As Passed by the House

136th General Assembly
Regular Session **Sub. H. B. No. 303**
2025-2026

Representatives Ray, Hoops

Cosponsors: Representatives Rader, Brennan, Fischer, Glassburn, Hall, D., Thomas, D., Abrams, Baker, Brent, Brownlee, Bryant Bailey, Deeter, Dovilla, King, Kishman, Lampton, Miller, J., Newman, Odioso, Piccolantonio, Richardson, Roemer, Russo, Salvo, Schmidt, Sigrist, Sweeney, Troy, White, A., Williams, Young

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To amend section 4928.02 and to enact sections 1.66, 4934.01, 4934.011, 4934.04, 4934.05, 4934.06, 4934.07, 4934.071, 4934.072, 4934.08, 4934.10, 4934.11, 4934.12, 4934.13, 4934.14, 4934.17, 4934.19, 4934.20, 4934.21, 4934.22, 4934.25, 4934.26, 4934.27, 4934.28, 4934.35, 4934.36, 4934.37, and 4934.38 of the Revised Code to establish the community energy program and pilot program and to define electricity measurement in alternating current.

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

Section 1. That section 4928.02 be amended and sections 1.66, 4934.01, 4934.011, 4934.04, 4934.05, 4934.06, 4934.07, 4934.071, 4934.072, 4934.08, 4934.10, 4934.11, 4934.12, 4934.13, 4934.14, 4934.17, 4934.19, 4934.20, 4934.21, 4934.22, 4934.25, 4934.26, 4934.27, 4934.28, 4934.35, 4934.36, 4934.37, and 4934.38 of the Revised Code be enacted to read as follows:

Sec. 1.66. As used in the Revised Code, unless the context requires otherwise, all measures of electricity described in watts, kilowatts, megawatts, or any derivative thereof means such electricity expressed in alternating current.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(O) Encourage cost-effective, timely, and efficient access to and sharing of customer usage data with customers and competitive suppliers to promote customer choice and grid modernization.

(P) Ensure that a customer's data is provided in a standard format and provided to third parties in as close to real time as is economically justifiable in order to spur economic investment and improve the energy options of individual customers.

(Q) Encourage the development of community energy facilities, as defined in section 4934.01 of the Revised Code, for the benefit of customers in this state and to facilitate participation by customers with the facilities.

(R) Establish a community energy pilot program, pursuant to sections 4934.04 to 4934.19 and 4934.25 to 4934.27 of the Revised Code.

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

Sec. 4934.01. As used in this chapter:

(A) "Bill credit" means the monetary value approved under section 4934.08 of the Revised Code by the public utilities commission for each kilowatt hour of electricity generated by a community energy facility.

(B) "Certified territory," "electric distribution utility," and "energy storage" have the same meanings as in section 4928.01 of the Revised Code.

(C) "Commercial or public sector rooftop" means either of the following that is located within an electric distribution utility's certified territory:

(1) The roof of a building located on commercial real estate as defined in section 1311.85 of the Revised Code;

(2) Any property owned by a public authority as defined in section 1311.25 of the Revised Code.

(D) "Community energy facility" means a single facility that does the following:

(1) Generates electricity by means of a solar photovoltaic device or uses as its fuel either solar, wind, biomass, landfill gas, or hydroelectric power, or uses a microturbine, natural gas-fired generator, energy storage system, or a fuel cell;

(2) Meets all of the following requirements:

(a) The facility is located in this state and is directly connected to an electric distribution utility's distribution system.

(b) The facility has at least three subscribers.

(c) The facility is located on one parcel of land and, except as provided in section 4934.011 of the Revised Code, there is no community energy facility on the same or a contiguous parcel that is developed, owned, or operated by the same entity, affiliated entity, or entity under common control.

(d) No subscriber holds more than a sixty per cent proportional interest in the output of the system, which shall be measured as the sum total of all meters on the subscriber's property.

