



S.B. 221

127th General Assembly
(As Introduced)

Sen. Schuler (By request)

BILL SUMMARY

- Authorizes the Public Utilities Commission (PUCO) to return generally to pre-S.B. 3 (pre-Electric Restructuring Law) regulation of retail electric generation service if that regulation is necessary to implement the statutory state electric services policy.
- Revises and adds to the current objectives of state electric services policy enacted under S.B. 3.
- Prohibits an electric utility selling or transferring any generating facility it owns in whole or in part to any person without prior PUCO approval.
- Retains a standard service offer requirement for electric distribution utilities and newly prescribes the allowable nature of those offers as either an "electric security plan" or a "market rate option."
- Requires an electric security plan to include the basis of the valuation of the generating facilities to be used and the basis of the cost of rendering service using those facilities, as those bases are defined by PUCO rule or order.
- However, requires valuation to factor in a utility's transition revenues under S.B. 3 and facility depreciation; and specifically authorizes the inclusion of environmental compliance costs and the inclusion of construction costs of any new generating facility located in Ohio that the PUCO certifies the need for on the basis of resource planning projections developed in accordance with PUCO rules.
- Requires an electric distribution utility with a PUCO-approved electric security plan to file an energy delivery infrastructure modernization plan

or any plan providing for the utility's recovery of costs and a just and reasonable rate of return on such modernization.

- Regarding the bill's market rate option requires open, competitive bidding for generation supply and subjects approval of the option to various criteria in addition to those applicable to an electric security plan.
- Requires the PUCO to adopt rules prescribing advanced energy portfolio standards that will apply to the standard service offers of electric distribution utilities.
- Requires the PUCO to establish energy efficiency standards relating to the projected load growths of electric distribution utilities and authorizes rules providing for revenue decoupling.
- Requires the PUCO to establish carbon control planning requirements for generating facilities and to establish greenhouse gas emission reporting requirements.
- Adds the following to the types of air quality projects that can be funded by the Ohio Air Quality Development Authority (OAQDA) and declares that both qualify as facilities for the control of air and thermal pollution under Section 13, Article VIII, Ohio Constitution: property, devices, or equipment used in the manufacture and production of any equipment that qualifies as an air quality project; and property, devices, or equipment that reduce air contaminant emissions through the generation of electricity using sustainable resources.
- In the manner of its current authority to fund air quality projects, authorizes OAQDA to issue revenue bonds to fund specified types of advanced energy projects and declares that such projects qualify as air and thermal pollution control facilities under the Ohio Constitution.
- Grants OAQDA authority regarding programs to achieve best cost rates for state-owned buildings, facilities, and operations, state-supported colleges and universities, willing local governments, and willing school districts through pooled purchases of electricity and the financing of taxable or tax-exempt prepayment of commodities; and regarding programs to achieve optimal cost electricity for key industrial and energy-intensive sectors.

- Grants OAQDA authority regarding programs to achieve optimal cost financing for new electric generating facilities and regarding the siting, financing, construction, operation, and risk reduction for next-generation base load generating systems, including clean coal facilities with carbon capture or sequestration or advanced nuclear power plants.
- Grants OAQDA authority regarding energy efficiency incentives, sustainable resource energy installations, and research and development regarding sustainable energy.
- Requires the Department of Natural Resources, the Ohio Environmental Protection Agency, and the PUCO jointly by rule to develop an interim policy framework for regulating pilot and demonstration, carbon sequestration activities in Ohio or sequestration products produced in Ohio.
- Requires the PUCO to employ a Federal Energy Advocate to monitor Federal Energy Regulatory Commission and other federal activities and advocate on behalf of Ohio retail electric service consumers.

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CONTENT AND OPERATION

Authority for pre-S.B. 3 regulation

(R.C. 4905.31 and 4928.05(A)(1))

Current law enacted under the Electric Restructuring Law of S.B. 3 of the 123rd General Assembly (primarily, R.C. Chapter 4928.) prohibits municipal regulation of a competitive retail electric service¹ under R.C. Chapter 743., and prohibits the PUCO from regulating such a service under public utility law (R.C. Chapters 4901. to 4909., 4933., 4935., and 4963.) except as provided under the Restructuring Law, and as provided under certain existing statutes and then only to the extent related to service reliability and public safety.

