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Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Seitz and Sweeney

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SUMMARY

State competitive retail electric service policy

- Amends the state policy for competitive retail electric service to include encouraging electric distribution utilities (EDUs) to develop voluntary portfolios of energy savings programs to help customers save energy.

Energy savings portfolio application requirements

- Permits EDUs to apply to the Public Utilities Commission (PUCO) for approval of a portfolio of programs for energy savings (energy efficiency savings and peak demand reduction savings) to help retail electric customers to save energy.
- Specifies what portfolio applications must contain about proposed energy savings programs, including for example, descriptions of program size and scope, program costs, and planned energy savings, and other information the EDU determines appropriate for PUCO review.
- Also requires a portfolio application to include proposed mechanisms for (1) certain program cost recovery and utility incentives and (2) recovery of lost distribution revenues or decoupling mechanism revenue as authorized under existing law governing energy efficiency and peak demand response (EE/PDR) .
- Limits the collection of portfolio mechanisms for the recovery of lost distribution revenues or recovery through a decoupling mechanism to a period that does not exceed the length of the approved portfolio's term.
- Specifies that, if applicable, any lost distribution revenue mechanisms must be normalized for weather.
- Specifies that recovery of any lost distribution revenues or recovery through a decoupling mechanism is not subject to the bill's provisions allowing mercantile

customers to opt in to an EDU's energy savings programs and residential and nonresidential customers to opt out.

- Prohibits portfolio mechanisms that would result in double cost recovery.

Application review process

- Requires PUCO to conduct hearings on a portfolio application.
- Not later than 180 days after receiving an application, requires PUCO by order to approve, or modify and approve, portfolio applications for a term not to exceed five years, if PUCO finds that the application meets the requirements under the bill and to deny the application if PUCO finds that the requirements are not met.
- Requires PUCO to specify, according to established rate classes, if it approves an energy savings portfolio application, the use of either lost distribution revenue recovery or recovery under a decoupling mechanism for EE or conservation programs under current EE/PDR law.
- Allows PUCO to modify an application only as necessary for it to comply with portfolio requirements under the bill.
- Requires PUCO, upon approving or modifying and approving a portfolio application, to authorize accounting mechanisms under which the EDU may defer and recover only those PUCO-approved program costs that would cause recovery in excess of the bill's rate caps due to the level of customer participation that exceeded the EDU's expectations.
- Requires an EDU to accept or withdraw its modified application not later than 90 days after the PUCO final application order, if PUCO modifies and approves the application or if a higher than expected number of customers opt out of the portfolio.
- Prohibits an EDU or its affiliate from doing certain activities to induce a party to a proceeding to enter into a settlement of a proceeding before PUCO regarding a portfolio application.

Additional portfolio requirements

- Requires portfolios to include at least one program to benefit low-income residential customers with an annual income at or below 200% of the federal poverty level.
- Requires the total cost for a portfolio's proposed residential low-income customer programs to be at least 15% of the total program costs for all of the portfolio's proposed residential programs.
- Requires a portfolio to be designed to:
  - Achieve gross annual energy savings of at least 0.5% of the gross annual energy savings of the prior year's retail electric sales to participating customers except as limited by the bill's net cost provisions and establishes options for determining gross

energy savings either directly or with a baseline established under federal energy standards for appliances or Ohio Building Code standards;

- Achieve not more than 30% of the planned annual gross savings through residential programs delivering only behavioral energy savings (energy savings occurring as a result of a change in a residential retail electric customer's pattern of electricity use);
- Emphasize smart technology measures, including ENERGY STAR® smart thermostats and appliance controllers;
- Only permit customer incentives on equipment that exceeds federal energy standards for appliances or Ohio Building Standards, for gross energy savings not determined through standard measurement, and verification protocols or, if available, through metering that has the capability to measure demand in kilowatts;
- For gross energy savings based on federal energy standards for appliances and other equipment or standards under the Ohio Building Code, an EDU may only claim savings for equipment in cases in which it has paid a customer incentive;
- For demand savings when residential advanced metering is not available, determine gross energy savings as the amount of kilowatt hours shifted to periods other than periods of high demand, if this method of determining gross energy savings is approved in the portfolio; and
- Exclude gross energy savings from any physical device or equipment not enrolled in the program with the permission or at the request of a participating customer.

