



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 381

132nd General Assembly
(As Introduced)

Reps. DeVitis, Henne, Householder, Johnson, Seitz, Slaby, Stein, Vitale, Faber, Patton, Young, Roegner, Sweeney, Retherford, Celebrezze, Keller

BILL SUMMARY

- Creates the Zero-Emissions Nuclear Resource (ZENR) Program that allocates to certain electric distribution utilities (EDUs) zero-emissions nuclear credits (ZENCs) and requires them to collect revenue to pay for the ZENCs through a nonbypassable rider imposed on retail electric service customers.
- Establishes criteria and a process for a nuclear energy resource to be designated a ZENR by the Public Utilities Commission of Ohio (PUCO).
- Establishes the process for transferring the ZENCs to the PUCO, allocating them among participating EDUs, and collecting the revenue for them.
- Requires participating EDUs to apply to the PUCO to establish the nonbypassable rider to collect the revenue to pay for the allocated ZENCs.
- Requires the PUCO to approve the rider not later than 60 days after the bill's effective date.
- Establishes a monthly charge under the nonbypassable rider at \$2.50 for residential customers and, for nonresidential customers, the lesser of \$3,500 or 5% of the customer's bill.
- Permits participating EDUs to adjust the rider charge downward if a lower rate will allow full collection of the total amount that must be collected for the allocated ZENCs.
- Provides that participating EDUs cannot be required to transfer to the PUCO any amounts in excess of the actual revenue collected if the total revenue collected

during a program period is less than what should have been collected for the allocated ZENCs.

- Provides for the program to operate for successive two-year periods, beginning on the bill's effective date and continuing until December 31, 2030, unless extended by the General Assembly.
- Requires the PUCO to conduct an inquiry in 2029 as to whether the public interest requires the ZENR program to continue after 2030 and to report its findings to the General Assembly (no specific date is set for the report of the findings to be made).
- Requires employments levels at a ZENR to "continue to be similar" to other nuclear energy resources (that are like the ZENR and constructed in the United States before 1990) during each program period that compensation for ZENCs is made to that ZENR.
- Creates the ZENR Fund in the custody of the Treasurer of State, but not as part of the state treasury, in which revenues received by the PUCO for the allocated ZENCs are to be deposited and from which the ZENRs that generated the allocated ZENCs are to be compensated.
- Provides that all financial statements, financial data, and trade secrets submitted to or received by the PUCO for purposes of satisfying the ZENR criteria and any information taken for any purpose from the statements, data, or trade secrets are not public records.
- Amends the state competitive retail electric service policy to encourage support for nuclear energy resources because they provide fuel diversity and environmental and other benefits.

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CONTENT AND OPERATION

Zero-Emissions Nuclear Resource Program

The bill creates a Zero-Emissions Nuclear Resource (ZENR) Program to enable the state of Ohio to meet its policy goals and requirements under which zero-emissions nuclear credits (ZENCs) are allocated to electric distribution utilities (EDUs) to provide long-term energy security, and environmental and other benefits to the region and to retail electric service customers in the state.

Participation in the program is mandatory for an EDU in Ohio that has a ZENR within its certified territory. Also, all EDUs in the same holding company system must participate jointly and allocate revenue collection across all classes of each participating EDU's customers.¹

Definitions

The bill defines the following terms:

- "Nuclear energy resource" is an electric generation unit fueled, in whole or in part, by nuclear power and licensed by the Nuclear Regulatory

¹ R.C. 4928.751.



Commission.² There are two operating nuclear power reactors that meet this definition and are in the certified territory of an Ohio EDU: Davis-Besse and Perry (both operated by FirstEnergy Nuclear Operating Company (FENOC)).³ FENOC also operates Beaver Valley, Units 1 and 2 (Shippingport, Pennsylvania)⁴ that meet the definition and are in the same holding company as the EDUs in whose certified territory Davis-Besse and Perry are located.⁵ (See **COMMENT 1**.)

- "PJM" is the PJM Interconnection, L.L.C., or its successor.⁶
- "Zero-emissions nuclear credit" (or ZENC) means the attributes associated with one megawatt hour of electricity generated by a ZENR.⁷
- "Zero-emissions nuclear resource" (or ZENR) means a nuclear energy resource that satisfies the "ZENR requirements" (outlined below).⁸

ZENR criteria

A nuclear resource that satisfies the criteria for all ZENRs and either the in-state or out-of-state criteria is a ZENR.⁹

Criteria for all ZENRs

All nuclear energy resources must satisfy the following criteria to be a ZENR:

- Be interconnected within the PJM transmission system;¹⁰
- Have a determination from PJM that the resource is transmission deliverable under their metrics used to calculate deliverability for purposes of capacity planning on a round-the-clock baseload basis into

² R.C. 4928.75(A).

