

24th Annual Ohio

Energy Management

C O N F E R E N C E

**Priceless Insights on Ohio's New Clean Air
Law (HB 6) ... Incentives, Initiatives &
Programs for Renewable Power for
Energy-End Users &
the Business Community**

Frank Strigari
Chief Legal Counsel Director
Ohio Senate
Columbus

**Tuesday, February 18, 2020
9:30 a.m. to 9:45 a.m.**

Biographical Information

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Frank Strigari is the Chief Legal Counsel for the Ohio Senate. During Mr. Strigari's 15-year legal career, he has primarily worked on state legislative and executive branch matters, and has served as legal counsel to a number of statewide elected officials, including 3 Senate Presidents, the Governor of Ohio, Auditor of State, and 2 Attorneys General. As Chief Legal Counsel to the Senate during the past 8 years, Mr. Strigari has supervised the legal affairs of the Senate, advised multiple Senate Presidents, Committee Chairs and majority caucus members on legal and policy-related matters, and has drafted hundreds of pieces of legislation that have become the law of Ohio. One of Mr. Strigari's primary areas of expertise is with legislation involving energy and public utilities law, which, most recently, had him work very intimately on last year's HB 6.

Mr. Strigari received his undergraduate degree from Indiana University, and later received his law degree from the Chicago-Kent College of Law. He is a resident of Columbus, Ohio, where he lives with his wife Sarah, and their identical twin girls, Elizabeth and Victoria.



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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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H.B. 6
133rd General Assembly

Final Analysis

[Click here for H.B. 6's Fiscal Note](#)

Version: As Passed by the General Assembly

Primary Sponsors: Reps. Callender and Wilkin

Effective date: October 22, 2019

Niyah Walters, Attorney

UPDATED VERSION*

SUMMARY

Payments for in-state nuclear and in-state renewable resources

Customer charges

- Requires each electric distribution utility (EDU) to collect a per-customer monthly charge from all of its retail electric customers in Ohio beginning January 1, 2021, and ending December 31, 2027, that is sufficient to produce:
 - \$150 million annually for total disbursements from the Nuclear Generation Fund; and
 - \$20 million annually for total disbursements from the Renewable Generation Fund.
- Requires the Public Utilities Commission (PUCO) to determine the method by which the revenue is allocated or assigned to each EDU for billing and collection, provided that the method is based on (1) the relative number of customers, (2) the relative quantity of kilowatt hour sales, or (3) a combination of the two.
- Requires the level and structure of the charge to be authorized by PUCO through a process that PUCO must determine is not for an increase in any rate, joint rate, toll, classification, charge, or rental.
- Requires the charge to be for bills rendered beginning January 1, 2021, and ending December 31, 2027, not to exceed the following:
 - Residential: 85¢;

* This version updates the effective date.

- Industrial customers that exceeded 45 million kilowatt hours of electricity at one location in the preceding year, \$2,400.
- Requires the level and design of the charge or charges for nonresidential customers that do *not* exceed 45 million kilowatt hours of electricity to be established in a way that avoids abrupt or excessive bill impacts for typical customers.
- Requires authorized charges to be subject to reconciliation of actual revenue collected with revenue needed to meet the revenue requirements.
- Authorizes EDUs to adopt accounting practices to facilitate reconciliation of revenue collected.
- Authorizes the charges to be extended beyond December 31, 2027, for purposes of reconciliation.
- Creates the Nuclear Generation Fund and the Renewable Generation Fund, where the above charges are to be deposited (88.25% of charges into the Nuclear Generation Fund and 11.75% into the Renewable Generation Fund).
- Requires the State Treasurer to distribute the money from the Nuclear Generation Fund and Renewable Generation Fund in accordance with directions provided by the Ohio Air Quality Development Authority, who must consult with PUCO.
- Requires any amount remaining in the Nuclear Generation Fund or Renewable Generation Fund as of December 31, 2027, minus remittances that are required to be made by January 21, 2028, to be refunded to customers in a manner determined by the Authority in consultation with PUCO.

In-state nuclear

- Permits an owner or operator of an in-state nuclear resource to apply, not later than February 1, 2020, to the Authority to receive quarterly payments from the Nuclear Generation Fund for nuclear resource credits it earned.
- Requires the application to include certain financial, operational, and risk information pertaining to the resource.
- Requires the Authority to review and approve the application by March 31, 2020, if the resource meets the act's definition, if the application meets the application requirements, and if the resource's operator maintains both a principal place of business in Ohio and a substantial presence in Ohio with regard to its business operations, offices, and transactions.
- Specifies that all financial and proprietary information, including trade secrets, submitted to the Authority for application purposes is confidential and is not a public record.
- Requires the owner or operator of the nuclear resource to report its electricity production not later than seven days after the close of each quarter.

- Requires the reported production to be in accordance with data from the generation attribute tracking system designated by the Authority.
- Requires the Authority to issue one nuclear resource credit to the nuclear resource for each megawatt hour reported and approved by the Authority.
- Sets the price of a nuclear resource credit at \$9 per megawatt hour, subject to reduction as provided in the act.
- Beginning April 2021 and ending January 2028, requires the Authority every quarter and by the 21st of the month, to direct the State Treasurer to remit money from the Nuclear Generation Fund to pay for the credits earned by the resource during the previous quarter.
- If money in the Nuclear Generation Fund is insufficient, requires the Authority to direct the State Treasurer to remit money from the fund not later than 21 days after the close of any quarter in which an owner or operator was not fully compensated, to pay for the unpaid credits.
- Requires a retrospective management and financial review of the owner or operator of a nuclear resource to be conducted annually beginning in 2021 and ending in 2027 not later than May 1 each year.
- Permits PUCO to retain consultants and advisors to perform all or any portion of the annual review, the cost of which is to be paid from the Nuclear Generation Fund.
- Allows the owner or operator of a nuclear resource to provide PUCO or PUCO's consultants or advisors with any information the owner or operator chooses.
- Requires the owner or operator to respond promptly and fully to any document, information, data, or other request by PUCO or PUCO's consultants or advisors, and provides that material failure to do so will result in suspension of payments for nuclear resource credits until the failure is cured to PUCO's satisfaction.
- Requires PUCO to submit a report of each annual retrospective management and financial review to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the Authority.
- Requires the report submission to include a copy of the owner's or operator's certified annual audit.
- Provides for the report to be made publicly available, provided it does not reveal any confidential or proprietary information.
- Requires the Authority in consultation with PUCO to consider the findings in the report, and permits the Authority to reduce or cease payments for nuclear resource credits if it makes certain determinations relating to need, continued resource operation, resource qualification, and reasonableness of credit funding.

