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## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Wilkin

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### SUMMARY

- Repeals electric security plans (ESPs) under which an electric distribution utility (EDU) provides customers in its certified territory a standard service offer (SSO) of retail electric services.
- Requires EDUs to offer SSOs under a market rate offer (MRO) as generally provided in current law.
- Permits EDUs to implement economic development and job retention programs under an MRO and to apply to the Public Utilities Commission to recover nonbypassable prudently incurred costs of those programs and allocate the costs across all customers of the EDU and EDUs in the same holding company system.
- Allows ESPs in effect on the bill's effective date to continue in accordance with applicable PUCO orders and rules and any law that existed prior to the bill's effective date until (1) the ESPs' specified termination dates or (2) for ESPs without a specified termination date, not later than January 1, 2024.
- Prohibits EDUs from extending an ESP or applying for a new ESP after it terminates.
- Changes provisions of ongoing law to reflect the repeal of ESPs by removing references to ESPs or, for certain provisions, applying the ESP law to these provisions as they existed before the bill's effective date.

### DETAILED ANALYSIS

#### Repeal of electric security plans (ESPs)

The bill repeals electric security plans (ESPs), one of the options in the competitive electric service law under which an electric distribution utility (EDU) provides customers a standard service offer (SSO). And, the bill amends the law to require, rather than permit, EDUs to offer SSOs under market rate offers (MROs). EDUs currently may provide an SSO through an

ESP or an MRO. However, no EDUs currently are operating under an MRO. The ESP repeal means that, under the bill, an MRO is an EDU's only option for offering an SSO to customers.

An SSO is an offer of competitive retail electric services necessary to maintain essential electric service that EDUs are required to provide consumers. The bill retains that description but removes the word "competitive."

Under ongoing law, an EDU is required to provide an SSO to customers within its certified territory. The customers are those who have not (1) shopped for an electric generation supplier or (2) obtained a new supplier after the customers' supplier defaulted.<sup>1</sup>

### **Status of existing ESPs**

Although the bill repeals the ESP law, the bill does not terminate ESPs that are in effect on the bill's effective date. Under the bill, an EDU with an existing ESP may continue the plan as follows:

- Until the plan's termination date, if the ESP has a specified termination date;
- Until not later than January 1, 2024, if the ESP does not have a specified termination date.<sup>2</sup>

The ESPs that continue must operate in accordance with all applicable Public Utilities Commission (PUCO) orders and rules and any law that existed and applied to the ESP prior to the bill's effective date. The bill prohibits an EDU from extending an ESP after its termination, and prohibits the EDU from applying for a new ESP.<sup>3</sup>

### **Changes to reflect ESP repeal**

Because it eliminates ESPs, the bill repeals the provisions of ESP law, including those regarding the PUCO application and approval process for ESPs; application requirements; the supply and pricing of electric generation services; and extensive cost recovery provisions allowed under ESPs, including, for example, recovery of prudently incurred costs and allowances for construction work in progress.<sup>4</sup>

Under the bill, cross references to the ESP law are removed from several sections of ongoing law, including provisions of the corporate separation law; governmental aggregation of retail electric loads by townships, counties, and municipal corporations; the securitization of certain phase-in costs of an EDU and the issuance of phase-in-recovery bonds under a PUCO-issued financing order; and the requirements for winning bids under the competitive

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<sup>1</sup> R.C. 4928.141, 4928.142(A), and 4928.143; R.C. 4928.03, not in the bill.

<sup>2</sup> Section 3(A)(1).

<sup>3</sup> Section 3(A)(2).

<sup>4</sup> R.C. 4928.141 and 4928.143.

procurement process for electric service for percentage of income payment plan program customers.<sup>5</sup>

### **Possible clarity issues**

The bill removes, from an exception clause in the corporate separation law, the cross references to Revised Code sections 4928.31 to 4928.40, the sections pertaining to the transition to competitive retail electric service. Although the transition to competitive service has already taken place, these sections are nominally in effect. Removing the cross reference to them from Revised Code Section 4928.17 may cause confusion in the section's statutory construction.<sup>6</sup>

The bill does not remove or amend all references to ESPs in the governmental aggregation law – specifically the provision allowing a legislative authority under an aggregation to elect not to receive any standby service under an ESP. Because two references to ESPs remain unchanged in the bill, it is unclear how standby service would be affected.<sup>7</sup>

### **Transitional provisions for existing ESPs**

#### **SSO as default service**

The bill specifies that, if a customer's chosen electric supplier fails to supply that electric service within an EDU's certified territory, the customer's service will default to the SSO service offered by the EDU either under an MRO or the ESP *as* that *ESP* existed prior to the bill's effective date and that is still in effect. Although not expressly stated by the bill, once an ESP that is in effect prior to the bill's effective date terminates, the default SSO service will be the SSO service offered under an MRO, since the bill specifies that ESPs may not continue after they terminate.

Under the competitive retail electric service law, a retail electric customer in Ohio may select a provider to supply the customer's electric generation service. If the provider fails to provide that service to customers within an EDU's certified territory, then the provider's customers will default to the EDU's SSO until the customers choose an alternate provider to supply electric generation service. Under ongoing law a supplier is deemed to have failed to provide electric service if any of four specified conditions are met, one of which is that the supplier's certification as a competitive electric supplier has been suspended, conditionally rescinded, or rescinded.<sup>8</sup>

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<sup>5</sup> R.C. 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542.

