Ohio lawmakers are on the cusp of reshaping the state's energy market. Here's how

By **Jake Zuckerman**
Cleveland.com

COLUMBUS, Ohio – The state could be on the cusp of reshaping its marketplace for energy, with major implications for customer power bills and developers interested in expanding Ohio's grid.

The House and Senate have passed dueling legislation – House Bill 15 and Senate Bill 2 – to change the way Ohio regulates and taxes the companies that generate power and distribute it to people's homes and businesses.

Now, legislative leaders and negotiators from both chambers need to select one of the two bills as-is or hammer out a compromise to get it to Gov. Mike DeWine for final approval.

Three major factors animated the legislation in the two chambers:

- Electricity-intensive data centers that fuel the emerging artificial intelligence and cryptocurrency sectors are driving an explosive increase in power demand, especially in central Ohio.
- Increasingly inefficient and uneconomic coal-fired power plants have closed over the past decade, unable to compete with cheaper natural gas-fired power.
- A public corruption scandal and prosecutions from the U.S. Department of Justice and Ohio Attorney General revolving in part around Ohio's last major energy overhaul, House Bill 6 in 2019, has consistently dogged lawmakers since the arrest of ex-Ohio House Speaker Larry Householder in 2020. He's in prison on a 20-year sentence, while two FirstEnergy executives accused of bribing him (and, separately, a since-deceased top state utility regulator) await trial. The executives have pleaded not guilty.

Bill sponsors and backers say they focused on increasing the power supply, limiting costs to consumers, and improving grid reliability. Specifically, they sought to lower taxes on new power generators; establish that distribution utilities with governmentbacked monopolies can't also produce power; and speed up the permitting process to lure new (mostly natural-gas fired) generation to Ohio.

While energy is a touchy political subject given the criminal entanglement around Ohio's last major energy legislation, the two bills at hand have drawn together a remarkable array of typical rivals: Democrats, Republicans, power producers, environmentalists, ratepayer advocates, the natural gas industry, business associations and more all wound up supporting the legislation.

With a few exceptions, the bulk of the opposition came from Ohio's investor-owned utilities, and their trade association.

What follows is an overview of the two bills and where they coincide or split, according to reviews of the legislation and reference documents, plus interviews with lawmakers, lobbyists and company officials who worked on or followed the legislation.

Ending the add on fees on electric bills

The Public Utilities Commission of Ohio (PUCO), a panel of gubernatorial appointees, sets the rates that power companies can charge their customers.

Typically, they do so after "rate reviews" – comprehensive scrutiny of their costs and charges. But since 2008, state law has allowed utilities to file "electric security plan" (ESP) cases.

Those plans allow utilities to attach fees or surcharges to customers' bills for one-off capital expenses. And as critics have maintained for years, those infrastructure improvements can allow utility companies to save money without passing the savings on to customers.

Those charges don't appear on standard electric bills but are listed online in the state's utility rate survey. They contain jargon-heavy names. Clevelanders' bills in March, for instance, included a "delivery capital recovery rider" ($8.59), an "advanced metering infrastructure rider" ($1.86), a "universal service fund rider" ($1.60) and many others. The individual amounts are small, but they add up to hundreds of millions of dollars across all customers.

Utilities came to favor the security plans over full blown rate reviews. In the most extreme case, FirstEnergy managed to go 17 years without a rate review, leaning on a patchwork of one-off surcharges. (Among the accusations against its ex-officials are that they bribed the PUCO's chairman for help evading a future rate review the company had previously committed to.)

Both bills would end ESPs and force utilities to undergo rate cases every three years.

Tax cuts for poles, wires, pipelines

A major split between the bills: How big a tax cut should power producers and distributors get?

Under current law, both generation (i.e. power plants) and distribution (i.e. utility) companies pay a tangible property tax on 85% of the assessed value of their transmission hardware and 24% of their generation assets' value. For pipeline companies, it's 88%.

