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Bill Analysis

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Primary Sponsor: Sen. Brenner

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SUMMARY

- Exempts, from regulation as a public utility by the Public Utilities Commission (PUCO) both of the following:
 - A person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs for customers behind-the-meter utility service;
 - Billing service for the resale of natural gas or water service to a tenant based on metered consumption that is delivered at a point after natural gas or water service is delivered to the public utility's metered point of delivery.
- Defines "behind-the-meter utility service" to be (1) service or benefit from an advanced energy resource, (2) electric service, (3) billing service for a service or benefit from an advanced energy resource or for electric service, (4) electric vehicle charging, and (5) resale of electricity to a tenant's dwelling unit by a landlord or the landlord's agent that is based on metered consumption.
- Prohibits, except for reasons of safety or reliability:
 - A public utility (a PUCO-regulated electric light, natural gas, or water-works company) from setting the location of, or refusing to relocate, its meters so that their location prevents a behind-the-meter utility service provider from providing, constructing, or installing behind-the-meter utility service, or prevents a billing service from providing natural gas or water resale billing service based on metered consumption, at a point after public utility service is delivered at that metered point of delivery.
 - PUCO from adopting any rule allowing such a public utility to locate, or refuse to relocate, its meters as described in the prohibition above.

- Prohibits a behind-the-meter utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit from charging the tenant more than the applicable residential customer standard service offer and riders.
- Allows PUCO to adopt rules meeting certain conditions requiring the biennial registration of some or all types of behind-the-meter utility service providers in Ohio, and charging a registration fee of not more than \$200.
- Requires a behind-the-meter utility service provider to be registered with PUCO if such registration is required in order to provide service in Ohio.
- Authorizes PUCO to require certain disclosures from behind-the-meter utility service providers that resell electricity to a tenant based on metered consumption for the tenant's dwelling unit.
- Establishes a process for any person, firm, corporation, or PUCO to file a written complaint against a behind-the-meter utility service provider for violating or failing to comply with the bill.
- Imposes a forfeiture of not more than \$100 for each violation of the bill not cured in a timely manner and that is to be collected by the Attorney General when directed by PUCO.

DETAILED ANALYSIS

Summary

The bill exempts entities providing (1) behind-the-meter utility service and (2) billing services for the resale of natural gas or water service in certain instances from being classified as a "public utility" subject to Public Utilities Commission (PUCO) jurisdiction. The bill also limits, except for reasons of safety or reliability, a PUCO-regulated public utility's ability to use the location of its meters to prevent behind-the-meter utility service or such billing services.

The bill also includes various other provisions specifically applicable to behind-the-meter utility service providers: a prohibition against certain providers from charging more than the applicable standard service offer (SSO); allowing PUCO to require the registration of certain providers and to establish a fee; allowing PUCO to require certain disclosures; and establishing a complaint process and forfeiture for compliance failure.

Exemption from being a public utility

Ohio law describing the general powers of PUCO specifies what entities are "public utilities" subject to PUCO regulation and what entities *are not* public utilities and thus not subject to PUCO regulation. A person, business, or other entity that is not a public utility is exempt from PUCO regulation, including, for example, the utility ratemaking law and hearing procedures under the utility law. The bill exempts both of the following from being a public utility:

- A person, business, or other entity that, either on its own behalf or under contract with a property owner, provides, constructs, or installs for customers behind-the-meter utility service.
- Billing service for the resale of natural gas or water service to a tenant’s dwelling unit by a landlord or the landlord’s agent that is based on metered consumption and that is delivered at a point after natural gas or water service is delivered to the public utility’s metered point of delivery for that service at that location.

Definitions

As used in the bill:

- “Advanced energy resources” means: (1) any method, or any modification or replacement of any property, process, device, structure, or equipment, that increases an electric generating facility’s generation output to the extent it is achieved without additional carbon dioxide emissions, (2) any distributed generation system consisting of customer cogeneration technology, (3) clean coal technology, (4) advanced nuclear technology or improvements to existing facilities, (5) any fuel cell used in the generation of electricity, (6) advanced solid waste or construction and demolition debris conversion technology, (7) demand-side management and any energy efficiency improvement, (8) any new, retrofitted, refueled, or repowered generating facility in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input, and (9) any uprated capacity of an existing electric generating facility if it results from the deployment of advanced technology.
- “Behind-the-meter utility service” is any of the following, if provided, constructed, or installed at a point after services provided by a public utility are delivered to the public utility’s metered points of delivery at the customers’ location: (1) service or benefit from an advanced energy resource, (2) electric service, (3) billing service for advanced energy resource service or benefit and electric service, (4) electric vehicle (EV) charging, and (5) resale of electricity to a tenant’s dwelling unit by a landlord or the landlord’s agent that is based on metered consumption.
- “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.
- “Landlord” means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

