



S.B. 265

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BILL SUMMARY

State energy policy

- Articulates a state policy regarding energy usage, production, and delivery in Ohio.
- Requires each state agency to implement that policy in carrying out its duties under Ohio law, and requires the Public Utilities Commission (PUCO) and the Power Siting Board (PSB) to be consistent with the policy when implementing the continuing statutory policy regarding competitive retail electric service and the bill's new policy on major utility facility siting, respectively.
- Requires the Department of Development (DOD) to coordinate state agency implementation of the energy policy; act as an ombudsperson to other state agencies to facilitate the development and delivery of energy in Ohio; improve the consistency of state energy agencies' regulatory methods and schedules; coordinate application processing by those agencies; and assist an applicant in mediating agency processing schedules regarding applications involving the same project.

Energy development and usage

- Requires the DOD to assist in developing facilities and technologies for the increased, environmentally sound use of renewable energy and Ohio coal, oil, and gas; assist developers and manufacturers in the commercial availability of fuel cells in Ohio; and assist developers of energy production, transportation, and transmission facilities in obtaining state and local incentives.

- Requires each state agency to seek ways to improve the energy efficiency of all of its owned or leased facilities and ensure best available, economically reasonable energy-efficient measures and energy-efficient products in agency projects.

Air quality funding

- Authorizes Ohio Air Quality Development Authority (OAQDA) funding for an air quality facility that promotes air contaminant reduction through the use of renewable energy as a primary energy source, an air quality project for which the DOD authorizes the use of money in the continuing Energy Efficiency Revolving Loan Fund, or any structure or equipment used solely in manufacturing an air quality facility.

Utility regulation

- Requires the PUCO to promote distributed electric generation and, upon request, assist a developer of such a facility to obtain federal and state authorizations.
- Requires the PUCO to work cooperatively to ensure mandatory reliability procedures for electric transmission; encourage procedural and rate transparency among transmission controlling entities and, ultimately, encourage and support control by a single entity; and provide for adequate wholesale electric market information by ensuring the consistency of federal and state oversight.
- Requires PUCO rules establishing a purchase-of-demand reduction program, an electric distribution service restoration program, and uniform interconnection procedures for distributed generation or other facilities connecting to an Ohio electric utility distribution system.
- Requires the PUCO to conduct an annual review of an electric utility's compliance with a PUCO order establishing or subsequently adjusting utility transition charges authorized under the Electric Restructuring Law.
- Authorizes the PUCO to award an amount up to treble damages against an electric, gas, or natural gas distribution utility for a violation of public utility law.
- Establishes a 90-day deadline for the issuance of a PUCO order pursuant to a complaint proceeding, and authorizes the PUCO to order a losing

electric or natural gas utility to pay a complainant's litigation costs and attorney's fees.

- Prohibits the PUCO from approving a stipulation signed by fewer than all the intervenors in a proceeding unless all intervenors had a reasonable opportunity to participate.
- Establishes prohibitions concerning utility offers of electric generating capacity and concerning service advertisements by a supplier affiliate of an electric utility.
- Authorizes customer-initiated electronic measurement or electronic pulse and telemetry of its electric or natural gas service.
- Requires natural gas meter readings monthly, November through April, upon customer request.

Facility siting

- Redefines which gas, natural gas, and electric transmission facilities are "major utility facilities" that are subject to Power Siting Law, and replaces with a statutory definition PSB authority to define a "substantial addition" to a major utility facility.
- Establishes a state power siting policy with the objectives of issuing agency final determinations on a major utility facility project within applicable statutory periods, but not exceeding 180 days, and specifies an order of siting priority relative to certain types of land uses.
- Changes various filing and procedural requirements relative to applications and amended applications for, and amendments to, a PSB certificate.
- Expresses PSB authority as to only the location and construction of a major utility facility, and specifies the authority of the Environmental Protection Agency (EPA) as to a facility's operation.
- Requires a PSB decision on a distributed electric generation facility within 90 days after an application's filing date and within nine months in the case of any other major utility facility.

- Removes the PSB chairperson's, but retains the PSB's, authority to suspend activity under a certificate if there is a complaint against the certificate holder, and modifies the criminal penalty that is applicable to Power Siting Law violations.

Tax credits

- Authorizes a nonrefundable corporation franchise tax credit for purchaser taxpayers that locate and use "energy-efficient technology" at industrial or commercial sites in Ohio and for taxpayer partners, members, or shareholders of or investors in a pass-through entity that is such a purchaser, and redefines "net income" in Corporation Franchise Tax Law relative to such technology.
- Beginning in tax year 2005, authorizes a nonrefundable corporation franchise tax credit for any taxpayer that produces a household "energy-saving device" that is wholly or partly made or assembled in Ohio.

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CONTENT AND OPERATION

Overview

Existing Electric Restructuring and Natural Gas Laws (R.C. Chapters 4928. and 4929.) each contain expressions of state policy regarding the services and suppliers covered by those Laws. The bill articulates an overarching state energy



policy pertaining to a wider array of energy resources and energy production and delivery issues. It also makes changes to specific aspects of state energy regulation by modifying the authority of various state agencies that deal with energy issues, including the Department of Development (DOD), Ohio Air Quality Development Authority (OAQDA), Public Utilities Commission (PUCO), and Power Siting Board (PSB). Additionally, it makes changes to Ohio tax law to provide corporation franchise tax credits relative to certain energy-efficient technology and energy-saving devices.

