

As Pending in the Senate Energy Committee

136th General Assembly

Regular Session

2025-2026

Sub. S. B. No. 2

Senator Reineke

A BILL

To amend sections 4905.03, 4906.01, 4906.03, 1
4906.04, 4906.07, 4906.10, 4909.04, 4909.05, 2
4909.052, 4909.06, 4909.07, 4909.08, 4909.15, 3
4909.156, 4909.17, 4909.173, 4909.174, 4909.18, 4
4909.191, 4909.42, 4911.15, 4928.01, 4928.05, 5
4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 6
4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 7
4928.34, 4928.542, 4928.64, 4928.645, 4929.20, 8
5727.01, 5727.031, 5727.06, and 5727.11; to 9
enact sections 122.161, 4903.27, 4905.321, 10
4909.041, 4909.042, 4909.181, 4909.47, 4928.041, 11
4928.081, 4928.101, 4928.102, 4928.103, 12
4928.149, 4928.1410, 4928.73, 4929.201, 13
4929.221, 4929.222, 4933.51, 4933.52, 4933.54, 14
4933.56, 4933.58, 4933.59, and 5727.76; and to 15
repeal sections 3706.40, 3706.41, 3706.43, 16
3706.431, 3706.45, 3706.46, 3706.49, 3706.491, 17
3706.55, 3706.551, 3706.59, 3706.63, 3706.65, 18
4928.143, 4928.148, and 4928.642 of the Revised 19
Code regarding public utilities and competitive 20
retail electric and natural gas services, to 21
make changes regarding electric company property 22
taxation, and repeal parts of H.B. 6 of the 23
133rd General Assembly. 24

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

Section 1. That sections 4905.03, 4906.01, 4906.03, 25
4906.04, 4906.07, 4906.10, 4909.04, 4909.05, 4909.052, 4909.06, 26
4909.07, 4909.08, 4909.15, 4909.156, 4909.17, 4909.173, 27
4909.174, 4909.18, 4909.191, 4909.42, 4911.15, 4928.01, 4928.05, 28
4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 29
4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 4928.542, 30
4928.64, 4928.645, 4929.20, 5727.01, 5727.031, 5727.06, and 31
5727.11 be amended and sections 122.161, 4903.27, 4905.321, 32
4909.041, 4909.042, 4909.181, 4909.47, 4928.041, 4928.081, 33
4928.101, 4928.102, 4928.103, 4928.149, 4928.1410, 4928.73, 34
4929.201, 4929.221, 4929.222, 4933.51, 4933.52, 4933.54, 35
4933.56, 4933.58, 4933.59, and 5727.76 of the Revised Code be 36
enacted to read as follows: 37

Sec. 122.161. (A) As used in this section: 38

(1) "Subdivision" means a municipal corporation, township, 39
or county. 40

(2) "Legislative authority" means the legislative 41
authority of a municipal corporation, a board of the township 42
trustees, or a board of county commissioners. 43

(3) "Subdivision's territory" means, in the case of a 44
municipal corporation, the territory of the municipal 45
corporation; in the case of a township, the unincorporated 46
territory of the township; or, in the case of a county, the 47
unincorporated territory of the county. 48

(4) "Brownfield" has the same meaning as in section 49
122.6511 of the Revised Code. 50

(5) "Former coal mine" means a location that was, but is 51
no longer, used in connection with the extraction of coal from 52
its natural deposit in the earth. 53

(6) "Qualifying property" has the same meaning as in 54
section 5727.76 of the Revised Code. 55

(B) A legislative authority may adopt and certify to the 56
director of development an ordinance or resolution requesting 57
that the director designate the site of a brownfield or former 58
coal mine within the subdivision's territory as a priority 59
investment area. The ordinance or resolution shall describe the 60
boundaries of the proposed area and shall specify that 61
qualifying property in the priority investment area shall be 62
exempt from taxation for five years pursuant to section 5727.76 63
of the Revised Code. 64

The director, upon receipt of that certification, shall 65
designate the proposed area as a priority investment area if the 66
director determines that the area meets the designation 67
standards set forth in rules adopted by the director. Those 68
standards shall specify that the director must prioritize the 69
designation of areas negatively impacted by the decline of the 70
coal industry. 71

The director shall notify the legislative authority of the 72
director's decision within ninety days after receiving the 73
certified ordinance or resolution. If the director does not 74
issue a decision within those ninety days, the request for 75
designation shall be considered approved by operation of law. 76

(C) The director of development shall immediately notify 77
the public utilities commission, the power siting board, and the 78
tax commissioner if the director approves the designation of a 79

priority investment area under division (B) of this section or 80
if the designation is approved by operation of law. 81

Sec. 4903.27. For all cases involving an application 82
pursuant to section 4909.18 of the Revised Code, the public 83
utilities commission shall not permit any new discovery 84
beginning not later than two hundred fifteen days after the 85
application is submitted. 86

Sec. 4905.03. As used in this chapter, any person, firm, 87
copartnership, voluntary association, joint-stock association, 88
company, or corporation, wherever organized or incorporated, is: 89

(A) A telephone company, when engaged in the business of 90
transmitting telephonic messages to, from, through, or in this 91
state; 92

(B) A for-hire motor carrier, when engaged in the business 93
of transporting persons or property by motor vehicle for 94
compensation, except when engaged in any of the operations in 95
intrastate commerce described in divisions (B)(1) to (9) of 96
section 4921.01 of the Revised Code, but including the carrier's 97
agents, officers, and representatives, as well as employees 98
responsible for hiring, supervising, training, assigning, or 99
dispatching drivers and employees concerned with the 100
installation, inspection, and maintenance of motor-vehicle 101
equipment and accessories; 102

(C) An electric light company, when engaged in the 103
business of supplying electricity for light, heat, or power 104
purposes to consumers within this state, including supplying 105
electric transmission service for electricity delivered to 106
consumers in this state, but excluding a regional transmission 107
organization approved by the federal energy regulatory 108

commission~~;~~_. 109

An electric light company does not include a self- 110

generator or mercantile customer self-power system. 111

(D) A gas company, when engaged in the business of 112

supplying artificial gas for lighting, power, or heating 113

purposes to consumers within this state or when engaged in the 114

business of supplying artificial gas to gas companies or to 115

natural gas companies within this state, but a producer engaged 116

in supplying to one or more gas or natural gas companies, only 117

such artificial gas as is manufactured by that producer as a by- 118

product of some other process in which the producer is primarily 119

engaged within this state is not thereby a gas company. All 120

rates, rentals, tolls, schedules, charges of any kind, or 121

agreements between any gas company and any other gas company or 122

any natural gas company providing for the supplying of 123

artificial gas and for compensation for the same are subject to 124

the jurisdiction of the public utilities commission. 125

(E) A natural gas company, when engaged in the business of 126

supplying natural gas for lighting, power, or heating purposes 127

to consumers within this state. Notwithstanding the above, 128

neither the delivery nor sale of Ohio-produced natural gas or 129

Ohio-produced raw natural gas liquids by a producer or gatherer 130

under a public utilities commission-ordered exemption, adopted 131

before, as to producers, or after, as to producers or gatherers, 132

January 1, 1996, or the delivery or sale of Ohio-produced 133

natural gas or Ohio-produced raw natural gas liquids by a 134

producer or gatherer of Ohio-produced natural gas or Ohio- 135

produced raw natural gas liquids, either to a lessor under an 136

oil and gas lease of the land on which the producer's drilling 137

unit is located, or the grantor incident to a right-of-way or 138

easement to the producer or gatherer, shall cause the producer 139
or gatherer to be a natural gas company for the purposes of this 140
section. 141

All rates, rentals, tolls, schedules, charges of any kind, 142
or agreements between a natural gas company and other natural 143
gas companies or gas companies providing for the supply of 144
natural gas and for compensation for the same are subject to the 145
jurisdiction of the public utilities commission. The commission, 146
upon application made to it, may relieve any producer or 147
gatherer of natural gas, defined in this section as a gas 148
company or a natural gas company, of compliance with the 149
obligations imposed by this chapter and Chapters 4901., 4903., 150
4907., 4909., 4921., and 4923. of the Revised Code, so long as 151
the producer or gatherer is not affiliated with or under the 152
control of a gas company or a natural gas company engaged in the 153
transportation or distribution of natural gas, or so long as the 154
producer or gatherer does not engage in the distribution of 155
natural gas to consumers. 156

Nothing in division (E) of this section limits the 157
authority of the commission to enforce sections 4905.90 to 158
4905.96 of the Revised Code. 159

(F) A pipe-line company, when engaged in the business of 160
transporting natural gas, oil, or coal or its derivatives 161
through pipes or tubing, either wholly or partly within this 162
state, but not when engaged in the business of the transport 163
associated with gathering lines, raw natural gas liquids, or 164
finished product natural gas liquids; 165

(G) A water-works company, when engaged in the business of 166
supplying water through pipes or tubing, or in a similar manner, 167
to consumers within this state; 168

(H) A heating or cooling company, when engaged in the 169
business of supplying water, steam, or air through pipes or 170
tubing to consumers within this state for heating or cooling 171
purposes; 172

(I) A messenger company, when engaged in the business of 173
supplying messengers for any purpose; 174

(J) A street railway company, when engaged in the business 175
of operating as a common carrier, a railway, wholly or partly 176
within this state, with one or more tracks upon, along, above, 177
or below any public road, street, alleyway, or ground, within 178
any municipal corporation, operated by any motive power other 179
than steam and not a part of an interurban railroad, whether the 180
railway is termed street, inclined-plane, elevated, or 181
underground railway; 182

(K) A suburban railroad company, when engaged in the 183
business of operating as a common carrier, whether wholly or 184
partially within this state, a part of a street railway 185
constructed or extended beyond the limits of a municipal 186
corporation, and not a part of an interurban railroad; 187

(L) An interurban railroad company, when engaged in the 188
business of operating a railroad, wholly or partially within 189
this state, with one or more tracks from one municipal 190
corporation or point in this state to another municipal 191
corporation or point in this state, whether constructed upon the 192
public highways or upon private rights-of-way, outside of 193
municipal corporations, using electricity or other motive power 194
than steam power for the transportation of passengers, packages, 195
express matter, United States mail, baggage, and freight. Such 196
an interurban railroad company is included in the term 197
"railroad" as used in section 4907.02 of the Revised Code. 198

