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**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Romanchuk and Smith

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### SUMMARY

#### Community energy facilities

- Amends state competitive retail electric service (CRES) policy to add provisions relating to community energy facilities, the establishment of the Community Energy Pilot Program and program evaluations and consumer protections for community energy subscribers.
- Defines “community energy facility” (CEF) as a single facility that generates electricity by means of a solar photovoltaic device or uses as its fuel either solar, wind, biomass, landfill gas, or hydroelectric power, or uses a microturbine, natural gas-fired generator, energy storage system, or a fuel cell and meets certain other requirements.
- Allows a CEF to be placed on the same parcel or contiguous parcel of land as a CEF that is developed, owned, or operated by the same entity, affiliated entity, or entity under common control if certain conditions are met.

#### Community Energy Pilot Program

- Requires the Public Utilities Commission (PUCO) to establish a Community Energy Pilot Program “Pilot Program,” consisting of 1,500 megawatts (MWs) of CEFs to be implemented throughout Ohio.

#### CEFs statewide

- Requires PUCO to annually certify 250 MWs of CEFs, based on nameplate capacity, until 1,000 MWs from such facilities are certified, and allocate MWs proportionally based on the size of each electric distribution utility’s (EDU’s) retail electric sales as published by the Energy Information Administration.
- Creates procedures regarding uncertified MWs and applications for certification, including a requirement that the certification process be separate from certification regarding renewable energy benchmarks and energy credits.

## **CEFs on distressed sites/commercial or public sector rooftops**

- Defines a “distressed site” as a site made up of one or more parcels of land located within an EDU’s certified territory, or in a county in which the EDU operates, where a majority of the acreage is a certain type of property, including, for example, a brownfield.
- Requires PUCO to certify 500 MWs of CEFs to be reserved for CEFs constructed exclusively on distressed sites or one or more commercial or public sector rooftops.
- Requires PUCO to ensure the certification process is separate from certification under renewable energy benchmarks and renewable energy credits.
- Allows a CEF, after all 500 MWs for distressed sites or a commercial or public sector rooftop, are certified, to be certified out of the 1,000 MWs allocated statewide (described above).

## **Bill credits**

- Requires an EDU with a CEF in its certified territory to allocate bill credits for all electricity generated by the facility that is attributable to a subscription.
- Allows a community energy organization (CEO) to account for unsubscribed electricity on a monthly basis and accumulate bill credits for the unsubscribed electricity for a period of up to 12 months after it was generated, which must be allocated to future subscribers at the direction of the CEO.
- Requires a CEO, at least once annually, to furnish to the EDU, in whose certified territory the CEF is located, an allocation for distribution of bill credits to subscribers for unsubscribed electricity.
- Requires the CEO to forfeit, to the applicable EDU, any bill credits for unsubscribed electricity that are not allocated.
- Provides that a CEF subscriber (any retail electric customer who meets certain requirements, including, for example, contracting with a CEF for a subscription) is eligible for a bill credit from the subscriber’s EDU for the proportional output of a CEF attributable to the subscriber.
- Requires PUCO to establish the bill credit for each subscriber that is equal to the EDU’s retail rate (all costs of providing generation, transmission, and distribution services that may be charged by an EDU) on a per-customer class basis, minus certain distribution charges assessed by the EDU.
- Requires PUCO, when determining the bill credit for each EDU, to ensure that it is set at a reasonably compensatory level to create a financeable community energy market and must consider: (1) costs and benefits provided by CEFs participating in the Pilot Program, (2) all proposed rules, fees, and charges, and (3) any other item PUCO determines is necessary.

- Prohibits PUCO from modifying the initially established bill credit unless, after the review of the Pilot Program, PUCO determines a change is necessary to adjust for unallocated community energy capacity; if so, then PUCO must calculate the “value stack” for each EDU and use it to revise the credit.
- Defines “value stack” as the distributed generation compensation calculated under the bill’s provisions that recognizes the benefits that CEFs bring to the electrical grid, including, for example, certain avoided electric costs, and increased resiliency.
- Requires EDUs, not later than nine months after the bill’s effective date, to publish new tariffs or update existing tariffs based on the initially established bill credit.
- Requires PUCO, not later than 12 months after the report described below is submitted, to approve a tariff based on the revised bill credit rate.
- Requires any bill credit exceeding a subscriber’s monthly bill amount to carry forward until fully allocated to the subscriber’s bill or until the termination of the subscriber’s subscription.

## **Subscriptions**

- Prohibits a subscriber from obtaining a subscription for electricity generated by a CEF representing more than 100% of the subscriber’s average annual electricity usage.

## **Consumer transactions**

- Specifies that a subscription is to be considered: (1) for residential subscribers, a consumer transaction subject to Ohio’s Consumer Sales Practices law or (2) for nonresidential subscribers, goods subject to the Ohio’s Commercial Code covering sales.

