

As Introduced

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H. B. No. 239

Representatives Smith, R., Carfagna

A BILL

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

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

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

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

(1) "Ancillary service" means any function necessary to 10
the provision of electric transmission or distribution service 11
to a retail customer and includes, but is not limited to, 12
scheduling, system control, and dispatch services; reactive 13
supply from generation resources and voltage control service; 14
reactive supply from transmission resources service; regulation 15
service; frequency response service; energy imbalance service; 16
operating reserve-spinning reserve service; operating reserve- 17
supplemental reserve service; load following; back-up supply 18
service; real-power loss replacement service; dynamic 19

scheduling; system black start capability; and network stability 20
service. 21

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

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

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

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

(6) "Electric distribution utility" means an electric 43
utility that supplies at least retail electric distribution 44
service. 45

(7) "Electric light company" has the same meaning as in 46
section 4905.03 of the Revised Code and includes an electric 47
services company, but excludes any self-generator to the extent 48

that it consumes electricity it so produces, sells that 49
electricity for resale, or obtains electricity from a generating 50
facility it hosts on its premises. 51

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

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

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

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

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

(13) "Governmental aggregator" means a legislative 73
authority of a municipal corporation, a board of township 74
trustees, or a board of county commissioners acting as an 75
aggregator for the provision of a competitive retail electric 76
service under authority conferred under section 4928.20 of the 77

Revised Code. 78

(14) A person acts "knowingly," regardless of the person's 79
purpose, when the person is aware that the person's conduct will 80
probably cause a certain result or will probably be of a certain 81
nature. A person has knowledge of circumstances when the person 82
is aware that such circumstances probably exist. 83

(15) "Level of funding for low-income customer energy 84
efficiency programs provided through electric utility rates" 85
means the level of funds specifically included in an electric 86
utility's rates on October 5, 1999, pursuant to an order of the 87
public utilities commission issued under Chapter 4905. or 4909. 88
of the Revised Code and in effect on October 4, 1999, for the 89
purpose of improving the energy efficiency of housing for the 90
utility's low-income customers. The term excludes the level of 91
any such funds committed to a specific nonprofit organization or 92
organizations pursuant to a stipulation or contract. 93

(16) "Low-income customer assistance programs" means the 94
percentage of income payment plan program, the home energy 95
assistance program, the home weatherization assistance program, 96
and the targeted energy efficiency and weatherization program. 97

(17) "Market development period" for an electric utility 98
means the period of time beginning on the starting date of 99
competitive retail electric service and ending on the applicable 100
date for that utility as specified in section 4928.40 of the 101
Revised Code, irrespective of whether the utility applies to 102
receive transition revenues under this chapter. 103

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

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

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

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

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

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

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

(25) "Advanced energy project" means any technologies, 131
products, activities, or management practices or strategies that 132
facilitate the generation or use of electricity or energy and 133
that reduce or support the reduction of energy consumption or 134
support the production of clean, renewable energy for 135

industrial, distribution, commercial, institutional, 136
governmental, research, not-for-profit, or residential energy 137
users, including, but not limited to, advanced energy resources 138
and renewable energy resources. "Advanced energy project" also 139
includes any project described in division (A), (B), or (C) of 140
section 4928.621 of the Revised Code. 141

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

(27) "Retail electric service" means any service involved 164
in supplying or arranging for the supply of electricity to 165
ultimate consumers in this state, from the point of generation 166

to the point of consumption. For the purposes of this chapter, 167
retail electric service includes one or more of the following 168
"service components": generation service, aggregation service, 169
power marketing service, power brokerage service, transmission 170
service, distribution service, ancillary service, metering 171
service, and billing and collection service. 172

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

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

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

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

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

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

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

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

(32) "Self-generator" means an entity in this state that 191
owns or hosts on its premises an electric generation facility 192
that produces electricity primarily for the owner's consumption 193
and that may provide any such excess electricity to another 194

entity, whether the facility is installed or operated by the owner or by an agent under a contract.

