



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 95

129th General Assembly  
(As Introduced)

**Reps.** Stautberg, Blessing, Uecker, Mecklenborg, Balderson, Hayes, Goodwin, Martin

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## BILL SUMMARY

### All utilities

- Repeals public-notice requirements for applications for rate increases and public hearings on those applications.

### Natural gas companies

- Permits natural gas companies to use projected property valuation and post-test-year expenses in rate cases.
- Expressly permits the Public Utilities Commission (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 requirements for notice, a hearing, and a determination of just and reasonable rates in a case involving an application for an alternative rate plan.
- 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, and exempts such applications from a determination of just and reasonable rates.
- 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 recover the following program costs: incremental depreciation, property tax expense, and post-in-service carrying costs.
- Exempts applications for capital expenditure programs from a determination of just and reasonable rates.
- Eliminates the requirement that natural gas companies file annual long-term forecast reports.
- Exempts natural gas companies from investigations, audits, and hearings under the purchased gas adjustment rule.

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## **CONTENT AND OPERATION**

### **Public notice requirements repealed for public utilities, in general**

The bill repeals the requirement that the Public Utilities Commission of Ohio (PUCO) publish a newspaper notice of a public utility's application for an increase in rates. Current law requires the public utility seeking the rate increase to prepare the notice and file it with the application. The notice is to state the average percentage increase that an industrial, commercial, and residential customer would bear if the increase were granted in full. It must also disclose that any person may file an objection to the increase. The PUCO is currently required to publish the notice once a week for three weeks in a newspaper of general circulation throughout the public utility's territory.<sup>1</sup>

The bill also repeals a requirement for notice of public hearings on applications for rate increases. 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

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<sup>1</sup> R.C. 4909.18(E) and 4909.19.

service area. Notice is required to be published once a week for two weeks in a newspaper of general circulation in the service area. The notice must state prominently the total amount of the revenue increase requested and a brief summary of the then-known major issues in contention in the case.<sup>2</sup>

## **Regulations changed for natural gas companies**

### **Rate-increase cases**

#### **Projected valuation**

The bill permits the use of projections in valuing a natural gas company's property, for the purpose of determining rates in a rate case. The bill 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 up to nine months after the date that the rate-increase application is filed. The property valuation, under continuing law, is what the PUCO uses to determine a "fair and reasonable rate of return."<sup>3</sup> Current 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 bill adds, to each of these descriptions, "or, with respect to a natural gas company, *projected to be . . .*"<sup>4</sup>

#### **Post-test-period adjustments to revenues and expenses**

The bill also permits natural gas companies to propose another change to the rate-calculation formula, with regard to the company's revenues and expenses.<sup>5</sup> The bill 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 bill requires the natural gas company proposing the adjustments to identify and quantify each adjustment. The bill requires the PUCO to incorporate the proposed adjustments into its determination of the revenues and expenses if the adjustments are reasonable.<sup>6</sup>

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<sup>2</sup> R.C. 4903.083.

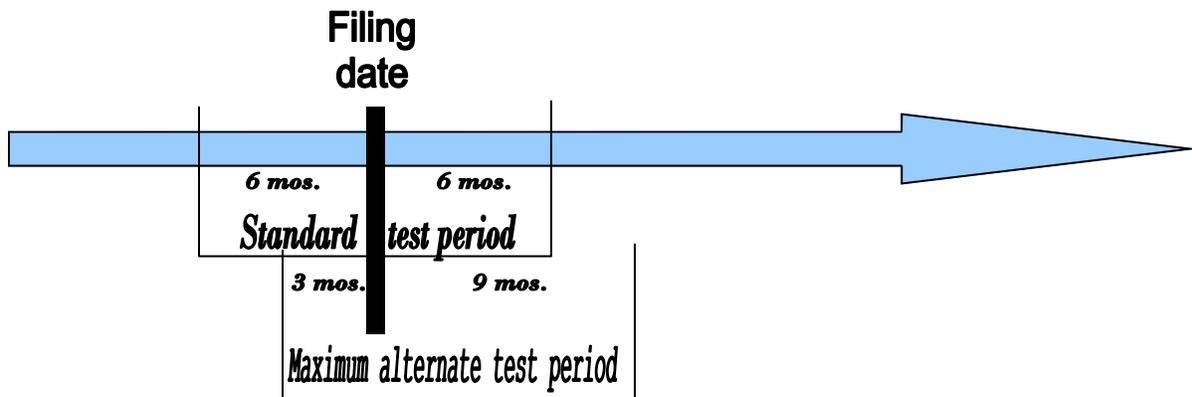
<sup>3</sup> R.C. 4909.15.

