



H.B. 555

125th General Assembly
(As Introduced)

Reps. Hollister, J. Stewart, Aslanides, Daniels, Kearns, Olman, Webster

BILL SUMMARY

- As part of the proceeding under continuing law to establish a post-market development period (MDP) generation service offer for an incumbent electric utility, requires the Public Utilities Commission (PUCO) to evaluate the state of the competitive market in the incumbent's service area for each rate schedule and customer class of the utility.
- If the PUCO determines there is not sufficient market development or effective competition in retail generation supply to a particular customer class of an incumbent utility, requires the PUCO to encourage the utility to file a standard service offer under continuing law that stabilizes the retail electric generation price for that customer class for a reasonable, prescribed period.
- Also requires the PUCO to order for the customer class load a rate stabilization plan that contains a retail electric generation service price that is just and reasonable.
- Prohibits the PUCO from setting a standard service offer price for retail generation service based on the day-ahead or hourly price posted by a regional transmission entity.
- Requires the PUCO to ensure that Ohio retail consumers are not unduly competitively disadvantaged as a result of differences between retail electric generation service prices for Ohio customers of an electric utility and the prices available to similarly situated customers of the utility or any of its affiliates providing retail electric service within the same regional transmission entity.

- Does not apply to any rate stabilization plan approved by the PUCO before the bill's effective date and accepted by the electric utility before January 1, 2005.
- Declares an emergency.

CONTENT AND OPERATION

Retaining current Electric Restructuring Law provisions regarding an incumbent utility's post-MDP supply obligation, the bill expresses the additional concept of rate stabilization in that statute and adds the duty that the PUCO undertake a market evaluation in the course of considering an incumbent utility's filing regarding its post-MDP supply obligation. The bill generally is directed at the implementation of the Restructuring Law in light of the state of the competitive generation market in Ohio.

Background

The Electric Restructuring Law initiated restructured retail electric service in Ohio. As enacted, the statute provided for a "flash cut" on January 1, 2001, to a market in which consumers choose their generation suppliers. Beginning on that date, the exclusive service territories of the incumbent electric utilities opened to competing generation service suppliers. Full competition, however, was to occur under the Law after a transitional MDP lasting five years: that is, only upon the December 31, 2005,¹ expiration of special pricing provisions applicable to incumbent-supplied services (specifically under statute, a cap on the total of the unbundled elements of retail rates at the pre-2001 level, a 5% reduction in incumbents' generation prices to residential customers, their receipt of transition charges, and their offering of customer shopping incentives).

In general then, beginning January 1, 2006, prices for *all* post-MDP generation service are to be market-determined, with incumbent utilities and other companies competing head-to-head in the electric generation market. However, to provide consumers with supply reliability beyond the MDP, the Restructuring Law

¹ Continuing law allows these pricing provisions to expire earlier than that date for a particular customer class only if the utility files an application to that effect with the PUCO and 20% of that customer class load has switched to another supplier or there is effective competition in the utility's distribution territory (see R.C. 4928.40(B)(2)).

also establishes for incumbent utilities a post-MDP default provider obligation² and, relevant to the bill, a supply obligation.³

To date, each incumbent utility has made a post-MDP supply obligation filing with the PUCO.⁴ While not every utility has represented its filing as a filing under the supply obligation provisions of the Restructuring Law, the PUCO reportedly will approve such a filing only as a filing under those provisions.

² R.C. 4928.14(C). *The default provider obligation addresses a concern for the supply reliability of electricity as an essential commodity and the possibility of a supplier failing to fulfill its contract obligations. The Restructuring Law specifies the conditions under which, until the affected consumer chooses another supplier, service to that consumer defaults to the market-based standard service offer of the consumer's incumbent utility, as described in the next footnote.*

³ R.C. 4928.14(A) and (B). *The post-MDP supply obligation that an incumbent utility offer a standard service offer reflects a legislative concern that there may be consumers who, for any number of reasons, do not shop for their electricity supply. The Restructuring Law provides for those consumers by ensuring there will be at least one supplier--the incumbent utility--that will provide within its certified electric distribution territory a "standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." This service package must be filed with and approved by the PUCO as an application for the establishment of a rate under continuing public utility law (R.C. 4909.18). Further according to R.C. 4928.14(A), it must be "market-based." That term is not defined in the Restructuring Law but does not necessarily equate to "market-determined" or "competitive market-priced." Such a competitive market-priced supply obligation is contemplated under a tandem provision of the Law.*

Under the tandem provision of R.C. 4928.14(B), an incumbent utility must offer customers in its certified distribution territory "an option to purchase competitive retail electric service the price of which is determined through a competitive bidding process" conducted pursuant to PUCO rule. At the utility's option, the generation price derived by competitive bid may be used to satisfy the statute's standard service offer requirement. However, the Law also states that the PUCO "may determine at any time that a competitive bidding process is not required, if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed."