## **Renewable attributes**

- Allows a regional governmental aggregator (a regional council of governments with members in at least 17 counties that is also a governmental aggregator under the CRES law) to purchase any amount of renewable attributes (credits, certificates benefits, and offsets attributable to a CEF or the electricity it generates from a governmental entity) from a CEF.

## **Customers exempted from charges under the Pilot Program**

- Prohibits large industrial customers from participating in, or being charged, directly or indirectly, for any costs related to, the Pilot Program.

## **Interconnection of a CEF**

- Requires an EDU to interconnect a CEF that is in that EDU’s certified territory to its distribution system within a reasonable time after the facility is constructed and must ensure such interconnections are made efficiently, safely, and in compliance with any applicable federal and state regulations and standards.

## **Discrimination prohibited**

- Prohibits an EDU from discriminating against CEFs or their subscribers, including adding extraordinary fees and charges not applied to similar facilities.

## **CEFs located on a brownfield**

- Provides that a CEO that constructs a CEF on a distressed site that is a brownfield is eligible to receive a grant awarded by the Department of Development (DEV) from the Brownfield Remediation Program for costs associated with construction and remediation.
- Requires DEV to promulgate rules for awarding grants to such CEFs.

## **Stakeholder working group**

- Requires PUCO to convene and facilitate an ongoing stakeholder working group to assist PUCO staff with effectively and efficiently promulgating rules for the Pilot Program.
- Requires the working group to consist of EDUs, consumer advocates, community energy industry representatives, and other interested parties.

## **CEFs located in a township**

- Prohibits a person from commencing construction of a CEF in a township unless: (1) the person holds a public meeting and (2) the board of township trustees where the facility is proposed to be located fails to adopt a resolution to prohibit or limit the CEF's construction.
- Requires a person intending to construct a CEF in a township to hold a public meeting in each township where the CEF is to be located to present certain technical information regarding the CEF.
- Requires the applicant, at least 14 days prior to the date of the public meeting, to provide written notice of the public meeting to the boards of trustees of every township in which the CEF will be located.
- Allows a board, or boards, of township trustees, not later than 90 days after the public meeting described above, to adopt a resolution to either: (1) prohibit the CEF's construction or (2) limit the boundaries of the proposed CEF to a smaller geographic area of the township.
- Provides that if no resolution is adopted within 90 days of the public meeting, construction of the CEF may commence.
- Provides that a resolution adopted that prohibits or limits the construction of a CEF does not prevent a person from filing another proposal for consideration by the board of township trustees at a later date.
- Requires PUCO to adopt rules to implement the township approval provisions described above, including, rules that provide for the decertification of a CEF's MWs if a board of township trustees adopts a resolution prohibiting the CEF's construction or limiting the CEF's proposed boundaries.

## **PUCO rulemaking for Pilot Program**

- Requires PUCO, not later than six months after the bill's effective date, with assistance from the working group, to promulgate rules to implement the community energy program, which must include rules for the creation and establishment of CEFs and a variety of other rules.

## **Net crediting**

- Allows an EDU to establish a net crediting program under which the EDU must enter into a net crediting agreement with a CEO, the terms of which must specify certain provisions regarding customer billing and payments made by the EDU to the CEO and may also include a net crediting fee.
- Defines "net crediting" as a program offered by an EDU under which it issues to a customer-subscriber a consolidated electric bill and remits the customer's subscription fee to the owner or operator of the CEO to which the customer subscribes.
- Requires an EDU, under a net crediting agreement, to do various things related to customer billing and payments to a CEO such as, for example, remit the cash value of the subscriber's subscription fee, minus any net crediting fee, to the CEO, and issue itemized monthly bills to subscribers that are customers of an EDU.
- Requires an EDU that enters into a net crediting agreement with a CEO to prioritize payments from customer-subscribers for each billing period.
- Requires past due subscriber fees owed to a CEO to be paid prior to payments to the EDU for any arrearages on the customer's electric service bill.
- Prohibits an EDU from applying a customer's bill credit to a customer's outstanding balance for electric service for the billing period.
- Allows a nonresidential customer that subscribes to multiple CEFs to participate in the net crediting program only if each facility is included in a net credit agreement.
- Applies the minimum service requirements established under the CRES law to the bill's net crediting agreement provisions.
- Requires PUCO to adopt rules to implement net crediting programs authorized by the bill's provisions.

## **Decommissioning of CEF**

- Requires a CEO, not later than 18 months after a CEF has ceased generating electricity, to commence decommissioning, which must include certain activities, to be mutually agreed to in writing by the property owner or owners and the CEO.
- Provides that not more than 20% of the total combined mass of the CEF may enter a landfill.

