

**As Introduced**

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

**H. B. No. 772**

**Representative Romanchuk**

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**A BILL**

To amend sections 4928.01, 4928.143, 4928.64, 1  
4928.641, 4928.645, 4928.66, and 4928.6610; to 2  
repeal sections 3706.40, 3706.41, 3706.43, 3  
3706.431, 3706.45, 3706.46, 3706.49, 3706.53, 4  
3706.55, 3706.59, 3706.61, 3706.63, 3706.65, 5  
4928.148, 4928.47, 4928.471, 4928.642, 4928.75, 6  
and 5727.231 of the Revised Code; and to repeal 7  
Section 5 of H.B. 6 of the 133rd General 8  
Assembly to make changes regarding electric 9  
utility service law, to repeal certain 10  
provisions of H.B. 6 of the 133rd General 11  
Assembly, and to declare an emergency. 12

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

**Section 1.** That sections 4928.01, 4928.143, 4928.64, 13  
4928.641, 4928.645, 4928.66, and 4928.6610 of the Revised Code 14  
be amended to read as follows: 15

**Sec. 4928.01.** (A) As used in this chapter: 16

(1) "Ancillary service" means any function necessary to 17  
the provision of electric transmission or distribution service 18  
to a retail customer and includes, but is not limited to, 19

scheduling, system control, and dispatch services; reactive 20  
supply from generation resources and voltage control service; 21  
reactive supply from transmission resources service; regulation 22  
service; frequency response service; energy imbalance service; 23  
operating reserve-spinning reserve service; operating reserve- 24  
supplemental reserve service; load following; back-up supply 25  
service; real-power loss replacement service; dynamic 26  
scheduling; system black start capability; and network stability 27  
service. 28

(2) "Billing and collection agent" means a fully 29  
independent agent, not affiliated with or otherwise controlled 30  
by an electric utility, electric services company, electric 31  
cooperative, or governmental aggregator subject to certification 32  
under section 4928.08 of the Revised Code, to the extent that 33  
the agent is under contract with such utility, company, 34  
cooperative, or aggregator solely to provide billing and 35  
collection for retail electric service on behalf of the utility 36  
company, cooperative, or aggregator. 37

(3) "Certified territory" means the certified territory 38  
established for an electric supplier under sections 4933.81 to 39  
4933.90 of the Revised Code. 40

(4) "Competitive retail electric service" means a 41  
component of retail electric service that is competitive as 42  
provided under division (B) of this section. 43

(5) "Electric cooperative" means a not-for-profit electric 44  
light company that both is or has been financed in whole or in 45  
part under the "Rural Electrification Act of 1936," 49 Stat. 46  
1363, 7 U.S.C. 901, and owns or operates facilities in this 47  
state to generate, transmit, or distribute electricity, or a 48  
not-for-profit successor of such company. 49

(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service. 50  
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(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises. 53  
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(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code. 59  
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(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent. 61  
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(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code. 69  
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(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent. 71  
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(12) "Firm electric service" means electric service other 78

than nonfirm electric service. 79

(13) "Governmental aggregator" means a legislative 80  
authority of a municipal corporation, a board of township 81  
trustees, or a board of county commissioners acting as an 82  
aggregator for the provision of a competitive retail electric 83  
service under authority conferred under section 4928.20 of the 84  
Revised Code. 85

(14) A person acts "knowingly," regardless of the person's 86  
purpose, when the person is aware that the person's conduct will 87  
probably cause a certain result or will probably be of a certain 88  
nature. A person has knowledge of circumstances when the person 89  
is aware that such circumstances probably exist. 90

(15) "Level of funding for low-income customer energy 91  
efficiency programs provided through electric utility rates" 92  
means the level of funds specifically included in an electric 93  
utility's rates on October 5, 1999, pursuant to an order of the 94  
public utilities commission issued under Chapter 4905. or 4909. 95  
of the Revised Code and in effect on October 4, 1999, for the 96  
purpose of improving the energy efficiency of housing for the 97  
utility's low-income customers. The term excludes the level of 98  
any such funds committed to a specific nonprofit organization or 99  
organizations pursuant to a stipulation or contract. 100

(16) "Low-income customer assistance programs" means the 101  
percentage of income payment plan program, the home energy 102  
assistance program, the home weatherization assistance program, 103  
and the targeted energy efficiency and weatherization program. 104

(17) "Market development period" for an electric utility 105  
means the period of time beginning on the starting date of 106  
competitive retail electric service and ending on the applicable 107

date for that utility as specified in section 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

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

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

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

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

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

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

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

the Revised Code. 137

(25) "Advanced energy project" means any technologies, 138  
products, activities, or management practices or strategies that 139  
facilitate the generation or use of electricity or energy and 140  
that reduce or support the reduction of energy consumption or 141  
support the production of clean, renewable energy for 142  
industrial, distribution, commercial, institutional, 143  
governmental, research, not-for-profit, or residential energy 144  
users, including, but not limited to, advanced energy resources 145  
and renewable energy resources. "Advanced energy project" also 146  
includes any project described in division (A), (B), or (C) of 147  
section 4928.621 of the Revised Code. 148

(26) "Regulatory assets" means the unamortized net 149  
regulatory assets that are capitalized or deferred on the 150  
regulatory books of the electric utility, pursuant to an order 151  
or practice of the public utilities commission or pursuant to 152  
generally accepted accounting principles as a result of a prior 153  
commission rate-making decision, and that would otherwise have 154  
been charged to expense as incurred or would not have been 155  
capitalized or otherwise deferred for future regulatory 156  
consideration absent commission action. "Regulatory assets" 157  
includes, but is not limited to, all deferred demand-side 158  
management costs; all deferred percentage of income payment plan 159  
arrears; post-in-service capitalized charges and assets 160  
recognized in connection with statement of financial accounting 161  
standards no. 109 (receivables from customers for income taxes); 162  
future nuclear decommissioning costs and fuel disposal costs as 163  
those costs have been determined by the commission in the 164  
electric utility's most recent rate or accounting application 165  
proceeding addressing such costs; the undepreciated costs of 166  
safety and radiation control equipment on nuclear generating 167

plants owned or leased by an electric utility; and fuel costs 168  
currently deferred pursuant to the terms of one or more 169  
settlement agreements approved by the commission. 170

(27) "Retail electric service" means any service involved 171  
in supplying or arranging for the supply of electricity to 172  
ultimate consumers in this state, from the point of generation 173  
to the point of consumption. For the purposes of this chapter, 174  
retail electric service includes one or more of the following 175  
"service components": generation service, aggregation service, 176  
power marketing service, power brokerage service, transmission 177  
service, distribution service, ancillary service, metering 178  
service, and billing and collection service. 179

(28) "Starting date of competitive retail electric 180  
service" means January 1, 2001. 181

(29) "Customer-generator" means a user of a net metering 182  
system. 183

(30) "Net metering" means measuring the difference in an 184  
applicable billing period between the electricity supplied by an 185  
electric service provider and the electricity generated by a 186  
customer-generator that is fed back to the electric service 187  
provider. 188

(31) "Net metering system" means a facility for the 189  
production of electrical energy that does all of the following: 190

(a) Uses as its fuel either solar, wind, biomass, landfill 191  
gas, or hydropower, or uses a microturbine or a fuel cell; 192

(b) Is located on a customer-generator's premises; 193

(c) Operates in parallel with the electric utility's 194  
transmission and distribution facilities; 195

(d) Is intended primarily to offset part or all of the 196  
customer-generator's requirements for electricity. For an 197  
industrial customer-generator with a net metering system that 198  
has a capacity of less than twenty megawatts and uses wind as 199  
energy, this means the net metering system was sized so as to 200  
not exceed one hundred per cent of the customer-generator's 201  
annual requirements for electric energy at the time of 202  
interconnection. 203

