



**Sub. S.B. 221\***

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(As Reported by H. Public Utilities)

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**BILL SUMMARY**

- Focuses on two main subject areas: electricity prices and electricity sources.

**Electricity prices:**

- Preserves the right of customer choice enacted by S.B. 3 of the 123rd General Assembly.
- Revises and adds to the current objectives of state electric services policy enacted under S.B. 3.
- Provides that a "self-generator" under Electric Restructuring Law need not own the generating facility, rather, it can host it on its premises.
- Permits special contract law to be enforced for the purposes of the Electric Restructuring Law.
- Expressly authorizes under special contract law the filing of a financial device to recover costs incurred in conjunction with economic development and job retention, the bill's peak demand reduction and energy efficiency programs, advanced metering, and government mandates.

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\* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Authorizes a mercantile customer or a group of those customers to establish a reasonable arrangement with a utility under special contract law.
- Provides that special contracts must be submitted to the PUCO by application for its approval.
- Preserves the requirement that each electric distribution utility have a standard service offer (SSO).
- Preserves current law's provision that each utility's SSO will be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.
- Expressly states that its SSO provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.
- Modifies the corporate separation law so that the law applies to an electric utility "except as otherwise provided in" the market rate offer (MRO) and electric security plan (ESP) provisions of the bill.
- Removes any limitation on divestiture by an electric utility that is not a distribution utility.
- Removes the current law's provision that a utility's authority to divest is subject to the provisions of public utility law relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.
- Authorizes the PUCO to grant rate phase-ins and states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service does not limit that phase-in authority.
- Requires that an SSO be either an MRO or an ESP.
- Authorizes discovery requests of certain utility agreements during an MRO or ESP proceeding.
- Requires all utilities to file an SSO before 1/1/09.

- Requires the first SSO application of a utility to be an ESP, but allows a utility to simultaneously file an MRO.
- Provides SSO provisions that reflect differences among the electric distribution utilities.
- Authorizes "transitional" MROs that require utilities that own generating assets to "ramp up" to market and operate under a blended generation price during that period.
- Provides that an electric distribution utility that files an MRO cannot, and cannot be required to, file an ESP.
- Provides that the bids selected for an MRO be the least-cost bids and establishes several other criteria regarding the bid results that can preclude an MRO application from going forward.
- Authorizes the PUCO to adjust the blended price of a transitional MRO.
- States that public utility law (R.C. Title 49) does not apply to an ESP.
- Prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, the application can contain, but does not limit any discretionary items to those the bill enumerates.
- Requires an ESP to contain provisions related to the supply and pricing of electric generation service and, if the proposed ESP has a term longer than three years, requires that it must include provisions to permit the PUCO to test the ESP.
- Permits an ESP to include automatic cost recovery, a construction work in progress allowance/nonbypassable surcharge, a nonbypassable surcharge for a competitively bid generating facility, facility decommissioning, derating, and retirement, rate stabilization, automatic price adjustments, securitization, transmission and related services, distribution service, and economic development and energy efficiency.
- Prescribes as a standard for PUCO approval that the ESP pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.

- Requires that, if an ESP provides a nonbypassable surcharge for CWIP or a competitively sourced generating facility, the PUCO must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.
- Allows an electric distribution utility to withdraw an ESP application, thereby terminating it, if the PUCO modifies and then approves the application.
- Requires the PUCO, if it modifies and approves or disapproves an ESP application, to issue an order continuing the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs, until a subsequent ESP or MRO is filed and authorized.
- Extends to a FERC-approved regional transmission organization that is responsible for maintaining reliability in all or part of Ohio the requirement to consent to service of process and designate an agent.
- Requires the PUCO to employ a Federal Energy Advocate to generally assist with transmission oversight.
- Prohibits an electric distribution utility charging a customer of a municipal utility in existence before 1/1/98 any surcharge, service termination charge, exit fee, or transition charge.
- Requires the PUCO, in carrying out the state electric services policy, to consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in Ohio.
- Requires the PUCO to adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities.
- Lengthens from two years to up to three years the time period for an automatic governmental aggregation before a participant can opt-out.

- Authorizes a state official or the legislative or other governing authority of a county, city, village, township, park district, or school district to enter into an energy price risk management contract.

#### **Electricity sources:**

- Requires an electric distribution utility and an electric services company to provide from "alternative energy resources" a portion of their electricity supplies from alternative energy resources.
- Defines alternative energy resources as consisting of specified advanced energy resources and renewable energy resources with the placed-in-service date of January 1, 1998, and as consisting of existing or new mercantile customer-sited resources.
- Specifies that the requisite portion of the electric supply derived from alternative energy must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio.
- Provides that half of the alternative energy can be generated from advanced energy resources, but at least half must be generated from renewable energy resources, including 0.05% from solar energy resources, with yearly benchmarks increasing in percentage of electric supply through 2024.
- Establishes a cost cap relative to a utility's or company's obligation to comply with a renewable energy resource benchmark.
- Authorizes the PUCO to make a force majeure determination regarding all or part of a utility's or company's compliance with a minimum, renewable energy resource benchmark.
- Authorizes the PUCO to enforce the renewable energy and solar energy resource benchmarks through the assessment of compliance payments.

- Requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee to semiannually review the bill's alternative energy requirements.
- Requires the PUCO to submit an annual report to the General Assembly describing alternative energy benchmark compliance and the use of alternative energy resources.
- Prescribes energy savings and peak demand reduction requirements for electric distribution utilities through 2025, sets yearly benchmarks, and authorizes PUCO enforcement of compliance through the assessment of forfeitures.
- Authorizes the PUCO to approve a revenue decoupling mechanism for an electric distribution utility if it reasonably aligns the interests of the utility and of its customers in favor of energy efficiency or energy conservation programs.
- Requires the Governor's Energy Advisor to periodically report to the General Assembly and as requested by House and Senate standing committees responsible for energy efficiency and conservation issues regarding energy efficiency and conservation initiatives undertaken by the Advisor and state government.
- Authorizes a natural gas utility to apply for Public Utilities Commission (PUCO) approval of an alternative rate plan that includes a revenue decoupling mechanism.
- Defines "revenue decoupling mechanism" as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.
- By declaring that such a plan is an application "not for an increase in rates," removes certain requirements for a hearing on any alternative rate plan that includes a revenue decoupling mechanism, proposes rates and charges based upon the billing determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case, and establishes, continues, or expands an energy efficiency or energy conservation program.

- Prohibits the bill being construed as supporting a claim or finding that an application for such a conservation-related plan filed before the bill's effective date *is* an application to increase rates (and therefore generally subject to hearing).
- Adds the following, twelfth objective to the statutory natural gas policy: to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.
- Changes the requirement that the PUCO follow the state policy when carrying out its duties under the alternative regulation law, to require that both the PUCO and Ohio Consumers' Counsel (OCC) follow the policy in exercising their respective authorities under that law.
- Requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas emissions reporting and carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date.

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## CONTENT AND OPERATION

The bill focuses on two main subject areas: electricity prices and electricity sources.

### I. Electricity prices

#### State policy provisions

##### 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 statutory electric policy applies statewide, and 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, 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 choice of 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.

Although the bill does not amend the wording of objective (1), its change in the regulatory framework for retail electric service prices, discussed below, will provide a different pricing context for implementing the objective's concept of "reasonably priced retail electric service." In addition, the bill changes the state

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 (7) above is changed to read: "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, *including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.*"

The following new objectives are added to the state electric services policy: (1) ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces, (2) provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates, (3) 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, (4) protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource, and (5) encourage the education of small business owners in Ohio regarding the use of energy efficiency programs and advanced energy technologies in their businesses and encourage that use.