The bill removes current law's prohibition regarding the PUCO and authorizes the PUCO to return to traditional regulation² of a competitive retail electric service. To do so, the PUCO must determine that that regulation is necessary to implement statutory electric services policy (see "State electric services policy," below, and **COMMENT 1**). As long as the PUCO does not return to traditional regulation, PUCO regulation of generation service apparently will continue as it is under current law except with respect to price regulation (see "Price regulation," below).

By way of background, "traditional regulation" addresses those facets of utility operation that affect the provision of utility services, for example, utility stock and bond issuance, mergers and acquisitions, and, of course, service pricing.

¹ For the purpose of this analysis, "competitive retail electric service" means electric generation service. By statutory declaration in current R.C. 4928.03, electric generation service is a competitive retail electric service. So are services provided by alternative generation suppliers: power marketing, power brokering, and customer aggregation. Current law (R.C. 4928.04) gives the PUCO authority to declare ancillary services, metering, and billing and collection services competitive services as well, but the PUCO has not exercised that authority, so those services remain noncompetitive services under the Restructuring Law. The bill does not amend or repeal any of these current law designations or authority. It also makes no changes in another major area of Electric Restructuring Law--tax policy applicable to electric utilities and electric services.

² A return to traditional regulation does not mean a return to pre-S.B. 3 regulation entirely, since S.B. 3 repealed certain provisions of traditional regulation, such as provisions authorizing an electric fuel component in rates and provisions addressing environmental compliance facilities of electric utilities, and amended other provisions.

Regarding such pricing, the PUCO, under a constant duty to balance the interests of utilities and consumers, determines the amount of revenue a utility needs to cover all its operating costs and earn a rate of return on its overall plant investment. The utility then sets its rates, subject to PUCO approval, so that they will provide it the opportunity to earn that revenue requirement. This "traditional ratemaking" uses a snapshot method of identifying operating costs and plant investment so that, by statute, their calculation is contemporary to the time period for which rates are being determined. In general, any time a utility desires to change its rates because of a change in its cost or investment status, it has to file a base rate case with the PUCO, in which not the specific change, but the utility's entire revenue, expense, cost, and investments are evaluated anew based on contemporary information.

Additional notable aspects of traditional regulation (which also relate to pricing under "*Energy security plan*," below) are that the valuation of utility assets and the determination of a utility's operating costs for rate-making purposes are specified in statute. For instance, under traditional regulation valuation must be done on an original cost basis,³ for facilities *used and useful* in rendering service, and using books and records maintained by the utility in accordance with a uniform system of accounts specified by the PUCO (R.C. 4905.13, 4909.05(C), and 4909.15(A)). Further, the rate-making process of traditional regulation generally requires the filing of a base rate case application under a statute (R.C. 4909.18) that prescribes certain hearing and other requirements. (This latter aspect of traditional regulation is also relevant to the bills' standard service offer provisions (see "*Approval process*," below).

State electric services policy

(R.C. 4928.02)

The bill revises and adds to the current objectives of the state electric services policy enacted under S.B. 3. Under both current law and the bill, the electric policy applies statewide. The PUCO is required to ensure that the policy is effectuated (R.C. 4928.06(A), not in the bill).

The current policy objectives, which have their genesis in S.B. 3's competitive generation market concept, are as follows: (1) ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, (2) ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier,

³ As opposed to some other basis, for example, original cost less depreciation or replacement cost new.

price, terms, conditions, and quality options they elect to meet their respective needs, (3) ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities, (4) encourage innovation and market access for cost-effective supply- and demand-side retail electric service, (5) encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service, (6) recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment, (7) ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, (8) ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power, and (9) facilitate the state's effectiveness in the global economy.

The bill changes these policy objectives by adding five new objectives and modifying three of the current objectives. Specifically, objective (4) above is changed to read: "*encourage innovation and market access for cost-effective retail electric service including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure.*"

Objective (5) above is changed to read: "*encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language.*"

Objective (8) above is changed to read: "*ensure retail electric service consumers just and reasonable rates and protection against unreasonable sales practices, market deficiencies, and market power.*"

The following new objectives are added to the state electric services policy: (1) preclude imbalances in knowledge and expertise among parties in a proceeding under the Restructuring Law to eliminate any appearance of disproportionate influence by any of those parties, (2) ensure that consumers and shareholders share the benefits of, as well as the responsibility for, electric utility investment in facilities supplying retail electric generation service, (3) provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates, (4) protect at-risk populations when considering the implementation of any new advanced energy technology, (5) encourage implementation of distributed generation across customer classes

through regular review and updating of rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering.

