



S.B. 203

125th General Assembly
(As Introduced)

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BILL SUMMARY

- Provides that an electric utility's retail electric service rates in effect after December 31, 2005, cannot be based on its rates on that date unless the new rates exclude the generation-related portion of the utility's transition charges and, as of its scheduled termination date, the regulatory asset portion of those charges.
- Prohibits the Public Utilities Commission from extending the period a utility can receive transition revenues beyond the dates specified in the utility's transition plan.
- Prohibits the Commission from allowing a utility to impose, beyond the scheduled termination date for the utility's transition charges, a rate for retail electric service that in any way is based on or related to those charges.
- Declares an emergency.

CONTENT AND OPERATION

Background and existing law

The general subject of the bill is incumbent electric utility rates and charges after December 31, 2005, and how those rates can compare or relate to rates and charges in effect before that date. December 31, 2005, is the general termination date under Electric Restructuring Law¹ for the "market development periods" of

¹ *The Electric Restructuring Law (primarily R.C. Chapter 4928.) declares that certain retail electric services are competitive services on and after January 1, 2001. The competitive services include electric generation service and also services related to the operation of a competitive generation market such as power marketing, brokering, and*

the incumbent utilities.² The market development period is a defined transition period designed to address issues specific to services that previously had been regulated and to utilities that had provided those services on a monopoly basis. Among issues addressed by the market development period concept are two issues germane to the bill, (1) a general cap on rates for electric service chargeable by the incumbent utilities during the period and (2) the receipt of any requested "transition revenues" that are attributable to certain utility costs incurred during regulation and that are derived from transition charges to be paid by consumers during the period.

The general cap on incumbent utility electric rates is established for the market development period under each utility's transition plan. The transition plan, which each utility filed with the Public Utilities Commission for approval, must include a new rate schedule for the utility under which formerly aggregated rates for electric service are "unbundled" 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 attributed to generation service.³ The total of the unbundled components generally is capped at the bundled level in effect on the day before the starting date of competitive retail electric service and remains capped for the duration of the market development period.⁴ Under the utilities' transition plans, the cap was implemented as a rate freeze.

Regarding transition revenues, current law provides incumbent utilities the opportunity to receive revenues designed to "assist [the utility] in making the transition to a fully competitive retail electric generation market." The total allowable amount of each utility's transition revenues is determined by the Commission.⁵ A utility receives transition revenues in two ways: (1) through

aggregation. Additionally, the Law eliminates the exclusive territorial franchises that the incumbent electric utilities had been granted by statute for those competitive services, so that markets are open to any supplier. The Law did not affect the exclusive franchises of the incumbent utilities to provide noncompetitive retail services, such as electric transmission and distribution services, in their statutory "certified territories."

² R.C. 4928.40(A).

³ R.C. 4928.34(A)(1) to (5).

⁴ R.C. 4928.34(A)(6).

⁵ R.C. 4928.37 to 4928.40. *The revenue amount is based on transition costs. Among the criteria the Commission must use in determining transition costs are that the costs were prudently incurred, are directly assignable or allocable to retail electric generation service provided to consumers in Ohio, and are unrecoverable in a competitive market.*

rates and charges customers pay when taking generation service from their incumbent utility or (2) through a "transition charge" paid by a customer that switches from its incumbent utility to another generation service supplier. The transition charge can have two parts: a regulatory asset portion and a remaining generation-related portion. The transition revenues determined by the Commission for a particular utility are the basis for the amount of the utility's transition charge. A utility's receipt of transition revenues is to terminate at the end of the market development period.⁶ However, the Commission may authorize a specified portion--the regulatory asset portion--of a transition charge, not limited by the market development period concept, to continue until December 31, 2010.⁷

Under the Electric Restructuring Law, each electric distribution utility, after its market development period, must provide customers within its certified territory a market-based standard service offer to maintain essential electric service.⁸ Customers also must have the option of purchasing, from their electric distribution utility, competitive retail electric service through a competitive bidding process.⁹ Rules adopted by the Commission require that rates offered through the standard service offer must be market-based and variable, while rates offered through the competitive bidding process must be fixed.¹⁰

The bill's provisions

(R.C. 4928.70)

The bill precludes any previously authorized transition charge, including any expired regulatory asset portion of such a charge, from being included as a basis for rates and charges in effect after December 31, 2005, for retail electric

⁶ R.C. 4928.38.

⁷ R.C. 4928.40(A). Under R.C. 4928.01(A)(26), "regulatory assets" are defined as the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the Commission or pursuant to generally accepted accounting principles as a result of a prior Commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent Commission action.

⁸ R.C. 4928.14(A).

⁹ R.C. 4928.14(B), although the Commission may determine at any time that competitive bidding is not required if equivalent options are available and a reasonable means for customer participation is developed.

¹⁰ Commission News Release, December 17, 2003.

service provided by an electric utility. Specifically, the Commission is prohibited from authorizing rates and charges in effect after December 31, 2005, that use as a basis the unbundled rates and charges in effect on that date, unless the total of all the new rates and charges excludes the generation-related portion of any transition charge in effect on December 31, 2005, and also excludes the regulatory asset portion of any transition charge as of the date the regulatory asset portion is scheduled to terminate under the utility's transition plan in effect on December 31, 2003.

Additionally, the bill prohibits the Commission from extending the period of receipt of transition revenues by a utility beyond the dates specified in its transition plan in effect on December 1, 2003. The bill also forbids the Commission allowing a utility to impose a rate or charge for retail electric service or a service component, regardless of the name or designation of the rate or charge (such as a "rate stabilization charge"), which in any way is based on, equal, equivalent, or related to, or reflective of (1) after December 31, 2005, the amount of the generation-related portion of the transition charge in effect on that date or (2) the amount of the regulatory asset portion of the transition charge, after the date it is scheduled to terminate under the utility's transition plan in effect on December 1, 2003.

The bill specifies that nothing in its provisions applies to rates or charges established pursuant to the competitive bidding process provided for under current law. The bill also specifies that its prohibitions apply with regard to any Commission action or order, including approval of a stipulation or a market-based standard service offer.

Further, the bill contains an emergency clause, stating that it is necessary to ensure that an electric utility is not authorized, beyond the discrete, transitional, market development period specified in Restructuring Law, a level of revenue opportunity based on, equal, equivalent, or related to, or reflective of all or part of the transition charges authorized in the utility's transition plan in effect on December 1, 2003. The issue of the post-market development period rates of an incumbent utility currently is before the Commission as a result of applications filed by First Energy, CINergy, and American Electric Power.

HISTORY

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Introduced	02-26-04	p. 1582

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