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(As Passed by the House)

**Reps. Setzer, Olman, Manning, Hollister, Goodman, Niehaus, Hagan, Schmidt, Womer Benjamin, Metzger, Carey, Kilbane, Peterson, Evans, Jolivette, Salerno**

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**BILL SUMMARY**

- Authorizes governmental aggregation for competitive retail natural gas services under specified circumstances, including under a three-year pilot program.
- If the Public Utilities Commission authorizes expanded, opt-out governmental aggregation, permits a natural gas company to file with the Commission a cost recovery application to recover its capacity and commodity costs from customers for which there is a choice of a supplier of commodity sales service.
- Authorizes the Commission to require a natural gas company having 15,000 or more customers in Ohio to provide distribution service on a fully open, equal, and nondiscriminatory basis to its nonmercantile customers within a specified area, if the provision of that service is in the public interest.
- Subjects governmental aggregators and certain retail natural gas suppliers to certification by the Commission to provide a competitive retail natural gas service.
- Establishes a procedure whereby a natural gas company may file an application with the Commission to recover incremental costs incurred in connection with the suspension, rescission, conditional rescission, or continuance of a retail natural gas supplier's certification.
- Makes changes in the scope of the public utility excise and personal property tax, telemarketing, and energy emergency laws in recognition of new terminology in the bill.

- Authorizes Project THAW to provide one-time heating assistance of up to \$250 for certain low-income customers, and makes a related appropriation to the budget of the Department of Jobs and Family Assistance for the current fiscal year in the amount of \$20 million.

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## CONTENT AND OPERATION

### *Background and general terminology*

(sec. 4929.01; Sections 4, 5, and 6)

The bill generally authorizes governmental aggregation for competitive retail natural gas services under specified circumstances, including under a pilot program. It also requires the certification of governmental aggregators and certain retail natural gas suppliers and provides standards and procedures by which distribution service would be available under specified circumstances on a fully open, equal, and nondiscriminatory basis where the provision of that service currently is not, in effect, enabling "gas choice" in those areas.

At present, the Public Utilities Commission (PUCO) certifies providers of competitive retail electric services pursuant to the electric restructuring law (Chapter 4928.), but it does not have express statutory authority to certify retail natural gas marketers or other types of natural gas suppliers. Such marketers have been providing natural gas to many Ohio consumers through the current "Gas Choice" Program.

The Gas Choice Program was initiated pursuant to PUCO approval of settlements in specific cases brought before it by natural gas companies. The settlements in those cases, negotiated and agreed to by each applicant company and various interested parties, authorized the company to offer natural gas transportation service under specified terms and conditions that opened the company's distribution system to potential natural gas suppliers other than the distribution company itself, allowing a supplier to have the capability to supply multiple small consumers with natural gas without having to build its own distribution lines. The first case was initiated by (Dominion) East Ohio Gas for approval of new transportation tariffs, and was followed by a similar filing by Columbia Gas of Ohio that was the first to be approved by the PUCO. Cincinnati Gas & Electric received PUCO approval of transportation tariffs it filed pursuant to a PUCO directive to file the tariffs, which directive was issued during the time the company's application for a general rate increase was pending before the PUCO.

The Gas Choice Program has expanded and evolved over time, with each distribution company initially agreeing and continuing to function as the supplier of "default service" to customers in the event a marketer fails to supply natural gas to a customer. Gas Choice is now available in the entire service area of Columbia Gas and Cincinnati Gas, and in ten counties of Dominion East Ohio's service area. As each company applied for expanded or new transportation authority, the PUCO issued orders refining the scope and terms of the Gas Choice Program. Those orders include provisions regarding specified transition cost recovery by the distribution company and cost recovery mechanisms, and distribution company responsibility for determining the technical and financial viability of a marketer, including authority to require a marketer to provide security in the form of a letter of credit, surety bond, cash deposit, or other appropriate guaranty. Marketers under the program are subject to codes of conduct that are contained in a distribution company's tariffs and govern marketers' obligations to the company and customers.

Additionally, under the electric restructuring law, municipalities, townships, and counties have the 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.