- If the Authority, based on the review, determines it necessary to make reductions, requires PUCO to reduce the revenue requirement, reduce the credit price, reduce the customer charge or charges, and adjust percentages for customer charge allocation.
- Requires that any revisions made by PUCO, as described above, be made through a process that PUCO must determine is not for an increase in any rate, joint rate, toll, classification, charge, or rental, notwithstanding anything to the contrary in Ohio's Public Utility Law.
- Requires PUCO to instruct EDUs to suspend or cease billing and collection of customer charges if payments for nuclear resource credits are suspended or ceased under the act.
- Exempts the review process from continuing law governing PUCO hearing procedure.

In-state renewable resources

- Permits an owner or operator of a qualifying renewable resource to apply, by February 1, 2020, to the Authority to receive quarterly payments from the Renewable Generation Fund for renewable energy credits earned by the resource.
- Defines "qualifying renewable resource" as in-state electric generating facility that:
 - Uses or will use solar energy as its primary energy resource;
 - Obtained a certificate for construction of a major utility facility from the Power Siting Board prior to June 1, 2019; and
 - Is interconnected with the transmission grid that is subject to the operational control of PJM interconnection, L.L.C., or its successor.
- Requires the Authority to review and approve the application by March 31, 2020, if the resource meets the act's definition.
- Specifies that all financial and proprietary information, including trade secrets, submitted to the Authority for application purposes is confidential and is not a public record.
- Requires the owner or operator of the resource to report its electricity production not later than seven days after the close of each quarter.
- Requires the reported production to be in accordance with data from the generation attribute tracking system designated by the Authority.
- Requires the Authority to issue one renewable energy credit to the resource for each megawatt hour reported and approved by the Authority.
- Sets the price of a renewable energy credit at \$9 per megawatt hour.
- Beginning April 2021 and ending January 2028, requires the Authority every quarter, and by the 21st of the month, to direct the State Treasurer to remit money from the Renewable Generation Fund to pay for the credits earned by the resource during the previous quarter.

- If money in the Renewable Generation Fund is insufficient, requires the Authority to both:
 - Direct the State Treasurer, not later than 21 days after the close of the quarter in which charges collected were insufficient, to prorate payments from the total amount available in the fund based on the number of credits earned by a resource during the quarter that ended 12 months prior to the last day of the previous quarter; and
 - Direct the State Treasurer, not later than 21 days after the close of a quarter in which an owner or operator received prorated payments, to remit money from the fund to pay the unpaid credits.
- Requires unpaid renewable energy credits to be paid before other remittances for renewable energy credits are made from the Renewable Generation Fund.

Administrative provisions

- Permits the Authority to make use of PUCO staff and experts in the manner provided by mutual arrangement between it and PUCO, and requires PUCO's information, data, and equipment to be placed at the Authority's disposal.
- Provides that if any information, data, or equipment is not a public record because the Authority or PUCO possesses it, the grant of authority to use PUCO staff and experts and to access the information, data, and equipment cannot be construed to make it a public record, notwithstanding anything to the contrary under the Revised Code.
- Requires the Authority to adopt rules, by January 1, 2020, for implementing the act's provisions regarding payments to nuclear and renewable resources.

Changes to renewable energy requirements

- Reduces the renewable energy benchmarks for EDUs and electric services companies (ESCs) to 8.5% of electricity supply, with no solar portion, by the end of 2026, and eliminates further requirements after that.
- Requires PUCO to reduce the number of kilowatt hours to comply with the renewable energy requirements for all EDUs and ESCs in Ohio, by application of a formula that reduces the compliance amount using the kilowatt hours produced by the qualifying renewable resources receiving renewable energy credits.
- Reduces the baselines for purposes of the renewable energy requirements of EDUs and ESCs to exclude the load and usage of mercantile customers that are self-assessing purchasers of electricity (45 million kilowatt hours a year) to facilitate competitiveness of those customers.
- Requires both of the following after the baseline has been reduced by excluding mercantile customers that are self-assessing purchasers:
 - Relieves EDUs and ESCs of the amount of compliance with the renewable energy requirements that would be required but for the baseline reduction;

- Exempts those mercantile customer self-assessing purchasers from any bypassable charge imposed for compliance with the renewable energy requirements.
- Specifies that ongoing costs for certain renewable energy contracts, which may be recovered under continuing law, may continue to be recovered regardless of the act's amendments to the renewable energy requirements.
- Beginning January 1, 2020, prohibits a qualifying renewable resource receiving renewable energy credits under the act from being eligible to obtain a renewable energy credit to meet the renewable energy requirements regarding any megawatt of electricity for which the resource has been issued a renewable energy credit.

Changes to energy efficiency requirements

- Replaces the energy efficiency benchmarks for years 2021 through 2027 with the 17.5% compliance process discussed below, and terminates energy efficiency/peak demand reduction portfolio plans on December 31, 2020.
- Extends to December 31, 2020, the expiration date for all portfolio plans in effect on the act's effective date.
- If a portfolio plan is extended beyond its PUCO-approved term, requires the existing plan's budget to be increased to include an amount equal to the annual average of the approved budget for all years of the portfolio plan in effect as of the act's effective date.
- Maintains all other terms and conditions of a portfolio plan extended beyond its PUCO-approved term unless changes are authorized by PUCO.
- Permits mercantile customers to opt out and later opt back into an EDU's energy efficiency/peak demand reduction portfolio plan.
- Requires PUCO to determine the cumulative energy savings collectively achieved by all EDUs in Ohio since 2009, as of December 31, 2020, using both:
 - Energy savings estimated by PUCO to be achieved as of December 31, 2020, and banked under continuing law; and
 - An energy savings baseline that is the average of total kilowatt hours sold by all EDUs in Ohio in calendar years 2018 through 2020.
- Provides that energy efficiency compliance must be deemed achieved if the energy savings collectively achieved is at least 17.5% of the energy savings baseline.
- If the energy savings collectively achieved is less than 17.5% of the baseline:
 - Requires PUCO to determine how further implementation of energy efficiency programs is to occur as reasonably necessary for a collective achievement of energy savings of 17.5% of the energy savings baseline; and
 - Provides that full compliance is to be deemed achieved as of a date certain established by PUCO, notwithstanding any contrary provision of the energy savings changes in the act.

