



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **S.B. 155**

132nd General Assembly  
(As Introduced)

**Sens.** Terhar and Peterson

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## **BILL SUMMARY**

### **State competitive retail electric service policy**

- Changes the state's competitive retail electric service policy to include ensuring the continuing economic vitality of historical investments made by electric distribution utilities (EDUs) in national security generation resources and supporting continued investment to preserve the ongoing benefits associated with those resources.

### **National security generation resource**

- Defines a national security generation resource as all generating facilities owned directly or indirectly by a corporation that was formed before 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests.
- Includes the Ohio Valley Electric Corporation as a national security generation resource.

### **Standard service offer**

- Amends the law requiring a standard service offer (SSO) for electric service to include automatic recovery of costs, including any deferred costs, that are associated with an EDU's contractual commitments to a national security generation resource.
- Specifies that the automatic recovery of those costs is subject to audit and reconciliation.

## **EDU affiliates**

- Permits an EDU with an affiliate that has a contractual commitment related to a national security generation resource to use the output from the affiliate's contractual commitment in its SSO provided that the affiliate's contractual commitment was previously the contractual commitment of the EDU.
- Permits the utility to recover costs, including any deferred costs, of the affiliate's share of the national security generation resource.
- Specifies that all EDUs in the same holding company may jointly use the output of the affiliate's contractual commitment in their SSOs.

## **Cost recovery under an MRO or ESP**

- Requires an SSO established under a market rate offer (MRO) or an electric security plan (ESP) to include provisions for the recovery of costs, including any deferred costs, associated with an EDU's contractual commitments related to a national security generation resource.
- Excepts automatic cost recovery related to a national security generation resource from the burden of proof requirement on an EDU filing an ESP application.
- Requires PUCO to issue an order as is necessary to ensure automatic recovery of costs, including any deferred costs, associated with a national security generation resource if the EDU withdraws an MRO application, or the EDU terminates, or the PUCO disapproves, an ESP application.

## **Nonbypassable cost recovery**

- Requires PUCO to grant cost recovery on a nonbypassable basis if an EDU agrees to offer its contractual commitment related to the national security generation resource into wholesale markets with any resulting revenues being credited to the benefit of retail customers.

## **Other changes to MROs and ESPs**

- Within 120 days of the effective date of the bill, permits an EDU to file an application to reopen, update, or amend its existing MRO or SSO (under an ESP) in order to implement the bill's changes, but prohibits the proceeding for the application from otherwise reopening "matters previously decided."

## Repeal of obsolete provisions

- Removes obsolete provisions of the law governing SSOs.

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## CONTENT AND OPERATION

### National security generation resource

The bill requires recovery of costs associated with an electric distribution utility's (EDU's) "contractual commitments" related to a "national security generation resource." Under the bill, the EDU may recover the costs in its market rate offer (MRO) or electric security plan (ESP) under the competitive retail electric service law. A "national security generation resource" means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests. The bill specifically includes the Ohio Valley Electric Corporation (OVEC) as a national security generation resource.<sup>1</sup>

The bill does not define the term "contractual commitment." It is not clear whether this means costs associated with the percentage of the EDU's equity in the resource, the EDU's share of the output of the national security generation resource, or something else as specified in the contract.

### OVEC background

OVEC is a company jointly owned by several shareholders. Headquartered in Piketon, Ohio, it owns and operates two coal-fired electric generating plants: the Kyger Creek Power Plant at Cheshire, Ohio, and the Clifty Creek Power Plant at Madison, Indiana. Both began operation in 1955. OVEC and its subsidiary, Indiana-Kentucky Electric Corporation (IKEC), were formed in 1952 by investor-owned utilities that furnished electric service in the Ohio River Valley (and their parent holding companies) for the purpose of providing electricity for the projected uranium enrichment facilities then under construction by the Atomic Energy Commission.<sup>2</sup>

OVEC owners (referred to by OVEC as sponsoring companies) purchase power from OVEC according to the terms of the Inter-Company Power Agreement, which is in force until its June 30, 2040 termination date. The proceeds from the purchase of power

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<sup>1</sup> R.C. 4928.141 to 4928.143 and 4928.01(A)(41).

