

**As Introduced**

**133rd General Assembly  
Regular Session  
2019-2020**

**H. B. No. 247**

**Representative Stein**

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**A BILL**

To amend sections 4928.01, 4928.02, 4928.143, 1  
4928.17, and 4928.34 and to enact section 2  
4928.25 of the Revised Code regarding the 3  
competitive retail electric service law. 4

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

**Section 1.** That sections 4928.01, 4928.02, 4928.143, 5  
4928.17, and 4928.34 be amended and section 4928.25 of the 6  
Revised Code be enacted to read as follows: 7

**Sec. 4928.01.** (A) As used in this chapter: 8

(1) "Ancillary service" means any function necessary to 9  
the provision of electric transmission or distribution service 10  
to a retail customer and includes, but is not limited to, 11  
scheduling, system control, and dispatch services; reactive 12  
supply from generation resources and voltage control service; 13  
reactive supply from transmission resources service; regulation 14  
service; frequency response service; energy imbalance service; 15  
operating reserve-spinning reserve service; operating reserve- 16  
supplemental reserve service; load following; back-up supply 17  
service; real-power loss replacement service; dynamic 18  
scheduling; system black start capability; and network stability 19

service. 20

(2) "Billing and collection agent" means a fully 21  
independent agent, not affiliated with or otherwise controlled 22  
by an electric utility, electric services company, electric 23  
cooperative, or governmental aggregator subject to certification 24  
under section 4928.08 of the Revised Code, to the extent that 25  
the agent is under contract with such utility, company, 26  
cooperative, or aggregator solely to provide billing and 27  
collection for retail electric service on behalf of the utility 28  
company, cooperative, or aggregator. 29

(3) "Certified territory" means the certified territory 30  
established for an electric supplier under sections 4933.81 to 31  
4933.90 of the Revised Code. 32

(4) "Competitive retail electric service" means a 33  
component of retail electric service that is competitive as 34  
provided under division (B) of this section. 35

(5) "Electric cooperative" means a not-for-profit electric 36  
light company that both is or has been financed in whole or in 37  
part under the "Rural Electrification Act of 1936," 49 Stat. 38  
1363, 7 U.S.C. 901, and owns or operates facilities in this 39  
state to generate, transmit, or distribute electricity, or a 40  
not-for-profit successor of such company. 41

(6) "Electric distribution utility" means an electric 42  
utility that supplies at least retail electric distribution 43  
service. 44

(7) "Electric light company" has the same meaning as in 45  
section 4905.03 of the Revised Code and includes an electric 46  
services company, but excludes any self-generator to the extent 47  
that it consumes electricity it so produces, sells that 48

electricity for resale, or obtains electricity from a generating 49  
facility it hosts on its premises. 50

(8) "Electric load center" has the same meaning as in 51  
section 4933.81 of the Revised Code. 52

(9) "Electric services company" means an electric light 53  
company that is engaged on a for-profit or not-for-profit basis 54  
in the business of supplying or arranging for the supply of only 55  
a competitive retail electric service in this state. "Electric 56  
services company" includes a power marketer, power broker, 57  
aggregator, or independent power producer but excludes an 58  
electric cooperative, municipal electric utility, governmental 59  
aggregator, or billing and collection agent. 60

(10) "Electric supplier" has the same meaning as in 61  
section 4933.81 of the Revised Code. 62

(11) "Electric utility" means an electric light company 63  
that has a certified territory and is engaged on a for-profit 64  
basis either in the business of supplying a noncompetitive 65  
retail electric service in this state or in the businesses of 66  
supplying both a noncompetitive and a competitive retail 67  
electric service in this state. "Electric utility" excludes a 68  
municipal electric utility or a billing and collection agent. 69

(12) "Firm electric service" means electric service other 70  
than nonfirm electric service. 71

(13) "Governmental aggregator" means a legislative 72  
authority of a municipal corporation, a board of township 73  
trustees, or a board of county commissioners acting as an 74  
aggregator for the provision of a competitive retail electric 75  
service under authority conferred under section 4928.20 of the 76  
Revised Code. 77

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

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

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

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

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

(19) "Mercantile customer" means a commercial or

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

(20) "Municipal electric utility" means a municipal 112  
corporation that owns or operates facilities to generate, 113  
transmit, or distribute electricity. 114

(21) "Noncompetitive retail electric service" means a 115  
component of retail electric service that is noncompetitive as 116  
provided under division (B) of this section. 117

(22) "Nonfirm electric service" means electric service 118  
provided pursuant to a schedule filed under section 4905.30 of 119  
the Revised Code or pursuant to an arrangement under section 120  
4905.31 of the Revised Code, which schedule or arrangement 121  
includes conditions that may require the customer to curtail or 122  
interrupt electric usage during nonemergency circumstances upon 123  
notification by an electric utility. 124

(23) "Percentage of income payment plan arrears" means 125  
funds eligible for collection through the percentage of income 126  
payment plan rider, but uncollected as of July 1, 2000. 127

(24) "Person" has the same meaning as in section 1.59 of 128  
the Revised Code. 129

(25) "Advanced energy project" means any technologies, 130  
products, activities, or management practices or strategies that 131  
facilitate the generation or use of electricity or energy and 132  
that reduce or support the reduction of energy consumption or 133  
support the production of clean, renewable energy for 134  
industrial, distribution, commercial, institutional, 135

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

(26) "Regulatory assets" means the unamortized net 141  
regulatory assets that are capitalized or deferred on the 142  
regulatory books of the electric utility, pursuant to an order 143  
or practice of the public utilities commission or pursuant to 144  
generally accepted accounting principles as a result of a prior 145  
commission rate-making decision, and that would otherwise have 146  
been charged to expense as incurred or would not have been 147  
capitalized or otherwise deferred for future regulatory 148  
consideration absent commission action. "Regulatory assets" 149  
includes, but is not limited to, all deferred demand-side 150  
management costs; all deferred percentage of income payment plan 151  
arrears; post-in-service capitalized charges and assets 152  
recognized in connection with statement of financial accounting 153  
standards no. 109 (receivables from customers for income taxes); 154  
future nuclear decommissioning costs and fuel disposal costs as 155  
those costs have been determined by the commission in the 156  
electric utility's most recent rate or accounting application 157  
proceeding addressing such costs; the undepreciated costs of 158  
safety and radiation control equipment on nuclear generating 159  
plants owned or leased by an electric utility; and fuel costs 160  
currently deferred pursuant to the terms of one or more 161  
settlement agreements approved by the commission. 162

