

# **As Reported by the House Public Utilities Committee**

**127th General Assembly**

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**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, Coley, Jones, Uecker**

**—**

## **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, 4928.141,	4
4928.142, 4928.143, 4928.144, 4928.145, 4928.146,	5
4928.151, 4928.24, 4928.621, 4928.64, 4928.65,	6
4928.66, 4928.68, 4928.69, and 4929.051; and to	7
repeal sections 4928.41, 4928.42, 4928.431, and	8
4928.44 of the Revised Code to revise state energy	9
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  
23

**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, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 27  
4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 4928.68, 28  
4928.69, and 4929.051 of the Revised Code be enacted to read as 29  
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. The term of the contract shall not extend 59  
beyond the end of the fiscal year in which the contract is entered 60  
into. Money received pursuant to such a contract entered into by a 61  
state official shall be deposited to the credit of the general 62  
revenue fund of this state, and, unless otherwise provided by 63  
ordinance or resolution enacted or adopted by the legislative 64  
authority of the political subdivision authorizing any such 65  
contract, money received under the contract shall be deposited to 66  
the credit of the general fund of the political subdivision. 67  
68

**Sec. 4905.31.** ~~Except as provided in section 4933.29 of the~~ 69  
~~Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921.,~~ 70  
~~and 4923., 4927., 4928., and 4929. of the Revised Code do not~~ 71  
prohibit a public utility from filing a schedule or establishing 72  
or entering into any reasonable arrangement with another public 73  
utility or with one or more of its customers, consumers, or 74  
employees, and do not prohibit a mercantile customer of an 75  
electric distribution utility as those terms are defined in 76  
section 4928.01 of the Revised Code or a group of those customers 77  
from establishing a reasonable arrangement with that utility or 78  
another public utility electric light company, providing for any 79

of the following: 80

(A) The division or distribution of its surplus profits; 81

(B) A sliding scale of charges, including variations in rates 82  
based upon ~~either of the following:~~ 83

~~(1) Stipulated stipulated variations in cost as provided in 84  
the schedule or arrangement;~~ 85

~~(2) Any emissions fee levied upon an electric light company 86  
under Substitute Senate Bill No. 359 of the 119th general assembly 87  
as provided in the schedule. The public utilities commission shall 88  
permit an electric light company to recover the emissions fee 89  
pursuant to such a variable rate schedule.~~ 90

~~(3) Any emissions fee levied upon an electric light company 91  
under division (C) or (D) of section 3745.11 of the Revised Code 92  
as provided in the schedule. The public utilities commission shall 93  
permit an electric light company to recover any such emission fee 94  
pursuant to such a variable rate schedule.~~ 95

~~(4) Any schedule of variable rates filed under division (B) 96  
of this section shall provide for the recovery of any such 97  
emissions fee by applying a uniform percentage increase to the 98  
base rate charged each customer of the electric light company for 99  
service during the period that the variable rate is in effect.~~ 100

(C) A minimum charge for service to be rendered unless such 101  
minimum charge is made or prohibited by the terms of the 102  
franchise, grant, or ordinance under which such public utility is 103  
operated; 104

(D) A classification of service based upon the quantity used, 105  
the time when used, the purpose for which used, the duration of 106  
use, and any other reasonable consideration; 107

(E) Any other financial device that may be practicable or 108  
advantageous to the parties interested. ~~No~~ In the case of a 109

schedule or arrangement concerning a public utility electric light 110  
company, such other financial device may include a device to 111  
recover costs incurred in conjunction with any economic 112  
development and job retention program of the utility within its 113  
certified territory, including recovery of revenue foregone as a 114  
result of any such program; any development and implementation of 115  
peak demand reduction and energy efficiency programs under section 116  
4928.66 of the Revised Code; any acquisition and deployment of 117  
advanced metering, including the costs of any meters prematurely 118  
retired as a result of the advanced metering implementation; and 119  
compliance with any government mandate. 120

No such schedule or arrangement, sliding scale, minimum 121  
charge, classification, variable rate, or device is lawful unless 122  
it is filed with and approved by the commission pursuant to an 123  
application that is submitted by the public utility or the 124  
mercantile customer or group of mercantile customers of an 125  
electric distribution utility and is posted on the commission's 126  
docketing information system and is accessible through the 127  
internet. 128

Every such public utility is required to conform its 129  
schedules of rates, tolls, and charges to such arrangement, 130  
sliding scale, classification, or other device, and where variable 131  
rates are provided for in any such schedule or arrangement, the 132  
cost data or factors upon which such rates are based and fixed 133  
shall be filed with the commission in such form and at such times 134  
as the commission directs. ~~The commission shall review the cost~~ 135  
~~data or factors upon which a variable rate schedule filed under~~ 136  
~~division (B)(2) or (3) of this section is based and shall adjust~~ 137  
~~the base rates of the electric light company or order the company~~ 138  
~~to refund any charges that it has collected under the variable~~ 139  
~~rate schedule that the commission finds to have resulted from~~ 140  
~~errors or erroneous reporting. After recovery of all of the~~ 141

~~emissions fees upon which a variable rate authorized under~~ 142  
~~division (B)(2) or (3) of this section is based, collection of the~~ 143  
~~variable rate shall end and the variable rate schedule shall be~~ 144  
~~terminated.~~ 145

Every such schedule or reasonable arrangement, ~~sliding scale,~~ 146  
~~minimum charge, classification, variable rate, or device~~ shall be 147  
under the supervision and regulation of the commission, and is 148  
subject to change, alteration, or modification by the commission. 149

**Sec. 4928.01.** (A) As used in this chapter: 150

(1) "Ancillary service" means any function necessary to the 151  
provision of electric transmission or distribution service to a 152  
retail customer and includes, but is not limited to, scheduling, 153  
system control, and dispatch services; reactive supply from 154  
generation resources and voltage control service; reactive supply 155  
from transmission resources service; regulation service; frequency 156  
response service; energy imbalance service; operating 157  
reserve-spinning reserve service; operating reserve-supplemental 158  
reserve service; load following; back-up supply service; 159  
real-power loss replacement service; dynamic scheduling; system 160  
black start capability; and network stability service. 161

(2) "Billing and collection agent" means a fully independent 162  
agent, not affiliated with or otherwise controlled by an electric 163  
utility, electric services company, electric cooperative, or 164  
governmental aggregator subject to certification under section 165  
4928.08 of the Revised Code, to the extent that the agent is under 166  
contract with such utility, company, cooperative, or aggregator 167  
solely to provide billing and collection for retail electric 168  
service on behalf of the utility company, cooperative, or 169  
aggregator. 170

(3) "Certified territory" means the certified territory 171  
established for an electric supplier under sections 4933.81 to 172

4933.90 of the Revised Code ~~as amended by Sub. S.B. No. 3 of the~~ 173  
~~123rd general assembly.~~ 174

(4) "Competitive retail electric service" means a component 175  
of retail electric service that is competitive as provided under 176  
division (B) of this section. 177

(5) "Electric cooperative" means a not-for-profit electric 178  
light company that both is or has been financed in whole or in 179  
part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 180  
7 U.S.C. 901, and owns or operates facilities in this state to 181  
generate, transmit, or distribute electricity, or a not-for-profit 182  
successor of such company. 183

(6) "Electric distribution utility" means an electric utility 184  
that supplies at least retail electric distribution service. 185

(7) "Electric light company" has the same meaning as in 186  
section 4905.03 of the Revised Code and includes an electric 187  
services company, but excludes any self-generator to the extent 188  
~~that it consumes electricity it so produces or to the extent it,~~ 189  
~~sells that electricity for resale electricity it so produces, or~~ 190  
~~obtains electricity from a generating facility it hosts on its~~ 191  
~~premises.~~ 192

(8) "Electric load center" has the same meaning as in section 193  
4933.81 of the Revised Code. 194

(9) "Electric services company" means an electric light 195  
company that is engaged on a for-profit or not-for-profit basis in 196  
the business of supplying or arranging for the supply of only a 197  
competitive retail electric service in this state. "Electric 198  
services company" includes a power marketer, power broker, 199  
aggregator, or independent power producer but excludes an electric 200  
cooperative, municipal electric utility, governmental aggregator, 201  
or billing and collection agent. 202

(10) "Electric supplier" has the same meaning as in section 203

4933.81 of the Revised Code. 204

(11) "Electric utility" means an electric light company that 205  
has a certified territory and is engaged on a for-profit basis 206  
either in the business of supplying a noncompetitive retail 207  
electric service in this state or in the businesses of supplying 208  
both a noncompetitive and a competitive retail electric service in 209  
this state. "Electric utility" excludes a municipal electric 210  
utility or a billing and collection agent. 211

(12) "Firm electric service" means electric service other 212  
than nonfirm electric service. 213

(13) "Governmental aggregator" means a legislative authority 214  
of a municipal corporation, a board of township trustees, or a 215  
board of county commissioners acting as an aggregator for the 216  
provision of a competitive retail electric service under authority 217  
conferred under section 4928.20 of the Revised Code. 218

(14) A person acts "knowingly," regardless of the person's 219  
purpose, when the person is aware that the person's conduct will 220  
probably cause a certain result or will probably be of a certain 221  
nature. A person has knowledge of circumstances when the person is 222  
aware that such circumstances probably exist. 223

(15) "Level of funding for low-income customer energy 224  
efficiency programs provided through electric utility rates" means 225  
the level of funds specifically included in an electric utility's 226  
rates on October 5, 1999, pursuant to an order of the public 227  
utilities commission issued under Chapter 4905. or 4909. of the 228  
Revised Code and in effect on October 4, 1999, for the purpose of 229  
improving the energy efficiency of housing for the utility's 230  
low-income customers. The term excludes the level of any such 231  
funds committed to a specific nonprofit organization or 232  
organizations pursuant to a stipulation or contract. 233

(16) "Low-income customer assistance programs" means the 234



percentage of income payment plan program, the home energy 235  
assistance program, the home weatherization assistance program, 236  
and the targeted energy efficiency and weatherization program. 237

(17) "Market development period" for an electric utility 238  
means the period of time beginning on the starting date of 239  
competitive retail electric service and ending on the applicable 240  
date for that utility as specified in section 4928.40 of the 241  
Revised Code, irrespective of whether the utility applies to 242  
receive transition revenues under this chapter. 243

(18) "Market power" means the ability to impose on customers 244  
a sustained price for a product or service above the price that 245  
would prevail in a competitive market. 246

(19) "Mercantile ~~commercial~~ customer" means a commercial or 247  
industrial customer if the electricity consumed is for 248  
nonresidential use and the customer consumes more than seven 249  
hundred thousand kilowatt hours per year or is part of a national 250  
account involving multiple facilities in one or more states. 251

(20) "Municipal electric utility" means a municipal 252  
corporation that owns or operates facilities to generate, 253  
transmit, or distribute electricity. 254

(21) "Noncompetitive retail electric service" means a 255  
component of retail electric service that is noncompetitive as 256  
provided under division (B) of this section. 257

(22) "Nonfirm electric service" means electric service 258  
provided pursuant to a schedule filed under section 4905.30 of the 259  
Revised Code or pursuant to an arrangement under section 4905.31 260  
of the Revised Code, which schedule or arrangement includes 261  
conditions that may require the customer to curtail or interrupt 262  
electric usage during nonemergency circumstances upon notification 263  
by an electric utility. 264

(23) "Percentage of income payment plan arrears" means funds 265

eligible for collection through the percentage of income payment 266  
plan rider, but uncollected as of July 1, 2000. 267

(24) "Person" has the same meaning as in section 1.59 of the 268  
Revised Code. 269

(25) "Advanced energy project" means any technologies, 270  
products, activities, or management practices or strategies that 271  
facilitate the generation or use of electricity and that reduce or 272  
support the reduction of energy consumption or support the 273  
production of clean, renewable energy for industrial, 274  
distribution, commercial, institutional, governmental, research, 275  
not-for-profit, or residential energy users. ~~Such energy includes,~~ 276  
including, but is not limited to, ~~wind power; geothermal energy;~~ 277  
~~solar thermal energy; and energy produced by micro turbines in~~ 278  
~~distributed generation applications with high electric~~ 279  
~~efficiencies, by combined heat and power applications, by fuel~~ 280  
~~cells powered by hydrogen derived from wind, solar, biomass,~~ 281  
~~hydroelectric, landfill gas, or geothermal sources, or by solar~~ 282  
~~electric generation, landfill gas, or hydroelectric generation~~ 283  
advanced energy resources and renewable energy resources. 284  
"Advanced energy project" also includes any project described in 285  
division (A), (B), or (C) of section 4928.621 of the Revised Code. 286

(26) "Regulatory assets" means the unamortized net regulatory 287  
assets that are capitalized or deferred on the regulatory books of 288  
the electric utility, pursuant to an order or practice of the 289  
public utilities commission or pursuant to generally accepted 290  
accounting principles as a result of a prior commission 291  
rate-making decision, and that would otherwise have been charged 292  
to expense as incurred or would not have been capitalized or 293  
otherwise deferred for future regulatory consideration absent 294  
commission action. "Regulatory assets" includes, but is not 295  
limited to, all deferred demand-side management costs; all 296  
deferred percentage of income payment plan arrears; 297

post-in-service capitalized charges and assets recognized in 298  
connection with statement of financial accounting standards no. 299  
109 (receivables from customers for income taxes); future nuclear 300  
decommissioning costs and fuel disposal costs as those costs have 301  
been determined by the commission in the electric utility's most 302  
recent rate or accounting application proceeding addressing such 303  
costs; the undepreciated costs of safety and radiation control 304  
equipment on nuclear generating plants owned or leased by an 305  
electric utility; and fuel costs currently deferred pursuant to 306  
the terms of one or more settlement agreements approved by the 307  
commission. 308

(27) "Retail electric service" means any service involved in 309  
supplying or arranging for the supply of electricity to ultimate 310  
consumers in this state, from the point of generation to the point 311  
of consumption. For the purposes of this chapter, retail electric 312  
service includes one or more of the following "service 313  
components": generation service, aggregation service, power 314  
marketing service, power brokerage service, transmission service, 315  
distribution service, ancillary service, metering service, and 316  
billing and collection service. 317

~~(28) "Small electric generation facility" means an electric 318  
generation plant and associated facilities designed for, or 319  
capable of, operation at a capacity of less than two megawatts. 320~~

~~(29)~~(28) "Starting date of competitive retail electric 321  
service" means January 1, 2001, ~~except as provided in division (C)~~ 322  
~~of this section.~~ 323

~~(30)~~(29) "Customer-generator" means a user of a net metering 324  
system. 325

~~(31)~~(30) "Net metering" means measuring the difference in an 326  
applicable billing period between the electricity supplied by an 327  
electric service provider and the electricity generated by a 328

customer-generator that is fed back to the electric service 329  
provider. 330

~~(32)~~(31) "Net metering system" means a facility for the 331  
production of electrical energy that does all of the following: 332

(a) Uses as its fuel either solar, wind, biomass, landfill 333  
gas, or hydropower, or uses a microturbine or a fuel cell; 334

(b) Is located on a customer-generator's premises; 335

(c) Operates in parallel with the electric utility's 336  
transmission and distribution facilities; 337

(d) Is intended primarily to offset part or all of the 338  
customer-generator's requirements for electricity. 339

~~(33)~~(32) "Self-generator" means an entity in this state that 340  
owns or hosts on its premises an electric generation facility that 341  
produces electricity primarily for the owner's consumption and 342  
that may provide any such excess electricity to ~~retail electric~~ 343  
~~service providers~~ another entity, whether the facility is 344  
installed or operated by the owner or by an agent under a 345  
contract. 346

(33) "Rate plan" means the standard service offer in effect 347  
on the effective date of the amendment of this section by S.B. 221 348  
of the 127th general assembly. 349

(34) "Advanced energy resource" means any of the following: 350

(a) Any method or any modification or replacement of any 351  
property, process, device, structure, or equipment that increases 352  
the generation output of an electric generating facility to the 353  
extent such efficiency is achieved without additional carbon 354  
dioxide emissions by that facility; 355

