



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Public Utilities)

Sens. Balderson, Coley, Eklund, Faber, Jones, Seitz

BILL SUMMARY

Renewable energy and advanced energy requirements

- Freezes, for 2015 and 2016, the renewable and solar energy benchmarks (required of electric distribution utilities (EDUs) and electric services companies (ESCs)) at the 2014 level required under current law, and requires the benchmarks to resume beginning in 2017 starting at the 2015 levels of current law.
- Eliminates the requirement that EDUs and ESCs provide, by 2025, up to 12.5% of the current 25% alternative energy requirement from advanced energy.
- Extends the benchmark period by which EDUs and ESCs must provide 12.5% of their electricity supply from renewable energy resources by two years to 2027.
- Eliminates the requirement that at least one-half of the renewable energy resources implemented to meet the benchmarks must be met through facilities located in Ohio and the remainder with resources deliverable into Ohio.
- Permits the renewable energy resources implemented to meet the benchmarks to be met either through facilities in Ohio or with resources shown to be deliverable into Ohio.
- Freezes the solar energy compliance payment at \$300 for 2014, 2015, and 2016 and resumes, in 2017, the gradual reduction of the payment amounts to a minimum of \$50 in 2026 and thereafter, a date that is two years later than the reduction to \$50 that is in current law.

* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires that recovery from customers of ongoing costs that are associated with EDUs' contracts to procure renewable energy resources, entered into before April 1, 2014, continue on a bypassable basis until the prudently incurred costs are fully recovered.
- States that renewable energy resources do not have to be converted to electricity in order to be eligible to receive renewable energy credits.
- Requires that rules of the Public Utilities Commission (PUCO) specify that for renewable energy credits, one megawatt hour of energy derived from biologically derived methane gas equals 3,412,142 British thermal units.
- Repeals the Alternative Energy Advisory Committee and its duty under current law to study the alternative energy resources requirements and to submit a semiannual report to the PUCO.
- Permits EDUs and ESCs to use a baseline of the compliance-year's sales to measure compliance with the renewable energy benchmarks, rather than the most recent three-year average of sales.
- Requires EDUs and ESCs that switch back to the three-year baseline to use that baseline for at least three consecutive years before again using the compliance-year baseline.
- Permits the PUCO to adjust the compliance-year baseline to adjust for new economic growth in the EDU's or ESC's territory or service area.

Classification of renewable energy resources

- Adds to the list of renewable energy resources, for purposes of the renewable energy requirements, advanced energy projects funded by the Ohio Air Quality Development Authority, and the Advanced Energy Program:
 - Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas.
 - Power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within Ohio, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of at least 40 megawatts.

Energy efficiency (EE) and peak demand reduction (PDR) requirements

- Specifies a new formula for determining the amount of annual EE savings an EDU must achieve, for 2015 and 2016 and requires the annual EE savings requirement to be 1% of the baseline prescribed for EE savings for each year during 2017-2020 and 2% each year thereafter.
- Extends the period in which an EDU must achieve the current cumulative EE savings in excess of 22% by two years to the end of 2027.
- Specifies a new formula for determining the amount of PDR an EDU must achieve for 2015-2016 and requires the EDU to achieve an additional .75% PDR for each year during 2017-2020.
- Prohibits the baseline prescribed under current law for EE savings and PDR from including the load and usage of certain customers.
- Requires that EE savings and PDR that are achieved, in whole or in part, as a result of funding provided from the Universal Service Fund through certain programs be counted toward meeting the EE/PDR requirements.
- Prohibits the EE savings and PDR described in the previous dot point from qualifying for "shared savings," which is not defined.
- Requires that EE savings and PDR achieved through actions taken by customers or through EDU programs that comply with federal standards for either or both EE or PDR requirements be counted toward meeting the EE/PDR requirements.
- Requires EE savings and PDR amounts approved by the PUCO to continue to be counted toward achieving the EE/PDR requirements as long as the requirements remain in effect.
- Permits, at an EDU's discretion, any EE savings or PDR amount achieved in excess of the requirements to be banked and applied toward achieving the EE/PDR requirements in future years.
- Requires the PUCO to count both the EE savings and PDR on an annualized basis and a gross savings basis.
- Requires certain EE savings and PDR to be measured on the higher of an as found or deemed basis, and specifies how EE savings and PDR are to be counted for new construction.

- Requires the PUCO to "count energy efficiency savings and peak demand reductions associated with transmission and distribution infrastructure improvements that reduce line losses."
- Prohibits the EE savings and PDR described in the previous dot point from qualifying for "shared savings," which is not defined.

