/PDR) rider, which separately recovers certain lost distribution revenues. Once this EE/PDR charge expires, a portion of its proceeds will instead be recovered through the decoupling rider.

However, none of this will occur under H.B. 772, because the bill eliminates all decoupling mechanisms.

Dayton Power and Light

In a development unrelated to H.B. 6, Dayton Power and Light filed a “Notice of Withdrawal” of its “ESP III” application in November 2019. PUCO approved the withdrawal and reverted Dayton Power and Light to its earlier “ESP I” rate plan. In doing so, several riders were removed, including the “Distribution Decoupling Rider.” The utility reported that the rider would have raised \$13.8 million in 2019.⁴ As of this date, no decoupling rider is levied on its customers.

Ohio Air Quality Development Authority

The bill eliminates the Ohio Air Quality Development Authority’s (OAQDA) role in administering payments to nuclear power plant stations and select solar energy electric generating facilities. Since enactment of H.B. 6, OAQDA reports that to date approximately \$250,000 has been spent on preparing to handle the agency’s responsibilities under H.B. 6. Furthermore, OAQDA estimates around \$200,000 to \$250,000 in continuing annual operating costs to administer the Nuclear Generation Fund and Renewable Generation Fund under its purview, costs that would be avoided under H.B. 772. As of this writing, however, OAQDA has not hired any new staff as a result of H.B. 6. A hiring process was initiated in January 2020, but it was subsequently put on hold due to the hiring freeze involved with the cost-saving measures put in place because of the COVID-19 pandemic.

Home Energy Assistance Program

The bill repeals permanent law included in H.B. 6 that would have required the Development Services Agency (DSA) to use 25%⁵ of federal Home Energy Assistance Program (HEAP) funds for weatherization services beginning in FY 2021. The fiscal effect is that more federal funding received by DSA for HEAP will be used for the program’s main purpose (providing energy assistance to low-income households) instead of for weatherization services. Both purposes will still be funded, however. Beyond FY 2021, the ultimate share of funding for the two purposes will depend on federal program requirements, other state law (typically the main operating budget bill enacted each General Assembly specifies exact or maximum amounts for weatherization using HEAP funds in those two fiscal years), and DSA’s administration of the program.

Emergency provision

H.B. 772 declares itself an emergency measure; therefore, it goes into immediate effect upon its enactment.

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⁴ FERC Form 1, filed by Dayton Power and Light for the year ending December 31, 2019. The company reported a decoupling deferral equal to \$13.8 million as a regulatory asset, but noted that this was subject to a petition pending before PUCO in Case No. 20-0140-EL-AAM.