



MEMORANDUM

Date: June 12th, 2020
To: The Ohio Manufacturers' Association
From: John Seryak, PE and Peter Worley (RunnerStone, LLC)
RE: Overview of HB 246: Significant Changes to Electric Rate Making, PUCO Accountability, and Customer Rights

On May 25th, 2020, substitute House Bill 246 (HB 246) was introduced into the Public Utilities Committee of the Ohio House of Representatives. Sponsors of the bill claim it is to “reform and modernize” the Public Utilities Commission of Ohio (PUCO) and the Office of the Ohio Consumers’ Counsel (OCC). It does nothing of the sort. Instead, the bill makes perilous changes to the electric ratemaking process, limits customers’ and intervenors’ rights to participate in cases, increases fees paid by competitive suppliers, creates a blank check for utilities, increases the Ohio Power Siting Board’s (OPSB) regulatory oversight and authority, and provides the PUCO with unfettered discretion. The bill is opaque and no clear reasoning exists for why its proposed changes are needed or how important modifications to existing law would work. HB 246 creates unreasonable risk to manufacturers in the following ways:

- Limits intervention rights of manufacturers and other interest groups by providing the PUCO with discretionary authority to consolidate litigation efforts of groups with “common interests.”
 - Increases the authority of the PUCO. HB 246 eliminates the PUCO’s requirement to eliminate two regulatory restrictions for every new restriction created.
 - Creates a blank check for monopoly utilities by authorizing a new type of ratemaking mechanism, the so-called “alternative distribution rate plan.” The costs of this type of plan are unknown, unjustified, and uncapped. There is no detail provided on what such a plan is, how it works, or why it is needed and leaves the approval of such plan to the discretion of the PUCO with only minimal limitations. It also leaves the necessity of a hearing to the PUCO’s discretion, even for applications that are for increases in rates.
 - Offers monopoly utilities a path to infringe on competitive markets. An alternative distribution rate plan is required to be non-discriminatory, which could allow the monopoly utility to offer competitive products to shopping customers. This provision becomes dangerous if the PUCO defines new and emerging technologies as a “public utility service,” which it is contemplating right now with electric vehicle (EV) charging stations. As a result, HB 246 could seriously constrain an emerging, competitive market driven by private investment, and instead socialize competitive services and products through the utilities.
 - Socializes what was previously private investment for select natural gas pipelines.
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- Worsens restrictions on future local renewable energy development, while exempting favored subsidized solar projects from House Bill 6.

Limits on Legal Intervention Rights of Manufacturers

The bill introduces two mechanisms that can limit manufacturers’ ability to intervene in ratemaking proceedings. First, the PUCO would now have the authority to consolidate intervention from various groups if the PUCO believes the groups “have sufficiently common interests and it will expedite the proceeding” (Line 276 of bill). The bill provides no criteria for what qualifies as “sufficiently common interests,” introducing a risk that the interests of the manufacturers in the Ohio Manufacturers’ Associations could be subordinated under interventions from groups with different policy positions at the discretion of the PUCO.

Secondly, with just six sentences, the bill creates an entirely new ratemaking process, the “alternative distribution rate plan” for monopoly electric distribution utilities that can increase manufacturers’ charges. The bill does not explain if groups may intervene and contest said plan. Instead, it alludes to intervention as a mere possibility, the plan “may include a hearing at the discretion of the public utilities commission” (Line 1784 of Bill).

Increases the Authority of the PUCO

For reasons unknown, the bill enables the PUCO to be exempted from the recent General Assembly’s restriction put in place to minimize the number of regulatory restrictions imposed on businesses by state agencies. State Agencies are required to eliminate two regulatory restrictions for every new one that they create.

Lastly, the bill reduces OCC’s authority, scope of participation, and budget. OCC is a party that advocates for residential customer rights and utility accountability. The bill limits OCC’s participation to certain cases before the PUCO. It seems to prohibit OCC’s participation in FERC, FCC, and OPSB cases. It grants the PUCO the authority to consolidate OCC’s involvement with other residential advocates (e.g., municipalities, Ohio Partners for Affordable Energy, etc.). It appears to eliminate OCC’s ability to participate in proceedings at the PUCO regarding rulemakings, general public policy cases, and the operations of the PUCO.