Portfolio plans for EE and PDR compliance

- Requires that existing portfolio plans for compliance with the EE and PDR requirements be either continued through the end of 2016 or amended under a 60-day PUCO review process.
- Specifies that current law applies to EDUs that have continued plans, for the duration of those plans, and the law as amended by the bill applies to EDUs with amended plans.
- Prohibits the PUCO from reviewing or approving applications for portfolio plans if the applications are pending on the bill's effective date, and prohibits the PUCO from taking unauthorized actions regarding portfolio plans.

Higher voltage and consumption customer opt-out and opt-out reporting

- Permits certain higher voltage and higher consumption customers, through written notice to the PUCO, to opt out of an EDU's portfolio plan or plans, thereby exempting the customer from cost recovery mechanisms but also removing the customer's ability to participate in or benefit from the plan or plans.
- Provides two opt-out options: (1) a temporary opt-out of amended EDU portfolio plans, and (2) a longer-term opt-out of EDU portfolio plans beginning in 2017.
- Permits a customer that has elected the longer-term opt out to opt in to the EDU's portfolio plan if the customer previously has opted out for at least three consecutive calendar years and gives 12-month's advance written notice to the PUCO Secretary and the EDU that serves the customer.
- Specifies that a customer that has opted in may elect to opt out after a minimum opt-out period of three consecutive calendar years.
- Requires a customer that opts out of an EDU's portfolio plan to verify and submit initial and updated reports to the PUCO that, for the opt-out period, summarizes the energy-intensity reductions measures implemented by the customer and identifies the cumulative energy-intensity reductions achieved.

- Permits the PUCO staff to request additional information from the customer regarding the energy-intensity reductions measures adopted and the amount of energy-intensity reductions achieved by the customer during the period covered by the updated report.
- Specifies that all information contained in customers' initial or updated reports and any responses to requests for additional information from the PUCO staff are confidential, proprietary, and a trade secret.
- Prohibits the information in customers' reports or responses to be publicly divulged without the customers' written authorization or used for any purpose other than to identify customer adopted measures and the quantity of customer achieved energy-intensity reductions.
- Provides for an opt-out suspension if energy-intensity reductions are not substantially achieved by the customers.

Disclosure of costs to customers

- Requires disclosure of the costs to customers of the renewable energy resource, EE savings, and PDR requirements, on each EDU and ESC customer's monthly bill, as applicable.

Service restoration for hospitals

- Requires an EDU's service restoration plan to prioritize hospitals.

Energy Mandates Study Committee

- Creates the 13-member Energy Mandates Study Committee to study Ohio's renewable energy, EE, and PDR mandates.
- Requires the Committee to submit a report to the General Assembly by September 30, 2015, including a cost-benefit analysis of the mandates, a recommendation of a standard for future review of the mandates, recommendations regarding opt-in and opt-out systems for the mandates, and reviews and analyses of other energy and cost issues.
- Abolishes the Committee effective October 1, 2015.
- States that the General Assembly intends to enact legislation in the future, after taking into account the recommendations of the Energy Mandates Study Committee, that will reduce the renewable energy resource, EE, and PDR mandates.

Percentage of Income Payment Plan

Prohibits the imposition of a waiting period for enrollment of an eligible customer in the Percentage of Income Payment Plan.

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CONTENT AND OPERATION

Renewable energy and advanced energy requirements

Renewable energy freeze and elimination of advanced energy requirement

The bill freezes, for 2015 and 2016, the renewable energy (including solar) benchmarks at the 2014 level required under current law. It also eliminates the advanced energy requirement and updates terminology accordingly.¹

Background on renewable and advanced energy requirements

Under current law, electric distribution utilities (EDUs) and electric services companies (ESCs) must provide, by 2025, 25% of their electricity supply required for their standard service offers from "alternative energy resources." The term "alternative" encompasses both advanced and renewable energy resources. Under current law, at least half of the 25% must be generated from certain renewable energy resources such as, for example, solar, wind, geothermal, and certain hydroelectric energy.² The remaining portion may be generated from advanced energy resources (clean coal and advanced nuclear energy technology are some examples³).⁴

Under continuing law, an EDU is an electric utility that supplies at least retail electric distribution service, and an ESC is an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in Ohio. An ESC includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, and billing and collection agent.⁵

Elimination of the advanced energy requirement

Current law provides yearly benchmarks for meeting the renewable portion of the alternative energy requirement, but does not provide benchmarks for advanced energy resources. Therefore, the advanced energy requirement has been interpreted as not being enforceable until 2025. The bill repeals the advanced energy requirement

¹ R.C. 4928.64; conforming changes in R.C. 4928.20 and 4928.645 (renumbered from 4928.65).

