Bill Analysis

Mary S. Connor *Legislative Service Commission*

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(As Introduced)

Reps. Setzer, Olman

BILL SUMMARY

- Authorizes governmental aggregation for competitive retail natural gas services.
- Subjects retail natural gas suppliers and governmental aggregators to certification by the Public Utilities Commission.
- Authorizes the Commission, upon application by a governmental aggregator or a retail natural gas supplier, to require a natural gas company to provide distribution service on a comparable and nondiscriminatory basis within the area of the governmental aggregation or the company's service area.

CONTENT AND OPERATION

Background and general terminology

(sec. 4929.01(G) and (I) to (M))

The bill generally authorizes natural gas governmental aggregation, state certification of retail natural gas suppliers and natural gas governmental aggregators, and expanded natural gas choice in Ohio. Currently, municipalities, townships, and counties have statutory authority to act as governmental aggregators for the provision of electricity within their respective jurisdictions, but there is no similar statutory authority to act as aggregators of natural gas.

Also, at present, the Public Utilities Commission (PUCO) certifies providers of competitive retail electric services pursuant to electric restructuring law, but it does not have express statutory authority to certify retail natural gas marketers. Such marketers have been providing natural gas commodity to many Ohio consumers through the "Gas Choice" program. That program was initiated by the PUCO pursuant to settlement agreements in specific cases brought before the PUCO. The Gas Choice program exists as a result of PUCO approval of those agreements and corresponding distribution company tariffs that open a company's distribution system to other natural gas suppliers under specified terms and conditions, thereby allowing a supplier to have the capability to supply multiple consumers without having to build its own distribution lines. The program has evolved and expanded over time. Gas choice currently is available only in the service areas of Columbia Gas and Cincinnati Gas & Electric and in ten counties of Dominion East Ohio Gas's service area. Marketers under the program are subject to codes of conduct that are contained in the distribution companies' tariffs and that govern certain obligations of the marketer to the company and to customers. Under the program, if a marketer fails to supply natural gas to a customer, "default service" to that customer must be provided by the customer's natural gas distribution company.

Defined terms generally applicable to the bill include "competitive retail natural gas service," meaning any natural gas service that may be competitively offered to consumers within the service area of a natural gas company (1) pursuant to revised schedules (tariffs) approved under the bill's natural gas choice provisions, (2) as a result of a PUCO rule or order, or (3) as a result of an exemption granted by the PUCO pursuant to existing alternative regulation law (secs. 4929.04 to 4929.08). (Sec. 4929.01(J).)

"Natural gas company" in effect means a natural gas distribution company. Under the bill, the term is defined as a natural gas company that is a public utility and excludes a retail natural gas supplier as defined by the bill. (Sec. 4929.01(G).)

A "retail natural gas supplier" is any person that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a competitive retail natural gas service to Ohio consumers. The term includes a marketer, broker, or aggregator. It excludes (1) a natural gas company, (2) a governmental aggregator, (3) a billing and collection agent, or (4) a gas producer or gatherer to the extent it is not a natural gas company and is not engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of a competitive retail natural gas service to Ohio consumers. (Sec. 4929.01(M).)

"Billing and collection agent" is defined as a fully independent agent, not affiliated with or otherwise controlled by a retail natural gas supplier subject to certification under the bill, to the extent that the agent is under contract with such supplier solely to provide billing and collection for competitive retail natural gas service on behalf of the supplier (sec. 4929.01(I)).

The bill's provisions regarding governmental aggregation and certification and the certification-related provisions regarding minimum service, consent to service of process, and information and assessment requirements are similar to corresponding provisions in electric restructuring law.

The analysis that follows covers the bill's provisions regarding natural gas governmental aggregation, natural gas choice, supplier certification, minimum service, consent to service of process, information, and assessment. It concludes with a discussion of PUCO enforcement authority.

Governmental aggregation

(secs. 4929.01(L) and 4929.25)

The bill authorizes the legislative authority of a municipal corporation to adopt an ordinance, or a board of township trustees or board of county commissioners to adopt a resolution, under which the legislative authority or board may aggregate competitive retail natural gas service. The legislative authority or board may aggregate the retail natural gas load centers that are located, respectively, within the municipal corporation, township, or unincorporated area of the county and for which there is a choice of supplier of that service pursuant to revised schedules approved under the bill's natural gas choice provisions or as a result of a PUCO rule or order or an exemption from regulation granted pursuant to existing alternative regulation law. (Sec. 4929.25(A).) Under the bill, a "retail natural gas load center" is a natural gas-consuming facility of any type of character that is owned, occupied, controlled, or used by a person at a single location and has been, is, or will be connected to and served at a metered point of delivery, and to which facility competitive retail natural gas service has been, is, or will be rendered (sec. 4929.01(L)).