(b) Any distributed generation system consisting of customer 356  
cogeneration of electricity and thermal output simultaneously, 357  
primarily to meet the energy needs of the customer's facilities; 358

(c) Clean coal technology that includes a carbon-based 359  
product that is chemically altered before combustion to 360  
demonstrate a reduction, as expressed as ash, in emissions of 361  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 362  
sulfur trioxide in accordance with the American society of testing 363  
and materials standard D1757A or a reduction of metal oxide 364  
emissions in accordance with standard D5142 of that society; 365

(d) Advanced nuclear energy technology consisting of 366  
generation III technology as defined by the nuclear regulatory 367  
commission; other, later technology; or significant improvements 368  
to existing facilities; 369

(e) Any fuel cell used in the generation of electricity, 370  
including, but not limited to, a proton exchange membrane fuel 371  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 372  
solid oxide fuel cell; 373

(f) Demand-side management and any energy efficiency 374  
improvement. 375

(35) "Renewable energy resource" means solar photovoltaic or 376  
solar thermal energy, wind energy, power produced by a 377  
hydroelectric facility, geothermal energy, fuel derived from solid 378  
wastes, as defined in section 3734.01 of the Revised Code, through 379  
fractionation, biological decomposition, or other process that 380  
does not principally involve combustion, biomass energy, 381  
biologically derived methane gas, or energy derived from 382  
nontreated by-products of the pulping process or wood 383  
manufacturing process, including bark, wood chips, sawdust, and 384  
lignin in spent pulping liquors. "Renewable energy resources" 385  
includes, but is not limited to, any fuel cell used in the 386  
generation of electricity, including, but not limited to, a proton 387  
exchange membrane fuel cell, phosphoric acid fuel cell, molten 388  
carbonate fuel cell, or solid oxide fuel cell; wind turbine 389  
located in the state's territorial waters of Lake Erie; storage 390

facility that will promote the better utilization of a renewable 391  
energy resource that primarily generates off peak; or distributed 392  
generation system used by a customer to generate electricity from 393  
any such energy. As used in division (A)(35) of this section, 394  
"hydroelectric facility" means a hydroelectric generating facility 395  
that is located at a dam on a river that is within or bordering 396  
this state or within or bordering an adjoining state and meets all 397  
of the following standards: 398

(a) The facility provides for river flows that are not 399  
detrimental for fish, wildlife, and water quality, including 400  
seasonal flow fluctuations as defined by the applicable licensing 401  
agency for the facility. 402

(b) The facility demonstrates that it complies with the water 403  
quality standards of this state, which compliance may consist of 404  
certification under Section 401 of the "Clean Water Act of 1977," 405  
91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has 406  
not contributed to a finding by this state that the river has 407  
impaired water quality under Section 303(d) of the "Clean Water 408  
Act of 1977," 114 Stat. 870, 33 U.S.C. 1313. 409

(c) The facility complies with mandatory prescriptions 411  
regarding fish passage as required by the federal energy 412  
regulatory commission license issued for the project, regarding 413  
fish protection for riverine, anadromous, and catadromus fish. 414

(d) The facility complies with the recommendations of the 415  
Ohio environmental protection agency and with the terms of its 416  
federal energy regulatory commission license regarding watershed 417  
protection, mitigation, or enhancement, to the extent of each 418  
agency's respective jurisdiction over the facility. 419

(e) The facility complies with provisions of the "Endangered 420  
Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as 421

amended. 422

(f) The facility does not harm cultural resources of the 423  
area. This can be shown through compliance with the terms of its 424  
federal energy regulatory commission license or, if the facility 425  
is not regulated by that commission, through development of a plan 426  
approved by the Ohio historic preservation office, to the extent 427  
it has jurisdiction over the facility. 428

(g) The facility complies with the terms of its federal 429  
energy regulatory commission license or exemption that are related 430  
to recreational access, accommodation, and facilities or, if the 431  
facility is not regulated by that commission, the facility 432  
complies with similar requirements as are recommended by resource 433  
agencies, to the extent they have jurisdiction over the facility; 434  
and the facility provides access to water to the public without 435  
fee or charge. 436

(h) The facility is not recommended for removal by any 437  
federal agency or agency of any state, to the extent the 438  
particular agency has jurisdiction over the facility. 439

(B) For the purposes of this chapter, a retail electric 440  
service component shall be deemed a competitive retail electric 441  
service if the service component is competitive pursuant to a 442  
declaration by a provision of the Revised Code or pursuant to an 443  
order of the public utilities commission authorized under division 444  
(A) of section 4928.04 of the Revised Code. Otherwise, the service 445  
component shall be deemed a noncompetitive retail electric 446  
service. 447

~~(C) Prior to January 1, 2001, and after application by an~~ 448  
~~electric utility, notice, and an opportunity to be heard, the~~ 449  
~~public utilities commission may issue an order delaying the~~ 450  
~~January 1, 2001, starting date of competitive retail electric~~ 451  
~~service for the electric utility for a specified number of days~~ 452

~~not to exceed six months, but only for extreme technical~~ 453  
~~conditions precluding the start of competitive retail electric~~ 454  
~~service on January 1, 2001.~~ 455

**Sec. 4928.02.** It is the policy of this state to do the 456  
following throughout this state ~~beginning on the starting date of~~ 457  
~~competitive retail electric service:~~ 458

(A) Ensure the availability to consumers of adequate, 459  
reliable, safe, efficient, nondiscriminatory, and reasonably 460  
priced retail electric service; 461

(B) Ensure the availability of unbundled and comparable 462  
retail electric service that provides consumers with the supplier, 463  
price, terms, conditions, and quality options they elect to meet 464  
their respective needs; 465

(C) Ensure diversity of electricity supplies and suppliers, 466  
by giving consumers effective choices over the selection of those 467  
supplies and suppliers and by encouraging the development of 468  
distributed and small generation facilities; 469

(D) Encourage innovation and market access for cost-effective 470  
supply- and demand-side retail electric service including, but not 471  
limited to, demand-side management, time-differentiated pricing, 472  
and implementation of advanced metering infrastructure; 473

(E) Encourage cost-effective and efficient access to 474  
information regarding the operation of the transmission and 475  
distribution systems of electric utilities in order to promote 476  
both effective customer choice of retail electric service and the 477  
development of performance standards and targets for service 478  
quality for all consumers, including annual achievement reports 479  
written in plain language; 480

(F) Ensure that an electric utility's transmission and 481  
distribution systems are available to a customer-generator or 482



owner of distributed generation, so that the customer-generator or 483  
owner can market and deliver the electricity it produces; 484

(G) Recognize the continuing emergence of competitive 485  
electricity markets through the development and implementation of 486  
flexible regulatory treatment; 487

~~(G)~~(H) Ensure effective competition in the provision of 488  
retail electric service by avoiding anticompetitive subsidies 489  
flowing from a noncompetitive retail electric service to a 490  
competitive retail electric service or to a product or service 491  
other than retail electric service, and vice versa, including by 492  
prohibiting the recovery of any generation-related costs through 493  
distribution or transmission rates; 494

~~(H)~~(I) Ensure retail electric service consumers protection 495  
against unreasonable sales practices, market deficiencies, and 496  
market power; 497

~~(I)~~(J) Provide coherent, transparent means of giving 498  
appropriate incentives to technologies that can adapt successfully 499  
to potential environmental mandates; 500

(K) Encourage implementation of distributed generation across 501  
customer classes through regular review and updating of 502  
administrative rules governing critical issues such as, but not 503  
limited to, interconnection standards, standby charges, and net 504  
metering; 505

(L) Protect at-risk populations, including, but not limited 506  
to, when considering the implementation of any new advanced energy 507  
or renewable energy resource; 508

(M) Encourage the education of small business owners in this 509  
state regarding the use of, and encourage the use of, energy 510  
efficiency programs and alternative energy resources in their 511  
businesses; 512

(N) Facilitate the state's effectiveness in the global 513  
economy. 514

In carrying out this policy, the commission shall consider 515  
rules as they apply to the costs of electric distribution 516  
infrastructure, including, but not limited to, line extensions, 517  
for the purpose of development in this state. 518

**Sec. 4928.05.** (A)(1) On and after the starting date of 519  
competitive retail electric service, a competitive retail electric 520  
service supplied by an electric utility or electric services 521  
company shall not be subject to supervision and regulation by a 522  
municipal corporation under Chapter 743. of the Revised Code or by 523  
the public utilities commission under Chapters 4901. to 4909., 524  
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 525  
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 526  
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 527  
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 528  
extent related to service reliability and public safety; and 529  
except as otherwise provided in this chapter. The commission's 530  
authority to enforce those excepted provisions with respect to a 531  
competitive retail electric service shall be such authority as is 532  
provided for their enforcement under Chapters 4901. to 4909., 533  
4933., 4935., and 4963. of the Revised Code and this chapter. 534  
Nothing in this division shall be construed to limit the 535  
commission's authority under section 4928.144 of the Revised Code. 536  
537

On and after the starting date of competitive retail electric 538  
service, a competitive retail electric service supplied by an 539  
electric cooperative shall not be subject to supervision and 540  
regulation by the commission under Chapters 4901. to 4909., 4933., 541  
4935., and 4963. of the Revised Code, except as otherwise 542  
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 543

the Revised Code. 544

(2) On and after the starting date of competitive retail 545  
electric service, a noncompetitive retail electric service 546  
supplied by an electric utility shall be subject to supervision 547  
and regulation by the commission under Chapters 4901. to 4909., 548  
4933., 4935., and 4963. of the Revised Code and this chapter, to 549  
the extent that authority is not preempted by federal law. The 550  
commission's authority to enforce those provisions with respect to 551  
a noncompetitive retail electric service shall be the authority 552  
provided under those chapters and this chapter, to the extent the 553  
authority is not preempted by federal law. Notwithstanding 554  
Chapters 4905. and 4909. of the Revised Code, commission authority 555  
under this chapter shall include the authority to provide for the 556  
recovery, through a reconcilable rider on an electric distribution 557  
utility's distribution rates, of all transmission and 558  
transmission-related costs, including ancillary and congestion 559  
costs, imposed on or charged to the utility by the federal energy 560  
regulatory commission or a regional transmission organization, 561  
independent transmission operator, or similar organization 562  
approved by the federal energy regulatory commission. 563

The commission shall exercise its jurisdiction with respect 565  
to the delivery of electricity by an electric utility in this 566  
state on or after the starting date of competitive retail electric 567  
service so as to ensure that no aspect of the delivery of 568  
electricity by the utility to consumers in this state that 569  
consists of a noncompetitive retail electric service is 570  
unregulated. 571

On and after that starting date, a noncompetitive retail 572  
electric service supplied by an electric cooperative shall not be 573  
subject to supervision and regulation by the commission under 574  
Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised 575

Code, except sections 4933.81 to 4933.90 and 4935.03 of the 576  
Revised Code. The commission's authority to enforce those excepted 577  
sections with respect to a noncompetitive retail electric service 578  
of an electric cooperative shall be such authority as is provided 579  
for their enforcement under Chapters 4933. and 4935. of the 580  
Revised Code. 581

(B) Nothing in this chapter affects the authority of the 582  
commission under Title XLIX of the Revised Code to regulate an 583  
electric light company in this state or an electric service 584  
supplied in this state prior to the starting date of competitive 585  
retail electric service. 586

**Sec. 4928.09.** (A)(1) No person shall operate in this state as 587  
an electric utility, an electric services company, ~~or~~ a billing 588  
and collection agent, or a regional transmission organization 589  
approved by the federal energy regulatory commission and having 590  
the responsibility for maintaining reliability in all or part of 591  
this state on and after the starting date of competitive retail 592  
electric service unless that person first does both of the 593  
following: 594

(a) Consents irrevocably to the jurisdiction of the courts of 595  
this state and service of process in this state, including, 596  
without limitation, service of summonses and subpoenas, for any 597  
civil or criminal proceeding arising out of or relating to such 598  
operation, by providing that irrevocable consent in accordance 599  
with division (A)(4) of this section; 600

(b) Designates an agent authorized to receive that service of 601  
process in this state, by filing with the commission a document 602  
designating that agent. 603

(2) No person shall continue to operate as such an electric 604  
utility, electric services company, ~~or~~ billing and collection 605  
agent, or regional transmission organization described in division 606

(A)(1) of this section unless that person continues to consent to 607  
such jurisdiction and service of process in this state and 608  
continues to designate an agent as provided under this division, 609  
by refiling in accordance with division (A)(4) of this section the 610  
appropriate documents filed under division (A)(1) of this section 611  
or, as applicable, the appropriate amended documents filed under 612  
division (A)(3) of this section. Such refiling shall occur during 613  
the month of December of every fourth year after the initial 614  
filing of a document under division (A)(1) of this section. 615

(3) If the address of the person filing a document under 616  
division (A)(1) or (2) of this section changes, or if a person's 617  
agent or the address of the agent changes, from that listed on the 618  
most recently filed of such documents, the person shall file an 619  
amended document containing the new information. 620

(4) The consent and designation required by divisions (A)(1) 621  
to (3) of this section shall be in writing, on forms prescribed by 622  
the public utilities commission. The original of each such 623  
document or amended document shall be legible and shall be filed 624  
with the commission, with a copy filed with the office of the 625  
consumers' counsel and with the attorney general's office. 626

(B) A person who enters this state pursuant to a summons, 627  
subpoena, or other form of process authorized by this section is 628  
not subject to arrest or service of process, whether civil or 629  
criminal, in connection with other matters that arose before the 630  
person's entrance into this state pursuant to such summons, 631  
subpoena, or other form of process. 632

(C) Divisions (A) and (B) of this section do not apply to any 633  
of the following: 634

(1) A corporation incorporated under the laws of this state 635  
that has appointed a statutory agent pursuant to section 1701.07 636  
or 1702.06 of the Revised Code; 637

(2) A foreign corporation licensed to transact business in 638  
this state that has appointed a designated agent pursuant to 639  
section 1703.041 of the Revised Code; 640

(3) Any other person that is a resident of this state or that 641  
files consent to service of process and designates a statutory 642  
agent pursuant to other laws of this state. 643

**Sec. 4928.14.** ~~(A) After its market development period, an 644  
electric distribution utility in this state shall provide 645  
consumers, on a comparable and nondiscriminatory basis within its 646  
certified territory, a market based standard service offer of all 647  
competitive retail electric services necessary to maintain 648  
essential electric service to consumers, including a firm supply 649  
of electric generation service. Such offer shall be filed with the 650  
public utilities commission under section 4909.18 of the Revised 651  
Code. 652~~

~~(B) After that market development period, each electric 653  
distribution utility also shall offer customers within its 654  
certified territory an option to purchase competitive retail 655  
electric service the price of which is determined through a 656  
competitive bidding process. Prior to January 1, 2004, the 657  
commission shall adopt rules concerning the conduct of the 658  
competitive bidding process, including the information 659  
requirements necessary for customers to choose this option and the 660  
requirements to evaluate qualified bidders. The commission may 661  
require that the competitive bidding process be reviewed by an 662  
independent third party. No generation supplier shall be 663  
prohibited from participating in the bidding process, provided 664  
that any winning bidder shall be considered a certified supplier 665  
for purposes of obligations to customers. At the election of the 666  
electric distribution utility, and approval of the commission, the 667  
competitive bidding option under this division may be used as the 668~~

~~market based standard offer required by division (A) of this~~ 669  
~~section. The commission may determine at any time that a~~ 670  
~~competitive bidding process is not required, if other means to~~ 671  
~~accomplish generally the same option for customers is readily~~ 672  
~~available in the market and a reasonable means for customer~~ 673  
~~participation is developed.~~ 674

~~(C) After the market development period, the~~ The failure of a 675  
supplier to provide retail electric generation service to 676  
customers within the certified territory of ~~the~~ an electric 677  
distribution utility shall result in the supplier's customers, 678  
after reasonable notice, defaulting to the utility's standard 679  
service offer ~~filed under division (A) of this section~~ sections 680  
4928.141, 4928.142, and 4928.143 of the Revised Code until the 681  
customer chooses an alternative supplier. A supplier is deemed 682  
under this ~~division~~ section to have failed to provide such service 683  
if the commission finds, after reasonable notice and opportunity 684  
for hearing, that any of the following conditions are met: 685