(e) Not less than forty per cent of the facility capacity shall be subscribed by subscriptions of forty kilowatts or less. For purposes of this division, a multi-unit building served by a single meter shall be considered a single customer provided the average usage, based on the number of units, is forty kilowatts or less.

(f) The facility has a nameplate capacity of ten or less megawatts, or twenty or less megawatts if the facility is on a distressed site or one or more commercial or public sector rooftops, as measured at the point of interconnection.

(g) The facility is not under the control of an electric distribution utility, but may be under the control of an affiliate of the utility.

(3)(a) If the facility uses either an energy storage system or natural gas-fired generator, then the energy storage system or generator is not sized so as to exceed the size of any co-located facility using solar, wind, biomass, landfill gas, or hydroelectric power as its fuel.

(b) If the system uses both an energy storage system and natural gas-fired generator, then the combined nameplate capacity of the storage system and generator is not sized so as to exceed the size of any co-located facility using solar, wind, biomass, landfill gas, or hydroelectric power as its fuel.

(E) "Community energy organization" means a for-profit or nonprofit entity that operates one or more community energy facilities.

(F) "Contiguous county" means a county that directly shares a border with another county, including, counties who only share a border with another county's endpoints, and counties that are adjacent geographically, with no intervening counties between them.

(G) "Distressed site" means a site made up of one or more parcels of land, located within an electric distribution utility's certified territory where the majority of the acreage is at least one or more of the following:

(1) A brownfield as defined in section 122.6511 of the Revised Code;

(2) A parcel that is within an area where an investor may receive a new markets tax credit under section 45D of the Internal Revenue Code;

(3) A solid waste facility licensed by the environmental protection agency under section 3734.02 of the Revised Code;

(4) A parcel of land that is described by division (b)(11)(B)(iii) of section 45 of the Internal Revenue Code;

(5) Land or structure owned by a metropolitan housing authority, as described in section 3735.27 of the Revised Code;

(6) Land owned by a county land reutilization corporation as defined in section 1724.01 of the Revised Code.

(H) "Large industrial customer" means any manufacturer that uses electricity primarily in a process involving a change of raw or unfinished materials into another form or product, and that takes service from an electric distribution utility at primary voltage, subtransmission voltage, or transmission voltage.

(I) "Mercantile customer" has the same meaning as in section 4928.01 of the Revised Code.

(J) "Net crediting" means a program offered by an electric distribution utility under which the electric utility does the following:

(1) Issues a customer, who is a subscriber, a consolidated electric bill that includes on the customer's monthly bill the electric utility charges for electric service, the community energy subscription charge, and any bill credit;

(2) Remits the customer's subscription fee to the owner or operator of the community energy organization to which the customer subscribes.

(K) "Non-ministerial permit" means all necessary and discretionary governmental permits and approvals to construct a community energy facility notwithstanding any pending legal challenge to one or more permits or approvals.

(L) "Political subdivision" means a county, township, or municipal corporation, or any other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

(M) "Subscriber" means any retail electric customer who meets all of the following:

(1) The customer has an electric meter on the customer's property;

(2) The customer is located within the certified territory of an electric distribution utility;

(3) The customer contracts for a subscription from a community energy facility located in the same certified territory as the customer;

(4) For customers with subscriptions of forty kilowatts or less to a community energy facility not located on a distressed site, the community energy facility must be located in either the same county as the customer or in a contiguous county to the customer's electric meter;

(5) The customer is not a large industrial customer or mercantile customer.

(N) "Subscription" means the right to obtain from a community energy organization an allocation of bill credits for electricity generated by a community energy facility.

(O) "Unsubscribed electricity" means any electricity generated by a community energy facility that is not attributable to a subscription.

Sec. 4934.011. A community energy facility may be placed on the same parcel or a contiguous parcel of land as a community energy facility that is developed, owned, or operated by the same entity, affiliated entity, or entity under common control if at least one of the following is met:

(A) The parcel or parcels of land are a distressed site or the facility is on one or more commercial or public sector rooftops, and the total capacity of all community energy facilities on the parcel or parcels does not exceed twenty megawatts.