<sup>4</sup> R.C. 4909.05 (emphasis added); conforming changes in R.C. 4909.06, 4909.07, 4909.08, and 4909.156.

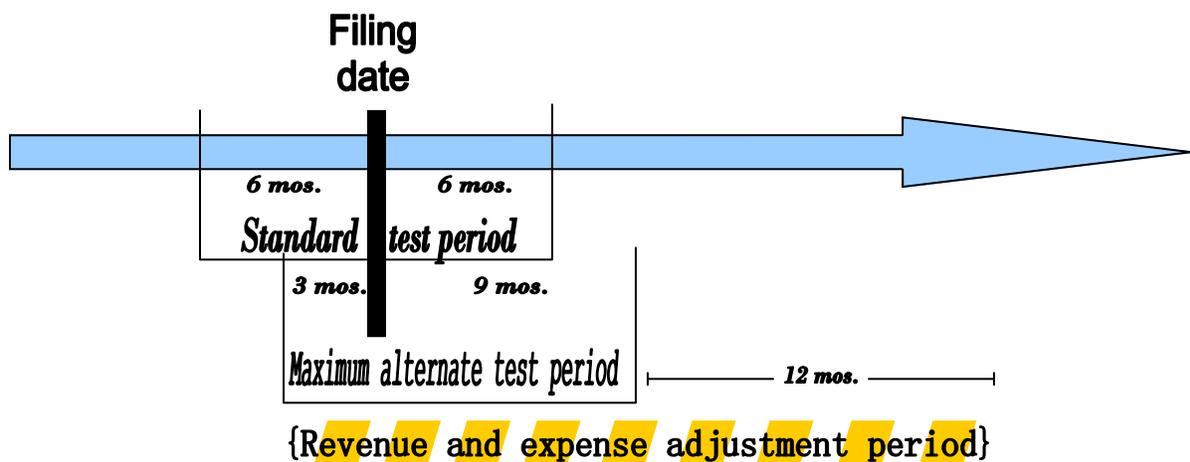
<sup>5</sup> R.C. 4909.15(D).

<sup>6</sup> R.C. 4909.15.

Under current 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 a "test period," which is, unless the PUCO orders otherwise, the 12-month period beginning six months before the application filing date. But in no event may the test period end more than nine months after the application filing date,<sup>7</sup> as illustrated below:



The bill does not change when the test period may occur. So, if the test period were set to end at the latest time permitted under law, a natural gas company could propose adjustments to revenues and expenses for changes reasonably expected to occur within 24 months after the beginning of the test period. What the bill does is illustrated as follows:



<sup>7</sup> R.C. 4909.15.

### **Automatic adjustment mechanism**

The bill 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.<sup>8</sup>

### **Alternative rate plans**

The bill alters various laws governing alternative rate plans for natural gas companies. 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.<sup>9</sup>

### **Removal of notice, hearing, and determination of just and reasonable rates**

The bill removes provisions requiring notice, a hearing, and a determination of just and reasonable rates and charges, for applications for approval of alternative rate plans by natural gas companies. By removing the just and reasonable determination, the bill eliminates the requirement 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 a test period.<sup>10</sup>

The bill does not change, however, the law requiring that for a natural gas company's alternative rate plan to be approved, 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.<sup>11</sup>

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

The bill requires that an application proposing to continue a previously approved alternative rate plan be considered an application *not* for an increase in rates.<sup>12</sup> The bill also requires the same consideration of an application for an alternative

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<sup>8</sup> R.C. 4929.11.

<sup>9</sup> R.C. 4929.01 (not in the bill).

<sup>10</sup> R.C. 4909.15, 4909.17, and 4929.05(A).

<sup>11</sup> R.C. 4905.35 and 4929.02 (not in the bill); R.C. 4929.05.