- “Tenant” means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.¹

Construction/installation of behind-the-meter utility service

It appears that the bill allows a person, business, or other entity to construct or install any behind-the-meter utility service at a point after service provided by a public utility is delivered to the public utility’s metered points of delivery. This may include construction or installation of, for example, an electric generating or distribution facility or a facility using an advanced energy resource, such as a distributed generation system or clean coal technology. Such facilities, if located after the metered location, would not be public utilities and therefore would be exempt from PUCO regulation.²

Net metering

The bill does not address net metering, which PUCO regulates under current competitive retail electric service (CRES) law. However, since a net metering system is a facility to produce electrical energy that is located on a customer-generator’s premises, which would be after the electric utility’s metered point of delivery, it is possible that net metering could be considered a behind-the-meter utility service that is exempt from PUCO regulation. If exempt from PUCO regulation, existing law requiring an electric utility to develop a standard contract or tariff for net metering might conflict with the bill’s scheme. Also, PUCO administrative rules for net metering in Ohio Administrative Code Chapter 4901:1-10-28 might no longer apply.³

Public utility meter location prohibition

Except for reasons of safety or reliability, the bill prohibits a public utility (meaning a PUCO-regulated electric light company, natural gas company, or water-works company) from setting the location of, or refusing to relocate, any of its meters so that the meter’s location prevents either of the following:

- A behind-the-meter utility service provider from providing, constructing, or installing behind-the-meter utility service at a point after the public utility service is delivered to the utility’s metered point of delivery at that location;
- A natural gas or water service resale billing service for a tenant that is based on metered consumption from providing the billing service at a point after the service is delivered to the utility’s metered point of delivery for that service at that location.

Additionally, except for reasons of safety or reliability, PUCO is prohibited from adopting any rule that permits a public utility to set the location of, or refuse to relocate, any of its

¹ R.C. 4928.01(A)(34) and 5321.01, not in the bill.

² R.C. 4905.02; R.C. 4905.03 and 4905.04, not in the bill.

³ R.C. 4928.01 and 4928.67, not in the bill.

meters so that the meter's location prevents behind-the-meter utility service or natural gas or water service resale billing service as described above.

The bill defines "behind-the-meter utility service provider" as a person, business, or other entity that, either on its own behalf or under a contract with a property owner, provides, constructs, or installs for customers behind-the-meter utility service.⁴

Behind-the-meter utility service regulation

Behind-the-meter electricity resale charge limit

The bill prohibits a behind-the-meter utility service provider that resells electricity to a tenant based on metered consumption at the tenant's dwelling unit from charging the tenant more than the bill for the SSO and all riders that the electric light company in whose certified territory the dwelling unit is located would charge its residential customers for electric service.

Continuing law requires each electric distribution utility to provide consumers within its certified territory an SSO of all competitive retail electric services necessary to maintain essential electric service, including a firm supply of electric generation service. The SSO can be established as either a market rate offer or electric security plan, and may include various other customer charges, which are commonly referred to as "riders."

The bill uses the current law definition of "electric light company," which is an entity that is engaged in the business of supplying electricity for light, heat, or power purposes to consumers in Ohio, including supplying electric transmission service for electricity delivered to consumers in Ohio, but excluding a regional transmission organization approved by the federal energy regulatory commission. However, this definition is not limited to only electric light companies regulated by PUCO, meaning that it may include entities such as a municipal electric utility, electric cooperative, and a nonprofit public utility. But, since this provision prohibits charging a tenant more than would be charged *under the SSO* and only an "electric distribution utility" (meaning, under continuing law, a for-profit electric light company with a certified territory that supplies at least retail electric distribution service) is required to develop an SSO, it may be that the term as used in the bill does not apply to municipal electric light companies, electric cooperatives, or nonprofit electric light companies. An amendment could clarify to what entities this section applies.⁵

Behind-the-meter utility service provider registration

PUCO may require registration

The bill allows PUCO to adopt rules requiring the biennial registration of some or all types of behind-the-meter utility service providers in Ohio. The registration process must require the behind-the-meter utility service provider to disclose the provider's name, business

⁴ R.C. 4933.51 and 4933.52.