State energy policy

Bill's policy statement

(R.C. 156.15(A))

The bill articulates a state energy policy that has 11 objectives as follows: (1) ensure the availability and accessibility to consumers of adequate, diverse, flexible, reliable, affordable, and globally competitive energy in Ohio, (2) ensure adequate electric generation and promote development of diverse energy supplies throughout Ohio, including, but not limited to, biomass, ethanol, fuel cell,¹ solar, soy diesel, wind energy, and nuclear energy, (3) encourage cogeneration² and distributed generation³ by removing barriers in the rate schedules of electric distribution utilities, and promote ease of access to that electricity by transmission and distribution lines, (4) provide flexible, streamlined, and cost-efficient regulatory treatment and expedited permitting for energy production, transportation, and transmission facilities, (5) ensure adequate, accessible, reliable, safe, and affordable means of energy transportation and transmission to persons in Ohio, (6) promote through the most cost-equitable and cost-effective measures the improvement and upgrading of the electric transmission grid serving Ohio, (7) ensure that electric transmission owners participate in an appropriate, regional

¹ A fuel cell is a battery-like device that uses hydrogen and oxygen as energy resources to generate electricity and heat.

² "Cogeneration" is not defined in the bill, but generally refers to a generating facility that produces both electricity and another form of useful thermal energy, such as heat or steam, used for industrial, commercial, heating, or cooling purposes.

³ "Distributed electric generation" is not defined in the bill, but generally refers to a system using small generators located on a utility's distribution system for the purpose of meeting local (substation level) peak loads or displacing the need to build additional, or upgrade, local distribution lines. With the advent of small (less than 100 kw) microturbine generators, distributed generation is beginning to include customer- or marketer-owned capacity for single load customers or small groups of customers.

transmission entity and advance reliability standards that are consistent with national standards, (8) consistent with reasonable land use and environmental policies, consonant with reasonable use of land and water resources, and considering available technology and the economics of available alternatives, support natural gas and oil exploration in Ohio, including, but not limited to, exploration on state-owned lands, and encourage oil and gas refining in Ohio, (9) recognize that nuclear oversight is properly a federal matter and not one that requires additional state regulation, (10) promote energy efficiency, conservation, and renewable energy programs, including, but not limited to, programs related to hydro, wind, and solar energy, and (11) encourage the production and use of energy-efficient products.

Energy policy historically

While a number of state agencies carry out statutorily imposed duties relating to energy, Ohio statutes do not contain a comprehensive energy policy statement. In 1974, a Task Force on Energy, commissioned by then-Lieutenant Governor John Brown in part to recommend a coordinated state energy policy, issued a report with recommendations on specific energy issues. In 1994, the Ohio Energy Strategy Task Force created by then-Governor George Voinovich pursued an interagency and public information-gathering process that resulted in the PUCO and numerous other state agencies, together with the Ohio House of Representatives, formulating a state energy policy and identifying initiatives and strategies to implement the policy. In April 2002, the House Public Utilities Committee and House Energy and Environment Committee combined as the House Energy Policy Committee to evaluate the state's energy resources and delivery systems. The Committee issued a report of recommended changes to specific policies early in 2003.

State agency duties

Generally (R.C. 156.15(B), (C), and (D)). The bill requires each department, bureau, institution, agency, board, commission, and office of state government (state agency)--with particular direction to the PUCO, PSB, DOD, Department of Natural Resources (DNR), and Environmental Protection Agency (EPA)--to implement the state energy policy established under the bill in carrying out their agency obligations under Ohio law. Additionally, it requires the PUCO and the PSB to be consistent with the state energy policy when following the existing statutory policy regarding competitive retail electric service and the bill's new policy on major utility facility siting, respectively (see "**Major utilities facilities and the PSB**," below).

The bill additionally requires each state agency to submit an annual report to the Governor and the General Assembly regarding the steps it has taken to

implement the state energy policy. The report may be filed with the Governor as part of the annual reports otherwise required of the PUCO, DNR, DOD, EPA, or Department of Transportation (ODOT) (R.C. 121.18 and 149.01). Any report to the General Assembly must be provided in accordance with existing law regarding the dissemination of such reports (R.C. 101.68).

Each state agency also must seek ways to improve the energy efficiency of all of its owned or leased facilities and ensure that the best available, economically reasonable energy-efficient measures are taken, and energy-efficient products installed, in every project that is wholly or partly funded by or under its control.

Department of Development (R.C. 122.04(I), 122.10, 156.15(E), and 4905.77(C)). The bill charges the DOD with the duty to promote and coordinate the state energy policy. In that role, the DOD must recognize and promote the policy as a key element of economic development and job creation in Ohio and coordinate the implementation of the policy by each state agency. Under an existing law requiring the DOD and other state agencies to furnish information upon request and requiring the DOD to coordinate its services and activities with those of other agencies, the bill adds state boards to the list of such other agencies.

Additionally, the bill replaces with several expanded energy duties a current requirement that the DOD assist in the development of facilities and technologies leading to increased and environmentally sound use of Ohio coal. Under the bill, the DOD must assist in the development of facilities and viable technologies that will lead to increased and environmentally sound use of biomass, ethanol, hydro, soy diesel, solar, wind, and other renewable energy sources and of Ohio coal, oil, and gas, and it must assist developers and manufacturers of fuel cells and fuel cell components to make their products commercially available in Ohio.

The DOD also must assist developers of energy production, transportation, or transmission facilities in obtaining state and local incentives. And, upon request, it must act as an ombudsperson with departments, bureaus, institutions, agencies, boards, commissions, and offices of state or local government to facilitate the development and the transportation or transmission of adequate, reliable, affordable, and globally competitive energy in Ohio.

Additionally, the DOD must promote the use of collaborative processes and programs and encourage the assistance of entities such as the State Review of Oil and Natural Gas Environmental Regulations, Inc.,⁴ to improve the consistency of

⁴ *The State Review of Oil and Natural Gas Environmental Regulations, Inc., is described on its web site as a "non-profit, multi-stakeholder organization whose purpose is to assist states in documenting the environmental regulations associated with the exploration, development and production of crude oil and natural gas." Review teams consisting of*

regulatory methods and schedules among the state agencies that have jurisdiction over energy issues.