- Requires CEOs to maintain sufficient financial assurances, in the form of a bond, through the life of a CEF's operation to provide for decommissioning.
- Requires the amount of the bond to be calculated by a third-party professional engineer obtained by the CEO and further requires the bond amount to be recalculated every five years from the date of the initial assessment in the same manner as the initial bond.
- Requires the board of county commissioners where the CEF is located to be the obligee of the bond.

## **PUCO review and report**

- Requires PUCO, 48 months after the rules for the Pilot Program have been promulgated, to conduct reviews of the Pilot Program and submit a report to the General Assembly.
- Requires PUCO to promulgate rules to require CEOs and EDUs to provide PUCO with a report containing the relevant information to complete the review.

## **Regulatory restriction reduction exemption**

- Exempts rules required to be adopted under the CEF provisions in the bill from the regulatory restriction reduction limitation in existing law.

## **Electricity expressed in alternating current**

- Specifies that all measures of electricity throughout the Revised Code described in watts, kilowatts, MW, or any derivative thereof means electricity expressed in alternating current, unless the context requires otherwise.

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## **TABLE OF CONTENTS**

PUCO rulemaking for Pilot Program .....	5
Summary .....	7
Discussion.....	8
Community energy facilities.....	8
State CRES policy includes community energy facilities .....	8
Definitions of frequently used terms .....	8
CEFs placed on the same parcel .....	10
Community Energy Pilot Program .....	10
CEFs statewide.....	10
CEFs on distressed sites/commercial or public sector rooftops .....	11
Bill credits .....	11
Subscription rules .....	12
Renewable attributes .....	13
Customers excluded from the Pilot Program .....	13
Interconnection of a CEF .....	14

Discrimination prohibited.....	14
CEFs located on a brownfield .....	14
Stakeholder working group .....	14
CEFs located in a township.....	14
PUCO review.....	15
PUCO rulemaking for Pilot Program.....	16
Net crediting program.....	17
Priority of payments .....	18
Nonresidential customer .....	18
Minimum service requirements .....	18
PUCO rulemaking.....	18
Decommissioning of CEF .....	19
Bonding requirements.....	19
Regulatory restriction reduction exemption.....	19
Electricity expressed in alternating current .....	19

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## DETAILED ANALYSIS

### Summary

The bill creates a framework by which community energy facilities (CEFs) can be developed in Ohio. First, the bill amends Ohio energy policy to include provisions encouraging the development of CEFs, consumer protections for subscribers of CEFs, and the establishment of a Community Energy Pilot Program (“Pilot Program”), which the Public Utilities Commission (PUCO) must develop. The Pilot Program allows up to 1,500 megawatts (MWs) of CEFs to be implemented throughout Ohio. The bill also provides for how the Pilot Program must be implemented, including, for example, criteria for facilities to qualify as a CEF, calculation of bill credits for subscribers, rules for subscriptions, and a requirement for PUCO to conduct a review of the Pilot Program and submit a report to the General Assembly. The bill further requires CEFs proposed to be constructed within a township to hold a public meeting and gives those boards of township trustees the power to adopt a resolution to prohibit the CEF’s construction or to modify the proposed CEF’s boundaries. PUCO must adopt rules for those provisions and to address decertifying MWs for CEFs prohibited from being built.

The bill also establishes for all CEFs a net crediting program by an electric distribution utility (EDU) and CEF decommissioning. The bill additionally provides that all rules required to be adopted by the bill’s provisions be exempt from regulatory restriction reduction limitations in existing law. Lastly, the bill specifies that all measures of electricity used throughout the Revised Code (watts, kilowatts, MWs, etc.) mean electricity expressed in alternating current, unless otherwise stated.

## Discussion

### Community energy facilities

#### State CRES policy includes community energy facilities

The bill adds to the state competitive retail electric service (CRES) policy, new policies to do all of the following:

- Encourage the development of CEFs for the benefit of customers in Ohio and to facilitate participation by customers with the facilities;
- Establish the Pilot Program;
- Establish program evaluations and consumer protections ensuring that community energy subscribers are effectively and equitably receiving guaranteed savings from participating in the Pilot Program.<sup>1</sup>

#### Definitions of frequently used terms

The bill defines the following terms for the community energy facility provisions:

