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# OHIO LEGISLATIVE SERVICE COMMISSION

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**S.B. 103**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Sen. Wilkins

Rocky Hernandez, Attorney

### SUMMARY

#### Ratemaking changes for natural gas companies

- Allows a natural gas company (NGC) to propose, and requires the Public Utilities Commission (PUCO) to approve, a test period that is any 12-month period prior to the application's filing date and ending not later than 24 months from that date.
- Requires PUCO to review the reasonableness of any partially or fully forecasted test period.
- Permits multiple dates certain, depending on the proposed test period as follows:
  - For a test period not greater than 12 months from the filing date, the NGC can propose, and PUCO is required to approve, two dates certain.
  - For a test period that is between 12 and 24 months from the filling date, the NGC can propose, and PUCO is required to approve, three dates certain.
- Allows an NGC, if the NGC proposes a fully projected or partially projected test period, to place rates into effect with a final order from, or deemed approval of, PUCO and the NGC has the right to place the rates into effect with the first customer bills rendered after each PUCO order regarding the dates certain.
- Requires an NGC to adjust its base rates to reflect the plant-in-service in accordance with a certain schedule following each of the dates certain and provides for PUCO review and approve of the adjustments.
- Exempts certain requirements in continuing law from applying to an NGC that proposes a fully projected test period.
- Requires PUCO to approve any motion, application, or request to waive any of its rules if the rules do not conform with the legislative requirements of R.C. Chapter 4909 governing ratemaking.

- Exempts PUCO rules adopted due to the bill's ratemaking changes from the regulatory restriction limitation in existing law.

## **Alternative rate plans**

### **Recovery of certain costs and capital expenditures**

- Allows an NGC, for alternative rate plans to recover specified costs and capital expenditures, to propose and requires PUCO to approve, the use of a fully or partially projected test period for the annual rider rate adjustment applications.
- Allows the fully or partially projected test period to be up to two years from the date of the annual rider rate adjustment application.
- Requires an NGC, if the NGC proposes a fully or partially projected test period for an annual rider rate adjustment proceeding, to true up that forecasted test period to reflect its actual expenditures in the subsequent annual rider rate adjustment proceeding.
- Allows, in lieu of a fully or partially projected test period, an NGC to propose, and requires PUCO to approve, a revenue requirement that includes construction work in progress.

### **Reasonable compliance costs or expenditures**

- Requires PUCO to approve an alternative rate plan to recover reasonable costs or expenditures to comply with federal or state statutes, rules, regulations, requirements, or mandates.
- Allows an NGC that proposes such an alternative rate plan to propose an initial rider rate of zero dollars, and such application is not considered an application for an increase in rates.
- Prohibits PUCO, in any proceeding in which an NGC seeks to approve an alternative rate plan or to adjust any rider amount, from limiting the rider recovery of any reasonable costs or capital expenditures to comply with federal or state law or regulation.
- Provides that if PUCO does not issue an order within 365 days from the date of the NGC's filing, the NGC's application is deemed approved by operation of law and is not subject to rehearing or appeal.

### **Large load customers**

- Defines "large load customers" (LLCs) as a customer that an NGC projects or anticipates to consume, or actually consumed, in a prior, current, or future 12-month period, more than 1,200,000 McF of natural gas.
- Allows an NGC that has already applied for, or already been approved for, an infrastructure development rider under continuing law to file an application to PUCO for an LLC-alternative rate plan.
- Requires an LLC-alternative rate plan to support commercial agreements entered into between the NGC and an LLC.