- Provides that once full compliance is deemed achieved, any cost recovery mechanisms authorized by PUCO for compliance with energy efficiency terminates except as necessary for reconciliation, and prohibits a cost recovery mechanism beyond the time necessary to complete that final reconciliation.
- Repeals the requirement that customers opting out of an EDU's energy efficiency/peak demand reduction portfolio plan submit initial and updated reports to PUCO staff regarding energy intensity reduction projects, actions, policies, and practices, and cumulative energy-intensity reductions achieved.

Legacy generation resource cost recovery

- Defines "legacy generation resource" as all generating facilities owned directly or indirectly by a corporation formed before 1960 by investor-owned utilities for the original purpose of providing power for use in defense of the United States or furtherance of national interests, and includes the Ohio Valley Electric Corporation.
- Replaces, on January 1, 2020, any mechanism approved by PUCO, prior to the act's effective date, for retail recovery of prudently incurred costs associated with contractual commitments related to a legacy generation resource, with a nonbypassable rate mechanism for recovery through December 31, 2030, from customers of all EDUs in Ohio.
- Requires the nonbypassable rate mechanism to be established through a process that PUCO must determine is not for an increase in any rate, joint rate, toll, classification, charge, or rental, notwithstanding anything contrary in Ohio's Public Utility Law.
- Caps monthly charges for the nonbypassable rate mechanism at \$1.50 per month for residential customers and \$1,500 per month for all other customer classes.
- Requires PUCO to determine in 2021 (for 2020) and in 2024, 2027, and 2030 (for the three years preceding each determination year) the prudence and reasonableness of the actions of EDUs with ownership interests in the legacy generation resource, including their decisions related to the contractual commitment into the wholesale markets.
- Requires PUCO to exclude from recovery those costs that it determines imprudent and unreasonable.
- If prudently incurred costs exceed the monthly caps, requires an EDU to defer any remaining prudently incurred costs as a regulatory asset or liability to be recovered as determined by PUCO subject to the monthly caps.
- Requires PUCO to provide for discontinuation, subject to final reconciliation, of the nonbypassable rate mechanism on December 31, 2030, including recovery of any deferrals existing at that time.

- Requires PUCO to determine the manner in which charges collected by EDUs with no ownership in a legacy generation resource are remitted to EDUs with an ownership interest, in direct proportion to each EDU's sponsorship interest.
- Requires an EDU, including all EDUs in the same holding company, to bid all output from the legacy generation resource into the wholesale market.
- Prohibits an EDU from using the legacy generation resource output to supply the EDU's standard service offer.

Wind farms of 5-20 megawatts

- Subjects to local control wind farms of 5-20 megawatts that are primarily dedicated to providing electricity to a single customer at a single location.

Net metering system

- Qualifies the definition of "net metering system" by specifying that, for an industrial customer-generator with a net metering system that has a capacity of less than 20 megawatts and uses wind as energy, it satisfies the definition if it was sized so as to not exceed 100% of the customer-generator's annual requirements for electric energy at the time of interconnection.

Agreements for customer-sited renewable energy resources

- Permits an EDU, on a nondiscriminatory basis and subject to PUCO approval, to enter into an agreement, having a term of three years or more, with a mercantile customer or group of mercantile customers for constructing a customer-sited renewable energy resource in Ohio that will provide the customer or group with a material portion of its electricity requirements.
- Requires any direct or indirect costs, including costs for infrastructure development or generation, associated with the customer-sited renewable energy resource to be paid for solely by the EDU and the mercantile customer or group of customers.

County fair and agricultural societies

- Requires an EDU to file with PUCO a new rate schedule for county fairs and agricultural societies that includes a fixed monthly service fee or an energy charge on a kilowatt-hour basis.
- Prohibits the minimum monthly charge from exceeding the fixed monthly service fee and prohibits a fair or society from being subject to any demand-based rider.
- Requires an EDU to be eligible to recover any revenue loss associated with the migration of customers to the new rate schedule.

Home energy assistance programs (HEAP)

- Requires the Director of Development Services annually to submit, beginning in FY 2021, a waiver request to spend 25% of federal low-income HEAP funds from the home energy assistance block grants for weatherization services.

Decoupling

- Allows certain electric distribution utilities to file an application for a decoupling mechanism with PUCO.

Property tax exemption for energy projects

- Permits energy projects of up to 20 megawatts to be exempted from property taxation without the formal approval of a board of county commissioners (the prior threshold was 5 megawatts).
- Releases such energy projects from other prerequisites for tax exemption, including repair of affected public infrastructure, training and equipping emergency responders, and career training.

Tangible Personal Property (TPP)

- Disallows future reductions in the taxable value of TPP of an electric company receiving nuclear resource credit payments.

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DETAILED ANALYSIS

Overview

The act requires an electric distribution utility (EDU) to collect a per-customer monthly charge from all of its retail electric customers in Ohio from January 1, 2021, through December 31, 2027. The charge must produce a total revenue stream of \$170 million annually, with \$150 million going to the Nuclear Generation Fund and \$20 million going to the Renewable Generation Fund, both created by the act.

The act permits an owner or operator of an in-state nuclear resource to apply to receive quarterly payments from the Nuclear Generation Fund for nuclear resource credits earned by the resource. Additionally, it requires an annual management and financial review of an owner

or operator of a qualifying nuclear resource and any resource that receives payments for nuclear resource credits under the act. It also permits an owner or operator of an in-state renewable resource that has obtained a certificate for construction of major utility facility from the Power Siting Board, and that is interconnected with the transmission grid that is subject to the operational control of PJM Interconnection, L.L.C., or its successor, to apply to receive quarterly payments from the Renewable Generation Fund for renewable energy credits earned by the resource.

The act also reduces the percentage of energy that is required to come from renewable resources under the renewable energy requirements and eliminates the solar carve-out. Additionally, it eliminates the energy efficiency requirements and replaces them with a 17.5% compliance process.