- “Community energy facility” means a single facility that generates electricity by means of a solar photovoltaic device or uses as its fuel either solar, wind, biomass, landfill gas, or hydroelectric power, or uses a microturbine, natural gas-fired generator, energy storage system, or a fuel cell, and meets all of the following criteria:
  - Is located in Ohio and is directly connected to an EDU’s distribution system.
  - Has at least three subscribers;
  - Is located on one parcel of land and there is no CEF on the same or a contiguous parcel that is developed, owned, or operated by the same entity, affiliated entity, or entity under common control;
  - No subscriber holds more than 40% proportional interest in the output of the system, which must be measured as the sum total of all meters on the subscriber’s property;
  - Not less than 60% of the CEF capacity must be subscribed by subscriptions of 40 KWs or less based on the average annual demand for the prior 12-month period, specifying that a multi-unit building served by a single meter must be considered a single customer provided the average usage, based on the number of units, is 40 KWs or less;
  - The CEF has a nameplate capacity of 10 MWs or less, or 20 MWs or less if the CEF is on a distressed site or one or more commercial or public sector rooftops, as measured at the point of interconnection;

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<sup>1</sup> R.C. 4928.02(Q) to (S).



- The CEF is not under the control of an EDU but may be under the control of an affiliate of the EDU.

The bill further provides if the CEF uses either an energy storage system or natural gas-fired generator, then the storage system or generator cannot be sized to exceed the size of any co-located CEF using solar, wind, biomass, landfill gas, or hydroelectric power as its fuel. If both an energy storage system and natural gas-fired generator are used, then the combined nameplate capacity of the storage system and generator cannot be sized to exceed the size of any co-located CEF using solar, wind, biomass, landfill gas, or hydroelectric power as its fuel.

- “Subscriber” means any retail electric customer who:
  - Has a single unique tax identification number;
  - Has an electric meter on the customer’s property;
  - Resides within the certified territory of an EDU;
  - Contracts for a subscription from a CEF located in the same certified territory as the customer;
  - The customer resides in the same, or a contiguous, county where the CEF is located.
  - Is not a large industrial customer (discussed below).
- “Subscription” means the right to obtain, from a community energy organization, an allocation of bill credits (discussed below) for electricity generated by a CEF.
- “Unsubscribed electricity” means any electricity generated by a CEF that is not attributable to a subscription.
- “Community energy organization” (CEO) means a for-profit or nonprofit entity that operates one or more CEFs.<sup>2</sup>
- “Distressed site” means a site made up of one or more parcels of land, located within an EDU’s certified territory where the majority of the acreage is at least one or more of the following:
  - A brownfield;<sup>3</sup>
  - A parcel that is within an area where an investor may receive a New Markets Tax Credit under Section 45D of the Internal Revenue Code;
  - A solid waste facility licensed by the Ohio EPA;<sup>4</sup>
  - A parcel of land that is described by section 45(b)(11) (B)(iii) of the Internal Revenue Code;

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<sup>2</sup> R.C. 4934.01(D), (E), (K), (L), and (M).

<sup>3</sup> R.C. 122.6511, not in the bill.

<sup>4</sup> R.C. 3734.02, not in the bill.

- Land or structure owned by a metropolitan housing authority;<sup>5</sup>
- Land owned by a county land reutilization corporation.<sup>6</sup>

### **CEFs placed on the same parcel**

The bill allows a CEF to be placed on the same parcel or contiguous parcel of land as a CEF that is developed, owned, or operated by the same entity, affiliated entity, or entity under common control if at least one of the following is met:

- The parcel or parcels of land are a distressed site or CEF is on one or more “commercial or public sector rooftops” (either a roof of a building located on commercial real estate,<sup>7</sup> or any property owned by a public authority, located in an EDU’s certified territory) and the total capacity of all CEFs on the parcel or parcels does not exceed 20 MWs.
- All of the following are satisfied:
  - The CEF is to be located on a parcel of land, or multiple parcels of land, that were created prior to the bill’s effective date.
  - The total capacity of all CEFs on the parcel or parcels of land does not exceed 10 MWs.
  - Each CEF has its own distinct point of interconnection with the serving EDU, including separate and distinct metering and the ability to be directly connected to or disconnected from the EDU.
  - The generation components of each CEF are separate, including separate fencing, and not connected with neighboring facilities other than by the EDU’s distribution system.
  - Each CEF shares only nonoperational infrastructure, including access roads, utility poles, and other features necessary to provide utility and physical access to each CEF.<sup>8</sup>

### **Community Energy Pilot Program**

The bill requires PUCO to establish a Community Energy Pilot Program (“Pilot Program”) consisting of 1,500 MWs of CEFs to be implemented throughout Ohio as follows.

#### **CEFs statewide**

The bill requires PUCO to annually certify 250 MWs of CEFs, based on nameplate capacity, until 1,000 MWs are certified. The bill further provides the following regarding these MWs:

- All MWs certified must be allocated proportionally based on the size of each EDU’s retail electric sales published by the Energy Information Administration.

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<sup>5</sup> R.C. 3735.27, not in the bill.

<sup>6</sup> R.C. 4934.01(F); R.C. 1724.01, not in the bill.