- Requires PUCO to approve an LLC-alternative rate plan if the NGC meets its burden of proof in a proceeding before PUCO that the LLC-alternative rate plan meets certain requirements.
- Requires any payment received from an LLC pursuant to a commercial agreement under an LLC-alternative rate plan to not be considered revenue in any proceeding held pursuant to current law.
- Provides that an LLC-alternative rate plan application is not to be considered an application for an increase in rates.
- Requires an NGC to file with PUCO a commercial agreement with an LLC entered into pursuant to a proposed or approved LLC-alternative rate plan.
- Requires a commercial agreement filed with PUCO to be automatically approved unless PUCO determines, within 45 days from the date of the filing, that the agreement is inconsistent with certain requirements.
- Allows an NGC to propose, and requires PUCO to approve, without modification, the following set forth in a commercial agreement:
  - Any negotiated terms that differ from the rates or terms of service approved in the NGC's most recent rate case proceeding;
  - Recovery of construction work in progress for any amounts incurred to serve the LLCs.
- Requires an NGC's proposed LLC-alternative rate plan to be deemed approved by operation of law if PUCO does not issue an order within 90 days from the date the NGC filed an application.
- Allows an NGC to withdraw and terminate the LLC-alternative rate plan if PUCO modifies either the plan itself or any settlement agreement between the NGC and any party to the plan.

### **Capital structure change re: rate of return on all rate cases**

- Requires, when determining a fair and reasonable rate of return in a rate case, PUCO to consider the public utility's capital structure, in addition to the valuation determined for public utility property.

### **Public utility settlements**

- Requires PUCO, in any proceeding where a public utility is the applicant or subject of the proceeding, to consider a settlement to resolve some or all issues in the proceeding under certain circumstances.

### **PUCO final order**

- Repeals existing law that permits a public utility to increase rates when PUCO has not entered a final order at the expiration of 275 days.

- Requires a public utility, if PUCO has not entered a final order within 365 days from the filing date of an application to increase rates, to place the rates into effect with the first customer bills rendered after the 365<sup>th</sup> day.
- Provides that the public utility has no obligation to make a refund of amounts collected and the utility's application is deemed approved as a matter of law.
- Specifies that the preceding provisions do not limit an NGC from adjusting its rates pursuant to the bill's other provisions regarding adjusting base rates to reflect the plant-in-service in accordance with the applicable dates certain.

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## DETAILED ANALYSIS

### Summary

The bill makes changes to Ohio law governing a traditional rate case for, and regulatory exemption for a natural gas company (NGC) by altering how the test period is established and providing for multiple dates certain for the company. The bill also expands the law governing alternative rate plans to include plans that recover certain costs and provide service to large load

customers. The bill also establishes new requirements for settlement agreements by public utilities and other parties to resolve proceedings, along with making other changes to provisions governing when the Public Utilities Commission (PUCO) must make a final order in a rate case.

## **Ratemaking changes for natural gas companies**

The bill makes changes regarding the test period and date certain with respect to an NGC's application to PUCO to establish a rate for distribution service. Under current law, PUCO must approve any application for an increase in rates. When doing so, PUCO must fix just and reasonable rates by determining, as of the date certain, valuation of NGC property used and useful in providing service and a fair and reasonable rate of return on that property. PUCO also must determine the cost of rendering the utility service, as well as the NGC's gross annual revenues, using a test period. Under current law, the test period is as proposed by the NGC, which may be any 12-month period beginning not more than six months prior to the date the application is filed and ending not more than nine months subsequent to that date. The date certain for an NGC must not be later than the end of the test period.<sup>1</sup>

### **NGC's test period/dates certain**

The bill allows an NGC to propose, and requires PUCO to approve, a test period that is any 12-month period beginning not earlier than 12 months *prior to* the date the rate case application was filed and ending not later than 24 months *from* that date. The bill further requires PUCO to review the reasonableness of any partially or fully forecasted test period.

### **Dates certain for a maximum 12-month from filing date test period**

The bill allows an NGC, when the NGC proposes a test period that is not greater than 12 months *from* the filing date of the application, to propose, and requires PUCO to approve, two dates certain as follows:

- The first date certain must be during the test period, but not later than three months before the 365<sup>th</sup> day after the application is filed.
- The second date certain must be not later than the end of the test period.

It is not clear what date certain requirement will apply if an NGC ostensibly chooses this test period option, and the test period chosen falls entirely within the current law test period and date certain provisions (test period is a 12-month period set between six months prior and nine months after the filing date, with the date certain not later than the end of the test period).

### **Dates certain for a 12-to-24-month from filing date test period**

Should an NGC propose a test period that is between 12 and 24 months *from* the application filing date, then the bill allows an NGC to propose, and PUCO must approve, three dates certain as follows:

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<sup>1</sup> R.C. 4909.15.

