



Mary S. Connor

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 14**

126th General Assembly  
(As Introduced)

**Reps. J. Stewart, Kearns, Miller, Aslanides, Woodard, Webster, Ujvagi,  
Garrison, Hartnett, C. Evans**

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### **BILL SUMMARY**

- As part of the proceeding under current 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 current 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 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.

- Expressly does not affect any rate stabilization plan filed with the PUCO by an electric utility before November 1, 2004.
- Declares an emergency.

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## CONTENT AND OPERATION

### Background and current law

The Electric Restructuring Law enacted in 1999 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 market development period (MDP) lasting five years: that is, upon the December 31, 2005, expiration of special pricing provisions applicable to retail electric services supplied by the incumbent electric utilities (namely, a cap on the total amount an incumbent utility can charge for retail electric service, set at the pre-2001 level of the utility's rates; a 5% reduction in incumbent utility generation prices to residential customers; and receipt of transition charges by incumbent utilities).

Generally, then, under the Law, 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--in particular consumers who, for whatever reason, do not shop for their electricity supply--the Restructuring Law also establishes a post-MDP supply obligation for incumbent utilities. The nature of this supply obligation is the focus of the bill.

An incumbent utility's current post-MDP supply obligation is the duty to make available 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" (R.C. 4928.14(A)). It is an obligation directed at ensuring that there will be at least one supplier--the incumbent utility--that will provide consumers in the utility's distribution territory a firm supply of generation. The standard service offer must be filed with and approved by the Public Utilities Commission (PUCO) as an application for the establishment or change of a rate under current public utility law (R.C. 4909.18). Further, the Restructuring Law requires that the offer be "market-based." That term is not defined in statute 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 that provision, 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 statute 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." (R.C. 4928.14(B).)

While 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.

Rate stabilization currently is a PUCO/utility concept expressed as responding to the current state of the competitive generation market in Ohio. The bill codifies the concept, which was first articulated with respect to the earliest post-MDP, market-based standard service offer, one filed by the Dayton Power & Light Company and approved by the PUCO in 2003. In that case, based on its general view of the competitive market in Ohio, the PUCO encouraged other utilities to meet their post-MDP supply obligation also by filing "rate stabilization plans." The general policy underlying such plans is to stabilize rates for a few years after a utility's MDP (generally, through 2008) at the levels established for the MDP, although the policy, as implemented, does not altogether preclude rate increases during the period. To date, all incumbent utilities except Monongahela Power have received PUCO approval of rate stabilization plans that were filed before November 1, 2004, and were determined as fulfilling their post-MDP supply obligations. Each plan differs substantially in its individual details.

### **The bill**

#### **Remedy of rate stabilization**

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

As stated above, the bill expresses the concept of rate stabilization with respect to post-MDP supply obligations of incumbent utilities. By its terms,

however, the bill does not affect any rate stabilization plan filed with the PUCO by an electric utility before November 1, 2004.

Under the bill, the PUCO must take two actions if, upon a market evaluation during a post-MDP supply obligation proceeding, 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 the incumbent utility. First, the PUCO must encourage the utility to file a market-based standard service offer 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 the continuing public utility law governing procedures for establishing or changing rates (R.C. 4909.18).

Regarding both of those stated duties, the PUCO must 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.<sup>1</sup> 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.

### **PUCO market evaluation**

(R.C. 4928.141(A))

The bill requires the PUCO, as part of a post-MDP supply obligation proceeding, to evaluate the competitive market in the incumbent utility's service

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<sup>1</sup> "Regional transmission entity" refers generally to an organization established pursuant to federal requirements for an open, regionally coordinated wholesale system. The federal government has approved two "regional transmission organizations" (RTOs) that include Ohio's incumbent utilities as voluntary members: Midwest Independent Transmission System Operator, Inc. (First Energy and CInergy) and PJM Interconnection LLC (American Electric Power, Allegheny Power, and Dayton Power & Light). Provisions regarding incumbent obligations to join regional transmission entities also appear in Ohio's Electric Restructuring Law (R.C. 4928.12, 4928.31(A), 4928.34(A), and 4928.35(G)).

area for each of the utility's rate schedules and customer classes. 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 "to ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service," 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 the rigor of the evidence required for a conclusion: in the case of the second standard--effective competition--the PUCO must consider factors currently specified for determining effective competition for other purposes.<sup>2</sup> Those factors are (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,<sup>3</sup> which may include market share, growth in market share, ease of entry of new suppliers, and supplier affiliations.

**Bill's immediate effective date**

(Section 2)

The bill takes effect immediately under its stated emergency provision, to ensure that at the earliest possible time it can 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.

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<sup>2</sup> Under current Restructuring Law unchanged by the bill, these standards, without limitation, 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.

<sup>3</sup> 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)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-25-05	p. 81

H0014-I-126.doc/jc