(M) A sewage disposal system company, when engaged in the 199
business of sewage disposal services through pipes or tubing, 200
and treatment works, or in a similar manner, within this state. 201

As used in division (E) of this section, "natural gas" 202
includes natural gas that has been processed to enable 203
consumption or to meet gas quality standards or that has been 204
blended with propane, hydrogen, biologically derived methane 205
gas, or any other artificially produced or processed gas. 206

As used in this section, "gathering lines" has the same 207
meaning as in section 4905.90 of the Revised Code, and "raw 208
natural gas liquids" and "finished product natural gas liquids" 209
have the same meanings as in section 4906.01 of the Revised 210
Code. 211

As used in this section, "self-generator" has the same 212
meaning as in section 4928.01 of the Revised Code, and 213
"mercantile customer self-power system" has the same meaning as 214
in section 4928.73 of the Revised Code. 215

Sec. 4905.321. Notwithstanding any provision of the 216
Revised Code to the contrary, all charges paid by customers to a 217
public utility that are later found to be unreasonable, 218
unlawful, imprudent, or otherwise improper by the public 219
utilities commission or the supreme court shall be promptly 220
refunded to the customers who paid such charges. The commission 221
shall order such refunds in a manner designed to allocate the 222
refunds to customer classes in the same proportion as the 223
charges were originally collected. 224

Sec. 4906.01. As used in Chapter 4906. of the Revised 225
Code: 226

(A) "Person" means an individual, corporation, business 227

trust, association, estate, trust, or partnership or any 228
officer, board, commission, department, division, or bureau of 229
the state or a political subdivision of the state, or any other 230
entity. 231

(B) (1) "Major utility facility" means: 232

(a) Electric generating plant and associated facilities 233
designed for, or capable of, operation at a capacity of fifty 234
megawatts or more; 235

(b) An electric transmission line and associated 236
facilities of a design capacity of one hundred kilovolts or 237
more; 238

(c) A gas pipeline that is greater than five hundred feet 239
in length, and its associated facilities, is more than nine 240
inches in outside diameter and is designed for transporting gas 241
at a maximum allowable operating pressure in excess of one 242
hundred twenty-five pounds per square inch. 243

(2) "Major utility facility" does not include any of the 244
following: 245

(a) Gas transmission lines over which an agency of the 246
United States has exclusive jurisdiction; 247

(b) Any solid waste facilities as defined in section 248
6123.01 of the Revised Code; 249

(c) Electric distributing lines and associated facilities 250
as defined by the power siting board; 251

(d) Any manufacturing facility that creates byproducts 252
that may be used in the generation of electricity as defined by 253
the power siting board; 254

| | |
|---|--------------------------|
| (e) Gathering lines, gas gathering pipelines, and processing plant gas stub pipelines as those terms are defined in section 4905.90 of the Revised Code and associated facilities; | 255 256 257 258 |
| (f) Any gas processing plant as defined in section 4905.90 of the Revised Code; | 259 260 |
| (g) Natural gas liquids finished product pipelines; | 261 |
| (h) Pipelines from a gas processing plant as defined in section 4905.90 of the Revised Code to a natural gas liquids fractionation plant, including a raw natural gas liquids pipeline, or to an interstate or intrastate gas pipeline; | 262 263 264 265 |
| (i) Any natural gas liquids fractionation plant; | 266 |
| (j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines; | 267 268 269 |
| (k) Any compressor stations used by the following: | 270 |
| (i) A gathering line, a gas gathering pipeline, a processing plant gas stub pipeline, or a gas processing plant as those terms are defined in section 4905.90 of the Revised Code; | 271 272 273 |
| (ii) A natural gas liquids finished product pipeline, a natural gas liquids fractionation plant, or any pipeline upstream of a natural gas liquids fractionation plant; or | 274 275 276 |
| (iii) A production operation as defined in section 1509.01 of the Revised Code. | 277 278 |
| (C) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility | 279 280 281 |

facility, but does not include surveying changes needed for 282
temporary use of sites or routes for nonutility purposes, or 283
uses in securing geological data, including necessary borings to 284
ascertain foundation conditions. 285

(D) "Certificate" means a certificate of environmental 286
compatibility and public need issued by the power siting board 287
under section 4906.10 of the Revised Code or a construction 288
certificate issued by the board under rules adopted under 289
division (E) ~~or~~, (F), or (G) of section 4906.03 of the Revised 290
Code. 291

(E) "Gas" means natural gas, flammable gas, or gas that is 292
toxic or corrosive. 293

(F) "Natural gas liquids finished product pipeline" means 294
a pipeline that carries finished product natural gas liquids to 295
the inlet of an interstate or intrastate finished product 296
natural gas liquid transmission pipeline, rail loading facility, 297
or other petrochemical or refinery facility. 298

(G) "Large solar facility" means an electric generating 299
plant that consists of solar panels and associated facilities 300
with a single interconnection to the electrical grid that is a 301
major utility facility. 302

(H) "Large wind farm" means an electric generating plant 303
that consists of wind turbines and associated facilities with a 304
single interconnection to the electrical grid that is a major 305
utility facility. 306

(I) "Natural gas liquids fractionation plant" means a 307
facility that takes a feed of raw natural gas liquids and 308
produces finished product natural gas liquids. 309

(J) "Raw natural gas" means hydrocarbons that are produced 310

in a gaseous state from gas wells and that generally include 311
methane, ethane, propane, butanes, pentanes, hexanes, heptanes, 312
octanes, nonanes, and decanes, plus other naturally occurring 313
impurities like water, carbon dioxide, hydrogen sulfide, 314
nitrogen, oxygen, and helium. 315

(K) "Raw natural gas liquids" means naturally occurring 316
hydrocarbons contained in raw natural gas that are extracted in 317
a gas processing plant and liquefied and generally include 318
mixtures of ethane, propane, butanes, and natural gasoline. 319

(L) "Finished product natural gas liquids" means an 320
individual finished product produced by a natural gas liquids 321
fractionation plant as a liquid that meets the specifications 322
for commercial products as defined by the gas processors 323
association. Those products include ethane, propane, iso-butane, 324
normal butane, and natural gasoline. 325

Sec. 4906.03. The power siting board shall: 326

(A) Require such information from persons subject to its 327
jurisdiction as it considers necessary to assist in the conduct 328
of hearings and any investigations or studies it may undertake; 329

(B) Conduct any studies or investigations that it 330
considers necessary or appropriate to carry out its 331
responsibilities under this chapter; 332

(C) Adopt rules establishing criteria for evaluating the 333
effects on environmental values of proposed and alternative 334
sites, and projected needs for electric power, and such other 335
rules as are necessary and convenient to implement this chapter, 336
including rules governing application fees, supplemental 337
application fees, and other reasonable fees to be paid by 338
persons subject to the board's jurisdiction. The board shall 339

make an annual accounting of its collection and use of these 340
fees and shall issue an annual report of its accounting, in the 341
form and manner prescribed by its rules, not later than the last 342
day of June of the year following the calendar year to which the 343
report applies. 344

(D) Approve, disapprove, or modify and approve 345
applications for certificates; 346

(E) Notwithstanding sections 4906.06 to 4906.14 of the 347
Revised Code, the board may adopt rules to provide for an 348
accelerated review of an application for a construction 349
certificate for construction of a major utility facility related 350
to a coal research and development project as defined in section 351
1555.01 of the Revised Code, or to a coal development project as 352
defined in section 1551.30 of the Revised Code, submitted to the 353
Ohio coal development office for review under division (B) (7) of 354
section 1551.33 of the Revised Code. Applications for 355
construction certificates for construction of major utility 356
facilities for Ohio coal research and development shall be filed 357
with the board on the same day as the proposed facility or 358
project is submitted to the Ohio coal development office for 359
review. 360

The board shall render a decision on an application for a 361
construction certificate within ninety days after receipt of the 362
application and all of the data and information it may require 363
from the applicant. In rendering a decision on an application 364
for a construction certificate, the board shall only consider 365
the criteria and make the findings and determinations set forth 366
in divisions (A) (2), (3), (5), and (7) and division (B) of 367
section 4906.10 of the Revised Code. 368

(F) Notwithstanding sections 4906.06 to 4906.14 of the 369

Revised Code, the board shall adopt rules to provide for an 370
accelerated review of an application for a construction 371
certificate for any of the following: 372

(1) An electric transmission line that is: 373

(a) Not more than two miles in length; 374

(b) Primarily needed to attract or meet the requirements 375
of a specific customer or specific customers; 376

(c) Necessary to maintain reliable electric service as a 377
result of the retirement or shutdown of an electric generating 378
facility located within the state; or 379

(d) A rebuilding of an existing transmission line. 380

(2) An electric generating facility that uses waste heat 381
or natural gas and is primarily within the current boundary of 382
an existing industrial or electric generating facility; 383

(3) A gas pipeline that is not more than five miles in 384
length or is primarily needed to meet the requirements of a 385
specific customer or specific customers. 386

The board shall adopt rules that provide for the automatic 387
certification to any entity described in this division when an 388
application by any such entity is not suspended by the board, an 389
administrative law judge, or the chairperson or executive 390
director of the board for good cause shown, within ninety days 391
of submission of the application. If an application is 392
suspended, the board shall approve, disapprove, or modify and 393
approve the application not later than ninety days after the 394
date of the suspension. 395

(G) Notwithstanding sections 4906.06 to 4906.14 of the 396
Revised Code, the board shall adopt rules to provide for the 397

accelerated review of an application for a construction 398
certificate for any of the following that are located in a 399
priority investment area designated and approved under section 400
122.161 of the Revised Code: 401

(1) An electric generating plant and associated 402
facilities; 403

(2) An electric transmission line and associated 404
facilities; 405

(3) Gas Pipeline infrastructure. 406

The board shall render a decision on an application 407
submitted under this division not later than forty-five days 408
after receipt of the application. If the board does not render a 409
decision within forty-five days, the application shall be 410
considered approved by operation of law, and the board shall 411
issue a certificate to the applicant. 412

The board shall adopt rules to implement this division, 413
including rules that prioritize applications for construction on 414
areas negatively impacted by the decline of the coal industry. 415