Further, upon request of an applicant, the DOD must coordinate the processing of an application made to the PSB, EPA, DNR, and ODOT and the processing of an application made by a developer of distributed generation to the EPA and DNR. Also upon request, the DOD must assist the applicant in mediating with the applicable agencies if the applications involve the same project and processing schedules are not consistent with an expeditious application process or if the requirements conflict with or overlap one another. The Director of Development must seek the assistance of the Office of the Governor to resolve any impasse in a dispute.

Finally, the bill prohibits the PUCO from authorizing any amount in electric rates or charges, including any surcharge or rider, for wholly or partly funding any of the DOD duties described above regarding facilities, technologies, or applications.

Energy regulation

Air quality facilities

(R.C. 3706.01)

Current air quality law provides for the issuance of state revenue bonds and the related award of grants or bans by the OAQDA for the installation of a process or property that qualifies as an "air quality facility." Included within the definition of that term are: (1) any method, any modification or replacement of property, or any process, device, structure, or equipment that removes, reduces, prevents, contains, alters, conveys, stores, disperses, or disposes of air contaminants or substances containing contaminants or that renders less noxious or reduces the concentration of contaminants in the ambient air, and (2) all or part of any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste resulting from anything named in item (1).⁵ The

representatives from the oil and gas industry, state environmental regulatory programs, and environmental/public interest groups review state oil and gas waste management programs against a set of guidelines developed and agreed to by all the participating parties. Additional information about the organization is available at <http://www.strongerinc.org>.

⁵ *Not affected by the bill, but also qualifying as "air quality facilities" are motor vehicle inspection stations and equipment used to comply with Ohio law and ethanol and other biofuel facilities and equipment (R.C. 3706.01(G)(2) and (3)).*

bill specifies that the contaminant or other pollution control activities described in items (1) and (2) can occur "prior to, during, or after the combustion of any energy source."

Also qualifying as an air quality facility is any property, device, or equipment that promotes air contaminant reduction through energy efficiency or conservation or, under language added by the bill, through the use of renewable energy as a primary energy source. "Renewable energy" is defined under the bill as energy produced from biofuel⁶ or wind, solar, or geothermal resources. The bill additionally specifies as an air quality facility any air quality project⁷ for which the Director of Development authorizes the use of money in the Energy Efficiency Revolving Loan Fund created under the Electric Restructuring Law.

Further, current law specifies that an air quality facility includes any property or system wholly or partly used for any qualifying air quality facility regardless of whether another purpose also is served as well as any property or system incidental to or having to do with, or the end purpose of which is, any qualifying air quality facility. The bill adds to these specifications of an air quality facility any structure or equipment used solely for the manufacture of a qualifying air quality facility.

PUCO authority

Wholesale market (R.C. 4905.77(A) and (B)). The bill specifies certain activities regarding reliability and supply in the wholesale electric market that the PUCO must undertake to promote a well-functioning competitive retail market. One such duty is that it must promote the construction of distributed electric generation facilities in Ohio and, upon the request of a developer of such a facility, assist the developer in obtaining necessary federal and state authorizations.

The PUCO also must work cooperatively with the Federal Energy Regulatory Commission (FERC), other states, and any entity controlling electric

⁶ "Biofuel" is defined under current law as any fuel made from cellulosic biomass resources, including renewable organic matter, crop waste residue, wood, aquatic plants and other crops, animal waste, solid waste, or sludge, and that is used for the production of energy for transportation or other purposes (R.C. 3706.01(T)).

⁷ Under continuing law, an "air quality project" is any air quality facility, including any undivided or other interest, acquired or to be acquired, or constructed or to be constructed, by OAQDA or by another governmental agency or person with all or part of the cost paid from an OAQDA loan or grant. The term includes all buildings and facilities, and all property, rights, easements, and interests, necessary for the project's operation.

transmission facilities in Ohio to: (1) ensure that such an entity is subject to mandatory reliability procedures, (2) encourage and support the establishment of a single entity to control all electric transmission facilities in Ohio and, until that time, encourage among all such entities transparency in their procedures and rates so that users of those entities' services have the benefits of a single organization, and (3) provide for the adequacy of information regarding the wholesale electric market by ensuring that federal and state oversight policies are consistent and complementary and by providing on the PUCO's web site the most recent information, updated at least bimonthly, about PUCO and federal efforts to stimulate a competitive wholesale electric market.

Additionally, the PUCO similarly must cooperate to adopt rules under the Electric Restructuring Law (R.C. 4928.06) establishing uniform interconnection procedures for distributed generation or other facilities that connect to an Ohio electric utility distribution system, including, but not limited to, rules addressing the determination of fee schedules, the need for impact studies, and timelines for the interconnection process. Initial rules must be adopted within 120 days after the bill's effective date.

The PUCO rules also must provide for the implementation of a purchase-of-demand reduction program under which electric consumers may opt to reduce load consumption and the demand reduction is resold on the wholesale electric market. The rules must address barriers to the program within the PUCO's jurisdiction such as barriers arising under intrastate rate schedules.

Further, the rules must implement a fair and equitable program, to be undertaken by every electric distribution utility and entity controlling electric transmission facilities in Ohio, for service restorations to electric distribution service customers in the event of a widespread, involuntary interruption of electric service. Those rules must take into account public health and safety, including the need to restore service to customers that provide products and components for critical infrastructure services, including, but not limited to, telecommunications, water, and fuel. The program must require reasonable, advance customer notice of service restoration, including notice that takes into account the potential for surges and fires to the facilities of certain commercial or industrial customers if power were restored suddenly without that notice.

