



**Sub. S.B. 44\***

125th General Assembly  
(As Reported by H. Public Utilities)

**Sens. Robert Gardner, Blessing, Spada, Dann, Mumper, Prentiss**

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**BILL SUMMARY**

- Authorizes a waterworks company or sewage disposal system company that is a public utility to submit an application to the Public Utilities Commission (PUCO) for approval to collect a surcharge of up to 3% on the company's rates to cover costs of certain infrastructure plant investments made after March 1, 2003, and before the application filing date, and provide a fair and reasonable rate of return on those investments.
- Prohibits the PUCO from authorizing a company to have more than three surcharges in effect at any time.
- Provides that no surcharge can be in effect after December 31, 2014, and that all surcharges must terminate if a general rate increase is approved for the company.
- Authorizes the PUCO to reduce or terminate a surcharge in order to prevent a company from earning an excessive rate of return on the most recent rate case valuation of the company's property considered used and useful in rendering a public utility service.
- Authorizes, instead of requires, a waterworks company to seek PUCO approval of a rate change based solely on a change in the cost of any water the company obtains from a municipal corporation or other local governmental unit whose rates are not subject to PUCO regulation, and

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*\* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

also confers this authority when a rate change is based on a change in cost of water supplied by another waterworks company.

- Establishes that same PUCO approval authority for a sewage disposal system company that seeks a rate change based solely on a change in the cost of sewage treatment supplied by such a municipal corporation or local governmental unit or by another sewage disposal system company.

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## CONTENT AND OPERATION

### Water and sewage surcharges

#### Background

The rates for water utilities and sewage disposal system utilities currently are determined pursuant to the traditional method of ratemaking authorized by R.C. Chapter 4909. Generally, a utility desiring to establish or modify a rate is required to file a written application with the PUCO to initiate a rate case under the rate case law.<sup>1</sup> Various publication, notice, and public hearing requirements apply. Rates that result from a rate case are based on a recalculation of a utility's overall revenue and expense situation and a PUCO-prescribed rate of return on investment.<sup>2</sup> In a rate case, the level of the utility's investment, as well as its revenue and its expenses including depreciation, are valued as of a contemporary date and time period. The utility sets the date and time period for the valuation of its investment, revenues, and expenses in the sense that the date and time period are determined by reference to the *filing date* of the rate case application. The utility alone chooses the filing date and also decides how frequently it needs to make a rate case filing.

The underlying premise of a rate case is that the resulting determination of the utility's "revenue requirement" fairly represents what the utility needs to meet its service obligations under law plus earn a reasonable rate of return on investment. Actual rates are then structured to produce that revenue requirement target. Before proposed rates can take effect, the PUCO must find that the rates meet the statutory standard of "just and reasonableness."

For various other types of utility services, current Ohio public utility law authorizes a number of cost recovery *exceptions* to the traditional ratemaking provisions. For instance, subject to audit by the PUCO, a gas utility is authorized

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<sup>1</sup> R.C. 4909.18 and 4909.19, not in the bill.

<sup>2</sup> R.C. 4909.15, not in the bill.

by statute to adjust its rates automatically on a regular basis to recover recently incurred fuel costs.<sup>3</sup> Also, relative to a capital project, traditional ratemaking law authorizes a utility to seek an allowance to be built into its rates for the cost of construction work on identified projects.<sup>4</sup>

**New surcharge authority under the bill**

(R.C. 4909.172)

The bill provides a mechanism for a water or sewage disposal system utility to receive revenue from its customers that ordinarily would not be available to it unless the expense and investment justifying the revenue were included under a rate case determination. Specifically, the bill authorizes the establishment, outside of a traditional rate case, of periodic infrastructure improvement surcharges on water or sewage disposal utility rates. No such surcharges can be in effect after December 31, 2014. The surcharges are payable by customers of the utility that are located in the utility's affected service areas and are subject to the affected tariff schedules. The utility must provide notice of an approved surcharge to each affected customer with or on the first bill containing the surcharge.

The bill requires the filing of an application with, and approval by order of, the PUCO before a surcharge can take effect. The application must be in such form and contain such information as the PUCO prescribes. An approved surcharge can cover the costs of only specified infrastructure plant incurred by the utility after March 1, 2003, and before the application filing date. Those costs can include depreciation expenses. Also under the bill, a utility's surcharge application may seek approval for the surcharge to include a return on the filing date valuation of the infrastructure plant.

Surcharges approved by the PUCO cannot exceed 3% of the rates and charges in effect, on the application filing date, for each customer class of the utility, and the actual percentage increase must be uniform for each class. A utility for which a surcharge has been authorized may file another surcharge application not sooner than 12 months after the filing date of its most recent surcharge application. The PUCO is prohibited from allowing a company to have more than three surcharges in effect at any time.