Sec. 4906.04. No person shall commence to construct a 416
major utility facility in this state without first having 417
obtained a certificate for the facility. The replacement of an 418
existing facility with a like facility, as determined by the 419
power siting board, ~~shall not constitute~~ constitutes the 420
construction of a major utility facility that requires a 421
certificate. Such replacement of a like facility is not exempt 422
~~from any other requirements of state or local laws or~~ 423
~~regulations.~~ Any facility, with respect to which such a 424
certificate is required, shall thereafter be constructed, 425
operated, and maintained in conformity with such certificate and 426

any terms, conditions, and modifications contained therein. A 427
certificate may only be issued pursuant to Chapter 4906. of the 428
Revised Code. 429

A certificate may be transferred, subject to the approval 430
of the board, to a person who agrees to comply with the terms, 431
conditions, and modifications contained therein. 432

Sec. 4906.07. (A) Upon the receipt of an application 433
complying with section 4906.06 of the Revised Code, the power 434
siting board shall promptly fix a date for a public hearing 435
thereon, not less than ~~sixty-fourty-five~~ nor more than ~~ninety-~~ 436
sixty days after such receipt, and shall conclude the proceeding 437
as expeditiously as practicable. 438

(B) On an application for an amendment of a certificate, 439
the board shall hold a hearing in the same manner as a hearing 440
is held on an application for a certificate if the proposed 441
change in the facility would result in any material increase in 442
any environmental impact of the facility or a substantial change 443
in the location of all or a portion of such facility other than 444
as provided in the alternates set forth in the application. 445

(C) The chairperson of the power siting board shall cause 446
each application filed with the board to be investigated and 447
shall, not less than fifteen days prior to the date any 448
application is set for hearing submit a written report to the 449
board and to the applicant. A copy of such report shall be made 450
available to any person upon request. Such report shall set 451
forth the nature of the investigation, and shall contain 452
recommended findings with regard to division (A) of section 453
4906.10 of the Revised Code and shall become part of the record 454
and served upon all parties to the proceeding. 455

Sec. 4906.10. (A) The power siting board shall render a 456
decision upon the record either granting or denying the 457
application as filed, or granting it upon such terms, 458
conditions, or modifications of the construction, operation, or 459
maintenance of the major utility facility as the board considers 460
appropriate. The certificate shall be subject to sections 461
4906.101, 4906.102, and 4906.103 of the Revised Code and 462
conditioned upon the facility being in compliance with standards 463
and rules adopted under section 4561.32 and Chapters 3704., 464
3734., and 6111. of the Revised Code. An applicant may withdraw 465
an application if the board grants a certificate on terms, 466
conditions, or modifications other than those proposed by the 467
applicant in the application. 468

The board shall not grant a certificate for the 469
construction, operation, and maintenance of a major utility 470
facility, either as proposed or as modified by the board, unless 471
it finds and determines all of the following: 472

(1) The basis of the need for the facility if the facility 473
is an electric transmission line or gas pipeline; 474

(2) The nature of the probable environmental impact; 475

(3) That the facility represents the minimum adverse 476
environmental impact, considering the state of available 477
technology and the nature and economics of the various 478
alternatives, and other pertinent considerations; 479

(4) In the case of an electric transmission line or 480
generating facility, that the facility is consistent with 481
regional plans for expansion of the electric power grid of the 482
electric systems serving this state and interconnected utility 483
systems and that the facility will serve the interests of 484

electric system economy and reliability; 485

(5) That the facility will comply with Chapters 3704., 486
3734., and 6111. of the Revised Code and all rules and standards 487
adopted under those chapters and under section 4561.32 of the 488
Revised Code. In determining whether the facility will comply 489
with all rules and standards adopted under section 4561.32 of 490
the Revised Code, the board shall consult with the office of 491
aviation of the division of multi-modal planning and programs of 492
the department of transportation under section 4561.341 of the 493
Revised Code. 494

(6) That the facility will serve the public interest, 495
convenience, and necessity; 496

(7) In addition to the provisions contained in divisions 497
(A) (1) to (6) of this section and rules adopted under those 498
divisions, what its impact will be on the viability as 499
agricultural land of any land in an existing agricultural 500
district established under Chapter 929. of the Revised Code that 501
is located within the site and alternative site of the proposed 502
major utility facility. Rules adopted to evaluate impact under 503
division (A) (7) of this section shall not require the 504
compilation, creation, submission, or production of any 505
information, document, or other data pertaining to land not 506
located within the site and alternative site. 507

(8) That the facility incorporates maximum feasible water 508
conservation practices as determined by the board, considering 509
available technology and the nature and economics of the various 510
alternatives. 511

(B) If the board determines that the location of all or a 512
part of the proposed facility should be modified, it may 513

condition its certificate upon that modification, provided that 514
the municipal corporations and counties, and persons residing 515
therein, affected by the modification shall have been given 516
reasonable notice thereof. 517

(C) A copy of the decision and any opinion issued 518
therewith shall be served upon each party. 519

(D) The board shall render a decision under this section 520
not later than one hundred twenty days after the date the 521
application is filed. If the board does not render a decision 522
within the time period required by this division, the 523
application shall be deemed approved by operation of law, and 524
the board shall issue a certificate to the applicant. 525

Sec. 4909.04. (A) The public utilities commission, for the 526
purpose of ascertaining the reasonableness and justice of rates 527
and charges for the service rendered by public utilities or 528
railroads, or for any other purpose authorized by law, may 529
investigate and ascertain the value of the property of any 530
public utility or railroad in this state used or useful for the 531
service and convenience of the public, using the same criteria 532
that are set forth in ~~section~~ sections 4909.042 and 4909.05 of 533
the Revised Code. At the request of the legislative authority of 534
any municipal corporation, the commission, after hearing and 535
determining that such a valuation is necessary, may also 536
investigate and ascertain the value of the property of any 537
public utility used and useful for the service and convenience 538
of the public where the whole or major portion of such public 539
utility is situated in such municipal corporation. 540

(B) To assist the commission in preparing such a 541
valuation, every public utility or railroad shall: 542

(1) Furnish to the commission, or to its agents, as the 543
commission requires, maps, profiles, schedules of rates and 544
tariffs, contracts, reports of engineers, and other documents, 545
records, and papers, or copies of any of them, in aid of any 546
investigation and ascertainment of the value of its property; 547

(2) Grant to the commission or its agents free access to 548
all of its premises and property and its accounts, records, and 549
memoranda whenever and wherever requested by any such authorized 550
agent; 551

(3) Cooperate with and aid the commission and its agents 552
in the work of the valuation of its property in such further 553
particulars and to such extent as the commission requires and 554
directs. 555

(C) The commission may make all rules which seem necessary 556
to ascertain the value of the property and plant of each public 557
utility or railroad. 558

Sec. 4909.041. As used in sections 4909.041, 4909.042, and 559
4909.05 of the Revised Code: 560

(A) A "lease purchase agreement" is an agreement pursuant 561
to which a public utility leasing property is required to make 562
rental payments for the term of the agreement and either the 563
utility is granted the right to purchase the property upon the 564
completion of the term of the agreement and upon the payment of 565
an additional fixed sum of money or title to the property vests 566
in the utility upon the making of the final rental payment. 567

(B) A "leaseback" is the sale or transfer of property by a 568
public utility to another person contemporaneously followed by 569
the leasing of the property to the public utility on a long-term 570
basis. 571

Sec. 4909.042. (A) With respect to an electric light 572
company that chooses to file a fully forecasted test period 573
under section 4909.18 of the Revised Code, the public utilities 574
commission shall prescribe the form and details of the valuation 575
report of the property of the utility. Such report shall include 576
all the kinds and classes of property, with the value of each, 577
owned, held, or projected to be owned or held during the test 578
period, by the utility for the service and convenience of the 579
public. 580

(B) Such report shall contain the following facts in 581
detail: 582

(1) The original cost of each parcel of land owned in fee 583
and projected to be owned in fee and in use during the test 584
period, determined by the commission; and also a statement of 585
the conditions of acquisition, whether by direct purchase, by 586
donation, by exercise of the power of eminent domain, or 587
otherwise; 588

(2) The actual acquisition cost, not including periodic 589
rental fees, of rights-of-way, trailways, or other land rights 590
projected to be held during the test period, by virtue of 591
easements, leases, or other forms of grants of rights as to 592
usage; 593

(3) The original cost of all other kinds and classes of 594
property projected to be used and useful during the test period, 595
in the rendition of service to the public. Such original costs 596
of property, other than land owned in fee, shall be the cost, as 597
determined to be reasonable by the commission, to the person 598
that first dedicated or dedicates the property to the public use 599
and shall be set forth in property accounts and subaccounts as 600
prescribed by the commission; 601

(4) The cost of property constituting all or part of a 602
project projected to be leased to or used by the utility during 603
the test period, under Chapter 165., 3706., 6121., or 6123. of 604
the Revised Code and not included under division (B) (3) of this 605
section exclusive of any interest directly or indirectly paid by 606
the utility with respect thereto whether or not capitalized; 607

(5) In the discretion of the commission, the cost to a 608
utility, in an amount determined to be reasonable by the 609
commission, of property constituting all or part of a project 610
projected to be leased to the utility during the test period, 611
under a lease purchase agreement or a leaseback and not included 612
under division (B) (3) of this section exclusive of any interest 613
directly or indirectly paid by the utility with respect thereto 614
whether or not capitalized; 615

(6) The proper and adequate reserve for depreciation, as 616
determined to be reasonable by the commission; 617

(7) Any sums of money or property that the utility is 618
projected to receive during the test period, as total or partial 619
defrayal of the cost of its property; 620

(8) The valuation of the property of the utility, which 621
shall be the sum of the amounts contained in the report pursuant 622
to divisions (B) (1) to (5) of this section, less the sum of the 623
amounts contained in the report pursuant to divisions (B) (6) and 624
(7) of this section. 625

(C) The report shall show separately the property 626
projected to be used and useful to or held by the utility during 627
the test period, and such other items as the commission 628
considers proper. The commission may require an additional 629
report showing the extent to which the property is projected to 630

be used and useful during the test period. Such reports shall be 631
filed in the office of the commission for the information of the 632
governor and the general assembly. 633

