



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Sens. Seitz, Balderson, Jones

BILL SUMMARY

State competitive retail electric service policy

- Adds "encouraging prompt access to interval customer energy usage data by customers and electric services companies (ESCs)" to the state competitive retail electric service policy to encourage innovation and market access for cost-effective supply- and demand-side retail electric.
- Adds "encouraging electric distribution utilities (EDUs) to make meaningful and cost-effective energy-savings programs available to their customers" to the provisions comprising the state competitive retail electric service policy.

Renewable energy and advanced energy requirements

- Extends the current law 2014-level freeze for renewable and solar energy resource benchmarks (required of EDUs and ESCs) for three years, 2017, 2018, and 2019.
- Requires revised benchmarks to resume beginning in 2020 and extends the benchmark period by which EDUs and ESCs must provide 12.5% of their electricity supply from qualified renewable resources by three years to 2030.
- Includes advanced energy resources as a renewable energy resource that may meet the renewable energy resource benchmarks.
- Retains the amount of the solar energy compliance payments at current law levels through 2019, and sets the compliance payment per megawatt hour of undercompliance or noncompliance at \$150 for 2022 and \$50 for 2025, 2028, 2029, and each calendar year thereafter.

Classification of renewable and advanced energy resources

- Adds to the list of *renewable energy resources* for purposes of the renewable energy requirements and the Advanced Energy Program any combined heat and power system placed into service or retrofitted on or after September 10, 2012.
- Adds to the list of *advanced energy resources* any plan, policy, behavior, or practice that reduces the energy intensity of:
 - A facility, pipeline, building, plant, or equipment regardless of the type of energy intensity reduction;
 - Any water supply function or water treatment function.
- For purposes of the renewable energy requirements, the Advanced Energy Program *and* advanced energy projects funded by the Ohio Air Quality Development Authority, adds to the list of renewable energy resources fuel derived from solid wastes through combustion if:
 - The combustion is effected in a facility to generate electricity or heat for a length of time and at a temperature to achieve the destruction of dioxins; and
 - The facility is equipped with scrubbers, powdered-activated-carbon injection, pulse-jet fabric filters, selective catalytic reduction of nitric oxide and nitrogen dioxide, and continuous emissions monitoring.

Energy efficiency (EE) and peak demand reduction (PDR) requirements

- Extends, for 2017, 2018, and 2019, the current law requirement that an EDU must achieve annual energy efficiency (EE) savings equal to the result of subtracting the cumulative EE savings achieved since 2009 from the product of multiplying the applicable baseline for EE savings by 4.2%.
- Specifies that, for 2020 to 2023, the annual EE savings requirement is 1% of the baseline prescribed for EE savings and 2% each year thereafter through 2029, after which the EE savings requirement will end.
- Extends, for 2017, 2018, and 2019, the current law requirement that an EDU must achieve peak demand reduction (PDR) equal to the result of subtracting the cumulative PDR achieved since 2009 from the product of multiplying the baseline prescribed for PDR by 4.75%.
- Requires an EDU to achieve an additional .75% of PDR in 2020 and subsequent years through 2029.

- Specifies that compliance with the annual EE and PDR requirements may be measured only in years 2016 to 2019, 2022, 2025, 2028, and 2029 and that compliance measurement is subject to the requirement that compliance status must be included in annual reports to the Public Utilities Commission (PUCO).
- Requires PUCO to recognize and count toward meeting the EE/PDR requirements the EE savings and PDR:
 - Associated with increased use of post-consumer recycled glass by a mercantile customer; and
 - That occur as a consequence of consumer reductions in water usage or reductions and improvements in wastewater treatment.
- Requires PUCO to recognize and count nonelectric EE savings or nonelectric PDR (on a Btu-equivalent basis) that occur as a consequence of a portfolio plan.
- Repeals the authority for an EDU, at its discretion, to bank any EE savings or PDR amount achieved in excess of the EE/PDR requirements and to apply the savings or reduction toward achieving the EE/PDR requirements in future years.
- Specifies that an EDU must be deemed in compliance with EE/PDR requirements and be eligible for unspecified PUCO-approved incentives in any year it meets or exceeds the cumulative EE/PDR requirements.

Reports

- Requires every EDU and ESC, as applicable, to submit a renewable energy resource benchmark, EE savings, and PDR compliance status report to PUCO by December 31 each year.
- Requires PUCO, by two years after the bill's effective date, to submit to the General Assembly a report with recommendations that includes the feasibility of implementing other constructs for EDU participation in distributed generation, incentives for residential smart thermostats, and market-based EE certification.

Mercantile customer opt-out

- Effective January 1, 2020, adds mercantile customers to those customers that may opt out of an EDU's portfolio plan making them exempt from any EE/PDR cost recovery mechanisms and unable to obtain direct benefits from the portfolio plan, and making them ineligible to participate in or directly benefit from plan programs.

Ohio Environmental Protection Agency (OEPA) authority

- Specifies that the Ohio Environmental Protection Agency (OEPA) maintains its statutory authority under the OEPA law regarding prevention, abatement, and control of all air pollution and air pollution controls for emissions of air pollutants.
- Declares that the final federal guidelines limiting CO₂ emissions from fossil-fuel-fired power plants under the federal Clean Air Act do not expand OEPA authority to allow for the development, implementation, or regulation of electric dispatch protocols.
- Prohibits OEPA, without new and specific state authority, from regulating or otherwise ordering the following:
 - Any electric dispatch protocols for any electric light company;
 - Any specific levels of natural gas utilization for any electric light company;
 - The acquisition of any amounts of renewable energy under the law establishing the renewable energy resource benchmarks or any other state law;
 - Any person or entity to achieve any EE savings or PDR under the energy efficiency law or any other state law.
- Prohibits OEPA, PUCO, and any other state agency, without new and specific state authority, from awarding, allocating, assigning, or transferring any CO₂ emission allowance or any emission-rate credit to any electric light company or any existing fossil-fuel-fired power plant subject to final federal guidelines either independently or as part of any state plan submitted to the U.S. EPA under those guidelines.
- Prohibits OEPA, PUCO, and any other state agency, without new and specific state authority, from developing or implementing any trading program or any plan premised in any way on an allowance system as part of any state plan submitted to U.S. EPA under the final federal guidelines.