<sup>6</sup> R.C. 4928.17(A).

<sup>7</sup> R.C. 4928.20(J).

<sup>8</sup> R.C. 4928.14 and Section 3(A)(2); R.C. 4928.03, not in the bill.

## **Phase-in of EDU price or rate**

Current law allows PUCO to authorize any just and reasonable phase-in of an EDU rate or price as PUCO determines is necessary to ensure rate or price stability for consumers. Under the bill, such an order applies to ESP rates or prices under the ESP law as it existed prior to the bill's effective date. Ongoing law, unchanged by the bill, permits PUCO, for rate or price stability, to establish a phase-in of an EDU rate or price under an MRO as necessary.<sup>9</sup>

## **Legacy generation resource**

The bill retains the prohibition against an EDU using the output from a legacy generation resource in supplying its SSO under an ESP, but specifies that the prohibition applies to ESPs under the ESP law as it existed prior to the effective date of the bill's ESP repeal.

Ongoing law (1) authorizes PUCO to establish a nonbypassable rate mechanism for a legacy generation resource (including Ohio Valley Electric Corporation (OVEC) facilities), and (2) requires that an EDU bid the output from a legacy generation resource into the wholesale market. The bill retains the prohibition against an EDU using the output of a legacy generation resource in supplying an SSO under an MRO.<sup>10</sup>

## **Electric securitization and financing orders**

Under the law governing the securitization of certain phase-in costs of an EDU and the issuance of phase-in-recovery bonds under a PUCO-issued financing order, "phase-in costs" include costs authorized by PUCO to be securitized or deferred as regulatory assets under ratemaking proceedings and proceedings for MROs and ESPs. The bill modifies "phase-in costs" to (1) include costs securitized or deferred as regulatory assets under MRO, and ESP proceedings as the law existed prior to the effective date of the bill and (2) exclude certain other costs authorized under an ESP and the ESP law as it existed prior to the effective date of the bill or certain electric generating facility costs approved for recovery according to the SSO, MRO, and ESP law as it existed prior to the effective date of the bill.

The bill specifies that financing order application information required by PUCO and restated or incorporated by reference that an EDU filed with PUCO under the law governing SSOs, MROs, and ESPs may include filings made under the law as it existed prior to the effective date of the bill.

Under the electric securitization law, parties that participated in proceedings before PUCO in which phase-in costs were approved under MROs, and ESPs, have standing to participate in proceedings for financing orders. The bill amends this provision to include proceedings for phase-in cost approvals under the law governing SSOs, MROs, and ESPs as they existed prior to the bill's effective date.<sup>11</sup>

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<sup>9</sup> R.C. 4928.144.

<sup>10</sup> R.C. 4928.148(B).

<sup>11</sup> R.C. 4928.23(J), 4928.231(C), and 4928.232(A).

## **Percentage of income payment plan program**

The percentage of income payment plan program law specifies that winning bids selected during the process to procure the competitive retail electric service supply for low-income customers must reduce the cost of the program relative to the otherwise applicable SSO under an MRO and ESP. The bill changes the provision to apply to an MRO or an otherwise applicable ESP under the ESP law as it existed prior to the effective date of the bill.<sup>12</sup>

## **Changes affecting the market rate offer (MRO)**

The bill generally retains the MRO process under current law, which provides for (1) the EDU to file an application with PUCO that meets requirements regarding access to the transmission grid, a market monitoring function, and a published source of pricing information prior to initiating a competitive bidding process for the 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 the above requirements, (4) the EDU to initiate its competitive bidding process if the PUCO determines all those requirements are met, and (5) PUCO to select the EDU's MRO from the least-cost bid winner or winners.<sup>13</sup>

## **Economic and job retention programs**

In a provision newly applied to an MRO under the bill, an EDU is permitted to implement economic development and job retention programs under an SSO offered through an MRO. This provision currently applies to ESPs. The bill also allows the EDU to apply to PUCO to recover nonbypassable prudently incurred costs of these programs and allocate the program costs across all classes of customers of the utility and those of EDUs in the same holding company system.<sup>14</sup>

## **Eliminated MRO provisions**

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

- The 150-day competitive bidding process delay imposed because of the following circumstances:
  - The EDU remedied a deficiency in its MRO application and competitive bidding process that the PUCO has approved;
  - An ESP application was filed simultaneously with the MRO application.
- The blended price requirements for EDUs that directly owned operating generating facilities that were used and useful as of July 31, 2008.

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<sup>12</sup> R.C. 4928.542(B).

<sup>13</sup> R.C. 4928.142(A) to (C).

<sup>14</sup> R.C. 4928.143.

- 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>15</sup>

## PUCO rules

The bill permits PUCO to amend its rules to meet the requirements of continuing an existing ESP until its termination, to repeal ESPs, and to meet the changes made by the bill.<sup>16</sup>

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## HISTORY

Action	Date
Introduced	05-18-21

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<sup>15</sup> R.C. 4928.142(B)(3) and (D) to (F).

<sup>16</sup> Section 3(B).