² R.C. 4928.01(A)(37).

³ R.C. 4928.01(A)(34).

⁴ R.C. 4928.64.

⁵ R.C. 4928.01(A)(6) and (9).



entirely. Consequently, the bill eliminates references to the "alternative energy resource requirements" and refers instead to the "renewable energy resource requirements." It also eliminates relevant references to advanced energy resources, including a provision that specifies that a *renewable* energy resource includes, for purposes of the alternative energy requirements, any advanced energy resource or renewable energy resource of a mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an EDU and would otherwise qualify as an alternative energy resource if it were utilized by an EDU.⁶

Renewable energy temporary freeze

The bill freezes, for 2015 and 2016, the renewable energy benchmarks at the 2014 level, which requires 2.5% of the electricity supply from renewable energy resources, including 0.12% from solar energy resources.⁷

Renewable energy benchmark resumption

The bill requires the annual benchmarks for both renewable and solar energy resources to resume in 2017, but specifies that the annual percentage requirements start at the 2015 levels in current law. The benchmarks also are extended for two years to accommodate the two-year freeze with the result being that EDUs and ESCs must provide 12.5% of their electricity supply from renewable energy resources, including 0.5% from solar energy resources, by 2027.⁸

Deliverability of renewable energy resources

The bill eliminates the requirement in current law that at least one-half of the renewable energy resources that an EDU or an ESC implements to meet the renewable energy resource benchmarks must be met through facilities located in Ohio and that the remainder must be met with resources that can be shown to be deliverable into Ohio. Instead, the bill permits the renewable energy resources implemented to meet the benchmarks be met through facilities located in Ohio or with resources that can be shown to be deliverable into Ohio.⁹

⁶ R.C. 4928.64; conforming changes in R.C. 4928.20 and 4928.645 (renumbered from 4928.65).

⁷ R.C. 4928.64(B)(2).

⁸ R.C. 4928.64(B)(1) and (2).

⁹ R.C. 4928.64(B)(3).

Solar energy compliance payments

The bill also freezes for 2014, 2015, and 2016, the amount of the solar energy compliance payments at the 2014 and 2015 level required under current law, which is \$300 per megawatt hour of undercompliance or noncompliance in the period under review. Beginning in 2017, the bill reduces the compliance payment by \$50 every two years through 2026 to a minimum compliance payment of \$50. Current law specifies similar biannual \$50 compliance payment reductions through 2024 to a minimum of \$50.¹⁰

| Bill | | Current Law (beginning at 2014) | |
|---------------------|--------------------|---------------------------------|--------------------|
| Years | Compliance Payment | Years | Compliance Payment |
| 2014 | \$300 | 2014 | \$300 |
| 2015 | | 2015 | |
| 2016 | | | |
| 2017 | \$250 | 2016 | \$250 |
| 2018 | | 2017 | |
| 2019 | \$200 | 2018 | \$200 |
| 2020 | | 2019 | |
| 2021 | \$150 | 2020 | \$150 |
| 2022 | | 2021 | |
| 2023 | \$100 | 2022 | \$100 |
| 2024 | | 2023 | |
| 2025 | \$50 | 2024 and thereafter | \$50 |
| 2026 and thereafter | | | |

Recovery of ongoing contract costs

The bill requires ongoing prudently incurred costs that are associated with contracts entered into before April 1, 2014, executed by an EDU to procure renewable energy resources, to continue to be recovered on a bypassable basis until those costs are fully recovered, if the costs are being recovered from customers through a bypassable charge as of the bill's effective date. The bill specifies that this provision applies only to costs associated with the original terms of those contracts. The bill further specifies that it does not permit recovery of costs associated with extensions of those contracts. It also

¹⁰ R.C. 4928.64(C)(2)(a).



specifies that it does not permit recovery of costs associated with amendments of those contracts if the amendments were made on or after April 1, 2014.¹¹

Option to choose compliance-year baseline for the renewable energy requirements

The bill gives EDUs and ESCs the option of using an alternative sales baseline to measure compliance. The only baseline permitted under existing law is the most recent three-year average of total kilowatt hours sold to Ohio retail electric consumers. But the bill allows the EDUs and ESCs to use a baseline of sales from the applicable compliance year. The bill's alternative baseline may be chosen beginning with compliance year 2014.¹²

The bill permits an EDU or ESC to switch back to the three-year baseline (after using the alternative baseline) for any subsequent compliance year. Once the EDU or ESC has switched back to the three-year baseline, the bill requires it to continue to use the three-year baseline for at least three consecutive years. After those three years, the EDU or ESC may again choose the alternative baseline.¹³