Divestiture policy

(R.C. 4928.17(E))

Current law enacted by S.B. 3 authorizes an electric utility to divest itself of any generating asset without prior PUCO approval. The bill prohibits an electric utility selling or transferring any generating facility it owns in whole or in part to any person without prior PUCO approval. (Prior to S.B. 3, an electric utility, like any other public utility, was subject to policy and a process regarding such prior PUCO approval under R.C. 4905.48 (not in the bill). PUCO approval authority under the bill does not reference that statute.)

Price regulation

(R.C. 4928.14 and 4928.141)

By way of background, S.B. 3 in effect repealed traditional price regulation for electric generation service and declared that the price of generation service would be competitively market-determined starting January 1, 2001. That is, incumbent electric utilities would no longer have state-established exclusive service territories for generation service,⁴ and other suppliers of generation services ("electric service companies," meaning generally, power marketers, power brokers, and aggregators) could compete to supply electricity to transmission/distribution customers of the incumbent utilities at each customer's option. Too, the incumbents were free to vie for each other's generation customers.-

Under S.B. 3, beginning generally in 2006 and currently, an electric utility's only regulated duty regarding generation service is to provide a "standard service offer" that assures the constant availability of a firm supply of electricity to (1) any of its distribution customers that have never chosen an alternate generation supplier and (2) customers that did choose but returned, if only briefly, to the utility because their supplier defaulted on its contract.⁵ In general, for various

⁴ Although such exclusive territories continued as to other components of electric service, such as distribution (R.C. 4933.81 et seq.).

⁵ More fully, a customer can return under current law to (the standard service offer of) its incumbent utility if the customer's supplier (1) has defaulted on its contract, (2) is in receivership, (3) has filed for bankruptcy, (4) is no longer capable of providing the service, (5) is unable to provide delivery to transmission or distribution facilities for such

reasons, the standard service offers of incumbent utilities over time became, instead of an "essential service fall-back" offer, *the* generation service offer for most of their distribution customers.

Current law enacted under S.B. 3 contemplates that a utility's standard service offer generation price will be "market-based" (not necessarily meaning market-determined) or else will be determined by competitive bidding, but not if the PUCO determines "at any time that a competitive bidding process is not required [because] other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed."

Since the time S.B. 3's standard service offer requirement took effect, the incumbent utilities have operated under various standard service offers that were developed by settlement among parties and approved by the PUCO as meeting S.B. 3's standard service offer requirement. These standard service offers are typically referred to as "rate stabilization plans." The current rate stabilization plans of the incumbent utilities are scheduled to expire at the end of 2008, except for Dayton Power & Light's, which is scheduled to expire at the end of 2010. Rate stabilization is an utility/PUCO-generated concept described as responding to an assessment that there is no effective competition in the electric generation market. The general nature of the utilities' rate stabilization plans is that they preserve generation prices at existing levels⁶ but allow prices to increase in relation to certain costs and under certain circumstances.

The bill retains the standard service offer requirement for electric utilities, but changes the allowable nature of those offers. In that regard, the bill authorizes two types of standard service offers: an "electric security plan" and a "market rate option." It further states that the bill does not preclude PUCO approval of a standard service offer similar to one currently in effect.

Electric security plan. An electric security plan must include the basis of the valuation of the specific generating facilities to be used in providing retail electric generation service and the basis of the cost of rendering generation service

reasonable period of time as the PUCO may specify by rule, or (6) has had its PUCO certification suspended, conditionally rescinded, or rescinded (R.C. 4928.14(F)).

⁶ Generally meaning, at the level of the utility's pre-2000 price of electricity, determined through an unbundling process, which required the price of generation to be what remained after all other electric service components were removed from the bundled price for electric service that reflected the vertical integration of Ohio electric utilities pre-S.B. 3. Those bundled prices had not changed since the utilities' last rate cases, which generally were in the late 1980s and early 1990s.

using those facilities. The bill provides that the PUCO must define those valuation and cost bases by rule or order. However, the valuation of facilities must factor in the extent to which the utility received transition revenues under S.B. 3⁷ (R.C. 4928.40) and the extent to which the facilities have been depreciated over time.