Advanced energy analytics

- Permits an EDU, upon PUCO approval, to recover all of the costs related to the procurement, deployment, or use of advanced energy analytics technology, including a reasonable rate of return.
- Specifies that cost recovery may occur if the advanced energy analytics technology is used for realizing operational efficiencies, cost savings, enhanced energy



management and customer engagement, improvements in system reliability, safety, and cyber security, or other benefits to ratepayers.

Energy efficiency and weatherization program reinvestment

- Requires reinvestment in the targeted energy efficiency and weatherization program in an amount equal to the difference between Universal Service Fund revenues collected for low-income customer assistance programs and any cost savings from the competitive procurement process for electric supply under the percentage of income payment plan program (PIPP).

Special energy improvement projects

- Permits property owners to petition municipal corporations or townships for special assessments to pay for the costs of the development and implementation of special energy improvement projects (SEIPs) for energy efficiency improvements without creating a special improvement district.
- Requires the petition to be signed by 100% of the property owners of the parcels to be assessed.
- Limits the special assessment to 30 years from the first day of the year in which it is first imposed.
- Permits a municipal corporation or township levying a special assessment for a SEIP to develop, finance, manage, or implement part or all of the SEIP.
- Permits a municipal corporation or township levying a special assessment for a SEIP to contract with any person, community improvement corporation, political subdivision, state agency, or port authority to develop, finance, manage, or implement part or all of the SEIP.
- Permits a municipal corporation or township levying a special assessment for a SEIP to sell, transfer, lease, or convey any SEIP owned by the municipal corporation or township if the SEIP is not required to be owned exclusively by the municipal corporation or township or required for certain purposes.
- Allows that a sale, transfer, lease, or conveyance of a SEIP may be made without advertising, receipt of bids, or other competitive bidding procedures.

Special improvement districts

- Provides a special voting process for each of the following regarding a general special improvement district that includes condominium property: (1) inclusion of



the property in the district, (2) approval of the district plan, (3) repealing an improvements or services plan of the district, and (4) dissolution of the district.

Net metering

Net-metering facilities

- Modifies the definition of "net metering system" to change which types of facilities qualify for net-metering contracts or tariffs.

Net metering through an electric services company

- Expressly permits an ESC to enter into a contract for net metering service with a customer.
- Exempts an ESC's contract for net metering from local or PUCO regulation if an ESC or any entity owned by or corporately affiliated with the ESC meaningfully participates in the installation of the net-metering facility or meaningfully finances the installation of the facility.
- Permits the PUCO to regulate a *residential* ESC contract for net metering if there is no meaningful participation by the ESC or the entity owned by or corporately affiliated with the ESC.
- Prohibits the PUCO's rules governing residential ESC net-metering contracts from requiring or prohibiting certain billing practices relating to customer-generation credits.
- Creates requirements for the reporting of load data in the context of ESC net-metering contracts.
- Creates requirements for data sharing between an electric utility (EU) and ESC in the context of ESC net-metering contracts.

Net metering through an electric utility

- Clarifies that an EU's standard contract or tariff for net metering is subject to PUCO rules.
- Exempts an EU's contract for net metering from PUCO regulation or supervision if:
 - The EU or an entity owned by or corporately affiliated with the EU meaningfully participates in the installation of the net-metering facility or meaningfully finances the installation of the facility; and

- There is no cost or revenue recovery for the contract.

Other net-metering requirements

- Specifies that certain provisions of continuing law apply to net metering through either an EU or ESC, and regardless of whether the net metering is subject to supervision or regulation.

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CONTENT AND OPERATION

State competitive retail electric service policy

The bill makes changes regarding Ohio's competitive retail electric service policy. As part of the policy to encourage innovation and market access for cost-effective supply- and demand-side retail electric service, the bill encourages "prompt access to interval customer energy usage data" by customers and electric services companies (ESCs). Currently, that particular policy encourages innovation and market access that includes, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure. The bill also adds the policy to encourage electric distribution utilities (EDUs) to make available to their customers meaningful and cost-effective energy-savings programs.¹

Under continuing law, an EDU is an electric utility that supplies at least retail electric distribution service, and an ESC is an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in Ohio. An ESC includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, and billing and collection agent.²

¹ R.C. 4928.02(D) and (N).

² R.C. 4928.01(A)(6) and (9).

Renewable energy and advanced energy requirements

Renewable energy freeze and advanced energy inclusion

The bill extends, for an additional three years, the freeze for the qualifying renewable energy resource (including solar) benchmarks at the level required under current law. Current law freezes the benchmarks for two years at the 2014 level. The bill also includes advanced energy resources as a qualifying renewable energy resource that may be used to meet the benchmarks.³ Current law uses the term "qualifying renewable energy resources" to describe those resources that can be used to meet the renewable energy resource requirements. This analysis, for purposes of brevity and efficiency, omits the term "qualifying" when describing the renewable energy resources.⁴

Renewable energy temporary freeze

The bill extends for three years, (2017, 2018, and 2019), the renewable energy benchmarks at the 2016 level in current law, which requires that 2.5% of the electricity supply must be from renewable energy resources, including 0.12% from solar energy resources, the same level as required since 2014. Current law freezes the benchmark for 2015 and 2016 at the 2014 level.⁵

Renewable energy benchmark resumption

The bill requires benchmarks for both renewable and solar energy resources to resume in 2020, but instead of annual benchmarks as in current law, the bill establishes benchmarks for every third year beginning in 2022 until 2028, and sets a final benchmark for 2029 that applies to each year thereafter. The revised benchmarks are extended for three years to accommodate the three-year freeze, with the result being that EDUs and ESCs must provide 12.5% of their electricity supply from renewable energy resources, including 0.5% from solar energy resources, by January 1, 2030. The benchmarks are subject to the requirement that EDUs and ESCs must report compliance status to the Public Utilities Commission (PUCO) annually. See "**Report to PUCO**" below.⁶

³ R.C. 4928.01(A).

