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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 798  
133<sup>rd</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Hoops

Rocky Hernandez, Attorney

### SUMMARY

- Modifies H.B. 6 of the 133<sup>rd</sup> General Assembly as follows:
  - Delays, for one year, the collection of charges from customers for the Nuclear Generation Fund and Renewable Generation Fund and the distribution of payments for nuclear resource and renewable energy credits.
  - Allows the Ohio Air Quality Development Authority (Authority), subject to the Controlling Board's approval, to use a certain amount of money from the funds to pay for annual administrative costs for the credit programs.
  - Allows for the refunding of excess money from the funds to customers to occur annually after an annual management and financial audit is completed.
  - Requires the Public Utilities Commission (PUCO) to retain independent consultants and auditors, complying with appropriate accounting principles and standards, to perform the annual audits.
  - Requires owners or operators subject to annual audit to provide any information requested by PUCO.
  - Requires the Authority to reduce or cease payments if certain criteria apply to a utility following the annual audit.
  - Requires the Authority to accept, review, and approve an application from a qualifying renewable resource if the resource submitted an application for credits before March 1, 2020.
  - Requires, beginning no later than 2022 and ending after 2030, an electric distribution utility (EDU) with an ownership interest in a legacy generation resource to make a good faith effort to divest from the resource.
  - Terminates any decoupling mechanism approved by PUCO in accordance with law enacted by H.B. 6, except for final reconciliation purposes.

- Requires the Power Siting Board to submit a report to the General Assembly detailing whether certain investments in power transmission systems are cost effective and in the interest of consumers.
- Repeals the requirement that PUCO consider total earned return on common equity for affiliated Ohio EDUs operating under a joint electric security plan (ESP) when determining whether an EDU had or is likely to have significantly excessive earnings.
- Repeals the provision that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its significantly excessive earnings review of annual ESP adjustments.
- Prohibits unreasonable limitations from being imposed on the ability of a property owner or condominium unit owner to construct a solar collector system on their property.
- Declares an emergency.

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## **DETAILED ANALYSIS**

### **Background: H.B. 6**

H.B. 6, enacted by the 133<sup>rd</sup> General Assembly, requires each electric distribution utility (EDU) to collect a per-customer monthly charge from all their retail electric customers in Ohio to produce a total revenue stream of \$170 million annually, with \$150 million going to the Nuclear Generation Fund and \$20 million going to the Renewable Generation Fund. An owner or operator of an in-state nuclear resource may apply to receive quarterly payments from the Nuclear Generation Fund for nuclear resource credits earned by the resource. Additionally, H.B. 6 requires an annual management and financial review of an owner or operator of a qualifying nuclear resource and any resource that receives payments for nuclear resource credits under the act. H.B. 6 also permits an owner or operator of an in-state renewable resource to apply to receive quarterly payments from the Renewable Generation Fund for renewable energy credits earned by the resource.

H.B. 6 also replaced, beginning January 1, 2020, any existing mechanism approved by the Public Utilities Commission (PUCO) with a nonbypassable rate mechanism that allows a legacy generation resource to recover an EDU's prudently incurred costs related to the legacy generation resource through 2030. The act also created a new EDU decoupling mechanism for 2019 and each calendar year thereafter that generally decoupled base distribution rates from base distribution revenue and energy efficiency and peak demand reduction (EE/PDR) implementation revenue.

H.B. 6 also made various other changes to Ohio law governing utilities including, for example, changes to renewable energy and energy efficiency requirements, customer-sited renewable energy resources, and windfarm classification and regulation.

## **H.B 6 provisions amended**

The bill modifies the nuclear and renewable resource generation credit program, legacy generation resource, and decoupling provisions of H.B. 6. But, it does not affect the various other H.B. 6 provisions.

### **Charges for, and payments from, nuclear and renewable funds delayed**

The bill delays for one year the date that an EDU can collect charges from retail electric customers for the Nuclear Generation Fund and the Renewable Generation Fund to January 1, 2022. The bill also delays the date charges must cease to be collected by an EDU to December 31, 2028. Current law requires collection to begin on January 1, 2021, and to cease on December 31, 2027. Under continuing law, an EDU can continue to collect charges through that end date for final reconciliation purposes.<sup>1</sup>

The bill also delays for one year the period during which qualifying nuclear and renewable resources will receive payments for nuclear resource or renewable energy credits to *April 2022* and continue every three months through the end of *January 2029*. Current law requires the payments to begin with *April 2021* and end with *January 2028*.<sup>2</sup>

### **Qualifying renewable resource application and initial quarterly report**

The bill requires the Ohio Air Quality Development Authority (“the Authority”) to accept, review, and approve an application from a qualifying renewable resource to receive payments for renewable energy credits if the resource applied prior to March 1, 2020. Under continuing law, qualifying renewable resources were to apply by February 1, 2020, to the Authority to receive payments. The bill does not repeal the February 1 application requirement.<sup>3</sup>