### **"Self-generator"**

(R.C. 4928.01(A)(7) and (32))

The bill makes certain changes that relate to customer generation of electricity. It modifies current law's definition of "self-generator." Under current law, a "self-generator" is an entity in Ohio that owns an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to retail electric service providers, whether the facility is installed or operated by the owner or by an agent under a contract.

The bill modifies that definition by providing, in effect, that a self-generator need not own the generating facility, rather it can host it on its premises. It similarly modifies the exclusion that current law grants to a self-generator from being considered an "electric light company" under the Electric Restructuring Law. In addition, the bill removes an undefined term--"retail electric service providers"--from the definition of "self-generator" and replaces it with the term "entity," thereby recognizing that a self-generator can sell excess electricity to anyone, not just to persons engaged in the retail sale of electric service.

**Scope of PUCO authority regarding retail generation service**

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

Current law specifies the scope of the PUCO's authority regarding a competitive retail electric service (generation service), by enumerating specific provisions of public utility rate-making law (R.C. Chapters 4905. and 4909.) that continue to apply to that service notwithstanding that the service is offered competitively in Ohio. The bill includes a reference to the special contract law (R.C. 4905.31), thereby clearly permitting that law to be enforced for the purposes of the Electric Restructuring Law.

Currently, the special contract law in effect authorizes a public utility to file a rate schedule or enter into any reasonable arrangement with another public utility or with its customers, consumers, or employees. The law describes a number of types of those schedules or arrangements, concluding with the general description of any financial device that may be practicable or advantageous to the parties. The bill states that, in the case of an electric distribution utility, such a financial device may include a device to recover costs incurred in conjunction with (1) any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program, (2) any development and implementation of peak demand reduction and energy efficiency programs under the bill's energy efficiency requirements (see "**Energy efficiency**," below), (3) any acquisition and deployment of advanced metering, including the costs of any meters retired as a result of advanced metering implementation, and (4) compliance with any government mandate.

The bill removes obsolete references in that list to schedules or arrangements relating to emissions fees.

More importantly, the bill authorizes a mercantile customer of an electric distribution utility or a group of those customers to establish a reasonable arrangement with that utility by filing an application with the PUCO.

The bill does not specify the standards the PUCO will use to approve a schedule or reasonable arrangement under the special contract law, but

presumably, the PUCO will continue to approve schedules and arrangements under that law as it has done in the past. The bill does require that every schedule or arrangement is posted on the PUCO's docketing information system and is accessible through the internet.

Additionally, the bill states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service (currently only generation service) must not be construed to limit the commission's authority under the bill's rate phase-in provisions (see "*Rate or price phase-ins/nonbypassable surcharge*," below).

### **SSO requirement**

#### **General requirement**

(R.C. 4928.141(A), 4928.142(B) and (F), 4928.143(A), 4928.145, and 4928.17(A))

The bill contains the requirement that each electric distribution utility in Ohio make available a standard service offer within its exclusive, certified distribution territory. Under both current law and the bill, a utility's SSO generally must be a market-based offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, and be offered on a comparable and nondiscriminatory basis. The bill preserves current law's provision that each utility's SSO will be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.

Under the bill, an SSO must be either an MRO or an ESP. The first SSO application of all the utilities must be an ESP application, but the bill also allows a utility to simultaneously file an MRO application. Once an MRO is approved for any distribution utility, its SSO must always be an MRO: the utility cannot, and cannot be required to, file an ESP.

A utility must file an MRO or ESP application before 1/1/2009, and can file an MRO or ESP before the effective date of the PUCO rules required under the bill, but, as the PUCO determines necessary, must immediately conform its filing to the rules upon their taking effect.

In connection with an MRO or ESP, the bill modifies the corporate separation law with a phrase that states that law applies to an electric utility "except as otherwise provided in" the MRO and ESP provisions of the bill.<sup>1</sup>

Additionally, the bill requires that, in any contested, MRO or ESP proceeding and upon submission of an appropriate discovery request, an electric distribution utility must make available to the requesting party every contract or agreement that is between the utility and a party to the proceeding and that is relevant to the proceeding. This requirement, however, is subject to such protection for proprietary or confidential information as the PUCO determines appropriate.

The bill expressly states that its provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

### **SSO variations**

(R.C. 4928.142(D) and 4928.143(D))

The bill's SSO provisions reflect differences among the distribution utilities. Specifically, Dayton Power & Light (DP&L) is the only utility with a current rate plan (commonly called an RSP) that expires at the end of 2010, instead of 2008 as the other utilities. Additionally, the First Energy operating utilities reportedly are the only distribution utilities that do not directly own or control generating facilities. First Energy generating assets are owned by an affiliate of the distribution utilities. All the other distribution utilities transferred their generating assets to separate subsidiaries, pursuant to continuing law that requires functional separation, but not necessarily divestiture, between any generation business and the transmission and distribution business of an electric distribution utility (R.C. 4928.17).

Under the bill, all electric distribution utilities are required to file new SSOs with the PUCO, in the form of an MRO or ESP, before 1/1/2009, and all current rate plans (commonly referred to as RSPs) of electric distribution utilities terminate on their scheduled termination date. In the case of DP&L, however, the bill requires that, regardless of the term of DP&L's initial ESP, the unexpired portion of its current rate plan will be incorporated into its ESP and must

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<sup>1</sup> Although this change may be read as possibly allowing an MRO or ESP to provide for corporate separation other than as required by R.C. 4928.17, it may be intended to preclude the PUCO's exercise of authority in authorizing an MRO or ESP from being challenged on the grounds that the PUCO lacked the authority to do so in light of R.C. 4928.05's corporate separation requirement.

constitute its ESP until the end of 2010. Also, the bill authorizes DP&L to apply for supplemental authority under its first ESP (see "**DP&L variation**," below). Nothing in the bill prohibits DP&L from also simultaneously filing an MRO for its initial SSO. So, depending on whether it makes the simultaneous MRO and ESP filings and depending on which filing is approved by the PUCO, DP&L, as other utilities, could operate under either an MRO or an ESP beginning on 1/1/2009.

The bill also provides "transitional MROs"--the name this analysis gives to the first MRO filed by any distribution utility that owns or controls generating assets that had been used and useful in Ohio (in other words, any distribution utility except the First Energy utilities). Under such an MRO, the bill provides that the utility will transition to the market, in the sense that the utility can bid out only a certain portion of its electric load (see "**Transitional MROs**," below).

### **General filing process**

(R.C. 4928.141(B))

The bill requires the PUCO to provide a hearing on an MRO or ESP application, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified distribution territory. The PUCO must adopt rules regarding MRO and ESP filings.

### **Market rate offers**

**Nature of an MRO** (R.C. 4928.142(A)). Under the bill, an MRO must be determined through a competitive bidding process that provides for all of the following: (1) open, fair, and transparent competitive solicitation, (2) clear product definition, (3) standardized bid evaluation criteria, (4) oversight by an independent third party that will design the solicitation, administer the bidding, and ensure that the foregoing requirements are met, and (5) evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. The PUCO must modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules must foster supplier participation and be consistent with (1) through (5) above. But, no generation supplier can be prohibited from participating in the bidding process.

**Transitional MROs** (R.C. 4928.142(D)). The first MRO filed by an electric distribution utility that, as of the bill's effective date, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in Ohio must provide that a portion of that utility's SSO load for the first five years of the MRO be competitively bid as follows: 10% of the load in year one and not less than 20% in year two, 30% in year three, 40% in year four, and

50% in year five. The bill requires the PUCO, consistent with those percentages, to determine the actual percentages for each year of years one through five.