⁴ R.C. 4928.64(A)(1).

⁵ R.C. 4928.64(B)(2).

⁶ R.C. 4928.64(B)(1) and (2) and 4928.6620.



Renewable energy benchmark requirements						
Bill				Current law		
By end of year	Renewable energy resource	Solar energy resource		By end of year	Renewable energy resource	Solar energy resource
2017	2.5%	0.12%		2017	3.5%	0.15%
2018	2.5%	0.12%		2018	4.5%	0.18%
2019	2.5%	0.12%		2019	5.5%	0.22%
				2020	6.5%	0.26%
				2021	7.5%	0.3%
2022	5.5%	0.22%		2022	8.5%	0.34%
				2023	9.5%	0.38%
				2024	10.5%	0.42%
2025	8.5%	0.34%		2025	11.5%	0.46%
				2026 and each calendar year thereafter	12.5%	0.5%
2028	11.5%	0.46%				
2029 and each calendar year thereafter	12.5%	0.5%				

Inclusion of advanced energy resources

The bill includes advanced energy resources, the definition of which is amended by the bill (see "**Renewable energy resource and advanced energy resource changes**" below), as a renewable energy resource that may be used to meet the renewable energy benchmarks.⁷

Solar energy compliance payments

The bill retains through 2019 the schedule of the solar energy compliance payments at the level required under current law, which starts at \$300 per megawatt hour of undercompliance or noncompliance in the benchmark period under review in 2016 and is reduced to a compliance payment of \$50 by 2025. Beginning in 2019 and

⁷ R.C. 4928.64(A)(1).



ending in 2028, the bill applies the compliance payment every three years (2019, 2022, 2025, and 2028), which match the benchmark periods under the bill. In 2029 and each subsequent calendar year, the bill maintains the compliance payment at \$50. Current law specified biennial \$50 compliance payment reductions through 2026 to a minimum of \$50.⁸ The bill does not change the nonsolar, renewable resource compliance payment, which is adjusted annually but must be at least \$45.⁹

Bill	
Years	Compliance Payment
2016	\$300
2017 2018	\$250
2019	\$200
2022	\$150
2025	\$50
2028	\$50
2029 and thereafter	\$50

Current Law (beginning at 2016)	
Years	Compliance Payment
2014 2015 2016	\$300
2017 2018	\$250
2019 2020	\$200
2021 2022	\$150
2023 2024	\$100
2025	\$50
2026 and thereafter	\$50

Renewable energy resource and advanced energy resource changes

For purposes of the renewable energy requirements¹⁰ and the Advanced Energy Program administered by the Director of the Development Services Agency,¹¹ the bill adds the following:

⁸ R.C. 4928.64(C)(2)(a).

⁹ R.C. 4928.64(C)(2)(b).

¹⁰ R.C. 4928.64.

¹¹ R.C. 4928.62, not in the bill.



- To the list of renewable energy resources, any combined heat and power system placed into service or retrofitted on or after September 10, 2012. (This change also applies to the use of renewable energy credits (RECs).)¹²
- To the list of advanced energy resources, any plan, policy, behavior, or practice that reduces:
 - The total energy intensity of a facility, pipeline, building, plant, or equipment regardless of the type of energy intensity reduction;
 - The energy intensity of any water supply function or water treatment function.¹³

Under current law, a combined heat and power system means the coproduction of electricity and useful thermal energy from the same fuel source designed to achieve minimum thermal-efficiency levels of at least 60% with at least 20% of the system's useful energy in the form of thermal energy.¹⁴ An advanced energy resource under current law means a number of items specifically listed in law including, for example, clean coal technology, advanced nuclear energy technology, advanced solid waste or construction and demolition debris conversion technology, and demand-side management and energy efficiency improvements.¹⁵

The bill also adds the terms "energy intensity," "water supply function," and "water treatment function," and defines them as follows:

New Term	Definition
Energy intensity	Amount of energy used to produce a certain level of output or activity, measured by the quantity of energy needed to perform a particular activity, expressed as energy per unit of output, energy per unit of gross total floor space, or an activity measure of service. ¹⁶

¹² R.C. 4928.01(A)(37)(a); R.C. 4928.645, not in the bill.

¹³ R.C. 4928.01(A)(34)(j) and (k).

¹⁴ R.C. 4928.01(A)(40).

¹⁵ R.C. 4928.01(A)(34).

¹⁶ R.C. 4928.01(A)(43).



New Term	Definition
Water supply function	Functions associated with (1) raw water collection, purification, treatment, and storage, (2) establishing or maintaining pressure to balance water supply and demand, and (3) water delivery and transfer. ¹⁷
Water treatment function	Any of the preliminary, secondary, tertiary, and advanced activities (whether physical, biological, or chemical) associated with the removal of contaminants from, or conditioning of, wastewater prior to its return to the environment or recycled use. ¹⁸

For purposes described above (including for use as RECs), *and* for purposes of advanced energy projects funded by the Ohio Air Quality Development Authority,¹⁹ the bill adds certain fuel from solid wastes to the list of renewable energy resources. Included as a renewable energy resource under the bill is fuel derived from solid wastes through a process that principally uses combustion if (1) the combustion is effected in a facility to generate electricity or heat for a length of time and at a temperature to achieve the destruction of dioxins and (2) the facility is equipped with scrubbers, powdered-activated-carbon injection, pulse-jet fabric filters, selective catalytic reduction of nitric oxide and nitrogen dioxide, and continuous emissions monitoring.²⁰ Under current law, fuel derived from solid wastes is included if it is derived through fractionation, biological decomposition, or other process that does not principally include combustion. Solid wastes are defined under continuing law as unwanted residual solid or semisolid material resulting from industrial, agricultural, and community operations including garbage, scrap tires, combustible and noncombustible material, street dirt and debris but excluding such materials as construction and demolition debris and material that is infectious or hazardous waste.²¹

¹⁷ R.C. 4928.01(A)(41).