<sup>2</sup> "Ohio Valley Electric Corporation," available at: <http://www.ovec.com/OVECHistory.pdf> (last visited May 22, 2017).



are designed to be sufficient to meet OVEC's operating expenses and fixed costs, as well as earn a return on equity before federal income taxes.<sup>3</sup>

Ohio EDUs that are OVEC sponsoring companies include:<sup>4</sup>

- Ohio Power Company, a subsidiary of American Electric Power Company, Inc.;<sup>5</sup>
- Dayton Power and Light Company, a subsidiary of The AES Corporation;<sup>6</sup> and
- Duke Energy Ohio, Inc., a subsidiary of Duke Energy Corporation.<sup>7</sup>

Also a part of OVEC is First Energy Solutions Corporation,<sup>8</sup> which is a generating company in Ohio that is a subsidiary of First Energy Corporation. First Energy Corporation is the holding company for Ohio Edison, The Cleveland Electric Illuminating Company, and the Toledo Edison Company.<sup>9</sup>

### **State competitive retail electric service policy**

The bill changes the state's policy regarding competitive retail electric service by adding the policy to "ensure the continuing economic viability of historical investments made by electric distribution utilities in national security generation resources and

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<sup>3</sup> "Ohio Valley Electric Corporation and subsidiary Indiana-Kentucky Electric Corporation Annual Report-2015," pp. 1 and 9, available at the Financials link: <http://www.ovec.com/index.php> (last visited May 22, 2017).

<sup>4</sup> "Ohio Valley Electric Corporation and subsidiary Indiana-Kentucky Electric Corporation Annual Report-2015," p. 1, available at the Financials link: <http://www.ovec.com/index.php> (last visited May 22, 2017).

<sup>5</sup> "AEP Ohio Service Territory," available at: <https://www.aepohio.com/info/facts/ServiceTerritory.aspx> (last visited May 22, 2017).

<sup>6</sup> "AES: Our Business: Improving Lives in the United States," available at: <http://www.aes.com/our-business/us-sbu/default.aspx> (last visited on May 21, 2017).

<sup>7</sup> "Duke Energy: About Us," available at: <https://www.duke-energy.com/our-company/about-us/businesses/regulated-utilities> (last visited May 21, 2017).

<sup>8</sup> "Ohio Valley Electric Corporation and subsidiary Indiana-Kentucky Electric Corporation Annual Report-2015," p. 1, available at the Financials link: <http://www.ovec.com/index.php> (last visited May 22, 2017).

<sup>9</sup> "First Energy: Company History," available at: [https://www.firstenergycorp.com/about/company\\_history.html](https://www.firstenergycorp.com/about/company_history.html) (last visited May 21, 2017) and "First Energy Solutions: About Us," available at: <https://www.fes.com> (last visited May 21, 2017).



support continued investment to preserve the ongoing benefits associated with such resources."<sup>10</sup> The bill describes cost recovery for national security generation resources (discussed below), but it does not explain what is meant by "supporting continued investment." Nor does it explicitly describe the "ongoing benefits associated with such resources." Possibly, the benefits would be continued electricity production and the economic benefits to the community in which the resource operates.

## **Standard service offer (SSO)**

The bill requires an EDU's standard service offer (SSO) price to include automatic recovery of all costs, including any deferred costs, associated with an EDU's contractual commitments related to a national security generation resource.<sup>11</sup>

### **SSO background**

Current law requires an EDU to provide customers within its certified territory an SSO of all competitive retail electric services necessary to maintain essential electric service. An SSO is the price offered for retail electric generation service to an EDU's customers (1) who do not shop for electric service from a competitive retail electric service provider or (2) whose supplier has defaulted in supplying the service. Current law allows the SSO to be established under an MRO or an ESP. However, the law, which took effect in 2009, required an EDU's first SSO application to be an ESP.<sup>12</sup> The PUCO has historically adopted three-year ESPs.<sup>13</sup>

### **Cost recovery audit and reconciliation**

The bill specifies that the automatic cost recovery under the bill is subject to audit and reconciliation, but the bill does not specify a procedure for this requirement. It is likely that the Public Utilities Commission (PUCO) would be responsible for conducting the audit and specifying any reconciliation that cost recovery would require.<sup>14</sup>

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<sup>10</sup> R.C. 4928.02(O).

<sup>11</sup> R.C. 4928.141(A).

<sup>12</sup> R.C. 4928.141, 4928.142, and 4928.143.

<sup>13</sup> Public Utilities Commission, "FirstEnergy's Electric Security Plan: ESP 101," available at: <https://www.puco.ohio.gov/be-informed/consumer-topics/firstenergy-s-electric-security-plan/> (last visited May 21, 2017).