- Requires an EDU's portfolio to include provisions intended to accommodate the participation of certain small businesses as trade allies in all counties within the EDU's service area under its proposed EE programs.
- Requires an EDU's energy savings portfolio to ensure that any savings on a customer's monthly bill or reduction in energy usage as a result of the customer's participation in any federal EE program or use of a federal tax rebate or credit will not be attributed to the EDU's programs.
- If gross annual energy savings from transmission and distribution system investments result in measurable EE savings, (1) prohibits the investments from being considered as a portfolio program for cost recovery and incentive purposes and (2) requires the energy savings to be counted toward determining whether the EDU achieved its required annual gross energy savings.

Utility cost test

- Requires an EDU's approved portfolio to be cost-effective based on a utility cost test that compares the total cost of measurable portfolio programs to avoided electric generation, transmission, and distribution costs; reductions in market prices for energy and capacity; reductions in credit and collection costs; and any other quantifiable EDU system benefits.

Customer and EDU incentives

- Specifies that (1) customer incentives must provide a "meaningful inducement" for customers to participate in the cost-effective delivery of energy savings and (2) EDU incentives through a portfolio must not exceed 10% of actual program costs on an after-tax basis and excluding any advertising or marketing dollars, and must not count toward the portfolio's net cost calculation or the rate caps under the bill.
- Permits PUCO to adopt rules to implement the customer and EDU incentive provisions of the bill.

EDU promotion of energy savings programs

- Requires an EDU that promotes its energy savings programs to include in its advertisements and marketing materials a description of the specific energy savings programs that the EDU is promoting and offering to its customers.

Portfolio net cost limit

- Establishes a method for calculating the net cost of an EDU's portfolio and prohibits the net cost from exceeding 2.25% of the difference between the EDU's annual total operating revenues for the previous year as reported in its FERC financial report, FERC Form 1, Account 400, less the purchased power expense, account 555, for the same year.
- Requires an EDU to retain 20% of revenues received from EDU program energy savings bid into the wholesale market and specifies that these revenues are separate from utility incentives described in the bill.
- Prohibits recovery of any lost distribution revenues or recovery using a decoupling mechanism under an EDU's approved portfolio from counting toward the portfolio's net cost or the rate caps under the bill.

Rate caps

- Effectively caps charges for an EDU's portfolio costs by prohibiting an EDU's portfolio costs from resulting in a rate that produces a monthly charge greater than $1.50 per residential customer per month or greater than $7.50 per nonresidential retail customer per month.
- If a higher than expected number of residential customers opt out of the portfolio, automatically authorizes an EDU with an approved portfolio to reduce portfolio spending to ensure that the EDU complies with the rate caps.

Customer opt-out

- Establishes a process under which, at the start of a new portfolio, (effectively at least every five years due to portfolio's maximum five-year term) residential customers and nonresidential retail customers (customers that are not residential customers or mercantile customers) may opt out of portfolio participation and cost recovery for the portfolio.

- Includes in this process, an opportunity for a customer that has opted out of portfolio participation to opt back in at the beginning of a portfolio's term.
- Allows a customer's election to opt out to continue after an EDU's portfolio's term expires or after PUCO approves a new portfolio and specifies that a customer's election to opt out of participation in a previous portfolio remains in effect until the customer elects to opt back in according the bill's opt-in process.

Mercantile customer opt-in

- Automatically excludes mercantile customers (commercial or industrial customers that consume more than 700,000 kilowatt hours of electricity per year or are part of a national account involving multiple facilities in one or more states) from participating in an EDU portfolio, but establishes a process under which such customers may affirmatively opt in to any opportunities to participate in an EDU's portfolio and any portfolio cost recovery.
- Requires EDUs to provide a notice to mercantile customers describing the opt-in that includes a mercantile customer's cost of participating in the portfolio.

Conveyance of energy savings incentives

- Permits a customer to convey to an eligible electric services company (ESC) an energy savings incentive associated with participation in an EDU's energy savings program if the ESC has:
  - Obtained the customer's written consent;
  - Verified the customer's identity by providing the customer's EDU account number or the customer's service delivery identifier number;
  - Explained how the incentive being conveyed meets the energy savings program eligibility requirements.
- Requires the ESC to produce evidence that the customer has completed the energy savings program, and provides that examples of such evidence could be a product identification code, product serial number, or similar evidence that proves installation or delivery of an eligible product under the energy savings program.

