

**As Reported by the House Select Committee on Energy Policy and Oversight**

**133rd General Assembly**

**Regular Session  
2019-2020**

**Sub. H. B. No. 798**

**Representative Hoops**

**Cosponsors: Representatives Abrams, Baldrige, Carfagna**

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**A BILL**

To amend sections 3706.431, 3706.46, 3706.49, 1  
3706.55, 3706.61, 4928.01, and 4928.143; to 2  
enact sections 3706.42, 3706.491, 3706.551, 3  
4906.105, 4928.149, 4928.473, 4928.646, and 4  
4928.647; and to repeal section 4928.471 of the 5  
Revised Code to delay for one year the charges 6  
and payments for nuclear resource and renewable 7  
energy credits, and revise certain other laws, 8  
enacted by H.B. 6 of the 133rd General Assembly, 9  
and to amend Power Siting Board law and other 10  
electric utility law. 11

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

**Section 1.** That sections 3706.431, 3706.46, 3706.49, 12  
3706.55, 3706.61, 4928.01, and 4928.143 be amended and sections 13  
3706.42, 3706.491, 3706.551, 4906.105, 4928.149, 4928.473, 14  
4928.646, and 4928.647 of the Revised Code be enacted to read as 15  
follows: 16

**Sec. 3706.42.** By the thirty-first day of December each 17  
year beginning in 2021 and ending in 2027, an owner or operator 18

of a qualifying nuclear resource shall file a notice with the 19  
Ohio air quality development authority that states the owner's 20  
or operator's intention to participate in the program to receive 21  
payments for nuclear resource credits under section 3706.55 of 22  
the Revised Code in the next calendar year. 23

If an owner or operator of a qualifying nuclear resource 24  
fails to file a notice under this section, the owner or 25  
operator, for the calendar year following the notice deadline, 26  
is ineligible to receive credits allocated under section 3706.45 27  
of the Revised Code or payments remitted under section 3706.55 28  
of the Revised Code. 29

**Sec. 3706.431.** All—Unless determined otherwise by the Ohio 30  
air quality development authority in consultation with the 31  
public utilities commission, all financial and proprietary 32  
information, including trade secrets, submitted to the ~~Ohio air-~~ 33  
~~quality development~~ authority under sections 3706.41 and 3706.43 34  
of the Revised Code is confidential information and is not a 35  
public record for the purpose of section 149.43 of the Revised 36  
Code. 37

**Sec. 3706.46.** (A) (1) Beginning for all bills rendered on 38  
or after January 1, ~~2021~~2022, by an electric distribution 39  
utility in this state, such electric distribution utility shall 40  
collect from all of its retail electric customers in this state, 41  
each month, a charge or charges which, in the aggregate, are 42  
sufficient to produce the following revenue requirements: 43

(a) One hundred fifty million dollars annually for total 44  
disbursements required under section 3706.55 of the Revised Code 45  
from the nuclear generation fund; 46

(b) Twenty million dollars annually for total 47

disbursements required under section 3706.55 of the Revised Code 48  
from the renewable generation fund. 49

(2) The public utilities commission shall determine the 50  
method by which the revenue is allocated or assigned to each 51  
electric distribution utility for billing and collection, 52  
provided that the method of allocation shall be based on the 53  
relative number of customers, relative quantity of kilowatt hour 54  
sales, or a combination of the two. The level and structure of 55  
the charge shall be authorized by the commission through a 56  
process that the commission shall determine is not for an 57  
increase in any rate, joint rate, toll, classification, charge, 58  
or rental, notwithstanding anything to the contrary in Title 59  
XLIX of the Revised Code. 60

(B) In authorizing the level and structure of any charge 61  
or charges to be billed and collected by each electric 62  
distribution utility, the commission shall ensure that the per- 63  
customer monthly charge for residential customers does not 64  
exceed eighty-five cents and that the per-customer monthly 65  
charge for industrial customers eligible to become self- 66  
assessing purchasers pursuant to division (C) of section 5727.81 67  
of the Revised Code does not exceed two thousand four hundred 68  
dollars. For nonresidential customers that are not self- 69  
assessing purchasers, the level and design of the charge or 70  
charges shall be established in a manner that avoids abrupt or 71  
excessive total net electric bill impacts for typical customers. 72

(C) Each charge authorized by the commission under this 73  
section shall be subject to adjustment so as to reconcile actual 74  
revenue collected with the revenue needed to meet the revenue 75  
requirements under division (A)(1) of this section. The 76  
commission shall authorize each electric distribution utility to 77

adopt accounting practices to facilitate such reconciliation. 78  
Notwithstanding any other provisions of the Revised Code, the 79  
charge or charges authorized by the commission may continue 80  
beyond December 31, ~~2027~~2028, only if it is necessary to 81  
reconcile actual revenue collected under this section during the 82  
period ending on December 31, ~~2027~~2028, with the actual revenue 83  
needed to meet the revenue requirements under division (A)(1) of 84  
this section for required disbursements under section 3706.55 of 85  
the Revised Code that may be due and owing during the same 86  
period. Such continuation shall be authorized only for such 87  
period of time beyond December 31, ~~2027~~2028, as may be 88  
reasonably necessary to complete the reconciliation. 89

**Sec. 3706.49.** (A) There is hereby created the nuclear 90  
generation fund and the renewable generation fund. Each fund 91  
shall be in the custody of the treasurer of state but shall not 92  
be part of the state treasury. Each fund shall consist of the 93  
charges collected under section 3706.46 of the Revised Code and 94  
deposited by the Ohio air quality development authority, in 95  
consultation with the public utilities commission, in accordance 96  
with section 3706.53 of the Revised Code. The interest generated 97  
by each fund shall be retained by each respective fund and used 98  
for the purposes set forth in sections 3706.40 to 3706.65 of the 99  
Revised Code. 100

(B) The treasurer of state shall distribute the moneys in 101  
the funds in accordance with directions provided by the Ohio air 102  
quality development authority. ~~Before giving directions under~~ 103  
~~this division~~Except with regard to the administrative costs 104  
described in section 3706.491 of the Revised Code, the authority 105  
shall consult with the public utilities commission before giving 106  
directions under this division. 107

Sec. 3706.491. (A) Except as provided in division (B) of 108  
this section, each fiscal year, beginning July 1, 2021, and 109  
ending June 30, 2029, and subject to controlling board approval, 110  
the Ohio air quality development authority may use, from the 111  
renewable generation fund and nuclear generation fund, created 112  
under section 3706.49 of the Revised Code, up to one hundred 113  
fifty thousand dollars from each fund, for a maximum total of 114  
three hundred thousand dollars, to pay for the authority's 115  
administrative costs for that year under sections 3706.40 to 116  
3706.65 of the Revised Code. 117