Sec. 4909.05. As used in this section: 634

~~(A) A "lease purchase agreement" is an agreement pursuant to which a public utility leasing property is required to make rental payments for the term of the agreement and either the utility is granted the right to purchase the property upon the completion of the term of the agreement and upon the payment of an additional fixed sum of money or title to the property vests in the utility upon the making of the final rental payment.~~ 635
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~~(B) A "leaseback" is the sale or transfer of property by a public utility to another person contemporaneously followed by the leasing of the property to the public utility on a long-term basis.~~ 642
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~~(C) The With respect to every public utility, other than an electric light company that chooses to file a fully forecasted test period under section 4909.18 of the Revised Code, the public utilities commission shall prescribe the form and details of the valuation report of the property of each public utility or railroad in the state. Such report shall include all the kinds and classes of property, with the value of each, owned, held, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be owned or held as of the date certain, by each public utility or railroad used and useful, or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, for the service and convenience of the public. Such~~ 646
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(B) Such report shall contain the following facts in 660
detail: 661

(1) The original cost of each parcel of land owned in fee 662
and in use, or, with respect to a natural gas, water-works, or 663
sewage disposal system company, projected to be owned in fee and 664
in use as of the date certain, determined by the commission; and 665
also a statement of the conditions of acquisition, whether by 666
direct purchase, by donation, by exercise of the power of 667
eminent domain, or otherwise; 668

(2) The actual acquisition cost, not including periodic 669
rental fees, of rights-of-way, trailways, or other land rights 670
held, or, with respect to a natural gas, water-works, or sewage 671
disposal system company, projected to be held as of the date 672
certain, by virtue of easements, leases, or other forms of 673
grants of rights as to usage; 674

(3) The original cost of all other kinds and classes of 675
property used and useful, or, with respect to a natural gas, 676
water-works, or sewage disposal system company, projected to be 677
used and useful as of the date certain, in the rendition of 678
service to the public. Subject to section 4909.052 of the 679
Revised Code, such original costs of property, other than land 680
owned in fee, shall be the cost, as determined to be reasonable 681
by the commission, to the person that first dedicated or 682
dedicates the property to the public use and shall be set forth 683
in property accounts and subaccounts as prescribed by the 684
commission. To the extent that the costs of property comprising 685
a coal research and development facility, as defined in section 686
1555.01 of the Revised Code, or a coal development project, as 687
defined in section 1551.30 of the Revised Code, have been 688
allowed for recovery as Ohio coal research and development costs 689

under section 4905.304 of the Revised Code, none of those costs 690
shall be included as a cost of property under this division. 691

(4) The cost of property constituting all or part of a 692
project leased to or used by the utility, or, with respect to a 693
natural gas, water-works, or sewage disposal system company, 694
projected to be leased to or used by the utility as of the date 695
certain, under Chapter 165., 3706., 6121., or 6123. of the 696
Revised Code and not included under division ~~(C) (3)~~ (B) (3) of 697
this section exclusive of any interest directly or indirectly 698
paid by the utility with respect thereto whether or not 699
capitalized; 700

(5) In the discretion of the commission, the cost to a 701
utility, in an amount determined to be reasonable by the 702
commission, of property constituting all or part of a project 703
leased to the utility, or, with respect to a natural gas, water- 704
works, or sewage disposal system company, projected to be leased 705
to the utility as of the date certain, under a lease purchase 706
agreement or a leaseback and not included under division ~~(C) (3)~~ 707
(B) (3) of this section exclusive of any interest directly or 708
indirectly paid by the utility with respect thereto whether or 709
not capitalized; 710

(6) The cost of the replacement of water service lines 711
incurred by a water-works company under section 4909.173 of the 712
Revised Code and the water service line replacement 713
reimbursement amounts provided to customers under section 714
4909.174 of the Revised Code; 715

(7) The proper and adequate reserve for depreciation, as 716
determined to be reasonable by the commission; 717

(8) Any sums of money or property that the company may 718

have received, or, with respect to a natural gas, water-works, 719
or sewage disposal system company, is projected to receive as of 720
the date certain, as total or partial defrayal of the cost of 721
its property; 722

(9) The valuation of the property of the company, which 723
shall be the sum of the amounts contained in the report pursuant 724
to divisions ~~(C) (1)~~ (B) (1) to (6) of this section, less the sum 725
of the amounts contained in the report pursuant to divisions ~~(C)~~ 726
~~(7)~~ (B) (7) and (8) of this section. 727

(C) The report shall show separately the property used and 728
useful to such public utility or railroad in the furnishing of 729
the service to the public, the property held by such public 730
utility or railroad for other purposes, and the property 731
projected to be used and useful to or held by a natural gas, 732
water-works, or sewage disposal system company as of the date 733
certain, and such other items as the commission considers 734
proper. The commission may require an additional report showing 735
the extent to which the property is used and useful, or, with 736
respect to a natural gas, water-works, or sewage disposal system 737
company, projected to be used and useful as of the date certain. 738
Such reports shall be filed in the office of the commission for 739
the information of the governor and the general assembly. 740

Sec. 4909.052. Subject to a finding that such costs are 741
just and reasonable, the public utilities commission in 742
evaluating a petition submitted under section 4905.481 of the 743
Revised Code shall accept the original cost, reported under 744
division ~~(C) (3)~~ (B) (3) of section 4909.05 of the Revised Code, 745
of the acquisition of a municipal water-works or sewage disposal 746
system company that is acquired by a large water-works or sewage 747
disposal system company, provided that the original cost is 748

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| determined according to all of the following requirements: | 749 |
| (A) The acquiring company has three appraisals performed on the property of the company being acquired. | 750 751 |
| (B) The three appraisals are performed by three independent utility-valuation experts mutually selected by the acquiring company and the company being acquired from the list maintained under section 4909.054 of the Revised Code. | 752 753 754 755 |
| (C) The average of the three appraisals is used as the fair market value of the company being acquired. | 756 757 |
| (D) Each utility-valuation expert does all of the following: | 758 759 |
| (1) Determines the fair market value of the company to be acquired by establishing the amount for which the company would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell; | 760 761 762 763 |
| (2) Determines the fair market value in compliance with the uniform standards of professional appraisal practice; | 764 765 |
| (3) Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired; | 766 767 768 |
| (4) Incorporates the assessment described in division (D) (5) of this section into the appraisal under the cost, market, and income approach; | 769 770 771 |
| (5) Engages one engineer who is licensed to prepare an assessment of the tangible assets of the company to be acquired. The original source of funding for any part of the tangible assets shall not be relevant to the determination of the value of those assets. | 772 773 774 775 776 |

(E) The lesser of the purchase price or the fair market value, described in division (C) of this section, is reported as the original cost under division ~~(C) (3)~~ (B) (3) of section 4909.05 of the Revised Code of the company to be acquired.

Sec. 4909.06. The investigation and report required by ~~section~~ section 4909.042 or 4909.05 of the Revised Code shall show, when the public utilities commission deems it necessary, the amounts, dates, and rates of interest of all bonds outstanding against each public utility or railroad, the property upon which such bonds are a lien, the amounts paid for them, and, the original capital stock and the moneys received by any such public utility or railroad by reason of any issue of stock, bonds, or other securities. Such report shall also show the net and gross receipts of such public utility or railroad and the method by which moneys were expended or paid out and the purpose of such payments. The commission may prescribe the procedure to be followed in making the investigation and valuation, the form in which the results of the ascertainment of the value of each public utility or railroad shall be submitted, and the classifications of the elements that constitute the ascertained value. Such investigation shall also show the value of the property of every public utility or railroad as a whole, and if such property is in more than one county, the value of its property in each of such counties.

"Valuation" and "value," as used in this section, may include, ~~with~~ :

(A) With respect to a public utility that is a natural gas, water-works, or sewage disposal system company, projected valuation and value as of the date certain, if applicable because of a future date certain under section 4909.15 of the

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| Revised Code; | 807 |
| <u>(B) With respect to an electric light company that chooses</u> | 808 |
| <u>to file a fully forecasted test period under section 4909.18 of</u> | 809 |
| <u>the Revised Code, the valuation and value during the fully</u> | 810 |
| <u>forecasted test period.</u> | 811 |
| Sec. 4909.07. The public utilities commission, during the | 812 |
| making of the valuation provided for in sections 4909.04 to | 813 |
| 4909.13 of the Revised Code, and after its completion, shall in | 814 |
| like manner keep itself informed through its engineers, experts, | 815 |
| and other assistants of all extensions, improvements, or other | 816 |
| changes in the condition and value of the property of all public | 817 |
| utilities or railroads and shall ascertain the value of such | 818 |
| extensions, improvements, and changes. The commission shall, as | 819 |
| is required for the proper regulation of such public utilities | 820 |
| or railroads, revise and correct its valuations of property, | 821 |
| showing such revisions and corrections as a whole and as to each | 822 |
| county. Such revisions and corrections shall be filed in the | 823 |
| same manner as original reports. | 824 |
| "Valuation" and "value," as used in this section, may | 825 |
| include, with : | 826 |
| <u>(A) With respect to a public utility that is a natural</u> | 827 |
| <u>gas, water-works, or sewage disposal system company, projected</u> | 828 |
| <u>valuation and value as of the date certain, if applicable</u> | 829 |
| <u>because of a future date certain under section 4909.15 of the</u> | 830 |
| <u>Revised Code;</u> | 831 |
| <u>(B) With respect to an electric light company that chooses</u> | 832 |
| <u>to file a fully forecasted test period under section 4909.18 of</u> | 833 |
| <u>the Revised Code, the valuation and value during the fully</u> | 834 |
| <u>forecasted test period.</u> | 835 |

Sec. 4909.08. When the public utilities commission has 836
completed the valuation of the property of any public utility or 837
railroad and before such valuation becomes final, it shall give 838
notice by registered letter to such public utility or railroad, 839
and if a substantial portion of said public utility or railroad 840
is situated in a municipal corporation, then to the mayor of 841
such municipal corporation, stating the valuations placed upon 842
the several kinds and classes of property of such public utility 843
or railroad and upon the property as a whole and give such 844
further notice by publication or otherwise as it shall deem 845
necessary to apprise the public of such valuation. If, within 846
thirty days after such notification, no protest has been filed 847
with the commission, such valuation becomes final. If notice of 848
protest has been filed by any public utility or railroad, the 849
commission shall fix a time for hearing such protest and shall 850
consider at such hearing any matter material thereto presented 851
by such public utility, railroad, or municipal corporation, in 852
support of its protest or by any representative of the public 853
against such protest. If, after the hearing of any protest of 854
any valuation so fixed, the commission is of the opinion that 855
its inventory is incomplete or inaccurate or that its valuation 856
is incorrect, it shall make such changes as are necessary and 857
shall issue an order making such corrected valuations final. A 858
final valuation by the commission and all classifications made 859
for the ascertainment of such valuations shall be public and are 860
prima-facie evidence relative to the value of the property. 861

"Valuation" and "value," as used in this section, may 862
include, ~~with~~ : 863

(A) With respect to a public utility that is a natural 864
gas, water-works, or sewage disposal system company, projected 865
valuation and value as of the date certain, if applicable 866

because of a future date certain under section 4909.15 of the Revised Code;

(B) With respect to an electric light company that chooses to file a fully forecasted test period under section 4909.18 of the Revised Code, the valuation and value during the fully forecasted test period.