EDU report

- Requires an EDU with an approved portfolio to review the cost-effectiveness of its portfolio annually over its term, update its portfolio based on the review, ensure that reductions in monthly bills or energy usage due to federal EE programs, tax credits, or rebates are not attributed to the EDU's programs, and file a report of its annual review to PUCO by April 15 each year.
- Requires an EDU to continue to offer customers a portfolio of energy savings programs during its cost-effectiveness and compliance review and subject to the General Assembly's findings regarding the EDU's performance and compliance as described in the PUCO report required by the bill.

PUCO report

- Requires PUCO, by July 1, 2026, and every three years thereafter, to review EDU reports and submit a report to the General Assembly that includes an overview of EDU compliance and energy savings and a compilation of the EDU reports received.
- Requires PUCO to recover reasonable costs for evaluation, measurement, and verification for each EDU's program through the affected EDU's portfolio cost recovery mechanism and specifies that the costs must not be considered portfolio costs or included in net cost calculations or the rate caps under the bill.

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DETAILED ANALYSIS

State competitive retail electric service policy

To the state's competitive retail electric service policy, the bill adds the new policy to "encourage electric distribution utilities to develop voluntary portfolios of energy savings programs to help their customers to save energy."[1]

Energy savings portfolios

The bill permits an electric distribution utility (EDU) to apply to the Public Utilities Commission (PUCO) for approval of a portfolio of energy savings programs for the purpose of assisting retail electric customers to achieve energy savings. Under the bill "energy savings" includes energy efficiency (EE) savings and peak demand reduction (PDR) savings.[2]

Portfolio application requirements

As required by the bill, portfolio applications must include certain information about the proposed energy savings programs. Specifically, applications must include:

- Descriptions of the size and scope of the programs;
- The programs' costs, planned energy savings, and cost-effectiveness;
- The EDU's projection of the expected number of customers opting out of the programs under the opt-out process of the bill (see **"Customer opt-out"** below);
- The program costs, availability, and planned energy savings listed by programs for residential customer and nonresidential retail customer classes and any programs that could impact all customer classes. (Under the bill, a "nonresidential retail customer" is a customer that is not a residential customer or mercantile customer. Under the Revised Code currently, 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.[3] Under the Ohio Administrative Code currently, a "residential customer" is a customer of a competitive retail electric service for residential purposes.[4]);
- Proposed mechanisms for:

[1] R.C. 4928.02(N).

[2] R.C. 4928.6630 and R.C. 4928.6631.

[3] R.C. 4928.01(A)(19), not in the bill.

[4] Ohio Administrative Code (O.A.C.) 4901:1-21-01(GG), not in the bill. No definition of "residential customer" exists in the Revised Code.

- ◻ The recovery of program costs, but not internal EDU employee labor costs already being recovered in the EDU's rates under its most recent rate case;
- ◻ Utility incentives;
- ◻ Either of the following determined by PUCO:
  - ❖ A mechanism for the recovery of lost distribution revenues, if applicable;
  - ❖ Any decoupling mechanism under existing EE provisions of the competitive retail electric service law.

- A plan to improve customers' smart technology capability for demand side management;
- A plan to improve, while working in coordination with electric services companies (ESCs), utility control to reduce demand or impacts of intermittent resources on the electric grid;
- A description of how the portfolio will meet the bill's requirement to include programs to benefit low-income customers;
- If the financial parameters of the bill do not allow the portfolio design to be consistent with the energy savings measures under the bill's net cost limitation (see "**Portfolio net cost limit**" below), an explanation of why consistency is not possible;
- Any other information the EDU determines is appropriate for PUCO review.[5]