The bill's provisions regarding certification and governmental aggregation differ from provisions in the electric restructuring law in a number of ways. One difference relates to exceptions made with respect to "mercantile customers." The bill contains a general definition of that term, but allows such a customer to act to remove itself from the "mercantile customer" designation for purposes of those provisions.

Under the bill, a "mercantile customer" is a customer that consumes, other than for residential use, more than 500,000 cubic feet of natural gas per year at a single location within Ohio or consumes natural gas, other than for residential use, as part of an undertaking having more than three locations within or outside Ohio. However, "mercantile customer" excludes a customer for which a declaration under the bill is in effect. A not-for-profit customer that otherwise would meet the definition of a "mercantile customer" may opt to be treated for purposes of the bill as a nonmercantile customer. To achieve this, the customer must file a declaration with the PUCO that it is not a mercantile customer for purposes of the bill. The declaration takes effect upon the date of filing. The customer may file a rescission of the declaration at any time. The rescission will have a prospective effect only. The PUCO must prescribe rules under its existing rule-making authority specifying the form and procedures applicable to a declaration or a rescission of a declaration.

Other defined terms generally applicable to the bill include "governmental aggregator" and "competitive retail natural gas service." A "governmental aggregator" is a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of competitive retail natural gas service under authority conferred by the bill. "Competitive retail natural gas service" means any retail natural gas service that may be competitively offered to Ohio consumers as a result of (1) revised schedules (tariffs) approved under the bill's natural gas choice provisions, (2) a PUCO rule or order, or (3) an exemption granted by the PUCO pursuant to the existing alternative regulation law (secs. 4929.04 to 4929.08).

"Retail natural gas service" under the bill consists of commodity sales service, ancillary service, natural gas aggregation service, natural gas marketing service, or natural gas brokerage service. Under continuing law, "commodity sales service" is the sale of natural gas to consumers, exclusive of any distribution or ancillary service; "ancillary service" is a service that is ancillary to the receipt or delivery of natural gas to consumers, and includes storage, pooling, balancing, and transmission; and "distribution service" is the delivery of natural gas to a consumer at the consumer's facilities, by and through the instrumentalities and facilities of a natural gas company, regardless of the party having title to the natural gas. A "consumer," under continuing law, is, in effect, an end user and is

defined as a person or association of persons purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas, including industrial, commercial, and residential consumers, but not including natural gas companies.

"Natural gas company" under the bill essentially means a natural gas distribution company. 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.

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 that are not mercantile customers. The term includes a marketer, broker, or aggregator. It excludes (1) a natural gas company, (2) a governmental aggregator, (3) a billing or collection agent, (4) a gas producer or gatherer to the extent it is not a natural gas company, or (5) any entity under existing public utility law that is a municipally owned or operated utility, or is a public utility, other than a telephone company, that is owned and operated exclusively by and solely for its customers, including any consumer or consumer group purchasing, delivering, storing, or transporting natural gas, or seeking to do so, exclusively by and solely for the consumer's or group's own intended use as the end user or end users and not for profit.

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

The bill's provisions take effect 90 days after the filing of the bill with the Secretary of State by the Governor, with the exception of the appropriation provisions relating to Project Temporary Heating Assistance for Warmth (Project THAW), which take immediate effect.

The bill expressly states that it does not affect any arrangement or other contract to supply or arrange for the supply of commodity sales service or ancillary service to an Ohio consumer, that was entered into prior to the effective date of initial PUCO rules adopted under the bill's certification provisions, or any rights or duties of any person under the arrangement or contract for its term. Further, it states that it does not affect any governmental aggregation authorized under the bill prior to the effective date of those initial rules, or any rights or duties of any party to the aggregation.

The analysis that follows covers the bill's provisions regarding natural gas governmental aggregation, natural gas choice, certification and the certification-related provisions regarding minimum service, consent to service of process, and information and assessment requirements. It also discusses specific authority of natural gas companies to recover certain costs associated with PUCO certification decisions and with certain governmental aggregations, and PUCO enforcement authority. The analysis concludes with descriptions of the bill's changes to existing public utility excise and personal property tax law, telemarketing fraud law, and energy emergency law, and of the Project THAW provision.

