As Introduced

133rd General Assembly
Regular Session 2019-2020

Representative Stein

A BILL

To amend sections 4928.01, 4928.02, 4928.143, 4928.17, and 4928.34 and to enact section 4928.25 of the Revised Code regarding the competitive retail electric service law.

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

Section 1. That sections 4928.01, 4928.02, 4928.143, 4928.17, and 4928.34 be amended and section 4928.25 of the Revised Code be enacted to read as follows:

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

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability.
(2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

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

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

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

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

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

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

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

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

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

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

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.
(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

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

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

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

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

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

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

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

(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.

(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.

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

(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
section 4928.621 of the Revised Code.

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

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

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

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

(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.

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

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

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

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

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

(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.

(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
generation III technology as defined by the nuclear regulatory
commission; other, later technology; or significant improvements
to existing facilities;

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

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

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

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

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

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

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

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

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

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

(iv) Power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts;

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

(vi) Geothermal energy;

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

(viii) Biomass energy;

(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air contaminant source in this state, which source has been in
operation since on or before January 1, 1985, provided that the
cogeneration technology is a part of a facility located in a
county having a population of more than three hundred sixty-five
thousand but less than three hundred seventy thousand according
to the most recent federal decennial census;

(x) Biologically derived methane gas;

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

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

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

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

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

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

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

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

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


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

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

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

(c) The standards in divisions (A)(37)(b)(i) to (viii) of this section do not apply to a small hydroelectric facility under division (A)(37)(a)(iv) of this section.

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

(a) A facility that generates electricity through the conversion of energy from either of the following:
(i) Exhaust heat from engines or manufacturing, industrial, commercial, or institutional sites, except for exhaust heat from a facility whose primary purpose is the generation of electricity;

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

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

(39) "Smart grid" means capital improvements to an electric distribution utility's distribution infrastructure that improve reliability, efficiency, resiliency, or reduce energy demand or use, or the deployment, adaptation, replacement, or subsequent reinforcement of any technology that facilitates the storage, control, or delivery of electric energy including, but not limited to, all of the following:

(a) Advanced metering and automation;

(b) Automation of system functions;

(c) Battery technology;

(d) Demand response and other energy management technologies;

(e) Distribution automation;

(f) Electric vehicle charging stations and associated
equipment or infrastructure;

(g) Energy monitoring and control devices;

(h) Lighting controls and other smart controls;

(i) Microgrids;

(j) Physical and cybersecurity technologies;

(k) Volt-VAR optimization and similar technologies;

(l) Any other technologies so classified by the public utilities commission.

"Smart grid" also includes capital investment in equipment deployed in conjunction with an electric distribution utility's distribution infrastructure that facilitates intelligent city designs such as traffic sensors, infrastructure monitoring equipment, data management systems, and similar technology.

(40) "Customer-focused energy services or products" means any services or products provided by an electric distribution utility to or for the benefit of its customers including, but not limited to, any of the following:

(a) Services related to energy reliability and resiliency;

(b) Curtailment and individual customer and aggregated demand response activities;

(c) Energy efficiency or reduction;

(d) Energy storage or battery functions;

(e) Energy management;

(f) Energy monitoring and control technologies;

(g) Lighting controls and other smart controls;
(h) Warranty and repair services;

(i) Electric vehicle charging stations;

(j) Microgrids;

(k) Community solar energy facilities;

(l) Energy-related physical security and cybersecurity.

"Customer-focused energy services or products" also includes the installation, financing, leasing, or management of technology, data, and devices related to such services or products and the installation and management of smart grid technology to facilitate such services.

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

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

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

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;
(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs in a manner consistent with Chapter 4928. of the Revised Code;

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

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

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

(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;

(G) Recognize the continuing emergence of competitive electricity markets and customer-focused energy services or products through the development and implementation of flexible
regulatory treatment;

(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;

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

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

(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;

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

(M) Encourage the education of residential customers and small business owners in this state regarding the use of, and encourage the use of, energy efficiency programs and alternative energy resources in their homes and businesses;

(N) Facilitate the state's effectiveness in the global economy.
In carrying out this policy, the commission shall consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in this state.

