

As Reported by the House Public Utilities Committee

135th General Assembly

Regular Session

2023-2024

H. B. No. 226

Representatives Robb Blasdel, Jarrells

Cosponsors: Representatives Grim, Isaacsohn, Hillyer, Troy, Brennan, Miller, A.

A BILL

To amend sections 4909.05 and 4909.15 and to enact 1
sections 4909.173 and 4909.174 of the Revised 2
Code to permit water-works companies to bear the 3
costs for replacing certain customer-owned water 4
service lines. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4909.05 and 4909.15 be amended 6
and sections 4909.173 and 4909.174 of the Revised Code be 7
enacted to read as follows: 8

Sec. 4909.05. As used in this section: 9

(A) A "lease purchase agreement" is an agreement pursuant 10
to which a public utility leasing property is required to make 11
rental payments for the term of the agreement and either the 12
utility is granted the right to purchase the property upon the 13
completion of the term of the agreement and upon the payment of 14
an additional fixed sum of money or title to the property vests 15
in the utility upon the making of the final rental payment. 16

(B) A "leaseback" is the sale or transfer of property by a 17
public utility to another person contemporaneously followed by 18

the leasing of the property to the public utility on a long-term 19
basis. 20

(C) The public utilities commission shall prescribe the 21
form and details of the valuation report of the property of each 22
public utility or railroad in the state. Such report shall 23
include all the kinds and classes of property, with the value of 24
each, owned, held, or, with respect to a natural gas, water- 25
works, or sewage disposal system company, projected to be owned 26
or held as of the date certain, by each public utility or 27
railroad used and useful, or, with respect to a natural gas, 28
water-works, or sewage disposal system company, projected to be 29
used and useful as of the date certain, for the service and 30
convenience of the public. Such report shall contain the 31
following facts in detail: 32

(1) The original cost of each parcel of land owned in fee 33
and in use, or, with respect to a natural gas, water-works, or 34
sewage disposal system company, projected to be owned in fee and 35
in use as of the date certain, determined by the commission; and 36
also a statement of the conditions of acquisition, whether by 37
direct purchase, by donation, by exercise of the power of 38
eminent domain, or otherwise; 39

(2) The actual acquisition cost, not including periodic 40
rental fees, of rights-of-way, trailways, or other land rights 41
held, or, with respect to a natural gas, water-works, or sewage 42
disposal system company, projected to be held as of the date 43
certain, by virtue of easements, leases, or other forms of 44
grants of rights as to usage; 45

(3) The original cost of all other kinds and classes of 46
property used and useful, or, with respect to a natural gas, 47
water-works, or sewage disposal system company, projected to be 48

used and useful as of the date certain, in the rendition of 49
service to the public. Subject to section 4909.052 of the 50
Revised Code, such original costs of property, other than land 51
owned in fee, shall be the cost, as determined to be reasonable 52
by the commission, to the person that first dedicated or 53
dedicates the property to the public use and shall be set forth 54
in property accounts and subaccounts as prescribed by the 55
commission. To the extent that the costs of property comprising 56
a coal research and development facility, as defined in section 57
1555.01 of the Revised Code, or a coal development project, as 58
defined in section 1551.30 of the Revised Code, have been 59
allowed for recovery as Ohio coal research and development costs 60
under section 4905.304 of the Revised Code, none of those costs 61
shall be included as a cost of property under this division. 62

(4) The cost of property constituting all or part of a 63
project leased to or used by the utility, or, with respect to a 64
natural gas, water-works, or sewage disposal system company, 65
projected to be leased to or used by the utility as of the date 66
certain, under Chapter 165., 3706., 6121., or 6123. of the 67
Revised Code and not included under division (C) (3) of this 68
section exclusive of any interest directly or indirectly paid by 69
the utility with respect thereto whether or not capitalized; 70

(5) In the discretion of the commission, the cost to a 71
utility, in an amount determined to be reasonable by the 72
commission, of property constituting all or part of a project 73
leased to the utility, or, with respect to a natural gas, water- 74
works, or sewage disposal system company, projected to be leased 75
to the utility as of the date certain, under a lease purchase 76
agreement or a leaseback and not included under division (C) (3) 77
of this section exclusive of any interest directly or indirectly 78
paid by the utility with respect thereto whether or not 79

capitalized; 80

(6) The cost of the replacement of water service lines 81
incurred by a water-works company under section 4909.173 of the 82
Revised Code and the water service line replacement 83
reimbursement amounts provided to customers under section 84
4909.174 of the Revised Code; 85

(7) The proper and adequate reserve for depreciation, as 86
determined to be reasonable by the commission; 87