(B) In addition to the amounts approved in division (A) of 118  
this section for fiscal year 2022 and subject to controlling 119  
board approval, the authority may use the following amounts in 120  
fiscal year 2022 from the renewable generation fund and nuclear 121  
generation fund: 122

(1) Up to three hundred thousand dollars, not more than 123  
one hundred fifty thousand dollars of which may be from each 124  
fund, to pay for the authority's administrative costs incurred 125  
in fiscal year 2020; 126

(2) Up to three hundred thousand dollars, not more than 127  
one hundred fifty thousand dollars of which may be from each 128  
fund, to pay for the authority's administrative costs incurred 129  
in fiscal year 2021. 130

**Sec. 3706.55. (A) For the period beginning with April of** 131  
**~~2021-2022~~ and ending with January of ~~2028~~2029,** the Ohio air 132  
quality development authority shall, in April of ~~2021-2022~~ and 133  
every three months thereafter through the end of the period, and 134  
not later than the twenty-first day of the month, direct the 135  
treasurer of state to remit money from the funds created under 136  
section 3706.49 of the Revised Code as follows: 137

(1) Subject to sections 3706.59 and 3706.61 of the Revised Code, from the nuclear generation fund to the owner or operator of a qualifying nuclear resource, in the amount equivalent to the number of credits earned by the resource during the quarter that ended ~~twelve~~twenty-four months prior to the last day of the previous quarter multiplied by the credit price, and as directed by the authority in accordance with section 3706.61 of the Revised Code;

(2) Subject to section 3706.59 of the Revised Code, from the renewable generation fund to the owners or operators of qualifying renewable resources, in the amount equivalent to the number of credits earned by the resources during the quarter that ended ~~twelve~~twenty-four months prior to the last day of the previous quarter multiplied by the credit price.

(B) Notwithstanding section 4905.32 of the Revised Code, the following shall occur:

(1) Any amounts in the nuclear generation fund and the renewable generation fund collected during the period of January 1, 2021, and the effective date of the amendments to this section by H.B. 798 of the 133rd general assembly, minus an amount to meet expenses related to the 2021 retrospective management and financial audit required under section 3706.61 of the Revised Code and amounts allowed under section 3706.491 of the Revised Code, shall be refunded to customers at any time in 2021 in a manner that shall be determined by the authority in consultation with the public utilities commission.

(2) Upon the completion of an annual audit required under section 3706.61 of the Revised Code during the period beginning in 2022 and ending in 2028, any amounts remaining in the nuclear generation fund and the renewable generation fund as of the

~~thirty-first day of December 31, 2027~~ of each year, minus the 168  
remittances that are required to be made between that date and 169  
~~January 21, 2028~~ the twenty-first day of January of the 170  
succeeding year, shall be refunded to customers in a manner that 171  
shall be determined by the authority in consultation with the 172  
~~public utilities~~ commission. 173

**Sec. 3706.551.** (A) Notwithstanding the renewable energy 174  
credit application deadlines for qualifying renewable resources 175  
under sections 3706.41 and 3706.43 of the Revised Code, the Ohio 176  
air quality development authority shall accept, review, and 177  
approve an application from a qualifying renewable resource if 178  
the resource submitted the application before March 1, 2020. 179

(B) The April 7, 2020, deadline for the first quarterly 180  
report required under section 3706.45 of the Revised Code shall 181  
not apply to a qualifying renewable resource whose application 182  
for renewable energy credits is approved under division (A) of 183  
this section. 184

**Sec. 3706.61.** (A) In each year beginning in 2021 and 185  
ending in ~~2027~~2028, the public utilities commission shall, not 186  
later than the first day of ~~May~~ July of each of those years, 187  
~~conduct complete~~ a retrospective management and financial ~~review~~ 188  
audit, including a financial need assessment and any 189  
recommendations, of the owner or operator of a qualifying 190  
nuclear resource and any such resource that receives payments 191  
for nuclear resource credits under section 3706.55 of the 192  
Revised Code. In doing so, the commission ~~may~~ shall retain 193  
independent consultants and ~~advisors~~ auditors who are 194  
knowledgeable and experienced in the particular subject to 195  
perform all ~~or any portion~~ of the annual ~~reviews~~ audits, the cost 196  
of which shall be paid, at the direction of the Ohio air quality 197

development authority, by the treasurer of state from the 198  
nuclear generation fund in accordance with section 3706.55 of 199  
the Revised Code. The consultants and auditors shall comply with 200  
generally accepted accounting principles and appropriate 201  
accounting standards in conducting an audit and making an audit 202  
report. 203

(B) Any owner or operator subject to ~~a review~~ an audit 204  
under division (A) of this section ~~may~~ shall, for purposes of the 205  
~~review~~ audit, provide the commission or the commission's 206  
consultants or ~~advisors~~ auditors with any information ~~the owner~~ 207  
~~or operator chooses~~ requested by the commission or its 208  
consultants or auditors. The owner or operator shall promptly 209  
and fully respond to any document, information, data, or other 210  
request that may be directed to its attention by the commission 211  
or the commission's consultants or ~~advisors~~ auditors for the 212  
purpose of the ~~review~~ audit. All information provided shall be 213  
certified as accurate by the owner's or operator's chief 214  
financial officer. Any material failure to timely, accurately, 215  
and fully respond shall result in suspension of further receipt 216  
of payments for nuclear resource credits under section 3706.55 217  
of the Revised Code until the failure is cured to the 218  
satisfaction of the commission. 219

(C) (1) The commission shall submit a report summarizing 220  
the findings and recommendations of each annual ~~review~~ audit to 221  
the president and minority leader of the senate, the speaker and 222  
minority leader of the house of representatives, and the ~~Ohio~~ 223  
~~air quality development~~ authority, and shall make the report 224  
publicly available, provided that the report shall not reveal 225  
any confidential or proprietary information. The submission 226  
shall include ~~a~~ both of the following: 227

(a) A copy of the owner's or operator's own certified 228  
annual audit that was obtained during the ~~review~~ audit performed 229  
under this section; 230

(b) An itemization of expenses determined not to be 231  
reasonable and prudent expenses that shall include the 232  
description and value of each expense and when it was incurred. 233

(2) After the first of July every year, beginning in 2021 234  
and ending in 2028, a representative of the consultants and 235  
auditors selected by the commission to conduct an annual audit 236  
pursuant to division (A) of this section shall appear in person 237  
before the standing committees of the house of representatives 238  
and the senate with primary responsibility for utility 239  
legislation. The representative shall present to each committee, 240  
at least one time for that audit year and in consultation with 241  
the commission and authority, the findings and recommendations 242  
of the audit and the commission's report. 243

