

As Reported by the House Energy and Natural Resources Committee

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H. B. No. 308

Representatives Stein, Brennan

Cosponsors: Representatives Gross, Lipps, King, Demetriou, Bird, Holmes, Denson, Seitz, Hoops, Klopfenstein, Abdullahi, Ray, Claggett, Hillyer, Dean, Robb Blasdel, Troy, Fowler Arthur, Dobos, Forhan, Weinstein, Brewer, McClain, Thomas, J., Johnson, Williams, Richardson, Carruthers, Click, Isaacsohn, Swearingen

A BILL

To amend section 4928.01 of the Revised Code to
include energy generated by nuclear reaction as
green energy.

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

Section 1. That section 4928.01 of the Revised Code be
amended to read as follows:

Sec. 4928.01. (A) As used in this chapter:

(1) "Ancillary service" means any function necessary to
the provision of electric transmission or distribution service
to a retail customer and includes, but is not limited to,
scheduling, system control, and dispatch services; reactive
supply from generation resources and voltage control service;
reactive supply from transmission resources service; regulation
service; frequency response service; energy imbalance service;
operating reserve-spinning reserve service; operating reserve-
supplemental reserve service; load following; back-up supply
service; real-power loss replacement service; dynamic

scheduling; system black start capability; and network stability 17
service. 18

(2) "Billing and collection agent" means a fully 19
independent agent, not affiliated with or otherwise controlled 20
by an electric utility, electric services company, electric 21
cooperative, or governmental aggregator subject to certification 22
under section 4928.08 of the Revised Code, to the extent that 23
the agent is under contract with such utility, company, 24
cooperative, or aggregator solely to provide billing and 25
collection for retail electric service on behalf of the utility 26
company, cooperative, or aggregator. 27

(3) "Certified territory" means the certified territory 28
established for an electric supplier under sections 4933.81 to 29
4933.90 of the Revised Code. 30

(4) "Competitive retail electric service" means a 31
component of retail electric service that is competitive as 32
provided under division (B) of this section. 33

(5) "Electric cooperative" means a not-for-profit electric 34
light company that both is or has been financed in whole or in 35
part under the "Rural Electrification Act of 1936," 49 Stat. 36
1363, 7 U.S.C. 901, and owns or operates facilities in this 37
state to generate, transmit, or distribute electricity, or a 38
not-for-profit successor of such company. 39

(6) "Electric distribution utility" means an electric 40
utility that supplies at least retail electric distribution 41
service. 42

(7) "Electric light company" has the same meaning as in 43
section 4905.03 of the Revised Code and includes an electric 44
services company, but excludes any self-generator to the extent 45

that it consumes electricity it so produces, sells that 46
electricity for resale, or obtains electricity from a generating 47
facility it hosts on its premises. 48

(8) "Electric load center" has the same meaning as in 49
section 4933.81 of the Revised Code. 50

(9) "Electric services company" means an electric light 51
company that is engaged on a for-profit or not-for-profit basis 52
in the business of supplying or arranging for the supply of only 53
a competitive retail electric service in this state. "Electric 54
services company" includes a power marketer, power broker, 55
aggregator, or independent power producer but excludes an 56
electric cooperative, municipal electric utility, governmental 57
aggregator, or billing and collection agent. 58

(10) "Electric supplier" has the same meaning as in 59
section 4933.81 of the Revised Code. 60

(11) "Electric utility" means an electric light company 61
that has a certified territory and is engaged on a for-profit 62
basis either in the business of supplying a noncompetitive 63
retail electric service in this state or in the businesses of 64
supplying both a noncompetitive and a competitive retail 65
electric service in this state. "Electric utility" excludes a 66
municipal electric utility or a billing and collection agent. 67

(12) "Firm electric service" means electric service other 68
than nonfirm electric service. 69

(13) "Governmental aggregator" means a legislative 70
authority of a municipal corporation, a board of township 71
trustees, or a board of county commissioners acting as an 72
aggregator for the provision of a competitive retail electric 73
service under authority conferred under section 4928.20 of the 74

Revised Code. 75

(14) A person acts "knowingly," regardless of the person's 76
purpose, when the person is aware that the person's conduct will 77
probably cause a certain result or will probably be of a certain 78
nature. A person has knowledge of circumstances when the person 79
is aware that such circumstances probably exist. 80

