As Introduced

132nd General Assembly
Regular Session **H. B. No. 178**
2017-2018

Representative DeVitis

A BILL

To amend section 4928.02 and to enact sections 4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 4928.755, 4928.756, 4928.757, 4928.7511, 4928.7513, 4928.7514, 4928.7515, 4928.7520, 4928.7521, 4928.7522, 4928.7523, 4928.7524, 4928.7525, 4928.7526, 4928.7527, 4928.7530, 4928.7532, 4928.7533, 4928.7534, and 4928.7540 of the Revised Code regarding the zero-emissions nuclear resource program.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4928.02 be amended and sections 4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 4928.755, 4928.756, 4928.757, 4928.7511, 4928.7513, 4928.7514, 4928.7515, 4928.7520, 4928.7521, 4928.7522, 4928.7523, 4928.7524, 4928.7525, 4928.7526, 4928.7527, 4928.7530, 4928.7532, 4928.7533, 4928.7534, and 4928.7540 of the Revised Code be enacted to read as follows:

Sec. 4928.02. It is the policy of this state to do the following throughout this state:

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of ~~electricity~~ the following:

(1) Electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(2) Resources, including zero-emissions nuclear resources as defined in section 4928.75 of the Revised Code, that provide fuel diversity and environmental and other benefits.

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and

distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;

(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment, while simultaneously recognizing the need for nuclear energy resources, as defined in section 4928.75 of the Revised Code, and resources that provide fuel diversity and environmental and other benefits;

(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;

(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;

(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;

(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;

(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new

advanced energy or renewable energy resource;

(M) Encourage the education of small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their businesses;

(N) Facilitate the state's effectiveness in the global economy.

In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

Sec. 4928.75. As used in sections 4928.75 to 4928.7540 of the Revised Code:

(A) "Nuclear energy resource" means an electric generation unit fueled, in whole or in part, by nuclear power and licensed by the nuclear regulatory commission.

(B) "PJM" means the PJM Interconnection, L.L.C., or its successor.

(C) "Zero-emissions nuclear credit" means the attributes associated with one megawatt hour of electricity generated by a zero-emissions nuclear resource.

(D) "Zero-emissions nuclear resource" means a nuclear energy resource that meets the criteria of section 4928.754 of the Revised Code.

Sec. 4928.751. There is hereby created a zero-emissions nuclear resource program to enable the state to meet its policy goals and requirements under which zero-emissions nuclear credits are purchased by electric distribution utilities to

provide long-term energy security and environmental and other benefits to the region and to retail electric service customers in the state. An electric distribution utility in this state that has a zero-emissions nuclear resource located within its certified territory shall participate in the program. All electric distribution utilities in the same holding company system shall participate jointly and shall allocate costs across all classes of each participating utility's customers.

Sec. 4928.752. The zero-emissions nuclear resource program shall operate for successive two-year program periods beginning with the initial program period commencing on the effective date of this section and terminating on the last day of the eighth program period.

Sec. 4928.753. To provide zero-emissions nuclear credits under the zero-emissions nuclear program, an entity that owns or operates a nuclear energy resource shall file with the public utilities commission a written notice verifying that the resource meets the criteria under section 4928.754 of the Revised Code. The entity shall file the written notice not later than ninety days after the commencement of the initial program period.

Sec. 4928.754. A nuclear energy resource that satisfies all of the following criteria is a zero-emissions nuclear resource for purposes of zero-emissions nuclear credits:

(A) The resource is interconnected within the transmission system of PJM.

(B) PJM has determined the resource is transmission deliverable under the metrics by which PJM calculates deliverability for purposes of capacity planning on a round-the-

clock baseload basis into the transmission zone or zones of electric distribution utilities participating in the zero-emissions nuclear resource program under sections 4928.75 to 4928.7540 of the Revised Code.

(C)(1) For in-state nuclear energy resources:

(a) The resource has benefited the air quality profile of the state more than the predominant electric generation source with similar capacity and baseload characteristics as the resource as of the time the resource commenced operation.

(b) All of the following could occur if the resource ceased operation and its capacity were replaced at the same location by the then predominant electric generation source with similar capacity and baseload characteristics as the resource:

(i) The ability of the state, or region of the state, to maintain or decrease existing intensity of fine particulate matter or to comply with one or more state or federal air pollution control programs, standards, or goals is reduced.

(ii) The carbon dioxide emissions intensity of the state is negatively impacted.