The act replaces, beginning January 1, 2020, any existing mechanism approved by the Public Utilities Commission (PUCO) with a nonbypassable rate mechanism that allows a legacy generation resource to recover an EDU's prudently incurred costs related to the legacy generation resource through 2030.

Payments for in-state nuclear and in-state renewable resources

Customer charges

The act requires an EDU to collect a per-customer monthly charge from all of its retail electric customers in Ohio, beginning January 1, 2021 and ending December 31, 2027. The charges collected must be sufficient to produce both (1) \$150 million annually for total disbursements from the Nuclear Generation Fund and (2) \$20 million annually for total disbursements from the Renewable Generation Fund.¹

The act requires PUCO to determine the method by which the revenue is allocated or assigned to an EDU for billing and collection. The method of allocation must be based on the relative number of customers, the relative quantity of kilowatt hour sales, or a combination of the two.

The level and structure of the charge or charges must be authorized by PUCO through a process PUCO must determine is not for an increase in any rate, joint rate, toll, classification, charge, or rental, notwithstanding anything contrary in R.C. Title 49.² In authorizing the level and structure of any charge to be collected by an EDU, PUCO must ensure that the charges do not exceed:

- For residential customers: 85¢;
- For industrial customers that exceed 45 million kilowatt hours of electricity at one location in the preceding year: \$2,400.

¹ R.C. 3706.46(A)(1).

² R.C. 3706.46(A)(2).

The level and design of the charges for nonresidential customers that do not exceed 45 million kilowatt hours must be established in a way that avoids abrupt or excessive bill impacts for typical customers.³

Each charge authorized by PUCO is subject to adjustment to reconcile actual revenue collected with the actual revenue needed to meet the act's revenue requirements. PUCO must authorize each EDU to adopt accounting practices to facilitate the reconciliation. Notwithstanding any other provisions of the Revised Code, the charge or charges authorized by PUCO may extend beyond December 31, 2027, if necessary to reconcile the actual revenue collected with the actual revenue needed to meet the revenue requirements that may be due and owing in the same period. The extension must be authorized only for the period of time reasonably necessary to complete the reconciliation.⁴

In-state nuclear

Not later than February 1, 2020, the owner or operator of a qualifying nuclear resource may apply to the Ohio Air Quality Development Authority to receive payments for nuclear resource credits.⁵ "Qualifying nuclear resource" is defined by the act as an electric generating facility in Ohio fueled by nuclear power.⁶ An application for a qualifying nuclear resource must include:

- Financial information;
- Certified cost and revenue projections through December 31, 2026;
- Operation and maintenance expenses;
- Fuel expenses, including spent-fuel expenses;
- Nonfuel capital expenses;
- Fully allocated overhead costs;
- The cost of *operational risks* and *market risks* that would be avoided by ceasing operation of the resource ("operational risks" include the risk (1) operating costs will be higher due to new regulatory mandates or equipment failures and (2) per-megawatt-hour costs will be higher due to a lower-than-expected capacity factor; "market risks" include (1) forced-outage risk and associated costs arising from contractual obligations and (2) risk that resource output may not be sold at projected levels); and

³ R.C. 3706.46(B).

⁴ R.C. 3706.46(C).

⁵ R.C. 3706.41(A).

⁶ R.C. 3706.40(A).

- Any other information, financial or otherwise, that demonstrates that the resource is projected not to continue being operational.⁷

The Authority must review and approve the application by March 31, 2020, if:

- The resource meets the definition of a qualifying nuclear resource;
- The application meets the act's requirements; and
- The resource's operator maintains both a principal place of business and a substantial presence in Ohio with regard to business operations, offices, and transactions.⁸

All financial and proprietary information, including trade secrets submitted to the Authority as part of an application to receive payments for nuclear resource credits is confidential information and is not a public record.⁹

An owner or operator of a qualifying nuclear resource whose application is approved must report to the Authority, not later than seven days after the close of each quarter, the number of megawatt hours the resource produced, if any, during the previous quarter. The first report must be made by April 7, 2020, and the last report must be made by January 7, 2027. The information reported must be in accordance with data from the generation attribute tracking system designated by the Authority.¹⁰ The Authority must issue one nuclear resource credit for each megawatt hour of electricity that is both reported and approved by the Authority. Except as otherwise provided by the act, a nuclear resource credit is \$9.¹¹

For purposes of carrying out its duties regarding payments to qualifying nuclear resources, the Authority may make use of PUCO's staff and experts in the manner provided in a mutual arrangement with PUCO. Any information, data, and equipment of PUCO must be placed at the Authority's disposal. If any information, data, or equipment is not a public record because either the Authority or PUCO possesses it, neither the use of PUCO staff and experts nor access to PUCO information, data, or equipment renders that information, data, or equipment a public record, notwithstanding anything to the contrary in the Revised Code.¹²

Nuclear Generation Fund

The act creates the Nuclear Generation Fund, where the customer charges are to be deposited. The fund is in the custody of the State Treasurer but not part of the state treasury. Any interest generated by the fund is to be retained in the fund and used for the act's purposes.

⁷ R.C. 3706.41(B) and (C).

⁸ R.C. 3706.43.

⁹ R.C. 3706.431.

¹⁰ R.C. 3706.45(A).

¹¹ R.C. 3706.45(B) and (C).

¹² R.C. 3706.65.

The act requires 88.25% of the per-customer monthly charges collected to be deposited in the Nuclear Generation Fund. The State Treasurer must distribute the money in the fund in accordance with the directions provided by the Authority, who must consult with PUCO prior to providing the directions.¹³

Remittances

For the period beginning April 2021 and ending January 2028, at intervals of every three months from that beginning date, and not later than the 21st day of the month, the Authority must direct the State Treasurer to remit money from the Nuclear Generation Fund to a qualifying nuclear resource owner or operator. The amount must equal the number of credits the resource earned during the quarter that ended 12 months prior to the last day of the previous quarter, multiplied by the credit price. That remittance is subject to there being sufficient money in the fund, and any reduction or cessation of remittances based on the annual management and financial review.

