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Am. Sub. S. B. No. 221

Senator Schuler

(By Request)

Cosponsors: Senators Jacobson, Harris, Fedor, Bocchieri, Miller, R., Morano,

Mumper, Niehaus, Padgett, Roberts, Wilson, Spada

Representatives Hagan, J., Blessing, Jones, Uecker, Budish, Chandler,

Domenick, Evans, Flowers, McGregor, J., Yuko

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A B I L L

To amend sections 4905.31, 4928.01, 4928.02, 4928.05,	1
4928.09, 4928.14, 4928.17, 4928.20, 4928.31,	2
4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and	3
4929.02; to enact sections 9.835, 3318.112,	4
4928.141, 4928.142, 4928.143, 4928.144, 4928.145,	5
4928.146, 4928.151, 4928.24, 4928.621, 4928.64,	6
4928.65, 4928.66, 4928.68, 4928.69, and 4929.051;	7
and to repeal sections 4928.41, 4928.42, 4928.431,	8
and 4928.44 of the Revised Code to revise state	9
energy policy to address electric service price	10
regulation, establish alternative energy	11
benchmarks for electric distribution utilities and	12
electric services companies, provide for the use	13
of renewable energy credits, establish energy	14
efficiency standards for electric distribution	15
utilities, require greenhouse gas emission	16
reporting and carbon dioxide control planning for	17
utility-owned generating facilities, authorize	18
energy price risk management contracts, and	19

authorize for natural gas utilities revenue 20
decoupling related to energy conservation and 21
efficiency. 22
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4905.31, 4928.01, 4928.02, 4928.05, 24
4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 25
4928.61, 4928.67, 4929.01, and 4929.02 be amended and sections 26
9.835, 3318.112, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 27
4928.146, 4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 28
4928.68, 4928.69, and 4929.051 of the Revised Code be enacted to 29
read as follows: 30

Sec. 9.835. (A) As used in this section: 31

(1) "Energy price risk management contract" means a contract 32
that mitigates for the term of the contract the price volatility 33
of energy sources, including, but not limited to, natural gas, 34
gasoline, oil, and diesel fuel, and that is a budgetary and 35
financial tool only and not a contract for the procurement of an 36
energy source. 37

(2) "Political subdivision" means a county, city, village, 38
township, park district, or school district. 39

(3) "State entity" means the general assembly, the supreme 40
court, the court of claims, the office of an elected state 41
officer, or a department, bureau, board, office, commission, 42
agency, institution, or other instrumentality of this state 43
established by the constitution or laws of this state for the 44
exercise of any function of state government, but excludes a 45
political subdivision, an institution of higher education, the 46
public employees retirement system, the Ohio police and fire 47

pension fund, the state teachers retirement system, the school 48
employees retirement system, the state highway patrol retirement 49
system, or the city of Cincinnati retirement system. 50

(4) "State official" means the elected or appointed official, 51
or that person's designee, charged with the management of a state 52
entity. 53

(B) If it determines that doing so is in the best interest of 54
the state entity or the political subdivision, and subject to, 55
respectively, state or local appropriation to pay amounts due, a 56
state official or the legislative or other governing authority of 57
a political subdivision may enter into an energy price risk 58
management contract. Money received pursuant to such a contract 59
entered into by a state official shall be deposited to the credit 60
of the general revenue fund of this state, and, unless otherwise 61
provided by ordinance or resolution enacted or adopted by the 62
legislative authority of the political subdivision authorizing any 63
such contract, money received under the contract shall be 64
deposited to the credit of the general fund of the political 65
subdivision. 66

Sec. 3318.112. (A) As used in this section, "solar ready" 67
means capable of accommodating the eventual installation of roof 68
top, solar photovoltaic energy equipment. 69

(B) The Ohio school facilities commission shall adopt rules 70
prescribing standards for solar ready equipment in school 71
buildings under their jurisdiction. The rules shall include, but 72
not be limited to, standards regarding roof space limitations, 73
shading and obstruction, building orientation, roof loading 74
capacity, and electric systems. 75

(C) A school district may seek, and the commission may grant 76
for good cause shown, a waiver from part or all of the standards 77
prescribed under division (B) of this section. 78

~~Sec. 4905.31. Except as provided in section 4933.29 of the~~ 79
~~Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921.,~~ 80
~~and 4923., 4927., 4928., and 4929. of the Revised Code do not~~ 81
prohibit a public utility from filing a schedule or establishing 82
or entering into any reasonable arrangement with another public 83
utility or with one or more of its customers, consumers, or 84
employees, and do not prohibit a mercantile customer of an 85
electric distribution utility as those terms are defined in 86
section 4928.01 of the Revised Code or a group of those customers 87
from establishing a reasonable arrangement with that utility or 88
another public utility electric light company, providing for any 89
of the following: 90

(A) The division or distribution of its surplus profits; 91

(B) A sliding scale of charges, including variations in rates 92
based upon ~~either of the following:~~ 93

~~(1) Stipulated stipulated~~ variations in cost as provided in 94
the schedule or arrangement; 95

~~(2) Any emissions fee levied upon an electric light company~~ 96
~~under Substitute Senate Bill No. 359 of the 119th general assembly~~ 97
~~as provided in the schedule. The public utilities commission shall~~ 98
~~permit an electric light company to recover the emissions fee~~ 99
~~pursuant to such a variable rate schedule.~~ 100

~~(3) Any emissions fee levied upon an electric light company~~ 101
~~under division (C) or (D) of section 3745.11 of the Revised Code~~ 102
~~as provided in the schedule. The public utilities commission shall~~ 103
~~permit an electric light company to recover any such emission fee~~ 104
~~pursuant to such a variable rate schedule.~~ 105

~~(4) Any schedule of variable rates filed under division (B)~~ 106
~~of this section shall provide for the recovery of any such~~ 107
~~emissions fee by applying a uniform percentage increase to the~~ 108

~~base rate charged each customer of the electric light company for~~ 109
~~service during the period that the variable rate is in effect.~~ 110

(C) A minimum charge for service to be rendered unless such 111
minimum charge is made or prohibited by the terms of the 112
franchise, grant, or ordinance under which such public utility is 113
operated; 114

(D) A classification of service based upon the quantity used, 115
the time when used, the purpose for which used, the duration of 116
use, and any other reasonable consideration; 117

(E) Any other financial device that may be practicable or 118
advantageous to the parties interested. ~~No~~ In the case of a 119
schedule or arrangement concerning a public utility electric light 120
company, such other financial device may include a device to 121
recover costs incurred in conjunction with any economic 122
development and job retention program of the utility within its 123
certified territory, including recovery of revenue foregone as a 124
result of any such program; any development and implementation of 125
peak demand reduction and energy efficiency programs under section 126
4928.66 of the Revised Code; any acquisition and deployment of 127
advanced metering, including the costs of any meters prematurely 128
retired as a result of the advanced metering implementation; and 129
compliance with any government mandate. 130

No such schedule or arrangement, sliding scale, minimum 131
charge, classification, variable rate, or device is lawful unless 132
it is filed with and approved by the commission pursuant to an 133
application that is submitted by the public utility or the 134
mercantile customer or group of mercantile customers of an 135
electric distribution utility and is posted on the commission's 136
docketing information system and is accessible through the 137
internet. 138

Every such public utility is required to conform its 139

schedules of rates, tolls, and charges to such arrangement, 140
sliding scale, classification, or other device, and where variable 141
rates are provided for in any such schedule or arrangement, the 142
cost data or factors upon which such rates are based and fixed 143
shall be filed with the commission in such form and at such times 144
as the commission directs. ~~The commission shall review the cost~~ 145
~~data or factors upon which a variable rate schedule filed under~~ 146
~~division (B)(2) or (3) of this section is based and shall adjust~~ 147
~~the base rates of the electric light company or order the company~~ 148
~~to refund any charges that it has collected under the variable~~ 149
~~rate schedule that the commission finds to have resulted from~~ 150
~~errors or erroneous reporting. After recovery of all of the~~ 151
~~emissions fees upon which a variable rate authorized under~~ 152
~~division (B)(2) or (3) of this section is based, collection of the~~ 153
~~variable rate shall end and the variable rate schedule shall be~~ 154
~~terminated.~~ 155

Every such schedule or reasonable arrangement, ~~sliding scale,~~ 156
~~minimum charge, classification, variable rate, or device~~ shall be 157
under the supervision and regulation of the commission, and is 158
subject to change, alteration, or modification by the commission. 159

Sec. 4928.01. (A) As used in this chapter: 160

(1) "Ancillary service" means any function necessary to the 161
provision of electric transmission or distribution service to a 162
retail customer and includes, but is not limited to, scheduling, 163
system control, and dispatch services; reactive supply from 164
generation resources and voltage control service; reactive supply 165
from transmission resources service; regulation service; frequency 166
response service; energy imbalance service; operating 167
reserve-spinning reserve service; operating reserve-supplemental 168
reserve service; load following; back-up supply service; 169
real-power loss replacement service; dynamic scheduling; system 170

black start capability; and network stability service. 171

(2) "Billing and collection agent" means a fully independent 172
agent, not affiliated with or otherwise controlled by an electric 173
utility, electric services company, electric cooperative, or 174
governmental aggregator subject to certification under section 175
4928.08 of the Revised Code, to the extent that the agent is under 176
contract with such utility, company, cooperative, or aggregator 177
solely to provide billing and collection for retail electric 178
service on behalf of the utility company, cooperative, or 179
aggregator. 180

(3) "Certified territory" means the certified territory 181
established for an electric supplier under sections 4933.81 to 182
4933.90 of the Revised Code ~~as amended by Sub. S.B. No. 3 of the~~ 183
~~123rd general assembly.~~ 184

(4) "Competitive retail electric service" means a component 185
of retail electric service that is competitive as provided under 186
division (B) of this section. 187

(5) "Electric cooperative" means a not-for-profit electric 188
light company that both is or has been financed in whole or in 189
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 190
7 U.S.C. 901, and owns or operates facilities in this state to 191
generate, transmit, or distribute electricity, or a not-for-profit 192
successor of such company. 193

(6) "Electric distribution utility" means an electric utility 194
that supplies at least retail electric distribution service. 195

(7) "Electric light company" has the same meaning as in 196
section 4905.03 of the Revised Code and includes an electric 197
services company, but excludes any self-generator to the extent 198
that it consumes electricity it so produces or to the extent it, 199
sells that electricity for resale ~~electricity it so produces, or~~ 200
obtains electricity from a generating facility it hosts on its 201

<u>premises.</u>	202
(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.	203 204
(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.	205 206 207 208 209 210 211 212
(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.	213 214
(11) "Electric utility" means an electric light company that <u>has a certified territory and</u> is engaged on a for-profit basis <u>either</u> in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent.	215 216 217 218 219 220 221
(12) "Firm electric service" means electric service other than nonfirm electric service.	222 223
(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.	224 225 226 227 228
(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is	229 230 231 232

aware that such circumstances probably exist. 233

(15) "Level of funding for low-income customer energy 234
efficiency programs provided through electric utility rates" means 235
the level of funds specifically included in an electric utility's 236
rates on October 5, 1999, pursuant to an order of the public 237
utilities commission issued under Chapter 4905. or 4909. of the 238
Revised Code and in effect on October 4, 1999, for the purpose of 239
improving the energy efficiency of housing for the utility's 240
low-income customers. The term excludes the level of any such 241
funds committed to a specific nonprofit organization or 242
organizations pursuant to a stipulation or contract. 243

(16) "Low-income customer assistance programs" means the 244
percentage of income payment plan program, the home energy 245
assistance program, the home weatherization assistance program, 246
and the targeted energy efficiency and weatherization program. 247

(17) "Market development period" for an electric utility 248
means the period of time beginning on the starting date of 249
competitive retail electric service and ending on the applicable 250
date for that utility as specified in section 4928.40 of the 251
Revised Code, irrespective of whether the utility applies to 252
receive transition revenues under this chapter. 253

(18) "Market power" means the ability to impose on customers 254
a sustained price for a product or service above the price that 255
would prevail in a competitive market. 256

(19) "Mercantile ~~commercial~~ customer" means a commercial or 257
industrial customer if the electricity consumed is for 258
nonresidential use and the customer consumes more than seven 259
hundred thousand kilowatt hours per year or is part of a national 260
account involving multiple facilities in one or more states. 261

(20) "Municipal electric utility" means a municipal 262
corporation that owns or operates facilities to generate, 263

transmit, or distribute electricity. 264

(21) "Noncompetitive retail electric service" means a 265
component of retail electric service that is noncompetitive as 266
provided under division (B) of this section. 267

(22) "Nonfirm electric service" means electric service 268
provided pursuant to a schedule filed under section 4905.30 of the 269
Revised Code or pursuant to an arrangement under section 4905.31 270
of the Revised Code, which schedule or arrangement includes 271
conditions that may require the customer to curtail or interrupt 272
electric usage during nonemergency circumstances upon notification 273
by an electric utility. 274

(23) "Percentage of income payment plan arrears" means funds 275
eligible for collection through the percentage of income payment 276
plan rider, but uncollected as of July 1, 2000. 277

(24) "Person" has the same meaning as in section 1.59 of the 278
Revised Code. 279

(25) "Advanced energy project" means any technologies, 280
products, activities, or management practices or strategies that 281
facilitate the generation or use of electricity and that reduce or 282
support the reduction of energy consumption or support the 283
production of clean, renewable energy for industrial, 284
distribution, commercial, institutional, governmental, research, 285
not-for-profit, or residential energy users. ~~Such energy includes,~~ 286
~~including,~~ but is not limited to, ~~wind power; geothermal energy;~~ 287
~~solar thermal energy; and energy produced by micro turbines in~~ 288
~~distributed generation applications with high electric~~ 289
~~efficiencies, by combined heat and power applications, by fuel~~ 290
~~cells powered by hydrogen derived from wind, solar, biomass,~~ 291
~~hydroelectric, landfill gas, or geothermal sources, or by solar~~ 292
~~electric generation, landfill gas, or hydroelectric generation~~ 293
advanced energy resources and renewable energy resources. 294

"Advanced energy project" also includes any project described in 295
division (A), (B), or (C) of section 4928.621 of the Revised Code. 296

(26) "Regulatory assets" means the unamortized net regulatory 297
assets that are capitalized or deferred on the regulatory books of 298
the electric utility, pursuant to an order or practice of the 299
public utilities commission or pursuant to generally accepted 300
accounting principles as a result of a prior commission 301
rate-making decision, and that would otherwise have been charged 302
to expense as incurred or would not have been capitalized or 303
otherwise deferred for future regulatory consideration absent 304
commission action. "Regulatory assets" includes, but is not 305
limited to, all deferred demand-side management costs; all 306
deferred percentage of income payment plan arrears; 307
post-in-service capitalized charges and assets recognized in 308
connection with statement of financial accounting standards no. 309
109 (receivables from customers for income taxes); future nuclear 310
decommissioning costs and fuel disposal costs as those costs have 311
been determined by the commission in the electric utility's most 312
recent rate or accounting application proceeding addressing such 313
costs; the undepreciated costs of safety and radiation control 314
equipment on nuclear generating plants owned or leased by an 315
electric utility; and fuel costs currently deferred pursuant to 316
the terms of one or more settlement agreements approved by the 317
commission. 318

(27) "Retail electric service" means any service involved in 319
supplying or arranging for the supply of electricity to ultimate 320
consumers in this state, from the point of generation to the point 321
of consumption. For the purposes of this chapter, retail electric 322
service includes one or more of the following "service 323
components": generation service, aggregation service, power 324
marketing service, power brokerage service, transmission service, 325
distribution service, ancillary service, metering service, and 326

billing and collection service. 327

~~(28) "Small electric generation facility" means an electric 328
generation plant and associated facilities designed for, or 329
capable of, operation at a capacity of less than two megawatts. 330~~

~~(29)~~(28) "Starting date of competitive retail electric 331
service" means January 1, 2001, ~~except as provided in division (C)~~ 332
~~of this section.~~ 333

~~(30)~~(29) "Customer-generator" means a user of a net metering 334
system. 335

~~(31)~~(30) "Net metering" means measuring the difference in an 336
applicable billing period between the electricity supplied by an 337
electric service provider and the electricity generated by a 338
customer-generator that is fed back to the electric service 339
provider. 340

~~(32)~~(31) "Net metering system" means a facility for the 341
production of electrical energy that does all of the following: 342