In the House bill, that rate drops to 25% for all newly built electric distribution assets or pipelines, and 7% for newly built generation assets.

This all comes at a cost. The lost revenue from electric and gas distribution would cost the state $49 million to $74 million, according to state fiscal analysts. As for generation, that "will result in an indeterminate revenue loss, as it depends on future investment activity and the catalyst for those decisions."

The Senate bill lowers that rate to zero for all newly built generation assets. Newly built distribution equipment (for gas or electric) would be taxed on 25% of their value.

Lawmakers theorize that lower taxes will attract new power producers to build in Ohio to help meet the state's growing energy demand.

Because the cuts only apply to new projects, lawmakers say local governments don't lose any current tax revenue. House Energy Chairman Adam Holmes, a Muskingum County Republican and key negotiator on the bill, said certain kinds of generation can force new costs on local governments like infrastructure improvements or special highway equipment. Keeping some tax, he said, would cover those costs.

He said the tax issue would likely be the major negotiation point between the House and Senate.

Death of a coal subsidy

In the 1950s, a dozen Midwest utility companies built two power plants – one in southeast Indiana and one in southeast Ohio – to fuel a uranium enrichment facility for the federal government in Piketon, Ohio, during the Cold War.

Starting in the 2000s, the utilities ended their agreement with the feds and instead sold the power into the regional electrical grid. By that time, state policy prohibited those distribution utilities from passing the cost of power generation to customers. But starting around 2014, the three Ohio utilities with equity in the plants – American Electric Power (a 44% stake), Duke Energy (9%) and AES Ohio (5%) – won permission from the PUCO to pass their losses to their customers anyway.

Under 2019's HB6, lawmakers at the time locked the bailouts in state law. The legislation forced all customers statewide to pay them regardless of their utility company and extended the lifespan of the bailouts through 2030. The subsidy was seen as a bargaining chip to win over conservative votes.

Ohioans, via fees on their electric bills, have paid $679 million collectively to the three Ohio utilities with stakes in the coal plants since 2016.

While Democrats and some Republicans have fought for years to repeal them, HB15 and SB2 mark the first time the matter came up for a vote, which passed near-unanimously in both chambers.

Despite heavy lobbying from the utilities to allow the bailouts to continue through 2026 to give utilities time to prepare, both bills would end the subsidy immediately.

State budget analysts estimate the end of the coal bailout alone will save ratepayers $591 million by the end of the decade.

Death of a solar subsidy

HB6 also created a subsidy for six solar farms in Ohio, some of the earliest utility-scale facilities of their kind in the state. Since then, Ohio collected $62 million. However, only about $8.5 million has gone out the door as a subsidy, for reasons ranging from hangups with developers to built-in bureaucracy. The rest is gathering dust in a state account.

Both bills end the solar subsidy, but they diverge over what to do with the money.

The House proposed refunding the money to customers.

The Senate bill, instead, creates a low-interest loan program, through which schools in Ohio could finance solar panels to generate their own power instead of buying it from their utilities, or finance other energy-saving improvements like LED lighting.

For Sen. Bill Demora, a Columbus Democrat, investing the money to help schools get long-term energy savings makes more sense than refunding Ohioans a piddling sum (his back-of-the-napkin math said $1.23).

"Giving ratepayers $1.23 or some miniscule amount similar to that is stupid," he said.

From wastelands, rooftops to solar farms

The House bill includes a limited pilot program to, in general terms, allow profit-seeking developers to operate a generation facility of any kind – solar, wind, gas, etc. – on either rooftops or distressed land like brownfields or solid waste facilities.

Customers could pay subscription fees to those developers and use their power or sell it back to the grid. Essentially, they're betting the subscription fee is less than the cost of the electricity produced.

Both chambers have considered similar legislation in past general assemblies, though they never made it to final passage.

The Senate's legislation does not include a similar program.

Power outage data

Utilities already must produce aggregate data on electric outages. But policymakers and advocates say the reporting requirement is so weak, given how large utility companies' service territories are, that the information is unhelpful.

