

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 247

Representative Romanchuk

A BILL

To amend sections 4928.01, 4928.04, 4928.05, 1
4928.06, 4928.14, 4928.141, 4928.142, 4928.144, 2
4928.17, 4928.18, 4928.20, 4928.23, 4928.231, 3
4928.232, 4928.31, 4928.34, 4928.35, 4928.542, 4
and 4933.81; to amend, for the purpose of 5
adopting a new section number as indicated in 6
parentheses, section 4928.04 (4928.041); to 7
enact new section 4928.04 and sections 4903.191, 8
4928.28, 4928.281, 4928.29, and 4928.30; and to 9
repeal section 4928.143 of the Revised Code to 10
require refunds to utility customers who have 11
been improperly charged, to eliminate electric 12
security plans and require all electric standard 13
service offers to be delivered through market- 14
rate offers, and to strengthen corporate 15
separation requirements. 16

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

Section 1. That sections 4928.01, 4928.04, 4928.05, 17
4928.06, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 18
4928.18, 4928.20, 4928.23, 4928.231, 4928.232, 4928.31, 4928.34, 19
4928.35, 4928.542, and 4933.81 of the Revised Code be amended; 20

section 4928.04 (4928.041) be amended for the purpose of 21
adopting a new section number as indicated in parentheses; and 22
new section 4928.04 and sections 4903.191, 4928.28, 4928.281, 23
4928.29, and 4928.30 be enacted to read as follows: 24

Sec. 4903.191. Notwithstanding any provision of the 25
Revised Code to the contrary, all charges paid by customers to a 26
public utility that are later found to be unreasonable, 27
unlawful, imprudent, or otherwise improper by the public 28
utilities commission, the supreme court, or other authority 29
shall be promptly refunded to the customers who paid such 30
charges. The commission shall order such refunds in a manner 31
designed to allocate the refunds to customer classes in the same 32
proportion as the charges were originally collected. 33

Sec. 4928.01. (A) As used in this chapter: 34

(1) "Ancillary service" means any function necessary to 35
the provision of electric transmission or distribution service 36
to a retail customer and includes, but is not limited to, 37
scheduling, system control, and dispatch services; reactive 38
supply from generation resources and voltage control service; 39
reactive supply from transmission resources service; regulation 40
service; frequency response service; energy imbalance service; 41
operating reserve-spinning reserve service; operating reserve- 42
supplemental reserve service; load following; back-up supply 43
service; real-power loss replacement service; dynamic 44
scheduling; system black start capability; and network stability 45
service. 46

(2) "Billing and collection agent" means a fully 47
independent agent, not affiliated with or otherwise controlled 48
by an electric utility, electric services company, electric 49
cooperative, or governmental aggregator subject to certification 50

under section 4928.08 of the Revised Code, to the extent that 51
the agent is under contract with such utility, company, 52
cooperative, or aggregator solely to provide billing and 53
collection for retail electric service on behalf of the utility 54
company, cooperative, or aggregator. 55

(3) "Certified territory" means the certified territory 56
established for an electric supplier under sections 4933.81 to 57
4933.90 of the Revised Code. 58

(4) "Competitive retail electric service" means a 59
component of retail electric service that is competitive as 60
provided under division (B) of this section. 61

(5) "Electric cooperative" means a not-for-profit electric 62
light company that both is or has been financed in whole or in 63
part under the "Rural Electrification Act of 1936," 49 Stat. 64
1363, 7 U.S.C. 901, and owns or operates facilities in this 65
state to generate, transmit, or distribute electricity, or a 66
not-for-profit successor of such company. 67

(6) "Electric distribution utility" means an electric 68
utility that supplies at least retail electric distribution 69
service. 70

(7) "Electric light company" has the same meaning as in 71
section 4905.03 of the Revised Code and includes an electric 72
services company, but excludes any self-generator to the extent 73
that it consumes electricity it so produces, sells that 74
electricity for resale, or obtains electricity from a generating 75
facility it hosts on its premises. 76

(8) "Electric load center" has the same meaning as in 77
section 4933.81 of the Revised Code. 78

(9) "Electric services company" means an electric light 79

company that is engaged on a for-profit or not-for-profit basis 80
in the business of supplying or arranging for the supply of only 81
a competitive retail electric service in this state. "Electric 82
services company" includes a power marketer, power broker, 83
aggregator, or independent power producer but excludes an 84
electric cooperative, municipal electric utility, governmental 85
aggregator, or billing and collection agent. 86

(10) "Electric supplier" has the same meaning as in 87
section 4933.81 of the Revised Code. 88

(11) "Electric utility" means an electric light company 89
that has a certified territory and is engaged on a for-profit 90
basis ~~either~~ in the business of supplying at least a 91
~~noncompetitive retail electric service in this state or in the~~ 92
~~businesses of supplying both a noncompetitive and a competitive~~ 93
~~retail electric service in this state.~~ "Electric utility" 94
excludes a municipal electric utility or a billing and 95
collection agent. 96

(12) "Firm electric service" means electric service other 97
than nonfirm electric service. 98

(13) "Governmental aggregator" means a legislative 99
authority of a municipal corporation, a board of township 100
trustees, or a board of county commissioners acting as an 101
aggregator for the provision of a competitive retail electric 102
service under authority conferred under section 4928.20 of the 103
Revised Code. 104

(14) A person acts "knowingly," regardless of the person's 105
purpose, when the person is aware that the person's conduct will 106
probably cause a certain result or will probably be of a certain 107
nature. A person has knowledge of circumstances when the person 108

is aware that such circumstances probably exist. 109

(15) "Level of funding for low-income customer energy 110
efficiency programs provided through electric utility rates" 111
means the level of funds specifically included in an electric 112
utility's rates on October 5, 1999, pursuant to an order of the 113
public utilities commission issued under Chapter 4905. or 4909. 114
of the Revised Code and in effect on October 4, 1999, for the 115
purpose of improving the energy efficiency of housing for the 116
utility's low-income customers. The term excludes the level of 117
any such funds committed to a specific nonprofit organization or 118
organizations pursuant to a stipulation or contract. 119

(16) "Low-income customer assistance programs" means the 120
percentage of income payment plan program, the home energy 121
assistance program, the home weatherization assistance program, 122
and the targeted energy efficiency and weatherization program. 123

(17) "Market development period" for an electric utility 124
means the period of time beginning on the starting date of 125
competitive retail electric service and ending on the applicable 126
date for that utility as specified in section 4928.40 of the 127
Revised Code, irrespective of whether the utility applies to 128
receive transition revenues under this chapter. 129

(18) "Market power" means the ability to impose on 130
customers a sustained price for a product or service above the 131
price that would prevail in a competitive market. 132

(19) "Mercantile customer" means a commercial or 133
industrial customer if the electricity consumed is for 134
nonresidential use and the customer consumes more than seven 135
hundred thousand kilowatt hours per year or is part of a 136
national account involving multiple facilities in one or more 137

states.	138
(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.	139 140 141
(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.	142 143 144
(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.	145 146 147 148 149 150 151
(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.	152 153 154
(24) "Person" has the same meaning as in section 1.59 of the Revised Code.	155 156
(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of	157 158 159 160 161 162 163 164 165 166

section 4928.621 of the Revised Code. 167

(26) "Regulatory assets" means the unamortized net 168
regulatory assets that are capitalized or deferred on the 169
regulatory books of the electric utility, pursuant to an order 170
or practice of the public utilities commission or pursuant to 171
generally accepted accounting principles as a result of a prior 172
commission rate-making decision, and that would otherwise have 173
been charged to expense as incurred or would not have been 174
capitalized or otherwise deferred for future regulatory 175
consideration absent commission action. "Regulatory assets" 176
includes, but is not limited to, all deferred demand-side 177
management costs; all deferred percentage of income payment plan 178
arrears; post-in-service capitalized charges and assets 179
recognized in connection with statement of financial accounting 180
standards no. 109 (receivables from customers for income taxes); 181
future nuclear decommissioning costs and fuel disposal costs as 182
those costs have been determined by the commission in the 183
electric utility's most recent rate or accounting application 184
proceeding addressing such costs; the undepreciated costs of 185
safety and radiation control equipment on nuclear generating 186
plants owned or leased by an electric utility; and fuel costs 187
currently deferred pursuant to the terms of one or more 188
settlement agreements approved by the commission. 189

(27) "Retail electric service" means any service involved 190
in supplying or arranging for the supply of electricity to 191
ultimate consumers in this state, from the point of generation 192
to the point of consumption. For the purposes of this chapter, 193
retail electric service includes one or more of the following 194
"service components": generation service, aggregation service, 195
power marketing service, power brokerage service, transmission 196
service, distribution service, ancillary service, metering 197

service, and billing and collection service.	198
(28) "Starting date of competitive retail electric service" means January 1, 2001.	199 200
(29) "Customer-generator" means a user of a net metering system.	201 202
(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.	203 204 205 206 207
(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:	208 209
(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell;	210 211
(b) Is located on a customer-generator's premises;	212
(c) Operates in parallel with the electric utility's transmission and distribution facilities;	213 214
(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.	215 216
(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.	217 218 219 220 221 222
(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by	223 224

S.B. 221 of the 127th general assembly, July 31, 2008.	225
(34) "Advanced energy resource" means any of the following:	226
	227
(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;	228
	229
	230
	231
	232
(b) Any distributed generation system consisting of customer cogeneration technology;	233
	234
(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;	235
	236
	237
	238
	239
	240
	241
	242
	243
	244
	245
	246
	247
	248
	249
(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;	250
	251
	252
	253

(e) Any fuel cell used in the generation of electricity, 254
including, but not limited to, a proton exchange membrane fuel 255
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 256
solid oxide fuel cell; 257

(f) Advanced solid waste or construction and demolition 258
debris conversion technology, including, but not limited to, 259
advanced stoker technology, and advanced fluidized bed 260
gasification technology, that results in measurable greenhouse 261
gas emissions reductions as calculated pursuant to the United 262
States environmental protection agency's waste reduction model 263
(WARM); 264

(g) Demand-side management and any energy efficiency 265
improvement; 266

(h) Any new, retrofitted, refueled, or repowered 267
generating facility located in Ohio, including a simple or 268
combined-cycle natural gas generating facility or a generating 269
facility that uses biomass, coal, modular nuclear, or any other 270
fuel as its input; 271

(i) Any uprated capacity of an existing electric 272
generating facility if the uprated capacity results from the 273
deployment of advanced technology. 274

"Advanced energy resource" does not include a waste energy 275
recovery system that is, or has been, included in an energy 276
efficiency program of an electric distribution utility pursuant 277
to requirements under section 4928.66 of the Revised Code. 278

(35) "Air contaminant source" has the same meaning as in 279
section 3704.01 of the Revised Code. 280

(36) "Cogeneration technology" means technology that 281
produces electricity and useful thermal output simultaneously. 282

(37) (a) "Renewable energy resource" means any of the	283
following:	284
(i) Solar photovoltaic or solar thermal energy;	285
(ii) Wind energy;	286
(iii) Power produced by a hydroelectric facility;	287
(iv) Power produced by a run-of-the-river hydroelectric	288
facility placed in service on or after January 1, 1980, that is	289
located within this state, relies upon the Ohio river, and	290
operates, or is rated to operate, at an aggregate capacity of	291
forty or more megawatts;	292
(v) Geothermal energy;	293
(vi) Fuel derived from solid wastes, as defined in section	294
3734.01 of the Revised Code, through fractionation, biological	295
decomposition, or other process that does not principally	296
involve combustion;	297
(vii) Biomass energy;	298
(viii) Energy produced by cogeneration technology that is	299
placed into service on or before December 31, 2015, and for	300
which more than ninety per cent of the total annual energy input	301
is from combustion of a waste or byproduct gas from an air	302
contaminant source in this state, which source has been in	303
operation since on or before January 1, 1985, provided that the	304
cogeneration technology is a part of a facility located in a	305
county having a population of more than three hundred sixty-five	306
thousand but less than three hundred seventy thousand according	307
to the most recent federal decennial census;	308
(ix) Biologically derived methane gas;	309

(x) Heat captured from a generator of electricity, boiler, 310
or heat exchanger fueled by biologically derived methane gas; 311

(xi) Energy derived from nontreated by-products of the 312
pulping process or wood manufacturing process, including bark, 313
wood chips, sawdust, and lignin in spent pulping liquors. 314