Any amount remaining in the fund as of December 31, 2027, minus remittances required to be made by January 21, 2028, must be refunded to customers in a manner determined by the Authority in consultation with PUCO.¹⁴

Insufficient funds

If the money in the Nuclear Generation Fund is insufficient to make payments in the amount required in a particular quarter, the Authority, not later than 21 days after the close of any quarter in which an owner or operator was not fully compensated, must direct the State Treasurer to remit money from the fund to pay for the unpaid credits.¹⁵

Annual management and financial review

Beginning in 2021 and ending in 2027, and by May 1 of those years, PUCO must conduct a retrospective management and financial review of the owner or operator of a qualifying nuclear resource and any resource that receives payments for nuclear resource credits under the act. PUCO may retain consultants and advisors to perform all or any portion of the annual reviews. The Authority must direct the State Treasurer to take money out of the Nuclear Generation Fund to pay for any costs associated with retaining the consultants and advisors. Any owner or operator that is subject to review may provide PUCO or PUCO's consultants or advisors any information the owner or operator chooses for purposes of the review. The owner or operator must promptly and fully respond to any document, information, data, or other request that may be directed to its attention by PUCO or PUCO's consultants or advisors for purposes of the review. Any material failure to respond timely and fully will result in the

¹³ R.C. 3706.49 and 3706.53(A).

¹⁴ R.C. 3706.55.

¹⁵ R.C. 3706.59(A).

suspension or further payments for nuclear resource credits until the failure is cured to the satisfaction of PUCO.¹⁶

PUCO must submit a report summarizing the findings of each annual review to the President and Minority Leader of the Senate, the Speaker and the Minority Leader of the House, and the Authority. The report must also be publicly available, provided it does not reveal any confidential or proprietary information. The submission must include a copy of the owner's or operator's own certified annual audit that was obtained during the review.¹⁷

Under the act, the provisions of Ohio's Public Utility Law governing hearings (R.C. Chapter 4903) do not apply to the annual retrospective management and financial review.¹⁸

Reducing or ceasing payments for nuclear resource credits

In consultation with PUCO, the Authority must consider the findings of the review, and may cease or reduce the payments for nuclear resource credits if the Authority determines any of the following:

- The Federal Energy Regulatory Commission or the Nuclear Regulatory Commission has established a monetary benefit or other incentive payment to continue the resource's commercial operation;
- The resource no longer meets the definition of qualifying nuclear resource under the act;
- The resource no longer maintains a principal place of business and substantial presence in this state with regard to its business operations, offices, and transactions;
- The resource's owner or operator applies to decommission the resource before May 1, 2027;
- For purposes of ensuring that the funding for nuclear resource credits stays reasonable, if the market price index exceeds the strike price on June 1 in the year that the report is submitted, the Authority must apply the credit price adjustment (described below) for the 12-month period that begins that day and ends May 31 or, for 2027, the 7-month period that begins that day and ends December 31.¹⁹

If the Authority determines it is necessary to make payment reductions, PUCO must do all of the following, as necessary:

¹⁶ R.C. 3706.61(A) and (B).

¹⁷ R.C. 3706.61(C).

¹⁸ R.C. 3706.61(G).

¹⁹ R.C. 3706.61(D).

- Reduce the revenue requirement for the Nuclear Generation Fund;
- Except when the Authority has applied the credit price adjustment (described below), reduce the price of the nuclear resource credit in accordance with a reduced revenue requirement;
- Reduce the charge or charges to conform with a reduced revenue requirement;
- Adjust the percentages of the charges that go into each of the funds in accordance with a reduced revenue requirement.²⁰

Credit price adjustment

The act defines the credit price adjustment to mean a reduction to the price for each nuclear resource credit equal to the market price index minus the strike price. The “strike price” is set at \$46 dollars per megawatt hour by the act. The “market price index” is defined as the sum in dollars per megawatt hour of both of the following for each period beginning June 1 and ending May 31: (1) projected energy prices using futures contracts for the PJM AEP-Dayton hub; and (2) projected capacity prices using PJM’s rest-of-RTO market clearing price.²¹

Reduction process

Any revisions made by PUCO in making reductions to payments for nuclear resource credits must be done through a process that PUCO must determine is not an increase in any rate, joint rate, toll, classification, charge, or rental, notwithstanding anything contrary to Ohio’s Public Utility Law (R.C. Title 49).²²

EDU suspension or cessation of billing or collecting

If payments for nuclear resource credits are suspended or ceased under the act, PUCO must direct the EDUs to accordingly suspend or cease billing and collecting customer charges authorized by the act.²³

In-state renewable resource

Not later than February 1, 2020, the owner or operator of a qualifying renewable resource may apply to the Authority to receive payments for renewable energy credits.²⁴ The act defines “qualifying renewable resource” as an electric generating facility in Ohio that (1) uses or will use solar energy as its primary energy source, (2) the facility obtained a certificate for construction of a major utility facility from the Power Siting Board prior to June 1, 2019, and (3) the facility is interconnected with the transmission grid that is subject to the

²⁰ R.C. 3706.61(E)(1).

²¹ R.C. 3706.40(C), (D), and (E).

²² R.C. 3706.61(E)(2).

²³ R.C. 3706.61(F).

²⁴ R.C. 3706.41(A).

operation control of PJM Interconnection, L.L.C., or its successor.²⁵ So, only certain solar energy resources can be qualifying renewable resources that receive renewable energy credits under the act.

The Authority must review and approve the application by March 31, 2020, if the resource meets the definition of a qualifying renewable resource.²⁶

All financial and proprietary information, including trade secrets submitted to the Authority as part of an application to receive payments for renewable energy credits is confidential and is not a public record.²⁷

An owner or operator of a qualifying renewable resource whose application is approved must report to the Authority, not later than seven days after the close of each quarter, the number of megawatt hours the resource produced during the previous quarter, if any. The first report must be made by April 7, 2020, and the last report by January 7, 2027. The information reported must be in accordance with data from the generation attribute tracking system designated by the Authority.²⁸

The Authority must issue one renewable resource credit for each megawatt hour of electricity that is both reported and approved by the Authority. A renewable energy credit is \$9.²⁹

For purposes of carrying out its duties regarding payments to qualifying renewable resources, the Authority may make use of PUCO's staff and experts in the manner provided by a mutual arrangement between it and PUCO. Any information, data, and equipment of PUCO must be placed at the Authority's disposal. If any information, data, or equipment is not a public record because either the Authority or PUCO possesses it, neither the use of PUCO staff and experts nor access to PUCO information, data, or equipment renders that information, data, or equipment a public record, notwithstanding anything to the contrary in the Revised Code.³⁰

Renewable Generation Fund

The act creates the Renewable Generation Fund, where the customer charges are to be deposited. The fund is in the custody of the State Treasurer but not part of the state treasury. Any interest generated by the fund is to be retained in the fund and used for the purposes of the act. The act requires 11.75% of the per-customer monthly charges collected to be deposited in the Renewable Generation Fund. The State Treasurer must distribute the money in the fund

²⁵ R.C. 3706.40(B).