³ U.S. Nuclear Regulatory Commission, <https://www.nrc.gov/info-finder/region-state/ohio.html>.

⁴ See <https://www.nrc.gov/info-finder/region-state/pennsylvania.html>.

⁵ First Energy Corp., <https://www.firstenergycorp.com/content/fecorp/about.html>.

⁶ R.C. 4928.75(B).

⁷ R.C. 4928.75(C).

⁸ R.C. 4928.75(D).

⁹ R.C. 4928.75(D) and 4928.754.

¹⁰ R.C. 4928.754(A).

the transmission zone or zones of EDUs participating in the ZENR Program;¹¹

- On or after January 1, 2017:
 - Did not receive from another state a state tax exemption, deferral, exclusion, allowance, payment, credit, deduction, or reimbursement calculated, in whole or in part, using a metric that provides value for emissions not produced by the resource;
 - Is not wholly owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations; or
 - Did not, during a program period (see "**ZENR Program timeline**" discussed below), recover some or all of the capital or operating costs of the resources through rates regulated by a state.¹²

Criteria for in-state ZENRs

An in-state nuclear energy resource that satisfies all of the following criteria, in addition to the criteria for all ZENRs, is a ZENR:

- The resource has benefited the air quality profile of Ohio more than the predominant electric generation source with similar capacity and baseload characteristics as the resource as of the time the resource commenced operation.¹³ Davis-Besse's operating license was issued April 22, 1977.¹⁴ Perry's license was issued November 13, 1986.¹⁵ Beaver Valley's operating licenses were issued July 2, 1976 and August 14, 1987.¹⁶
- 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:

¹¹ R.C. 4928.754(B).

¹² R.C. 4928.754(D).

¹³ R.C. 4928.754(C)(1)(a).

¹⁴ <https://www.nrc.gov/info-finder/reactors/davi.html>.

¹⁵ <https://www.nrc.gov/info-finder/reactors/perr1.html>.

¹⁶ <https://www.nrc.gov/info-finder/reactors/bv1.html> and <https://www.nrc.gov/info-finder/reactors/bv2.html>.

- The ability of Ohio, or one of its regions, to maintain or decrease existing levels of volatile organic compounds or to comply with one or more state or federal air pollution control programs, standards, or goals is reduced;
- The carbon dioxide emissions intensity of Ohio is negatively impacted;
- The ability of Ohio to maintain or decrease existing levels of carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen oxide, or sulfur dioxide is negatively impacted.¹⁷

Criteria for out-of-state ZENRs

A ZENR located outside of Ohio must be shown to provide no less than the same level of environmental benefits to Ohio as an in-state nuclear energy resource, under the above requirements.¹⁸

ZENR approval process

Application

Before providing ZENCs under the ZENR Program, an entity that owns or operates a nuclear energy resource must file a written notice with the PUCO, stating that it meets the criteria described above. An entity must file the notice not later than 90 days after the commencement of the initial program period.¹⁹

In-state resources

Comments from interested persons

With respect to the written notice filed relating to an in-state nuclear energy resource, any interested person may file comments with the PUCO not later than 20 days after the written notice is filed.²⁰

¹⁷ R.C. 4928.754(C)(1)(b).

¹⁸ R.C. 4928.754(C)(2).

¹⁹ R.C. 4928.753.

²⁰ R.C. 4928.755.



Reply to comments

An entity that owns or operates a nuclear energy resource may file a response to any comment filed as described above, not later than ten days after the comment was filed with the PUCO.²¹

Default for approval after 50 days

The PUCO has 50 days from the initial filing regarding an in-state nuclear energy resource to designate the resource a ZENR and issue an order making the designation, if it satisfies the criteria described above. If the PUCO fails to issue a timely order, the resource is deemed a ZENR.²²

Out-of-state resources

The bill also requires the PUCO, under a procedure it adopts, to determine and issue the appropriate order regarding whether an out-of-state resource is a ZENR. The nuclear energy resource must submit an environmental study showing that it meets the criteria to be a ZENR. At a minimum, the adopted procedures must provide for the opportunity for comment and response similar to the provisions governing in-state resources.²³

Continuation as a ZENR

Continuation as ZENR if criteria met

The bill provides that a nuclear energy resource determined to be a ZENR will continue to be considered a ZENR for all successive program periods as long as the resource continues to meet the criteria described above that is applicable to all ZENRs. The bill further provides that if a ZENR is sold, assigned, transferred, or conveyed, the bill's provisions apply to the new owner.²⁴

²¹ R.C. 4928.756.