### **Governmental aggregation**

The general statutory process for governmental aggregation under the bill requires that a local government first pass a law authorizing it to aggregate the retail natural gas loads of consumers within its jurisdiction and then seek a supplier to supply gas to that aggregated load. This governmental aggregation could occur on an "opt-in" basis (meaning, with the prior consent of each consumer to be included in the aggregation) or on an "opt-out" basis (meaning, a consumer is automatically included in the aggregation unless it takes action to remove itself). The bill authorizes opt-in aggregation in a manner similar to that under the electric restructuring law. But for opt-out aggregation, the bill initially authorizes it through smaller-scale, local government-initiated pilot programs, subject to prior PUCO approval. The bill terminates the pilot programs and pilot aggregations on April 1, 2004. Opt-out aggregations may occur after that date under conditions specified in the bill, provided the PUCO has determined that it is in the public interest for such aggregations to occur. Following is a discussion of the bill's pilot program and other opt-out aggregation provisions, as well as the opt-in aggregation provisions, and those generally applicable to any aggregation under the bill.

### **Opt-out aggregation**

(secs. 4929.25(A) and (C), 4929.26(A), and 4929.27)

**Pilot program.** The bill authorizes the PUCO to provide by order for a pilot program for opt-out governmental natural gas aggregations. The bill terminates the pilot program on April 1, 2004. The PUCO may authorize different size pilot aggregations as it determines reasonable given the customer base of a particular distribution company. Regarding the natural gas company with the largest number of distribution service customers in Ohio (currently, Columbia Gas), the bill caps at 50,000 customers the total number of the company's distribution service customers that may be aggregated in a pilot program before April 1, 2003. On or after April 1, 2003, the total number of such aggregated customers of that company cannot exceed 150% of the original 50,000 maximum.

The PUCO must apply the maximums established by the bill proportionately with respect to pilot aggregations of customers of all other natural gas companies. A pilot aggregation must reflect an appropriate mix of customers.

Under the bill, a pilot aggregation may only be initiated by local government action. Specifically, the legislative authority of a municipal corporation or of township trustees or of county commissioners may adopt a nonemergency ordinance or resolution providing for a pilot aggregation. Once adopted, the legislative authority or board then may apply to the PUCO for authority to provide the pilot aggregation. After notice and an opportunity for a hearing, the PUCO may approve the application if it determines that the aggregation is in the public interest. Upon that determination, and subject to the opt-out requirements of the bill, the legislative authority or board may proceed with the opt-out aggregation of retail natural gas loads located within its jurisdiction and for which there is a choice of supplier of competitive retail natural gas service.

The bill prohibits a pilot aggregation from including any of the following persons: (1) a person that is both a distribution service customer and a mercantile customer on the date of commencement of service to the aggregated load, or a person that becomes a distribution service customer after that date and also is a mercantile customer, (2) a person supplied with commodity sales service pursuant to a contract with a retail natural gas supplier in effect on the effective date of the ordinance or resolution, or (3) a person supplied with commodity sales service as part of an aggregation provided for pursuant to PUCO rule or order.

A legislative authority or board is prohibited from providing a pilot aggregation under the bill unless it in advance clearly discloses to each person that the person will be enrolled automatically in the pilot 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 aggregation without paying a switching fee. Any such person that opts out of the aggregation program pursuant to the stated procedure defaults to its natural gas company, until the person chooses an alternative supplier.

**Expanded opt-out aggregation.** The bill requires the PUCO, prior to April 1, 2004, to initiate a proceeding for the purpose of determining whether it is in the public interest that opt-out governmental aggregation should occur on an expanded basis as provided under the bill (generally, with no size limitations and without prior PUCO approval, but subject to voter approval). The proceeding must include one or more public hearings. Upon the conclusion of the proceeding, the PUCO may issue an order in the affirmative if it determines that such expanded

aggregation authority is in the public interest. The PUCO must maintain a complete record of the proceeding and file findings of fact and written opinions setting forth the reasons for its determination.