(D) In consultation with the commission, the ~~Ohio air-~~ 244  
~~quality development~~ authority shall consider the findings and 245  
~~recommendations~~ of the ~~review~~ audit and based on such findings, 246  
~~recommendations, and audit, may~~ shall cease or reduce payments 247  
for nuclear resource credits under section 3706.55 of the 248  
Revised Code if the authority determines any of the following 249  
findings are made: 250

(1) That the federal ~~energy regulatory commission or the~~ 251  
~~nuclear regulatory commission~~ government or PJM interconnection, 252  
L.L.C., or its successor organization has established a monetary 253  
benefit or other ~~incentive payment~~ financial support program 254  
designed to continue the resource's commercial operation; 255

(2) That either requirement under division (A) or (B) (2) 256

of section 3706.43 of the Revised Code is no longer being met; 257

(3) That the resource's owner or operator applies, before 258  
May 1, ~~2027~~2028, to decommission the resource or takes any other 259  
action to cease commercial operation; 260

(4) That, for the purpose of ensuring that the funding for 261  
nuclear resource credits remains reasonable, the market price 262  
index exceeds the strike price on the first day of June in the 263  
year in which the report is submitted, in which case the 264  
authority shall apply the credit price adjustment for the 265  
twelve-month period that begins on that day and ends the thirty- 266  
first day of May, or, for ~~2027~~2028, for the seven-month period 267  
that begins on that day and ends the thirty-first day of 268  
December. 269

(5) That, for the purpose of ensuring that the funding for 270  
nuclear resource credits helps to maintain the economic 271  
viability of the resource at the lowest cost to consumers, 272  
payments for nuclear resource credits shall be limited to the 273  
amount necessary to increase the net income or profit margin 274  
from on going operations of the resource from a negative amount 275  
to not more than zero for the annual audit period. In 276  
determining whether any resource operated with no net income or 277  
profit margin, the authority shall consider all revenue received 278  
or accrued from all sources and only reasonable and prudent 279  
expenses, whether directly incurred or charged from affiliates. 280

As used in this division, "reasonable and prudent 281  
expenses" shall be in accordance with generally accepted 282  
accounting principles, but shall not include lobbying costs, 283  
political or charitable donations, share buybacks, management 284  
bonuses, management incentive compensation, allocation of 285  
corporate overhead in excess of reasonable amounts, costs 286

<u>related to other facilities or businesses, or interest expenses</u>	287
<u>or preferred dividends related to any financing or convertible</u>	288
<u>or preferred securities incurred after the fact.</u>	289
(E) (1) If the authority determines it necessary to make	290
reductions under division (D) of this section, the commission	291
shall do all of the following, as necessary:	292
(a) Reduce the revenue requirement under division (A) (1)	293
(a) of section 3706.46 of the Revised Code;	294
(b) Except when the authority has applied the credit price	295
adjustment under division (D) (4) of this section, reduce the	296
price of a nuclear resource credit under section 3706.45 of the	297
Revised Code, in accordance with a reduced revenue requirement;	298
(c) Reduce the charge or charges under section 3706.46 of	299
the Revised Code, to conform with a reduced revenue requirement;	300
(d) Adjust the percentages under section 3706.53 of the	301
Revised Code in accordance with a reduced revenue requirement.	302
(2) Any revisions made by the commission under division	303
(E) (1) of this section shall be made through a process that the	304
commission shall determine is not for an increase in any rate,	305
joint rate, toll, classification, charge, or rental,	306
notwithstanding anything to the contrary in Title XLIX of the	307
Revised Code.	308
(F) If the payments for nuclear resource credits are	309
suspended or ceased under this section, the commission shall	310
instruct the electric distribution utilities to accordingly	311
suspend or cease billing and collecting customer charges under	312
section 3706.46 of the Revised Code.	313
(G) Chapter 4903. of the Revised Code shall not apply to	314

this section. 315

Sec. 4906.105. The power siting board shall submit a 316  
report to the general assembly, not later than December 1, 2021, 317  
on whether the current requirements for the planning of the 318  
power transmission system and associated facilities investment 319  
in this state are cost effective and in the interest of 320  
consumers. The board shall hold at least one public meeting 321  
before completing the report. The board shall complete the 322  
report in consultation with JobsOhio and may consult with or 323  
request the assistance of PJM interconnection regional 324  
transmission organization, L.L.C., the independent market 325  
monitor for PJM interconnection regional transmission 326  
organization, L.L.C. and other interested stakeholders, such as 327  
transmission owners. The report may include any recommendations 328  
for legislative changes to ensure transmission planning is cost 329  
effective and in the interest of consumers, including 330  
recommendations regarding any of the following: 331

(A) Whether the definition of a major utility facility 332  
should include an electric transmission line of a design 333  
capacity at or above sixty-nine kilovolts and associated 334  
facilities the costs of which are recovered as a transmission 335  
asset by the transmission owners; 336

(B) Whether the criteria for an accelerated certificate 337  
application should be modified; 338

(C) Whether the certification process is sufficiently 339  
transparent; 340

(D) Whether the board should require the following for, or 341  
determine if the following apply to, a transmission project 342  
certification application: 343

<u>(1) That alternative transmission projects were</u>	344
<u>considered;</u>	345
<u>(2) That the project was competitively bid or compared to</u>	346
<u>the results of a competitive bid;</u>	347
<u>(3) That the project has been considered in the context of</u>	348
<u>the utility's larger transmission plan;</u>	349
<u>(4) That the project has been considered in the context of</u>	350
<u>the regional transmission planning process of PJM</u>	351
<u>interconnection regional transmission organization, L.L.C.;</u>	352
<u>(5) That the project could not have been deferred or</u>	353
<u>redesigned to achieve the same operational result at a lower</u>	354
<u>overall cost;</u>	355
<u>(6) That the project has provided historical information</u>	356
<u>for an existing transmission project or information for a</u>	357
<u>planned or proposed project.</u>	358
<b>Sec. 4928.01.</b> (A) As used in this chapter:	359
(1) "Ancillary service" means any function necessary to	360
the provision of electric transmission or distribution service	361
to a retail customer and includes, but is not limited to,	362
scheduling, system control, and dispatch services; reactive	363
supply from generation resources and voltage control service;	364
reactive supply from transmission resources service; regulation	365
service; frequency response service; energy imbalance service;	366
operating reserve-spinning reserve service; operating reserve-	367
supplemental reserve service; load following; back-up supply	368
service; real-power loss replacement service; dynamic	369
scheduling; system black start capability; and network stability	370
service.	371

(2) "Billing and collection agent" means a fully 372  
independent agent, not affiliated with or otherwise controlled 373  
by an electric utility, electric services company, electric 374  
cooperative, or governmental aggregator subject to certification 375  
under section 4928.08 of the Revised Code, to the extent that 376  
the agent is under contract with such utility, company, 377  
cooperative, or aggregator solely to provide billing and 378  
collection for retail electric service on behalf of the utility 379  
company, cooperative, or aggregator. 380

