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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

S.B. 143
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Romanchuk

Reid J. Fleeson, Attorney

SUMMARY

- Requires an electric distribution utility (EDU) to file a rate case application regarding distribution service at least every five years beginning not later than five years after the effective date of the bill.
- Requires an EDU's standard service offer (SSO) to be established only as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory.
- Modifies the MRO process.
- Prohibits electric utilities (EUs) from providing any competitive retail electric service in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date.
- Eliminates the corporate separation requirements for EUs that are in the business of supplying both a noncompetitive and a competitive retail electric service in Ohio, since the bill prohibits EUs from providing competitive retail service designated as such prior to the bill's effective date.
- Modifies the corporate separation requirements that remain applicable to EUs that are in the business of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service regarding unfair competitive advantage and abuse of market power.
- Repeals the prohibition against an EDU selling or transferring any generating asset without PUCO approval.
- Requires PUCO to review each MRO application to ensure that the application and resulting MRO does not contain any rate, price, term, condition, or provision that would have an adverse effect on large-scale governmental aggregation in Ohio.

- Repeals provisions in sections amended by the bill that no longer serve a purpose or have no applicability.

DETAILED ANALYSIS

Rate case application every five years

The bill requires an electric distribution utility (EDU) to file a rate case application regarding distribution service at least every five years beginning not later than five years after the effective date of the bill.¹

Changes affecting the standard service offer (SSO)

Elimination of electric security plans (ESPs)

The bill requires an EDU's standard service offer (SSO) to be established only as a market-rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory.² An SSO is an offer of all the competitive retail electric services that are necessary to maintain essential electric service that an EDU is required to provide to its customers (1) who did not shop for their own electric generation supplier or (2) whose supplier defaulted and the customer did not obtain a new supplier.³ Under current law, an EDU may establish its SSO as an ESP or an MRO.

The bill requires that an ESP that was approved prior to the bill's effective date must continue to serve as an EDU's SSO until an MRO is approved.⁴ The bill provides that if a customer does not receive retail electric generation service from a competitive generation supplier and the EDU's ESP is still in effect, the customer will default, after reasonable notice, to that ESP until the customer chooses an alternative supplier or until the EDU's MRO is authorized.⁵ The bill prohibits an ESP that is approved after January 1, 2023, from extending beyond June 1, 2027.⁶

Since the bill eliminates ESPs, the bill also repeals or amends all other provisions of the Revised Code addressing or affecting ESPs.⁷

¹ R.C. 4909.181. The bill does not define "electric distribution utility" for purposes of this rate case application requirement. The term likely would be construed to mean such an entity as defined under R.C. 4928.01, but that conclusion is not certain.

² R.C. 4928.141(A)(1) and 4928.142(A); R.C. 4928.143, repealed.

³ R.C. 4928.14 and 4928.141.

⁴ R.C. 4928.141(A)(1) and (2).

⁵ R.C. 4928.14(C).

⁶ R.C. 4928.141(A)(2).

⁷ R.C. 4928.14, 4928.141, 4928.142, 4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542; R.C. 4928.143, repealed.

Changes affecting the market-rate offer

The bill generally retains the MRO process under current law providing for (1) the EDU to file an application with the Public Utilities Commission (PUCO) prior to initiating a competitive bidding process for the EDU's MRO, (2) the MRO to be competitively bid in accordance with certain requirements under continuing law, (3) PUCO to determine within 90 days of the application's filing date whether the EDU and its MRO meet all requirements, (4) the EDU to initiate its competitive bidding process if PUCO determines all requirements are met, and (5) PUCO to select the EDU's MRO from the least-cost bid winner or winners.⁸ The bill also makes (4) above mandatory instead of discretionary as provided under current law (MRO competitive bidding *must be* initiated – instead of *may be* initiated – if PUCO determines all requirements are met).⁹

The bill, however, eliminates the following provisions from the MRO requirements under current law:

- The requirement that an EDU withdraw its application, as an alternative to timely remedying a deficiency, if PUCO finds that the MRO does not meet MRO requirements.
- The limitation that an EDU cannot initiate the competitive bidding process for at least 150 days after an application's filing if (1) PUCO finds that the MRO does not meet MRO requirements, (2) the EDU remedies the MRO deficiency, (3) PUCO determines the remedied application meets the MRO requirements, and (4) the MRO was filed simultaneously with an ESP application.¹⁰
- The blended price requirements for EDUs that directly owned operating generating facilities that were used and useful as of July 31, 2008.¹¹
- The restriction that an EDU may not ever file or be required to file an ESP application if its initial MRO application is approved.¹²

Prohibition against providing competitive service outside of an SSO

The bill prohibits electric utilities (EUs) from providing any competitive retail electric service in Ohio, other than through an SSO, if that service was deemed competitive or otherwise legally classified as competitive prior to the bill's effective date. The bill explicitly requires that EUs continue to supply SSOs to consumers in Ohio.¹³ "Competitive retail electric

⁸ R.C. 4928.142(A) to (C).

⁹ R.C. 4928.142(B).

¹⁰ R.C. 4928.142(B)(3).

¹¹ R.C. 4928.142(D) and (E).

¹² R.C. 4928.142(F).