(32) "Self-generator" means an entity in this state that 204  
owns or hosts on its premises an electric generation facility 205  
that produces electricity primarily for the owner's consumption 206  
and that may provide any such excess electricity to another 207  
entity, whether the facility is installed or operated by the 208  
owner or by an agent under a contract. 209

(33) "Rate plan" means the standard service offer in 210  
effect on the effective date of the amendment of this section by 211  
S.B. 221 of the 127th general assembly, July 31, 2008. 212

(34) "Advanced energy resource" means any of the 213  
following: 214

(a) Any method or any modification or replacement of any 215  
property, process, device, structure, or equipment that 216  
increases the generation output of an electric generating 217  
facility to the extent such efficiency is achieved without 218  
additional carbon dioxide emissions by that facility; 219

(b) Any distributed generation system consisting of 220  
customer cogeneration technology; 221

(c) Clean coal technology that includes a carbon-based 222  
product that is chemically altered before combustion to 223  
demonstrate a reduction, as expressed as ash, in emissions of 224



nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 225  
sulfur trioxide in accordance with the American society of 226  
testing and materials standard D1757A or a reduction of metal 227  
oxide emissions in accordance with standard D5142 of that 228  
society, or clean coal technology that includes the design 229  
capability to control or prevent the emission of carbon dioxide, 230  
which design capability the commission shall adopt by rule and 231  
shall be based on economically feasible best available 232  
technology or, in the absence of a determined best available 233  
technology, shall be of the highest level of economically 234  
feasible design capability for which there exists generally 235  
accepted scientific opinion; 236

(d) Advanced nuclear energy technology consisting of 237  
generation III technology as defined by the nuclear regulatory 238  
commission; other, later technology; or significant improvements 239  
to existing facilities; 240

(e) Any fuel cell used in the generation of electricity, 241  
including, but not limited to, a proton exchange membrane fuel 242  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 243  
solid oxide fuel cell; 244

(f) Advanced solid waste or construction and demolition 245  
debris conversion technology, including, but not limited to, 246  
advanced stoker technology, and advanced fluidized bed 247  
gasification technology, that results in measurable greenhouse 248  
gas emissions reductions as calculated pursuant to the United 249  
States environmental protection agency's waste reduction model 250  
(WARM); 251

(g) Demand-side management and any energy efficiency 252  
improvement; 253

(h) Any new, retrofitted, refueled, or repowered generating facility located in Ohio, including a simple or combined-cycle natural gas generating facility or a generating facility that uses biomass, coal, modular nuclear, or any other fuel as its input;	254 255 256 257 258
(i) Any uprated capacity of an existing electric generating facility if the uprated capacity results from the deployment of advanced technology.	259 260 261
"Advanced energy resource" does not include a waste energy recovery system that is, or has been, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.	262 263 264 265
(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.	266 267
(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	268 269
(37) (a) "Renewable energy resource" means any of the following:	270 271
(i) Solar photovoltaic or solar thermal energy;	272
(ii) Wind energy;	273
(iii) Power produced by a hydroelectric facility;	274
(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;	275 276 277
(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	278 279 280

operates, or is rated to operate, at an aggregate capacity of	281
forty or more megawatts;	282
(vi) Geothermal energy;	283
(vii) Fuel derived from solid wastes, as defined in	284
section 3734.01 of the Revised Code, through fractionation,	285
biological decomposition, or other process that does not	286
principally involve combustion;	287
(viii) Biomass energy;	288
(ix) Energy produced by cogeneration technology that is	289
placed into service on or before December 31, 2015, and for	290
which more than ninety per cent of the total annual energy input	291
is from combustion of a waste or byproduct gas from an air	292
contaminant source in this state, which source has been in	293
operation since on or before January 1, 1985, provided that the	294
cogeneration technology is a part of a facility located in a	295
county having a population of more than three hundred sixty-five	296
thousand but less than three hundred seventy thousand according	297
to the most recent federal decennial census;	298
(x) Biologically derived methane gas;	299
(xi) Heat captured from a generator of electricity,	300
boiler, or heat exchanger fueled by biologically derived methane	301
gas;	302
(xii) Energy derived from nontreated by-products of the	303
pulping process or wood manufacturing process, including bark,	304
wood chips, sawdust, and lignin in spent pulping liquors.	305
"Renewable energy resource" includes, but is not limited	306
to, any fuel cell used in the generation of electricity,	307
including, but not limited to, a proton exchange membrane fuel	308

cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 309  
solid oxide fuel cell; wind turbine located in the state's 310  
territorial waters of Lake Erie; methane gas emitted from an 311  
abandoned coal mine; waste energy recovery system placed into 312  
service or retrofitted on or after the effective date of the 313  
amendment of this section by S.B. 315 of the 129th general 314  
assembly, September 10, 2012, except that a waste energy 315  
recovery system described in division (A) (38) (b) of this section 316  
may be included only if it was placed into service between 317  
January 1, 2002, and December 31, 2004; storage facility that 318  
will promote the better utilization of a renewable energy 319  
resource; or distributed generation system used by a customer to 320  
generate electricity from any such energy. 321

"Renewable energy resource" does not include a waste 322  
energy recovery system that is, or was, on or after January 1, 323  
2012, included in an energy efficiency program of an electric 324  
distribution utility pursuant to requirements under section 325  
4928.66 of the Revised Code. 326

(b) As used in division (A) (37) of this section, 327  
"hydroelectric facility" means a hydroelectric generating 328  
facility that is located at a dam on a river, or on any water 329  
discharged to a river, that is within or bordering this state or 330  
within or bordering an adjoining state and meets all of the 331  
following standards: 332

(i) The facility provides for river flows that are not 333  
detrimental for fish, wildlife, and water quality, including 334  
seasonal flow fluctuations as defined by the applicable 335  
licensing agency for the facility. 336

(ii) The facility demonstrates that it complies with the 337  
water quality standards of this state, which compliance may 338

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

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

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

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

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

(vii) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended

by resource agencies, to the extent they have jurisdiction over 368  
the facility; and the facility provides access to water to the 369  
public without fee or charge. 370

(viii) The facility is not recommended for removal by any 371  
federal agency or agency of any state, to the extent the 372  
particular agency has jurisdiction over the facility. 373

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 374  
this section do not apply to a small hydroelectric facility 375  
under division (A) (37) (a) (iv) of this section. 376

(38) "Waste energy recovery system" means either of the 377  
following: 378

(a) A facility that generates electricity through the 379  
conversion of energy from either of the following: 380

(i) Exhaust heat from engines or manufacturing, 381  
industrial, commercial, or institutional sites, except for 382  
exhaust heat from a facility whose primary purpose is the 383  
generation of electricity; 384

(ii) Reduction of pressure in gas pipelines before gas is 385  
distributed through the pipeline, provided that the conversion 386  
of energy to electricity is achieved without using additional 387  
fossil fuels. 388

(b) A facility at a state institution of higher education 389  
as defined in section 3345.011 of the Revised Code that recovers 390  
waste heat from electricity-producing engines or combustion 391  
turbines and that simultaneously uses the recovered heat to 392  
produce steam, provided that the facility was placed into 393  
service between January 1, 2002, and December 31, 2004. 394

(39) "Smart grid" means capital improvements to an 395

electric distribution utility's distribution infrastructure that 396  
improve reliability, efficiency, resiliency, or reduce energy 397  
demand or use, including, but not limited to, advanced metering 398  
and automation of system functions. 399