(a) Uses as its fuel either solar, wind, biomass, landfill 343
gas, or hydropower, or uses a microturbine or a fuel cell; 344

(b) Is located on a customer-generator's premises; 345

(c) Operates in parallel with the electric utility's 346
transmission and distribution facilities; 347

(d) Is intended primarily to offset part or all of the 348
customer-generator's requirements for electricity. 349

~~(33)~~(32) "Self-generator" means an entity in this state that 350
owns or hosts on its premises an electric generation facility that 351
produces electricity primarily for the owner's consumption and 352
that may provide any such excess electricity to ~~retail electric~~ 353
~~service providers~~ another entity, whether the facility is 354
installed or operated by the owner or by an agent under a 355
contract. 356

(33) "Rate plan" means the standard service offer in effect 357
on the effective date of the amendment of this section by S.B. 221 358
of the 127th general assembly. 359

(34) "Advanced energy resource" means any of the following: 360

(a) Any method or any modification or replacement of any 361
property, process, device, structure, or equipment that increases 362
the generation output of an electric generating facility to the 363
extent such efficiency is achieved without additional carbon 364
dioxide emissions by that facility; 365

(b) Any distributed generation system consisting of customer 366
cogeneration of electricity and thermal output simultaneously, 367
primarily to meet the energy needs of the customer's facilities; 368

(c) Clean coal technology that includes a carbon-based 369
product that is chemically altered before combustion to 370
demonstrate a reduction, as expressed as ash, in emissions of 371
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 372
sulfur trioxide in accordance with the American society of testing 373
and materials standard D1757A or a reduction of metal oxide 374
emissions in accordance with standard D5142 of that society, or 375
clean coal technology that includes the design capability to 376
control or prevent the emission of carbon dioxide, which design 377
capability the commission shall adopt by rule and shall be based 378
on economically feasible best available technology or, in the 379
absence of a determined best available technology, shall be of the 380
highest level of economically feasible design capability for which 381
there exists generally accepted scientific opinion; 382

(d) Advanced nuclear energy technology consisting of 383
generation III technology as defined by the nuclear regulatory 384
commission; other, later technology; or significant improvements 385
to existing facilities; 386

(e) Any fuel cell used in the generation of electricity, 387

including, but not limited to, a proton exchange membrane fuel 388
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 389
solid oxide fuel cell; 390

(f) Advanced solid waste or construction and demolition 391
debris conversion technology, including, but not limited to, 392
advanced stoker technology, and advanced fluidized bed 393
gasification technology, that results in measurable greenhouse gas 394
emissions reductions as calculated pursuant to the United States 395
environmental protection agency's waste reduction model (WARM). 396

(g) Demand-side management and any energy efficiency 398
improvement. 399

(35) "Renewable energy resource" means solar photovoltaic or 400
solar thermal energy, wind energy, power produced by a 401
hydroelectric facility, geothermal energy, fuel derived from solid 402
wastes, as defined in section 3734.01 of the Revised Code, through 403
fractionation, biological decomposition, or other process that 404
does not principally involve combustion, biomass energy, 405
biologically derived methane gas, or energy derived from 406
nontreated by-products of the pulping process or wood 407
manufacturing process, including bark, wood chips, sawdust, and 408
lignin in spent pulping liquors. "Renewable energy resource" 409
includes, but is not limited to, any fuel cell used in the 410
generation of electricity, including, but not limited to, a proton 411
exchange membrane fuel cell, phosphoric acid fuel cell, molten 412
carbonate fuel cell, or solid oxide fuel cell; wind turbine 413
located in the state's territorial waters of Lake Erie; storage 414
facility that will promote the better utilization of a renewable 415
energy resource that primarily generates off peak; or distributed 416
generation system used by a customer to generate electricity from 417
any such energy. As used in division (A)(35) of this section, 418
"hydroelectric facility" means a hydroelectric generating facility 419

that is located at a dam on a river, or on any water discharged to 420
a river, that is within or bordering this state or within or 421
bordering an adjoining state and meets all of the following 422
standards: 423

(a) The facility provides for river flows that are not 424
detrimental for fish, wildlife, and water quality, including 425
seasonal flow fluctuations as defined by the applicable licensing 426
agency for the facility. 427

(b) The facility demonstrates that it complies with the water 428
quality standards of this state, which compliance may consist of 429
certification under Section 401 of the "Clean Water Act of 1977," 430
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 431
not contributed to a finding by this state that the river has 432
impaired water quality under Section 303(d) of the "Clean Water 433
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 434

(c) The facility complies with mandatory prescriptions 436
regarding fish passage as required by the federal energy 437
regulatory commission license issued for the project, regarding 438
fish protection for riverine, anadromous, and catadromus fish. 439

(d) The facility complies with the recommendations of the 440
Ohio environmental protection agency and with the terms of its 441
federal energy regulatory commission license regarding watershed 442
protection, mitigation, or enhancement, to the extent of each 443
agency's respective jurisdiction over the facility. 444

(e) The facility complies with provisions of the "Endangered 445
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 446
amended. 447

(f) The facility does not harm cultural resources of the 448
area. This can be shown through compliance with the terms of its 449
federal energy regulatory commission license or, if the facility 450

is not regulated by that commission, through development of a plan 451
approved by the Ohio historic preservation office, to the extent 452
it has jurisdiction over the facility. 453

(g) The facility complies with the terms of its federal 454
energy regulatory commission license or exemption that are related 455
to recreational access, accommodation, and facilities or, if the 456
facility is not regulated by that commission, the facility 457
complies with similar requirements as are recommended by resource 458
agencies, to the extent they have jurisdiction over the facility; 459
and the facility provides access to water to the public without 460
fee or charge. 461

(h) The facility is not recommended for removal by any 462
federal agency or agency of any state, to the extent the 463
particular agency has jurisdiction over the facility. 464

(B) For the purposes of this chapter, a retail electric 465
service component shall be deemed a competitive retail electric 466
service if the service component is competitive pursuant to a 467
declaration by a provision of the Revised Code or pursuant to an 468
order of the public utilities commission authorized under division 469
(A) of section 4928.04 of the Revised Code. Otherwise, the service 470
component shall be deemed a noncompetitive retail electric 471
service. 472

~~(C) Prior to January 1, 2001, and after application by an~~ 473
~~electric utility, notice, and an opportunity to be heard, the~~ 474
~~public utilities commission may issue an order delaying the~~ 475
~~January 1, 2001, starting date of competitive retail electric~~ 476
~~service for the electric utility for a specified number of days~~ 477
~~not to exceed six months, but only for extreme technical~~ 478
~~conditions precluding the start of competitive retail electric~~ 479
~~service on January 1, 2001.~~ 480

Sec. 4928.02. It is the policy of this state to do the 481

following throughout this state ~~beginning on the starting date of~~ 482
~~competitive retail electric service:~~ 483

(A) Ensure the availability to consumers of adequate, 484
reliable, safe, efficient, nondiscriminatory, and reasonably 485
priced retail electric service; 486

(B) Ensure the availability of unbundled and comparable 487
retail electric service that provides consumers with the supplier, 488
price, terms, conditions, and quality options they elect to meet 489
their respective needs; 490

(C) Ensure diversity of electricity supplies and suppliers, 491
by giving consumers effective choices over the selection of those 492
supplies and suppliers and by encouraging the development of 493
distributed and small generation facilities; 494

(D) Encourage innovation and market access for cost-effective 495
supply- and demand-side retail electric service including, but not 496
limited to, demand-side management, time-differentiated pricing, 497
and implementation of advanced metering infrastructure; 498

(E) Encourage cost-effective and efficient access to 499
information regarding the operation of the transmission and 500
distribution systems of electric utilities in order to promote 501
both effective customer choice of retail electric service and the 502
development of performance standards and targets for service 503
quality for all consumers, including annual achievement reports 504
written in plain language; 505

(F) Ensure that an electric utility's transmission and 506
distribution systems are available to a customer-generator or 507
owner of distributed generation, so that the customer-generator or 508
owner can market and deliver the electricity it produces; 509

(G) Recognize the continuing emergence of competitive 510
electricity markets through the development and implementation of 511
flexible regulatory treatment; 512

~~(G)~~(H) Ensure effective competition in the provision of 513
retail electric service by avoiding anticompetitive subsidies 514
flowing from a noncompetitive retail electric service to a 515
competitive retail electric service or to a product or service 516
other than retail electric service, and vice versa, including by 517
prohibiting the recovery of any generation-related costs through 518
distribution or transmission rates; 519

~~(H)~~(I) Ensure retail electric service consumers protection 520
against unreasonable sales practices, market deficiencies, and 521
market power; 522

~~(I)~~(J) Provide coherent, transparent means of giving 523
appropriate incentives to technologies that can adapt successfully 524
to potential environmental mandates; 525

(K) Encourage implementation of distributed generation across 526
customer classes through regular review and updating of 527
administrative rules governing critical issues such as, but not 528
limited to, interconnection standards, standby charges, and net 529
metering; 530

(L) Protect at-risk populations, including, but not limited 531
to, when considering the implementation of any new advanced energy 532
or renewable energy resource; 533

(M) Encourage the education of small business owners in this 534
state regarding the use of, and encourage the use of, energy 535
efficiency programs and alternative energy resources in their 536
businesses; 537

(N) Facilitate the state's effectiveness in the global 538
economy. 539

In carrying out this policy, the commission shall consider 540
rules as they apply to the costs of electric distribution 541
infrastructure, including, but not limited to, line extensions, 542
for the purpose of development in this state. 543

Sec. 4928.05. (A)(1) On and after the starting date of 544
competitive retail electric service, a competitive retail electric 545
service supplied by an electric utility or electric services 546
company shall not be subject to supervision and regulation by a 547
municipal corporation under Chapter 743. of the Revised Code or by 548
the public utilities commission under Chapters 4901. to 4909., 549
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 550
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 551
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 552
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 553
extent related to service reliability and public safety; and 554
except as otherwise provided in this chapter. The commission's 555
authority to enforce those excepted provisions with respect to a 556
competitive retail electric service shall be such authority as is 557
provided for their enforcement under Chapters 4901. to 4909., 558
4933., 4935., and 4963. of the Revised Code and this chapter. 559
Nothing in this division shall be construed to limit the 560
commission's authority under sections 4928.141 to 4928.144 of the 561
Revised Code. 562

On and after the starting date of competitive retail electric 563
service, a competitive retail electric service supplied by an 564
electric cooperative shall not be subject to supervision and 565
regulation by the commission under Chapters 4901. to 4909., 4933., 566
4935., and 4963. of the Revised Code, except as otherwise 567
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 568
the Revised Code. 569

(2) On and after the starting date of competitive retail 570
electric service, a noncompetitive retail electric service 571
supplied by an electric utility shall be subject to supervision 572
and regulation by the commission under Chapters 4901. to 4909., 573
4933., 4935., and 4963. of the Revised Code and this chapter, to 574
the extent that authority is not preempted by federal law. The 575

commission's authority to enforce those provisions with respect to 576
a noncompetitive retail electric service shall be the authority 577
provided under those chapters and this chapter, to the extent the 578
authority is not preempted by federal law. Notwithstanding 579
Chapters 4905. and 4909. of the Revised Code, commission authority 580
under this chapter shall include the authority to provide for the 581
recovery, through a reconcilable rider on an electric distribution 582
utility's distribution rates, of all transmission and 583
transmission-related costs, including ancillary and congestion 584
costs, imposed on or charged to the utility by the federal energy 585
regulatory commission or a regional transmission organization, 586
independent transmission operator, or similar organization 587
approved by the federal energy regulatory commission. 588

589

The commission shall exercise its jurisdiction with respect 590
to the delivery of electricity by an electric utility in this 591
state on or after the starting date of competitive retail electric 592
service so as to ensure that no aspect of the delivery of 593
electricity by the utility to consumers in this state that 594
consists of a noncompetitive retail electric service is 595
unregulated. 596

On and after that starting date, a noncompetitive retail 597
electric service supplied by an electric cooperative shall not be 598
subject to supervision and regulation by the commission under 599
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 600
Code, except sections 4933.81 to 4933.90 and 4935.03 of the 601
Revised Code. The commission's authority to enforce those excepted 602
sections with respect to a noncompetitive retail electric service 603
of an electric cooperative shall be such authority as is provided 604
for their enforcement under Chapters 4933. and 4935. of the 605
Revised Code. 606

(B) Nothing in this chapter affects the authority of the 607

commission under Title XLIX of the Revised Code to regulate an 608
electric light company in this state or an electric service 609
supplied in this state prior to the starting date of competitive 610
retail electric service. 611

Sec. 4928.09. (A)(1) No person shall operate in this state as 612
an electric utility, an electric services company, ~~or~~ a billing 613
and collection agent, or a regional transmission organization 614
approved by the federal energy regulatory commission and having 615
the responsibility for maintaining reliability in all or part of 616
this state on and after the starting date of competitive retail 617
electric service unless that person first does both of the 618
following: 619

(a) Consents irrevocably to the jurisdiction of the courts of 620
this state and service of process in this state, including, 621
without limitation, service of summonses and subpoenas, for any 622
civil or criminal proceeding arising out of or relating to such 623
operation, by providing that irrevocable consent in accordance 624
with division (A)(4) of this section; 625

(b) Designates an agent authorized to receive that service of 626
process in this state, by filing with the commission a document 627
designating that agent. 628

(2) No person shall continue to operate as such an electric 629
utility, electric services company, ~~or~~ billing and collection 630
agent, or regional transmission organization described in division 631
(A)(1) of this section unless that person continues to consent to 632
such jurisdiction and service of process in this state and 633
continues to designate an agent as provided under this division, 634
by refiling in accordance with division (A)(4) of this section the 635
appropriate documents filed under division (A)(1) of this section 636
or, as applicable, the appropriate amended documents filed under 637
division (A)(3) of this section. Such refiling shall occur during 638

the month of December of every fourth year after the initial 639
filing of a document under division (A)(1) of this section. 640

(3) If the address of the person filing a document under 641
division (A)(1) or (2) of this section changes, or if a person's 642
agent or the address of the agent changes, from that listed on the 643
most recently filed of such documents, the person shall file an 644
amended document containing the new information. 645

(4) The consent and designation required by divisions (A)(1) 646
to (3) of this section shall be in writing, on forms prescribed by 647
the public utilities commission. The original of each such 648
document or amended document shall be legible and shall be filed 649
with the commission, with a copy filed with the office of the 650
consumers' counsel and with the attorney general's office. 651

(B) A person who enters this state pursuant to a summons, 652
subpoena, or other form of process authorized by this section is 653
not subject to arrest or service of process, whether civil or 654
criminal, in connection with other matters that arose before the 655
person's entrance into this state pursuant to such summons, 656
subpoena, or other form of process. 657

(C) Divisions (A) and (B) of this section do not apply to any 658
of the following: 659

(1) A corporation incorporated under the laws of this state 660
that has appointed a statutory agent pursuant to section 1701.07 661
or 1702.06 of the Revised Code; 662

(2) A foreign corporation licensed to transact business in 663
this state that has appointed a designated agent pursuant to 664
section 1703.041 of the Revised Code; 665

(3) Any other person that is a resident of this state or that 666
files consent to service of process and designates a statutory 667
agent pursuant to other laws of this state. 668

~~Sec. 4928.14. (A) After its market development period, an electric distribution utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Such offer shall be filed with the public utilities commission under section 4909.18 of the Revised Code.~~

~~(B) After that market development period, each electric distribution utility also shall offer customers within its certified territory an option to purchase competitive retail electric service the price of which is determined through a competitive bidding process. Prior to January 1, 2004, the commission shall adopt rules concerning the conduct of the competitive bidding process, including the information requirements necessary for customers to choose this option and the requirements to evaluate qualified bidders. The commission may require that the competitive bidding process be reviewed by an independent third party. No generation supplier shall be prohibited from participating in the bidding process, provided that any winning bidder shall be considered a certified supplier for purposes of obligations to customers. At the election of the electric distribution utility, and approval of the commission, the competitive bidding option under this division may be used as the market-based standard offer required by division (A) of this section. The commission may determine at any time that a competitive bidding process is not required, if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed.~~

