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Ohio Legislative Service Commission

Office of Research and Drafting

Legislative Budget Office

H.B. 746
133rd General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 746's Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Lanese and Greenspan

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill repeals all of the provisions enacted in H.B. 6 of the 133rd General Assembly. Specifically, it:
  - Repeals the Nuclear Generation Fund and the Renewable Generation Fund, both of which are custodial funds;
  - Repeals the charges scheduled to be implemented in January 2021 to raise $170 million per year from electric distribution utility customers;
  - Repeals the nonbypassable statewide charge paid by retail electric customers for utilities' ownership stakes in the Ohio Valley Electric Corporation (OVEC);
  - Restores the administrative duties of the Ohio Air Quality Development Authority to those that existed prior to H.B. 6, reducing its future expenditures for administering the custodial funds and payments to electric generating facilities; and
  - Restores compliance targets in place prior to H.B. 6 for energy efficiency, peak demand reduction, and renewable energy.
- The bill affects utility compliance costs, so state agencies and local governments, as utility customers, will likely see changes in costs of purchasing electrical utility services.

Detailed Analysis

The bill makes numerous changes to codified laws governing electric distribution utilities (EDUs). Ohio's six EDUs offer essential electric service to consumers under an electric security plan (ESP) approved by the Public Utilities Commission of Ohio (PUCO). These state-regulated plans enable EDUs to recover prudently incurred costs of providing service. Additional state policy objectives are often recovered in the form of "riders" on customers' monthly electric bill.

The principal fiscal effect of this bill is on the EDUs' compliance costs and the associated riders that recoup the costs of these policy directives from ratepayers.

The table below summarizes by category the largest utility costs affected by H.B. 746. The costs are sorted in descending order, from the largest to smallest impact on ratepayers. A brief description of each category will follow. The LSC bill analysis and the fiscal note for H.B. 6 provide a more detailed analysis of these provisions and other aspects of H.B. 746 with lesser fiscal impacts.

Summary of EDU Compliance Costs and Associated Ratepayer Charges Affected by H.B. 746		
Category	**H.B. 6**	**H.B. 746**
Energy Efficiency	Discontinued after 2020	Reinstate prior law
Financial Support for Nuclear and Solar Power Plants	New customer charge beginning in 2021	Repealed
Ohio Valley Electric Corporation	Singular rider applied on statewide basis	Reinstate law governing pre-H.B. 6 arrangements
Renewable Portfolio Standard	Curtail requirements	Reinstate prior law
Revenue Decoupling	Create new variety of rider	Repealed

Energy efficiency rider

H.B. 746 reinstates the previous energy efficiency savings requirements applicable to 2021 through 2027. Specifically, the requirements establish annual benchmarks for utility-sponsored energy efficiency plans that must reduce electricity consumption within their respective service territory. In practice, EDUs submit multiyear "portfolio plans," which identify specific energy efficiency initiatives proposed for its customer base, for PUCO approval ahead of the applicable compliance year.[1] The existing portfolio plans were scheduled to expire at the conclusion of 2019 or 2020 (depending on an EDU's circumstances), so PUCO extended all of the portfolio plans through December 31, 2020, at which point they must terminate under codified law enacted by H.B. 6. EDU compliance costs from the pre-H.B. 6 energy efficiency and peak demand reduction[2] requirements averaged $289 million per year during the years 2017 through 2019.

Whereas the earlier annual energy savings requirements never surpassed an incremental savings of 1% per year, H.B. 746 reinstates the prospective 2% annual benchmarks applicable from 2021 to 2027. Once H.B. 6 was enacted, utilities were not required to submit future portfolio plans, so LBO does not have insight as to how much EDUs will spend to comply with

[1] Refer to Ohio Administrative Code 4901:1-39-04(A) for general framework of timeline.

[2] Under continuing law, the peak demand reduction requirements terminate after 2020.

energy savings requirements proposed by H.B. 746. All portfolio plans are subject to PUCO approval, but the Ohio Supreme Court ruled in 2019 that PUCO lacks codified authority to impose a cost cap on these portfolio plans. Therefore, some uncertainty exists in what EDUs would propose to achieve 2% incremental savings in every year from 2021 to 2027. The "banked" savings that utilities accumulated by exceeding prior year benchmarks will be exhausted during the 2020 compliance year.[3] Consequently, the incremental savings achieved in 2021 will likely be derived from entirely new initiatives. Regardless of the costs, an EDU's portfolio plan can only obtain PUCO approval if the EDU demonstrates that lifetime benefits of the portfolio plan exceed the single-year cost of complying with the annual savings requirement.