¹⁸ R.C. 4928.01(A)(42).

¹⁹ R.C. 3706.26, not in the bill.

²⁰ R.C. 3706.25(E)(1)(f) and R.C. 4928.01(A)(37)(a)(vi).

²¹ R.C. 3734.01, not in the bill.

Energy efficiency (EE) and peak demand reduction (PDR) requirements

Annual EE requirements

EE for 2017, 2018, and 2019

The bill extends for 2017, 2018, and 2019, the current law requirement (applicable for 2015 and 2016) that an EDU must achieve annual energy efficiency (EE) savings equal to the result of subtracting the cumulative EE savings achieved since 2009 from the product of multiplying the applicable baseline for EE savings by 4.2%. If the result is zero or less for the year for which the calculation is being made, current law, unchanged by the bill, prohibits the EDU from being required to achieve additional EE savings for that year, but permits the EDU to achieve additional EE savings for that year.²²

EE for 2020 to 2023

The bill specifies that for 2020 to 2023, the annual EE savings requirement is 1% of the baseline prescribed for EE savings (under current law, that 1% savings requirement is imposed for 2017 to 2020) and 2% each year thereafter through 2029. Effectively, the bill retains the former annual EE savings requirement of 1% for 2020; reduces the EE savings requirement from 2% to 1% for 2021 to 2023; and retains the current law EE savings requirement of 2% for 2024 to 2029, after which the EE savings requirement ends. The bill repeals the current law provision requiring that an EDU must achieve cumulative EE savings in excess of 22% by the end of 2027.²³

Annual PDR requirements

The bill extends for 2017, 2018, and 2019, the current law requirement (applicable to 2015 and 2016) that an EDU must achieve peak demand reduction (PDR) equal to the result of subtracting the cumulative PDR achieved since 2009 from the product of multiplying the baseline prescribed for PDR by 4.75%. Under current law, unchanged by the bill, if the result is zero or less for the year for which the calculation is being made, the EDU is prohibited from being required to achieve additional PDR for that year, but the EDU may achieve additional PDR for that year. The bill requires the EDU to achieve an additional 0.75% of PDR in 2020 through 2029. Under current law EDUs must implement PDR programs designed to achieve an additional 0.75% PDR each year from 2017 to 2020.²⁴

²² R.C. 4928.66(A)(1)(a).

²³ R.C. 4928.66(A)(1)(a).

²⁴ R.C. 4928.66(A)(1)(b).

EE and PDR compliance measurement

The bill specifies that compliance with the annual EE and PDR requirements may be measured only in years 2016 to 2019, 2022, 2025, 2028, and 2029.²⁵ Compliance measurement must be done subject to the requirement that EDUs and ESCs report compliance status to PUCO annually. See "**Report to PUCO**" below.²⁶

Repeal of obsolete requirements

The bill repeals EE savings and PDR provisions that set requirements for years that have passed, 2010 to 2015.

Mercantile customer opt-out of portfolio plans

Effective January 1, 2020, the bill adds mercantile customers to those customers that may opt out of, and later opt back into, an EDU's portfolio plan.²⁷ PUCO rules require EDUs to have three-year plans for compliance with the EE and PDR requirements.²⁸ The opt-out/opt-in law gives mercantile customers the ability to avoid being subject to cost recovery mechanisms imposed by an EDU for EE/PDR costs. But, it also affects their ability to participate in, or directly benefit from, EE/PDR under the portfolio plan. (See **COMMENT 1**.)

Under current law, a mercantile customer is defined as a commercial or industrial electric customer that consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.²⁹ Under current law beginning January 1, 2017, a customer that is eligible to opt out of a portfolio plan is any customer of an EDU that either receives service above the primary voltage level as determined by the EDU's tariff classification or is a commercial or industrial customer (1) that receives electricity through the meter of an end user or through more than one meter at a single location in a quantity that exceeds 45 million kilowatt hours for the preceding calendar year and (2) has requested registration as a self-assessing purchaser pursuant to the kilowatt hour tax.³⁰

²⁵ R.C. 4928.66(A)(1)(a) and (b).

²⁶ R.C. 4928.66(A)(1)(a) and (b) and 4928.6620.

²⁷ R.C. 4928.6610(A)(1) and Section 3; R.C. 4928.6611 to 4928.6616, not in the bill.

²⁸ Ohio Administrative Code Chapter 4901:1-39, not in the bill.

²⁹ R.C. 4928.01(A)(19).

³⁰ R.C. 4928.6610(A)(2); R.C. 4928.6611, not in the bill.



Provisions governing counting of EE/PDR

The bill expands what PUCO may count toward meeting EE/PDR requirements. Under the bill, PUCO must count and recognize the following:

- EE savings and PDR associated with increased use of post-consumer recycled glass by a mercantile customer;
- EE savings and PDR that occur as a consequence of consumer reductions in water usage or reductions and improvements in wastewater treatment;
- Nonelectric energy efficiency savings or nonelectric peak demand reductions (on a Btu-equivalent basis) that occur as a consequence of a portfolio plan.

The bill repeals the authority for an EDU, at its discretion, to bank any EE savings or PDR amount achieved in excess of the EE or PDR requirements and to apply them toward achieving the requirements in future years.³¹

Incentives

Under the bill, an EDU is deemed in compliance with the EE/PDR savings requirements and is eligible for PUCO-approved incentives in any year in which the EDU's actual cumulative EE/PDR savings meet or exceed the cumulative savings mandates set forth in the bill. The bill does not define what incentives could be approved by PUCO.³²

Reports

Report to PUCO

The bill requires every EDU and ESC to submit an annual report to PUCO by December 31 each year. The report must detail the EDU's or ESC's status of compliance with the renewable energy resource benchmarks, and EE/PDR requirements, as applicable.³³

³¹ R.C. 4928.662.

³² R.C. 4928.6621.

³³ R.C. 4928.6620.