<sup>14</sup> R.C. 4928.141(A).



## **Applicability of cost recovery to certain EDU affiliates**

The bill permits an EDU with an affiliate that has a contractual commitment related to a national security generation resource to use the output from the affiliate's contractual commitment in its SSO under an MRO and ESP. However, the bill permits this to occur only if the affiliate's contractual commitment was previously the contractual commitment of the EDU. Under the bill, the EDU must recover any and all costs of the affiliate's share of the resource, including any deferred costs. The bill also permits all EDUs in the same holding company system to jointly use the output of the affiliate's contractual commitment in their SSO.<sup>15</sup>

The bill does not clarify what it means to "use the output of the affiliate's contractual commitments" or to "jointly use" the output in the case of EDUs in the same holding company. This provision in the bill may be creating an exception to the state policy against cost recovery for electric generation.<sup>16</sup> For example, the electric generation company First Energy Solutions, a subsidiary of First Energy Corporation, is one of the owners of the national security generation resource, OVEC. It appears that, under the bill, the EDUs within First Energy Corporation may use the First Energy Solutions share of OVEC power output in its SSO.

### **Cost recovery under an MRO**

If an EDU establishes an SSO through a competitive bidding process under the MRO law, the bill requires the MRO to include recovery of all costs, including any deferred costs, associated with the EDU's contractual commitments related to a national security generation resource.<sup>17</sup>

### **Cost recovery if MRO application is withdrawn**

Under the bill, cost recovery occurs even when the EDU withdraws its MRO application following a PUCO finding that the application does not meet the requirements for the competitive bidding process or the MRO application procedure.<sup>18</sup> If the MRO application is withdrawn, PUCO must issue an order as is necessary to ensure automatic recovery of all costs, including any deferred costs, associated with a national security generation resource.

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<sup>15</sup> R.C. 4928.141(B).

<sup>16</sup> R.C. 4928.02(H).

<sup>17</sup> R.C. 4928.142(A)(2).

<sup>18</sup> The bill may need a technical amendment in R.C. 4928.142(B) to correct cross references referring to PUCO rules. The references to division (A)(2) should be (A)(3).



Current law permits an EDU to submit an application for an MRO with the PUCO. If, in the proceeding for the application, PUCO directs the EDU to correct deficiencies in the MRO, the EDU must correct them or withdraw the application.<sup>19</sup>

### **Cost recovery under an ESP**

If an SSO is established under the ESP law, the bill requires the ESP to include provisions relating to recovery of all costs, including any deferred costs, associated with an EDU's contractual commitments related to a national security generation resource.<sup>20</sup>

### **Cost recovery if ESP is terminated or disapproved**

Similar to the MRO provisions, the bill specifies that if an EDU withdraws, and thereby terminates, an ESP application, or if the PUCO disapproves the application, the PUCO must issue an order to ensure automatic cost recovery of all costs, including any deferred costs, associated with a national security generation resource.<sup>21</sup>

Current law allows the PUCO to approve, modify and approve, or disapprove an ESP application based on whether the ESP is more favorable in the aggregate than an MRO. Current law also allows an EDU to withdraw and terminate an ESP application if the PUCO modifies and approves it.<sup>22</sup> If an application is terminated or disapproved, the PUCO must issue an order to continue the provisions, terms, and conditions of the EDU's most recent SSO.<sup>23</sup>

### **Burden of proof**

Under current law for an ESP proceeding, the burden of proof regarding the proceeding is on the EDU, but the bill adds an exception to this provision under which the PUCO must approve automatic cost recovery of all costs, including any deferred costs, associated with a national security generation resource.<sup>24</sup> The effect of this may be that the EDU would not have to justify to PUCO recovery of costs that the EDU claims in the proceeding to be related to the national security generation resource.

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<sup>19</sup> R.C. 4928.142(B).

<sup>20</sup> R.C. 4928.143(B)(1).

<sup>21</sup> R.C. 4928.143(C)(2)(b).

<sup>22</sup> R.C. 4928.143(C)(1) and (2)(a).

<sup>23</sup> R.C. 4928.143(C)(2)(b).

<sup>24</sup> R.C. 4928.143(C)(1).