A legislative authority or board may exercise its aggregation authority jointly with any other such legislative authority or board and may enter into service agreements to facilitate the sale and purchase of competitive retail natural gas service for the retail natural gas load centers. An aggregation ordinance or resolution must specify whether the aggregation will occur only with the prior consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated or will occur automatically for all such persons pursuant to the opt-out requirements described below. (Sec. 4929.25(A).)

An ordinance or resolution that specifies that aggregation will occur automatically must direct the board of elections to submit the question of the authority to aggregate to the electors of the respective municipal corporation, township, or unincorporated area of a county at a special election on the day of the next primary or general election in the municipal corporation, township, or county. The legislative authority or board must certify a copy of the ordinance or resolution to the board of elections not less than 75 days before the day of the special election. An ordinance or resolution that provides for such an election cannot take effect unless approved by a majority of the electors voting on it. (Sec. 4929.25(B).)

Once the legislative authority or board has the requisite legal authority to aggregate, it must develop a plan of operation and governance for the aggregation program. Before adopting the plan, it must hold at least two public hearings. Before the first hearing, the legislative authority or board must publish notice of the hearings once a week for two consecutive weeks in a newspaper of general circulation in the jurisdiction. The notice must summarize the plan and state the date, time, and location of each hearing. (Sec. 4929.25(C).)

A legislative authority or board is prohibited from providing automatic aggregation under the bill unless it in advance clearly discloses to each person owning, occupying, controlling, or using a retail natural gas load center that the person will be enrolled automatically in the aggregation program and will remain enrolled unless the person affirmatively elects by a stated procedure not to be enrolled. The disclosure must state prominently the rates, charges, and other terms and conditions of enrollment. The stated procedure must allow any person enrolled in the aggregation program the opportunity to opt out of the program every two years, without paying a switching fee. Any such person that opts out of the aggregation program pursuant to the stated procedure must default to such provision of the service within the person's service area as the PUCO must specify by rule or order, until the person chooses an alternative supplier. (Sec. 4929.25(D).)

The bill subjects an ordinance or resolution authorizing governmental aggregation to initiative or referendum. In the case of a municipal aggregation, initiative or referendum petitions may be filed in accordance with existing law (secs. 731.25 to 731.41). With respect to township or county aggregation, initiative or referendum petitions may be filed under that same law, except that the petitions shall be filed, respectively, with the township clerk or the board of county commissioners, who must perform the petition-related duties of a city auditor or village clerk, and the petitions must contain the signatures of not less than 10% of the total number of electors in the jurisdiction who voted for the Office of Governor at the preceding general election for that office in that area. (Sec. 4929.25(E).)

The bill states that a governmental aggregator under the bill is not a public utility engaging in the wholesale purchase and resale of natural gas, and provision of the aggregated service is not a wholesale utility transaction. It also states that a governmental aggregator is subject to supervision and regulation by the PUCO only to the extent of any competitive retail natural gas service it provides and to PUCO authority under the bill. (Sec. 4929.25(F).)

Natural gas choice

(sec. 4929.26)

The bill authorizes a natural gas governmental aggregator to petition the PUCO to require a natural gas company to provide natural gas distribution service on a comparable and nondiscriminatory basis to consumers that are within the company's Ohio service area and also are within the area of governmental aggregation. Additionally, a retail natural gas supplier similarly may petition the PUCO for such service to all consumers within the company's service area.

Upon the application's filing, the PUCO, after notice and opportunity for hearing, may require by order that the company provide the service within the area specified in the petition if the PUCO finds that the provision of the service within the area is in the public interest. The applicant has the burden of proof. The bill states that existing public utility law governing PUCO proceedings (Chapter 4903.) applies to such a gas choice proceeding. (Sec. 4929.26(A).)

Upon the issuance of an order requiring comparable and nondiscriminatory distribution service within the area specified in the order, the natural gas company must file with the PUCO under existing tariff filing law (sec. 4905.30) revised schedules under which the company must provide the service. The PUCO must act promptly to approve the schedules. (Sec. 4929.26(B).)

Certification

(secs. 4905.10, 4911.18, 4929.01(K), and 4929.20; and Section 3)

The bill generally requires a retail natural gas supplier or a governmental aggregator authorized under the bill (sec. 4929.01(K)), to be PUCO certified in order to provide a competitive natural gas service in Ohio. Retail natural gas suppliers and governmental aggregators currently engaged in business in Ohio may continue to engage in that business until the PUCO acts upon the person's certification application, provided the person files that application within 90 days after the effective date of initial certification rules adopted by the PUCO under the bill (Section 3).