**MRO application** (R.C. 4928.142(B)). An MRO application must detail the electric distribution utility's proposed compliance with the requirements described under "**Nature of an MRO**" (above) for the competitive bidding process and with the PUCO rules.

Additionally, the application must demonstrate that all of the following requirements are met: (1) the utility or its transmission service affiliate belongs to at least one FERC-approved RTO, or there otherwise is comparable and nondiscriminatory access to the electric transmission grid, (2) any such RTO has a market-monitor function and the ability to take actions to identify and mitigate market power or the utility's market conduct, or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power, and (3) a published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

**MRO approval process** (R.C. 4928.142(B)). The PUCO must initiate a proceeding and, within 90 days after the application's filing date, determine by order whether the utility and its market-rate offer has demonstrated the items required in the application, as enumerated in (1) to (3) immediately above. If the finding is positive, the utility can initiate its competitive bidding process. If it is negative as to one or more requirements, the PUCO in the order must direct the utility regarding how any deficiency may be remedied in a timely manner to the PUCO's satisfaction; otherwise, the utility must withdraw the application. However, if such remedy is made and the subsequent finding is positive, and also if the utility made a simultaneous filing of an ESP application, the utility cannot initiate its competitive bid until at least 120 days after the filing date of those applications.

**MRO generation price** (R.C. 4928.142(C) and (D)). Upon the completion of the competitive bidding process, the PUCO must select the least-cost bid winner or winners of that process. Those selected bid or bids, as prescribed as retail rates by the PUCO, will be the utility's SSO unless the PUCO, by order issued before the third calendar day following the conclusion of the bidding process, determines that (1) any portion of the bidding process was not oversubscribed, such that the amount of supply bid upon was not greater than the amount of the load bid out, (2) there were fewer than four bidders, or (3) at least 25% of the load was not bid upon by one or more persons other than the electric distribution utility.

In addition, the bill requires all costs incurred by the utility as a result of or related to the competitive bidding process or to procuring generation service to provide the MRO, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, must be timely recovered through the SSO price. For that purpose, the bill requires the PUCO to approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

**Transitional MRO generation price** (R.C. 4928.142(D) and (E)). In the case of a Transitional MRO, the bill requires that the SSO price for electric generation service will be a proportionate blend of the bid price and the generation service price for the remaining utility's remaining SSO load. The latter price must equal to the utility's most recent SSO price, adjusted upward or downward as the PUCO determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of one or more of the following as reflected in that most recent standard service offer price: (1) the utility's prudently incurred cost of fuel used to produce electricity, (2) its prudently incurred purchased power costs, (3) its costs of satisfying Ohio's supply and demand portfolio requirements, including, but not limited to, renewable energy resource and energy efficiency requirements, and (4) its costs prudently incurred to comply with environmental laws and regulations.

In making any such price adjustment to the most recent SSO price, the PUCO must consider the benefits that may become available to the utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits. Accordingly, the PUCO may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility.

Additionally, the PUCO can adjust the utility's most recent SSO price by such just and reasonable amount as it determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the MRO is not so inadequate as to result, directly or indirectly, in a taking of property under the Ohio Constitution (Article I, Section 19).

Too, the bill authorizes the PUCO, beginning in the second year of a blended price under a Transitional MRO and notwithstanding any other requirement concerning MROs, to alter, prospectively, the proportions constituting a blended price, to mitigate any effect of an abrupt change in the utility's SSO price that would otherwise result in general or with respect to any rate group or rate schedule if not for the alteration. Any such alteration cannot be made more often than annually, and the PUCO cannot, by altering those proportions and in

any event, cause the duration of the blending period to exceed ten years as counted from the approved MRO's effective date. Additionally, any such alteration must be limited to an alteration affecting the prospective proportions used during the blending period and cannot affect any blending proportion previously approved and applied by the PUCO pursuant to the bill.

The PUCO's determination of the utility's most recent SSO price must exclude any previously authorized allowance for transition costs, with that exclusion being effective on and after the date the allowance is scheduled to end under the utility's present-day rate plan.

A utility has the burden of demonstrating that any adjustment to its most recent SSO price is proper under the bill's Transitional MRO provisions.

### **ESPs**

**Nature of an ESP** (R.C. 4928.143(B) and (D)). The bill states, in effect, that any contrary provision of public utility law (R.C. Title 49) does not apply to an ESP. This means, for example, that, with the exceptions noted in "CWIP allowance/nonbypassable surcharge," and "Nonbypassable surcharge for a competitively bid generating facility," below), the bill will authorize an electric utility's distribution rates to be determined under an ESP in a manner different from the traditional rate-making requirements that applied to those rates before the enactment of this bill and that will continue to apply to a utility with an approved MRO.

The bill prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, it can contain. But any discretionary items in an ESP are not limited to the items the bill enumerates. Essentially, an ESP must contain provisions related to the supply and pricing of electric generation service and, if the proposed ESP has a term longer than three years, it must include provisions to permit the PUCO to test the plan as described in "Testing an ESP," below, as well as any transitional conditions that the utility would want the PUCO to adopt if the PUCO were to terminate the ESP after such a test.

As noted above in "SSO variations," in its initial ESP application DP&L can request PUCO approval of provisions for the incremental recovery or the deferral of any of the following costs that are not being recovered under its current rate plan and that it incurs during that rate plan continuation period under the ESP: (1) costs to comply with the bill's SSO/default service requirements, (2) costs to comply with the bill's alternative energy requirements (see "Alternative energy requirements," below), and (3) costs to comply with the bill's energy efficiency requirements (see "Energy efficiency," below).

As explained immediately below, enumerated items that the bill authorizes any utility to request in an ESP include the following: provisions for or regarding (1) automatic cost recovery, (2) a construction work in progress (CWIP) allowance/nonbypassable surcharge, (3) a nonbypassable surcharge for a competitively bid generating facility, (4) generating facility retirement, (5) rate stabilization, (6) automatic price adjustments, (7) securitization, (8) transmission and related services, (9) distribution service, and (10) economic development and energy efficiency.

**ESP application** (R.C. 4928.143(B)). Automatic cost recovery. An ESP can include provisions for the automatic recovery of the following costs of the utility (meaning, recovery without further PUCO authorization): (1) fuel used to generate the electricity supplied under the SSO, (2) purchased power supplied, including the cost of energy and capacity, and including purchased power acquired from an affiliate, (3) emission allowances, and (4) federally mandated carbon or energy taxes.

CWIP allowance/nonbypassable surcharge. An ESP can include a request for a reasonable CWIP for any of the utility's cost of constructing a generating facility or for an environmental expenditure for any such facility of the utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. The bill requires that any such CWIP allowance be subject to the CWIP limitations of public utility law (R.C. 4909.15, not in the bill), except that the PUCO can authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. However, the bill prohibits such a CWIP allowance unless the PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the utility. Further, no CWIP allowance can be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the PUCO can adopt rules.

Under the bill, any authorized CWIP allowance must be established as a nonbypassable surcharge for the life of the facility.

Nonbypassable surcharge for a competitively bid generating facility. An ESP can request the establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any rules as the PUCO adopts under the bill's CWIP provisions (see "CWIP allowance/nonbypassable surcharge," above), and is newly used and useful on or after January 1, 2009. The surcharge must cover all of the utility's costs specified in the application, excluding costs recovered through a surcharge authorized for a CWIP allowance described above. But, no surcharge can be authorized unless the

PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.

Additionally, if the surcharge is authorized for such a facility pursuant to plan approval and as a condition of the continuation of the surcharge, the utility must dedicate to the Ohio consumers bearing the surcharge all the electricity generated by that facility. Before the PUCO authorizes such a surcharge, it can consider the effects, as applicable, of any decommissionings, deratings, and retirements.

