OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 247 of the 132nd G.A.

Status: As Introduced

Sponsor: Rep. Romanchuk

Local Impact Statement Procedure Required: No

Subject: Revise policies applicable to electric utilities

State & Local Fiscal Highlights

- The bill has no direct fiscal effect on expenditures for state agencies or political subdivisions, but the bill might have the indirect effect of changing electricity costs if electric security plans are eliminated. Should retail electric rates increase or decline as a result of H.B. 247, there could be a corresponding impact in commercial activity tax revenue paid by affected utilities. Revenue from the tax is allocated primarily to the GRF.

Detailed Fiscal Analysis

H.B. 247 revises several state policies governing electric utilities. For a complete explanation of the changes, refer to the LSC Bill Analysis. The topics highlighted below are those that are most likely to have an indirect fiscal effect on governmental revenues and expenditures. The bill does not have a direct effect on state agencies or political subdivisions, but it could impact the electricity prices paid by these entities as well as state tax receipts collected from electric distribution utilities (EDUs).

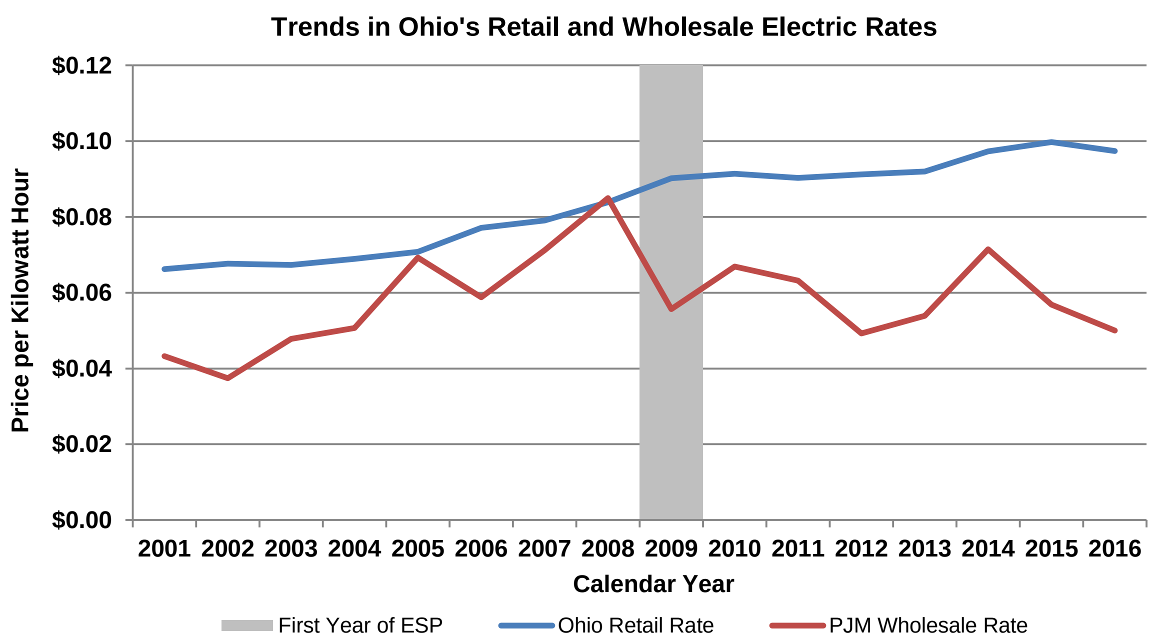
Elimination of electric security plans

H.B. 247 requires an EDU's standard service offer (SSO) to be established only as a market rate offer (MRO) by eliminating the electric security plan (ESP) option and making the MRO mandatory. Under current law in R.C. 4928.141, an EDU must provide consumers within its certified territory a standard service offer of all competitive retail electric services necessary to maintain essential electric services to customers, including a firm supply of electric generation services. The SSO may be either an MRO in accordance with R.C. 4928.142 or an ESP in accordance with R.C. 4928.143. The MRO is determined through a competitive bidding process in which generation suppliers submit their least-cost bids.

Existing law governing an ESP permits numerous rate components, but does not explicitly specify the rate calculation. The only substantive requirement is that the plan must be "more favorable in the aggregate as compared to the expected results" of an

MRO.[1] In practice, the Public Utilities Commission of Ohio (PUCO) evaluates the quantitative and qualitative benefits when determining whether the proposed ESP is more favorable than the expected MRO.[2] Moving to market-based rates would almost certainly change the rates that customers, including the state and local governments, pay for electricity. Current market conditions exhibit retail rates for electricity in Ohio that are significantly higher than wholesale rates (see chart below), which suggests the most likely impact of moving to market-based rates would initially be downward.