Specifically, under the bill, a retail natural gas supplier or governmental aggregator is prohibited from providing a competitive retail natural gas service in Ohio without first being certified by the PUCO regarding its managerial, technical, and financial capability to provide that service and providing a financial guarantee sufficient to protect customers and natural gas companies from default. Certification must be granted pursuant to procedures and standards the PUCO must prescribe in accordance with rules adopted pursuant to existing rule-making authority (sec. 4929.10). (Sec. 4929.20(A).) The capability standards must be sufficient to ensure compliance with minimum service and consent-to-service-of-process requirements under the bill. The standards must allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands.

The rules also must include procedures for biennially renewing certification. (Sec. 4929.20(B).) Certification or certification renewal will be deemed approved 30 days after the filing of an application with the PUCO unless it suspends that approval for good cause shown. In the case of such a suspension, the PUCO must approve or deny certification or certification renewal to the applicant not later than 90 days after the date of the suspension. (Sec. 4929.20(A).)

Further, the bill prohibits a natural gas company, or and after the effective date of the initial PUCO certification rules, from knowingly distributing natural gas to an Ohio retail consumer for any retail natural gas supplier that is not PUCO-certified (sec. 4929.20(D)).

Minimum service requirements

(sec. 4929.22)

The bill requires the PUCO, for the protection of Ohio consumers, to adopt rules under existing rule-making authority, specifying the necessary minimum service requirements of a retail natural gas supplier or governmental aggregator subject to certification under the bill regarding the provision, directly or through its billing and collection agent, of the competitive retail natural gas services for which it is subject to certification. The rules must include a prohibition against unfair, deceptive, and unconscionable acts and practices in the marketing, solicitation, and sale of such a competitive retail natural gas service and in the administration of any contract for service, and also must include additional consumer protections concerning all of the following:

(1) Contract disclosure. The rules must include requirements that a retail natural gas supplier or governmental aggregator (a) provide consumers with adequate, accurate, and understandable pricing and terms and conditions of service, including any switching fees, and with a document containing the terms and conditions of pricing and service before the consumer enters into the contract for service, and (b) disclose the conditions under which a customer may rescind a contract without penalty.

(2) Service termination. The rules must include disclosure of the terms identifying how customers may switch or terminate service, including any required notice and any penalties.

(3) Minimum content of customer bills. The rules must include all of the following requirements, which must be standardized: (a) price disclosure and disclosures of total billing units for the billing period and historical annual usage, (b) to the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy, (c) identification of the supplier of each service, (d) statement of where and how payment may be made and provision of a toll-free or local customer assistance and complaint number for the retail natural gas supplier or governmental aggregator, as well as a consumer assistance telephone number or numbers for state agencies, such as the PUCO, the Office of Consumers' Counsel (OCC), and the Attorney General's Office (AG), with the available hours noted, and (e) other than for the first billing after the effective date of the initial rules, highlighting and clear explanation on each customer bill, for two consecutive billing periods, of any changes in the rates, terms, and conditions of service.

(4) Disconnection and service termination, including requirements with respect to master-metered buildings. The rules must include policies and procedures that are consistent with existing statutory provisions and PUCO rules regarding service disconnection and that provide for all of the following: (a) coordination between suppliers for the purpose of maintaining service, (b) the allocation of partial payments between suppliers when service components are jointly billed, (c) a prohibition against blocking, or authorizing the blocking of, customer access to a noncompetitive retail natural gas service when a customer is delinquent in payments to the retail natural gas supplier for a competitive retail natural gas service, (d) a prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail natural gas service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures, (e) a requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty, and (f) specification of any required notice and any penalty for early termination of contract.

(5) Minimum service quality, safety, and reliability.

(6) Customer information. The rules must include requirements that the retail natural gas supplier or governmental aggregator make generic customer load pattern information available to other retail natural gas suppliers, governmental aggregators, or natural gas companies on a comparable and nondiscriminatory basis, and make customer-specific information available to other retail natural gas suppliers, governmental aggregators, or natural gas companies on a comparable

and nondiscriminatory basis unless, as to customer-specific information, the customer objects. The rules must ensure that each retail natural gas supplier or governmental aggregator provide clear and frequent notice to its customers of the right to object and of applicable procedures. The rules must establish the exact language to be used in all such notices.

Consent to service of process requirement

(sec. 4929.21)

The bill prohibits any person from operating in Ohio as a retail natural gas supplier on and after the effective date of the PUCO's initial certification rules, unless that person (1) consents, and continues to consent, irrevocably to the jurisdiction of Ohio courts and service of process in Ohio, including, without limitation, service of summonses and subpoenas, for any civil or criminal proceeding arising out of or relating to such operation, and (2) designates, and continues to designate, an agent authorized to receive that service of process, by filing with the PUCO a document designating that agent. (Sec. 4929.21(A)(1) and (2).)

