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H.B. 58
134th General Assembly

# Bill Analysis

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**Version:** As Introduced

**Primary Sponsors:** Reps. Skindell and Denson

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## SUMMARY


- Repeals the requirement that the Public Utilities Commission (PUCO) consider total earned return on common equity for affiliated Ohio electric distribution utilities (EDUs) operating under a joint electric security plan (ESP) when determining whether an EDU had or is likely to have significantly excessive earnings.
- Repeals the provision that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its significantly excessive earnings review of annual ESP adjustments.


## DETAILED ANALYSIS

### Electric distribution utility excessive earnings test

The bill modifies the law that requires the Public Utilities Commission (PUCO) to determine if electric distribution utilities (EDUs) that operate under an electric security plan (ESP) are likely to have or have had excessive earnings. Determinations are made through a significantly excessive earnings test (SEET). Under the bill, when determining how significantly excessive earnings are assessed PUCO may no longer do the following:

- Use the total earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted every four years.[1] (See "**Quadrennial reviews for significantly excessive earnings**" below.)
- Use the total of the utilities' earned return on common equity, for affiliated Ohio EDUs that operate under a joint ESP, for the SEET conducted in reviews of annual ESP

[1] R.C. 4928.143(E).

adjustments.[2] (See "**Annual reviews for significantly excessive earnings**" below.)

The bill removes the provision that allows PUCO, in its SEET reviews for annual ESP adjustments, to consider, "directly or indirectly, the revenue, expenses, or earnings of" any EDU affiliate that is an Ohio EDU. The bill revives prior law that prohibits PUCO from considering these factors for "any affiliate or parent company."[3] The effect of this change is that the factors PUCO considers for individual Ohio EDU affiliates during a review may no longer be reviewed in combination with the other affiliate EDUs.

# Background

Under the competitive retail electric service law, EDUs must provide consumers "on a comparable and nondiscriminatory basis within its certified territory, a standard service offer [SSO] of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service." EDUs must apply to PUCO to establish the SSO through a market rate offer (MRO) or an electric security plan (ESP).[4]

No EDUs are operating under an MRO. Cleveland Illuminating Company, Ohio Edison Company, and Toledo Edison Company are FirstEnergy companies that operate under a joint ESP.[5]

## SEET reviews

### Quadrennial reviews for significantly excessive earnings

Ongoing law requires PUCO to review each ESP with a term of more than three years, in the fourth year, and if applicable every four years thereafter. One of the purposes of the review is to determine whether the prospective effect of an EDU's ESP *is substantially likely to provide* the EDU with a return on common equity that is "significantly in excess of the return on common equity *that is likely to be earned* by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings will not occur. (In the four-year review, PUCO also determines whether the ESP continues to be more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.)[6]

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[2] R.C. 4928.143(F).

[3] R.C. 4928.143(F).

[4] R.C. 4928.141, not in the bill.

[5] FirstEnergy Electric Security Plan (Case No. 14-1297-EL-SSO), available at http://dis.puc.state.oh.us/TiffToPDf/A1001001A16C31B41521H01842.pdf, accessed on February 15, 2021.

[6] R.C. 4928.143(E).

### Annual reviews for significantly excessive earnings

Under continuing law, PUCO also must review ESP adjustments following the end of each annual period of an ESP to determine if the adjustments resulted in excessive earnings. This SEET determination is measured by whether *earned* return on common equity of the EDU is "significantly in excess of the return on common equity that *was earned* during the same period by publicly traded companies . . . that face comparable business and financial risk." EDUs have the burden of proof to demonstrate that significantly excessive earnings did not occur.[7]

### Actions after SEET results

If, after a SEET for a four-year review, PUCO finds that continuation of the ESP would result in significantly excessive earnings, PUCO may terminate the ESP after providing notice and a hearing. If, during an annual SEET review of ESP adjustments, PUCO finds that the adjustments, in the aggregate, did result in significantly excessive earnings, PUCO must require the EDU to return to consumers the amount of the excess by prospective adjustments. The EDU, upon making such prospective adjustments, may terminate the ESP and immediately file an application for an MRO. Rates for terminated ESPs, by PUCO order, become the EDU's most recent SSO rate until the EDU submits a new ESP or MRO.[8]

## HISTORY

| Action | Date |
|---|---|
| Introduced | 02-03-21 |

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[7] R.C. 4928.143(F).

[8] R.C. 4928.143(E) and (F).