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

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

(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;

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

(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;

(d) Advanced nuclear energy technology consisting of	224
generation III technology as defined by the nuclear regulatory	225
commission; other, later technology; or significant improvements	226
to existing facilities;	227
(e) Any fuel cell used in the generation of electricity,	228
including, but not limited to, a proton exchange membrane fuel	229
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	230
solid oxide fuel cell;	231
(f) Advanced solid waste or construction and demolition	232
debris conversion technology, including, but not limited to,	233
advanced stoker technology, and advanced fluidized bed	234
gasification technology, that results in measurable greenhouse	235
gas emissions reductions as calculated pursuant to the United	236
States environmental protection agency's waste reduction model	237
(WARM);	238
(g) Demand-side management and any energy efficiency	239
improvement;	240
(h) Any new, retrofitted, refueled, or repowered	241
generating facility located in Ohio, including a simple or	242
combined-cycle natural gas generating facility or a generating	243
facility that uses biomass, coal, modular nuclear, or any other	244
fuel as its input;	245
(i) Any uprated capacity of an existing electric	246
generating facility if the uprated capacity results from the	247
deployment of advanced technology.	248
"Advanced energy resource" does not include a waste energy	249
recovery system that is, or has been, included in an energy	250
efficiency program of an electric distribution utility pursuant	251
to requirements under section 4928.66 of the Revised Code.	252

(35) "Air contaminant source" has the same meaning as in	253
section 3704.01 of the Revised Code.	254
(36) "Cogeneration technology" means technology that	255
produces electricity and useful thermal output simultaneously.	256
(37) (a) "Renewable energy resource" means any of the	257
following:	258
(i) Solar photovoltaic or solar thermal energy;	259
(ii) Wind energy;	260
(iii) Power produced by a hydroelectric facility;	261
(iv) Power produced by a run-of-the-river hydroelectric	262
facility placed in service on or after January 1, 1980, that is	263
located within this state, relies upon the Ohio river, and	264
operates, or is rated to operate, at an aggregate capacity of	265
forty or more megawatts;	266
(v) Geothermal energy;	267
(vi) Fuel derived from solid wastes, as defined in section	268
3734.01 of the Revised Code, through fractionation, biological	269
decomposition, or other process that does not principally	270
involve combustion;	271
(vii) Biomass energy;	272
(viii) Energy produced by cogeneration technology that is	273
placed into service on or before December 31, 2015, and for	274
which more than ninety per cent of the total annual energy input	275
is from combustion of a waste or byproduct gas from an air	276
contaminant source in this state, which source has been in	277
operation since on or before January 1, 1985, provided that the	278
cogeneration technology is a part of a facility located in a	279

county having a population of more than three hundred sixty-five 280
thousand but less than three hundred seventy thousand according 281
to the most recent federal decennial census; 282

(ix) Biologically derived methane gas; 283

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

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

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

"Renewable energy resource" does not include a waste 305
energy recovery system that is, or was, on or after January 1, 306
2012, included in an energy efficiency program of an electric 307
distribution utility pursuant to requirements under section 308

4928.66 of the Revised Code.	309
(b) As used in division (A) (37) of this section,	310
"hydroelectric facility" means a hydroelectric generating	311
facility that is located at a dam on a river, or on any water	312
discharged to a river, that is within or bordering this state or	313
within or bordering an adjoining state and meets all of the	314
following standards:	315
(i) The facility provides for river flows that are not	316
detrimental for fish, wildlife, and water quality, including	317
seasonal flow fluctuations as defined by the applicable	318
licensing agency for the facility.	319
(ii) The facility demonstrates that it complies with the	320
water quality standards of this state, which compliance may	321
consist of certification under Section 401 of the "Clean Water	322
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and	323
demonstrates that it has not contributed to a finding by this	324
state that the river has impaired water quality under Section	325
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33	326
U.S.C. 1313.	327
(iii) The facility complies with mandatory prescriptions	328
regarding fish passage as required by the federal energy	329
regulatory commission license issued for the project, regarding	330
fish protection for riverine, anadromous, and catadromous fish.	331
(iv) The facility complies with the recommendations of the	332
Ohio environmental protection agency and with the terms of its	333
federal energy regulatory commission license regarding watershed	334
protection, mitigation, or enhancement, to the extent of each	335
agency's respective jurisdiction over the facility.	336
(v) The facility complies with provisions of the	337

"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 338
to 1544, as amended. 339

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

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

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

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

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

(i) Exhaust heat from engines or manufacturing, 361
industrial, commercial, or institutional sites, except for 362
exhaust heat from a facility whose primary purpose is the 363
generation of electricity; 364

(ii) Reduction of pressure in gas pipelines before gas is 365
distributed through the pipeline, provided that the conversion 366

of energy to electricity is achieved without using additional 367
fossil fuels. 368

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

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

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

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

(B) For the purposes of this chapter, a retail electric 392
service component shall be deemed a competitive retail electric 393
service if the service component is competitive pursuant to a 394
declaration by a provision of the Revised Code or pursuant to an 395

order of the public utilities commission authorized under 396
division (A) of section 4928.04 of the Revised Code. Otherwise, 397
the service component shall be deemed a noncompetitive retail 398
electric service. 399

