UPDATED VERSION*

Ohio Legislative Service Commission

Final Analysis

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Am. Sub. H.B. 95

129th General Assembly
(As Passed by the General Assembly)

Reps. Stautberg, Blessing, Uecker, Mecklenborg, Balderson, Hayes, Goodwin, Martin, Beck, Coley, Roegner, Buchy, Gardner, Gonzales, Grossman, Hackett, C. Hagan, Newbold, Thompson, Wachtmann, Batchelder

Sens. Daniels, Wilson, Coley, Hite, Jordan, Niehaus, Seitz, Wagoner

Effective date: September 9, 2011

ACT SUMMARY

All utilities

- Reduces from three to two the number of consecutive weeks of newspaper publication for notices of applications for rate increases.

- Alters public-notice requirements, for both applications for rate increases and public hearings on those applications, by requiring that the first notice be published in its entirety, and permitting the second to be abbreviated if:

  --the abbreviated notice for applications is one-quarter the size of the first notice, and for public hearings, half the size;

  --the first notice is published on the newspaper's and the Public Utilities Commission's (PUCO's) web sites; and

  --the abbreviated notice contains instructions for accessing the electronic postings.

- Reduces what must be contained in each notice by:

  --removing a requirement that a notice of public hearings summarize the major issues in contention; and

* This version updates the effective date of the act.

--requiring publication of "notice" of an application for a rate-increase, rather than the "substance and prayer" of the application.

Gas, natural gas, and electric major utility facilities

- Requires the PUCO to hold a public hearing on a long-term forecast report *only* upon the showing of good cause by an interested party.

Natural gas companies

- Permits the date certain for property valuation in natural gas company rate cases to be not later than the end of the test period.

- Permits, in natural gas company rate cases, the use of projected property valuation as of the date certain and, during and one year after the test period, expected revenue and expense adjustments.

- Requires a reconciliation ("true up"), under which only downward adjustments are permitted, for any projected property valuation or expected revenue and expense adjustments incorporated into a rate determination, and permits a final reconciliation after the initial reconciliation.

- Expressly permits the PUCO to grant a natural gas company an automatic adjustment mechanism or device in connection with an application for a rate case, an alternative rate plan, or an application specifically for an automatic adjustment mechanism or device.

- Removes the requirement of notice before implementation of an alternative rate plan.

- Requires that alternative rate plans be just and reasonable and removes the requirement, for those plans, of a PUCO determination of just and reasonable rates.

- Requires hearings for alternative rate plans only at the discretion of the PUCO.

- Requires that both of the following applications be considered applications *not* for increases in rates:

  --an application to continue an alternative rate plan; and

  --an application for an alternative rate plan proposing to initiate or continue a revenue decoupling mechanism.

- Expressly permits the filing of an application for an alternative rate plan proposing to *initiate or continue* a revenue decoupling mechanism.

- Expressly permits a natural gas company to apply for an automatic adjustment mechanism.

- Permits a natural gas company to apply to implement a capital expenditure program for infrastructure expansion, upgrade, or replacement; installation, upgrade, or replacement of information technology systems; or any program necessary to comply with governmental regulation.

- Permits a natural gas company with an approved capital expenditure program to defer or recover program costs for incremental depreciation, property tax expense, and post-in-service carrying costs, but limits applications for recovery of those costs in certain cases to no more than one time each calendar year.

- Requires natural gas companies to file long-term forecast reports every three years rather than annually.

- Exempts natural gas companies that do not sell natural gas under a purchased gas adjustment clause from the purchased gas adjustment rule.

- Limits management or performance audits of natural gas companies under the purchased gas adjustment rule, or hearings related to such audits, by restricting their frequency to once every three years and their scope to production and purchasing policies.