*Rate stabilization.* An ESP can include terms, conditions, or charges that both would have the effect of stabilizing or providing certainty regarding retail electric service and relate to (1) limitations on customer shopping for retail electric generation service, (2) bypassability, (3) standby, back-up, or supplemental power service, (4) default service, (5) carrying costs, (6) amortization periods, and (7) accounting or deferrals, including future recovery of such deferrals.

*Generation facility retirement.* Under the bill, an ESP can contain provisions for generating facility decommissioning, derating, or retirement.

*Automatic price adjustments.* Under the bill, an ESP can include provisions for automatic increases or decreases in any component of the SSO price.

*Securitization.* An ESP can request approval of provisions for the utility to securitize any phase-in authorized under the bill (see "*Rate or price phase-ins/nonbypassable surcharge*," below), inclusive of carrying charges, of its SSO price (see "*Rate or price phase-ins/nonbypassable surcharge*," below), as well as provisions for the recovery of the utility's cost of securitization. If the PUCO's order includes such a phase-in, the order also must provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order must authorize the collection of those deferrals through a nonbypassable surcharge on the utility's rates.

Under current law retained by the bill, "regulatory assets" are the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the PUCO or pursuant to generally accepted accounting principles as a result of a prior PUCO rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent PUCO action. They include, but are not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan (PIPP) arrears; post-in-service capitalized charges and assets recognized in connection with statement of Financial Accounting Standards No. 109 (receivables from customers for income taxes); future nuclear

decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the PUCO. (R.C. 4928.01(A)(26).)

*Transmission and related services.* An ESP can include provisions relating to transmission, ancillary, congestion, or any related service required for the SSO, including provisions for the recovery of any cost of such service that the electric distribution utility incurs pursuant to the SSO.

*Distribution service.* An ESP can include provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of public utility law (R.C. Title 49) to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the utility. The infrastructure and modernization provisions can include a long-term energy delivery infrastructure modernization plan for the utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization.

*Economic development and energy efficiency.* An ESP can include provisions under which the electric distribution utility can implement economic development, job retention, and energy efficiency programs. Those provisions can allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

**ESP approval process** (R.C. 4928.143(C)). The burden of proof in an ESP proceeding is on the applicant utility.

The PUCO must issue an order approving, modifying and approving, or disapproving an initial ESP application not later than 120 days after the application's filing date and within 275 days for later applications. The PUCO must disapprove the application unless it finds that the ESP so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. If it makes that finding, the PUCO can approve or modify and approve the ESP. Additionally, if the ESP provides a nonbypassable surcharge for CWIP or a competitively sourced generating facility as authorized under the bill, the PUCO must ensure that the

benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

If the PUCO modifies and then approves an ESP application, the electric distribution utility can withdraw the application, thereby terminating it. If the utility does so, or if the PUCO disapproves the ESP application, the PUCO must issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent ESP or MRO is filed and authorized under the bill.

**Testing an ESP** (R.C. 4928.143(E)). Regarding an ESP that has a term, exclusive of phase-ins or deferrals, of longer than three years, the bill requires the PUCO to test that plan in its fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under an MRO. If the test results are in the negative, the PUCO may terminate the ESP, but must permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that ESP. Before terminating the ESP, the PUCO must provide interested parties with notice and an opportunity to be heard. The PUCO can impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.

**Rate or price phase-ins/nonbypassable surcharge**

(R.C. 4928.144)

As it considers necessary to ensure rate or price stability for consumers, the PUCO by order can authorize, inclusive of carrying charges, any just and reasonable phase-in of any electric distribution utility rate or price established under an ESP or MRO. The order also must provide for the creation of regulatory assets (see "Securitization," above), by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order must authorize the collection of those deferrals through a nonbypassable surcharge any rate or price established for the utility by the PUCO.

## **Transmission operations**

### **RTO operating requirements**

(R.C. 4928.09)

The bill extends to a FERC-approved regional transmission organization (RTO)<sup>2</sup> that is responsible for maintaining reliability in all or part of Ohio requirements that apply under continuing law to electric utilities, electric services companies, and billing and collection agents. Those requirements consist of (1) consenting to the jurisdiction of the Ohio courts and service of process in Ohio and (2) designating an agent authorized to receive that service of process, by filing with the commission a document designating that agent.

### **Federal Energy Advocate**

(R.C. 4928.24)

The bill requires the PUCO to employ a Federal Energy Advocate. 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.

Additionally under the bill, the PUCO employee must monitor the activities of FERC and other federal agencies and, represented by the Attorney General, must advocate on behalf of the interests of Ohio retail electric service consumers. Currently, there is one, state-level entity that functions as a consumer advocate: the Ohio Consumers' Counsel, who advocates on both the state and federal levels, on behalf of the residential consumers of electric, gas, natural gas, and certain other public utilities (R.C. Chapter 4911.). The PUCO itself often is a party to federal proceedings.

### **Municipal customer charge prohibition**

(R.C. 4928.69)

The bill provides that, notwithstanding any provision of the Electric Restructuring Law and except as otherwise provided in an agreement under special contract law (R.C. 4905.31), an electric distribution utility cannot charge any person that is a customer of a municipal electric utility in existence on or

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<sup>2</sup> Regional transmission organizations coordinate the movement of electricity on a regional basis throughout North America via the electric transmission grid.

before 1/1/2008 any surcharge, service termination charge, exit fee, or transition charge.

### **Line extensions**

(R.C. 4928.02 and 4928.151)

Continuing law requires that an electric utility's distribution rate schedule must include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with PUCO rules, policy, precedents, or orders (R.C. 4928.15(A)).

The bill requires the PUCO, in carrying out the state electric services policy (see "**State electric services policy**," above) to consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in Ohio.

It also requires the PUCO adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities, so that, on and after the effective date of the initial rules so adopted, all such utilities apply the same policies and charges to those customers. Initial rules must be adopted not later than six months after the bill's effective date. The rules must address the just and reasonable allocation to and utility recovery from the requesting customer or other customers of the utility of all costs of any such line extension and any requisite substation or related facility, including, but not limited to, the costs of necessary technical studies, operations and maintenance costs, and capital costs, including a return on capital costs.

### **Governmental aggregation**

(R.C. 4928.20(D))

Current law authorizes the electric load of electric customers to be aggregated for the purpose of purchasing retail electric generation (R.C. 4928.03). Aggregators performing that function include governmental aggregators, specifically, municipalities, townships, and counties that can aggregate the electric load of customers within their respective jurisdictions. Current law establishes various requirements for and limitations on a governmental aggregation, including, for instance, a popular vote on the question of whether the local government can aggregate load without first obtaining the individual permission of each customer.

The bill changes current law's limitation that, in the case of such an "automatic" governmental aggregation, the local government must allow any person that is so enrolled in the aggregation an opportunity to opt out of the aggregation every *two* years, without paying a switching fee. Under the bill, a customer can opt-out *up to every three years* without paying a switching fee.

### **Energy price risk management contracts**

(R.C. 9.835)

The bill authorizes a state official (an elected or appointed official or that person's designee, charged with the management of a state entity) or the legislative or other governing authority of a political subdivision (county, city, village, township, park district, or school district) to enter into an energy price risk management contract if it determines that doing so is in the best interest of the state entity or such political subdivision, and subject to, respectively, state or local appropriation to pay amounts due. The bill defines a "state entity" as the General Assembly, the Supreme Court, the Court of Claims, the office of an elected state officer, or a state department, bureau, board, office, commission, agency, institution, or other instrumentality established by Ohio law to exercise any function of state government. "State entity" excludes a political subdivision, an institution of higher education, all the state retirement systems, and the City of Cincinnati retirement system.