Sale of generation (R.C. 4905.771). The bill prohibits an electric utility⁸ or its affiliate from making any offer of generation capacity except on a

⁸ "Electric utility," "electric services company," "governmental aggregator," and "retail electric service" have the same meanings as in the Electric Restructuring Law (R.C. 4928.01(A)(9), (11), (13), and (27)).

comparable and nondiscriminatory basis and simultaneously to all electric services companies and governmental aggregators on a first-come, first-serve basis. The prohibition applies only while the electric utility: (1) is authorized to receive generation-related transition charges under its transition plan approved pursuant to the Electric Restructuring Law and in effect on December 31, 2003, or (2) is authorized to receive, beyond the date or dates authorized in that transition plan and pursuant to such authority as otherwise may be conferred by law, any revenues or equivalent revenues based on, equal to, equivalent to, related to, or reflective of such authorized, generation-related transition charges. The utility or affiliate must post each such offer of generation capacity on a publicly accessible web site.

Regarding retail sales, the bill establishes a requirement regarding any advertisement made through any medium regarding the generation service component of retail electric service supplied by a utility affiliate. Specifically, it prohibits an electric utility or affiliate from failing to include or failing to cause to be included in the advertisement a clear and conspicuous statement that "[name of the supplier affiliate] is not [name of the electric utility], and taking electric generation service from [name of the supplier affiliate] is not the same as taking that service from [name of the electric utility]."

A violation of the generation capacity prohibition or the advertising prohibition is subject to enforcement by the PUCO as a violation of corporate separation requirements under the Electric Restructuring Law.⁹

Electric transition charges (R.C. 4905.77(B)(3)). Current law authorizes the PUCO to conduct a review, not more often than annually, of a utility's transition charges and, as necessary, adjust the charges in accordance with the law; the adjustment may reflect changes in the relevant market (R.C. 4928.40(B)(1)). The bill requires the PUCO to conduct an annual review of the compliance of each electric utility with any PUCO order establishing or subsequently adjusting transition charges for the utility pursuant to authority under the Electric

⁹ *Applicable PUCO enforcement authority appears in R.C. 4928.18, unchanged by the bill. Accordingly, in addition to any remedies otherwise provided by law, the PUCO can issue a compliance order, modify a PUCO order as appropriate, suspend or abrogate all or part of a PUCO order, or require that the utility or affiliate pay restitution. Depending on the severity and source of the violation or any pattern of violations, the PUCO also may impose a forfeiture of up to \$25,000 per day. Regarding a violation by a utility relating to a corporate separation plan involving competitive retail service, the PUCO can suspend or abrogate all or part of an order authorizing transition revenues for the utility. Also, an injured party has a right to sue the utility or affiliate for treble damages.*

Restructuring Law (R.C. 4928.40(A) or (B)) and, upon concluding the review, make its findings available to the utility, and simultaneously to the general public, immediately, but not later than March 31 following the calendar year in which the review was initiated.

Electric and gas treble damages (R.C. 4905.61). Current law authorizes a court to award treble damages to a party that brings suit against a public utility or railroad that the PUCO has found in violation of specified public utility law. It states that such an award does not affect a recovery by the state of any authorized penalty against the utility or railroad. For any of those same violations (except a violation of unauthorized switching of a natural gas provider by a public utility), the bill adds to that court authority PUCO authority to award an aggrieved person an amount not to exceed treble damages against a public utility providing noncompetitive electric, gas, or natural gas service.¹⁰ Such an award by the PUCO expressly precludes an award by a court.

Electric and gas complaint proceedings (R.C. 4905.26 and 4905.261). Current law authorizes any person to file, or the PUCO to initiate, a complaint proceeding against a public utility for specified purposes such as a utility charging an unreasonable rate or providing discriminatory service, and it also authorizes a public utility to initiate a complaint as to any matter affecting its products or services. The bill newly sets a deadline for the PUCO to issue a final order in such a proceeding. The PUCO must issue the order not less than 90 days after the complainant's filing unless the complainant waives this requirement. In the case of a proceeding that the PUCO initiates, it must issue a final order within 90 days after initiation unless that requirement is waived by agreement of a majority of the parties to the proceeding.

Additionally under the bill, upon the conclusion of a complaint proceeding in which one or more respondents are public utilities that supply noncompetitive electric, gas, or natural gas service and in which the finding is in favor of the complainant, the PUCO must order the utility respondent or respondents to pay the complainant's reasonable litigation costs and all attorney's fees. The bill prohibits

¹⁰ *The bill excepts a violation of the prohibition against the unauthorized switching of a public utility customer's natural gas service. Under current law unchanged by the bill, the PUCO has authority to order a number of remedies for such an aggrieved consumer, including making the consumer whole for any bonuses or benefits the consumer would have earned, absolving the consumer of any liability for charges illegally assessed, refunding charges collected or fees paid, and reimbursing any costs incurred as a result of the switching or the resumption of the consumer's service (R.C. 4905.73(B)).*

any rate, rental, or charge of the public utility from including any amount so paid. There are no comparable provisions in current law.¹¹

Stipulations generally (R.C. 4903.221). Stipulations, sometimes referred to as settlements or settlement agreements, often are the outcome of public utility proceedings before the PUCO. They require PUCO approval to take effect. The bill prohibits the PUCO from approving any stipulation signed by fewer than all the intervenors in a proceeding unless it first determines that the applicant gave all the other intervenors a reasonable opportunity to be present and participate at each session at which the stipulation was discussed and negotiated and, if the PUCO staff is a signatory to the stipulation, the staff apprised all the intervenors in the proceeding that discussion and negotiations were occurring.

Electronic gas and electric measurement

(R.C. 4933.171)

The bill authorizes a customer, at its own expense, to provide for electronic measurement or electronic pulse and telemetry, or both, of its electric or natural gas service if the equipment installed meets industry standards. The electric or natural gas company must permit a customer, at the customer's expense, to install an additional meter or substitute meter at the customer's premises, provided that the installation meets national electric code standards. The customer must give at least 14 days' notice to the utility prior to the installation. The bill specifies that, once the equipment is installed, whether by the customer or the electric or natural gas company, the electronic readings are the official readings for billing purposes. Further, the bill requires that a customer have real-time access to the information and data used to calculate any such electronic measurement or electronic pulse and telemetry. There are no comparable provisions in current law.

