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H.B. 128
134th General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Hoops and Stein

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SUMMARY

Repeal of nuclear provisions of H.B. 6

- Repeals the following provisions established under H.B. 6 of the 133rd General Assembly:
 - The requirement that an electric distribution utility (EDU) must collect a per-customer monthly charge on all ratepayers in Ohio to subsidize credits for nuclear resources;
 - The provision that disallows future reductions in the taxable value of tangible personal property of certain electric companies.

Renewable energy credit changes to H.B. 6

- Changes the term “renewable” to “solar” in all the provisions governing the renewable energy credit program enacted under H.B. 6.
- Lowers the charges that may be imposed by an EDU on retail electric customers in Ohio for solar resource credits, reflecting the elimination of the nuclear resource credit program and related customer charges.
- Makes changes regarding the Solar Generation Fund (SGF) regarding its administration and the deposit of charges collected from retail customers.
- Permits the Ohio Air Quality Development Authority (OAQDA) to use, subject to Controlling Board approval, up to \$300,000 per fiscal year from the SGF for program administrative costs beginning January 1, 2021 and ending June 30, 2029.
- Subject to Controlling Board approval for fiscal year 2022, also permits up to \$300,000 in SGF funds to be used for program administrative costs incurred in fiscal years 2020 and 2021.

- Requires OAQDA to re-review and approve applications for qualifying solar resources that applied to receive payments for solar energy credits, so long as the application was made before March 1, 2020.
- Relieves the re-reviewed and approved qualifying solar resources from meeting the deadlines for quarterly reports of the megawatt hours produced by the resource that have passed before the bill's effective date.
- Repeals the prohibition against megawatts produced from solar resources that receive solar resource credits from also receiving renewable resource credits under the renewable energy resource requirements of continuing law.

Decoupling provision changes to H.B. 6

- Repeals the ability of an electric distribution utility (EDU) to file an application with the Public Utilities Commission (PUCO) to implement a decoupling mechanism for calendar year 2019 and thereafter regarding energy efficiency and peak demand reduction (EE/PDR) programs.
- Terminates any H.B. 6 decoupling mechanism for EE/PDR approved prior to the bill's repeal of the decoupling mechanism provision and prohibits any related amount, charge, mechanism, or rider from being assessed or collected from customers.

Electric distribution utility excessive earnings test

- Repeals the requirement established under H.B. 166 of the 133rd General Assembly that PUCO consider total earned return on common equity for affiliated Ohio EDUs operating under a joint ESP when conducting the quadrennial and annual significantly excessive earnings test (SEET) reviews for those EDUs.
- Repeals the provision established under H.B. 166 that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its annual SEET review of ESP adjustments.

Customer refunds

- Requires the following to be promptly refunded to customers and allocated to customer classes in the same proportion as originally collected:
 - The full amount of revenues collected from customers under the decoupling mechanism established under H.B. 6 for calendar year 2019, and thereafter, regarding EE/PDR programs (repealed as described above);
 - The amounts of money collected from customers resulting from, or attributable to, amendments made to the law by H.B. 166 regarding quadrennial and annual SEET reviews.

Reconsideration of PUCO orders

- Requires PUCO to reconsider any order or determination it made under the law as amended by H.B. 166 regarding quadrennial and annual SEET reviews, and to issue new orders or determinations in compliance with this bill's provisions.

Power Siting Board

- Requires the Power Siting Board (PSB) to submit, by December 1, 2021, a report, and any legislative recommendations, to the General Assembly 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.
- To complete the report, PSB (1) must consult with JobsOhio and (2) may consult with, or be assisted by, PJM Interconnection Regional Transmission Organization L.L.C. (PJM), PJM's independent market monitor, and other interested stakeholders, such as transmission owners.

DETAILED ANALYSIS

Overview

The bill repeals provisions established under H.B. 6 of the 133rd General Assembly regarding (1) nuclear resource payments, the nuclear resource credit program, and the associated monthly electric customer charges, (2) decoupling mechanisms, and (3) reductions in the taxable value of tangible personal property of certain electric companies.

Although the bill repeals the nuclear resource credit and payment program, it retains, with some modification, the renewable energy credit program. And, under the bill, references to "renewable" resources and credits are changed to "solar" resources and credits.

The bill also amends the law regarding electric security plans (ESP) by eliminating certain provisions established under H.B. 166 of the 133rd General Assembly that related to the significantly excessive earnings test (SEET), which curbs the ability of the Public Utilities Commission (PUCO) to use certain revenues in the earnings calculations.

The bill further requires the refund of revenues and money collected from customers under the decoupling mechanism and SEET provisions described above as they existed prior to the effective date of this bill. And, the bill requires PUCO to reconsider any orders or decisions made in relation to the SEET as amended prior to the bill's effective date.

Finally, the bill requires the Power Siting Board (PSB) to submit, to the General Assembly, a report related to planning of the power transmission system.