Report to General Assembly

Not later than two years after the bill's effective date, PUCO must submit a feasibility report with recommendations to the General Assembly. The report must include the feasibility of the implementation of all of the following:

- Other constructs for EDUs to fairly participate in distributed-generation opportunities;
- Incentivizing the use of smart thermostats in residential homes so that consumers can remotely control energy usage while they are away;
- Investigating a market-based certification instrument for energy efficiency.³⁴

Ohio Environmental Protection Agency authority

The bill specifies that the Ohio Environmental Protection Agency (OEPA) maintains its statutory authority under the OEPA law to provide for the prevention, abatement, and control of all air pollution and to require air pollution controls for any facility, process, or activity that produces or might produce significant emissions of air pollutants. However, under the bill, OEPA is not permitted to derive any new state statutory authority from the final federal guidelines that limit CO₂ emissions from fossil-fuel-fired power plants that exist on the bill's effective date under section 111(d) of the federal Clean Air Act³⁵ that are consistent with that Act's cooperative federalism model (as simplified by the Federal D.C. Circuit Court of Appeals, "cooperative federalism," with respect to the Act, means pollution control is the primary responsibility of the states, but Congress requires federal regulation and enforcement in specific circumstances; the bill does not define what "cooperative federalism model" means).³⁶ The bill also specifies that the final federal guidelines do not expand the authority of OEPA to allow for the development, implementation, or regulation of electric dispatch protocols.³⁷

Under the bill, OEPA is prohibited from doing the following without being granted new and specific state authority to do so:

³⁴ Section 4.

³⁵ 42 United States Code 7411(d).

³⁶ R.C. 3745.28(B) and (C). See *Texas v. EPA*, 726 F.3d 180, 192 (2013).

³⁷ R.C. 3745.28(C).



- Regulating, mandating, dictating, establishing, or otherwise ordering any electric dispatch protocols for any electric light company;³⁸
- Regulating, establishing, or otherwise ordering any specific levels of natural gas utilization for any electric light company;³⁹
- Regulating, developing, or otherwise ordering the acquisition of any amounts of renewable energy under the law governing the renewable energy resource benchmarks⁴⁰ or any other state law;⁴¹
- Regulating, developing, or otherwise ordering any person or entity, including an electric light company or any owner or operator of an electric generating unit, to achieve any EE or PDR under the energy efficiency law⁴² or any other state law.⁴³

The bill also prohibits OEPA, PUCO, and any other state agency from doing the following without being granted new and specific state authority to do so:

- Awarding, allocating, assigning, or transferring any CO₂-emission allowance, with respect to a mass-based standard, or emission-rate credit, with respect to a rate-based standard, to any electric light company or to any owner or operator of any existing fossil-fuel-fired power plant that is subject to the final federal guidelines limiting CO₂ emissions from existing fossil-fuel-fired power plants, either independently or as part of any state plan submitted to the U.S. EPA under those guidelines;⁴⁴
- Developing or implementing any trading program or any plan premised in any way on an allowance system, whether on a single-state or multi-state basis, as part of any state plan submitted to the U.S. EPA under the final federal guidelines.⁴⁵

³⁸ R.C. 3745.28(C).

³⁹ R.C. 3745.28(D).

⁴⁰ R.C. 4928.64.

⁴¹ R.C. 3745.28(E).

⁴² R.C. 4928.66.

⁴³ R.C. 3745.28(G).

⁴⁴ R.C. 3745.28(F).

⁴⁵ R.C. 3745.28(H).

An electric light company is a company engaged in the business of supplying electricity for light, heat, or power purposes, including supplying electric transmission service, to consumers in this state. An electric light company includes an ESC, but excludes certain self-generators and regional transmission organizations approved by the Federal Energy Regulatory Commission.⁴⁶

Advanced energy analytics technology

The bill permits an EDU, upon PUCO approval, to recover all of its costs relating to the procurement, deployment, or use of advanced energy analytics technology, including a reasonable rate or return on those costs. Under the bill, "advanced energy analytics technology" includes Internet-based and cloud-based computing solutions and subscription licensing models, including software as a service that (1) uses cyber-physical systems to allow the correlation of data aggregated from appropriate data sources and smart grid sensor networks, (2) employs analytics and machine learning, or (3) employs other advanced computing solutions and models.

To be eligible for cost recovery under the bill, the technology must be used by the EDU for purposes of realizing operational efficiencies, cost savings, enhanced energy management and customer engagement, improvements in system reliability, safety, and cyber security, or other benefits to ratepayers.⁴⁷

Reinvestment in energy efficiency and weatherization program

The bill requires that any difference between Universal Service Fund revenues used for low-income customer assistance programs and the customer education program and any percentage of income payment plan (PIPP) program cost savings resulting from the competitive procurement process established under current law for PIPP customers be reinvested in the existing targeted energy efficiency and weatherization program established by the Director of Development Services in current law.⁴⁸

The competitive procurement process under the PIPP program law requires the Director to aggregate PIPP customers in a competitive procurement process auction for the supply of reliable competitive retail electric services for the PIPP customers. The energy efficiency and weatherization program provides assistance with energy efficiency improvement projects and targets, to the extent practicable, high-cost, high-volume use structures occupied by PIPP-eligible customers. The program aims to reduce the occupants' energy bills. The program also requires that, as a condition of participation in the PIPP

⁴⁶ R.C. 4928.01(A)(7).

⁴⁷ R.C. 4928.41.

⁴⁸ R.C. 4928.55.

program, any PIPP-eligible customer must accept energy and weatherization program services.⁴⁹ Under current law, the PIPP program, funded by the Universal Service Fund Rider charged to retail electric distribution customers, allows certain low-income customers to pay a percentage of their household income rather than the actual bill for residential electric service.⁵⁰

Special energy improvement projects

Overview

Essentially, the bill is creating a new process that permits property owners to implement energy-efficiency special improvement projects (SEIPs) on their property, and to pay for those energy-efficiency SEIPs through special assessments. SEIPs may be financed through special assessments under current law – though only if the property owners first create a special improvement district. The bill does not require the creation of a special improvement district for an SEIP. The district SEIPs that are permitted under continuing law, however, are not restricted to energy-efficiency improvements.⁵¹ Some of the bill's provisions governing energy-efficiency SEIPs are similar to provisions of current law governing district SEIPs. This analysis does not compare the district SEIP provisions with the energy-efficiency SEIP provisions. It simply analyzes all of the bill's provisions governing the new energy-efficiency SEIPs.