Gas meter readings

(R.C. 4905.76)

The bill prohibits a natural gas company that is a public utility from failing to read a retail customer's meter monthly, November through April, if the company has received a request from the customer for such a monthly reading.

¹¹ However, as to PUCO investigative costs, under current law unaffected by the bill, a utility found to be at fault after a PUCO investigation must pay the PUCO's investigative expenses. Further, all fees, expenses, and costs of a hearing or investigation may be imposed by the PUCO on any party to the proceeding or divided among parties in such proportion as the PUCO determines (R.C. 4903.24).

Currently, pursuant to a PUCO order issued in a complaint case,¹² there is a legal requirement of an annual meter reading. The requirement is included in each natural gas utility's tariff filing with the PUCO. Reportedly, some natural gas utilities serving rural customers may read meters only once a year, but most utilities as a matter of practice read meters every two months.

Major utility facilities and the Power Siting Board

"Major utility facility" (R.C. 4906.01(B) and 4906.05). The Power Siting Law, unchanged by the bill, defines "major utility facility" as including an electric generating plant and its associated facilities if the plant is designed for or capable of operation at a capacity of 50 megawatts (MW) or more. Also defined as a major utility facility is an electric transmission line and its associated facilities if the line has a design capacity of 125 kilovolts (kv) or more.

As to electric transmission lines, the bill narrows which lines are to be classified as major utilities facilities. Under the bill, a 125 kv or more electric transmission line and associated facilities are a major utility facility only if the line and facilities are located outside an existing electric transmission right-of-way. However, a 346 kv or more line and associated facilities are a major utility facility only if located within an existing electric transmission right-of-way.

A gas or natural gas transmission line and its associated facilities are considered a major utility facility under current law if the line is designed for or capable of transporting gas or natural gas at pressures exceeding 125 pounds per square inch. The bill narrows this classification so that only such a gas or natural gas transmission line nine inches or greater in outside diameter is a major utility facility.

Additionally, among facilities expressly excluded under current law as major utility facilities are gas or natural gas transmission lines over which a federal agency has exclusive jurisdiction. The bill changes this exclusion by specifying that it covers gas or natural gas transmission lines over which a federal agency has permitting authority.

The bill also removes PSB authority to define what constitutes a "substantial addition" to a major utility facility already in operation. Such an addition, under current law, requires a PSB certificate. Instead, the bill defines "substantial addition" in statute as being: (1) an improvement or addition that

¹² *In the Matter of the Complaint of Marcella Fallucco, Complainant, v. The East Ohio Gas Company, Respondent, Case No. 84-361-GA-CSS (June 4, 1985); rehearing denied July 23, 1985.*

increases the capacity of an electric generating plant and associated facilities by 50 MW or more, or (2) an improvement or addition to an electric, gas, or natural gas transmission line and associated facilities that requires an increase of ten feet or more in the width of the permanent right-of-way.

State siting policy (R.C. 4906.011). The bill establishes a new state policy that applies to the siting of major utility facilities by the PSB as well as various approvals by other state agencies. The first objective of the policy places a general time limit on final determinations for state agency approvals of major utility facility applications. Specifically, the bill states that it is state policy to ensure, with the assistance of the Director of Development, interagency consistency in authorization requirements and processing procedures for applications so that applicants that timely file applications regarding a major utility facility with the PSB, EPA, DNR, and ODOT receive consistent, final determinations within the period otherwise established under their respective enabling statutes, but not to exceed 180 days.

Secondly, the bill states that it is state policy to promote, to the extent feasible and consistent with economic and engineering considerations and protection of the environment, the use of the following corridors, in the stated order of priority, when siting electric transmission lines qualifying as major utility facilities: (1) existing utility corridors, (2) highway and railroad corridors, (3) recreational trails to the extent that the line or associated facilities can be constructed below ground and in a manner that does not significantly adversely impact environmentally sensitive areas, and (4) new corridors.

Required applications for and amendments to PSB certificates (R.C. 4906.05 and 4906.06(B)(2) and (F)(2)). Under current law unchanged by the bill, an individual, corporation, business trust, association, estate, trust, or partnership, any officer, board, commission, department, division, or bureau of the state or a political subdivision, or any other entity that desires to construct a major utility facility in Ohio must first receive a certificate from the PSB. The certificate is obtained by filing an application. Current law and the bill also authorize the filing of an amended application as well as an application for an amendment to a certificate already issued by the PSB.

Under current law, the PSB must hold a public hearing on an amendment to a certificate if two criteria are met (R.C. 4907.07(C)). The bill removes this hearing requirement and also applies the criteria to a different purpose. That is, the bill prohibits the PSB from requiring an amended application or an amendment to a certificate unless a proposed change in the major utility facility would result in: (1) a material increase in the facility's environmental impact, or (2) a substantial relocation of all or part of the facility from its respective proposed or existing site. Further, an amendment to a certificate must be amended and refiled

only in the case of a substantial relocation of all or part of the facility to a site other than one set forth in the pending amendment.

Similarly under the bill, an amended application for a PSB certificate must be filed only if a proposed change in the major utility facility would result in: (1) a material increase in the facility's environmental impact, or (2) a substantial relocation of all or a portion of the facility to a site other than one set forth in a pending application for a certificate.

The bill also removes provisions in current law that exempt from siting certification any major utility facility already under construction during the two-year period beginning October 23, 1972, or in operation on that date and that state that the exemption does not extend to requirements of other state or local laws.