Sec. 4909.15. (A) The public utilities commission, when fixing and determining just and reasonable rates, cost recovery mechanisms, fares, tolls, rentals, and charges, shall determine:

~~(1) The~~ (1) (a) With respect to a public utility that is a natural gas, water-works, or sewage disposal system company, or that is an electric light company that chooses not to file a fully forecasted test period under section 4909.18 of the Revised Code, the valuation as of the date certain of the property of the public utility that is used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, is projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined.~~The~~

(b) With respect to an electric light company that chooses to file a fully forecasted test period under section 4909.18 of the Revised Code, the valuation of the property of the utility that is projected to be used and useful during the fully forecasted test period in rendering the public utility service for which rates are to be fixed and determined.

(c) The valuation so determined under division (A) (1) of this section for any public utility shall be the total value as set forth in division ~~(C) (9)~~ (B) (8) of section 4909.042 of the Revised Code and division (B) (9) of section 4909.05 of the

Revised Code, and a reasonable allowance for materials and 896
supplies and a reasonable allowance for cash working capital as 897
determined by the commission. 898

~~The commission, in its discretion, may include in the 899
valuation a reasonable allowance for construction work in- 900
progress but, in no event, may such an allowance be made by the- 901
commission until it has determined that the particular- 902
construction project is at least seventy-five per cent complete. 903~~

~~In determining the percentage completion of a particular 904
construction project, the commission shall consider, among other 905
relevant criteria, the per cent of time elapsed in construction; 906
the per cent of construction funds, excluding allowance for 907
funds used during construction, expended, or obligated to such- 908
construction funds budgeted where all such funds are adjusted to 909
reflect current purchasing power; and any physical inspection- 910
performed by or on behalf of any party, including the 911
commission's staff. 912~~

~~A reasonable allowance for construction work in progress- 913
shall not exceed ten per cent of the total valuation as stated- 914
in this division, not including such allowance for construction- 915
work in progress. 916~~

~~Where the commission permits an allowance for construction 917
work in progress, the dollar value of the project or portion- 918
thereof included in the valuation as construction work in- 919
progress shall not be included in the valuation as plant in- 920
service until such time as the total revenue effect of the- 921
construction work in progress allowance is offset by the total- 922
revenue effect of the plant in service exclusion. Carrying- 923
charges calculated in a manner similar to allowance for funds- 924
used during construction shall accrue on that portion of the- 925~~

~~project in service but not reflected in rates as plant in- 926~~
~~service, and such accrued carrying charges shall be included in- 927~~
~~the valuation of the property at the conclusion of the offset- 928~~
~~period for purposes of division (C) (9) of section 4909.05 of the 929~~
~~Revised Code. 930~~

~~From and after April 10, 1985, no allowance for- 931~~
~~construction work in progress as it relates to a particular- 932~~
~~construction project shall be reflected in rates for a period- 933~~
~~exceeding forty-eight consecutive months commencing on the date- 934~~
~~the initial rates reflecting such allowance become effective,- 935~~
~~except as otherwise provided in this division. 936~~

~~The applicable maximum period in rates for an allowance- 937~~
~~for construction work in progress as it relates to a particular- 938~~
~~construction project shall be tolled if, and to the extent, a- 939~~
~~delay in the in-service date of the project is caused by the- 940~~
~~action or inaction of any federal, state, county, or municipal- 941~~
~~agency having jurisdiction, where such action or inaction- 942~~
~~relates to a change in a rule, standard, or approval of such- 943~~
~~agency, and where such action or inaction is not the result of- 944~~
~~the failure of the utility to reasonably endeavor to comply with 945~~
~~any rule, standard, or approval prior to such change. 946~~

~~In the event that such period expires before the project- 947~~
~~goes into service, the commission shall exclude, from the date- 948~~
~~of expiration, the allowance for the project as construction- 949~~
~~work in progress from rates, except that the commission may- 950~~
~~extend the expiration date up to twelve months for good cause- 951~~
~~shown. 952~~

~~In the event that a utility has permanently canceled,- 953~~
~~abandoned, or terminated construction of a project for which it- 954~~
~~was previously permitted a construction work in progress- 955~~

~~allowance, the commission immediately shall exclude the~~ 956
~~allowance for the project from the valuation.~~ 957

~~In the event that a construction work in progress project~~ 958
~~previously included in the valuation is removed from the~~ 959
~~valuation pursuant to this division, any revenues collected by~~ 960
~~the utility from its customers after April 10, 1985, that~~ 961
~~resulted from such prior inclusion shall be offset against~~ 962
~~future revenues over the same period of time as the project was~~ 963
~~included in the valuation as construction work in progress. The~~ 964
~~total revenue effect of such offset shall not exceed the total~~ 965
~~revenues previously collected.~~ 966

~~In no event shall the total revenue effect of any offset~~ 967
~~or offsets provided under division (A) (1) of this section exceed~~ 968
~~the total revenue effect of any construction work in progress~~ 969
~~allowance.~~ 970

(2) A fair and reasonable rate of return to the utility on 971
the valuation as determined in division (A) (1) of this section; 972

(3) The dollar annual return to which the utility is 973
entitled by applying the fair and reasonable rate of return as 974
determined under division (A) (2) of this section to the 975
valuation of the utility determined under division (A) (1) of 976
this section; 977

(4) The cost to the utility of rendering the public 978
utility service for the test period used for the determination 979
under division (C) (1) of this section, less the total of any 980
interest on cash or credit refunds paid, pursuant to section 981
4909.42 of the Revised Code, by the utility during the test 982
period. 983

~~(a) Federal, state, and local taxes imposed on or measured~~ 984

by net income may, in the discretion of the commission, be 985
computed by the normalization method of accounting, provided the 986
utility maintains accounting reserves that reflect differences 987
between taxes actually payable and taxes on a normalized basis, 988
provided that no determination as to the treatment in the rate- 989
making process of such taxes shall be made that will result in 990
loss of any tax depreciation or other tax benefit to which the 991
utility would otherwise be entitled, and further provided that 992
such tax benefit as redounds to the utility as a result of such 993
a computation may not be retained by the company, used to fund 994
any dividend or distribution, or utilized for any purpose other 995
than the defrayal of the operating expenses of the utility and 996
the defrayal of the expenses of the utility in connection with 997
construction work. 998

~~(b) The amount of any tax credits granted to an electric 999
light company under section 5727.391 of the Revised Code for 1000
Ohio coal burned prior to January 1, 2000, shall not be retained 1001
by the company, used to fund any dividend or distribution, or 1002
utilized for any purposes other than the defrayal of the 1003
allowable operating expenses of the company and the defrayal of 1004
the allowable expenses of the company in connection with the 1005
installation, acquisition, construction, or use of a compliance 1006
facility. The amount of the tax credits granted to an electric 1007
light company under that section for Ohio coal burned prior to 1008
January 1, 2000, shall be returned to its customers within three 1009
years after initially claiming the credit through an offset to 1010
the company's rates or fuel component, as determined by the 1011
commission, as set forth in schedules filed by the company under 1012
section 4905.30 of the Revised Code. As used in division (A)(4) 1013
(b) of this section, "compliance facility" has the same meaning 1014
as in section 5727.391 of the Revised Code. 1015~~

(B) The commission shall compute the gross annual revenues 1016
to which the utility is entitled by adding the dollar amount of 1017
return under division (A) (3) of this section to the cost, for 1018
the test period used for the determination under division (C) (1) 1019
of this section, of rendering the public utility service under 1020
division (A) (4) of this section. 1021

(C) (1) Except as provided in division (D) of this section, 1022
the revenues and expenses of the utility shall be determined 1023
during a test period. ~~The utility may~~ as follows: 1024

(a) Electric light companies may propose a fully 1025
forecasted test period utilizing reasonably forecasted rate 1026
base, revenues, and expenses for the first twelve months that 1027
new rates will be in effect. Initially, rates shall be set using 1028
the thirteen-month average rate base ending in the last month of 1029
the test period, based on the end-of-month balance for the 1030
twelve consecutive calendar months of the test period plus the 1031
end-of-month balance for the month immediately prior to the 1032
beginning of the forecasted test period. Final rates for this 1033
thirteen-month average test period shall use the lower of 1034
forecasted plant investment or actual plant investment, actual 1035
revenues, and actual expenses. 1036

Forecasted plant investment, forecasted revenues, and 1037
forecasted expenses versus actual investment, actual revenues, 1038
and actual expenses shall be trued up via a cost recovery 1039
mechanism approved by the commission. As part of the true-up 1040
process, the commission shall exclude any cost components that 1041
have not been found by the commission to be used and useful in 1042
rendering public utility service. 1043

The fully forecasted test period shall commence not later 1044
than the application's filing date. 1045

(b) All utilities, except for electric light companies 1046
that choose to file under division (C) (1) (a) of this section, 1047
shall propose a test period ~~for this determination~~ that is any 1048
twelve-month period beginning not more than six months prior to 1049
the date the application is filed and ending not more than nine 1050
months subsequent to that date. ~~The test period for determining~~ 1051
~~revenues and expenses of the utility shall be the test period~~ 1052
~~proposed by the utility, unless otherwise ordered by the~~ 1053
~~commission.~~ 1054