~~(1)(A)~~ (A) The supplier has defaulted on its contracts with 686  
customers, is in receivership, or has filed for bankruptcy. 687

~~(2)(B)~~ (B) The supplier is no longer capable of providing the 688  
service. 689

~~(3)(C)~~ (C) The supplier is unable to provide delivery to 690  
transmission or distribution facilities for such period of time as 691  
may be reasonably specified by commission rule adopted under 692  
division (A) of section 4928.06 of the Revised Code. 693

~~(4)(D)~~ (D) The supplier's certification has been suspended, 694  
conditionally rescinded, or rescinded under division (D) of 695  
section 4928.08 of the Revised Code. 696

**Sec. 4928.141.** (A) Beginning January 1, 2009, an electric 697  
distribution utility shall provide consumers, on a comparable and 698

nondiscriminatory basis within its certified territory, a 699  
market-based standard service offer of all competitive retail 700  
electric services necessary to maintain essential electric service 701  
to consumers, including a firm supply of electric generation 702  
service. To that end, the electric distribution utility shall 703  
apply to the public utilities commission to establish the standard 704  
service offer in accordance with section 4928.142 or 4928.143 of 705  
the Revised Code and, at its discretion, may apply simultaneously 706  
under both sections, except that the utility's first standard 707  
service offer application at minimum shall include a filing under 708  
section 4928.143 of the Revised Code. Only a standard service 709  
offer authorized in accordance with section 4928.142 or 4928.143 710  
of the Revised Code, shall serve as the utility's standard service 711  
offer for the purpose of compliance with this section; and that 712  
standard service offer shall serve as the utility's default 713  
standard service offer for the purpose of section 4928.14 of the 714  
Revised Code. However, pursuant to division (D) of section 715  
4928.143 of the Revised Code, any rate plan that extends beyond 716  
December 31, 2008, shall continue to be in effect for the subject 717  
electric distribution utility for the duration of the plan's term. 718  
719

(B) The commission shall set the time for hearing of a filing 720  
under section 4928.142 or 4928.143 of the Revised Code, send 721  
written notice of the hearing to the electric distribution 722  
utility, and publish notice in a newspaper of general circulation 723  
in each county in the utility's certified territory. The 724  
commission shall adopt rules regarding filings under those 725  
sections. 726

**Sec. 4928.142.** (A) For the purpose of complying with section 727  
4928.141 of the Revised Code and subject to division (D) of this 728  
section and, as applicable, subject to the rate plan requirement 729



of division (A) of section 4928.141 of the Revised Code, an 730  
electric distribution utility may establish a standard service 731  
offer price for retail electric generation service that is 732  
delivered to the utility under a market-rate offer. 733

(1) The market-rate offer shall be determined through a 734  
competitive bidding process that provides for all of the 735  
following: 736

(a) Open, fair, and transparent competitive solicitation; 737

(b) Clear product definition; 738

(c) Standardized bid evaluation criteria; 739

(d) Oversight by an independent third party that shall design 740  
the solicitation, administer the bidding, and ensure that the 741  
criteria specified in division (A)(1)(a) to (c) of this section 742  
are met; 743

(e) Evaluation of the submitted bids prior to the selection 744  
of the least-cost bid winner or winners. 745

No generation supplier shall be prohibited from participating 746  
in the bidding process. 747

(2) The public utilities commission shall modify rules, or 748  
adopt new rules as necessary, concerning the conduct of the 749  
competitive bidding process and the qualifications of bidders, 750  
which rules shall foster supplier participation in the bidding 751  
process and shall be consistent with the requirements of division 752  
(A)(1) of this section. 753

(B) Prior to initiating a competitive bidding process for a 754  
market-rate offer under division (A) of this section, the electric 755  
distribution utility shall file an application with the 756  
commission. An electric distribution utility may file its 757  
application with the commission prior to the effective date of the 758  
commission rules required under division (A)(2) of this section, 759

and, as the commission determines necessary, the utility shall 760  
immediately conform its filing to the rules upon their taking 761  
effect. 762

An application under this division shall detail the electric 763  
distribution utility's proposed compliance with the requirements 764  
of division (A)(1) of this section and with commission rules under 765  
division (A)(2) of this section and demonstrate that all of the 766  
following requirements are met: 767

(1) The electric distribution utility or its transmission 768  
service affiliate belongs to at least one regional transmission 769  
organization that has been approved by the federal energy 770  
regulatory commission; or there otherwise is comparable and 771  
nondiscriminatory access to the electric transmission grid. 772

(2) Any such regional transmission organization has a 773  
market-monitor function and the ability to take actions to 774  
identify and mitigate market power or the electric distribution 775  
utility's market conduct; or a similar market monitoring function 776  
exists with commensurate ability to identify and monitor market 777  
conditions and mitigate conduct associated with the exercise of 778  
market power. 779

(3) A published source of information is available publicly 780  
or through subscription that identifies pricing information for 781  
traded electricity on- and off-peak energy products that are 782  
contracts for delivery beginning at least two years from the date 783  
of the publication and is updated on a regular basis. 784

The commission shall initiate a proceeding and, within ninety 785  
days after the application's filing date, shall determine by order 786  
whether the electric distribution utility and its market-rate 787  
offer meet all of the foregoing requirements. If the finding is 788  
positive, the electric distribution utility may initiate its 789  
competitive bidding process. If the finding is negative as to one 790

or more requirements, the commission in the order shall direct the 791  
electric distribution utility regarding how any deficiency may be 792  
remedied in a timely manner to the commission's satisfaction; 793  
otherwise, the electric distribution utility shall withdraw the 794  
application. However, if such remedy is made and the subsequent 795  
finding is positive and also if the electric distribution utility 796  
made a simultaneous filing under this section and section 4928.143 797  
of the Revised Code, the utility shall not initiate its 798  
competitive bid until at least one hundred twenty days after the 799  
filing date of those applications. 800

(C) Upon the completion of the competitive bidding process 801  
authorized by divisions (A) and (B) of this section, including for 802  
the purpose of division (D) of this section, the commission shall 803  
select the least-cost bid winner or winners of that process, and 804  
such selected bid or bids, as prescribed as retail rates by the 805  
commission, shall be the electric distribution utility's standard 806  
service offer unless the commission, by order issued before the 807  
third calendar day following the conclusion of the competitive 808  
bidding process for the market rate offer, determines that one or 809  
more of the following criteria were not met: 810

(1) Each portion of the bidding process was oversubscribed, 811  
such that the amount of supply bid upon was greater than the 812  
amount of the load bid out. 813

(2) There were four or more bidders. 814

(3) At least twenty-five per cent of the load is bid upon by 815  
one or more persons other than the electric distribution utility. 816

All costs incurred by the electric distribution utility as a 817  
result of or related to the competitive bidding process or to 818  
procuring generation service to provide the standard service 819  
offer, including the costs of energy and capacity and the costs of 820  
all other products and services procured as a result of the 821

competitive bidding process, shall be timely recovered through the 822  
standard service offer price, and, for that purpose, the 823  
commission shall approve a reconciliation mechanism, other 824  
recovery mechanism, or a combination of such mechanisms for the 825  
utility. 826

(D) The first application filed under this section by an 827  
electric distribution utility that, as of the effective date of 828  
this section, directly owns, in whole or in part, operating 829  
electric generating facilities that had been used and useful in 830  
this state shall require that a portion of that utility's standard 831  
service offer load for the first five years of the market rate 832  
offer be competitively bid under division (A) of this section as 833  
follows: ten per cent of the load in year one and not less than 834  
twenty per cent in year two, thirty per cent in year three, forty 835  
per cent in year four, and fifty per cent in year five. Consistent 836  
with those percentages, the commission shall determine the actual 837  
percentages for each year of years one through five. The standard 838  
service offer price for retail electric generation service under 839  
this first application shall be a proportionate blend of the bid 840  
price and the generation service price for the remaining standard 841  
service offer load, which latter price shall be equal to the 842  
electric distribution utility's most recent standard service offer 843  
price, adjusted upward or downward as the commission determines 844  
reasonable, relative to the jurisdictional portion of any known 845  
and measurable changes from the level of any one or more of the 846  
following costs as reflected in that most recent standard service 847  
offer price: 848

(1) The electric distribution utility's prudently incurred 850  
cost of fuel used to produce electricity; 851

(2) Its prudently incurred purchased power costs; 852

(3) Its costs of satisfying the supply and demand portfolio 853

requirements of this state, including, but not limited to, 854  
renewable energy resource and energy efficiency requirements; 855

(4) Its costs prudently incurred to comply with environmental 856  
laws and regulations. 857

In making any adjustment to the most recent standard service 858  
offer price on the basis of costs described in division (D)(4) of 859  
this section, the commission shall consider the benefits that may 860  
become available to the electric distribution utility as a result 861  
of or in connection with the costs included in the adjustment, 862  
including, but not limited to, the utility's receipt of emissions 863  
credits or its receipt of tax benefits or of other benefits, and, 864  
accordingly, the commission may impose such conditions on the 865  
adjustment to ensure that any such benefits are properly aligned 866  
with the associated cost responsibility. 867

Additionally, the commission may adjust the electric 868  
distribution utility's most recent standard service offer price by 869  
such just and reasonable amount that the commission determines 870  
necessary to address any emergency that threatens the utility's 871  
financial integrity or to ensure that the resulting revenue 872  
available to the utility for providing the standard service offer 873  
is not so inadequate as to result, directly or indirectly, in a 874  
taking of property without compensation pursuant to Section 19 of 875  
Article I, Ohio Constitution. The electric distribution utility 876  
has the burden of demonstrating that any adjustment to its most 877  
recent standard service offer price is proper in accordance with 878  
this division. The commission's determination of the electric 879  
distribution utility's most recent standard service offer price 880  
shall exclude any previously authorized allowance for transition 881  
costs with such exclusion being effective on and after the date 882  
that allowance is scheduled to end under the utility's rate plan. 883

(E) Beginning in the second year of a blended price under 884  
division (D) of this section and notwithstanding any other 885

requirement of this section, the commission may alter 886  
prospectively the proportions specified in that division to 887  
mitigate any effect of an abrupt change in the electric 888  
distribution utility's standard service offer price that would 889  
otherwise result in general or with respect to any rate group or 890  
rate schedule but for such alteration. Any such alteration shall 891  
be made not more often than annually, and the commission shall 892  
not, by altering those proportions and in any event, cause the 893  
duration of the blending period to exceed ten years as counted 894  
from the effective date of the approved market rate offer. 895  
Additionally, any such alteration shall be limited to an 896  
alteration affecting the prospective proportions used during the 897  
blending period and shall not affect any blending proportion 898  
previously approved and applied by the commission under this 899  
division. 900

(F) An electric distribution utility that has received 901  
commission approval of its first application under division (C) of 902  
this section shall not, nor ever shall be authorized or required 903  
by the commission to, file an application under section 4928.143 904  
of the Revised Code. 905

**Sec. 4928.143.** (A) For the purpose of complying with section 906  
4928.141 of the Revised Code, an electric distribution utility may 907  
file an application for public utilities commission approval of an 908  
electric security plan as prescribed under division (B) of this 909  
section. The utility may file that application prior to the 910  
effective date of any rules the commission may adopt for the 911  
purpose of this section, and, as the commission determines 912  
necessary, the utility immediately shall conform its filing to 913  
those rules upon their taking effect. 914

(B) Notwithstanding any other provision of Title XLIX of the 915  
Revised Code to the contrary except division (D) of this section: 916

(1) An electric security plan shall include provisions 917  
relating to the supply and pricing of electric generation service. 918  
In addition, if the proposed electric security plan has a term 919  
longer than three years, it shall include provisions in the plan 920  
to permit the commission to test the plan pursuant to division (E) 921  
of this section and any transitional conditions that should be 922  
adopted by the commission if the commission terminates the plan as 923  
authorized under that division. 924

(2) The plan may provide for or include, without limitation, 925  
any of the following: 926

(a) Automatic recovery of the electric distribution utility's 927  
costs of fuel used to generate the electricity supplied under the 928  
offer; purchased power supplied under the offer, including the 929  
cost of energy and capacity, and including purchased power 930  
acquired from an affiliate; emission allowances; and federally 931  
mandated carbon or energy taxes; 932

(b) A reasonable allowance for construction work in progress 933  
for any of the electric distribution utility's cost of 934  
constructing an electric generating facility or for an 935  
environmental expenditure for any electric generating facility of 936  
the electric distribution utility, provided the cost is incurred 937  
or the expenditure occurs on or after January 1, 2009. Any such 938  
allowance shall be subject to the construction work in progress 939  
allowance limitations of division (A) of section 4909.15 of the 940  
Revised Code, except that the commission may authorize such an 941  
allowance upon the incurrence of the cost or occurrence of the 942  
expenditure. No such allowance for generating facility 943  
construction shall be authorized, however, unless the commission 944  
first determines in the proceeding that there is need for the 945  
facility based on resource planning projections submitted by the 946  
electric distribution utility. Further, no such allowance shall be 947  
authorized unless the facility's construction was sourced through 948

a competitive bid process, regarding which process the commission 949  
may adopt rules. An allowance approved under division (B)(2)(b) of 950  
this section shall be established as a nonbypassable surcharge for 951  
the life of the facility. 952

(c) The establishment of a nonbypassable surcharge for the 953  
life of an electric generating facility that is owned or operated 954  
by the electric distribution utility, was sourced through a 955  
competitive bid process subject to any such rules as the 956  
commission adopts under division (B)(2)(b) of this section, and is 957  
newly used and useful on or after January 1, 2009, which surcharge 958  
shall cover all costs of the utility specified in the application, 959  
excluding costs recovered through a surcharge under division 960  
(B)(2)(b) of this section. However, no surcharge shall be 961  
authorized unless the commission first determines in the 962  
proceeding that there is need for the facility based on resource 963  
planning projections submitted by the electric distribution 964  
utility. Additionally, if a surcharge is authorized for a facility 965  
pursuant to plan approval under division (C) of this section and 966  
as a condition of the continuation of the surcharge, the electric 967  
distribution utility shall dedicate to the Ohio consumers bearing 968  
the surcharge all the electricity generated by that facility. 969  
Before the commission authorizes any surcharge pursuant to this 970  
division, it may consider, as applicable, the effects of any 971  
decommissioning, deratings, and retirements. 972

(d) Provisions for the decommissioning, derating, or 973  
retirement of an electric generating facility; 974

(e) Terms, conditions, or charges relating to limitations on 975  
customer shopping for retail electric generation service, 976  
bypassability, standby, back-up, or supplemental power service, 977  
default service, carrying costs, amortization periods, and 978  
accounting or deferrals, including future recovery of such 979  
deferrals, as would have the effect of stabilizing or providing 980



certainty regarding retail electric service; 981

(f) Automatic increases or decreases in any component of the 982  
standard service offer price; 983

(g) Provisions for the electric distribution utility to 984  
securitize any phase-in, inclusive of carrying charges, of the 985  
utility's standard service offer price, which phase-in is 986  
authorized in accordance with section 4928.144 of the Revised 987  
Code; and provisions for the recovery of the utility's cost of 988  
securitization. If the commission's order includes such a 989  
phase-in, the order also shall provide for the creation of 990  
regulatory assets pursuant to generally accepted accounting 991  
principles, by authorizing the deferral of incurred costs equal to 992  
the amount not collected, plus carrying charges on that amount. 993  
Further, the order shall authorize the collection of those 994  
deferrals through a nonbypassable surcharge on the utility's 995  
rates. 996

(h) Provisions relating to transmission, ancillary, 997  
congestion, or any related service required for the standard 998  
service offer, including provisions for the recovery of any cost 999  
of such service that the electric distribution utility incurs on 1000  
or after that date pursuant to the standard service offer; 1001