(15) "Level of funding for low-income customer energy 81
efficiency programs provided through electric utility rates" 82
means the level of funds specifically included in an electric 83
utility's rates on October 5, 1999, pursuant to an order of the 84
public utilities commission issued under Chapter 4905. or 4909. 85
of the Revised Code and in effect on October 4, 1999, for the 86
purpose of improving the energy efficiency of housing for the 87
utility's low-income customers. The term excludes the level of 88
any such funds committed to a specific nonprofit organization or 89
organizations pursuant to a stipulation or contract. 90

(16) "Low-income customer assistance programs" means the 91
percentage of income payment plan program, the home energy 92
assistance program, the home weatherization assistance program, 93
and the targeted energy efficiency and weatherization program. 94

(17) "Market development period" for an electric utility 95
means the period of time beginning on the starting date of 96
competitive retail electric service and ending on the applicable 97
date for that utility as specified in section 4928.40 of the 98
Revised Code, irrespective of whether the utility applies to 99
receive transition revenues under this chapter. 100

(18) "Market power" means the ability to impose on 101
customers a sustained price for a product or service above the 102
price that would prevail in a competitive market. 103

(19) "Mercantile customer" means a commercial or 104
industrial customer if the electricity consumed is for 105
nonresidential use and the customer consumes more than seven 106
hundred thousand kilowatt hours per year or is part of a 107
national account involving multiple facilities in one or more 108
states. 109

(20) "Municipal electric utility" means a municipal 110
corporation that owns or operates facilities to generate, 111
transmit, or distribute electricity. 112

(21) "Noncompetitive retail electric service" means a 113
component of retail electric service that is noncompetitive as 114
provided under division (B) of this section. 115

(22) "Nonfirm electric service" means electric service 116
provided pursuant to a schedule filed under section 4905.30 of 117
the Revised Code or pursuant to an arrangement under section 118
4905.31 of the Revised Code, which schedule or arrangement 119
includes conditions that may require the customer to curtail or 120
interrupt electric usage during nonemergency circumstances upon 121
notification by an electric utility. 122

(23) "Percentage of income payment plan arrears" means 123
funds eligible for collection through the percentage of income 124
payment plan rider, but uncollected as of July 1, 2000. 125

(24) "Person" has the same meaning as in section 1.59 of 126
the Revised Code. 127

(25) "Advanced energy project" means any technologies, 128
products, activities, or management practices or strategies that 129
facilitate the generation or use of electricity or energy and 130
that reduce or support the reduction of energy consumption or 131
support the production of clean, renewable energy for 132

industrial, distribution, commercial, institutional, 133
governmental, research, not-for-profit, or residential energy 134
users, including, but not limited to, advanced energy resources 135
and renewable energy resources. "Advanced energy project" also 136
includes any project described in division (A), (B), or (C) of 137
section 4928.621 of the Revised Code. 138

(26) "Regulatory assets" means the unamortized net 139
regulatory assets that are capitalized or deferred on the 140
regulatory books of the electric utility, pursuant to an order 141
or practice of the public utilities commission or pursuant to 142
generally accepted accounting principles as a result of a prior 143
commission rate-making decision, and that would otherwise have 144
been charged to expense as incurred or would not have been 145
capitalized or otherwise deferred for future regulatory 146
consideration absent commission action. "Regulatory assets" 147
includes, but is not limited to, all deferred demand-side 148
management costs; all deferred percentage of income payment plan 149
arrears; post-in-service capitalized charges and assets 150
recognized in connection with statement of financial accounting 151
standards no. 109 (receivables from customers for income taxes); 152
future nuclear decommissioning costs and fuel disposal costs as 153
those costs have been determined by the commission in the 154
electric utility's most recent rate or accounting application 155
proceeding addressing such costs; the undepreciated costs of 156
safety and radiation control equipment on nuclear generating 157
plants owned or leased by an electric utility; and fuel costs 158
currently deferred pursuant to the terms of one or more 159
settlement agreements approved by the commission. 160

(27) "Retail electric service" means any service involved 161
in supplying or arranging for the supply of electricity to 162
ultimate consumers in this state, from the point of generation 163

to the point of consumption. For the purposes of this chapter, 164
retail electric service includes one or more of the following 165
"service components": generation service, aggregation service, 166
power marketing service, power brokerage service, transmission 167
service, distribution service, ancillary service, metering 168
service, and billing and collection service. 169

