



H.B. 76

127th General Assembly
(As Introduced)

Reps. R. Hagan, Brady, Koziura, Skindell, Yates, Yuko, Foley

BILL SUMMARY

- Requires an electric utility or electric services company to derive at least a portion of its electricity supply from specified types of renewable energy sources, including new sources.
- Prescribes the minimum percentage of a utility's or company's calendar year electricity supply that must come from renewable energy sources, beginning in 2009 at 3% of its total, annual retail electric sales and topping at 20% in 2023 and subsequent years.
- Specifies renewable energy supply purchases, photovoltaic system subsidies, net metering system connections, and renewable energy credit use as activities qualifying as compliance with the renewable energy requirement.
- Authorizes the Public Utilities Commission to establish a system of renewable energy credits and to enforce the renewable energy requirement.

CONTENT AND OPERATION

Renewable energy requirement

(R.C. 4905.88(A)(2) and (B)(1); 4928.01(A)(9) and (11) not in the bill)

The bill establishes a renewable energy requirement for each electric utility or electric services company that provides retail electric service in Ohio. Under definitions from current electric restructuring law, an "electric utility" generally is a for-profit business that supplies at least a noncompetitive retail electric service in Ohio. An "electric services company" is a for-profit or not-for-profit business that supplies or arranges for the supply of only a competitive retail electric service 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. Both terms exclude a self-generator to the extent it consumes or sells for resale electricity it produces.

Under the bill's renewable energy requirement, a utility or company must derive at least a portion of its electricity supply from specified types of renewable energy sources. As described below, the bill prescribes what qualifies as renewable energy, what portion of a utility's or company's calendar year supply must come from renewable energy sources, and what activities qualify as compliance with the renewable energy requirement. It also specifies duties of the Public Utilities Commission (PUCO) regarding the renewable energy requirement.

Renewable energy sources

(R.C. 4905.88(A)(1) and (3))

For purposes of its renewable energy requirement, the bill defines "renewable energy" as (1) energy from biomass that is available on a renewable basis, (2) geothermal energy, (3) energy produced by a photovoltaic technology system, (4) wind energy, or (5) energy from a hydroelectric facility that produces less than 20 megawatts of electricity and is certified on or after two years following the bill's effective date as a low-impact hydropower facility by the Low-Impact Hydropower Institute (see **COMMENT**). "Renewable energy" expressly excludes nuclear energy and energy produced from coal, natural gas, oil, propane, or any other fossil fuel.

The bill defines "biomass" as any organic matter, including any organic material from a plant that is grown (1) to be used exclusively in electricity production and (2) on land that was in crop production on the bill's effective date or is protected under the Federal Conservation Reserve Program, provided the planting does not adversely affect the water quality protection, soil erosion prevention, or wildlife habitat enhancement purposes of that federal program. "Biomass" also includes any solid, nonhazardous, cellulosic waste that is derived from waste pallets, crates, dunnage, or landscape or right-of-way tree trimmings; from agricultural sources including orchard tree crops, vineyards, grains, legumes, or sugar; or from any crop byproducts or residues. "Biomass" specifically excludes forestry resources; agricultural resource waste necessary for maintaining soil fertility or for preventing erosion; municipal or unsegregated waste or garbage; or paper that is commonly recycled.

Minimum supply percentages

(R.C. 4905.88(A)(4) and (B)(3); 4928.01(A)(31) and (32) not in the bill)

The bill specifies the minimum, annual amount of an electric utility's or electric services company's electricity supply that must be derived from renewable energy sources beginning with calendar year 2009. This minimum is calculated by multiplying the utility's or company's total retail electric sales for a given calendar year by a specified percentage for that calendar year. Under the bill, a utility's or company's total retail electric sales for a calendar year is determined by calculating, in kilowatt hours (kWh), the average of its retail electric sales in Ohio during each of the immediately preceding three calendar years.

The applicable calendar year percentages are 3% in 2009, 5% in 2010, 6% in 2011, 8% in 2012, and 10% in 2013, with the minimum percentage increasing by 1% for each subsequent year until the percentage reaches 20% in 2023. After 2023, the minimum calendar year percentage remains a constant 20%.

Additionally, the bill requires that all of calendar year 2009's minimum percentage be derived from one or more new renewable energy sources. For subsequent years through 2023, at minimum the entire calendar year's percentage *increase* from the prior calendar year must be derived from one or more new sources.