(i) Provisions regarding the utility's distribution service, 1002  
including, without limitation and notwithstanding any provision of 1003  
Title XLIX of the Revised Code to the contrary, provisions 1004  
regarding single issue ratemaking, a revenue decoupling mechanism 1005  
or any other incentive ratemaking, and provisions regarding 1006  
distribution infrastructure and modernization incentives for the 1007  
electric distribution utility. The latter may include a long-term 1008  
energy delivery infrastructure modernization plan for that utility 1009  
or any plan providing for the utility's recovery of costs, 1010  
including lost revenue, shared savings, and avoided costs, and a 1011  
just and reasonable rate of return on such infrastructure 1012

modernization. 1013

(j) Provisions under which the electric distribution utility 1014  
may implement economic development, job retention, and energy 1015  
efficiency programs, which provisions may allocate program costs 1016  
across all classes of customers of the utility and those of 1017  
electric distribution utilities in the same holding company 1018  
system. 1019

(C)(1) The burden of proof in the proceeding shall be on the 1020  
electric distribution utility. The commission shall issue an order 1021  
under this division for an initial application under this section 1022  
not later than one hundred twenty days after the application's 1023  
filing date and, for any subsequent application by the utility 1024  
under this section, not later than two hundred seventy-five days 1025  
after the application's filing date. Subject to division (D) of 1026  
this section, the commission by order shall approve or modify and 1027  
approve an application filed under division (A) of this section if 1028  
it finds that the electric security plan so approved, including 1029  
its pricing and all other terms and conditions, including any 1030  
deferrals and any future recovery of deferrals, is favorable in 1031  
the aggregate as compared to the expected results that would 1032  
otherwise apply under section 4928.142 of the Revised Code. 1033  
Additionally, if the commission so approves an application that 1034  
contains a surcharge under division (B)(2)(b) or (c) of this 1035  
section, the commission shall ensure that the benefits derived for 1036  
any purpose for which the surcharge is established are reserved 1037  
and made available to those that bear the surcharge. Otherwise, 1038  
the commission by order shall disapprove the application. 1039

1040

(2)(a) If the commission modifies and approves an application 1041  
under division (C)(1) of this section, the electric distribution 1042  
utility may withdraw the application, thereby terminating it, and 1043  
may file a new standard service offer under this section or a 1044

standard service offer under section 4928.142 of the Revised Code. 1045

(b) If the utility terminates an application pursuant to 1046  
division (C)(2)(a) of this section or if the commission 1047  
disapproves an application under division (C)(1) of this section, 1048  
the commission shall issue such order as is necessary to continue 1049  
the provisions, terms, and conditions of the utility's most recent 1050  
standard service offer, along with any expected increases or 1051  
decreases in fuel costs from those contained in that offer, until 1052  
a subsequent offer is authorized pursuant to this section or 1053  
section 4928.142 of the Revised Code, respectively. 1054

(D) Regarding the rate plan requirement of division (A) of 1055  
section 4928.141 of the Revised Code, if an electric distribution 1056  
utility that has a rate plan that extends beyond December 31, 1057  
2008, files an application under this section for the purpose of 1058  
its compliance with division (A) of section 4928.141 of the 1059  
Revised Code, that rate plan and its terms and conditions are 1060  
hereby incorporated into its proposed electric security plan and 1061  
shall continue in effect until the date scheduled under the rate 1062  
plan for its expiration, and that portion of the electric security 1063  
plan shall not be subject to commission approval or disapproval 1064  
under division (C) of this section. However, that utility may 1065  
include in its electric security plan under this section, and the 1066  
commission may approve, modify and approve, or disapprove subject 1067  
to division (C) of this section, provisions for the incremental 1068  
recovery or the deferral of any costs that are not being recovered 1069  
under the rate plan and that the utility incurs during that 1070  
continuation period to comply with section 4928.141, division (B) 1071  
of section 4928.64, or division (A) of section 4928.66 of the 1072  
Revised Code. 1073

(E) If an electric security plan approved under division (C) 1074  
of this section, except one withdrawn by the utility as authorized 1075  
under that division, has a term, exclusive of phase-ins or 1076

deferrals, that exceeds three years from the effective date of the 1077  
plan, the commission shall test the plan in the fourth year, and 1078  
if applicable, every fourth year thereafter, to determine whether 1079  
the plan, including its then-existing pricing and all other terms 1080  
and conditions, including any deferrals and any future recovery of 1081  
deferrals, continues to be favorable in the aggregate and during 1082  
the remaining term of the plan as compared to the expected results 1083  
that would otherwise apply under section 4928.142 of the Revised 1084  
Code. If the test results are in the negative, the commission may 1085  
terminate the electric security plan, but not until it shall have 1086  
provided interested parties with notice and an opportunity to be 1087  
heard. The commission may impose such conditions on the plan's 1088  
termination as it considers reasonable and necessary to 1089  
accommodate the transition from an approved plan to the more 1090  
advantageous alternative. In the event of an electric security 1091  
plan's termination pursuant to this division, the commission shall 1092  
permit the continued deferral and phase-in of any amounts that 1093  
occurred prior to that termination and the recovery of those 1094  
amounts as contemplated under that electric security plan. 1095

1096

**Sec. 4928.144.** The public utilities commission by order may 1097  
authorize any just and reasonable phase-in of any electric 1098  
distribution utility rate or price established under sections 1099  
4928.141 to 4928.143 of the Revised Code, and inclusive of 1100  
carrying charges, as the commission considers necessary to ensure 1101  
rate or price stability for consumers. If the commission's order 1102  
includes such a phase-in, the order also shall provide for the 1103  
creation of regulatory assets, by authorizing the deferral of 1104  
incurred costs equal to the amount not collected, plus carrying 1105  
charges on that amount. Further, the order shall authorize the 1106  
collection of those deferrals through a nonbypassable surcharge on 1107  
any such rate or price so established for the electric 1108

distribution utility by the commission. 1109

Sec. 4928.145. During a proceeding under sections 4928.141 to 1110  
4928.144 of the Revised Code and upon submission of an appropriate 1111  
discovery request, an electric distribution utility shall make 1112  
available to the requesting party every contract or agreement that 1113  
is between the electric distribution utility and a party to the 1114  
proceeding and that is relevant to the proceeding, subject to such 1115  
protection for proprietary or confidential information as is 1116  
determined appropriate by the public utilities commission. 1117

Sec. 4928.146. Nothing in sections 4928.141 to 4928.145 of 1118  
the Revised Code precludes or prohibits an electric distribution 1119  
utility providing competitive retail electric service to electric 1120  
load centers within the certified territory of another such 1121  
utility. 1122

Sec. 4928.151. The public utilities commission shall adopt 1123  
and enforce rules prescribing a uniform, statewide policy 1124  
regarding electric transmission and distribution line extensions 1125  
and requisite substations and related facilities that are 1126  
requested by nonresidential customers of electric utilities, so 1127  
that, on and after the effective date of the initial rules so 1128  
adopted, all such utilities apply the same policies and charges to 1129  
those customers. Initial rules shall be adopted not later than six 1130  
months after the effective date of this section. The rules shall 1131  
address the just and reasonable allocation to and utility recovery 1132  
from the requesting customer or other customers of the utility of 1133  
all costs of any such line extension and any requisite substation 1134  
or related facility, including, but not limited to, the costs of 1135  
necessary technical studies, operations and maintenance costs, and 1136  
capital costs, including a return on capital costs. 1137

**Sec. 4928.17.** (A) Except as otherwise provided in sections 1138  
4928.142 or 4928.143 or 4928.31 to 4928.40 of the Revised Code and 1139  
beginning on the starting date of competitive retail electric 1140  
service, no electric utility shall engage in this state, either 1141  
directly or through an affiliate, in the businesses of supplying a 1142  
noncompetitive retail electric service and supplying a competitive 1143  
retail electric service, or in the businesses of supplying a 1144  
noncompetitive retail electric service and supplying a product or 1145  
service other than retail electric service, unless the utility 1146  
implements and operates under a corporate separation plan that is 1147  
approved by the public utilities commission under this section, is 1148  
consistent with the policy specified in section 4928.02 of the 1149  
Revised Code, and achieves all of the following: 1150

(1) The plan provides, at minimum, for the provision of the 1151  
competitive retail electric service or the nonelectric product or 1152  
service through a fully separated affiliate of the utility, and 1153  
the plan includes separate accounting requirements, the code of 1154  
conduct as ordered by the commission pursuant to a rule it shall 1155  
adopt under division (A) of section 4928.06 of the Revised Code, 1156  
and such other measures as are necessary to effectuate the policy 1157  
specified in section 4928.02 of the Revised Code. 1158

(2) The plan satisfies the public interest in preventing 1159  
unfair competitive advantage and preventing the abuse of market 1160  
power. 1161

(3) The plan is sufficient to ensure that the utility will 1162  
not extend any undue preference or advantage to any affiliate, 1163  
division, or part of its own business engaged in the business of 1164  
supplying the competitive retail electric service or nonelectric 1165  
product or service, including, but not limited to, utility 1166  
resources such as trucks, tools, office equipment, office space, 1167  
supplies, customer and marketing information, advertising, billing 1168

and mailing systems, personnel, and training, without compensation 1169  
based upon fully loaded embedded costs charged to the affiliate; 1170  
and to ensure that any such affiliate, division, or part will not 1171  
receive undue preference or advantage from any affiliate, 1172  
division, or part of the business engaged in business of supplying 1173  
the noncompetitive retail electric service. No such utility, 1174  
affiliate, division, or part shall extend such undue preference. 1175  
Notwithstanding any other division of this section, a utility's 1176  
obligation under division (A)(3) of this section shall be 1177  
effective January 1, 2000. 1178

(B) The commission may approve, modify and approve, or 1179  
disapprove a corporate separation plan filed with the commission 1180  
under division (A) of this section. As part of the code of conduct 1181  
required under division (A)(1) of this section, the commission 1182  
shall adopt rules pursuant to division (A) of section 4928.06 of 1183  
the Revised Code regarding corporate separation and procedures for 1184  
plan filing and approval. The rules shall include limitations on 1185  
affiliate practices solely for the purpose of maintaining a 1186  
separation of the affiliate's business from the business of the 1187  
utility to prevent unfair competitive advantage by virtue of that 1188  
relationship. The rules also shall include an opportunity for any 1189  
person having a real and substantial interest in the corporate 1190  
separation plan to file specific objections to the plan and 1191  
propose specific responses to issues raised in the objections, 1192  
which objections and responses the commission shall address in its 1193  
final order. Prior to commission approval of the plan, the 1194  
commission shall afford a hearing upon those aspects of the plan 1195  
that the commission determines reasonably require a hearing. The 1196  
commission may reject and require refileing of a substantially 1197  
inadequate plan under this section. 1198

(C) The commission shall issue an order approving or 1199  
modifying and approving a corporate separation plan under this 1200

section, to be effective on the date specified in the order, only 1201  
upon findings that the plan reasonably complies with the 1202  
requirements of division (A) of this section and will provide for 1203  
ongoing compliance with the policy specified in section 4928.02 of 1204  
the Revised Code. However, for good cause shown, the commission 1205  
may issue an order approving or modifying and approving a 1206  
corporate separation plan under this section that does not comply 1207  
with division (A)(1) of this section but complies with such 1208  
functional separation requirements as the commission authorizes to 1209  
apply for an interim period prescribed in the order, upon a 1210  
finding that such alternative plan will provide for ongoing 1211  
compliance with the policy specified in section 4928.02 of the 1212  
Revised Code. 1213

(D) Any party may seek an amendment to a corporate separation 1214  
plan approved under this section, and the commission, pursuant to 1215  
a request from any party or on its own initiative, may order as it 1216  
considers necessary the filing of an amended corporate separation 1217  
plan to reflect changed circumstances. 1218

(E) ~~Notwithstanding section 4905.20, 4905.21, 4905.46, or~~ 1219  
~~4905.48 of the Revised Code, an No electric distribution utility~~ 1220  
~~may divest itself of shall sell or transfer any generating asset~~ 1221  
~~it wholly or partly owns at any time without obtaining prior~~ 1222  
~~commission approval, subject to the provisions of Title XLIX of~~ 1223  
~~the Revised Code relating to the transfer of transmission,~~ 1224  
~~distribution, or ancillary service provided by such generating~~ 1225  
~~asset.~~ 1226

**Sec. 4928.20.** (A) The legislative authority of a municipal 1227  
corporation may adopt an ordinance, or the board of township 1228  
trustees of a township or the board of county commissioners of a 1229  
county may adopt a resolution, under which, on or after the 1230  
starting date of competitive retail electric service, it may 1231



aggregate in accordance with this section the retail electrical 1232  
loads located, respectively, within the municipal corporation, 1233  
township, or unincorporated area of the county and, for that 1234  
purpose, may enter into service agreements to facilitate for those 1235  
loads the sale and purchase of electricity. The legislative 1236  
authority or board also may exercise such authority jointly with 1237  
any other such legislative authority or board. For customers that 1238  
are not mercantile commercial customers, an ordinance or 1239  
resolution under this division shall specify whether the 1240  
aggregation will occur only with the prior, affirmative consent of 1241  
each person owning, occupying, controlling, or using an electric 1242  
load center proposed to be aggregated or will occur automatically 1243  
for all such persons pursuant to the opt-out requirements of 1244  
division (D) of this section. The aggregation of mercantile 1245  
commercial customers shall occur only with the prior, affirmative 1246  
consent of each such person owning, occupying, controlling, or 1247  
using an electric load center proposed to be aggregated. Nothing 1248  
in this division, however, authorizes the aggregation of the 1249  
retail electric loads of an electric load center, as defined in 1250  
section 4933.81 of the Revised Code, that is located in the 1251  
certified territory of a nonprofit electric supplier under 1252  
sections 4933.81 to 4933.90 of the Revised Code or an electric 1253  
load center served by transmission or distribution facilities of a 1254  
municipal electric utility. 1255

(B) If an ordinance or resolution adopted under division (A) 1256  
of this section specifies that aggregation of customers that are 1257  
not mercantile commercial customers will occur automatically as 1258  
described in that division, the ordinance or resolution shall 1259  
direct the board of elections to submit the question of the 1260  
authority to aggregate to the electors of the respective municipal 1261  
corporation, township, or unincorporated area of a county at a 1262  
special election on the day of the next primary or general 1263  
election in the municipal corporation, township, or county. The 1264

legislative authority or board shall certify a copy of the 1265  
ordinance or resolution to the board of elections not less than 1266  
seventy-five days before the day of the special election. No 1267  
ordinance or resolution adopted under division (A) of this section 1268  
that provides for an election under this division shall take 1269  
effect unless approved by a majority of the electors voting upon 1270  
the ordinance or resolution at the election held pursuant to this 1271  
division. 1272

(C) Upon the applicable requisite authority under divisions 1273  
(A) and (B) of this section, the legislative authority or board 1274  
shall develop a plan of operation and governance for the 1275  
aggregation program so authorized. Before adopting a plan under 1276  
this division, the legislative authority or board shall hold at 1277  
least two public hearings on the plan. Before the first hearing, 1278  
the legislative authority or board shall publish notice of the 1279  
hearings once a week for two consecutive weeks in a newspaper of 1280  
general circulation in the jurisdiction. The notice shall 1281  
summarize the plan and state the date, time, and location of each 1282  
hearing. 1283

(D) No legislative authority or board, pursuant to an 1284  
ordinance or resolution under divisions (A) and (B) of this 1285  
section that provides for automatic aggregation of customers that 1286  
are not mercantile commercial customers as described in division 1287  
(A) of this section, shall aggregate the electrical load of any 1288  
electric load center located within its jurisdiction unless it in 1289  
advance clearly discloses to the person owning, occupying, 1290  
controlling, or using the load center that the person will be 1291  
enrolled automatically in the aggregation program and will remain 1292  
so enrolled unless the person affirmatively elects by a stated 1293  
procedure not to be so enrolled. The disclosure shall state 1294  
prominently the rates, charges, and other terms and conditions of 1295  
enrollment. The stated procedure shall allow any person enrolled 1296

in the aggregation program the opportunity to opt out of the 1297  
program every ~~two~~ three years, without paying a switching fee. Any 1298  
such person that opts out of the aggregation program pursuant to 1299  
the stated procedure shall default to the standard service offer 1300  
provided under ~~division (A)~~ of section 4928.14 or division (D) of 1301  
section 4928.35 of the Revised Code until the person chooses an 1302  
alternative supplier. 1303

