

More gas, fewer surcharges: Breaking apart the Senate's plan to solve Ohio's energy crisis

By **Jake Zuckerman**
Cleveland.com

COLUMBUS, Ohio – An Ohio Senate committee on Tuesday unanimously passed legislation that backers say will eliminate add-on charges to customers' monthly electric bills and, they hope, spur development of new, natural gas-fired power plants.

Republicans say natural gas development is the answer to a looming energy shortage, driven by both a boom in data centers that power the emerging artificial intelligence industry and the retirement of coal-fired power plants.

Under Senate Bill 2, utilities still would not be allowed to own both the means of generating electricity and its distribution. Their current businesses revolve around distributing power, not making it. That legal certainty – along with property tax breaks – will lure gas developers to invest in Ohio, said state Sen. Bill Reineke, a Tiffin Republican.

The legislation also eliminates two subsidies – about \$1 billion for two coal plants and \$140 million for six solar projects – written into state law by Ohio's last major energy bill in 2019. Federal prosecutors said that 2019 legislation was the fruit of a bribery scheme engineered by Akron-based electric company FirstEnergy. The bill landed ex-Ohio House Speaker Larry Householder in prison for 20 years for racketeering. The company's then-CEO and senior vice president both await trial.

The sweeping bill drew support from unlikely allies. Republicans, Democrats, the Ohio Manufacturers Association, the Environmental Law and Policy Center, NRG Energy of Texas, the Ohio Consumers' Counsel, and even (on at least some of the bill) American Electric Power, one of Ohio's biggest utilities. The Electric Power Supply Association (an industry group of independent power generators) has backed the bill and taken out ads supporting it as well.

While the timing on a full Senate vote is up to Republican leadership, Reineke predicted a floor vote on his bill Wednesday.

GOP leaders in the House and the Senate have each led their own dueling versions of the bill, both of which have changed shape under heavy lobbying pressure. The Senate bill passed the Senate Energy Committee on Tuesday before legislative analysts published a summary or fiscal note of the most recent draft.

Any legislation would need to be passed by both chambers and signed by Gov. Mike DeWine before becoming law.

“I think it’s a really good piece of legislation as far as trying to protect the consumer,” Reineke said. “So we had four issues: consumer cost; we need reliability; we’ve got to have a supply of energy; and making it easier for companies to do business in the state of Ohio. And also trying to reduce some of the barriers for entry into the system. We believe that this will allow a lot of companies to have generation here.”

Here’s a summary of the proposals that fill the Senate’s omnibus energy bill.

The end of ESPs

Electric distribution (utility) companies in America have enjoyed monopolies for more than 100 years. As such, states have claimed authority to strictly regulate the business to ensure customers receive fair pricing and can rely on a stable grid.

But instead of the traditional and comprehensive rate review process, Ohio since 2008 has allowed utilities to file “electric security plants” (ESPs) – one-off requests for capital expenditure projects that get charged to electric bills as “riders.”

For instance, Clevelanders’ bills last month included charges like \$8.59 for the “delivery capital recovery rider” or \$1.86 for the “advanced metering infrastructure/modern grid rider,” [according to the state utility rate survey](#). The riders aren’t itemized on the bills utilities mail to customers, though they can be found online or through the companies.

Critics, like Rob Kelter of the Environmental Law and Policy Center, say the plans allow the utilities to invest in infrastructure that might produce cost savings, but never pass them on to customers. For instance, utilities have deployed smart meters funded by riders. But the companies have gotten to pocket the savings now that they no longer need to send cars and meter readers out to customers’ houses.

The legislation would eliminate the use of riders. Instead, all utilities would need to undergo a full rate review every three years.

Some utilities, like FirstEnergy, have gone more than a decade without a rate review, instead relying on ESPs, which critics have cast as a telltale sign they're charging customers too much.

Death of a coal bailout

Ohio is a “deregulated” state, meaning distribution utilities generally cannot force customers to pay for their ownership of generation assets. However, starting in the 2010s, the Public Utilities Commission of Ohio began allowing three Ohio utilities to pass on losses from two Cold War era coal plants they partially owned in Southeast Ohio and Indiana.

The 2019 energy bill locked those bailouts into state law, extended them through 2030, and forced all Ohioans to pay them – namely customers of FirstEnergy, who has no ownership in the plants.