(27) "Retail electric service" means any service involved 163  
in supplying or arranging for the supply of electricity to 164  
ultimate consumers in this state, from the point of generation 165  
to the point of consumption. For the purposes of this chapter, 166

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

(28) "Starting date of competitive retail electric 172  
service" means January 1, 2001. 173

(29) "Customer-generator" means a user of a net metering 174  
system. 175

(30) "Net metering" means measuring the difference in an 176  
applicable billing period between the electricity supplied by an 177  
electric service provider and the electricity generated by a 178  
customer-generator that is fed back to the electric service 179  
provider. 180

(31) "Net metering system" means a facility for the 181  
production of electrical energy that does all of the following: 182

(a) Uses as its fuel either solar, wind, biomass, landfill 183  
gas, or hydropower, or uses a microturbine or a fuel cell; 184

(b) Is located on a customer-generator's premises; 185

(c) Operates in parallel with the electric utility's 186  
transmission and distribution facilities; 187

(d) Is intended primarily to offset part or all of the 188  
customer-generator's requirements for electricity. 189

(32) "Self-generator" means an entity in this state that 190  
owns or hosts on its premises an electric generation facility 191  
that produces electricity primarily for the owner's consumption 192  
and that may provide any such excess electricity to another 193  
entity, whether the facility is installed or operated by the 194

owner or by an agent under a contract. 195

(33) "Rate plan" means the standard service offer in 196  
effect on the effective date of the amendment of this section by 197  
S.B. 221 of the 127th general assembly, July 31, 2008. 198

(34) "Advanced energy resource" means any of the 199  
following: 200

(a) Any method or any modification or replacement of any 201  
property, process, device, structure, or equipment that 202  
increases the generation output of an electric generating 203  
facility to the extent such efficiency is achieved without 204  
additional carbon dioxide emissions by that facility; 205

(b) Any distributed generation system consisting of 206  
customer cogeneration technology; 207

(c) Clean coal technology that includes a carbon-based 208  
product that is chemically altered before combustion to 209  
demonstrate a reduction, as expressed as ash, in emissions of 210  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 211  
sulfur trioxide in accordance with the American society of 212  
testing and materials standard D1757A or a reduction of metal 213  
oxide emissions in accordance with standard D5142 of that 214  
society, or clean coal technology that includes the design 215  
capability to control or prevent the emission of carbon dioxide, 216  
which design capability the commission shall adopt by rule and 217  
shall be based on economically feasible best available 218  
technology or, in the absence of a determined best available 219  
technology, shall be of the highest level of economically 220  
feasible design capability for which there exists generally 221  
accepted scientific opinion; 222

(d) Advanced nuclear energy technology consisting of 223

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

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

operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;

(x) Biologically derived methane gas;

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

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

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

"Renewable energy resource" does not include a waste

energy recovery system that is, or was, on or after January 1, 309  
2012, included in an energy efficiency program of an electric 310  
distribution utility pursuant to requirements under section 311  
4928.66 of the Revised Code. 312

(b) As used in division (A) (37) of this section, 313  
"hydroelectric facility" means a hydroelectric generating 314  
facility that is located at a dam on a river, or on any water 315  
discharged to a river, that is within or bordering this state or 316  
within or bordering an adjoining state and meets all of the 317  
following standards: 318

(i) The facility provides for river flows that are not 319  
detrimental for fish, wildlife, and water quality, including 320  
seasonal flow fluctuations as defined by the applicable 321  
licensing agency for the facility. 322

(ii) The facility demonstrates that it complies with the 323  
water quality standards of this state, which compliance may 324  
consist of certification under Section 401 of the "Clean Water 325  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 326  
demonstrates that it has not contributed to a finding by this 327  
state that the river has impaired water quality under Section 328  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 329  
U.S.C. 1313. 330

(iii) The facility complies with mandatory prescriptions 331  
regarding fish passage as required by the federal energy 332  
regulatory commission license issued for the project, regarding 333  
fish protection for riverine, anadromous, and catadromous fish. 334

(iv) The facility complies with the recommendations of the 335  
Ohio environmental protection agency and with the terms of its 336  
federal energy regulatory commission license regarding watershed 337

protection, mitigation, or enhancement, to the extent of each 338  
agency's respective jurisdiction over the facility. 339

(v) The facility complies with provisions of the 340  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 341  
to 1544, as amended. 342

(vi) The facility does not harm cultural resources of the 343  
area. This can be shown through compliance with the terms of its 344  
federal energy regulatory commission license or, if the facility 345  
is not regulated by that commission, through development of a 346  
plan approved by the Ohio historic preservation office, to the 347  
extent it has jurisdiction over the facility. 348

(vii) The facility complies with the terms of its federal 349  
energy regulatory commission license or exemption that are 350  
related to recreational access, accommodation, and facilities 351  
or, if the facility is not regulated by that commission, the 352  
facility complies with similar requirements as are recommended 353  
by resource agencies, to the extent they have jurisdiction over 354  
the facility; and the facility provides access to water to the 355  
public without fee or charge. 356

(viii) The facility is not recommended for removal by any 357  
federal agency or agency of any state, to the extent the 358  
particular agency has jurisdiction over the facility. 359

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 360  
this section do not apply to a small hydroelectric facility 361  
under division (A) (37) (a) (iv) of this section. 362

(38) "Waste energy recovery system" means either of the 363  
following: 364

(a) A facility that generates electricity through the 365  
conversion of energy from either of the following: 366

(i) Exhaust heat from engines or manufacturing, 367  
industrial, commercial, or institutional sites, except for 368  
exhaust heat from a facility whose primary purpose is the 369  
generation of electricity; 370