~~(C) After the market development period, the The failure of a~~

supplier to provide retail electric generation service to 701
customers within the certified territory of ~~the~~ an electric 702
distribution utility shall result in the supplier's customers, 703
after reasonable notice, defaulting to the utility's standard 704
service offer ~~filed under division (A) of this section~~ sections 705
4928.141, 4928.142, and 4928.143 of the Revised Code until the 706
customer chooses an alternative supplier. A supplier is deemed 707
under this ~~division~~ section to have failed to provide such service 708
if the commission finds, after reasonable notice and opportunity 709
for hearing, that any of the following conditions are met: 710

~~(1)~~(A) The supplier has defaulted on its contracts with 711
customers, is in receivership, or has filed for bankruptcy. 712

~~(2)~~(B) The supplier is no longer capable of providing the 713
service. 714

~~(3)~~(C) The supplier is unable to provide delivery to 715
transmission or distribution facilities for such period of time as 716
may be reasonably specified by commission rule adopted under 717
division (A) of section 4928.06 of the Revised Code. 718

~~(4)~~(D) The supplier's certification has been suspended, 719
conditionally rescinded, or rescinded under division (D) of 720
section 4928.08 of the Revised Code. 721

Sec. 4928.141. (A) Beginning January 1, 2009, an electric 722
distribution utility shall provide consumers, on a comparable and 723
nondiscriminatory basis within its certified territory, a standard 724
service offer of all competitive retail electric services 725
necessary to maintain essential electric service to consumers, 726
including a firm supply of electric generation service. To that 727
end, the electric distribution utility shall apply to the public 728
utilities commission to establish the standard service offer in 729
accordance with section 4928.142 or 4928.143 of the Revised Code 730
and, at its discretion, may apply simultaneously under both 731

sections, except that the utility's first standard service offer 732
application at minimum shall include a filing under section 733
4928.143 of the Revised Code. Only a standard service offer 734
authorized in accordance with section 4928.142 or 4928.143 of the 735
Revised Code, shall serve as the utility's standard service offer 736
for the purpose of compliance with this section; and that standard 737
service offer shall serve as the utility's default standard 738
service offer for the purpose of section 4928.14 of the Revised 739
Code. Notwithstanding the foregoing provision, the rate plan of an 740
electric distribution utility shall continue for the purpose of 741
the utility's compliance with this division until a standard 742
service offer is first authorized under section 4928.142 or 743
4928.143 of the Revised Code, and, as applicable, pursuant to 744
division (D) of section 4928.143 of the Revised Code, any rate 745
plan that extends beyond December 31, 2008, shall continue to be 746
in effect for the subject electric distribution utility for the 747
duration of the plan's term. A standard service offer under 748
section 4928.142 or 4928.143 of the Revised Code shall exclude any 749
previously authorized allowances for transition costs, with such 750
exclusion being effective on and after the date that the allowance 751
is scheduled to end under the utility's rate plan. 752

753

(B) The commission shall set the time for hearing of a filing 754
under section 4928.142 or 4928.143 of the Revised Code, send 755
written notice of the hearing to the electric distribution 756
utility, and publish notice in a newspaper of general circulation 757
in each county in the utility's certified territory. The 758
commission shall adopt rules regarding filings under those 759
sections. 760

Sec. 4928.142. (A) For the purpose of complying with section 761
4928.141 of the Revised Code and subject to division (D) of this 762

section and, as applicable, subject to the rate plan requirement 763
of division (A) of section 4928.141 of the Revised Code, an 764
electric distribution utility may establish a standard service 765
offer price for retail electric generation service that is 766
delivered to the utility under a market-rate offer. 767

(1) The market-rate offer shall be determined through a 768
competitive bidding process that provides for all of the 769
following: 770

(a) Open, fair, and transparent competitive solicitation; 771

(b) Clear product definition; 772

(c) Standardized bid evaluation criteria; 773

(d) Oversight by an independent third party that shall design 774
the solicitation, administer the bidding, and ensure that the 775
criteria specified in division (A)(1)(a) to (c) of this section 776
are met; 777

(e) Evaluation of the submitted bids prior to the selection 778
of the least-cost bid winner or winners. 779

No generation supplier shall be prohibited from participating 780
in the bidding process. 781

(2) The public utilities commission shall modify rules, or 782
adopt new rules as necessary, concerning the conduct of the 783
competitive bidding process and the qualifications of bidders, 784
which rules shall foster supplier participation in the bidding 785
process and shall be consistent with the requirements of division 786
(A)(1) of this section. 787

(B) Prior to initiating a competitive bidding process for a 788
market-rate offer under division (A) of this section, the electric 789
distribution utility shall file an application with the 790
commission. An electric distribution utility may file its 791
application with the commission prior to the effective date of the 792

commission rules required under division (A)(2) of this section, 793
and, as the commission determines necessary, the utility shall 794
immediately conform its filing to the rules upon their taking 795
effect. 796

An application under this division shall detail the electric 797
distribution utility's proposed compliance with the requirements 798
of division (A)(1) of this section and with commission rules under 799
division (A)(2) of this section and demonstrate that all of the 800
following requirements are met: 801

(1) The electric distribution utility or its transmission 802
service affiliate belongs to at least one regional transmission 803
organization that has been approved by the federal energy 804
regulatory commission; or there otherwise is comparable and 805
nondiscriminatory access to the electric transmission grid. 806

(2) Any such regional transmission organization has a 807
market-monitor function and the ability to take actions to 808
identify and mitigate market power or the electric distribution 809
utility's market conduct; or a similar market monitoring function 810
exists with commensurate ability to identify and monitor market 811
conditions and mitigate conduct associated with the exercise of 812
market power. 813

(3) A published source of information is available publicly 814
or through subscription that identifies pricing information for 815
traded electricity on- and off-peak energy products that are 816
contracts for delivery beginning at least two years from the date 817
of the publication and is updated on a regular basis. 818

The commission shall initiate a proceeding and, within ninety 819
days after the application's filing date, shall determine by order 820
whether the electric distribution utility and its market-rate 821
offer meet all of the foregoing requirements. If the finding is 822
positive, the electric distribution utility may initiate its 823

competitive bidding process. If the finding is negative as to one 824
or more requirements, the commission in the order shall direct the 825
electric distribution utility regarding how any deficiency may be 826
remedied in a timely manner to the commission's satisfaction; 827
otherwise, the electric distribution utility shall withdraw the 828
application. However, if such remedy is made and the subsequent 829
finding is positive and also if the electric distribution utility 830
made a simultaneous filing under this section and section 4928.143 831
of the Revised Code, the utility shall not initiate its 832
competitive bid until at least one hundred fifty days after the 833
filing date of those applications. 834

(C) Upon the completion of the competitive bidding process 835
authorized by divisions (A) and (B) of this section, including for 836
the purpose of division (D) of this section, the commission shall 837
select the least-cost bid winner or winners of that process, and 838
such selected bid or bids, as prescribed as retail rates by the 839
commission, shall be the electric distribution utility's standard 840
service offer unless the commission, by order issued before the 841
third calendar day following the conclusion of the competitive 842
bidding process for the market rate offer, determines that one or 843
more of the following criteria were not met: 844

(1) Each portion of the bidding process was oversubscribed, 845
such that the amount of supply bid upon was greater than the 846
amount of the load bid out. 847

(2) There were four or more bidders. 848

(3) At least twenty-five per cent of the load is bid upon by 849
one or more persons other than the electric distribution utility. 850

All costs incurred by the electric distribution utility as a 851
result of or related to the competitive bidding process or to 852
procuring generation service to provide the standard service 853
offer, including the costs of energy and capacity and the costs of 854

all other products and services procured as a result of the 855
competitive bidding process, shall be timely recovered through the 856
standard service offer price, and, for that purpose, the 857
commission shall approve a reconciliation mechanism, other 858
recovery mechanism, or a combination of such mechanisms for the 859
utility. 860

(D) The first application filed under this section by an 861
electric distribution utility that, as of the effective date of 862
this section, directly owns, in whole or in part, operating 863
electric generating facilities that had been used and useful in 864
this state shall require that a portion of that utility's standard 865
service offer load for the first five years of the market rate 866
offer be competitively bid under division (A) of this section as 867
follows: ten per cent of the load in year one and not less than 868
twenty per cent in year two, thirty per cent in year three, forty 869
per cent in year four, and fifty per cent in year five. Consistent 870
with those percentages, the commission shall determine the actual 871
percentages for each year of years one through five. The standard 872
service offer price for retail electric generation service under 873
this first application shall be a proportionate blend of the bid 874
price and the generation service price for the remaining standard 875
service offer load, which latter price shall be equal to the 876
electric distribution utility's most recent standard service offer 877
price, adjusted upward or downward as the commission determines 878
reasonable, relative to the jurisdictional portion of any known 879
and measurable changes from the level of any one or more of the 880
following costs as reflected in that most recent standard service 881
offer price: 882

(1) The electric distribution utility's prudently incurred 884
cost of fuel used to produce electricity; 885

(2) Its prudently incurred purchased power costs; 886

(3) Its prudently incurred costs of satisfying the supply and 887
demand portfolio requirements of this state, including, but not 888
limited to, renewable energy resource and energy efficiency 889
requirements; 890

(4) Its costs prudently incurred to comply with environmental 891
laws and regulations, with consideration of the derating of any 892
facility associated with those costs. 893

In making any adjustment to the most recent standard service 894
offer price on the basis of costs described in division (D) of 895
this section, the commission shall include the benefits that may 896
become available to the electric distribution utility as a result 897
of or in connection with the costs included in the adjustment, 898
including, but not limited to, the utility's receipt of emissions 899
credits or its receipt of tax benefits or of other benefits, and, 900
accordingly, the commission may impose such conditions on the 901
adjustment to ensure that any such benefits are properly aligned 902
with the associated cost responsibility. The commission shall also 903
determine how such adjustments will affect the electric 904
distribution utility's return on common equity that may be 905
achieved by those adjustments. The commission shall not apply its 906
consideration of the return on common equity to reduce any 907
adjustments authorized under this division unless the adjustments 908
will cause the electric distribution utility to earn a return on 909
common equity that is significantly in excess of the return on 910
common equity that is earned by publicly traded companies, 911
including utilities, that face comparable business and financial 912
risk, with such adjustments for capital structure as may be 913
appropriate. The burden of proof for demonstrating that 914
significantly excessive earnings will not occur shall be on the 915
electric distribution utility. 916

Additionally, the commission may adjust the electric 917
distribution utility's most recent standard service offer price by 918

such just and reasonable amount that the commission determines 919
necessary to address any emergency that threatens the utility's 920
financial integrity or to ensure that the resulting revenue 921
available to the utility for providing the standard service offer 922
is not so inadequate as to result, directly or indirectly, in a 923
taking of property without compensation pursuant to Section 19 of 924
Article I, Ohio Constitution. The electric distribution utility 925
has the burden of demonstrating that any adjustment to its most 926
recent standard service offer price is proper in accordance with 927
this division. 928

(E) Beginning in the second year of a blended price under 929
division (D) of this section and notwithstanding any other 930
requirement of this section, the commission may alter 931
prospectively the proportions specified in that division to 932
mitigate any effect of an abrupt or significant change in the 933
electric distribution utility's standard service offer price that 934
would otherwise result in general or with respect to any rate 935
group or rate schedule but for such alteration. Any such 936
alteration shall be made not more often than annually, and the 937
commission shall not, by altering those proportions and in any 938
event, including because of the length of time, as authorized 939
under division (C) of this section, taken to approve the market 940
rate offer, cause the duration of the blending period to exceed 941
ten years as counted from the effective date of the approved 942
market rate offer. Additionally, any such alteration shall be 943
limited to an alteration affecting the prospective proportions 944
used during the blending period and shall not affect any blending 945
proportion previously approved and applied by the commission under 946
this division. 947

(F) An electric distribution utility that has received 948
commission approval of its first application under division (C) of 949
this section shall not, nor ever shall be authorized or required 950

by the commission to, file an application under section 4928.143 951
of the Revised Code. 952

Sec. 4928.143. (A) For the purpose of complying with section 953
4928.141 of the Revised Code, an electric distribution utility may 954
file an application for public utilities commission approval of an 955
electric security plan as prescribed under division (B) of this 956
section. The utility may file that application prior to the 957
effective date of any rules the commission may adopt for the 958
purpose of this section, and, as the commission determines 959
necessary, the utility immediately shall conform its filing to 960
those rules upon their taking effect. 961

(B) Notwithstanding any other provision of Title XLIX of the 962
Revised Code to the contrary except division (D) of this section, 963
divisions (I), (J), and (K) of section 4928.20, division (E) of 964
section 4928.64, and section 4928.69 of the Revised Code: 965

(1) An electric security plan shall include provisions 966
relating to the supply and pricing of electric generation service. 967
In addition, if the proposed electric security plan has a term 968
longer than three years, it may include provisions in the plan to 969
permit the commission to test the plan pursuant to division (E) of 970
this section and any transitional conditions that should be 971
adopted by the commission if the commission terminates the plan as 972
authorized under that division. 973

(2) The plan may provide for or include, without limitation, 974
any of the following: 975

(a) Automatic recovery of any of the following costs of the 976
electric distribution utility, provided the cost is prudently 977
incurred: the cost of fuel used to generate the electricity 978
supplied under the offer; the cost of purchased power supplied 979
under the offer, including the cost of energy and capacity, and 980
including purchased power acquired from an affiliate; the cost of 981

emission allowances; and the cost of federally mandated carbon or 982
energy taxes; 983

(b) A reasonable allowance for construction work in progress 984
for any of the electric distribution utility's cost of 985
constructing an electric generating facility or for an 986
environmental expenditure for any electric generating facility of 987
the electric distribution utility, provided the cost is incurred 988
or the expenditure occurs on or after January 1, 2009. Any such 989
allowance shall be subject to the construction work in progress 990
allowance limitations of division (A) of section 4909.15 of the 991
Revised Code, except that the commission may authorize such an 992
allowance upon the incurrence of the cost or occurrence of the 993
expenditure. No such allowance for generating facility 994
construction shall be authorized, however, unless the commission 995
first determines in the proceeding that there is need for the 996
facility based on resource planning projections submitted by the 997
electric distribution utility. Further, no such allowance shall be 998
authorized unless the facility's construction was sourced through 999
a competitive bid process, regarding which process the commission 1000
may adopt rules. An allowance approved under division (B)(2)(b) of 1001
this section shall be established as a nonbypassable surcharge for 1002
the life of the facility. 1003

(c) The establishment of a nonbypassable surcharge for the 1004
life of an electric generating facility that is owned or operated 1005
by the electric distribution utility, was sourced through a 1006
competitive bid process subject to any such rules as the 1007
commission adopts under division (B)(2)(b) of this section, and is 1008
newly used and useful on or after January 1, 2009, which surcharge 1009
shall cover all costs of the utility specified in the application, 1010
excluding costs recovered through a surcharge under division 1011
(B)(2)(b) of this section. However, no surcharge shall be 1012
authorized unless the commission first determines in the 1013

proceeding that there is need for the facility based on resource 1014
planning projections submitted by the electric distribution 1015
utility. Additionally, if a surcharge is authorized for a facility 1016
pursuant to plan approval under division (C) of this section and 1017
as a condition of the continuation of the surcharge, the electric 1018
distribution utility shall dedicate to Ohio consumers the capacity 1019
and energy and the rate associated with the cost of that facility. 1020
Before the commission authorizes any surcharge pursuant to this 1021
division, it may consider, as applicable, the effects of any 1022
decommissioning, deratings, and retirements. 1023

1024

(d) Terms, conditions, or charges relating to limitations on 1025
customer shopping for retail electric generation service, 1026
bypassability, standby, back-up, or supplemental power service, 1027
default service, carrying costs, amortization periods, and 1028
accounting or deferrals, including future recovery of such 1029
deferrals, as would have the effect of stabilizing or providing 1030
certainty regarding retail electric service; 1031

(e) Automatic increases or decreases in any component of the 1032
standard service offer price; 1033

(f) Provisions for the electric distribution utility to 1034
securitize any phase-in, inclusive of carrying charges, of the 1035
utility's standard service offer price, which phase-in is 1036
authorized in accordance with section 4928.144 of the Revised 1037
Code; and provisions for the recovery of the utility's cost of 1038
securitization. 1039

(g) Provisions relating to transmission, ancillary, 1040
congestion, or any related service required for the standard 1041
service offer, including provisions for the recovery of any cost 1042
of such service that the electric distribution utility incurs on 1043
or after that date pursuant to the standard service offer; 1044