(B) All of the following are satisfied:

(1) The community energy facility is to be located on a

parcel of land, or multiple parcels of land, that were created prior to the effective date of this section.

(2) The total capacity of all community energy facilities on the parcel or parcels of land does not exceed ten megawatts.

(3) Each community energy facility has its own distinct point of interconnection with the serving electric distribution utility, including separate and distinct metering and the ability to be directly connected to or disconnected from the utility.

(4) The generation components of each community energy facility are separate, including separate fencing, and not connected with neighboring facilities other than by the utility's distribution system.

(5) Each community energy facility shares only non-operational infrastructure, including access roads, utility poles, and other features necessary to provide utility and physical access to each facility.

Sec. 4934.04. The public utilities commission shall establish a community energy pilot program, as described in sections 4934.05 to 4934.17 and 4934.25 to 4934.27 of the Revised Code, consisting of one thousand five hundred megawatts to be implemented throughout this state. The amount of megawatts in the program may only be expanded by the general assembly.

Sec. 4934.05. (A) The public utilities commission shall annually certify two hundred fifty megawatts of community energy facilities, based on nameplate capacity, until one thousand megawatts from such facilities are certified.

(B) All megawatts certified pursuant to this section shall be allocated proportionally based on the size of each utility's retail electric sales published by the energy information administration.

(C) Any uncertified megawatts for a year carry over to the subsequent year until all available megawatts are certified.

(D) All megawatts certified pursuant to this section shall be certified in the order that the certification applications were received.

(E) If applications for certification exceed the total capacity available for the year, then the applications shall be placed on a wait list as determined by the commission. Once certification of one thousand megawatts for community energy facilities has occurred, the wait list shall be eliminated.

(F) The commission shall ensure that certification under this section is separate from a certification process required under sections 4928.64 to 4928.645 of the Revised Code, or any related rules in the Ohio Administrative Code.

Sec. 4934.06. (A) The public utilities commission shall certify five hundred megawatts of community energy facilities, in addition to the megawatts certified under section 4934.05 of the Revised Code, which shall be reserved for community energy facilities constructed exclusively on distressed sites or one or more commercial or public sector rooftops.

(B) The commission shall ensure that certification under this section is separate from a certification process required under sections 4928.64 to 4928.645 of the Revised Code, or any related rules in the Administrative Code.

(C) After all megawatts are certified pursuant to this section, a community energy facility on a distressed site or a commercial or public sector rooftop may be certified from the megawatts allocated under section 4934.05 of the Revised Code.

Sec. 4934.07. (A) An electric distribution utility with a community energy facility in its certified territory shall allocate bill credits for all electricity generated by the facility that is attributable to a subscription.

(B)(1) A community energy organization may account for unsubscribed electricity on a monthly basis and accumulate bill credits for the unsubscribed electricity for a period of up to twelve months after it was generated.

(2) Bill credits for unsubscribed electricity accumulated under division (B)(1) of this section shall be allocated to future subscribers at the direction of the community energy organization.

(C) At least once annually, a community energy organization shall furnish to the electric distribution utility in whose certified territory the community energy facility is located an allocation for distribution of bill credits to subscribers for unsubscribed electricity.

(D) A community energy organization shall forfeit, to the electric distribution utility in whose certified territory the community energy facility is located, any bill credits for unsubscribed electricity that are not allocated pursuant to division (B) of this section.

Sec. 4934.071. (A) As used in this section:

(1) "Regional governmental aggregator" means a regional council of governments established under Chapter 167. of the Revised Code with members in at least seventeen counties that is also a governmental aggregator under section 4928.20 of the Revised Code.

(2) "Renewable attributes" means any of the following that are attributable to a community energy facility or the electricity generated by a facility provided by the federal or state government or any other legislative authority of a political subdivision in the state:

(a) Any credits, certificates, benefits, or offsets and allowances computed on the basis of a community energy facility's displacement of fossil fuel-derived, or other conventional, electric generation;

(b) Any renewable energy credits or any other environmental certificates issued or administered in connection with electricity generated from a community energy facility;

(c) Any voluntary emission reduction credits obtained, or obtainable, in connection with the electric generation from a community energy facility.