(ii) Reduction of pressure in gas pipelines before gas is 371  
distributed through the pipeline, provided that the conversion 372  
of energy to electricity is achieved without using additional 373  
fossil fuels. 374

(b) A facility at a state institution of higher education 375  
as defined in section 3345.011 of the Revised Code that recovers 376  
waste heat from electricity-producing engines or combustion 377  
turbines and that simultaneously uses the recovered heat to 378  
produce steam, provided that the facility was placed into 379  
service between January 1, 2002, and December 31, 2004. 380

(39) "Smart grid" means capital improvements to an 381  
electric distribution utility's distribution infrastructure that 382  
improve reliability, efficiency, resiliency, or reduce energy 383  
demand or use, or the deployment, adaptation, replacement, or 384  
subsequent reinforcement of any technology that facilitates the 385  
storage, control, or delivery of electric energy including, but 386  
not limited to, ~~advanced~~ all of the following: 387

(a) Advanced metering and automation; 388

(b) Automation of system functions; 389

(c) Battery technology; 390

(d) Demand response and other energy management 391  
technologies; 392

(e) Distribution automation; 393

(f) Electric vehicle charging stations and associated 394

<u>equipment or infrastructure;</u>	395
<u>(g) Energy monitoring and control devices;</u>	396
<u>(h) Lighting controls and other smart controls;</u>	397
<u>(i) Microgrids;</u>	398
<u>(j) Physical and cybersecurity technologies;</u>	399
<u>(k) Volt-VAR optimization and similar technologies;</u>	400
<u>(l) Any other technologies so classified by the public</u> <u>utilities commission.</u>	401 402
<u>"Smart grid" also includes capital investment in equipment</u> <u>deployed in conjunction with an electric distribution utility's</u> <u>distribution infrastructure that facilitates intelligent city</u> <u>designs such as traffic sensors, infrastructure monitoring</u> <u>equipment, data management systems, and similar technology.</u>	403 404 405 406 407
(40) <u>"Customer-focused energy services or products" means</u> <u>any services or products provided by an electric distribution</u> <u>utility to or for the benefit of its customers including, but</u> <u>not limited to, any of the following:</u>	408 409 410 411
<u>(a) Services related to energy reliability and resiliency;</u>	412
<u>(b) Curtailment and individual customer and aggregated</u> <u>demand response activities;</u>	413 414
<u>(c) Energy efficiency or reduction;</u>	415
<u>(d) Energy storage or battery functions;</u>	416
<u>(e) Energy management;</u>	417
<u>(f) Energy monitoring and control technologies;</u>	418
<u>(g) Lighting controls and other smart controls;</u>	419

<u>(h) Warranty and repair services;</u>	420
<u>(i) Electric vehicle charging stations;</u>	421
<u>(j) Microgrids;</u>	422
<u>(k) Community solar energy facilities;</u>	423
<u>(l) Energy-related physical security and cybersecurity.</u>	424
<u>"Customer-focused energy services or products" also</u>	425
<u>includes the installation, financing, leasing, or management of</u>	426
<u>technology, data, and devices related to such services or</u>	427
<u>products and the installation and management of smart grid</u>	428
<u>technology to facilitate such services.</u>	429
<u>(41) "Combined heat and power system" means the</u>	430
coproduction of electricity and useful thermal energy from the	431
same fuel source designed to achieve thermal-efficiency levels	432
of at least sixty per cent, with at least twenty per cent of the	433
system's total useful energy in the form of thermal energy.	434
(B) For the purposes of this chapter, a retail electric	435
service component shall be deemed a competitive retail electric	436
service if the service component is competitive pursuant to a	437
declaration by a provision of the Revised Code or pursuant to an	438
order of the public utilities commission authorized under	439
division (A) of section 4928.04 of the Revised Code. Otherwise,	440
the service component shall be deemed a noncompetitive retail	441
electric service.	442
<b>Sec. 4928.02.</b> It is the policy of this state to do the	443
following throughout this state:	444
(A) Ensure the availability to consumers of adequate,	445
reliable, safe, efficient, nondiscriminatory, and reasonably	446
priced retail electric service;	447

(B) Ensure the availability of unbundled and comparable 448  
retail electric service that provides consumers with the 449  
supplier, price, terms, conditions, and quality options they 450  
elect to meet their respective needs in a manner consistent with 451  
Chapter 4928. of the Revised Code; 452

(C) Ensure diversity of electricity supplies and 453  
suppliers, by giving consumers effective choices over the 454  
selection of those supplies and suppliers and by encouraging the 455  
development of distributed and small generation facilities; 456

(D) Encourage innovation and market access for cost- 457  
effective supply- and demand-side retail electric service 458  
including, but not limited to, demand-side management, time- 459  
differentiated pricing, waste energy recovery systems, smart 460  
grid programs, and implementation of advanced metering 461  
infrastructure; 462

(E) Encourage cost-effective and efficient access to 463  
information regarding the operation of the transmission and 464  
distribution systems of electric utilities in order to promote 465  
both effective customer choice of retail electric service and 466  
the development of performance standards and targets for service 467  
quality for all consumers, including annual achievement reports 468  
written in plain language; 469

(F) Ensure that an electric utility's transmission and 470  
distribution systems are available to a customer-generator or 471  
owner of distributed generation, so that the customer-generator 472  
or owner can market and deliver the electricity it produces; 473

(G) Recognize the continuing emergence of competitive 474  
electricity markets and customer-focused energy services or 475  
products through the development and implementation of flexible 476

regulatory treatment;	477
(H) Ensure effective competition in the provision of	478
retail electric service by avoiding anticompetitive subsidies	479
flowing from a noncompetitive retail electric service to a	480
competitive retail electric service <del>or to a product or service</del>	481
<del>other than retail electric service</del> , and vice versa, including by	482
prohibiting the recovery of any generation-related costs through	483
distribution or transmission rates;	484
(I) Ensure retail electric service consumers protection	485
against unreasonable sales practices, market deficiencies, and	486
market power;	487
(J) Provide coherent, transparent means of giving	488
appropriate incentives to technologies that can adapt	489
successfully to potential environmental mandates;	490
(K) Encourage implementation of distributed generation	491
across customer classes through regular review and updating of	492
administrative rules governing critical issues such as, but not	493
limited to, interconnection standards, standby charges, and net	494
metering;	495
(L) Protect at-risk populations, including, but not	496
limited to, when considering the implementation of any new	497
advanced energy or renewable energy resource;	498
(M) Encourage the education of <u>residential customers and</u>	499
small business owners in this state regarding the use of, and	500
encourage the use of, energy efficiency programs and alternative	501
energy resources in their <u>homes and businesses</u> ;	502
(N) Facilitate the state's effectiveness in the global	503
economy.	504