Under the bill, an "energy price risk management contract" is a contract that mitigates for the term of the contract the price volatility of energy sources, including, but not limited to, natural gas, gasoline, oil, and diesel fuel, and that is a budgetary and financial tool only and not a contract for the procurement of an energy source. The bill prohibits the term of the contract extending beyond the end of the fiscal year in which the contract is entered into. Under the bill, money received pursuant to such a contract entered into by a state official must be deposited to the credit of the state General Revenue Fund, and, unless otherwise provided by ordinance or resolution enacted or adopted by the legislative authority of the political subdivision authorizing any such contract, money received under the contract must be deposited to the credit of the general fund of the political subdivision.

## **II. Energy sources**

### **Corporate separation**

(R.C. 4928.17(E))

Current statute authorizes, but does not require, an electric utility to divest itself of any generating asset without prior PUCO approval. The bill focuses

divestiture policy on electric distribution utilities specifically, thereby removing any limitation on divestiture by an electric utility that is not a distribution utility. The bill also removes the current law's provision that a utility's authority to divest is subject to the provisions of Title 49 of the Revised Code relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.

### **Alternative energy requirements**

(R.C. 4928.01 and 4928.64)

The bill requires an electric distribution utility, by 2025 and thereafter, to provide from "alternative energy resources" a portion of the electricity supply required for its requisite SSO, and an electric services company to provide a portion of its Ohio retail electricity supply, from alternative energy resources.

Under the bill, an alternative energy resource means an advanced energy resource or renewable energy resource that has a placed-in-service date of January 1, 1998, or after; or a mercantile customer-sited advanced energy resource or renewable energy resource, whether new or existing, that the mercantile customer<sup>3</sup> commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided in the energy efficiency provisions of the bill (see "Energy efficiency," below). The bill specifically includes as such programs (1) a resource that has the effect of improving the relationship between real and reactive power, (2) a resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer, (3) storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics, (4) electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource, and (5) any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility. Additionally, under the bill and as it considers appropriate, the PUCO can classify any new technology as such an advanced energy resource or a renewable energy resource.

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<sup>3</sup> Under continuing law, a "mercantile customer" is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states (R.C. 4928.01(A)(19)).

### **"Advanced energy resource"**

The bill defines an "advanced energy resource" as (1) any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of any electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility, (2) any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities, (3) clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials Standard D1757A or a reduction of metal oxide emissions in accordance with the Society's Standard D5142, (4) advanced nuclear energy technology consisting of generation III technology as defined by the Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities, (5) any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell, and (6) demand-side management and any energy efficiency improvement.

### **"Renewable energy resource"**

The bill defines a "renewable energy resource" as solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes<sup>4</sup> through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. The term includes, but is not limited to, any fuel cell used in the generation of

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<sup>4</sup> As used here, "solid wastes" means "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than 50% of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste." (R.C. 3734.01(E).)

electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; any wind turbine located in the state's territorial waters of Lake Erie; any storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy.

For the purpose of the bill's renewable energy resource requirement only, the bill defines the term "hydroelectric facility" to mean energy produced by a hydroelectric generating facility that is located at a dam on a river within or bordering Ohio or an adjoining state and (1) provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility, (2) demonstrates that it complies with the water quality standards of Ohio, which compliance may consist of certification under the federal "Clean Water Act of 1977" and demonstrates that it has not contributed to a finding by the State of Ohio that the river has impaired water quality under that act, (3) complies with mandatory prescriptions regarding fish passage as required by the FERC license issued for the project, regarding fish protection for riverine, anadromous, and catadromus fish, (4) complies with the recommendations of the OEPA and with the terms of the facility's FERC license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility, (5) complies with the federal "Endangered Species Act of 1973," (6) does not harm cultural resources of the area, as shown through compliance with the terms of its FERC license or, if not regulated by FERC, through development of a plan approved by the Ohio Historic Preservation Office, to the extent it has jurisdiction over the facility, (7) complies with the terms of its FERC license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by FERC, complies with similar requirements as are recommended by resource agencies, and provides access to water to the public without fee or charge, and (8) is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

### **Mercantile customer-sited resources**

A mercantile customer-sited advanced energy or renewable energy resource qualifies as an alternative energy resource under this bill if the mercantile customer<sup>5</sup> commits the resource for integration into the electric distribution

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<sup>5</sup> Under the bill, based on the definition of current law, a "mercantile customer" is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states. Current law uses this

utility's demand-response, energy efficiency, or peak demand reduction programs as provided under the energy efficiency provisions of the bill including, but not limited to, any of the following: (1) a resource that has the effect of improving the relationship between real and reactive power, (2) a resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by the mercantile customer, (3) storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics, (4) electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource, and (5) any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility.

### **Benchmarks**

The requisite portion of electric supply derived from alternative energy resources must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio. The bill states, however, that its alternative energy resource provisions do not preclude a utility or company from providing a greater percentage. The baseline for a utility's or company's compliance with the alternative energy resource requirements must be the average of such total kilowatt hours it sold in the preceding three calendar years, except that the PUCO can reduce a utility's or company's baseline to adjust for new economic growth in the utility's certified territory or, in the case of an electric services company, in the company's service area in Ohio.

Of the alternative energy resources implemented by a utility or company, the bill provides that half can be generated from advanced energy resources. However, at least half must be generated from renewable energy resources, including 0.5% from solar energy resources, in accordance with the following benchmarks:

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definition for the term "mercantile commercial customers" and removes "commercial" from that phrase.

<u>By end of year</u>	<u>Renewable energy resources</u>	<u>Solar energy resources</u>
2009	0.25%	0.004%
2010	0.50%	0.008%
2011	1%	0.015%
2012	1.5%	0.02%
2013	2%	0.06%
2014	2.5%	0.10%
2015	3.5%	0.14%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.3%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each calendar year thereafter	12.5%	0.5%

Further, under the bill, at least half of the renewable energy resources implemented by the utility or company must be met through facilities located in Ohio; the remainder must be met with resources that can be shown to be deliverable into Ohio.

The bill specifies that all costs incurred by a utility in complying with the bill's alternative energy resource requirements are bypassable by any consumer choosing an alternative generation supplier.

The bill establishes a cost cap relative to a utility's or company's obligation to comply with a renewable energy resource benchmark. Under the bill, no electric distribution utility or electric services company can, nor can be required to or be subject to a compliance payment the enforcement provisions of the bill, exceed that benchmark if that would result in an annual, estimated, average net increase in the total amounts paid by its customers due to the cost of the renewable energy resources to exceed 3% of the total amounts paid by each customer class in

the previous calendar year, as determined by the PUCO. "Total amounts paid by customers" is defined as all costs for generation, transmission, distribution, metering, taxes, and all other costs comprising customer bills. The bill states that nothing in its force majeure provision affects the right of the utility or company to construct or operate any renewable energy resource or affects any electricity supply contract.

Regarding adjustments to the 3% limitation, the bill authorizes the PUCO, not later than 1/1/2013 and in consultation with DOD, the Ohio Air Quality Development Authority, and the Office of the Consumers' Counsel, to review the cost cap limitation and report to the House and Senate standing committees of the General Assembly that primarily deal with alternative energy issues regarding whether the 3% limitation unduly constrains the procurement of renewable energy resources. The report must include recommendations regarding whether that limitation should be maintained, eliminated, or changed.