The bill permits the PUCO to reduce the bill's compliance-year baseline to adjust for new economic growth in the EDU's certified territory or in the ESC's service area. This is already permitted under current law for the three-year baseline.¹⁴

Entities from which renewable energy credits may be acquired

Current law permits renewable energy credits to be purchased from *any entity*, and provides examples of entities. The bill modifies and adds to these examples. First, it modifies the description of an owner or operator of a hydroelectric generating facility. Current law describes this entity as an owner or operator of a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering Ohio or within or bordering an adjoining state, and the bill adds "or that produces power that can be shown to be deliverable into this state." Second, the bill adds, to the examples, a seller of compressed natural gas that has been produced from biologically derived methane gas, provided that the seller may only provide renewable energy credits for metered amounts of gas.

¹¹ R.C. 4928.641.

¹² R.C. 4928.64(B) and 4928.643(A) and (B).

¹³ R.C. 4928.643(C).

¹⁴ R.C. 4928.64(B) and 4928.644.



Under continuing law, an EDU or ESC may use renewable energy credits for the purpose of complying with the renewable energy benchmarks.¹⁵

Resources need not be converted to electricity for credits

The bill states that renewable energy resources do not have to be converted to electricity to be eligible to receive renewable energy credits.¹⁶

Alternative Energy Advisory Committee

The bill repeals the Alternative Energy Advisory Committee. Under current law, this Committee, appointed by the Governor in consultation with the Public Utilities Commission (PUCO) Chairperson, has the duty to (1) examine available technology for and related timetables, goals, and costs of the alternative energy resource benchmarks as they presently exist, and (2) submit to the PUCO a semiannual report of its recommendations.¹⁷

Biologically derived methane gas

For purposes of (1) the renewable energy requirements (including the use of renewable energy credits),¹⁸ (2) advanced energy projects funded by the Ohio Air Quality Development Authority,¹⁹ and (3) the Advanced Energy Program administered by the Director of the Development Services Agency,²⁰ the bill adds, to the list of renewable energy resources, heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane gas.²¹

The bill also requires that the PUCO's rules governing renewable energy credits specify that, for purposes of converting the quantity of energy derived from biologically derived methane gas to an electricity equivalent, one megawatt hour equals 3,412,142 British thermal units.²²

¹⁵ R.C. 4928.645(A) (renumbered from 4928.65).

¹⁶ R.C. 4928.645(B)(1) (renumbered from 4928.65).

¹⁷ R.C. 4928.64(D)(2).

¹⁸ R.C. 4928.64 and 4928.645 (renumbered from 4928.65).

¹⁹ R.C. 3706.26, not in the bill.

²⁰ R.C. 4928.62, not in the bill.

²¹ R.C. 3706.25(E) and 4928.01(A)(37)(a)(ix).

²² R.C. 4928.645(B)(1) (renumbered from 4928.65).

Run-of-the-river hydroelectric facilities

For purposes of (1) the renewable energy requirements (including the use of renewable energy credits),²³ (2) advanced energy projects funded by the Ohio Air Quality Development Authority,²⁴ and (3) the Advanced Energy Program administered by the Director of the Development Services Agency,²⁵ the bill adds to the list of renewable energy resources power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within Ohio, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of at least 40 megawatts.²⁶ This list of renewable energy resources, under continuing law, already contains power produced by a hydroelectric facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets certain standards.²⁷ For purposes of the renewable energy requirements (including the use of renewable energy credits), the hydroelectric facility classified under continuing law (and not run-of-the-river hydroelectric facility) must be placed in service as of January 1, 1998, or must be created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998.²⁸

Energy efficiency (EE) and peak demand reduction (PDR) requirements

Annual EE requirements

EE for 2015-2016

The bill maintains current energy savings through 2014, but specifies that for 2015 and 2016, the annual EE savings an EDU must achieve is equal to the result of subtracting the cumulative EE savings achieved since 2009 from the product of multiplying the applicable baseline for EE savings by four and two-tenths of one per cent. Under current law, an EDU must achieve an annual EE savings of 1% in 2015 and 2016.

²³ R.C. 4928.64 and 4928.645.

²⁴ R.C. 3706.26, not in the bill.

²⁵ R.C. 4928.62, not in the bill.

²⁶ R.C. 3706.25(E) and 4928.01(A)(37)(a)(iv).

²⁷ R.C. 3706.25(E) and 4928.01(A)(37)(a)(iii) and (A)(37)(b).