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CONTENT AND OPERATION

Public-notice requirements altered for public utilities

Notice of application for rate increase

The act alters requirements for publication of newspaper notices of public utilities' applications for increases in rates. Specifically, the act requires publication two consecutive weeks in a newspaper in the public utility's territory, whereas former law required publication for three consecutive weeks. The act requires the notice itself to include instructions for electronic access to the application or other documents on file with the Public Utilities Commission (PUCO). The act also requires publication of "notice" of the application, rather than publication of the "substance and prayer," as were required formerly. The act requires the PUCO to determine a format for the content of notices, considering costs and technological efficiencies. Finally, the act specifies that defects in the publication of the notice do not affect the legality or sufficiency of the notice, provided the PUCO has substantially complied with the law governing the notices.[1]

The act repeals requirements that the public utility seeking the rate increase must prepare the notice and file it with the application. Former requirements also repealed by the act directed the notice to state the average percentage increase that an industrial, commercial, and residential customer would bear if the increase were granted in full. They also required disclosure that any person may file an objection to the increase.[2]

Notice of public hearings

The act also alters requirements for publication of notices of public hearings on applications for rate increases. Specifically, the act repeals a requirement that the notice summarize the major issues in contention, but it retains the requirement that the total revenue increase requested be included. The act also requires the PUCO to consider costs and technological efficiencies in determining a format for the content of notices. Finally, the act specifies that defects in the publication (rather than the "content") of the

[1] R.C. 4909.19.

[2] R.C. 4909.18(E).

notice do not affect the legality *or sufficiency* (rather than just the legality) of the notice, provided the PUCO has substantially complied with the law governing the notices.

Continuing law requires that the PUCO hold public hearings on rate-increase cases in each municipal corporation, in an affected service area, having a population over 100,000, provided that at least one hearing is held in each affected service area.[3]

Both types of notices

For publication of both types of notices, the act requires that the initial notice be published in its entirety, which may be made in a preprinted newspaper insert, and permits the second to be abbreviated if all of the following apply:

- the abbreviated notice is one-quarter (for notices of applications) or half (for notices of public hearings) the size of the first notice;
- the first notice is published on the newspaper's and PUCO's web sites; and
- the abbreviated notice contains instructions for accessing the electronic postings.[4]

Long-term forecast reports

Gas, natural gas, and electric major utility facilities

The act requires that the PUCO hold public hearings on long-term forecast reports for natural gas and electric major utility facilities only upon the showing of good cause by an interested party. Under continuing law, the long-term forecast reports are required to be made publicly available, containing certain supply-and-demand data, including information on needed facilities, and covering the next two to ten years. Under prior law, the PUCO was required to hold at least one public hearing every five years, on the latest report and to hold a hearing on the latest report if there was a substantial change from the preceding report. Demonstration of good cause by an interested party would have been such a change. Under continuing law, the hearing record and the PUCO's determinations on the report are considered by the Power Siting Board in determining whether to permit construction of a major utility facility. The hearing record is also considered by the PUCO in promoting energy conservation, reduced energy consumption, and economic efficiencies. The PUCO also considers the

[3] R.C. 4903.083.

[4] R.C. 4903.083 and 4909.19.

hearing record in its determination of just and reasonable rates in any rate case where such a determination is required, such as a rate-increase case.[5]

Natural gas companies

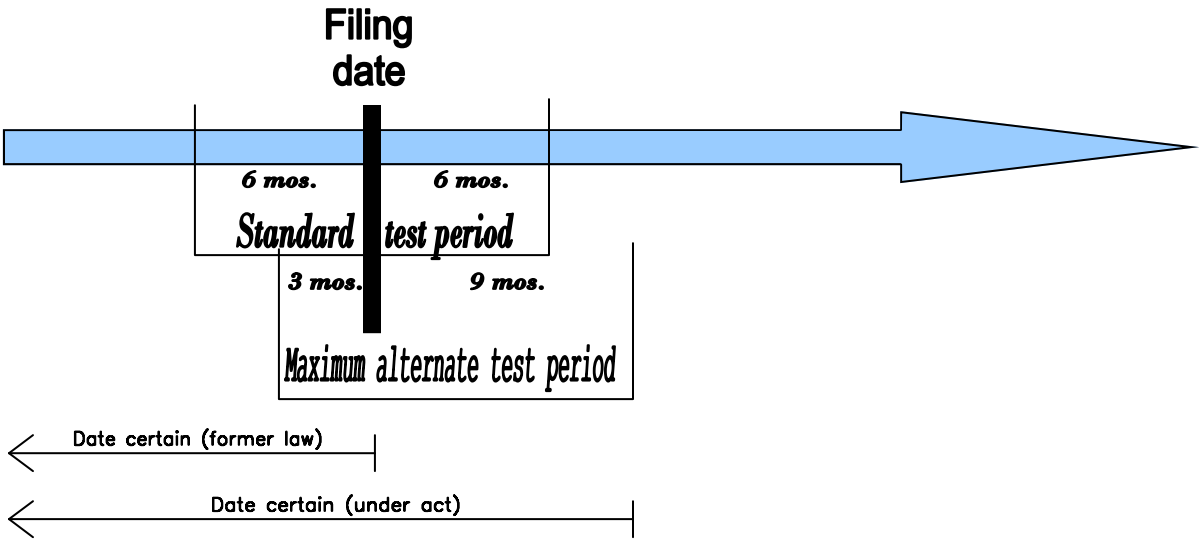
The act requires natural gas companies to furnish long-term forecast reports every three years, rather than annually as was required prior current law.[6]