(3) "Certified territory" means the certified territory 381  
established for an electric supplier under sections 4933.81 to 382  
4933.90 of the Revised Code. 383

(4) "Competitive retail electric service" means a 384  
component of retail electric service that is competitive as 385  
provided under division (B) of this section. 386

(5) "Electric cooperative" means a not-for-profit electric 387  
light company that both is or has been financed in whole or in 388  
part under the "Rural Electrification Act of 1936," 49 Stat. 389  
1363, 7 U.S.C. 901, and owns or operates facilities in this 390  
state to generate, transmit, or distribute electricity, or a 391  
not-for-profit successor of such company. 392

(6) "Electric distribution utility" means an electric 393  
utility that supplies at least retail electric distribution 394  
service. 395

(7) "Electric light company" has the same meaning as in 396  
section 4905.03 of the Revised Code and includes an electric 397  
services company, but excludes any self-generator to the extent 398  
that it consumes electricity it so produces, sells that 399  
electricity for resale, or obtains electricity from a generating 400

facility it hosts on its premises. 401

(8) "Electric load center" has the same meaning as in 402  
section 4933.81 of the Revised Code. 403

(9) "Electric services company" means an electric light 404  
company that is engaged on a for-profit or not-for-profit basis 405  
in the business of supplying or arranging for the supply of only 406  
a competitive retail electric service in this state. "Electric 407  
services company" includes a power marketer, power broker, 408  
aggregator, or independent power producer but excludes an 409  
electric cooperative, municipal electric utility, governmental 410  
aggregator, or billing and collection agent. 411

(10) "Electric supplier" has the same meaning as in 412  
section 4933.81 of the Revised Code. 413

(11) "Electric utility" means an electric light company 414  
that has a certified territory and is engaged on a for-profit 415  
basis either in the business of supplying a noncompetitive 416  
retail electric service in this state or in the businesses of 417  
supplying both a noncompetitive and a competitive retail 418  
electric service in this state. "Electric utility" excludes a 419  
municipal electric utility or a billing and collection agent. 420

(12) "Firm electric service" means electric service other 421  
than nonfirm electric service. 422

(13) "Governmental aggregator" means a legislative 423  
authority of a municipal corporation, a board of township 424  
trustees, or a board of county commissioners acting as an 425  
aggregator for the provision of a competitive retail electric 426  
service under authority conferred under section 4928.20 of the 427  
Revised Code. 428

(14) A person acts "knowingly," regardless of the person's 429

purpose, when the person is aware that the person's conduct will 430  
probably cause a certain result or will probably be of a certain 431  
nature. A person has knowledge of circumstances when the person 432  
is aware that such circumstances probably exist. 433

(15) "Level of funding for low-income customer energy 434  
efficiency programs provided through electric utility rates" 435  
means the level of funds specifically included in an electric 436  
utility's rates on October 5, 1999, pursuant to an order of the 437  
public utilities commission issued under Chapter 4905. or 4909. 438  
of the Revised Code and in effect on October 4, 1999, for the 439  
purpose of improving the energy efficiency of housing for the 440  
utility's low-income customers. The term excludes the level of 441  
any such funds committed to a specific nonprofit organization or 442  
organizations pursuant to a stipulation or contract. 443

(16) "Low-income customer assistance programs" means the 444  
percentage of income payment plan program, the home energy 445  
assistance program, the home weatherization assistance program, 446  
and the targeted energy efficiency and weatherization program. 447

(17) "Market development period" for an electric utility 448  
means the period of time beginning on the starting date of 449  
competitive retail electric service and ending on the applicable 450  
date for that utility as specified in section 4928.40 of the 451  
Revised Code, irrespective of whether the utility applies to 452  
receive transition revenues under this chapter. 453

(18) "Market power" means the ability to impose on 454  
customers a sustained price for a product or service above the 455  
price that would prevail in a competitive market. 456

(19) "Mercantile customer" means a commercial or 457  
industrial customer if the electricity consumed is for 458

nonresidential use and the customer consumes more than seven 459  
hundred thousand kilowatt hours per year or is part of a 460  
national account involving multiple facilities in one or more 461  
states. 462

(20) "Municipal electric utility" means a municipal 463  
corporation that owns or operates facilities to generate, 464  
transmit, or distribute electricity. 465

(21) "Noncompetitive retail electric service" means a 466  
component of retail electric service that is noncompetitive as 467  
provided under division (B) of this section. 468

(22) "Nonfirm electric service" means electric service 469  
provided pursuant to a schedule filed under section 4905.30 of 470  
the Revised Code or pursuant to an arrangement under section 471  
4905.31 of the Revised Code, which schedule or arrangement 472  
includes conditions that may require the customer to curtail or 473  
interrupt electric usage during nonemergency circumstances upon 474  
notification by an electric utility. 475

(23) "Percentage of income payment plan arrears" means 476  
funds eligible for collection through the percentage of income 477  
payment plan rider, but uncollected as of July 1, 2000. 478

(24) "Person" has the same meaning as in section 1.59 of 479  
the Revised Code. 480

(25) "Advanced energy project" means any technologies, 481  
products, activities, or management practices or strategies that 482  
facilitate the generation or use of electricity or energy and 483  
that reduce or support the reduction of energy consumption or 484  
support the production of clean, renewable energy for 485  
industrial, distribution, commercial, institutional, 486  
governmental, research, not-for-profit, or residential energy 487

users, including, but not limited to, advanced energy resources 488  
and renewable energy resources. "Advanced energy project" also 489  
includes any project described in division (A), (B), or (C) of 490  
section 4928.621 of the Revised Code. 491

(26) "Regulatory assets" means the unamortized net 492  
regulatory assets that are capitalized or deferred on the 493  
regulatory books of the electric utility, pursuant to an order 494  
or practice of the public utilities commission or pursuant to 495  
generally accepted accounting principles as a result of a prior 496  
commission rate-making decision, and that would otherwise have 497  
been charged to expense as incurred or would not have been 498  
capitalized or otherwise deferred for future regulatory 499  
consideration absent commission action. "Regulatory assets" 500  
includes, but is not limited to, all deferred demand-side 501  
management costs; all deferred percentage of income payment plan 502  
arrears; post-in-service capitalized charges and assets 503  
recognized in connection with statement of financial accounting 504  
standards no. 109 (receivables from customers for income taxes); 505  
future nuclear decommissioning costs and fuel disposal costs as 506  
those costs have been determined by the commission in the 507  
electric utility's most recent rate or accounting application 508  
proceeding addressing such costs; the undepreciated costs of 509  
safety and radiation control equipment on nuclear generating 510  
plants owned or leased by an electric utility; and fuel costs 511  
currently deferred pursuant to the terms of one or more 512  
settlement agreements approved by the commission. 513