Repeal of nuclear provisions of H.B. 6

The bill repeals certain provisions of H.B. 6. Below is a summary discussion of the repealed provisions, and a link to LSC's analysis of H.B. 6, As Passed by the General Assembly, for a more detailed discussion of the provisions.

Payments for nuclear resources

The bill repeals all provisions of the in-state nuclear resource payment provisions of law enacted in H.B. 6. The repeal includes all provisions related to the per-customer monthly charges that an electric distribution utility (EDU) must collect starting January 1, 2021, and ending on December 31, 2027, to subsidize the nuclear resources. The bill, in turn, repeals the nuclear resource credit program, including provisions regarding the application for, the issuance of, and the payment for, nuclear resource credits administered primarily by the Ohio Air Quality Development Authority (OAQDA). A detailed discussion of the law being repealed is available on pages 11 to 16 of LSC's analysis of H.B. 6, As Passed by the General Assembly, [available here](#).¹

Tangible Personal Property (TPP)

The bill repeals the provision of H.B. 6 that disallows any future reduction in the taxable value of TPP of an electric company that receives payments for nuclear resource credits. A detailed discussion of the law being repealed can be found on page 26 of LSC's analysis of H.B. 6, As Passed by the General Assembly, [available here](#).²

Renewable energy credit changes

Although the bill repeals the nuclear resource credit program and all its operative provisions, it essentially retains the renewable energy credit program. But, the bill makes various changes to that program and its operative provisions as described below.

Terminology change

The bill changes the term "renewable" to "solar" in all the provisions governing the renewable energy credit program enacted under H.B. 6. As a result, "qualifying solar resources" may obtain "solar energy credits" from customer charges deposited into and then paid from the "Solar Generation Fund" (SGF). This change is more apparent than real simply because qualified renewable resources under H.B. 6 and the bill can only be certain solar facilities.³

Solar generation charge

The bill lowers the charges that may be imposed by an EDU on retail electric customers in Ohio for renewable energy credits, reflecting the elimination of the nuclear resource credit program and related customer charges to meet the revenue requirements for the repealed program. The bill retains the solar charge in an amount necessary to meet an annual \$20 million revenue requirement. The bill, in turn, reduces the maximum monthly charge imposed to meet

¹ R.C. 3706.40 to 3706.49, 3706.55, 3706.59, and 4928.642; R.C. 3706.53 and 3706.61, repealed by the bill.

² R.C. 5727.231, repealed by the bill.

³ R.C. 3706.40 to 3706.59.

the revenue requirement from 85¢ to 10¢ per month for residential customers and from \$2,400 to \$242 per month for industrial customers.⁴

Solar generation fund

The bill clarifies that all the customer charges collected for solar energy credits are to be deposited into the SGF by OAQDA, in consultation with PUCO. The bill also places the SGF under the administration of OAQDA and requires OAQDA to request the Treasurer of State to create the account for the SGF.⁵

Under the bill, OAQDA may use, subject to Controlling Board approval, up to a maximum of \$300,000 from the SGF to pay for program administrative costs each fiscal year beginning July 1, 2021, and ending on June 30, 2029. The bill also allows OAQDA to use, in fiscal year 2022, and subject to Controlling Board approval, SGF funds for administrative costs incurred in fiscal years 2020 and 2021 in amounts up to \$300,000 for each of those fiscal years.⁶

Application for solar energy credits

Notwithstanding the February 1, 2020, application deadline and the March 31, 2020, OAQDA approval deadline under continuing law, the bill requires OAQDA to re-review and approve an application from a qualifying solar resource that applied to receive payments for solar energy credits, so long as the application was submitted before March 1, 2020.⁷ Under current law, only applications received prior to February 1, 2020, were to be reviewed, with OAQDA issuing decisions before March 31, 2020.⁸

In addition, the deadlines for quarterly reports of the megawatt hours produced by the resource that have passed before the bill's effective date do not apply to a qualifying solar resource whose application for credits is approved as described above.⁹ The first four report deadlines have already passed (April, July, and October 7, 2020, and January 7, 2021).¹⁰

Renewable energy credits

The bill repeals the prohibition against a qualifying solar resource that receives a solar energy credit from also receiving a renewable resource credit useable to meet the renewable energy resource requirements of continuing law for the same megawatts.¹¹

⁴ R.C. 3706.46; R.C. 3706.53, repealed by the bill.

⁵ R.C. 3706.49.

⁶ R.C. 3706.491.

⁷ R.C. 3706.551(A).

⁸ R.C. 3706.41 and 3706.43.

⁹ R.C. 3706.551(B).

¹⁰ R.C. 3706.45.

¹¹ R.C. 4928.645; R.C. 4928.64, not in the bill.

Decoupling provision changes of H.B. 6

Decoupling

The bill repeals the decoupling provisions of law enacted in H.B. 6 of the 133rd General Assembly. Generally, these provisions give an electric distribution utility (EDU) the ability to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. Under the decoupling mechanism, the base distribution rates for residential and commercial customers is decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements, excluding program costs and shared savings, and recovered pursuant to an approved ESP, as of the 12-month period ending December 31, 2018.¹²

A detailed discussion of the law being repealed can be found on page 24 of LSC's analysis of H.B. 6, As Passed by the General Assembly, [available here](#).