- The first date certain must be not later than three months before the 365<sup>th</sup> day after the application is filed.
- The second date certain must be during the test period.
- The third date certain must be not later than the end of the test period.<sup>2</sup>

If an NGC does not choose either alternative test period option, the current law test period and date certain requirements (described above) will apply.

### **Provisions affected by test period/date certain changes**

The bill conforms the following provisions to the test period/date certain changes in the bill:

- NGC property valuation report.
- Property valuation determinations, and all requirements related to such valuation determinations, and rate of return determinations, in a rate case.
- Reports of total amounts received from outstanding debt and equity securities;
- Rate case application requirements.
- Adjustments to rates based on adjustments to projected valuations incorporated in those rates, which valuations later changed.
- Valuations calculated in determining application for a regulatory exemption for certain natural gas storage or gathering facilities.<sup>3</sup>

### **New rates allowed without PUCO final order**

The bill allows an NGC, if the NGC proposes a fully or partially projected test period, to place rates into effect pursuant to a final order from, or deemed approval of, PUCO (see “**PUCO final order**” below). The bill further specifies that the NGC has the right to place the rates into effect with the first customer bills rendered after each PUCO order issued regarding the dates certain (described above).<sup>4</sup>

### **Adjustment of base rates**

The bill allows an NGC to adjust its base rates to reflect the plant-in-service in accordance with the dates certain the NGC proposed as follows:

#### **Base rate adjustment with two dates certain**

For an NGC that proposes a test period no greater than 12 months from the application filing date:

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<sup>2</sup> R.C. 4909.15(E).

<sup>3</sup> R.C. 4909.05, 4909.06, 4909.07, 4909.08, 4909.15, 4909.155, 4909.156, 4909.18, 4909.191, 4928.18, and 4929.041.

<sup>4</sup> R.C. 4909.15(F).

- The first date certain shall be reflected in the rates put into effect in accordance with a PUCO order before the expiration of the 365<sup>th</sup> day after filing the application.
- With the second date certain base rate adjustment, the NGC has up to 60 days from the second date certain to file schedules reflecting the actual plant-in-service and actual capital structure of the NGC as of the second date certain. All other components to the setting of rates, including the return on equity percentage set with the PUCO order reflecting the first date certain, will remain unchanged with the second base rate adjustment.

The bill further provides PUCO has 60 days to review the filed schedules of incremental plant placed-in-service after the first date certain through the second date certain and to issue a final order determining the adjusted base rates reflecting the plant-in-service as of the second date certain.<sup>5</sup>

### **Base rate adjustments with three dates certain**

If an NGC proposes a test period that is between 12 and 24 months from the application filing date:

- The first and second dates certain will be reflected in the same manner as described above for two dates certain.
- With the third date certain base rate adjustment, the NGC has up to 60 days from the third date certain to file schedules reflecting the actual plant-in-service and actual capital structure of the NGC as of the third date certain. All other components to the setting of rates, including the return on equity percentage set with the PUCO order reflecting the first date certain, will remain unchanged with the third base rate adjustment.

Like the preceding section, the bill provides PUCO 60 days to review the filed schedules of incremental plant placed-in-service after the second date certain through the third date certain and to issue a final order determining the adjusted base rates reflecting the plant-in-service as of the third date certain.<sup>6</sup>

### **Exemption from recalculating rates**

The bill exempts an NGC that proposes a fully projected test period from current law requirements providing for PUCO-ordered adjustments to rates based on adjustments to projected revenues, expenses, and valuations incorporated in those rates, which projections later changed.<sup>7</sup>

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<sup>5</sup> R.C. 4909.15(G).

<sup>6</sup> R.C. 4909.15(H).

<sup>7</sup> R.C. 4909.15(I) and 4909.191.

## **Treatment of PUCO rules**

The bill requires PUCO to approve any motion, application, or request to waive any of its rules, if the rules do not conform with the legislative requirements of Chapter 4909 of the Revised Code.