Petition process

When petitions are allowed

The bill permits a property owner or owners to petition the legislative authority of any municipal corporation or township in which their property is located for authorization to develop and implement one or more SEIPs *that consist only of energy efficiency improvements*.⁵² Under continuing law, an SEIP is defined as any property, device, structure, or equipment necessary for the acquisition, installation, equipping, and improvement of any real or personal property used for the purpose of creating a number of different types of projects, including an energy-efficiency improvement, whether that real or personal property is publicly or privately owned.⁵³ The bill

⁴⁹ R.C. 4928.55; R.C. 4928.54, not in the bill.

⁵⁰ R.C. 4928.52 and O.A.C. Chapter 122:5-3, not in the bill.

⁵¹ R.C. 1710.01 and 1710.02.

⁵² R.C. 1710.20.

⁵³ R.C. 1710.01(I).



specifies that property is located in a municipal corporation or township if the property is located wholly within the boundaries of the municipal corporation or township.⁵⁴

Petition contents

The petition must be signed by 100% of the property owners of the parcels to be assessed. Ownership of each parcel must be shown by reference to records that were available from each county recorder's office not more than 60 days prior to the submission of the petition.⁵⁵ The petition must include all of the following:

- A description of the proposed SEIP or SEIPs, including the proposed cost and a statement of which property or properties each SEIP will benefit;
- A designation of at least one SEIP for each parcel of real property;
- The method of assessment to be used and the time period during which the assessment will be levied;
- A statement that the development and implementation of the SEIP or SEIPs is being requested under the bill's provisions applicable to energy-efficiency SEIPs.

The petition *may* include provisions for the following:

- Planning, designing, and implementing the SEIP or SEIPs, and paying the cost of any action taken in furtherance of the SEIP or SEIPs, including hiring architectural, engineering, legal, financial, appraisal, insurance, consulting, energy auditing, and planning services;
- Paying the costs of issuing, paying interest on, and redeeming or refunding notes and bonds issued for the purpose of paying costs of the SEIP or SEIPs, reimbursing costs of the SEIP or SEIPs that were previously incurred, and cooperating with any person, any public or private lender, or any port authority having jurisdiction over the parcels to provide financing to pay or reimburse the costs of the SEIP or SEIPs;
- Sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the SEIP or SEIPs between a municipal corporation or township and any owner of real

⁵⁴ R.C. 1710.20.

⁵⁵ R.C. 1710.21.

property on which one of the SEIPs is acquired, installed, equipped, or improved;

- Any other actions necessary to develop and implement the SEIP or SEIPs.⁵⁶

Petition approval or disapproval

A municipal corporation or township with which a petition is filed has 60 days to approve or disapprove the petition for SEIPs, by way of legislation.⁵⁷

Assessment process

If the municipal corporation or township approves the petition, the municipal corporation or township must levy a special assessment on all real property subject to the petition to pay for the costs of the development and implementation of the SEIP or SEIPs. The assessment is limited to 30 years from the first day of the year in which the assessment is first imposed.

The special assessment must be levied in accordance with continuing law governing special assessments for municipal corporations, except that:

- The municipal corporation or township may levy the assessment for each SEIP by any one or any combination of the methods of assessment allowed under the continuing law, provided that the assessment is uniformly applied; and
- The municipal corporation or township may combine one or more SEIPs and levy a single assessment against specially benefited property.⁵⁸

The bill also provides that, for purposes of levying the special assessment, the SEIP or SEIPs are deemed a special benefit to any private property owners subject to the petition. Also, the use of special assessments levied under the bill does not constitute an expenditure of public funds.⁵⁹

⁵⁶ R.C. 1710.22.

⁵⁷ R.C. 1710.24(A).

⁵⁸ R.C. 1710.24(B) and (C).

⁵⁹ R.C. 1710.24(C).



Involvement by the municipal corporation or township

The bill permits a municipal corporation or township levying a special assessment for an SEIP to develop, finance, manage, or implement part or all of the SEIP. The bill also permits the municipal corporation or township to contract with any person, community improvement corporation, political subdivision, state agency, or port authority to develop, finance, manage, or implement part or all of an SEIP.⁶⁰ If the contract is made with a port authority, the port authority must have jurisdiction over the parcel or parcels upon which the SEIP is proposed to be developed and implemented.⁶¹

Constitutional purposes

The bill states that a petition for SEIPs under the bill and any actions taken by the municipal corporation or township under the petition and legislation approving the petition are in furtherance of the purposes set forth in Section 2o or 2q of Article VIII, Ohio Constitution (conservation and revitalization purposes and the Clean Ohio Program) if approved by the municipal corporation or township with which the petition is filed.⁶²

Rights and privileges of property owners

The bill grants to a property owner assessed under the bill all applicable rights and privileges of a property owner that is assessed under continuing law governing special assessments for municipal corporations. The bill also states "unless waived by the property owner." (See **COMMENT 2**.)⁶³

Transactions by the municipal corporation or township

The bill permits a municipal corporation or township levying a special assessment for an SEIP under the bill to sell, transfer, lease, or convey the SEIP if it is owned by the municipal corporation or township. But the legislative authority of the municipal corporation or township must first determine that the SEIP is not required to be owned exclusively by the municipal corporation or township for its purposes or for any of the following purposes:

⁶⁰ R.C. 1710.26.

⁶¹ R.C. 4582.06(A)(17)(b) and 4582.31(A)(27)(b).

⁶² R.C. 1710.241.

⁶³ R.C. 1710.24(D).



