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Substitute Bill Comparative Synopsis

Sub. H.B. 317

134th General Assembly

House Public Utilities

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This table summarizes how the latest substitute version of the bill differs from the immediately preceding version. It addresses only the topics on which the two versions differ substantively. It does not list topics on which the two bills are substantively the same.

Previous Version (I_134_1936, adopted September 22, 2021)	Latest Version (I_134_1936-7)
PUCO rehearings	
PUCO decision deadline after rehearing	
<p>Except during a state of emergency declared by the Governor, requires the Public Utilities Commission (PUCO) to render a final decision not later than <i>180 days</i> after granting a rehearing under the law regarding procedures for applying for and granting rehearings to parties to a proceeding after PUCO issues an order (<i>R.C. 4903.101</i>).</p>	<p>Modifies this requirement to specify that PUCO must render a final decision <i>on the merits of the issue</i> and changes the final decision after granting a rehearing to not later than <i>150 days</i> (<i>R.C. 4903.101</i>).</p>

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PUCO failure to render rehearing decision by deadline	
No provision.	Specifies that if PUCO fails to render a final decision in the 150 days as required, the rehearing on the issue must be considered denied by operation of law (<i>R.C. 4903.101</i>).
Refunds of improper public utility charges	
Customer refunds for improper charges	
Specifies that all rates, fares, or any other charges paid by customers to a public utility that are later found to be unreasonable, unlawful, or otherwise improper by the Ohio Supreme Court are subject to refund from the date of the Court's decision until the date when, on remand, PUCO establishes new rates to implement the decision (<i>R.C. 4905.321</i>).	Modifies this requirement to apply to rates, fares, or any other charges paid by customers to a public utility <i>as part of a rider or tracking mechanism, rather than through base rates</i> and specifies that the rates, fares, or charges found to be unreasonable, unlawful, or otherwise improper by the Ohio Supreme Court are subject to refund from the date of the Court's decision until the date <i>when PUCO makes changes to the rider or mechanism to implement new rates</i> to implement the Court's decision (<i>R.C. 4905.321</i>).
Small commercial customers	
"Small commercial customer" definition	
No provision.	Defines a "small commercial customer" as any customer that receives electric service pursuant to a nonresidential tariff if the customer's demand for electricity does not exceed 25 kilowatts within the last 12 months, but excludes any customer that does one or both of the following: <ul style="list-style-type: none"> ▪ Manages multiple electric meters and, within the last 12 months, the electricity demand for at least one of the meters is 25 kilowatts or more;

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	<ul style="list-style-type: none"> ▪ Has, at the customer’s discretion, aggregated the demand for the customer-managed meters. <p><i>(R.C. 4928.101(A).)</i></p>
Applicability of consumer protections to small commercial customers	
No provision.	Applies to small commercial customers and all other customers the consumer protections (such as protections regarding contract disclosure, service termination, and customer bill content) that are set forth in Revised Code Section 4928.10 and in rules adopted under that section <i>(R.C. 4928.101(B)).</i>
Competitive Power Plan (CPP) and CPP-related provisions	
EDU distribution service rate case application frequency	
Requires an electric distribution utility (EDU) to file a distribution service rate case application not later than five years after the EDU’s competitive power plan (CPP) has been approved and at least once every five years thereafter <i>(R.C. 4909.181).</i>	Modifies this requirement to specify that an EDU must file a distribution rate case application at least one time during the term of each CPP approved by PUCO and specifies that each EDU that has <i>not</i> filed a distribution rate case application during the five-year period prior to the bill’s effective date must file such a rate case not later than six months after that effective date <i>(R.C. 4909.181 and Section 5).</i>
CPP: incorporation of provisions in effect prior to bill’s effective date	
Requires an EDU’s CPP to incorporate the PUCO’s competitive bidding process, that was implemented by PUCO and in effect immediately prior to the bill’s effective date and under which EDUs established a standard service offer (SSO) <i>(R.C. 4928.143(A)(1)).</i>	Requires a CPP to incorporate the PUCO’s competitive bidding process, <i>retail cost allocation, and rate design</i> that were implemented by PUCO and in effect immediately prior to the bill’s effective date <i>(R.C. 4928.143(A)(1)).</i>