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

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

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

(2) The plan may provide for or include, without limitation, any of the following:
(a) Automatic recovery of any of the following costs of the electric distribution utility, provided the cost is prudently incurred: the cost of fuel used to generate the electricity supplied under the offer; the cost of purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; the cost of emission allowances; and the cost of federally mandated carbon or energy taxes;

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

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

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

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

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

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

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

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

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single all of the following:

(i) Single issue ratemaking;

(ii) A revenue decoupling mechanism or any;

(iii) Any other incentive ratemaking, and provisions regarding distribution;

(iv) Distribution infrastructure and modernization incentives for the electric distribution utility;

(v) Deployment of smart grid technology;

(vi) Provision of customer-focused energy services or products. The latter

Provisions regarding divisions (B)(2)(h)(iii) to (vi) of this section may include a long-term energy delivery infrastructure modernization plan for that utility or any plan
providing for the utility's recovery of costs, including lost
revenue, shared savings, and avoided costs, and a just and
reasonable rate of return on such infrastructure modernization
or smart grid technology deployment. As part of its
determination as to whether to allow in an electric distribution
utility's electric security plan inclusion of any provision
described in division (B)(2)(h) of this section, the commission
shall examine the reliability of the electric distribution
utility's distribution system and ensure that customers' and the
electric distribution utility's expectations are aligned and
that the electric distribution utility is placing sufficient
emphasis on and dedicating sufficient resources to the
reliability of its distribution system.

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

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

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

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

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

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on
common equity that is significantly in excess of the return on common equity that is likely to be 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. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

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

Sec. 4928.17. (A) Except as otherwise provided in sections this section or in section 4928.142 or 4928.143 or 4928.31 to 4928.40, 4928.64, or 4928.66 of the Revised Code and beginning on the starting date of competitive retail electric service, no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a
competitive retail electric service, or in the businesses of
supplying a noncompetitive retail electric service and supplying
a product or service other than retail electric service, unless
the utility implements and operates under a corporate separation
plan that is approved by the public utilities commission under
this section, is consistent with the policy specified in section
4928.02 of the Revised Code, and achieves all of the following:

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

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

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

(B) An electric distribution utility may offer customer-focused energy services or products, including any related deployment of smart grid technology on the customer's premises, provided that one of the following applies:

(1) The electric distribution utility either receives approval from the public utilities commission to offer such services under section 4905.31, 4909.18, 4928.143, or 4928.66 of the Revised Code, in which case the requirements under division (B)(2) of this section shall not automatically apply;

(2) All of the following apply and shall be reflected in the electric distribution utility's subsequent corporate separation plan:

(a) The customer-focused energy services or products are optional for customers;

(b) The utility maintains separate accounting for customer-focused energy services or products;

(c) The utility does not include incremental costs directly related to customer-focused energy services or products in base distribution rates but instead recovers such incremental costs of such services through charges to customers who elect to subscribe to those services.

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

(C)(D) The commission shall issue an order approving or modifying and approving a corporate separation plan under this section, to be effective on the date specified in the order, only upon findings that the plan reasonably complies with the requirements of division (A) of this section and will provide for ongoing compliance with the policy specified in section 4928.02 of the Revised Code. However, for good cause shown, and upon a finding that such alternative plan will provide for both functional separation and ongoing compliance with the policy specified in section 4928.02 of the Revised Code, 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.

(E) 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.

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

(G) Notwithstanding any other provision of this section, commission approval of an electric distribution utility's proposed action, plan, product or service offering, or initiative under section 4905.31, 4928.142, 4928.64, or 4928.66 of the Revised Code fully satisfies the requirements of this section.

Sec. 4928.25. (A) As used in this section:

(1) "Infrastructure development" means the planning, development, and construction of substation facilities and extensions of transmission or distribution facilities that an electric distribution utility owns and operates and the performance of load studies.