(27) "Retail electric service" means any service involved 514  
in supplying or arranging for the supply of electricity to 515  
ultimate consumers in this state, from the point of generation 516  
to the point of consumption. For the purposes of this chapter, 517  
retail electric service includes one or more of the following 518

"service components": generation service, aggregation service, 519  
power marketing service, power brokerage service, transmission 520  
service, distribution service, ancillary service, metering 521  
service, and billing and collection service. 522

(28) "Starting date of competitive retail electric 523  
service" means January 1, 2001. 524

(29) "Customer-generator" means a user of a net metering 525  
system. 526

(30) "Net metering" means measuring the difference in an 527  
applicable billing period between the electricity supplied by an 528  
electric service provider and the electricity generated by a 529  
customer-generator that is fed back to the electric service 530  
provider. 531

(31) "Net metering system" means a facility for the 532  
production of electrical energy that does all of the following: 533

(a) Uses as its fuel either solar, wind, biomass, landfill 534  
gas, or hydropower, or uses a microturbine or a fuel cell; 535

(b) Is located on a customer-generator's premises; 536

(c) Operates in parallel with the electric utility's 537  
transmission and distribution facilities; 538

(d) Is intended primarily to offset part or all of the 539  
customer-generator's requirements for electricity. For an 540  
industrial customer-generator with a net metering system that 541  
has a capacity of less than twenty megawatts and uses wind as 542  
energy, this means the net metering system was sized so as to 543  
not exceed one hundred per cent of the customer-generator's 544  
annual requirements for electric energy at the time of 545  
interconnection. 546

(32) "Self-generator" means an entity in this state that 547  
owns or hosts on its premises an electric generation facility 548  
that produces electricity primarily for the owner's consumption 549  
and that may provide any such excess electricity to another 550  
entity, whether the facility is installed or operated by the 551  
owner or by an agent under a contract. 552

(33) "Rate plan" means the standard service offer in 553  
effect on the effective date of the amendment of this section by 554  
S.B. 221 of the 127th general assembly, July 31, 2008. 555

(34) "Advanced energy resource" means any of the 556  
following: 557

(a) Any method or any modification or replacement of any 558  
property, process, device, structure, or equipment that 559  
increases the generation output of an electric generating 560  
facility to the extent such efficiency is achieved without 561  
additional carbon dioxide emissions by that facility; 562

(b) Any distributed generation system consisting of 563  
customer cogeneration technology; 564

(c) Clean coal technology that includes a carbon-based 565  
product that is chemically altered before combustion to 566  
demonstrate a reduction, as expressed as ash, in emissions of 567  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 568  
sulfur trioxide in accordance with the American society of 569  
testing and materials standard D1757A or a reduction of metal 570  
oxide emissions in accordance with standard D5142 of that 571  
society, or clean coal technology that includes the design 572  
capability to control or prevent the emission of carbon dioxide, 573  
which design capability the commission shall adopt by rule and 574  
shall be based on economically feasible best available 575

technology or, in the absence of a determined best available 576  
technology, shall be of the highest level of economically 577  
feasible design capability for which there exists generally 578  
accepted scientific opinion; 579

(d) Advanced nuclear energy technology consisting of 580  
generation III technology as defined by the nuclear regulatory 581  
commission; other, later technology; or significant improvements 582  
to existing facilities; 583

(e) Any fuel cell used in the generation of electricity, 584  
including, but not limited to, a proton exchange membrane fuel 585  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 586  
solid oxide fuel cell; 587

(f) Advanced solid waste or construction and demolition 588  
debris conversion technology, including, but not limited to, 589  
advanced stoker technology, and advanced fluidized bed 590  
gasification technology, that results in measurable greenhouse 591  
gas emissions reductions as calculated pursuant to the United 592  
States environmental protection agency's waste reduction model 593  
(WARM); 594

(g) Demand-side management and any energy efficiency 595  
improvement; 596

(h) Any new, retrofitted, refueled, or repowered 597  
generating facility located in Ohio, including a simple or 598  
combined-cycle natural gas generating facility or a generating 599  
facility that uses biomass, coal, modular nuclear, or any other 600  
fuel as its input; 601

(i) Any uprated capacity of an existing electric 602  
generating facility if the uprated capacity results from the 603  
deployment of advanced technology. 604

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

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

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

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

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

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

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

(vi) Geothermal energy;

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

(viii) Biomass energy;

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

(x) Biologically derived methane gas;

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

(xii) Energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors if the facility that creates the byproducts and the energy is interconnected to the electrical grid under the operational control of PJM interconnection, L.L.C.

"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 662  
may be included only if it was placed into service between 663  
January 1, 2002, and December 31, 2004; storage facility that 664  
will promote the better utilization of a renewable energy 665  
resource; or distributed generation system used by a customer to 666  
generate electricity from any such energy. 667

"Renewable energy resource" does not include a waste 668  
energy recovery system that is, or was, on or after January 1, 669  
2012, included in an energy efficiency program of an electric 670  
distribution utility pursuant to requirements under section 671  
4928.66 of the Revised Code. 672

(b) As used in division (A) (37) of this section, 673  
"hydroelectric facility" means a hydroelectric generating 674  
facility that is located at a dam on a river, or on any water 675  
discharged to a river, that is within or bordering this state or 676  
within or bordering an adjoining state and meets all of the 677  
following standards: 678

(i) The facility provides for river flows that are not 679  
detrimental for fish, wildlife, and water quality, including 680  
seasonal flow fluctuations as defined by the applicable 681  
licensing agency for the facility. 682

(ii) The facility demonstrates that it complies with the 683  
water quality standards of this state, which compliance may 684  
consist of certification under Section 401 of the "Clean Water 685  
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 686  
demonstrates that it has not contributed to a finding by this 687  
state that the river has impaired water quality under Section 688  
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 689  
U.S.C. 1313. 690

(iii) The facility complies with mandatory prescriptions 691  
regarding fish passage as required by the federal energy 692  
regulatory commission license issued for the project, regarding 693  
fish protection for riverine, anadromous, and catadromous fish. 694

(iv) The facility complies with the recommendations of the 695  
Ohio environmental protection agency and with the terms of its 696  
federal energy regulatory commission license regarding watershed 697  
protection, mitigation, or enhancement, to the extent of each 698  
agency's respective jurisdiction over the facility. 699

(v) The facility complies with provisions of the 700  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 701  
to 1544, as amended. 702

(vi) The facility does not harm cultural resources of the 703  
area. This can be shown through compliance with the terms of its 704  
federal energy regulatory commission license or, if the facility 705  
is not regulated by that commission, through development of a 706  
plan approved by the Ohio historic preservation office, to the 707  
extent it has jurisdiction over the facility. 708