Financial support for nuclear power plants and solar farms

H.B. 746 repeals the legal basis for a new customer charge that would otherwise begin in January 2021. The prospective charge, which is referred to as the "Clean Air Fund rider" in PUCO proceedings, would financially support two Ohio-based nuclear power plants and certain utility-scale, solar energy electric generating facilities. Under H.B. 746, customers would not be charged up to $170 million per year, from 2021 through 2027. The intended recipients would not receive these proceeds, which would be dedicated to the nuclear power plants ($150 million) and qualifying solar farms ($20 million). Proceeds of this rider were to be deposited into two custodial funds established by H.B. 6, prior to distribution to these intended recipients: the Nuclear Generation Fund and the Renewable Generation Fund. The two funds are eliminated by H.B. 746.

Ohio Valley Electric Corporation

Prior to H.B. 6, three EDUs separately obtained PUCO approval for an ESP that included funding for the Ohio Valley Electric Corporation (OVEC). The rider charged customers for the deficits that EDUs incurred through their ownership stakes in OVEC. H.B. 6 repealed these separately imposed riders and replaced them with a single rider applicable to all six EDU territories. Beginning in January 2020, the new "Legacy Generation rider" applied a statewide rate to various customer classes (e.g., residential) in every territory. Because H.B. 746 repeals the legal basis for the Legacy Generation rider, it seems likely that three EDUs would immediately seek PUCO's approval for the reinstatement of their previous OVEC-specific riders.

If the previous riders were reinstated under H.B. 746, those OVEC riders would reflect various dates for their scheduled expiration: October 31, 2023 (Dayton Power and Light), May 31, 2024 (AEP Ohio; the Ohio Power Company is a subsidiary of AEP), and May 31, 2025 (Duke Energy Ohio). It is not clear how PUCO would rule on any forthcoming application. The previous OVEC riders were not authorized by specific language in codified law; instead, they fell under broad authority granted by R.C. 4928.143(B). In contrast, H.B. 746 repeals codified language specifically authorizing support for OVEC. In doing so, it prevents EDUs from incurring recoverable costs through December 31, 2030, which was the duration authorized by H.B. 6.

[3] Utilities could "bank" the excess megawatt-hour (mWh) savings that exceeded their annual benchmark towards compliance in a future year. Banked energy savings accumulated since the advent of energy efficiency programs in 2009 were applied towards the 17.5% cumulative savings requirement enacted by H.B. 6.

In theory, the three separate OVEC riders and the Legacy Generation rider operate as a "hedge." In the event that OVEC's revenues exceed its costs for a given year, ratepayers would receive a credit rather than a charge. The hedge aspect, as proposed by EDUs, suggests that OVEC's costs are largely stable and uncorrelated with the price of natural gas, which is the largest fuel source for Ohio's electric generating facilities.

OVEC operates two coal-fueled plants along the Ohio River and each of its "sponsoring companies" are entitled to their specified share of all net power and energy produced by OVEC's two generating stations. In return, the sponsoring companies must pay their share of all of OVEC's costs resulting from the ownership, operation, and maintenance of its generation and transmission facilities. Among the dozen sponsoring companies are three Ohio EDUs: Ohio Power Company (19.93% ownership stake), Duke Energy Ohio (9.0%), and Dayton Power and Light Company (4.9%).

Renewable portfolio standard

H.B. 746 reinstates previous requirements for the supply of renewable energy that were curtailed by H.B. 6. Customers that receive their generation under an EDU's standard service offer pay a rider on behalf of the compliance costs incurred by their EDU. Other consumers ("shoppers") that obtain their supply from a competitive retail electric service (CRES) provider do not pay a PUCO-approved rider, but their billing amounts likely reflect their CRES providers' costs, to some extent. Most nonresidential customers shop for their electricity rather than take default supply from their EDU.