²⁶ R.C. 3706.43.

²⁷ R.C. 3706.431.

²⁸ R.C. 3706.45(A).

²⁹ R.C. 3706.45(B) and (D).

³⁰ R.C. 3706.65.

in accordance with the directions provided by the Authority, who must consult with PUCO prior to providing instruction.³¹

Remittances

For the period beginning April 2021 and ending January 2028, at intervals of every three months from that beginning date, and not later than the 21st day of the month, the Authority must direct the State Treasurer to remit money from the Renewable Generation Fund to a qualifying renewable resource owner or operator. The amount must equal the number of credits the resource earned during the quarter that ended 12 months prior to the last day of the previous quarter, multiplied by the credit price. The remittance is subject to there being sufficient money in the fund.

Any amount remaining in the fund as of December 31, 2027, minus remittances required to be made by January 21, 2028, must be refunded to customers in a manner determined by the Authority in consultation with PUCO.³²

Insufficient funds

If the money in the Renewable Generation Fund is insufficient to make the payments required under the act for all owners and operators of qualifying renewable resources, the Authority must do both of the following:

- Not later than 21 days after the close of the quarter in which the charges collected were insufficient to make all the payments, direct the State Treasurer to prorate payments from the total amount available in the fund based on the number of credits each resource earned during the quarter that ended 12 months prior to the last day of the previous quarter; and
- Not later than 21 days after the close of any quarter in which owners and operators receive prorated payments, direct the State Treasurer to remit money from the fund to pay for the unpaid credits.

Unpaid credits must be paid before any other remittances are made from the Renewable Generation Fund.³³

Rulemaking

The act requires the Authority, not later than January 1, 2020, to adopt rules under R.C. Chapter 119 that are necessary to implement the payments to qualifying nuclear resources and qualifying renewable resources.³⁴

³¹ R.C. 3706.49 and 3706.53(B).

³² R.C. 3706.55.

³³ R.C. 3706.59(B).

³⁴ R.C. 3706.63.

Renewable energy requirements

Benchmark changes

The act makes the following changes to the benchmarks for the renewable energy requirements for EDUs and electric services companies (ESCs):³⁵

Year	Overall renewable portion		Solar portion	
	Prior Law	Act	Prior Law	Act
2020	6.5%	5.5%	0.26%	0%
2021	7.5%	6%	0.3%	0%
2022	8.5%	6.5%	0.34%	0%
2023	9.5%	7%	0.38%	0%
2024	10.5%	7.5%	0.42%	0%
2025	11.5%	8%	0.46%	0%
2026	12.5%	8.5%	0.5%	0%
2027 and each year thereafter	12.5%	No further requirements	0.5%	No further requirements

Compliance reduction

Reduction based on in-state renewable resources

Beginning with compliance year 2020, the act requires PUCO to reduce the number of kilowatt hours required for compliance with the renewable energy requirements for all EDUs and ESCs in Ohio. PUCO must determine each EDU's and each ESC's reduction by taking the total amount of kilowatt hours produced, if any, by all qualifying renewable resources, as defined by the act (which are only certain in-state solar energy resources as described above, under **In-state renewable resources**), during the preceding compliance year. PUCO then must allocate that total among all EDUs and ESCs in proportion to their baselines for the subject compliance year and subtract the allocated amount from the EDU's or ESC's compliance amount as otherwise determined by the renewable energy requirements.³⁶

³⁵ R.C. 4928.64(B) and (C)(2)(a)(iii) and (iv).

³⁶ R.C. 4928.642.

Reduction for certain self-assessing purchasers

To facilitate the competitiveness of mercantile customers located in Ohio that are registered as self-assessing purchasers, PUCO must reduce both baselines applicable regarding renewable energy requirements under continuing law to exclude the load and usage of those self-assessing purchasers. On the effective date of the baseline reduction, both of the following apply:

- Any EDU or ESC serving such a self-assessing purchaser is relieved of the amount of compliance that would be required under the renewable energy requirements but for the baseline reduction.
- Exempts the self-assessing purchaser from any bypassable charge imposed for compliance under the renewable energy requirements.³⁷

Double recovery not permitted

Beginning January 1, 2020, a qualifying renewable resource (which is any of certain in-state solar energy resources as described above, under **In-state renewable resources**) is not eligible to obtain a renewable energy credit under the act for any megawatt of electricity for which it has been issued a renewable energy credit under the act.³⁸

Existing renewable energy contract recovery

The act specifies that if an EDU is recovering costs through a bypassable charge from customers for a renewable energy resource procurement contract that was executed before April 1, 2014, under continuing law, the costs will continue to be recovered through 2032 regardless of the amendments made by the act.³⁹

Energy Efficiency

Portfolio plans

Effect on existing plans

If an EDU has a comprehensive energy efficiency and peak-demand reduction program portfolio plan (“portfolio plan”) in effect on the act’s effective date, and that plan expires before December 31, 2020, PUCO must extend the plan through December 31, 2020. All portfolio plans terminate on that date under the act. If a portfolio plan is extended beyond its initial PUCO-approved term, the existing plan’s budget must be increased for the extended term to include an amount equal to the annual average of the approved budget for all the years of the portfolio plan in effect as of the effective date of the act’s amendments. All other terms

³⁷ R.C. 4928.644(B).

³⁸ R.C. 4928.645(C).

