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132nd General Assembly

Regular Session

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Sub. H. B. No. 239

A BILL

To amend sections 4928.01, 4928.02, 4928.141, 1
4928.142, and 4928.143 and to enact section 2
4928.147 of the Revised Code to allow electric 3
distribution utilities to recover costs for a 4
national security generation resource. 5

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

Section 1. That sections 4928.01, 4928.02, 4928.141, 6
4928.142, and 4928.143 be amended and section 4928.147 of the 7
Revised Code be enacted to read as follows: 8

Sec. 4928.01. (A) As used in this chapter: 9

(1) "Ancillary service" means any function necessary to 10
the provision of electric transmission or distribution service 11
to a retail customer and includes, but is not limited to, 12
scheduling, system control, and dispatch services; reactive 13
supply from generation resources and voltage control service; 14
reactive supply from transmission resources service; regulation 15



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service; frequency response service; energy imbalance service; 16
operating reserve-spinning reserve service; operating reserve- 17
supplemental reserve service; load following; back-up supply 18
service; real-power loss replacement service; dynamic 19
scheduling; system black start capability; and network stability 20
service. 21

(2) "Billing and collection agent" means a fully 22
independent agent, not affiliated with or otherwise controlled 23
by an electric utility, electric services company, electric 24
cooperative, or governmental aggregator subject to certification 25
under section 4928.08 of the Revised Code, to the extent that 26
the agent is under contract with such utility, company, 27
cooperative, or aggregator solely to provide billing and 28
collection for retail electric service on behalf of the utility 29
company, cooperative, or aggregator. 30

(3) "Certified territory" means the certified territory 31
established for an electric supplier under sections 4933.81 to 32
4933.90 of the Revised Code. 33

(4) "Competitive retail electric service" means a 34
component of retail electric service that is competitive as 35
provided under division (B) of this section. 36

(5) "Electric cooperative" means a not-for-profit electric 37
light company that both is or has been financed in whole or in 38
part under the "Rural Electrification Act of 1936," 49 Stat. 39
1363, 7 U.S.C. 901, and owns or operates facilities in this 40
state to generate, transmit, or distribute electricity, or a 41
not-for-profit successor of such company. 42

(6) "Electric distribution utility" means an electric 43
utility that supplies at least retail electric distribution 44

service. 45

(7) "Electric light company" has the same meaning as in 46
section 4905.03 of the Revised Code and includes an electric 47
services company, but excludes any self-generator to the extent 48
that it consumes electricity it so produces, sells that 49
electricity for resale, or obtains electricity from a generating 50
facility it hosts on its premises. 51

(8) "Electric load center" has the same meaning as in 52
section 4933.81 of the Revised Code. 53

(9) "Electric services company" means an electric light 54
company that is engaged on a for-profit or not-for-profit basis 55
in the business of supplying or arranging for the supply of only 56
a competitive retail electric service in this state. "Electric 57
services company" includes a power marketer, power broker, 58
aggregator, or independent power producer but excludes an 59
electric cooperative, municipal electric utility, governmental 60
aggregator, or billing and collection agent. 61

(10) "Electric supplier" has the same meaning as in 62
section 4933.81 of the Revised Code. 63

(11) "Electric utility" means an electric light company 64
that has a certified territory and is engaged on a for-profit 65
basis either in the business of supplying a noncompetitive 66
retail electric service in this state or in the businesses of 67
supplying both a noncompetitive and a competitive retail 68
electric service in this state. "Electric utility" excludes a 69
municipal electric utility or a billing and collection agent. 70

(12) "Firm electric service" means electric service other 71
than nonfirm electric service. 72

(13) "Governmental aggregator" means a legislative 73

authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

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

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

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

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

(18) "Market power" means the ability to impose on 104
customers a sustained price for a product or service above the 105
price that would prevail in a competitive market. 106

(19) "Mercantile customer" means a commercial or 107
industrial customer if the electricity consumed is for 108
nonresidential use and the customer consumes more than seven 109
hundred thousand kilowatt hours per year or is part of a 110
national account involving multiple facilities in one or more 111
states. 112

(20) "Municipal electric utility" means a municipal 113
corporation that owns or operates facilities to generate, 114
transmit, or distribute electricity. 115

(21) "Noncompetitive retail electric service" means a 116
component of retail electric service that is noncompetitive as 117
provided under division (B) of this section. 118

(22) "Nonfirm electric service" means electric service 119
provided pursuant to a schedule filed under section 4905.30 of 120
the Revised Code or pursuant to an arrangement under section 121
4905.31 of the Revised Code, which schedule or arrangement 122
includes conditions that may require the customer to curtail or 123
interrupt electric usage during nonemergency circumstances upon 124
notification by an electric utility. 125

(23) "Percentage of income payment plan arrears" means 126
funds eligible for collection through the percentage of income 127
payment plan rider, but uncollected as of July 1, 2000. 128

(24) "Person" has the same meaning as in section 1.59 of 129
the Revised Code. 130

(25) "Advanced energy project" means any technologies, 131
products, activities, or management practices or strategies that 132

facilitate the generation or use of electricity or energy and 133
that reduce or support the reduction of energy consumption or 134
support the production of clean, renewable energy for 135
industrial, distribution, commercial, institutional, 136
governmental, research, not-for-profit, or residential energy 137
users, including, but not limited to, advanced energy resources 138
and renewable energy resources. "Advanced energy project" also 139
includes any project described in division (A), (B), or (C) of 140
section 4928.621 of the Revised Code. 141

(26) "Regulatory assets" means the unamortized net 142
regulatory assets that are capitalized or deferred on the 143
regulatory books of the electric utility, pursuant to an order 144
or practice of the public utilities commission or pursuant to 145
generally accepted accounting principles as a result of a prior 146
commission rate-making decision, and that would otherwise have 147
been charged to expense as incurred or would not have been 148
capitalized or otherwise deferred for future regulatory 149
consideration absent commission action. "Regulatory assets" 150
includes, but is not limited to, all deferred demand-side 151
management costs; all deferred percentage of income payment plan 152
arrears; post-in-service capitalized charges and assets 153
recognized in connection with statement of financial accounting 154
standards no. 109 (receivables from customers for income taxes); 155
future nuclear decommissioning costs and fuel disposal costs as 156
those costs have been determined by the commission in the 157
electric utility's most recent rate or accounting application 158
proceeding addressing such costs; the undepreciated costs of 159
safety and radiation control equipment on nuclear generating 160
plants owned or leased by an electric utility; and fuel costs 161
currently deferred pursuant to the terms of one or more 162
settlement agreements approved by the commission. 163