(h) Provisions regarding the utility's distribution service, 1045
including, without limitation and notwithstanding any provision of 1046
Title XLIX of the Revised Code to the contrary, provisions 1047
regarding single issue ratemaking, a revenue decoupling mechanism 1048
or any other incentive ratemaking, and provisions regarding 1049
distribution infrastructure and modernization incentives for the 1050
electric distribution utility. The latter may include a long-term 1051
energy delivery infrastructure modernization plan for that utility 1052
or any plan providing for the utility's recovery of costs, 1053
including lost revenue, shared savings, and avoided costs, and a 1054
just and reasonable rate of return on such infrastructure 1055
modernization. As part of its determination as to whether to allow 1056
in an electric distribution utility's electric security plan 1057
inclusion of any provision described in division (B)(2)(h) of this 1058
section, the commission shall examine the reliability of the 1059
electric distribution utility's distribution system and ensure 1060
that customers' and the electric distribution utility's 1061
expectations are aligned and that the electric distribution 1062
utility is placing sufficient emphasis on and dedicating 1063
sufficient resources to the reliability of its distribution 1064
system. 1065

(i) Provisions under which the electric distribution utility 1066
may implement economic development, job retention, and energy 1067
efficiency programs, which provisions may allocate program costs 1068
across all classes of customers of the utility and those of 1069
electric distribution utilities in the same holding company 1070
system. 1071

(C)(1) The burden of proof in the proceeding shall be on the 1072
electric distribution utility. The commission shall issue an order 1073
under this division for an initial application under this section 1074
not later than one hundred fifty days after the application's 1075
filing date and, for any subsequent application by the utility 1076

under this section, not later than two hundred seventy-five days 1077
after the application's filing date. Subject to division (D) of 1078
this section, the commission by order shall approve or modify and 1079
approve an application filed under division (A) of this section if 1080
it finds that the electric security plan so approved, including 1081
its pricing and all other terms and conditions, including any 1082
deferrals and any future recovery of deferrals, is more favorable 1083
in the aggregate as compared to the expected results that would 1084
otherwise apply under section 4928.142 of the Revised Code. 1085
Additionally, if the commission so approves an application that 1086
contains a surcharge under division (B)(2)(b) or (c) of this 1087
section, the commission shall ensure that the benefits derived for 1088
any purpose for which the surcharge is established are reserved 1089
and made available to those that bear the surcharge. Otherwise, 1090
the commission by order shall disapprove the application. 1091

1092

(2)(a) If the commission modifies and approves an application 1093
under division (C)(1) of this section, the electric distribution 1094
utility may withdraw the application, thereby terminating it, and 1095
may file a new standard service offer under this section or a 1096
standard service offer under section 4928.142 of the Revised Code. 1097

(b) If the utility terminates an application pursuant to 1098
division (C)(2)(a) of this section or if the commission 1099
disapproves an application under division (C)(1) of this section, 1100
the commission shall issue such order as is necessary to continue 1101
the provisions, terms, and conditions of the utility's most recent 1102
standard service offer, along with any expected increases or 1103
decreases in fuel costs from those contained in that offer, until 1104
a subsequent offer is authorized pursuant to this section or 1105
section 4928.142 of the Revised Code, respectively. 1106

(D) Regarding the rate plan requirement of division (A) of 1107
section 4928.141 of the Revised Code, if an electric distribution 1108

utility that has a rate plan that extends beyond December 31, 1109
2008, files an application under this section for the purpose of 1110
its compliance with division (A) of section 4928.141 of the 1111
Revised Code, that rate plan and its terms and conditions are 1112
hereby incorporated into its proposed electric security plan and 1113
shall continue in effect until the date scheduled under the rate 1114
plan for its expiration, and that portion of the electric security 1115
plan shall not be subject to commission approval or disapproval 1116
under division (C) of this section, and the earnings test provided 1117
for in division (F) of this section shall not apply until after 1118
the expiration of the rate plan. However, that utility may include 1119
in its electric security plan under this section, and the 1120
commission may approve, modify and approve, or disapprove subject 1121
to division (C) of this section, provisions for the incremental 1122
recovery or the deferral of any costs that are not being recovered 1123
under the rate plan and that the utility incurs during that 1124
continuation period to comply with section 4928.141, division (B) 1125
of section 4928.64, or division (A) of section 4928.66 of the 1126
Revised Code. 1127

(E) If an electric security plan approved under division (C) 1128
of this section, except one withdrawn by the utility as authorized 1129
under that division, has a term, exclusive of phase-ins or 1130
deferrals, that exceeds three years from the effective date of the 1131
plan, the commission shall test the plan in the fourth year, and 1132
if applicable, every fourth year thereafter, to determine whether 1133
the plan, including its then-existing pricing and all other terms 1134
and conditions, including any deferrals and any future recovery of 1135
deferrals, continues to be more favorable in the aggregate and 1136
during the remaining term of the plan as compared to the expected 1137
results that would otherwise apply under section 4928.142 of the 1138
Revised Code. The commission shall also determine the prospective 1139
effect of the electric security plan to determine if that effect 1140
is substantially likely to provide the electric distribution 1141

utility with a return on common equity that is significantly in 1142
excess of the return on common equity that is likely to be earned 1143
by publicly traded companies, including utilities, that face 1144
comparable business and financial risk, with such adjustments for 1145
capital structure as may be appropriate. The burden of proof for 1146
demonstrating that significantly excessive earnings will not occur 1147
shall be on the electric distribution utility. If the test results 1148
are in the negative or the commission finds that continuation of 1149
the electric security plan will result in a return on equity that 1150
is significantly in excess of the return on common equity that is 1151
likely to be earned by publicly traded companies, including 1152
utilities, that will face comparable business and financial risk, 1153
with such adjustments for capital structure as may be appropriate, 1154
during the balance of the plan, the commission may terminate the 1155
electric security plan, but not until it shall have provided 1156
interested parties with notice and an opportunity to be heard. The 1157
commission may impose such conditions on the plan's termination as 1158
it considers reasonable and necessary to accommodate the 1159
transition from an approved plan to the more advantageous 1160
alternative. In the event of an electric security plan's 1161
termination pursuant to this division, the commission shall permit 1162
the continued deferral and phase-in of any amounts that occurred 1163
prior to that termination and the recovery of those amounts as 1164
contemplated under that electric security plan. 1165

1166

(F) With regard to the provisions that are included in an 1167
electric security plan under this section, the commission shall 1168
consider, following the end of each annual period of the plan, if 1169
any such adjustments resulted in excessive earnings as measured by 1170
whether the earned return on common equity of the electric 1171
distribution utility is significantly in excess of the return on 1172
common equity that was earned during the same period by publicly 1173
traded companies, including utilities, that face comparable 1174

business and financial risk, with such adjustments for capital 1175
structure as may be appropriate. Consideration also shall be given 1176
to the capital requirements of future committed investments in 1177
this state. The burden of proof for demonstrating that 1178
significantly excessive earnings did not occur shall be on the 1179
electric distribution utility. If the commission finds that such 1180
adjustments, in the aggregate, did result in significantly 1181
excessive earnings, it shall require the electric distribution 1182
utility to return to consumers the amount of the excess by 1183
prospective adjustments; provided that, upon making such 1184
prospective adjustments, the electric distribution utility shall 1185
have the right to terminate the plan and immediately file an 1186
application pursuant to section 4928.142 of the Revised Code. Upon 1187
termination of a plan under this division, rates shall be set on 1188
the same basis as specified in division (C)(2)(b) of this section, 1189
and the commission shall permit the continued deferral and 1190
phase-in of any amounts that occurred prior to that termination 1191
and the recovery of those amounts as contemplated under that 1192
electric security plan. In making its determination of 1193
significantly excessive earnings under this division, the 1194
commission shall not consider, directly or indirectly, the 1195
revenue, expenses, or earnings of any affiliate or parent company. 1196
1197

Sec. 4928.144. The public utilities commission by order may 1198
authorize any just and reasonable phase-in of any electric 1199
distribution utility rate or price established under sections 1200
4928.141 to 4928.143 of the Revised Code, and inclusive of 1201
carrying charges, as the commission considers necessary to ensure 1202
rate or price stability for consumers. If the commission's order 1203
includes such a phase-in, the order also shall provide for the 1204
creation of regulatory assets pursuant to generally accepted 1205
accounting principles, by authorizing the deferral of incurred 1206

costs equal to the amount not collected, plus carrying charges on 1207
that amount. Further, the order shall authorize the collection of 1208
those deferrals through a nonbypassable surcharge on any such rate 1209
or price so established for the electric distribution utility by 1210
the commission. 1211

Sec. 4928.145. During a proceeding under sections 4928.141 to 1212
4928.144 of the Revised Code and upon submission of an appropriate 1213
discovery request, an electric distribution utility shall make 1214
available to the requesting party every contract or agreement that 1215
is between the utility or any of its affiliates and a party to the 1216
proceeding, consumer, electric services company, or political 1217
subdivision and that is relevant to the proceeding, subject to 1218
such protection for proprietary or confidential information as is 1219
determined appropriate by the public utilities commission. 1220
1221

Sec. 4928.146. Nothing in sections 4928.141 to 4928.145 of 1222
the Revised Code precludes or prohibits an electric distribution 1223
utility providing competitive retail electric service to electric 1224
load centers within the certified territory of another such 1225
utility. 1226

Sec. 4928.151. The public utilities commission shall adopt 1227
and enforce rules prescribing a uniform, statewide policy 1228
regarding electric transmission and distribution line extensions 1229
and requisite substations and related facilities that are 1230
requested by nonresidential customers of electric utilities, so 1231
that, on and after the effective date of the initial rules so 1232
adopted, all such utilities apply the same policies and charges to 1233
those customers. Initial rules shall be adopted not later than six 1234
months after the effective date of this section. The rules shall 1235
address the just and reasonable allocation to and utility recovery 1236

from the requesting customer or other customers of the utility of 1237
all costs of any such line extension and any requisite substation 1238
or related facility, including, but not limited to, the costs of 1239
necessary technical studies, operations and maintenance costs, and 1240
capital costs, including a return on capital costs. 1241

Sec. 4928.17. (A) Except as otherwise provided in sections 1242
4928.142 or 4928.143 or 4928.31 to 4928.40 of the Revised Code and 1243
beginning on the starting date of competitive retail electric 1244
service, no electric utility shall engage in this state, either 1245
directly or through an affiliate, in the businesses of supplying a 1246
noncompetitive retail electric service and supplying a competitive 1247
retail electric service, or in the businesses of supplying a 1248
noncompetitive retail electric service and supplying a product or 1249
service other than retail electric service, unless the utility 1250
implements and operates under a corporate separation plan that is 1251
approved by the public utilities commission under this section, is 1252
consistent with the policy specified in section 4928.02 of the 1253
Revised Code, and achieves all of the following: 1254

(1) The plan provides, at minimum, for the provision of the 1255
competitive retail electric service or the nonelectric product or 1256
service through a fully separated affiliate of the utility, and 1257
the plan includes separate accounting requirements, the code of 1258
conduct as ordered by the commission pursuant to a rule it shall 1259
adopt under division (A) of section 4928.06 of the Revised Code, 1260
and such other measures as are necessary to effectuate the policy 1261
specified in section 4928.02 of the Revised Code. 1262

(2) The plan satisfies the public interest in preventing 1263
unfair competitive advantage and preventing the abuse of market 1264
power. 1265

(3) The plan is sufficient to ensure that the utility will 1266
not extend any undue preference or advantage to any affiliate, 1267

division, or part of its own business engaged in the business of 1268
supplying the competitive retail electric service or nonelectric 1269
product or service, including, but not limited to, utility 1270
resources such as trucks, tools, office equipment, office space, 1271
supplies, customer and marketing information, advertising, billing 1272
and mailing systems, personnel, and training, without compensation 1273
based upon fully loaded embedded costs charged to the affiliate; 1274
and to ensure that any such affiliate, division, or part will not 1275
receive undue preference or advantage from any affiliate, 1276
division, or part of the business engaged in business of supplying 1277
the noncompetitive retail electric service. No such utility, 1278
affiliate, division, or part shall extend such undue preference. 1279
Notwithstanding any other division of this section, a utility's 1280
obligation under division (A)(3) of this section shall be 1281
effective January 1, 2000. 1282

(B) The commission may approve, modify and approve, or 1283
disapprove a corporate separation plan filed with the commission 1284
under division (A) of this section. As part of the code of conduct 1285
required under division (A)(1) of this section, the commission 1286
shall adopt rules pursuant to division (A) of section 4928.06 of 1287
the Revised Code regarding corporate separation and procedures for 1288
plan filing and approval. The rules shall include limitations on 1289
affiliate practices solely for the purpose of maintaining a 1290
separation of the affiliate's business from the business of the 1291
utility to prevent unfair competitive advantage by virtue of that 1292
relationship. The rules also shall include an opportunity for any 1293
person having a real and substantial interest in the corporate 1294
separation plan to file specific objections to the plan and 1295
propose specific responses to issues raised in the objections, 1296
which objections and responses the commission shall address in its 1297
final order. Prior to commission approval of the plan, the 1298
commission shall afford a hearing upon those aspects of the plan 1299
that the commission determines reasonably require a hearing. The 1300

commission may reject and require refiling of a substantially 1301
inadequate plan under this section. 1302

(C) The commission shall issue an order approving or 1303
modifying and approving a corporate separation plan under this 1304
section, to be effective on the date specified in the order, only 1305
upon findings that the plan reasonably complies with the 1306
requirements of division (A) of this section and will provide for 1307
ongoing compliance with the policy specified in section 4928.02 of 1308
the Revised Code. However, for good cause shown, the commission 1309
may issue an order approving or modifying and approving a 1310
corporate separation plan under this section that does not comply 1311
with division (A)(1) of this section but complies with such 1312
functional separation requirements as the commission authorizes to 1313
apply for an interim period prescribed in the order, upon a 1314
finding that such alternative plan will provide for ongoing 1315
compliance with the policy specified in section 4928.02 of the 1316
Revised Code. 1317

(D) Any party may seek an amendment to a corporate separation 1318
plan approved under this section, and the commission, pursuant to 1319
a request from any party or on its own initiative, may order as it 1320
considers necessary the filing of an amended corporate separation 1321
plan to reflect changed circumstances. 1322

(E) ~~Notwithstanding section 4905.20, 4905.21, 4905.46, or~~ 1323
~~4905.48 of the Revised Code, an No electric distribution utility~~ 1324
~~may divest itself of shall sell or transfer any generating asset~~ 1325
~~it wholly or partly owns at any time without obtaining prior~~ 1326
~~commission approval, subject to the provisions of Title XLIX of~~ 1327
~~the Revised Code relating to the transfer of transmission,~~ 1328
~~distribution, or ancillary service provided by such generating~~ 1329
~~asset.~~ 1330

Sec. 4928.20. (A) The legislative authority of a municipal 1331

corporation may adopt an ordinance, or the board of township 1332
trustees of a township or the board of county commissioners of a 1333
county may adopt a resolution, under which, on or after the 1334
starting date of competitive retail electric service, it may 1335
aggregate in accordance with this section the retail electrical 1336
loads located, respectively, within the municipal corporation, 1337
township, or unincorporated area of the county and, for that 1338
purpose, may enter into service agreements to facilitate for those 1339
loads the sale and purchase of electricity. The legislative 1340
authority or board also may exercise such authority jointly with 1341
any other such legislative authority or board. For customers that 1342
are not mercantile ~~commercial~~ customers, an ordinance or 1343
resolution under this division shall specify whether the 1344
aggregation will occur only with the prior, affirmative consent of 1345
each person owning, occupying, controlling, or using an electric 1346
load center proposed to be aggregated or will occur automatically 1347
for all such persons pursuant to the opt-out requirements of 1348
division (D) of this section. The aggregation of mercantile 1349
~~commercial~~ customers shall occur only with the prior, affirmative 1350
consent of each such person owning, occupying, controlling, or 1351
using an electric load center proposed to be aggregated. Nothing 1352
in this division, however, authorizes the aggregation of the 1353
retail electric loads of an electric load center, as defined in 1354
section 4933.81 of the Revised Code, that is located in the 1355
certified territory of a nonprofit electric supplier under 1356
sections 4933.81 to 4933.90 of the Revised Code or an electric 1357
load center served by transmission or distribution facilities of a 1358
municipal electric utility. 1359