(iii) The ability of the state to maintain or decrease existing intensity of carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen oxide, or sulfur dioxide is negatively impacted.

(2) For all other nuclear energy resources, each such resource is shown to provide no less than the same level of environmental benefits to the state as nuclear energy resources located within the state, pursuant to the requirements in division (C)(1) of this section.

(D) The resource, on or after January 1, 2017:

(1) Did not receive from another state tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions, or reimbursements calculated in whole or in part using a metric that provides value for emissions not produced by the resource;

(2) Is not wholly owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations; or

(3) Did not, during a program period described in section 4928.752 of the Revised Code, recover some or all of the capital or operating costs of the resource through rates regulated by a state.

Sec. 4928.755. With respect to a written notice filed under section 4928.753 of the Revised Code relating to a nuclear energy resource located in this state, any interested person may file comments with the public utilities commission not later than twenty days after the written notice was filed.

Sec. 4928.756. An entity that owns or operates a nuclear energy resource may file with the public utilities commission a response to any comment made under section 4928.755 of the Revised Code, not later than ten days after the comment was filed.

Sec. 4928.757. Not later than fifty days after the filing of a written notice under section 4928.753 of the Revised Code relating to a nuclear energy resource located in this state, the public utilities commission shall designate a resource that satisfies the criteria in section 4928.754 of the Revised Code as a zero-emissions nuclear resource and issue an order

consistent with that designation. If the commission does not issue an order in the time required by this section, the resource shall be deemed to be a zero-emissions nuclear resource.

Sec. 4928.7511. The public utilities commission, under a procedure it adopts, shall determine and issue the appropriate order regarding whether a nuclear energy resource described in division (C)(2) of section 4928.754 of the Revised Code satisfies the criteria in section 4928.754 of the Revised Code as a zero-emissions nuclear resource. The nuclear energy resource shall submit an environmental study showing that the resource meets the criteria under section 4928.754 of the Revised Code. At minimum, the adopted procedure shall provide the opportunity for comment and response similar to the opportunities described under sections 4928.755 and 4928.756 of the Revised Code.

Sec. 4928.7513. A nuclear energy resource determined under section 4928.757 or 4928.7511 of the Revised Code to be a zero-emissions nuclear resource shall continue to be considered such a resource for all successive program periods as long as the resource continues to meet the criteria of divisions (A), (B), and (D) of section 4928.754 of the Revised Code. The provisions of sections 4928.75 to 4928.7540 of the Revised Code shall apply to any person to which zero-emissions nuclear resources are sold, assigned, transferred, or conveyed.

Sec. 4928.7514. Zero-emission nuclear resources shall provide zero-emissions nuclear credits for the zero-emissions nuclear resource program. Not later than thirty days before a program period commences, each zero-emissions nuclear resource shall confirm with the public utilities commission its intent to

continue to commit its credits under the program.

Sec. 4928.7515. All financial statements, financial data, and trade secrets submitted to or received by the public utilities commission for purposes of satisfying the criteria as a zero-emissions nuclear resource and any information taken for any purpose from the statements, data, or trade secrets are not public records under section 149.43 of the Revised Code.

Sec. 4928.7520. Not later than sixty days after the initial program period commences and not later than thirty days before a subsequent program period commences, the public utilities commission shall set the price for zero-emissions nuclear credits applicable for the period. For the initial program period the price shall be seventeen dollars per credit. For each subsequent program period, that price shall be adjusted for inflation using the gross domestic product implicit price deflator as published by the United States department of commerce, bureau of economic analysis, index numbers 2007=100.

Sec. 4928.7521. At the same time the public utilities commission sets the price for zero-emissions nuclear credits, the commission shall determine the maximum number of credits to be purchased by electric distribution utilities during the program period. The amount the commission sets shall equal one-third of the total "Total End User Consumption" in megawatt-hours over the previous two calendar years as shown on PUCO Form D1 of each participating electric distribution utility's most recently filed long-term forecast report.

Sec. 4928.7522. Not later than seven days following the close of each quarter of a program period, each zero-emissions nuclear resource shall transfer all of its zero-emissions nuclear credits generated that quarter to the public utilities

commission, which shall hold the credits for the sole purpose of administering the program.

Sec. 4928.7523. Not later than seven days after the zero-emissions nuclear resource transfers its credits, the public utilities commission shall notify each participating electric distribution utility of the total amount of zero-emissions nuclear credits received from zero-emissions nuclear resources.