### **Renewable and solar benchmark enforcement**

**Penalties.** The bill requires the PUCO to review annually a utility's or company's compliance with the most recent, applicable, renewable energy resource or solar energy resource benchmark and, in the course of that review, identify any undercompliance or noncompliance that the PUCO determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the utility's or company's control. If the PUCO determines, after notice and opportunity for hearing, and based upon its findings in that review regarding avoidable undercompliance or noncompliance, that the utility or company has failed to comply with any such benchmark, it must impose a renewable energy compliance payment on the utility or company.

The compliance payment pertaining to the bill's solar energy resource benchmarks must be an amount per megawatt hour of undercompliance or noncompliance in the period under review, starting at \$450 for 2009, \$400 for 2010 and 2011, and similarly reduced every two years thereafter through 2024 by \$50, to a minimum of \$50.

The compliance payment pertaining to the bill's renewable energy resource benchmarks must equal the number of additional renewable energy credits (see "**Renewable energy credits**," below) that the utility or company would have needed to comply with the applicable benchmark in the period under review times an amount beginning at \$45 and adjusted annually by the PUCO to reflect any change in the Consumer Price Index, but cannot be less than \$45.

The bill prohibits the compliance payment being passed through to consumers. It must be remitted to the PUCO, for deposit to the credit of the

Advanced Energy Fund (see "*Advanced Energy Fund assistance*," below). Payment of the compliance payment will be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in the bill).

The bill also requires the PUCO to establish a process to provide for at least an annual review of the alternative energy resource market in Ohio and in the service territories of RTOs that manage transmission systems located in Ohio. The PUCO must use the study results to identify any needed changes to the bill's amount of a renewable energy compliance payment. Specifically, the PUCO may increase the amount to ensure that payment of compliance payments is not used to achieve compliance in lieu of actually acquiring or realizing energy derived from renewable energy resources. However, under the bill, if it finds that the amount of the compliance payment should be otherwise changed, the PUCO must present this finding to the General Assembly for legislative enactment.

#### ***Force majeure exception***

The bill authorizes an electric utility or electric services company to request the PUCO to make a force majeure determination regarding all or part of the utility's or company's compliance with any minimum, renewable energy resource benchmark during the period of compliance review as described above. The PUCO can require the utility or company to make solicitations for renewable energy resource credits as part of its default service before the utility or company can make a force majeure request.

Within 90 days after the filing of such a request, the PUCO must determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the PUCO must consider whether the utility or company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the PUCO must consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM Interconnection regional transmission organization or its successor and the Midwest System Operator or its successor.

If the PUCO determines that renewable energy or solar energy resources are not reasonably available to permit the utility or company to comply during the period of review with the applicable minimum benchmark, the PUCO must modify that compliance obligation of the utility or company as it determines appropriate to accommodate the finding. The bill provides that such a PUCO

modification does not automatically reduce the obligation for the utility's or company's compliance in subsequent years, and the PUCO can require the utility or company, if sufficient renewable energy resource credits exist in the marketplace, to acquire additional renewable energy resource credits in subsequent years equivalent to the utility's or company's modified obligation.

### **Annual report**

The bill requires the PUCO to submit an annual report to the General Assembly describing the compliance of electric distribution utilities and electric services companies with the bill's alternative energy resource requirements and any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying Ohio's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The PUCO must allow and consider public comments on the report prior to submission. The bill states that nothing in the report is binding on any person, including any utility or company for the purpose of its compliance with any alternative energy resource benchmark or the enforcement of a benchmark requirement.

### **Alternative Energy Advisory Committee**

The bill requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee. The Committee must examine available technology for and related timetables, goals, and costs of the bill's alternative energy resource requirements and submit to the PUCO a semiannual report of its recommendations.

### **Advanced Energy Fund assistance**

(R.C. 4928.01(A)(25), 4928.61, and 4928.621)

The bill adds revenue sources for continuing law's Advanced Energy Fund, which is administered by DOD to provide grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives for advanced energy projects, and revises the definition of "advanced energy project."

### **Revenue sources**

The bill adds two new revenue sources for the Advanced Energy Fund: renewable energy compliance payments imposed by the PUCO pursuant to the bill (see "**Renewable and solar benchmark enforcement**," above) and forfeitures assessed by the PUCO for violations of the bill's energy efficiency provisions (see "**Energy efficiency**," above). The Fund will continue under the bill to receive revenue from the sources currently authorized by law: namely, a surcharge on all

customers of electric distribution utilities and any participating municipal electric utilities and electric cooperatives;<sup>6</sup> payments, repayments, and income from funded projects; and interest earnings on the Fund.

**"Advanced energy project"**

Under current law, an "advanced energy project" is any technology, product, activity, or management practice or strategy that facilitates the generation or use of electricity and reduces or supports the reduction of energy consumption or supports the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users. Such energy expressly includes, but is not limited to, wind power; geothermal energy; solar thermal energy; and energy produced by micro turbines in distributed generation applications with high electric efficiencies, by combined heat and power applications, by fuel cells powered by hydrogen derived from wind, solar, biomass, hydroelectric, landfill gas, or geothermal sources, or by solar electric generation, landfill gas, or hydroelectric generation.

Instead of that last sentence, the bill provides that an "advanced energy project" includes, but is not limited to, advanced energy resources and renewable energy resources, the definitions for which appear in the "**Alternative energy requirements**," section of this analysis, above).

Additionally, without intending to limit who otherwise can apply for state assistance for advanced energy projects, the bill makes all of the following eligible for funding as an "advanced energy project":

(1) Any Edison Technology Center,<sup>7</sup> for the purposes of creating an Advanced Energy Manufacturing Center in Ohio that will provide for the exchange of information and expertise regarding advanced energy, assisting with the design of advanced energy projects, developing workforce training programs for such projects, and encouraging investment in advanced energy manufacturing

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<sup>6</sup> Under continuing law, surcharge remittances continue only until December 31, 2011, or until the Fund reaches \$100 million, whichever is first.

<sup>7</sup> There are seven such centers in Ohio, three in Columbus and one each in Cleveland, Dayton, Toledo, and Cincinnati. A DOD web site describes the Centers as providing "a variety of product and process innovation and commercialization services to both established and early-stage technology-based businesses such as: new product design; CAD/CAM; prototyping; materials selection and handling; plant layout and design; quality systems; information systems; machining; joining technology assistance; and biotechnology business consulting." (<<http://www.odod.state.oh.gov/tech/edison/tiedc.htm>>(4/11/08).

technologies for advanced energy products and investment in sustainable manufacturing operations that create high-paying jobs in Ohio;

(2) Any university or group of universities in Ohio that conducts research on any advanced energy resource (see "*Alternative energy requirements*," above) or any not-for-profit corporation formed to address issues affecting the price and availability of electricity and having members that are small businesses, for the purpose of encouraging research in Ohio that is directed at innovation in or the refinement of those resources or for the purpose of educational outreach regarding those resources.

The bill requires the university, university group, or not-for-profit corporation to use the funding to establish such a program of research or education outreach and requires that any such educational outreach be directed at an increase in, innovation regarding, or refinement of access by or of application or understanding of Ohio businesses and consumers regarding, advanced energy resources;

(3) Any independent group located in Ohio, the express objective of which is to educate Ohio small businesses regarding renewable energy resources and energy efficiency programs;

(4) Any small business located in Ohio electing to utilize an advanced energy project or participate in an energy efficiency program.

### **Renewable energy credits**

(R.C. 4928.65)

The bill authorizes an electric distribution utility or electric services company to use renewable energy credits any time in the five calendar years following the purchase or acquisition of such credits from any entity, including, but not limited to, a mercantile customer or an owner or operator of a hydroelectric generating facility that is located at a dam on a river that is within or bordering Ohio or an adjoining state, for the purpose of complying with the bill's renewable energy and solar energy resource requirements (see "*Alternative energy requirements*," above). The PUCO must adopt rules specifying that one unit of credit equals one megawatt hour of electricity derived from renewable energy resources. The rules also must provide for Ohio a system of registering renewable energy credits by specifying which of any generally available registries must be used for that purpose and not by creating a registry. That selected system of registering renewable energy credits shall allow a hydroelectric generating facility eligible for obtaining renewable energy credits and shall allow customer-sited projects or actions the broadest opportunities to be eligible for obtaining renewable energy credits.