(40) "Combined heat and power system" means the 400  
coproduction of electricity and useful thermal energy from the 401  
same fuel source designed to achieve thermal-efficiency levels 402  
of at least sixty per cent, with at least twenty per cent of the 403  
system's total useful energy in the form of thermal energy. 404

~~(41) "Legacy generation resource" means all generating 405  
facilities owned directly or indirectly by a corporation that 406  
was formed prior to 1960 by investor-owned utilities for the 407  
original purpose of providing power to the federal government 408  
for use in the nation's defense or in furtherance of national 409  
interests, including the Ohio valley electric corporation. 410~~

~~(42) "Prudently incurred costs related to a legacy 411  
generation resource" means costs, including deferred costs, 412  
allocated pursuant to a power agreement approved by the federal 413  
energy regulatory commission that relates to a legacy generation 414  
resource, less any revenues realized from offering the 415  
contractual commitment for the power agreement into the 416  
wholesale markets, provided that where the net revenues exceed 417  
net costs, those excess revenues shall be credited to customers. 418  
Such costs shall exclude any return on investment in common 419  
equity and, in the event of a premature retirement of a legacy 420  
generation resource, shall exclude any recovery of remaining 421  
debt. Such costs shall include any incremental costs resulting 422  
from the bankruptcy of a current or former sponsor under such 423  
power agreement or co-owner of the legacy generation resource if 424  
not otherwise recovered through a utility rate cost recovery 425~~

~~mechanism.~~ 426

(B) For the purposes of this chapter, a retail electric 427  
service component shall be deemed a competitive retail electric 428  
service if the service component is competitive pursuant to a 429  
declaration by a provision of the Revised Code or pursuant to an 430  
order of the public utilities commission authorized under 431  
division (A) of section 4928.04 of the Revised Code. Otherwise, 432  
the service component shall be deemed a noncompetitive retail 433  
electric service. 434

**Sec. 4928.143.** (A) For the purpose of complying with 435  
section 4928.141 of the Revised Code, an electric distribution 436  
utility may file an application for public utilities commission 437  
approval of an electric security plan as prescribed under 438  
division (B) of this section. The utility may file that 439  
application prior to the effective date of any rules the 440  
commission may adopt for the purpose of this section, and, as 441  
the commission determines necessary, the utility immediately 442  
shall conform its filing to those rules upon their taking 443  
effect. 444

(B) Notwithstanding any other provision of Title XLIX of 445  
the Revised Code to the contrary except division (D) of this 446  
section, divisions (I), (J), and (K) of section 4928.20, 447  
division (E) of section 4928.64, and section 4928.69 of the 448  
Revised Code: 449

(1) An electric security plan shall include provisions 450  
relating to the supply and pricing of electric generation 451  
service. In addition, if the proposed electric security plan has 452  
a term longer than three years, it may include provisions in the 453  
plan to permit the commission to test the plan pursuant to 454  
division (E) of this section and any transitional conditions 455



that should be adopted by the commission if the commission 456  
terminates the plan as authorized under that division. 457

(2) The plan may provide for or include, without 458  
limitation, any of the following: 459

(a) Automatic recovery of any of the following costs of 460  
the electric distribution utility, provided the cost is 461  
prudently incurred: the cost of fuel used to generate the 462  
electricity supplied under the offer; the cost of purchased 463  
power supplied under the offer, including the cost of energy and 464  
capacity, and including purchased power acquired from an 465  
affiliate; the cost of emission allowances; and the cost of 466  
federally mandated carbon or energy taxes; 467

(b) A reasonable allowance for construction work in 468  
progress for any of the electric distribution utility's cost of 469  
constructing an electric generating facility or for an 470  
environmental expenditure for any electric generating facility 471  
of the electric distribution utility, provided the cost is 472  
incurred or the expenditure occurs on or after January 1, 2009. 473  
Any such allowance shall be subject to the construction work in 474  
progress allowance limitations of division (A) of section 475  
4909.15 of the Revised Code, except that the commission may 476  
authorize such an allowance upon the incurrence of the cost or 477  
occurrence of the expenditure. No such allowance for generating 478  
facility construction shall be authorized, however, unless the 479  
commission first determines in the proceeding that there is need 480  
for the facility based on resource planning projections 481  
submitted by the electric distribution utility. Further, no such 482  
allowance shall be authorized unless the facility's construction 483  
was sourced through a competitive bid process, regarding which 484  
process the commission may adopt rules. An allowance approved 485

under division (B) (2) (b) of this section shall be established as 486  
a nonbypassable surcharge for the life of the facility. 487

(c) The establishment of a nonbypassable surcharge for the 488  
life of an electric generating facility that is owned or 489  
operated by the electric distribution utility, was sourced 490  
through a competitive bid process subject to any such rules as 491  
the commission adopts under division (B) (2) (b) of this section, 492  
and is newly used and useful on or after January 1, 2009, which 493  
surcharge shall cover all costs of the utility specified in the 494  
application, excluding costs recovered through a surcharge under 495  
division (B) (2) (b) of this section. However, no surcharge shall 496  
be authorized unless the commission first determines in the 497  
proceeding that there is need for the facility based on resource 498  
planning projections submitted by the electric distribution 499  
utility. Additionally, if a surcharge is authorized for a 500  
facility pursuant to plan approval under division (C) of this 501  
section and as a condition of the continuation of the surcharge, 502  
the electric distribution utility shall dedicate to Ohio 503  
consumers the capacity and energy and the rate associated with 504  
the cost of that facility. Before the commission authorizes any 505  
surcharge pursuant to this division, it may consider, as 506  
applicable, the effects of any decommissioning, deratings, and 507  
retirements. 508

(d) Terms, conditions, or charges relating to limitations 509  
on customer shopping for retail electric generation service, 510  
bypassability, standby, back-up, or supplemental power service, 511  
default service, carrying costs, amortization periods, and 512  
accounting or deferrals, including future recovery of such 513  
deferrals, as would have the effect of stabilizing or providing 514  
certainty regarding retail electric service; 515

(e) Automatic increases or decreases in any component of the standard service offer price;	516 517
(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:	518 519
(i) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code;	520 521 522 523 524
(ii) Provisions for the recovery of the utility's cost of securitization.	525 526
(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;	527 528 529 530 531
(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, <del>a revenue decoupling mechanism or any other incentive ratemaking,</del> and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an	532 533 534 535 536 537 538 539 540 541 542 543 544

electric distribution utility's electric security plan inclusion 545  
of any provision described in division (B) (2) (h) of this 546  
section, the commission shall examine the reliability of the 547  
electric distribution utility's distribution system and ensure 548  
that customers' and the electric distribution utility's 549  
expectations are aligned and that the electric distribution 550  
utility is placing sufficient emphasis on and dedicating 551  
sufficient resources to the reliability of its distribution 552  
system. 553

(i) Provisions under which the electric distribution 554  
utility may implement economic development, and job retention, 555  
~~and energy efficiency programs, which provisions may allocate~~ 556  
~~program costs across all classes of customers of the utility and~~ 557  
~~those of electric distribution utilities in the same holding~~ 558  
~~company system.~~ 559

(C) (1) The burden of proof in the proceeding shall be on 560  
the electric distribution utility. The commission shall issue an 561  
order under this division for an initial application under this 562  
section not later than one hundred fifty days after the 563  
application's filing date and, for any subsequent application by 564  
the utility under this section, not later than two hundred 565  
seventy-five days after the application's filing date. Subject 566  
to division (D) of this section, the commission by order shall 567  
approve or modify and approve an application filed under 568  
division (A) of this section if it finds that the electric 569  
security plan so approved, including its pricing and all other 570  
terms and conditions, including any deferrals and any future 571  
recovery of deferrals, is more favorable in the aggregate as 572  
compared to the expected results that would otherwise apply 573  
under section 4928.142 of the Revised Code. Additionally, if the 574  
commission so approves an application that contains a surcharge 575

under division (B) (2) (b) or (c) of this section, the commission 576  
shall ensure that the benefits derived for any purpose for which 577  
the surcharge is established are reserved and made available to 578  
those that bear the surcharge. Otherwise, the commission by 579  
order shall disapprove the application. 580