Sec. 4928.7524. (A) Except as provided in division (B) of this section, all participating electric distribution utilities shall purchase all zero-emissions nuclear credits transferred to the public utilities commission up to the maximum number of credits determined under section 4928.7521 of the Revised Code. The commission shall allocate the amounts to be purchased by each participating utility based on the total "Total End User Consumption" in megawatt-hours over the previous two calendar years as shown on PUCO Form D1 of each participating electric distribution utility's most recently filed long-term forecast report. Each participating electric distribution utility shall pay the credit price for each credit purchased.

(B) If the owner, as of December 31, 2016, of a zero-emissions nuclear resource sells or transfers the zero-emissions nuclear resource, the commission shall reduce the number of zero-emissions nuclear credits to be purchased from that resource during the program period and, if necessary, successive program periods, to reflect an adjustment equal to one-half of the dollar amount of any net proceeds available after the payment or provision for the seller's known obligations, but in no instance shall this adjustment apply to a sale or transfer under the United States Bankruptcy Code, including, but not limited to, sections 363 and 1123, 11 U.S.C. sections 363 and

1123.

Sec. 4928.7525. The public utilities commission shall deposit all payments for credits into the zero-emissions nuclear resources fund created under section 4928.7532 of the Revised Code.

Sec. 4928.7526. Not later than seven days after receipt of utility payment, the public utilities commission shall pay to each zero-emissions nuclear resource the amount paid for each of the resource's zero-emissions nuclear credits purchased from the zero-emissions nuclear resources fund.

Sec. 4928.7527. Credits purchased by participating electric distribution utilities may not be transferred, sold, or assigned to any other entity.

Sec. 4928.7530. Each participating electric distribution utility shall recover any and all direct and indirect costs for the purchase of zero-emissions nuclear credits through a nonbypassable rider charged to all of its retail electric service customers, which rider shall be established not later than sixty days after the effective date of this section. The nonbypassable charge shall be designed such that no retail electric service customer shall have an increase resulting from the nonbypassable rider in the customer's total retail electric service bill of more than five per cent as compared to June 2015. The participating electric distribution utility shall defer as a regulatory asset an amount equal to the revenue reduction resulting from the five per cent limit on customer bill increases and recover the deferral plus carrying charges through a nonbypassable charge assessed over a twelve-month period.

Sec. 4928.7532. There is hereby created the zero-emissions nuclear resources fund that shall be in the custody of the treasurer of state but shall not be part of the state treasury. The fund shall consist of all money collected by the public utilities commission from purchases of zero-emissions nuclear credits. The amounts deposited into the fund shall be used to pay the credit purchase price to the resources that generated the credits. All investment earnings from the fund shall be transferred by the treasurer to the general revenue fund in the state treasury.

Sec. 4928.7533. During each program period in which a zero-emissions nuclear resource receives payment for credits under section 4928.7526 of the Revised Code, an entity that owns or operates that zero-emissions nuclear resource and that has its corporate headquarters located in this state shall continue to maintain its corporate headquarters in this state.

Sec. 4928.7534. During the sixth and eleventh years of the zero-emissions nuclear resource program, the public utilities commission shall evaluate the zero-emissions nuclear credit price established under section 4928.7520 of the Revised Code for the purpose of discerning whether the program is achieving the policy goals in section 4928.751 of the Revised Code and whether those policy goals are being met through other federal environmental laws, programs, rules or regulations, or through amendments to the federal tax code. Upon the conclusion of its evaluation, the commission shall report the results of its evaluation to the standing committees of both houses of the general assembly that have primary jurisdiction regarding public utility legislation. In no case shall the zero-emissions nuclear resource program terminate earlier than the last day of the second program period.

Sec. 4928.7540. (A) For purposes of this section:

(1) "Employment levels" means the number of full-time employees regularly providing services at the location of a zero-emissions nuclear resource.

(2) "Full-time employee" means an individual who is employed for consideration for at least thirty-five hours per week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(B) During each program period in which a zero-emissions nuclear resource receives payment for zero-emissions nuclear credits under section 4928.7526 of the Revised Code, the employment levels at that zero-emissions nuclear resource shall continue to be similar to that of nuclear energy resources constructed prior to 1990 in the United States with the same reactor type, similar nameplate capacity, and single-unit location.

Section 2. That existing section 4928.02 of the Revised Code is hereby repealed.