³⁹ R.C. 4928.641(A).

and conditions of a portfolio plan extended beyond its initial PUCO-approved term are to remain the same unless changes are authorized by PUCO.⁴⁰

Portfolio plan definition change

The act alters the definition of “portfolio plan” to also include any plan implemented pursuant to the act’s provisions described immediately below.⁴¹

Cumulative energy savings

Not later than February 1, 2021, the act requires PUCO to determine the cumulative energy savings collectively achieved since 2009 by all EDUs in Ohio as of December 31, 2020. In determining the cumulative total, PUCO must both:

- Include energy savings that were estimated by PUCO to be achieved as of December 31, 2020 and banked under continuing law; and
- Use an energy savings baseline that is the average of the total kilowatt hours sold by all EDUs in Ohio in calendar years 2018 through 2020. The baseline must exclude the load and usage of a customer that has an approved reasonable arrangement (beginning January 1, 2017) or has opted out of the EDU’s portfolio plan. That baseline may also be reduced for new economic growth in the EDU’s certified territory and adjusted and normalized as provided in continuing law.⁴²

If the cumulative energy savings collectively achieved as determined by PUCO is at least 17.5% of the baseline (described immediately above), full compliance with the energy efficiency requirements must be deemed achieved. If the cumulative energy savings achieved is less than 17.5% of that baseline:

- PUCO must determine how further implementation of energy efficiency programs are to occur as reasonably necessary for collective achievement of the cumulative energy savings of 17.5% and no more; and
- Full compliance of the energy efficiency requirements is to be deemed achieved as of a date certain established by PUCO, notwithstanding any contrary provision.⁴³

Discontinuation of existing cost recovery mechanisms

The act requires that upon the date full compliance with the energy efficiency requirements is deemed achieved, any EDU cost recovery mechanisms authorized by PUCO for compliance with the energy efficiency requirements must be terminated, except as may be necessary to reconcile the revenue collected and the allowable compliance costs for

⁴⁰ R.C. 4928.66(F).

⁴¹ R.C. 4928,6610(C)(2).

⁴² R.C. 4928.66(G)(1).

⁴³ R.C. 4928.66(G)(2).

compliance efforts occurring before full compliance is deemed achieved. The act prohibits the authorization of a cost recovery mechanism by PUCO beyond the period of time required to complete that final reconciliation.⁴⁴

Energy intensity reduction reports

The act repeals the requirement that certain high-volume electric customers that opt out of an EDU's energy efficiency/peak demand reduction portfolio plan submit initial and updated reports to PUCO staff regarding energy intensity reduction projects, actions, policies, and practices, and cumulative energy-intensity reductions achieved.⁴⁵

Mercantile customer opt-out

The act permits mercantile customers to opt out and later opt back into an EDU's energy efficiency/peak demand reduction portfolio plan.⁴⁶

Annual savings requirement

The act eliminates (1) the annual savings requirement of an additional 2% increase each year after 2020 until 2027 and (2) the cumulative energy savings requirement in excess of 22% as of 2027.⁴⁷

Legacy generation resource cost recovery

Under the act, on January 1, 2020, any mechanism authorized by PUCO prior to the act's effective date for retail recovery of prudently incurred costs related a legacy generation resource must be replaced with a nonbypassable rate mechanism established by PUCO for recovery of those costs through December 31, 2030, from customers of all the EDUs in Ohio.⁴⁸ The act defines "legacy generation resource" as all generating facilities owned directly or indirectly by a corporation formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national interests, including the Ohio Valley Electric Corporation.⁴⁹ The nonbypassable rate mechanism must be established through a process that PUCO determines is not an increase in any rate, joint rate, toll, classification, charge, or rental, notwithstanding Ohio's Public Utility Law (R.C. Title 49). All of the following apply to a nonbypassable rate mechanism established under the act:

- PUCO must determine in 2021 (for 2020) and in 2024, 2027, and 2030 (for the three years preceding each determination year) the prudence and

⁴⁴ R.C. 4928.66(G)(3).

⁴⁵ R.C. 4928.6616.

⁴⁶ R.C. 4928.6610.

⁴⁷ R.C. 4928.66(A)(1)(a).

⁴⁸ R.C. 4928.148(A).

⁴⁹ R.C. 4928.01(A)(41).

reasonableness of the actions of EDUs with ownership interests in the legacy generation resource, including their decisions related to the contractual commitment into the wholesale markets, and exclude recovery from those costs PUCO determines imprudent and unreasonable.

- PUCO must determine the proper rate design for recovering or remitting the prudently incurred costs related to a legacy generation resource, provided that the monthly charge or credit for those costs, including any deferrals or credits does not exceed \$1.50 a month per customer for residential customers.
 - For all other customer classes, PUCO shall establish comparable monthly caps for each class at or below \$1,500 per customer.
 - If the prudently incurred costs related to a legacy generation resource exceed these monthly limits, the EDU must defer the remaining prudently incurred costs as a regulatory asset or liability that is to be recovered as determined by PUCO subject to the monthly caps set forth by the act.
- PUCO must provide for discontinuation, subject to final reconciliation, of the nonbypassable rate mechanism on December 31, 2030, including recovery of any deferrals that exist at that time.
- PUCO must determine the manner in which charges collected by a utility with no ownership interest in a legacy generation resource are to be remitted to the utilities with such ownership interest, in direct proportion to each utility's sponsorship interest.⁵⁰

An EDU, including all EDUs in the same holding company, must bid all output from a legacy generation resource into the wholesale market and must not use the output in supplying its standard service offer.⁵¹

Agreements for customer-sited renewable energy resources

The act allows an EDU, on a nondiscriminatory basis and subject to approval by PUCO, to enter into an agreement, having a term of three years or more, with a mercantile customer or a group of mercantile customers to construct a customer-sited renewable energy resource in Ohio that will provide the customer or group with a material portion of its electricity requirements. Any direct or indirect costs, including costs for infrastructure development or generation associated with the resource, must be paid for solely by the utility and the customer or group. The act prohibits PUCO from authorizing EDUs to collect, and prohibits EDUs from collecting, any of those costs from any customer other than the mercantile customer or the group of mercantile customers.⁵²

⁵⁰ R.C. 4928.148(A).

⁵¹ R.C. 4928.148(B).

⁵² R.C. 4928.47.

Decoupling

The act permits an EDU to file an application to implement a decoupling mechanism for calendar year 2019 and each calendar year thereafter. It permits the filing no earlier than 30 days after the act's effective date. An EDU that has base distribution rates that took effect between December 31, 2018, and that effective date under an application for an increase in base distribution rates may not apply for the decoupling mechanism.

For an EDU that applies for a decoupling mechanism, the base distribution rates for residential and commercial customers must be decoupled to the base distribution revenue and revenue resulting from implementation of the energy efficiency and peak demand reduction requirements under continuing law, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The act specifies that the decoupling mechanism application must not be considered an application to establish or change a rate.