"Renewable energy resource" includes, but is not limited 315
to, any fuel cell used in the generation of electricity, 316
including, but not limited to, a proton exchange membrane fuel 317
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 318
solid oxide fuel cell; wind turbine located in the state's 319
territorial waters of Lake Erie; methane gas emitted from an 320
abandoned coal mine; waste energy recovery system placed into 321
service or retrofitted on or after the effective date of the 322
amendment of this section by S.B. 315 of the 129th general 323
assembly, September 10, 2012, except that a waste energy 324
recovery system described in division (A) (38) (b) of this section 325
may be included only if it was placed into service between 326
January 1, 2002, and December 31, 2004; storage facility that 327
will promote the better utilization of a renewable energy 328
resource; or distributed generation system used by a customer to 329
generate electricity from any such energy. 330

"Renewable energy resource" does not include a waste 331
energy recovery system that is, or was, on or after January 1, 332
2012, included in an energy efficiency program of an electric 333
distribution utility pursuant to requirements under section 334
4928.66 of the Revised Code. 335

(b) As used in division (A) (37) of this section, 336
"hydroelectric facility" means a hydroelectric generating 337
facility that is located at a dam on a river, or on any water 338
discharged to a river, that is within or bordering this state or 339

within or bordering an adjoining state and meets all of the 340
following standards: 341

(i) The facility provides for river flows that are not 342
detrimental for fish, wildlife, and water quality, including 343
seasonal flow fluctuations as defined by the applicable 344
licensing agency for the facility. 345

(ii) The facility demonstrates that it complies with the 346
water quality standards of this state, which compliance may 347
consist of certification under Section 401 of the "Clean Water 348
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 349
demonstrates that it has not contributed to a finding by this 350
state that the river has impaired water quality under Section 351
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 352
U.S.C. 1313. 353

(iii) The facility complies with mandatory prescriptions 354
regarding fish passage as required by the federal energy 355
regulatory commission license issued for the project, regarding 356
fish protection for riverine, anadromous, and catadromous fish. 357

(iv) The facility complies with the recommendations of the 358
Ohio environmental protection agency and with the terms of its 359
federal energy regulatory commission license regarding watershed 360
protection, mitigation, or enhancement, to the extent of each 361
agency's respective jurisdiction over the facility. 362

(v) The facility complies with provisions of the 363
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 364
to 1544, as amended. 365

(vi) The facility does not harm cultural resources of the 366
area. This can be shown through compliance with the terms of its 367
federal energy regulatory commission license or, if the facility 368

is not regulated by that commission, through development of a 369
plan approved by the Ohio historic preservation office, to the 370
extent it has jurisdiction over the facility. 371

(vii) The facility complies with the terms of its federal 372
energy regulatory commission license or exemption that are 373
related to recreational access, accommodation, and facilities 374
or, if the facility is not regulated by that commission, the 375
facility complies with similar requirements as are recommended 376
by resource agencies, to the extent they have jurisdiction over 377
the facility; and the facility provides access to water to the 378
public without fee or charge. 379

(viii) The facility is not recommended for removal by any 380
federal agency or agency of any state, to the extent the 381
particular agency has jurisdiction over the facility. 382

(38) "Waste energy recovery system" means either of the 383
following: 384

(a) A facility that generates electricity through the 385
conversion of energy from either of the following: 386

(i) Exhaust heat from engines or manufacturing, 387
industrial, commercial, or institutional sites, except for 388
exhaust heat from a facility whose primary purpose is the 389
generation of electricity; 390

(ii) Reduction of pressure in gas pipelines before gas is 391
distributed through the pipeline, provided that the conversion 392
of energy to electricity is achieved without using additional 393
fossil fuels. 394

(b) A facility at a state institution of higher education 395
as defined in section 3345.011 of the Revised Code that recovers 396
waste heat from electricity-producing engines or combustion 397

turbines and that simultaneously uses the recovered heat to 398
produce steam, provided that the facility was placed into 399
service between January 1, 2002, and December 31, 2004. 400

(39) "Smart grid" means capital improvements to an 401
electric distribution utility's distribution infrastructure that 402
improve reliability, efficiency, resiliency, or reduce energy 403
demand or use, including, but not limited to, advanced metering 404
and automation of system functions. 405

(40) "Combined heat and power system" means the 406
coproduction of electricity and useful thermal energy from the 407
same fuel source designed to achieve thermal-efficiency levels 408
of at least sixty per cent, with at least twenty per cent of the 409
system's total useful energy in the form of thermal energy. 410

(B) For the purposes of this chapter, a retail electric 411
service component shall be deemed a competitive retail electric 412
service if the service component is competitive pursuant to a 413
declaration by a provision of the Revised Code or pursuant to an 414
order of the public utilities commission authorized under 415
division (A) of section ~~4928.04~~ 4928.041 of the Revised Code. 416
Otherwise, the service component shall be deemed a 417
noncompetitive retail electric service. 418

Sec. 4928.04. (A) Except as provided in sections 4928.141 419
and 4928.142 of the Revised Code, no electric utility shall 420
provide a competitive retail electric service in this state if 421
that service was deemed competitive or otherwise legally 422
classified as competitive prior to the effective date of this 423
section. 424

(B) The standard service offer under section 4928.141 of 425
the Revised Code shall continue to be provided to consumers in 426

this state by electric utilities. 427

Sec. ~~4928.04~~ 4928.041. (A) The public utilities commission 428
by order may declare that retail ancillary, metering, or billing 429
and collection service supplied to consumers within the 430
certified territory of an electric utility ~~on or after the~~ 431
~~starting date of competitive retail electric service~~ is a 432
competitive retail electric service that the consumers may 433
obtain from any supplier or suppliers subject to this chapter. 434
The commission may issue such order, after investigation and 435
public hearing, only if it first determines either of the 436
following: 437

(1) There will be effective competition with respect to 438
the service. 439

(2) The customers of the service have reasonably available 440
alternatives. 441

~~The commission shall initiate a proceeding on or before~~ 442
~~March 31, 2003, on the question of the desirability,~~ 443
~~feasibility, and timing of any such competition.~~ 444

(B) In carrying out division (A) of this section, the 445
commission may prescribe different classifications, procedures, 446
terms, or conditions for different electric utilities and for 447
the retail electric services they provide that are declared 448
competitive pursuant to that division, provided the 449
classifications, procedures, terms, or conditions are reasonable 450
and do not confer any undue economic, competitive, or market 451
advantage or preference upon any electric utility. 452

Sec. 4928.05. (A) (1) ~~On and after the starting date of~~ 453
~~competitive retail electric service, a~~ A competitive retail 454
electric service supplied by an ~~electric utility or~~ electric 455

services company, or by an electric utility consistent with 456
section 4928.141 of the Revised Code, shall not be subject to 457
supervision and regulation by a municipal corporation under 458
Chapter 743. of the Revised Code or by the public utilities 459
commission under Chapters 4901. to 4909., 4933., 4935., and 460
4963. of the Revised Code, except sections 4905.10 and 4905.31, 461
division (B) of section 4905.33, and sections 4905.35 and 462
4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, 463
and 4963.41 of the Revised Code only to the extent related to 464
service reliability and public safety; and except as otherwise 465
provided in this chapter. The commission's authority to enforce 466
those excepted provisions with respect to a competitive retail 467
electric service shall be such authority as is provided for 468
their enforcement under Chapters 4901. to 4909., 4933., 4935., 469
and 4963. of the Revised Code and this chapter. Nothing in this 470
division shall be construed to limit the commission's authority 471
under sections 4928.141 ~~to~~, 4928.142, and 4928.144 of the 472
Revised Code. 473

~~On and after the starting date of competitive retail~~ 474
~~electric service, a~~ (2) A competitive retail electric service 475
supplied by an electric cooperative shall not be subject to 476
supervision and regulation by the commission under Chapters 477
4901. to 4909., 4933., 4935., and 4963. of the Revised Code, 478
except as otherwise expressly provided in sections 4928.01 to 479
4928.10 and 4928.16 of the Revised Code. 480

~~(2) On and after the starting date of competitive retail~~ 481
~~electric service, a~~ (B) (1) A noncompetitive retail electric 482
service supplied by an electric utility shall be subject to 483
supervision and regulation by the commission under Chapters 484
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 485
this chapter, to the extent that authority is not preempted by 486

federal law. The commission's authority to enforce those 487
provisions with respect to a noncompetitive retail electric 488
service shall be the authority provided under those chapters and 489
this chapter, to the extent the authority is not preempted by 490
federal law. Notwithstanding Chapters 4905. and 4909. of the 491
Revised Code, commission authority under this chapter shall 492
include the authority to provide for the recovery, through a 493
reconcilable rider on an electric distribution utility's 494
distribution rates, of all transmission and transmission-related 495
costs, including ancillary and congestion costs, imposed on or 496
charged to the utility by the federal energy regulatory 497
commission or a regional transmission organization, independent 498
transmission operator, or similar organization approved by the 499
federal energy regulatory commission. 500

(2) The commission shall exercise its jurisdiction with 501
respect to the delivery of electricity by an electric utility in 502
this state ~~on or after the starting date of competitive retail~~ 503
~~electric service~~ so as to ensure that no aspect of the delivery 504
of electricity by the utility to consumers in this state that 505
consists of a noncompetitive retail electric service is 506
unregulated. 507

~~On and after that starting date, a~~ (3) A noncompetitive 508
retail electric service supplied by an electric cooperative 509
shall not be subject to supervision and regulation by the 510
commission under Chapters 4901. to 4909., 4933., 4935., and 511
4963. of the Revised Code, except sections 4933.81 to 4933.90 512
and 4935.03 of the Revised Code. The commission's authority to 513
enforce those excepted sections with respect to a noncompetitive 514
retail electric service of an electric cooperative shall be such 515
authority as is provided for their enforcement under Chapters 516
4933. and 4935. of the Revised Code. 517

~~(B) Nothing in this chapter affects the authority of the~~ 518
~~commission under Title XLIX of the Revised Code to regulate an~~ 519
~~electric light company in this state or an electric service~~ 520
~~supplied in this state prior to the starting date of competitive~~ 521
~~retail electric service.~~ 522

Sec. 4928.06. ~~(A) Beginning on the starting date of~~ 523
~~competitive retail electric service, the~~ The public utilities 524
commission shall ensure that the policy specified in section 525
4928.02 of the Revised Code is effectuated. To the extent 526
necessary, the commission shall adopt rules to carry out this 527
chapter. ~~Initial rules necessary for the commencement of the~~ 528
~~competitive retail electric service under this chapter shall be~~ 529
~~adopted within one hundred eighty days after the effective date~~ 530
~~of this section.~~ Except as otherwise provided in this chapter, 531
the proceedings and orders of the commission under the chapter 532
shall be subject to and governed by Chapter 4903. of the Revised 533
Code. 534

(B) If the commission determines, ~~on or after the starting~~ 535
~~date of competitive retail electric service,~~ that there is a 536
decline or loss of effective competition with respect to a 537
competitive retail electric service of an electric utility, 538
which service was declared competitive by commission order 539
issued pursuant to division (A) of section ~~4928.04~~ 4928.041 of 540
the Revised Code, the commission shall ensure that that service 541
is provided at compensatory, fair, and nondiscriminatory prices 542
and terms and conditions. 543

(C) In addition to its authority under section ~~4928.04~~ 544
4928.041 of the Revised Code and divisions (A) and (B) of this 545
section, the commission, on an ongoing basis, shall monitor and 546
evaluate the provision of retail electric service in this state 547

for the purpose of discerning any noncompetitive retail electric 548
service that should be available on a competitive basis ~~on or~~ 549
~~after the starting date of competitive retail electric service~~ 550
pursuant to a declaration in the Revised Code, and for the 551
purpose of discerning any competitive retail electric service 552
that is no longer subject to effective competition ~~on or after~~ 553
~~that date~~. Upon such evaluation, the commission periodically 554
shall report its findings and any recommendations for 555
legislation to the standing committees of both houses of the 556
general assembly that have primary jurisdiction regarding public 557
utility legislation. ~~Until 2008, the commission and the~~ 558
~~consumer's counsel also shall provide biennial reports to those~~ 559
~~standing committees, regarding the effectiveness of competition~~ 560
~~in the supply of competitive retail electric services in this~~ 561
~~state. In addition, until the end of all market development~~ 562
~~periods as determined by the commission under section 4928.40 of~~ 563
~~the Revised Code, those standing committees shall meet at least~~ 564
~~biennially to consider the effect on this state of electric~~ 565
~~service restructuring and to receive reports from the~~ 566
~~commission, consumers' counsel, and director of development.~~ 567

(D) In determining, for purposes of division (B) or (C) of 568
this section, whether there is effective competition in the 569
provision of a retail electric service or reasonably available 570
alternatives for that service, the commission shall consider 571
factors including, but not limited to, all of the following: 572

(1) The number and size of alternative providers of that 573
service; 574

(2) The extent to which the service is available from 575
alternative suppliers in the relevant market; 576

(3) The ability of alternative suppliers to make 577

functionally equivalent or substitute services readily available 578
at competitive prices, terms, and conditions; 579