⁵ R.C. 4905.02(A) and 4933.54; R.C. 4928.01(A)(6) and (11), 4905.03(C), and 4928.141 to 4928.143, not in the bill.

address, phone number, regulatory contact, and the type of services offered by the provider, and include other PUCO-prescribed disclosure requirements. The rules establishing registration requirements, including any requirements regarding classifications, procedures, terms, and conditions, must be reasonable and not confer any undue economic, competitive, or market advantage or preference on any electric light company, behind-the-meter utility service provider, or CRES provider.

If PUCO requires registration, no behind-the-meter utility service provider can provide a behind-the-meter utility service to an Ohio consumer without first being registered.⁶

Registration fee

PUCO is permitted to charge behind-the-meter utility service providers a registration processing fee of not more than \$200 per biennial registration.⁷

Disclosures for certain behind-the-meter utility service providers

If PUCO establishes a behind-the-meter utility service provider registration process and requirements, then PUCO can require a provider that resells electricity to a tenant based on metered consumption for the tenant's dwelling unit to do the following:

- Provide a separate disclosure to its tenants and reporting of pricing solely for purposes of compliance with the resale of electricity pricing requirement discussed above (see "**Behind-the-meter electricity resale charge limit**").
- Disclosure of its process and procedures for the disconnection of electric service.⁸

Written complaint to PUCO

Any person, firm, or corporation, or PUCO on its own initiative, may file a written complaint against any behind-the-meter utility service provider for a failure to comply with, or a violation of, the bill's behind-the-meter utility service provider PUCO registration requirements or the resale of electricity pricing requirement.

If it appears that reasonable grounds for complaint are stated, PUCO must provide notice of probable noncompliance to the behind-the-meter utility service provider and grant the provider 60 days to cure the noncompliance. If the provider does not timely cure the noncompliance, PUCO may open an investigation of the provider's compliance with the registration or pricing requirements. The parties to a complaint investigation are entitled to be heard, represented by counsel, and to have a process to enforce the attendance of witnesses.⁹

⁶ R.C. 4933.56(A) and (B) and 4933.57.

⁷ R.C. 4933.56(C).

⁸ R.C. 4933.59.

⁹ R.C. 4933.60.

Forfeiture for noncompliance

Any behind-the-meter utility service provider that violates or fails to comply with the registration requirements or resale of electricity pricing requirement is liable to the state for a forfeiture of not more than \$100 for each violation or compliance failure unless the violation or failure is cured within 60 days after receipt of the required reasonable notice and opportunity for a hearing (discussed next) provided before PUCO issues a forfeiture assessment.

PUCO, after providing reasonable notice and the opportunity for a hearing, must issue an order assessing a forfeiture on a behind-the-meter utility service provider whom PUCO determines, by a preponderance of the evidence, committed the violation or failed to comply. Forfeitures are to be recovered by action prosecuted by the Attorney General, when directed by PUCO, in the name of the state and may be brought in the court of common pleas of any county where the provider who committed the violation or failed to comply is located. All forfeitures are cumulative, and an action for recovery of one does not bar the recovery of another.

Forfeitures collected must be credited to the General Revenue Fund.

It is unclear how the forfeiture cure period functions under the bill. After providing reasonable notice and hearing regarding the forfeiture, PUCO may assess the forfeiture if it determines there was a violation or failure to comply. There is no express timing requirement linking the forfeiture cure period and when PUCO may determine a violation or failure to comply. Presumably, the violation or failure is determined before the forfeiture is assessed. If that is so, the bill may be providing a separate hearing for the forfeiture that is at least 60 days after PUCO's violation or failure determination. An amendment to the bill might clarify this timing issue.¹⁰

Regulatory restriction reduction exemption

The bill exempts rules adopted by PUCO to implement the behind-the-meter utility service regulation provisions in the bill from the regulatory restriction limitation in current law. That limitation prohibits state agencies, including PUCO, from adopting a new regulatory restriction unless the agency simultaneously removes two or more existing regulatory restrictions, until June 30, 2025. State agencies are also required to achieve a 30% total regulatory restriction reduction by June 30, 2025. Regulatory restrictions are state agency rules that include words such as "shall," "require," and "prohibit."¹¹

¹⁰ R.C. 4933.63.

¹¹ R.C. 4933.56(D); R.C. 121.95 to 121.953, not in the bill.

HISTORY

Action	Date
Introduced	02-18-25