The bill specifies further that a regulatory restriction contained in any rules adopted due to the foregoing ratemaking changes are not subject to the requirement for the reduction and limitation of regulatory restrictions under Ohio law.<sup>8</sup>

## **Alternative rate plans**

The bill expands Ohio law governing alternative rate plans, which plans, under current law, exempt NGC commodity sales service or ancillary service from most provisions of Ohio law regulating public utilities.

### **Recovery of certain costs and capital expenditures**

The bill allows an NGC, for any alternative rate plan involving the recovery of specified costs and capital expenditures, to propose, and requires PUCO to approve, the use of a fully or partially projected test period for the NGC's annual rider rate adjustment applications. The test period may be up to two years from the date of the annual rider rate adjustment application.

The bill also requires an NGC, should the NGC propose a fully or partially projected test period for an annual rider rate adjustment proceeding, to true up that forecasted test period to reflect its actual expenditures in the subsequent annual rider rate adjustment proceeding.

In lieu of a fully or partially projected test period, the bill allows an NGC to propose, and requires PUCO to approve, a revenue requirement that includes construction work in progress.<sup>9</sup>

### **Reasonable compliance costs or expenditures**

The bill requires PUCO to approve any alternative rate plan that proposes to recover any reasonable costs or expenditures ("cost recovery-alternative rate plan") to comply with federal or state statutes, rules, regulations, requirements, or mandates, including costs that have been incurred or will be required to be incurred due to an existing or reasonably anticipated rule, policy, or other mandate by the following federal or state agencies:

- Pipeline Hazardous Materials Safety Administration.
- Department of Transportation.
- Federal Energy Regulatory Commission.
- Environmental Protection Administration.
- Any other federal or state agency or authority.

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<sup>8</sup> R.C. 4909.15(J); R.C. 121.95, not in the bill.

<sup>9</sup> R.C. 4929.052.



Additionally, the bill allows an NGC that proposes a cost recovery-alternative rate plan to propose an initial rider rate of \$0, and such application will not be considered an application for an increase in rates.

The bill prohibits PUCO from limiting the rider recovery of any reasonable costs or capital expenditures, which have been incurred or will be required to be incurred to comply with federal or state statutes, rules, regulations, requirements, or mandates in any proceeding in which an NGC seeks to approve a cost recovery-alternative rate plan or to adjust any rider amount pursuant to that plan.

The bill provides that if PUCO does not issue an order within 365 days from the date of the NGC's filing, the application is deemed approved by operation of law and shall not be subject to rehearing or appeal.<sup>10</sup>

### **Large load customers**

The bill allows an NGC that has applied for, or already has been approved for, an infrastructure development rider pursuant to continuing law, unchanged by the bill, to also file an application to PUCO for an alternative rate plan to serve large load customers ("LLC-alternative rate plan"). The bill further provides that a large load customer alternative rate plan must support commercial agreements between the NGC and a large load customer.

Under the bill, a "large load customer" (LLC) means a customer that an NGC projected or anticipated to consume, or actually consumed, in a prior, current, or future 12-month period, more than 1,200,000 McF of natural gas.<sup>11</sup>

### **Requirements for LLC-alternative rate plan**

The bill requires PUCO to approve an LLC-alternate rate plan if the NGC meets its burden of proof in a proceeding before PUCO that the plan does the following:

- Protects the NGC's non-LLCs from financial risk associated with initial infrastructure costs under any commercial agreement under that plan to serve LLCs.
- Provides any commercial agreement under the plan must require a credit to the annual infrastructure rider charged by the NGC pursuant to continuing law, which will be the cost, as determined by the NGC, of the LLC's use of the NGC infrastructure in service at the time the commercial agreement is executed.
- Supports economic development in the state by serving the LLC, which is proven by a letter of support by an "economic development entity" (which includes the following: JobsOhio or any JobsOhio network or regional partner, the Department of Development, port authority, special improvement district, community urban redevelopment

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<sup>10</sup> R.C. 4929.053.