(4) Other indicators of market power, which may include 580
market share, growth in market share, ease of entry, and the 581
affiliation of suppliers of services. 582

The burden of proof shall be on any entity requesting, 583
under division (B) or (C) of this section, a determination by 584
the commission of the existence of or a lack of effective 585
competition or reasonably available alternatives. 586

(E) (1) ~~Beginning on the starting date of competitive~~ 587
~~retail electric service, the~~ The commission has authority under 588
Chapters 4901. to 4909. of the Revised Code, and shall exercise 589
that authority, to resolve abuses of market power by any 590
electric utility that interfere with effective competition in 591
the provision of retail electric service. 592

(2) In addition to the commission's authority under 593
division (E) (1) of this section, the commission, ~~beginning the~~ 594
~~first year after the market development period of a particular~~ 595
~~electric utility and~~ after reasonable notice and opportunity for 596
hearing, may take such measures within a transmission 597
constrained area in the utility's certified territory as are 598
necessary to ensure that retail electric generation service is 599
provided at reasonable rates within that area. The commission 600
may exercise this authority only upon findings that an electric 601
utility is or has engaged in the abuse of market power and that 602
that abuse is not adequately mitigated by rules and practices of 603
any independent transmission entity controlling the transmission 604
facilities. Any such measure shall be taken only to the extent 605
necessary to protect customers in the area from the particular 606
abuse of market power and to the extent the commission's 607

authority is not preempted by federal law. The measure shall 608
remain in effect until the commission, after reasonable notice 609
and opportunity for hearing, determines that the particular 610
abuse of market power has been mitigated. 611

(F) An electric utility, electric services company, 612
electric cooperative, or governmental aggregator subject to 613
certification under section 4928.08 of the Revised Code shall 614
provide the commission with such information, regarding a 615
competitive retail electric service for which it is subject to 616
certification, as the commission considers necessary to carry 617
out this chapter. An electric utility shall provide the 618
commission with such information as the commission considers 619
necessary to carry out divisions (B) to (E) of this section. The 620
commission shall take such measures as it considers necessary to 621
protect the confidentiality of any such information. 622

The commission shall require each electric utility to file 623
with the commission ~~on and after the starting date of~~ 624
~~competitive retail electric service~~ an annual report of its 625
intrastate gross receipts and sales of kilowatt hours of 626
electricity, and shall require each electric services company, 627
electric cooperative, and governmental aggregator subject to 628
certification to file an annual report ~~on and after that~~ 629
~~starting date~~ of such receipts and sales from the provision of 630
those retail electric services for which it is subject to 631
certification. For the purpose of the reports, sales of kilowatt 632
hours of electricity are deemed to occur at the meter of the 633
retail customer. 634

Sec. 4928.14. ~~The~~ (A) Except as provided in division (C) 635
of this section, the failure of a supplier to provide retail 636
electric generation service to customers within the certified 637

territory of an electric distribution utility shall result in 638
the supplier's customers, after reasonable notice, defaulting to 639
the utility's standard service offer under sections 4928.141,~~—~~ 640
and 4928.142, and 4928.143 of the Revised Code until the 641
customer chooses an alternative supplier.~~—A—~~ 642

(B) A supplier is deemed under this section to have failed 643
to provide ~~such retail electric generation~~ service if the 644
commission finds, after reasonable notice and opportunity for 645
hearing, that any of the following conditions are met: 646

~~(A) (1)~~ The supplier has defaulted on its contracts with 647
customers, is in receivership, or has filed for bankruptcy. 648

~~(B) (2)~~ The supplier is no longer capable of providing the 649
service. 650

~~(C) (3)~~ The supplier is unable to provide delivery to 651
transmission or distribution facilities for such period of time 652
as may be reasonably specified by commission rule adopted under 653
division (A) of section 4928.06 of the Revised Code. 654

~~(D) (4)~~ The supplier's certification has been suspended, 655
conditionally rescinded, or rescinded under division (D) of 656
section 4928.08 of the Revised Code. 657

(C) If an electric distribution utility has an electric 658
security plan that was approved under section 4928.143 of the 659
Revised Code as that section existed prior to the amendments to 660
this section by ...B... of the 132nd general assembly, the 661
failure of a supplier to provide retail electric generation 662
service to customers within the certified territory of that 663
utility shall result in the supplier's customers, after 664
reasonable notice, defaulting to the utility's standard service 665
offer under that electric security plan until the customer 666

chooses an alternative supplier or until the utility's standard 667
service offer is authorized under section 4928.142 of the 668
Revised Code. 669

Sec. 4928.141. (A) ~~Beginning January 1, 2009, an~~ (1) An 670
electric distribution utility shall provide consumers, on a 671
comparable and nondiscriminatory basis within its certified 672
territory, a standard service offer of all competitive retail 673
electric services necessary to maintain essential electric 674
service to consumers, including a firm supply of electric 675
generation service. To that end, the electric distribution 676
utility shall apply to the public utilities commission to 677
establish the standard service offer in accordance with section 678
4928.142 ~~or 4928.143~~ of the Revised Code ~~and, at its discretion,~~ 679
~~may apply simultaneously under both sections, except that the~~ 680
~~utility's first standard service offer application at minimum~~ 681
~~shall include a filing under section 4928.143 of the Revised~~ 682
~~Code. Only~~ Except as provided in division (A) (2) of this 683
section, a standard service offer authorized in accordance with 684
section 4928.142 ~~or 4928.143~~ of the Revised Code, shall serve as 685
the utility's standard service offer for the purpose of 686
compliance with this section, ~~and~~ and that standard service offer 687
shall serve as the utility's default standard service offer for 688
the purpose of section 4928.14 of the Revised Code. 689
~~Notwithstanding the foregoing provision, the rate~~ 690

(2) An electric distribution utility's electric security 691
plan of an electric distribution utility that was approved under 692
section 4928.143 of the Revised Code as that section existed 693
prior to the amendments to this section by ...B... of the 132nd 694
general assembly shall continue for the purpose of the utility's 695
compliance with ~~this~~ division (A) (1) of this section until a 696
standard service offer is ~~first~~ authorized under section 697

4928.142 ~~or 4928.143~~ of the Revised Code, ~~and, as applicable,~~ 698
~~pursuant to division (D) of section 4928.143 of the Revised~~ 699
~~Code, any rate.~~ No electric security plan that extends approved 700
after June 1, 2017, shall extend beyond December 31 June 1, 701
~~2008, shall continue to be in effect for the subject electric~~ 702
~~distribution utility for the duration of the plan's term 2020.~~ ~~A~~ 703

(3) A standard service offer under section 4928.142 ~~or~~ 704
~~4928.143~~ of the Revised Code shall exclude any previously 705
authorized allowances for transition costs, with such exclusion 706
being effective on and after the date that the allowance is 707
scheduled to end under the utility's ~~rate~~ electric security 708
plan. 709

(B) The commission shall set the time for hearing of a 710
filing under section 4928.142 ~~or 4928.143~~ of the Revised Code, 711
send written notice of the hearing to the electric distribution 712
utility, and publish notice in a newspaper of general 713
circulation in each county in the utility's certified territory. 714
The commission shall adopt rules regarding filings under ~~those~~ 715
~~sections that section.~~ 716

Sec. 4928.142. (A) For the purpose of complying with 717
section 4928.141 of the Revised Code and subject to division (D) 718
of this section and, as applicable, subject to the ~~rate plan~~ 719
~~requirement~~ requirements of division (A) of section 4928.141 of 720
the Revised Code, an electric distribution utility ~~may~~ shall 721
establish a standard service offer price for retail electric 722
generation service that is delivered to the utility under a 723
market-rate offer. 724

(1) The market-rate offer shall be determined through a 725
competitive bidding process that provides for all of the 726
following: 727

(a) Open, fair, and transparent competitive solicitation;	728
(b) Clear product definition;	729
(c) Standardized bid evaluation criteria;	730
(d) Oversight by an independent third party that shall design the solicitation, administer the bidding, and ensure that the criteria specified in division <u>divisions</u> (A) (1) (a) to (c) of this section are met;	731 732 733 734
(e) Evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners.	735 736
No generation supplier shall be prohibited from participating in the bidding process.	737 738
(2) The public utilities commission shall modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules shall foster supplier participation in the bidding process and shall be consistent with the requirements of division (A) (1) of this section.	739 740 741 742 743 744
(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A) (2) of this section, and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect.	745 746 747 748 749 750 751 752 753
An application under this division shall detail the electric distribution utility's proposed compliance with the	754 755

requirements of division (A) (1) of this section and with 756
commission rules under division (A) (2) of this section and 757
demonstrate that all of the following requirements are met: 758

(1) The electric distribution utility or its transmission 759
service affiliate belongs to at least one regional transmission 760
organization that has been approved by the federal energy 761
regulatory commission; or there otherwise is comparable and 762
nondiscriminatory access to the electric transmission grid. 763

(2) Any such regional transmission organization has a 764
market-monitor function and the ability to take actions to 765
identify and mitigate market power or the electric distribution 766
utility's market conduct; or a similar market monitoring 767
function exists with commensurate ability to identify and 768
monitor market conditions and mitigate conduct associated with 769
the exercise of market power. 770

(3) A published source of information is available 771
publicly or through subscription that identifies pricing 772
information for traded electricity on- and off-peak energy 773
products that are contracts for delivery beginning at least two 774
years from the date of the publication and is updated on a 775
regular basis. 776

The commission shall initiate a proceeding and, within 777
ninety days after the application's filing date, shall determine 778
by order whether the electric distribution utility and its 779
market-rate offer meet all of the foregoing requirements. If the 780
finding is positive, the electric distribution utility ~~may~~ shall 781
initiate its competitive bidding process. If the finding is 782
negative as to one or more requirements, the commission in the 783
order shall direct the electric distribution utility regarding 784
how any deficiency may be remedied in a timely manner to the 785

commission's satisfaction; ~~otherwise, the electric distribution-~~ 786
~~utility shall withdraw the application. However, if such remedy-~~ 787
~~is made and the subsequent finding is positive and also if the-~~ 788
~~electric distribution utility made a simultaneous filing under-~~ 789
~~this section and section 4928.143 of the Revised Code, the-~~ 790
~~utility shall not initiate its competitive bid until at least-~~ 791
~~one hundred fifty days after the filing date of those-~~ 792
~~applications.~~ 793

(C) Upon the completion of the competitive bidding process 794
authorized by divisions (A) and (B) of this section, ~~including-~~ 795
~~for the purpose of division (D) of this section,~~ the commission 796
shall select the least-cost bid winner or winners of that 797
process, and such selected bid or bids, as prescribed as retail 798
rates by the commission, shall be the electric distribution 799
utility's standard service offer unless the commission, by order 800
issued before the third calendar day following the conclusion of 801
the competitive bidding process for the market rate offer, 802
determines that one or more of the following criteria were not 803
met: 804

(1) Each portion of the bidding process was 805
oversubscribed, such that the amount of supply bid upon was 806
greater than the amount of the load bid out. 807

(2) There were four or more bidders. 808

(3) At least twenty-five per cent of the load is bid upon 809
by one or more persons other than the electric distribution 810
utility. 811

All costs incurred by the electric distribution utility as 812
a result of or related to the competitive bidding process or to 813
procuring generation service to provide the standard service 814

offer, including the costs of energy and capacity and the costs 815
of all other products and services procured as a result of the 816
competitive bidding process, shall be timely recovered through 817
the standard service offer price, and, for that purpose, the 818
commission shall approve a reconciliation mechanism, other 819
recovery mechanism, or a combination of such mechanisms for the 820
utility. 821

(D) The ~~first~~ application filed under this section by an 822
electric distribution utility ~~that, as of July 31, 2008,~~ 823
~~directly owns, in whole or in part, operating electric-~~ 824
~~generating facilities that had been used and useful in this-~~ 825
~~state shall require that a portion of that~~ the utility's 826
standard service offer load ~~for the first five years of the~~ 827
~~market rate offer~~ be competitively bid under division (A) of 828
this section ~~as follows: ten per cent of the load in year one,~~ 829
~~not more than twenty per cent in year two, thirty per cent in~~ 830
~~year three, forty per cent in year four, and fifty per cent in~~ 831
~~year five. Consistent with those percentages, the commission~~ 832
~~shall determine the actual percentages for each year of years~~ 833
~~one through five. The standard service offer price for retail~~ 834
~~electric generation service under this first application shall~~ 835
~~be a proportionate blend of the bid price and the generation~~ 836
~~service price for the remaining standard service offer load,~~ 837
~~which latter price shall be equal to the electric distribution-~~ 838
~~utility's most recent standard service offer price, adjusted~~ 839
~~upward or downward as the commission determines reasonable,~~ 840
~~relative to the jurisdictional portion of any known and~~ 841
~~measurable changes from the level of any one or more of the~~ 842
~~following costs as reflected in that most recent standard-~~ 843
~~service offer price:~~ 844