(2) (a) If the commission modifies and approves an 581  
application under division (C) (1) of this section, the electric 582  
distribution utility may withdraw the application, thereby 583  
terminating it, and may file a new standard service offer under 584  
this section or a standard service offer under section 4928.142 585  
of the Revised Code. 586

(b) If the utility terminates an application pursuant to 587  
division (C) (2) (a) of this section or if the commission 588  
disapproves an application under division (C) (1) of this 589  
section, the commission shall issue such order as is necessary 590  
to continue the provisions, terms, and conditions of the 591  
utility's most recent standard service offer, along with any 592  
expected increases or decreases in fuel costs from those 593  
contained in that offer, until a subsequent offer is authorized 594  
pursuant to this section or section 4928.142 of the Revised 595  
Code, respectively. 596

(D) Regarding the rate plan requirement of division (A) of 597  
section 4928.141 of the Revised Code, if an electric 598  
distribution utility that has a rate plan that extends beyond 599  
December 31, 2008, files an application under this section for 600  
the purpose of its compliance with division (A) of section 601  
4928.141 of the Revised Code, that rate plan and its terms and 602  
conditions are hereby incorporated into its proposed electric 603  
security plan and shall continue in effect until the date 604  
scheduled under the rate plan for its expiration, and that 605

portion of the electric security plan shall not be subject to 606  
commission approval or disapproval under division (C) of this 607  
section, and the earnings test provided for in division (F) of 608  
this section shall not apply until after the expiration of the 609  
rate plan. However, that utility may include in its electric 610  
security plan under this section, and the commission may 611  
approve, modify and approve, or disapprove subject to division 612  
(C) of this section, provisions for the incremental recovery or 613  
the deferral of any costs that are not being recovered under the 614  
rate plan and that the utility incurs during that continuation 615  
period to comply with section 4928.141, division (B) of section 616  
4928.64, or division (A) of section 4928.66 of the Revised Code. 617

(E) If an electric security plan approved under division 618  
(C) of this section, except one withdrawn by the utility as 619  
authorized under that division, has a term, exclusive of phase- 620  
ins or deferrals, that exceeds three years from the effective 621  
date of the plan, the commission shall test the plan in the 622  
fourth year, and if applicable, every fourth year thereafter, to 623  
determine whether the plan, including its then-existing pricing 624  
and all other terms and conditions, including any deferrals and 625  
any future recovery of deferrals, continues to be more favorable 626  
in the aggregate and during the remaining term of the plan as 627  
compared to the expected results that would otherwise apply 628  
under section 4928.142 of the Revised Code. The commission shall 629  
also determine the prospective effect of the electric security 630  
plan to determine if that effect is substantially likely to 631  
provide the electric distribution utility with a return on 632  
common equity that is significantly in excess of the return on 633  
common equity that is likely to be earned by publicly traded 634  
companies, including utilities, that face comparable business 635  
and financial risk, with such adjustments for capital structure 636

as may be appropriate. The burden of proof for demonstrating 637  
that significantly excessive earnings will not occur shall be on 638  
the electric distribution utility. For affiliated Ohio electric 639  
distribution utilities that operate under a joint electric 640  
security plan, their total earned return on common equity shall 641  
be used for purposes of assessing significantly excessive 642  
earnings. If the test results are in the negative or the 643  
commission finds that continuation of the electric security plan 644  
will result in a return on equity that is significantly in 645  
excess of the return on common equity that is likely to be 646  
earned by publicly traded companies, including utilities, that 647  
will face comparable business and financial risk, with such 648  
adjustments for capital structure as may be appropriate, during 649  
the balance of the plan, the commission may terminate the 650  
electric security plan, but not until it shall have provided 651  
interested parties with notice and an opportunity to be heard. 652  
The commission may impose such conditions on the plan's 653  
termination as it considers reasonable and necessary to 654  
accommodate the transition from an approved plan to the more 655  
advantageous alternative. In the event of an electric security 656  
plan's termination pursuant to this division, the commission 657  
shall permit the continued deferral and phase-in of any amounts 658  
that occurred prior to that termination and the recovery of 659  
those amounts as contemplated under that electric security plan. 660

(F) With regard to the provisions that are included in an 661  
electric security plan under this section, the commission shall 662  
consider, following the end of each annual period of the plan, 663  
if any such adjustments resulted in excessive earnings as 664  
measured by whether the earned return on common equity of the 665  
electric distribution utility is significantly in excess of the 666  
return on common equity that was earned during the same period 667

by publicly traded companies, including utilities, that face 668  
comparable business and financial risk, with such adjustments 669  
for capital structure as may be appropriate. In making its 670  
determination of significantly excessive earnings under this 671  
division, the commission shall, for affiliated Ohio electric 672  
distribution utilities that operate under a joint electric 673  
security plan, use the total of the utilities' earned return on 674  
common equity. Consideration also shall be given to the capital 675  
requirements of future committed investments in this state. The 676  
burden of proof for demonstrating that significantly excessive 677  
earnings did not occur shall be on the electric distribution 678  
utility. If the commission finds that such adjustments, in the 679  
aggregate, did result in significantly excessive earnings, it 680  
shall require the electric distribution utility to return to 681  
consumers the amount of the excess by prospective adjustments; 682  
provided that, upon making such prospective adjustments, the 683  
electric distribution utility shall have the right to terminate 684  
the plan and immediately file an application pursuant to section 685  
4928.142 of the Revised Code. Upon termination of a plan under 686  
this division, rates shall be set on the same basis as specified 687  
in division (C) (2) (b) of this section, and the commission shall 688  
permit the continued deferral and phase-in of any amounts that 689  
occurred prior to that termination and the recovery of those 690  
amounts as contemplated under that electric security plan. In 691  
making its determination of significantly excessive earnings 692  
under this division, the commission shall not consider, directly 693  
or indirectly, the revenue, expenses, or earnings of any 694  
affiliate that is not an Ohio electric distribution utility or 695  
parent company. 696

**Sec. 4928.64.** (A) (1) As used in this section, "qualifying 697  
renewable energy resource" means a renewable energy resource, as 698



defined in section 4928.01 of the Revised Code that:	699
(a) Has a placed-in-service date on or after January 1, 1998;	700 701
(b) Is any run-of-the-river hydroelectric facility that has an in-service date on or after January 1, 1980;	702 703
(c) Is a small hydroelectric facility;	704
(d) Is created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or	705 706 707
(e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the following:	708 709 710 711 712 713 714
(i) A resource that has the effect of improving the relationship between real and reactive power;	715 716
(ii) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;	717 718 719
(iii) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;	720 721 722
(iv) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.	723 724
(2) For the purpose of this section and as it considers	725

appropriate, the public utilities commission may classify any 726  
new technology as such a qualifying renewable energy resource. 727