(B) A regional governmental aggregator may purchase any amount of renewable attributes from a community energy facility.

Sec. 4934.072. (A) A large industrial customer or mercantile customer shall not participate in the community energy pilot program or be charged, directly or indirectly, for any costs related to the community energy pilot program, including any bill credits approved under section 4934.08 of the Revised Code.

(B) Residential and commercial customers who do not participate in the community energy pilot program shall not be charged, directly or indirectly, for any costs related to the community energy pilot program.

Sec. 4934.08. (A) As used in this section, "retail rate" means all costs of providing generation service, transmission service, and distribution service that may be charged by an electric distribution utility.

(B) A subscriber to a community energy facility shall be eligible for a bill credit from the subscriber's electric distribution utility for the proportional output of a community energy facility attributable to the subscriber.

(C) The public utilities commission shall establish the bill credit for each subscriber that is equal to the utility's retail rate on a per-customer class basis, minus only the utility's base charge for distribution service approved under Chapter 4909. of the Revised Code and the utility's distribution riders or other distribution charges approved under Chapter 4928. of the Revised Code.

(D) The utility shall publish new tariffs or update existing tariffs based on the bill credit set under this section not later than nine months after the effective date of this section.

Sec. 4934.10. Any bill credit exceeding a subscriber's monthly bill amount shall carry forward until fully allocated to the subscriber's bill or until the termination of the subscriber's community energy organization subscription.

Sec. 4934.11. No subscriber may obtain a subscription for electricity generated by a community energy facility representing more than one hundred per cent of the subscriber's average annual electricity usage.

Sec. 4934.12. A subscription shall be considered one of the following:

(A) A consumer transaction subject to Chapter 1345. of the Revised Code regarding the enrollment of residential subscribers to obtain an allocation of bill credits;

(B) Goods subject to Chapter 1302. of the Revised Code regarding the enrollment of nonresidential subscribers to obtain an allocation of bill credits.

Sec. 4934.13. An electric distribution utility shall interconnect a community energy facility that is in that utility's certified territory to its distribution system within a reasonable time after the facility is constructed and shall ensure such interconnections are made efficiently, safely, and in compliance with any applicable federal and state regulations and standards.

Sec. 4934.14. An electric distribution utility shall not discriminate against community energy facilities or their subscribers, which includes adding extraordinary fees and charges not applied to similar facilities.

Sec. 4934.17. (A) Notwithstanding division (B) of this section, the public utilities commission has exclusive jurisdiction over the regulation of the interconnection of community energy facilities to the distribution systems of electric utilities. A board of county commissioners, a board of township trustees, or the legislative authority of a municipal corporation shall not adopt or enforce regulations governing the technical requirements, processes, or costs of interconnection for a community energy facility.

(B) Nothing in this chapter shall be construed to limit the authority of the following regarding the zoning of a small wind farm or small solar facility:

(1) A board of county commissioners or a board of zoning appeals under section 303.213 of the Revised Code;

(2) A board of township trustees or a board of zoning appeals under section 519.213 of the Revised Code;

(3) The legislative authority of a municipal corporation under section 713.081 of the Revised Code.

As used in this division, "small wind farm" and "small solar facility" have the same meanings as in sections 303.213, 519.213, and 713.081 of the Revised Code.

Sec. 4934.19. (A) An electric distribution utility shall establish a net crediting program under which the electric distribution utility shall enter into a net crediting agreement with a community energy organization. The terms of an agreement shall specify that authorization by or on behalf of a subscriber is required before a subscriber may be billed by the electric distribution utility under the program. An agreement also shall specify the terms for payments made by the electric distribution utility to the community energy organization, which terms may include a net crediting fee of not more than one per cent of the subscription fee to be deducted from the electric distribution utility's payment to the community energy organization.