²⁸ R.C. 4928.64(A)(1).



If the result is zero or less for the year for which the calculation is being made, the bill prohibits the EDU from being required to achieve additional EE savings for that year, but permits the EDU to achieve additional EE savings for that year.²⁹

EE for 2017 and thereafter

The bill specifies that for 2017-2020, the annual EE savings requirement is 1% of the baseline prescribed for EE savings and 2% each year thereafter. Effectively, the bill retains the current annual EE savings requirement of 1% for 2017 and 2018; reduces the current EE savings requirement from 2% to 1% for 2019 and 2020; and retains the current EE savings requirement of 2% for 2021 and thereafter.³⁰

Time period in which an EDU must achieve cumulative energy savings

The bill extends the time period in which an EDU must achieve the current cumulative EE savings in excess of 22% by two years to the end of 2027. Under current law, an EDU must achieve those savings by the end of 2025.³¹

Annual PDR requirements

The bill maintains current PDR requirements through 2014, but specifies that for 2015 and 2016, an EDU must achieve PDR equal to the result of subtracting the cumulative PDR achieved since 2009 from the product of multiplying the baseline prescribed for PDR by 4.75%. If the result is zero or less for the year for which the calculation is being made, the bill prohibits the EDU from being required to achieve additional PDR for that year, but the bill permits the EDU to achieve additional PDR for that year. The bill requires the EDU to achieve an additional .75% of PDR in 2017-2020. Under current law, EDUs must implement PDR programs designed to achieve a 1% PDR and an additional 0.75% PDR each year through 2018. The bill also repeals a requirement that, in 2018, the energy committees in the House of Representatives and the Senate must make recommendations to the General Assembly regarding future PDR targets.³²

Baseline exclusions

The bill prohibits the baseline prescribed under current law for EE savings and PDR from including the load and usage of any of the following customers:

²⁹ R.C. 4928.66(A)(1)(a) and (2)(a).

³⁰ R.C. 4928.66(A)(1)(a).

³¹ R.C. 4928.66(A)(1)(a).

³² R.C. 4928.66(A)(1)(b).

(1) Beginning January 1, 2017, a customer for which a reasonable arrangement has been approved under current law;

(2) A customer that has opted out of the utility's portfolio plan under the bill.³³

Provisions for existing portfolio plans for energy savings compliance

Current PUCO rules require EDUs to have three-year plans for compliance with the EE and PDR requirements.³⁴ The bill directs what is to happen with plans (referred to as "portfolio plans" in the bill) that are in effect on the bill's effective date.

Basically, the bill gives EDUs two options, either of which they may choose at their "sole discretion": (1) continue to implement the existing plan, with no amendments, through the end of 2016, or (2) seek an amendment of the plan with the PUCO.

To amend an existing plan under (2) above, the bill requires the EDU to file an application with the PUCO to amend the plan not later than 30 days after the bill's effective date. If the EDU misses this deadline, it must continue the existing plan as described in (1) above. The PUCO is required to review the application in accordance with the PUCO's rules as if the application were for a new portfolio plan. The PUCO must then review and approve, or modify and approve, the application not later than 60 days after the date that the application is filed. The bill specifies that if the PUCO fails to review and approve, or fails to modify and approve, the application by January 1, 2015, the plan will be deemed approved as amended. All amended plans must take effect on January 1, 2015, and expire on December 31, 2016. The bill specifies that the new law (the law as amended by the bill) applies to an EDU that applies to amend its plan.

For existing plans that are continued under (1) above, if the plan as originally approved by the PUCO expires before December 31, 2016, the bill requires the PUCO to automatically extend the plan through December 31, 2016, with no amendments. The bill requires *current law* governing the EE and PDR requirements to apply to an EDU that continues its existing plan. The current law applies to that EDU for the plan's original duration, or, if the plan is extended by the PUCO, through the end of 2016. The bill specifies that beginning January 1, 2017, the new law (as amended by the bill) applies to the EDU.³⁵

³³ R.C. 4928.66(A)(2)(a).

³⁴ O.A.C. Chapter 4901:1-39.

³⁵ Sections 5 and 6.