Further, prices under an electric security plan may include amounts for specified costs, including, but not limited to, (1) environmental compliance costs associated with the generating facilities and (2) costs incurred by the utility on or after January 1, 2009, in the construction of any generating facility that is located in Ohio and that, notwithstanding power siting law (Chapter 4906.) to the contrary, the PUCO determines and certifies the need for on the basis of resource planning projections developed in accordance with PUCO-prescribed policies and procedures.

Market rate option. The bill describes the market rate option as an option under which a utility's standard service offer prices periodically are determined through an open, competitive bidding process.

Approval criteria. Standard service offer approval, or modification and approval, requires that the PUCO make both of the following findings: (1) the offer and the prices it establishes are just and reasonable and in furtherance of the state electric service policy described above and (2) the utility is in compliance with the bill's contract filing requirement for the standard service offer proceeding (see "**Approval process**," below).

However, the bill additionally prohibits the PUCO approving a market rate option unless the utility demonstrates that (1) the relevant markets are subject to effective competition, (2) the utility does not impose unreasonable or discriminatory costs or undue burdens on generation service competition within its generation service territory, (3) the offer will not impose undue price increases on consumers, (4) the offer is reasonable on both a short- and long-term basis, and (5) power purchases supporting the offer are prudent and reasonable.

For the purpose of evaluating effective competition in (1) above, the PUCO must consider factors prescribed under S.B. 3, which include, but are not limited to, (1) the number and size of alternative providers of the service, (2) the extent to

⁷ "Transition revenues" refers to a source of revenue available to incumbent utilities, by application to the PUCO, for generation costs "unrecoverable in a competitive market" (R.C. 4928.40). Senate Bill 3 required the application to be in the form of a requisite transition plan that covered a number of issues relevant to utilities' monopoly position as providers of electric services and to their evolution to a competitive generation market. In actuality, transition plans consisted of negotiated settlements submitted for PUCO approval.

which the service is available from alternative suppliers in the relevant market, (3) the ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions, and (4) other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of suppliers of services (R.C. 4928.06(D)).

Also, regarding any standard service offer consisting of an electric security plan in an application filed by a utility that transferred all or part of its generation facilities to an affiliate, the commission, to the extent authorized by federal law, may consider power supply or generation service contracts or agreements between the utility and its affiliates or between the utility and the holding company owning or controlling the utility.

Approval process. The bill requires a utility to file an application with the PUCO setting forth its standard offer. Initially, such an application must be filed not later than six months after the bill's effective date.

Under the bill, the application is subject to such filing and procedural requirements as the PUCO must prescribe by rule or order. However, in a standard service offer proceeding, an electric distribution utility must file with the PUCO every contract or agreement between the utility or any of its affiliates and a consumer, electric services company, political subdivision, or any party to the proceeding, including any contract or agreement in effect on the filing date of the utility's initial standard service offer application. The bill requires that the details of the contract or agreement be made available as privileged information to intervenors in the proceeding. Additionally, the bill provides that PUCO rules may include transition rules necessary for the initial implementation of the bill's standard service offer requirement.

The bill expressly does not preclude a utility for which an electric security plan application has been approved by the PUCO from later filing an application for a market rate option standard service offer, or vice versa. But, if the PUCO disapproves a market rate option standard service offer filed in a utility's first application under the bill, the utility must then immediately file an application for approval of an electric security plan.

In an order approving a standard service offer, the PUCO must prescribe any requirements for the utility, as it considers necessary to implement the state policy and must provide the term of the offer and a schedule and the procedural and substantive terms and conditions for periodic PUCO review of the approved offer. In the case of an offer consisting of a market rate option, the review must provide for reconciliation of the standard service offer prices to ensure that they are just and reasonable and in furtherance of the state policy.

Approval effect. Regarding a utility's approved, initial standard service offer, the bill specifies that the offer takes effect on the date the PUCO specifies in its order. The bill further states that, on that specified date, the offer supersedes any prior authority granted by Ohio law under which the utility provided generation service.

Additionally, the bill states that nothing in its standard service offer provisions limits an electric distribution utility providing competitive retail electric (generation) service to electric load centers⁸ within the certified territory of another such utility.