The chart below illustrates trends in Ohio's average retail electric rate and the wholesale rates reported by the regional transmission organizer, PJM. Both retail and wholesale rates grew in the earliest years of the centrally organized market operated by PJM, but the subsequent downturn in wholesale prices has not been reflected in retail rates paid by Ohio customers. The lack of correlation between wholesale and retail prices emerges around calendar year 2009, which is the same year that Ohio's utilities began operating under ESPs. However, other external factors may be relevant. For example, the emergence of a large amount of unconventional natural gas production (i.e., shale gas) started in 2006-2007. The resulting drop in natural gas prices began in 2009 under the combined impacts of low electricity demand during the economic recession and a significant increase in supply.[3]



Source: Average Ohio retail price of electricity from U.S. Energy Information Administration; total wholesale power price from 2016 State of the Market Report for PJM

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[1] R.C. 4928.143(C)(1).

[2] Most recently in an October 20, 2017 Opinion and Order that adopted Dayton Power and Light Company's current ESP (PUCO Case No. 16-395-EL-SSO).

[3] Further discussion of this dynamic can be found in the U.S. Department of Energy's "Staff Report to the Secretary on Electricity Markets and Reliability." https://energy.gov/downloads/download-staff-report-secretary-electricity-markets-and-reliability.

Commercial Activity Tax

H.B. 247 does not have a direct effect on Commercial Activity Tax (CAT) receipts, but if the bill changes electric charges for customers, Ohio's electric distribution utilities may remit more or less CAT revenue than they otherwise would absent the legislation. LSC cannot speculate on the potential indirect effect, but the table below provides the total CAT charges reported by EDUs in their most recent annual reports. The six utilities reported a combined total of $20.3 million in CAT charges during calendar year 2016.

Under continuing law, the Commercial Activities Tax Receipts Fund (Fund 5GA0) consists of money arising from the CAT. The Department of Taxation's Revenue Enhancement Fund (Fund 2280) receives the first 0.75% of the money credited to that fund to defray the costs incurred by the Department. Of the remaining money in Fund 5GA0, 85% must be credited to the GRF, 13% to the School District Tangible Property Tax Replacement Fund, and 2% to the Local Government Tangible Property Tax Replacement Fund. Expenses of the latter two funds are fixed, with excess revenue transferred to the GRF, so the GRF would bear the full gain or loss of revenue after Fund 2280 gets its share.

Company-Reported CAT Charges During Calendar Year 2016	
Electric Distribution Utility	**CAT Charged During 2016**
Cleveland Electric Illuminating Company	$2,473,429
Dayton Power and Light Company	$2,725,934
Duke Energy Ohio, Inc.*	$3,055,279
Ohio Edison Company	$3,234,840
Ohio Power Company (AEP Ohio)	$7,733,279
Toledo Edison Company	$1,096,661
Total	**$20,319,422**

*Company reported data adjusted by LSC using company's annual report to PUCO. The downward adjustment isolates CAT paid on behalf of electric utility receipts by excluding gas utility receipts.

Source: FERC Form No. 1: Annual Report of Major Electric Utilities

Refunds for utility charges

The bill requires that all charges paid by customers to any public utility that are later found to be unreasonable, unlawful, imprudent, or otherwise improper by PUCO, the Supreme Court, or another authority be promptly refunded to the customers who paid the charges. PUCO must order these refunds in a manner designed to allocate them to customer classes in the same proportion as the charges were originally collected.

The refund provision may reduce costs to ratepayers, but LSC cannot predict the frequency (if any) with which this provision would be invoked in future years. If this language was in effect when a 2014 Ohio Supreme Court decision was issued, the ratepayers in American Electric Power's (AEP Ohio) two service territories would have likely received refunds totaling $368 million.[4] At the time, the Ohio Supreme Court found that PUCO erred when it approved certain charges contained in AEP Ohio's first ESP, in effect from 2009 to 2011. Although the Supreme Court regarded those charges as unjustified, it did not order the money refunded to customers, citing existing statute and case law against retroactive ratemaking.

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[4] Supreme Court Document Ohio Supreme Court Slip Opinion, 2014-Ohio-462, affirming PUCO's decision in Case No. 08-0917-EL-SSO.