(B) If an ordinance or resolution adopted under division (A) 1360
of this section specifies that aggregation of customers that are 1361
not mercantile ~~commercial~~ customers will occur automatically as 1362
described in that division, the ordinance or resolution shall 1363
direct the board of elections to submit the question of the 1364

authority to aggregate to the electors of the respective municipal 1365
corporation, township, or unincorporated area of a county at a 1366
special election on the day of the next primary or general 1367
election in the municipal corporation, township, or county. The 1368
legislative authority or board shall certify a copy of the 1369
ordinance or resolution to the board of elections not less than 1370
seventy-five days before the day of the special election. No 1371
ordinance or resolution adopted under division (A) of this section 1372
that provides for an election under this division shall take 1373
effect unless approved by a majority of the electors voting upon 1374
the ordinance or resolution at the election held pursuant to this 1375
division. 1376

(C) Upon the applicable requisite authority under divisions 1377
(A) and (B) of this section, the legislative authority or board 1378
shall develop a plan of operation and governance for the 1379
aggregation program so authorized. Before adopting a plan under 1380
this division, the legislative authority or board shall hold at 1381
least two public hearings on the plan. Before the first hearing, 1382
the legislative authority or board shall publish notice of the 1383
hearings once a week for two consecutive weeks in a newspaper of 1384
general circulation in the jurisdiction. The notice shall 1385
summarize the plan and state the date, time, and location of each 1386
hearing. 1387

(D) No legislative authority or board, pursuant to an 1388
ordinance or resolution under divisions (A) and (B) of this 1389
section that provides for automatic aggregation of customers that 1390
are not mercantile ~~commercial~~ customers as described in division 1391
(A) of this section, shall aggregate the electrical load of any 1392
electric load center located within its jurisdiction unless it in 1393
advance clearly discloses to the person owning, occupying, 1394
controlling, or using the load center that the person will be 1395
enrolled automatically in the aggregation program and will remain 1396

so enrolled unless the person affirmatively elects by a stated 1397
procedure not to be so enrolled. The disclosure shall state 1398
prominently the rates, charges, and other terms and conditions of 1399
enrollment. The stated procedure shall allow any person enrolled 1400
in the aggregation program the opportunity to opt out of the 1401
program every ~~two~~ three years, without paying a switching fee. Any 1402
such person that opts out before the commencement of the 1403
aggregation program pursuant to the stated procedure shall default 1404
to the standard service offer provided under ~~division (A) of~~ 1405
section 4928.14 or division (D) of section 4928.35 of the Revised 1406
Code until the person chooses an alternative supplier. 1407

(E)(1) With respect to a governmental aggregation for a 1408
municipal corporation that is authorized pursuant to divisions (A) 1409
to (D) of this section, resolutions may be proposed by initiative 1410
or referendum petitions in accordance with sections 731.28 to 1411
731.41 of the Revised Code. 1412

(2) With respect to a governmental aggregation for a township 1413
or the unincorporated area of a county, which aggregation is 1414
authorized pursuant to divisions (A) to (D) of this section, 1415
resolutions may be proposed by initiative or referendum petitions 1416
in accordance with sections 731.28 to 731.40 of the Revised Code, 1417
except that: 1418

(a) The petitions shall be filed, respectively, with the 1419
township fiscal officer or the board of county commissioners, who 1420
shall perform those duties imposed under those sections upon the 1421
city auditor or village clerk. 1422

(b) The petitions shall contain the signatures of not less 1423
than ten per cent of the total number of electors in, 1424
respectively, the township or the unincorporated area of the 1425
county who voted for the office of governor at the preceding 1426
general election for that office in that area. 1427

(F) A governmental aggregator under division (A) of this 1428
section is not a public utility engaging in the wholesale purchase 1429
and resale of electricity, and provision of the aggregated service 1430
is not a wholesale utility transaction. A governmental aggregator 1431
shall be subject to supervision and regulation by the public 1432
utilities commission only to the extent of any competitive retail 1433
electric service it provides and commission authority under this 1434
chapter. 1435

(G) This section does not apply in the case of a municipal 1436
corporation that supplies such aggregated service to electric load 1437
centers to which its municipal electric utility also supplies a 1438
noncompetitive retail electric service through transmission or 1439
distribution facilities the utility singly or jointly owns or 1440
operates. 1441

(H) A governmental aggregator shall not include in its 1442
aggregation the accounts of any of the following: 1443

(1) A customer that has opted out of the aggregation; 1444

(2) A customer in contract with a certified ~~competitive~~ 1445
electric services company ~~retail electric services provider~~; 1446

(3) A customer that has a special contract with an electric 1447
distribution utility; 1448

(4) A customer that is not located within the governmental 1449
aggregator's governmental boundaries; 1450

(5) Subject to division (C) of section 4928.21 of the Revised 1451
Code, a customer who appears on the "do not aggregate" list 1452
maintained under that section. 1453

(I) Customers that are part of a governmental aggregation 1454
under this section shall be responsible only for such portion of a 1455
surcharge under section 4928.144 of the Revised Code that is 1456
proportionate to the benefits, as determined by the commission, 1457

that the governmental aggregation's customers as an aggregated 1458
group receive. The proportionate surcharge so established shall 1459
apply to each customer of the governmental aggregation while the 1460
customer is part of that aggregation. If a customer ceases being 1461
such a customer, the otherwise applicable surcharge shall apply. 1462
Nothing in this section shall result in less than full recovery by 1463
an electric distribution utility of any surcharge authorized under 1464
section 4928.144 of the Revised Code. 1465

(J) On behalf of the customers that are part of a 1466
governmental aggregation under this section and by filing written 1467
notice with the public utilities commission, the legislative 1468
authority that formed or is forming that governmental aggregation 1469
may elect not to receive standby service within the meaning of 1470
division (B)(2)(e) of section 4928.143 of the Revised Code from an 1471
electric distribution utility in whose certified territory the 1472
governmental aggregation is located and that operates under an 1473
approved electric security plan under that section. Upon the 1474
filing of that notice, the electric distribution utility shall not 1475
charge any such customer to whom electricity is delivered under 1476
the governmental aggregation for the standby service. Any such 1477
consumer that returns to the utility for competitive retail 1478
electric service shall pay the market price of power incurred by 1479
the utility to serve that consumer plus any amount attributable to 1480
the utility's cost of compliance with the alternative energy 1481
resource provisions of section 4928.64 of the Revised Code to 1482
serve the consumer. Such market price shall include, but not be 1483
limited to, capacity and energy charges; all charges associated 1484
with the provision of that power supply through the regional 1485
transmission organization, including, but not limited to, 1486
transmission, ancillary services, congestion, and settlement and 1487
administrative charges; and all other costs incurred by the 1488
utility that are associated with the procurement, provision, and 1489
administration of that power supply, as such costs may be approved 1490

by the commission. The period of time during which the market 1491
price and alternative energy resource amount shall be so assessed 1492
on the consumer shall be from the time the consumer so returns to 1493
the electric distribution utility until the expiration of the 1494
electric security plan. However, if that period of time is 1495
expected to be more than two years, the commission may reduce the 1496
time period to a period of not less than two years. 1497

(K) The commission shall adopt rules to encourage and promote 1498
large-scale governmental aggregation in this state. For that 1499
purpose, the commission shall conduct an immediate review of any 1500
rules it has adopted for the purpose of this section that are in 1501
effect on the effective date of the amendment of this section by 1502
S.B. 221 of the 127th general assembly. Further, within the 1503
context of an electric security plan under section 4928.143 of the 1504
Revised Code, the commission shall consider the effect on 1505
large-scale governmental aggregation of any nonbypassable 1506
generation charges, however collected, that would be established 1507
under that plan, except any nonbypassable generation charge that 1508
relates to a cost incurred by the electric distribution utility, 1509
the deferral of which has been authorized by the commission prior 1510
to the effective date of the amendment of this section by S.B. 221 1511
of the 127th general assembly. 1512

Sec. 4928.24. The public utilities commission shall employ a 1513
federal energy advocate to monitor the activities of the federal 1514
energy regulatory commission and other federal agencies and to 1515
advocate on behalf of the interests of retail electric service 1516
consumers in this state. The attorney general shall represent the 1517
advocate before the federal energy regulatory commission and other 1518
federal agencies. Among other duties assigned to the advocate by 1519
the commission, the advocate shall examine the value of the 1520
participation of this state's electric utilities in regional 1521
transmission organizations and submit a report to the public 1522

utilities commission on whether continued participation of those 1523
utilities is in the interest of those consumers. 1524

Sec. 4928.31. (A) Not later than ninety days after the 1525
effective date of this section, an electric utility supplying 1526
retail electric service in this state on that date shall file with 1527
the public utilities commission a plan for the utility's provision 1528
of retail electric service in this state during the market 1529
development period. This transition plan shall be in such form as 1530
the commission shall prescribe by rule adopted under division (A) 1531
of section 4928.06 of the Revised Code and shall include all of 1532
the following: 1533

(1) A rate unbundling plan that specifies, consistent with 1534
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 1535
any rules adopted by the commission under division (A) of section 1536
4928.06 of the Revised Code, the unbundles components for electric 1537
generation, transmission, and distribution service and such other 1538
unbundled service components as the commission requires, to be 1539
charged by the utility beginning on the starting date of 1540
competitive retail electric service and that includes information 1541
the commission requires to fix and determine those components; 1542

(2) A corporate separation plan consistent with section 1543
4928.17 of the Revised Code and any rules adopted by the 1544
commission under division (A) of section 4928.06 of the Revised 1545
Code; 1546

(3) Such plan or plans as the commission requires to address 1547
operational support systems and any other technical implementation 1548
issues pertaining to competitive retail electric service 1549
consistent with any rules adopted by the commission under division 1550
(A) of section 4928.06 of the Revised Code; 1551

(4) An employee assistance plan for providing severance, 1552
retraining, early retirement, retention, outplacement, and other 1553

assistance for the utility's employees whose employment is 1554
affected by electric industry restructuring under this chapter; 1555

(5) A consumer education plan consistent with former section 1556
4928.42 of the Revised Code and any rules adopted by the 1557
commission under division (A) of section 4928.06 of the Revised 1558
Code. 1559

A transition plan under this section may include tariff terms 1560
and conditions to address reasonable requirements for changing 1561
suppliers, length of commitment by a customer for service, and 1562
such other matters as are necessary to accommodate electric 1563
restructuring. Additionally, a transition plan under this section 1564
may include an application for the opportunity to receive 1565
transition revenues as authorized under sections 4928.31 to 1566
4928.40 of the Revised Code, which application shall be consistent 1567
with those sections and any rules adopted by the commission under 1568
division (A) of section 4928.06 of the Revised Code. The 1569
transition plan also may include a plan for the independent 1570
operation of the utility's transmission facilities consistent with 1571
section 4928.12 of the Revised Code, division (A)(13) of section 1572
4928.34 of the Revised Code, and any rules adopted by the 1573
commission under division (A) of section 4928.06 of the Revised 1574
Code. 1575

The commission may reject and require refiling, in whole or 1576
in part, of any substantially inadequate transition plan. 1577

(B) The electric utility shall provide public notice of its 1578
filing under division (A) of this section, in a form and manner 1579
that the commission shall prescribe by rule adopted under division 1580
(A) of section 4928.06 of the Revised Code. However, the adoption 1581
of rules regarding the public notice under this division, 1582
regarding the form of the transition plan under division (A) of 1583
this section, and regarding procedures for expedited discovery 1584
under division (A) of section 4928.32 of the Revised Code are not 1585

subject to division (D) of section 111.15 of the Revised Code. 1586

Sec. 4928.34. (A) The public utilities commission shall not 1587
approve or prescribe a transition plan under division (A) or (B) 1588
of section 4928.33 of the Revised Code unless the commission first 1589
makes all of the following determinations: 1590

(1) The unbundled components for the electric transmission 1591
component of retail electric service, as specified in the 1592
utility's rate unbundling plan required by division (A)(1) of 1593
section 4928.31 of the Revised Code, equal the tariff rates 1594
determined by the federal energy regulatory commission that are in 1595
effect on the date of the approval of the transition plan under 1596
sections 4928.31 to 4928.40 of the Revised Code, as each such rate 1597
is determined applicable to each particular customer class and 1598
rate schedule by the commission. The unbundled transmission 1599
component shall include a sliding scale of charges under division 1600
(B) of section 4905.31 of the Revised Code to ensure that refunds 1601
determined or approved by the federal energy regulatory commission 1602
are flowed through to retail electric customers. 1603

(2) The unbundled components for retail electric distribution 1604
service in the rate unbundling plan equal the difference between 1605
the costs attributable to the utility's transmission and 1606
distribution rates and charges under its schedule of rates and 1607
charges in effect on the effective date of this section, based 1608
upon the record in the most recent rate proceeding of the utility 1609
for which the utility's schedule was established, and the tariff 1610
rates for electric transmission service determined by the federal 1611
energy regulatory commission as described in division (A)(1) of 1612
this section. 1613

(3) All other unbundled components required by the commission 1614
in the rate unbundling plan equal the costs attributable to the 1615
particular service as reflected in the utility's schedule of rates 1616

and charges in effect on the effective date of this section. 1617

(4) The unbundled components for retail electric generation 1618
service in the rate unbundling plan equal the residual amount 1619
remaining after the determination of the transmission, 1620
distribution, and other unbundled components, and after any 1621
adjustments necessary to reflect the effects of the amendment of 1622
section 5727.111 of the Revised Code by Sub. S.B. No. 3 of the 1623
123rd general assembly. 1624

(5) All unbundled components in the rate unbundling plan have 1625
been adjusted to reflect any base rate reductions on file with the 1626
commission and as scheduled to be in effect by December 31, 2005, 1627
under rate settlements in effect on the effective date of this 1628
section. However, all earnings obligations, restrictions, or caps 1629
imposed on an electric utility in a commission order prior to the 1630
effective date of this section are void. 1631

(6) Subject to division (A)(5) of this section, the total of 1632
all unbundled components in the rate unbundling plan are capped 1633
and shall equal during the market development period, except as 1634
specifically provided in this chapter, the total of all rates and 1635
charges in effect under the applicable bundled schedule of the 1636
electric utility pursuant to section 4905.30 of the Revised Code 1637
in effect on the day before the effective date of this section, 1638
including the transition charge determined under section 4928.40 1639
of the Revised Code, adjusted for any changes in the taxation of 1640
electric utilities and retail electric service under Sub. S.B. No. 1641
3 of the 123rd General Assembly, the universal service rider 1642
authorized by section 4928.51 of the Revised Code, and the 1643
temporary rider authorized by section 4928.61 of the Revised Code. 1644
For the purpose of this division, the rate cap applicable to a 1645
customer receiving electric service pursuant to an arrangement 1646
approved by the commission under section 4905.31 of the Revised 1647
Code is, for the term of the arrangement, the total of all rates 1648

and charges in effect under the arrangement. For any rate schedule
filed pursuant to section 4905.30 of the Revised Code or any
arrangement subject to approval pursuant to section 4905.31 of the
Revised Code, the initial tax-related adjustment to the rate cap
required by this division shall be equal to the rate of taxation
specified in section 5727.81 of the Revised Code and applicable to
the schedule or arrangement. To the extent such total annual
amount of the tax-related adjustment is greater than or less than
the comparable amount of the total annual tax reduction
experienced by the electric utility as a result of the provisions
of Sub. S.B. No. 3 of the ~~123rd~~ 123rd general assembly, such
difference shall be addressed by the commission through accounting
procedures, refunds, or an annual surcharge or credit to
customers, or through other appropriate means, to avoid placing
the financial responsibility for the difference upon the electric
utility or its shareholders. Any adjustments in the rate of
taxation specified in 5727.81 of the Revised Code section shall
not occur without a corresponding adjustment to the rate cap for
each such rate schedule or arrangement. The department of taxation
shall advise the commission and self-assessors under section
5727.81 of the Revised Code prior to the effective date of any
change in the rate of taxation specified under that section, and
the commission shall modify the rate cap to reflect that
adjustment so that the rate cap adjustment is effective as of the
effective date of the change in the rate of taxation. This
division shall be applied, to the extent possible, to eliminate
any increase in the price of electricity for customers that
otherwise may occur as a result of establishing the taxes
contemplated in section 5727.81 of the Revised Code.

(7) The rate unbundling plan complies with any rules adopted
by the commission under division (A) of section 4928.06 of the
Revised Code.