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CPP: amendments to competitive bidding process, retail cost allocation, and rate design	
No provision.	Allows PUCO to amend the CPP competitive bidding process, rate allocation, and rate design as necessary to result in just and reasonable rates <i>(R.C. 4928.143(A)(1))</i> .
CPP: cost recovery through SSO price	
Specifies that under a CPP all costs directly incurred by the EDU in conducting the competitive bidding process must be recovered through the SSO price <i>(R.C. 4928.143(A)(1))</i> .	Specifies that all direct and indirect costs that the EDU incurs to support or provide its SSO must be recovered through the SSO price <i>(R.C. 4928.143(A)(1))</i> .
CPP: SSO costs eligible for full and timely cost recovery	
No provision.	<p>Specifies that each EDU is entitled to full and timely recovery of all costs associated with its SSO, including recovery of the exact cost of:</p> <ul style="list-style-type: none"> ▪ Acquiring energy and capacity; ▪ Costs associated with conducting, administering, and implementing the competitive bidding process; ▪ Costs for independent consultants; and ▪ All other direct or indirect costs incurred to support or provide the SSO. <p><i>(R.C. 4928.143(A)(1).)</i></p>

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CPP: PUCO to ensure no double recovery/credit rider	
No provision.	Requires PUCO to ensure that any direct or indirect costs allocated to the SSO price are not recovered twice from distribution customers and permits PUCO to authorize a credit rider to avoid double recovery (R.C. 4928.143(A)(1)).
CPP: procedures to ensure least cost and reliable generation service	
Requires an EDU's CPP to incorporate any other PUCO procedures necessary to ensure least cost and reliable generation service (R.C. 4928.143(A)(1)).	No provision.
CPP: alternative rate recovery mechanisms	
Permits an EDU to establish alternative rate recovery mechanisms for distribution costs in addition to the base rate recovery approved in a distribution rate case under the ratemaking law in R.C. 4909.18 (R.C. 4928.143(A)(2)(a)).	Specifies that the alternative rate recovery mechanisms may be for distribution <i>and transmission</i> costs in addition to the base rate recovery approved in a distribution rate case under the ratemaking law (R.C. 4928.143(A)(2)(a)).
CPP: distribution riders under alternative rate recovery mechanisms	
Specifies that the rate recovery mechanisms may include distribution riders for the recovery of reasonable and prudent costs or credits, including those for distribution system upgrades and modernization, infrastructure improvements to accommodate electric vehicle charging, and changes in taxes and in environmental compliance and makes the riders subject to annual reconciliation, including refunds, as a result of PUCO audits (R.C. 4928.143(A)(2)(a)(i) and (ii)).	Retains the annual reconciliation requirements, but specifies that the distribution riders may be for the recovery of reasonable and prudent capital investments and related operation and maintenance expenses; carrying costs; incremental depreciation and incremental property taxes for "distribution infrastructure expansion, improvement, or replacement"; and for any program that is legally required to comply with any PUCO order or rule or any order or regulation of another governmental entity having jurisdiction over the EDU (R.C. 4928.143(A)(2)(a)(i) and (iii)).

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CPP: “distribution infrastructure expansion, improvement, or replacement” definition	
No provision.	<p>Defines “distribution infrastructure expansion, improvement, or replacement” (the depreciation and property taxes for which may be recovered through a distribution rider) to include:</p> <ul style="list-style-type: none"> ▪ Each of the following for distribution service: (1) battery storage, (2) cybersecurity technologies, and (3) smart-city technologies; ▪ Distribution grid modernization; and ▪ Distribution infrastructure upgrades to accommodate customer investment in microgrids and in electric vehicle charging. <p><i>(R.C. 4928.143(A)(2)(a)(i).)</i></p>
CPP: cost recovery limit for distribution riders	
No provision.	<p>Prohibits the following from exceeding 3% of the EDU’s total distribution revenue from the previous year:</p> <ul style="list-style-type: none"> ▪ The initial filing for cost recovery under the distribution riders described above; ▪ Each annual increase for cost recovery under the riders. <p><i>(R.C. 4928.143(A)(2)(a)(ii).)</i></p>
CPP: customer price transparency	
<p>Allows a CPP to offer customer price transparency in addition to the existing law consumer protections in R.C. 4928.10</p> <p><i>(R.C. 4928.143(A)(2)(c)).</i></p>	No provision.