Sec. 4928.02. It is the policy of this state to do the 400
following throughout this state: 401

(A) Ensure the availability to consumers of adequate, 402
reliable, safe, efficient, nondiscriminatory, and reasonably 403
priced retail electric service; 404

(B) Ensure the availability of unbundled and comparable 405
retail electric service that provides consumers with the 406
supplier, price, terms, conditions, and quality options they 407
elect to meet their respective needs; 408

(C) Ensure diversity of electricity supplies and 409
suppliers, by giving consumers effective choices over the 410
selection of those supplies and suppliers and by encouraging the 411
development of distributed and small generation facilities; 412

(D) Encourage innovation and market access for cost- 413
effective supply- and demand-side retail electric service 414
including, but not limited to, demand-side management, time- 415
differentiated pricing, waste energy recovery systems, smart 416
grid programs, and implementation of advanced metering 417
infrastructure; 418

(E) Encourage cost-effective and efficient access to 419
information regarding the operation of the transmission and 420
distribution systems of electric utilities in order to promote 421
both effective customer choice of retail electric service and 422
the development of performance standards and targets for service 423
quality for all consumers, including annual achievement reports 424

written in plain language;	425
(F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces;	426 427 428 429
(G) Recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment;	430 431 432
(H) Ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, including by prohibiting the recovery of any generation-related costs through distribution or transmission rates;	433 434 435 436 437 438 439
(I) Ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power;	440 441 442
(J) Provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates;	443 444 445
(K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering;	446 447 448 449 450
(L) Protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource;	451 452 453

(M) Encourage the education of small business owners in 454
this state regarding the use of, and encourage the use of, 455
energy efficiency programs and alternative energy resources in 456
their businesses; 457

(N) Facilitate the state's effectiveness in the global 458
economy; 459

(O) Ensure the continuing economic viability of historical 460
investments made by electric distribution utilities in national 461
security generation resources and support continued investment 462
to preserve the ongoing benefits associated with such resources. 463

In carrying out this policy, the commission shall consider 464
rules as they apply to the costs of electric distribution 465
infrastructure, including, but not limited to, line extensions, 466
for the purpose of development in this state. 467

Sec. 4928.141. (A) Beginning January 1, 2009, an electric 468
distribution utility shall provide consumers, on a comparable 469
and nondiscriminatory basis within its certified territory, a 470
standard service offer of all competitive retail electric 471
services necessary to maintain essential electric service to 472
consumers, including a firm supply of electric generation 473
service. To that end, the electric distribution utility shall 474
apply to the public utilities commission to establish the 475
standard service offer in accordance with section 4928.142 or 476
4928.143 of the Revised Code and, at its discretion, may apply 477
simultaneously under both sections, ~~except that the utility's~~ 478
~~first standard service offer application at minimum shall~~ 479
~~include a filing under section 4928.143 of the Revised Code.~~ 480
Only a standard service offer authorized in accordance with 481
section 4928.142 or 4928.143 of the Revised Code, shall serve as 482
the utility's standard service offer for the purpose of 483

compliance with this section; and that standard service offer 484
shall serve as the utility's default standard service offer for 485
the purpose of section 4928.14 of the Revised Code. 486

~~Notwithstanding the foregoing provision, the rate plan of an 487
electric distribution utility shall continue for the purpose of 488
the utility's compliance with this division until a standard 489
service offer is first authorized under section 4928.142 or 490
4928.143 of the Revised Code, and, as applicable, pursuant to 491
division (D) of section 4928.143 of the Revised Code, any rate 492
plan that extends beyond December 31, 2008, shall continue to be 493
in effect for the subject electric distribution utility for the 494
duration of the plan's term. A standard service offer under 495
section 4928.142 or 4928.143 of the Revised Code shall include 496
automatic recovery, subject to audit and reconciliation, of all 497
costs, including any deferred costs, associated with an electric 498
distribution utility's contractual commitments related to a 499
national security generation resource, but shall exclude any 500
previously authorized allowances for transition costs, with such 501
exclusion being effective on and after the date that the 502
allowance is scheduled to end under the utility's rate plan. 503~~

(B) An electric distribution utility with an affiliate 504
that has a contractual commitment related to a national security 505
generation resource may use the output from the affiliate's 506
contractual commitment in its standard service offer provided 507
under section 4928.142 or 4928.143 of the Revised Code, provided 508
that the affiliate's contractual commitment was previously the 509
contractual commitment of the electric distribution utility. The 510
utility shall recover any and all costs, including any deferred 511
costs, of the affiliate's share of the resource. All electric 512
distribution utilities in the same holding company system may 513
jointly use the output of the affiliate's contractual commitment 514

in their standard service offer. 515

(C) The commission shall set the time for hearing of a 516
filing under section 4928.142 or 4928.143 of the Revised Code, 517
send written notice of the hearing to the electric distribution 518
utility, and publish notice in a newspaper of general 519
circulation in each county in the utility's certified territory. 520
The commission shall adopt rules regarding filings under those 521
sections. 522