(8) The corporate separation plan required by division (A)(2) 1681
of section 4928.31 of the Revised Code complies with section 1682
4928.17 of the Revised Code and any rules adopted by the 1683
commission under division (A) of section 4928.06 of the Revised 1684
Code. 1685

(9) Any plan or plans the commission requires to address 1686
operational support systems and any other technical implementation 1687
issues pertaining to competitive retail electric service comply 1688
with any rules adopted by the commission under division (A) of 1689
section 4928.06 of the Revised Code. 1690

(10) The employee assistance plan required by division (A)(4) 1691
of section 4928.31 of the Revised Code sufficiently provides 1692
severance, retraining, early retirement, retention, outplacement, 1693
and other assistance for the utility's employees whose employment 1694
is affected by electric industry restructuring under this chapter. 1695

(11) The consumer education plan required under division 1696
(A)(5) of section 4928.31 of the Revised Code complies with former 1697
section 4928.42 of the Revised Code and any rules adopted by the 1698
commission under division (A) of section 4928.06 of the Revised 1699
Code. 1700

(12) The transition revenues for which an electric utility is 1701
authorized a revenue opportunity under sections 4928.31 to 4928.40 1702
of the Revised Code are the allowable transition costs of the 1703
utility as such costs are determined by the commission pursuant to 1704
section 4928.39 of the Revised Code, and the transition charges 1705
for the customer classes and rate schedules of the utility are the 1706
charges determined pursuant to section 4928.40 of the Revised 1707
Code. 1708

(13) Any independent transmission plan included in the 1709
transition plan filed under section 4928.31 of the Revised Code 1710
reasonably complies with section 4928.12 of the Revised Code and 1711

any rules adopted by the commission under division (A) of section 1712
4928.06 of the Revised Code, unless the commission, for good cause 1713
shown, authorizes the utility to defer compliance until an order 1714
is issued under division (G) of section 4928.35 of the Revised 1715
Code. 1716

(14) The utility is in compliance with sections 4928.01 to 1717
4928.11 of the Revised Code and any rules or orders of the 1718
commission adopted or issued under those sections. 1719

(15) All unbundled components in the rate unbundling plan 1720
have been adjusted to reflect the elimination of the tax on gross 1721
receipts imposed by section 5727.30 of the Revised Code. 1722

In addition, a transition plan approved by the commission 1723
under section 4928.33 of the Revised Code but not containing an 1724
approved independent transmission plan shall contain the express 1725
conditions that the utility will comply with an order issued under 1726
division (G) of section 4928.35 of the Revised Code. 1727

(B) Subject to division (E) of section 4928.17 of the Revised 1728
Code, if the commission finds that any part of the transition plan 1729
would constitute an abandonment under sections 4905.20 and 4905.21 1730
of the Revised Code, the commission shall not approve that part of 1731
the transition plan unless it makes the finding required for 1732
approval of an abandonment application under section 4905.21 of 1733
the Revised Code. Sections 4905.20 and 4905.21 of the Revised Code 1734
otherwise shall not apply to a transition plan under sections 1735
4928.31 to 4928.40 of the Revised Code. 1736

Sec. 4928.35. (A) Upon approval of its transition plan under 1737
sections 4928.31 to 4928.40 of the Revised Code, an electric 1738
utility shall file in accordance with section 4905.30 of the 1739
Revised Code schedules containing the unbundled rate components 1740
set in the approved plan in accordance with section 4928.34 of the 1741
Revised Code. The schedules shall be in effect for the duration of 1742

the utility's market development period, shall be subject to the 1743
cap specified in division (A)(6) of section 4928.34 of the Revised 1744
Code, and shall not be adjusted during that period by the public 1745
utilities commission except as otherwise authorized by division 1746
(B) of this section or as otherwise authorized by federal law or 1747
except to reflect any change in tax law or tax regulation that has 1748
a material effect on the electric utility. 1749

(B) Efforts shall be made to reach agreements with electric 1750
utilities in matters of litigation regarding property valuation 1751
issues. Irrespective of those efforts, the unbundled components 1752
for an electric utility's retail electric generation service and 1753
distribution service, as provided in division (A) of this section, 1754
are not subject to adjustment for the utility's market development 1755
period, except that the commission shall order an equitable 1756
reduction in those components for all customer classes to reflect 1757
any refund a utility receives as a result of the resolution of 1758
utility personal property tax valuation litigation that is 1759
resolved on or after the effective date of this section and not 1760
later than December 31, 2005. Immediately upon the issuance of 1761
that order, the electric utility shall file revised rate schedules 1762
under section 4909.18 of the Revised Code to effect the order. 1763

(C) The schedule under division (A) of this section 1764
containing the unbundled distribution components shall provide 1765
that electric distribution service under the schedule will be 1766
available to all retail electric service customers in the electric 1767
utility's certified territory and their suppliers on a 1768
nondiscriminatory and comparable basis on and after the starting 1769
date of competitive retail electric service. The schedule also 1770
shall include an obligation to build distribution facilities when 1771
necessary to provide adequate distribution service, provided that 1772
a customer requesting that service may be required to pay all or 1773
part of the reasonable incremental cost of the new facilities, in 1774

accordance with rules, policy, precedents, or orders of the 1775
commission. 1776

(D) During the market development period, an electric 1777
distribution utility shall provide consumers on a comparable and 1778
nondiscriminatory basis within its certified territory a standard 1779
service offer of all competitive retail electric services 1780
necessary to maintain essential electric service to consumers, 1781
including a firm supply of electric generation service priced in 1782
accordance with the schedule containing the utility's unbundled 1783
generation service component. Immediately upon approval of its 1784
transition plan, the utility shall file the standard service offer 1785
with the commission under section 4909.18 of the Revised Code, 1786
during the market development period. The failure of a supplier to 1787
deliver retail electric generation service shall result in the 1788
supplier's customers, after reasonable notice, defaulting to the 1789
utility's standard service offer filed under this division until 1790
the customer chooses an alternative supplier. A supplier is deemed 1791
under this section to have failed to deliver such service if any 1792
of the conditions specified in ~~divisions (B)(1) to (4)~~ of section 1793
4928.14 of the Revised Code is met. 1794

(E) An amendment of a corporate separation plan contained in 1795
a transition plan approved by the commission under section 4928.33 1796
of the Revised Code shall be filed and approved as a corporate 1797
separation plan pursuant to section 4928.17 of the Revised Code. 1798

(F) Any change to an electric utility's opportunity to 1799
receive transition revenues under a transition plan approved in 1800
accordance with section 4928.33 of the Revised Code shall be 1801
authorized only as provided in sections 4928.31 to 4928.40 of the 1802
Revised Code. 1803

(G) The commission, by order, shall require each electric 1804
utility whose approved transition plan did not include an 1805
independent transmission plan as described in division (A)(13) of 1806

section 4928.34 of the Revised Code to be a member of, and 1807
transfer control of transmission facilities it owns or controls in 1808
this state to, one or more qualifying transmission entities, as 1809
described in division (B) of section 4928.12 of the Revised Code, 1810
that are planned to be operational on and after December 31, 2003. 1811
However, the commission may extend that date if, for reasons 1812
beyond the control of the utility, a qualifying transmission 1813
entity is not planned to be operational on that date. The 1814
commission's order may specify an earlier date on which the 1815
transmission entity or entities are planned to be operational if 1816
the commission considers it necessary to carry out the policy 1817
specified in section 4928.02 of the Revised Code or to encourage 1818
effective competition in retail electric service in this state. 1819

Upon the issuance of the order, each such utility shall file 1820
with the commission a plan for such independent operation of the 1821
utility's transmission facilities consistent with this division. 1822
The commission may reject and require refiling of any 1823
substantially inadequate plan submitted under this division. 1824

After reasonable notice and opportunity for hearing, the 1825
commission shall approve the plan upon a finding that the plan 1826
will result in the utility's compliance with the order, this 1827
division, and any rules adopted under division (A) of section 1828
4928.06 of the Revised Code. The approved independent transmission 1829
plan shall be deemed a part of the utility's transition plan for 1830
purposes of sections 4928.31 to 4928.40 of the Revised Code. 1831

Sec. 4928.61. (A) There is hereby established in the state 1832
treasury the advanced energy fund, into which shall be deposited 1833
all advanced energy revenues remitted to the director of 1834
development under division (B) of this section, for the exclusive 1835
purposes of funding the advanced energy program created under 1836
section 4928.62 of the Revised Code and paying the program's 1837

administrative costs. Interest on the fund shall be credited to 1838
the fund. 1839

(B) Advanced energy revenues shall include all of the 1840
following: 1841

(1) Revenues remitted to the director after collection by 1842
each electric distribution utility in this state of a temporary 1843
rider on retail electric distribution service rates as such rates 1844
are determined by the public utilities commission pursuant to this 1845
chapter. The rider shall be a uniform amount statewide, determined 1846
by the director of development, after consultation with the public 1847
benefits advisory board created by section 4928.58 of the Revised 1848
Code. The amount shall be determined by dividing an aggregate 1849
revenue target for a given year as determined by the director, 1850
after consultation with the advisory board, by the number of 1851
customers of electric distribution utilities in this state in the 1852
prior year. Such aggregate revenue target shall not exceed more 1853
than fifteen million dollars in any year through 2005 and shall 1854
not exceed more than five million dollars in any year after 2005. 1855
The rider shall be imposed beginning on the effective date of the 1856
amendment of this section by Sub. H.B. 251 of the 126th general 1857
assembly, January 4, 2007, and shall terminate at the end of ten 1858
years following the starting date of competitive retail electric 1859
service or until the advanced energy fund, including interest, 1860
reaches one hundred million dollars, whichever is first. 1861

(2) Revenues from payments, repayments, and collections under 1862
the advanced energy program and from program income; 1863

(3) Revenues remitted to the director after collection by a 1864
municipal electric utility or electric cooperative in this state 1865
upon the utility's or cooperative's decision to participate in the 1866
advanced energy fund; 1867

(4) Revenues from renewable energy compliance payments as 1868

provided under division (C)(2) of section 4928.64 of the Revised 1869
Code; 1870

(5) Revenue from forfeitures under division (C) of section 1871
4928.66 of the Revised Code; 1872

(6) Interest earnings on the advanced energy fund. 1873

(C)(1) Each electric distribution utility in this state shall 1874
remit to the director on a quarterly basis the revenues described 1875
in divisions (B)(1) and (2) of this section. Such remittances 1876
shall occur within thirty days after the end of each calendar 1877
quarter. 1878

(2) Each participating electric cooperative and participating 1879
municipal electric utility shall remit to the director on a 1880
quarterly basis the revenues described in division (B)(3) of this 1881
section. Such remittances shall occur within thirty days after the 1882
end of each calendar quarter. For the purpose of division (B)(3) 1883
of this section, the participation of an electric cooperative or 1884
municipal electric utility in the energy efficiency revolving loan 1885
program as it existed immediately prior to the effective date of 1886
the amendment of this section by Sub. H.B. 251 of the 126th 1887
general assembly, January 4, 2007, does not constitute a decision 1888
to participate in the advanced energy fund under this section as 1889
so amended. 1890

(3) All remittances under divisions (C)(1) and (2) of this 1891
section shall continue only until the end of ten years following 1892
the starting date of competitive retail electric service or until 1893
the advanced energy fund, including interest, reaches one hundred 1894
million dollars, whichever is first. 1895

(D) Any moneys collected in rates for non-low-income customer 1896
energy efficiency programs, as of October 5, 1999, and not 1897
contributed to the energy efficiency revolving loan fund 1898
authorized under this section prior to the effective date of its 1899

amendment by Sub. H.B. 251 of the 126th general assembly, January 1900
4, 2007, shall be used to continue to fund cost-effective, 1901
residential energy efficiency programs, be contributed into the 1902
universal service fund as a supplement to that required under 1903
section 4928.53 of the Revised Code, or be returned to ratepayers 1904
in the form of a rate reduction at the option of the affected 1905
electric distribution utility. 1906

Sec. 4928.621. (A) Any Edison technology center in this state 1907
is eligible to apply for and receive assistance pursuant to 1908
section 4928.62 of the Revised Code for the purposes of creating 1909
an advanced energy manufacturing center in this state that will 1910
provide for the exchange of information and expertise regarding 1911
advanced energy, assisting with the design of advanced energy 1912
projects, developing workforce training programs for such 1913
projects, and encouraging investment in advanced energy 1914
manufacturing technologies for advanced energy products and 1915
investment in sustainable manufacturing operations that create 1916
high-paying jobs in this state. 1917

(B) Any university or group of universities in this state 1918
that conducts research on any advanced energy resource or any 1919
not-for-profit corporation formed to address issues affecting the 1920
price and availability of electricity and having members that are 1921
small businesses may apply for and receive assistance pursuant to 1922
section 4928.62 of the Revised Code for the purpose of encouraging 1923
research in this state that is directed at innovation in or the 1924
refinement of those resources or for the purpose of educational 1925
outreach regarding those resources and, to that end, shall use 1926
that assistance to establish such a program of research or 1927
education outreach. Any such educational outreach shall be 1928
directed at an increase in, innovation regarding, or refinement of 1929
access by or of application or understanding of businesses and 1930
consumers in this state regarding, advanced energy resources. 1931

1932

(C) Any independent group located in this state the express 1933
objective of which is to educate small businesses in this state 1934
regarding renewable energy resources and energy efficiency 1935
programs, or any small business located in this state electing to 1936
utilize an advanced energy project or participate in an energy 1937
efficiency program, is eligible to apply for and receive 1938
assistance pursuant to section 4928.62 of the Revised Code. 1939

(D) Nothing in this section shall be construed as limiting 1940
the eligibility of any qualifying entity to apply for or receive 1941
assistance pursuant to section 4928.62 of the Revised Code. 1942

Sec. 4928.64. (A)(1) As used in sections 4928.64 and 4928.65 1943
of the Revised Code, "alternative energy resource" means an 1944
advanced energy resource or renewable energy resource, as defined 1945
in section 4928.01 of the Revised Code that has a 1946
placed-in-service date of January 1, 1998, or after; or a 1947
mercantile customer-sited advance energy resource or renewable 1948
energy resource, whether new or existing, that the mercantile 1949
customer commits for integration into the electric distribution 1950
utility's demand-response, energy efficiency, or peak demand 1951
reduction programs as provided under division (B)(2)(b) of section 1952
4928.66 of the Revised Code, including, but not limited to, any of 1953
the following: 1954

(a) A resource that has the effect of improving the 1955
relationship between real and reactive power; 1956

(b) A resource that makes efficient use of waste heat or 1957
other thermal capabilities owned or controlled by a mercantile 1958
customer; 1959

(c) Storage technology that allows a mercantile customer more 1960
flexibility to modify its demand or load and usage 1961

<u>characteristics;</u>	1962
<u>(d) Electric generation equipment owned or controlled by a</u>	1963
<u>mercantile customer that uses an advanced energy resource or</u>	1964
<u>renewable energy resource;</u>	1965
<u>(e) Any advanced energy resource or renewable energy resource</u>	1966
<u>of the mercantile customer that can be utilized effectively as</u>	1967
<u>part of any advanced energy resource plan of an electric</u>	1968
<u>distribution utility and would otherwise qualify as an alternative</u>	1969
<u>energy resource if it were utilized directly by an electric</u>	1970
<u>distribution utility.</u>	1971
<u>(2) For the purpose of this section and as it considers</u>	1972
<u>appropriate, the public utilities commission may classify any new</u>	1973
<u>technology as such an advanced energy resource or a renewable</u>	1974
<u>energy resource.</u>	1975
<u>(B) By 2025 and thereafter, an electric distribution utility</u>	1976
<u>shall provide from alternative energy resources, including, at its</u>	1977
<u>discretion, alternative energy resources obtained pursuant to an</u>	1978
<u>electricity supply contract, a portion of the electricity supply</u>	1979
<u>required for its standard service offer under section 4928.141 of</u>	1980
<u>the Revised Code, and an electric services company shall provide a</u>	1981
<u>portion of its electricity supply for retail consumers in this</u>	1982
<u>state from alternative energy resources, including, at its</u>	1983
<u>discretion, alternative energy resources obtained pursuant to an</u>	1984
<u>electricity supply contract. That portion shall equal twenty-five</u>	1985
<u>per cent of the total number of kilowatt hours of electricity sold</u>	1986
<u>by the subject utility or company to any and all retail electric</u>	1987
<u>consumers whose electric load centers are served by that utility</u>	1988
<u>and are located within the utility's certified territory or, in</u>	1989
<u>the case of an electric services company, are served by the</u>	1990
<u>company and are located within this state. However, nothing in</u>	1991
<u>this section precludes a utility or company from providing a</u>	1992
<u>greater percentage. The baseline for a utility's or company's</u>	1993

compliance with the alternative energy resource requirements of 1994
this section shall be the average of such total kilowatt hours it 1995
sold in the preceding three calendar years, except that the 1996
commission may reduce a utility's or company's baseline to adjust 1997
for new economic growth in the utility's certified territory or, 1998
in the case of an electric services company, in the company's 1999
service area in this state. 2000

