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Bill Analysis

Legislative Service Commission

S.B. 242

127th General Assembly
(As Introduced)

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R. Miller, Kearney**

BILL SUMMARY

- Requires an electric utility or electric services company to derive at least a portion of its electricity supply from specified types of renewable energy systems.
- Prescribes the minimum percentage of a utility's or company's calendar year electricity supply that must come from renewable energy systems, beginning in 2009 at 2% of its total, annual retail electric sales and topping at 20% in 2018 and subsequent years.
- Requires at least half of each calendar year's electricity percentage obtained from renewable energy systems to be derived from wind energy and further requires 250 megawatt-hours of the aggregate electricity supply of all utilities and companies to be derived from wind energy generated from the Ohio portion of Lake Erie.
- Specifies new renewable energy supply acquisitions, new net metering system connections, and new renewable energy credit use as activities qualifying as compliance with the renewable energy requirement.
- Authorizes the Public Utilities Commission (PUCO) to establish a system of renewable energy credits and to enforce the renewable energy systems requirement.

CONTENT AND OPERATION

Renewable energy system requirement

(R.C. 4905.66(B); 4905.661; and 4928.01(A)(4) [not in the bill])

The bill establishes a renewable energy system requirement for each electric utility or electric services company that provides "competitive retail electric generation service" in Ohio. Under definitions from current electric restructuring law, an "electric utility" generally is a for-profit business that supplies at least a noncompetitive retail electric service in Ohio. An "electric services company" is a for-profit or not-for-profit business that supplies or arranges for the supply of only a competitive retail electric service in Ohio and includes a power marketer, power broker, aggregator, or independent power producer, but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent. Both terms exclude a self-generator to the extent it consumes or sells for resale electricity it produces. "Competitive retail electric service" means retail electric generation, aggregation, power marketing, and power brokerage services.

Under the bill's renewable energy system requirement, a utility or company must derive at least a portion of its electricity supply from specified types of renewable energy. As described below, the bill prescribes what qualifies as a renewable energy system, what portion of a utility's or company's calendar year supply must come from such systems, and what activities qualify as compliance with the renewable energy system requirement. It also specifies duties of the PUCO regarding the renewable energy system requirement.

Renewable energy systems defined

(R.C. 4905.66(A), (C), and (D))

For purposes of its renewable energy system requirement, the bill defines a "renewable energy system" as a facility or energy system that uses renewable energy to generate electricity or a net metering system that has renewable energy as its primary energy source. Under the bill, a "net metering system" is a facility producing electricity that (1) uses solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell as fuel, (2) is located on a customer-generator's premises (a customer-generator is someone who uses a net metering system), (3) operates in parallel with the electric utility's transmission and distribution facilities, and (4) is intended mostly to offset the customer-generator's electricity needs.

"Renewable energy" means (1) energy from biomass that is available on a renewable basis, (2) geothermal energy, (3) wind energy, (4) energy from a hydroelectric facility that is certified on or after two years following the bill's effective date as a low-impact hydropower facility by the Low Impact Hydro Institute or a comparable replacement, (5) energy from an anaerobic digester system, (6) solar energy, and (7) energy from hydrogen that is a byproduct of any other renewable energy sources described in (1) to (6) above.¹ "Renewable energy" expressly excludes energy produced from any fossil fuel and energy produced using waste-to-energy technologies.

The bill further defines "biomass" as any organic matter, including any organic material from a plant that is grown (1) to be used exclusively in electricity production and (2) on land that was in crop production on the bill's effective date or is protected under the federal Conservation Reserve Program,² provided the planting does not adversely affect the water quality protection, soil erosion prevention, or wildlife habitat enhancement purposes of that program. "Biomass" also includes any solid, nonhazardous, cellulosic waste that is derived from waste pallets, crates, dunnage, or landscape or right-of-way tree trimmings; from agricultural sources including orchard tree crops, vineyards, grains, legumes, or sugar; or from any crop byproducts or residues. The definition also includes animal and other organic waste and municipal or unsegregated waste or garbage that is converted to a clean burning fuel used to generate electricity. "Biomass" specifically excludes forestry resources; agricultural resource waste useful for maintaining soil fertility or for preventing erosion; and paper that is commonly recycled.

¹ According to its web site at <<http://www.lowimpacthydro.org/>>, "the Low Impact Hydropower Institute (LIHI) is a non-profit 501(c)(3) organization dedicated to reducing the impacts of hydropower generation through the certification of environmentally responsible, 'low impact' hydropower." Additional information about the Institute and its voluntary certification program can be found at <<http://www.lowimpacthydro.org/documents/faq.pdf>> and at other locations on its web site.

² This is a program of the U.S. Department of Agriculture's Farm Service Agency and described as providing financial assistance for long-term, resource conserving covers on eligible farmland. See <www.ers.usda.gov/publications/arei/ah712/AH7126-3.pdf> for more information.

Minimum supply percentages

(R.C. 4905.661(A))

The bill specifies the minimum, annual amount of an electric utility's or electric services company's electricity supply that must be derived from renewable energy systems beginning with calendar year 2009, pursuant to periodic competitive bidding. This minimum is calculated by multiplying the utility's or company's total retail electric sales in Ohio for a given calendar year by a specified percentage for that calendar year. Under the bill, a utility's or company's total retail electric sales for a calendar year is determined by calculating, in kilowatt hours (kWh), the average of its retail, Ohio electric sales during each of the immediately preceding two calendar years and those forecasted for the current calendar year pursuant to R.C. 4935.04 (long-term forecasting).