- Uses that will promote the welfare of the people of the municipal corporation or township;
- To improve the quality of life and the general and economic well-being of the people of the municipal corporation or township;
- To better ensure the public health, safety, and welfare;
- To protect water and other natural resources;
- To provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization;
- To control, prevent, minimize, clean up, or mediate certain contamination of or pollution from lands in the state and water contamination or pollution;
- To provide for safe and natural areas and resources.

The legislative authority must specify the consideration and any other terms for a sale, transfer, lease, or conveyance of an SEIP under the bill.

The bill states that any determinations made by a legislative authority regarding the sale, transfer, lease, or conveyance of an SEIP or regarding the consideration are conclusive.

The bill exempts the sale, transfer, lease, or conveyance of an SEIP made under the bill from competitive bidding and related advertising requirements that might otherwise apply.⁶⁴

Laws not superseded

The bill states that it does not prohibit or restrict the rights of municipal corporations under the Ohio Constitution or the right of the municipal legislative authority to impose reasonable conditions in legislation approving SEIPs. The bill also states that the acquisition, installation, equipping, and improvement of any SEIPs under the bill does not supersede any of the following:

- Any local zoning, environmental, or similar law or regulation;
- Continuing law governing the certified territories of electric suppliers;

⁶⁴ R.C. 1710.28.

- Any state or federal law relating to the provision of electric service or the regulation of electric light companies that operate their utilities not for profit or public utilities.⁶⁵

Port authorities

The bill expressly permits port authorities having jurisdiction over the parcel upon which the SEIP or SEIPs are proposed to be developed and implemented to provide financing to pay or reimburse the costs of those SEIPs. The bill also specifies that the authorized purposes given to port authorities by the bill may be exercised jointly or separately by one or more port authorities, are in addition to the powers granted to port authorities under continuing law, and are not limitations on any of those existing powers.⁶⁶

Special improvement districts

The bill provides a special voting process for each of the following regarding a special improvement district that includes condominium property:

- Inclusion of the property in a proposed district;
- Approval of the district plan;
- Repealing an improvements or services plan of the district;
- Dissolution of the district.

A vote must be made in favor of the action and conducted according to the unit owners association bylaws and declaration. The petition must then be signed by a member of the board of directors of the unit owners association on behalf of all unit owners. The bill prohibits a unit owner from signing the petition on the unit owner's own behalf.⁶⁷ With respect to action to dissolve the district or repeal the district's improvements or services plan, the bill requires the member of the board of directors that signed the petition to appear at the meeting of district members required under current law, unchanged by the bill, to consider the petition. The board member is required to vote

⁶⁵ R.C. 1710.24(A).

⁶⁶ R.C. 1710.01(O), 4582.06(A)(17)(a) and (c), and 4582.31(A)(27)(a) and (c).

⁶⁷ R.C. 1710.01(P), 1710.02(E)(2)(b), 1710.06(B)(2)(b), and 1710.13(B)(2) and (C).



for dissolution or repeal consistent with the earlier vote of the unit owners regarding the underlying petition.⁶⁸

Net metering

Which facilities qualify for net metering

The bill modifies the definition of "net-metering system" to change which types of facilities qualify for net-metering tariffs or contracts. The bill makes the following changes in this regard:

- Requires a facility to produce "electricity" rather than "electrical energy";
- Adds that a facility that is sized to generate 120% of the customer generator's (a customer generator is simply a user of a net metering system – so for convenience the analysis will use the term "net-metering customer" or "customer") average usage for the three previous calendar years automatically satisfies the requirement of being intended primarily to offset part or all of the net-metering customer's requirements for electricity. This "offset" requirement is one of five requirements that must be met under current law.
- Adds a sixth requirement that a facility must be sized such that the facility is *not* required to register with a regional transmission organization as a net generator.⁶⁹

Electric utility (EU) net-metering contracts and tariffs

Certain EU contracts not subject to PUCO supervision or regulation

The bill exempts a contract between an electric utility (EU) and a customer for net metering from PUCO regulation or supervision if both of the following apply:

- The EU does not receive cost or revenue recovery for the contract through a tariff or an order of PUCO.
- The EU or an entity owned by or corporately affiliated with the EU meaningfully participates in the installation of the net metering facility or meaningfully finances the installation of the facility.

⁶⁸ R.C. 1710.13(C).

⁶⁹ R.C. 4928.01(A)(31).

Under the bill, meaningful participation means the completing, or managing the completion of, at least 75% of the work to complete the installation. Meaningful financing means the financing, or arranging for the financing of, at least 75% of the cost of the installation of the facility.

The bill specifies that an EU may, but is not required to, enter into a net-metering contract with a customer under the conditions described above. But, the bill requires the EU and the customer to negotiate the terms of such a contract for net metering, including the price, rate, credit, or refund of any excess production by the customer.⁷⁰

Certain EU contracts and tariffs subject to PUCO rules

The bill clarifies that an EU's *standard* contract or tariff for net metering is subject to PUCO rules.⁷¹ An EU is defined under continuing law as an electric light company ("electric light company" is the broadest term for entities providing electricity used in the Revised Code) 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 Ohio or in the businesses of supplying both a noncompetitive and a competitive retail electric service in Ohio. The term excludes a municipal electric utility or a billing and collection agent.⁷²

ESC net-metering contracts

ESC net-metering contracts expressly permitted

The bill expressly permits (but does not require) an ESC to enter into a contract for net-metering service with a customer. The customer must be eligible to enroll for competitive retail electric service under PUCO rules. The bill requires the ESC and the customer to negotiate the terms of the net-metering contract, including the price, rate, credit, or refund of any excess production by the customer.⁷³

Certain ESC contracts not subject to local or PUCO regulation

If an ESC or any entity owned by or corporately affiliated with the ESC meaningfully participates in the installation of the net-metering facility or meaningfully finances the installation of the facility, the bill prohibits a municipal corporation or

⁷⁰ R.C. 4928.671, 4928.672, and 4928.673.

⁷¹ R.C. 4928.67.