²² R.C. 4928.757.

²³ R.C. 4928.7511.

²⁴ R.C. 4928.7513.

Intent to continue

The bill requires a ZENR to confirm with the PUCO its intent to continue to commit its credits to the ZENR Program, not later than 30 days before a program period commences.²⁵

ZENR market

PUCO establishes price and supply

Not later than 30 days before a program period commences, the PUCO sets the price for ZENCs applicable for that period. The bill establishes the initial program period price as \$17 per credit. For each subsequent program period, the price must be adjusted for inflation using the gross domestic product implicit price deflator as published by the U.S. Department of Commerce, Bureau of Economic analysis, index numbers 2007=100.²⁶

The bill requires the PUCO, at the same time it sets the ZENC price, to also determine the maximum number of credits to be allocated to EDUs during the program period. For the first program period, this determination probably must be made not later than 60 days after the first program period commences. (See **COMMENT 2.**) The amount set must equal $\frac{1}{3}$ of the "Total End User Consumption" in megawatt-hours over the previous two calendar years as shown on PUCO Form D1 of each participating EDU's most recently filed long-term forecast report.²⁷

ZENR transfers credits

The bill requires a ZENR, not later than seven days following the close of each quarter of a program period, to transfer all of its ZENCs generated that quarter to the PUCO, which must hold the credits for the sole purpose of administering the ZENR Program.²⁸

PUCO notifies EDUs of ZENC supply

Not later than seven days after the ZENR transfers its credits, the PUCO must allocate among the participating EDUs all of the ZENCs transferred to the PUCO, up to the maximum number of ZENCs determined for each EDU. The ZENCs must be

²⁵ R.C. 4928.7514.

²⁶ R.C. 4928.7520.

²⁷ R.C. 4928.7520 and 4928.5721.

²⁸ R.C. 4928.7522.

allocated in proportion to the EDUs' "Total End User Consumption" in megawatt-hours over the previous two calendar years. The PUCO must notify each participating EDU of its allocation.²⁹

EDUs collect ZENC value through nonbypassable rider

The bill requires each participating EDU to collect, through a nonbypassable rider charged to all of its retail electric service customers, an amount equal to the EDU's credit allocation multiplied by the credit price. The rider an EDU applies for must be approved by the PUCO not later than 60 days after the bill's effective date.

The bill establishes the following monthly charges for the rider:

Customer class	Charge
Residential	\$2.50 per month
Nonresidential	The lesser of \$3,500 per month or 5% of the customer's total monthly bill

The EDU may charge less than these amounts if lower amounts will allow full collection of the total amount required to be collected.

The bill provides that if the "owner, as of December 31, 2016, of a [ZENR] sells or transfers the [ZENR]," the PUCO must reduce the number of ZENCs to be allocated from that ZENR "during the program period" and, if necessary, successive program periods, to reflect an adjustment equal to ½ of the dollar amount of "any net proceeds available after the payment or provision for the seller's known obligations." (See **COMMENT 3.**) In no instance, however, would that adjustment apply to the sale or transfer in bankruptcy.³⁰

EDUs transfer revenues collected to the PUCO

Each participating EDU must transfer to the PUCO all revenues that it collects through the rider.

The bill protects EDUs from being held responsible for under-collections of ZENC revenue by stating that the EDUs are not responsible for or required to transfer any amounts in excess of those collected through the rider.³¹

²⁹ R.C. 4928.7523.

³⁰ R.C. 4928.7524.

³¹ R.C. 4928.7524(B)(2).



PUCO deposits revenues received into the ZENR Fund

The bill requires the PUCO to deposit all revenues received for ZENCs into the ZENR Fund created under the bill. The ZENR Fund is created in the custody of the Treasurer, but is not to be part of the state treasury. The Treasurer must transfer all investment earnings from the ZENR Fund to the General Revenue Fund.³²

PUCO compensates ZENRs

Not later than seven days after receipt of the revenues, the PUCO must use all amounts in the ZENR Fund to pay to each ZENR the total revenues received for the ZENR's ZENCs (see **COMMENT 4**).³³

Nontransferability of ZENCs

The bill prohibits ZENCs allocated to participating EDUs from being transferred, sold, or assigned to any other entity.³⁴

ZENR Program timeline

Termination in 2030

The bill establishes an approximately 12-year lifespan for the ZENR Program. It begins on the bill's effective date, and is broken into two-year program periods, terminating on the last day of 2030, unless extended by the General Assembly. The bill requires any over-collection of revenue during the last program period to be credited to customers.³⁵

PUCO inquiry on continuation of the ZENR Program

The bill requires the PUCO to conduct an inquiry in 2029 to determine whether it is in the public interest to continue the ZENR Program after 2030. The PUCO must report its findings to the General Assembly.³⁶ The bill does not set a deadline for the PUCO to report its findings.