The bill also requires that mechanisms for the recovery of lost distribution revenues or from a decoupling mechanism may only be collected for a period that does not exceed the length of the approved portfolio's term. (As described below, portfolio terms may not exceed five years.) If applicable, approved lost distribution revenue mechanisms must be normalized for weather. The bill prohibits approval of mechanisms that would result in double cost recovery.[6] And, recovery of lost distribution revenues and recovery of revenues from a decoupling mechanism are not subject to the bill's opt-out and opt-in provisions for residential and nonresidential customers or its mercantile customer opt-in provisions. (See "**Customer opt-out**" and "**Mercantile customer opt-in**" below.)[7]

Application review process

Under the bill, PUCO must conduct hearings on a portfolio application. PUCO must issue an order to approve, or modify and approve, a portfolio application not later than 180 days after receiving it, if PUCO finds that the application meets the application requirements described above and includes at least one program to benefit low-income residential

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[5] R.C. 4928.6630 and R.C. 4928.6633.

[6] R.C. 4928.6633(E)(1)(c) and (2).

[7] R.C. 4928.6646.

customers. The bill requires PUCO to deny the application if it does not meet the requirements. In approving an application, PUCO must also specify, according to established rate classes, the use of either lost distribution revenue recovery or recovery through a decoupling mechanism under current law.

Terms for approved portfolios may not exceed five years, and to replace or extend a terminating portfolio, an EDU must file a new portfolio application. A PUCO order approving or modifying and approving an application must authorize accounting mechanisms that allow the EDU to defer and recover only those PUCO-approved program costs that would cause recovery to exceed the rate caps established by the bill due to a greater level of customer participation than the EDU expected.[8] (The rate caps are \$1.50 per month for residential customers and \$7.50 per month for nonresidential retail customers. See "**Rate caps**" below.)

Modification restrictions and process

Although the bill permits PUCO to modify an application, PUCO may modify it only as necessary to bring the application into compliance with: (1) the bill's application and portfolio design requirements, (2) the utility cost test to measure the portfolio's cost-effectiveness, (3) the provisions ensuring that any customer savings or reductions in energy usage as a result of the customer's participation in a federal EE program or use of a federal tax rebate or credit will not be attributed to the EDU's programs, and (4) the provisions for customer and utility incentives, portfolio net cost, and gross annual energy savings (all described below).

If PUCO modifies and approves an EDU's portfolio application, the EDU must accept the modified application or withdraw it not later than 90 days after PUCO's final order. An EDU also must accept the approved application or withdraw it within that 90-day period, if a higher than expected number of customers opt out of the portfolio.[9] If an application is approved without modification, it is not clear whether the bill allows an EDU to withdraw an application due to a higher than expected number of customers opting out.

Inducement of settlement prohibited

The bill prohibits an EDU or its affiliate from inducing any party to enter into a settlement of a proceeding relating to a portfolio application before PUCO by either: (1) making a cash payment to that party that is not specifically tied to the provision of services related to the EDU offering EE programs or (2) entering into any agreement or financial or private arrangement with that party that is not made part of the public case record.[10]

[8] R.C. 4928.6634(A), (B), and (D).

[9] R.C. 4928.6634(B) and (C).

[10] R.C. 4928.6635.

Additional portfolio requirements

Programs for low-income customers

Under the bill, an EDU's portfolio must include at least one program that benefits low-income residential customers with an annual income that is at or below 200% of the federal poverty level. And, total proposed costs for such programs must be at least 15% of the total proposed residential program costs for all residential programs in the EDU's portfolio.[11]

Accommodations for trade allies

The bill requires an EDU's approved portfolio to include provisions intended to reasonably accommodate the participation of small businesses as trade allies in all the counties within the EDUs service area under the EDU's proposed EE programs. Under the bill, "trade allies" are defined as entities that install equipment or measures that qualify for an incentive included in an approved portfolio on behalf of a customer participating in an EDU's EE program.[12]

Portfolio energy savings requirements

The bill requires an EDU's portfolio to achieve certain gross energy savings and specifies how to determine the savings. First, a portfolio must be designed to achieve gross annual energy savings of at least 0.5% of the gross annual energy savings of the prior year's retail electric sales to participating customers, except as limited by the bill's net cost provisions for portfolios. (See "**Portfolio net cost limit**" below.)