(2) ~~The~~ For utilities filing under division (C) (1) (b) of 1055
this section, the date certain shall be not later than the date 1056
of filing, except that it shall be, for a natural gas, water- 1057
works, or sewage disposal system company, not later than the end 1058
of the test period. 1059

(D) ~~A natural gas, water works, or sewage disposal system~~ 1060
~~company~~ Utilities filing under division (C) (1) (b) of this 1061
section may propose adjustments to the revenues and expenses to 1062
~~be determined under division (C) (1) of this section~~ for any 1063
changes that are, during the test period or the twelve-month 1064
period immediately following the test period, reasonably 1065
expected to occur. ~~The natural gas, water works, or sewage~~ 1066
~~disposal system company utility~~ shall identify and quantify, 1067
individually, any proposed adjustments. The commission shall 1068
incorporate the proposed adjustments into the determination if 1069
the adjustments are just and reasonable. 1070

(E) When the commission is of the opinion, after hearing 1071
and after making the determinations under divisions (A) and (B) 1072
of this section, that any rate, cost recovery mechanism, fare, 1073
charge, toll, rental, schedule, classification, or service, or 1074
any joint rate, cost recovery mechanism, fare, charge, toll, 1075

rental, schedule, classification, or service rendered, charged, 1076
demanded, exacted, or proposed to be rendered, charged, 1077
demanded, or exacted, is, or will be, unjust, unreasonable, 1078
unjustly discriminatory, unjustly preferential, or in violation 1079
of law, that the service is, or will be, inadequate, or that the 1080
maximum rates, cost recovery mechanisms, charges, tolls, or 1081
rentals chargeable by any such public utility are insufficient 1082
to yield reasonable compensation for the service rendered, and 1083
are unjust and unreasonable, the commission shall: 1084

(1) With due regard among other things to the value of all 1085
property of the public utility ~~actually used and useful for the~~ 1086
~~convenience of the public~~ as determined under division (A) (1) of 1087
this section, excluding from such value the value of any 1088
franchise or right to own, operate, or enjoy the same in excess 1089
of the amount, exclusive of any tax or annual charge, actually 1090
paid to any political subdivision of the state or county, as the 1091
consideration for the grant of such franchise or right, and 1092
excluding any value added to such property by reason of a 1093
monopoly or merger, with due regard in determining the dollar 1094
annual return under division (A) (3) of this section to the 1095
necessity of making reservation out of the income for surplus, 1096
depreciation, and contingencies, and; 1097

(2) With due regard to all such other matters as are 1098
proper, according to the facts in each case, 1099

(a) Including a fair and reasonable rate of return 1100
determined by the commission with reference to a cost of debt 1101
equal to the actual embedded cost of debt of such public 1102
utility, 1103

(b) But not including the portion of any periodic rental 1104
or use payments representing that cost of property that is 1105

included in the valuation report under divisions ~~(C) (4)~~ (B) (4) 1106
and (5) of section 4909.042 of the Revised Code and divisions 1107
(B) (4) and (5) of section 4909.05 of the Revised Code, fix and 1108
determine the just and reasonable rate, cost recovery mechanism, 1109
fare, charge, toll, rental, or service to be rendered, charged, 1110
demanded, exacted, or collected for the performance or rendition 1111
of the service that will provide the public utility the 1112
allowable gross annual revenues under division (B) of this 1113
section, and order such just and reasonable rate, cost recovery 1114
mechanism, fare, charge, toll, rental, or service to be 1115
substituted for the existing one. After such determination and 1116
order no change in the rate, cost recovery mechanism, fare, 1117
toll, charge, rental, schedule, classification, or service shall 1118
be made, rendered, charged, demanded, exacted, or changed by 1119
such public utility without the order of the commission, and any 1120
other rate, cost recovery mechanism, fare, toll, charge, rental, 1121
classification, or service is prohibited. 1122

(F) Upon application of any person or any public utility, 1123
and after notice to the parties in interest and opportunity to 1124
be heard as provided in Chapters 4901., 4903., 4905., 4907., 1125
4909., 4921., and 4923. of the Revised Code for other hearings, 1126
has been given, the commission may rescind, alter, or amend an 1127
order fixing any rate, cost recovery mechanism, fare, toll, 1128
charge, rental, classification, or service, or any other order 1129
made by the commission. Certified copies of such orders shall be 1130
served and take effect as provided for original orders. 1131

Sec. 4909.156. In fixing the just, reasonable, and 1132
compensatory rates, cost recovery mechanisms, joint rates, 1133
tolls, classifications, charges, or rentals to be observed and 1134
charged for service by any public utility, the public utilities 1135
commission shall, in action upon an application filed pursuant 1136

to section 4909.18 of the Revised Code, require a public utility 1137
to file a report showing the proportionate amounts of the 1138
valuation of the property of the utility, as determined under 1139
section 4909.042 or 4909.05 of the Revised Code, and the 1140
proportionate amounts of the revenues and expenses of the 1141
utility that are proposed to be considered as attributable to 1142
the service area involved in the application. 1143

"Valuation," as used in this section, may include, ~~with~~: 1144

(A) With respect to a public utility that is a natural 1145
gas, water-works, or sewage disposal system company, projected 1146
valuation as of the date certain, if applicable because of a 1147
future date certain under section 4909.15 of the Revised Code; 1148

(B) With respect to an electric light company that chooses 1149
to file a fully forecasted test period under section 4909.18 of 1150
the Revised Code, the valuation and value during the fully 1151
forecasted test period. 1152

Sec. 4909.17. No rate, cost recovery mechanism, joint 1153
rate, toll, classification, charge, or rental, no change in any 1154
rate, cost recovery mechanism, joint rate, toll, classification, 1155
charge, or rental, and no regulation or practice affecting any 1156
rate, cost recovery mechanism, joint rate, toll, classification, 1157
charge, or rental of a public utility shall become effective 1158
until the public utilities commission, by order, determines it 1159
to be just and reasonable, except as provided in this section 1160
and sections 4909.18, 4909.19, and 4909.191 of the Revised Code. 1161
Such sections do not apply to any rate, cost recovery mechanism, 1162
joint rate, toll, classification, charge, or rental, or any 1163
regulation or practice affecting the same, of railroads, street 1164
and electric railways, for-hire motor carriers, and pipe line 1165
companies. 1166

| | |
|--|------|
| Sec. 4909.173. (A) As used in this section and section | 1167 |
| 4909.174 of the Revised Code: | 1168 |
| (1) "Customer-owned water service line" means the water | 1169 |
| service line connected to the water-works company's water | 1170 |
| service line at the curb of a customer's property. | 1171 |
| (2) "Water-works company" means an entity defined under | 1172 |
| division (G) of section 4905.03 of the Revised Code that is a | 1173 |
| public utility under section 4905.02 of the Revised Code. | 1174 |
| (B) A water-works company may do any of the following: | 1175 |
| (1) Replace lead customer-owned water service lines | 1176 |
| concurrently with a scheduled utility main replacement project, | 1177 |
| an emergency replacement, or company-initiated lead water | 1178 |
| service line replacement program; | 1179 |
| (2) Replace lead customer-owned water service lines when | 1180 |
| mandated or ordered to replace such lines by law or a state or | 1181 |
| federal regulatory agency; | 1182 |
| (3) Replace customer-owned water service lines of other | 1183 |
| composition when mandated or ordered to replace such lines by | 1184 |
| law or a state or federal regulatory agency. | 1185 |
| (C) If a water-works company replaces customer-owned water | 1186 |
| service lines under this section, then the company shall include | 1187 |
| the cost of the replacement of the water service lines, | 1188 |
| including the cost of replacement of both company side and | 1189 |
| customer-owned water service lines and the cost to evaluate | 1190 |
| customer-owned water service lines of unknown composition, in | 1191 |
| the valuation report of the property of the company as required | 1192 |
| under division (C) (6) <u>(B) (6)</u> of section 4909.05 of the Revised | 1193 |
| Code for inclusion in a rate case under this chapter. | 1194 |

(D) The water service customer who is responsible for the 1195
customer-owned water service line that was replaced under this 1196
section shall hold legal title to the replaced water service 1197
line. 1198

Sec. 4909.174. (A) A water-works company shall reimburse a 1199
customer who replaces the customer's customer-owned water 1200
service line, if both of the following occur: 1201

(1) The company confirms that the customer-owned water 1202
service line was composed of lead or other composition that was 1203
mandated or ordered to be replaced by law or a state or federal 1204
regulatory agency; 1205

(2) The customer submits the reimbursement request to the 1206
company not later than twelve months after the completion of the 1207
water line replacement. 1208

(B) A water-works company that provides a reimbursement to 1209
a customer under this section shall include the reimbursement 1210
amount in the valuation report of the property of the company as 1211
required under division ~~(C) (6)~~ (B) (6) of section 4909.05 of the 1212
Revised Code for inclusion in a rate case under this chapter. 1213