Creation of Blank Checks for Monopoly Utilities through “Alternative Distribution Rate Plans”

As mentioned earlier, the bill creates a new ratemaking process, the “alternative distribution rate plan.” Furthermore, the bill puts no limits on what the monopoly electric distribution utilities can request in these plans and at what cost. The PUCO must accept their plans if they meet three vague criteria:

1. The utility is in compliance with not offering any undue or unreasonable preference or advantage to any person or is not subjecting any person to any undue or unreasonable prejudice or disadvantage;



2. The utility is currently in substantial compliance with the policy of the state and the alternative distribution rate plan does not take the utility out of substantial compliance with the policy of the state; and
3. The plan is just and reasonable.

What an “alternative distribution rate plan” is and why it is needed is unclear. There are no details explaining or defining the plan. Based on the minimal criteria that the plan must meet, it seems this new type of rate plan would allow a utility to deviate from the policy of the state, since it only needs to meet “substantial compliance” with the policy. If the utility is not wholly in compliance with state policy, in what ways would it be allowed to deviate from the policy? And, how are utility actions to be held accountable under the law if they are given permission by the law to ignore state policy in some cases? Worryingly, HB 264 also eliminates a requirement that the PUCO report to the General Assembly non-competitive electric services that should be available on a competitive basis. Competition and customer choice is a key part of Ohio’s energy policy.

This bestows monopoly electric utilities a vast space of options to increase rates, all left to the discretion of the PUCO.

Given that the utility is required not to offer any undue or unreasonable preference or advantage to any person or not subject any person to any undue or unreasonable prejudice or disadvantage, it appears that the utility would be required to offer utility services via the “alternative distribution rate plan” to shopping customers at the same price as non-shopping customers, as to be non-discriminatory. This could include competitive services, such as efficiency services, load management, behind-the-meter services.

Socialization of Investment in Select Natural Gas Pipelines Offers Monopoly Natural Gas Utilities a Path to Infringe on Competitive Markets

The bill creates a new government program: “the natural gas supply access investment program” for “facilitating investment... in meeting natural gas supply needs... of areas of this state in which there is ... insufficient natural gas supply access to meet those needs” (Line 119 of bill). The director of the Ohio public works commission would authorize grants and loans from this program, without limits or minimum standards. The bill provides no criteria on what qualifies as “natural gas supply needs” nor “insufficient natural gas supply access.” The program does not need to perform a cost benefit analysis. The program does not need to compare natural gas investment cost-benefits to alternative energy solutions. This enables the PUCO to decide the solution instead of the market.

Worsening Restrictions on Future Local Renewable Energy Development

By increasing the authority of the OPSB, and authorizing it to create more regulations, the bill makes local renewable energy development even more challenging. The bill makes wind turbine setbacks even more restrictive. Note that wind farm setbacks have been a subject of intense debate at the Ohio General Assembly for many years now, with the most restrictive options being put into law. Given the breadth of debate on the record, it is not clear why there is a need for yet a further restriction.



RunnerStone, LLC

5701 N. High Street, Suite 112, Worthington, OH 43085
614.268.4263

Troublingly, the bill expands setback regulations to now include major solar projects (>50 MW) as well, as early as 12/2/2020. The bill provides no explanation for the need for setbacks for solar, nor details on what the minimum setbacks would be.

Furthermore, the bill grants the OPSB chair authority to pay outside experts to analyze applications, with no details or limits (e.g., consensus on the expert chosen or \$50,000 maximum fee). The applicant must pay the unlimited and undefined cost for the expert. The bill also increases OPSB oversight over major utility facilities. Before the OPSB oversaw facilities with voltage at 100 kV or greater, but the bill expands its authority to 69 kV or over.

Other Provisions

The bill makes a myriad of other changes to various laws, including laws regarding railroad bridges, railroad rights-of-way, rooftop solar in condo associations, increases in pipeline safety forfeitures, increases in competitive suppliers and aggregators' fees, and creates alternative rate plans for water and sewer companies. Not all provisions of the bill are covered in this memorandum.