(E)(1) With respect to a governmental aggregation for a 1304  
municipal corporation that is authorized pursuant to divisions (A) 1305  
to (D) of this section, resolutions may be proposed by initiative 1306  
or referendum petitions in accordance with sections 731.28 to 1307  
731.41 of the Revised Code. 1308

(2) With respect to a governmental aggregation for a township 1309  
or the unincorporated area of a county, which aggregation is 1310  
authorized pursuant to divisions (A) to (D) of this section, 1311  
resolutions may be proposed by initiative or referendum petitions 1312  
in accordance with sections 731.28 to 731.40 of the Revised Code, 1313  
except that: 1314

(a) The petitions shall be filed, respectively, with the 1315  
township fiscal officer or the board of county commissioners, who 1316  
shall perform those duties imposed under those sections upon the 1317  
city auditor or village clerk. 1318

(b) The petitions shall contain the signatures of not less 1319  
than ten per cent of the total number of electors in, 1320  
respectively, the township or the unincorporated area of the 1321  
county who voted for the office of governor at the preceding 1322  
general election for that office in that area. 1323

(F) A governmental aggregator under division (A) of this 1324  
section is not a public utility engaging in the wholesale purchase 1325  
and resale of electricity, and provision of the aggregated service 1326  
is not a wholesale utility transaction. A governmental aggregator 1327

shall be subject to supervision and regulation by the public 1328  
utilities commission only to the extent of any competitive retail 1329  
electric service it provides and commission authority under this 1330  
chapter. 1331

(G) This section does not apply in the case of a municipal 1332  
corporation that supplies such aggregated service to electric load 1333  
centers to which its municipal electric utility also supplies a 1334  
noncompetitive retail electric service through transmission or 1335  
distribution facilities the utility singly or jointly owns or 1336  
operates. 1337

(H) A governmental aggregator shall not include in its 1338  
aggregation the accounts of any of the following: 1339

(1) A customer that has opted out of the aggregation; 1340

(2) A customer in contract with a certified competitive 1341  
retail electric services provider; 1342

(3) A customer that has a special contract with an electric 1343  
distribution utility; 1344

(4) A customer that is not located within the governmental 1345  
aggregator's governmental boundaries; 1346

(5) Subject to division (C) of section 4928.21 of the Revised 1347  
Code, a customer who appears on the "do not aggregate" list 1348  
maintained under that section. 1349

Sec. 4928.24. The public utilities commission shall employ a 1350  
federal energy advocate to monitor the activities of the federal 1351  
energy regulatory commission and other federal agencies and to 1352  
advocate on behalf of the interests of retail electric service 1353  
consumers in this state. The attorney general shall represent the 1354  
advocate before the federal energy regulatory commission and other 1355  
federal agencies. Among other duties assigned to the advocate by 1356  
the commission, the advocate shall examine the value of the 1357

participation of this state's electric utilities in regional 1358  
transmission organizations and submit a report to the public 1359  
utilities commission on whether continued participation of those 1360  
utilities is in the interest of those consumers. 1361

**Sec. 4928.31.** (A) Not later than ninety days after the 1362  
effective date of this section, an electric utility supplying 1363  
retail electric service in this state on that date shall file with 1364  
the public utilities commission a plan for the utility's provision 1365  
of retail electric service in this state during the market 1366  
development period. This transition plan shall be in such form as 1367  
the commission shall prescribe by rule adopted under division (A) 1368  
of section 4928.06 of the Revised Code and shall include all of 1369  
the following: 1370

(1) A rate unbundling plan that specifies, consistent with 1371  
divisions (A)(1) to (7) of section 4928.34 of the Revised Code and 1372  
any rules adopted by the commission under division (A) of section 1373  
4928.06 of the Revised Code, the unbundles components for electric 1374  
generation, transmission, and distribution service and such other 1375  
unbundled service components as the commission requires, to be 1376  
charged by the utility beginning on the starting date of 1377  
competitive retail electric service and that includes information 1378  
the commission requires to fix and determine those components; 1379

(2) A corporate separation plan consistent with section 1380  
4928.17 of the Revised Code and any rules adopted by the 1381  
commission under division (A) of section 4928.06 of the Revised 1382  
Code; 1383

(3) Such plan or plans as the commission requires to address 1384  
operational support systems and any other technical implementation 1385  
issues pertaining to competitive retail electric service 1386  
consistent with any rules adopted by the commission under division 1387  
(A) of section 4928.06 of the Revised Code; 1388

(4) An employee assistance plan for providing severance, 1389  
retraining, early retirement, retention, outplacement, and other 1390  
assistance for the utility's employees whose employment is 1391  
affected by electric industry restructuring under this chapter; 1392

(5) A consumer education plan consistent with former section 1393  
4928.42 of the Revised Code and any rules adopted by the 1394  
commission under division (A) of section 4928.06 of the Revised 1395  
Code. 1396

A transition plan under this section may include tariff terms 1397  
and conditions to address reasonable requirements for changing 1398  
suppliers, length of commitment by a customer for service, and 1399  
such other matters as are necessary to accommodate electric 1400  
restructuring. Additionally, a transition plan under this section 1401  
may include an application for the opportunity to receive 1402  
transition revenues as authorized under sections 4928.31 to 1403  
4928.40 of the Revised Code, which application shall be consistent 1404  
with those sections and any rules adopted by the commission under 1405  
division (A) of section 4928.06 of the Revised Code. The 1406  
transition plan also may include a plan for the independent 1407  
operation of the utility's transmission facilities consistent with 1408  
section 4928.12 of the Revised Code, division (A)(13) of section 1409  
4928.34 of the Revised Code, and any rules adopted by the 1410  
commission under division (A) of section 4928.06 of the Revised 1411  
Code. 1412

The commission may reject and require refiling, in whole or 1413  
in part, of any substantially inadequate transition plan. 1414

(B) The electric utility shall provide public notice of its 1415  
filing under division (A) of this section, in a form and manner 1416  
that the commission shall prescribe by rule adopted under division 1417  
(A) of section 4928.06 of the Revised Code. However, the adoption 1418  
of rules regarding the public notice under this division, 1419  
regarding the form of the transition plan under division (A) of 1420

this section, and regarding procedures for expedited discovery 1421  
under division (A) of section 4928.32 of the Revised Code are not 1422  
subject to division (D) of section 111.15 of the Revised Code. 1423

**Sec. 4928.34.** (A) The public utilities commission shall not 1424  
approve or prescribe a transition plan under division (A) or (B) 1425  
of section 4928.33 of the Revised Code unless the commission first 1426  
makes all of the following determinations: 1427

(1) The unbundled components for the electric transmission 1428  
component of retail electric service, as specified in the 1429  
utility's rate unbundling plan required by division (A)(1) of 1430  
section 4928.31 of the Revised Code, equal the tariff rates 1431  
determined by the federal energy regulatory commission that are in 1432  
effect on the date of the approval of the transition plan under 1433  
sections 4928.31 to 4928.40 of the Revised Code, as each such rate 1434  
is determined applicable to each particular customer class and 1435  
rate schedule by the commission. The unbundled transmission 1436  
component shall include a sliding scale of charges under division 1437  
(B) of section 4905.31 of the Revised Code to ensure that refunds 1438  
determined or approved by the federal energy regulatory commission 1439  
are flowed through to retail electric customers. 1440

(2) The unbundled components for retail electric distribution 1441  
service in the rate unbundling plan equal the difference between 1442  
the costs attributable to the utility's transmission and 1443  
distribution rates and charges under its schedule of rates and 1444  
charges in effect on the effective date of this section, based 1445  
upon the record in the most recent rate proceeding of the utility 1446  
for which the utility's schedule was established, and the tariff 1447  
rates for electric transmission service determined by the federal 1448  
energy regulatory commission as described in division (A)(1) of 1449  
this section. 1450

(3) All other unbundled components required by the commission 1451

in the rate unbundling plan equal the costs attributable to the 1452  
particular service as reflected in the utility's schedule of rates 1453  
and charges in effect on the effective date of this section. 1454

(4) The unbundled components for retail electric generation 1455  
service in the rate unbundling plan equal the residual amount 1456  
remaining after the determination of the transmission, 1457  
distribution, and other unbundled components, and after any 1458  
adjustments necessary to reflect the effects of the amendment of 1459  
section 5727.111 of the Revised Code by Sub. S.B. No. 3 of the 1460  
123rd general assembly. 1461

(5) All unbundled components in the rate unbundling plan have 1462  
been adjusted to reflect any base rate reductions on file with the 1463  
commission and as scheduled to be in effect by December 31, 2005, 1464  
under rate settlements in effect on the effective date of this 1465  
section. However, all earnings obligations, restrictions, or caps 1466  
imposed on an electric utility in a commission order prior to the 1467  
effective date of this section are void. 1468

(6) Subject to division (A)(5) of this section, the total of 1469  
all unbundled components in the rate unbundling plan are capped 1470  
and shall equal during the market development period, except as 1471  
specifically provided in this chapter, the total of all rates and 1472  
charges in effect under the applicable bundled schedule of the 1473  
electric utility pursuant to section 4905.30 of the Revised Code 1474  
in effect on the day before the effective date of this section, 1475  
including the transition charge determined under section 4928.40 1476  
of the Revised Code, adjusted for any changes in the taxation of 1477  
electric utilities and retail electric service under Sub. S.B. No. 1478  
3 of the 123rd General Assembly, the universal service rider 1479  
authorized by section 4928.51 of the Revised Code, and the 1480  
temporary rider authorized by section 4928.61 of the Revised Code. 1481  
For the purpose of this division, the rate cap applicable to a 1482  
customer receiving electric service pursuant to an arrangement 1483



approved by the commission under section 4905.31 of the Revised 1484  
Code is, for the term of the arrangement, the total of all rates 1485  
and charges in effect under the arrangement. For any rate schedule 1486  
filed pursuant to section 4905.30 of the Revised Code or any 1487  
arrangement subject to approval pursuant to section 4905.31 of the 1488  
Revised Code, the initial tax-related adjustment to the rate cap 1489  
required by this division shall be equal to the rate of taxation 1490  
specified in section 5727.81 of the Revised Code and applicable to 1491  
the schedule or arrangement. To the extent such total annual 1492  
amount of the tax-related adjustment is greater than or less than 1493  
the comparable amount of the total annual tax reduction 1494  
experienced by the electric utility as a result of the provisions 1495  
of Sub. S.B. No. 3 of the ~~123RD~~ 123rd general assembly, such 1496  
difference shall be addressed by the commission through accounting 1497  
procedures, refunds, or an annual surcharge or credit to 1498  
customers, or through other appropriate means, to avoid placing 1499  
the financial responsibility for the difference upon the electric 1500  
utility or its shareholders. Any adjustments in the rate of 1501  
taxation specified in 5727.81 of the Revised Code section shall 1502  
not occur without a corresponding adjustment to the rate cap for 1503  
each such rate schedule or arrangement. The department of taxation 1504  
shall advise the commission and self-assessors under section 1505  
5727.81 of the Revised Code prior to the effective date of any 1506  
change in the rate of taxation specified under that section, and 1507  
the commission shall modify the rate cap to reflect that 1508  
adjustment so that the rate cap adjustment is effective as of the 1509  
effective date of the change in the rate of taxation. This 1510  
division shall be applied, to the extent possible, to eliminate 1511  
any increase in the price of electricity for customers that 1512  
otherwise may occur as a result of establishing the taxes 1513  
contemplated in section 5727.81 of the Revised Code. 1514

(7) The rate unbundling plan complies with any rules adopted 1515  
by the commission under division (A) of section 4928.06 of the 1516

Revised Code. 1517

(8) The corporate separation plan required by division (A)(2) 1518  
of section 4928.31 of the Revised Code complies with section 1519  
4928.17 of the Revised Code and any rules adopted by the 1520  
commission under division (A) of section 4928.06 of the Revised 1521  
Code. 1522

(9) Any plan or plans the commission requires to address 1523  
operational support systems and any other technical implementation 1524  
issues pertaining to competitive retail electric service comply 1525  
with any rules adopted by the commission under division (A) of 1526  
section 4928.06 of the Revised Code. 1527

(10) The employee assistance plan required by division (A)(4) 1528  
of section 4928.31 of the Revised Code sufficiently provides 1529  
severance, retraining, early retirement, retention, outplacement, 1530  
and other assistance for the utility's employees whose employment 1531  
is affected by electric industry restructuring under this chapter. 1532

(11) The consumer education plan required under division 1533  
(A)(5) of section 4928.31 of the Revised Code complies with former 1534  
section 4928.42 of the Revised Code and any rules adopted by the 1535  
commission under division (A) of section 4928.06 of the Revised 1536  
Code. 1537

(12) The transition revenues for which an electric utility is 1538  
authorized a revenue opportunity under sections 4928.31 to 4928.40 1539  
of the Revised Code are the allowable transition costs of the 1540  
utility as such costs are determined by the commission pursuant to 1541  
section 4928.39 of the Revised Code, and the transition charges 1542  
for the customer classes and rate schedules of the utility are the 1543  
charges determined pursuant to section 4928.40 of the Revised 1544  
Code. 1545

(13) Any independent transmission plan included in the 1546  
transition plan filed under section 4928.31 of the Revised Code 1547

reasonably complies with section 4928.12 of the Revised Code and 1548  
any rules adopted by the commission under division (A) of section 1549  
4928.06 of the Revised Code, unless the commission, for good cause 1550  
shown, authorizes the utility to defer compliance until an order 1551  
is issued under division (G) of section 4928.35 of the Revised 1552  
Code. 1553

(14) The utility is in compliance with sections 4928.01 to 1554  
4928.11 of the Revised Code and any rules or orders of the 1555  
commission adopted or issued under those sections. 1556

(15) All unbundled components in the rate unbundling plan 1557  
have been adjusted to reflect the elimination of the tax on gross 1558  
receipts imposed by section 5727.30 of the Revised Code. 1559

In addition, a transition plan approved by the commission 1560  
under section 4928.33 of the Revised Code but not containing an 1561  
approved independent transmission plan shall contain the express 1562  
conditions that the utility will comply with an order issued under 1563  
division (G) of section 4928.35 of the Revised Code. 1564

(B) Subject to division (E) of section 4928.17 of the Revised 1565  
Code, if the commission finds that any part of the transition plan 1566  
would constitute an abandonment under sections 4905.20 and 4905.21 1567  
of the Revised Code, the commission shall not approve that part of 1568  
the transition plan unless it makes the finding required for 1569  
approval of an abandonment application under section 4905.21 of 1570  
the Revised Code. Sections 4905.20 and 4905.21 of the Revised Code 1571  
otherwise shall not apply to a transition plan under sections 1572  
4928.31 to 4928.40 of the Revised Code. 1573

**Sec. 4928.35.** (A) Upon approval of its transition plan under 1574  
sections 4928.31 to 4928.40 of the Revised Code, an electric 1575  
utility shall file in accordance with section 4905.30 of the 1576  
Revised Code schedules containing the unbundled rate components 1577  
set in the approved plan in accordance with section 4928.34 of the 1578

Revised Code. The schedules shall be in effect for the duration of 1579  
the utility's market development period, shall be subject to the 1580  
cap specified in division (A)(6) of section 4928.34 of the Revised 1581  
Code, and shall not be adjusted during that period by the public 1582  
utilities commission except as otherwise authorized by division 1583  
(B) of this section or as otherwise authorized by federal law or 1584  
except to reflect any change in tax law or tax regulation that has 1585  
a material effect on the electric utility. 1586