<sup>7</sup> R.C. 4934.01(C)(1); R.C. 1311.85, not in the bill.

<sup>8</sup> R.C. 4934.01(C) and 4934.011; R.C. 1311.25 and 1311.85, not in the bill.

- Any uncertified MWs for a year carry over to the subsequent year until all available MWs are certified.
- All MWs certified must be certified in the order that the certification applications were received.
- If applications for certification exceed the total capacity available for the year, then the applications must be placed on a wait list, determined by PUCO, and once certification of 1,000 MWs of CEFs has occurred, the wait list is eliminated.
- Requires PUCO to ensure that certification for these CEFs is separate from any certification process under Ohio's renewable energy benchmark and renewable energy credits laws and regulations.<sup>9</sup>

### **CEFs on distressed sites/commercial or public sector rooftops**

The bill requires PUCO to certify 500 MWs of CEFs, in addition to the 1,000 MWs described above, which must be reserved for CEFs constructed exclusively on distressed sites or one or more commercial or public sector rooftops. PUCO must ensure that certification of these CEFs is separate from any certification process under Ohio's renewable energy benchmark and renewable energy credits laws. After these 500 MWs are certified, a CEF on a distressed site or a commercial or public sector rooftop may be certified from the 1,000 MWs for CEFs statewide.<sup>10</sup>

### **Bill credits**

The bill requires a subscriber to be eligible for a bill credit (the monetary value approved or revised by PUCO for each kilowatt hour of electricity generated by a CEF) from the subscriber's EDU for the proportional output of a CEF attributable to the subscriber. An EDU with a CEF in its certified territory must allocate these bill credits for all electricity generated by the CEF that is attributable to a subscription. The bill further allows for a CEO to account for unsubscribed electricity on a monthly basis and accumulate bill credits for the unsubscribed electricity for a period of up to 12 months after it was generated with the bill credits for unsubscribed electricity to be allocated to future subscribers at the CEO's direction.

The bill requires a CEO, at least once annually, to furnish to the EDU in whose certified territory the CEF is located an allocation for distribution of bill credits to subscribers for unsubscribed electricity. Additionally, a CEO must forfeit to the EDU any bill credits for unallocated unsubscribed electricity.<sup>11</sup>

### ***Establishment of bill credit***

The bill requires PUCO to establish the bill credit for each subscriber that is equal to the EDU's retail rate (all costs of providing generation service, transmission service, and distribution service that may be charged by an EDU) on a per-customer class basis, minus only the EDU's base

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<sup>9</sup> R.C. 4934.04 and 4934.05; R.C. 4928.64 to 4928.645, not in the bill.

<sup>10</sup> R.C. 4934.07; R.C. 4928.64 to 4928.645, not in the bill.

<sup>11</sup> R.C. 4934.01(A), 4934.07, and 4934.08(B).

charge for distribution service approved under the rate making provisions of law in Chapter 4909. of the Revised Code and the EDU's distribution riders or other distribution charges approved under the CRES law.

The bill further requires PUCO, when determining the bill credit for each EDU, to ensure that the credit is set at a reasonably compensatory level to create a financeable community energy market, and take into account all of the following:

- The costs and benefits provided by CEFs participating in the Pilot Program;
- All proposed rules, fees, and charges;
- Any other item that PUCO determines is necessary.

The bill also requires EDUs, not later than nine months after the bill's effective date, to publish new tariffs or update existing tariffs based on the bill credit.<sup>12</sup>

### ***Revised bill credit***

The bill prohibits the initially established bill from being modified unless PUCO determines, after the review of the Pilot Program required by the bill is completed (see "**PUCO review**" below), that changes are necessary to adjust for unallocated community energy capacity. PUCO must calculate the value stack for each EDU and use it to revise the credit. Under the bill, "value stack" means distributed generation compensation calculated under the bill's provisions that recognizes the benefits that CEFs bring to the electrical grid, including avoided costs for generation, capacity and transmission; deferred transmission distribution investments; avoided line loss; increased resiliency; and other benefits associated with locally produced electricity.

The bill then requires PUCO, not later than 12 months after the required PUCO review report is submitted, to approve a tariff based on the revised bill credit rate.<sup>13</sup>

### ***Carryover bill credits***

The bill requires any bill credit exceeding a subscriber's monthly bill amount to carry forward until fully allocated to the subscriber's bill or until the termination of the subscriber's CEO subscription.<sup>14</sup>

## **Subscription rules**

### ***Size limit***

The bill prohibits subscribers from obtaining a subscription for electricity generated by a CEF representing more than 100% of the subscriber's average annual electricity usage.<sup>15</sup>

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<sup>12</sup> R.C. 4934.08(A), (C), (D), (E), and (G).

<sup>13</sup> R.C. 4934.08(F) and 4934.09.