~~(1) The electric distribution utility's prudently incurred-~~ 845

~~cost of fuel used to produce electricity;~~ 846

~~(2) Its prudently incurred purchased power costs;~~ 847

~~(3) Its prudently incurred costs of satisfying the supply~~ 848
~~and demand portfolio requirements of this state, including, but~~ 849
~~not limited to, renewable energy resource and energy efficiency~~ 850
~~requirements;~~ 851

~~(4) Its costs prudently incurred to comply with~~ 852
~~environmental laws and regulations, with consideration of the~~ 853
~~derating of any facility associated with those costs.~~ 854

~~In making any adjustment to the most recent standard~~ 855
~~service offer price on the basis of costs described in division~~ 856
~~(D) of this section, the commission shall include the benefits~~ 857
~~that may become available to the electric distribution utility~~ 858
~~as a result of or in connection with the costs included in the~~ 859
~~adjustment, including, but not limited to, the utility's receipt~~ 860
~~of emissions credits or its receipt of tax benefits or of other~~ 861
~~benefits, and, accordingly, the commission may impose such~~ 862
~~conditions on the adjustment to ensure that any such benefits~~ 863
~~are properly aligned with the associated cost responsibility.~~ 864
~~The commission shall also determine how such adjustments will~~ 865
~~affect the electric distribution utility's return on common~~ 866
~~equity that may be achieved by those adjustments. The commission~~ 867
~~shall not apply its consideration of the return on common equity~~ 868
~~to reduce any adjustments authorized under this division unless~~ 869
~~the adjustments will cause the electric distribution utility to~~ 870
~~earn a return on common equity that is significantly in excess~~ 871
~~of the return on common equity that is earned by publicly traded~~ 872
~~companies, including utilities, that face comparable business~~ 873
~~and financial risk, with such adjustments for capital structure~~ 874
~~as may be appropriate. The burden of proof for demonstrating~~ 875

~~that significantly excessive earnings will not occur shall be on-~~ 876
~~the electric distribution utility.~~ 877

~~Additionally, the commission may adjust the electric-~~ 878
~~distribution utility's most recent standard service offer price-~~ 879
~~by such just and reasonable amount that the commission-~~ 880
~~determines necessary to address any emergency that threatens the-~~ 881
~~utility's financial integrity or to ensure that the resulting-~~ 882
~~revenue available to the utility for providing the standard-~~ 883
~~service offer is not so inadequate as to result, directly or-~~ 884
~~indirectly, in a taking of property without compensation-~~ 885
~~pursuant to Section 19 of Article I, Ohio Constitution. The-~~ 886
~~electric distribution utility has the burden of demonstrating-~~ 887
~~that any adjustment to its most recent standard service offer-~~ 888
~~price is proper in accordance with this division.~~ 889

~~(E) Beginning in the second year of a blended price under-~~ 890
~~division (D) of this section and notwithstanding any other-~~ 891
~~requirement of this section, the commission may alter-~~ 892
~~prospectively the proportions specified in that division to-~~ 893
~~mitigate any effect of an abrupt or significant change in the-~~ 894
~~electric distribution utility's standard service offer price-~~ 895
~~that would otherwise result in general or with respect to any-~~ 896
~~rate group or rate schedule but for such alteration. Any such-~~ 897
~~alteration shall be made not more often than annually, and the-~~ 898
~~commission shall not, by altering those proportions and in any-~~ 899
~~event, including because of the length of time, as authorized-~~ 900
~~under division (C) of this section, taken to approve the market-~~ 901
~~rate offer, cause the duration of the blending period to exceed-~~ 902
~~ten years as counted from the effective date of the approved-~~ 903
~~market rate offer. Additionally, any such alteration shall be-~~ 904
~~limited to an alteration affecting the prospective proportions-~~ 905
~~used during the blending period and shall not affect any-~~ 906

~~blending proportion previously approved and applied by the~~ 907
~~commission under this division.~~ 908

~~(F) An electric distribution utility that has received~~ 909
~~commission approval of its first application under division (C)~~ 910
~~of this section shall not, nor ever shall be authorized or~~ 911
~~required by the commission to, file an application under section~~ 912
~~4928.143 of the Revised Code.~~ 913

Sec. 4928.144. The public utilities commission by order 914
may authorize any just and reasonable phase-in of any electric 915
distribution utility ~~rate or price~~ established under sections 916
4928.141 ~~to 4928.143~~ and 4928.142 of the Revised Code, and 917
inclusive of carrying charges, as the commission considers 918
necessary to ensure ~~rate or price~~ stability for consumers. If 919
the commission's order includes such a phase-in, the order also 920
shall provide for the creation of regulatory assets pursuant to 921
generally accepted accounting principles, by authorizing the 922
deferral of incurred costs equal to the amount not collected, 923
plus carrying charges on that amount. Further, the order shall 924
authorize the collection of those deferrals through a 925
nonbypassable surcharge on any such rate or price so established 926
for the electric distribution utility by the commission. 927

Sec. 4928.17. (A) Except as otherwise provided in sections 928
4928.141, 4928.142 ~~or 4928.143,~~ or 4928.31 to 4928.40 of the 929
Revised Code ~~and beginning on the starting date of competitive~~ 930
~~retail electric service,~~ no electric utility shall engage in 931
this state, either directly or through an affiliate, ~~in the~~ 932
~~businesses of supplying a noncompetitive retail electric service~~ 933
~~and supplying a competitive retail electric service, or in the~~ 934
businesses of supplying a noncompetitive retail electric service 935
and supplying a product or service other than retail electric 936

service, unless the utility implements and operates under a 937
corporate separation plan that is approved by the public 938
utilities commission under this section, is consistent with the 939
policy specified in section 4928.02 of the Revised Code, and 940
achieves all of the following: 941

(1) The plan provides, at minimum, for the provision of 942
~~the competitive retail electric service or the nonelectric~~ 943
product or service through a fully separated affiliate of the 944
utility, and the plan includes separate accounting requirements, 945
the code of conduct as ordered by the commission pursuant to a 946
rule it shall adopt under division (A) of section 4928.06 of the 947
Revised Code, and such other measures as are necessary to 948
effectuate the policy specified in section 4928.02 of the 949
Revised Code. 950

(2) The plan satisfies the public interest in ~~preventing~~ 951
~~unfair competitive advantage and~~ preventing the abuse of market 952
power. 953

(3) The plan is sufficient to ensure that the utility will 954
not extend any undue preference or advantage to any affiliate, 955
division, or part of its own business engaged in the business of 956
supplying the ~~competitive retail electric service or nonelectric~~ 957
product or service, including, but not limited to, utility 958
resources such as trucks, tools, office equipment, office space, 959
supplies, customer and marketing information, advertising, 960
billing and mailing systems, personnel, and training, without 961
compensation based upon fully loaded embedded costs charged to 962
the affiliate; and to ensure that any such affiliate, division, 963
or part will not receive undue preference or advantage from any 964
affiliate, division, or part of the business engaged in business 965
of supplying the noncompetitive retail electric service. No such 966

utility, affiliate, division, or part shall extend such undue 967
preference. ~~Notwithstanding any other division of this section,~~ 968
~~a utility's obligation under division (A) (3) of this section~~ 969
~~shall be effective January 1, 2000.~~ 970

(B) The commission may approve, modify and approve, or 971
disapprove a corporate separation plan filed with the commission 972
under division (A) of this section. As part of the code of 973
conduct required under division (A) (1) of this section, the 974
commission shall adopt rules pursuant to division (A) of section 975
4928.06 of the Revised Code regarding corporate separation and 976
procedures for plan filing and approval. The rules shall include 977
limitations on affiliate practices solely for the purpose of 978
maintaining a separation of the affiliate's business from the 979
business of the utility to prevent ~~unfair competitive advantage~~ 980
abuse of market power by virtue of that relationship. The rules 981
also shall include an opportunity for any person having a real 982
and substantial interest in the corporate separation plan to 983
file specific objections to the plan and propose specific 984
responses to issues raised in the objections, which objections 985
and responses the commission shall address in its final order. 986
Prior to commission approval of the plan, the commission shall 987
afford a hearing upon those aspects of the plan that the 988
commission determines reasonably require a hearing. The 989
commission may reject and require refiling of a substantially 990
inadequate plan under this section. 991

(C) The commission shall issue an order approving or 992
modifying and approving a corporate separation plan under this 993
section, to be effective on the date specified in the order, 994
only upon findings that the plan reasonably complies with the 995
requirements of division (A) of this section and will provide 996
for ongoing compliance with the policy specified in section 997

4928.02 of the Revised Code. However, for good cause shown, the
commission may issue an order approving or modifying and
approving a corporate separation plan under this section that
does not comply with division (A) (1) of this section but
complies with such functional separation requirements as the
commission authorizes to apply for an interim period prescribed
in the order, upon a finding that such alternative plan will
provide for ongoing compliance with the policy specified in
section 4928.02 of the Revised Code.

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

~~(E) No electric distribution utility shall sell or
transfer any generating asset it wholly or partly owns at any
time without obtaining prior commission approval.~~

Sec. 4928.18. (A) Notwithstanding division (E) (2) (a) of
section 4909.15 of the Revised Code, nothing in this chapter
prevents the public utilities commission from exercising its
authority under Title XLIX of the Revised Code to protect
customers of retail electric service supplied by an electric
utility from any adverse effect of the utility's provision of a
product or service other than retail electric service.

(B) The commission has jurisdiction under section 4905.26
of the Revised Code, upon complaint of any person or upon
complaint or initiative of the commission ~~on or after the
starting date of competitive retail electric service,~~ to
determine whether an electric utility or its affiliate has
violated any provision of ~~section~~ sections 4928.17 and 4928.29

of the Revised Code or an order issued or rule adopted under 1028
that section. For this purpose, the commission may examine such 1029
books, accounts, or other records kept by an electric utility or 1030
its affiliate as may relate to the businesses for which 1031
corporate separation is required under ~~section~~ sections 4928.17 1032
and 4928.29 of the Revised Code, and may investigate ~~such~~ 1033
relevant utility or affiliate operations as may relate to those 1034
businesses and investigate the interrelationship of those 1035
operations. Any such examination or investigation by the 1036
commission shall be governed by Chapter 4903. of the Revised 1037
Code. 1038

(C) In addition to any remedies otherwise provided by law, 1039
the commission, regarding a determination of a violation 1040
pursuant to division (B) of this section, may do any of the 1041
following: 1042

(1) Issue an order directing the utility or affiliate to 1043
comply; 1044

(2) Modify an order as the commission finds reasonable and 1045
appropriate and order the utility or affiliate to comply with 1046
the modified order; 1047

(3) Suspend or abrogate an order, in whole or in part; 1048

(4) Issue an order that the utility or affiliate pay 1049
restitution to any person injured by the violation or failure to 1050
comply~~+~~. 1051

(D) In addition to any remedies otherwise provided by law, 1052
the commission, regarding a determination of a violation 1053
pursuant to division (B) of this section and commensurate with 1054
the severity of the violation, the source of the violation, any 1055
pattern of violations, or any monetary damages caused by the 1056

violation, may do either of the following: 1057

(1) Impose a forfeiture on the utility or affiliate of up 1058
to twenty-five thousand dollars per day per violation. The 1059
recovery and deposit of any such forfeiture shall be subject to 1060
sections 4905.57 and 4905.59 of the Revised Code. 1061

(2) Regarding a violation by an electric utility relating 1062
to a corporate separation plan involving competitive retail 1063
electric service, suspend or abrogate all or part of an order, 1064
to the extent it is in effect, authorizing an opportunity for 1065
the utility to receive transition revenues under a transition 1066
plan approved by the commission under section 4928.33 of the 1067
Revised Code. 1068

Corporate separation under this section does not prohibit 1069
the common use of employee benefit plans, facilities, equipment, 1070
or employees, subject to proper accounting and the code of 1071
conduct ordered by the commission as provided in division (A) (1) 1072
of this section. 1073

(E) Section 4905.61 of the Revised Code applies in the 1074
case of any violation of ~~section~~ sections 4928.17 and 4928.29 of 1075
the Revised Code or of any rule adopted or order issued under 1076
that section. 1077