(B) Under a net crediting agreement, an electric distribution utility shall do the following:

(1) Remit, through an electronic funds transfer, the cash value of the subscriber's subscription fee, less any net crediting fee, to the community energy organization not later than thirty days after the billing period;

(2) Issue electric distribution utility customers who are subscribers an itemized monthly bill that includes, in addition to charges described in division (B)(4) of this section, the subscriber's bill credit for the billing period and the

subscriber's subscription fee;

(3) Process monthly bills for subscribers who participate in low-income customer assistance programs or budget billing programs in the same manner as bills for customers who are not participating in such programs;

(4) Bill for all basic electric services, including transmission, distribution, and generation charges, consistent with this section and commission regulations.

Sec. 4934.20. A nonresidential customer that subscribes to multiple community energy facilities may participate in the net crediting program only if each facility is included in a net crediting agreement under sections 4934.19 to 4934.22 of the Revised Code.

Sec. 4934.21. The minimum service requirements established under section 4928.10 of the Revised Code apply to sections 4934.19 to 4934.22 of the Revised Code.

Sec. 4934.22. The public utilities commission shall adopt rules to implement net crediting programs authorized under sections 4934.19 to 4934.22 of the Revised Code.

Sec. 4934.25. (A) A community energy organization that constructs a community energy facility on a distressed site that is a brownfield, as defined in section 122.6511 of the Revised Code, shall be eligible to receive a grant awarded by the department of development from the brownfield remediation program under section 122.6511 of the Revised Code for costs associated with remediation.

(B) The department of development shall promulgate rules for awarding grants described in this section.

Sec. 4934.26. (A) The public utilities commission shall convene and facilitate an ongoing stakeholder working group, or designate an existing group to function as the working group, to assist commission staff with effectively and efficiently promulgating rules for the community energy pilot program.

(B) The working group shall consist of the following:

(1) Electric distribution utilities;

(2) Consumer advocates;

(3) Community energy industry representatives;

(4) Other interested parties.

Sec. 4934.27. Not later than twelve months after the effective date of this section, the public utilities commission, with assistance from the working group under section 4934.26 of the Revised Code shall promulgate rules to implement the community energy pilot program, which shall include rules for the creation and establishment of community energy facilities, the collection of a reasonable application fee from each community energy organization participating in the program, and the following:

(A) The certification of community energy facilities, which shall include rules for the commission to approve or deny each facility application within ninety days, unless good cause is shown for not meeting the deadline, as determined by the commission;

(B) Prohibit removing a subscriber from the subscriber's applicable customer class because of the subscriber's subscription to a community energy facility;

(C) Reasonably allow for the transfer and portability of subscriptions, including allowing a subscriber to retain a subscription to a facility if the subscriber moves within the same electric distribution utility's service territory;

(D) Modify existing interconnection standards, fees, and processes as needed to facilitate the efficient and cost-effective interconnection of community energy facilities that allow an electric distribution utility to recover reasonable interconnection costs for each facility;

(E) Require each electric distribution utility to efficiently connect a community energy facility to its electrical distribution grid and not to discriminate against facilities or subscribers;

(F) Provide for consumer protection in accordance with existing laws and regulations, including any protections against disconnection of service;

(G) Establish robust consumer protections for subscribers, including at least the following:

(1) A standardized customer disclosure form for residential subscribers;

(2) Prohibiting upfront sign-on fees or credit checks;

(3) Preventing early termination charges to any subscriber who unsubscribes.