Over the past decade, [Ohioans have paid \\$679 million, all through their electric bills, to American Electric Power, Duke Energy, and AES Ohio](#) to cover those losses. Last year alone, ratepayers forked over \$172 million.

Frank Strigari, a lobbyist and vice president of external affairs for AEP (and until recently, the top lawyer working for the Ohio Senate), urged lawmakers Tuesday to amend the bill to give the company a “reasonable transition” out of its position in the coal plants. Failure to do so, he warned, would ultimately lead to higher costs for customers if the company needs to raise capital from its investors. His claim didn't move any lawmakers Tuesday.

AEP has not been criminally implicated in the scandal around the 2019 legislation. However, the company [recently paid a \\$19 million settlement to the U.S. Securities and Exchange Commission](#) on accusations of lying to investors about its role in the scheme.

‘Behind the meter’ gas and solar

Some data centers have come up with a novel solution to their own demand outstripping the grid's supply: generate their own power “behind the meter” for their own private use.

SB2 would change the law to say utility companies can only “supply” such behind the meter service if the generator is “in operation” before the law takes effect. And it states utilities cannot recover any costs associated with a behind the meter project from anyone but the specific customer who asked for the service.

Two developers have already asked the Ohio Power Siting Board to build natural gas plants on data center campuses in Central Ohio. And Strigari told lawmakers that AEP has already entered contracts with two data centers to build renewable energy operations to power them. He said those contracts would be imperiled by the new legislation as the facilities are not yet operational, and he asked that they be exempted from the bill.

“I don’t know what to make of that. That’s the first I’ve heard of that,” Reineke said after the vote.

However, state Sen. Jane Timken expressed concerns that utilities could dominate behind-the-meter power, leaving out other developers.

Strigari said AEP charges only the data center developers themselves for work building the renewable operations. Kim Bojko, an Ohio Manufacturers' Association lobbyist, whose members buy substantial amounts of electricity, objected to the claim, argued AEP employees’ time and resources will wind up underwritten by customers.

Solar

The 2019 energy bill forced Ohioans to pay about \$20 million per year into a solar generation fund, to be distributed to six of the first utility-scale solar projects around the state. The subsidy acted as a bargaining chip for renewables, which won a pittance compared to sums handed over to coal and nuclear power.

Sluggish implementation and red tape have bottlenecked the fund, with only \$8.5 million having gone out the door and [about \\$54 million gathering dust in a state account](#).

The Senate’s legislation would take that money and allow the state to issue it as a low-interest (2% over no more than 10 years) loan to school districts to install solar panels on their roofs.

This amounts to the only piece of the bill focused on reducing energy demand, as opposed to increasing the energy supply.

Tax cuts for new development

The legislation would exempt electric generation sites built in 2026 or later from tangible property taxes and do the same for natural gas pipelines or electric utility infrastructure built after 2027.

Earlier versions of the bill would have gone further, applying the tax break to current generators. However, the new approach, per Reineke, keeps counties (recipients of that tax money) whole.

Reineke said these tax breaks would entice natural gas developers to build new capacity in Ohio. And he expects those property tax savings to be passed on to consumers.

The bill also allows governments with brownfields or former coal mining sites in their borders to create five-year property tax exemptions for electricity transmission infrastructure, and it speeds up the permitting process for new power projects in those areas.

Narrow refunds for customers

In 1957, the [Ohio Supreme Court found](#) that utility companies had unreasonably and unlawfully charged customers millions. But, the court said the utility could keep the money unless state law provides a specific mechanism for a refund.

The precedent has benefitted utilities at customers' expense. For instance, in 2017, the [Ohio Supreme Court found that \\$456 million collected from FirstEnergy customers](#) as a "distribution modernization rider" was unlawfully allowed by the PUCO. (A subsequent audit [couldn't even definitively say any of the money was spent modernizing the grid.](#))

FirstEnergy got to keep the money regardless.

The legislation doesn't fix the problem but it does limit it. It forces utilities to pay refunds on all costs after the Supreme Court finds any charge to customers as "unreasonable, unlawful, or otherwise improper." That would span the time between a Supreme Court ruling and the PUCO issuing a subsequent ruling detailing how to proceed.