(B) Efforts shall be made to reach agreements with electric 1587  
utilities in matters of litigation regarding property valuation 1588  
issues. Irrespective of those efforts, the unbundled components 1589  
for an electric utility's retail electric generation service and 1590  
distribution service, as provided in division (A) of this section, 1591  
are not subject to adjustment for the utility's market development 1592  
period, except that the commission shall order an equitable 1593  
reduction in those components for all customer classes to reflect 1594  
any refund a utility receives as a result of the resolution of 1595  
utility personal property tax valuation litigation that is 1596  
resolved on or after the effective date of this section and not 1597  
later than December 31, 2005. Immediately upon the issuance of 1598  
that order, the electric utility shall file revised rate schedules 1599  
under section 4909.18 of the Revised Code to effect the order. 1600

(C) The schedule under division (A) of this section 1601  
containing the unbundled distribution components shall provide 1602  
that electric distribution service under the schedule will be 1603  
available to all retail electric service customers in the electric 1604  
utility's certified territory and their suppliers on a 1605  
nondiscriminatory and comparable basis on and after the starting 1606  
date of competitive retail electric service. The schedule also 1607  
shall include an obligation to build distribution facilities when 1608  
necessary to provide adequate distribution service, provided that 1609  
a customer requesting that service may be required to pay all or 1610

part of the reasonable incremental cost of the new facilities, in 1611  
accordance with rules, policy, precedents, or orders of the 1612  
commission. 1613

(D) During the market development period, an electric 1614  
distribution utility shall provide consumers on a comparable and 1615  
nondiscriminatory basis within its certified territory a standard 1616  
service offer of all competitive retail electric services 1617  
necessary to maintain essential electric service to consumers, 1618  
including a firm supply of electric generation service priced in 1619  
accordance with the schedule containing the utility's unbundled 1620  
generation service component. Immediately upon approval of its 1621  
transition plan, the utility shall file the standard service offer 1622  
with the commission under section 4909.18 of the Revised Code, 1623  
during the market development period. The failure of a supplier to 1624  
deliver retail electric generation service shall result in the 1625  
supplier's customers, after reasonable notice, defaulting to the 1626  
utility's standard service offer filed under this division until 1627  
the customer chooses an alternative supplier. A supplier is deemed 1628  
under this section to have failed to deliver such service if any 1629  
of the conditions specified in ~~divisions (B)(1) to (4) of~~ section 1630  
4928.14 of the Revised Code is met. 1631

(E) An amendment of a corporate separation plan contained in 1632  
a transition plan approved by the commission under section 4928.33 1633  
of the Revised Code shall be filed and approved as a corporate 1634  
separation plan pursuant to section 4928.17 of the Revised Code. 1635

(F) Any change to an electric utility's opportunity to 1636  
receive transition revenues under a transition plan approved in 1637  
accordance with section 4928.33 of the Revised Code shall be 1638  
authorized only as provided in sections 4928.31 to 4928.40 of the 1639  
Revised Code. 1640

(G) The commission, by order, shall require each electric 1641  
utility whose approved transition plan did not include an 1642

independent transmission plan as described in division (A)(13) of 1643  
section 4928.34 of the Revised Code to be a member of, and 1644  
transfer control of transmission facilities it owns or controls in 1645  
this state to, one or more qualifying transmission entities, as 1646  
described in division (B) of section 4928.12 of the Revised Code, 1647  
that are planned to be operational on and after December 31, 2003. 1648  
However, the commission may extend that date if, for reasons 1649  
beyond the control of the utility, a qualifying transmission 1650  
entity is not planned to be operational on that date. The 1651  
commission's order may specify an earlier date on which the 1652  
transmission entity or entities are planned to be operational if 1653  
the commission considers it necessary to carry out the policy 1654  
specified in section 4928.02 of the Revised Code or to encourage 1655  
effective competition in retail electric service in this state. 1656

Upon the issuance of the order, each such utility shall file 1657  
with the commission a plan for such independent operation of the 1658  
utility's transmission facilities consistent with this division. 1659  
The commission may reject and require refiling of any 1660  
substantially inadequate plan submitted under this division. 1661

After reasonable notice and opportunity for hearing, the 1662  
commission shall approve the plan upon a finding that the plan 1663  
will result in the utility's compliance with the order, this 1664  
division, and any rules adopted under division (A) of section 1665  
4928.06 of the Revised Code. The approved independent transmission 1666  
plan shall be deemed a part of the utility's transition plan for 1667  
purposes of sections 4928.31 to 4928.40 of the Revised Code. 1668

**Sec. 4928.61.** (A) There is hereby established in the state 1669  
treasury the advanced energy fund, into which shall be deposited 1670  
all advanced energy revenues remitted to the director of 1671  
development under division (B) of this section, for the exclusive 1672  
purposes of funding the advanced energy program created under 1673

section 4928.62 of the Revised Code and paying the program's 1674  
administrative costs. Interest on the fund shall be credited to 1675  
the fund. 1676

(B) Advanced energy revenues shall include all of the 1677  
following: 1678

(1) Revenues remitted to the director after collection by 1679  
each electric distribution utility in this state of a temporary 1680  
rider on retail electric distribution service rates as such rates 1681  
are determined by the public utilities commission pursuant to this 1682  
chapter. The rider shall be a uniform amount statewide, determined 1683  
by the director of development, after consultation with the public 1684  
benefits advisory board created by section 4928.58 of the Revised 1685  
Code. The amount shall be determined by dividing an aggregate 1686  
revenue target for a given year as determined by the director, 1687  
after consultation with the advisory board, by the number of 1688  
customers of electric distribution utilities in this state in the 1689  
prior year. Such aggregate revenue target shall not exceed more 1690  
than fifteen million dollars in any year through 2005 and shall 1691  
not exceed more than five million dollars in any year after 2005. 1692  
The rider shall be imposed beginning on the effective date of the 1693  
amendment of this section by Sub. H.B. 251 of the 126th general 1694  
assembly, January 4, 2007, and shall terminate at the end of ten 1695  
years following the starting date of competitive retail electric 1696  
service or until the advanced energy fund, including interest, 1697  
reaches one hundred million dollars, whichever is first. 1698

(2) Revenues from payments, repayments, and collections under 1699  
the advanced energy program and from program income; 1700

(3) Revenues remitted to the director after collection by a 1701  
municipal electric utility or electric cooperative in this state 1702  
upon the utility's or cooperative's decision to participate in the 1703  
advanced energy fund; 1704

(4) Revenues from renewable energy compliance payments as 1705  
provided under division (C)(2) of section 4928.64 of the Revised 1706  
Code; 1707

(5) Revenue from forfeitures under division (C) of section 1708  
4928.66 of the Revised Code; 1709

(6) Interest earnings on the advanced energy fund. 1710

(C)(1) Each electric distribution utility in this state shall 1711  
remit to the director on a quarterly basis the revenues described 1712  
in divisions (B)(1) and (2) of this section. Such remittances 1713  
shall occur within thirty days after the end of each calendar 1714  
quarter. 1715

(2) Each participating electric cooperative and participating 1716  
municipal electric utility shall remit to the director on a 1717  
quarterly basis the revenues described in division (B)(3) of this 1718  
section. Such remittances shall occur within thirty days after the 1719  
end of each calendar quarter. For the purpose of division (B)(3) 1720  
of this section, the participation of an electric cooperative or 1721  
municipal electric utility in the energy efficiency revolving loan 1722  
program as it existed immediately prior to the effective date of 1723  
the amendment of this section by Sub. H.B. 251 of the 126th 1724  
general assembly, January 4, 2007, does not constitute a decision 1725  
to participate in the advanced energy fund under this section as 1726  
so amended. 1727

(3) All remittances under divisions (C)(1) and (2) of this 1728  
section shall continue only until the end of ten years following 1729  
the starting date of competitive retail electric service or until 1730  
the advanced energy fund, including interest, reaches one hundred 1731  
million dollars, whichever is first. 1732

(D) Any moneys collected in rates for non-low-income customer 1733  
energy efficiency programs, as of October 5, 1999, and not 1734  
contributed to the energy efficiency revolving loan fund 1735



authorized under this section prior to the effective date of its 1736  
amendment by Sub. H.B. 251 of the 126th general assembly, January 1737  
4, 2007, shall be used to continue to fund cost-effective, 1738  
residential energy efficiency programs, be contributed into the 1739  
universal service fund as a supplement to that required under 1740  
section 4928.53 of the Revised Code, or be returned to ratepayers 1741  
in the form of a rate reduction at the option of the affected 1742  
electric distribution utility. 1743

Sec. 4928.621. (A) Any Edison technology center in this state 1744  
is eligible to apply for and receive assistance pursuant to 1745  
section 4928.62 of the Revised Code for the purposes of creating 1746  
an advanced energy manufacturing center in this state that will 1747  
provide for the exchange of information and expertise regarding 1748  
advanced energy, assisting with the design of advanced energy 1749  
projects, developing workforce training programs for such 1750  
projects, and encouraging investment in advanced energy 1751  
manufacturing technologies for advanced energy products and 1752  
investment in sustainable manufacturing operations that create 1753  
high-paying jobs in this state. 1754

(B) Any university or group of universities in this state 1755  
that conducts research on any advanced energy resource or any 1756  
not-for-profit corporation formed to address issues affecting the 1757  
price and availability of electricity and having members that are 1758  
small businesses may apply for and receive assistance pursuant to 1759  
section 4928.62 of the Revised Code for the purpose of encouraging 1760  
research in this state that is directed at innovation in or the 1761  
refinement of those resources or for the purpose of educational 1762  
outreach regarding those resources and, to that end, shall use 1763  
that assistance to establish such a program of research or 1764  
education outreach. Any such educational outreach shall be 1765  
directed at an increase in, innovation regarding, or refinement of 1766  
access by or of application or understanding of businesses and 1767

consumers in this state regarding, advanced energy resources. 1768

1769

(C) Any independent group located in this state the express 1770  
objective of which is to educate small businesses in this state 1771  
regarding renewable energy resources and energy efficiency 1772  
programs, or any small business located in this state electing to 1773  
utilize an advanced energy project or participate in an energy 1774  
efficiency program, is eligible to apply for and receive 1775  
assistance pursuant to section 4928.62 of the Revised Code. 1776

(D) Nothing in this section shall be construed as limiting 1777  
the eligibility of any qualifying entity to apply for or receive 1778  
assistance pursuant to section 4928.62 of the Revised Code. 1779

**Sec. 4928.64.** (A)(1) As used in sections 4928.64 and 4928.65 1780  
of the Revised Code, "alternative energy resource" means an 1781  
advanced energy resource or renewable energy resource, as defined 1782  
in section 4928.01 of the Revised Code that has a 1783  
placed-in-service date of January 1, 1998, or after; or a 1784  
mercantile customer-sited advance energy resource or renewable 1785  
energy resource, whether new or existing, that the mercantile 1786  
customer commits for integration into the electric distribution 1787  
utility's demand-response, energy efficiency, or peak demand 1788  
reduction programs as provided under division (B)(2)(b) of section 1789  
4928.66 of the Revised Code, including, but not limited to, any of 1790  
the following: 1791

(a) A resource that has the effect of improving the 1792  
relationship between real and reactive power; 1793

(b) A resource that makes efficient use of waste heat or 1794  
other thermal capabilities owned or controlled by a mercantile 1795  
customer; 1796

(c) Storage technology that allows a mercantile customer more 1797

flexibility to modify its demand or load and usage 1798  
characteristics; 1799

(d) Electric generation equipment owned or controlled by a 1800  
mercantile customer that uses an advanced energy resource or 1801  
renewable energy resource; 1802

(e) Any advanced energy resource or renewable energy resource 1803  
of the mercantile customer that can be utilized effectively as 1804  
part of any advanced energy resource plan of an electric 1805  
distribution utility and would otherwise qualify as an alternative 1806  
energy resource if it were utilized directly by an electric 1807  
distribution utility. 1808

(2) For the purpose of this section and as it considers 1809  
appropriate, the public utilities commission may classify any new 1810  
technology as such an advanced energy resource or a renewable 1811  
energy resource. 1812

(B) By 2025 and thereafter, an electric distribution utility 1813  
shall provide from alternative energy resources, including, at its 1814  
discretion, alternative energy resources obtained pursuant to an 1815  
electricity supply contract, a portion of the electricity supply 1816  
required for its standard service offer under section 4928.141 of 1817  
the Revised Code, and an electric services company shall provide a 1818  
portion of its electricity supply for retail consumers in this 1819  
state from alternative energy resources, including, at its 1820  
discretion, alternative energy resources obtained pursuant to an 1821  
electricity supply contract. That portion shall equal twenty-five 1822  
per cent of the total number of kilowatt hours of electricity sold 1823  
by the subject utility or company to any and all retail electric 1824  
consumers whose electric load centers are served by that utility 1825  
and are located within the utility's certified territory or, in 1826  
the case of an electric services company, are served by the 1827  
company and are located within this state. However, nothing in 1828  
this section precludes a utility or company from providing a 1829

greater percentage. The baseline for a utility's or company's 1830  
compliance with the alternative energy resource requirements of 1831  
this section shall be the average of such total kilowatt hours it 1832  
sold in the preceding three calendar years, except that the 1833  
commission may reduce a utility's or company's baseline to adjust 1834  
for new economic growth in the utility's certified territory or, 1835  
in the case of an electric services company, in the company's 1836  
service area in this state. 1837

1838

Of the alternative energy resources implemented by the 1839  
subject utility or company by 2025 and thereafter: 1840

(1) Half may be generated from advanced energy resources; 1841

(2) At least half shall be generated from renewable energy 1842  
resources, including one-half per cent from solar energy 1843  
resources, in accordance with the following benchmarks: 1844

<u>By end of year</u>	<u>Renewable energy</u>	<u>Solar energy</u>	1845
	<u>resources</u>	<u>resources</u>	
<u>2009</u>	<u>0.25%</u>	<u>0.004%</u>	1846
<u>2010</u>	<u>0.50%</u>	<u>0.008%</u>	1847
<u>2011</u>	<u>1%</u>	<u>0.015%</u>	1848
<u>2012</u>	<u>1.5%</u>	<u>0.02%</u>	1849
<u>2013</u>	<u>2%</u>	<u>0.06%</u>	1850
<u>2014</u>	<u>2.5%</u>	<u>0.10%</u>	1851
<u>2015</u>	<u>3.5%</u>	<u>0.14%</u>	1852
<u>2016</u>	<u>4.5%</u>	<u>0.18%</u>	1853
<u>2017</u>	<u>5.5%</u>	<u>0.22%</u>	1854
<u>2018</u>	<u>6.5%</u>	<u>0.26%</u>	1855
<u>2019</u>	<u>7.5%</u>	<u>0.3%</u>	1856
<u>2020</u>	<u>8.5%</u>	<u>0.34%</u>	1857
<u>2021</u>	<u>9.5%</u>	<u>0.38%</u>	1858
<u>2022</u>	<u>10.5%</u>	<u>0.42%</u>	1859
<u>2023</u>	<u>11.5%</u>	<u>0.46%</u>	1860

2024 and each calendar 12.5% 0.5% 1861  
year thereafter

(3) At least one-half of the renewable energy resources 1862  
implemented by the utility or company shall be met through 1863  
facilities located in this state; the remainder shall be met with 1864  
resources that can be shown to be deliverable into this state. 1865

(C)(1) The commission annually shall review an electric 1866  
distribution utility's or electric services company's compliance 1867  
with the most recent applicable benchmark under division (B)(2) of 1868  
this section and, in the course of that review, shall identify any 1869  
undercompliance or noncompliance of the utility or company that it 1870  
determines is weather-related, related to equipment or resource 1871  
shortages for advanced energy or renewable energy resources as 1872  
applicable, or is otherwise outside the utility's or company's 1873  
control. 1874

(2) Subject to the cost cap provisions of division (C)(3) of 1875  
this section, if the commission determines, after notice and 1876  
opportunity for hearing, and based upon its findings in that 1877  
review regarding avoidable undercompliance or noncompliance, but 1878  
subject to division (C)(4) of this section, that the utility or 1879  
company has failed to comply with any such benchmark, the 1880  
commission shall impose a renewable energy compliance payment on 1881  
the utility or company. 1882