Sec. 4928.20. (A) The legislative authority of a municipal 1078
corporation may adopt an ordinance, or the board of township 1079
trustees of a township or the board of county commissioners of a 1080
county may adopt a resolution, under which, ~~on or after the~~ 1081
~~starting date of competitive retail electric service,~~ it may 1082
aggregate in accordance with this section the retail electrical 1083
loads located, respectively, within the municipal corporation, 1084
township, or unincorporated area of the county and, for that 1085

purpose, may enter into service agreements to facilitate for 1086
those loads the sale and purchase of electricity. The 1087
legislative authority or board also may exercise such authority 1088
jointly with any other such legislative authority or board. For 1089
customers that are not mercantile customers, an ordinance or 1090
resolution under this division shall specify whether the 1091
aggregation will occur only with the prior, affirmative consent 1092
of each person owning, occupying, controlling, or using an 1093
electric load center proposed to be aggregated or will occur 1094
automatically for all such persons pursuant to the opt-out 1095
requirements of division (D) of this section. The aggregation of 1096
mercantile customers shall occur only with the prior, 1097
affirmative consent of each such person owning, occupying, 1098
controlling, or using an electric load center proposed to be 1099
aggregated. Nothing in this division, however, authorizes the 1100
aggregation of the retail electric loads of an electric load 1101
center, as defined in section 4933.81 of the Revised Code, that 1102
is located in the certified territory of a nonprofit electric 1103
supplier under sections 4933.81 to 4933.90 of the Revised Code 1104
or an electric load center served by transmission or 1105
distribution facilities of a municipal electric utility. 1106

(B) If an ordinance or resolution adopted under division 1107
(A) of this section specifies that aggregation of customers that 1108
are not mercantile customers will occur automatically as 1109
described in that division, the ordinance or resolution shall 1110
direct the board of elections to submit the question of the 1111
authority to aggregate to the electors of the respective 1112
municipal corporation, township, or unincorporated area of a 1113
county at a special election on the day of the next primary or 1114
general election in the municipal corporation, township, or 1115
county. The legislative authority or board shall certify a copy 1116

of the ordinance or resolution to the board of elections not 1117
less than ninety days before the day of the special election. No 1118
ordinance or resolution adopted under division (A) of this 1119
section that provides for an election under this division shall 1120
take effect unless approved by a majority of the electors voting 1121
upon the ordinance or resolution at the election held pursuant 1122
to this division. 1123

(C) Upon the applicable requisite authority under 1124
divisions (A) and (B) of this section, the legislative authority 1125
or board shall develop a plan of operation and governance for 1126
the aggregation program so authorized. Before adopting a plan 1127
under this division, the legislative authority or board shall 1128
hold at least two public hearings on the plan. Before the first 1129
hearing, the legislative authority or board shall publish notice 1130
of the hearings once a week for two consecutive weeks in a 1131
newspaper of general circulation in the jurisdiction or as 1132
provided in section 7.16 of the Revised Code. The notice shall 1133
summarize the plan and state the date, time, and location of 1134
each hearing. 1135

(D) No legislative authority or board, pursuant to an 1136
ordinance or resolution under divisions (A) and (B) of this 1137
section that provides for automatic aggregation of customers 1138
that are not mercantile customers as described in division (A) 1139
of this section, shall aggregate the electrical load of any 1140
electric load center located within its jurisdiction unless it 1141
in advance clearly discloses to the person owning, occupying, 1142
controlling, or using the load center that the person will be 1143
enrolled automatically in the aggregation program and will 1144
remain so enrolled unless the person affirmatively elects by a 1145
stated procedure not to be so enrolled. The disclosure shall 1146
state prominently the rates, charges, and other terms and 1147

conditions of enrollment. The stated procedure shall allow any 1148
person enrolled in the aggregation program the opportunity to 1149
opt out of the program every three years, without paying a 1150
switching fee. Any such person that opts out before the 1151
commencement of the aggregation program pursuant to the stated 1152
procedure shall default to the standard service offer provided 1153
under section 4928.14 or division (D) of section 4928.35 of the 1154
Revised Code until the person chooses an alternative supplier. 1155

(E) (1) With respect to a governmental aggregation for a 1156
municipal corporation that is authorized pursuant to divisions 1157
(A) to (D) of this section, resolutions may be proposed by 1158
initiative or referendum petitions in accordance with sections 1159
731.28 to 731.41 of the Revised Code. 1160

(2) With respect to a governmental aggregation for a 1161
township or the unincorporated area of a county, which 1162
aggregation is authorized pursuant to divisions (A) to (D) of 1163
this section, resolutions may be proposed by initiative or 1164
referendum petitions in accordance with sections 731.28 to 1165
731.40 of the Revised Code, except that: 1166

(a) The petitions shall be filed, respectively, with the 1167
township fiscal officer or the board of county commissioners, 1168
who shall perform those duties imposed under those sections upon 1169
the city auditor or village clerk. 1170

(b) The petitions shall contain the signatures of not less 1171
than ten per cent of the total number of electors in, 1172
respectively, the township or the unincorporated area of the 1173
county who voted for the office of governor at the preceding 1174
general election for that office in that area. 1175

(F) A governmental aggregator under division (A) of this 1176

section is not a public utility engaging in the wholesale 1177
purchase and resale of electricity, and provision of the 1178
aggregated service is not a wholesale utility transaction. A 1179
governmental aggregator shall be subject to supervision and 1180
regulation by the public utilities commission only to the extent 1181
of any competitive retail electric service it provides and 1182
commission authority under this chapter. 1183

(G) This section does not apply in the case of a municipal 1184
corporation that supplies such aggregated service to electric 1185
load centers to which its municipal electric utility also 1186
supplies a noncompetitive retail electric service through 1187
transmission or distribution facilities the utility singly or 1188
jointly owns or operates. 1189

(H) A governmental aggregator shall not include in its 1190
aggregation the accounts of any of the following: 1191

(1) A customer that has opted out of the aggregation; 1192

(2) A customer in contract with a certified electric 1193
services company; 1194

(3) A customer that has a special contract with an 1195
electric distribution utility; 1196

(4) A customer that is not located within the governmental 1197
aggregator's governmental boundaries; 1198

(5) Subject to division (C) of section 4928.21 of the 1199
Revised Code, a customer who appears on the "do not aggregate" 1200
list maintained under that section. 1201

(I) Customers that are part of a governmental aggregation 1202
under this section shall be responsible only for such portion of 1203
a surcharge under section 4928.144 of the Revised Code that is 1204

proportionate to the benefits, as determined by the commission, 1205
that electric load centers within the jurisdiction of the 1206
governmental aggregation as a group receive. The proportionate 1207
surcharge so established shall apply to each customer of the 1208
governmental aggregation while the customer is part of that 1209
aggregation. If a customer ceases being such a customer, the 1210
otherwise applicable surcharge shall apply. Nothing in this 1211
section shall result in less than full recovery by an electric 1212
distribution utility of any surcharge authorized under section 1213
4928.144 of the Revised Code. Nothing in this section shall 1214
result in less than the full and timely imposition, charging, 1215
collection, and adjustment by an electric distribution utility, 1216
its assignee, or any collection agent, of the phase-in-recovery 1217
charges authorized pursuant to a final financing order issued 1218
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 1219

~~(J) On behalf of the customers that are part of a 1220
governmental aggregation under this section and by filing 1221
written notice with the public utilities commission, the 1222
legislative authority that formed or is forming that 1223
governmental aggregation may elect not to receive standby 1224
service within the meaning of division (B)(2)(d) of section 1225
4928.143 of the Revised Code from an electric distribution 1226
utility in whose certified territory the governmental 1227
aggregation is located and that operates under an approved 1228
electric security plan under that section. Upon the filing of 1229
that notice, the electric distribution utility shall not charge 1230
any such customer to whom competitive retail electric generation 1231
service is provided by another supplier under the governmental 1232
aggregation for the standby service. Any such consumer that 1233
returns to the utility for competitive retail electric service 1234
shall pay the market price of power incurred by the utility to 1235~~

~~serve that consumer plus any amount attributable to the~~ 1236
~~utility's cost of compliance with the renewable energy resource~~ 1237
~~provisions of section 4928.64 of the Revised Code to serve the~~ 1238
~~consumer. Such market price shall include, but not be limited~~ 1239
~~to, capacity and energy charges; all charges associated with the~~ 1240
~~provision of that power supply through the regional transmission~~ 1241
~~organization, including, but not limited to, transmission,~~ 1242
~~ancillary services, congestion, and settlement and~~ 1243
~~administrative charges; and all other costs incurred by the~~ 1244
~~utility that are associated with the procurement, provision, and~~ 1245
~~administration of that power supply, as such costs may be~~ 1246
~~approved by the commission. The period of time during which the~~ 1247
~~market price and renewable energy resource amount shall be so~~ 1248
~~assessed on the consumer shall be from the time the consumer so~~ 1249
~~returns to the electric distribution utility until the~~ 1250
~~expiration of the electric security plan. However, if that~~ 1251
~~period of time is expected to be more than two years, the~~ 1252
~~commission may reduce the time period to a period of not less~~ 1253
~~than two years.~~ 1254