Sec. 4928.142. (A) For the purpose of complying with 523
section 4928.141 of the Revised Code and subject to division (D) 524
of this section and, ~~as applicable, subject to the rate plan~~ 525
~~requirement of division (A) of section 4928.141 of the Revised~~ 526
~~Code,~~ an electric distribution utility may establish a standard 527
service offer price for retail electric generation service that 528
is delivered to the utility under a market-rate offer. An 529
electric distribution utility shall have the right within one 530
hundred twenty days of the effective date of ...B... of the 531
132nd general assembly to file an application to reopen, update, 532
or amend its then-current market-rate offer in order to 533
implement the amended version of this section, which proceeding 534
shall not otherwise reopen matters previously decided. 535

(1) The supply and pricing of electric generation service 536
under a market-rate offer shall be determined through a 537
competitive bidding process that provides for all of the 538
following: 539

- (a) Open, fair, and transparent competitive solicitation; 540
- (b) Clear product definition; 541
- (c) Standardized bid evaluation criteria; 542
- (d) Oversight by an independent third party that shall 543

design the solicitation, administer the bidding, and ensure that 544
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 545
this section are met; 546

(e) Evaluation of the submitted bids prior to the 547
selection of the least-cost bid winner or winners. 548

No generation supplier shall be prohibited from 549
participating in the bidding process. 550

(2) The market-rate offer shall include provisions for 551
recovery of all costs, including any deferred costs, associated 552
with an electric distribution utility's contractual commitments 553
related to a national security generation resource. If the 554
electric distribution utility agrees to offer the contractual 555
commitment related to the national security generation resource 556
into wholesale markets with any resulting revenues being 557
credited to the benefit of retail customers, such recovery shall 558
be granted by the public utilities commission on a nonbypassable 559
basis. 560

(3) The public utilities commission shall modify rules, or 561
adopt new rules as necessary, concerning the conduct of the 562
competitive bidding process and the qualifications of bidders, 563
which rules shall foster supplier participation in the bidding 564
process and shall be consistent with the requirements of 565
division (A) (1) of this section. 566

(B) Prior to initiating a competitive bidding process for 567
a market-rate offer under division (A) of this section, the 568
electric distribution utility shall file an application with the 569
commission. An electric distribution utility may file its 570
application with the commission prior to the effective date of 571
the commission rules required under division (A) (2) of this 572

section, and, as the commission determines necessary, the 573
utility shall immediately conform its filing to the rules upon 574
their taking effect. 575

An application under this division shall detail the 576
electric distribution utility's proposed compliance with the 577
requirements of division (A) (1) of this section and with 578
commission rules under division (A) (2) of this section and 579
demonstrate that all of the following requirements are met: 580

(1) The electric distribution utility or its transmission 581
service affiliate belongs to at least one regional transmission 582
organization that has been approved by the federal energy 583
regulatory commission; or there otherwise is comparable and 584
nondiscriminatory access to the electric transmission grid. 585

(2) Any such regional transmission organization has a 586
market-monitor function and the ability to take actions to 587
identify and mitigate market power or the electric distribution 588
utility's market conduct; or a similar market monitoring 589
function exists with commensurate ability to identify and 590
monitor market conditions and mitigate conduct associated with 591
the exercise of market power. 592

(3) A published source of information is available 593
publicly or through subscription that identifies pricing 594
information for traded electricity on- and off-peak energy 595
products that are contracts for delivery beginning at least two 596
years from the date of the publication and is updated on a 597
regular basis. 598

The commission shall initiate a proceeding and, within 599
ninety days after the application's filing date, shall determine 600
by order whether the electric distribution utility and its 601

market-rate offer meet all of the foregoing requirements. If the 602
finding is positive, the electric distribution utility may 603
initiate its competitive bidding process. If the finding is 604
negative as to one or more requirements in division (A) (1) or 605
(B) (1) of this section, the commission in the order shall direct 606
the electric distribution utility regarding how any deficiency 607
may be remedied in a timely manner to the commission's 608
satisfaction; otherwise, the electric distribution utility shall 609
withdraw the application. However, if such remedy is made and 610
the subsequent finding is positive and also if the electric 611
distribution utility made a simultaneous filing under this 612
section and section 4928.143 of the Revised Code, the utility 613
shall not initiate its competitive bid until at least one 614
hundred fifty days after the filing date of those applications. 615
If the electric distribution utility withdraws the application, 616
the commission shall issue an order as is necessary to ensure 617
automatic recovery of all costs, including any deferred costs, 618
associated with a national security generation resource. 619