Second, the bill limits what annual gross energy savings certain residential programs may achieve. Under the bill, not more than 30% of the planned annual gross energy savings may be achieved through residential programs designed to deliver only behavioral energy savings. "Behavioral energy savings" is defined as "energy savings that occurs as a result of a change in a residential retail electric customer's pattern of energy use."[13]

For example, if a portfolio's planned energy savings is the minimum, 0.5%, then up to 0.15% of that 0.5% may be programs that deliver only behavioral savings. If a portfolio's planned energy savings is 0.75%, then up to 0.225% of that 0.75% may be behavioral savings programs. See table below for other possible scenarios.

[11] R.C. 4928.6636.

[12] R.C. 4928.6637.

[13] R.C. 4928.6630 and R.C. 4928.6639(A) and (B).

Possible energy savings scenarios (Energy savings x 30% limit =Total % limit for behavioral savings)	
Planned energy savings	Behavioral savings programs maximum
0.5% (minimum annual gross energy savings required under bill)	0.15 %
0.75%	0.225%
1.00%	0.30%
1.25%	0.375%
1.5%	0.45%
1.75%	0.525%
2.00%	0.6%

Third, as required by the bill, a portfolio must emphasize smart technology measures, including ENERGY STAR® qualified smart thermostats and appliance controllers. ENERGY STAR is a "partnership program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that helps businesses and individuals to save energy and protect the environment through energy-efficient products, homes, and buildings."[14]

Fourth, for gross energy savings determined using federal appliance standards or the Ohio Building Code (described below), a portfolio may only permit customer incentive programs for equipment that exceeds those standards and an EDU may only claim savings for equipment in cases in which it has paid a customer incentive.

Fifth, portfolios must exclude gross energy savings from any physical device or equipment that has not been enrolled in the program with the permission or at the request of a customer participating in the portfolio.[15]

Gross energy savings determination

Under the bill, a portfolio's gross energy savings must be determined (1) directly through standard evaluation, measurement, and verification protocols, such as a bill savings

[14] R.C. 4928.6639(C); 42 United State Code (U.S.C.) 6294a; U.S. Environmental Protection Agency and U.S. Department of Energy, "ENERGY STAR®, About ENERGY STAR," available at: energystar.gov accessed on June 30, 2023.

[15] R.C. 4928.6639(E) to (G).

analysis or, if available, through metering that has the capability to measure demand in kilowatts, (2) for savings not determined through these protocols, with a baseline established for federal energy standards for appliances and other equipment[16] or standards under the Ohio Building Code, or (3) for demand savings when residential advanced metering is not available, the amount of kilowatt hours shifted to periods other than periods of high demand, if this method of determining gross energy savings is approved in the portfolio.[17]

Energy savings from transmission and distribution system investments

If gross annual energy savings from transmission and distribution system investments result in measurable energy savings, the bill requires the following:

- The investments must not be considered as a portfolio program for cost recovery and incentive purposes under the portfolio;
- The energy savings must count toward determining whether the EDU achieved its required annual gross energy savings of at least 0.5% as described above.[18]

Federal EE measures, tax rebates, or credits

The bill requires an EDU to ensure that any savings on a customer's monthly bill or a reduction in energy usage that are the result of the customer's participation in any federal EE program or use of a federal tax rebate or credit is not attributed to the EDU's portfolio programs.[19]

Utility cost test

The bill requires an approved portfolio to be cost-effective based on a utility cost test. As specified in the bill, the cost-effectiveness of a portfolio is determined by comparing the total cost of its measurable programs to any of the following:

- Avoided electric generation, transmission, and distribution costs;
- Reductions in market prices for energy and capacity;
- Reductions in EDU credit and collection costs;
- Any other quantifiable EDU system benefits.[20]

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[16] 42 U.S.C. 6295; U.S. Department of Energy, Office of Energy Efficiency & Renewable Energy, "Standards and Test Procedures," available at: energy.gov/eere/buildngs/standards-and-test-procedures, accessed on July 6, 2023.

[17] R.C. 4928.6639(D); R.C. Chapter 3781, not in the bill.

[18] R.C. 4928.6653.

[19] R.C. 4928.6642.

[20] R.C. 4928.6641.

Customer and EDU incentives

Customer incentives that an EDU offers through a portfolio must provide, under the bill, "a meaningful inducement for customers to participate in the cost-effective delivery of projected energy savings." The bill does not define what constitutes a "meaningful inducement" nor does it set up any other requirements for a portfolio's customer incentive programs.