## **Nonbypassable cost recovery**

The bill requires PUCO to grant cost recovery if, in an MRO or ESP, the EDU agrees to offer the contractual commitment related to a national security generation resource into wholesale markets with any resulting revenues being credited to the benefit of retail customers. Such recovery must be granted on a nonbypassable basis.<sup>25</sup>

## **Other changes to MROs or ESPs**

### **MRO-reopening**

The bill grants an EDU the right to file an application to reopen, update, or amend its "then-current" MRO (probably the most recently approved MRO in effect) in order to implement the changes regarding cost recovery for a national security generation resource under the bill. The EDU must file such an application within 120 days of the effective date of the bill. However, under the bill, the proceeding for the application may not "reopen matters previously decided," which might mean that no provision other than cost recovery for the national security generation resource may be addressed if an MRO case is reopened.<sup>26</sup>

Unlike provisions for changes to an ESP described below, the bill does not address what happens to a prior MRO if an MRO application is reopened, updated, or amended to implement the bill. However, such transition language regarding implementation of the bill is probably not necessary, because to date no EDU has established an MRO.

### **MRO application requirements**

The bill alters PUCO proceedings to determine EDU compliance with MRO requirements. Under the bill, PUCO must order the EDU to remedy its application if (1) the EDU does not meet the competitive bidding process requirements, or (2) the EDU or its affiliate does not belong to at least one regional transmission organization approved by the Federal Energy Regulatory Commission or does not have comparable and nondiscriminatory access to the electric grid.<sup>27</sup>

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<sup>25</sup> R.C. 4928.142(A)(2) and 4928.143(B)(1).

<sup>26</sup> R.C. 4928.142(A).

<sup>27</sup> R.C. 4928.142(B).





Under current law, the application requirements are broader and include, for example, a requirement that there be a published information source for pricing of traded electricity on- and off-peak.<sup>28</sup>

### **Wording change in MRO law**

The bill changes the MRO reference to the competitive bidding process for an MRO from "the market-rate offer shall be determined through a competitive bidding process" to "the supply and pricing of electric generation service under a market-rate offer shall be determined through a competitive bidding process."<sup>29</sup>

### **ESP-reopening**

Under the bill, an EDU has the right to file an application to reopen, update, or amend its "then-current" SSO (probably the most recently approved SSO in effect)<sup>30</sup> in order to implement the bill's national security generation resource cost recovery provisions. The EDU must file the application within 120 days of the effective date of the bill. However, as with changes to an MRO, the bill prohibits the proceeding for the application from reopening "matters previously decided," which may mean that no provision other than cost recovery for the national security generation resource may be addressed if an ESP case for an SSO is reopened.

In addition, the bill specifies that upon approval of an update or amendment to implement the bill's changes to the law, any terms and conditions of the prior ESP relating to a national security generation resource are to no longer be in effect.<sup>31</sup>

### **Repeal of obsolete provisions**

The bill repeals obsolete provisions of law that, when the bill first became effective in 2008, dealt with requiring an EDU to apply for an ESP in its first SSO application, the continuation of an existing rate plan until an MRO or ESP was first established, and continuation of rate plans that extended beyond December 31, 2008.<sup>32</sup>

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<sup>28</sup> R.C. 4928.142(B)(3).

<sup>29</sup> R.C. 4928.142(A)(1).

<sup>30</sup> The bill states "SSO" here instead of "ESP." The similar language in the MRO law refers to "MRO" instead of "SSO." This may need a corrective amendment to provide consistency.

<sup>31</sup> R.C. 4928.143(A).

<sup>32</sup> R.C. 4928.141(A) and 4928.142(A).

However, the bill does not repeal the provision in the ESP law that deals with an EDU's rate plan that extends beyond December 31, 2008.<sup>33</sup>

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## COMMENT

The bill is inconsistent in its references to recovery for costs, including deferred costs, associated with a contractual commitment related to a national security generation resource. Some references are to recovering "any and all costs" or recovery of "all costs" (lines 511, 552, and 766)<sup>34</sup> and some refer to "automatic recovery of all costs," and "automatic cost recovery of all costs" (lines 497, 618, 886, and 918).<sup>35</sup> The difference in phrasing might cause confusion regarding how the cost recovery is implemented.

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## HISTORY

ACTION	DATE
Introduced	05-23-17

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<sup>33</sup> R.C. 4928.143(D).

<sup>34</sup> R.C. 4928.141(B), 4928.142(A)(2), and 4928.143 (B)(1).

<sup>35</sup> R.C. 4928.141(A), 4928.142(B), and 4928.143(C)(1) and (C)(2)(b).