⁴ *While no two filings are alike, one common thread in the resultant PUCO orders if not the filings themselves has been a focus on "rate stabilization" as a major policy objective for the foreseeable future. Rate stabilization as a post-MDP policy objective is not expressed in the Restructuring Law; it is a utility/PUCO concept described as responding to an assessment of the competitive market.*

The PUCO has already approved a post-MDP filing for Dayton Power and Light Company (DP&L). The filing consists in part of a settlement agreement described as a post-MDP "rate stabilization plan" with a three-year life. The PUCO found that the plan fulfilled the utility's statutory post-MDP supply obligation.⁵ In support of its approval of the plan, the PUCO also found that there was no effective competition for generation service in DP&L's distribution territory, necessitating a rate stabilization plan.⁶ Along with the approval of the post-MDP filing for DP&L, the PUCO also "encourage[d] other electric utilities to consider such [rate stabilization] options if competitive electric markets have not fully developed in [their] service territor[ies] by the end of their MDPs."⁷

Other post-MDP plans that subsequently have been approved by the PUCO are plans for the three First Energy companies (Ohio Edison, Toledo Edison, and Cleveland Electric Illuminating) and a plan for Cincinnati Gas & Electric Company. Applications for those plans stated they were filed in response to the PUCO's expressed encouragement cited above.⁸ Currently pending before the PUCO are filings for the two American Electric Power companies (Ohio Power and Columbus Southern Power)⁹ and for Monongahela Power.¹⁰

⁵ *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for the Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, Opinion and Order (Sept. 2, 2003), at 27.

⁶ *Id.*, at 19.

⁷ *Id.*, at 29.

⁸ *See, In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Continue and Modify Regulatory Accounting Practices and Procedures, for Tariff Approvals and to Establish Rates and Other Charges Including Regulatory Transition Charges Following the Market Development Period*, Case No. 03-2144-EL-ATA, Testimony of Anthony Alexander (filed Nov. 19, 2003), at 5-7; and *In the Matter of the Application of the Cincinnati Gas and Electric Company to Modify its Non-Residential Generation Rates to Provide for Market-Based Standard Service Offer Pricing and to Establish a Pilot Alternative Competitively-Bid Service Rate Option Subsequent to Market Development Period*, Case No. 03-93-EL-ATA, The Cincinnati Gas & Electric Company's Filing in Response to the Request of the Public Utilities Commission of Ohio to File a Rate Stabilization Plan (filed Jan. 26, 2004), at 3 and 4.

⁹ *In the Matter of the Application of the Columbus Southern Power Company and Ohio Power Company for Approval of a Post Market Development Period Rate Stabilization Plan*, Case No. 04-169-EL-UNC (filed Feb. 9, 2004).

¹⁰ *The approach of Monongahela Power (Mon Power) to the statutory post-MDP supply obligation differed from DP&L's. Essentially, for its larger customers, Mon Power proposed a market-determined rather than stabilized price. Originally the PUCO had approved a December 31, 2003, ending date for the MDP applicable to Mon Power's industrial, large commercial, and street lighting customers. In April 2003, as the end of that MDP approached, the utility filed an application with the PUCO partly to implement its post-MDP supply obligation for those larger customers. The utility proposed to use a competitive bid process to establish a fixed-rate, market-based standard service offer for the larger customers and also proposed to establish a variable-rate offer based on spot market prices obtained through a regional transmission entity. With PUCO oversight, Mon Power conducted a competitive bid. Three bids were obtained, one deemed not in conformance with the bid request. The lowest and winning bid came from a Mon Power affiliate, which bid the PUCO concluded would result in significant rate increases for the larger customers. The PUCO then rejected Mon Power's proposal and ordered Mon Power's MDP for larger customers to be extended until December 31, 2005. Mon Power appealed the PUCO's decision at the Ohio Supreme Court and also filed actions in federal district court (see below). Mon Power also made a filing on June 30, 2004, for fixed-rate and variable-rate post-MDP supply offers to take effect for all its customer classes beginning January 1, 2006; the proposal is similar to its earlier proposal for larger customers. The case is currently pending before the PUCO. (In the Matter of the Application for Approval of a Standard Service Offer and Competitive Bidding Process For Monongahela Power Company, Case No. 04-1047-EL-ATA (filed June 30, 2004)).*

Assertions by Mon Power in its appeal to the Supreme Court include the unreasonableness and unlawfulness of certain aspects of the PUCO's order, including the PUCO's MDP extension to 2006 for larger customers and denial of authority for Mon Power to contract with the lowest and winning bidder. The case currently is pending a decision by the Court. (Monongahela Power Co. v. Pub. Util. Comm. of Ohio, Case No. 04-0305, filed Feb. 13, 2004.)