Under the bill, a photovoltaic system subsidy is deemed a new source if the electric utility or electric services company pays it out in the calendar year. A renewable energy credit is a new source if the utility or company acquires it that year. And, a renewable energy system is a new source if it is first connected in the calendar year to a facility or system owned, operated, or controlled by an electric utility. The bill identifies the following as "renewable energy systems": (1) a photovoltaic system, (2) a facility or energy system using renewable energy to generate electricity that is transmitted or distributed through a power line connected to a facility or system of an electric light company, which line is either a dedicated line or is shared with not more than one generating facility or system that generates electricity from nonrenewable energy, and (3) a net metering system having renewable energy as its primary energy source. Under Ohio law not in the bill, such a "net metering system" is a facility for the production of electrical energy that uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell; is located on a customer-generator's premises; operates in parallel with the electric utility's transmission and distribution facilities; and is intended primarily to offset part or all of the customer-generator's requirements for electricity. And "net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric

service provider and the electricity generated by a customer-generator, which is fed back to the electric service provider's system.

Qualifying compliance activities

(R.C. 4905.88(B)(2) and (C))

The bill specifies the following types of activities that can be counted toward the utility's or company's compliance with the bill's renewable energy requirement.

Renewable energy supply purchases. The acquisition of electricity supply from one or more renewable energy systems located in Ohio can fulfill the bill's renewable energy requirement.

In the case of a renewable energy system that is a net metering system, compliance can be achieved by counting all of the electricity the system generates in the pertinent calendar year.

Photovoltaic system subsidies. An additional compliance option is to reduce the energy consumption of one or more Ohio retail electric customers by subsidizing all or part of the acquisition or installation of one or more photovoltaic technology systems in the customer's Ohio residence. Compliance with the renewable energy requirement is determined by comparing any reduction in the number of kWh sold to the customer in the pertinent calendar year with the number of kWh sold to the customer in the calendar year prior to the system's installation.

Renewable energy credit use. Another compliance option is for a utility or company to use one or more, or a portion of, any renewable energy credits that it has purchased at a negotiated price or has earned or otherwise acquired, to the extent such credits are available under a system established by PUCO rules. Any such rules must specify the amount and allowable uses of a credit and may specify the requirements and procedures for the sale of a credit.

Role of the PUCO

Rulemaking

(R.C. 4905.88(D); 4928.06(F) not in the bill)

In addition to authorizing the PUCO, as described above, to establish a system of renewable energy credits, the bill requires that the PUCO adopt rules requiring the filing of an annual report by each electric utility and electric services company that is subject to the bill's renewable energy requirement. The report

must contain such information as the PUCO requires relating to the utility's or company's compliance with the requirement. It must be in the form and filed at such time after the applicable calendar year as the PUCO prescribes. The rules may authorize the report to be included within an annual report of gross receipts and retail sales that the utility or company files under current electric restructuring law.

The PUCO also may adopt such other rules as it considers necessary to promote renewable energy usage in Ohio by defining the renewable energy requirement with regard to available technologies, or to ensure compliance with the requirement, including rules requiring additional reports.

Enforcement

(R.C. 4905.88(E))

The bill extends the PUCO's current complaint law by authorizing the PUCO, by complaint of any person or its own initiative, to determine whether an electric utility or electric services company has failed to comply with the renewable energy requirement as to the amount or source of renewable energy provided.

It further authorizes an exclusive remedy for such noncompliance, notwithstanding any provision of law to the contrary and after reasonable notice and opportunity for a hearing under the complaint law. That is, the PUCO may assess a forfeiture against the utility or company, in an amount the PUCO considers just and reasonable to ensure the utility's or company's compliance, considering also the gravity of the noncompliance, the utility's or company's prior history of noncompliance, and its good faith efforts to comply, including, as applicable, to verify the source of its supply.

COMMENT

According to its web site at <<http://www.lowimpacthydro.org/>>, "the Low Impact Hydropower Institute (LIHI) is a non-profit 501(c)(3) organization dedicated to reducing the impacts of hydropower generation through the certification of environmentally responsible, 'low impact' hydropower." Additional information about the Institute and its voluntary certification program can be found at <<http://www.lowimpacthydro.org/documents/faq.pdf>> and at other locations on its web site.

HISTORY

ACTION

DATE

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