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CPP: transmission cost recovery rider	
Allows a CPP to authorize full and timely transmission cost recovery through annually reconciled transmission riders (R.C. 4928.143(A)(2)(b)).	Also allows a CPP to also authorize these transmission riders for cost recovery of <i>transmission related costs</i> (R.C. 4928.143(A)(2)(b)).
CPP: eligible transmission cost recovery/energy-intensive customers	
Allows as eligible transmission cost recovery (1) programs that align retail rate recovery with how utilities incur transmission costs or (2) programs that allow customers to be billed directly for transmission costs (R.C. 4928.143(A)(2)(b)).	Limits those recovery programs to energy-intensive customers and modifies the programs to those that (1) align retail rate recovery with how <i>transmission and transmission related costs are imposed on, or charged to, the EDU</i> or (2) allow direct billing for <i>transmission service by a competitive retail electric service provider (CRES)</i> (R.C. 4928.143(A)(2)(c)).
CPP: additional eligible transmission cost recovery	
No provision.	Allows as eligible transmission and transmission related cost recovery (1) ancillary and congestion costs, and (2) costs imposed on or charged to the EDU by the Federal Regulatory Commission (FERC) or a regional transmission organization or similar organization, but excludes costs for balancing and operating reserves (R.C. 4928.143(A)(2)(b)).
CPP: economic development and job retention programs	
Allows an EDU to implement in its CPP economic development, job retention, or interruptible rate programs provided that (1) the programs currently in existence on the bill's effective date may only be terminated on a gradual basis that avoids abrupt or significant rate impacts and (2) the program costs may be allocated across all classes of customers and across those utilities in the same holding company system (R.C. 4928.143(A)(2)(d)).	Adds a condition to implementing these programs in an EDU's CPP by specifying that the EDU allow <i>cost-effective programs for customers or potential customers that are energy intensive or have a distinct energy profile</i> and specifies that the programs currently in existence on the bill's effective date may only be terminated <i>or modified</i> on a gradual basis that avoids abrupt or significant rate impacts <i>on participating customers</i> (R.C. 4928.143(A)(2)(d)).

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CPP: capital lease financing arrangements	
No provision.	Allows a CPP to authorize the EDU to enter into capital lease financing arrangements with mercantile customers for distribution or transmission related equipment (1) without preapproval by PUCO and under which the mercantile customers must pay for the EDU's capital investment through periodic lease payments to the EDU or (2) through a PUCO-approved reasonable arrangement (created under current law in R.C.4905.31) to promote economic development and under which the mercantile customers are not responsible for paying the full cost of the capital investments (<i>R.C. 4928.143(A)(2)(e)(i) and (ii)</i>).
CPP: ratepayers not liable for costs following a default under a capital lease financing arrangement	
No provision.	Specifies that ratepayers will not be responsible for any default related costs in the event of a mercantile customer's default with respect to a capital lease financing arrangement (<i>R.C. 4928.143(A)(2)(e)(iii)</i>).
CPP: distributed energy resource aggregation for wholesale market participation	
No provision.	Allows an EDU, under a CPP, to aggregate the distributed energy resources of its SSO customers for participating in the wholesale market, consistent with FERC orders and regulations (<i>R.C. 4928.143(A)(2)(f)</i>).

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CPP: economic development using “Infrastructure Investment and Jobs Act” funding	
No provision.	Permits an EDU, under a CPP, to obtain and utilize (with PUCO approval and if consistent with Ohio law) funding under the federal “Infrastructure Investment and Jobs Act” to invest in distribution infrastructure to promote economic development in the EDU’s service territory and provide benefits to the EDU’s customers (R.C. 4928.143(A)(2)(g)).
Prohibition against cash payments to interveners in CPP proceeding	
Prohibits an EDU from making, directly or indirectly, a cash payment to any intervening party in a CPP proceeding to induce that party to enter into a stipulation for a matter pending with PUCO (R.C. 4928.143(B)(3)(a)).	Retains the prohibition against making such cash payments to an intervening party, but removes the specification that prohibits making payments <i>directly or indirectly</i> (R.C. 4928.143(B)(3)(a)(i)).
Cash payment prohibition not a limitation on PUCO authority	
No provision.	Specifies that the cash payment prohibition described above does not (1) limit PUCO authority to reasonably allocate costs among rate schedules or reasonably design rates within a rate schedule or (2) prohibit PUCO from approving rates designed for particular customers or classes of customers (R.C. 4928.143(B)(3)(b)).