The bill also waives the deadline for the first quarterly report that qualifying renewable resources are required to submit if they applied under the new March 1, 2020, deadline (discussed above). Under continuing law, resources are to submit a quarterly report to the Authority with the first report having been due April 7, 2020. The bill only waives the deadline for the first report, but does not mention the other 2020 reports.<sup>4</sup>

### **Qualifying nuclear resource audit requirement**

The bill requires the PUCO to complete an annual retrospective management and financial audit, including a financial need assessment, of the owner or operator of a qualifying nuclear resource, with the first one to be completed no later than May 1, 2021, and the last one

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<sup>1</sup> R.C. 3706.46(A)(1) and (C).

<sup>2</sup> R.C. 3706.55(A).

<sup>3</sup> R.C. 3706.551(A); R.C. 3706.41(A) and 3706.43(B)(1), not in the bill.

<sup>4</sup> R.C. 3706.551(B); R.C. 3706.45(A), not in the bill.

completed no later than May 1, 2028. PUCO must retain independent consultants and auditors who are knowledgeable in the subject matter to perform the annual audits. Owners or operators must provide PUCO or the consultants or auditors with any information they request. The consultants and auditors must comply with generally accepted accounting principles and standards when conducting an audit or making an audit report. The bill further requires that PUCO submit a report summarizing the findings and recommendations of each annual audit to the president and minority leader of the Senate, the speaker and minority leader of the House, and the Authority, and shall make the report publically available.

Under current law, PUCO must conduct an annual management and financial review, with the first one conducted no later than May 1, 2021, and the last one conducted no later than May 1, 2027. In doing so, PUCO has discretion to retain consultants and advisors to perform some or all of the review. Owners or operators also have the discretion to provide any information they want PUCO to review. The report of the findings of the review is then required to be submitted to the same officials and the Authority, as described above, and must be made publically available.<sup>5</sup>

### **Ceasing or reducing payments for qualifying nuclear resources**

The bill requires the Authority (instead of permits, as under current law), after considering the audit findings and recommendations (instead of after considering the annual review findings, as under current law) to cease or reduce payments for a qualifying nuclear resource if the Authority determines any of the following apply:

- The federal government or PJM Interconnection, LLC, or its successor organization (instead of the Federal Energy Regulatory Commission or Nuclear Regulatory Commission, as under current law) has established a monetary benefit or other financial support program designed (instead of “other financial incentive,” as under current law) to continue the resource’s commercial operation;
- The resource no longer meets the definition of qualifying nuclear resource under continuing law (current law criterion);
- The resource no longer maintains a principal place of business and substantial presence in this state with regard to its business operations, offices, and transactions (current law criterion);
- The resource’s owner or operator applies to decommission the resource before May 1, 2028 (instead of May 1, 2027, as under current law);
- For purposes of ensuring that the funding for nuclear resource credits stays reasonable, if the market price index exceeds the strike price on June 1 in the year that the report is submitted, the Authority must apply the credit price adjustment (described below) for the 12-month period that begins that day and ends May 31 or, for 2028 (instead of

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<sup>5</sup> R.C. 3706.61(A), (B), and (C).

2027, as under current law), the seven-month period that begins that day and ends December 31;

- That, for the purpose of ensuring that the funding for nuclear resource credits helps to maintain the economic viability of the resource at the lowest cost to consumers, payments for nuclear resource credits must be limited to the amount necessary to increase the net income or profit margin of the resource from a negative amount to not more than zero for the annual audit period. The authority must consider all revenue received or accrued from all sources and only reasonable and prudent expenses (includes depreciation but not lobbying costs, political or charitable donations, share buybacks, management bonuses, or incentive compensation) in making a determination about net income or profit margin.<sup>6</sup>

### **Refunding of excess funds**

The bill requires the refunding to customers, in a manner determined by the Authority in consultation with PUCO, of any amounts remaining in either the Nuclear or Renewable Generation funds as of the December 31 of each year, minus any remittances required to be made on January 21 of the succeeding year. The refund is to occur on the completion of the annual management and financial audit and notwithstanding the prohibition in continuing law against a public utility refunding any charge in its rates filed with PUCO (“**Qualifying nuclear resource audit requirement**”).<sup>7</sup>

### **Legacy generation resource divestment**

The bill requires that every year beginning no later than 2022 and ending after 2030, an EDU with an ownership interest in a legacy generation resource must make a good faith effort to divest from its obligations related to the resource.<sup>8</sup> Under continuing law, a nonbypassable rate mechanism established by PUCO provides for recovery of prudently incurred costs related to a legacy generation resource. The bill does not affect this mechanism, except as to require the divestment effort. “Legacy generation resource” means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation’s defense or in furtherance of national interests, including the Ohio valley electric corporation.<sup>9</sup>

### **Decoupling**

The bill, 60 days after its effective date, terminates any decoupling mechanism authorized under H.B. 6 and approved by PUCO for 2019 and every year thereafter that generally decouples base distribution rates from base distribution revenue and EE/PDR implementation revenue. Any such decoupling mechanism may continue if it is necessary to

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<sup>6</sup> R.C. 3706.61(D)(1) to (5).