Regulations changed for natural gas companies only

Rate-increase cases

Projected valuation

The act permits the use of projections in valuing a natural gas company's property, for the purpose of determining rates in a rate case. The act does this by permitting, for a natural gas company, the date on which the property valuation is to be determined, called the "date certain," to be not later than the end of the "test period," which is up to nine months after the date that the rate-increase application is filed, unless the PUCO orders otherwise. Under former law, the date certain could be no later than the date of application filing. The act's change to the date certain is illustrated below:



[5] R.C. 4935.04.

[6] R.C. 4935.04(C).

The property valuation, under continuing law, is what the PUCO uses to determine a "fair and reasonable rate of return."[7] Ongoing law requires that the property to be valued is, on the date certain, "owned," "held," "leased," or "received" by the company seeking the rate increase and "used and useful" or "in use." The act adds, to each of these descriptions, "or, with respect to a natural gas company, *projected to be . . . as of the date certain. . . .*"[8]

Adjustments to revenues and expenses

The act also permits natural gas companies to propose another change to the rate-calculation formula, with regard to the company's revenues and expenses. The act permits natural gas companies to propose adjustments to the revenues and expenses for any changes that are "reasonably expected to occur" during the test period *or* the 12-month period immediately after the test period. The act requires the natural gas company proposing the adjustments to identify and quantify each adjustment. The act requires the PUCO to incorporate the proposed adjustments into its determination of the revenues and expenses if the adjustments are just and reasonable.[9]

Under continuing law governing rate-increase cases, a public utility's permitted gross annual revenues are calculated by adding the amount of return (determined by the PUCO) to the public utility's cost of rendering service. This cost must be determined during the test period. The act clarifies that the test period may be proposed by a utility, as any 12-month period beginning not more than 6 months before an application for a rate case is filed, and ending not more than 9 months after the filing date. The act requires the test period to be the period proposed by the utility, unless the PUCO orders otherwise. The test-period scenarios, assuming the PUCO does not order otherwise, are illustrated below:

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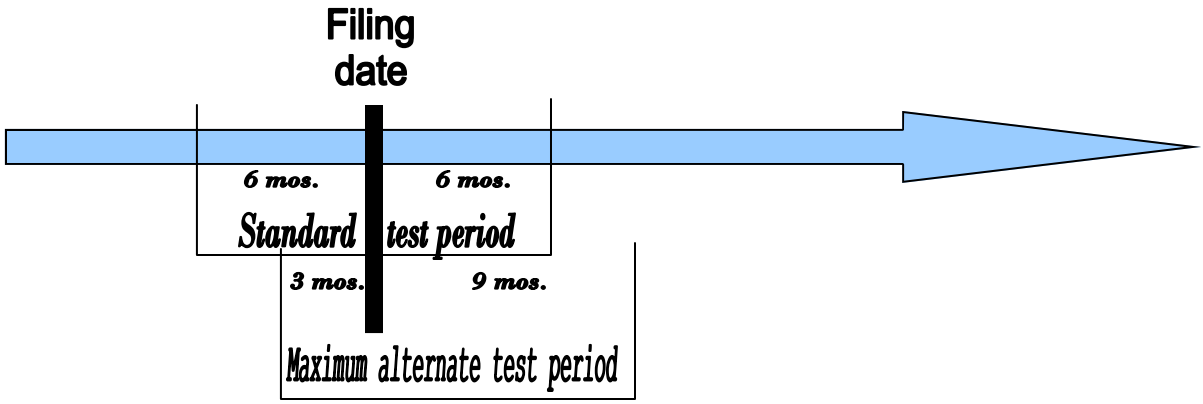
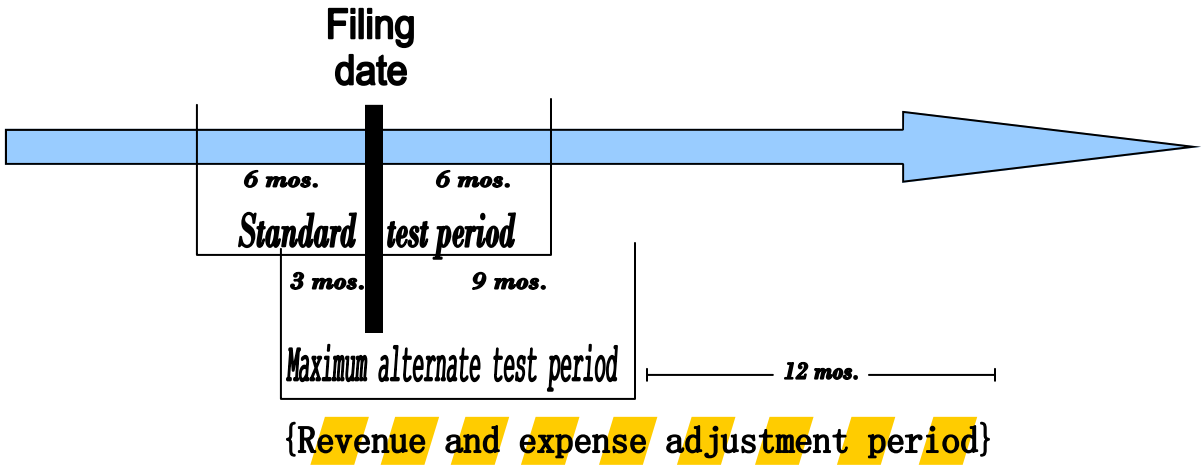
[7] R.C. 4909.15.

[8] R.C. 4909.05 (emphasis added); conforming changes in R.C. 4909.06, 4909.07, 4909.08, 4909.15, 4909.156, and 4909.18.

[9] R.C. 4909.15(D).



If the test period were set to end at the latest time permitted assuming the PUCO does not order otherwise, a natural gas company could, under the act, propose adjustments to revenues and expenses for changes reasonably expected to occur within 21 months after the application filing. This is illustrated as follows:



Reconciliation procedures

The act requires a reconciliation ("true up") procedure for any projected valuation as of the date certain, or expected revenue and expense adjustments, incorporated into a rate determination. The natural gas company must submit to the PUCO, not later than 90 days after actual data becomes known, proposed rate or charge adjustments. These proposed adjustments must provide for the recalculation of rates or charges, reflective of customer-class responsibility, corresponding to the differences, if any, between incorporated projected valuation and actual valuation as of the date certain, or incorporated expected revenue and expense adjustments and actual revenues and expenses.

The act requires the PUCO to review the proposed adjustments. Hearings are to be held at the discretion of the PUCO if the PUCO finds that the proposed adjustments may be unreasonable. The PUCO must, not later than 150 days after proposed adjustments are submitted, issue a final order on the proposed adjustments. The act prohibits the authorized rate or charge adjustments from being upward. After the issuance of the final order, the company may submit proposed *reconciliation* adjustments that refund to customers the difference between actual revenues collected and the rates or charges recalculated under the authorized rate or charge adjustments. The reconciliation adjustments are to be effective for a 12-month period. After this period, the reconciliation adjustments may be subject to a final reconciliation by the PUCO.[10]

The act exempts the reconciliation procedures from the ongoing law requirement that no rate may become effective until the PUCO determines it to be just and reasonable.[11]

Automatic adjustment mechanism

The act also expressly permits the PUCO to allow, for a natural gas company in a rate case, an automatic adjustment mechanism or device that allows the company's rates or charges for a regulated service or goods to fluctuate automatically with changes in a specified cost or costs.[12]

Alternative rate plans

The act alters various laws governing alternative rate plans for natural gas companies, as described below. An alternative rate plan is a method for establishing rates and charges for distribution service, fully regulated commodity sales services, or fully regulated ancillary sales services that does not rely on the law governing rate cases.[13]

Removal of notice requirement

The act removes a requirement of "notice" before the implementation of an alternative rate plan.[14]

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[10] R.C. 4909.191.