The bill also prohibits any decoupling mechanism established under H.B. 6 from remaining in effect on and after the effective date of the bill, and prohibits any amount, charge, mechanism, or rider related to this decoupling provision from being assessed or collected from customers.¹³

Customer decoupling refunds

The bill requires customer refunds of the full amount of the revenues collected under the decoupling provisions of H.B. 6, as those provisions existed prior to the effective date of the bill. Refunds must be made promptly to customers from whom the revenues were collected and must be allocated to customer classes in the same proportion as originally collected.

The decoupling refunds must be made notwithstanding any other provision in Ohio utility law, including the current law that prohibits public utilities from refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.¹⁴

Electric distribution utility excessive earnings test

The bill modifies the law that requires the PUCO to determine if EDUs that operate under an ESP are likely to have or have had excessive earnings. Determinations are made through a 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.¹⁵ (See "**Quadrennial reviews for significantly excessive earnings**" below.)

¹² R.C. 4928.471, repealed by the bill.

¹³ Section 4.

¹⁴ Section 5.

¹⁵ R.C. 4928.143(E).

- 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.¹⁶ (See "**Annual reviews for significantly excessive earnings**" below.)

The bill removes the provision, enacted by H.B. 166 of the 133rd General Assembly, 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."¹⁷ 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).¹⁸

No EDUs are operating under an MRO. Cleveland Illuminating Company, Ohio Edison Company, and Toledo Edison Company are FirstEnergy companies that operate under a joint ESP.¹⁹

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.²⁰

¹⁶ R.C. 4928.143(F).

¹⁷ R.C. 4928.143(F).

¹⁸ R.C. 4928.141, not in the bill.

¹⁹ FirstEnergy Electric Security Plan (Case No. 14-1297-EL-SSO), available at <http://dis.puc.state.oh.us/TiffToPDF/A1001001A16C31B41521H01842.pdf>, accessed on March 9, 2021.

²⁰ R.C. 4928.143(E).

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.²¹

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 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 the terminated ESP, by PUCO order, become the EDU’s most recent SSO rate until the EDU submits a new ESP or MRO.²²

Customer refunds regarding SEET

The bill requires customer refunds of the amounts of money collected from customers resulting from, or attributable to, amendments made to the ESP laws described above regarding SEET. Refunds must be made promptly to customers from whom the money was collected and must be allocated to customer classes in the same proportion as originally collected.²³

Reconsideration of orders and decisions regarding SEET

The bill requires PUCO to reconsider any order or determination it made in compliance with the ESP laws prior to the effective date of this bill regarding SEET. The bill further requires PUCO to issue new orders and determinations in compliance with the amendments this bill makes to these provisions.²⁴

Certain utility law not applicable

Refunds and reconsideration required above must be made notwithstanding any other provision in Ohio utility law, including the current law that prohibits public utilities from

²¹ R.C. 4928.143(F).

²² R.C. 4928.143(E) and (F).

²³ Section 6(A).

²⁴ Section 6(B).

refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.²⁵

Power Siting Board

The bill requires the Power Siting Board (PSB) to submit a report to the General Assembly 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. PSB must hold at least one public meeting before completing the report, which must be submitted not later than December 1, 2021. When completing the required report, PSB:

- Must consult with JobsOhio;
- May consult with or request assistance from:
 - PJM Interconnection Regional Transmission Organization, L.L.C. (PJM);
 - PJM's independent market monitor;
 - Other interested stakeholders, such as transmission owners.

Under the bill, the report may include recommendations for legislative changes to ensure that transmission planning is cost effective and in the interest of consumers. The bill also specifies that the report may include legislative recommendations regarding whether (1) the definition of a major utility facility should include an electric transmission line of a design capacity at or above 69 kilovolts and associated facilities the costs of which are recovered as a transmission asset by the transmission owners, (2) the criteria for an accelerated certificate application should be modified, (3) the certification process is sufficiently transparent, and (4) PSB should require certain factors for, or determine if the factors apply to, a transmission project certification application.

Under the bill, the application factors to consider under (4) above are that:

- Alternative transmission projects were considered;
- The project:
 - Was competitively bid or compared to the results of a competitive bid;
 - Has been considered in the context of the utility's larger transmission plan;
 - Has been considered in the context of the regional transmission planning process of PJM;
 - Could not have been deferred or redesigned to achieve the same operational result at a lower overall cost;

²⁵ Section 6.

- Has provided historical information for an existing transmission project or information for a planned or proposed project.²⁶

PSB, which operates within PUCO, is responsible for approving the siting of major utility facilities and certain wind farms and ensuring that they meet requirements specified in Ohio law.²⁷

HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Public Utilities	03-10-21
Passed House (86-7)	03-10-21

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²⁶ R.C. 4906.105.

²⁷ R.C. 4906.02(A) and 4906.03, not in the bill.