<sup>7</sup> R.C. 3706.55(B); R.C. 4905.32, not in the bill.

<sup>8</sup> R.C. 4928.149.

<sup>9</sup> R.C. 4928.01(A)(41) and 4928.148, not in the bill.

reconcile the difference between revenue collected under the mechanism and the allowable cost recovery associated with the mechanism occurring prior to the termination date. The bill prohibits PUCO from authorizing any recovery from these decoupling mechanisms beyond the period of time required for this final reconciliation.<sup>10</sup>

### **Administrative cost recovery**

The bill allows the Authority, each fiscal year, beginning July 1, 2022, and ending June 30, 2029, to use, from the Nuclear Generation Fund and Renewable Generation Fund, up to \$150,000 per fund, for a maximum total of \$300,000, to pay for the Authority's annual administrative costs for the year related to the nuclear resource and renewable energy credit program. The use of the funds is subject to the Controlling Board's approval. Amounts approved for FY 2023 may be used in FYs

### **Other utility law changes**

The bill makes other changes to Ohio utility law that are unrelated to the changes made by H.B. 6.

### **Power siting board (PSB) report requirement**

The bill requires the PSB to submit a report to the General Assembly by December 1, 2021, on whether the current requirements for the planning of the power transmission system and associated facilities investment in Ohio are cost effective and in the interest of consumers. The PSB must hold at least one public meeting before completing the report and must consult with JobsOhio.<sup>11</sup>

The report must include any recommendations for changes in law to ensure transmission planning is cost effective and in the public's interest, including recommendations regarding the following:

- Whether the definition of a major utility facility should include electric transmission lines and associated facilities the costs of which are recovered as a transmission asset by the transmission owners;
- Whether the criteria for an accelerated certificate application should be modified;
- Whether the certification process is sufficiently transparent;
- Whether the board should require the following for, or determine if the following apply to, a transmission project certification application:
  - Alternative transmission projects were considered;
  - The project was competitively bid or compared to the results of a competitive bid;

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<sup>10</sup> R.C. 4928.471(F) and 4928.473.

<sup>11</sup> R.C. 4906.105.

- The project has been considered in the context of the utility’s larger transmission plan;
- The project has been considered in the context of the regional transmission planning process of PJM interconnection regional transmission organization, L.L.C.;
- The project could not have been deferred or redesigned to achieve the same operational result at a lower overall cost;
- The project has provided historical information for an existing transmission project or information for a planned or proposed project.<sup>12</sup>

### **Electric distribution utility excessive earnings test**

The bill modifies the law that requires PUCO to determine if EDUs that operate under an electric security plan (ESP) are likely to have or have had excessive earnings. Determinations are made through a significantly excessive earnings test (SEET). Under the bill, when determining how significantly excessive earnings are assessed PUCO may no longer do the following:

- Use the total earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted every four years.<sup>13</sup> (See “*Quadrennial reviews for significantly excessive earnings*” below.)
- Use the total of the utilities’ earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted in reviews of annual ESP adjustments.<sup>14</sup> (See “*Annual reviews for significantly excessive earnings*” below.)

The bill removes the provision that allows PUCO, in its SEET reviews for annual ESP adjustments, to consider, “directly or indirectly, the revenue, expenses, or earnings of” any EDU affiliate that is an Ohio EDU. The bill revives prior law that prohibits PUCO from considering these factors for “any affiliate or parent company.”<sup>15</sup> The effect of this change is that the factors PUCO considers for individual Ohio EDU affiliates during a review may no longer be reviewed in combination with the other affiliate EDUs.

### **Background**

Under the competitive retail electric service law, EDUs must provide consumers “on a comparable and nondiscriminatory basis within its certified territory, a standard service offer [SSO] of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.” EDUs must apply to PUCO to establish the SSO through a market rate offer (MRO) or an electric security plan (ESP).<sup>16</sup>

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<sup>12</sup> R.C. 4906.105(A) to (D).

<sup>13</sup> R.C. 4928.143(E).

<sup>14</sup> R.C. 4928.143(F).

<sup>15</sup> R.C. 4928.143(F).

<sup>16</sup> R.C. 4928.141, not in the bill.