(vii) The facility complies with the terms of its federal 709  
energy regulatory commission license or exemption that are 710  
related to recreational access, accommodation, and facilities 711  
or, if the facility is not regulated by that commission, the 712  
facility complies with similar requirements as are recommended 713  
by resource agencies, to the extent they have jurisdiction over 714  
the facility; and the facility provides access to water to the 715  
public without fee or charge. 716

(viii) The facility is not recommended for removal by any 717  
federal agency or agency of any state, to the extent the 718  
particular agency has jurisdiction over the facility. 719

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 720  
this section do not apply to a small hydroelectric facility 721  
under division (A) (37) (a) (iv) of this section. 722

(38) "Waste energy recovery system" means either of the 723  
following: 724

(a) A facility interconnected to the electrical grid under 725  
the operational control of PJM interconnection, L.L.C. that 726  
generates electricity through the conversion of energy from 727  
either of the following: 728

(i) Exhaust heat from engines or manufacturing, 729  
industrial, commercial, or institutional sites, except for 730  
exhaust heat from a facility whose primary purpose is the 731  
generation of electricity; 732

(ii) Reduction of pressure in gas pipelines before gas is 733  
distributed through the pipeline, provided that the conversion 734  
of energy to electricity is achieved without using additional 735  
fossil fuels. 736

(b) A facility at a state institution of higher education 737  
as defined in section 3345.011 of the Revised Code that recovers 738  
waste heat from electricity-producing engines or combustion 739  
turbines and that simultaneously uses the recovered heat to 740  
produce steam, provided that the facility was placed into 741  
service between January 1, 2002, and December 31, 2004. 742

(39) "Smart grid" means capital improvements to an 743  
electric distribution utility's distribution infrastructure that 744  
improve reliability, efficiency, resiliency, or reduce energy 745  
demand or use, including, but not limited to, advanced metering 746  
and automation of system functions. 747

(40) "Combined heat and power system" means the 748

coproduction of electricity and useful thermal energy from the 749  
same fuel source designed to achieve thermal-efficiency levels 750  
of at least sixty per cent, with at least twenty per cent of the 751  
system's total useful energy in the form of thermal energy. 752

(41) "Legacy generation resource" means all generating 753  
facilities owned directly or indirectly by a corporation that 754  
was formed prior to 1960 by investor-owned utilities for the 755  
original purpose of providing power to the federal government 756  
for use in the nation's defense or in furtherance of national 757  
interests, including the Ohio valley electric corporation. 758

(42) "Prudently incurred costs related to a legacy 759  
generation resource" means costs, including deferred costs, 760  
allocated pursuant to a power agreement approved by the federal 761  
energy regulatory commission that relates to a legacy generation 762  
resource, less any revenues realized from offering the 763  
contractual commitment for the power agreement into the 764  
wholesale markets, provided that where the net revenues exceed 765  
net costs, those excess revenues shall be credited to customers. 766  
Such costs shall exclude any return on investment in common 767  
equity and, in the event of a premature retirement of a legacy 768  
generation resource, shall exclude any recovery of remaining 769  
debt. Such costs shall include any incremental costs resulting 770  
from the bankruptcy of a current or former sponsor under such 771  
power agreement or co-owner of the legacy generation resource if 772  
not otherwise recovered through a utility rate cost recovery 773  
mechanism. 774

(B) For the purposes of this chapter, a retail electric 775  
service component shall be deemed a competitive retail electric 776  
service if the service component is competitive pursuant to a 777  
declaration by a provision of the Revised Code or pursuant to an 778

order of the public utilities commission authorized under 779  
division (A) of section 4928.04 of the Revised Code. Otherwise, 780  
the service component shall be deemed a noncompetitive retail 781  
electric service. 782

**Sec. 4928.143.** (A) For the purpose of complying with 783  
section 4928.141 of the Revised Code, an electric distribution 784  
utility may file an application for public utilities commission 785  
approval of an electric security plan as prescribed under 786  
division (B) of this section. The utility may file that 787  
application prior to the effective date of any rules the 788  
commission may adopt for the purpose of this section, and, as 789  
the commission determines necessary, the utility immediately 790  
shall conform its filing to those rules upon their taking 791  
effect. 792

(B) Notwithstanding any other provision of Title XLIX of 793  
the Revised Code to the contrary except division (D) of this 794  
section, divisions (I), (J), and (K) of section 4928.20, 795  
division (E) of section 4928.64, and section 4928.69 of the 796  
Revised Code: 797

(1) An electric security plan shall include provisions 798  
relating to the supply and pricing of electric generation 799  
service. In addition, if the proposed electric security plan has 800  
a term longer than three years, it may include provisions in the 801  
plan to permit the commission to test the plan pursuant to 802  
division (E) of this section and any transitional conditions 803  
that should be adopted by the commission if the commission 804  
terminates the plan as authorized under that division. 805

(2) The plan may provide for or include, without 806  
limitation, any of the following: 807

(a) Automatic recovery of any of the following costs of 808  
the electric distribution utility, provided the cost is 809  
prudently incurred: the cost of fuel used to generate the 810  
electricity supplied under the offer; the cost of purchased 811  
power supplied under the offer, including the cost of energy and 812  
capacity, and including purchased power acquired from an 813  
affiliate; the cost of emission allowances; and the cost of 814  
federally mandated carbon or energy taxes; 815

(b) A reasonable allowance for construction work in 816  
progress for any of the electric distribution utility's cost of 817  
constructing an electric generating facility or for an 818  
environmental expenditure for any electric generating facility 819  
of the electric distribution utility, provided the cost is 820  
incurred or the expenditure occurs on or after January 1, 2009. 821  
Any such allowance shall be subject to the construction work in 822  
progress allowance limitations of division (A) of section 823  
4909.15 of the Revised Code, except that the commission may 824  
authorize such an allowance upon the incurrence of the cost or 825  
occurrence of the expenditure. No such allowance for generating 826  
facility construction shall be authorized, however, unless the 827  
commission first determines in the proceeding that there is need 828  
for the facility based on resource planning projections 829  
submitted by the electric distribution utility. Further, no such 830  
allowance shall be authorized unless the facility's construction 831  
was sourced through a competitive bid process, regarding which 832  
process the commission may adopt rules. An allowance approved 833  
under division (B) (2) (b) of this section shall be established as 834  
a nonbypassable surcharge for the life of the facility. 835