Only after the PUCO has issued such an affirmative order may the legislative authority of any municipal corporation or a board of township trustees or county commissioners adopt an ordinance or resolution providing for opt-out aggregation of retail natural gas loads located within its jurisdiction and for which there is a choice of supplier. But such an opt-out aggregation cannot include any person that cannot be included in a pilot aggregation (see "***Pilot program***," above), although an aggregation may allow such a person to be later included in the aggregation if the person no longer qualifies to be excluded.

Further, as with a pilot opt-out aggregation, the legislative authority or board must provide each person with advance disclosure of the automatic aggregation, including the rates, charges, and other terms and conditions of enrollment. A person enrolled in the aggregation must be given the opportunity to opt out every two years, without paying a switching fee. Any person that opts out of the aggregation defaults to the natural gas company that is providing the person's distribution service, until the person chooses an alternative supplier.

An ordinance or resolution providing for opt-out aggregation 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.

Expanded opt-out governmental aggregation authority may be exercised jointly with any other legislative authority or board. A legislative authority or board proposing to aggregate may enter into service agreements to facilitate the sale and purchase of competitive retail natural gas service for the aggregated retail natural gas loads.

***Cost recovery for a distribution company due to an expanded opt-out aggregation***

(sec. 4929.26(B))

If the PUCO authorizes expanded opt-out aggregation, a natural gas company may file a cost recovery application with the PUCO. Upon that filing,

the PUCO must determine the total allowable amount of capacity and commodity costs of the company. That amount must be the just and reasonable costs of the company that the PUCO finds meet all of the following criteria: (1) the costs were prudently incurred, (2) the costs are legitimate, net, verifiable, and directly due to capacity and commodity obligations entered into by the company on behalf of consumers that take commodity sales service through a particular governmental aggregator acting under the expanded opt-out provisions of the bill, in lieu of taking that service from the natural gas company after April 1, 2004, (3) the costs are otherwise unrecoverable, and (4) the company would otherwise be entitled an opportunity to recover those costs.

The PUCO is prohibited from authorizing such revenue opportunity for a company without first setting the matter for hearing, giving notice of the hearing to the company, and publishing notice one time in a newspaper of general circulation in each county affected by the application. At the hearing, the company has the burden of demonstrating allowable costs.

Upon the issuance of a capacity and commodity cost recovery order, the company must file with the PUCO under existing tariff filing law revised schedules allowing such cost recovery as the PUCO authorized in the order and containing such necessary and appropriate cost recovery mechanism or mechanisms as the PUCO prescribes. The mechanism or mechanisms must recover the costs from customers for which there is a choice of supplier of commodity sales service. The PUCO must act promptly to approve such revised schedules as it determines comply with its order.

### **Opt-in aggregation**

(sec. 4929.28(A))

Opt-in governmental aggregation, which requires prior consent of each person to be aggregated, may be authorized by the passage of an ordinance or resolution by the legislative authority of a municipal corporation or a board of township trustees or county commissioners at any time after the bill's effective date. But opt-in aggregation cannot include any person with an existing commodity sales service contract or a person included in an aggregation provided for by PUCO rule or order.

Opt-in governmental aggregation authority may be exercised jointly with any other legislative authority or board of township trustees or county commissioners. A legislative authority or board proposing to aggregate may enter into service agreements to facilitate the sale and purchase of competitive retail natural gas service for the aggregated retail natural gas loads.

### **General aggregation provisions**

(secs. 4929.25, 4929.27, and 4929.28)

The following provisions apply with respect to a pilot or any other governmental aggregation under the bill. A legislative authority or board 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.

An ordinance or resolution authorizing a pilot or any other governmental aggregation is subject to initiative or referendum. In the case of a municipal aggregation, initiative or referendum petitions may be filed in accordance with existing law. 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.

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.

### **Natural gas choice**

(sec. 4929.29)

The legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners may petition the PUCO to require a natural gas company with 15,000 or more Ohio customers to provide, upon the effective date of a governmental natural gas aggregation ordinance or resolution adopted under the bill, distribution service on a fully open, equal, and nondiscriminatory basis to consumers that are not mercantile customers and are within the area of the governmental aggregation, and to which the company provides distribution service through facilities it singly or jointly owns or operates. Additionally, a retail natural gas supplier similarly may petition the PUCO for

such service to all nonmercantile customers to which such a company provides distribution service.