[11] R.C. 4909.17.

[12] R.C. 4929.11.

[13] R.C. 4929.01 (not in the act).

[14] R.C. 4929.05(A).

Discretionary hearings

The act specifies that "investigation," which continuing law requires before the implementation of an alternative rate plan, may include a hearing at the discretion of the PUCO. The act removes the requirement of a "hearing" before the implementation of an alternative rate plan. Prior law did not explicitly provide for any discretion of the PUCO in this regard.[15]

Just and reasonable determination

The act requires that the PUCO find an alternative rate plan to be just and reasonable before it may be implemented. Former law required that a determination of just and reasonable rates and charges be made pursuant to the law governing rate cases, before an alternative rate plan could be implemented. Ongoing rate-case law requires that a determination be made of the value of the utility's property used and useful in rendering service, a fair and reasonable rate of return, and the cost to the utility of rendering service, as determined during the test period.[16]

The act does not alter requirements that, for a natural gas company's alternative rate plan to be implemented, the company must be in compliance with state policy prohibiting discrimination in utility service. It also does not change the requirement that natural gas companies be in substantial compliance with other state policy objectives, including promoting the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.[17]

Consideration as an application *not* for an increase in rates

The act requires that an application proposing to continue a previously approved alternative rate plan be considered an application *not* for an increase in rates.[18] The act also requires the same consideration of an application for an alternative rate plan that proposes to initiate or continue a revenue decoupling mechanism; whereas former law directed that only an application proposing a revenue decoupling mechanism *could* be considered an application not for an increase in rates.[19] A revenue decoupling mechanism is a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of

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[15] R.C. 4929.05(A).

[16] R.C. 4909.15, 4909.17, and 4929.05.

[17] R.C. 4905.35 and 4929.02 (not in the act); R.C. 4929.05.

[18] R.C. 4929.051(B).

[19] R.C. 4929.051(A).

volumetric sales or system throughput (the amount of gas entering the transmission or distribution system).[20] In other words, a revenue decoupling mechanism provides recovery of fixed costs based on a fair and reasonable rate of return, even if actual sales would call for a different amount of recovery.

The act's designation of "not for an increase in rates" exempts such an application from a number of requirements and regulations. Under continuing law, if an application is *not* for an increase in rates, the PUCO may allow the utility's schedule, filed with the application, to take effect in an expedited manner. No hearing is required to be held on such an application. Likewise, if a utility files an application not for an increase in rates, the utility is not required to file, with the application, any of the following, which would otherwise be required:

- a report of property used and useful in rendering service;
- a complete operating statement of the last fiscal year;
- a statement of the income and expense anticipated under the application; or
- a statement of financial condition summarizing assets, liabilities, and net worth.[21]

Change in wording for applications for revenue decoupling mechanisms

The act alters wording concerning applications for alternative rate plans that propose revenue decoupling mechanisms so that such an application may propose to continue a previously approved application for a revenue decoupling mechanism. Prior law only permitted a plan to propose such a mechanism.[22]

Applications for automatic adjustment mechanisms

The act expressly permits a natural gas company to apply for an automatic adjustment mechanism. Former law stated that "[n]othing in the Revised Code prohibits" the PUCO from allowing an automatic adjustment mechanism or device in a natural gas company's rate schedules. As explained above, an automatic adjustment mechanism or device permits a natural gas company's rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified

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[20] R.C. 4929.01 (not in the act).

[21] R.C. 4909.18.

[22] R.C. 4929.051.

cost or costs. The act alters the wording quoted above so that an automatic adjustment mechanism or device may be allowed *upon an application* filed with the PUCO.[23]

Capital expenditure programs

Applying to implement a program

The act authorizes a natural gas company to apply to the PUCO to implement a capital expenditure program. The company may apply to implement a capital expenditure program by filing any one of the following three applications:

- a rate-case application, or, more specifically, an application to establish a rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, under R.C. 4909.18;
- an application for an alternative rate plan under R.C. 4929.05; or
- the application, created by the act, for an automatic adjustment mechanism or device under R.C. 4929.11.[24]

Types of programs

The capital expenditure program may be for any of the following:

- any infrastructure expansion, improvement, or replacement;
- any program to install, upgrade, or replace information technology systems;
- any program reasonably necessary to comply with any rules, regulations, or orders of the PUCO or another governmental entity with jurisdiction.[25]

Recovery of program costs

The act requires an application to specify the total cost of the capital expenditure program. The act requires the PUCO to approve the application if the proposed program is consistent with the natural gas company's continuing law obligation to furnish necessary and adequate services and facilities, which services and facilities the

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[23] R.C. 4929.11.