(c) The establishment of a nonbypassable surcharge for the 836  
life of an electric generating facility that is owned or 837  
operated by the electric distribution utility, was sourced 838

through a competitive bid process subject to any such rules as 839  
the commission adopts under division (B) (2) (b) of this section, 840  
and is newly used and useful on or after January 1, 2009, which 841  
surcharge shall cover all costs of the utility specified in the 842  
application, excluding costs recovered through a surcharge under 843  
division (B) (2) (b) of this section. However, no surcharge shall 844  
be authorized unless the commission first determines in the 845  
proceeding that there is need for the facility based on resource 846  
planning projections submitted by the electric distribution 847  
utility. Additionally, if a surcharge is authorized for a 848  
facility pursuant to plan approval under division (C) of this 849  
section and as a condition of the continuation of the surcharge, 850  
the electric distribution utility shall dedicate to Ohio 851  
consumers the capacity and energy and the rate associated with 852  
the cost of that facility. Before the commission authorizes any 853  
surcharge pursuant to this division, it may consider, as 854  
applicable, the effects of any decommissioning, deratings, and 855  
retirements. 856

(d) Terms, conditions, or charges relating to limitations 857  
on customer shopping for retail electric generation service, 858  
bypassability, standby, back-up, or supplemental power service, 859  
default service, carrying costs, amortization periods, and 860  
accounting or deferrals, including future recovery of such 861  
deferrals, as would have the effect of stabilizing or providing 862  
certainty regarding retail electric service; 863

(e) Automatic increases or decreases in any component of 864  
the standard service offer price; 865

(f) Consistent with sections 4928.23 to 4928.2318 of the 866  
Revised Code, both of the following: 867

(i) Provisions for the electric distribution utility to 868

securitize any phase-in, inclusive of carrying charges, of the 869  
utility's standard service offer price, which phase-in is 870  
authorized in accordance with section 4928.144 of the Revised 871  
Code; 872

(ii) Provisions for the recovery of the utility's cost of 873  
securitization. 874

(g) Provisions relating to transmission, ancillary, 875  
congestion, or any related service required for the standard 876  
service offer, including provisions for the recovery of any cost 877  
of such service that the electric distribution utility incurs on 878  
or after that date pursuant to the standard service offer; 879

(h) Provisions regarding the utility's distribution 880  
service, including, without limitation and notwithstanding any 881  
provision of Title XLIX of the Revised Code to the contrary, 882  
provisions regarding single issue ratemaking, a revenue 883  
decoupling mechanism or any other incentive ratemaking, and 884  
provisions regarding distribution infrastructure and 885  
modernization incentives for the electric distribution utility. 886  
The latter may include a long-term energy delivery 887  
infrastructure modernization plan for that utility or any plan 888  
providing for the utility's recovery of costs, including lost 889  
revenue, shared savings, and avoided costs, and a just and 890  
reasonable rate of return on such infrastructure modernization. 891  
As part of its determination as to whether to allow in an 892  
electric distribution utility's electric security plan inclusion 893  
of any provision described in division (B) (2) (h) of this 894  
section, the commission shall examine the reliability of the 895  
electric distribution utility's distribution system and ensure 896  
that customers' and the electric distribution utility's 897  
expectations are aligned and that the electric distribution 898

utility is placing sufficient emphasis on and dedicating 899  
sufficient resources to the reliability of its distribution 900  
system. 901

(i) Provisions under which the electric distribution 902  
utility may implement economic development, job retention, and 903  
energy efficiency programs, which provisions may allocate 904  
program costs across all classes of customers of the utility and 905  
those of electric distribution utilities in the same holding 906  
company system. 907

(C) (1) The burden of proof in the proceeding shall be on 908  
the electric distribution utility. The commission shall issue an 909  
order under this division for an initial application under this 910  
section not later than one hundred fifty days after the 911  
application's filing date and, for any subsequent application by 912  
the utility under this section, not later than two hundred 913  
seventy-five days after the application's filing date. Subject 914  
to division (D) of this section, the commission by order shall 915  
approve or modify and approve an application filed under 916  
division (A) of this section if it finds that the electric 917  
security plan so approved, including its pricing and all other 918  
terms and conditions, including any deferrals and any future 919  
recovery of deferrals, is more favorable in the aggregate as 920  
compared to the expected results that would otherwise apply 921  
under section 4928.142 of the Revised Code. Additionally, if the 922  
commission so approves an application that contains a surcharge 923  
under division (B) (2) (b) or (c) of this section, the commission 924  
shall ensure that the benefits derived for any purpose for which 925  
the surcharge is established are reserved and made available to 926  
those that bear the surcharge. Otherwise, the commission by 927  
order shall disapprove the application. 928

(2) (a) If the commission modifies and approves an 929  
application under division (C) (1) of this section, the electric 930  
distribution utility may withdraw the application, thereby 931  
terminating it, and may file a new standard service offer under 932  
this section or a standard service offer under section 4928.142 933  
of the Revised Code. 934

(b) If the utility terminates an application pursuant to 935  
division (C) (2) (a) of this section or if the commission 936  
disapproves an application under division (C) (1) of this 937  
section, the commission shall issue such order as is necessary 938  
to continue the provisions, terms, and conditions of the 939  
utility's most recent standard service offer, along with any 940  
expected increases or decreases in fuel costs from those 941  
contained in that offer, until a subsequent offer is authorized 942  
pursuant to this section or section 4928.142 of the Revised 943  
Code, respectively. 944

(D) Regarding the rate plan requirement of division (A) of 945  
section 4928.141 of the Revised Code, if an electric 946  
distribution utility that has a rate plan that extends beyond 947  
December 31, 2008, files an application under this section for 948  
the purpose of its compliance with division (A) of section 949  
4928.141 of the Revised Code, that rate plan and its terms and 950  
conditions are hereby incorporated into its proposed electric 951  
security plan and shall continue in effect until the date 952  
scheduled under the rate plan for its expiration, and that 953  
portion of the electric security plan shall not be subject to 954  
commission approval or disapproval under division (C) of this 955  
section, and the earnings test provided for in division (F) of 956  
this section shall not apply until after the expiration of the 957  
rate plan. However, that utility may include in its electric 958  
security plan under this section, and the commission may 959

approve, modify and approve, or disapprove subject to division 960  
(C) of this section, provisions for the incremental recovery or 961  
the deferral of any costs that are not being recovered under the 962  
rate plan and that the utility incurs during that continuation 963  
period to comply with section 4928.141, division (B) of section 964  
4928.64, or division (A) of section 4928.66 of the Revised Code. 965