(B) (1) By the end of 2026, an electric distribution 728  
utility shall have provided from qualifying renewable energy 729  
resources, including, at its discretion, qualifying renewable 730  
energy resources obtained pursuant to an electricity supply 731  
contract, a portion of the electricity supply required for its 732  
standard service offer under section 4928.141 of the Revised 733  
Code, and an electric services company shall have provided a 734  
portion of its electricity supply for retail consumers in this 735  
state from qualifying renewable energy resources, including, at 736  
its discretion, qualifying renewable energy resources obtained 737  
pursuant to an electricity supply contract. That portion shall 738  
equal eight and one-half per cent of the total number of 739  
kilowatt hours of electricity sold by the subject utility or 740  
company to any and all retail electric consumers whose electric 741  
load centers are served by that utility and are located within 742  
the utility's certified territory or, in the case of an electric 743  
services company, are served by the company and are located 744  
within this state. However, nothing in this section precludes a 745  
utility or company from providing a greater percentage. 746

(2) ~~Subject to section 4928.642 of the Revised Code, the~~ 747  
The portion required under division (B) (1) of this section shall 748  
be generated from renewable energy resources in accordance with 749  
the following benchmarks: 750

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A By end of year Renewable energy resources Solar energy resources

B	2009	0.25%	0.004%
C	2010	0.50%	0.010%
D	2011	1%	0.030%
E	2012	1.5%	0.060%
F	2013	2%	0.090%
G	2014	2.5%	0.12%
H	2015	2.5%	0.12%
I	2016	2.5%	0.12%
J	2017	3.5%	0.15%
K	2018	4.5%	0.18%
L	2019	5.5%	0.22%
M	2020	5.5%	0%
N	2021	6%	0%
O	2022	6.5%	0%
P	2023	7%	0%
Q	2024	7.5%	0%
R	2025	8%	0%
S	2026	8.5%	0%

(3) The qualifying renewable energy resources implemented 752  
by the utility or company shall be met either: 753

(a) Through facilities located in this state; or 754

(b) With resources that can be shown to be deliverable 755  
into this state. 756

(C) (1) The commission annually shall review an electric 757  
distribution utility's or electric services company's compliance 758  
with the most recent applicable benchmark under division (B) (2) 759  
of this section and, in the course of that review, shall 760  
identify any undercompliance or noncompliance of the utility or 761  
company that it determines is weather-related, related to 762  
equipment or resource shortages for qualifying renewable energy 763  
resources as applicable, or is otherwise outside the utility's 764  
or company's control. 765

(2) Subject to the cost cap provisions of division (C) (3) 766  
of this section, if the commission determines, after notice and 767  
opportunity for hearing, and based upon its findings in that 768  
review regarding avoidable undercompliance or noncompliance, but 769  
subject to division (C) (4) of this section, that the utility or 770  
company has failed to comply with any such benchmark, the 771  
commission shall impose a renewable energy compliance payment on 772  
the utility or company. 773

(a) The compliance payment pertaining to the solar energy 774  
resource benchmarks under division (B) (2) of this section shall 775  
be an amount per megawatt hour of undercompliance or 776  
noncompliance in the period under review, as follows: 777

(i) Three hundred dollars for 2014, 2015, and 2016; 778

(ii) Two hundred fifty dollars for 2017 and 2018; 779

(iii) Two hundred dollars for 2019. 780

(b) The compliance payment pertaining to the renewable 781  
energy resource benchmarks under division (B) (2) of this section 782  
shall equal the number of additional renewable energy credits 783  
that the electric distribution utility or electric services 784  
company would have needed to comply with the applicable 785  
benchmark in the period under review times an amount that shall 786  
begin at forty-five dollars and shall be adjusted annually by 787  
the commission to reflect any change in the consumer price index 788  
as defined in section 101.27 of the Revised Code, but shall not 789  
be less than forty-five dollars. 790

(c) The compliance payment shall not be passed through by 791  
the electric distribution utility or electric services company 792  
to consumers. The compliance payment shall be remitted to the 793  
commission, for deposit to the credit of the advanced energy 794  
fund created under section 4928.61 of the Revised Code. Payment 795  
of the compliance payment shall be subject to such collection 796  
and enforcement procedures as apply to the collection of a 797  
forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the 798  
Revised Code. 799

(3) An electric distribution utility or an electric 800  
services company need not comply with a benchmark under division 801  
(B) (2) of this section to the extent that its reasonably 802  
expected cost of that compliance exceeds its reasonably expected 803  
cost of otherwise producing or acquiring the requisite 804  
electricity by three per cent or more. The cost of compliance 805  
shall be calculated as though any exemption from taxes and 806  
assessments had not been granted under section 5727.75 of the 807  
Revised Code. 808

(4) (a) An electric distribution utility or electric 809

services company may request the commission to make a force 810  
majeure determination pursuant to this division regarding all or 811  
part of the utility's or company's compliance with any minimum 812  
benchmark under division (B) (2) of this section during the 813  
period of review occurring pursuant to division (C) (2) of this 814  
section. The commission may require the electric distribution 815  
utility or electric services company to make solicitations for 816  
renewable energy resource credits as part of its default service 817  
before the utility's or company's request of force majeure under 818  
this division can be made. 819

(b) Within ninety days after the filing of a request by an 820  
electric distribution utility or electric services company under 821  
division (C) (4) (a) of this section, the commission shall 822  
determine if qualifying renewable energy resources are 823  
reasonably available in the marketplace in sufficient quantities 824  
for the utility or company to comply with the subject minimum 825  
benchmark during the review period. In making this 826  
determination, the commission shall consider whether the 827  
electric distribution utility or electric services company has 828  
made a good faith effort to acquire sufficient qualifying 829  
renewable energy or, as applicable, solar energy resources to so 830  
comply, including, but not limited to, by banking or seeking 831  
renewable energy resource credits or by seeking the resources 832  
through long-term contracts. Additionally, the commission shall 833  
consider the availability of qualifying renewable energy or 834  
solar energy resources in this state and other jurisdictions in 835  
the PJM interconnection regional transmission organization, 836  
L.L.C., or its successor and the midcontinent independent system 837  
operator or its successor. 838

(c) If, pursuant to division (C) (4) (b) of this section, 839  
the commission determines that qualifying renewable energy or 840

solar energy resources are not reasonably available to permit 841  
the electric distribution utility or electric services company 842  
to comply, during the period of review, with the subject minimum 843  
benchmark prescribed under division (B) (2) of this section, the 844  
commission shall modify that compliance obligation of the 845  
utility or company as it determines appropriate to accommodate 846  
the finding. Commission modification shall not automatically 847  
reduce the obligation for the electric distribution utility's or 848  
electric services company's compliance in subsequent years. If 849  
it modifies the electric distribution utility or electric 850  
services company obligation under division (C) (4) (c) of this 851  
section, the commission may require the utility or company, if 852  
sufficient renewable energy resource credits exist in the 853  
marketplace, to acquire additional renewable energy resource 854  
credits in subsequent years equivalent to the utility's or 855  
company's modified obligation under division (C) (4) (c) of this 856  
section. 857

(5) The commission shall establish a process to provide 858  
for at least an annual review of the renewable energy resource 859  
market in this state and in the service territories of the 860  
regional transmission organizations that manage transmission 861  
systems located in this state. The commission shall use the 862  
results of this study to identify any needed changes to the 863  
amount of the renewable energy compliance payment specified 864  
under divisions (C) (2) (a) and (b) of this section. Specifically, 865  
the commission may increase the amount to ensure that payment of 866  
compliance payments is not used to achieve compliance with this 867  
section in lieu of actually acquiring or realizing energy 868  
derived from qualifying renewable energy resources. However, if 869  
the commission finds that the amount of the compliance payment 870  
should be otherwise changed, the commission shall present this 871

finding to the general assembly for legislative enactment. 872

(D) The commission annually shall submit to the general 873  
assembly in accordance with section 101.68 of the Revised Code a 874  
report describing all of the following: 875

(1) The compliance of electric distribution utilities and 876  
electric services companies with division (B) of this section; 877