## **Energy efficiency**

### **General requirements**

(R.C. 4928.66(A))

The bill requires electric distribution utilities to implement energy efficiency programs. Such programs expressly can include demand-response programs, customer-sited programs, and transmission and distribution infrastructure improvements that reduce line losses. The bill requires that its energy efficiency provisions must be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code."

The bill also prohibits any such program or improvement to conflict with any statewide building code adopted by the Board of Building Standards.

### **Energy savings benchmarks**

(R.C. 4928.66(A)(1)(a) and (2)(a))

Under the bill, beginning in 2009, an electric distribution utility must implement energy efficiency programs that achieve energy savings equivalent to at least 0.3% of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to its Ohio customers. The savings requirement, using such a three-year average, must increase to an additional 0.5% in 2010, 0.7% in 2011, 0.8% in 2012, 0.9% in 2013, 1% in years 2014 to 2018, and 2% each year thereafter, achieving a cumulative, annual energy savings in excess of 22% by the end of 2025. The baseline for such energy savings will be the average of the total kilowatt hours the utility sold in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

### **Peak demand reduction benchmarks**

(R.C. 4928.66(A)(1)(b) and (2)(a))

Beginning in 2009, an electric distribution utility must implement peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional 0.75% reduction each year through 2018. In 2018, the standing committees in the Ohio House and Senate primarily dealing with energy issues must make recommendations to the General Assembly regarding future

peak demand reduction targets.<sup>8</sup> The baseline for a peak demand reduction will be the average peak demand on the utility in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

### **Baseline adjustments**

(R.C. 4928.66(A)(2)(b) and (c))

The bill authorizes the PUCO to amend the energy savings benchmarks and the peak demand reduction benchmarks if, after application by the electric distribution utility, the PUCO determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks for regulatory, economic, or technological reasons beyond its reasonable control.

Additionally, the bill requires that a utility's compliance with the energy savings benchmarks and the peak demand reduction benchmarks must be measured by including the effects of all demand-response programs for its mercantile customers and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the "appropriate loss factors." If a mercantile customer commits such existing or new demand-response, energy efficiency, or peak demand reduction capability for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, the utility's baseline must be adjusted to exclude the effects of all such demand-response, energy efficiency, or peak demand reduction programs that may have existed during the period used to establish the baseline. An energy savings or peak demand reduction baseline also must be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

### **Energy efficiency enforcement**

(R.C. 4928.66(B) and (C))

The bill requires the PUCO, in accordance with rules it must adopt, to produce and docket an annual report containing the results of its verification of the annual levels of energy efficiency and peak demand reductions achieved by each electric distribution utility as required by the bill. A copy of the report must be provided to the Consumers' Counsel.

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<sup>8</sup> Because actions of a General Assembly are not binding on future General Assemblies, this recommendation requirement cannot be construed as mandatory. (See, OH Const. Art. II, §§1, 15).

If it determines, after notice and opportunity for hearing and based upon the report, that an electric distribution utility has failed to comply with an energy efficiency or peak demand reduction requirement established by the bill, the PUCO must assess forfeiture on the utility as provided under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in the bill), either in the amount, per day per undercompliance or noncompliance, relative to the period of the report, equal to that so prescribed for noncompliances (a maximum of \$10,000 currently), or in an amount equal to the then existing market value of one renewable energy credit per megawatt hour of undercompliance or noncompliance. Revenue from any such forfeiture assessed must be deposited to the credit of the Advanced Energy Fund (see "*Advanced Energy Fund assistance*," above).

**Revenue decoupling/energy efficiency**

(R.C. 4928.66(D))

The PUCO may establish rules regarding the content of an application by an electric distribution utility for PUCO approval of a revenue decoupling mechanism. The bill provides that such a revenue decoupling application is not to be considered an application to increase rates<sup>9</sup> and that the application may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs.

The PUCO can approve the revenue decoupling mechanism if it determines that the mechanism provides for the recovery of revenue that otherwise may be foregone by the utility as a result of or in connection with the utility's implementation of any energy efficiency or energy conservation programs and that the mechanism reasonably aligns the interests of the utility and of its customers in favor of those programs.

However, the bill also provides that any mechanism designed to recover the cost of the bill's energy efficiency and peak demand reduction requirements can exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, provided the PUCO determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.

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<sup>9</sup> Referring to an application under R.C. 4909.18, which type of application would require a hearing.

### **Energy Advisor report**

(Section 5)

The bill requires the Governor's Energy Advisor to periodically submit a written report to the General Assembly and report in person to and as requested by the standing committees of the Ohio House of Representatives and the Senate that have primary responsibility for energy efficiency and conservation issues regarding initiatives undertaken by the Advisor and state government pursuant to numbered paragraphs 3 and 4 of Executive Order 2007-02S, "Coordinating Ohio Energy Policy and State Energy Utilization." The first written report must be submitted not later than 60 days after the bill's effective date. Paragraph 3 pertains to energy efficiency and conservation measures by state agencies and paragraph 4 pertains to measures by state universities and colleges.

### **Customer information**

(R.C. 4928.66(E))

The bill requires the PUCO to adopt rules that require an electric distribution utility to provide a customer upon request with two years' consumption data in an accessible form.

### **Net metering**

(R.C. 4928.67)

#### **Generally**

Current law requires a retail electric service provider to develop a standard contract or tariff providing for net energy metering and requires the utility to make this contract or tariff available to customer-generators upon request and on a first-come, first-served basis, but only when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio. It requires that the contract or tariff be identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator.

The bill provides that this net metering requirement pertains to electric utilities and removes the reference to a "retail electric service provider." This conforms the statute to PUCO rules. The current term is not defined in the Restructuring Law and has been interpreted in PUCO rules as meaning an electric utility.

In addition, the bill removes current law's limitation that a net metering contract or tariff be made available when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio.

### **Hospital net metering**

The bill newly requires an electric utility to develop a separate standard contract or tariff providing for net metering for a hospital that is also a customer-generator. Such a "hospital" includes a public health center and general, mental, chronic disease, or other type of hospital, and any related facility, such as a laboratory, outpatient department, nurses' home facility, extended care facility, self-care unit, or central service facility operated in connection with a hospital, and also includes an education and training facility for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care (R.C. 3701.01(C), not in the bill).

Under the bill, a hospital seeking such a contract or tariff need not comply with two requirements that apply to other net metering systems: a hospital's system need not (1) use as its fuel either solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell or (2) be intended primarily to offset part or all of the customer-generator's requirements for electricity.

The bill provides that such a hospital net metering contract or tariff is not limited as to its availability and must be based upon (1) the rate structure, rate components, and any charges to which the hospital would otherwise be assigned if it were not a customer-generator and (2) the market value of the customer-generated electricity at the time it is generated. In addition, transmission and distribution charges in the contract or tariff apply to the flow of electricity both to the customer and from the customer to the electric utility.

The hospital contract or tariff also must allow the hospital customer-generator to operate its electric generating facilities individually or collectively without any wattage limitation on size.

### **Greenhouse gas emissions**

(R.C. 4928.68)

Ohio currently does not have any rules regarding reporting by any types of emitter of greenhouse gases, which include, but are not limited to, electric generating facilities. A recent federal act requires the U.S. EPA to prescribe mandatory reporting requirements for greenhouse gas emissions and appropriate emission thresholds for particular economic sectors, including electric generation. Draft rules are expected this summer and final rules must be in place in mid-2009.