Advance energy portfolio standards

(R.C. 4928.142)

The bill requires the PUCO to adopt rules prescribing advanced energy portfolio standards that will apply to the standard service offers of electric utilities. In adopting the rules, the PUCO must consider available technology, costs, job creation, and economic impacts. The rules must require evaluation of and encourage, where necessary, development and implementation of next-generation energy technologies, including, but not limited to, renewable energy sources, clean coal technology, advanced nuclear generation, fuel cells, and cogeneration.

The bill requires that the rules seek to achieve specified interim goals such that, by 2025, advanced energy technologies must provide 25% of a utility's standard service offer. At least half of the advanced energy the utility implements must be generated from renewable energy sources. The renewable sources must include solar power, with any remainder supplied by, but not limited to, any clean coal technology with carbon controls, an advanced nuclear plant, or a cogeneration project, the original construction of which is initiated after January 1, 2009. Additionally, at least half of the advanced energy implemented must be met through facilities located in Ohio.

Electric system modernization

(R.C. 4928.111)

The bill requires an electric utility with a PUCO-approved electric security plan to file with the PUCO a "long-term energy delivery infrastructure modernization plan or any plan providing for the utility's recovery of costs and a just and reasonable rate of return on such infrastructure modernization." The plan

⁸ Basically, an electric load center is the metered point of electricity delivery (R.C. 4928.01(A)(8) and 4933.81(E)).

must specify the initiatives the utility must take to improve electric service reliability by rebuilding, upgrading, or replacing utility infrastructure *and* generating facilities. The plan must be filed in an application under the traditional ratemaking law (R.C. 4909.18) and therefore subject to any applicable hearing and other requirements of that law.

Energy efficiency standards

(R.C. 4928.64)

The bill requires the PUCO to establish by rule energy efficiency standards applicable to electric distribution utilities. Under the rules, a utility must implement energy efficiency measures that will result in not less than 25% of projected growth in its electric load and not less than 10% of its total peak demand being achieved, by 2025, through those measures. The rules must include a requirement that an electric distribution utility provide a customer upon request with three years of consumption data in an accessible form. Additionally, the rules may provide for "decoupling." (Although not further described in the bill, this term usually refers to a policy that detaches utility earnings from amount of commodity sold.)

Greenhouse gas emissions, carbon control

(R.C. 4928.69)

The bill requires the PUCO to adopt rules establishing greenhouse gas⁹ emission reporting requirements (presumably applicable only to public utilities regulated by the PUCO). The rules must include participation in the Climate Registry. The Registry's web site describes the Registry as "a collaboration between states, provinces, and tribes aimed at developing and managing a common greenhouse gas emissions reporting system with high integrity that is

⁹ "[G]reenhouse gases allow sunlight to enter the atmosphere freely. When sunlight strikes the Earth's surface, some of it is reflected back towards space as infrared radiation (heat). Greenhouse gases absorb this infrared radiation and trap the heat in the atmosphere. ...Some of [the gases] occur in nature (water vapor, carbon dioxide, methane, and nitrous oxide), while others are exclusively human-made (like gases used for aerosols)....During the past 20 years, about three-quarters of human-made carbon dioxide emissions were from burning fossil fuels." From the U.S. Energy Information Administration, at <<http://www.eia.doe.gov/oiaf/1605/ggccebro/chapter1.html>>.

capable of supporting various greenhouse gas emissions reporting and reduction policies for its member states and tribes and reporting entities."¹⁰

The bill also requires the PUCO to adopt rules establishing carbon control planning requirements for each electric generating facility located in Ohio that emits greenhouse gases, including facilities in operation on the bill's effective date.

Carbon sequestration

(R.C. 1551.41)

The bill requires the Department of Natural Resources, the Ohio Environmental Protection Agency, and the PUCO, jointly by rule, to develop an interim policy framework for supervision and regulation by the agencies of pilot and demonstration, carbon sequestration activities located in Ohio and sequestration products produced in Ohio.

State revenue bonds

(R.C. 122.41, 122.451, 3706.01 through 3706.18, and 4905.40)

Current law authorizes the Ohio Air Quality Development Authority (OAQDA) to issue revenue bonds and notes, the proceeds of which can be used to fund the cost¹¹ of air quality projects. Funding can come in the form of an OAQDA loan or grant or can otherwise be paid from bond proceeds.