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CPP: excessive earnings test	
Establishes a process for annually determining whether the EDU's earnings were excessive under which excessive earnings are measured according to whether the EDU's earned return on common equity is greater by 200 basis points or more than the common equity that was earned during the same period that was earned by publicly traded electric utilities facing comparable risk (<i>R.C. 4928.143(C)</i>).	Modifies the excessive earnings measurement to be measured according to whether the EDU's earned return on common equity is greater by 250 basis points or more than the common equity <i>most recently authorized by PUCO (R.C. 4928.143(C))</i> .
Prohibition against bidding energy from battery storage into wholesale market	
No provision.	Prohibits an EDU from bidding into the wholesale market the energy from any battery storage system that the EDU invested in for distribution service (<i>R.C. 4928.149</i>).
Corporate separation law exception	
No provision.	Permits an EDU's affiliate to own or operate an electric generating facility, notwithstanding the prohibition against an EDU, either directly or through an affiliate, engaging in the businesses of supplying a noncompetitive retail electric service and a competitive retail electric service under the corporate separation law (<i>R.C. 4928.171</i>).
Standby service under governmental aggregation for electric service repeal	
No provision.	Repeals the law regarding a legislative authority's election not to receive any standby service under the governmental aggregation law for electric service and the prohibition against imposing standby service charges on governmental aggregation customers (<i>R.C. 4928.20(I)</i>).

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EDU definition	
No provision.	Modifies the existing law definition of an EDU to be an electric utility that supplies at least retail electric distribution service “ <i>and does not own or operate an electric generating facility, other than a legacy generation resource.</i> ” (A legacy generation resource, unchanged by the bill, includes all generating facilities owned directly or indirectly by a corporation 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, including the Ohio Valley Electric Corporation (OVEC).) (R.C. 4928.01(A)(6) and (41).)
SSO definition	
No provision.	Without changing the current meaning of an SSO and by cross referencing the existing law, creates a definition for “standard service offer” that states that an SSO is the provision of competitive retail electric service to consumers as required under R.C. 4928.141. (Ongoing law in R.C. 4928.141 requires an EDU to provide consumers an SSO of all competitive retail electric services necessary to maintain essential electric service including a firm supply of electric generation service.) (R.C. 4928.01(A)(43)).

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Competitive retail electric and natural gas service providers	
Bond requirement for competitive providers of retail electric service	
No provision.	Specifies that an electric services company (ESC) providing competitive retail electric service to an Ohio consumer must post a \$150,000 surety bond sufficient to protect customers and EDUs from default and that the bond must be filed as part of the ESC's application with PUCO for certification as a CRES provider to meet the financial guarantee required for that certification (<i>R.C. 4928.08(B)</i>).
Bond requirement for competitive suppliers of natural gas service	
No provision.	Specifies that a retail natural gas supplier providing competitive retail natural gas service to an Ohio consumer must post a \$150,000 surety bond sufficient to protect customers and natural gas companies from default and that the bond must be filed as part of the supplier's application with PUCO for certification as a competitive retail natural gas (CRNG) supplier and in addition to the financial assurances required for that certification. (Current law specifies, without providing a bond amount, that a supplier may be required to provide a performance bond sufficient to protect customers and natural gas companies from default.) (<i>R.C. 4929.20(A)</i>).
CRES and CRNG fixed-to-variable rate contract notice requirements	
No provision.	Requires CRES and CRNG providers that offer a customer a contract for a fixed introductory rate that converts to a variable rate upon the fixed rate's expiration to provide:

<p style="text-align: center;">Previous Version (I_134_1936, adopted September 22, 2021)</p>	<p style="text-align: center;">Latest Version (I_134_1936-7)</p>
	<ul style="list-style-type: none"> ▪ Two notices by standard U.S. mail at specified times to each customer that enters into such a contract that informs the customer of the fixed rate expiration date and the conversion to a variable rate. ▪ An annual notice by standard U.S. mail to each customer that has entered into a contract that has converted to a variable rate upon the expiration of the contract’s fixed introductory rate to inform the customer that the contract is subject to a variable rate and that other fixed rate contracts are available. <p><i>(R.C. 4928.102(A) and (B) and 4929.221(A) and (B)).</i></p>
<p style="text-align: center;">CRES and CRNG PUCO rules for contract rate notices</p>	
<p>No provision.</p>	<p>Requires PUCO to adopt rules to implement the contract notice requirements described above not later than 120 days after the bill’s effective date, including rules to require that notices use clear and unambiguous language and be designed to ensure that they cannot be confused with marketing material.</p> <p><i>(R.C. 4928.102(C) and 4929.221(C)).</i></p>
<p style="text-align: center;">Percentage of Income Payment Plan (PIPP)</p>	
<p>PIPP auction process</p>	
<p>No provision.</p>	<p>Repeals the current law requirement that the Director of Development must aggregate Percentage of Income Payment Plan (PIPP) customers for the purpose of establishing a competitive procurement process and hold a competitive auction for the supply of retail electric service for PIPP customers that results in the best value for universal service plan rider payers and that the winning bid (or bids) must reduce the cost of the PIPP program relative to the otherwise applicable SSO established</p>