Sec. 4909.18. Any public utility desiring to establish any 1214
rate, cost recovery mechanism, joint rate, toll, classification, 1215
charge, or rental, or to modify, amend, change, increase, or 1216
reduce any existing rate, cost recovery mechanism, joint rate, 1217
toll, classification, charge, or rental, or any regulation or 1218
practice affecting the same, shall file a written application 1219
with the public utilities commission. Except for actions under 1220
section 4909.16 of the Revised Code, no public utility may issue 1221
the notice of intent to file an application pursuant to division 1222
(B) of section 4909.43 of the Revised Code to increase any 1223

existing rate, cost recovery mechanism, joint rate, toll, 1224
classification, charge, or rental, until a final order under 1225
this section has been issued by the commission on any pending 1226
prior application to increase the same rate, cost recovery 1227
mechanism, joint rate, toll, classification, charge, or rental 1228
or until two hundred seventy-five days after filing such 1229
application, whichever is sooner. Such application shall be 1230
verified by the president or a vice-president and the secretary 1231
or treasurer of the applicant. Such application shall contain a 1232
schedule of the existing rate, cost recovery mechanism, joint 1233
rate, toll, classification, charge, or rental, or regulation or 1234
practice affecting the same, a schedule of the modification 1235
amendment, change, increase, or reduction sought to be 1236
established, and a statement of the facts and grounds upon which 1237
such application is based. If such application proposes a new 1238
service or the use of new equipment, or proposes the 1239
establishment or amendment of a regulation, the application 1240
shall fully describe the new service or equipment, or the 1241
regulation proposed to be established or amended, and shall 1242
explain how the proposed service or equipment differs from 1243
services or equipment presently offered or in use, or how the 1244
regulation proposed to be established or amended differs from 1245
regulations presently in effect. The application shall provide 1246
such additional information as the commission may require in its 1247
discretion. If the commission determines that such application 1248
is not for an increase in any rate, cost recovery mechanism, 1249
joint rate, toll, classification, charge, or rental, the 1250
commission may permit the filing of the schedule proposed in the 1251
application and fix the time when such schedule shall take 1252
effect. If it appears to the commission that the proposals in 1253
the application may be unjust or unreasonable, the commission 1254
shall set the matter for hearing and shall give notice of such 1255

hearing by sending written notice of the date set for the 1256
hearing to the public utility and publishing notice of the 1257
hearing one time in a newspaper of general circulation in each 1258
county in the service area affected by the application. At such 1259
hearing, the burden of proof to show that the proposals in the 1260
application are just and reasonable shall be upon the public 1261
utility. After such hearing, the commission shall, where 1262
practicable, issue an appropriate order within six months from 1263
the date the application was filed. 1264

If the commission determines that said application is for 1265
an increase in any rate, cost recovery mechanism, joint rate, 1266
toll, classification, charge, or rental there shall also, unless 1267
otherwise ordered by the commission, be filed with the 1268
application in duplicate the following exhibits: 1269

(A) A report of its property used and useful, or, with 1270
respect to a natural gas, water-works, or sewage disposal system 1271
company, projected to be used and useful, as of the date 1272
certain, or during the test period, if the application is filed 1273
under division (C) (1) (a) of section 4909.15 of the Revised Code, 1274
in rendering the service referred to in such application, as 1275
provided in ~~section~~ sections 4909.042 and 4909.05 of the Revised 1276
Code; 1277

(B) A complete operating statement of its last fiscal 1278
year, showing in detail all its receipts, revenues, and incomes 1279
from all sources, all of its operating costs and other 1280
expenditures, and any analysis such public utility deems 1281
applicable to the matter referred to in said application; 1282

(C) A statement of the income and expense anticipated 1283
under the application filed; 1284

(D) A statement of financial condition summarizing assets, 1285
liabilities, and net worth; 1286

(E) Such other information as the commission may require 1287
in its discretion. 1288

Sec. 4909.181. (A) As used in this section, "electric 1289
distribution utility" has the same meaning as in section 4928.01 1290
of the Revised Code. 1291

(B) Not later than December 31, 2029, each electric 1292
distribution utility shall file a rate case application 1293
regarding distribution service under section 4909.18 of the 1294
Revised Code. 1295

Sec. 4909.191. (A) If the public utilities commission, 1296
under division (D) of section 4909.15 of the Revised Code, 1297
incorporated proposed adjustments to revenues and expenses into 1298
the commission's determination under that section, the ~~natural-~~ 1299
~~gas, water-works, or sewage disposal system company~~ public 1300
utility shall, not later than ninety days after actual data for 1301
all of the incorporated adjustments becomes known, submit to the 1302
commission proposed rate or charge adjustments that provide for 1303
the recalculation of rates or charges, reflective of customer- 1304
class responsibility, corresponding to the differences, if any, 1305
between the incorporated adjustments to revenues and expenses 1306
and the actual revenues and expenses associated with the 1307
incorporated adjustments. 1308

(B) If the commission incorporated projected value or 1309
valuation of property into the commission's determination under 1310
division ~~(A) (1)~~ (A) (1) (a) of section 4909.15 of the Revised Code, 1311
the natural gas, water-works, or sewage disposal system company 1312
shall, not later than ninety days after data for the actual 1313

value or valuation as of the date certain becomes known, submit 1314
to the commission proposed rate or charge adjustments that 1315
provide for the recalculation of rates or charges, reflective of 1316
customer-class responsibility, corresponding to the differences, 1317
if any, between the projected value or valuation incorporated 1318
into the commission's determination and the actual value or 1319
valuation as of the date certain. 1320

(C) The commission shall review the proposed rate or 1321
charge adjustments submitted under divisions (A) and (B) of this 1322
section. The review shall not include a hearing unless the 1323
commission finds that the proposed rate or charge adjustments 1324
may be unreasonable, in which case the commission may, in its 1325
discretion, schedule the matter for a hearing. 1326

(D) The commission shall issue, not later than one hundred 1327
fifty days after the date that any proposed rate or charge 1328
adjustments are submitted under division (A) or (B) of this 1329
section, a final order on the proposed rate or charge 1330
adjustments. Any rate or charge adjustments authorized under 1331
this division shall be limited to amounts that are not greater 1332
than those consistent with the proposed adjustments to revenues 1333
and expenses that were incorporated into the commission's 1334
determination under division (D) of section 4909.15 of the 1335
Revised Code, and not greater than those consistent with the 1336
incorporated projected value or valuation. In no event shall 1337
rate or charge adjustments authorized under this division be 1338
upward. 1339

After the commission has issued such a final order, the 1340
~~natural gas, water works, or sewage disposal system~~ 1341
~~company~~ public utility, if applicable, shall submit to the 1342
commission proposed reconciliation adjustments that refund to 1343

customers the difference between the actual revenues collected 1344
by the ~~natural gas, water works, or sewage disposal system~~ 1345
~~company, utility~~ under the rates and charges determined by the 1346
commission under section 4909.15 of the Revised Code, and the 1347
rates or charges recalculated under the adjustments authorized 1348
under this division. The reconciliation adjustments shall be 1349
effective for a twelve-month period. 1350

(E) The reconciliation adjustments ordered under division 1351
(D) of this section may be subject to a final reconciliation by 1352
the commission. Any such final reconciliation shall occur after 1353
the twelve-month period described in division (D) of this 1354
section. 1355

Sec. 4909.42. ~~If the proceeding on an application filed~~ 1356
~~with the~~ The public utilities commission under section 4909.18 1357
~~of the Revised Code shall issue an order to approve or deny an~~ 1358
application filed under section 4909.18 of the Revised Code by 1359
~~any public utility requesting an increase on any rate, joint~~ 1360
~~rate, toll, classification, charge, or rental or requesting a~~ 1361
~~change in a regulation or practice affecting the same has not~~ 1362
~~been concluded and an order entered pursuant to section 4909.19~~ 1363
~~of the Revised Code at the expiration of~~ not later than two 1364
hundred seventy-five days from the date of filing the 1365
application, ~~an increase not to exceed the proposed increase~~ 1366
~~shall go into effect upon the filing of a bond or a letter of~~ 1367
~~credit by the public utility. The bond or letter of credit shall~~ 1368
~~be filed with the commission and shall be payable to the state~~ 1369
~~for the use and benefit of the customers affected by the~~ 1370
proposed increase or change~~If the commission does not issue an~~ 1371
order within the time period required by this section, the 1372
application shall be deemed approved by operation of law. 1373

~~An affidavit attached to the bond or letter of credit must
be signed by two of the officers of the utility, under oath, and
must contain a promise on behalf of the utility to refund any
amounts collected by the utility over the rate, joint rate,
toll, classification, charge, or rental, as determined in the
final order of the commission. All refunds shall include
interest at the rate stated in section 1343.03 of the Revised
Code. The refund shall be in the form of a temporary reduction
in rates following the final order of the commission, and shall
be accomplished in such manner as shall be prescribed by the
commission in its final order. The commission shall exercise
continuing and exclusive jurisdiction over such refunds.~~

~~If the public utilities commission has not entered a final
order within five hundred forty-five days from the date of the
filing of an application for an increase in rates under section
4909.18 of the Revised Code, a public utility shall have no
obligation to make a refund of amounts collected after the five
hundred forty-fifth day which exceed the amounts authorized by
the commission's final order.~~

Nothing in this section shall be construed to mitigate any
duty of the commission to issue a final order under section
4909.19 of the Revised Code.

Sec. 4909.47. (A) As used in this section, "electric
distribution utility" has the same meaning as in section 4928.01
of the Revised Code.

(B) An electric distribution utility may file an
application with the public utilities commission for a mini rate
case, as determined in accordance with this section.

(C) A mini rate case proceeding shall be available solely

to collect capital expenditures of the electric distribution 1403
utility for economic development purposes that were not included 1404
in an approved application submitted under section 4909.18 of 1405
the Revised Code. 1406

(D) The public utilities commission shall adopt rules 1407
consistent with this section to create a mini rate case 1408
proceeding, including prescribing filing requirements. 1409

Sec. 4911.15. The consumers' counsel, at the request of 1410
one or more residential consumers residing in, or municipal 1411
corporations located in, an area served by a public utility or 1412
whenever in his counsel's opinion the public interest is served, 1413
may represent those consumers or corporations whenever an 1414
application is made to the public utilities commission by any 1415
public utility desiring to establish, modify, amend, change, 1416
increase, or reduce any rate, cost recovery mechanism, joint 1417
rate, toll, fare, classification, charge, or rental. 1418

The consumers' counsel may appear before the public 1419
utilities commission as a representative of the residential 1420
consumers of any public utility when a complaint has been filed 1421
with the commission that a rate, cost recovery mechanism, joint 1422
rate, fare, toll, charge, classification, or rental for 1423
commodities or services rendered, charged, demanded, exacted, or 1424
proposed to be rendered, charged, demanded, or exacted by the 1425
utility is in any respect unjust, unreasonable, unjustly 1426
discriminatory, unjustly preferential, or in violation of the 1427
law. 1428

Nothing in Chapter 4911. of the Revised Code shall be 1429
construed to restrict or limit in any manner the right of a 1430
municipal corporation to represent the residential consumers of 1431
such municipal corporation in all proceedings before the public 1432

utilities commission, and in both state and federal courts and 1433
administrative agencies on behalf of such residential consumers 1434
concerning review of decisions rendered by, or failure to act 1435
by, the public utilities commission. 1436