(27) "Retail electric service" means any service involved 164
in supplying or arranging for the supply of electricity to 165
ultimate consumers in this state, from the point of generation 166
to the point of consumption. For the purposes of this chapter, 167
retail electric service includes one or more of the following 168
"service components": generation service, aggregation service, 169
power marketing service, power brokerage service, transmission 170
service, distribution service, ancillary service, metering 171
service, and billing and collection service. 172

(28) "Starting date of competitive retail electric 173
service" means January 1, 2001. 174

(29) "Customer-generator" means a user of a net metering 175
system. 176

(30) "Net metering" means measuring the difference in an 177
applicable billing period between the electricity supplied by an 178
electric service provider and the electricity generated by a 179
customer-generator that is fed back to the electric service 180
provider. 181

(31) "Net metering system" means a facility for the 182
production of electrical energy that does all of the following: 183

(a) Uses as its fuel either solar, wind, biomass, landfill 184
gas, or hydropower, or uses a microturbine or a fuel cell; 185

(b) Is located on a customer-generator's premises; 186

(c) Operates in parallel with the electric utility's 187
transmission and distribution facilities; 188

(d) Is intended primarily to offset part or all of the 189
customer-generator's requirements for electricity. 190

(32) "Self-generator" means an entity in this state that 191

owns or hosts on its premises an electric generation facility 192
that produces electricity primarily for the owner's consumption 193
and that may provide any such excess electricity to another 194
entity, whether the facility is installed or operated by the 195
owner or by an agent under a contract. 196

(33) "Rate plan" means the standard service offer in 197
effect on the effective date of the amendment of this section by 198
S.B. 221 of the 127th general assembly, July 31, 2008. 199

(34) "Advanced energy resource" means any of the 200
following: 201

(a) Any method or any modification or replacement of any 202
property, process, device, structure, or equipment that 203
increases the generation output of an electric generating 204
facility to the extent such efficiency is achieved without 205
additional carbon dioxide emissions by that facility; 206

(b) Any distributed generation system consisting of 207
customer cogeneration technology; 208

(c) Clean coal technology that includes a carbon-based 209
product that is chemically altered before combustion to 210
demonstrate a reduction, as expressed as ash, in emissions of 211
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 212
sulfur trioxide in accordance with the American society of 213
testing and materials standard D1757A or a reduction of metal 214
oxide emissions in accordance with standard D5142 of that 215
society, or clean coal technology that includes the design 216
capability to control or prevent the emission of carbon dioxide, 217
which design capability the commission shall adopt by rule and 218
shall be based on economically feasible best available 219
technology or, in the absence of a determined best available 220

technology, shall be of the highest level of economically 221
feasible design capability for which there exists generally 222
accepted scientific opinion; 223

(d) Advanced nuclear energy technology consisting of 224
generation III technology as defined by the nuclear regulatory 225
commission; other, later technology; or significant improvements 226
to existing facilities; 227

(e) Any fuel cell used in the generation of electricity, 228
including, but not limited to, a proton exchange membrane fuel 229
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 230
solid oxide fuel cell; 231

(f) Advanced solid waste or construction and demolition 232
debris conversion technology, including, but not limited to, 233
advanced stoker technology, and advanced fluidized bed 234
gasification technology, that results in measurable greenhouse 235
gas emissions reductions as calculated pursuant to the United 236
States environmental protection agency's waste reduction model 237
(WARM); 238

(g) Demand-side management and any energy efficiency 239
improvement; 240

(h) Any new, retrofitted, refueled, or repowered 241
generating facility located in Ohio, including a simple or 242
combined-cycle natural gas generating facility or a generating 243
facility that uses biomass, coal, modular nuclear, or any other 244
fuel as its input; 245

(i) Any uprated capacity of an existing electric 246
generating facility if the uprated capacity results from the 247
deployment of advanced technology. 248

"Advanced energy resource" does not include a waste energy 249

recovery system that is, or has been, included in an energy 250
efficiency program of an electric distribution utility pursuant 251
to requirements under section 4928.66 of the Revised Code. 252

(35) "Air contaminant source" has the same meaning as in 253
section 3704.01 of the Revised Code. 254

(36) "Cogeneration technology" means technology that 255
produces electricity and useful thermal output simultaneously. 256

(37) (a) "Renewable energy resource" means any of the 257
following: 258

(i) Solar photovoltaic or solar thermal energy; 259

(ii) Wind energy; 260

(iii) Power produced by a hydroelectric facility; 261

(iv) Power produced by a run-of-the-river hydroelectric 262
facility placed in service on or after January 1, 1980, that is 263
located within this state, relies upon the Ohio river, and 264
operates, or is rated to operate, at an aggregate capacity of 265
forty or more megawatts; 266

(v) Geothermal energy; 267

(vi) Fuel derived from solid wastes, as defined in section 268
3734.01 of the Revised Code, through fractionation, biological 269
decomposition, or other process that does not principally 270
involve combustion; 271

(vii) Biomass energy; 272

(viii) Energy produced by cogeneration technology that is 273
placed into service on or before December 31, 2015, and for 274
which more than ninety per cent of the total annual energy input 275
is from combustion of a waste or byproduct gas from an air 276

contaminant source in this state, which source has been in 277
operation since on or before January 1, 1985, provided that the 278
cogeneration technology is a part of a facility located in a 279
county having a population of more than three hundred sixty-five 280
thousand but less than three hundred seventy thousand according 281
to the most recent federal decennial census; 282

(ix) Biologically derived methane gas; 283

(x) Heat captured from a generator of electricity, boiler, 284
or heat exchanger fueled by biologically derived methane gas; 285

(xi) Energy derived from nontreated by-products of the 286
pulping process or wood manufacturing process, including bark, 287
wood chips, sawdust, and lignin in spent pulping liquors. 288