(a) The compliance payment pertaining to the solar energy 1883  
resource benchmarks under division (B)(2) of this section shall be 1884  
an amount per megawatt hour of undercompliance or noncompliance in 1885  
the period under review, starting at four hundred fifty dollars 1886  
for 2009, four hundred dollars for 2010 and 2011, and similarly 1887  
reduced every two years thereafter through 2024 by fifty dollars, 1888  
to a minimum of fifty dollars. 1889

(b) The compliance payment pertaining to the renewable energy 1890  
resource benchmarks under division (B)(2) of this section shall 1891

equal the number of additional renewable energy credits that the 1892  
electric distribution utility or electric services company would 1893  
have needed to comply with the applicable benchmark in the period 1894  
under review times an amount that shall begin at forty-five 1895  
dollars and shall be adjusted annually by the commission to 1896  
reflect any change in the consumer price index as defined in 1897  
section 101.27 of the Revised Code, but shall not be less than 1898  
forty-five dollars. 1899

(c) The compliance payment shall not be passed through by the 1900  
electric distribution utility or electric services company to 1901  
consumers. The compliance payment shall be remitted to the 1902  
commission, for deposit to the credit of the advanced energy fund 1903  
created under section 4928.61 of the Revised Code. Payment of the 1904  
compliance payment shall be subject to such collection and 1905  
enforcement procedures as apply to the collection of a forfeiture 1906  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code. 1907  
1908

(3)(a) No electric distribution utility or electric services 1909  
company, for the purpose of compliance with a specified, minimum 1910  
benchmark under division (B) of this section, shall comply with, 1911  
be required to comply with, or be subject to a compliance payment 1912  
under division (C)(2) of this section for failure to comply with, 1913  
that benchmark if compliance would result in an annual, estimated, 1914  
average net increase in the total amounts paid by its customers 1915  
due to the cost of the renewable energy resources that exceeds 1916  
three per cent of the total amounts paid by each customer class in 1917  
the previous calendar year, as determined by the commission. As 1918  
used in division (C)(3) of this section, "total amounts paid by 1919  
customers" means all costs for generation, transmission, 1920  
distribution, metering, taxes, and all other costs comprising 1921  
customer bills. Nothing in this division shall affect the right of 1922  
the utility or company to construct or operate any renewable 1923

energy resource nor shall affect any electricity supply contract. 1924

(b) Not later than January 1, 2013, the commission, in 1925  
consultation with the department of development, the Ohio air 1926  
quality development authority, and the office of the consumers' 1927  
counsel, shall review the cost cap limitation of division 1928  
(C)(3)(b) of this section and report to the standing committees of 1929  
the house of representatives and the senate that primarily deal 1930  
with alternative energy issues regarding whether the limitation 1931  
unduly constrains the procurement of renewable energy resources. 1932  
The report shall include recommendations regarding whether that 1933  
limitation should be maintained, eliminated, or changed. 1934

(4)(a) An electric distribution utility or electric services 1935  
company may request the commission to make a force majeure 1936  
determination pursuant to this division regarding all or part of 1937  
the utility's or company's compliance with any minimum benchmark 1938  
under division (B)(2) of this section during the period of review 1939  
occurring pursuant to division (C)(5) of this section. The 1940  
commission may require the electric distribution utility or 1941  
electric services company to make solicitations for renewable 1942  
energy resource credits as part of its default service before the 1943  
utility's or company's request of force majeure under this 1944  
division can be made. 1945

(b) Within ninety days after the filing of a request by an 1946  
electric distribution utility or electric services company under 1947  
division (C)(4)(a) of this section, the commission shall determine 1948  
if renewable energy resources are reasonably available in the 1949  
marketplace in sufficient quantities for the utility or company to 1950  
comply with the subject minimum benchmark during the review 1951  
period. In making this determination, the commission shall 1952  
consider whether the electric distribution utility or electric 1953  
services company has made a good faith effort to acquire 1954  
sufficient renewable energy or, as applicable, solar energy 1955

resources to so comply, including, but not limited to, by banking 1956  
or seeking renewable energy resource credits or by seeking the 1957  
resources through long-term contracts. Additionally, the 1958  
commission shall consider the availability of renewable energy or 1959  
solar energy resources in this state and other jurisdictions in 1960  
the PJM interconnection regional transmission organization or its 1961  
successor and the midwest system operator or its successor. 1962

(c) If, pursuant to division (C)(4)(b) of this section, the 1963  
commission determines that renewable energy or solar energy 1964  
resources are not reasonably available to permit the electric 1965  
distribution utility or electric services company to comply, 1966  
during the period of review, with the subject minimum benchmark 1967  
prescribed under division (B)(2) of this section, the commission 1968  
shall modify that compliance obligation of the utility or company 1969  
as it determines appropriate to accommodate the finding. 1970  
Commission modification shall not automatically reduce the 1971  
obligation for the electric distribution utility's or electric 1972  
services company's compliance in subsequent years. If it modifies 1973  
the electric distribution utility or electric services company 1974  
obligation under division (C)(4)(c) of this section, the 1975  
commission may require the utility or company, if sufficient 1976  
renewable energy resource credits exist in the marketplace, to 1977  
acquire additional renewable energy resource credits in subsequent 1978  
years equivalent to the utility's or company's modified obligation 1979  
under division (C)(4)(c) of this section. 1980

(5) The commission shall establish a process to provide for 1981  
at least an annual review of the alternative energy resource 1982  
market in this state and in the service territories of the 1983  
regional transmission organizations that manage transmission 1984  
systems located in this state. The commission shall use the 1985  
results of this study to identify any needed changes to the amount 1986  
of the renewable energy compliance payment specified under 1987



divisions (C)(2)(a) and (b) of this section. Specifically, the 1988  
commission may increase the amount to ensure that payment of 1989  
compliance payments is not used to achieve compliance with this 1990  
section in lieu of actually acquiring or realizing energy derived 1991  
from renewable energy resources. However, if the commission finds 1992  
that the amount of the compliance payment should be otherwise 1993  
changed, the commission shall present this finding to the general 1994  
assembly for legislative enactment. 1995

1996

(D)(1) The commission annually shall submit to the general 1997  
assembly in accordance with section 101.68 of the Revised Code a 1998  
report describing the compliance of electric distribution 1999  
utilities and electric services companies with division (B) of 2000  
this section and any strategy for utility and company compliance 2001  
or for encouraging the use of alternative energy resources in 2002  
supplying this state's electricity needs in a manner that 2003  
considers available technology, costs, job creation, and economic 2004  
impacts. The commission shall allow and consider public comments 2005  
on the report prior to its submission to the general assembly. 2006  
Nothing in the report shall be binding on any person, including 2007  
any utility or company for the purpose of its compliance with any 2008  
benchmark under division (B) of this section, or the enforcement 2009  
of that provision under division (C) of this section. 2010

2011

(2) The governor, in consultation with the commission 2012  
chairperson, shall appoint an alternative energy advisory 2013  
committee. The committee shall examine available technology for 2014  
and related timetables, goals, and costs of the alternative energy 2015  
resource requirements under division (B) of this section and shall 2016  
submit to the commission a semiannual report of its 2017  
recommendations. 2018

(E) All costs incurred by an electric distribution utility in 2019

complying with the requirements of this section shall be 2020  
bypassable by any consumer that has exercised choice of supplier 2021  
under section 4928.03 of the Revised Code. 2022

**Sec. 4928.65.** An electric distribution utility or electric 2023  
services company may use renewable energy credits any time in the 2024  
five calendar years following the date of their purchase or 2025  
acquisition from any entity, including, but not limited to, a 2026  
mercantile customer or an owner or operator of a hydroelectric 2027  
generating facility that is located at a dam on a river that is 2028  
within or bordering this state or within or bordering an adjoining 2029  
state, for the purpose of complying with the renewable energy and 2030  
solar energy resource requirements of division (B)(2) of section 2031  
4928.64 of the Revised Code. The public utilities commission shall 2032  
adopt rules specifying that one unit of credit shall equal one 2033  
megawatt hour of electricity derived from renewable energy 2034  
resources. The rules also shall provide for this state a system of 2035  
registering renewable energy credits by specifying which of any 2036  
generally available registries shall be used for that purpose and 2037  
not by creating a registry. That selected system of registering 2038  
renewable energy credits shall allow a hydroelectric generating 2039  
facility to be eligible for obtaining renewable energy credits and 2040  
shall allow customer-sited projects or actions the broadest 2041  
opportunities to be eligible for obtaining renewable energy 2042  
credits. 2043  
2044

**Sec. 4928.66.** (A)(1)(a) Beginning in 2009, an electric 2045  
distribution utility shall implement energy efficiency programs 2046  
that achieve energy savings equivalent to at least three-tenths of 2047  
one per cent of the total, annual average, and normalized 2048  
kilowatt-hour sales of the electric distribution utility during 2049  
the preceding three calendar years to customers in this state. The 2050

savings requirement, using such a three-year average, shall 2051  
increase to an additional five-tenths of one per cent in 2010, 2052  
seven-tenths of one per cent in 2011, eight-tenths of one per cent 2053  
in 2012, nine-tenths of one per cent in 2013, one per cent from 2054  
2014 to 2018, and two per cent each year thereafter, achieving a 2055  
cumulative, annual energy savings in excess of twenty-two per cent 2056  
by the end of 2025. 2057

(b) Beginning in 2009, an electric distribution utility shall 2058  
implement peak demand reduction programs designed to achieve a one 2059  
per cent reduction in peak demand in 2009 and an additional 2060  
seventy-five hundredths of one per cent reduction each year 2061  
through 2018. In 2018, the standing committees in the house of 2062  
representatives and the senate primarily dealing with energy 2063  
issues shall make recommendations to the general assembly 2064  
regarding future peak demand reduction targets. 2065

(2) For the purposes of divisions (A)(1)(a) and (b) of this 2066  
section: 2067

(a) The baseline for energy savings under division (A)(1)(a) 2068  
of this section shall be the average of the total kilowatt hours 2069  
the electric distribution utility sold in the preceding three 2070  
calendar years, and the baseline for a peak demand reduction under 2071  
division (A)(1)(b) of this section shall be the average peak 2072  
demand on the utility in the preceding three calendar years, 2073  
except that the commission may reduce either baseline to adjust 2074  
for new economic growth in the utility's certified territory. 2075

(b) The commission may amend the benchmarks set forth in 2076  
division (A)(1)(a) or (b) of this section if, after application by 2077  
the electric distribution utility, the commission determines that 2078  
the amendment is necessary because the utility cannot reasonably 2079  
achieve the benchmarks due to regulatory, economic, or 2080  
technological reasons beyond its reasonable control. 2081

(c) Compliance with divisions (A)(1)(a) and (b) of this 2082  
section shall be measured by including the effects of all 2083  
demand-response programs for mercantile customers of the subject 2084  
electric distribution utility and all such mercantile 2085  
customer-sited energy efficiency and peak demand reduction 2086  
programs, adjusted upward by the appropriate loss factors. Any 2087  
mechanism designed to recover the cost of energy efficiency and 2088  
peak demand reduction programs under divisions (A)(1)(a) and (b) 2089  
of this section may exempt mercantile customers that commit their 2090  
demand-response or other customer-sited capabilities, whether 2091  
existing or new, for integration into the electric distribution 2092  
utility's demand-response, energy efficiency, or peak demand 2093  
reduction programs, if the commission determines that that 2094  
exemption reasonably encourages such customers to commit those 2095  
capabilities to those programs. If a mercantile customer makes 2096  
such existing or new demand-response, energy efficiency, or peak 2097  
demand reduction capability available to an electric distribution 2098  
utility pursuant to division (A)(2)(c) of this section, the 2099  
electric utility's baseline under division (A)(2)(a) of this 2100  
section shall be adjusted to exclude the effects of all such 2101  
demand-response, energy efficiency, or peak demand reduction 2102  
programs that may have existed during the period used to establish 2103  
the baseline. The baseline also shall be normalized for changes in 2104  
numbers of customers, sales, weather, peak demand, and other 2105  
appropriate factors so that the compliance measurement is not 2106  
unduly influenced by factors outside the control of the electric 2107  
distribution utility. 2108

(d) Programs implemented by a utility may include 2109  
demand-response programs, customer-sited programs, and 2110  
transmission and distribution infrastructure improvements that 2111  
reduce line losses. Division (A)(2)(c) of this section shall be 2112  
applied to include facilitating efforts by a mercantile customer 2113  
or group of those customers to offer customer-sited 2114

demand-response, energy efficiency, or peak demand reduction 2115  
capabilities to the electric distribution utility as part of a 2116  
reasonable arrangement submitted to the commission pursuant to 2117  
section 4905.31 of the Revised Code. 2118

(e) No programs or improvements described in division 2119  
(A)(2)(d) of this section shall conflict with any statewide 2120  
building code adopted by the board of building standards. 2121

(B) In accordance with rules it shall adopt, the public 2122  
utilities commission shall produce and docket at the commission an 2123  
annual report containing the results of its verification of the 2124  
annual levels of energy efficiency and of peak demand reductions 2125  
achieved by each electric distribution utility pursuant to 2126  
division (A) of this section. A copy of the report shall be 2127  
provided to the consumers' counsel. 2128

(C) If the commission determines, after notice and 2129  
opportunity for hearing and based upon its report under division 2130  
(B) of this section, that an electric distribution utility has 2131  
failed to comply with an energy efficiency or peak demand 2132  
reduction requirement of division (A) of this section, the 2133  
commission shall assess a forfeiture on the utility as provided 2134  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised Code, 2135  
either in the amount, per day per undercompliance or 2136  
noncompliance, relative to the period of the report, equal to that 2137  
prescribed for noncompliances under section 4905.54 of the Revised 2138  
Code, or in an amount equal to the then existing market value of 2139  
one renewable energy credit per megawatt hour of undercompliance 2140  
or noncompliance. Revenue from any forfeiture assessed under this 2141  
division shall be deposited to the credit of the advanced energy 2142  
fund created under section 4928.61 of the Revised Code. 2143

2144

(D) The commission may establish rules regarding the content 2145  
of an application by an electric distribution utility for 2146

commission approval of a revenue decoupling mechanism under this 2147  
division. Such an application shall not be considered an 2148  
application to increase rates and may be included as part of a 2149  
proposal to establish, continue, or expand energy efficiency or 2150  
conservation programs. The commission by order may approve an 2151  
application under this division if it determines both that the 2152  
revenue decoupling mechanism provides for the recovery of revenue 2153  
that otherwise may be foregone by the utility as a result of or in 2154  
connection with the implementation by the electric distribution 2155  
utility of any energy efficiency or energy conservation programs 2156  
and reasonably aligns the interests of the utility and of its 2157  
customers in favor of those programs. 2158

(E) The commission additionally shall adopt rules that 2159  
require an electric distribution utility to provide a customer 2160  
upon request with two years' consumption data in an accessible 2161  
form. 2162

**Sec. 4928.67.** ~~(A)(1) Beginning on the starting date of~~ 2163  
~~competitive retail electric service, a retail electric service~~ 2164  
~~provider in this state~~ Except as provided in division (A)(2) of 2165  
this section, an electric utility shall develop a standard 2166  
contract or tariff providing for net energy metering. 2167

~~Any time that the total rated generating capacity used by~~ 2168  
~~customer generators is less than one per cent of the provider's~~ 2169  
~~aggregate customer peak demand in this state, the provider shall~~ 2170  
~~make this contract or tariff available to customer generators,~~ 2171  
~~upon request and on a first come, first served basis. The~~ 2172

That contract or tariff shall be identical in rate structure, 2173  
all retail rate components, and any monthly charges, 2174  
contract or tariff to which the same customer would be assigned if 2175  
that customer were not a customer-generator. 2176

(2) An electric utility shall also develop a separate 2177

standard contract or tariff providing for net energy metering for 2178  
a hospital, as defined in section 3701.01 of the Revised Code, 2179  
that is also a customer-generator, subject to all of the 2180  
following: 2181