Utility incentives through a portfolio must not exceed 10% of actual program costs on an after-tax basis and excluding any advertising or marketing dollars, and must not count toward the net cost of the portfolio or the bill's rate caps. (See "**Portfolio net cost limit**" and "**Rate caps**" below). The bill does not create a definition, or establish any other requirements, for "utility incentives."

The bill permits PUCO to adopt rules to implement its customer and EDU incentive provisions.[21]

EDU promotion of energy savings programs

The bill establishes a requirement for an EDU that promotes its energy savings programs by producing or paying for any advertisement or marketing materials. As required by the bill, an EDU with an approved portfolio must include in its advertisements or marketing materials a description of the specific energy savings programs that the EDU is promoting and offering to its customers.[22]

Portfolio net cost limit

The bill limits the net cost of an EDU's portfolio. "Net cost" equals an EDU's total program costs for an approved portfolio minus 80% of any revenue the EDU collects during the same program year from capacity, environmental, and other attributes of the EDU's energy savings programs, including bidding efficiency into the wholesale market operated by PJM Interconnection L.L.C.

Under the bill, an EDU's net cost must not exceed 2.25% of the difference between the EDU's annual total electric operating revenues for the previous year as reported in its FERC financial report, FERC Form 1, Account 400 less the purchased power expense, Account 555, for the same year. FERC Form 1, is the annual report required by the Federal Energy Regulatory Commission (FERC) for the purpose of collecting financial and operational information from major electric utilities, licensees, and others subject to FERC.

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[21] R.C. 4928.6644.

[22] R.C. 4928.6645.

The EDU must retain 20% of revenues received from program energy savings that are bid into the wholesale market, which revenues must be separate from utility incentives offered through a portfolio under the bill.[23]

If there are any lost distribution or decoupling mechanism revenues recovered under an EDU's portfolio, the recovery of that revenue does not count toward the net cost of the portfolio or the rate caps described below.[24]

Rate caps

The bill prohibits an EDU's portfolio costs from resulting in a residential customer rate that produces a monthly charge that is greater than $1.50 per residential customer per month, and $7.50 per nonresidential retail customer per month. To ensure that the EDU complies with the rate caps, an EDU with an approved portfolio automatically is authorized to reduce portfolio spending, if a higher than expected number of residential customers opt out of the portfolio. (See "**Customer opt-out**" below.)[25]

Customer opt-out

The bill provides an opportunity for residential customers and nonresidential retail customers to (1) opt out of portfolio participation and cost recovery for the portfolio and (2) opt in to participation, if the customer has previously opted out. The opt-out and opt-in opportunity must be offered by an EDU with a PUCO-approved portfolio at the start of a new portfolio. This opportunity must occur at intervals of no longer than five years, because of the five-year limit for a portfolio term.

The EDU must send, to all residential customers and nonresidential retail customers in its certified territory, two written notices describing the options to opt out and opt back in. The first must be sent within five business days after its portfolio is approved, and the second within 30 days after the approval date. The time period during which a customer may opt out of or opt back in to participation must extend at least 45 days from the date of the postmark on the first written notice. A customer is deemed to have opted out or opted in, if the customer indicates the intent to opt out or opt in before the deadline has elapsed.[26]

The bill requires the opt-out and opt-in process to permit customers to return a postcard or similar notice to the EDU to express the customers' intentions to opt out or opt in. It also requires the process to include alternative methods, such as a telephonic or an internet method to express customer intent. But, the alternative methods must allow for a verification of the customer's election.[27]

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[23] R.C. 4928.6647; 18 Code of Federal Regulations (C.F.R.) 141.1.

[24] R.C. 4928.6646.

[25] R.C. 4928.6650.

[26] R.C. 4928.6634(D) and R.C. 4928.6657(A).

[27] R.C. 4928.6657(B).

The bill allows a customer's election to opt out to continue after an EDU's portfolio's term expires or after PUCO approves a new portfolio. A customer's election to opt out of participation in a previous portfolio remains in effect until the customer elects to opt in according the bill's opt-in process described above.[28]

Mercantile customer opt-in

Unless they affirmatively choose to opt in to an EDU's portfolio in writing, mercantile customers are not included in the portfolio. Under the bill, they are automatically opted out of any opportunities to participate in an EDU's portfolio and any portfolio cost recovery.