No review or approval of pending applications for portfolio plans

The bill prohibits the PUCO from reviewing or approving an application for a portfolio plan if the application is pending on the bill's effective date.³⁶

Prohibition of unauthorized actions regarding portfolio plans

The bill prohibits the PUCO, prior to January 1, 2017, from taking any action with regard to any portfolio plan or application regarding a portfolio plan except those actions expressly authorized or required by the bill and actions necessary to administer the implementation of existing portfolio plans.³⁷

Higher voltage and consumption customer opt-out of portfolio plans

The bill permits certain customers to temporarily opt out of an EDU's portfolio plan for the period between January 1, 2015 and December 31, 2016 if the plan has been amended as described above (uncodified opt-out). The bill also permits the same customers to opt out of an EDU's portfolio plan for a longer period beginning January 1, 2017 (codified opt-out/opt-in).³⁸ For purposes of the opt-out provisions, a customer is any customer of an EDU that either receives service above the primary voltage level as determined by the EDU's tariff classification, or is a commercial or industrial customer that both (1) receives electricity through a meter of an end user or through more than one meter at a single location in a quantity that exceeds 45 million kilowatt hours of electricity for the preceding calendar year, and (2) has made a written request for registration as a self-assessing purchaser pursuant to the kilowatt hour tax.³⁹

Under the bill, the opt-out provisions exempt properly identified customer accounts from any EE or PDR cost recovery mechanisms. The exemption lasts for the duration of the amended portfolio plan, for the uncodified opt out. The bill also removes the customer's opportunity and ability to obtain direct benefits from the portfolio plan or plans, and limits the customer's eligibility to participate in or directly benefit from programs arising from the plan or plans.⁴⁰

³⁶ Section 7.

³⁷ Section 7.

³⁸ R.C. 4928.6611 and Section 8.

³⁹ R.C. 4928.6610(A) and Sections 5 and 8.

⁴⁰ R.C. 4928.6611 and 4928.6613 and Sections 8 and 10.

The opt-outs extend to all of the customer's accounts, irrespective of the size or service voltage level, associated with the activities performed by the customer and located on or adjacent to the customer's premises.⁴¹

The bill requires the customer to send a verified written notice of intent to opt out to the EDU from which it receives services, and to submit a complete copy to the PUCO Secretary. The notice must include (1) a statement that the customer is opting out, (2) the opt-out effective date, (3) the account number of each customer account to which the opt out is to apply, (4) the physical location of the customer's load center, and (5) the date upon which the customer established, or plans to establish a process and implement, cost-effective measures to improve its energy efficiency savings and peak demand reductions.⁴²

Opt-out reporting

The bill provides that, not later than 60 days after the effective date of a customer's election to opt out, the customer must submit an initial report to the PUCO staff that summarizes the projects, actions, policies, or practices that the customer may consider implementing, based on the customer's cost-effectiveness criteria, for the purpose of reducing energy intensity. Energy intensity is defined as the amount of energy, from electricity, used or consumed per unit of production. For temporary opt outs under uncodified law during the 2015 to 2016 period, the bill requires the customer, by November 1, 2016, to prepare and submit to the PUCO staff an updated report. The updated report must include a general description of any cumulative amount of energy-intensity reductions achieved by the customer during the period beginning on the effective date of the election to opt out and ending not later than 60 days prior to the date that the updated report is submitted. For the longer-term opt outs under codified law, the bill requires the customer to submit the updated report at least once every 24 months for as long as the opt out is in effect. Once an updated report is submitted, the PUCO staff may request that the customer provide additional information on the projects, actions, policies, or practices implemented and the amount of energy-intensity reductions achieved during the period covered by the updated report. (See **COMMENT.**)

Both initial and updated reports must be verified by the customers.

The bill provides that any information contained in any opt-out report and any customer responses to PUCO staff requests for additional information are deemed

⁴¹ R.C. 4928.6611 and Section 8.

⁴² R.C. 4928.6612 and Section 9.



confidential, proprietary, and a trade secret. The information and responses cannot be (1) publicly divulged without written customer authorization or (2) used for any purpose other than to identify the amount of energy-intensity reductions achieved by the customer.⁴³

Opt-out suspension

If the PUCO finds, after notice and a hearing, that the customer has failed to achieve a substantial cumulative reduction in energy intensity identified by the customer in an updated report, and the customer has not shown good cause that excuses the failure, the PUCO may suspend the opt out for the time needed for the customer to achieve the reduction identified, but no longer than the time needed.⁴⁴

Opting back in

The bill permits a customer that used the longer-term codified law opt-out to opt back in to the EDU's portfolio plan, if the customer has previously opted out for at least three consecutive calendar years and the customer gives 12 months' advance written notice of its intent to opt in, to both the PUCO Secretary and the EDU servicing that customer. The bill does not exclude any period of time under the temporary opt-out under uncodified law from inclusion in the three-year count. The bill provides that the notice of intent to opt in must include: (1) a statement of the election to opt in, (2) the effective date of that election, (3) the account number for each customer account to which the opt-in is to apply, and (4) the physical location of the customer's load center. The minimum opt-in period the bill provides before the customer may again elect to opt out is three calendar years.⁴⁵

Provisions governing counting of EE savings and PDR

The bill requires that both of the following be counted toward meeting the EE/PDR requirements:

- EE savings and PDR that are achieved, in whole or in part, as a result of funding provided from the Universal Service Fund to benefit low-income customers through programs that include, but are not limited to, energy audits, the installation of energy efficiency insulation, appliances, and windows, and other weatherization measures. (The bill prohibits these EE

⁴³ R.C. 4928.6610(B), 4928.6616, and Sections 5 and 11.