(a) No limitation, including that in division (A)(1) of this 2182  
section and divisions (A)(31)(a) and (d) of section 4928.01 of the 2183  
Revised Code, shall apply regarding the availability of the 2184  
contract or tariff to such hospital customer-generators. 2185

(b) The contract or tariff shall be based both upon the rate 2186  
structure, rate components, and any charges to which the hospital 2187  
would otherwise be assigned if the hospital were not a 2188  
customer-generator and upon the market value of the 2189  
customer-generated electricity at the time it is generated. 2190  
Transmission and distribution charges in the contract or tariff 2191  
shall apply to the flow of electricity both to the customer and 2192  
from the customer to the electric utility. 2193

(c) The contract or tariff shall allow the hospital 2194  
customer-generator to operate its electric generating facilities 2195  
individually or collectively without any wattage limitation on 2196  
size. 2197

~~(2)~~(B)(1) Net metering under this section shall be 2198  
accomplished using a single meter capable of registering the flow 2199  
of electricity in each direction. If its existing electrical meter 2200  
is not capable of measuring the flow of electricity in two 2201  
directions, the customer-generator shall be responsible for all 2202  
expenses involved in purchasing and installing a meter that is 2203  
capable of measuring electricity flow in two directions. 2204

~~(3)~~Such an (2) The electric ~~service provider~~ utility, at its 2205  
own expense and with the written consent of the 2206  
customer-generator, may install one or more additional meters to 2207  
monitor the flow of electricity in each direction. 2208

~~(B)~~(3) Consistent with the other provisions of this section, 2209  
the measurement of net electricity supplied or generated shall be 2210  
calculated in the following manner: 2211

~~(1)~~(a) The electric ~~service-provider~~ utility shall measure 2212  
the net electricity produced or consumed during the billing 2213  
period, in accordance with normal metering practices. 2214

~~(2)~~(b) If the electricity supplied by the electric ~~service~~ 2215  
~~provider~~ utility exceeds the electricity generated by the 2216  
customer-generator and fed back to the ~~electric service-provider~~ 2217  
utility during the billing period, the customer-generator shall be 2218  
billed for the net electricity supplied by the ~~electric service~~ 2219  
~~provider~~ utility, in accordance with normal metering practices. If 2220  
electricity is provided to the ~~electric service-provider~~ utility, 2221  
the credits for that electricity shall appear in the next billing 2222  
cycle. 2223

~~(C)~~(1)(4) A net metering system used by a customer-generator 2224  
shall meet all applicable safety and performance standards 2225  
established by the national electrical code, the institute of 2226  
electrical and electronics engineers, and underwriters 2227  
laboratories. 2228

~~(2)~~(C) The public utilities commission shall adopt rules 2229  
relating to additional control and testing requirements for 2230  
customer-generators ~~which~~ that the commission determines are 2231  
necessary to protect public and worker safety and system 2232  
reliability. 2233

(D) An electric ~~service-provider~~ utility shall not require a 2234  
customer-generator whose net metering system meets the standards 2235  
and requirements provided for in divisions (B)(4) and (C)(1) ~~and~~ 2236  
~~(D)~~ of this section to do any of the following: 2237

(1) Comply with additional safety or performance standards; 2238

(2) Perform or pay for additional tests; 2239



(3) Purchase additional liability insurance. 2240

Sec. 4928.68. To the extent permitted by federal law, the 2241  
public utilities commission shall adopt rules establishing 2242  
greenhouse gas emission reporting requirements, including 2243  
participation in the climate registry, and carbon dioxide control 2244  
planning requirements for each electric generating facility that 2245  
is located in this state, is owned or operated by a public utility 2246  
that is subject to the commission's jurisdiction, and emits 2247  
greenhouse gases, including facilities in operation on the 2248  
effective date of this section. 2249

Sec. 4928.69. Notwithstanding any provision of Chapter 4928. 2250  
of the Revised Code and except as otherwise provided in an 2251  
agreement filed with and approved by the public utilities 2252  
commission under section 4905.31 of the Revised Code, an electric 2253  
distribution utility shall not charge any person that is a 2254  
customer of a municipal electric utility that is in existence on 2255  
or before January 1, 2008, any surcharge, service termination 2256  
charge, exit fee, or transition charge. 2257

**Sec. 4929.01.** As used in this chapter: 2258

(A) "Alternative rate plan" means a method, alternate to the 2259  
method of section 4909.15 of the Revised Code, for establishing 2260  
rates and charges, under which rates and charges may be 2261  
established for a commodity sales service or ancillary service 2262  
that is not exempt pursuant to section 4929.04 of the Revised Code 2263  
or for a distribution service. Alternative rate plans may include, 2264  
but are not limited to, methods that provide adequate and reliable 2265  
natural gas services and goods in this state; minimize the costs 2266  
and time expended in the regulatory process; tend to assess the 2267  
costs of any natural gas service or goods to the entity, service, 2268  
or goods that cause such costs to be incurred; afford rate 2269

stability; promote and reward efficiency, quality of service, or 2270  
cost containment by a natural gas company; ~~or~~ provide sufficient 2271  
flexibility and incentives to the natural gas industry to achieve 2272  
high quality, technologically advanced, and readily available 2273  
natural gas services and goods at just and reasonable rates and 2274  
charges; or establish revenue decoupling mechanisms. Alternative 2275  
rate plans also may include, but are not limited to, automatic 2276  
adjustments based on a specified index or changes in a specified 2277  
cost or costs. 2278

(B) "Ancillary service" means a service that is ancillary to 2279  
the receipt or delivery of natural gas to consumers, including, 2280  
but not limited to, storage, pooling, balancing, and transmission. 2281

(C) "Commodity sales service" means the sale of natural gas 2282  
to consumers, exclusive of any distribution or ancillary service. 2283

(D) "Comparable service" means any regulated service or goods 2284  
whose availability, quality, price, terms, and conditions are the 2285  
same as or better than those of the services or goods that the 2286  
natural gas company provides to a person with which it is 2287  
affiliated or which it controls, or, as to any consumer, that the 2288  
natural gas company offers to that consumer as part of a bundled 2289  
service that includes both regulated and exempt services or goods. 2290

(E) "Consumer" means any person or association of persons 2291  
purchasing, delivering, storing, or transporting, or seeking to 2292  
purchase, deliver, store, or transport, natural gas, including 2293  
industrial consumers, commercial consumers, and residential 2294  
consumers, but not including natural gas companies. 2295

(F) "Distribution service" means the delivery of natural gas 2296  
to a consumer at the consumer's facilities, by and through the 2297  
instrumentalities and facilities of a natural gas company, 2298  
regardless of the party having title to the natural gas. 2299

(G) "Natural gas company" means a natural gas company, as 2300

defined in section 4905.03 of the Revised Code, that is a public 2301  
utility as defined in section 4905.02 of the Revised Code and 2302  
excludes a retail natural gas supplier. 2303

(H) "Person," except as provided in division (N) of this 2304  
section, has the same meaning as in section 1.59 of the Revised 2305  
Code, and includes this state and any political subdivision, 2306  
agency, or other instrumentality of this state and includes the 2307  
United States and any agency or other instrumentality of the 2308  
United States. 2309

(I) "Billing or collection agent" means a fully independent 2310  
agent, not affiliated with or otherwise controlled by a retail 2311  
natural gas supplier or governmental aggregator subject to 2312  
certification under section 4929.20 of the Revised Code, to the 2313  
extent that the agent is under contract with such supplier or 2314  
aggregator solely to provide billing and collection for 2315  
competitive retail natural gas service on behalf of the supplier 2316  
or aggregator. 2317

(J) "Competitive retail natural gas service" means any retail 2318  
natural gas service that may be competitively offered to consumers 2319  
in this state as a result of revised schedules approved under 2320  
division (C) of section 4929.29 of the Revised Code, a rule or 2321  
order adopted or issued by the public utilities commission under 2322  
Chapter 4905. of the Revised Code, or an exemption granted by the 2323  
commission under sections 4929.04 to 4929.08 of the Revised Code. 2324

(K) "Governmental aggregator" means either of the following: 2325

(1) A legislative authority of a municipal corporation, a 2326  
board of township trustees, or a board of county commissioners 2327  
acting exclusively under section 4929.26 or 4929.27 of the Revised 2328  
Code as an aggregator for the provision of competitive retail 2329  
natural gas service; 2330

(2) A municipal corporation acting exclusively under Section 2331

4 of Article XVIII, Ohio Constitution, as an aggregator for the 2332  
provision of competitive retail natural gas service. 2333

(L)(1) "Mercantile customer" means a customer that consumes, 2334  
other than for residential use, more than five hundred thousand 2335  
cubic feet of natural gas per year at a single location within 2336  
this state or consumes natural gas, other than for residential 2337  
use, as part of an undertaking having more than three locations 2338  
within or outside of this state. "Mercantile customer" excludes a 2339  
customer for which a declaration under division (L)(2) of this 2340  
section is in effect pursuant to that division. 2341

(2) A not-for-profit customer that consumes, other than for 2342  
residential use, more than five hundred thousand cubic feet of 2343  
natural gas per year at a single location within this state or 2344  
consumes natural gas, other than for residential use, as part of 2345  
an undertaking having more than three locations within or outside 2346  
this state may file a declaration under division (L)(2) of this 2347  
section with the public utilities commission. The declaration 2348  
shall take effect upon the date of filing, and by virtue of the 2349  
declaration, the customer is not a mercantile customer for the 2350  
purposes of this section and sections 4929.20 to 4929.29 of the 2351  
Revised Code or the purposes of a governmental natural gas 2352  
aggregation or arrangement or other contract entered into after 2353  
the declaration's effective date for the supply or arranging of 2354  
the supply of natural gas to the customer to a location within 2355  
this state. The customer may file a rescission of the declaration 2356  
with the commission at any time. The rescission shall not affect 2357  
any governmental natural gas aggregation or arrangement or other 2358  
contract entered into by the customer prior to the date of the 2359  
filing of the rescission and shall have effect only with respect 2360  
to any subsequent such aggregation or arrangement or other 2361  
contract. The commission shall prescribe rules under section 2362  
4929.10 of the Revised Code specifying the form of the declaration 2363

or a rescission and procedures by which a declaration or 2364  
rescission may be filed. 2365

(M) "Retail natural gas service" means commodity sales 2366  
service, ancillary service, natural gas aggregation service, 2367  
natural gas marketing service, or natural gas brokerage service. 2368

(N) "Retail natural gas supplier" means any person, as 2369  
defined in section 1.59 of the Revised Code, that is engaged on a 2370  
for-profit or not-for-profit basis in the business of supplying or 2371  
arranging for the supply of a competitive retail natural gas 2372  
service to consumers in this state that are not mercantile 2373  
customers. "Retail natural gas supplier" includes a marketer, 2374  
broker, or aggregator, but excludes a natural gas company, a 2375  
governmental aggregator as defined in division (K)(1) or (2) of 2376  
this section, an entity described in division (B) or (C) of 2377  
section 4905.02 of the Revised Code, or a billing or collection 2378  
agent, and excludes a producer or gatherer of gas to the extent 2379  
such producer or gatherer is not a natural gas company under 2380  
section 4905.03 of the Revised Code. 2381

(O) "Revenue decoupling mechanism" means a rate design or 2382  
other cost recovery mechanism that provides recovery of the fixed 2383  
costs of service and a fair and reasonable rate of return, 2384  
irrespective of system throughput or volumetric sales. 2385

**Sec. 4929.02.** (A) It is the policy of this state to, 2386  
throughout this state: 2387

(1) Promote the availability to consumers of adequate, 2388  
reliable, and reasonably priced natural gas services and goods; 2389

(2) Promote the availability of unbundled and comparable 2390  
natural gas services and goods that provide wholesale and retail 2391  
consumers with the supplier, price, terms, conditions, and quality 2392  
options they elect to meet their respective needs; 2393

(3) Promote diversity of natural gas supplies and suppliers,	2394
by giving consumers effective choices over the selection of those	2395
supplies and suppliers;	2396
(4) Encourage innovation and market access for cost-effective	2397
supply- and demand-side natural gas services and goods;	2398
(5) Encourage cost-effective and efficient access to	2399
information regarding the operation of the distribution systems of	2400
natural gas companies in order to promote effective customer	2401
choice of natural gas services and goods;	2402
(6) Recognize the continuing emergence of competitive natural	2403
gas markets through the development and implementation of flexible	2404
regulatory treatment;	2405
(7) Promote an expeditious transition to the provision of	2406
natural gas services and goods in a manner that achieves effective	2407
competition and transactions between willing buyers and willing	2408
sellers to reduce or eliminate the need for regulation of natural	2409
gas services and goods under Chapters 4905. and 4909. of the	2410
Revised Code;	2411
(8) Promote effective competition in the provision of natural	2412
gas services and goods by avoiding subsidies flowing to or from	2413
regulated natural gas services and goods;	2414
(9) Ensure that the risks and rewards of a natural gas	2415
company's offering of nonjurisdictional and exempt services and	2416
goods do not affect the rates, prices, terms, or conditions of	2417
nonexempt, regulated services and goods of a natural gas company	2418
and do not affect the financial capability of a natural gas	2419
company to comply with the policy of this state specified in this	2420
section;	2421
(10) Facilitate the state's competitiveness in the global	2422
economy;	2423

(11) Facilitate additional choices for the supply of natural 2424  
gas for residential consumers, including aggregation; 2425

(12) Promote an alignment of natural gas company interests 2426  
with consumer interest in energy efficiency and energy 2427  
conservation. 2428

(B) The public utilities commission and the office of the 2429  
consumers' counsel shall follow the policy specified in this 2430  
section in ~~carrying out~~ exercising their respective authorities 2431  
relative to sections 4929.03 to 4929.30 of the Revised Code. 2432

(C) Nothing in Chapter 4929. of the Revised Code shall be 2433  
construed to alter the public utilities commission's construction 2434  
or application of division (A)(6) of section 4905.03 of the 2435  
Revised Code. 2436

Sec. 4929.051. An alternative rate plan filed by a natural 2437  
gas company under section 4929.05 of the Revised Code and 2438  
proposing a revenue decoupling mechanism may be an application not 2439  
for an increase in rates if the rates, joint rates, tolls, 2440  
classifications, charges, or rentals are based upon the billing 2441  
determinants and revenue requirement authorized by the public 2442  
utilities commission in the company's most recent rate case 2443  
proceeding and the plan also establishes, continues, or expands an 2444  
energy efficiency or energy conservation program. 2445

**Section 2.** That existing sections 4905.31, 4928.01, 4928.02, 2446  
4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 2447  
4928.35, 4928.61, 4928.67, 4929.01, and 4929.02 and sections 2448  
4928.41, 4928.42, 4928.431, and 4928.44 of the Revised Code are 2449  
hereby repealed. 2450

**Section 3.** Nothing in this act affects the legal validity or 2451  
the force and effect of an electric distribution utility's rate 2452

plan, as defined in section 4928.01 of the Revised Code as amended 2453  
by this act, or the plan's terms and conditions, including any 2454  
provisions regarding cost recovery. 2455

**Section 4.** Section 4929.051 of the Revised Code, as enacted 2456  
by this act, shall not be applied in favor of a claim or finding 2457  
that an application described in that section but submitted to the 2458  
Public Utilities Commission prior to the act's effective date is 2459  
an application to increase rates. 2460

**Section 5.** The Governor's Energy Advisor periodically shall 2461  
submit a written report to the General Assembly pursuant to 2462  
section 101.68 of the Revised Code and report in person to and as 2463  
requested by the standing committees of the House of 2464  
Representatives and the Senate that have primary responsibility 2465  
for energy efficiency and conservation issues regarding 2466  
initiatives undertaken by the Advisor and state government 2467  
pursuant to numbered paragraphs 3 and 4 of Executive Order 2468  
2007-02S, "Coordinating Ohio Energy Policy and State Energy 2469  
Utilization. The first written report shall be submitted not later 2470  
than sixty days after the effective date of this act. 2471