The consent and designation must be in writing, on forms prescribed by the PUCO. The original of each such document or amended document must be legible and be filed with the PUCO, with a copy filed with OCC and the AG. The refiling of the documents to continue operating in Ohio must occur during December of every fourth year after the supplier's initial filing. If the address of the person filing a document changes, or if a person's agent or the address of the agent changes, from that listed on the most recently filed of such documents, the person must file an amended document containing the new information. (Sec. 4929.21(A)(2) to (4).)

The bill additionally provides that a person who enters Ohio pursuant to a summons, subpoena, or other form of process authorized by the bill is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person's entrance into Ohio pursuant to that summons, subpoena, or other form of process (sec. 4929.21(B)).

Under the bill, the consent-to-service-of-process requirements do not apply to a corporation incorporated under the Ohio law that has appointed a statutory agent pursuant to existing corporations law, a foreign corporation licensed to transact business in Ohio that has appointed a designated agent pursuant to existing corporations law, or any other person that is an Ohio resident or that files consent to service of process and designates a statutory agent pursuant to any other Ohio law (sec. 4929.21(C)).

Information and assessment requirements

(secs. 4905.10, 4911.18, and 4929.23)

The bill requires that a retail natural gas supplier or governmental aggregator subject to certification must provide the PUCO with such information, regarding a competitive retail natural gas service for which it is subject to certification, as the PUCO considers necessary to carry out the bill. The PUCO must take such measures as it considers necessary to protect the confidentiality of any such information (sec. 4929.23(A)).

Additionally, the PUCO must require each retail natural gas supplier or governmental aggregator subject to certification to file an annual report of such receipts and sales from the provision of those competitive retail natural gas services for which it is subject to certification. For the purpose of the reports, sales of hundred cubic feet of natural gas are deemed to occur at the meter of the retail customer. (Sec. 4929.23(B).)

In line with existing policy of assessing regulated entities to fund the operations of the PUCO and OCC, the bill subjects retail natural gas suppliers and governmental aggregators subject to certification to such assessment, to the extent of the supplier's or aggregator's engagement in the business of supplying or arranging for the supply in Ohio of any competitive retail natural gas service for which it must be certified. The assessment is based on the intrastate gross receipts of the supplier or aggregator as specified in its most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the PUCO pursuant to the bill and verified by the PUCO. (Secs. 4905.10(A) and (D)(2) and 4911.18(A) and (D)(2).)

PUCO enforcement authority

(secs. 4929.20(C) and 4929.24)

General enforcement

Under the bill, upon complaint of any person or complaint or initiative of the PUCO under existing complaint law (sec. 4905.26), the PUCO has jurisdiction regarding the provision, by a retail natural gas supplier or governmental aggregator subject to certification, of any service for which it is subject to certification (sec. 4929.24(A)(1)).

The PUCO also has jurisdiction under existing complaint law to determine whether a retail natural gas supplier or governmental aggregator subject to certification has either (1) violated or failed to comply with the bill's certification, minimum service, consent to service of process, or information requirements regarding a competitive retail natural gas service for which it is subject to certification, or (2) violated or failed to comply with any rule or order adopted or issued by the PUCO for purposes of the bill (sec. 4929.20(A)(2)).

In addition to other remedies provided by law, the PUCO, after providing reasonable notice and opportunity for hearing in accordance with complaint law, may order rescission of a contract, or restitution to customers or order any remedy or forfeiture provided under existing public utility law (secs. 4905.54 to 4905.60 and 4905.64). (Sec. 4929.24(B).)

Further, in addition to the authority conferred under existing law, OCC may file a complaint under the bill on behalf of Ohio residential consumers or appear before the PUCO as their representative in any complaint proceeding. Also, OCC may file with the PUCO a complaint for discovery if the recipient of an inquiry under existing OCC law (sec. 4911.19) fails to provide a response within the time specified in that law. (Sec. 4929.24(C).)

Certification enforcement

The PUCO may suspend, rescind, or conditionally rescind the certification of any retail natural gas supplier if the PUCO determines, after reasonable notice and opportunity for hearing, that the retail natural gas supplier or governmental aggregator has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or unconscionable acts or practices in Ohio (sec. 4929.20(C)).

Additionally, under enforcement authority of existing public utility law (Chapter 4905.), the PUCO has authority to enforce against a natural gas company for any violation of the bill's prohibition against distributing natural gas for a supplier that is not PUCO-certified or for any failure to comply with the duty to file revised tariff schedules upon any PUCO approval of expanded natural gas choice under the bill (sec. 4929.24(D)).

HISTORY

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