⁴⁴ R.C. 4928.6616(F).

⁴⁵ R.C. 4928.6614 and 4928.6615.



savings and PDR from qualifying for "shared savings." "Shared savings" is not defined.)

- EE savings and PDR achieved through actions taken by customers or through EDU programs that comply with federal standards for either or both EE or PDR requirements, including resources associated with such savings or reduction that are recognized as capacity resources by the regional transmission organization operating in Ohio in compliance with continuing law governing transmission functions.

The bill requires EE savings and PDR amounts approved by the PUCO to continue to be counted toward achieving the EE/PDR requirements as long as the requirements remain in effect. Similarly, the bill permits, at an EDU's discretion, any EE savings or PDR amount achieved in excess of the requirements to be banked and applied toward achieving the EE/PDR requirements in future years.

The bill requires the PUCO to count both the EE savings and PDR on an annualized basis and a gross savings basis.

The bill requires EE savings and PDR achieved on and after the bill's effective date to be measured on the higher of an as found or deemed basis, except that, solely at the EDU's option, such savings and reduction achieved since 2006 may also be measured using this method. For new construction, the EE savings and PDR are to be counted based on 2008 federal standards, provided that when new construction replaces an existing facility, the difference in energy consumed, energy intensity, and peak demand between the new and replaced facility is to be counted toward meeting the EE and PDR requirements.

The bill requires the PUCO to "count energy efficiency savings and peak demand reductions associated with transmission and distribution infrastructure improvements that reduce line losses." The bill does not specify how these savings and reductions are to be counted or what they are to be counted toward. However, such EE savings and PDR are prohibited from qualifying for "shared savings," which is not defined.⁴⁶

Disclosure of customer costs of the energy requirements

The bill requires the PUCO, by January 1, 2015, to adopt rules governing the disclosure of the costs to customers of the renewable energy resource, EE savings, and PDR requirements. The bill requires the rules to include requirements that EDUs and ESCs must list, on all customer bills, including utility consolidated bills that are sent by

⁴⁶ R.C. 4928.66(A)(2)(d)(i) and (ii) and 4928.662.

an EDU but contain both EDU and ESC charges, the individual customer cost of compliance with the renewable energy resource requirements (applicable to both EDUs and ESCs) and the EE savings and PDR requirements (applicable only to EDUs) for the applicable billing period.

For bills sent by EDUs, including the utility consolidated bills, the costs must be listed as three distinct line items – one for renewable energy resources, one for EE, and one for PDR. Also, for bills sent by EDUs, including the utility consolidated bills, the cost of compliance with the renewable energy resource requirements must be calculated by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs, including solar-renewable-energy-credit costs, paid by all EDUs, as listed in the PUCO's most recently available alternative energy portfolio standard report. For bills sent by ESCs, the cost of compliance with the renewable energy resource requirements must be calculated similarly – by multiplying the individual customer's monthly usage by the combined weighted average of renewable-energy-credit costs, including solar-renewable-energy-credit costs, paid by all ESCs, as listed in the PUCO's most recently available alternative energy portfolio standard report. The cost of compliance with the renewable energy resource requirements is required to be listed as a distinct line item on the bills sent by ESCs.⁴⁷

Service restoration plan to prioritize hospitals

The bill provides that if electric service is interrupted during an emergency or disaster, an EDU's service restoration plan must give priority to hospitals that are the EDU's customers. The bill also requires that, if requested to do so by a hospital that is its customer, the EDU must confer at least every two years with that hospital regarding power quality issues and concerns, including voltage sags, spikes, and harmonic disturbances, in an effort to minimize those events and their impact on the hospital. The bill requires the PUCO to adopt rules to carry out these provisions.⁴⁸

Creation of the Energy Mandates Study Committee

The bill creates the Energy Mandates Study Committee to study Ohio's renewable energy, EE, and PDR mandates. The Committee consists of the following 13 members:

- Six members of the House of Representatives appointed by the Speaker of the House of Representatives, with not more than four members from the same political party;

⁴⁷ R.C. 4928.65.