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 requires that existing public utility law governing PUCO proceedings (Chapter 4903.) applies to such a gas choice proceeding.

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 revised schedules under which the company must provide the service. The PUCO must act promptly to approve the schedules.

### **Certification**

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

The bill generally requires a retail natural gas supplier, or a governmental aggregator authorized to aggregate under the bill, to be PUCO certified on or after 13 months following the bill's effective date in order to provide a competitive retail 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 approves or denies the person's initial certification application.

Specifically, 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. 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. 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.

Further, the bill prohibits a natural gas company, on and after 13 months following the effective date of this certification law, from knowingly distributing natural gas to an Ohio retail consumer for any retail natural gas supplier or governmental aggregator that is not PUCO-certified.

**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 marketing, solicitation, sale, or 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 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 qualification and termination. The rules must include a requirement that, before a consumer is eligible for service from a retail natural gas supplier or governmental aggregator, the consumer must discharge, or enter into a plan to discharge, all existing arrearages owed to or being billed by the natural gas company from which the consumer presently is receiving service. The rules also must provide for 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) a 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 certification 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 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, (d) a requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty, and (e) 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 a natural gas company make generic customer load pattern information available to a retail natural gas supplier or governmental aggregator on a comparable and nondiscriminatory basis, and make customer information similarly available unless, as to customer information, the customer objects. The rules must ensure that each natural gas company 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.

In addition, the rules must require that, upon the request of a governmental aggregator solely for the purpose of customer notification for purposes of any opt-out governmental aggregation, a natural gas company or retail natural gas supplier must provide the governmental aggregator with the billing names and addresses of the customers of the company or supplier whose retail natural gas loads are to be included in the governmental aggregation. The information must be provided in a timely manner and at such cost as the PUCO must provide for in the rules.

(7) Ohio office. The rules must require that a retail natural gas supplier maintain an office and an employee in Ohio.

### **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 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.

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 document, the person must file an amended document containing the new information.

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.

Under the bill, the consent-to-service-of-process requirements do not apply to a corporation incorporated under Ohio law that has appointed a statutory agent pursuant to existing general corporation or nonprofit corporation law, a foreign corporation licensed to transact business in Ohio that has appointed a designated agent pursuant to existing foreign corporation 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.

### **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 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 the information.

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 report, sales of hundred cubic feet of natural gas are deemed to occur at the meter of the retail customer.

Generally, in line with the existing policy of assessing regulated entities to fund the operations of the PUCO and OCC, the bill subjects to such assessment retail natural gas suppliers and governmental aggregators that are subject to certification, 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 such receipts and sales of hundred cubic feet of natural gas, filed with the PUCO pursuant to the bill and verified by the PUCO. However, the bill prohibits an assessment from being imposed upon a retail natural gas supplier or governmental aggregator until after the PUCO, through a complaint proceeding or rate case filing, removes from the base rates of a natural gas company the amount of assessment that is attributable to the value of natural gas in the base rates paid by those customers that do not purchase natural gas from the company.

### **PUCO enforcement authority**

#### **General enforcement**

(sec. 4929.24)

Under the bill, upon complaint of any person or complaint or initiative of the PUCO under existing complaint law, the PUCO has jurisdiction regarding the provision, by a retail natural gas supplier subject to certification, of any service for which it is subject to certification.

The PUCO also has jurisdiction under existing complaint law to determine whether a retail natural gas supplier subject to certification has either violated or failed to comply with (1) 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) any rule or order adopted or issued by the PUCO for purposes of the bill.

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.

Further, in addition to the authority conferred under existing OCC law, the 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, the OCC may file with the PUCO a complaint for discovery if the recipient of an inquiry under existing OCC law fails to provide a response within the time specified in that law.

### **Certification enforcement**

(secs. 4929.20(C) and 4929.24(D))

The PUCO may suspend, rescind, or conditionally rescind the certification of any retail natural gas supplier or governmental aggregator 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.

