

As Reported by the House Public Utilities Committee

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Sub. S. B. No. 221

Senator Schuler

(By Request)

**Cosponsors: Senators Jacobson, Harris, Fedor, Bocchieri, Miller, R., Morano,
Mumper, Niehaus, Padgett, Roberts, Wilson, Spada
Representatives Hagan, J., Blessing, Coley, Jones, Uecker**

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A B I L L

To amend sections 4905.31, 4928.01, 4928.02, 4928.05, 1
4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 2
4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and 3
4929.02; to enact sections 9.835, 4928.141, 4
4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 5
4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 6
4928.66, 4928.68, 4928.69, and 4929.051; and to 7
repeal sections 4928.41, 4928.42, 4928.431, and 8
4928.44 of the Revised Code to revise state energy 9
policy to address electric service price 10
regulation, establish alternative energy 11
benchmarks for electric distribution utilities and 12
electric services companies, provide for the use 13
of renewable energy credits, establish energy 14
efficiency standards for electric distribution 15
utilities, require greenhouse gas emission 16
reporting and carbon dioxide control planning for 17
utility-owned generating facilities, authorize 18
energy price risk management contracts, and 19
authorize for natural gas utilities revenue 20

decoupling related to energy conservation and 21
efficiency. 22
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4905.31, 4928.01, 4928.02, 4928.05, 24
4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 25
4928.61, 4928.67, 4929.01, and 4929.02 be amended and sections 26
9.835, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 27
4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 4928.68, 28
4928.69, and 4929.051 of the Revised Code be enacted to read as 29
follows: 30

Sec. 9.835. (A) As used in this section: 31

(1) "Energy price risk management contract" means a contract 32
that mitigates for the term of the contract the price volatility 33
of energy sources, including, but not limited to, natural gas, 34
gasoline, oil, and diesel fuel, and that is a budgetary and 35
financial tool only and not a contract for the procurement of an 36
energy source. 37

(2) "Political subdivision" means a county, city, village, 38
township, park district, or school district. 39

(3) "State entity" means the general assembly, the supreme 40
court, the court of claims, the office of an elected state 41
officer, or a department, bureau, board, office, commission, 42
agency, institution, or other instrumentality of this state 43
established by the constitution or laws of this state for the 44
exercise of any function of state government, but excludes a 45
political subdivision, an institution of higher education, the 46
public employees retirement system, the Ohio police and fire 47
pension fund, the state teachers retirement system, the school 48

employees retirement system, the state highway patrol retirement 49
system, or the city of Cincinnati retirement system. 50

(4) "State official" means the elected or appointed official, 51
or that person's designee, charged with the management of a state 52
entity. 53

(B) If it determines that doing so is in the best interest of 54
the state entity or the political subdivision, and subject to, 55
respectively, state or local appropriation to pay amounts due, a 56
state official or the legislative or other governing authority of 57
a political subdivision may enter into an energy price risk 58
management contract. The term of the contract shall not extend 59
beyond the end of the fiscal year in which the contract is entered 60
into. Money received pursuant to such a contract entered into by a 61
state official shall be deposited to the credit of the general 62
revenue fund of this state, and, unless otherwise provided by 63
ordinance or resolution enacted or adopted by the legislative 64
authority of the political subdivision authorizing any such 65
contract, money received under the contract shall be deposited to 66
the credit of the general fund of the political subdivision. 67

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

<u>of the following:</u>	80
(A) The division or distribution of its surplus profits;	81
(B) A sliding scale of charges, including variations in rates based upon either of the following:	82 83
(1) Stipulated <u>stipulated</u> variations in cost as provided in the schedule or arrangement;	84 85
(2) Any emissions fee levied upon an electric light company under Substitute Senate Bill No. 359 of the 119th general assembly as provided in the schedule. The public utilities commission shall permit an electric light company to recover the emissions fee pursuant to such a variable rate schedule.	86 87 88 89 90
(3) Any emissions fee levied upon an electric light company under division (C) or (D) of section 3745.11 of the Revised Code as provided in the schedule. The public utilities commission shall permit an electric light company to recover any such emission fee pursuant to such a variable rate schedule.	91 92 93 94 95
(4) Any schedule of variable rates filed under division (B) of this section shall provide for the recovery of any such emissions fee by applying a uniform percentage increase to the base rate charged each customer of the electric light company for service during the period that the variable rate is in effect.	96 97 98 99 100
(C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;	101 102 103 104
(D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;	105 106 107
(E) Any other financial device that may be practicable or advantageous to the parties interested. No <u>In the case of a</u>	108 109