~~(K) The commission shall adopt rules and issue orders in~~ 1255
~~proceedings under sections 4928.141 and 4928.142 of the Revised~~ 1256
~~Code to encourage and promote large-scale governmental~~ 1257
~~aggregation in this state. For that purpose, the commission~~ 1258
~~shall conduct an immediate review of any rules it has adopted~~ 1259
~~for the purpose of this section that are in effect on the~~ 1260
~~effective date of the amendment of this section by S.B. 221 of~~ 1261
~~the 127th general assembly, July 31, 2008. ~~Further, within the~~~~ 1262
~~~~context of an electric security plan under section 4928.143 of~~~~ 1263  
~~the Revised Code, the The commission shall ~~consider the effect~~~~ 1264  
~~on large scale governmental aggregation of any nonbypassable~~ 1265  
~~generation charges, however collected, that would be established~~ 1266

~~under that plan, except any nonbypassable generation charges~~ 1267  
~~that relate to any cost incurred by the~~ review each application 1268  
filed under section 4928.142 of the Revised Code by an electric 1269  
distribution utility, ~~to ensure that the deferral of which has~~ 1270  
~~been authorized by the commission prior to the effective date of~~ 1271  
application and the amendment of this section by S.B. 221 of the 1272  
127th general assembly, July 31, 2008 resulting market rate 1273  
offer shall not contain any rate, price, term, condition, or 1274  
provision that would have an adverse effect on large-scale 1275  
governmental aggregation in this state. 1276

**Sec. 4928.23.** As used in sections 4928.23 to 4928.2318 of 1277  
the Revised Code: 1278

(A) "Ancillary agreement" means any bond insurance policy, 1279  
letter of credit, reserve account, surety bond, swap 1280  
arrangement, hedging arrangement, liquidity or credit support 1281  
arrangement, or other similar agreement or arrangement entered 1282  
into in connection with the issuance of phase-in-recovery bonds 1283  
that is designed to promote the credit quality and marketability 1284  
of the bonds or to mitigate the risk of an increase in interest 1285  
rates. 1286

(B) "Assignee" means any person or entity to which an 1287  
interest in phase-in-recovery property is sold, assigned, 1288  
transferred, or conveyed, other than as security, and any 1289  
successor to or subsequent assignee of such a person or entity. 1290

(C) "Bond" includes debentures, notes, certificates of 1291  
participation, certificates of beneficial interest, certificates 1292  
of ownership or other evidences of indebtedness or ownership 1293  
that are issued by an electric distribution utility or an 1294  
assignee under a final financing order, the proceeds of which 1295  
are used directly or indirectly to recover, finance, or 1296

|                                                                  |      |
|------------------------------------------------------------------|------|
| refinance phase-in costs and financing costs, and that are       | 1297 |
| secured by or payable from revenues from phase-in-recovery       | 1298 |
| charges.                                                         | 1299 |
| (D) "Bondholder" means any holder or owner of a phase-in-        | 1300 |
| recovery bond.                                                   | 1301 |
| (E) "Financing costs" means any of the following:                | 1302 |
| (1) Principal, interest, and redemption premiums that are        | 1303 |
| payable on phase-in-recovery bonds;                              | 1304 |
| (2) Any payment required under an ancillary agreement;           | 1305 |
| (3) Any amount required to fund or replenish a reserve           | 1306 |
| account or another account established under any indenture,      | 1307 |
| ancillary agreement, or other financing document relating to     | 1308 |
| phase-in-recovery bonds;                                         | 1309 |
| (4) Any costs of retiring or refunding any existing debt         | 1310 |
| and equity securities of an electric distribution utility in     | 1311 |
| connection with either the issuance of, or the use of proceeds   | 1312 |
| from, phase-in-recovery bonds;                                   | 1313 |
| (5) Any costs incurred by an electric distribution utility       | 1314 |
| to obtain modifications of or amendments to any indenture,       | 1315 |
| financing agreement, security agreement, or similar agreement or | 1316 |
| instrument relating to any existing secured or unsecured         | 1317 |
| obligation of the electric distribution utility in connection    | 1318 |
| with the issuance of phase-in-recovery bonds;                    | 1319 |
| (6) Any costs incurred by an electric distribution utility       | 1320 |
| to obtain any consent, release, waiver, or approval from any     | 1321 |
| holder of an obligation described in division (E) (5) of this    | 1322 |
| section that are necessary to be incurred for the electric       | 1323 |
| distribution utility to issue or cause the issuance of phase-in- | 1324 |

|                                                                                                                                                                                                                                                                                                                                                                                 |                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| recovery bonds;                                                                                                                                                                                                                                                                                                                                                                 | 1325                                         |
| (7) Any taxes, franchise fees, or license fees imposed on<br>phase-in-recovery revenues;                                                                                                                                                                                                                                                                                        | 1326<br>1327                                 |
| (8) Any costs related to issuing or servicing phase-in-<br>recovery bonds or related to obtaining a financing order,<br>including servicing fees and expenses, trustee fees and<br>expenses, legal, accounting, or other professional fees and<br>expenses, administrative fees, placement fees, underwriting<br>fees, capitalized interest and equity, and rating-agency fees; | 1328<br>1329<br>1330<br>1331<br>1332<br>1333 |
| (9) Any other similar costs that the public utilities<br>commission finds appropriate.                                                                                                                                                                                                                                                                                          | 1334<br>1335                                 |
| (F) "Financing order" means an order issued by the public<br>utilities commission under section 4928.232 of the Revised Code<br>that authorizes an electric distribution utility or an assignee<br>to issue phase-in-recovery bonds and recover phase-in-recovery<br>charges.                                                                                                   | 1336<br>1337<br>1338<br>1339<br>1340         |
| (G) "Final financing order" means a financing order that<br>has become final and has taken effect as provided in section<br>4928.233 of the Revised Code.                                                                                                                                                                                                                       | 1341<br>1342<br>1343                         |
| (H) "Financing party" means either of the following:                                                                                                                                                                                                                                                                                                                            | 1344                                         |
| (1) Any trustee, collateral agent, or other person acting<br>for the benefit of any bondholder;                                                                                                                                                                                                                                                                                 | 1345<br>1346                                 |
| (2) Any party to an ancillary agreement, the rights and<br>obligations of which relate to or depend upon the existence of<br>phase-in-recovery property, the enforcement and priority of a<br>security interest in phase-in-recovery property, the timely<br>collection and payment of phase-in-recovery revenues, or a<br>combination of these factors.                        | 1347<br>1348<br>1349<br>1350<br>1351<br>1352 |

(I) "Financing statement" has the same meaning as in 1353  
section 1309.102 of the Revised Code. 1354

(J) "Phase-in costs" means costs, inclusive of carrying 1355  
charges incurred before, on, or after ~~the effective date of this~~ 1356  
~~section~~ March 22, 2012, authorized by the commission before, on, 1357  
or after ~~the effective date of this section~~ March 22, 2012, to 1358  
be securitized or deferred as regulatory assets in proceedings 1359  
under section 4909.18 ~~of the Revised Code, sections 4928.141 to~~ 1360  
~~4928.143, 4928.142, or 4928.144 of the Revised Code, or~~ section 1361  
4928.14 of the Revised Code as it existed prior to July 31, 1362  
2008, or section 4928.143 of the Revised Code as it existed 1363  
prior to the effective date of the amendments to this section by 1364  
...B... of the 132nd general assembly pursuant to a final order 1365  
for which appeals have been exhausted. "Phase-in costs" excludes 1366  
the following: 1367

(1) With respect to any electric generating facility that, 1368  
on and after ~~the effective date of this section~~ March 22, 2012, 1369  
is owned, in whole or in part, by an electric distribution 1370  
utility applying for a financing order under section 4928.231 of 1371  
the Revised Code, costs that ~~are~~ were authorized under division 1372  
(B) (2) (b) or (c) of section 4928.143 of the Revised Code as that 1373  
section existed prior to the effective date of the amendments to 1374  
this section by ...B... of the 132nd general assembly; 1375

(2) Costs incurred after ~~the effective date of this~~ 1376  
~~section~~ March 22, 2012, related to the ongoing operation of an 1377  
electric generating facility, but not environmental clean-up or 1378  
remediation costs incurred by an electric distribution utility 1379  
because of its ownership or operation of an electric generating 1380  
facility prior to ~~the effective date of this section~~ March 22, 1381  
2012, which such clean-up or remediation costs are imposed or 1382

incurred pursuant to federal or state law, rules, or regulations 1383  
and for which the commission approves or approved recovery in 1384  
accordance with section 4909.18 ~~of the Revised Code, sections~~ 1385  
~~4928.141 to 4928.143,~~ 4928.142, or 4928.144 of the Revised Code, 1386  
~~or~~ section 4928.14 of the Revised Code as it existed prior to 1387  
July 31, 2008, or section 4928.143 of the Revised Code as it 1388  
existed prior to the effective date of the amendments to this 1389  
section by ...B... of the 132nd general assembly. 1390

(K) "Phase-in-recovery property" means the property, 1391  
rights, and interests of an electric distribution utility or an 1392  
assignee under a final financing order, including the right to 1393  
impose, charge, and collect the phase-in-recovery charges that 1394  
shall be used to pay and secure the payment of phase-in-recovery 1395  
bonds and financing costs, and including the right to obtain 1396  
adjustments to those charges, and any revenues, receipts, 1397  
collections, rights to payment, payments, moneys, claims, or 1398  
other proceeds arising from the rights and interests created 1399  
under the final financing order. 1400

(L) "Phase-in-recovery revenues" means all revenues, 1401  
receipts, collections, payments, moneys, claims, or other 1402  
proceeds arising from phase-in-recovery property. 1403

(M) "Successor" means, with respect to any entity, another 1404  
entity that succeeds by operation of law to the rights and 1405  
obligations of the first legal entity pursuant to any 1406  
bankruptcy, reorganization, restructuring, or other insolvency 1407  
proceeding, any merger, acquisition, or consolidation, or any 1408  
sale or transfer of assets, regardless of whether any of these 1409  
occur as a result of a restructuring of the electric power 1410  
industry or otherwise. 1411

**Sec. 4928.231.** (A) An electric distribution utility may 1412



|                                                                  |      |
|------------------------------------------------------------------|------|
| apply to the public utilities commission for a financing order   | 1413 |
| that authorizes the following:                                   | 1414 |
| (1) The issuance of phase-in-recovery bonds, in one or           | 1415 |
| more series, to recover uncollected phase-in costs;              | 1416 |
| (2) The imposition, charging, and collection of phase-in-        | 1417 |
| recovery charges, in accordance with the adjustment mechanism    | 1418 |
| approved by the commission under section 4928.232 of the Revised | 1419 |
| Code, and consistent with the commission's authority regarding   | 1420 |
| governmental aggregation as provided in division (I) of section  | 1421 |
| 4928.20 of the Revised Code, to recover both of the following:   | 1422 |
| (a) Uncollected phase-in costs;                                  | 1423 |
| (b) Financing costs.                                             | 1424 |
| (3) The creation of phase-in-recovery property under the         | 1425 |
| financing order.                                                 | 1426 |
| (B) The application shall include all of the following:          | 1427 |
| (1) A description of the uncollected phase-in costs that         | 1428 |
| the electric distribution utility seeks to recover through the   | 1429 |
| issuance of phase-in-recovery bonds;                             | 1430 |
| (2) An estimate of the date each series of phase-in-             | 1431 |
| recovery bonds are expected to be issued;                        | 1432 |
| (3) The expected term during which the phase-in costs            | 1433 |
| associated with the issuance of each series of phase-in-recovery | 1434 |
| bonds are expected to be recovered;                              | 1435 |
| (4) An estimate of the financing costs, as described in          | 1436 |
| section 4928.23 of the Revised Code, associated with the         | 1437 |
| issuance of each series of phase-in-recovery bonds;              | 1438 |
| (5) An estimate of the amount of phase-in-recovery charges       | 1439 |

necessary to recover the phase-in costs and financing costs set 1440  
forth in the application and the calculation for that estimate, 1441  
which calculation shall take into account the estimated date or 1442  
dates of issuance and the estimated principal amount of each 1443  
series of phase-in-recovery bonds; 1444

(6) For phase-in-recovery charges not subject to 1445  
allocation according to an existing order, a proposed 1446  
methodology for allocating phase-in-recovery charges among 1447  
customer classes, including a proposed methodology for 1448  
allocating such charges to governmental aggregation customers 1449  
based upon the proportionate benefit determination made under 1450  
division (I) of section 4928.20 of the Revised Code; 1451

(7) A description of a proposed adjustment mechanism for 1452  
use as described in division (A) (2) of this section; 1453

(8) A description and valuation of how the issuance of the 1454  
phase-in-recovery bonds, including financing costs, will both 1455  
result in cost savings to customers and mitigate rate impacts to 1456  
customers when compared to the use of other financing mechanisms 1457  
or cost-recovery methods available to the electric distribution 1458  
utility; 1459

(9) Any other information required by the commission. 1460

(C) The electric distribution utility may restate or 1461  
incorporate by reference in the application any information 1462  
required under division (B) (9) of this section that the electric 1463  
distribution utility filed with the commission under section 1464  
4909.18 or sections 4928.141 to 4928.144 of the Revised Code ~~or,~~ 1465  
section 4928.14 of the Revised Code as it existed prior to July 1466  
31, 2008, or section 4928.143 of the Revised Code as it existed 1467  
prior to the amendments to this section by ...B... of the 132nd 1468

general assembly. 1469

**Sec. 4928.232.** (A) Proceedings before the public utilities 1470  
commission on an application submitted by an electric 1471  
distribution utility under section 4928.231 of the Revised Code 1472  
shall be governed by Chapter 4903. of the Revised Code, but only 1473  
to the extent that chapter is not inconsistent with this section 1474  