(28) "Starting date of competitive retail electric 170
service" means January 1, 2001. 171

(29) "Customer-generator" means a user of a net metering 172
system. 173

(30) "Net metering" means measuring the difference in an 174
applicable billing period between the electricity supplied by an 175
electric service provider and the electricity generated by a 176
customer-generator that is fed back to the electric service 177
provider. 178

(31) "Net metering system" means a facility for the 179
production of electrical energy that does all of the following: 180

(a) Uses as its fuel either solar, wind, biomass, landfill 181
gas, or hydropower, or uses a microturbine or a fuel cell; 182

(b) Is located on a customer-generator's premises; 183

(c) Operates in parallel with the electric utility's 184
transmission and distribution facilities; 185

(d) Is intended primarily to offset part or all of the 186
customer-generator's requirements for electricity. For an 187
industrial customer-generator with a net metering system that 188
has a capacity of less than twenty megawatts and uses wind as 189
energy, this means the net metering system was sized so as to 190
not exceed one hundred per cent of the customer-generator's 191

annual requirements for electric energy at the time of 192
interconnection. 193

(32) "Self-generator" means an entity in this state that 194
owns or hosts on its premises an electric generation facility 195
that produces electricity primarily for the owner's consumption 196
and that may provide any such excess electricity to another 197
entity, whether the facility is installed or operated by the 198
owner or by an agent under a contract. 199

(33) "Rate plan" means the standard service offer in 200
effect on the effective date of the amendment of this section by 201
S.B. 221 of the 127th general assembly, July 31, 2008. 202

(34) "Advanced energy resource" means any of the 203
following: 204

(a) Any method or any modification or replacement of any 205
property, process, device, structure, or equipment that 206
increases the generation output of an electric generating 207
facility to the extent such efficiency is achieved without 208
additional carbon dioxide emissions by that facility; 209

(b) Any distributed generation system consisting of 210
customer cogeneration technology; 211

(c) Clean coal technology that includes a carbon-based 212
product that is chemically altered before combustion to 213
demonstrate a reduction, as expressed as ash, in emissions of 214
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 215
sulfur trioxide in accordance with the American society of 216
testing and materials standard D1757A or a reduction of metal 217
oxide emissions in accordance with standard D5142 of that 218
society, or clean coal technology that includes the design 219
capability to control or prevent the emission of carbon dioxide, 220

which design capability the commission shall adopt by rule and 221
shall be based on economically feasible best available 222
technology or, in the absence of a determined best available 223
technology, shall be of the highest level of economically 224
feasible design capability for which there exists generally 225
accepted scientific opinion; 226

(d) Advanced nuclear energy technology consisting of 227
generation III technology as defined by the nuclear regulatory 228
commission; other, later technology; or significant improvements 229
to existing facilities; 230

(e) Any fuel cell used in the generation of electricity, 231
including, but not limited to, a proton exchange membrane fuel 232
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 233
solid oxide fuel cell; 234

(f) Advanced solid waste or construction and demolition 235
debris conversion technology, including, but not limited to, 236
advanced stoker technology, and advanced fluidized bed 237
gasification technology, that results in measurable greenhouse 238
gas emissions reductions as calculated pursuant to the United 239
States environmental protection agency's waste reduction model 240
(WARM); 241

(g) Demand-side management and any energy efficiency 242
improvement; 243

(h) Any new, retrofitted, refueled, or repowered 244
generating facility located in Ohio, including a simple or 245
combined-cycle natural gas generating facility or a generating 246
facility that uses biomass, coal, modular nuclear, or any other 247
fuel as its input; 248

(i) Any uprated capacity of an existing electric 249

generating facility if the uprated capacity results from the 250
deployment of advanced technology. 251

"Advanced energy resource" does not include a waste energy 252
recovery system that is, or has been, included in an energy 253
efficiency program of an electric distribution utility pursuant 254
to requirements under section 4928.66 of the Revised Code. 255

(35) "Air contaminant source" has the same meaning as in 256
section 3704.01 of the Revised Code. 257