HB15 would, for the first time, require annual reliability reports at a granular level. That would include the average number of outages; how long they last; how many customers experienced multiple outages; and similar data points.

"There's accountability on outages for the first time," said state Rep. Chris Glassburn, a North Olmsted Democrat.

The Senate's bill does not require those reports.

Smart thermostats

Most of the two bills focuses on increasing the supply of electricity. But the Senate included two programs aimed instead at reducing demand: energy efficiency for schools via the leftover solar subsidy funds and “demand response” technology for residential and commercial customers.

The PUCO allows the companies to create such programs so long as they’re cost-effective for consumers.

For utilities, the companies can build out technologies to decrease customers’ power use during moments of peak demand, like on a hot August day when air conditioners run full blast.

Customers, so long as they opt in to the programs and don’t override the utilities more than half the time, get a $40 annual bill credit in return.

Rob Kelter, a managing attorney with the Environmental Law and Policy Center, said the programs generally entail adjustments of one to three degrees Fahrenheit, if they’re required at all.

“You can run the whole summer without entering the program once,” he said. “Most customers who sign up don’t even notice the change.”

The House bill does not include the thermostat program or the energy efficiency in schools loan program.

‘Advanced transmission technology’

Customers pay the infrastructure costs of transmission lines – the high voltage lines that carry energy over long distances – along with the distribution lines that ferry energy the last miles to people’s homes.

Critics say that incentivizes utility companies – which receive guaranteed rates of return on investments – to build first and ask questions later.

Before requesting a regulatory permit to build a new transmission line, HB 15 says utilities must provide a summary of studies about what kinds of “advanced transmission technologies” could improve existing lines instead of building new ones.

The Senate bill has no such provision.

My own private power plant

Some data centers in Ohio have come up with an idea to solve the shortage of energy on the grid: make their own energy and keep it off the grid.

Two developers have asked the Ohio Power Siting Board, which issues permits for generation projects, for permission to build natural gas fired power plants on data center campuses. The power generated would only be used by the data centers, not the 13-state regional grid. American Electric Power testified to lawmakers it has contracts with data centers operated by Amazon and Cologix to build solar farms to power those two companies' facilities.

Both bills set new rules for regulators to follow when considering such projects, and both of them prohibit utilities from owning such "behind the meter" generation.

But one major split between the House and the Senate revolves around those two AEP projects. The Senate version makes no consideration for works already in progress, meaning AEP could not own or operate its planned solar projects for data centers. The House version would grandfather the AEP projects in under current law.

What the utilities say

In general terms, electric companies do not like either bill. They were some of the few who testified in opposition to the bill, along with their trade groups.

FirstEnergy didn't publicly testify against the bill in person, though FirstEnergy Ohio CEO Torrence Hinton provided written comments arguing against it. He said the bills cuts off needed flexibility to address changes like extreme weather, economic trends or new technology, and raised other technical points of dispute.

"A thoughtful transition to a new regulatory framework will be key to providing safe and reliable power to our customers while managing impacts to their electric bills," said Hannah Catlett, a company spokeswoman. "As the legislation moves forward, FirstEnergy will continue to work with industry peers and regulators to advocate for sound energy policy that is critical to address the state's energy future while balancing cost and reliability for customers."

American Electric Power is Ohio's largest electric utility, serving central Ohio, including the data center boom that has developed here. The company lobbied against the end to security plans; the end to the coal plant subsidies, which will cost it hundreds of millions of dollars; and prohibitions against utilities owning any new "behind the meter" generation.

Spokesman Scott Blake said the bill as written limits its "innovations" in providing "important bridge solutions for customers with high energy needs" like data centers.

“We also will continue to advocate for a reasonable timeline for transitioning the cost recovery for the (coal) plants,” he said. “There are other troublesome provisions in the bill, and we will continue to work with policy makers and other interested parties throughout the legislative process.”

An AES Ohio spokeswoman didn’t provide a comment for this report.