(2) The average annual cost of renewable energy credits 878  
purchased by utilities and companies for the year covered in the 879  
report; 880

(3) Any strategy for utility and company compliance or for 881  
encouraging the use of qualifying renewable energy resources in 882  
supplying this state's electricity needs in a manner that 883  
considers available technology, costs, job creation, and 884  
economic impacts. 885

The commission shall begin providing the information 886  
described in division (D) (2) of this section in each report 887  
submitted after September 10, 2012. The commission shall allow 888  
and consider public comments on the report prior to its 889  
submission to the general assembly. Nothing in the report shall 890  
be binding on any person, including any utility or company for 891  
the purpose of its compliance with any benchmark under division 892  
(B) of this section, or the enforcement of that provision under 893  
division (C) of this section. 894

(E) All costs incurred by an electric distribution utility 895  
in complying with the requirements of this section shall be 896  
bypassable by any consumer that has exercised choice of supplier 897  
under section 4928.03 of the Revised Code. 898

**Sec. 4928.641.** (A) If an electric distribution utility has 899  
executed a contract before April 1, 2014, to procure renewable 900



energy resources and there are ongoing costs associated with 901  
that contract that are being recovered from customers through a 902  
bypassable charge as of September 12, 2014, that cost recovery 903  
shall, ~~regardless of the amendments to section 4928.64 of the~~ 904  
~~Revised Code by H.B. 6 of the 133rd general assembly,~~ continue 905  
on a bypassable basis ~~through December 31, 2032~~until the 906  
prudently incurred costs associated with that contract are fully 907  
recovered. 908

(B) Division (A) of this section applies only to costs 909  
associated with the original term of a contract described in 910  
that division and entered into before April 1, 2014. This 911  
section does not permit recovery of costs associated with an 912  
extension of such a contract. This section does not permit 913  
recovery of costs associated with an amendment of such a 914  
contract if that amendment was made on or after April 1, 2014. 915

**Sec. 4928.645.** (A) An electric distribution utility or 916  
electric services company may use, for the purpose of complying 917  
with the requirements under divisions (B)(1) and (2) of section 918  
4928.64 of the Revised Code, renewable energy credits any time 919  
in the five calendar years following the date of their purchase 920  
or acquisition from any entity, including, but not limited to, 921  
the following: 922

(1) A mercantile customer; 923

(2) An owner or operator of a hydroelectric generating 924  
facility that is located at a dam on a river, or on any water 925  
discharged to a river, that is within or bordering this state or 926  
within or bordering an adjoining state, or that produces power 927  
that can be shown to be deliverable into this state; 928

(3) A seller of compressed natural gas that has been 929

produced from biologically derived methane gas, provided that 930  
the seller may only provide renewable energy credits for metered 931  
amounts of gas. 932

(B) (1) The public utilities commission shall adopt rules 933  
specifying that one unit of credit shall equal one megawatt hour 934  
of electricity derived from renewable energy resources, except 935  
that, for a generating facility of seventy-five megawatts or 936  
greater that is situated within this state and has committed by 937  
December 31, 2009, to modify or retrofit its generating unit or 938  
units to enable the facility to generate principally from 939  
biomass energy by June 30, 2013, each megawatt hour of 940  
electricity generated principally from that biomass energy shall 941  
equal, in units of credit, the product obtained by multiplying 942  
the actual percentage of biomass feedstock heat input used to 943  
generate such megawatt hour by the quotient obtained by dividing 944  
the then existing unit dollar amount used to determine a 945  
renewable energy compliance payment as provided under division 946  
(C) (2) (b) of section 4928.64 of the Revised Code by the then 947  
existing market value of one renewable energy credit, but such 948  
megawatt hour shall not equal less than one unit of credit. 949  
Renewable energy resources do not have to be converted to 950  
electricity in order to be eligible to receive renewable energy 951  
credits. The rules shall specify that, for purposes of 952  
converting the quantity of energy derived from biologically 953  
derived methane gas to an electricity equivalent, one megawatt 954  
hour equals 3,412,142 British thermal units. 955

(2) The rules also shall provide for this state a system 956  
of registering renewable energy credits by specifying which of 957  
any generally available registries shall be used for that 958  
purpose and not by creating a registry. That selected system of 959  
registering renewable energy credits shall allow a hydroelectric 960

generating facility to be eligible for obtaining renewable 961  
energy credits and shall allow customer-sited projects or 962  
actions the broadest opportunities to be eligible for obtaining 963  
renewable energy credits. 964

~~(C) Beginning January 1, 2020, a qualifying renewable 965  
resource as defined in section 3706.40 of the Revised Code is 966  
not eligible to obtain a renewable energy credit under this 967  
section for any megawatt hour for which the resource has been 968  
issued a renewable energy credit under section 3706.45 of the 969  
Revised Code. 970~~

**Sec. 4928.66.** (A) (1) (a) Beginning in 2009, an electric 971  
distribution utility shall implement energy efficiency programs 972  
that achieve energy savings equivalent to at least three-tenths 973  
of one per cent of the total, annual average, and normalized 974  
kilowatt-hour sales of the electric distribution utility during 975  
the preceding three calendar years to customers in this state. 976  
An energy efficiency program may include a combined heat and 977  
power system placed into service or retrofitted on or after the 978  
effective date of the amendment of this section by S.B. 315 of 979  
the 129th general assembly, September 10, 2012, or a waste 980  
energy recovery system placed into service or retrofitted on or 981  
after September 10, 2012, except that a waste energy recovery 982  
system described in division (A) (38) (b) of section 4928.01 of 983  
the Revised Code may be included only if it was placed into 984  
service between January 1, 2002, and December 31, 2004. For a 985  
waste energy recovery or combined heat and power system, the 986  
savings shall be as estimated by the public utilities 987  
commission. The savings requirement, using such a three-year 988  
average, shall increase to an additional five-tenths of one per 989  
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 990  
of one per cent in 2012, nine-tenths of one per cent in 2013, 991

and one per cent in 2014. In 2015 and 2016, an electric 992  
distribution utility shall achieve energy savings equal to the 993  
result of subtracting the cumulative energy savings achieved 994  
since 2009 from the product of multiplying the baseline for 995  
energy savings, described in division (A)(2)(a) of this section, 996  
by four and two-tenths of one per cent. If the result is zero or 997  
less for the year for which the calculation is being made, the 998  
utility shall not be required to achieve additional energy 999  
savings for that year, but may achieve additional energy savings 1000  
for that year. The annual savings requirements shall be, for 1001  
years 2017, 2018, 2019, and 2020, an additional one per cent of 1002  
the baseline. For purposes of a waste energy recovery or 1003  
combined heat and power system, an electric distribution utility 1004  
shall not apply more than the total annual percentage of the 1005  
electric distribution utility's industrial-customer load, 1006  
relative to the electric distribution utility's total load, to 1007  
the annual energy savings requirement. 1008

(b) Beginning in 2009, an electric distribution utility 1009  
shall implement peak demand reduction programs designed to 1010  
achieve a one per cent reduction in peak demand in 2009 and an 1011  
additional seventy-five hundredths of one per cent reduction 1012  
each year through 2014. In 2015 and 2016, an electric 1013  
distribution utility shall achieve a reduction in peak demand 1014  
equal to the result of subtracting the cumulative peak demand 1015  
reductions achieved since 2009 from the product of multiplying 1016  
the baseline for peak demand reduction, described in division 1017  
(A)(2)(a) of this section, by four and seventy-five hundredths 1018  
of one per cent. If the result is zero or less for the year for 1019  
which the calculation is being made, the utility shall not be 1020  
required to achieve an additional reduction in peak demand for 1021  
that year, but may achieve an additional reduction in peak 1022

demand for that year. In 2017 and each year thereafter through 1023  
2020, the utility shall achieve an additional seventy-five 1024  
hundredths of one per cent reduction in peak demand. 1025