The applicable calendar year percentages are 2% in 2009, 4% in 2010, 6% in 2011, 8% in 2012, 10% in 2013, 12% in 2014, 14% in 2015, 16% in 2016, 18% in 2017, and 20% in 2018. After 2018, the minimum calendar year percentage remains a constant 20%. The bill requires that a minimum of one-half of each calendar year's percentage come from renewable energy systems that use wind energy for electricity generation.

The bill also requires that in 2009, the specified percentages must come from one or more new systems and for subsequent calendar years, at least the subject calendar year's percentage increase from the prior calendar year must come from one or more new systems (see "**Qualifying compliance activities**" for discussion on "new systems"). The bill charges the House of Representatives and Senate standing committees responsible for renewable energy issues in the 132nd General Assembly to hold hearings to review the renewable energy market and the implementation of the bill's renewable energy system portfolio standards and to recommend to the General Assembly whether the portfolio standard percentage should increase after 2018.

Qualifying compliance activities

(R.C. 4905.661(B))

The bill specifies the types of activities that can be counted toward the utility's or company's compliance with the renewable energy system requirement. Those activities are (1) new renewable energy supply acquisitions, (2) new net metering system connections, and (3) new renewable energy credit use.

New renewable energy supply purchases. The acquisition of electricity supply from a new renewable energy system located in Ohio can fulfill the bill's

renewable energy system requirement for an electric utility or electric services company. If the system is located outside of Ohio, the bill's requirements can be fulfilled so long as it can be demonstrated that the energy was sold into one of the regional transmission organizations to which Ohio electric utilities belong. The supply must be acquired only for the utility's or company's customers in Ohio. A renewable energy system is new if it began operating after 1997.

New net metering system connections. Compliance also can be achieved by connecting to a new net metering system located in Ohio that has renewable energy as its primary energy source. In the case of such connection, the utility or company may purchase the associated renewable energy credits from the new net metering system owner and only then may count toward compliance all of the electricity generated in the pertinent calendar year by the new net metering system. A net metering system is considered new in a calendar year if it is first connected to the grid in that calendar year or the preceding calendar year.

New renewable energy credit use. Another compliance option is for a utility or company to use any new renewable energy credits that it acquires under the renewable energy system the PUCO establishes by rule as provided in the bill (see "**Renewable energy credit system**" below). A renewable energy credit representing power generated outside Ohio, however, may only be used to meet this compliance option if the state where it was generated has a renewable portfolio standard consistent with the bill. A renewable energy credit is considered new in a calendar year if it is acquired by the utility or company in that calendar year or the preceding calendar year.

Renewable energy credit system

(R.C. 4905.662)

The bill requires the PUCO to establish by rule a system of renewable energy credits so that each qualifying generator receives a certain number. One and one-half of a credit must be allocated for each megawatt-hour of renewable energy generated in Ohio. For each megawatt-hour of renewable energy generated outside Ohio, one credit must be allocated. The PUCO must also specify the allowable uses of a credit and may specify the requirements and procedures for the sale or transfer of credits. The PUCO, to the extent possible, must conform these rules with national standards.

Wind energy from Lake Erie

(R.C. 4905.661(C))

The bill requires that, starting with calendar year 2018 and for every subsequent calendar year, each utility and company must derive for its electricity supply such an amount from wind energy generated from facilities located in Ohio's portion of Lake Erie so that the total amount of electricity derived for the electricity supply of all the utilities and companies equals, in the aggregate, at least 250 megawatt-hours.

The bill further requires the PUCO to adopt rules establishing how much of the aggregate wind energy electricity amount each utility and company must derive for its electricity supply. The calculation used to determine each utility's and company's portion of the aggregate must be based on the utility's or company's total retail electric sales in the state for the preceding calendar year as compared to the total retail electric sales in Ohio of all the utilities and companies for that same calendar year.

Compliance reports

(R.C. 4905.663)

The bill requires each electric utility and electric services company subject to the renewable energy system requirements of the bill to file with the PUCO and transmit to the Office of Consumers' Counsel an annual report that describes for the prior year the utility's or company's compliance with the bill's requirements. The report must contain the information the PUCO requires by rule. The rule may require the report to be included within the annual report of gross receipts and retail sales that the utility or company files under current electric restructuring law.

Enforcement

(R.C. 4905.664)

The bill extends current PUCO complaint law by authorizing the PUCO, by complaint of any person or its own initiative and after notice and hearing, to determine whether an electric utility or electric services company has failed to comply with the renewable energy system requirement as provided in the bill or the rules adopted pursuant to the bill.

The bill further provides that the penalty provisions governing violations of public utility law apply to utilities and companies that violate the bill's requirements and the requirements of rules adopted pursuant to the bill. Those provisions include a forfeiture of not more than \$10,000 per violation, with each

day's continuation of the violation being a separate offense. The bill further authorizes the PUCO to assess an additional forfeiture against a utility or company for failure to comply with the renewable energy system requirements and provides for the amounts to be collected as provided under the public utility law governing actions to recover forfeitures and for mandamus and injunction. The additional forfeiture must be in an amount, per kilowatt-hour of noncompliance per day, equal to two times the arithmetic mean market value, during the period of noncompliance, of a renewable energy credit issued pursuant to the PUCO rules adopted under the bill.

HISTORY

ACTION	DATE
Introduced	10-11-07

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