"Renewable energy resource" includes, but is not limited 289
to, any fuel cell used in the generation of electricity, 290
including, but not limited to, a proton exchange membrane fuel 291
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 292
solid oxide fuel cell; wind turbine located in the state's 293
territorial waters of Lake Erie; methane gas emitted from an 294
abandoned coal mine; waste energy recovery system placed into 295
service or retrofitted on or after the effective date of the 296
amendment of this section by S.B. 315 of the 129th general 297
assembly, September 10, 2012, except that a waste energy 298
recovery system described in division (A) (38) (b) of this section 299
may be included only if it was placed into service between 300
January 1, 2002, and December 31, 2004; storage facility that 301
will promote the better utilization of a renewable energy 302
resource; or distributed generation system used by a customer to 303
generate electricity from any such energy. 304

"Renewable energy resource" does not include a waste 305

energy recovery system that is, or was, on or after January 1, 306
2012, included in an energy efficiency program of an electric 307
distribution utility pursuant to requirements under section 308
4928.66 of the Revised Code. 309

(b) As used in division (A) (37) of this section, 310
"hydroelectric facility" means a hydroelectric generating 311
facility that is located at a dam on a river, or on any water 312
discharged to a river, that is within or bordering this state or 313
within or bordering an adjoining state and meets all of the 314
following standards: 315

(i) The facility provides for river flows that are not 316
detrimental for fish, wildlife, and water quality, including 317
seasonal flow fluctuations as defined by the applicable 318
licensing agency for the facility. 319

(ii) The facility demonstrates that it complies with the 320
water quality standards of this state, which compliance may 321
consist of certification under Section 401 of the "Clean Water 322
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 323
demonstrates that it has not contributed to a finding by this 324
state that the river has impaired water quality under Section 325
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 326
U.S.C. 1313. 327

(iii) The facility complies with mandatory prescriptions 328
regarding fish passage as required by the federal energy 329
regulatory commission license issued for the project, regarding 330
fish protection for riverine, anadromous, and catadromous fish. 331

(iv) The facility complies with the recommendations of the 332
Ohio environmental protection agency and with the terms of its 333
federal energy regulatory commission license regarding watershed 334

protection, mitigation, or enhancement, to the extent of each 335
agency's respective jurisdiction over the facility. 336

(v) The facility complies with provisions of the 337
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 338
to 1544, as amended. 339

(vi) The facility does not harm cultural resources of the 340
area. This can be shown through compliance with the terms of its 341
federal energy regulatory commission license or, if the facility 342
is not regulated by that commission, through development of a 343
plan approved by the Ohio historic preservation office, to the 344
extent it has jurisdiction over the facility. 345

(vii) The facility complies with the terms of its federal 346
energy regulatory commission license or exemption that are 347
related to recreational access, accommodation, and facilities 348
or, if the facility is not regulated by that commission, the 349
facility complies with similar requirements as are recommended 350
by resource agencies, to the extent they have jurisdiction over 351
the facility; and the facility provides access to water to the 352
public without fee or charge. 353

(viii) The facility is not recommended for removal by any 354
federal agency or agency of any state, to the extent the 355
particular agency has jurisdiction over the facility. 356

(38) "Waste energy recovery system" means either of the 357
following: 358

(a) A facility that generates electricity through the 359
conversion of energy from either of the following: 360

(i) Exhaust heat from engines or manufacturing, 361
industrial, commercial, or institutional sites, except for 362
exhaust heat from a facility whose primary purpose is the 363

generation of electricity; 364

(ii) Reduction of pressure in gas pipelines before gas is 365
distributed through the pipeline, provided that the conversion 366
of energy to electricity is achieved without using additional 367
fossil fuels. 368

(b) A facility at a state institution of higher education 369
as defined in section 3345.011 of the Revised Code that recovers 370
waste heat from electricity-producing engines or combustion 371
turbines and that simultaneously uses the recovered heat to 372
produce steam, provided that the facility was placed into 373
service between January 1, 2002, and December 31, 2004. 374

(39) "Smart grid" means capital improvements to an 375
electric distribution utility's distribution infrastructure that 376
improve reliability, efficiency, resiliency, or reduce energy 377
demand or use, including, but not limited to, advanced metering 378
and automation of system functions. 379

(40) "Combined heat and power system" means the 380
coproduction of electricity and useful thermal energy from the 381
same fuel source designed to achieve thermal-efficiency levels 382
of at least sixty per cent, with at least twenty per cent of the 383
system's total useful energy in the form of thermal energy. 384

(41) "National security generation resource" means all 385
generating facilities owned directly or indirectly by a 386
corporation that was formed prior to 1960 by investor-owned 387
utilities for the original purpose of providing capacity and 388
electricity to the federal government for use in the nation's 389
defense or in furtherance of national interests, including the 390
Ohio valley electric corporation. 391

(42) "Prudently incurred costs related to a national 392

security generation resource" means costs, including deferred 393
costs, allocated pursuant to a power agreement approved by the 394
federal energy regulatory commission that relates to a national 395
security generation resource. Such costs shall exclude any added 396
return on investment and, in the event of a premature retirement 397
of a national security generation resource, shall exclude any 398
recovery of remaining debt. 399

(43) "National security generation resource net impact" 400
means retail recovery of prudently incurred costs related to a 401
national security generation resource less any revenues realized 402
from offering the contractual commitment related to a national 403
security generation resource into the wholesale markets, 404
provided, where, the net revenues exceed net costs, such excess 405
revenues shall be credited to customers. 406

(B) For the purposes of this chapter, a retail electric 407
service component shall be deemed a competitive retail electric 408
service if the service component is competitive pursuant to a 409
declaration by a provision of the Revised Code or pursuant to an 410
order of the public utilities commission authorized under 411
division (A) of section 4928.04 of the Revised Code. Otherwise, 412
the service component shall be deemed a noncompetitive retail 413
electric service. 414

Sec. 4928.02. It is the policy of this state to do the 415
following throughout this state: 416

(A) Ensure the availability to consumers of adequate, 417
reliable, safe, efficient, nondiscriminatory, and reasonably 418
priced retail electric service; 419

(B) Ensure the availability of unbundled and comparable 420
retail electric service that provides consumers with the 421

supplier, price, terms, conditions, and quality options they 422
elect to meet their respective needs; 423