In carrying out this policy, the commission shall consider 505  
rules as they apply to the costs of electric distribution 506  
infrastructure, including, but not limited to, line extensions, 507  
for the purpose of development in this state. 508

**Sec. 4928.143.** (A) For the purpose of complying with 509  
section 4928.141 of the Revised Code, an electric distribution 510  
utility may file an application for public utilities commission 511  
approval of an electric security plan as prescribed under 512  
division (B) of this section. The utility may file that 513  
application prior to the effective date of any rules the 514  
commission may adopt for the purpose of this section, and, as 515  
the commission determines necessary, the utility immediately 516  
shall conform its filing to those rules upon their taking 517  
effect. 518

(B) Notwithstanding any other provision of Title XLIX of 519  
the Revised Code to the contrary except division (D) of this 520  
section, divisions (I), (J), and (K) of section 4928.20, 521  
division (E) of section 4928.64, and section 4928.69 of the 522  
Revised Code: 523

(1) An electric security plan shall include provisions 524  
relating to the supply and pricing of electric generation 525  
service. In addition, if the proposed electric security plan has 526  
a term longer than three years, it may include provisions in the 527  
plan to permit the commission to test the plan pursuant to 528  
division (E) of this section and any transitional conditions 529  
that should be adopted by the commission if the commission 530  
terminates the plan as authorized under that division. 531

(2) The plan may provide for or include, without 532  
limitation, any of the following: 533

(a) Automatic recovery of any of the following costs of 534  
the electric distribution utility, provided the cost is 535  
prudently incurred: the cost of fuel used to generate the 536  
electricity supplied under the offer; the cost of purchased 537  
power supplied under the offer, including the cost of energy and 538  
capacity, and including purchased power acquired from an 539  
affiliate; the cost of emission allowances; and the cost of 540  
federally mandated carbon or energy taxes; 541

(b) A reasonable allowance for construction work in 542  
progress for any of the electric distribution utility's cost of 543  
constructing an electric generating facility or for an 544  
environmental expenditure for any electric generating facility 545  
of the electric distribution utility, provided the cost is 546  
incurred or the expenditure occurs on or after January 1, 2009. 547  
Any such allowance shall be subject to the construction work in 548  
progress allowance limitations of division (A) of section 549  
4909.15 of the Revised Code, except that the commission may 550  
authorize such an allowance upon the incurrence of the cost or 551  
occurrence of the expenditure. No such allowance for generating 552  
facility construction shall be authorized, however, unless the 553  
commission first determines in the proceeding that there is need 554  
for the facility based on resource planning projections 555  
submitted by the electric distribution utility. Further, no such 556  
allowance shall be authorized unless the facility's construction 557  
was sourced through a competitive bid process, regarding which 558  
process the commission may adopt rules. An allowance approved 559  
under division (B) (2) (b) of this section shall be established as 560  
a nonbypassable surcharge for the life of the facility. 561

(c) The establishment of a nonbypassable surcharge for the 562  
life of an electric generating facility that is owned or 563  
operated by the electric distribution utility, was sourced 564

through a competitive bid process subject to any such rules as 565  
the commission adopts under division (B) (2) (b) of this section, 566  
and is newly used and useful on or after January 1, 2009, which 567  
surcharge shall cover all costs of the utility specified in the 568  
application, excluding costs recovered through a surcharge under 569  
division (B) (2) (b) of this section. However, no surcharge shall 570  
be authorized unless the commission first determines in the 571  
proceeding that there is need for the facility based on resource 572  
planning projections submitted by the electric distribution 573  
utility. Additionally, if a surcharge is authorized for a 574  
facility pursuant to plan approval under division (C) of this 575  
section and as a condition of the continuation of the surcharge, 576  
the electric distribution utility shall dedicate to Ohio 577  
consumers the capacity and energy and the rate associated with 578  
the cost of that facility. Before the commission authorizes any 579  
surcharge pursuant to this division, it may consider, as 580  
applicable, the effects of any decommissioning, deratings, and 581  
retirements. 582

(d) Terms, conditions, or charges relating to limitations 583  
on customer shopping for retail electric generation service, 584  
bypassability, standby, back-up, or supplemental power service, 585  
default service, carrying costs, amortization periods, and 586  
accounting or deferrals, including future recovery of such 587  
deferrals, as would have the effect of stabilizing or providing 588  
certainty regarding retail electric service; 589

(e) Automatic increases or decreases in any component of 590  
the standard service offer price; 591

(f) Consistent with sections 4928.23 to 4928.2318 of the 592  
Revised Code, both of the following: 593

(i) Provisions for the electric distribution utility to 594

securitize any phase-in, inclusive of carrying charges, of the 595  
utility's standard service offer price, which phase-in is 596  
authorized in accordance with section 4928.144 of the Revised 597  
Code; 598

(ii) Provisions for the recovery of the utility's cost of 599  
securitization. 600

(g) Provisions relating to transmission, ancillary, 601  
congestion, or any related service required for the standard 602  
service offer, including provisions for the recovery of any cost 603  
of such service that the electric distribution utility incurs on 604  
or after that date pursuant to the standard service offer; 605

(h) Provisions regarding the utility's distribution 606  
service, including, without limitation and notwithstanding any 607  
provision of Title XLIX of the Revised Code to the contrary, 608  
provisions regarding ~~single~~ all of the following: 609

(i) Single issue ratemaking, ~~a~~; 610

(ii) A revenue decoupling mechanism ~~or any~~; 611

(iii) Any other incentive ratemaking, ~~and provisions~~ 612  
regarding distribution; 613