<sup>14</sup> R.C. 4934.10.

<sup>15</sup> R.C. 4934.11.

### ***Consumer transactions***

The bill requires a subscription to be considered:

- A consumer transaction subject to Ohio’s Consumer Sales Practices law in Chapter 1345. of the Revised Code regarding the enrollment of residential subscribers to obtain an allocation of bill credits;
- Goods subject to Ohio’s Commercial Code covering Sales in Chapter 1302. of the Revised Code regarding the enrollment of nonresidential subscribers to obtain an allocation of bill credits.<sup>16</sup>

### **Renewable attributes**

The bill allows a regional governmental aggregator to purchase any amount of renewable attributes from a CEF.

Under the bill, a “regional governmental aggregator” means a regional council of governments established under Chapter 167 of the Revised Code with members in at least 17 counties that is also a governmental aggregator under the CRES law.

A “renewable attribute” is any of the following that are attributable to a CEF or the electricity generated by a CEF provided by the federal or state governments or any other legislative authority of a political subdivision in Ohio:

- Any credits, certificates, benefits, or offsets and allowances computed on the basis of a CEF’s displacement of fossil fuel-derived, or other conventional, electric generation;
- Any renewable energy credits or any other environmental certificates issued or administered in connection with electricity generated from a CEF;
- Any voluntary emission reduction credits obtained, or obtainable, in connection with the electric generation from a CEF.<sup>17</sup>

### **Customers excluded from the Pilot Program**

The bill prohibits any large industrial customer from participating in, or being charged, directly or indirectly, for any costs related to, the Pilot Program.

Under the bill, “large industrial customer” means any manufacturer that uses electricity primarily in a process involving a change of raw or unfinished materials into another form or product, and that takes service from an EDU at primary voltage, subtransmission voltage, or transmission voltage.<sup>18</sup>

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<sup>16</sup> R.C. 4934.12.

<sup>17</sup> R.C. 4934.071; R.C. 4928.20, not in the bill.

<sup>18</sup> R.C. 4934.01(H), and 4934.072.

### **Interconnection of a CEF**

The bill requires an EDU to interconnect a CEF located in that EDU's certified territory to its distribution system within a reasonable time after the CEF is constructed and must ensure such interconnections are made efficiently, safely, and in compliance with any applicable federal and state regulations and standards.<sup>19</sup>

### **Discrimination prohibited**

The bill prohibits an EDU from discriminating against CEFs or their subscribers, which includes adding extraordinary fees and charges not applied to similar facilities.<sup>20</sup>

### **CEFs located on a brownfield**

The bill provides that a CEO that constructs a CEF on a distressed site that is a brownfield is eligible to receive a grant awarded by the Department of Development (DEV) from the Brownfield Remediation Program for costs associated with construction and remediation. The bill further requires DEV to promulgate rules for awarding such grants.<sup>21</sup>

### **Stakeholder working group**

The bill requires PUCO to convene and facilitate an ongoing stakeholder working group to assist PUCO staff with effectively and efficiently promulgating rules for the Pilot Program. The bill requires the working group to consist of EDUs, consumer advocates, community energy industry representatives, and other interested parties.<sup>22</sup>

### **CEFs located in a township**

The bill includes additional requirements for a person proposing to construct a CEF in whole or in part within the boundary of a township. Under the bill, no person can construct a CEF in a township unless (1) the person holds a public meeting, and (2) the board of township trustees fails to adopt a resolution to prohibit construction of the CEF or limit the boundaries in which the CEF may be located.<sup>23</sup>

### ***Public meeting requirement***

The bill requires a person intending to construct a CEF in whole or in part within a township to hold a public meeting in each township where the CEF will be located. At least 14 days prior to the meeting, the applicant must provide written notice to the boards of trustees of every township in which the CEF will be located.

At the meeting, the person intending to construct the CEF must provide to the board of township trustees information regarding: (1) the type of fuel source the CEF will utilize, (2) the

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<sup>19</sup> R.C. 4934.13.

<sup>20</sup> R.C. 4934.14.

<sup>21</sup> R.C. 4934.25; R.C. 122.6511(A)(1), not in the bill.

<sup>22</sup> R.C. 4934.26.

<sup>23</sup> R.C. 4934.15(A).

CEF's maximum nameplate capacity, and (3) a map of the proposed geographic boundaries of the project within that township. This information must also be submitted to the board in written form at the meeting.<sup>24</sup>

### ***Township resolution***

The bill allows, not later than 90 days after the public meeting described above, or by rules adopted by PUCO regarding a modified CEF proposal (discussed fully below), for the board of township trustees to adopt a resolution that either: (1) prohibits the CEF's construction, or (2) limits the boundaries of the proposed CEF to a smaller geographic area of the township, completely within what was proposed by the person proposing to construct and operate the CEF. If no resolution is adopted within the 90-day deadline, the CEF may commence construction.