³² R.C. 4928.7525 and 4928.7532.

³³ R.C. 4928.7526.

³⁴ R.C. 4928.7527.

³⁵ R.C. 4928.752(A).

³⁶ R.C. 4928.752(B).

Requirements for ZENRs during program periods

Keep headquarters in Ohio

The bill requires an entity that (1) owns or operates a ZENR receiving payments for ZENCs and (2) has its corporate headquarters located in Ohio to keep its headquarters in Ohio during each program period it receives such payments.³⁷

Maintain employees

The bill requires, during each program period in which a ZENR receives payment for ZENCs, that the employment levels at the ZENR must continue to be similar to that of nuclear energy resources constructed prior to 1990 in the U.S. with the same reactor type, similar nameplate capacity, and single-unit location. A "full-time employee" is defined as an individual who is employed for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.³⁸

Certain information not public records

The bill provides that all financial statements, financial data, or trade secrets submitted to or received by the PUCO for purposes of satisfying the criteria as a ZENR, and any information taken for any purposes from the statements, data, or trade secrets are not a public record under Ohio's public records law.³⁹

State competitive retail electric service policy changes

Energy diversity

The bill expands Ohio's competitive retail electric service policy to ensure a diversity of resources, including ZENRs that provide fuel diversity and environmental and other benefits.⁴⁰ Under continuing law, Ohio's policy is to ensure diversity of 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.⁴¹

³⁷ R.C. 4928.7533.

³⁸ R.C. 4928.7540.

³⁹ R.C. 4928.7515; R.C. 149.43, not in the bill.

⁴⁰ R.C. 4928.02(C)(2).

⁴¹ R.C. 4928.02(C)(1).



Mitigating the policy of competitive electricity markets

The bill amends the policy requiring the state to recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment by requiring the state to continue to do that "while simultaneously recognizing the need" for nuclear energy resources and resources that provide fuel diversity and environmental and other benefits.⁴²

COMMENT

1. The bill requires an Ohio EDU that has a ZENR located in its certified territory to participate in the ZENR Program. The bill also provides that all EDUs in the same holding company system must participate jointly.⁴³ It is not clear whether this means the Beaver Valley units would be included in the ZENR Program. However, the bill permits out-of-state nuclear energy resources to qualify and participate as ZENRs.⁴⁴

2. The bill requires the PUCO to set the ZENC price for the first program period not later than 60 days after that period commences. But the bill also sets the ZENC price for that period at \$17. The bill requires the PUCO to determine, for every program period, the maximum number of ZENCs to be allocated to each participating EDU at the same time that the PUCO sets the ZENC price. The bill is not likely to be interpreted as requiring the PUCO to set the ZENC price for the first program period, because that price is set by the bill. Therefore, it appears that the only action that the PUCO must take within the first 60 days of the initial program period is determining the maximum number of ZENCs to be allocated to the EDUs.⁴⁵

3. The bill provides that if the "owner, as of December 31, 2016, of a [ZENR] sells or transfers the [ZENR]," the PUCO must reduce the number of ZENCs to be allocated from that ZENR "during the program period" and, if necessary, successive program periods, to reflect an adjustment equal to $\frac{1}{2}$ of the dollar amount of "any net proceeds available after the payment or provision for the seller's known obligations."⁴⁶ The date December 31, 2016, likely refers to the date as of which the owner owns the ZENR, but this is not clear. Also, the phrase, "during the program period" likely refers to the program period during which the ZENR is sold or transferred, but this is also unclear.

⁴² R.C. 4928.02(G).

⁴³ R.C. 4928.751.

⁴⁴ R.C. 4928.754(C)(2).

⁴⁵ R.C. 4928.7520 and 4928.7521.

⁴⁶ R.C. 4928.7524(C).

And it is likely that "net proceeds" and "known obligations" refer to proceeds and obligations relating to the sale or transfer of a ZENR, but this is unclear. Finally, this provision of the bill appears to apply to either the sale or transfer of a ZENR, but the provision referring to known obligations applies only to a seller, and not a transferor.

4. The bill's provision requiring the PUCO to use "all amounts" in the ZENR Fund to pay the ZENRs may conflict with the bill's provision requiring all investment earnings from the ZENR Fund to be transferred to the General Revenue Fund.⁴⁷

HISTORY

ACTION	DATE
Introduced	10-11-17

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⁴⁷ R.C. 4928.7526 and 4928.7532.