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4933.81 of the Revised Code.	204
(11) "Electric utility" means an electric light company that	205
<u>has a certified territory and</u> is engaged on a for-profit basis	206
<u>either</u> in the business of supplying a noncompetitive retail	207
electric service in this state or in the businesses of supplying	208
both a noncompetitive and a competitive retail electric service in	209
this state. "Electric utility" excludes a municipal electric	210
utility or a billing and collection agent.	211
(12) "Firm electric service" means electric service other	212
than nonfirm electric service.	213
(13) "Governmental aggregator" means a legislative authority	214
of a municipal corporation, a board of township trustees, or a	215
board of county commissioners acting as an aggregator for the	216
provision of a competitive retail electric service under authority	217
conferred under section 4928.20 of the Revised Code.	218
(14) A person acts "knowingly," regardless of the person's	219
purpose, when the person is aware that the person's conduct will	220
probably cause a certain result or will probably be of a certain	221
nature. A person has knowledge of circumstances when the person is	222
aware that such circumstances probably exist.	223
(15) "Level of funding for low-income customer energy	224
efficiency programs provided through electric utility rates" means	225
the level of funds specifically included in an electric utility's	226
rates on October 5, 1999, pursuant to an order of the public	227
utilities commission issued under Chapter 4905. or 4909. of the	228
Revised Code and in effect on October 4, 1999, for the purpose of	229
improving the energy efficiency of housing for the utility's	230
low-income customers. The term excludes the level of any such	231
funds committed to a specific nonprofit organization or	232
organizations pursuant to a stipulation or contract.	233
(16) "Low-income customer assistance programs" means the	234

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Clean coal technology that includes a carbon-based 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; 359
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(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; 366
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(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; 370
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(f) Demand-side management and any energy efficiency improvement. 374
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(35) "Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, 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, biomass energy, biologically derived methane gas, or 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 resources" 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; storage 376
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facility that will promote the better utilization of a renewable 391
energy resource that primarily generates off peak; or distributed 392
generation system used by a customer to generate electricity from 393
any such energy. As used in division (A)(35) of this section, 394
"hydroelectric facility" means a hydroelectric generating facility 395
that is located at a dam on a river that is within or bordering 396
this state or within or bordering an adjoining state and meets all 397
of the following standards: 398

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

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

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

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

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

amended. 422

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4928.05. (A)(1) On and after the starting date of 519
competitive retail electric service, a competitive retail electric 520
service supplied by an electric utility or electric services 521
company shall not be subject to supervision and regulation by a 522
municipal corporation under Chapter 743. of the Revised Code or by 523
the public utilities commission under Chapters 4901. to 4909., 524
4933., 4935., and 4963. of the Revised Code, except ~~section~~ 525
sections 4905.10 and 4905.31, division (B) of section 4905.33, and 526
sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 527
4935.03, 4963.40, and 4963.41 of the Revised Code only to the 528
extent related to service reliability and public safety; and 529
except as otherwise provided in this chapter. The commission's 530
authority to enforce those excepted provisions with respect to a 531
competitive retail electric service shall be such authority as is 532
provided for their enforcement under Chapters 4901. to 4909., 533
4933., 4935., and 4963. of the Revised Code and this chapter. 534
Nothing in this division shall be construed to limit the 535
commission's authority under section 4928.144 of the Revised Code. 536
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On and after the starting date of competitive retail electric 538
service, a competitive retail electric service supplied by an 539
electric cooperative shall not be subject to supervision and 540
regulation by the commission under Chapters 4901. to 4909., 4933., 541
4935., and 4963. of the Revised Code, except as otherwise 542
expressly provided in sections 4928.01 to 4928.10 and 4928.16 of 543

the Revised Code. 544

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Clear product definition; 738

(c) Standardized bid evaluation criteria; 739

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) There were four or more bidders. 814