(C) Ensure diversity of electricity supplies and 424
suppliers, by giving consumers effective choices over the 425
selection of those supplies and suppliers and by encouraging the 426
development of distributed and small generation facilities; 427

(D) Encourage innovation and market access for cost- 428
effective supply- and demand-side retail electric service 429
including, but not limited to, demand-side management, time- 430
differentiated pricing, waste energy recovery systems, smart 431
grid programs, and implementation of advanced metering 432
infrastructure; 433

(E) Encourage cost-effective and efficient access to 434
information regarding the operation of the transmission and 435
distribution systems of electric utilities in order to promote 436
both effective customer choice of retail electric service and 437
the development of performance standards and targets for service 438
quality for all consumers, including annual achievement reports 439
written in plain language; 440

(F) Ensure that an electric utility's transmission and 441
distribution systems are available to a customer-generator or 442
owner of distributed generation, so that the customer-generator 443
or owner can market and deliver the electricity it produces; 444

(G) Recognize the continuing emergence of competitive 445
electricity markets through the development and implementation 446
of flexible regulatory treatment; 447

(H) Ensure effective competition in the provision of 448
retail electric service by avoiding anticompetitive subsidies 449
flowing from a noncompetitive retail electric service to a 450

competitive retail electric service or to a product or service 451
other than retail electric service, and vice versa, including by 452
prohibiting the recovery of any generation-related costs through 453
distribution or transmission rates; 454

(I) Ensure retail electric service consumers protection 455
against unreasonable sales practices, market deficiencies, and 456
market power; 457

(J) Provide coherent, transparent means of giving 458
appropriate incentives to technologies that can adapt 459
successfully to potential environmental mandates; 460

(K) Encourage implementation of distributed generation 461
across customer classes through regular review and updating of 462
administrative rules governing critical issues such as, but not 463
limited to, interconnection standards, standby charges, and net 464
metering; 465

(L) Protect at-risk populations, including, but not 466
limited to, when considering the implementation of any new 467
advanced energy or renewable energy resource; 468

(M) Encourage the education of small business owners in 469
this state regarding the use of, and encourage the use of, 470
energy efficiency programs and alternative energy resources in 471
their businesses; 472

(N) Facilitate the state's effectiveness in the global 473
economy; 474

(O) Provide clarity in cost recovery for Ohio-based 475
electric utilities in conjunction with national security 476
generation resources and encourage electric distribution utility 477
and affiliate divestiture of ownership interest in any national 478
security generation resource. 479

In carrying out this policy, the commission shall consider 480
rules as they apply to the costs of electric distribution 481
infrastructure, including, but not limited to, line extensions, 482
for the purpose of development in this state. 483

Sec. 4928.141. (A) Beginning January 1, 2009, an electric 484
distribution utility shall provide consumers, on a comparable 485
and nondiscriminatory basis within its certified territory, a 486
standard service offer of all competitive retail electric 487
services necessary to maintain essential electric service to 488
consumers, including a firm supply of electric generation 489
service. To that end, the electric distribution utility shall 490
apply to the public utilities commission to establish the 491
standard service offer in accordance with section 4928.142 or 492
4928.143 of the Revised Code and, at its discretion, may apply 493
simultaneously under both sections, ~~except that the utility's~~ 494
~~first standard service offer application at minimum shall~~ 495
~~include a filing under section 4928.143 of the Revised Code.~~ 496
Only a standard service offer authorized in accordance with 497
section 4928.142 or 4928.143 of the Revised Code, shall serve as 498
the utility's standard service offer for the purpose of 499
compliance with this section; and that standard service offer 500
shall serve as the utility's default standard service offer for 501
the purpose of section 4928.14 of the Revised Code. 502
~~Notwithstanding the foregoing provision, the rate plan of an~~ 503
~~electric distribution utility shall continue for the purpose of~~ 504
~~the utility's compliance with this division until a standard~~ 505
~~service offer is first authorized under section 4928.142 or~~ 506
~~4928.143 of the Revised Code, and, as applicable, pursuant to~~ 507
~~division (D) of section 4928.143 of the Revised Code, any rate~~ 508
~~plan that extends beyond December 31, 2008, shall continue to be~~ 509
~~in effect for the subject electric distribution utility for the~~ 510

~~duration of the plan's term.~~ A standard service offer under 511
section 4928.142 or 4928.143 of the Revised Code shall include 512
automatic recovery, subject to audit and reconciliation, of all 513
national security generation resource net impacts that are 514
calculated and recovered in accordance with the rate mechanism 515
established under section 4928.147 of the Revised Code, but 516
shall exclude any previously authorized allowances for 517
transition costs, with such exclusion being effective on and 518
after the date that the allowance is scheduled to end under the 519
utility's rate plan. 520

(B) An electric distribution utility with an affiliate 521
that has a contractual commitment related to a national security 522
generation resource may use the affiliate's contractual 523
commitment in its standard service offer and recover the 524
national security generation resource net impact under division 525
(A) (2) of section 4928.142 or division (B) (1) of section 526
4928.143 of the Revised Code, provided that, as of the effective 527
date of H.B. 239 of the 132nd general assembly, the affiliate's 528
contractual commitment was previously the contractual commitment 529
of the electric distribution utility. All electric distribution 530
utilities in the same holding company system may jointly use the 531
affiliate's contractual commitment and recover the national 532
security generation resource net impact under division (A) (2) of 533
section 4928.142 or division (B) (1) of section 4928.143 of the 534
Revised Code. 535

(C) The commission shall set the time for hearing of a 536
filing under section 4928.142 or 4928.143 of the Revised Code, 537
send written notice of the hearing to the electric distribution 538
utility, and publish notice in a newspaper of general 539
circulation in each county in the utility's certified territory. 540
The commission shall adopt rules regarding filings under those 541

sections. 542

Sec. 4928.142. (A) For the purpose of complying with 543
section 4928.141 of the Revised Code and subject to division (D) 544
of this section ~~and, as applicable, subject to the rate plan~~ 545
~~requirement of division (A) of section 4928.141 of the Revised~~ 546
~~Code,~~ an electric distribution utility may establish a standard 547
service offer price for retail electric generation service that 548
is delivered to the utility under a market-rate offer. An 549
electric distribution utility shall have the right within one 550
hundred twenty days of the effective date of H.B. 239 of the 551
132nd general assembly to file an application to reopen, update, 552
or amend its then-current market-rate offer in order to 553
implement the amended version of this section, which proceeding 554
shall not otherwise reopen matters previously decided. 555

