



What you need to know about Ohio's electric energy policy (Senate Bill 221)

The Office of the Ohio Consumers' Counsel's (OCC) review of the electric law passed by the state legislature shows that after months of hearings, testimony and informational meetings on behalf of consumers, some of the key safeguards the OCC had advocated for on behalf of Ohio's 4.5 million households were adopted while other important safeguards were not. The residential customer class represents about 40 percent of the electric industry's revenues in this state.

Senate Bill 221 contains both pros and cons for residential consumers. The OCC believes that the renewable energy and energy efficiency provisions are the jewels of Senate Bill 221, signed into law by Ohio Governor Ted Strickland on May 1, 2008.

With respect to the rate portions of the law, the OCC is pleased with a number of key consumer protections for which the office had advocated on behalf of consumers. However, the OCC is concerned that the legislation could allow the Public Utilities Commission of Ohio (PUCO) to approve significant rate increases for residential consumers for many years. Under this law, utilities can file for increases in rates outside the normal ratemaking procedures that could reach into the millions or billions of dollars without requiring audits or hearings.

As always, through its advocacy, OCC will work hard to present its case to protect residential customers. Given its broad authority, it will be up to the PUCO to render decisions. The OCC hopes the PUCO will adopt its recommendations and provide positive customer outcomes.

Energy efficiency

- ▶ Senate Bill 221 requires a 22 percent reduction in energy demand by 2025 and includes benchmarks and penalties.

The OCC's view

The OCC is pleased with the outcome of the energy efficiency portions of the legislation, for which the OCC has advocated over the past two years. Senate Bill 221 includes the adoption of the OCC's recommended level of energy efficiency along with other related provisions.

Alternative energy

- ▶ The alternative energy portfolio standard requires that by 2025, 25 percent of electricity sold in Ohio must be generated from alternative energy sources, such as



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The Pros and Cons of Senate Bill 221

Pros:

- ▶ A determination will be made regarding whether an Electric Security Plan is more favorable than a Market Rate Option
- ▶ Prudence standard must be used to determine costs customers will pay
- ▶ Energy efficiency standard will reduce demand by 22 percent by 2025
- ▶ Renewable energy standard will be 12.5 percent of generation supply in Ohio by 2025
- ▶ Energy efficiency and renewable energy standards have benchmarks that must be met or penalties will be assessed
- ▶ Following the initial Electric Security Plan filings under the energy policy, subsequent plans will give case participants 275 days to make arguments before a PUCO decision must be made
- ▶ Regulatory transition charges will expire and no longer be a part of rates

Cons:

- ▶ Utilities may be permitted to impose automatic increases for fuel costs, purchased power, emissions allowances and federally mandated energy and carbon taxes
- ▶ Still allows special contracts and side deals
- ▶ Natural gas utilities can seek alternative regulation to be made financially whole if sales lag because of energy efficiency or conservation programs
- ▶ Allows utilities to request the recovery of construction costs prior to customers receiving any benefit from new power plants
- ▶ Utilities can include in an Electric Security Plan single issues related to costs, revenue decoupling, modernization incentives, lost revenues, shared savings and avoided costs and other incentive ratemaking
- ▶ Utilities are allowed to withdraw application if it disagrees with the outcome of PUCO modifications

clean coal, nuclear energy, fuel cells and cogeneration. Half of this standard (12.5 percent) must be met with renewable sources, including a 0.5 percent solar set aside. Also, half of the advanced energy and renewable energy must be located in Ohio.

- ▶ Senate Bill 221 institutes a 3 percent cost cap for alternative energy. If the cost of fulfilling the alternative energy requirements is 3 percent or greater than the cost of meeting the same demand without alternative energy, then the PUCO may waive a portion of a utility's requirements.

The OCC's view

The inclusion of a renewable energy mandate is one of the jewels of the legislation that OCC worked hard to obtain. The renewable energy standards include acceptable benchmarks and penalties for non-compliance.

Regulated and market rates

- ▶ Electric utilities must file a generation rate to be effective Jan. 1, 2009 through an Electric Security Plan with the PUCO. However, Dayton Power & Light may stay on its current rate plan through 2010, as previously approved by the PUCO.
- ▶ Electric utilities may propose to begin charging a standard service offer according to a Market Rate Option. The Market Rate Option would include a competitive bidding process for generation service.