¹⁰ <<http://www.theclimateregistry.org/>>. According to the web site, as of August 9, 2007, Ohio is listed having jointed the Registry, along with all other states except Alaska, Texas, Louisiana, Mississippi, Arkansas, North Dakota, South Dakota, Nebraska, Kentucky, Indiana, and West Virginia. The Ohio contact listed on the site is the Director of Ohio EPA. The state's listing currently enables a utility's voluntary participation in the Registry.

¹¹ "Cost" means the cost of acquisition and construction, the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for such acquisition and construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal OAQDA office and sub-offices, the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements for such access roads, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than 18 months after completion of construction, engineering, expenses of research and development, the cost of any commodity contract, including related fees and expenses, legal expenses, plans,

The bill adds to the types of air quality projects that can be funded by the OAQDA. It also gives OAQDA new, identical, statutory authority to issue revenue bonds to fund advanced energy projects (see **COMMENT 2**). The latter also involves extending to advanced energy projects two existing statutory provisions relating to a Department of Development mortgage insurance program for air quality, wastewater, or solid wastes projects.

Air quality projects

Current law declares that "air quality projects" qualify as facilities for the control of air pollution and thermal pollution related to air under Section 13, Article VIII, Ohio Constitution (R.C. 3706.01(G); see also R.C. 3706.03(A)). That constitutional provision empowers state government to lend the state's aid and credit to private entities (by issuing of debt backed by revenues other than tax revenues) for the express purposes of controlling air, water, and thermal pollution or disposing of solid waste. The constitutional provision also states that,

except for facilities for pollution control or solid waste disposal, as determined by law, no guarantees or loans and no lending of aid or credit shall be made [by statute] for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The relationship between the constitutional provision and statute is that statute, subject to the limitations of the constitutional provision, designates OAQDA to implement the constitutional provision by funding air quality (air or thermal pollution) projects.

Under current statute, projects eligible for OAQDA funding are, in brief: (1) methods, or modifications or replacements of property, processes, devices, structures, or equipment, directed at air contaminants,¹² (2) property used for

specifications, surveys, studies, cost and revenue estimates, working capital, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing a project, administrative expense, and such other expense as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, including the amount authorized in the OAQDA bond resolution, the financing of the placing of such project in operation, and any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, preparation of plans and specifications, and other engineering services, or any other cost described above (R.C. 3706.01(I)).

¹² That is, methods, modifications, or replacements that remove, reduce, prevent, contain, alter, convey, store, disperse, or dispose of particulate matter, dust, fumes, gas, mist, smoke, noise, vapor, heat, radioactivity, radiation, or odorous substances, or substances

collecting, storing, treating, using, processing, or disposing of a by-product or solid waste resulting from a project described in (1), (3) motor vehicle inspection stations and station equipment, (4) ethanol or other biofuel facilities and facility equipment, (5) property, devices, or equipment that reduce emissions of air contaminants through improvements in energy efficiency or energy conservation, (6) research and development projects under the Ohio Coal Development Office, (7) property used for collecting, storing, treating, using, processing or disposing of a by-product or solid waste resulting from a project described in (6) or from the use of clean coal technology, excluding property used primarily for other subsequent commercial purposes, (8) property that is part of the FutureGen project¹³ or related to its siting, and (9) property or any system to be used for any of the purposes described in (1) to (8), whether another purpose is also served, and any property or system incidental to or that has to do with, or the end purpose of which is, any of (1) to (8) above.

The bill makes the following eligible as air quality projects and expands (9) above to include these new types of projects: (1) property, devices, or equipment necessary for the manufacture and production of any equipment that qualifies as an air quality project, and (2) property, devices, or equipment that reduce air contaminant emissions through the generation of electricity using sustainable resources. "Sustainable resources" include, but are not limited to, solar, wind, tidal or wave, biomass, biofuel, hydro, or geothermal resources. The bill declares that both of these new types of air quality projects qualify as facilities for the control of air pollution and thermal pollution related to air under Section 13, Article VIII, Ohio Constitution (R.C. 3706.01(G)).

Advanced energy projects

Under the bill, OAQDA's authority to fund advanced energy projects is the same as its authority to fund air quality projects. "Advanced energy projects" consist of methods or of modifications or replacements of property, processes, devices, structures, or equipment, regarding any of the following: (1) a coal-based generating facility that can control or prevent carbon dioxide emissions by at least 80% (compared to the emissions that would occur without its clean coal technology), (2) for advanced nuclear energy production, generation III

containing those contaminants, or that render them less noxious or reduce their concentration in the air (R.C. 3706.01(C) and (G)).