Application information requirements (R.C. 4906.06(A)). Under existing law, an amendment to a certificate must be in the form and contain the information that the PSB requires. However, current law specifies the inclusion of certain information in an application for a certificate. Among that information is a summary of any studies made of the environmental impact of the facility. The bill modifies this requirement so that the summary focuses on the environmental impact of the construction of the facility.

Another information requirement is a statement explaining the need for the facility. The bill requires such a statement only if the facility is an electric, gas, or natural gas transmission line.

Additionally, current law requires a statement of how a facility fits into an applicant's long-term supply and demand forecast filed with the PUCO. The bill requires this statement only if the applicant is a public utility as defined in public utility law (R.C. 4905.02).

Under current law, the PSB can specify other information to be included in an application. The bill, however, provides that any applicant that does not have the power to appropriate private property cannot be required to submit information regarding alternative sites.¹³ Additionally, a nonutility applicant cannot be required to provide in the application information reported under the Uniform System of Accounts prescribed by the FERC or information considered to be a trade secret unless the PSB protects the trade secret information from disclosure.

¹³ Am. Sub. S.B. 3 of the 123rd General Assembly, which enacted the *Electric Restructuring Law*, eliminated the power of appropriation for construction of an electric generating facility (R.C. 4933.14 and 4933.15).

Application filing period and filing date (R.C. 4906.06(A) and 4906.07(A)). The bill removes a provision of current law prescribing when a certificate application can be filed. Currently, an application can be filed not earlier than one year nor more than five years before planned construction although the PSB may waive this limitation for good cause shown.

Additionally, the bill specifies that the filing date of an application for a PSB certificate is the date that notice of a complete application is sent to the applicant as described in "**Completeness determinations**," below. Further, the filing date of an amendment to a certificate is the date on which the amendment is first filed with the PSB.

Completeness determinations (R.C. 4906.06(B)(1)). New to the Power Siting Law are the bill's provisions regarding a completeness determination for each application for a PSB certificate. The bill requires the PSB's chairperson or the chairperson's designee to determine whether the application contains all the application information specified in the Law. The determination must be made within 30 days after receipt of the application, and the chairperson or designee immediately must send written notice of the determination to the applicant. The notice must identify specific reasons why an application is incomplete. Under the bill, an applicant has 30 days after the receipt of a notice of an incomplete application to resubmit the application.

Application notifications (R.C. 4906.06(C), (D), and (F)(1)). The bill adds a time limit of seven business days after the receipt of a notice of a complete application to current law's requirement that an applicant serve a copy of the application on chief executive officers of area municipal corporations and the county as well as on each area public agency that is required to protect the environment or plan land use. Also under the bill, newspaper notice must be published within 15 business days after the receipt of a notice of a complete application rather than within the current 15 days. Further, the bill removes current law's requirement that the newspaper notice be for persons residing within the jurisdictions of the cities and county served notice as described above and, instead, requires that the publication be in newspapers of general circulation in the area of the proposed facility. Notice of the filing of an amendment to a certificate application also must be given to government officials and the public in the modified manner described above for an application for a certificate.

Hearings and PSB order deadlines (R.C. 4906.07(B), (C), and (D)). Current law requires the PSB, not less than 60 or more than 90 days after receipt of an application for a certificate, to fix a date for a public hearing. The bill requires a hearing not less than 60 or more than 90 days after the filing date of the application or amendment to a certificate (see "**Application filing period and filing date**," above). The notice sent to an applicant of a complete application or



amendment (see "Completeness determinations," above) must include the date and location of the hearing. The bill removes a requirement in current law that the PSB hold a public hearing on an amendment to a certificate if the proposed change in the major utility facility would result in any material increase in any environmental impact of the facility or a substantial relocation of all or part of the facility other than as provided in the alternates set forth in the amendment (see "Required applications for and amendments to certificates," above).

If an application for or amendment to a certificate is for a distributed electric generation facility, the bill requires the PSB to issue a final order within 90 days after the application's or amendment's filing. In the case of an amended application, a final order must be issued within the later of 90 days after the application's or amendment to a certificate's filing or 30 days after the filing date of the amended application. For any other major utility facility, the PSB must issue a certificate within nine months after the filing of an application or amendment or, in the case of an amended application, within the later of that nine-month date or three months after filing.

Parties to a certification proceeding (R.C. 4906.08(A) and (D)). Current law authorizes all of the following to be a party to a certification proceeding: (1) the applicant, (2) each person entitled to service of a copy of the application for or amendment to a certificate if the person has filed a notice to intervene within 30 days after the date of service, and (3) any person residing in a municipal corporation or county entitled to receive service of a copy if the person has filed a petition to intervene within 30 days after newspaper notice of the application or amendment and if the petition has been granted by the PSB for good cause shown. The bill modifies item (3) by allowing as a party any person that files a petition to intervene, within 30 days after the requisite newspaper notice of the application's filing, if the PSB determines either that there is a federal or Ohio statute conferring on the person the right to intervene or that the person is so situated that the disposition of the proceeding may impair or impede the person's ability to protect a real and substantial interest of the person that is not adequately represented by other parties. Further, the bill newly requires that representatives of an applicant have the opportunity to respond by sworn testimony to issues raised during a PSB hearing.

Approval standards for a certificate (R.C. 4906.10(A)(2), (3), and (6)). Current law specifies eight findings that the PSB must make in order to grant a certificate under the Power Siting Law. The requirement that the PSB determine the nature of the facility's probable environmental impact is modified by the bill to require, instead, a determination of the nature of the probable environmental impact of constructing the facility on the proposed site (a change apparently

related to the change described in "Application information requirements," above).

The requirement that the PSB determine that the major utility facility represents the minimum adverse environmental impact, considering available technology and the nature and economics of alternatives, and other pertinent considerations, is modified by the bill so that the PSB makes this determination as to the location and construction of the facility only. The bill also adds to the current requirement of a determination that the facility serve the public interest, convenience, and necessity the requirement of a determination that the facility complies with state power siting policy (see "State siting policy," above).