(36) "Cogeneration technology" means technology that 258
produces electricity and useful thermal output simultaneously. 259

(37) (a) "Renewable energy resource" means any of the 260
following: 261

(i) Solar photovoltaic or solar thermal energy; 262

(ii) Wind energy; 263

(iii) Power produced by a hydroelectric facility; 264

(iv) Power produced by a small hydroelectric facility, 265
which is a facility that operates, or is rated to operate, at an 266
aggregate capacity of less than six megawatts; 267

(v) Power produced by a run-of-the-river hydroelectric 268
facility placed in service on or after January 1, 1980, that is 269
located within this state, relies upon the Ohio river, and 270
operates, or is rated to operate, at an aggregate capacity of 271
forty or more megawatts; 272

(vi) Geothermal energy; 273

(vii) Fuel derived from solid wastes, as defined in 274
section 3734.01 of the Revised Code, through fractionation, 275
biological decomposition, or other process that does not 276

principally involve combustion; 277

(viii) Biomass energy; 278

(ix) Energy produced by cogeneration technology that is 279
placed into service on or before December 31, 2015, and for 280
which more than ninety per cent of the total annual energy input 281
is from combustion of a waste or byproduct gas from an air 282
contaminant source in this state, which source has been in 283
operation since on or before January 1, 1985, provided that the 284
cogeneration technology is a part of a facility located in a 285
county having a population of more than three hundred sixty-five 286
thousand but less than three hundred seventy thousand according 287
to the most recent federal decennial census; 288

(x) Biologically derived methane gas; 289

(xi) Heat captured from a generator of electricity, 290
boiler, or heat exchanger fueled by biologically derived methane 291
gas; 292

(xii) Energy derived from nontreated by-products of the 293
pulping process or wood manufacturing process, including bark, 294
wood chips, sawdust, and lignin in spent pulping liquors. 295

"Renewable energy resource" includes, but is not limited 296
to, any fuel cell used in the generation of electricity, 297
including, but not limited to, a proton exchange membrane fuel 298
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 299
solid oxide fuel cell; wind turbine located in the state's 300
territorial waters of Lake Erie; methane gas emitted from an 301
abandoned coal mine; waste energy recovery system placed into 302
service or retrofitted on or after the effective date of the 303
amendment of this section by S.B. 315 of the 129th general 304
assembly, September 10, 2012, except that a waste energy 305

recovery system described in division (A) (38) (b) of this section 306
may be included only if it was placed into service between 307
January 1, 2002, and December 31, 2004; storage facility that 308
will promote the better utilization of a renewable energy 309
resource; or distributed generation system used by a customer to 310
generate electricity from any such energy. 311

"Renewable energy resource" does not include a waste 312
energy recovery system that is, or was, on or after January 1, 313
2012, included in an energy efficiency program of an electric 314
distribution utility pursuant to requirements under section 315
4928.66 of the Revised Code. 316

(b) As used in division (A) (37) of this section, 317
"hydroelectric facility" means a hydroelectric generating 318
facility that is located at a dam on a river, or on any water 319
discharged to a river, that is within or bordering this state or 320
within or bordering an adjoining state and meets all of the 321
following standards: 322

(i) The facility provides for river flows that are not 323
detrimental for fish, wildlife, and water quality, including 324
seasonal flow fluctuations as defined by the applicable 325
licensing agency for the facility. 326

(ii) The facility demonstrates that it complies with the 327
water quality standards of this state, which compliance may 328
consist of certification under Section 401 of the "Clean Water 329
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 330
demonstrates that it has not contributed to a finding by this 331
state that the river has impaired water quality under Section 332
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33
U.S.C. 1313. 334

(iii) The facility complies with mandatory prescriptions 335
regarding fish passage as required by the federal energy 336
regulatory commission license issued for the project, regarding 337
fish protection for riverine, anadromous, and catadromous fish. 338

(iv) The facility complies with the recommendations of the 339
Ohio environmental protection agency and with the terms of its 340
federal energy regulatory commission license regarding watershed 341
protection, mitigation, or enhancement, to the extent of each 342
agency's respective jurisdiction over the facility. 343

(v) The facility complies with provisions of the 344
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 345
to 1544, as amended. 346