(2) For the purposes of divisions (A)(1)(a) and (b) of 1026  
this section: 1027

(a) The baseline for energy savings under division (A)(1) 1028  
(a) of this section shall be the average of the total kilowatt 1029  
hours the electric distribution utility sold in the preceding 1030  
three calendar years. The baseline for a peak demand reduction 1031  
under division (A)(1)(b) of this section shall be the average 1032  
peak demand on the utility in the preceding three calendar 1033  
years, except that the commission may reduce either baseline to 1034  
adjust for new economic growth in the utility's certified 1035  
territory. Neither baseline shall include the load and usage of 1036  
any of the following customers: 1037

(i) Beginning January 1, 2017, a customer for which a 1038  
reasonable arrangement has been approved under section 4905.31 1039  
of the Revised Code; 1040

(ii) A customer that has opted out of the utility's 1041  
portfolio plan under section 4928.6611 of the Revised Code; 1042

(iii) A customer that has opted out of the utility's 1043  
portfolio plan under Section 8 of S.B. 310 of the 130th general 1044  
assembly. 1045

(b) The commission may amend the benchmarks set forth in 1046  
division (A)(1)(a) or (b) of this section if, after application 1047  
by the electric distribution utility, the commission determines 1048  
that the amendment is necessary because the utility cannot 1049  
reasonably achieve the benchmarks due to regulatory, economic, 1050  
or technological reasons beyond its reasonable control. 1051

(c) Compliance with divisions (A) (1) (a) and (b) of this section shall be measured by including the effects of all demand-response programs for mercantile customers of the subject electric distribution utility, all waste energy recovery systems and all combined heat and power systems, and all such mercantile customer-sited energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs, adjusted upward by the appropriate loss factors. Any mechanism designed to recover the cost of energy efficiency, including waste energy recovery and combined heat and power, and peak demand reduction programs under divisions (A) (1) (a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customers to commit those capabilities to those programs. If a mercantile customer makes such existing or new demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction capability available to an electric distribution utility pursuant to division (A) (2) (c) of this section, the electric utility's baseline under division (A) (2) (a) of this section shall be adjusted to exclude the effects of all such demand-response, energy efficiency, including waste energy recovery and combined heat and power, or peak demand reduction programs that may have existed during the period used to establish the baseline. The baseline also shall be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the

control of the electric distribution utility. 1084

(d) (i) Programs implemented by a utility may include the 1085  
following: 1086

(I) Demand-response programs; 1087

(II) Smart grid investment programs, provided that such 1088  
programs are demonstrated to be cost-beneficial; 1089

(III) Customer-sited programs, including waste energy 1090  
recovery and combined heat and power systems; 1091

(IV) Transmission and distribution infrastructure 1092  
improvements that reduce line losses; 1093

(V) Energy efficiency savings and peak demand reduction 1094  
that are achieved, in whole or in part, as a result of funding 1095  
provided from the universal service fund established by section 1096  
4928.51 of the Revised Code to benefit low-income customers 1097  
through programs that include, but are not limited to, energy 1098  
audits, the installation of energy efficiency insulation, 1099  
appliances, and windows, and other weatherization measures. 1100

(ii) No energy efficiency or peak demand reduction 1101  
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this 1102  
section shall qualify for shared savings. 1103

(iii) Division (A) (2) (c) of this section shall be applied 1104  
to include facilitating efforts by a mercantile customer or 1105  
group of those customers to offer customer-sited demand- 1106  
response, energy efficiency, including waste energy recovery and 1107  
combined heat and power, or peak demand reduction capabilities 1108  
to the electric distribution utility as part of a reasonable 1109  
arrangement submitted to the commission pursuant to section 1110  
4905.31 of the Revised Code. 1111

(e) No programs or improvements described in division (A) 1112  
(2) (d) of this section shall conflict with any statewide 1113  
building code adopted by the board of building standards. 1114

(B) In accordance with rules it shall adopt, the public 1115  
utilities commission shall produce and docket at the commission 1116  
an annual report containing the results of its verification of 1117  
the annual levels of energy efficiency and of peak demand 1118  
reductions achieved by each electric distribution utility 1119  
pursuant to division (A) of this section. A copy of the report 1120  
shall be provided to the consumers' counsel. 1121

(C) If the commission determines, after notice and 1122  
opportunity for hearing and based upon its report under division 1123  
(B) of this section, that an electric distribution utility has 1124  
failed to comply with an energy efficiency or peak demand 1125  
reduction requirement of division (A) of this section, the 1126  
commission shall assess a forfeiture on the utility as provided 1127  
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 1128  
Code, either in the amount, per day per undercompliance or 1129  
noncompliance, relative to the period of the report, equal to 1130  
that prescribed for noncompliances under section 4905.54 of the 1131  
Revised Code, or in an amount equal to the then existing market 1132  
value of one renewable energy credit per megawatt hour of 1133  
undercompliance or noncompliance. Revenue from any forfeiture 1134  
assessed under this division shall be deposited to the credit of 1135  
the advanced energy fund created under section 4928.61 of the 1136  
Revised Code. 1137

~~(D) The commission may establish rules regarding the 1138  
content of an application by an electric distribution utility 1139  
for commission approval of a revenue decoupling mechanism under 1140  
this division. Such an application shall not be considered an 1141~~



~~application to increase rates and may be included as part of a~~ 1142  
~~proposal to establish, continue, or expand energy efficiency or~~ 1143  
~~conservation programs. The commission by order may approve an~~ 1144  
~~application under this division if it determines both that the~~ 1145  
~~revenue decoupling mechanism provides for the recovery of~~ 1146  
~~revenue that otherwise may be forgone by the utility as a result~~ 1147  
~~of or in connection with the implementation by the electric~~ 1148  
~~distribution utility of any energy efficiency or energy~~ 1149  
~~conservation programs and reasonably aligns the interests of the~~ 1150  
~~utility and of its customers in favor of those programs.~~ 1151

~~(E)~~The commission additionally shall adopt rules that 1152  
require an electric distribution utility to provide a customer 1153  
upon request with two years' consumption data in an accessible 1154  
form. 1155

~~(F)(1)~~(E)(1) As used in divisions ~~(F)(2)~~(E)(2), (3), and 1156  
(4) of this section, "portfolio plan" has the same meaning as in 1157  
division (C)(1) of section 4928.6610 of the Revised Code. 1158

(2) If an electric distribution utility has a portfolio 1159  
plan in effect as of October 22, 2019, the effective date of the 1160  
amendments to this section by H.B. 6 of the 133rd general 1161  
assembly and that plan expires before December 31, 2020, the 1162  
commission shall extend the plan through that date. All 1163  
portfolio plans shall terminate on that date. 1164

(3) If a portfolio plan is extended beyond its commission 1165  
approved term by division ~~(F)(2)~~(E)(2) of this section, the 1166  
existing plan's budget shall be increased for the extended term 1167  
to include an amount equal to the annual average of the approved 1168  
budget for all years of the portfolio plan in effect as of 1169  
October 22, 2019, the effective date of the amendments to this 1170  
section by H.B. 6 of the 133rd general assembly. 1171

(4) All other terms and conditions of a portfolio plan 1172  
extended beyond its commission-approved term by division ~~(F) (2)~~ 1173  
(E) (2) of this section shall remain the same unless changes are 1174  
authorized by the commission. 1175