(iv) Distribution infrastructure and modernization 614  
incentives for the electric distribution utility; 615

(v) Deployment of smart grid technology; 616

(vi) Provision of customer-focused energy services or 617  
products. The latter 618

Provisions regarding divisions (B) (2) (h) (iii) to (vi) of 619  
this section may include a long-term energy delivery 620  
infrastructure modernization plan for that utility or any plan 621

providing for the utility's recovery of costs, including lost 622  
revenue, shared savings, and avoided costs, and a just and 623  
reasonable rate of return on such infrastructure modernization 624  
or smart grid technology deployment. As part of its 625  
determination as to whether to allow in an electric distribution 626  
utility's electric security plan inclusion of any provision 627  
described in division (B) (2) (h) of this section, the commission 628  
shall examine the reliability of the electric distribution 629  
utility's distribution system and ensure that customers' and the 630  
electric distribution utility's expectations are aligned and 631  
that the electric distribution utility is placing sufficient 632  
emphasis on and dedicating sufficient resources to the 633  
reliability of its distribution system. 634

(i) Provisions under which the electric distribution 635  
utility may implement economic development, job retention, and 636  
energy efficiency programs, which provisions may allocate 637  
program costs across all classes of customers of the utility and 638  
those of electric distribution utilities in the same holding 639  
company system. 640

(C) (1) The burden of proof in the proceeding shall be on 641  
the electric distribution utility. The commission shall issue an 642  
order under this division for an initial application under this 643  
section not later than one hundred fifty days after the 644  
application's filing date and, for any subsequent application by 645  
the utility under this section, not later than two hundred 646  
seventy-five days after the application's filing date. Subject 647  
to division (D) of this section, the commission by order shall 648  
approve or modify and approve an application filed under 649  
division (A) of this section if it finds that the electric 650  
security plan so approved, including its pricing and all other 651  
terms and conditions, including any deferrals and any future 652

recovery of deferrals, is more favorable in the aggregate as 653  
compared to the expected results that would otherwise apply 654  
under section 4928.142 of the Revised Code. Additionally, if the 655  
commission so approves an application that contains a surcharge 656  
under division (B) (2) (b) or (c) of this section, the commission 657  
shall ensure that the benefits derived for any purpose for which 658  
the surcharge is established are reserved and made available to 659  
those that bear the surcharge. Otherwise, the commission by 660  
order shall disapprove the application. 661

(2) (a) If the commission modifies and approves an 662  
application under division (C) (1) of this section, the electric 663  
distribution utility may withdraw the application, thereby 664  
terminating it, and may file a new standard service offer under 665  
this section or a standard service offer under section 4928.142 666  
of the Revised Code. 667

(b) If the utility terminates an application pursuant to 668  
division (C) (2) (a) of this section or if the commission 669  
disapproves an application under division (C) (1) of this 670  
section, the commission shall issue such order as is necessary 671  
to continue the provisions, terms, and conditions of the 672  
utility's most recent standard service offer, along with any 673  
expected increases or decreases in fuel costs from those 674  
contained in that offer, until a subsequent offer is authorized 675  
pursuant to this section or section 4928.142 of the Revised 676  
Code, respectively. 677

(D) Regarding the rate plan requirement of division (A) of 678  
section 4928.141 of the Revised Code, if an electric 679  
distribution utility that has a rate plan that extends beyond 680  
December 31, 2008, files an application under this section for 681  
the purpose of its compliance with division (A) of section 682

4928.141 of the Revised Code, that rate plan and its terms and 683  
conditions are hereby incorporated into its proposed electric 684  
security plan and shall continue in effect until the date 685  
scheduled under the rate plan for its expiration, and that 686  
portion of the electric security plan shall not be subject to 687  
commission approval or disapproval under division (C) of this 688  
section, and the earnings test provided for in division (F) of 689  
this section shall not apply until after the expiration of the 690  
rate plan. However, that utility may include in its electric 691  
security plan under this section, and the commission may 692  
approve, modify and approve, or disapprove subject to division 693  
(C) of this section, provisions for the incremental recovery or 694  
the deferral of any costs that are not being recovered under the 695  
rate plan and that the utility incurs during that continuation 696  
period to comply with section 4928.141, division (B) of section 697  
4928.64, or division (A) of section 4928.66 of the Revised Code. 698

(E) If an electric security plan approved under division 699  
(C) of this section, except one withdrawn by the utility as 700  
authorized under that division, has a term, exclusive of phase- 701  
ins or deferrals, that exceeds three years from the effective 702  
date of the plan, the commission shall test the plan in the 703  
fourth year, and if applicable, every fourth year thereafter, to 704  
determine whether the plan, including its then-existing pricing 705  
and all other terms and conditions, including any deferrals and 706  
any future recovery of deferrals, continues to be more favorable 707  
in the aggregate and during the remaining term of the plan as 708  
compared to the expected results that would otherwise apply 709  
under section 4928.142 of the Revised Code. The commission shall 710  
also determine the prospective effect of the electric security 711  
plan to determine if that effect is substantially likely to 712  
provide the electric distribution utility with a return on 713

common equity that is significantly in excess of the return on 714  
common equity that is likely to be earned by publicly traded 715  
companies, including utilities, that face comparable business 716  
and financial risk, with such adjustments for capital structure 717  
as may be appropriate. The burden of proof for demonstrating 718  
that significantly excessive earnings will not occur shall be on 719  
the electric distribution utility. If the test results are in 720  
the negative or the commission finds that continuation of the 721  
electric security plan will result in a return on equity that is 722  
significantly in excess of the return on common equity that is 723  
likely to be earned by publicly traded companies, including 724  
utilities, that will face comparable business and financial 725  
risk, with such adjustments for capital structure as may be 726  
appropriate, during the balance of the plan, the commission may 727  
terminate the electric security plan, but not until it shall 728  
have provided interested parties with notice and an opportunity 729  
to be heard. The commission may impose such conditions on the 730  
plan's termination as it considers reasonable and necessary to 731  
accommodate the transition from an approved plan to the more 732  
advantageous alternative. In the event of an electric security 733  
plan's termination pursuant to this division, the commission 734  
shall permit the continued deferral and phase-in of any amounts 735  
that occurred prior to that termination and the recovery of 736  
those amounts as contemplated under that electric security plan. 737