Scope of a certificate and PSB jurisdiction (R.C. 4906.04, 4906.10(A), 4906.13, and 4906.14). Under current law, the PSB may grant or deny a certificate or an amendment to a certificate or may grant it upon such terms, conditions, and modification of the construction, operation, or maintenance of the major utility facility as the PSB considers appropriate. Current law also requires that a major utility facility must be constructed, operated, and maintained in conformity with its PSB certificate. The bill modifies that facility requirement and PSB authority to specify that the PSB may condition or modify a certificate or amendment as to the location and construction of a facility and that the facility must be located and constructed in conformity with its certificate. The bill also changes a statute authorizing interstate agreements regarding the construction--but no longer the operation and maintenance--of major utility facilities.

The bill retains a mandatory approval standard that a major utility facility comply with Ohio water consumption, "tall towers," air pollution, water pollution, and solid and hazardous waste laws. However, it removes provisions that define a facility's period of initial operation and that expressly subject the facility during that time to enforcement and monitoring by the EPA for compliance with state air pollution, water pollution, and solid and hazardous waste laws and to EPA-issued, conditional operating permits. The bill also modifies a provision of current law stating that, after the expiration of the period of initial operation, a facility is under the EPA's jurisdiction and must comply with all air pollution, water pollution, and solid and hazardous waste disposal laws; specifically, the bill subjects a facility to EPA jurisdiction and such compliance upon commencement of commercial operation of the facility.

The bill additionally changes provisions of current law that limit other regulation of a major utility facility. Specifically, it modifies a general prohibition against a public agency or political subdivision requiring any approval, consent, permit, certificate, or other condition for the construction or initial operation of a major utility facility so that the prohibition extends to the construction or operation of a facility. Also, the bill modifies an exception in current law that authorizes

state employee protection laws and municipal regulations to be applied to a major utility facility, except those pertaining to a facility's location or design or to pollution control and abatement standards. Under the bill, such prohibited municipal regulations are those pertaining to a facility's location, design, or construction and pollution control and abatement standards.

PSB enforcement authority (R.C. 4906.97). Current law authorizes the PSB or its chairperson, after notice and opportunity to respond, to suspend any activity that is the subject of a complaint to the PSB, for the duration of the PSB's consideration of the complaint, and authorizes the chairperson to terminate a suspension if the party against which the complaint was filed shows that all matters have been addressed satisfactorily. The bill removes the chairperson's authority to suspend activity, but retains his or her authority to terminate a suspension.

Violations and penalties (R.C. 4906.98 and 4906.99). Current law specifies three prohibited practices: (1) willfully constructing a major utility facility without first obtaining a PSB certificate, (2) willfully constructing, operating, or maintaining a major utility facility other than in compliance with its certificate, and (3) willfully failing to comply with a PSB order or activity suspension. The bill changes item (2) by removing the activities of operating and maintaining a facility and by referring to the willful construction of a facility. It also removes the standard of willfulness as it pertains under current law to items (1) and (3). As to the criminal penalty itself, the bill removes the option of imprisonment for up to one year, but retains the fine for a violation of any of the three prohibitions (\$1,000 to \$10,000 per day, per violation).

PSB staff (R.C. 4906.02). Under current law unchanged by the bill, the chairperson of the PUCO is the chairperson and chief executive officer of the PSB. Current law requires the PSB chairperson to keep a complete record of PSB proceedings, issue certain documents, maintain files, conduct PSB investigations, and perform other duties that the PSB prescribes. The bill authorizes the PSB chairperson to have a designee perform those duties.

Current law retained by the bill authorizes the PUCO chairperson to assign or transfer duties among PUCO staff, but affirms that the PSB's authority to grant siting certificates lies only with the PSB itself. The bill expressly authorizes the PUCO chairperson to designate which PUCO staff will serve as PSB staff and also specifies that authority to participate in state and federal proceedings lies only with the PSB.

Energy-related tax credits

Energy-efficient technology purchaser tax credit

(R.C. 5733.04(I)(17)(d) and (S), 5733.47, and 5733.98(A)(30))

The bill authorizes a nonrefundable credit against the corporation franchise tax liability of a taxpayer for installations of "energy-efficient technology." That term is defined under the bill as any property designed, constructed, or installed for use at an industrial or commercial plant or site for the primary purpose of improving the efficiency with which energy is generated, distributed, used, or consumed, including, but not limited to, an energy conversion facility, solid waste energy conversion facility, thermal efficiency improvement facility,¹⁴ or cogeneration facility.

Specifically, the credit is authorized for a taxpayer that purchases,¹⁵ on or after January 1, 2004, new energy-efficient technology that the taxpayer locates

¹⁴ *An "energy conversion facility" is any property or equipment designed, constructed, or installed after December 31, 1974, for use at an industrial or commercial plant or site for the primary purpose of converting fuel or power usage and consumption from natural gas to an alternate fuel or power source other than propane, butane, naphtha, or fuel oil; or from fuel oil to an alternate fuel or power source other than natural gas, propane, butane, or naphtha.*

A "solid waste energy conversion facility" is any such property or equipment so designed, constructed, or installed after that date, for such use, and for the primary purpose of converting solid waste into energy and using that energy for some useful purpose.

A "thermal efficiency improvement facility" is likewise any such property or equipment, for such use, and for the primary purpose of recovering and using waste heat or waste steam produced incidental to electric power generation, industrial process heat generation, lighting, refrigeration, or space heating.

(R.C. 5709.20(C), (D), (H), (I), (J), and (K).)

