



**H.B. 419**

124th General Assembly  
(As Introduced)

**Reps. Niehaus, Schuring, Carey, Fessler, Seitz, Lendrum, Metzger, Distel, Damschroder, Coates, Reidelbach, Carano, Hollister, Webster, Rhine, Willamowski, Williams, Jolivette, Collier, Aslanides, Kearns**

---

**BILL SUMMARY**

- Authorizes the competitive installation, operation, and maintenance of electric delivery lines and associated electric plants and equipment.
- Permits the owner or developer of real property, or the owner's or developer's agent, to transfer such a line, plant, and equipment to the electric distribution utility in whose certified territory they are located.
- Requires the Public Utilities Commission to adopt rules for facilitating the competitive installation of electric delivery lines, and associated electric plant and equipment, their interconnection and integration, and their operation and maintenance.

---

**CONTENT AND OPERATION**

**Background**

Each Ohio electric distribution utility installs, owns, operates, and maintains all electric distribution lines connected to its utility system. Since the enactment of the Ohio certified territories law in 1978, a distribution utility has engaged in those activities in the course of fulfilling its statutory obligation under that law to provide adequate distribution service within its exclusive, certified service territory (R.C. 4933.81 to 4933.90). The terms and conditions under which each utility operates and extends distribution lines are specified in the rate schedules (commonly referred to as "tariffs") that a utility files subject to approval of the Public Utilities Commission (PUCO).

The bill provides an alternative to direct utility ownership and control of distribution lines: it provides for the competitive installation, operation, and

maintenance of electric delivery lines and for private, nonutility ownership of those lines. This proposed authority is prescribed notwithstanding any provision of law to the contrary (including, for instance, the certified territories law). The authority conferred by the bill does not directly affect the tariff terms and conditions or tariff authority of electric distribution utilities, but it does broadly relate to a general change in tariff policy concerning how the cost of a nonrural distribution line extension is paid for (see **COMMENT**, below).

### **The bill**

In general, the bill provides that installation, operation, and maintenance of an electric delivery line and associated electric plant and equipment are competitive retail electric services that no longer have to be obtained from the electric distribution utility in whose certified territory the line, plant, and equipment would be located. It authorizes the PUCO to adopt rules to facilitate this authority and establishes the terms and conditions under which ownership of such line, plant, and equipment may be transferred to the utility. The bill also authorizes the PUCO to apply existing enforcement authority with respect to an electric distribution utility's compliance with the bill and with respect to the compliance of any electric services company that provides installation, operation, or maintenance service under the bill.

### **Authority to install, operate, and maintain a line**

(R.C. 4928.111(A), (B), and (C))

The bill authorizes an owner or developer of real property, or an agent of the owner or developer, notwithstanding any provision of law to the contrary and in accordance with specific authority in the bill, to install or cause the installation of an electric delivery line and associated plant or equipment, and obtain operation and maintenance services for the line, plant, and equipment. It declares that such installation, operation, and maintenance are competitive retail electric services for the purposes of the electric restructuring law (R.C. Chapter 4928.), notwithstanding the existing statutory delineation of competitive and noncompetitive services (R.C. 4928.01(B)).

Under the bill, a real property owner or developer, or the agent of the owner or developer, for the purpose of supplying retail electric service to that property, may install the line, plant, and equipment, or may cause their installation by a person other than the electric distribution utility in whose certified territory the line would be located. An electric distribution utility has a duty to interconnect and integrate the line, plant, and equipment only if they are installed in compliance with rules the PUCO must adopt under the bill (see "**PUCO's rule-making authority**," below).

Regarding operation and maintenance, a property owner, developer, or agent that installs or causes the installation of such a line, plant, and equipment, and owns the line, plant, and equipment may obtain from any electric services company operation and maintenance services for the line, plant, and equipment, provided the company is certified by the PUCO under existing law for certification to provide competitive service (R.C. 4928.08).<sup>1</sup> However, the applicable standards and other requirements for granting such certification must be those the PUCO must prescribe by rule under the bill (see "*PUCO's rule-making authority*," below). The bill prohibits an electric services company from providing operation and maintenance services without first being certified.

Additionally, if an electric distribution utility in whose certified territory an electric delivery line and associated electric plant and equipment are installed pursuant to the bill does not agree to the request of the property owner, developer, or agent that owns the line, plant, or equipment to provide operation and maintenance services, the PUCO, by order, may require the utility to provide such services on a comparable and nondiscriminatory basis pursuant to unbundled rates and charges.