(C) Upon the completion of the competitive bidding process 620
authorized by divisions (A) and (B) of this section, including 621
for the purpose of division (D) of this section, the commission 622
shall select the least-cost bid winner or winners of that 623
process, and such selected bid or bids, as prescribed as retail 624
rates by the commission, shall be the electric distribution 625
utility's standard service offer unless the commission, by order 626
issued before the third calendar day following the conclusion of 627
the competitive bidding process for the market rate offer, 628
determines that one or more of the following criteria were not 629
met: 630

(1) Each portion of the bidding process was 631
oversubscribed, such that the amount of supply bid upon was 632

greater than the amount of the load bid out. 633

(2) There were four or more bidders. 634

(3) At least twenty-five per cent of the load is bid upon 635
by one or more persons other than the electric distribution 636
utility. 637

All costs incurred by the electric distribution utility as 638
a result of or related to the competitive bidding process or to 639
procuring generation service to provide the standard service 640
offer, including the costs of energy and capacity and the costs 641
of all other products and services procured as a result of the 642
competitive bidding process, shall be timely recovered through 643
the standard service offer price, and, for that purpose, the 644
commission shall approve a reconciliation mechanism, other 645
recovery mechanism, or a combination of such mechanisms for the 646
utility. 647

(D) The first application filed under this section by an 648
electric distribution utility that, as of July 31, 2008, 649
directly owns, in whole or in part, operating electric 650
generating facilities that had been used and useful in this 651
state shall require that a portion of that utility's standard 652
service offer load for the first five years of the market rate 653
offer be competitively bid under division (A) of this section as 654
follows: ten per cent of the load in year one, not more than 655
twenty per cent in year two, thirty per cent in year three, 656
forty per cent in year four, and fifty per cent in year five. 657
Consistent with those percentages, the commission shall 658
determine the actual percentages for each year of years one 659
through five. The standard service offer price for retail 660
electric generation service under this first application shall 661
be a proportionate blend of the bid price and the generation 662

service price for the remaining standard service offer load, 663
which latter price shall be equal to the electric distribution 664
utility's most recent standard service offer price, adjusted 665
upward or downward as the commission determines reasonable, 666
relative to the jurisdictional portion of any known and 667
measurable changes from the level of any one or more of the 668
following costs as reflected in that most recent standard 669
service offer price: 670

(1) The electric distribution utility's prudently incurred 671
cost of fuel used to produce electricity; 672

(2) Its prudently incurred purchased power costs; 673

(3) Its prudently incurred costs of satisfying the supply 674
and demand portfolio requirements of this state, including, but 675
not limited to, renewable energy resource and energy efficiency 676
requirements; 677

(4) Its costs prudently incurred to comply with 678
environmental laws and regulations, with consideration of the 679
derating of any facility associated with those costs. 680

In making any adjustment to the most recent standard 681
service offer price on the basis of costs described in division 682
(D) of this section, the commission shall include the benefits 683
that may become available to the electric distribution utility 684
as a result of or in connection with the costs included in the 685
adjustment, including, but not limited to, the utility's receipt 686
of emissions credits or its receipt of tax benefits or of other 687
benefits, and, accordingly, the commission may impose such 688
conditions on the adjustment to ensure that any such benefits 689
are properly aligned with the associated cost responsibility. 690
The commission shall also determine how such adjustments will 691

affect the electric distribution utility's return on common equity that may be achieved by those adjustments. The commission shall not apply its consideration of the return on common equity to reduce any adjustments authorized under this division unless the adjustments will cause the electric distribution utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility.