⁷² R.C. 4928.01(A)(11); R.C. 4905.03, not in the bill.

⁷³ R.C. 4928.676.

PUCO from supervising or regulating the net-metering contract.⁷⁴ Meaningful participation and meaningful financing have the same meanings as explained above (see "**Certain EU contracts not subject to PUCO supervision or regulation**").

Certain residential ESC contracts subject to PUCO rules

The bill permits PUCO to adopt rules governing an ESC's purchase, under a net-metering contract, of excess production by a *residential* net-metering customer if both of the following apply:

- Neither the ESC nor any entity owned by or corporately affiliated with the ESC meaningfully participated in the installation of the net-metering facility.
- Neither the ESC nor any entity owned by or corporately affiliated with the ESC meaningfully financed the installation of the net-metering facility.

However, the bill prohibits PUCO from adopting certain specific rules (see "**Credits for generated electricity for ESC net metering**" below).⁷⁵

Credits for generated electricity for ESC net metering

The bill permits a net-metering customer and an ESC to agree to an alternative arrangement for the timing of a customer's generation credits. Current law requires that credits for any electricity fed back to an EU must appear in the next billing cycle. The bill clarifies that this requirement also applies to *ESC* net metering, but permits the ESC and the customer to agree to an alternative arrangement. The bill also clarifies that the alternative arrangement would be subject to any applicable rules adopted by PUCO. As explained above (see "**Certain residential ESC contracts subject to PUCO rules**"), these rules apply only to certain ESC net-metering contracts. But, the rules cannot:

- Require the ESC to carry over the customer's credit for overproduction for more than 12 months;
- Require the ESC to issue a monetary refund for overproduction; or

⁷⁴ R.C. 4928.677.

⁷⁵ R.C. 4928.679.

- Prohibit the ESC and the customer from agreeing that the customer loses overproduction credits or monetary refunds if the customer switches to a different ESC.⁷⁶

ESC net-metering load requirements

The bill creates the following requirements regarding load under any net-metering contract entered into with an ESC:

- The EU must ensure that any final settlement data sent to a regional transmission organization includes negative loads in the hourly load calculation of any electricity purchased by the ESC from its net-metering customers located in the EU's service territory.
- Load from a net-metering customer must be incorporated into the purchasing ESC's total hourly energy obligation reported to a regional transmission organization.
- The load from net-metering customers must offset the purchasing ESC's load reported to the regional transmission organization.⁷⁷

Data sharing between the EU and the ESC

The bill requires an EU to do the following regarding each net-metering customer located in the EU's service territory that has a net-metering contract with an ESC:

- Transmit to the ESC via an electronic data interchange transaction or transactions the customer's hourly interval energy production and consumption data for each billing period before the EU generates the customer's bill for that period. The time period between the transmission and the generation of the bill must be at least as long as the time period between transmission and generation applicable to a customer who does *not* have a net-metering contract with an ESC.
- Either of the following:
 - Transmit to the ESC via an electronic data interchange transaction, or another mechanism approved by PUCO, the customer's daily interval production and consumption data. The bill requires the

⁷⁶ R.C. 4928.679 and 4928.6715(B).

⁷⁷ R.C. 4928.6719.

transmission to occur not more than 24 hours from the time the EU receives the data from the meter.

- Provide access to the meter for direct readings of the customer's daily interval production and consumption data by the ESC, to the extent that the meter technology is deployed in the EU's service territory.
- Calculate, at least annually, and share with the ESC each customer's individual network service peak load value and individual network service peak load contribution. The bill requires this data to be shared not later than ten calendar days after the EU calculates it.⁷⁸

Meter requirements for net metering

The bill specifies that continuing requirements for meters used for net metering apply to net metering through either an EU or ESC, and regardless of whether the net metering is subject to supervision or regulation. The bill also adds to these requirements. Under current law, net metering must be accomplished using a single meter capable of registering the flow of electricity in each direction. The bill adds ". . . in intervals of no greater than one hour." Current law also requires that if a meter is not capable of meeting the requirements, that the customer is responsible for the expenses involved in purchasing and installing a suitable meter. The bill adds that upon a customer's request or authorization, the EU must *install* the suitable meter.⁷⁹

Applying other provisions to both EU and ESC net metering

The bill specifies that certain provisions of continuing law apply to net metering through either an EU or ESC, and regardless of whether the net metering is subject to supervision or regulation:

- Requirements for the measurement of electricity supplied or generated through net metering;⁸⁰
- PUCO rules relating to control and testing requirements for net-metering customers to protect public worker safety and system reliability;⁸¹

⁷⁸ R.C. 4928.6721.

⁷⁹ R.C. 4928.6713(A) and 4928.6717.

⁸⁰ R.C. 4928.6715.

⁸¹ R.C. 4928.6723.

- A prohibition against an EU requiring a net-metering customer whose net-metering system meets the standards and requirements of continuing law to do any of the following:
 - Comply with additional safety or performance standards;
 - Perform or pay for additional tests;
 - Purchase additional liability insurance.⁸²

COMMENT

1. The bill does not address how the mercantile customer exemption from EE/PDR cost recovery for committing the customer's demand response and other capabilities to the EDU's EE/PDR program (current law, not changed by the bill)⁸³ will be affected by the bill's provision allowing mercantile customers to opt out of/opt back into an EDU's portfolio plan beginning in 2020.⁸⁴ It is not clear whether they would conflict or if the new opt out would supersede the existing exemption.

2. Due to the ambiguous structure of two sentences in the bill, the meaning of the phrase "unless waived by the property owner" is unclear. The waiver could apply to only the right to notice of a resolution of necessity and the filing of an estimated assessment, or it could also apply to other rights and privileges as well.⁸⁵

HISTORY

ACTION	DATE
Introduced	04-25-16

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⁸² R.C. 4928.6725.

⁸³ R.C. 4928.66(A)(2)(c).

⁸⁴ R.C. 4928.6610 and Section 3.

⁸⁵ R.C. 1710.24(D).