~~(7)~~(8) Any sums of money or property that the company may 88
have received, or, with respect to a natural gas, water-works, 89
or sewage disposal system company, is projected to receive as of 90
the date certain, as total or partial defrayal of the cost of 91
its property; 92

~~(8)~~(9) The valuation of the property of the company, 93
which shall be the sum of the amounts contained in the report 94
pursuant to divisions (C) (1) to ~~(5)~~(6) of this section, less 95
the sum of the amounts contained in the report pursuant to 96
divisions ~~(C) (6)~~(C) (7) and ~~(7)~~(8) of this section. 97

The report shall show separately the property used and 98
useful to such public utility or railroad in the furnishing of 99
the service to the public, the property held by such public 100
utility or railroad for other purposes, and the property 101
projected to be used and useful to or held by a natural gas, 102
water-works, or sewage disposal system company as of the date 103
certain, and such other items as the commission considers 104
proper. The commission may require an additional report showing 105
the extent to which the property is used and useful, or, with 106
respect to a natural gas, water-works, or sewage disposal system 107
company, projected to be used and useful as of the date certain. 108

Such reports shall be filed in the office of the commission for 109
the information of the governor and the general assembly. 110

Sec. 4909.15. (A) The public utilities commission, when 111
fixing and determining just and reasonable rates, fares, tolls, 112
rentals, and charges, shall determine: 113

(1) The valuation as of the date certain of the property 114
of the public utility used and useful or, with respect to a 115
natural gas, water-works, or sewage disposal system company, 116
projected to be used and useful as of the date certain, in 117
rendering the public utility service for which rates are to be 118
fixed and determined. The valuation so determined shall be the 119
total value as set forth in division ~~(C) (8)~~ (C) (9) of section 120
4909.05 of the Revised Code, and a reasonable allowance for 121
materials and supplies and cash working capital as determined by 122
the commission. 123

The commission, in its discretion, may include in the 124
valuation a reasonable allowance for construction work in 125
progress but, in no event, may such an allowance be made by the 126
commission until it has determined that the particular 127
construction project is at least seventy-five per cent complete. 128

In determining the percentage completion of a particular 129
construction project, the commission shall consider, among other 130
relevant criteria, the per cent of time elapsed in construction; 131
the per cent of construction funds, excluding allowance for 132
funds used during construction, expended, or obligated to such 133
construction funds budgeted where all such funds are adjusted to 134
reflect current purchasing power; and any physical inspection 135
performed by or on behalf of any party, including the 136
commission's staff. 137

A reasonable allowance for construction work in progress 138
shall not exceed ten per cent of the total valuation as stated 139
in this division, not including such allowance for construction 140
work in progress. 141

Where the commission permits an allowance for construction 142
work in progress, the dollar value of the project or portion 143
thereof included in the valuation as construction work in 144
progress shall not be included in the valuation as plant in 145
service until such time as the total revenue effect of the 146
construction work in progress allowance is offset by the total 147
revenue effect of the plant in service exclusion. Carrying 148
charges calculated in a manner similar to allowance for funds 149
used during construction shall accrue on that portion of the 150
project in service but not reflected in rates as plant in 151
service, and such accrued carrying charges shall be included in 152
the valuation of the property at the conclusion of the offset 153
period for purposes of division ~~(C) (8)~~ (C) (9) of section 4909.05 154
of the Revised Code. 155

From and after April 10, 1985, no allowance for 156
construction work in progress as it relates to a particular 157
construction project shall be reflected in rates for a period 158
exceeding forty-eight consecutive months commencing on the date 159
the initial rates reflecting such allowance become effective, 160
except as otherwise provided in this division. 161

The applicable maximum period in rates for an allowance 162
for construction work in progress as it relates to a particular 163
construction project shall be tolled if, and to the extent, a 164
delay in the in-service date of the project is caused by the 165
action or inaction of any federal, state, county, or municipal 166
agency having jurisdiction, where such action or inaction 167

relates to a change in a rule, standard, or approval of such agency, and where such action or inaction is not the result of the failure of the utility to reasonably endeavor to comply with any rule, standard, or approval prior to such change.

In the event that such period expires before the project goes into service, the commission shall exclude, from the date of expiration, the allowance for the project as construction work in progress from rates, except that the commission may extend the expiration date up to twelve months for good cause shown.

In the event that a utility has permanently canceled, abandoned, or terminated construction of a project for which it was previously permitted a construction work in progress allowance, the commission immediately shall exclude the allowance for the project from the valuation.

