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S.B. 10
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Romanchuk

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SUMMARY

- Repeals the ability of an electric distribution utility (EDU) to file an application with the Public Utilities Commission (PUCO) to implement a decoupling mechanism established under H.B. 6 of the 133rd General Assembly for calendar year 2019 and thereafter regarding energy efficiency and peak demand reduction (EE/PDR) programs.
- Terminates all decoupling mechanisms (and any related customer assessment or collection) currently in existence and established as follows:
  - Under an electric security plan (ESP) or EE/PDR program;
  - Under H.B. 6 for calendar year 2019 and thereafter regarding EE/PDR programs.
- Repeals the requirement established under H.B. 166 of the 133rd General Assembly that PUCO consider total earned return on common equity for affiliated Ohio EDUs operating under a joint ESP when conducting the quadrennial and annual significantly excessive earnings test (SEET) reviews for those EDUs.
- Repeals the provision established under H.B. 166 that allows PUCO to consider the revenue, expenses, or earnings of any EDU affiliate that is an Ohio EDU in its annual SEET review of ESP adjustments.
- Repeals the provisions that permit an EDU to do the following:
  - Implement energy efficiency programs as part of its ESP;
  - Allocate economic development, job retention, and energy efficiency program costs across all classes of EDU customers, including customers of EDUs in the same holding company system.
- Requires the following to be promptly refunded to customers and allocated to customer classes in the same proportion as originally collected:

- ◻ The full amount of revenues collected from customers under the decoupling mechanism established under H.B. 6 for calendar year 2019 and thereafter regarding EE/PDR programs;
- ◻ The amounts of money collected from customers resulting from, or attributable to, amendments made to the law by H.B. 166 regarding quadrennial and annual SEET reviews.

- Requires PUCO to reconsider any order or determination it made under the law as amended by H.B. 166 regarding quadrennial and annual SEET reviews, and to issue new orders or determinations in compliance with this bill's provisions.

DETAILED ANALYSIS

Overview

The bill repeals, and terminates, all decoupling mechanisms from the law, effectively removing the mechanism as a cost-recovery option for certain electric distribution utilities (EDU) in the state. The bill also amends the law regarding electric security plans (ESP) by eliminating certain provisions related to the significantly excessive earnings test (SEET), which curbs the ability of the Public Utilities Commission (PUCO) to use certain revenues in the earnings calculations.

The bill further requires the refund of revenues and money collected from customers under the laws described above as they existed prior to the effective date of this bill along with requiring PUCO to reconsider any orders or decisions made under the ESP laws as amended prior to the bill's effective date.

Decoupling repeals

Under H.B. 6

The bill repeals the decoupling provisions of law enacted in H.B. 6 of the 133rd General Assembly. Generally, these provisions give an EDU the ability to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. Under the decoupling mechanism, the base distribution rates for residential and commercial customers is decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements, excluding program costs and shared savings, and recovered pursuant to an approved ESP, as of the 12-month period ending December 31, 2018.[1]

A detailed discussion of the law being repealed can be found on page 24 of LSC's analysis of H.B. 6, As Passed by the General Assembly, available here.

[1] R.C. 4928.471, repealed by the bill.

The bill also prohibits any decoupling mechanism established under H.B. 6 from remaining in effect on and after the effective date of the bill, and prohibits any amount, charge, mechanism, or rider related to this decoupling provision from being assessed or collected from customers.[2]

Under law enacted prior to H.B. 6

The bill repeals the current law provisions (that were already law prior to H.B. 6) that permit EDUs, as part of their ESP, to include a (1) revenue decoupling mechanism or any other incentive ratemaking regarding distribution service or (2) decoupling mechanism for energy efficiency or conservation programs. Under the bill, any decoupling mechanism established under these provisions is prohibited from remaining in effect and any amount, charge, mechanism, or rider related to the decoupling provisions is prohibited from being assessed or collected from customers.[3]

Customer refunds

The bill requires customer refunds of the full amount of the revenues collected under the decoupling provisions of H.B. 6, as those sections existed prior to the effective date of the bill. Refunds must be made promptly to customers from whom the revenues were collected and must be allocated to customer classes in the same proportion as originally collected.

Refunds under the bill must be made notwithstanding any other provision in Ohio utility law, including the current law that prohibits public utilities from refunding any rate, rental, toll, or charge established in its rate schedule, except as specified in that rate schedule.[4]

Economic development, jobs, and energy efficiency in ESPs

The bill removes energy efficiency programs from the current law provisions (that were already law prior to H.B. 6) that permit EDUs to include provisions for implementing economic development and job retention and *energy efficiency programs* in their ESPs. The bill also repeals the provision that permits the allocation of economic development, job retention, and energy efficiency program costs across all classes of EDU customers, including customers of EDUs in the same holding company system.[5]

Electric distribution utility excessive earnings test

The bill modifies the law that requires the PUCO to determine if EDUs that operate under an ESP are likely to have or have had excessive earnings. Determinations are made through a SEET. Under the bill, when determining how significantly excessive earnings are assessed PUCO may no longer do the following:

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[2] Section 4.

[3] R.C. 4928.143(B)(2)(h) and 4928.66(D); Section 4.

[4] Section 5.

[5] R.C. 4928.143(B)(2)(i).

- 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.[6] (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 adjustments.[7] (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."[8] 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).[9]

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.[10]

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

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

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

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

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

[10] FirstEnergy Electric Security Plan (Case No. 14-1297-EL-SSO), available at http://dis.puc.state.oh.us/TiffToPDf/A1001001A16C31B41521H01842.pdf, accessed on January 26, 2021.

whether the ESP continues to be more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.)[11]

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.[12]

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.[13]

Customer refunds regarding SEET

The bill requires customer refunds of the full amount of money collected from customers resulting from, or attributable to, amendments made to the ESP laws described above regarding SEET. Refunds must be made promptly to customers from whom the money was collected and must be allocated to customer classes in the same proportion as originally collected.[14]

Reconsideration of orders and decisions regarding SEET

The bill requires the PUCO to reconsider any order or determination it made in compliance with the ESP laws prior to the effective date of this bill regarding SEET. The bill further requires PUCO to issue new orders and determinations in compliance with the amendments this bill makes to these provisions.[15]

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

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

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

[14] Section 6(A).

[15] Section 6(B).

HISTORY

Action	Date
Introduced	01-21-21

S0010-I-134/ec