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

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any

rate group or rate schedule but for such alteration. Any such 723
alteration shall be made not more often than annually, and the 724
commission shall not, by altering those proportions and in any 725
event, including because of the length of time, as authorized 726
under division (C) of this section, taken to approve the market 727
rate offer, cause the duration of the blending period to exceed 728
ten years as counted from the effective date of the approved 729
market rate offer. Additionally, any such alteration shall be 730
limited to an alteration affecting the prospective proportions 731
used during the blending period and shall not affect any 732
blending proportion previously approved and applied by the 733
commission under this division. 734

(F) An electric distribution utility that has received 735
commission approval of its first application under division (C) 736
of this section shall not, nor ever shall be authorized or 737
required by the commission to, file an application under section 738
4928.143 of the Revised Code. 739

Sec. 4928.143. (A) For the purpose of complying with 740
section 4928.141 of the Revised Code, an electric distribution 741
utility may file an application for public utilities commission 742
approval of an electric security plan as prescribed under 743
division (B) of this section. The utility may file that 744
application prior to the effective date of any rules the 745
commission may adopt for the purpose of this section, and, as 746
the commission determines necessary, the utility immediately 747
shall conform its filing to those rules upon their taking 748
effect. An electric distribution utility shall have the right 749
within one hundred twenty days of the effective date of ...B... 750
of the 132nd general assembly to file an application to reopen, 751
update, or amend its then-current standard service offer in 752
order to implement the amended version of this section, which 753

proceeding shall not otherwise reopen matters previously 754
decided. Upon approval of an update or amendment to implement 755
the change in law, any terms and conditions of the prior 756
electric security plan relating to a national security 757
generation resource shall no longer be in effect. 758

(B) Notwithstanding any other provision of Title XLIX of 759
the Revised Code to the contrary except division (D) of this 760
section, divisions (I), (J), and (K) of section 4928.20, 761
division (E) of section 4928.64, and section 4928.69 of the 762
Revised Code: 763

(1) An electric security plan shall include provisions 764
relating to the supply and pricing of electric generation 765
service and relating to recovery of all costs, including any 766
deferred costs, associated with an electric distribution 767
utility's contractual commitments related to a national security 768
generation resource. If the electric distribution utility agrees 769
to offer the contractual commitment related to the national 770
security generation resource into wholesale markets with any 771
resulting revenues being credited to the benefit of retail 772
customers, such recovery shall be granted by the commission on a 773
nonbypassable basis. In addition, if the proposed electric 774
security plan has a term longer than three years, it may include 775
provisions in the plan to permit the commission to test the plan 776
pursuant to division (E) of this section and any transitional 777
conditions that should be adopted by the commission if the 778
commission terminates the plan as authorized under that 779
division. 780

(2) The plan may provide for or include, without 781
limitation, any of the following: 782

(a) Automatic recovery of any of the following costs of 783

the electric distribution utility, provided the cost is 784
prudently incurred: the cost of fuel used to generate the 785
electricity supplied under the offer; the cost of purchased 786
power supplied under the offer, including the cost of energy and 787
capacity, and including purchased power acquired from an 788
affiliate; the cost of emission allowances; and the cost of 789
federally mandated carbon or energy taxes; 790

(b) A reasonable allowance for construction work in 791
progress for any of the electric distribution utility's cost of 792
constructing an electric generating facility or for an 793
environmental expenditure for any electric generating facility 794
of the electric distribution utility, provided the cost is 795
incurred or the expenditure occurs on or after January 1, 2009. 796
Any such allowance shall be subject to the construction work in 797
progress allowance limitations of division (A) of section 798
4909.15 of the Revised Code, except that the commission may 799
authorize such an allowance upon the incurrence of the cost 800
or occurrence of the expenditure. No such allowance for 801
generating facility construction shall be authorized, however, 802
unless the commission first determines in the proceeding that 803
there is need for the facility based on resource planning 804
projections submitted by the electric distribution utility. 805
Further, no such allowance shall be authorized unless the 806
facility's construction was sourced through a competitive bid 807
process, regarding which process the commission may adopt rules. 808
An allowance approved under division (B) (2) (b) of this section 809
shall be established as a nonbypassable surcharge for the life 810
of the facility. 811

(c) The establishment of a nonbypassable surcharge for the 812
life of an electric generating facility that is owned or 813
operated by the electric distribution utility, was sourced 814

through a competitive bid process subject to any such rules as 815
the commission adopts under division (B) (2) (b) of this section, 816
and is newly used and useful on or after January 1, 2009, which 817
surcharge shall cover all costs of the utility specified in the 818
application, excluding costs recovered through a surcharge under 819
division (B) (2) (b) of this section. However, no surcharge shall 820
be authorized unless the commission first determines in the 821
proceeding that there is need for the facility based on resource 822
planning projections submitted by the electric distribution 823
utility. Additionally, if a surcharge is authorized for a 824
facility pursuant to plan approval under division (C) of this 825
section and as a condition of the continuation of the surcharge, 826
the electric distribution utility shall dedicate to Ohio 827
consumers the capacity and energy and the rate associated with 828
the cost of that facility. Before the commission authorizes any 829
surcharge pursuant to this division, it may consider, as 830
applicable, the effects of any decommissioning, deratings, and 831
retirements. 832