<sup>12</sup> R.C. 4929.051(B).

rate plan that proposes to initiate or continue a revenue decoupling mechanism; whereas current law directs that only an application proposing a revenue decoupling mechanism *may* be considered an application not for an increase in rates.<sup>13</sup> 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 volumetric sales or system throughput (the amount of gas entering the transmission or distribution system).<sup>14</sup> 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 bill'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.<sup>15</sup>

#### **Change in wording for applications for revenue decoupling mechanisms**

The bill 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. Current law only permits a plan to propose such a mechanism.<sup>16</sup>

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<sup>13</sup> R.C. 4929.051(A).

<sup>14</sup> R.C. 4929.01 (not in the bill).

<sup>15</sup> R.C. 4909.18.

<sup>16</sup> R.C. 4929.051.

## **Applications for automatic adjustment mechanisms**

The bill expressly permits a natural gas company to apply for an automatic adjustment mechanism. Current law states 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 cost or costs. The bill alters the wording quoted above so that an automatic adjustment mechanism or device may be allowed *upon an application* filed with the PUCO.<sup>17</sup>

The bill also exempts applications for automatic adjustment mechanisms from the current law requirement that no rate may become effective until the PUCO determines it to be just and reasonable.<sup>18</sup>

## **Capital expenditure programs**

### **Applying to implement a program**

The bill 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 bill, for an automatic adjustment mechanism or device under R.C. 4929.11.<sup>19</sup>

### **Types of programs**

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

- any infrastructure expansion, improvement, or replacement;

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<sup>17</sup> R.C. 4929.11.

<sup>18</sup> R.C. 4909.17.

<sup>19</sup> R.C. 4929.111(A).

- 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.<sup>20</sup>

### **Recovery of program costs**

The bill 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. An approved application authorizes the natural gas company to defer, for subsequent recovery, certain costs related to the capital expenditure program. Specifically, the natural gas company may defer, for subsequent recovery, 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.<sup>21</sup>

The natural gas company must apply to recover these costs by filing one of the three applications described above which a natural gas company may use to *implement* the program. The application need not be the same in both cases. In other words, a company may apply to implement a capital expenditure program via an application for an alternative rate plan, but may later apply for an automatic adjustment mechanism to recover the deferred program costs.<sup>22</sup>

### **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 incurred by the company. All recoverable program costs are to be calculated in accordance with the system of accounts

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<sup>20</sup> R.C. 4929.111(A)(1) to (3).

<sup>21</sup> R.C. 4929.111(B) and (C).

<sup>22</sup> R.C. 4929.111(C).

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 bill 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 (AFUDC).<sup>23</sup> "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.<sup>24</sup>

### **Exemption from requirement of just and reasonable determination**

The bill also exempts applications for capital expenditure programs from the current law requirement that no rate may become effective until the PUCO determines it to be just and reasonable.<sup>25</sup>

### **Elimination of long-term forecast reports**

The bill eliminates a requirement that natural gas companies file annual long-term forecast reports, required to be made publicly available, containing certain supply-and-demand data, including information on needed facilities, that cover the next two to ten years. The PUCO is required to hold a public hearing on the report – at least one public hearing every five years, on the latest report. 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 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.<sup>26</sup>

### **Exemption from audits under the purchased gas adjustment rule**

The bill exempts certain natural gas companies from investigations, audits, and hearings under the rule governing the purchased gas adjustment clause that a natural gas company may include in its schedule of rates. The bill specifies that a natural gas

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<sup>23</sup> R.C. 4929.111(D) to (F).

<sup>24</sup> "Allowance for Funds Used During Construction," available at <<http://www.ferc.gov/legal/acct-matts/docs/ar-13.asp>> (last visited February 13, 2011).

<sup>25</sup> R.C. 4909.17.

<sup>26</sup> R.C. 4935.04; conforming change in R.C. 4906.06.

company that does not sell natural gas under a purchased gas adjustment clause may not be subject to any such investigation, audit, or hearing. The bill also exempts from these investigations, audits, and hearings a natural gas company that has a customer choice program under which at least 30% of the company's residential customers obtain natural gas. The bill defines a customer choice program as a program under which customers may choose a natural gas supplier other than the natural gas company.

Under current law, a purchased gas adjustment clause may require or allow a natural gas company to adjust rates in accordance with any fluctuation in the 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.<sup>27</sup>

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## HISTORY

ACTION	DATE
Introduced	02-10-11

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<sup>27</sup> R.C. 4905.302.