(1) The supply and pricing of electric generation service 556
under a market-rate offer shall be determined through a 557
competitive bidding process that provides for all of the 558
following: 559

(a) Open, fair, and transparent competitive solicitation; 560

(b) Clear product definition; 561

(c) Standardized bid evaluation criteria; 562

(d) Oversight by an independent third party that shall 563
design the solicitation, administer the bidding, and ensure that 564
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 565
this section are met; 566

(e) Evaluation of the submitted bids prior to the 567
selection of the least-cost bid winner or winners. 568

No generation supplier shall be prohibited from 569

participating in the bidding process. 570

(2) The market-rate offer shall include provisions for 571
recovery, through a nonbypassable rate mechanism, of all 572
national security generation resource net impacts pursuant to 573
section 4928.147 of the Revised Code. 574

(3) The public utilities commission shall modify rules, or 575
adopt new rules as necessary, concerning the conduct of the 576
competitive bidding process and the qualifications of bidders, 577
which rules shall foster supplier participation in the bidding 578
process and shall be consistent with the requirements of 579
division (A) (1) of this section. 580

(B) Prior to initiating a competitive bidding process for 581
a market-rate offer under division (A) of this section, the 582
electric distribution utility shall file an application with the 583
commission. An electric distribution utility may file its 584
application with the commission prior to the effective date of 585
the commission rules required under division (A) ~~(2)~~ (3) of this 586
section, and, as the commission determines necessary, the 587
utility shall immediately conform its filing to the rules upon 588
their taking effect. 589

An application under this division shall detail the 590
electric distribution utility's proposed compliance with the 591
requirements of division (A) (1) of this section and with 592
commission rules under division (A) ~~(2)~~ (3) of this section and 593
demonstrate that all of the following requirements are met: 594

(1) The electric distribution utility or its transmission 595
service affiliate belongs to at least one regional transmission 596
organization that has been approved by the federal energy 597
regulatory commission; or there otherwise is comparable and 598

nondiscriminatory access to the electric transmission grid. 599

(2) Any such regional transmission organization has a 600
market-monitor function and the ability to take actions to 601
identify and mitigate market power or the electric distribution 602
utility's market conduct; or a similar market monitoring 603
function exists with commensurate ability to identify and 604
monitor market conditions and mitigate conduct associated with 605
the exercise of market power. 606

(3) A published source of information is available 607
publicly or through subscription that identifies pricing 608
information for traded electricity on- and off-peak energy 609
products that are contracts for delivery beginning at least two 610
years from the date of the publication and is updated on a 611
regular basis. 612

The commission shall initiate a proceeding and, within 613
ninety days after the application's filing date, shall determine 614
by order whether the electric distribution utility and its 615
market-rate offer meet all of the foregoing requirements. If the 616
finding is positive, the electric distribution utility may 617
initiate its competitive bidding process. If the finding is 618
negative as to one or more requirements in division (A) (1) or 619
(B) (1) of this section, the commission in the order shall direct 620
the electric distribution utility regarding how any deficiency 621
may be remedied in a timely manner to the commission's 622
satisfaction; otherwise, the electric distribution utility shall 623
withdraw the application. However, if such remedy is made and 624
the subsequent finding is positive and also if the electric 625
distribution utility made a simultaneous filing under this 626
section and section 4928.143 of the Revised Code, the utility 627
shall not initiate its competitive bid until at least one 628

hundred fifty days after the filing date of those applications. 629
If the electric distribution utility withdraws the application, 630
the commission shall issue an order as is necessary to ensure 631
automatic recovery of all national security generation resource 632
net impacts. 633

(C) Upon the completion of the competitive bidding process 634
authorized by divisions (A) and (B) of this section, including 635
for the purpose of division (D) of this section, the commission 636
shall select the least-cost bid winner or winners of that 637
process, and such selected bid or bids, as prescribed as retail 638
rates by the commission, shall be the electric distribution 639
utility's standard service offer unless the commission, by order 640
issued before the third calendar day following the conclusion of 641
the competitive bidding process for the market rate offer, 642
determines that one or more of the following criteria were not 643
met: 644

(1) Each portion of the bidding process was 645
oversubscribed, such that the amount of supply bid upon was 646
greater than the amount of the load bid out. 647

(2) There were four or more bidders. 648

(3) At least twenty-five per cent of the load is bid upon 649
by one or more persons other than the electric distribution 650
utility. 651

All costs incurred by the electric distribution utility as 652
a result of or related to the competitive bidding process or to 653
procuring generation service to provide the standard service 654
offer, including the costs of energy and capacity and the costs 655
of all other products and services procured as a result of the 656
competitive bidding process, shall be timely recovered through 657

the standard service offer price, and, for that purpose, the 658
commission shall approve a reconciliation mechanism, other 659
recovery mechanism, or a combination of such mechanisms for the 660
utility. 661

(D) The first application filed under this section by an 662
electric distribution utility that, as of July 31, 2008, 663
directly owns, in whole or in part, operating electric 664
generating facilities that had been used and useful in this 665
state shall require that a portion of that utility's standard 666
service offer load for the first five years of the market rate 667
offer be competitively bid under division (A) of this section as 668
follows: ten per cent of the load in year one, not more than 669
twenty per cent in year two, thirty per cent in year three, 670
forty per cent in year four, and fifty per cent in year five. 671
Consistent with those percentages, the commission shall 672
determine the actual percentages for each year of years one 673
through five. The standard service offer price for retail 674
electric generation service under this first application shall 675
be a proportionate blend of the bid price and the generation 676
service price for the remaining standard service offer load, 677
which latter price shall be equal to the electric distribution 678
utility's most recent standard service offer price, adjusted 679
upward or downward as the commission determines reasonable, 680
relative to the jurisdictional portion of any known and 681
measurable changes from the level of any one or more of the 682
following costs as reflected in that most recent standard 683
service offer price: 684