No EDUs are operating under an MRO. Ohio Power Company (AEP Ohio), Dayton Power and Light, and Duke Energy Ohio operate under ESPs.<sup>17</sup> Cleveland Electric Illuminating Company, Ohio Edison Company, and Toledo Edison Company are FirstEnergy companies that operate under a joint ESP.<sup>18</sup>

### ***SEET reviews***

#### ***Quadrennial reviews for significantly excessive earnings***

Ongoing law requires PUCO to review each ESP with a term of more than three years, in the fourth year, and if applicable every four years thereafter. One of the purposes of the review is to determine whether the prospective effect of an EDU's ESP *is substantially likely to provide* the EDU with a return on common equity that is "significantly in excess of the return on common equity *that is likely to be earned* by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings will not occur. (In the four-year review, PUCO also determines whether the ESP continues to be more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.)<sup>19</sup>

#### ***Annual reviews for significantly excessive earnings***

Under continuing law, PUCO also must review ESP adjustments following the end of each annual period of an ESP to determine if the adjustments resulted in excessive earnings. This SEET determination is measured by whether *earned* return on common equity of the EDU is "significantly in excess of the return on common equity that *was earned* during the same period by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings did not occur.<sup>20</sup>

#### ***Actions after SEET results***

If, after a SEET for a four-year review, PUCO finds that continuation of the ESP would result in significantly excessive earnings, PUCO may terminate the ESP after providing notice and a hearing. If, during an annual SEET review of ESP adjustments, PUCO finds that the

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<sup>17</sup> AEP Ohio Electric Security Plan (Case No. 16-1852-EL-SSO) available at: <https://dis.puc.state.oh.us/TiffToPdf/A1001001A18D25B43534I06271.pdf>.

Dayton Power & Light Electric Security Plan (Case No. 08-1094-EL-SSO) available at: <https://dis.puc.state.oh.us/TiffToPdf/A1001001A19L18B42631H02251.pdf>.

Duke Energy Ohio Electric Security Plan (Case No. 17-0032-EL-AIR) available at: <https://dis.puc.state.oh.us/TiffToPdf/A1001001A18L19B43028I02536.pdf>, accessed on September 9, 2020.

<sup>18</sup> FirstEnergy Electric Security Plan (Case No. 14-1297-EL-SSO), available at <http://dis.puc.state.oh.us/TiffToPdf/A1001001A16C31B41521H01842.pdf>, accessed on September 9, 2020.

<sup>19</sup> R.C. 4928.143(E).

<sup>20</sup> R.C. 4928.143(F).



adjustments, in the aggregate, did result in significantly excessive earnings, PUCO must require the EDU to return to consumers the amount of the excess by prospective adjustments. The EDU, upon making such prospective adjustments, may terminate the ESP and immediately file an application for an MRO. Rates for terminated ESPs, by PUCO order, become the EDU's most recent SSO rate until the EDU submits a new ESP or MRO.<sup>21</sup>

### **Restrictions to solar collector systems (SCS)**

The bill prohibits the following from imposing or being construed to impose any unreasonable limitation (which is any limitation that significantly increases the cost, or decreases the efficiency of, an SCS) on the installation of an SCS on the roof or exterior walls of improvements:

- A covenant, condition, or restriction in a deed, or a rule, regulation, bylaw, or other governing document or agreement of a homeowners, neighborhood, civic, or other association, with respect to a property owner who owns or has the right to exclusive use of the roof or exterior walls;
- A declaration, bylaw, rule, regulation, or agreement of a condominium property, or construction of any of these items by the board of managers of its unit owners association, with respect to a unit owner if there is no competing use of the roof or exterior walls.

The bill defines an SCS as a solar collector or other solar energy device with the primary purpose of collecting, storing and distributing solar energy for electricity generation, space heating and cooling, or water heating.<sup>22</sup> If a property owner or unit owner installs or intends to install an SCS, the owner may negotiate to obtain a solar access easement under continuing law.<sup>23</sup>

### **Emergency clause**

The bill includes an emergency clause stating that it is an emergency measure necessary for the immediate preservation of the public peace, health, and safety and therefore goes into immediate effect. The reason for the emergency is to ensure the oversight of ratepayer dollars by delaying, prior to their implementation on January 1, 2021, the charges ratepayers must pay for nuclear resource and renewable energy credits under H.B. 6.<sup>24</sup>

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<sup>21</sup> R.C. 4928.143(E) and (F).

<sup>22</sup> R.C. 5301.075 and 5301.076 (property owners); R.C. 5311.195 and 5311.196 (condominium owners).

<sup>23</sup> R.C. 5301.077 (property owners); R.C. 5311.197 (condominium owners).

<sup>24</sup> Section 3.

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## HISTORY

| Action     | Date     |
|------------|----------|
| Introduced | 12-01-20 |

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