[24] R.C. 4929.111(A).

[25] R.C. 4929.111(A)(1) to (3).

PUCO finds to be just and reasonable. An approved application authorizes the natural gas company to defer or recover in one of the three applications outlined above certain costs related to the capital expenditure program. The act limits deferral or recovery to amounts no greater than those consistent with the total cost of the program as set forth in the application, unless the PUCO authorizes additional recovery. Specifically, the costs that the natural gas company may defer or recover are all of the following:

- the incremental depreciation directly attributable to the program;
- the property tax expense directly attributable to the program; and
- the post-in-service carrying costs (the costs of storing or owning an asset after it has been placed in service) of the portion of the program assets that are placed in service but not reflected in rates as plant in service.[26]

The application to defer or recover these costs need not be the same as the application to implement the program. In other words, a company may apply to implement a capital expenditure program via an application for an alternative rate plan, but may apply for an automatic adjustment mechanism to defer or recover the program costs.[27]

The act prohibits a company from applying for cost recovery under an alternative rate plan or an automatic adjustment mechanism more than one time each calendar year. The act, however, does not place the same limitation on cost deferral or on cost recovery or deferral under a rate case application.[28]

Calculation of recoverable program costs

The recoverable program costs are to be calculated from the time the program assets are placed in service until rates reflecting the cost of the program assets are effective. The post-in-service carrying costs, specifically, are to be calculated for every investment in a program asset, and the calculation of the post-in-service carrying costs must be based on the cost of long-term debt of the company. All recoverable program costs are to be calculated in accordance with the system of accounts established by the PUCO under continuing law. This system is required under continuing law to conform, when practicable, to the system prescribed by the Ohio Department of Taxation. The act also specifies that any accounting accruals made to calculate the recoverable program costs are to be in addition to any allowance for funds used during construction

[26] R.C. 4929.111(B), (C), and (D).

[27] R.C. 4929.111(A) and (D).

[28] R.C. 4929.111(E).

(AFUDC).[29] "Allowance for funds used during construction" is not defined in the Revised Code. But according to the web site of the Federal Energy Regulatory Commission, AFUDC is an accounting mechanism for the accounting of costs during construction, such as the cost of debt and capital devoted to project construction.[30]

Purchased gas adjustment rule

The act exempts natural gas companies that do not sell gas under a purchased gas adjustment clause (which may be included in a natural gas company's schedule of rates) from the rule governing purchased gas adjustment clauses, including investigations, audits, and hearings under the rule.

For all other natural gas companies, the act limits management or performance audits under the purchased gas adjustment rule, or hearings related to such audits, by restricting the frequency of such audits or hearings to once every three years. The act also limits the scope of such audits or hearings to a natural gas company's natural gas production and purchasing policies. Specifically, the act prohibits such an audit or hearing from extending beyond matters that are necessary to determine the following:

- that the purchasing policies are designed to meet the company's service requirements;
- that procurement planning is sufficient to reasonably ensure reliable service at optimal prices and consistent with the long-term strategic supply plan; and
- that the company has reviewed existing and potential supply sources.

Under continuing law, a purchased gas adjustment clause may require or allow an adjustment to rates in accordance with any fluctuation in a natural gas company's cost of obtaining gas that occurs after the PUCO has issued an order establishing those rates. The PUCO must adopt a "purchased gas adjustment rule" that establishes procedures for investigations, audits, and hearings of natural gas companies not exempted by the act as described above.[31]

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[29] R.C. 4929.111(D) to (G).

[30] "Allowance for Funds Used During Construction," available at <http://www.ferc.gov/legal/acct-matts/docs/ar-13.asp> (last visited February 13, 2011).

[31] R.C. 4905.302.

HISTORY

ACTION	DATE
Introduced	02-10-11
Reported, H. Public Utilities	05-04-11
Passed House (66-32)	05-04-11
Reported, S. Energy & Public Utilities	05-25-11
Passed Senate (28-4)	05-25-11
House concurred in Senate amendments (68-27)	05-25-11

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