¹⁵ *Under section 179(d)(2) of the Internal Revenue Code, "purchase" means any acquisition of property, but only if: (1) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under specified tax law, (2) the property is not acquired by one component member of a controlled group from another component member of the same controlled group, and (3) the basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired or under specified tax law relating to property acquired from a decedent.*

and uses in Ohio. The credit also is allowed for a taxpayer that, during any portion of a pass-through entity's¹⁶ taxable year, is a partner, member, or shareholder of or investor in a pass-through entity that purchases energy-efficient technology that the entity locates and uses in Ohio.

The amount of the credit is 20% of the cost¹⁷ of the technology that is located and used in Ohio. The taxpayer must claim the credit for the taxable year in which use begins and in the order in which it appears in a statutory list of allowable corporation franchise tax credits, specifically, number 30 out of 34 possible tax credits. The bill allows any amount of the credit after any other credits preceding it in that specified order, and exceeding the amount of tax due, to be carried forward for ten taxable years, but the amount of the excess credit allowed in any year must be deducted from the balance carried forward to the next year.

Further, the bill provides that the credit available to a taxpayer or taxpayers in a controlled group¹⁸ may be allocated to a taxpayer or taxpayers in a combined

¹⁶ A "pass-through entity" is a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year or a partnership, limited liability company, or any other person, other than an individual, trust, or estate, if it is not classified for federal income tax purposes as an association taxed as a corporation (R.C. 5733.01(O)).

¹⁷ Under section 179(d)(3) of the Internal Revenue Code, the "cost" of property excludes such basis of the property as is determined by reference to the basis of other property held at any time by the person acquiring the property.

¹⁸ Under sections 179(d)(7) and 1563(a) of the Internal Revenue Code, a "controlled group of corporations" means any group of:

(1) One or more chains of corporations connected through stock ownership with a common parent corporation if: (a) stock with at least 50% of the total combined voting power of all classes of stock entitled to vote or at least 50% of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one or more of the other corporations, and (b) the common parent corporation owns stock with at least 50% of the total combined voting power of all classes of stock entitled to vote or at least 50% of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations;

(2) Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing: (a) at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation, and (b) more than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares

report¹⁹ in any amount elected for the taxable year by the group. Expressly, that election is revocable and amendable during the statutory period, unchanged by the bill, for filing corporation franchise tax refund applications. The bill also states that it does not limit or disallow pass-through treatment of a pass-through entity's income, deductions, credits, or other amounts necessary to compute corporation franchise taxes imposed and credits allowed.

Additionally, under current law, the definition of "net income," which is the basis for a taxpayer's corporation franchise tax liability, specifies, among other adjustments, an allowable adjustment to net income constituting an amount "added back" relating to depreciation expense. The amount includes the taxpayer's proportionate or distributive share of depreciation expense allowed to any pass-through entity of which the taxpayer has direct or indirect ownership. The bill, however, prohibits including any depreciation expense-related add-backs pertaining to depreciation expense allowed under federal tax law²⁰ and taken with respect to energy-efficient technologies.

of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation;

(3) Three or more corporations each of which is a member of a group of corporations described in item (1) or (2) and one of which: (a) is a common parent corporation included in a group of corporations described in item (1), and also (b) is included in a group of corporations described in (2); or

(4) Two or more insurance companies subject to taxation under section 801 of the Internal Revenue Code that are members of a controlled group of corporations described in item (1), (2), or (3). The insurance companies are treated as a controlled group of corporations separate from any other corporations that are members of the controlled group of corporations described in item (1), (2), or (3).

¹⁹ *"Combined report" refers to the authority of a taxpayer, under specified conditions, to combine its net income with the net income of other corporations for the purpose of calculating the taxpayer's corporation franchise tax liability (R.C. 5733.052).*

²⁰ *The bill specifically references section 168(k)--accelerated cost recovery for certain property acquired after September 10, 2001, and before January 1, 2005--and section 179 of the Internal Revenue Code--election to expense certain depreciable business assets.*



Energy-saving device producer tax credit

(R.C. 5733.48 and 5733.98(A)(31))

Beginning in tax year 2005, the bill authorizes a nonrefundable corporation franchise tax credit for any taxpayer that produces an energy-saving device that is wholly or partly made or assembled in Ohio. "Energy-saving device" is defined to mean any finished device ready for installation or use for home or household purposes and carrying the Energy Star label indicating it meets the energy efficiency criteria of the Energy Star Program established by the U.S. Department of Energy and the U.S. Environmental Protection Agency. Such a device specifically includes a washer, dryer, range, refrigerator, freezer, dishwasher, or trash compactor; a water heater, air conditioner, furnace, or other similar product used for regulating air or water temperature; an outside window or door; and a television or other appliance used primarily for home entertainment.

To claim the credit, the taxpayer must have received a written rebate request pursuant to a rebate program that it offers in Ohio. The request must provide an Ohio address to which the rebate is to be sent and be accompanied by proof of original,²¹ retail purchase²² in Ohio and a sales receipt or copy of that receipt indicating that the purchase was made within the taxable year at retail premises in Ohio.

The aggregate amount of the credit in any taxable year can equal 10% of the purchase price of every such device for which the taxpayer has received a written rebate request, exclusive of any tax or charge and as price is evidenced by the sales receipt for each device. The taxpayer must submit such information or certification that the Tax Commissioner determines is necessary to claim the credit.

The credit is to be claimed in the order in which it appears in the list of allowable corporation franchise tax credits, specifically, number 31 out of 34 possible tax credits. The bill allows any amount of the credit after any other credits preceding it in that specified order, and exceeding the amount of tax due, to be carried forward each tax year until fully used, but the amount of the excess credit allowed in any year must be deducted from the balance carried forward to the next year.

²¹ "Original" under the bill means for the purpose of first-time use (R.C. 5733.48(A)(2)).

²² "Purchase" here means the receipt of title and also includes receipt of the right to use by lease, bailment, or any other contract (R.C. 5733.48(A)(3)).

HISTORY

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