or section 4928.233 of the Revised Code. Any party that 1475  
participated in the proceeding in which phase-in costs were 1476  
approved under section 4909.18 or sections 4928.141 to 4928.144 1477  
of the Revised Code ~~or~~, section 4928.14 of the Revised Code as 1478  
it existed prior to July 31, 2008, or section 4928.143 of the 1479  
Revised Code as it existed prior to the amendments to this 1480  
section by ...B... of the 132nd general assembly shall have 1481  
standing to participate in proceedings under sections 4928.23 to 1482  
4928.2318 of the Revised Code. 1483

(B) When reviewing an application for a financing order 1484  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 1485  
the commission may hold such hearings, make such inquiries or 1486  
investigations, and examine such witnesses, books, papers, 1487  
documents, and contracts as the commission considers proper to 1488  
carry out these sections. Within thirty days after the filing of 1489  
an application under section 4928.231 of the Revised Code, the 1490  
commission shall publish a schedule of the proceeding. 1491

(C) (1) Not later than one hundred thirty-five days after 1492  
the date the application is filed, the commission shall issue 1493  
either a financing order, granting the application in whole or 1494  
with modifications, or an order suspending or rejecting the 1495  
application. 1496

(2) If the commission suspends an application for a 1497  
financing order, the commission shall notify the electric 1498

distribution utility of the suspension and may direct the electric distribution utility to provide additional information as the commission considers necessary to evaluate the application. Not later than ninety days after the suspension, the commission shall issue either a financing order, granting the application in whole or with modifications, or an order rejecting the application.

(D) (1) The commission shall not issue a financing order under division (C) of this section unless the commission determines that the financing order is consistent with section 4928.02 of the Revised Code.

(2) Except as provided in division (D) (1) of this section, the commission shall issue a financing order under division (C) of this section if, at the time the financing order is issued, the commission finds that the issuance of the phase-in-recovery bonds and the phase-in-recovery charges authorized by the order results in, consistent with market conditions, both measurably enhancing cost savings to customers and mitigating rate impacts to customers as compared with traditional financing mechanisms or traditional cost-recovery methods available to the electric distribution utility or, if the commission previously approved a recovery method, as compared with that recovery method.

(E) The commission shall include all of the following in a financing order issued under division (C) of this section:

(1) A determination of the maximum amount and a description of the phase-in costs that may be recovered through phase-in-recovery bonds issued under the financing order;

(2) A description of phase-in-recovery property, the creation of which is authorized by the financing order;

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| (3) A description of the financing costs that may be recovered through phase-in-recovery charges and the period over which those costs may be recovered;                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 1528<br>1529<br>1530                                                         |
| (4) For phase-in-recovery charges not subject to allocation according to an existing order, a description of the methodology and calculation for allocating phase-in-recovery charges among customer classes, including the allocation of such charges, if any, to governmental aggregation customers based upon the proportionate benefit determination made under division (I) of section 4928.20 of the Revised Code;                                                                                                                                                                                                      | 1531<br>1532<br>1533<br>1534<br>1535<br>1536<br>1537                         |
| (5) A description of the adjustment mechanism for use in the imposition, charging, and collection of the phase-in-recovery charges;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 1538<br>1539<br>1540                                                         |
| (6) The maximum term of the phase-in-recovery bonds;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 1541                                                                         |
| (7) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the phase-in-recovery charges described in divisions (E) (3) to (5) of this section.                                                                                                                                                                                                                                                                                                                                            | 1542<br>1543<br>1544<br>1545<br>1546                                         |
| (F) The commission may, in a financing order, afford the electric distribution utility flexibility in establishing the terms and conditions for the phase-in-recovery bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the electric distribution utility, at its option, to effect a series of issuances of phase-in-recovery bonds and correlated assignments, sales, pledges, or other transfers of phase-in-recovery property. Any changes made under this section | 1547<br>1548<br>1549<br>1550<br>1551<br>1552<br>1553<br>1554<br>1555<br>1556 |

to terms and conditions for the phase-in-recovery bonds shall be 1557  
in conformance with the financing order. 1558

(G) A financing order may provide that the creation of 1559  
phase-in-recovery property shall be simultaneous with the sale 1560  
of that property to an assignee as provided in the application 1561  
and the pledge of the property to secure phase-in-recovery 1562  
bonds. 1563

(H) The commission shall, in a financing order, require 1564  
that after the final terms of each issuance of phase-in-recovery 1565  
bonds have been established, and prior to the issuance of those 1566  
bonds, the electric distribution utility shall determine the 1567  
resulting phase-in-recovery charges in accordance with the 1568  
adjustment mechanism described in the financing order. These 1569  
phase-in-recovery charges shall be final and effective upon the 1570  
issuance of the phase-in-recovery bonds, without further 1571  
commission action. 1572

Sec. 4928.28. (A) Every electric utility shall file, not 1573  
later than sixty days after the effective date of this section, 1574  
a market power mitigation plan with the public utilities 1575  
commission. 1576

(B) The plan shall provide for any of the following, to be 1577  
completed by December 31, 2018: 1578

(1) The sale of generation assets owned and controlled by 1579  
the utility or by an affiliated entity to a nonaffiliated 1580  
entity; 1581

(2) The exchange of generation assets with a nonaffiliated 1582  
entity located in another state; 1583

(3) The auction of generation capacity entitlements as 1584  
part of a capacity auction; 1585

(4) The sale of the right to capacity to a nonaffiliated entity for at least four years, beginning on January 1, 2019; 1586  
1587

(5) Any reasonable method of mitigation for divestiture of generation assets. 1588  
1589

(C) The plan shall be in a form prescribed by the commission and shall provide information that the commission finds reasonably necessary to evaluate the plan. 1590  
1591  
1592

(D) The commission shall approve, modify, or reject the plan not later than one hundred days after the date that the plan is filed. 1593  
1594  
1595

(E) In reaching its determination under division (D) of this section, the commission shall consider all of the following: 1596  
1597  
1598

(1) Whether the reasonable value of the generation assets is likely to be received on disposition; 1599  
1600

(2) The effect of the plan on the electric utility's federal income taxes; 1601  
1602

(3) The effect of the plan on current and potential competitors in the generation market; 1603  
1604

(4) Whether the plan is consistent with the public interest. 1605  
1606

Sec. 4928.281. An electric utility with a market power mitigation plan approved under section 4928.28 of the Revised Code may request to amend its plan. On a showing of good cause, the public utilities commission may modify the plan. 1607  
1608  
1609  
1610

Sec. 4928.29. Beginning on January 1, 2019, no electric utility and no entity affiliated with that utility may own and 1611  
1612

control any installed generation capacity located in this state. 1613

Sec. 4928.30. If an electric utility's market power 1614  
mitigation plan is not approved before January 1, 2019, the 1615  
public utilities commission may order the electric utility or, 1616  
as applicable, an affiliated entity to auction generation 1617  
capacity entitlements, subject to commission approval, until a 1618  
plan is approved. The auction shall be held not later than sixty 1619  
days after the date that the commission issues the order. 1620

**Sec. 4928.31.** (A) Not later than ninety days after the 1621  
effective date of this section, an electric utility supplying 1622  
retail electric service in this state on that date shall file 1623  
with the public utilities commission a plan for the utility's 1624  
provision of retail electric service in this state during the 1625  
market development period. This transition plan shall be in such 1626  
form as the commission shall prescribe by rule adopted under 1627  
division (A) of section 4928.06 of the Revised Code and shall 1628  
include all of the following: 1629

(1) A rate unbundling plan that specifies, consistent with 1630  
divisions (A) (1) to (7) of section 4928.34 of the Revised Code 1631  
and any rules adopted by the commission under division (A) of 1632  
section 4928.06 of the Revised Code, the unbundles components 1633  
for electric generation, transmission, and distribution service 1634  
and such other unbundled service components as the commission 1635  
requires, to be charged by the utility ~~beginning on the starting~~ 1636  
~~date of competitive retail electric service~~ and that includes 1637  
information the commission requires to fix and determine those 1638  
components; 1639

(2) A corporate separation plan consistent with ~~section~~ 1640  
sections 4928.17 and 4928.29 of the Revised Code and any rules 1641  
adopted by the commission under division (A) of section 4928.06 1642



of the Revised Code; 1643

(3) Such plan or plans as the commission requires to 1644  
address operational support systems and any other technical 1645  
implementation issues pertaining to competitive retail electric 1646  
service consistent with any rules adopted by the commission 1647  
under division (A) of section 4928.06 of the Revised Code; 1648

(4) An employee assistance plan for providing severance, 1649  
retraining, early retirement, retention, outplacement, and other 1650  
assistance for the utility's employees whose employment is 1651  
affected by electric industry restructuring under this chapter; 1652

(5) A consumer education plan consistent with former 1653  
section 4928.42 of the Revised Code and any rules adopted by the 1654  
commission under division (A) of section 4928.06 of the Revised 1655  
Code. 1656

A transition plan under this section may include tariff 1657  
terms and conditions to address reasonable requirements for 1658  
changing suppliers, length of commitment by a customer for 1659  
service, and such other matters as are necessary to accommodate 1660  
electric restructuring. Additionally, a transition plan under 1661  
this section may include an application for the opportunity to 1662  
receive transition revenues as authorized under sections 4928.31 1663  
to 4928.40 of the Revised Code, which application shall be 1664  
consistent with those sections and any rules adopted by the 1665  
commission under division (A) of section 4928.06 of the Revised 1666  
Code. The transition plan also may include a plan for the 1667  
independent operation of the utility's transmission facilities 1668  
consistent with section 4928.12 of the Revised Code, division 1669  
(A) (13) of section 4928.34 of the Revised Code, and any rules 1670  
adopted by the commission under division (A) of section 4928.06 1671  
of the Revised Code. 1672

The commission may reject and require refiling, in whole 1673  
or in part, of any substantially inadequate transition plan. 1674

(B) The electric utility shall provide public notice of 1675  
its filing under division (A) of this section, in a form and 1676  
manner that the commission shall prescribe by rule adopted under 1677  
division (A) of section 4928.06 of the Revised Code. However, 1678  
the adoption of rules regarding the public notice under this 1679  
division, regarding the form of the transition plan under 1680  
division (A) of this section, and regarding procedures for 1681  
expedited discovery under division (A) of section 4928.32 of the 1682  
Revised Code are not subject to division (D) of section 111.15 1683  
of the Revised Code. 1684

**Sec. 4928.34.** (A) The public utilities commission shall 1685  
not approve or prescribe a transition plan under division (A) or 1686  
(B) of section 4928.33 of the Revised Code unless the commission 1687  
first makes all of the following determinations: 1688

(1) The unbundled components for the electric transmission 1689  
component of retail electric service, as specified in the 1690  
utility's rate unbundling plan required by division (A)(1) of 1691  
section 4928.31 of the Revised Code, equal the tariff rates 1692  
determined by the federal energy regulatory commission that are 1693  
in effect on the date of the approval of the transition plan 1694  
under sections 4928.31 to 4928.40 of the Revised Code, as each 1695  
such rate is determined applicable to each particular customer 1696  
class and rate schedule by the commission. The unbundled 1697  
transmission component shall include a sliding scale of charges 1698  
under division (B) of section 4905.31 of the Revised Code to 1699  
ensure that refunds determined or approved by the federal energy 1700  
regulatory commission are flowed through to retail electric 1701  
customers. 1702

(2) The unbundled components for retail electric 1703  
distribution service in the rate unbundling plan equal the 1704  
difference between the costs attributable to the utility's 1705  
transmission and distribution rates and charges under its 1706  
schedule of rates and charges in effect on the effective date of 1707  
this section, based upon the record in the most recent rate 1708  
proceeding of the utility for which the utility's schedule was 1709  
established, and the tariff rates for electric transmission 1710  
service determined by the federal energy regulatory commission 1711  
as described in division (A) (1) of this section. 1712

(3) All other unbundled components required by the 1713  
commission in the rate unbundling plan equal the costs 1714  
attributable to the particular service as reflected in the 1715  
utility's schedule of rates and charges in effect on the 1716  
effective date of this section. 1717

(4) The unbundled components for retail electric 1718  
generation service in the rate unbundling plan equal the 1719  
residual amount remaining after the determination of the 1720  
transmission, distribution, and other unbundled components, and 1721  
after any adjustments necessary to reflect the effects of the 1722  
amendment of section 5727.111 of the Revised Code by Sub. S.B. 1723  
No. 3 of the 123rd general assembly. 1724

(5) All unbundled components in the rate unbundling plan 1725  
have been adjusted to reflect any base rate reductions on file 1726  
with the commission and as scheduled to be in effect by December 1727  
31, 2005, under rate settlements in effect on the effective date 1728  
of this section. However, all earnings obligations, 1729  
restrictions, or caps imposed on an electric utility in a 1730  
commission order prior to the effective date of this section are 1731  
void. 1732

(6) Subject to division (A) (5) of this section, the total 1733  
of all unbundled components in the rate unbundling plan are 1734  
capped and shall equal during the market development period, 1735  
except as specifically provided in this chapter, the total of 1736  
all rates and charges in effect under the applicable bundled 1737  
schedule of the electric utility pursuant to section 4905.30 of 1738  
the Revised Code in effect on the day before the effective date 1739  
of this section, including the transition charge determined 1740  
under section 4928.40 of the Revised Code, adjusted for any 1741  
changes in the taxation of electric utilities and retail 1742  
electric service under Sub. S.B. No. 3 of the 123rd General 1743  
Assembly, the universal service rider authorized by section 1744  
4928.51 of the Revised Code, and the temporary rider authorized 1745  
by section 4928.61 of the Revised Code. For the purpose of this 1746  
division, the rate cap applicable to a customer receiving 1747  
electric service pursuant to an arrangement approved by the 1748  