¹³ This project is a coal-fueled, zero-emissions power plant designed to prove the feasibility of producing electricity and hydrogen from coal and nearly eliminating carbon dioxide emissions through capture and permanent storage. The future site of the project has been narrowed by the U.S. Department of Energy to Texas or Illinois.

technology as defined by the Nuclear Regulatory Commission, other later technology, or "significant improvements to existing facilities," (3) electric generating fuel cells including, but not limited to, proton exchange membrane fuel cells, phosphoric acid fuel cells, molten carbonate fuel cells, or solid fuel cells, and (4) cogeneration technology using a heat engine or power station to generate electricity and useful heat simultaneously. An advanced energy project also includes any property or system to be used in whole or in part for (1) to (4) above, whether another purpose also is served, and any property or system incidental to or that has to do with, or the end purpose of which is, any of (1) to (4).

The bill declares that advanced energy projects for industry, commerce, distribution, or research, including public utility companies, qualify as facilities for the control of air pollution and thermal pollution related to air under Section 13, Article VIII, Ohio Constitution (R.C. 3706.03(A)).

Additional OAQDA authority

(R.C. 3706.04)

Current law lists a number of general powers of the OAQDA with respect to air quality projects, including, for example, adopting an official OAQDA seal, making loans and grants, acquiring or constructing property, engaging in certain competitive bidding, and receiving federal funds. The bill extends those same powers with respect to advanced energy projects funded by OAQDA.

Further, the bill establishes additional OAQDA authority (although the bill is not clear regarding how these new powers relate, if at all, to OAQDA bonds or bond proceeds). The bill authorizes OAQDA to develop, encourage, promote, support, and implement programs to achieve best cost rates for state-owned buildings, facilities, and operations, state-supported colleges and universities, willing local governments, and willing school districts through pooled purchases of electricity and the financing of taxable or tax-exempt prepayment of commodities. OAQDA additionally may develop, encourage, promote, support, and implement programs to achieve optimal cost electricity available to key industrial and energy-intensive sectors of Ohio's economy.

The bill also empowers OAQDA to develop, encourage, promote, support, and implement programs to achieve optimal cost financing for electric generating facilities to be constructed on or after January 1, 2009. And, it empowers OAQDA to lead, encourage, promote, and support siting,¹⁴ financing,

¹⁴ This apparently intends that OAQDA lead, encourage, promote, and support siting of such facilities before the Power Siting Board, if the facilities qualify as major utility facilities under power siting law.

construction, and operation for, and reduce the costs of associated risks of, early implementations of next-generation base load generating systems, including clean coal generating facilities with carbon capture or sequestration or advanced nuclear power plants.

Additional authority is granted for OAQDA to develop, encourage, and provide incentives for investments in energy efficiency; develop, encourage, promote, and support implementation in Ohio of sustainable resource energy installations; and engage in and coordinate state-supported energy research and development with respect to reliable, affordable, and sustainable energy in Ohio.

Federal energy advocate; RTO participation

(R.C. 4928.68)

The bill requires the PUCO to employ a Federal Energy Advocate to monitor the activities of the Federal Energy Regulatory Commission (FERC) and other federal agencies and advocate on behalf of the interests of Ohio retail electric service consumers. The attorney general must represent the Advocate before the FERC and other federal agencies. Among other duties assigned by the PUCO, the Advocate must examine the value of the participation of Ohio electric utilities in regional transmission organizations and submit a report to the PUCO on whether continued participation of those utilities is in the interest of retail electric consumers.

COMMENT

1. The bill authorizes the PUCO to return to traditional regulation of a competitive retail electric service if necessary to implement state electric services policy. The bill could be clarified regarding what that authority means with respect to current law that appears to continue under the bill notwithstanding a return to traditional regulation and, specifically, whether the bill intends that the generation prices of electric utilities be regulated but those charged by other suppliers not be regulated. The bill also is not clear as to whether the authority to return to traditional regulation also includes PUCO authority to revert back to current regulation as amended by the bill.

2. In keeping with the apparent intent of the bill, the definition of "revenues" in R.C. 3706.01 should be amended to add appropriate references to advance energy projects.

HISTORY

ACTION

DATE

Introduced

09-25-07

S0221-I-127.doc/jc