The bill further provides that no resolution adopted under the bill's provisions prevents a person from filing another proposal for consideration by the board of township trustees at a later date.<sup>25</sup>

### ***PUCO rulemaking regarding township placement***

The bill requires PUCO to adopt rules to implement the bill's provisions regarding township approval of the construction of a CEF, including rules for the following:

- The decertification of a CEF's MWs should the relevant board of township trustees adopt a resolution to prohibit the construction of the CEF or to limit the CEF's boundaries.
- In the case of a resolution adopted that would prohibit the CEF's construction, certification of those MWs for the next CEF on the wait list, if any, pursuant to the bill's provisions.
- In the case of a resolution adopted that would limit the CEF's boundaries, requirements and procedures that are consistent with the bill's provisions for recertification of some or all of the decertified MWs for the CEF subject to the resolution if the CEF proposal is modified to meet the resolution's limitations. Decertified MWs not included in the modified proposal must be certified for the next CEF on the wait list, if any.
- If a recertified CEF under a modified proposal is subsequently subjected to a resolution to prohibit construction or further limit the CEF's boundaries, certification of those MWs for the next CEF on the wait list, if any.<sup>26</sup>

### **PUCO review**

The bill requires PUCO to conduct reviews of the Pilot Program 48 months after the rules for the program have been promulgated and submit a report to the General Assembly containing the following:

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<sup>24</sup> R.C. 4934.16.

<sup>25</sup> R.C. 519.216.

<sup>26</sup> R.C. 4934.15(B).

- The number and location of operating CEFs;
- The amount of nameplate capacity certified;
- The number of subscribers, how much energy was subscribed to by those subscribers, and the types of customer classes that subscribed;
- Whether guaranteed savings were achieved by the subscribers.

The bill further requires PUCO to promulgate rules to require CEOs and EDUs to provide PUCO with a report containing the relevant information described above.<sup>27</sup>

### **PUCO rulemaking for Pilot Program**

The bill requires PUCO, not later than six months after the bill's effective date and with assistance from the working group described above, to promulgate rules to implement the community energy program, which must include rules for the creation and establishment of CEFs, and:

- CEF certification, including rules for PUCO to approve or deny each CEF application within 90 days, unless good cause is shown for not meeting the deadline, as determined by PUCO;
- Prohibit removing a subscriber from the subscriber's applicable customer class because of the subscriber's subscription to a CEF;
- Reasonably allow for the transfer and portability of subscriptions, including allowing a subscriber to retain a subscription to a CEF if the subscriber moves within the same EDU's service territory;
- Modify existing interconnection standards, fees, and processes as needed to facilitate the efficient and cost-effective interconnection of CEFs that allow an EDU to recover reasonable interconnection costs for each CEF;
- Require each EDU to efficiently connect a CEF to its electrical distribution grid and not to discriminate against CEFs or subscribers;
- Provide for consumer protection in existing laws and regulations, including any protections against disconnection of service;
- Establish robust consumer protections for subscribers, including at least:
  - A standardized customer disclosure form for residential subscribers;
  - Prohibiting upfront sign-on fees or credit checks;
  - Preventing early termination charges to any subscriber who unsubscribes.

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<sup>27</sup> R.C. 4934.37.



- Allow an EDU to recover reasonable costs associated with administering the Pilot Program;
- Ensure that costs associated with the Pilot Program only be recovered from customer classes participating in the program and that no cross-subsidization of costs between classes occurs;
- Ensure CEFs qualifying for the Pilot Program have a signed interconnection agreement or a system impact study, as determined by PUCO, can demonstrate site control, and have received all applicable nonministerial permits (all necessary and discretionary governmental permits and approvals to construct a CEF notwithstanding any pending legal challenge to one or more permits or approvals).
- Require each CEO to send a notice in a standardized format containing information related to subscriber enrollment to the EDU that services the area where the CEO's CEF is sited;
- Require each EDU, not later than nine months after the bill's effective date, to publish new tariffs or update existing tariffs to implement the Pilot Program;
- Establish Pilot Program evaluations and consumer protections to ensure subscribers are effectively equitably receiving guaranteed savings (realized savings by the subscriber as the difference between the cost of a subscription to a CEF and the bill credit received for the generation attributed to the subscription) from participating in the Pilot Program;
- Require a CEO to be responsible for the CEF's decommissioning.<sup>28</sup>

### **Net crediting program**

The bill allows an EDU to establish a net crediting program, under which the EDU must enter into a net crediting agreement with a CEO. Under the bill, "net crediting" means a program offered by an EDU under which it: (1) issues to a customer-subscriber a consolidated electric bill that includes the utility charges for electric service, the subscription charge, and any bill credits, (2) remits the customer's subscription fee to the owner or operator of the CEO to which the customer subscribes.