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	<p>under Ohio competitive retail electric service law.</p> <p>Repeals the requirements that PUCO, upon written request by the Director of Development must design, manage, and supervise the competitive procurement process for PIPP and that the Director must reimburse PUCO for costs it incurs.</p> <p><i>(R.C. 4928.54; R.C. 4928.541 to 4928.544, repealed.)</i></p>
Restoration of prior PIPP auction law, but with mandatory auction	
No provision.	<p>Restores the PIPP auction provision of the law in effect prior to the enactment of H.B. 64 of the 131st General Assembly to aggregate PIPP customers for the purpose of competitively auctioning the supply of competitive retail electric generation service for PIPP customers, but <i>requires rather than permits</i> the Director of Development to aggregate PIPP customers for this purpose.</p> <p>Specifies that, to meet this requirement, the competitive supply of retail electric service for PIPP customers must be obtained through the SSO offered through a CPP.</p> <p>Restores the prior law requirement that any difference between Universal Service Fund revenues and savings resulting from a competitive auction for the supply of electric service to PIPP customers be reinvested in the Targeted Energy Efficiency and Weatherization Program.</p> <p><i>(R.C. 4928.54 and 4928.55.)</i></p>
Public Benefits Advisory Board investigation and report	
No provision.	<p>Repeals the provision regarding the Public Benefits Advisory Board investigation and report regarding funding for PIPP and other similar programs <i>(R.C. 4928.581, 4928.582, and 4928.583, repealed)</i>.</p>

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PIPP service procured prior to bill's effective date	
No provision.	Specifies that retail electric service obtained for PIPP customers under the competitive procurement process in effect prior to the bill's effective date must continue to be provided according to the terms and for the period of service established under the procurement process (<i>Section 6</i>).
PIPP auctions after bill's effective date	
No provision.	Specifies that auctions for obtaining retail electric service for PIPP customers after the bill's effective date must be conducted as changed by the bill (<i>Section 6</i>).
Electric security plans (ESPs)	
Electric security plans (ESPs) with a specific termination date	
If an EDU has an electric security plan (ESP) that has a specific termination date and the ESP is in effect on the bill's effective date, permits the EDU to continue that ESP until its termination date and in accordance with all applicable ESP laws and PUCO orders and rules that applied to the ESP prior to the bill's effective date (<i>Section 4(A)(1)(a) and (2)</i>).	<i>Requires</i> rather than allows such an EDU to continue its ESP until its termination date and in accordance with all applicable ESP laws and PUCO orders and rules (<i>Section 4(A)(1)(a) and (2)</i>).

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Railroad rights-of-way	
Railroad right-of-way crossings by public utilities	
<p>No provision.</p>	<p>Establishes a process under which a public utility (defined as a telephone company, electric light company, gas company, natural gas company, pipe-line company, water-works company, or sewage disposal company) must provide the owner of a railroad right-of-way with a written notice and a one-time \$1,000 fee, if the utility intends to construct a crossing (the placement and use of any public utility facility over, under across, or parallel to a railroad right-of-way) and includes the following provisions to:</p> <ul style="list-style-type: none"> ▪ Specify that the railroad must not charge the crossing fee if the crossing is located in a public right-of-way; ▪ Permit construction of the crossing to begin 30 days after the railroad receives the notice unless the railroad files an appeal with PUCO, which, by order, must approve or deny the proposed crossing; ▪ Allow the recording of a perpetual easement for crossings; ▪ Specify that the bill does not impair the public utility's right to secure crossing rights by easement by eminent domain; and ▪ Allow a railroad and public utility to continue under a crossing agreement that existed prior to the bill's effective date and to negotiate terms and conditions for, or the resolution of disputes regarding, a crossing. <p><i>(R.C. 4963.60 to 4963.80.)</i></p>