***Authority to transfer the line, plant, and equipment***

(R.C. 4928.111(D))

Under the bill, a property owner, developer, or agent that installs or causes the installation of an electric delivery line and associated electric plant and equipment may transfer, to the electric distribution utility in whose certified territory the line, plant, and equipment are located, full ownership of them, and the utility must receive and accept that full ownership. The bill provides that the transfer constitutes full payment to the utility for the capital cost of the line, plant, and equipment, and the utility is not entitled to any other compensation for that capital cost from the property owner, developer, or agent, from any customer, or through its generally applicable rates and charges.

---

<sup>1</sup> Under continuing law, an "electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in Ohio. The term includes a power marketer, power broker, aggregator, or independent power producer, but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent (R.C. 4928.01(A)(9)).

**No effect on duty to provide electric distribution service**

(R.C. 4928.111(E))

Except as otherwise provided in the bill, nothing in it affects the rights or duties of an electric distribution utility under law to supply electric distribution service on a comparable and nondiscriminatory basis under a schedule that is filed with the PUCO pursuant to existing public utility law (R.C. Chapter 4905.) or the electric restructuring law.

**PUCO's rule-making authority**

(R.C. 4928.111(F))

The bill provides that the PUCO must adopt rules as required by the bill, and may adopt such other rules as it considers necessary and appropriate to carry out the bill or to promote economic development and job retention in Ohio by facilitating the competitive installation of electric delivery lines and associated electric plant and equipment, and by facilitating their interconnection and integration, and operation and maintenance, in a manner that maintains the quality, safety, and reliability of electric utility transmission and distribution systems. Initial rules must be adopted by the PUCO not later than 60 days after the bill's effective date.

The rules for interconnection and integration of electric delivery lines and associated plant and equipment must prescribe comparable and nondiscriminatory technical standards that such lines, plant, and equipment installed pursuant to the bill must meet in order to compel their interconnection and integration. The standards must ensure that the installation of any such line, plant, and equipment promotes the state's competitive retail electric service policy specified in existing law (which, among other things, ensures the availability of reasonably priced retail electric service and encourages market access), and does not adversely affect the quality, safety, and reliability of electric utility transmission and distribution systems. The rules may allow for different technical standards for different electric distribution utilities as the PUCO determines reasonably necessary and appropriate.

In addition, the rules must prescribe uniform procedures by which a property owner, developer, or agent must provide advance, written notice to the electric distribution utility of the intent to install or cause the installation, in the utility's certified territory, of an electric delivery line and associated electric plant and equipment.

The rules required by the bill prescribing standards and other requirements for the certification of electric services companies to provide operation and maintenance services must ensure that those standards and other requirements reflect best practices, encourage predictive and preventative maintenance, and encourage qualified suppliers to provide such operation and maintenance services.

**PUCO enforcement authority regarding the compliance of electric distribution utilities and electric services companies**

(R.C. 4928.111(C)(2), (G), and (H))

The bill provides that no **electric distribution utility** may fail to:

(1) Interconnect and integrate an electric delivery line and associated electric plant and equipment that are installed in compliance with the PUCO rules adopted under the bill.

(2) Conform to the bill and to the PUCO's rules adopted under it any schedule filed with the PUCO pursuant to existing public utility law (Chapter 4905.) or the electric restructuring law.

(3) Receive and accept full ownership of property transferred to it pursuant to the bill.

(4) Comply with any rule or order adopted or issued by the PUCO pursuant to the bill.

The bill prohibits an **electric services company** from violating the bill's certification requirements to provide operation and maintenance services or any rule or order adopted or issued by the PUCO under the bill.

**PUCO's jurisdiction to enforce prohibitions**

(R.C. 4928.111(G)(2) and (H)(2))

The bill extends the PUCO's existing enforcement authority under the electric restructuring law to the enforcement of the bill's prohibitions regarding electric distribution utilities and electric services companies. Accordingly, the bill provides the PUCO with authority to enforce a violation of the bill's prohibitions by an electric distribution utility or an electric services company pursuant to existing complaint law, which authorizes the PUCO to initiate a proceeding or to hear a complaint filed by any person (R.C. 4905.26). In the case of a violation by either an electric distribution utility or an electric services company, the bill authorizes the PUCO, in addition to its authority to rescind or suspend certification and to any other remedy provided by law, and after reasonable notice and

opportunity for a hearing, to (1) order rescission of a contract, or restitution to customers, or (2) order any remedy or forfeiture provided under existing public utility law: that is, order a forfeiture of up to \$1,000 per day per violation, or direct the Attorney General to seek a mandamus order, injunction, or other appropriate civil remedy.