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

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

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

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

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

(2) Its prudently incurred purchased power costs; 852

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>certainty regarding retail electric service;</u>	981
<u>(f) Automatic increases or decreases in any component of the</u>	982
<u>standard service offer price;</u>	983
<u>(g) Provisions for the electric distribution utility to</u>	984
<u>securitize any phase-in, inclusive of carrying charges, of the</u>	985
<u>utility's standard service offer price, which phase-in is</u>	986
<u>authorized in accordance with section 4928.144 of the Revised</u>	987
<u>Code; and provisions for the recovery of the utility's cost of</u>	988
<u>securitization. If the commission's order includes such a</u>	989
<u>phase-in, the order also shall provide for the creation of</u>	990
<u>regulatory assets pursuant to generally accepted accounting</u>	991
<u>principles, by authorizing the deferral of incurred costs equal to</u>	992
<u>the amount not collected, plus carrying charges on that amount.</u>	993
<u>Further, the order shall authorize the collection of those</u>	994
<u>deferrals through a nonbypassable surcharge on the utility's</u>	995
<u>rates.</u>	996
<u>(h) Provisions relating to transmission, ancillary,</u>	997
<u>congestion, or any related service required for the standard</u>	998
<u>service offer, including provisions for the recovery of any cost</u>	999
<u>of such service that the electric distribution utility incurs on</u>	1000
<u>or after that date pursuant to the standard service offer;</u>	1001
<u>(i) Provisions regarding the utility's distribution service,</u>	1002
<u>including, without limitation and notwithstanding any provision of</u>	1003
<u>Title XLIX of the Revised Code to the contrary, provisions</u>	1004
<u>regarding single issue ratemaking, a revenue decoupling mechanism</u>	1005
<u>or any other incentive ratemaking, and provisions regarding</u>	1006
<u>distribution infrastructure and modernization incentives for the</u>	1007
<u>electric distribution utility. The latter may include a long-term</u>	1008
<u>energy delivery infrastructure modernization plan for that utility</u>	1009
<u>or any plan providing for the utility's recovery of costs,</u>	1010
<u>including lost revenue, shared savings, and avoided costs, and a</u>	1011
<u>just and reasonable rate of return on such infrastructure</u>	1012

modernization. 1013

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

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

1040

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

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

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

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

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

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

1096

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

distribution utility by the commission. 1109

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

approved by the commission under section 4905.31 of the Revised 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~~ 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 5727.81 of the Revised Code section 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.	1517
(8) The corporate separation plan required by division (A)(2)	1518
of section 4928.31 of the Revised Code complies with section	1519
4928.17 of the Revised Code and any rules adopted by the	1520
commission under division (A) of section 4928.06 of the Revised	1521
Code.	1522
(9) Any plan or plans the commission requires to address	1523
operational support systems and any other technical implementation	1524
issues pertaining to competitive retail electric service comply	1525
with any rules adopted by the commission under division (A) of	1526
section 4928.06 of the Revised Code.	1527
(10) The employee assistance plan required by division (A)(4)	1528
of section 4928.31 of the Revised Code sufficiently provides	1529
severance, retraining, early retirement, retention, outplacement,	1530
and other assistance for the utility's employees whose employment	1531
is affected by electric industry restructuring under this chapter.	1532
(11) The consumer education plan required under division	1533
(A)(5) of section 4928.31 of the Revised Code complies with <u>former</u>	1534
section 4928.42 of the Revised Code and any rules adopted by the	1535
commission under division (A) of section 4928.06 of the Revised	1536
Code.	1537
(12) The transition revenues for which an electric utility is	1538
authorized a revenue opportunity under sections 4928.31 to 4928.40	1539
of the Revised Code are the allowable transition costs of the	1540
utility as such costs are determined by the commission pursuant to	1541
section 4928.39 of the Revised Code, and the transition charges	1542
for the customer classes and rate schedules of the utility are the	1543
charges determined pursuant to section 4928.40 of the Revised	1544
Code.	1545
(13) Any independent transmission plan included in the	1546
transition plan filed under section 4928.31 of the Revised Code	1547