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<sup>3</sup> R.C. 4905.302, not in the bill.

<sup>4</sup> R.C. 4909.15, not in the bill.

### **Includable infrastructure plant**

As noted previously, the bill specifies the types of infrastructure costs and plant that may be covered by a surcharge. Generally, a surcharge may cover only capital improvements that the PUCO determines are used and useful in rendering public utility service. For a waterworks utility, includable costs and plant cover (1) any service lines for, and hydrants, mains, and valves installed as a part of, a replacement project for an existing facility, (2) main extensions installed to eliminate dead ends to resolve water supply problems presenting significant health or safety issues to existing customers, and (3) main cleaning or relining.

For a sewage disposal utility, includable costs and plant cover (1) mains and lift stations installed as part of a replacement project for an existing facility, (2) main extensions that resolve sewage disposal problems presenting significant health or safety issues to existing customers, and (3) main cleaning, inflow and infiltration elimination, or relining.

For both types of utilities, includable costs also include unreimbursed capital expenditures made by the utility for facility relocation required by a governmental entity due to a street or highway project, as well as minimum land or land rights acquired as necessary for any qualifying service line, equipment, or facility.

The bill expressly prohibits the inclusion of any improvement providing the utility with additional revenue, other than any minimal revenue associated with eliminating a dead end.

### **Approval process and standards**

At the time of filing a surcharge application, the utility must serve a copy of the application upon the chief executive of each municipal corporation, the board of township trustees of each township, and the board of county commissioners of each county in which affected customers are located. The PUCO must allow an opportunity for filing comments on a surcharge application.

After considering those comments, the PUCO may approve a surcharge that is just and reasonable and is sufficient, but not greater than, the revenue requirement necessary both to (1) cover the infrastructure plant costs specified in the bill and not already reflected in the affected tariffs and (2) provide a fair and reasonable rate of return on the infrastructure plant valuation. The PUCO is prohibited from authorizing a surcharge if it determines that the surcharge causes the company to earn an excessive rate of return on its plant valuation as determined in its last rate case.

### **Additional limitations**

During the period an authorized surcharge is in effect, the PUCO may reduce or terminate the surcharge, on its own motion or for good cause shown, to prevent a utility from earning an excessive rate of return on the utility's last rate case valuation of the property used and useful in rendering service.

The bill prohibits a surcharge from being in effect after a rate or charge increase is approved pursuant to a rate case order. Accordingly, any PUCO order authorizing such an increase also must provide for the termination of any existing surcharge. The termination date is to be the earlier of the effective date of the rate or charge increase or December 31, 2014.

Finally, the bill authorizes the PUCO to adopt any rules necessary to carry out the bill's requirements.

### **Rate adjustments of a waterworks or sewage disposal system company**

(R.C. 4909.171)

Under current law that is modified by the bill, a waterworks company must have PUCO approval to increase or decrease its rates for service if that service entails water supplied by a municipal corporation or other local government unit whose rates are not subject to PUCO regulation and the rate adjustment is based solely on a change in the cost of the water supplied. When requesting a rate adjustment, the company must file with the PUCO evidence of the cost of the water, as well as appropriate tariff revisions. In revising its tariffs, however, the company is prohibited from changing the distribution of revenue responsibility of its various classes of customers. The tariff revisions become effective immediately upon filing. The application for the rate adjustment is not subject to the application, hearing, or publication procedures set forth in the rate case law.

The bill authorizes any waterworks company or sewage disposal system company to submit an application for a rate or charge adjustment for water or for sewage treatment provided to the company by either (1) a municipal corporation or other local government unit whose rates are not subject to PUCO regulation *or* (2) another waterworks company or sewage disposal system company whose rates have been approved by the PUCO in a rate case. As under current law, the rate or charge adjustment must be based solely on a change in the cost to the company of the water or the sewage treatment. The application is to be accompanied by evidence of the new rates or charges charged to the company.

The bill requires the PUCO to approve appropriate revisions to the company's public rate schedules filed with the PUCO to reflect the change in the

cost of the water or the sewage treatment. As under current law, the rate case law does not apply to the application for the revisions, and the revisions are prohibited from changing the distribution of revenue responsibility of the company's various classes of customers.

Any rate or charge increased pursuant to the bill is not effective until ten days after the company provides affected customers with notice. The notice is to be in a form and provided by a method as determined by the PUCO.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-04-03	pp. 165-166
Reported, S. Public Utilities	04-30-03	pp. 306-307
Passed Senate (33-0)	04-30-03	pp. 307-308
Reported, H. Public Utilities	---	---

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