---

## COMMENT

The issue of nonrural distribution line extension policy currently is before the PUCO, in a docket it recently opened due to complaints it had received from individuals building homes and other electric utility customers and from persons engaged in the business of home building. According to the entry,

[t]he primary complaint is that homebuilders and individual customers are being required to pay a much larger portion of the cost of new electric facilities to serve new premises than what was required prior to [restructuring]. . . . One of the purposes of the [docketed proceeding] is to gain information on past and present line extension policies and procedures . . . , as well as to study how those policies and procedures interact with the [PUCO's] rural line extension procedures. The [docket] will also be used to study the impact of [the electric restructuring law (Am. Sub. S.B. 3 of the 123rd General Assembly)] on line extension policies of these companies and to determine if the current policies are in compliance with SB 3.

The docket primarily is focusing on two utilities against whom complaints have been made and on a third utility that is considering modifying its line extension policy in a manner similar to the other two utilities. The docket currently is awaiting evaluation of comments and reply comments filed on an initial list of questions posed by the PUCO. In the meantime, the PUCO imposed a stay on any new line extension policies implemented by the three utilities and ordered the utilities to instead use their line extension policies in effect prior to restructuring. However, customers currently under a new line extension program are to remain under that program, "subject to possible adjustment based upon the outcome of [the docket]." (*In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions*, Case No. 01-2708-EL-COI, Entry (October 24, 2001).)

Utilities instituted new line extension policies in their distribution rate schedules in reliance of a line extension provision of the electric restructuring law. Each schedule was approved by the PUCO in the course of approving each utility's requisite transition plan in the form of a settlement agreement. One of the questions the PUCO docket reportedly will consider is whether the new line extension policy complies with electric restructuring law.

The electric restructuring law establishes a state policy regarding electric restructuring (R.C. 4928.02) and "unbundles" formerly integrated electric services, retaining distribution service as a fully regulated service to be provided by suppliers within their exclusive certified territories. It establishes requirements for distribution service, both under provisions that apply to utilities during a "market development" transition period (which, practically speaking, corresponds to the period during which the utility may receive "transition revenues" based on its transition costs), *and* under provisions that otherwise apply to utilities.

Under the restructuring law, any utility rate schedule for distribution service must include a requirement that the utility provide distribution service on a nondiscriminatory and comparable basis to all retail customers in its service territory and to all the customers' suppliers. The schedule also must specify the utility's obligation to build distribution facilities when necessary to provide adequate distribution service. Further, a customer requesting that a utility build new distribution facilities "may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with rules, policy, precedents, or orders of the [PUCO]." (R.C. 4928.15(A) and 4928.35(C).)

While establishing the above-stated provisions regarding distribution service and line extensions, the restructuring law also contains provisions pertaining to allowable rates for distribution service during the transition period. (Distribution rates after the transition period may be adjusted only in accordance with the traditional rate regulation provisions of continuing law (primarily, R.C. 4909.15).) As part of a transition plan each utility is required to file under the restructuring law, the utility must file new rate schedules reflecting the separation of formerly aggregated rates for electric service, first into their electric transmission component, then into their distribution component, and then into a component for other, nongeneration services, with the residual amount finally attributable to generation service (R.C. 4928.34(A)(1) to (5)). The restructuring law then caps utility rates, including distribution rates, for the duration of the transition period at their existing levels--rate levels established pursuant to the traditional manner of ratemaking, under which rates are set based upon the revenues the utility requires to cover its operating costs and plant investment and earn a fair and reasonable return on that investment. Specifically, under the restructuring law, the total of the unbundled components of electric service are

capped at the bundled level in effect on the day before the law's effective date (October 5, 1999), subject to specified, limited adjustments (R.C. 4931.31(A)(6)).<sup>2</sup> The nature of these adjustments make the rate cap tantamount to a rate freeze.

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-24-01	p. 983

h0419-i.124/kl

---

<sup>2</sup> *The capped rates cannot be adjusted during the transition period except under the following express circumstances: (1) to lower generation and distribution service rates if the utility receives a refund as a result of taxable property valuation litigation, (2) as otherwise authorized by federal law, or (3) to reflect any material change in tax law or tax regulation (R.C. 4928.35(A) and (B)). (The law factors into the cap the changes in taxation of electric utilities authorized under the electric restructuring law, the universal service rider to support electric service for low-income customers authorized under the law, and the temporary rider for energy efficiency programs authorized under the law (R.C. 4928.34(A)(6)).)*