H.B. 6 reduced the renewal portfolio standards beginning with calendar year (CY) 2020. It eliminated the solar carve-out, while simultaneously lowering the annual benchmarks for renewable energy resource procurement. Utilities must now generate 8.5% of their energy supply from renewable energy sources by CY 2026. H.B. 746 would reinstate the previous requirements, 12.5% of their energy supply by 2026, of which 0.5% must come from solar energy, and applies them to CY 2027 and successive years.

Another prominent change made by H.B. 6 excludes certain large customers from the renewable portfolio standard beginning in 2020. Recent statistics suggest this provision excludes 23.7 million mWh from the statewide baseline of 115.4 million mWh, which is a reduction of nearly 21%. Reducing the baseline effectively lowers the amount of renewable energy that must be purchased, since the escalating percentages in codified law will be applied to a smaller customer base. H.B. 746 removes this exclusion, so the compliance baseline will be measured in the same manner as it was computed for CY 2019.

Revenue decoupling

H.B. 746 repeals the legal basis for a specific type of decoupling mechanism authorized by H.B. 6. The repeal does not eliminate all varieties of revenue decoupling charges because other provisions in codified law that preceded H.B. 6 will remain. The decoupling option repealed by H.B. 746 is a narrowly construed, prescriptive option, which contrasts with other iterations implemented by EDUs. In those cases, PUCO retained discretion in how revenues are calculated (e.g., normalized for weather fluctuations) and whether the decoupling mechanism should be approved.

As of this writing, the H.B. 6 decoupling rider (or "Conservation Support rider") only applies to the three FirstEnergy EDUs. Duke Energy is statutorily prohibited from applying for the

H.B. 6 decoupling rider. Dayton Power and Light is currently eligible but unlikely to apply for this rider until their revenues drop below the baseline specified in H.B. 6. If that occurs, the utility will have a financial incentive to seek PUCO's approval. AEP Ohio already has its own decoupling rider, so PUCO recently denied its application to impose the H.B. 6 version on grounds that it did not meet the qualifications in R.C. 4928.471. Under this current environment, H.B. 746 will only repeal the Conservation Support rider, and other utilities will be unaffected.

In general, a decoupling mechanism separates a utility's revenues from the volume of electricity it delivers. Consequently, a decoupling mechanism ensures that an EDU's revenue target[4] is reached, regardless of how much electricity is sold. Over the past dozen years, Ohio's overall consumption of electricity is largely flat, if not trending slightly downward. For this reason, a decoupling mechanism often manifests as a customer charge, but it could provide a credit if consumption exceeds the baseline target.

Ohio Air Quality Development Authority

The bill eliminates the Ohio Air Quality Development Authority's (OAQDA) role in administering payments to nuclear power plant stations and select solar energy electric generating facilities. Since enactment of H.B. 6, OAQDA reports that to date approximately $250,000 has been spent on preparing to handle the agency's responsibilities under H.B. 6. Furthermore, OAQDA estimates around $200,000 to $250,000 in continuing annual operating costs to administer the Nuclear Generation Fund and Renewable Generation Fund under its purview, costs that would be avoided under H.B. 746. As of yet, however, OAQDA has not hired any new staff as a result of H.B. 6. A hiring process was initiated in January 2020, but it was subsequently put on hold due to the hiring freeze involved with the cost-saving measures put in place because of the COVID-19 pandemic.

Home Energy Assistance Program

The bill repeals permanent law included in H.B. 6 that would have required the Development Services Agency (DSA) to use 25%[5] of federal Home Energy Assistance Program (HEAP) funds for weatherization services beginning in FY 2021. The fiscal effect is that more federal funding received by DSA for HEAP will be used for the program's main purpose (providing energy assistance to low-income households) instead of for weatherization services. Both purposes will still be funded, however. Beyond FY 2021, the ultimate share of funding for the two purposes will depend on federal program requirements, other state law (typically the main operating budget bill enacted each General Assembly specifies exact or maximum amounts for weatherization using HEAP funds in those two fiscal years), and DSA's administration of the program.

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[4] The type of revenue target can vary, whether based on revenue per customer or an aggregate amount.

[5] Without the H.B. 6 provision, DSA would use 17.5% of HEAP funding for weatherization in FY 2021, which is an estimated reduction of $13 million.