In the event that a construction work in progress project previously included in the valuation is removed from the valuation pursuant to this division, any revenues collected by the utility from its customers after April 10, 1985, that resulted from such prior inclusion shall be offset against future revenues over the same period of time as the project was included in the valuation as construction work in progress. The total revenue effect of such offset shall not exceed the total revenues previously collected.

In no event shall the total revenue effect of any offset or offsets provided under division (A) (1) of this section exceed the total revenue effect of any construction work in progress allowance.

(2) A fair and reasonable rate of return to the utility on

the valuation as determined in division (A) (1) of this section;	197
(3) The dollar annual return to which the utility is	198
entitled by applying the fair and reasonable rate of return as	199
determined under division (A) (2) of this section to the	200
valuation of the utility determined under division (A) (1) of	201
this section;	202
(4) The cost to the utility of rendering the public	203
utility service for the test period used for the determination	204
under division (C) (1) of this section, less the total of any	205
interest on cash or credit refunds paid, pursuant to section	206
4909.42 of the Revised Code, by the utility during the test	207
period.	208
(a) Federal, state, and local taxes imposed on or measured	209
by net income may, in the discretion of the commission, be	210
computed by the normalization method of accounting, provided the	211
utility maintains accounting reserves that reflect differences	212
between taxes actually payable and taxes on a normalized basis,	213
provided that no determination as to the treatment in the rate-	214
making process of such taxes shall be made that will result in	215
loss of any tax depreciation or other tax benefit to which the	216
utility would otherwise be entitled, and further provided that	217
such tax benefit as redounds to the utility as a result of such	218
a computation may not be retained by the company, used to fund	219
any dividend or distribution, or utilized for any purpose other	220
than the defrayal of the operating expenses of the utility and	221
the defrayal of the expenses of the utility in connection with	222
construction work.	223
(b) The amount of any tax credits granted to an electric	224
light company under section 5727.391 of the Revised Code for	225
Ohio coal burned prior to January 1, 2000, shall not be retained	226

by the company, used to fund any dividend or distribution, or 227
utilized for any purposes other than the defrayal of the 228
allowable operating expenses of the company and the defrayal of 229
the allowable expenses of the company in connection with the 230
installation, acquisition, construction, or use of a compliance 231
facility. The amount of the tax credits granted to an electric 232
light company under that section for Ohio coal burned prior to 233
January 1, 2000, shall be returned to its customers within three 234
years after initially claiming the credit through an offset to 235
the company's rates or fuel component, as determined by the 236
commission, as set forth in schedules filed by the company under 237
section 4905.30 of the Revised Code. As used in division (A) (4) 238
(b) of this section, "compliance facility" has the same meaning 239
as in section 5727.391 of the Revised Code. 240

(B) The commission shall compute the gross annual revenues 241
to which the utility is entitled by adding the dollar amount of 242
return under division (A) (3) of this section to the cost, for 243
the test period used for the determination under division (C) (1) 244
of this section, of rendering the public utility service under 245
division (A) (4) of this section. 246

(C) (1) Except as provided in division (D) of this section, 247
the revenues and expenses of the utility shall be determined 248
during a test period. The utility may propose a test period for 249
this determination that is any twelve-month period beginning not 250
more than six months prior to the date the application is filed 251
and ending not more than nine months subsequent to that date. 252
The test period for determining revenues and expenses of the 253
utility shall be the test period proposed by the utility, unless 254
otherwise ordered by the commission. 255

(2) The date certain shall be not later than the date of 256

filing, except that it shall be, for a natural gas, water-works, 257
or sewage disposal system company, not later than the end of the 258
test period. 259

(D) A natural gas, water-works, or sewage disposal system 260
company may propose adjustments to the revenues and expenses to 261
be determined under division (C) (1) of this section for any 262
changes that are, during the test period or the twelve-month 263
period immediately following the test period, reasonably 264
expected to occur. The natural gas, water-works, or sewage 265
disposal system company shall identify and quantify, 266
individually, any proposed adjustments. The commission shall 267
incorporate the proposed adjustments into the determination if 268
the adjustments are just and reasonable. 269

(E) When the commission is of the opinion, after hearing 270
and after making the determinations under divisions (A) and (B) 271
of this section, that any rate, fare, charge, toll, rental, 272
schedule, classification, or service, or any joint rate, fare, 273
charge, toll, rental, schedule, classification, or service 274
rendered, charged, demanded, exacted, or proposed to be 275
rendered, charged, demanded, or exacted, is, or will be, unjust, 276
unreasonable, unjustly discriminatory, unjustly preferential, or 277
in violation of law, that the service is, or will be, 278
inadequate, or that the maximum rates, charges, tolls, or 279
rentals chargeable by any such public utility are insufficient 280
to yield reasonable compensation for the service rendered, and 281
are unjust and unreasonable, the commission shall: 282