In Mon Power's initial action before the U.S. District Court for the Southern District of Ohio, Eastern Division, the Court granted Mon Power a preliminary injunction and in part declared unconstitutional specific transitional provisions of the Restructuring Law, insofar as the Law did not provide a way for a utility to adjudicate a claim of confiscatory rates arising under the statutory rate cap of the MDP. The Court directed the PUCO to adjudicate that claim. (Monongahela Power Co. v. Alan Schriber, Case No. 02-04-84, Opinion and Order (May 19, 2004).) Upon a second action filed by Mon Power--a Motion for Expedited Reconsideration,--the Court refined certain directions to the PUCO pertaining to the recovery of Mon Power costs (Monongahela Power Co. v. Alan R. Schriber, Case No. C2-04-84, Opinion and Order (June 14, 2004). The adjudication is presently underway (In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for Monongahela Power Company, Case No. 04-880-EL-UNC, Entry on Remand (June 9, 2004)).



Market evaluation under the bill

(R.C. 4928.141(A))

The bill requires the PUCO to evaluate the competitive market in an electric utility's service area for each rate schedule and customer class of an electric utility. This evaluation must be done as part of the proceeding required under continuing law to establish a post-MDP service offering for the utility. The bill proposes two standards of evaluation: (1) whether the competitive retail generation market within the utility's service area is sufficiently developed to effectuate the state electric restructuring policy prescribed by statute and (2) whether there is effective competition in retail electric generation service in the utility's service area to effectuate that policy. The apparent difference between the two standards is rigor of the evidence required for a conclusion.

Specifically, in the case of the second standard--effective competition--the PUCO must consider factors prescribed under current law for determining effective competition in other circumstances.¹¹ Those factors include, but are not limited to, (a) the number and size of alternative suppliers of the service, (b) the extent to which the service is available from alternative suppliers, (c) the ability of alternative suppliers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions, and (d) other indicators of market power,¹² which may include market share, growth in market share, ease of entry of new suppliers, and supplier affiliations.

¹¹ *Under the current Restructuring Law, these standards are to be applied by the PUCO for the following two purposes: (1) to determine if there has been a decline or loss of effective competition regarding retail ancillary, metering, or billing and collection service if the PUCO has declared that service a competitive retail electric service per express statutory authority, and (2) to report to specified legislative committees that generation service or any service declared competitive by future statute is no longer subject to effective competition. (See R.C. 4928.06(B), (C), and (D).) These purposes are related to the general market-monitoring function the law requires the PUCO to perform. The bill proposes these standards for a specific PUCO function: approving post-MDP service offerings of incumbent utilities.*

¹² *Under the Restructuring Law, "market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market (R.C. 4928.01(A)(18)).*

Remedies

(R.C. 4928.141(B) and (C))

The bill requires the PUCO to take two actions if, upon the evaluation described above, it determines that there is not sufficient market development or effective competition in the supply of retail generation service to a specific customer class of a utility. First, the PUCO must encourage the utility to file a standard service offer under continuing law that stabilizes the retail electric generation price for that customer class for a reasonable, prescribed period. Secondly, the PUCO must order for the customer class load a rate stabilization plan that contains a retail electric generation service price that is just and reasonable. The bill authorizes the PUCO to establish that price administratively and to establish conditions regarding the utility's implementation of the plan. The bill requires that the plan be a filing under continuing, post-MDP statute.

Regarding both of those stated duties, the bill requires the PUCO to ensure that Ohio retail consumers are not unduly competitively disadvantaged as a result of differences between retail electric generation service prices for Ohio customers of an electric utility and the prices available to similarly situated customers of the utility or any of its affiliates providing retail electric service within the same regional transmission entity.¹³ Additionally, the bill prohibits the PUCO from setting a standard service offer price for retail electric generation service based on the day-ahead or hourly price posted by a regional transmission entity. The bill, however, expressly states that it does not preclude a customer opting for a service offering priced on such day-ahead or hourly basis.

Bill's applicability and immediate effective date

(R.C. 4928.141(D); Section 2)

The bill states that it does not affect any rate stabilization plan approved by the PUCO before the bill's effective date and accepted by the electric utility before January 1, 2005. Thus, the bill affects any current plan filed but not so approved or accepted and any future filing of a utility in anticipation of the expiration of a currently approved plan.

¹³ *Each incumbent utility is required by the Restructuring Law to be a member of a qualifying transmission entity to which it has transferred control of its electric transmission facilities to ensure that the electric transmission system operates independent of any user of the system (R.C. 4928.34(A)(13), 4928.35(G), and 4928.12). There are nine statutory criteria defining what constitutes a qualifying entity (R.C. 4928.12).*

Additionally, the bill takes effect immediately under its stated emergency provision, to ensure that it takes effect at the earliest possible time to address uncertainty regarding the electric prices and resulting revenues paid by Ohio retail customers after December 31, 2005, and to protect those customers against undue competitive disadvantage based on the price of generation service.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-23-04	p. 2163

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