commission under section 4905.31 of the Revised Code is, for the 1749  
term of the arrangement, the total of all rates and charges in 1750  
effect under the arrangement. For any rate schedule filed 1751  
pursuant to section 4905.30 of the Revised Code or any 1752  
arrangement subject to approval pursuant to section 4905.31 of 1753  
the Revised Code, the initial tax-related adjustment to the rate 1754  
cap required by this division shall be equal to the rate of 1755  
taxation specified in section 5727.81 of the Revised Code and 1756  
applicable to the schedule or arrangement. To the extent such 1757  
total annual amount of the tax-related adjustment is greater 1758  
than or less than the comparable amount of the total annual tax 1759  
reduction experienced by the electric utility as a result of the 1760  
provisions of Sub. S.B. No. 3 of the 123rd general assembly, 1761  
such difference shall be addressed by the commission through 1762  
accounting procedures, refunds, or an annual surcharge or credit 1763  
to customers, or through other appropriate means, to avoid 1764

placing the financial responsibility for the difference upon the 1765  
electric utility or its shareholders. Any adjustments in the 1766  
rate of taxation specified in section 5727.81 of the Revised 1767  
Code ~~section~~ shall not occur without a corresponding adjustment 1768  
to the rate cap for each such rate schedule or arrangement. The 1769  
department of taxation shall advise the commission and self- 1770  
assessors under section 5727.81 of the Revised Code prior to the 1771  
effective date of any change in the rate of taxation specified 1772  
under that section, and the commission shall modify the rate cap 1773  
to reflect that adjustment so that the rate cap adjustment is 1774  
effective as of the effective date of the change in the rate of 1775  
taxation. This division shall be applied, to the extent 1776  
possible, to eliminate any increase in the price of electricity 1777  
for customers that otherwise may occur as a result of 1778  
establishing the taxes contemplated in section 5727.81 of the 1779  
Revised Code. 1780

(7) The rate unbundling plan complies with any rules 1781  
adopted by the commission under division (A) of section 4928.06 1782  
of the Revised Code. 1783

(8) The corporate separation plan required by division (A) 1784  
(2) of section 4928.31 of the Revised Code complies with ~~section~~ 1785  
sections 4928.17 and 4928.29 of the Revised Code and any rules 1786  
adopted by the commission under division (A) of section 4928.06 1787  
of the Revised Code. 1788

(9) Any plan or plans the commission requires to address 1789  
operational support systems and any other technical 1790  
implementation issues pertaining to competitive retail electric 1791  
service comply with any rules adopted by the commission under 1792  
division (A) of section 4928.06 of the Revised Code. 1793

(10) The employee assistance plan required by division (A) 1794

(4) of section 4928.31 of the Revised Code sufficiently provides 1795  
severance, retraining, early retirement, retention, 1796  
outplacement, and other assistance for the utility's employees 1797  
whose employment is affected by electric industry restructuring 1798  
under this chapter. 1799

(11) The consumer education plan required under division 1800  
(A) (5) of section 4928.31 of the Revised Code complies with 1801  
former section 4928.42 of the Revised Code and any rules adopted 1802  
by the commission under division (A) of section 4928.06 of the 1803  
Revised Code. 1804

(12) The transition revenues for which an electric utility 1805  
is authorized a revenue opportunity under sections 4928.31 to 1806  
4928.40 of the Revised Code are the allowable transition costs 1807  
of the utility as such costs are determined by the commission 1808  
pursuant to section 4928.39 of the Revised Code, and the 1809  
transition charges for the customer classes and rate schedules 1810  
of the utility are the charges determined pursuant to section 1811  
4928.40 of the Revised Code. 1812

(13) Any independent transmission plan included in the 1813  
transition plan filed under section 4928.31 of the Revised Code 1814  
reasonably complies with section 4928.12 of the Revised Code and 1815  
any rules adopted by the commission under division (A) of 1816  
section 4928.06 of the Revised Code, unless the commission, for 1817  
good cause shown, authorizes the utility to defer compliance 1818  
until an order is issued under division (G) of section 4928.35 1819  
of the Revised Code. 1820

(14) The utility is in compliance with sections 4928.01 to 1821  
4928.11 of the Revised Code and any rules or orders of the 1822  
commission adopted or issued under those sections. 1823

(15) All unbundled components in the rate unbundling plan 1824  
have been adjusted to reflect the elimination of the tax on 1825  
gross receipts imposed by section 5727.30 of the Revised Code. 1826

In addition, a transition plan approved by the commission 1827  
under section 4928.33 of the Revised Code but not containing an 1828  
approved independent transmission plan shall contain the express 1829  
conditions that the utility will comply with an order issued 1830  
under division (G) of section 4928.35 of the Revised Code. 1831

~~(B) Subject to division (E) of section 4928.17 of the~~ 1832  
~~Revised Code, if~~If the commission finds that any part of the 1833  
transition plan would constitute an abandonment under sections 1834  
4905.20 and 4905.21 of the Revised Code, the commission shall 1835  
not approve that part of the transition plan unless it makes the 1836  
finding required for approval of an abandonment application 1837  
under section 4905.21 of the Revised Code. Sections 4905.20 and 1838  
4905.21 of the Revised Code otherwise shall not apply to a 1839  
transition plan under sections 4928.31 to 4928.40 of the Revised 1840  
Code. 1841

**Sec. 4928.35.** (A) Upon approval of its transition plan 1842  
under sections 4928.31 to 4928.40 of the Revised Code, an 1843  
electric utility shall file in accordance with section 4905.30 1844  
of the Revised Code schedules containing the unbundled rate 1845  
components set in the approved plan in accordance with section 1846  
4928.34 of the Revised Code. The schedules shall be in effect 1847  
for the duration of the utility's market development period, 1848  
shall be subject to the cap specified in division (A) (6) of 1849  
section 4928.34 of the Revised Code, and shall not be adjusted 1850  
during that period by the public utilities commission except as 1851  
otherwise authorized by division (B) of this section or as 1852  
otherwise authorized by federal law or except to reflect any 1853

change in tax law or tax regulation that has a material effect 1854  
on the electric utility. 1855

(B) Efforts shall be made to reach agreements with 1856  
electric utilities in matters of litigation regarding property 1857  
valuation issues. Irrespective of those efforts, the unbundled 1858  
components for an electric utility's retail electric generation 1859  
service and distribution service, as provided in division (A) of 1860  
this section, are not subject to adjustment for the utility's 1861  
market development period, except that the commission shall 1862  
order an equitable reduction in those components for all 1863  
customer classes to reflect any refund a utility receives as a 1864  
result of the resolution of utility personal property tax 1865  
valuation litigation that is resolved on or after the effective 1866  
date of this section and not later than December 31, 2005. 1867  
Immediately upon the issuance of that order, the electric 1868  
utility shall file revised rate schedules under section 4909.18 1869  
of the Revised Code to effect the order. 1870

(C) The schedule under division (A) of this section 1871  
containing the unbundled distribution components shall provide 1872  
that electric distribution service under the schedule will be 1873  
available to all retail electric service customers in the 1874  
electric utility's certified territory and their suppliers on a 1875  
nondiscriminatory and comparable basis ~~on and after the starting~~ 1876  
~~date of competitive retail electric service~~. The schedule also 1877  
shall include an obligation to build distribution facilities 1878  
when necessary to provide adequate distribution service, 1879  
provided that a customer requesting that service may be required 1880  
to pay all or part of the reasonable incremental cost of the new 1881  
facilities, in accordance with rules, policy, precedents, or 1882  
orders of the commission. 1883



(D) During the market development period, an electric 1884  
distribution utility shall provide consumers on a comparable and 1885  
nondiscriminatory basis within its certified territory a 1886  
standard service offer of all competitive retail electric 1887  
services necessary to maintain essential electric service to 1888  
consumers, including a firm supply of electric generation 1889  
service priced in accordance with the schedule containing the 1890  
utility's unbundled generation service component. Immediately 1891  
upon approval of its transition plan, the utility shall file the 1892  
standard service offer with the commission under section 4909.18 1893  
of the Revised Code, during the market development period. The 1894  
failure of a supplier to deliver retail electric generation 1895  
service shall result in the supplier's customers, after 1896  
reasonable notice, defaulting to the utility's standard service 1897  
offer filed under this division until the customer chooses an 1898  
alternative supplier. A supplier is deemed under this section to 1899  
have failed to deliver such service if any of the conditions 1900  
specified in section 4928.14 of the Revised Code is met. 1901

(E) An amendment of a corporate separation plan contained 1902  
in a transition plan approved by the commission under section 1903  
4928.33 of the Revised Code shall be filed and approved as a 1904  
corporate separation plan pursuant to ~~section~~sections 4928.17 1905  
and 4928.29 of the Revised Code. 1906

(F) Any change to an electric utility's opportunity to 1907  
receive transition revenues under a transition plan approved in 1908  
accordance with section 4928.33 of the Revised Code shall be 1909  
authorized only as provided in sections 4928.31 to 4928.40 of 1910  
the Revised Code. 1911

(G) The commission, by order, shall require each electric 1912  
utility whose approved transition plan did not include an 1913

independent transmission plan as described in division (A) (13) 1914  
of section 4928.34 of the Revised Code to be a member of, and 1915  
transfer control of transmission facilities it owns or controls 1916  
in this state to, one or more qualifying transmission entities, 1917  
as described in division (B) of section 4928.12 of the Revised 1918  
Code, that are planned to be operational on and after December 1919  
31, 2003. However, the commission may extend that date if, for 1920  
reasons beyond the control of the utility, a qualifying 1921  
transmission entity is not planned to be operational on that 1922  
date. The commission's order may specify an earlier date on 1923  
which the transmission entity or entities are planned to be 1924  
operational if the commission considers it necessary to carry 1925  
out the policy specified in section 4928.02 of the Revised Code 1926  
or to encourage effective competition in retail electric service 1927  
in this state. 1928

Upon the issuance of the order, each such utility shall 1929  
file with the commission a plan for such independent operation 1930  
of the utility's transmission facilities consistent with this 1931  
division. The commission may reject and require refiling of any 1932  
substantially inadequate plan submitted under this division. 1933

After reasonable notice and opportunity for hearing, the 1934  
commission shall approve the plan upon a finding that the plan 1935  
will result in the utility's compliance with the order, this 1936  
division, and any rules adopted under division (A) of section 1937  
4928.06 of the Revised Code. The approved independent 1938  
transmission plan shall be deemed a part of the utility's 1939  
transition plan for purposes of sections 4928.31 to 4928.40 of 1940  
the Revised Code. 1941

**Sec. 4928.542.** The winning bid or bids selected through 1942  
the competitive procurement process established under section 1943

4928.54 of the Revised Code shall meet all of the following requirements: 1944  
1945

(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers; 1946  
1947  
1948

(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under ~~sections~~ section 4928.141, ~~4928.142,~~ and ~~4928.143~~ of the Revised Code; 1949  
1950  
1951  
1952

(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code. 1953  
1954  
1955

**Sec. 4933.81.** As used in sections 4933.81 to 4933.90 of the Revised Code: 1956  
1957

(A) "Electric supplier" means any electric light company as defined in section 4905.03 of the Revised Code, including electric light companies organized as nonprofit corporations, but not including municipal corporations or other units of local government that provide electric service. 1958  
1959  
1960  
1961  
1962

(B) "Adequate facilities" means distribution lines or facilities having sufficient capacity to meet the maximum estimated electric service requirements of its existing customers and of any new customer occurring during the year following the commencement of permanent electric service, and to assure all such customers of reasonable continuity and quality of service. Distribution facilities and lines of an electric supplier shall be considered "adequate facilities" if such supplier offers to undertake to make its distribution facilities and lines meet such service requirements and, in the 1963  
1964  
1965  
1966  
1967  
1968  
1969  
1970  
1971  
1972

determination of the public utilities commission, can do so 1973  
within a reasonable time. 1974

(C) "Distribution line" means any electric line that is 1975  
being or has been used primarily to provide electric service 1976  
directly to electric load centers by the owner of such line. 1977

(D) "Existing distribution line" means any distribution 1978  
line of an electric supplier which was in existence on January 1979  
1, 1977, or under construction on that date. 1980

(E) "Electric load center" means all the electric- 1981  
consuming facilities of any type or character owned, occupied, 1982  
controlled, or used by a person at a single location, which 1983  
facilities have been, are, or will be connected to and served at 1984  
a metered point of delivery and to which electric service has 1985  
been, is, or will be rendered. 1986

(F) "Electric service" means retail electric service 1987  
furnished to an electric load center for ultimate consumption, 1988  
but excludes furnishing electric power or energy at wholesale 1989  
for resale. In the case of a for-profit electric supplier ~~and~~ 1990  
~~beginning on the starting date of competitive retail electric~~ 1991  
~~service as defined in section 4928.01 of the Revised Code,~~ 1992  
"electric service" also excludes a competitive retail electric 1993  
service. In the case of a not-for-profit electric supplier ~~and~~ 1994  
~~beginning on that starting date,~~ "electric service" also 1995  
excludes any service component of competitive retail electric 1996  
service that is specified in an irrevocable filing the electric 1997  
supplier makes with the public utilities commission for 1998  
informational purposes only to eliminate permanently its 1999  
certified territory under sections 4933.81 to 4933.90 of the 2000  
Revised Code as to that service component. The filing shall 2001  
specify the date on which such territory is so eliminated. 2002

Notwithstanding division (B) of section 4928.01 of the Revised Code, such a service component may include retail ancillary, metering, or billing and collection service irrespective of whether that service component has or has not been declared competitive under section ~~4928.04~~ 4928.041 of the Revised Code. Upon receipt of the filing by the commission, the not-for-profit electric supplier's certified territory shall be eliminated permanently as to the service component specified in the filing as of the date specified in the filing. As used in this division, "competitive retail electric service" and "retail electric service" have the same meanings as in section 4928.01 of the Revised Code.

(G) "Certified territory" means a geographical area the boundaries of which have been established pursuant to sections 4933.81 to 4933.90 of the Revised Code within which an electric supplier is authorized and required to provide electric service.

(H) "Other unit of local government" means any governmental unit or body that may come into existence after July 12, 1978, with powers and authority similar to those of a municipal corporation, or that is created to replace or exercise the relevant powers of any one or more municipal corporations.

**Section 2.** That existing sections 4928.01, 4928.04, 4928.05, 4928.06, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4928.18, 4928.20, 4928.23, 4928.231, 4928.232, 4928.31, 4928.34, 4928.35, 4928.542, and 4933.81 and section 4928.143 of the Revised Code are hereby repealed.