(F) With regard to the provisions that are included in an 738  
electric security plan under this section, the commission shall 739  
consider, following the end of each annual period of the plan, 740  
if any such adjustments resulted in excessive earnings as 741  
measured by whether the earned return on common equity of the 742  
electric distribution utility is significantly in excess of the 743  
return on common equity that was earned during the same period 744

by publicly traded companies, including utilities, that face 745  
comparable business and financial risk, with such adjustments 746  
for capital structure as may be appropriate. Consideration also 747  
shall be given to the capital requirements of future committed 748  
investments in this state. The burden of proof for demonstrating 749  
that significantly excessive earnings did not occur shall be on 750  
the electric distribution utility. If the commission finds that 751  
such adjustments, in the aggregate, did result in significantly 752  
excessive earnings, it shall require the electric distribution 753  
utility to return to consumers the amount of the excess by 754  
prospective adjustments; provided that, upon making such 755  
prospective adjustments, the electric distribution utility shall 756  
have the right to terminate the plan and immediately file an 757  
application pursuant to section 4928.142 of the Revised Code. 758  
Upon termination of a plan under this division, rates shall be 759  
set on the same basis as specified in division (C) (2) (b) of this 760  
section, and the commission shall permit the continued deferral 761  
and phase-in of any amounts that occurred prior to that 762  
termination and the recovery of those amounts as contemplated 763  
under that electric security plan. In making its determination 764  
of significantly excessive earnings under this division, the 765  
commission shall not consider, directly or indirectly, the 766  
revenue, expenses, or earnings of any affiliate or parent 767  
company. 768

**Sec. 4928.17.** (A) Except as otherwise provided in ~~sections~~ 769  
~~this section or in section 4928.142 or, 4928.143 or, 4928.31~~ 770  
~~to 4928.40, 4928.64, or 4928.66 of the Revised Code and~~ 771  
~~beginning on the starting date of competitive retail electric~~ 772  
~~service,~~ no electric utility shall engage in this state, either 773  
directly or through an affiliate, in the businesses of supplying 774  
a noncompetitive retail electric service and supplying a 775

competitive retail electric service, ~~or in the businesses of~~ 776  
~~supplying a noncompetitive retail electric service and supplying~~ 777  
~~a product or service other than retail electric service,~~ unless 778  
the utility implements and operates under a corporate separation 779  
plan that is approved by the public utilities commission under 780  
this section, ~~is consistent with the policy specified in section~~ 781  
~~4928.02 of the Revised Code,~~ and achieves all of the following: 782

(1) The plan provides, at minimum, for the provision of 783  
the competitive retail electric service ~~or the nonelectric~~ 784  
~~product or service~~ through a fully separated affiliate of the 785  
utility, and the plan includes separate accounting requirements, 786  
the code of conduct as ordered by the commission pursuant to ~~a~~ 787  
~~rule it shall adopt~~ rules promulgated under division (A) of 788  
section 4928.06 of the Revised Code, and such other measures as 789  
are necessary to effectuate the policy specified in section 790  
4928.02 of the Revised Code. 791

(2) The plan satisfies the public interest in preventing 792  
unfair competitive advantage and preventing the abuse of market 793  
power. 794

(3) The plan is sufficient to ensure that the utility will 795  
not extend any undue preference or advantage to any affiliate, 796  
division, or part of its own business engaged in the business of 797  
supplying the competitive retail electric service ~~or nonelectric~~ 798  
~~product or service,~~ including, but not limited to, utility 799  
resources such as trucks, tools, office equipment, office space, 800  
supplies, customer and marketing information, advertising, 801  
billing and mailing systems, personnel, and training, without 802  
compensation based upon fully loaded embedded costs charged to 803  
the affiliate; and to ensure that any such affiliate, division, 804  
or part will not receive undue preference or advantage from any 805

affiliate, division, or part of the business engaged in business 806  
of supplying the noncompetitive retail electric service. No such 807  
utility, affiliate, division, or part shall extend such undue 808  
preference. Notwithstanding any other division of this section, 809  
a utility's obligation under division (A)(3) of this section 810  
shall be effective January 1, 2000. 811

(B) An electric distribution utility may offer customer- 812  
focused energy services or products, including any related 813  
deployment of smart grid technology on the customer's premises, 814  
provided that one of the following applies: 815

(1) The electric distribution utility either receives 816  
approval from the public utilities commission to offer such 817  
services under section 4905.31, 4909.18, 4928.143, or 4928.66 of 818  
the Revised Code, in which case the requirements under division 819  
(B)(2) of this section shall not automatically apply; 820

(2) All of the following apply and shall be reflected in 821  
the electric distribution utility's subsequent corporate 822  
separation plan: 823

(a) The customer-focused energy services or products are 824  
optional for customers; 825

(b) The utility maintains separate accounting for 826  
customer-focused energy services or products; 827

(c) The utility does not include incremental costs 828  
directly related to customer-focused energy services or products 829  
in base distribution rates but instead recovers such incremental 830  
costs of such services through charges to customers who elect to 831  
subscribe to those services. 832

(C) The commission may approve, modify and approve, or 833  
disapprove a corporate separation plan filed with the commission 834

under division (A) or (B) of this section. As part of the code 835  
of conduct required under division (A) (1) of this section, the 836  
commission shall adopt rules pursuant to division (A) of section 837  
4928.06 of the Revised Code regarding corporate separation and 838  
procedures for plan filing and approval. The rules shall include 839  
limitations on affiliate practices solely for the purpose of 840  
maintaining a separation of the affiliate's business from the 841  
business of the utility to prevent unfair competitive advantage 842  
by virtue of that relationship. The rules also shall include an 843  
opportunity for any person having a real and substantial 844  
interest in the corporate separation plan to file specific 845  
objections to the plan and propose specific responses to issues 846  
raised in the objections, which objections and responses the 847  
commission shall address in its final order. Prior to commission 848  
approval of the plan, the commission shall afford a hearing upon 849  
those aspects of the plan that the commission determines 850  
reasonably require a hearing. The commission may reject and 851  
require refiling of a substantially inadequate plan under this 852  
section. 853