(d) Terms, conditions, or charges relating to limitations 833
on customer shopping for retail electric generation service, 834
bypassability, standby, back-up, or supplemental power service, 835
default service, carrying costs, amortization periods, and 836
accounting or deferrals, including future recovery of such 837
deferrals, as would have the effect of stabilizing or providing 838
certainty regarding retail electric service; 839

(e) Automatic increases or decreases in any component of 840
the standard service offer price; 841

(f) Consistent with sections 4928.23 to 4928.2318 of the 842
Revised Code, both of the following: 843

(i) Provisions for the electric distribution utility to 844

securitize any phase-in, inclusive of carrying charges, of the 845
utility's standard service offer price, which phase-in is 846
authorized in accordance with section 4928.144 of the Revised 847
Code; 848

(ii) Provisions for the recovery of the utility's cost of 849
securitization. 850

(g) Provisions relating to transmission, ancillary, 851
congestion, or any related service required for the standard 852
service offer, including provisions for the recovery of any cost 853
of such service that the electric distribution utility incurs on 854
or after that date pursuant to the standard service offer; 855

(h) Provisions regarding the utility's distribution 856
service, including, without limitation and notwithstanding any 857
provision of Title XLIX of the Revised Code to the contrary, 858
provisions regarding single issue ratemaking, a revenue 859
decoupling mechanism or any other incentive ratemaking, and 860
provisions regarding distribution infrastructure and 861
modernization incentives for the electric distribution utility. 862

The latter may include a long-term energy delivery 863
infrastructure modernization plan for that utility or any plan 864
providing for the utility's recovery of costs, including lost 865
revenue, shared savings, and avoided costs, and a just and 866
reasonable rate of return on such infrastructure modernization. 867
As part of its determination as to whether to allow in an 868
electric distribution utility's electric security plan inclusion 869
of any provision described in division (B) (2) (h) of this 870
section, the commission shall examine the reliability of the 871
electric distribution utility's distribution system and ensure 872
that customers' and the electric distribution utility's 873
expectations are aligned and that the electric distribution 874

utility is placing sufficient emphasis on and dedicating 875
sufficient resources to the reliability of its distribution 876
system. 877

(i) Provisions under which the electric distribution 878
utility may implement economic development, job retention, and 879
energy efficiency programs, which provisions may allocate 880
program costs across all classes of customers of the utility and 881
those of electric distribution utilities in the same holding 882
company system. 883

(C) (1) The burden of proof in the proceeding shall be on 884
the electric distribution utility, except that the public 885
utilities commission must approve automatic cost recovery of all 886
costs, including any deferred costs, associated with a national 887
security generation resource. The commission shall issue an 888
order under this division for an initial application under this 889
section not later than one hundred fifty days after the 890
application's filing date and, for any subsequent application by 891
the utility under this section, not later than two hundred 892
seventy-five days after the application's filing date. Subject 893
to division (D) of this section, the commission by order shall 894
approve or modify and approve an application filed under 895
division (A) of this section if it finds that the electric 896
security plan so approved, including its pricing and all other 897
terms and conditions, including any deferrals and any future 898
recovery of deferrals, is more favorable in the aggregate as 899
compared to the expected results that would otherwise apply 900
under section 4928.142 of the Revised Code. Additionally, if the 901
commission so approves an application that contains a surcharge 902
under division (B) (2) (b) or (c) of this section, the commission 903
shall ensure that the benefits derived for any purpose for which 904
the surcharge is established are reserved and made available to 905

those that bear the surcharge. Otherwise, the commission by 906
order shall disapprove the application. 907

(2) (a) If the commission modifies and approves an 908
application under division (C) (1) of this section, the electric 909
distribution utility may withdraw the application, thereby 910
terminating it, and may file a new standard service offer under 911
this section or a standard service offer under section 4928.142 912
of the Revised Code. 913

(b) If the utility terminates an application pursuant to 914
division (C) (2) (a) of this section or if the commission 915
disapproves an application under division (C) (1) of this 916
section, the commission shall issue such order as is necessary 917
to ensure automatic cost recovery of all costs, including any 918
deferred costs, associated with a national security generation 919
resource and to continue the provisions, terms, and conditions 920
of the utility's most recent standard service offer, along with 921
any expected increases or decreases in fuel costs from those 922
contained in that offer, until a subsequent offer is authorized 923
pursuant to this section or section 4928.142 of the Revised 924
Code, respectively. 925