Under a Market Rate Option, if a utility owns its power plants, it must transition to a full Market Rate Option as approved by the PUCO.

If American Electric Power, Dayton Power & Light or Duke proposes to charge market rates, they must phase in new rates, beginning with a split between the rates under a regulated Electric Security Plan

(90 percent) and Market Rate Option (10 percent) for the first year. Each year, more of the rate can reflect the market price.

- ▶ Each proposed Electric Security Plan will be compared to the results under the Market Rate Option. If the Electric Security Plan is judged by the PUCO to be more favorable overall (“in the aggregate”) than the Market Rate Option, the Electric Security Plan can be approved.
- ▶ A comparison between the Electric Security Plan and the Market Rate Option will occur every four years if the term of an approved Electric Security Plan exceeds three years.

The OCC’s view

The OCC is concerned that Electric Security Plan rates will not be developed using the tried and true traditional ratemaking process. Generation and distribution rates should be subject to this process, so that costs can be verified as just, reasonable and prudent.

The OCC was successful in gaining a comparison between the Electric Security Plan and market rates, so that the least cost option can be determined and selected by the PUCO. The OCC has continuously stressed that Senate Bill 221 should have the flexibility to provide the lowest cost electricity to each utility’s residential customers. Otherwise residents in some parts of Ohio will pay higher rates than they should.

Excess earnings

- ▶ On an annual basis, the PUCO must consider whether adjustments to rates resulted in excess earnings for a utility under an Electric Security Plan.
- ▶ Additionally, under an Electric Security Plan having a term greater than three years, a test for excess earnings as a result of the plan will also occur every four years. The burden of proof is on the utilities.

The OCC’s view

The OCC supports the concept of monitoring excess earnings and holding utilities accountable if they over-collect from ratepayers.

Elimination of regulatory transition charges

- ▶ Senate Bill 221 eliminates current regulatory transition charges (RTCs) which reflect costs



the utilities incurred prior to deregulation, and in most cases will have fully recovered those costs by the end of 2008.

The OCC’s view

Removing the continuation of the RTCs is an important victory for the OCC. Under Senate Bill 221, these charges will expire as previously approved by the PUCO. In the FirstEnergy service territory, for example, retaining these charges would have annually taken \$590 million out of the pockets of customers.

Potential rate increases

- ▶ As part of an Electric Security Plan, utilities can file for increases, including automatic increases, in a number of categories of generation costs outside the normal ratemaking process, including:

environmental costs, fuel costs, operating and maintenance costs, and the cost of providing standby and default service.

- ▶ An Electric Security Plan may allow costs of new power plants to be recovered through a charge, but there must be a proven need for the plant and construction must be competitively sourced. The Electric Security Plan may permit the recovery of construction costs prior to customers receiving benefits from power plants.
- ▶ Electric companies can avoid the ratemaking process for major distribution costs by including them in an Electric Security Plan, thereby avoiding close scrutiny and preventing the review of decreased costs that could otherwise be used to off set the proposed increases.

The OCC's view

The OCC is concerned that the law could allow the PUCO to approve significant rate increases to residential consumers for many years. Under this law, utilities can file for automatic increases for costs that could reach into the hundreds of millions or billions of dollars without a requirement for audits or hearings.

Recovery of costs should take place in a case with ample time for the OCC to represent the interests of residential consumers. This would better ensure that rates are prudent, just and reasonable and that customers are not overpaying for their electric service.

The Office of the Ohio Consumers' Counsel (OCC), the residential utility consumer advocate, represents the interests of 4.5 million households in proceedings before state and federal regulators and in the courts. The state agency also educates consumers about electric, natural gas, telephone and water issues and resolves complaints from individuals. To receive utility information, brochures, schedule a presentation or file a utility complaint, residential consumers may call 1-877-PICKOCC (1-877-742-5622) toll free in Ohio or visit the OCC website at www.pickocc.org.

The Office of the Ohio Consumers' Counsel is an equal opportunity employer and provider of services.

For additional information from the Office of the Ohio Consumers' Counsel:

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