<sup>11</sup> R.C. 4929.054; R.C. 4929.161, not in the bill.

corporation, community improvement corporation, new community authority, joint economic development district, development corporation, or municipal utility district).<sup>12</sup>

### **Exemptions**

The bill exempts any payment received from an LLC pursuant to a commercial agreement under an LLC-alternative rate plan from being considered revenue in any proceeding held pursuant to Chapter 4909 of the Revised Code. Additionally, the bill exempts an LLC-alternative rate plan application from being considered an application for an increase in rates.<sup>13</sup>

### **Commercial agreements**

The bill requires an NGC to file with PUCO a commercial agreement with an LLC entered into pursuant to a proposed or approved LLC-alternative rate plan. Additionally, the bill deems an agreement automatically approved unless PUCO, within 45 days from the date of the filing, determines that the agreement is inconsistent with the LLC-alternate rate plan requirements in the bill.

The bill also allows an NGC to propose, and requires PUCO to approve, without modification, the following set forth in a commercial agreement:

- Any negotiated terms that differ from the rates or terms of service approved in the NGC's most recent rate case proceeding.
- Recovery of construction work in progress for any amounts incurred to serve the LLCs.<sup>14</sup>

### **Automatic approval of LLC-alternative rate plan**

The bill deems an NGC's application for an LLC-alternative rate plan automatically approved by operation of law if PUCO does not issue an order within 90 days from the date the NGC files the application.<sup>15</sup>

### **Modifications to LLC-alternative rate plan or agreements**

The bill allows an NGC to withdraw an LLC-alternative rate plan and terminate it if PUCO modifies the plan or any settlement agreement between the NGC and any party to the LLC-alternative rate plan.<sup>16</sup>

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<sup>12</sup> R.C. 4929.055; R.C. 4929.163(C)(4), not in the bill.

<sup>13</sup> R.C. 4929.056 and 4929.057.

<sup>14</sup> R.C. 4929.058.

<sup>15</sup> R.C. 4929.059.

<sup>16</sup> R.C. 4929.0510.

## Capital structure change re: rate of return on all rate cases

The bill also provides, when PUCO is determining a fair and reasonable rate of return to a public utility as part of a rate case, for PUCO to also consider the public utility's capital structure, in addition to the valuation determined for public utility property.<sup>17</sup>

## Settlement agreements

The bill requires PUCO, in any proceeding before PUCO for which a public utility is the applicant or the subject of the proceeding, to consider a settlement to resolve some or all issues in the proceeding only if the utility is a signatory party to, or has filed a notice that it does not oppose, the settlement. PUCO must determine a settlement is reasonable and lawful only if the following criteria are met:

- It was a product of serious bargaining among capable, knowledgeable parties.
- As a package, it benefits ratepayers and the public interest.
- It does not violate any important regulatory principle or practice.<sup>18</sup>

## PUCO final order

The bill modifies the law that permits a public utility to increase rates when PUCO has not entered a final order regarding a utility's application to increase rates. Under current law, if the proceeding on an application filed with PUCO requesting an increase on any rate, joint rate, toll, classification, charge, or rental, or requesting a change in a regulation or practice affecting any of those, has not been concluded and a final order entered after 275 days from the application filing date, then the utility may increase their rates up to the amount proposed in the utility's application, upon the filing of a bond or a letter of credit by the utility, meeting certain requirements, and providing for refunds.

The bill repeals those provisions and instead requires a public utility, if PUCO has not entered a final order regarding an application to increase rates within 365 days of the filing date of the application, to place the increased rates into effect with the first customer bills rendered after the 365<sup>th</sup> day. The bill further provides that a public utility has no obligation to make a refund of amounts collected, and the utility's application is deemed approved as a matter of law.

The bill specifies that nothing in the provisions described above should be construed to: (1) mitigate any duty for PUCO to issue a final order as required under continuing law and (2) limit an NGC from adjusting its rates pursuant to the bill's provisions (see "**Adjustment of base rates**" above). Current law only requires (1).<sup>19</sup>

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<sup>17</sup> R.C. 4909.15(A)(2) and (K)(2)(a).

<sup>18</sup> R.C. 4903.30.

<sup>19</sup> R.C. 4909.15(A)(4) and 4909.42.

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## HISTORY

Action	Date
Introduced	02-14-25

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