PUCO must issue an order approving an application for a decoupling mechanism not later than 60 days after the application is filed. In determining that an application is not unjust and unreasonable, PUCO must verify that the rate schedule or schedules are designed to recover the EDU's 2018 annual revenues and that the decoupling rate design is aligned with the rate design of the EDU's existing base distribution rates. The decoupling mechanism must recover an amount equal to the base distribution revenue and revenue resulting from the implementation of the energy efficiency and peak demand reduction requirements under continuing law, excluding program costs and shared savings, and recovered pursuant to an approved electric security plan, as of the 12-month period ending December 31, 2018. The decoupling mechanism must be adjusted annually thereafter to reconcile any over recovery or under recovery from the prior year and to enable an EDU to recover the same level of revenues in each year.

PUCO's approval of a decoupling mechanism must not affect any other rates, riders, charges, schedules, classifications, or services previously approved by PUCO. The decoupling mechanism must remain in effect until the next time the EDU applies for, and PUCO approves, base distribution rates for the utility under continuing law.

The act prohibits PUCO from approving an application for a decoupling mechanism if it determines that approval will result in double recovery by the EDU, unless the utility cures the double recovery.⁵³

Wind farms of 5-20 megawatts

The act makes wind farms of at least 5 but less than 20 megawatts subject to local control if they meet certain requirements. The wind turbines and associate facilities must be (1) primarily dedicated to providing electricity to a single customer at a single location and (2) designed for, or capable of, operation at an aggregate capacity of less than 20 megawatts, as

⁵³ R.C. 4928.471.

measured at the customer's point of interconnection to the electrical grid. Under prior law, all wind farms of at least 5 megawatts were subject to the jurisdiction of the Power Siting Board, and all wind farms under 5 megawatts were subject to local control.⁵⁴

Net metering system using wind under 20 megawatts

The act adds a further qualification to the continuing requirement that a net metering system be "intended primarily to offset part or all of the customer-generator requirements for electricity." Specifically, the act adds that "[f]or an industrial customer-generator with a net metering system that has a capacity of less than [20] megawatts and uses wind as energy, this [offsetting of electricity requirements] means the net metering system was sized so as to not exceed [100%] of the customer-generator's annual requirements for electric energy at the time of interconnection."⁵⁵

Rate schedule for county fairs and agricultural societies

The act requires an EDU to file with PUCO a rate schedule for county fairs and agricultural societies that includes either (1) a fixed monthly service fee or (2) an energy charge on a kilowatt-hour basis. The act prohibits the "minimum monthly charge" from exceeding the fixed monthly service fee. It also prohibits the customer from being subject to any demand-based riders. The EDU is eligible to recover any revenue loss associated with the migration of customers to this new rate schedule.⁵⁶

Home energy assistance programs (HEAP)

The act requires the Director of Development Services, beginning in FY 2021, annually to submit a federal waiver request for the state to spend 25% of federal low-income HEAP funds received from the home energy assistance block grants for weatherization services allowed under federal law.⁵⁷

Property tax exemption for energy projects

The act permits larger-scale energy generation projects to be exempted from property taxation without the approval of the board of county commissioners. Previously, an energy project could be exempted from property taxation if its nameplate generation capacity was less than 5 megawatts or, for higher capacity projects, if the board of county commissioners affirmatively approved the exemption. The act increases this threshold to 20 megawatts, permitting projects under that threshold to be exempted from taxation without the approval of county commissioners.

⁵⁴ R.C. 303.213, 519.213, 713.081, and 4906.13.

⁵⁵ R.C. 4928.01(A)(31)(d).

⁵⁶ R.C. 4928.80.

⁵⁷ R.C. 4928.75 and Section 5 of the act.

This higher threshold also affects the potential for boards of county commissioners to obtain payments in lieu of taxes (“PILOTS”) from projects they approve for tax exemption. Previously, if a board of commissioners approved a tax exemption for a project with nameplate capacity of 5 or more megawatts, the board could have conditioned the exemption on an annual PILOT of at least \$2,000 per megawatts, payable to the county general fund. (Under continuing law, the actual amount of the PILOT a county may obtain varies depending on the source of the energy – i.e., solar, other renewable, and others – and the number of Ohio resident employees involved in the project’s building or installation.) Under the act, a board of county commissioners may condition a tax exemption on PILOTS only if a project has a capacity of at least 20 megawatts.

The higher capacity threshold also releases energy projects within the 5-to-20 megawatts range from three prerequisites for tax exemption that previously applied to any project with 5 or more megawatts capacity: (1) repairing all roads, bridges, and culverts affected by the project to restore them to their prior condition, and posting a bond in some circumstances, (2) providing for training of fire and emergency responders and for adequate emergency equipment related to the project, and (3) providing training and education in the wind and solar power industries through universities or apprenticeship programs. Under the act, these prerequisites only applied to projects with a capacity of 20 or more megawatts.

The act’s changes to this tax exemption law apply to energy projects certified by the Director of Development Services on or after the act’s effective date and to existing projects that have nameplate capacity of fewer than 5 megawatts (but that might exceed 20 megawatts after the effective date).⁵⁸

Tangible Personal Property (TPP)

Under continuing law, local property taxes extend not only to real property, but to the TPP of public utilities, including an electric company. Similar to real property, public utility TPP is assessed at its taxable value, i.e., a percentage of its full value, against which the tax rate is applied to determine the utility’s tax obligation. This valuation is based on the capitalized cost of the TPP reflected on an annual report filed by the utility and accounts for annual depreciation allowances.

The act disallows any future reduction in the taxable value of TPP of an electric company that receives payments for nuclear resource credits under the act. Specifically, the value of that TPP for any tax year in which the company receives the payments may not be less than the property’s value for the tax year that includes the act’s effective date. Neither the electric company’s annual report nor the Tax Commissioner’s annual valuation may reflect a valuation reduction below this minimum value.⁵⁹

⁵⁸ R.C. 5727.75; Section 4 of the act.

⁵⁹ R.C. 5727.231.

HISTORY

Action	Date
Introduced	04-12-19
Reported, H. Energy and Natural Resources	05-23-19
Reported, H. Rules and Reference	05-29-19
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Reported, S. Energy and Public Utilities	07-17-19
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