The bill further requires the terms of the agreement to specify: (1) that authorization by or on behalf of a subscriber is required before a subscriber may be billed by the EDU under the program, and (2) the terms for payments made by the EDU to the CEO, which terms may include a net crediting fee of not more than 1% of the subscription fee to be deducted from the EDU's payment to the CEO.

The bill also requires an EDU, under a net crediting agreement, to do the following:

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<sup>28</sup> R.C. 4934.01(G) and (J) and 4934.27.

- Remit, through an electronic funds transfer, the cash value of the subscriber's subscription fee, less any net crediting fee, to the CEO not later than 30 days after the billing period;
- Issue EDU customers who are subscribers an itemized monthly bill that includes, in addition to charges for basic electric services, the subscriber's bill credit for the billing period and the subscriber's bill credit for the billing period and the subscriber's subscription fee;
- Process monthly bills for subscribers who participate in low-income customer assistance programs or budget billing programs in the same manner as bills for customers who are not participating in such programs;
- Bill for all basic electric services, including, transmission, distribution, and generation charges, consistent with the bill's net crediting programs provisions and PUCO regulations.<sup>29</sup>

### **Priority of payments**

The bill requires an EDU that enters into a net crediting agreement with a CEO to prioritize payments from a customer-subscriber for each billing period. The bill requires past due subscriber fees owed to a CEO to be paid prior to payments to the EDU for any arrearages on the customer's electric service bill. The EDU cannot apply a customer's bill credit to a customer's outstanding balance for electric service for the billing period.<sup>30</sup>

### **Nonresidential customer**

The bill allows a nonresidential customer that subscribes to multiple CEFs to participate in the net crediting program only if each CEF is included in a net crediting agreement.<sup>31</sup>

### **Minimum service requirements**

The bill provides that the minimum service requirements established in the CRES law to apply to the bill's net crediting program provisions.<sup>32</sup>

### **PUCO rulemaking**

The bill requires PUCO to adopt rules to implement net crediting programs authorized under the bill's net crediting program provisions.<sup>33</sup>

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<sup>29</sup> R.C. 4934.01(I) and 4934.17.

<sup>30</sup> R.C. 4934.18.

<sup>31</sup> R.C. 4934.20.

<sup>32</sup> R.C. 4934.21; R.C. 4928.10, not in the bill.

<sup>33</sup> R.C. 4934.23.

## **Decommissioning of CEF**

The bill requires a CEO, not later than 18 months after a CEF has ceased generating electricity, to commence decommissioning of the CEF, which must include the following, to be mutually agreed to in writing by the property owner or owners and the CEO:

- The removal, and potential reuse and recycling, of solar panels and other community energy equipment, and the remediation of the site;
- The removal of all nonutility-owned equipment, graveled areas, and access roads;
- The replacement of any topsoil that was removed for the construction of the CEF and reseeded of the cleared area.

The bill further provides that not more than 20% of the total combined mass of the CEF may enter a landfill.<sup>34</sup>

### **Bonding requirements**

The bill requires CEOs to maintain sufficient financial assurances, in the form of a bond, through the life of a CEF's operation to provide for decommissioning. The amount of the bond must be calculated by a third-party professional engineer obtained by the CEO. The bond amount must be recalculated in the same manner every five years from the date of the initial assessment. Lastly, the bill requires the board of county commissioners where the project is located to be the obligee of the bond.<sup>35</sup>

### **Regulatory restriction reduction exemption**

All rules required to be adopted by PUCO and DEV under the CEF provisions in the bill are exempted from the regulatory restriction limitation in existing law. Specifically, PUCO rules regarding implementing the Pilot Program, the township CEF approval process, the Net Crediting Program, and rules regarding a Pilot Project report to the General Assembly are excluded from this limitation. DEV rules for awarding Brownfield Remediation Program grants to CEOs that construct CEFs on distressed sites that are brownfields are also exempted.<sup>36</sup>

### **Electricity expressed in alternating current**

The bill adds a provision that specifies that throughout the Revised Code, unless the context requires otherwise, all measures of electricity described in watts, kW, MW, or any derivative thereof means such electricity expressed in alternating current.<sup>37</sup>

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<sup>34</sup> R.C. 4934.35.

<sup>35</sup> R.C. 4934.36.

<sup>36</sup> R.C. 4934.15, 4934.23, 4934.25, 4934.27, 4934.37, and 4934.38; R.C. 121.95 to 121.953, not in the bill.

<sup>37</sup> R.C. 1.66.

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## HISTORY

Action	Date
Introduced	07-07-25

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