¹³ R.C. 4928.041.

service” is a component of retail electric service that is deemed competitive under Ohio statutory law or a PUCO order. All retail electric generation, aggregation, power marketing, and power brokerage services supplied to consumers within the certified territory of an EU are competitive.¹⁴

Definition of an electric utility

The bill changes the definition of EU to mean “an electric light company that has a certified territory and is engaged on a for-profit basis in the business of supplying at least a noncompetitive retail electric service in this state.” Current law, however, defines an EU as “an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the business of supplying both a noncompetitive and a competitive retail electric service in this state.” An EU is also defined under continuing law to exclude a municipal electric utility and a billing and collection agent.¹⁵

Applicability of the prohibition to electric distribution utilities

The bill’s prohibition against providing competitive retail electric service outside of an SSO extends to EDUs because, under continuing law, an EDU is an EU that supplies at least retail electric distribution service.¹⁶

Future designation of competitive retail electric services

The effect of limiting the prohibition to services deemed or classified as competitive *prior* to the bill’s effective date is that if a different service is deemed or classified as competitive in the future, an EU could provide that service outside of an SSO. PUCO has continuing authority to declare the following additional services as competitive: retail ancillary, metering, or billing and collection service.¹⁷

Changes to corporate separation requirements

Requirements not applicable to certain electric utilities

The bill eliminates the corporate separation requirements for certain EUs that are in the business in Ohio of supplying a noncompetitive and a competitive retail electric service. If an EU is in the business of supplying noncompetitive retail electric service and supplying a product or service other than retail electric service, the requirements would still apply.

Under current law, an EU can be engaged in the business of supplying both a noncompetitive retail electric service and a competitive retail electric service, so long as a corporate separation plan meeting certain requirements of utility law are met. Because the bill

¹⁴ R.C. 4928.01(A)(4) and (B); R.C. 4928.03, not in the bill

¹⁵ R.C. 4928.01(A)(11).

¹⁶ R.C. 4928.01(A)(6).

¹⁷ R.C. 4928.041(A); R.C. 4928.04(A), not in the bill.

prohibits an EU from providing a competitive retail electric service other than through an SSO, eliminating the corporate separation requirement means that the EU generally cannot provide both a noncompetitive retail electric service and a competitive retail electric service even by following a corporate separation plan. However, as mentioned above (see **“Future designation of competitive retail electric services”** above), the prohibition on EU’s providing competitive retail electric service applies only to retail electric service deemed competitive prior to the effective date of the bill.¹⁸

Unfair competitive advantages and the abuse of market power

The bill makes a change to the corporate separation requirements that would still apply to EUs supplying a noncompetitive retail electric service and a product or service other than retail electric service. The bill eliminates the requirement that the EU’s corporate separation plan satisfy the public interest in “preventing unfair competitive advantage.” Instead, the bill just retains the requirement that the plan satisfy the public interest in “preventing the abuse of market power.” With respect to PUCO rules establishing limitations on affiliate practices solely for the purpose of maintaining a separation of the affiliate’s business from the EU’s business to prevent unfair competitive advantage, the bill replaces “unfair competitive advantage” with “abuse of market power.” Under continuing law, “market power” means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.¹⁹

Sale or transfer of generation assets

The bill repeals a provision from the corporate separation requirements that prohibits an EDU from selling or transferring any generating asset it wholly or partly owns without prior PUCO approval. Additionally, the prohibition against PUCO approving part of an EU’s transition plan if the transition plan would constitute an abandonment of service is no longer subject to the requirement that PUCO approve the selling or transferring of generation assets.²⁰

Large-scale governmental aggregation

The bill amends Ohio law governing governmental aggregation to require PUCO to review each MRO application filed by an EDU to ensure that the application and resulting MRO does not contain any rate, price, term, condition, or provision that would have an adverse effect on large-scale governmental aggregation in Ohio. The bill also requires PUCO to adopt rules and issue orders in proceedings under the MRO and SSO requirements to encourage and promote large-scale governmental aggregation in Ohio. The requirement that PUCO consider the effect of large-scale governmental aggregation of certain nonbypassable generation charges in the context of an ESP when adopting large-scale governmental aggregation rules is repealed. Governmental aggregation refers to a municipal corporation, township, or county

¹⁸ R.C. 4928.01(A)(11), 4928.041, and 4928.17(A).

¹⁹ R.C. 4928.01(A)(18) and 4928.17(A)(2) and (B).

²⁰ R.C. 4928.17(E) and 4928.34(B).

that aggregates retail electric loads in their jurisdiction in order to enter into an agreement for the sale or purchase of electricity for those loads.²¹

Governmental aggregation ESP standby service

The bill repeals a provision which permitted a legislative authority that formed or is forming governmental aggregation to elect not to receive standby service under an ESP, subject to certain requirements.²²

Repeal of obsolete provisions

The bill repeals, only in Revised Code sections amended by the bill, provisions referencing the starting date of competitive retail service, as they no longer serve a purpose. The bill also repeals various other provisions of the utility law that no longer have applicability or that serve no purpose.²³

HISTORY

Action	Date
Introduced	08-17-23

ANSB0143IN-135/ks

²¹ R.C. 4928.20(J).

²² R.C. 4928.20(J), repealed.

²³ R.C. 4928.05, 4928.141, 4928.17(A) and (E), and 4928.20(A).