The rules apparently will be issued under existing authority of the federal Clean Air Act, under which OEPA typically is the implementing state agency. Reportedly, other state agencies that wish to enforce such federal rules must petition the federal government for permission.

The bill requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas<sup>10</sup> emission reporting requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date. The rules must include participation in the Climate Registry.<sup>11</sup> 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 capable of supporting various greenhouse gas emissions reporting and reduction policies for its member states and tribes and reporting entities."

Neither continuing state law nor the bill provide for any type of penalty for a violation of any rule so adopted, although federal law may govern in this regard.

### **Carbon dioxide control**

(R.C. 4928.68)

The bill requires the PUCO, expressly to the extent permitted by federal law, to adopt rules establishing carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a

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<sup>10</sup> "[Greenhouse 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> (March 31, 2008).

<sup>11</sup> <<http://www.theclimateregistry.org/>>. According to the web site, as of April 11, 2008, Ohio is listed as having joined 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.

public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date.

There currently are no such federal or state requirements, and none are being proposed for the foreseeable future. The bill does not describe the scope of the carbon control planning requirements, for example, whether the rules will be directed at the filing of long-term plans or address technology standards. Further, neither continuing state law nor the bill provide for any type of penalty for a violation of any rule so adopted.

### **Natural gas revenue decoupling**

(R.C. 4929.01 and 4929.051; Section 4)

#### **Alternative rate plan**

Continuing Ohio law generally affirms PUCO authority to regulate the commodity sales service, distribution service, and ancillary service<sup>12</sup> of a natural gas utility (R.C. 4929.03). Under continuing law, a natural gas utility can apply for PUCO approval of an alternative rate plan for its commodity sales service or ancillary service (R.C. 4929.05). Such a plan would establish a different method for determining the rates and charges for the service than ordinarily would occur under the traditional rate-making provisions of continuing law (R.C. 4909.15). Those provisions, for the purpose of setting the utility's rate schedule (tariff), require determination of the revenue requirement of the utility necessary to cover its identified operating costs and receive a fair and reasonable rate of return on its investment in plant used and useful in rendering the service.

As stated, an alternative rate plan allows other methods of determining the rate schedule of the utility than the previously described cost/rate of return method. The definition "alternative rate plan" specifies two, actual alternative mechanisms: (1) an automatic adjustment in rates based on a specified index or changes in a specified cost or costs<sup>13</sup> and (2) a mechanism that tends to assess the costs of any natural gas service or goods to the entity, service, or goods that cause

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<sup>12</sup> "Commodity sales service" is the sale of natural gas to consumers, excluding distribution or ancillary service (R.C. 4929.01(C)). In other words, it is the sale of the natural gas commodity to retail customers. "Ancillary service" is any service that is ancillary to the receipt or delivery of that natural gas commodity, including, but not limited to, storage, pooling, balancing, and transmission (R.C. 4929.01(B)).

<sup>13</sup> In addition, R.C. 4929.11 of the alternative regulation law authorizes the PUCO to allow "any automatic adjustment mechanism or device in a [utility's] rate schedules that allows [the] rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs."

such costs to be incurred. Otherwise, current law specifies as allowable methods what are actually possible outcomes of alternative ratemaking. Those methods can include, but are not limited to, rate-setting methods that will (3) provide adequate and reliable natural gas services and goods in Ohio, (4) minimize the costs and time expended in the regulatory process, (5) afford rate stability, (6) promote and reward efficiency, quality of service, or cost containment, and (7) provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges. (R.C. 4929.01.)

Under the bill, an alternative rate plan could newly include (8) a revenue decoupling mechanism, which the bill defines as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of "system throughput" (the amount of gas entering the transmission/distribution system) or volumetric sales.

### **Plan approval process**

Current law prescribes the process for obtaining PUCO approval of an alternative rate plan. It specifies that there must be notice, investigation, and hearing of an alternative rate plan. The standards the PUCO must use to approve the plan are that (1) the plan will produce just and reasonable rates and charges and, after a showing by the utility, (2) the utility is in compliance with the nondiscrimination provisions of Ohio law (R.C. 4905.35)<sup>14</sup> and in substantial compliance with the state natural gas policy (which is amended by the bill, as described below), and (3) the utility is expected to be in substantial compliance with that policy following the plan's implementation. (R.C. 4929.05.)

The current approval process authorizes the request for approval of an alternative rate plan as part of an application filed under the rate-making law (R.C. 4909.18) that governs applications by utilities to establish new, or change existing, rates and charges for service. That law prescribes certain timelines for filing such an application and the information the application must contain. It also requires that, if the PUCO believes the application may be unjust or unreasonable, it must hold hearings on the matter. This could apply, for instance, when a utility was asking for a rate increase. However, if the PUCO determines an application is *not for an increase in rates*, the PUCO can permit the filing of the rate schedule and set the date it is to take effect; no hearing is required.

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<sup>14</sup> Generally, prohibitions against a utility giving undue preference or advantage, or undue or unreasonable prejudice or disadvantage, to anyone relative to utility service, discriminating among suppliers, or treating similarly situated consumers differently as to the terms and conditions of service.

The bill provides that an alternative rate plan filed by a natural gas company under R.C. 4929.05 of continuing law and proposing a revenue decoupling mechanism can be an application "not for an increase in rates" if both of the following apply: (1) the rates, joint rates, tolls, classifications, charges, or rentals the plan proposes are based upon the billing determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case proceeding and (2) the plan also establishes, continues, or expands an energy efficiency or energy conservation program (R.C. 4929.051).

### **Bill's effect on existing applications**

Regarding any alternative rate plan that was filed before the bill's effective date under R.C. 4929.05 and that proposes a revenue decoupling mechanism and meets the two conditions described immediately above, uncodified law in the bill expressly prohibits the bill being applied in favor of (that is, construed as supporting) a claim or finding that the application *is* an application to increase rates (and therefore generally subject to hearing under traditional rate-making law).

### **State natural gas policy**

(R.C. 4929.02)

Current Ohio law articulates a state policy that lists eleven objectives regarding natural gas service and requires the Public Utilities Commission (PUCO) to follow that policy when carrying out R.C. Chapter 4929. Aside from authorizing approval of alternative rate plans as described above, that chapter also establishes the conditions under which the PUCO can deregulate natural gas commodity sales and ancillary services upon a filing by a utility and certify governmental aggregators of natural gas and retail natural gas suppliers to operate in Ohio.

The bill adds a twelfth objective to the state policy: to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. It also requires both the PUCO and OCC to follow the state policy in exercising their respective authorities relative to Chapter 4929. Under continuing law, OCC serves as the advocate for residential consumers of utility services.

### **Miscellaneous**

(R.C. 4928.20, 4928.31, 4928.34, 4928.35, 4928.41, 4928.42, 4928.431, and 4928.44)

The bill repeals four sections of the Electric Restructuring Law: R.C. 4928.41, regarding electric cooperative transition revenues; R.C. 4928.42, regarding transitional requirements for electric consumer education; R.C. 4928.431, regarding an obsolete Electric Employee Assistance Advisory Board created under S.B. 3; and R.C. 4928.44, regarding service offering for nonfirm electric service customers. Accordingly, the bill amends R.C. 4928.20, 4928.31, 4928.34, and 4928.35 to remove references to those repealed sections.

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### **HISTORY**

ACTION	DATE
Introduced	09-25-07
Reported, S. Energy & Public Utilities	10-31-07
Passed Senate (32-0)	10-31-07
Reported, H. Public Utilities	---

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