(E) If an electric security plan approved under division 966  
(C) of this section, except one withdrawn by the utility as 967  
authorized under that division, has a term, exclusive of phase- 968  
ins or deferrals, that exceeds three years from the effective 969  
date of the plan, the commission shall test the plan in the 970  
fourth year, and if applicable, every fourth year thereafter, to 971  
determine whether the plan, including its then-existing pricing 972  
and all other terms and conditions, including any deferrals and 973  
any future recovery of deferrals, continues to be more favorable 974  
in the aggregate and during the remaining term of the plan as 975  
compared to the expected results that would otherwise apply 976  
under section 4928.142 of the Revised Code. The commission shall 977  
also determine the prospective effect of the electric security 978  
plan to determine if that effect is substantially likely to 979  
provide the electric distribution utility with a return on 980  
common equity that is significantly in excess of the return on 981  
common equity that is likely to be earned by publicly traded 982  
companies, including utilities, that face comparable business 983  
and financial risk, with such adjustments for capital structure 984  
as may be appropriate. The burden of proof for demonstrating 985  
that significantly excessive earnings will not occur shall be on 986  
the electric distribution utility. ~~For affiliated Ohio electric~~ 987  
~~distribution utilities that operate under a joint electric~~ 988  
~~security plan, their total earned return on common equity shall~~ 989  
~~be used for purposes of assessing significantly excessive~~ 990

~~earnings.~~ If the test results are in the negative or the 991  
commission finds that continuation of the electric security plan 992  
will result in a return on equity that is significantly in 993  
excess of the return on common equity that is likely to be 994  
earned by publicly traded companies, including utilities, that 995  
will face comparable business and financial risk, with such 996  
adjustments for capital structure as may be appropriate, during 997  
the balance of the plan, the commission may terminate the 998  
electric security plan, but not until it shall have provided 999  
interested parties with notice and an opportunity to be heard. 1000  
The commission may impose such conditions on the plan's 1001  
termination as it considers reasonable and necessary to 1002  
accommodate the transition from an approved plan to the more 1003  
advantageous alternative. In the event of an electric security 1004  
plan's termination pursuant to this division, the commission 1005  
shall permit the continued deferral and phase-in of any amounts 1006  
that occurred prior to that termination and the recovery of 1007  
those amounts as contemplated under that electric security plan. 1008

(F) With regard to the provisions that are included in an 1009  
electric security plan under this section, the commission shall 1010  
consider, following the end of each annual period of the plan, 1011  
if any such adjustments resulted in excessive earnings as 1012  
measured by whether the earned return on common equity of the 1013  
electric distribution utility is significantly in excess of the 1014  
return on common equity that was earned during the same period 1015  
by publicly traded companies, including utilities, that face 1016  
comparable business and financial risk, with such adjustments 1017  
for capital structure as may be appropriate. ~~In making its~~ 1018  
~~determination of significantly excessive earnings under this~~ 1019  
~~division, the commission shall, for affiliated Ohio electric~~ 1020  
~~distribution utilities that operate under a joint electric~~ 1021

~~security plan, use the total of the utilities' earned return on-~~ 1022  
~~common equity.~~ Consideration also shall be given to the capital 1023  
requirements of future committed investments in this state. The 1024  
burden of proof for demonstrating that significantly excessive 1025  
earnings did not occur shall be on the electric distribution 1026  
utility. If the commission finds that such adjustments, in the 1027  
aggregate, did result in significantly excessive earnings, it 1028  
shall require the electric distribution utility to return to 1029  
consumers the amount of the excess by prospective adjustments; 1030  
provided that, upon making such prospective adjustments, the 1031  
electric distribution utility shall have the right to terminate 1032  
the plan and immediately file an application pursuant to section 1033  
4928.142 of the Revised Code. Upon termination of a plan under 1034  
this division, rates shall be set on the same basis as specified 1035  
in division (C) (2) (b) of this section, and the commission shall 1036  
permit the continued deferral and phase-in of any amounts that 1037  
occurred prior to that termination and the recovery of those 1038  
amounts as contemplated under that electric security plan. In 1039  
making its determination of significantly excessive earnings 1040  
under this division, the commission shall not consider, directly 1041  
or indirectly, the revenue, expenses, or earnings of any 1042  
~~affiliate that is not an Ohio electric distribution utility or~~ 1043  
~~parent company.~~ 1044

Sec. 4928.149. Every year beginning not later than the 1045  
year 2022 and ending after 2030, an electric distribution 1046  
utility with an ownership interest in a legacy generation 1047  
resource shall make a good faith effort to divest from its 1048  
legacy generation resource obligations. 1049

Sec. 4928.473. (A) Subject to division (B) of this 1050  
section, an electric distribution utility's decoupling mechanism 1051  
authorized by the public utilities commission under section 1052

4928.471 of the Revised Code as that section existed prior to 1053  
the effective date of H.B. 798 of the 133rd general assembly 1054  
shall terminate thirty days after that effective date. 1055

(B) The decoupling mechanism described in division (A) of 1056  
this section shall terminate pursuant to that division, except 1057  
as may be necessary to reconcile the difference between revenue 1058  
collected under the mechanism and the allowable cost recovery 1059  
associated with the mechanism occurring prior to its termination 1060  
date. No such recovery from a decoupling mechanism shall be 1061  
authorized by the commission beyond the period of time required 1062  
to complete this final reconciliation. 1063

**Sec. 4928.646.** On or after the effective date of this 1064  
section, renewable energy credits shall not be derived from any 1065  
of the following resources, and shall not be used for complying 1066  
with the requirements under divisions (B)(1) and (2) of section 1067  
4928.64 of the Revised Code, if the resources are not 1068  
interconnected to the electrical grid under the operational 1069  
control of PJM interconnection, L.L.C.: 1070

(A) Energy derived from nontreated by-products of the 1071  
pulping process or wood manufacturing process, including bark, 1072  
wood chips, sawdust, and lignin in spent pulping liquors. 1073

(B) A facility that generates electricity through the 1074  
conversion of energy from either of the following: 1075

(1) Exhaust heat from engines or manufacturing, 1076  
industrial, commercial, or institutional sites, except for 1077  
exhaust heat from a facility whose primary purpose is the 1078  
generation of electricity; 1079

(2) Reduction of pressure in gas pipelines before gas is 1080  
distributed through the pipeline, provided that the conversion 1081

of energy to electricity is achieved without using additional 1082  
fossil fuels. 1083

**Sec. 4928.647.** Renewable energy credits derived, prior to 1084  
the effective date of this section, from resources described in 1085  
divisions (A) (37) (a) (xii) and (38) (a) of section 4928.01 of the 1086  
the Revised Code, as those divisions existed prior to that 1087  
effective date, may be used to comply with the requirements of 1088  
divisions (B) (1) and (2) of section 4928.64 of the Revised Code 1089  
for a period of five years after the date of generation of the 1090  
resources. 1091

**Section 2.** That existing sections 3706.431, 3706.46, 1092  
3706.49, 3706.55, 3706.61, 4928.01, and 4928.143 of the Revised 1093  
Code are hereby repealed. 1094

**Section 3.** That section 4928.471 of the Revised Code is 1095  
hereby repealed. 1096