(1) The electric distribution utility's prudently incurred 685
cost of fuel used to produce electricity; 686

(2) Its prudently incurred purchased power costs; 687

(3) Its prudently incurred costs of satisfying the supply 688
and demand portfolio requirements of this state, including, but 689
not limited to, renewable energy resource and energy efficiency 690
requirements; 691

(4) Its costs prudently incurred to comply with 692
environmental laws and regulations, with consideration of the 693
derating of any facility associated with those costs. 694

In making any adjustment to the most recent standard 695
service offer price on the basis of costs described in division 696
(D) of this section, the commission shall include the benefits 697
that may become available to the electric distribution utility 698
as a result of or in connection with the costs included in the 699
adjustment, including, but not limited to, the utility's receipt 700
of emissions credits or its receipt of tax benefits or of other 701
benefits, and, accordingly, the commission may impose such 702
conditions on the adjustment to ensure that any such benefits 703
are properly aligned with the associated cost responsibility. 704
The commission shall also determine how such adjustments will 705
affect the electric distribution utility's return on common 706
equity that may be achieved by those adjustments. The commission 707
shall not apply its consideration of the return on common equity 708
to reduce any adjustments authorized under this division unless 709
the adjustments will cause the electric distribution utility to 710
earn a return on common equity that is significantly in excess 711
of the return on common equity that is earned by publicly traded 712
companies, including utilities, that face comparable business 713
and financial risk, with such adjustments for capital structure 714
as may be appropriate. The burden of proof for demonstrating 715
that significantly excessive earnings will not occur shall be on 716
the electric distribution utility. 717

Additionally, the commission may adjust the electric 718
distribution utility's most recent standard service offer price 719
by such just and reasonable amount that the commission 720
determines necessary to address any emergency that threatens the 721
utility's financial integrity or to ensure that the resulting 722
revenue available to the utility for providing the standard 723
service offer is not so inadequate as to result, directly or 724
indirectly, in a taking of property without compensation 725
pursuant to Section 19 of Article I, Ohio Constitution. The 726
electric distribution utility has the burden of demonstrating 727
that any adjustment to its most recent standard service offer 728
price is proper in accordance with this division. 729

(E) Beginning in the second year of a blended price under 730
division (D) of this section and notwithstanding any other 731
requirement of this section, the commission may alter 732
prospectively the proportions specified in that division to 733
mitigate any effect of an abrupt or significant change in the 734
electric distribution utility's standard service offer price 735
that would otherwise result in general or with respect to any 736
rate group or rate schedule but for such alteration. Any such 737
alteration shall be made not more often than annually, and the 738
commission shall not, by altering those proportions and in any 739
event, including because of the length of time, as authorized 740
under division (C) of this section, taken to approve the market 741
rate offer, cause the duration of the blending period to exceed 742
ten years as counted from the effective date of the approved 743
market rate offer. Additionally, any such alteration shall be 744
limited to an alteration affecting the prospective proportions 745
used during the blending period and shall not affect any 746
blending proportion previously approved and applied by the 747
commission under this division. 748

(F) An electric distribution utility that has received 749
commission approval of its first application under division (C) 750
of this section shall not, nor ever shall be authorized or 751
required by the commission to, file an application under section 752
4928.143 of the Revised Code. 753

Sec. 4928.143. (A) For the purpose of complying with 754
section 4928.141 of the Revised Code, an electric distribution 755
utility may file an application for public utilities commission 756
approval of an electric security plan as prescribed under 757
division (B) of this section. The utility may file that 758
application prior to the effective date of any rules the 759
commission may adopt for the purpose of this section, and, as 760
the commission determines necessary, the utility immediately 761
shall conform its filing to those rules upon their taking 762
effect. An electric distribution utility shall have the right 763
within one hundred twenty days of the effective date of H.B. 239 764
of the 132nd general assembly to file an application to reopen, 765
update, or amend its then-current standard service offer or 766
initiate a separate proceeding in order to implement the amended 767
version of this section, which proceeding shall not otherwise 768
reopen matters previously decided. Upon approval of an update or 769
amendment to implement the change in law, any terms and 770
conditions of the prior electric security plan relating to a 771
national security generation resource shall no longer be in 772
effect. 773

(B) Notwithstanding any other provision of Title XLIX of 774
the Revised Code to the contrary except division (D) of this 775
section, divisions (I), (J), and (K) of section 4928.20, 776
division (E) of section 4928.64, and section 4928.69 of the 777
Revised Code: 778

(1) An electric security plan shall include provisions 779
relating to the supply and pricing of electric generation 780
service and shall include provisions for recovery, through a 781
nonbypassable rate mechanism, of all national security 782
generation resource net impacts pursuant to section 4928.147 of 783
the Revised Code. In addition, if the proposed electric security 784
plan has a term longer than three years, it may include 785
provisions in the plan to permit the commission to test the plan 786
pursuant to division (E) of this section and any transitional 787
conditions that should be adopted by the commission if the 788
commission terminates the plan as authorized under that 789
division. 790

(2) The plan may provide for or include, without 791
limitation, any of the following: 792

(a) Automatic recovery of any of the following costs of 793
the electric distribution utility, provided the cost is 794
prudently incurred: the cost of fuel used to generate the 795
electricity supplied under the offer; the cost of purchased 796
power supplied under the offer, including the cost of energy and 797
capacity, and including purchased power acquired from an 798
affiliate; the cost of emission allowances; and the cost of 799
federally mandated carbon or energy taxes; 800

(b) A reasonable allowance for construction work in 801
progress for any of the electric distribution utility's cost of 802
constructing an electric generating facility or for an 803
environmental expenditure for any electric generating facility 804
of the electric distribution utility, provided the cost is 805
incurred or the expenditure occurs on or after January 1, 2009. 806
Any such allowance shall be subject to the construction work in 807
progress allowance limitations of division (A) of section 808

4909.15 of the Revised Code, except that the commission may 809
authorize such an allowance upon the incurrence of the cost or 810
occurrence of the expenditure. No such allowance for generating 811
facility construction shall be authorized, however, unless the 812
commission first determines in the proceeding that there is need 813
for the facility based on resource planning projections 814
submitted by the electric distribution utility. Further, no such 815
allowance shall be authorized unless the facility's construction 816
was sourced through a competitive bid process, regarding which 817
process the commission may adopt rules. An allowance approved 818
under division (B) (2) (b) of this section shall be established as 819
a nonbypassable surcharge for the life of the facility. 820