(vi) The facility does not harm cultural resources of the 347
area. This can be shown through compliance with the terms of its 348
federal energy regulatory commission license or, if the facility 349
is not regulated by that commission, through development of a 350
plan approved by the Ohio historic preservation office, to the 351
extent it has jurisdiction over the facility. 352

(vii) The facility complies with the terms of its federal 353
energy regulatory commission license or exemption that are 354
related to recreational access, accommodation, and facilities 355
or, if the facility is not regulated by that commission, the 356
facility complies with similar requirements as are recommended 357
by resource agencies, to the extent they have jurisdiction over 358
the facility; and the facility provides access to water to the 359
public without fee or charge. 360

(viii) The facility is not recommended for removal by any 361
federal agency or agency of any state, to the extent the 362
particular agency has jurisdiction over the facility. 363

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 364
this section do not apply to a small hydroelectric facility 365
under division (A) (37) (a) (iv) of this section. 366

(38) "Waste energy recovery system" means either of the 367
following: 368

(a) A facility that generates electricity through the 369
conversion of energy from either of the following: 370

(i) Exhaust heat from engines or manufacturing, 371
industrial, commercial, or institutional sites, except for 372
exhaust heat from a facility whose primary purpose is the 373
generation of electricity; 374

(ii) Reduction of pressure in gas pipelines before gas is 375
distributed through the pipeline, provided that the conversion 376
of energy to electricity is achieved without using additional 377
fossil fuels. 378

(b) A facility at a state institution of higher education 379
as defined in section 3345.011 of the Revised Code that recovers 380
waste heat from electricity-producing engines or combustion 381
turbines and that simultaneously uses the recovered heat to 382
produce steam, provided that the facility was placed into 383
service between January 1, 2002, and December 31, 2004. 384

(39) "Smart grid" means capital improvements to an 385
electric distribution utility's distribution infrastructure that 386
improve reliability, efficiency, resiliency, or reduce energy 387
demand or use, including, but not limited to, advanced metering 388
and automation of system functions. 389

(40) "Combined heat and power system" means the 390
coproduction of electricity and useful thermal energy from the 391
same fuel source designed to achieve thermal-efficiency levels 392

of at least sixty per cent, with at least twenty per cent of the 393
system's total useful energy in the form of thermal energy. 394

(41) "Legacy generation resource" means all generating 395
facilities owned directly or indirectly by a corporation that 396
was formed prior to 1960 by investor-owned utilities for the 397
original purpose of providing power to the federal government 398
for use in the nation's defense or in furtherance of national 399
interests, including the Ohio valley electric corporation. 400

(42) "Prudently incurred costs related to a legacy 401
generation resource" means costs, including deferred costs, 402
allocated pursuant to a power agreement approved by the federal 403
energy regulatory commission that relates to a legacy generation 404
resource, less any revenues realized from offering the 405
contractual commitment for the power agreement into the 406
wholesale markets, provided that where the net revenues exceed 407
net costs, those excess revenues shall be credited to customers. 408
Such costs shall exclude any return on investment in common 409
equity and, in the event of a premature retirement of a legacy 410
generation resource, shall exclude any recovery of remaining 411
debt. Such costs shall include any incremental costs resulting 412
from the bankruptcy of a current or former sponsor under such 413
power agreement or co-owner of the legacy generation resource if 414
not otherwise recovered through a utility rate cost recovery 415
mechanism. 416

~~(43)~~ (43) (a) "Green energy" means any energy generated by 417
using an energy resource that does one or more of the following: 418

~~(a)~~ (i) Releases reduced air pollutants, thereby reducing 419
cumulative air emissions; 420

~~(b)~~ (ii) Is more sustainable and reliable relative to some 421

fossil fuels. 422

(b) "Green energy" includes energy generated by using 423
natural gas the following as a resource; 424

(i) Natural gas as a resource; 425

(ii) Nuclear reaction. 426

(B) For the purposes of this chapter, a retail electric 427
service component shall be deemed a competitive retail electric 428
service if the service component is competitive pursuant to a 429
declaration by a provision of the Revised Code or pursuant to an 430
order of the public utilities commission authorized under 431
division (A) of section 4928.04 of the Revised Code. Otherwise, 432
the service component shall be deemed a noncompetitive retail 433
electric service. 434

Section 2. That existing section 4928.01 of the Revised 435
Code is hereby repealed. 436