~~(C)~~ (D) The commission shall issue an order approving or 854  
modifying and approving a corporate separation plan under this 855  
section, to be effective on the date specified in the order, 856  
only upon findings that the plan reasonably complies with the 857  
requirements of division (A) of this section and will provide 858  
for ongoing compliance with the policy specified in section 859  
4928.02 of the Revised Code. However, for good cause shown, and 860  
upon a finding that such alternative plan will provide for both 861  
functional separation and ongoing compliance with the policy 862  
specified in section 4928.02 of the Revised Code, the commission 863  
may issue an order approving or modifying and approving a 864  
corporate separation plan under this section that does not 865

~~comply with division (A) (1) of this section but complies with~~ 866  
~~such functional separation requirements as the commission~~ 867  
~~authorizes to apply for an interim period prescribed in the~~ 868  
~~order, upon a finding that such alternative plan will provide~~ 869  
~~for ongoing compliance with the policy specified in section~~ 870  
~~4928.02 of the Revised Code.~~ 871

~~(D)~~ (E) Any party may seek an amendment to a corporate 872  
separation plan approved under this section, and the commission, 873  
pursuant to a request from any party or on its own initiative, 874  
may order as it considers necessary the filing of an amended 875  
corporate separation plan to reflect changed circumstances. 876

~~(E)~~ (F) No electric distribution utility shall sell or 877  
transfer any generating asset it wholly or partly owns at any 878  
time without obtaining prior commission approval. 879

(G) Notwithstanding any other provision of this section, 880  
commission approval of an electric distribution utility's 881  
proposed action, plan, product or service offering, or 882  
initiative under section 4905.31, 4928.142, 4928.64, or 4928.66 883  
of the Revised Code fully satisfies the requirements of this 884  
section. 885

**Sec. 4928.25.** (A) As used in this section: 886

(1) "Infrastructure development" means the planning, 887  
development, and construction of substation facilities and 888  
extensions of transmission or distribution facilities that an 889  
electric distribution utility owns and operates and the 890  
performance of load studies. 891

(2) "Infrastructure development costs" means any cost of 892  
infrastructure development, including, if applicable, an 893  
allowance for funds used during construction. 894

(B) An electric distribution utility may undertake 895  
infrastructure development necessary to support or enable a 896  
state or local economic development project, including any 897  
project approved, certified, or funded by the agency. Prior to 898  
beginning the infrastructure development, the electric 899  
distribution utility shall file a notice with the public 900  
utilities commission that contains all of the following: 901

(1) A description of the economic development project; 902

(2) A summary of the infrastructure development costs; 903

(3) A statement from the state or local entity involved 904  
that the infrastructure development is necessary to support or 905  
enable the economic development project. 906

(C) An electric distribution utility shall timely recover 907  
all infrastructure development costs through a nonbypassable 908  
rider charged to all distribution customers regardless of 909  
whether the infrastructure development is used and useful at the 910  
time constructed. 911

(D) An electric distribution utility may plan, develop, 912  
and construct facilities for a mercantile customer that is newly 913  
locating or expanding operations in the state, and has a 914  
forecasted monthly peak demand of five megawatts or more. The 915  
electric distribution utility shall timely recover all costs of 916  
planning, developing, and constructing such facilities through a 917  
nonbypassable rider charged to all distribution customers. 918  
Following the completion of construction, the mercantile 919  
customer shall own and maintain the facilities. 920

**Sec. 4928.34.** (A) The public utilities commission shall 921  
not approve or prescribe a transition plan under division (A) or 922  
(B) of section 4928.33 of the Revised Code unless the commission 923

first makes all of the following determinations: 924

(1) The unbundled components for the electric transmission 925  
component of retail electric service, as specified in the 926  
utility's rate unbundling plan required by division (A) (1) of 927  
section 4928.31 of the Revised Code, equal the tariff rates 928  
determined by the federal energy regulatory commission that are 929  
in effect on the date of the approval of the transition plan 930  
under sections 4928.31 to 4928.40 of the Revised Code, as each 931  
such rate is determined applicable to each particular customer 932  
class and rate schedule by the commission. The unbundled 933  
transmission component shall include a sliding scale of charges 934  
under division (B) of section 4905.31 of the Revised Code to 935  
ensure that refunds determined or approved by the federal energy 936  
regulatory commission are flowed through to retail electric 937  
customers. 938

(2) The unbundled components for retail electric 939  
distribution service in the rate unbundling plan equal the 940  
difference between the costs attributable to the utility's 941  
transmission and distribution rates and charges under its 942  
schedule of rates and charges in effect on the effective date of 943  
this section, based upon the record in the most recent rate 944  
proceeding of the utility for which the utility's schedule was 945  
established, and the tariff rates for electric transmission 946  
service determined by the federal energy regulatory commission 947  
as described in division (A) (1) of this section. 948

(3) All other unbundled components required by the 949  
commission in the rate unbundling plan equal the costs 950  
attributable to the particular service as reflected in the 951  
utility's schedule of rates and charges in effect on the 952  
effective date of this section. 953

(4) The unbundled components for retail electric 954  
generation service in the rate unbundling plan equal the 955  
residual amount remaining after the determination of the 956  
transmission, distribution, and other unbundled components, and 957  
after any adjustments necessary to reflect the effects of the 958  
amendment of section 5727.111 of the Revised Code by Sub. S.B. 959  
No. 3 of the 123rd general assembly. 960

(5) All unbundled components in the rate unbundling plan 961  
have been adjusted to reflect any base rate reductions on file 962  
with the commission and as scheduled to be in effect by December 963  
31, 2005, under rate settlements in effect on the effective date 964  
of this section. However, all earnings obligations, 965  
restrictions, or caps imposed on an electric utility in a 966  
commission order prior to the effective date of this section are 967  
void. 968