(D) Regarding the rate plan requirement of division (A) of 926
section 4928.141 of the Revised Code, if an electric 927
distribution utility that has a rate plan that extends beyond 928
December 31, 2008, files an application under this section for 929
the purpose of its compliance with division (A) of section 930
4928.141 of the Revised Code, that rate plan and its terms and 931
conditions are hereby incorporated into its proposed electric 932
security plan and shall continue in effect until the date 933
scheduled under the rate plan for its expiration, and that 934
portion of the electric security plan shall not be subject to 935

commission approval or disapproval under division (C) of this 936
section, and the earnings test provided for in division (F) of 937
this section shall not apply until after the expiration of the 938
rate plan. However, that utility may include in its electric 939
security plan under this section, and the commission may 940
approve, modify and approve, or disapprove subject to division 941
(C) of this section, provisions for the incremental recovery or 942
the deferral of any costs that are not being recovered under the 943
rate plan and that the utility incurs during that continuation 944
period to comply with section 4928.141, division (B) of section 945
4928.64, or division (A) of section 4928.66 of the Revised Code. 946

(E) If an electric security plan approved under division 947
(C) of this section, except one withdrawn by the utility as 948
authorized under that division, has a term, exclusive of phase- 949
ins or deferrals, that exceeds three years from the effective 950
date of the plan, the commission shall test the plan in the 951
fourth year, and if applicable, every fourth year thereafter, to 952
determine whether the plan, including its then-existing pricing 953
and all other terms and conditions, including any deferrals and 954
any future recovery of deferrals, continues to be more favorable 955
in the aggregate and during the remaining term of the plan as 956
compared to the expected results that would otherwise apply 957
under section 4928.142 of the Revised Code. The commission shall 958
also determine the prospective effect of the electric security 959
plan to determine if that effect is substantially likely to 960
provide the electric distribution utility with a return on 961
common equity that is significantly in excess of the return on 962
common equity that is likely to be earned by publicly traded 963
companies, including utilities, that face comparable business 964
and financial risk, with such adjustments for capital structure 965
as may be appropriate. The burden of proof for demonstrating 966

that significantly excessive earnings will not occur shall be on 967
the electric distribution utility. If the test results are in 968
the negative or the commission finds that continuation of the 969
electric security plan will result in a return on equity that is 970
significantly in excess of the return on common equity that is 971
likely to be earned by publicly traded companies, including 972
utilities, that will face comparable business and financial 973
risk, with such adjustments for capital structure as may be 974
appropriate, during the balance of the plan, the commission may 975
terminate the electric security plan, but not until it shall 976
have provided interested parties with notice and an opportunity 977
to be heard. The commission may impose such conditions on the 978
plan's termination as it considers reasonable and necessary to 979
accommodate the transition from an approved plan to the more 980
advantageous alternative. In the event of an electric security 981
plan's termination pursuant to this division, the commission 982
shall permit the continued deferral and phase-in of any amounts 983
that occurred prior to that termination and the recovery of 984
those amounts as contemplated under that electric security plan. 985

(F) With regard to the provisions that are included in an 986
electric security plan under this section, the commission shall 987
consider, following the end of each annual period of the plan, 988
if any such adjustments resulted in excessive earnings as 989
measured by whether the earned return on common equity of the 990
electric distribution utility is significantly in excess of the 991
return on common equity that was earned during the same period 992
by publicly traded companies, including utilities, that face 993
comparable business and financial risk, with such adjustments 994
for capital structure as may be appropriate. Consideration also 995
shall be given to the capital requirements of future committed 996
investments in this state. The burden of proof for demonstrating 997

that significantly excessive earnings did not occur shall be on 998
the electric distribution utility. If the commission finds that 999
such adjustments, in the aggregate, did result in significantly 1000
excessive earnings, it shall require the electric distribution 1001
utility to return to consumers the amount of the excess by 1002
prospective adjustments; provided that, upon making such 1003
prospective adjustments, the electric distribution utility shall 1004
have the right to terminate the plan and immediately file an 1005
application pursuant to section 4928.142 of the Revised Code. 1006
Upon termination of a plan under this division, rates shall be 1007
set on the same basis as specified in division (C) (2) (b) of this 1008
section, and the commission shall permit the continued deferral 1009
and phase-in of any amounts that occurred prior to that 1010
termination and the recovery of those amounts as contemplated 1011
under that electric security plan. In making its determination 1012
of significantly excessive earnings under this division, the 1013
commission shall not consider, directly or indirectly, the 1014
revenue, expenses, or earnings of any affiliate or parent 1015
company. 1016

Section 2. That existing sections 4928.01, 4928.02, 1017
4928.141, 4928.142, and 4928.143 of the Revised Code are hereby 1018
repealed. 1019