(H) Allow an electric distribution utility to recover reasonable costs associated with administering the community energy pilot program from community energy subscribers or community energy organizations;

(I) Ensure that the provisions of H.B. 303 of the 136th general assembly shall be construed to minimize direct or indirect costs related to community energy facilities to an electric distribution utility's nonsubscriber ratepayers and shall maximize benefits to all rate classes, regardless of participation in a community energy program;

(J) Ensure facilities qualifying for the community energy pilot program have a signed interconnection agreement or a system impact study, as determined by the commission, can demonstrate site control, and have received all applicable non-ministerial permits;

(K) Require each community energy organization to send a notice in a standardized format containing information related to subscriber enrollment to the electric distribution utility that services the area where the organization's community energy facility is sited;

(L) Not later than nine months after the effective date of this section, require each electric distribution utility to publish new tariffs or update existing tariffs to implement the community energy pilot program;

(M) Require a community energy organization to be responsible for the decommissioning of a community energy facility pursuant to sections 4934.35 and 4934.36 of the Revised Code.

Sec. 4934.28. (A) As used in this section, "distributed energy resource" means a small-scale electricity-generating or storage system connected to the distribution grid, including technologies such as rooftop solar, batteries, and generators, that enhance grid resilience, provide energy security, and offer potential cost savings.

(B) A distributed energy resource that also meets the criteria to be a community energy facility that has submitted a completed interconnection application to an electric distribution utility and has site control before the effective date of this section shall retain its original position in the interconnection queue and remain eligible to participate in the community energy pilot program if that facility meets the program eligibility requirements and any rules adopted by the public utilities commission.

(C) The commission shall ensure the following:

(1) That the projects described in division (B) of this section are not made to restart the interconnection process or forfeit any previously completed engineering reviews or fees.

(2) Projects commence any applicable study process within thirty days of receiving the study agreement or pursuant to timelines established by the commission.

(D) An owner or operator of a distributed energy resource that fails to engage in good faith progression of the interconnection process, including willful delay or obstruction, may result in loss of queue position or eligibility in the community energy pilot program.

Sec. 4934.35. (A) Not later than eighteen months after a community energy facility has ceased generating electricity, a community energy organization shall commence decommissioning of the facility.

(B) The decommissioning described in division (A) of this section shall include the following, to be mutually agreed to in writing by the property owner or owners and the organization:

(1) The removal, and potential reuse and recycling, of solar panels and other community energy equipment, and the

remediation of the site;

(2) The removal of all non-utility-owned equipment, graveled areas, and access roads;

(3) The replacement of any topsoil that was removed for the construction of the facility and reseeding of the cleared area.

(C) Not more than twenty per cent of the total combined mass of the community energy facility may enter a landfill.

Sec. 4934.36. (A) A community energy organization shall maintain sufficient financial assurances, in the form of a bond, through the life of a community energy facility's operation to provide for decommissioning as described in section 4934.35 of the Revised Code.

(B) The amount of the bond shall be calculated by a third-party professional engineer obtained by the organization. Every five years from the date of the initial assessment, the bond amount shall be recalculated in the same manner.

(C) The board of county commissioners where the project is located shall be the obligee of the bond.

Sec. 4934.37. The public utilities commission shall conduct reviews of the community energy pilot program forty-eight months after the rules for the program have been promulgated and present a report at a hearing before the appropriate committee in each chamber of the general assembly with the following information:

(A) The number and location of operating community energy facilities;

(B) The amount of nameplate capacity certified;

(C) The number of subscribers, how much energy was subscribed to by those subscribers, and the types of customer classes that subscribed;

(D) Avoided costs for generation, capacity, and transmission;

(E) Deferred transmission distribution investments;

(F) Avoided line loss;

(G) Increases in electric grid resiliency;

(H) Other benefits associated with locally produced electricity;

(I) An evaluation of the overall costs and benefits of the community energy pilot program, including an assessment of whether the program has successfully minimized direct or indirect costs related to community energy facilities to an electric distribution utility's nonsubscriber ratepayers and whether program costs and benefits have been allocated in proportion to customer participation within each rate class.

Sec. 4934.38. Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a regulatory restriction contained in a rule adopted under sections 4934.22, 4934.25, 4934.27, and 4934.37 of the Revised Code is not subject to sections 121.95 to 121.953 of the Revised Code.

Section 2. That existing section 4928.02 of the Revised Code is hereby repealed.