~~(G) (1)~~ (F) (1) Not later than February 1, 2021, the 1176  
commission shall determine the cumulative energy savings 1177  
collectively achieved, since 2009, by all electric distribution 1178  
utilities in this state as of December 31, 2020. In determining 1179  
that cumulative total, the commission shall do both of the 1180  
following: 1181

(a) Include energy savings that were estimated by the 1182  
commission to be achieved as of December 31, 2020, and banked 1183  
under division (G) of section 4928.662 of the Revised Code; 1184

(b) Use an energy savings baseline that is the average of 1185  
the total kilowatt hours sold by all electric distribution 1186  
utilities in this state in the calendar years 2018, 2019, and 1187  
2020. The baseline shall exclude the load and usage described in 1188  
division (A) (2) (a) (i), (ii), and (iii) of this section. That 1189  
baseline may also be reduced for new economic growth in the 1190  
utility's certified territory as provided in division (A) (2) (a) 1191  
of this section and adjusted and normalized as provided in 1192  
division (A) (2) (c) of this section. 1193

(2) (a) If the cumulative energy savings collectively 1194  
achieved as determined by the commission under division ~~(G) (1)~~ 1195  
(F) (1) of this section is at least seventeen and one-half per 1196  
cent of the baseline described in division ~~(G) (1) (b)~~ (F) (1) (b) 1197  
of this section, then full compliance with division (A) (1) (a) of 1198  
this section shall be deemed to have been achieved 1199  
notwithstanding any provision of this section to the contrary. 1200

(b) If the cumulative energy savings collectively achieved 1201  
as determined by the commission under division ~~(G) (1)~~ (F) (1) of 1202  
this section is less than seventeen and one-half per cent of the 1203  
baseline described in division ~~(G) (1) (b)~~ (F) (1) (b) of this 1204  
section, then both of the following shall apply: 1205

(i) The commission shall determine the manner in which 1206  
further implementation of energy efficiency programs shall occur 1207  
as may be reasonably necessary for collective achievement of 1208  
cumulative energy savings equal to seventeen and one-half 1209  
~~percent~~ per cent, and not more, of the baseline described in 1210  
division ~~(G) (1) (b)~~ (F) (1) (b) of this section. 1211

(ii) Full compliance with division (A) (1) (a) of this 1212  
section shall be deemed to be achieved as of a date certain 1213  
established by the commission notwithstanding any provision of 1214  
this section to the contrary. 1215

(3) Upon the date that full compliance with division (A) 1216  
(1) (a) of this section is deemed achieved under division ~~(G) (2)~~ 1217  
~~(a)~~ (F) (2) (a) or (b) of this section, any electric distribution 1218  
utility cost recovery mechanisms authorized by the commission 1219  
for compliance with this section shall terminate except as may 1220  
be necessary to reconcile the difference between revenue 1221  
collected and the allowable cost of compliance associated with 1222  
compliance efforts occurring prior to the date upon which full 1223  
compliance with division (A) (1) (a) of this section is deemed 1224  
achieved. No such cost recovery mechanism shall be authorized by 1225  
the commission beyond the period of time required to complete 1226  
this final reconciliation. 1227

**Sec. 4928.6610.** As used in sections 4928.6611 to 4928.6615 1228  
of the Revised Code: 1229

(A) "Customer" means either of the following:	1230
(1) Effective January 1, 2020, a mercantile customer as defined in section 4928.01 of the Revised Code;	1231 1232
(2) Any customer of an electric distribution utility to which either of the following applies:	1233 1234
(a) The customer receives service above the primary voltage level as determined by the utility's tariff classification.	1235 1236 1237
(b) The customer is a commercial or industrial customer to which both of the following apply:	1238 1239
(i) The customer receives electricity through a meter of an end user or through more than one meter at a single location in a quantity that exceeds forty-five million kilowatt hours of electricity for the preceding calendar year.	1240 1241 1242 1243
(ii) The customer has made a written request for registration as a self-assessing purchaser pursuant to section 5727.81 of the Revised Code.	1244 1245 1246
(B) "Energy intensity" means the amount of energy, from electricity, used or consumed per unit of production.	1247 1248
(C) "Portfolio plan" means either of the following:	1249
(1) The comprehensive energy efficiency and peak-demand reduction program portfolio plan required under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code or hereafter recodified or amended;	1250 1251 1252 1253 1254
(2) Any plan implemented pursuant to division <del>(G)</del> <u>(F)</u> of section 4928.66 of the Revised Code.	1255 1256

**Section 2.** That existing sections 4928.01, 4928.143, 1257  
4928.64, 4928.641, 4928.645, 4928.66, and 4928.6610 of the 1258  
Revised Code are hereby repealed. 1259

**Section 3.** That sections 3706.40, 3706.41, 3706.43, 1260  
3706.431, 3706.45, 3706.46, 3706.49, 3706.53, 3706.55, 3706.59, 1261  
3706.61, 3706.63, 3706.65, 4928.148, 4928.47, 4928.471, 1262  
4928.642, 4928.75, and 5727.231 of the Revised Code are hereby 1263  
repealed. 1264

**Section 4.** That Section 5 of H.B. 6 of the 133rd General 1265  
Assembly is hereby repealed. 1266

**Section 5.** (A) (1) Any mechanism for retail recovery of 1267  
prudently incurred costs authorized and established pursuant to 1268  
division (A) of section 4928.148 of the Revised Code as that 1269  
section existed prior to the effective date of this act is 1270  
hereby terminated. 1271

(2) Any mechanism for retail recovery of costs for all 1272  
generating facilities owned directly or indirectly by a 1273  
corporation that was formed prior to 1960 by investor-owned 1274  
utilities for the original purpose of providing power to the 1275  
federal government for use in the nation's defense or in 1276  
furtherance of national interests, including the Ohio Valley 1277  
Electric Corporation, that was authorized under section 4928.143 1278  
of the Revised Code, or any other section of the Revised Code, 1279  
and that was in effect on or before the effective date of H.B. 6 1280  
of the 133rd General Assembly shall not be revived, reimposed, 1281  
reestablished, or in any way reinstated as a result of this 1282  
act, or Public Utilities Commission order, decision, or rule, 1283  
and no amount, charge, mechanism, or rider related to such 1284  
mechanism may be assessed or collected from customers. 1285

(B) On and after the effective date of this act, and 1286  
notwithstanding any provision in Title XLIX of the Revised Code 1287  
to the contrary, no decoupling mechanism established under 1288  
section 4928.143 or 4928.66 of the Revised Code or section 1289  
4928.471 of the Revised Code, as that section existed prior to 1290  
the effective date of this act, shall remain in effect, and no 1291  
amount, charge, mechanism, or rider related to decoupling may be 1292  
assessed or collected from customers. 1293

**Section 6.** Upon the effective date of this section, and 1294  
notwithstanding section 4905.32 of the Revised Code and any 1295  
other provision in Title XLIX of the Revised Code to the 1296  
contrary, the full amount of revenues collected from customers 1297  
through an amount, charge, mechanism, or rider established under 1298  
sections 4928.148 and 4928.471 of the Revised Code, as those 1299  
sections existed prior to the effective date of this section, 1300  
shall be promptly refunded to customers from whom the revenues 1301  
were collected. Refunds paid to customers shall be allocated to 1302  
customer classes in the same proportion as originally collected. 1303

**Section 7.** This act is hereby declared to be an emergency 1304  
measure necessary for the immediate preservation of the public 1305  
peace, health, and safety. The reason for such necessity is to 1306  
protect Ohio electric customers from possible irregularities 1307  
regarding the provisions established under H.B. 6 of the 133rd 1308  
General Assembly that allow and are related to the imposition or 1309  
collection of certain customer charges established under that 1310  
act. Therefore, this act shall go into immediate effect. 1311