(1) With due regard among other things to the value of all 283
property of the public utility actually used and useful for the 284
convenience of the public as determined under division (A) (1) of 285
this section, excluding from such value the value of any 286

franchise or right to own, operate, or enjoy the same in excess 287
of the amount, exclusive of any tax or annual charge, actually 288
paid to any political subdivision of the state or county, as the 289
consideration for the grant of such franchise or right, and 290
excluding any value added to such property by reason of a 291
monopoly or merger, with due regard in determining the dollar 292
annual return under division (A) (3) of this section to the 293
necessity of making reservation out of the income for surplus, 294
depreciation, and contingencies, and; 295

(2) With due regard to all such other matters as are 296
proper, according to the facts in each case, 297

(a) Including a fair and reasonable rate of return 298
determined by the commission with reference to a cost of debt 299
equal to the actual embedded cost of debt of such public 300
utility, 301

(b) But not including the portion of any periodic rental 302
or use payments representing that cost of property that is 303
included in the valuation report under divisions (C) (4) and (5) 304
of section 4909.05 of the Revised Code, fix and determine the 305
just and reasonable rate, fare, charge, toll, rental, or service 306
to be rendered, charged, demanded, exacted, or collected for the 307
performance or rendition of the service that will provide the 308
public utility the allowable gross annual revenues under 309
division (B) of this section, and order such just and reasonable 310
rate, fare, charge, toll, rental, or service to be substituted 311
for the existing one. After such determination and order no 312
change in the rate, fare, toll, charge, rental, schedule, 313
classification, or service shall be made, rendered, charged, 314
demanded, exacted, or changed by such public utility without the 315
order of the commission, and any other rate, fare, toll, charge, 316

rental, classification, or service is prohibited. 317

(F) Upon application of any person or any public utility, 318
and after notice to the parties in interest and opportunity to 319
be heard as provided in Chapters 4901., 4903., 4905., 4907., 320
4909., 4921., and 4923. of the Revised Code for other hearings, 321
has been given, the commission may rescind, alter, or amend an 322
order fixing any rate, fare, toll, charge, rental, 323
classification, or service, or any other order made by the 324
commission. Certified copies of such orders shall be served and 325
take effect as provided for original orders. 326

Sec. 4909.173. (A) As used in this section and section 327
4909.174 of the Revised Code: 328

(1) "Customer-owned water service line" means the water 329
service line connected to the water-works company's water 330
service line at the curb of a customer's property. 331

(2) "Water-works company" means an entity defined under 332
division (G) of section 4905.03 of the Revised Code that is a 333
public utility under section 4905.02 of the Revised Code. 334

(B) A water-works company may do any of the following: 335

(1) Replace lead customer-owned water service lines 336
concurrently with a scheduled utility main replacement project, 337
an emergency replacement, or company-initiated lead water 338
service line replacement program; 339

(2) Replace lead customer-owned water service lines when 340
mandated or ordered to replace such lines by law or a state or 341
federal regulatory agency; 342

(3) Replace customer-owned water service lines of other 343
composition when mandated or ordered to replace such lines by 344

law or a state or federal regulatory agency. 345

(C) If a water-works company replaces customer-owned water 346
service lines under this section, then the company shall include 347
the cost of the replacement of the water service lines, 348
including the cost of replacement of both company side and 349
customer-owned water service lines and the cost to evaluate 350
customer-owned water service lines of unknown composition, in 351
the valuation report of the property of the company as required 352
under division (C) (6) of section 4909.05 of the Revised Code for 353
inclusion in a rate case under this chapter. 354

(D) The water service customer who is responsible for the 355
customer-owned water service line that was replaced under this 356
section shall hold legal title to the replaced water service 357
line. 358

Sec. 4909.174. (A) A water-works company shall reimburse a 359
customer who replaces the customer's customer-owned water 360
service line, if both of the following occur: 361

(1) The company confirms that the customer-owned water 362
service line was composed of lead or other composition that was 363
mandated or ordered to be replaced by law or a state or federal 364
regulatory agency; 365

(2) The customer submits the reimbursement request to the 366
company not later than twelve months after the completion of the 367
water line replacement. 368

(B) A water-works company that provides a reimbursement to 369
a customer under this section shall include the reimbursement 370
amount in the valuation report of the property of the company as 371
required under division (C) (6) of section 4909.05 of the Revised 372
Code for inclusion in a rate case under this chapter. 373

Section 2. That existing sections 4909.05 and 4909.15 of 374
the Revised Code are hereby repealed. 375