The opt-in process requires an EDU to send, to all mercantile customers in its certified territory, a written notice describing the option to affirmatively opt in to portfolio participation. The notice must provide the mercantile customer's cost of participating in the portfolio.

If a mercantile customer submits a written opt-in application, the customer is deemed to have opted in, if the customer does so as prescribed by the EDU. Mercantile customers that opt in remain as an opt-in customer for a period of at least one year from the date the customer first receives the "benefit of participation."[29]

The bill does not describe what is considered to be a benefit of participation or how to determine the date when the benefit is first received. Presumably, the benefit of participation is lower energy costs due to portfolio participation and the date a customer first receives the benefit might be determined based on the date of the first billing with a lower energy bill.

Conveyance of energy savings incentives

The bill permits a customer to convey to an ESC an energy savings incentive associated with participation in an EDU's energy savings program. An ESC that promotes energy savings and the use of EDU energy savings programs is eligible to be considered for a conveyance of an incentive, if the ESC has done all of the following:

- Obtained the customer's written consent;
- Verified the customer's identity by providing the customer's EDU account number or service delivery identifier number;
- Explained how the incentive being conveyed meets the energy savings program eligibility requirements.

The bill also requires the ESC to produce evidence that the customer has completed the energy savings program. Evidence of program completion may be in the form of a product

[28] R.C. 4928.6657(C).

[29] R.C. 4928.6655.

identification code, product serial number, or similar evidence that proves installation or delivery of an eligible product under the energy savings program.[30]

The bill does not establish a process for an ESC to be determined as eligible for an energy savings incentive conveyance, nor does it explain how or to whom an ESC is required to produce evidence of a customer's program completion. Presumably, evidence would be presented to the EDU that offers the energy savings program.

Cost-effectiveness and compliance review

EDU report

Over its term, an EDU's approved portfolio is subject to an annual cost-effectiveness and compliance review under the bill. Each year the EDU must review the cost-effectiveness of its portfolio according to the utility cost test and inputs that the bill establishes. It must also ensure that, as required under the bill, any monthly bill savings or reduced energy usage due to participation in a federal EE program or use of a federal tax rebate or credit are not attributed to the EDU's programs. (See "**Federal EE measures, tax rebates, or credits**"above). The EDU must file a report of its review with PUCO by April 15. Based on the review, the EDU may update its portfolio as needed.[31]

The bill requires an EDU to continue to offer customers a portfolio of energy savings programs during the review required under the bill's reporting provisions and subject to the findings of the General Assembly regarding the EDU's performance and compliance as described in the PUCO's report (see discussion below).[32] The bill does not expressly state whether the phrase "during the review under this section" refers to the EDU's review, the PUCO review of the EDU's report to PUCO, or both. Both an EDU and PUCO must conduct reviews under Revised Code Section 4928.6665 of the bill, but it is likely that the programs would continue to be offered until the portfolio's term ends unless the General Assembly or PUCO took action to discontinue programs for costliness or noncompliance with the law.

PUCO report

The bill requires PUCO, by July 1, 2026, and every three years thereafter, to review each EDU cost-effectiveness and compliance report and submit a report to the General Assembly that includes a compilation of EDU reports received and an overview of EDU compliance and energy savings. Given the bill's provision allowing a portfolio to have a term of up to five years, approved portfolios with terms longer than three years will have their compliance and energy savings review included in two PUCO reports under the bill.

Based on the results of the PUCO's review of an EDU's report, the bill requires the PUCO's reasonable costs for evaluation, measurement, and verification for each EDU's program

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[30] R.C. 4928.6660.

[31] R.C. 4928.6665(A) and (B).

[32] R.C. 4928.6665(E).

to be recovered through the affected EDU's portfolio's cost recovery mechanism. These costs must not be considered as portfolio costs or included in the net cost calculations or the rate caps required under the bill. (See "**Portfolio net cost limit**" and "**Rate caps**" above.)[33]

HISTORY

Action	Date
Introduced	02-27-23
Reported, H. Public Utilities	06-21-23
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