⁴⁸ R.C. 4928.112.



- Six members of the Senate appointed by the President of the Senate, with not more than four members from the same political party;
- The PUCO chairperson, as an ex officio, nonvoting member.

Any vacancies that occur on the Committee must be filled in the same manner as the original appointment. The Speaker and President must appoint one member of the Committee each to serve as the co-chairpersons of the Committee.

The Committee is required to submit a report of its findings to the House of Representatives and the Senate by September 30, 2015, and then cease to exist on October 1, 2015. The report must include, at a minimum, all of the following:

- A cost-benefit analysis of the renewable energy, EE, and PDR mandates, including the projected costs on electric customers if the mandates were to remain at the percentage levels required under the law as amended by the bill;
- A recommendation of the best, evidence-based standard for reviewing the mandates in the future, including an examination of readily available technology to attain such a standard;
- The potential benefits of an opt-in system for the mandates, in contrast to an opt-out system for the mandates, and a recommendation as to whether an opt-in system should apply to all electric customers, whether an opt-out system should apply to only certain customers, or whether a hybrid of these two systems is recommended;
- A recommendation on whether costs incurred by an EDU or ESC pursuant to any contract, which may be entered into by the EDU or ESC on or after the bill's effective date for the purpose of procuring renewable energy resources or renewable energy credits and complying with the renewable energy requirements, may be passed through to any consumer, if the costs could have been avoided with the inclusion of a change of law provision in the contract;
- A review of the risk of increased electric grid congestion due to the anticipated retirement of coal-fired generating capacity and other factors; the ability of distributed generation, including combined heat and power and waste energy recovery, to reduce such grid congestion; and the potential benefit to energy consumers from reduced grid congestion;

- An analysis of whether there are alternatives for the development of advanced energy resources (such as clean coal and advanced nuclear energy technology, for example);
- An assessment of the environmental impact of the renewable energy and EE/PDR mandates on reductions of greenhouse gas and fossil fuel emissions;
- A review of payments made by EDUs to third-party administrators to promote EE/PDR programs under the terms of the EDUs' portfolio plans. The review is to include a complete analysis of all fixed and variable payments made to those administrators since the effective date of S.B. 221 of the 127th General Assembly, jobs created, retained, and impacted, whether those payments outweigh the benefits to ratepayers, and whether those payments should no longer be recovered from ratepayers. The review also must include a recommendation regarding whether the administrators should submit periodic reports to the PUCO documenting the payments received from EDUs.⁴⁹

Intention to adjust the energy mandates in the future

The bill states that it is the intent of the General Assembly to ensure that customers in Ohio have access to affordable energy. It further states that it is the intent of the General Assembly to incorporate as many forms of inexpensive, reliable energy sources in the state of Ohio as possible. The bill continues that it is also the intent of the General Assembly to get a better understanding of how energy mandates impact jobs and the economy in Ohio and to minimize government mandates. The bill further states that because the energy mandates in current law may be unrealistic and unattainable, it is the intent of the General Assembly to review all energy resources as part of its efforts to address energy pricing issues.

The bill concludes that therefore, it is the intent of the General Assembly to enact legislation in the future, after taking into account the recommendations of the Energy Mandates Study Committee, that will reduce the renewable energy resource, EE, and PDR mandates, and provide greater transparency to electric customers on the costs of future energy mandates, if there are to be any.⁵⁰

⁴⁹ Section 4.

⁵⁰ Section 3.

Prohibition of waiting period for the Percentage of Income Payment Plan

The bill prohibits the imposition of a waiting period for enrollment of an eligible customer in the Percentage of Income Payment Plan, which is a low-income customer assistance plan under continuing law.⁵¹

COMMENT

While the bill's customer opt-out reporting requirements refer to the customer's *energy-intensity reductions* that must be summarized in the required reports,⁵² the bill requires the customer's opt-out notice to specify the date that the customer established, or plans to establish a process and implement, cost-effective measures to improve its *energy efficiency savings and peak demand reductions*.⁵³

HISTORY

| ACTION | DATE |
|-------------------------------|----------|
| Introduced | 03-28-14 |
| Reported, S. Public Utilities | 05-07-14 |
| Passed Senate (21-12) | 05-07-14 |
| Reported, H. Public Utilities | --- |

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⁵¹ R.C. 4928.53(B)(3).

⁵² R.C. 4928.6616 and Section 11.

⁵³ R.C. 4928.6612(E) and Section 9(E).