(c) The establishment of a nonbypassable surcharge for the 821
life of an electric generating facility that is owned or 822
operated by the electric distribution utility, was sourced 823
through a competitive bid process subject to any such rules as 824
the commission adopts under division (B) (2) (b) of this section, 825
and is newly used and useful on or after January 1, 2009, which 826
surcharge shall cover all costs of the utility specified in the 827
application, excluding costs recovered through a surcharge under 828
division (B) (2) (b) of this section. However, no surcharge shall 829
be authorized unless the commission first determines in the 830
proceeding that there is need for the facility based on resource 831
planning projections submitted by the electric distribution 832
utility. Additionally, if a surcharge is authorized for a 833
facility pursuant to plan approval under division (C) of this 834
section and as a condition of the continuation of the surcharge, 835
the electric distribution utility shall dedicate to Ohio 836
consumers the capacity and energy and the rate associated with 837
the cost of that facility. Before the commission authorizes any 838
surcharge pursuant to this division, it may consider, as 839

applicable, the effects of any decommissioning, deratings, and 840
retirements. 841

(d) Terms, conditions, or charges relating to limitations 842
on customer shopping for retail electric generation service, 843
bypassability, standby, back-up, or supplemental power service, 844
default service, carrying costs, amortization periods, and 845
accounting or deferrals, including future recovery of such 846
deferrals, as would have the effect of stabilizing or providing 847
certainty regarding retail electric service; 848

(e) Automatic increases or decreases in any component of 849
the standard service offer price; 850

(f) Consistent with sections 4928.23 to 4928.2318 of the 851
Revised Code, both of the following: 852

(i) Provisions for the electric distribution utility to 853
securitize any phase-in, inclusive of carrying charges, of the 854
utility's standard service offer price, which phase-in is 855
authorized in accordance with section 4928.144 of the Revised 856
Code; 857

(ii) Provisions for the recovery of the utility's cost of 858
securitization. 859

(g) Provisions relating to transmission, ancillary, 860
congestion, or any related service required for the standard 861
service offer, including provisions for the recovery of any cost 862
of such service that the electric distribution utility incurs on 863
or after that date pursuant to the standard service offer; 864

(h) Provisions regarding the utility's distribution 865
service, including, without limitation and notwithstanding any 866
provision of Title XLIX of the Revised Code to the contrary, 867
provisions regarding single issue ratemaking, a revenue 868

decoupling mechanism or any other incentive ratemaking, and 869
provisions regarding distribution infrastructure and 870
modernization incentives for the electric distribution utility. 871

The latter may include a long-term energy delivery 872
infrastructure modernization plan for that utility or any plan 873
providing for the utility's recovery of costs, including lost 874
revenue, shared savings, and avoided costs, and a just and 875
reasonable rate of return on such infrastructure modernization. 876
As part of its determination as to whether to allow in an 877
electric distribution utility's electric security plan inclusion 878
of any provision described in division (B)(2)(h) of this 879
section, the commission shall examine the reliability of the 880
electric distribution utility's distribution system and ensure 881
that customers' and the electric distribution utility's 882
expectations are aligned and that the electric distribution 883
utility is placing sufficient emphasis on and dedicating 884
sufficient resources to the reliability of its distribution 885
system. 886

(i) Provisions under which the electric distribution 887
utility may implement economic development, job retention, and 888
energy efficiency programs, which provisions may allocate 889
program costs across all classes of customers of the utility and 890
those of electric distribution utilities in the same holding 891
company system. 892

(C)(1) The burden of proof in the proceeding shall be on 893
the electric distribution utility, provided that the public 894
utilities commission must approve automatic cost recovery of all 895
national security generation resource net impacts consistent 896
with the prudence review in section 4928.147 of the Revised 897
Code. The commission shall issue an order under this division 898

for an initial application under this section not later than one 899
hundred fifty days after the application's filing date and, for 900
any subsequent application by the utility under this section, 901
not later than two hundred seventy-five days after the 902
application's filing date. Subject to division (D) of this 903
section, the commission by order shall approve or modify and 904
approve an application filed under division (A) of this section 905
if it finds that the electric security plan so approved, 906
including its pricing and all other terms and conditions, 907
including any deferrals and any future recovery of deferrals, is 908
more favorable in the aggregate as compared to the expected 909
results that would otherwise apply under section 4928.142 of the 910
Revised Code. Additionally, if the commission so approves an 911
application that contains a surcharge under division (B) (2) (b) 912
or (c) of this section, the commission shall ensure that the 913
benefits derived for any purpose for which the surcharge is 914
established are reserved and made available to those that bear 915
the surcharge. Otherwise, the commission by order shall 916
disapprove the application. 917

(2) (a) If the commission modifies and approves an 918
application under division (C) (1) of this section, the electric 919
distribution utility may withdraw the application, thereby 920
terminating it, and may file a new standard service offer under 921
this section or a standard service offer under section 4928.142 922
of the Revised Code. 923

(b) If the utility terminates an application pursuant to 924
division (C) (2) (a) of this section or if the commission 925
disapproves an application under division (C) (1) of this 926
section, the commission shall issue such order as is necessary 927
to ensure automatic cost recovery of all national security 928
generation resource net impacts and to continue the provisions, 929

terms, and conditions of the utility's most recent standard 930
service offer, along with any expected increases or decreases in 931
fuel costs from those contained in that offer, until a 932
subsequent offer is authorized pursuant to this section or 933
section 4928.142 of the Revised Code, respectively. 934

(D) Regarding the rate plan requirement of division (A) of 935
section 4928.141 of the Revised Code, if an electric 936
distribution utility that has a rate plan that extends beyond 937
December 31, 2008, files an application under this section for 938
the purpose of its compliance with division (A) of section 939
4928.141 of the Revised Code, that rate plan and its terms and 940
conditions are hereby incorporated into its proposed electric 941
security plan and shall continue in effect until the date 942
scheduled under the rate plan for its expiration, and that 943
portion of the electric security plan shall not be subject to 944
commission approval or disapproval under division (C) of this 945
section, and the earnings test provided for in division (F) of 946
this section shall not apply until after the expiration of the 947
rate plan. However, that utility may include in its electric 948
security plan under this section, and the commission may 949
approve, modify and approve, or disapprove subject to division 950
(C) of this section, provisions for the incremental recovery or 951
the deferral of any costs that are not being recovered under the 952
rate plan and that the utility incurs during that continuation 953
period to comply with section 4928.141, division (B) of section 954
4928.64, or division (A) of section 4928.66 of the Revised Code. 955