(6) Subject to division (A)(5) of this section, the total 969  
of all unbundled components in the rate unbundling plan are 970  
capped and shall equal during the market development period, 971  
except as specifically provided in this chapter, the total of 972  
all rates and charges in effect under the applicable bundled 973  
schedule of the electric utility pursuant to section 4905.30 of 974  
the Revised Code in effect on the day before the effective date 975  
of this section, including the transition charge determined 976  
under section 4928.40 of the Revised Code, adjusted for any 977  
changes in the taxation of electric utilities and retail 978  
electric service under Sub. S.B. No. 3 of the 123rd General 979  
Assembly, the universal service rider authorized by section 980  
4928.51 of the Revised Code, and the temporary rider authorized 981  
by section 4928.61 of the Revised Code. For the purpose of this 982  
division, the rate cap applicable to a customer receiving 983  
electric service pursuant to an arrangement approved by the 984

commission under section 4905.31 of the Revised Code is, for the 985  
term of the arrangement, the total of all rates and charges in 986  
effect under the arrangement. For any rate schedule filed 987  
pursuant to section 4905.30 of the Revised Code or any 988  
arrangement subject to approval pursuant to section 4905.31 of 989  
the Revised Code, the initial tax-related adjustment to the rate 990  
cap required by this division shall be equal to the rate of 991  
taxation specified in section 5727.81 of the Revised Code and 992  
applicable to the schedule or arrangement. To the extent such 993  
total annual amount of the tax-related adjustment is greater 994  
than or less than the comparable amount of the total annual tax 995  
reduction experienced by the electric utility as a result of the 996  
provisions of Sub. S.B. No. 3 of the 123rd general assembly, 997  
such difference shall be addressed by the commission through 998  
accounting procedures, refunds, or an annual surcharge or credit 999  
to customers, or through other appropriate means, to avoid 1000  
placing the financial responsibility for the difference upon the 1001  
electric utility or its shareholders. Any adjustments in the 1002  
rate of taxation specified in section 5727.81 of the Revised 1003  
Code ~~section~~ shall not occur without a corresponding adjustment 1004  
to the rate cap for each such rate schedule or arrangement. The 1005  
department of taxation shall advise the commission and self- 1006  
assessors under section 5727.81 of the Revised Code prior to the 1007  
effective date of any change in the rate of taxation specified 1008  
under that section, and the commission shall modify the rate cap 1009  
to reflect that adjustment so that the rate cap adjustment is 1010  
effective as of the effective date of the change in the rate of 1011  
taxation. This division shall be applied, to the extent 1012  
possible, to eliminate any increase in the price of electricity 1013  
for customers that otherwise may occur as a result of 1014  
establishing the taxes contemplated in section 5727.81 of the 1015  
Revised Code. 1016

(7) The rate unbundling plan complies with any rules	1017
adopted by the commission under division (A) of section 4928.06	1018
of the Revised Code.	1019
(8) The corporate separation plan required by division (A)	1020
(2) of section 4928.31 of the Revised Code complies with section	1021
4928.17 of the Revised Code and any rules adopted by the	1022
commission under division (A) of section 4928.06 of the Revised	1023
Code.	1024
(9) Any plan or plans the commission requires to address	1025
operational support systems and any other technical	1026
implementation issues pertaining to competitive retail electric	1027
service comply with any rules adopted by the commission under	1028
division (A) of section 4928.06 of the Revised Code.	1029
(10) The employee assistance plan required by division (A)	1030
(4) of section 4928.31 of the Revised Code sufficiently provides	1031
severance, retraining, early retirement, retention,	1032
outplacement, and other assistance for the utility's employees	1033
whose employment is affected by electric industry restructuring	1034
under this chapter.	1035
(11) The consumer education plan required under division	1036
(A) (5) of section 4928.31 of the Revised Code complies with	1037
former section 4928.42 of the Revised Code and any rules adopted	1038
by the commission under division (A) of section 4928.06 of the	1039
Revised Code.	1040
(12) The transition revenues for which an electric utility	1041
is authorized a revenue opportunity under sections 4928.31 to	1042
4928.40 of the Revised Code are the allowable transition costs	1043
of the utility as such costs are determined by the commission	1044
pursuant to section 4928.39 of the Revised Code, and the	1045

transition charges for the customer classes and rate schedules 1046  
of the utility are the charges determined pursuant to section 1047  
4928.40 of the Revised Code. 1048

(13) Any independent transmission plan included in the 1049  
transition plan filed under section 4928.31 of the Revised Code 1050  
reasonably complies with section 4928.12 of the Revised Code and 1051  
any rules adopted by the commission under division (A) of 1052  
section 4928.06 of the Revised Code, unless the commission, for 1053  
good cause shown, authorizes the utility to defer compliance 1054  
until an order is issued under division (G) of section 4928.35 1055  
of the Revised Code. 1056

(14) The utility is in compliance with sections 4928.01 to 1057  
4928.11 of the Revised Code and any rules or orders of the 1058  
commission adopted or issued under those sections. 1059

(15) All unbundled components in the rate unbundling plan 1060  
have been adjusted to reflect the elimination of the tax on 1061  
gross receipts imposed by section 5727.30 of the Revised Code. 1062

In addition, a transition plan approved by the commission 1063  
under section 4928.33 of the Revised Code but not containing an 1064  
approved independent transmission plan shall contain the express 1065  
conditions that the utility will comply with an order issued 1066  
under division (G) of section 4928.35 of the Revised Code. 1067

(B) Subject to division ~~(E)~~ (F) of section 4928.17 of the 1068  
Revised Code, if the commission finds that any part of the 1069  
transition plan would constitute an abandonment under sections 1070  
4905.20 and 4905.21 of the Revised Code, the commission shall 1071  
not approve that part of the transition plan unless it makes the 1072  
finding required for approval of an abandonment application 1073  
under section 4905.21 of the Revised Code. Sections 4905.20 and 1074

4905.21 of the Revised Code otherwise shall not apply to a 1075  
transition plan under sections 4928.31 to 4928.40 of the Revised 1076  
Code. 1077

**Section 2.** That existing sections 4928.01, 4928.02, 1078  
4928.143, 4928.17, and 4928.34 of the Revised Code are hereby 1079  
repealed. 1080