(2) "Infrastructure development costs" means any cost of infrastructure development, including, if applicable, an allowance for funds used during construction.
(B) An electric distribution utility may undertake infrastructure development necessary to support or enable a state or local economic development project, including any project approved, certified, or funded by the agency. Prior to beginning the infrastructure development, the electric distribution utility shall file a notice with the public utilities commission that contains all of the following:

(1) A description of the economic development project;
(2) A summary of the infrastructure development costs;
(3) A statement from the state or local entity involved that the infrastructure development is necessary to support or enable the economic development project.

(C) An electric distribution utility shall timely recover all infrastructure development costs through a nonbypassable rider charged to all distribution customers regardless of whether the infrastructure development is used and useful at the time constructed.

(D) An electric distribution utility may plan, develop, and construct facilities for a mercantile customer that is newly locating or expanding operations in the state, and has a forecasted monthly peak demand of five megawatts or more. The electric distribution utility shall timely recover all costs of planning, developing, and constructing such facilities through a nonbypassable rider charged to all distribution customers. Following the completion of construction, the mercantile customer shall own and maintain the facilities.

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

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

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

(3) All other unbundled components required by the commission in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates and charges in effect on the effective date of this section.
(4) The unbundled components for retail electric generation service in the rate unbundling plan equal the residual amount remaining after the determination of the transmission, distribution, and other unbundled components, and after any adjustments necessary to reflect the effects of the amendment of section 5727.111 of the Revised Code by Sub. S.B. No. 3 of the 123rd general assembly.

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

(6) Subject to division (A)(5) of this section, the total of all unbundled components in the rate unbundling plan are capped and shall equal during the market development period, except as specifically provided in this chapter, the total of all rates and charges in effect under the applicable bundled schedule of the electric utility pursuant to section 4905.30 of the Revised Code in effect on the day before the effective date of this section, including the transition charge determined under section 4928.40 of the Revised Code, adjusted for any changes in the taxation of electric utilities and retail electric service under Sub. S.B. No. 3 of the 123rd General Assembly, the universal service rider authorized by section 4928.51 of the Revised Code, and the temporary rider authorized by section 4928.61 of the Revised Code. For the purpose of this division, the rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the
commission under section 4905.31 of the Revised Code is, for the term of the arrangement, the total of all rates and charges in effect under the arrangement. For any rate schedule filed pursuant to section 4905.30 of the Revised Code or any arrangement subject to approval pursuant to section 4905.31 of the Revised Code, the initial tax-related adjustment to the rate cap required by this division shall be equal to the rate of taxation specified in section 5727.81 of the Revised Code and applicable to the schedule or arrangement. To the extent such total annual amount of the tax-related adjustment is greater than or less than the comparable amount of the total annual tax reduction experienced by the electric utility as a result of the provisions of Sub. S.B. No. 3 of the 123rd general assembly, such difference shall be addressed by the commission through accounting procedures, refunds, or an annual surcharge or credit to customers, or through other appropriate means, to avoid placing the financial responsibility for the difference upon the electric utility or its shareholders. Any adjustments in the rate of taxation specified in section 5727.81 of the Revised Code shall not occur without a corresponding adjustment to the rate cap for each such rate schedule or arrangement. The department of taxation shall advise the commission and self-assessors under section 5727.81 of the Revised Code prior to the effective date of any change in the rate of taxation specified under that section, and the commission shall modify the rate cap to reflect that adjustment so that the rate cap adjustment is effective as of the effective date of the change in the rate of taxation. This division shall be applied, to the extent possible, to eliminate any increase in the price of electricity for customers that otherwise may occur as a result of establishing the taxes contemplated in section 5727.81 of the Revised Code.
(7) The rate unbundling plan complies with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

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

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

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

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

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

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

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

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

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

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

Section 2. That existing sections 4928.01, 4928.02, 4928.143, 4928.17, and 4928.34 of the Revised Code are hereby repealed.