2001

Of the alternative energy resources implemented by the 2002
subject utility or company by 2025 and thereafter: 2003

(1) Half may be generated from advanced energy resources; 2004

(2) At least half shall be generated from renewable energy 2005
resources, including one-half per cent from solar energy 2006
resources, in accordance with the following benchmarks: 2007

<u>By end of year</u>	<u>Renewable energy</u>	<u>Solar energy</u>	
	<u>resources</u>	<u>resources</u>	
<u>2009</u>	<u>0.25%</u>	<u>0.004%</u>	2009
<u>2010</u>	<u>0.50%</u>	<u>0.010%</u>	2010
<u>2011</u>	<u>1%</u>	<u>0.030%</u>	2011
<u>2012</u>	<u>1.5%</u>	<u>0.060%</u>	2012
<u>2013</u>	<u>2%</u>	<u>0.090%</u>	2013
<u>2014</u>	<u>2.5%</u>	<u>0.12%</u>	2014
<u>2015</u>	<u>3.5%</u>	<u>0.15%</u>	2015
<u>2016</u>	<u>4.5%</u>	<u>0.18%</u>	2016
<u>2017</u>	<u>5.5%</u>	<u>0.22%</u>	2017
<u>2018</u>	<u>6.5%</u>	<u>0.26%</u>	2018
<u>2019</u>	<u>7.5%</u>	<u>0.3%</u>	2019
<u>2020</u>	<u>8.5%</u>	<u>0.34%</u>	2020
<u>2021</u>	<u>9.5%</u>	<u>0.38%</u>	2021
<u>2022</u>	<u>10.5%</u>	<u>0.42%</u>	2022
<u>2023</u>	<u>11.5%</u>	<u>0.46%</u>	2023
<u>2024 and each calendar</u>	<u>12.5%</u>	<u>0.5%</u>	2024

year thereafter

(3) At least one-half of the renewable energy resources 2025
implemented by the utility or company shall be met through 2026
facilities located in this state; the remainder shall be met with 2027
resources that can be shown to be deliverable into this state. 2028

(C)(1) The commission annually shall review an electric 2029
distribution utility's or electric services company's compliance 2030
with the most recent applicable benchmark under division (B)(2) of 2031
this section and, in the course of that review, shall identify any 2032
undercompliance or noncompliance of the utility or company that it 2033
determines is weather-related, related to equipment or resource 2034
shortages for advanced energy or renewable energy resources as 2035
applicable, or is otherwise outside the utility's or company's 2036
control. 2037

(2) Subject to the cost cap provisions of division (C)(3) of 2038
this section, if the commission determines, after notice and 2039
opportunity for hearing, and based upon its findings in that 2040
review regarding avoidable undercompliance or noncompliance, but 2041
subject to division (C)(4) of this section, that the utility or 2042
company has failed to comply with any such benchmark, the 2043
commission shall impose a renewable energy compliance payment on 2044
the utility or company. 2045

(a) The compliance payment pertaining to the solar energy 2046
resource benchmarks under division (B)(2) of this section shall be 2047
an amount per megawatt hour of undercompliance or noncompliance in 2048
the period under review, starting at four hundred fifty dollars 2049
for 2009, four hundred dollars for 2010 and 2011, and similarly 2050
reduced every two years thereafter through 2024 by fifty dollars, 2051
to a minimum of fifty dollars. 2052

(b) The compliance payment pertaining to the renewable energy 2053
resource benchmarks under division (B)(2) of this section shall 2054
equal the number of additional renewable energy credits that the 2055

electric distribution utility or electric services company would 2056
have needed to comply with the applicable benchmark in the period 2057
under review times an amount that shall begin at forty-five 2058
dollars and shall be adjusted annually by the commission to 2059
reflect any change in the consumer price index as defined in 2060
section 101.27 of the Revised Code, but shall not be less than 2061
forty-five dollars. 2062

(c) The compliance payment shall not be passed through by the 2063
electric distribution utility or electric services company to 2064
consumers. The compliance payment shall be remitted to the 2065
commission, for deposit to the credit of the advanced energy fund 2066
created under section 4928.61 of the Revised Code. Payment of the 2067
compliance payment shall be subject to such collection and 2068
enforcement procedures as apply to the collection of a forfeiture 2069
under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code. 2070
2071

(3) An electric distribution utility or an electric services 2072
company need not comply with a benchmark under division (B)(1) or 2073
(2) of this section to the extent that its reasonably expected 2074
cost of that compliance exceeds its reasonably expected cost of 2075
otherwise producing or acquiring the requisite electricity by 2076
three per cent or more. 2077

(4)(a) An electric distribution utility or electric services 2078
company may request the commission to make a force majeure 2079
determination pursuant to this division regarding all or part of 2080
the utility's or company's compliance with any minimum benchmark 2081
under division (B)(2) of this section during the period of review 2082
occurring pursuant to division (C)(2) of this section. The 2083
commission may require the electric distribution utility or 2084
electric services company to make solicitations for renewable 2085
energy resource credits as part of its default service before the 2086
utility's or company's request of force majeure under this 2087

division can be made. 2088

(b) Within ninety days after the filing of a request by an 2089
electric distribution utility or electric services company under 2090
division (C)(4)(a) of this section, the commission shall determine 2091
if renewable energy resources are reasonably available in the 2092
marketplace in sufficient quantities for the utility or company to 2093
comply with the subject minimum benchmark during the review 2094
period. In making this determination, the commission shall 2095
consider whether the electric distribution utility or electric 2096
services company has made a good faith effort to acquire 2097
sufficient renewable energy or, as applicable, solar energy 2098
resources to so comply, including, but not limited to, by banking 2099
or seeking renewable energy resource credits or by seeking the 2100
resources through long-term contracts. Additionally, the 2101
commission shall consider the availability of renewable energy or 2102
solar energy resources in this state and other jurisdictions in 2103
the PJM interconnection regional transmission organization or its 2104
successor and the midwest system operator or its successor. 2105

(c) If, pursuant to division (C)(4)(b) of this section, the 2106
commission determines that renewable energy or solar energy 2107
resources are not reasonably available to permit the electric 2108
distribution utility or electric services company to comply, 2109
during the period of review, with the subject minimum benchmark 2110
prescribed under division (B)(2) of this section, the commission 2111
shall modify that compliance obligation of the utility or company 2112
as it determines appropriate to accommodate the finding. 2113
Commission modification shall not automatically reduce the 2114
obligation for the electric distribution utility's or electric 2115
services company's compliance in subsequent years. If it modifies 2116
the electric distribution utility or electric services company 2117
obligation under division (C)(4)(c) of this section, the 2118
commission may require the utility or company, if sufficient 2119

renewable energy resource credits exist in the marketplace, to 2120
acquire additional renewable energy resource credits in subsequent 2121
years equivalent to the utility's or company's modified obligation 2122
under division (C)(4)(c) of this section. 2123

(5) The commission shall establish a process to provide for 2124
at least an annual review of the alternative energy resource 2125
market in this state and in the service territories of the 2126
regional transmission organizations that manage transmission 2127
systems located in this state. The commission shall use the 2128
results of this study to identify any needed changes to the amount 2129
of the renewable energy compliance payment specified under 2130
divisions (C)(2)(a) and (b) of this section. Specifically, the 2131
commission may increase the amount to ensure that payment of 2132
compliance payments is not used to achieve compliance with this 2133
section in lieu of actually acquiring or realizing energy derived 2134
from renewable energy resources. However, if the commission finds 2135
that the amount of the compliance payment should be otherwise 2136
changed, the commission shall present this finding to the general 2137
assembly for legislative enactment. 2138

2139

(D)(1) The commission annually shall submit to the general 2140
assembly in accordance with section 101.68 of the Revised Code a 2141
report describing the compliance of electric distribution 2142
utilities and electric services companies with division (B) of 2143
this section and any strategy for utility and company compliance 2144
or for encouraging the use of alternative energy resources in 2145
supplying this state's electricity needs in a manner that 2146
considers available technology, costs, job creation, and economic 2147
impacts. The commission shall allow and consider public comments 2148
on the report prior to its submission to the general assembly. 2149
Nothing in the report shall be binding on any person, including 2150
any utility or company for the purpose of its compliance with any 2151

benchmark under division (B) of this section, or the enforcement 2152
of that provision under division (C) of this section. 2153

2154

(2) The governor, in consultation with the commission 2155
chairperson, shall appoint an alternative energy advisory 2156
committee. The committee shall examine available technology for 2157
and related timetables, goals, and costs of the alternative energy 2158
resource requirements under division (B) of this section and shall 2159
submit to the commission a semiannual report of its 2160
recommendations. 2161

(E) All costs incurred by an electric distribution utility in 2162
complying with the requirements of this section shall be 2163
bypassable by any consumer that has exercised choice of supplier 2164
under section 4928.03 of the Revised Code. 2165

Sec. 4928.65. An electric distribution utility or electric 2166
services company may use renewable energy credits any time in the 2167
five calendar years following the date of their purchase or 2168
acquisition from any entity, including, but not limited to, a 2169
mercantile customer or an owner or operator of a hydroelectric 2170
generating facility that is located at a dam on a river, or on any 2171
water discharged to a river, that is within or bordering this 2172
state or within or bordering an adjoining state, for the purpose 2173
of complying with the renewable energy and solar energy resource 2174
requirements of division (B)(2) of section 4928.64 of the Revised 2175
Code. The public utilities commission shall adopt rules specifying 2176
that one unit of credit shall equal one megawatt hour of 2177
electricity derived from renewable energy resources. The rules 2178
also shall provide for this state a system of registering 2179
renewable energy credits by specifying which of any generally 2180
available registries shall be used for that purpose and not by 2181
creating a registry. That selected system of registering renewable 2182

energy credits shall allow a hydroelectric generating facility to 2183
be eligible for obtaining renewable energy credits and shall allow 2184
customer-sited projects or actions the broadest opportunities to 2185
be eligible for obtaining renewable energy credits. 2186

2187

Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric 2188
distribution utility shall implement energy efficiency programs 2189
that achieve energy savings equivalent to at least three-tenths of 2190
one per cent of the total, annual average, and normalized 2191
kilowatt-hour sales of the electric distribution utility during 2192
the preceding three calendar years to customers in this state. The 2193
savings requirement, using such a three-year average, shall 2194
increase to an additional five-tenths of one per cent in 2010, 2195
seven-tenths of one per cent in 2011, eight-tenths of one per cent 2196
in 2012, nine-tenths of one per cent in 2013, one per cent from 2197
2014 to 2018, and two per cent each year thereafter, achieving a 2198
cumulative, annual energy savings in excess of twenty-two per cent 2199
by the end of 2025. 2200

(b) Beginning in 2009, an electric distribution utility shall 2201
implement peak demand reduction programs designed to achieve a one 2202
per cent reduction in peak demand in 2009 and an additional 2203
seventy-five hundredths of one per cent reduction each year 2204
through 2018. In 2018, the standing committees in the house of 2205
representatives and the senate primarily dealing with energy 2206
issues shall make recommendations to the general assembly 2207
regarding future peak demand reduction targets. 2208

(2) For the purposes of divisions (A)(1)(a) and (b) of this 2209
section: 2210

(a) The baseline for energy savings under division (A)(1)(a) 2211
of this section shall be the average of the total kilowatt hours 2212
the electric distribution utility sold in the preceding three 2213

calendar years, and the baseline for a peak demand reduction under 2214
division (A)(1)(b) of this section shall be the average peak 2215
demand on the utility in the preceding three calendar years, 2216
except that the commission may reduce either baseline to adjust 2217
for new economic growth in the utility's certified territory. 2218

(b) The commission may amend the benchmarks set forth in 2219
division (A)(1)(a) or (b) of this section if, after application by 2220
the electric distribution utility, the commission determines that 2221
the amendment is necessary because the utility cannot reasonably 2222
achieve the benchmarks due to regulatory, economic, or 2223
technological reasons beyond its reasonable control. 2224

(c) Compliance with divisions (A)(1)(a) and (b) of this 2225
section shall be measured by including the effects of all 2226
demand-response programs for mercantile customers of the subject 2227
electric distribution utility and all such mercantile 2228
customer-sited energy efficiency and peak demand reduction 2229
programs, adjusted upward by the appropriate loss factors. Any 2230
mechanism designed to recover the cost of energy efficiency and 2231
peak demand reduction programs under divisions (A)(1)(a) and (b) 2232
of this section may exempt mercantile customers that commit their 2233
demand-response or other customer-sited capabilities, whether 2234
existing or new, for integration into the electric distribution 2235
utility's demand-response, energy efficiency, or peak demand 2236
reduction programs, if the commission determines that that 2237
exemption reasonably encourages such customers to commit those 2238
capabilities to those programs. If a mercantile customer makes 2239
such existing or new demand-response, energy efficiency, or peak 2240
demand reduction capability available to an electric distribution 2241
utility pursuant to division (A)(2)(c) of this section, the 2242
electric utility's baseline under division (A)(2)(a) of this 2243
section shall be adjusted to exclude the effects of all such 2244
demand-response, energy efficiency, or peak demand reduction 2245

programs that may have existed during the period used to establish 2246
the baseline. The baseline also shall be normalized for changes in 2247
numbers of customers, sales, weather, peak demand, and other 2248
appropriate factors so that the compliance measurement is not 2249
unduly influenced by factors outside the control of the electric 2250
distribution utility. 2251

(d) Programs implemented by a utility may include 2252
demand-response programs, customer-sited programs, and 2253
transmission and distribution infrastructure improvements that 2254
reduce line losses. Division (A)(2)(c) of this section shall be 2255
applied to include facilitating efforts by a mercantile customer 2256
or group of those customers to offer customer-sited 2257
demand-response, energy efficiency, or peak demand reduction 2258
capabilities to the electric distribution utility as part of a 2259
reasonable arrangement submitted to the commission pursuant to 2260
section 4905.31 of the Revised Code. 2261

(e) No programs or improvements described in division 2262
(A)(2)(d) of this section shall conflict with any statewide 2263
building code adopted by the board of building standards. 2264

(B) In accordance with rules it shall adopt, the public 2265
utilities commission shall produce and docket at the commission an 2266
annual report containing the results of its verification of the 2267
annual levels of energy efficiency and of peak demand reductions 2268
achieved by each electric distribution utility pursuant to 2269
division (A) of this section. A copy of the report shall be 2270
provided to the consumers' counsel. 2271

(C) If the commission determines, after notice and 2272
opportunity for hearing and based upon its report under division 2273
(B) of this section, that an electric distribution utility has 2274
failed to comply with an energy efficiency or peak demand 2275
reduction requirement of division (A) of this section, the 2276
commission shall assess a forfeiture on the utility as provided 2277

under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, 2278
either in the amount, per day per undercompliance or 2279
noncompliance, relative to the period of the report, equal to that 2280
prescribed for noncompliances under section 4905.54 of the Revised 2281
Code, or in an amount equal to the then existing market value of 2282
one renewable energy credit per megawatt hour of undercompliance 2283
or noncompliance. Revenue from any forfeiture assessed under this 2284
division shall be deposited to the credit of the advanced energy 2285
fund created under section 4928.61 of the Revised Code. 2286

2287

(D) The commission may establish rules regarding the content 2288
of an application by an electric distribution utility for 2289
commission approval of a revenue decoupling mechanism under this 2290
division. Such an application shall not be considered an 2291
application to increase rates and may be included as part of a 2292
proposal to establish, continue, or expand energy efficiency or 2293
conservation programs. The commission by order may approve an 2294
application under this division if it determines both that the 2295
revenue decoupling mechanism provides for the recovery of revenue 2296
that otherwise may be foregone by the utility as a result of or in 2297
connection with the implementation by the electric distribution 2298
utility of any energy efficiency or energy conservation programs 2299
and reasonably aligns the interests of the utility and of its 2300
customers in favor of those programs. 2301