(E) If an electric security plan approved under division 956
(C) of this section, except one withdrawn by the utility as 957
authorized under that division, has a term, exclusive of phase- 958
ins or deferrals, that exceeds three years from the effective 959
date of the plan, the commission shall test the plan in the 960

fourth year, and if applicable, every fourth year thereafter, to 961
determine whether the plan, including its then-existing pricing 962
and all other terms and conditions, including any deferrals and 963
any future recovery of deferrals, continues to be more favorable 964
in the aggregate and during the remaining term of the plan as 965
compared to the expected results that would otherwise apply 966
under section 4928.142 of the Revised Code. The commission shall 967
also determine the prospective effect of the electric security 968
plan to determine if that effect is substantially likely to 969
provide the electric distribution utility with a return on 970
common equity that is significantly in excess of the return on 971
common equity that is likely to be earned by publicly traded 972
companies, including utilities, that face comparable business 973
and financial risk, with such adjustments for capital structure 974
as may be appropriate. The burden of proof for demonstrating 975
that significantly excessive earnings will not occur shall be on 976
the electric distribution utility. If the test results are in 977
the negative or the commission finds that continuation of the 978
electric security plan will result in a return on equity that is 979
significantly in excess of the return on common equity that is 980
likely to be earned by publicly traded companies, including 981
utilities, that will face comparable business and financial 982
risk, with such adjustments for capital structure as may be 983
appropriate, during the balance of the plan, the commission may 984
terminate the electric security plan, but not until it shall 985
have provided interested parties with notice and an opportunity 986
to be heard. The commission may impose such conditions on the 987
plan's termination as it considers reasonable and necessary to 988
accommodate the transition from an approved plan to the more 989
advantageous alternative. In the event of an electric security 990
plan's termination pursuant to this division, the commission 991
shall permit the continued deferral and phase-in of any amounts 992

that occurred prior to that termination and the recovery of 993
those amounts as contemplated under that electric security plan. 994

(F) With regard to the provisions that are included in an 995
electric security plan under this section, the commission shall 996
consider, following the end of each annual period of the plan, 997
if any such adjustments resulted in excessive earnings as 998
measured by whether the earned return on common equity of the 999
electric distribution utility is significantly in excess of the 1000
return on common equity that was earned during the same period 1001
by publicly traded companies, including utilities, that face 1002
comparable business and financial risk, with such adjustments 1003
for capital structure as may be appropriate. Consideration also 1004
shall be given to the capital requirements of future committed 1005
investments in this state. The burden of proof for demonstrating 1006
that significantly excessive earnings did not occur shall be on 1007
the electric distribution utility. If the commission finds that 1008
such adjustments, in the aggregate, did result in significantly 1009
excessive earnings, it shall require the electric distribution 1010
utility to return to consumers the amount of the excess by 1011
prospective adjustments; provided that, upon making such 1012
prospective adjustments, the electric distribution utility shall 1013
have the right to terminate the plan and immediately file an 1014
application pursuant to section 4928.142 of the Revised Code. 1015
Upon termination of a plan under this division, rates shall be 1016
set on the same basis as specified in division (C)(2)(b) of this 1017
section, and the commission shall permit the continued deferral 1018
and phase-in of any amounts that occurred prior to that 1019
termination and the recovery of those amounts as contemplated 1020
under that electric security plan. In making its determination 1021
of significantly excessive earnings under this division, the 1022
commission shall not consider, directly or indirectly, the 1023

revenue, expenses, or earnings of any affiliate or parent 1024
company. 1025

Sec. 4928.147. (A) In establishing a nonbypassable rate 1026
mechanism for recovery of national security generation resource 1027
net impacts under division (A) (2) of section 4928.142 or 1028
division (B) (1) of section 4928.143 of the Revised Code, the 1029
public utilities commission shall do the following: 1030

(1) Determine, every three years, the prudence and 1031
reasonableness of the electric distribution utility's actions 1032
related to the national security generation resource, including 1033
its decisions related to offering the contractual commitment 1034
into the wholesale markets; 1035

(2) Determine the proper rate design for recovering or 1036
remitting the national security generation resource net impact, 1037
provided, however, that the monthly charge or credit recovering 1038
such impact, including any deferrals or credits, shall not 1039
exceed two dollars and fifty cents per customer per month for 1040
residential customers and two thousand five hundred dollars per 1041
customer per month for all other customers, with the commission 1042
establishing comparable monthly caps for each nonresidential 1043
customer class at or below the two thousand five hundred dollar 1044
per customer level. Insofar as the national security generation 1045
resource net impact exceeds these monthly limits, the electric 1046
distribution utility shall defer the remaining net impact as a 1047
regulatory asset or liability that shall be recovered as 1048
determined by the commission subject to the monthly rate caps 1049
set forth herein. 1050

(3) Provide for discontinuation, subject to final 1051
reconciliation, of the nonbypassable recovery mechanism on 1052
December 31, 2030, unless such mechanism is extended pursuant to 1053

division (B) of this section. 1054

(B) The commission shall conduct an inquiry in 2029 to 1055
determine whether it is in the public interest to continue 1056
recovery of national security generation resource net impacts 1057
after 2030, and report its findings to the general assembly. 1058

Section 2. That existing sections 4928.01, 4928.02, 1059
4928.141, 4928.142, and 4928.143 of the Revised Code are hereby 1060
repealed. 1061

Section 3. The items of law contained in division (B) of 1062
section 4928.141 of the Revised Code, and their applications, 1063
are severable. If any item of law contained in that division, or 1064
if any application of any item of law contained in that 1065
division, is held invalid, the invalidity does not affect other 1066
items of law contained in this act and their applications that 1067
can be given effect without the invalid item of law or 1068
application. 1069