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) <u>Revenues from renewable energy compliance payments as provided under division (C)(2) of section 4928.64 of the Revised Code;</u>	1705 1706 1707
<u>(5) Revenue from forfeitures under division (C) of section 4928.66 of the Revised Code;</u>	1708 1709
<u>(6) Interest earnings on the advanced energy fund.</u>	1710
(C)(1) Each electric distribution utility in this state shall remit to the director on a quarterly basis the revenues described in divisions (B)(1) and (2) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter.	1711 1712 1713 1714 1715
(2) Each participating electric cooperative and participating municipal electric utility shall remit to the director on a quarterly basis the revenues described in division (B)(3) of this section. Such remittances shall occur within thirty days after the end of each calendar quarter. For the purpose of division (B)(3) of this section, the participation of an electric cooperative or municipal electric utility in the energy efficiency revolving loan program as it existed immediately prior to the effective date of the amendment of this section by Sub. H.B. 251 of the 126th general assembly, <u>January 4, 2007</u> , does not constitute a decision to participate in the advanced energy fund under this section as so amended.	1716 1717 1718 1719 1720 1721 1722 1723 1724 1725 1726 1727
(3) All remittances under divisions (C)(1) and (2) of this section shall continue only until the end of ten years following the starting date of competitive retail electric service or until the advanced energy fund, including interest, reaches one hundred million dollars, whichever is first.	1728 1729 1730 1731 1732
(D) Any moneys collected in rates for non-low-income customer energy efficiency programs, as of October 5, 1999, and not contributed to the energy efficiency revolving loan fund	1733 1734 1735

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

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

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

consumers in this state regarding, advanced energy resources. 1768

1769

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2024 and each calendar 12.5% 0.5% 1861
year thereafter

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

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

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

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

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

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

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

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

energy resource nor shall affect any electricity supply contract. 1924

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

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

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

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

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

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

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

1996
(D)(1) The commission annually shall submit to the general 1997
assembly in accordance with section 101.68 of the Revised Code a 1998
report describing the compliance of electric distribution 1999
utilities and electric services companies with division (B) of 2000
this section and any strategy for utility and company compliance 2001
or for encouraging the use of alternative energy resources in 2002
supplying this state's electricity needs in a manner that 2003
considers available technology, costs, job creation, and economic 2004
impacts. The commission shall allow and consider public comments 2005
on the report prior to its submission to the general assembly. 2006
Nothing in the report shall be binding on any person, including 2007
any utility or company for the purpose of its compliance with any 2008
benchmark under division (B) of this section, or the enforcement 2009
of that provision under division (C) of this section. 2010

2011
(2) The governor, in consultation with the commission 2012
chairperson, shall appoint an alternative energy advisory 2013
committee. The committee shall examine available technology for 2014
and related timetables, goals, and costs of the alternative energy 2015
resource requirements under division (B) of this section and shall 2016
submit to the commission a semiannual report of its 2017
recommendations. 2018

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

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

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

2044
Sec. 4928.66. (A)(1)(a) Beginning in 2009, an electric 2045
distribution utility shall implement energy efficiency programs 2046
that achieve energy savings equivalent to at least three-tenths of 2047
one per cent of the total, annual average, and normalized 2048
kilowatt-hour sales of the electric distribution utility during 2049
the preceding three calendar years to customers in this state. The 2050

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Perform or pay for additional tests; 2239

(3) Purchase additional liability insurance. 2240

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

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

Sec. 4929.01. As used in this chapter: 2258

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A municipal corporation acting exclusively under Section 2331

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

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

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

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

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

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

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

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

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

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

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

(11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation; 2424
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(12) Promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. 2426
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(B) The public utilities commission and the office of the consumers' counsel shall follow the policy specified in this section in ~~carrying out~~ exercising their respective authorities relative to sections 4929.03 to 4929.30 of the Revised Code. 2429
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(C) Nothing in Chapter 4929. of the Revised Code shall be construed to alter the public utilities commission's construction or application of division (A)(6) of section 4905.03 of the Revised Code. 2433
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Sec. 4929.051. An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program. 2437
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Section 2. That existing sections 4905.31, 4928.01, 4928.02, 4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and 4929.02 and sections 4928.41, 4928.42, 4928.431, and 4928.44 of the Revised Code are hereby repealed. 2446
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Section 3. Nothing in this act affects the legal validity or the force and effect of an electric distribution utility's rate 2451
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plan, as defined in section 4928.01 of the Revised Code as amended 2453
by this act, or the plan's terms and conditions, including any 2454
provisions regarding cost recovery. 2455

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

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