(E) The commission additionally shall adopt rules that 2302
require an electric distribution utility to provide a customer 2303
upon request with two years' consumption data in an accessible 2304
form. 2305

Sec. 4928.67. ~~(A)(1) Beginning on the starting date of~~ 2306
~~competitive retail electric service, a retail electric service~~ 2307
~~provider in this state~~ Except as provided in division (A)(2) of 2308

this section, an electric utility shall develop a standard 2309
contract or tariff providing for net energy metering. 2310

~~Any time that the total rated generating capacity used by~~ 2311
~~customer generators is less than one per cent of the provider's~~ 2312
~~aggregate customer peak demand in this state, the provider shall~~ 2313
~~make this contract or tariff available to customer generators,~~ 2314
~~upon request and on a first come, first served basis. The~~ 2315

That contract or tariff shall be identical in rate structure, 2316
all retail rate components, and any monthly charges, to the 2317
contract or tariff to which the same customer would be assigned if 2318
that customer were not a customer-generator. 2319

(2) An electric utility shall also develop a separate 2320
standard contract or tariff providing for net metering for a 2321
hospital, as defined in section 3701.01 of the Revised Code, that 2322
is also a customer-generator, subject to all of the following: 2323
2324

(a) No limitation, including that in divisions (A)(31)(a) and 2325
(d) of section 4928.01 of the Revised Code, shall apply regarding 2326
the availability of the contract or tariff to such hospital 2327
customer-generators. 2328

(b) The contract or tariff shall be based both upon the rate 2329
structure, rate components, and any charges to which the hospital 2330
would otherwise be assigned if the hospital were not a 2331
customer-generator and upon the market value of the 2332
customer-generated electricity at the time it is generated. 2333

(c) The contract or tariff shall allow the hospital 2334
customer-generator to operate its electric generating facilities 2335
individually or collectively without any wattage limitation on 2336
size. 2337

~~(2)(B)(1)~~ Net metering under this section shall be 2338
accomplished using a single meter capable of registering the flow 2339

of electricity in each direction. If its existing electrical meter 2340
is not capable of measuring the flow of electricity in two 2341
directions, the customer-generator shall be responsible for all 2342
expenses involved in purchasing and installing a meter that is 2343
capable of measuring electricity flow in two directions. 2344

~~(3) Such an~~ (2) The electric service provider utility, at its 2345
own expense and with the written consent of the 2346
customer-generator, may install one or more additional meters to 2347
monitor the flow of electricity in each direction. 2348

~~(B)(3)~~ Consistent with the other provisions of this section, 2349
the measurement of net electricity supplied or generated shall be 2350
calculated in the following manner: 2351

~~(1)(a)~~ The electric ~~service provider utility~~ shall measure 2352
the net electricity produced or consumed during the billing 2353
period, in accordance with normal metering practices. 2354

~~(2)(b)~~ If the electricity supplied by the electric ~~service~~ 2355
~~provider utility~~ exceeds the electricity generated by the 2356
customer-generator and fed back to the ~~electric service provider~~ 2357
~~utility~~ during the billing period, the customer-generator shall be 2358
billed for the net electricity supplied by the ~~electric service~~ 2359
~~provider utility~~, in accordance with normal metering practices. If 2360
electricity is provided to the ~~electric service provider utility~~, 2361
the credits for that electricity shall appear in the next billing 2362
cycle. 2363

~~(C)(1)(4)~~ A net metering system used by a customer-generator 2364
shall meet all applicable safety and performance standards 2365
established by the national electrical code, the institute of 2366
electrical and electronics engineers, and underwriters 2367
laboratories. 2368

~~(2)(C)~~ The public utilities commission shall adopt rules 2369
relating to additional control and testing requirements for 2370

customer-generators ~~which~~ that the commission determines are 2371
necessary to protect public and worker safety and system 2372
reliability. 2373

(D) An electric ~~service provider~~ utility shall not require a 2374
customer-generator whose net metering system meets the standards 2375
and requirements provided for in divisions (B)(4) and (C)(1) ~~and~~ 2376
~~(D)~~ of this section to do any of the following: 2377

- (1) Comply with additional safety or performance standards; 2378
- (2) Perform or pay for additional tests; 2379
- (3) Purchase additional liability insurance. 2380

Sec. 4928.68. To the extent permitted by federal law, the 2381
public utilities commission shall adopt rules establishing 2382
greenhouse gas emission reporting requirements, including 2383
participation in the climate registry, and carbon dioxide control 2384
planning requirements for each electric generating facility that 2385
is located in this state, is owned or operated by a public utility 2386
that is subject to the commission's jurisdiction, and emits 2387
greenhouse gases, including facilities in operation on the 2388
effective date of this section. 2389

Sec. 4928.69. Notwithstanding any provision of Chapter 4928. 2390
of the Revised Code and except as otherwise provided in an 2391
agreement filed with and approved by the public utilities 2392
commission under section 4905.31 of the Revised Code, an electric 2393
distribution utility shall not charge any person that is a 2394
customer of a municipal electric utility that is in existence on 2395
or before January 1, 2008, any surcharge, service termination 2396
charge, exit fee, or transition charge. 2397

Sec. 4929.01. As used in this chapter: 2398

- (A) "Alternative rate plan" means a method, alternate to the 2399

method of section 4909.15 of the Revised Code, for establishing 2400
rates and charges, under which rates and charges may be 2401
established for a commodity sales service or ancillary service 2402
that is not exempt pursuant to section 4929.04 of the Revised Code 2403
or for a distribution service. Alternative rate plans may include, 2404
but are not limited to, methods that provide adequate and reliable 2405
natural gas services and goods in this state; minimize the costs 2406
and time expended in the regulatory process; tend to assess the 2407
costs of any natural gas service or goods to the entity, service, 2408
or goods that cause such costs to be incurred; afford rate 2409
stability; promote and reward efficiency, quality of service, or 2410
cost containment by a natural gas company; ~~or~~ provide sufficient 2411
flexibility and incentives to the natural gas industry to achieve 2412
high quality, technologically advanced, and readily available 2413
natural gas services and goods at just and reasonable rates and 2414
charges; or establish revenue decoupling mechanisms. Alternative 2415
rate plans also may include, but are not limited to, automatic 2416
adjustments based on a specified index or changes in a specified 2417
cost or costs. 2418

(B) "Ancillary service" means a service that is ancillary to 2419
the receipt or delivery of natural gas to consumers, including, 2420
but not limited to, storage, pooling, balancing, and transmission. 2421

(C) "Commodity sales service" means the sale of natural gas 2422
to consumers, exclusive of any distribution or ancillary service. 2423

(D) "Comparable service" means any regulated service or goods 2424
whose availability, quality, price, terms, and conditions are the 2425
same as or better than those of the services or goods that the 2426
natural gas company provides to a person with which it is 2427
affiliated or which it controls, or, as to any consumer, that the 2428
natural gas company offers to that consumer as part of a bundled 2429
service that includes both regulated and exempt services or goods. 2430

(E) "Consumer" means any person or association of persons 2431

purchasing, delivering, storing, or transporting, or seeking to 2432
purchase, deliver, store, or transport, natural gas, including 2433
industrial consumers, commercial consumers, and residential 2434
consumers, but not including natural gas companies. 2435

(F) "Distribution service" means the delivery of natural gas 2436
to a consumer at the consumer's facilities, by and through the 2437
instrumentalities and facilities of a natural gas company, 2438
regardless of the party having title to the natural gas. 2439

(G) "Natural gas company" means a natural gas company, as 2440
defined in section 4905.03 of the Revised Code, that is a public 2441
utility as defined in section 4905.02 of the Revised Code and 2442
excludes a retail natural gas supplier. 2443

(H) "Person," except as provided in division (N) of this 2444
section, has the same meaning as in section 1.59 of the Revised 2445
Code, and includes this state and any political subdivision, 2446
agency, or other instrumentality of this state and includes the 2447
United States and any agency or other instrumentality of the 2448
United States. 2449

(I) "Billing or collection agent" means a fully independent 2450
agent, not affiliated with or otherwise controlled by a retail 2451
natural gas supplier or governmental aggregator subject to 2452
certification under section 4929.20 of the Revised Code, to the 2453
extent that the agent is under contract with such supplier or 2454
aggregator solely to provide billing and collection for 2455
competitive retail natural gas service on behalf of the supplier 2456
or aggregator. 2457

(J) "Competitive retail natural gas service" means any retail 2458
natural gas service that may be competitively offered to consumers 2459
in this state as a result of revised schedules approved under 2460
division (C) of section 4929.29 of the Revised Code, a rule or 2461
order adopted or issued by the public utilities commission under 2462

Chapter 4905. of the Revised Code, or an exemption granted by the 2463
commission under sections 4929.04 to 4929.08 of the Revised Code. 2464

(K) "Governmental aggregator" means either of the following: 2465

(1) A legislative authority of a municipal corporation, a 2466
board of township trustees, or a board of county commissioners 2467
acting exclusively under section 4929.26 or 4929.27 of the Revised 2468
Code as an aggregator for the provision of competitive retail 2469
natural gas service; 2470

(2) A municipal corporation acting exclusively under Section 2471
4 of Article XVIII, Ohio Constitution, as an aggregator for the 2472
provision of competitive retail natural gas service. 2473

(L)(1) "Mercantile customer" means a customer that consumes, 2474
other than for residential use, more than five hundred thousand 2475
cubic feet of natural gas per year at a single location within 2476
this state or consumes natural gas, other than for residential 2477
use, as part of an undertaking having more than three locations 2478
within or outside of this state. "Mercantile customer" excludes a 2479
customer for which a declaration under division (L)(2) of this 2480
section is in effect pursuant to that division. 2481

(2) A not-for-profit customer that consumes, other than for 2482
residential use, more than five hundred thousand cubic feet of 2483
natural gas per year at a single location within this state or 2484
consumes natural gas, other than for residential use, as part of 2485
an undertaking having more than three locations within or outside 2486
this state may file a declaration under division (L)(2) of this 2487
section with the public utilities commission. The declaration 2488
shall take effect upon the date of filing, and by virtue of the 2489
declaration, the customer is not a mercantile customer for the 2490
purposes of this section and sections 4929.20 to 4929.29 of the 2491
Revised Code or the purposes of a governmental natural gas 2492
aggregation or arrangement or other contract entered into after 2493

the declaration's effective date for the supply or arranging of 2494
the supply of natural gas to the customer to a location within 2495
this state. The customer may file a rescission of the declaration 2496
with the commission at any time. The rescission shall not affect 2497
any governmental natural gas aggregation or arrangement or other 2498
contract entered into by the customer prior to the date of the 2499
filing of the rescission and shall have effect only with respect 2500
to any subsequent such aggregation or arrangement or other 2501
contract. The commission shall prescribe rules under section 2502
4929.10 of the Revised Code specifying the form of the declaration 2503
or a rescission and procedures by which a declaration or 2504
rescission may be filed. 2505

(M) "Retail natural gas service" means commodity sales 2506
service, ancillary service, natural gas aggregation service, 2507
natural gas marketing service, or natural gas brokerage service. 2508

(N) "Retail natural gas supplier" means any person, as 2509
defined in section 1.59 of the Revised Code, that is engaged on a 2510
for-profit or not-for-profit basis in the business of supplying or 2511
arranging for the supply of a competitive retail natural gas 2512
service to consumers in this state that are not mercantile 2513
customers. "Retail natural gas supplier" includes a marketer, 2514
broker, or aggregator, but excludes a natural gas company, a 2515
governmental aggregator as defined in division (K)(1) or (2) of 2516
this section, an entity described in division (B) or (C) of 2517
section 4905.02 of the Revised Code, or a billing or collection 2518
agent, and excludes a producer or gatherer of gas to the extent 2519
such producer or gatherer is not a natural gas company under 2520
section 4905.03 of the Revised Code. 2521

(O) "Revenue decoupling mechanism" means a rate design or 2522
other cost recovery mechanism that provides recovery of the fixed 2523
costs of service and a fair and reasonable rate of return, 2524
irrespective of system throughput or volumetric sales. 2525

Sec. 4929.02. (A) It is the policy of this state to, 2526
throughout this state: 2527

(1) Promote the availability to consumers of adequate, 2528
reliable, and reasonably priced natural gas services and goods; 2529

(2) Promote the availability of unbundled and comparable 2530
natural gas services and goods that provide wholesale and retail 2531
consumers with the supplier, price, terms, conditions, and quality 2532
options they elect to meet their respective needs; 2533

(3) Promote diversity of natural gas supplies and suppliers, 2534
by giving consumers effective choices over the selection of those 2535
supplies and suppliers; 2536

(4) Encourage innovation and market access for cost-effective 2537
supply- and demand-side natural gas services and goods; 2538

(5) Encourage cost-effective and efficient access to 2539
information regarding the operation of the distribution systems of 2540
natural gas companies in order to promote effective customer 2541
choice of natural gas services and goods; 2542

(6) Recognize the continuing emergence of competitive natural 2543
gas markets through the development and implementation of flexible 2544
regulatory treatment; 2545

(7) Promote an expeditious transition to the provision of 2546
natural gas services and goods in a manner that achieves effective 2547
competition and transactions between willing buyers and willing 2548
sellers to reduce or eliminate the need for regulation of natural 2549
gas services and goods under Chapters 4905. and 4909. of the 2550
Revised Code; 2551

(8) Promote effective competition in the provision of natural 2552
gas services and goods by avoiding subsidies flowing to or from 2553
regulated natural gas services and goods; 2554

(9) Ensure that the risks and rewards of a natural gas 2555

company's offering of nonjurisdictional and exempt services and 2556
goods do not affect the rates, prices, terms, or conditions of 2557
nonexempt, regulated services and goods of a natural gas company 2558
and do not affect the financial capability of a natural gas 2559
company to comply with the policy of this state specified in this 2560
section; 2561

(10) Facilitate the state's competitiveness in the global 2562
economy; 2563

(11) Facilitate additional choices for the supply of natural 2564
gas for residential consumers, including aggregation; 2565

(12) Promote an alignment of natural gas company interests 2566
with consumer interest in energy efficiency and energy 2567
conservation. 2568

(B) The public utilities commission and the office of the 2569
consumers' counsel shall follow the policy specified in this 2570
section in ~~carrying out~~ exercising their respective authorities 2571
relative to sections 4929.03 to 4929.30 of the Revised Code. 2572

(C) Nothing in Chapter 4929. of the Revised Code shall be 2573
construed to alter the public utilities commission's construction 2574
or application of division (A)(6) of section 4905.03 of the 2575
Revised Code. 2576

Sec. 4929.051. An alternative rate plan filed by a natural 2577
gas company under section 4929.05 of the Revised Code and 2578
proposing a revenue decoupling mechanism may be an application not 2579
for an increase in rates if the rates, joint rates, tolls, 2580
classifications, charges, or rentals are based upon the billing 2581
determinants and revenue requirement authorized by the public 2582
utilities commission in the company's most recent rate case 2583
proceeding and the plan also establishes, continues, or expands an 2584
energy efficiency or energy conservation program. 2585

Section 2. That existing sections 4905.31, 4928.01, 4928.02, 2586
4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 2587
4928.35, 4928.61, 4928.67, 4929.01, and 4929.02 and sections 2588
4928.41, 4928.42, 4928.431, and 4928.44 of the Revised Code are 2589
hereby repealed. 2590

Section 3. Nothing in this act affects the legal validity or 2591
the force and effect of an electric distribution utility's rate 2592
plan, as defined in section 4928.01 of the Revised Code as amended 2593
by this act, or the plan's terms and conditions, including any 2594
provisions regarding cost recovery. 2595

Section 4. Section 4929.051 of the Revised Code, as enacted 2596
by this act, shall not be applied in favor of a claim or finding 2597
that an application described in that section but submitted to the 2598
Public Utilities Commission prior to the act's effective date is 2599
an application to increase rates. 2600

Section 5. The Governor's Energy Advisor periodically shall 2601
submit a written report to the General Assembly pursuant to 2602
section 101.68 of the Revised Code and report in person to and as 2603
requested by the standing committees of the House of 2604
Representatives and the Senate that have primary responsibility 2605
for energy efficiency and conservation issues regarding 2606
initiatives undertaken by the Advisor and state government 2607
pursuant to numbered paragraphs 3 and 4 of Executive Order 2608
2007-02S, "Coordinating Ohio Energy Policy and State Energy 2609
Utilization. The first written report shall be submitted not later 2610
than sixty days after the effective date of this act. 2611