Additionally, under enforcement authority of existing public utility law, the PUCO has authority to enforce against a natural gas company 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.

### **Certification-related cost recovery by distribution companies**

(sec. 4929.20(C))

If the PUCO suspends, rescinds, or conditionally rescinds the certification of a retail natural gas supplier pursuant to its enforcement authority under the bill, or, after a proceeding to consider such a matter, continues the certification of a supplier, a natural gas company may apply to the PUCO under the bill for approval of authority to recover any incremental costs reasonably and prudently incurred by the company in connection with the PUCO's action. Upon the filing of such an application, the PUCO must conduct an audit of the incremental costs specified in the application.

The bill provides that cost recovery must be through a rider on the base rates of customers for which there is a choice of commodity sales service supplier. The rider takes effect 90 days after the application's filing date unless the PUCO, based on the audit results and for good cause shown, sets the matter for hearing.

After an audit, the PUCO must approve the application, and authorize such cost recovery rider effective on the date specified in the order, only for such incremental costs as the PUCO determines were reasonably and prudently incurred by the company in connection with the PUCO's certification action. A proceeding for the purpose of authorizing cost recovery is subject to existing public utility law governing PUCO proceedings.

**Public utility excise tax and personal property tax law**

(sec. 5727.01(B)(4))

The bill changes a definition in the existing state public utility excise tax and personal property tax law. Currently, the law defines a "natural gas company" that is subject to taxation as a company engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio. The bill describes such a company as engaged in the business of supplying *or distributing* natural gas for such purposes to Ohio consumers and expressly *excludes* a person that is a governmental aggregator or retail natural gas supplier as defined in the bill.

**Energy emergency law**

(sec. 4935.03)

Existing law confers certain rule-making authority on the PUCO regarding energy emergencies and authorizes the Governor to issue energy emergency orders in the event of an energy shortage. When the Governor declares an energy emergency, the PUCO must implement the measures it determines are appropriate for the type and level of emergency in effect. Existing law provides that the PUCO rules may prescribe different measures for each different type or level of declared emergency, and must empower the Governor to take specified actions, including ordering any of the following to sell energy to alleviate hardship or to acquire or produce emergency supplies: (1) an electric light, natural gas or gas, or pipeline company, (2) any supplier subject to certification under the electric restructuring law, (3) a municipal or not-for-profit electric or gas utility, (4) a coal producer or supplier, (5) an electric power producer or marketer, or (6) a petroleum fuel producer, refiner, wholesale distributor, or retail dealer. The bill adds to that list a supplier subject to certification under the bill.

**Telemarketing fraud law**

(sec. 4719.01(B)(16))

Existing telemarketing fraud law contains a list of persons that are not "telephone solicitors" for purposes of that law. The list currently includes a public

utility, as defined in the public utility law, if it is subject to PUCO regulation, as well as the affiliate of the public utility. The bill adds to the list a retail natural gas supplier, as defined under the bill, if it is subject to PUCO regulation, and the affiliate of such a supplier.

**Project THAW**

(Sections 5 and 6)

Under uncodified provisions, which take effect immediately when the bill becomes law, the bill appropriates \$20 million from the General Revenue Fund for fiscal year 2001. The appropriation is to be used for the Project Temporary Heating Assistance for Warmth (THAW) program to provide assistance in paying the winter heating expenses of persons not eligible for assistance under Title IV-A of the Social Security Act (generally, persons eligible for Temporary Assistance for Needy Families (TANF)-funded services or assistance) and whose gross monthly income does not exceed 200% of federal poverty guidelines (currently, for a family of three, \$29,260). Total expenditures for the program expressly cannot exceed \$20 million.

The bill authorizes the Department of Job and Family Services to provide funds for Project THAW to county departments of jobs and family services to make one-time payments of 50% of the primary heating bills incurred between October 1, 2000, and April 1, 2001, for any heating fuel on behalf of eligible households, up to \$250. The Department may issue guidelines for the program.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 93
Reported, H. Public Utilities	02-22-01	p. 175
Passed House (87-9)	02-27-01	pp. 176-182

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