Sec. 4928.01. (A) As used in this chapter: 1437

(1) "Ancillary service" means any function necessary to 1438
the provision of electric transmission or distribution service 1439
to a retail customer and includes, but is not limited to, 1440
scheduling, system control, and dispatch services; reactive 1441
supply from generation resources and voltage control service; 1442
reactive supply from transmission resources service; regulation 1443
service; frequency response service; energy imbalance service; 1444
operating reserve-spinning reserve service; operating reserve- 1445
supplemental reserve service; load following; back-up supply 1446
service; real-power loss replacement service; dynamic 1447
scheduling; system black start capability; and network stability 1448
service. 1449

(2) "Billing and collection agent" means a fully 1450
independent agent, not affiliated with or otherwise controlled 1451
by an electric utility, electric services company, electric 1452
cooperative, or governmental aggregator subject to certification 1453
under section 4928.08 of the Revised Code, to the extent that 1454
the agent is under contract with such utility, company, 1455
cooperative, or aggregator solely to provide billing and 1456
collection for retail electric service on behalf of the utility 1457
company, cooperative, or aggregator. 1458

(3) "Certified territory" means the certified territory 1459
established for an electric supplier under sections 4933.81 to 1460
4933.90 of the Revised Code. 1461

(4) "Competitive retail electric service" means a 1462
component of retail electric service that is competitive as 1463
provided under division (B) of this section. 1464

(5) "Electric cooperative" means a not-for-profit electric 1465
light company that both is or has been financed in whole or in 1466
part under the "Rural Electrification Act of 1936," 49 Stat. 1467
1363, 7 U.S.C. 901, and owns or operates facilities in this 1468
state to generate, transmit, or distribute electricity, or a 1469
not-for-profit successor of such company. 1470

(6) "Electric distribution utility" means an electric 1471
utility that supplies at least retail electric distribution 1472
service and does not own or operate an electric generating 1473
facility. 1474

(7) "Electric light company" has the same meaning as in 1475
section 4905.03 of the Revised Code and includes an electric 1476
services company, ~~but excludes any self-generator to the extent-~~ 1477
~~that it consumes electricity it so produces, sells that-~~ 1478
~~electricity for resale, or obtains electricity from a generating~~ 1479
~~facility it hosts on its premises.~~ 1480

(8) "Electric load center" has the same meaning as in 1481
section 4933.81 of the Revised Code. 1482

(9) "Electric services company" means an electric light 1483
company that is engaged on a for-profit or not-for-profit basis 1484
in the business of supplying or arranging for the supply of only 1485
a competitive retail electric service in this state. "Electric 1486
services company" includes a power marketer, power broker, 1487
aggregator, or independent power producer but excludes an 1488
electric cooperative, municipal electric utility, governmental 1489
aggregator, or billing and collection agent. 1490

(10) "Electric supplier" has the same meaning as in 1491
section 4933.81 of the Revised Code. 1492

(11) "Electric utility" means an electric light company 1493
that has a certified territory and is engaged on a for-profit 1494
basis ~~either~~ in the business of supplying at least a 1495
noncompetitive retail electric service in this state ~~or in the~~ 1496
~~businesses of supplying both a noncompetitive and a competitive~~ 1497
~~retail electric service in this state.~~ "Electric utility" 1498
excludes a municipal electric utility or a billing and 1499
collection agent. 1500

(12) "Firm electric service" means electric service other 1501
than nonfirm electric service. 1502

(13) "Governmental aggregator" means a legislative 1503
authority of a municipal corporation, a board of township 1504
trustees, or a board of county commissioners acting as an 1505
aggregator for the provision of a competitive retail electric 1506
service under authority conferred under section 4928.20 of the 1507
Revised Code. 1508

(14) A person acts "knowingly," regardless of the person's 1509
purpose, when the person is aware that the person's conduct will 1510
probably cause a certain result or will probably be of a certain 1511
nature. A person has knowledge of circumstances when the person 1512
is aware that such circumstances probably exist. 1513

(15) "Level of funding for low-income customer energy 1514
efficiency programs provided through electric utility rates" 1515
means the level of funds specifically included in an electric 1516
utility's rates on October 5, 1999, pursuant to an order of the 1517
public utilities commission issued under Chapter 4905. or 4909. 1518
of the Revised Code and in effect on October 4, 1999, for the 1519

purpose of improving the energy efficiency of housing for the 1520
utility's low-income customers. The term excludes the level of 1521
any such funds committed to a specific nonprofit organization or 1522
organizations pursuant to a stipulation or contract. 1523

(16) "Low-income customer assistance programs" means the 1524
percentage of income payment plan program, the home energy 1525
assistance program, the home weatherization assistance program, 1526
and the targeted energy efficiency and weatherization program. 1527

(17) "Market development period" for an electric utility 1528
means the period of time beginning on the starting date of 1529
competitive retail electric service and ending on the applicable 1530
date for that utility as specified in section 4928.40 of the 1531
Revised Code, irrespective of whether the utility applies to 1532
receive transition revenues under this chapter. 1533

(18) "Market power" means the ability to impose on 1534
customers a sustained price for a product or service above the 1535
price that would prevail in a competitive market. 1536

(19) "Mercantile customer" means a commercial or 1537
industrial customer if the electricity consumed is for 1538
nonresidential use and the customer consumes more than seven 1539
hundred thousand kilowatt hours per year or is part of a 1540
national account involving multiple facilities in one or more 1541
states. 1542

(20) "Municipal electric utility" means a municipal 1543
corporation that owns or operates facilities to generate, 1544
transmit, or distribute electricity. 1545

(21) "Noncompetitive retail electric service" means a 1546
component of retail electric service that is noncompetitive as 1547
provided under division (B) of this section. 1548

(22) "Nonfirm electric service" means electric service 1549
provided pursuant to a schedule filed under section 4905.30 of 1550
the Revised Code or pursuant to an arrangement under section 1551
4905.31 of the Revised Code, which schedule or arrangement 1552
includes conditions that may require the customer to curtail or 1553
interrupt electric usage during nonemergency circumstances upon 1554
notification by an electric utility. 1555

(23) "Percentage of income payment plan arrears" means 1556
funds eligible for collection through the percentage of income 1557
payment plan rider, but uncollected as of July 1, 2000. 1558

(24) "Person" has the same meaning as in section 1.59 of 1559
the Revised Code. 1560

(25) "Advanced energy project" means any technologies, 1561
products, activities, or management practices or strategies that 1562
facilitate the generation or use of electricity or energy and 1563
that reduce or support the reduction of energy consumption or 1564
support the production of clean, renewable energy for 1565
industrial, distribution, commercial, institutional, 1566
governmental, research, not-for-profit, or residential energy 1567
users, including, but not limited to, advanced energy resources 1568
and renewable energy resources. "Advanced energy project" also 1569
includes any project described in division (A), (B), or (C) of 1570
section 4928.621 of the Revised Code. 1571

(26) "Regulatory assets" means the unamortized net 1572
regulatory assets that are capitalized or deferred on the 1573
regulatory books of the electric utility, pursuant to an order 1574
or practice of the public utilities commission or pursuant to 1575
generally accepted accounting principles as a result of a prior 1576
commission rate-making decision, and that would otherwise have 1577
been charged to expense as incurred or would not have been 1578

capitalized or otherwise deferred for future regulatory 1579
consideration absent commission action. "Regulatory assets" 1580
includes, but is not limited to, all deferred demand-side 1581
management costs; all deferred percentage of income payment plan 1582
arrears; post-in-service capitalized charges and assets 1583
recognized in connection with statement of financial accounting 1584
standards no. 109 (receivables from customers for income taxes); 1585
future nuclear decommissioning costs and fuel disposal costs as 1586
those costs have been determined by the commission in the 1587
electric utility's most recent rate or accounting application 1588
proceeding addressing such costs; the undepreciated costs of 1589
safety and radiation control equipment on nuclear generating 1590
plants owned or leased by an electric utility; and fuel costs 1591
currently deferred pursuant to the terms of one or more 1592
settlement agreements approved by the commission. 1593

(27) "Retail electric service" means any service involved 1594
in supplying or arranging for the supply of electricity to 1595
ultimate consumers in this state, from the point of generation 1596
to the point of consumption. For the purposes of this chapter, 1597
retail electric service includes one or more of the following 1598
"service components": generation service, aggregation service, 1599
power marketing service, power brokerage service, transmission 1600
service, distribution service, ancillary service, metering 1601
service, and billing and collection service. 1602

(28) "Starting date of competitive retail electric 1603
service" means January 1, 2001. 1604

(29) "Customer-generator" means a user of a net metering 1605
system. 1606

(30) "Net metering" means measuring the difference in an 1607
applicable billing period between the electricity supplied by an 1608

electric service provider and the electricity generated by a 1609
customer-generator that is fed back to the electric service 1610
provider. 1611

(31) "Net metering system" means a facility for the 1612
production of electrical energy that does all of the following: 1613

(a) Uses as its fuel either solar, wind, biomass, landfill 1614
gas, or hydropower, or uses a microturbine or a fuel cell; 1615

(b) Is located on a customer-generator's premises; 1616

(c) Operates in parallel with the electric utility's 1617
transmission and distribution facilities; 1618

(d) Is intended primarily to offset part or all of the 1619
customer-generator's requirements for electricity. For an 1620
industrial customer-generator with a net metering system that 1621
has a capacity of less than twenty megawatts and uses wind as 1622
energy, this means the net metering system was sized so as to 1623
not exceed one hundred per cent of the customer-generator's 1624
annual requirements for electric energy at the time of 1625
interconnection. 1626

(32) "Self-generator" means an entity in this state that 1627
owns or hosts on ~~its premises~~ property the entity controls an 1628
electric generation facility that produces electricity primarily 1629
for the owner's consumption and that may provide any such excess 1630
electricity to another entity, whether the facility is installed 1631
or operated by the owner or by ~~an agent~~ a third party under a 1632
contract, including a lease, purchase power agreement, or other 1633
service contract. 1634

(33) "Rate plan" means the standard service offer in 1635
effect on the effective date of the amendment of this section by 1636
S.B. 221 of the 127th general assembly, July 31, 2008. 1637

- (34) "Advanced energy resource" means any of the 1638
following: 1639
- (a) Any method or any modification or replacement of any 1640
property, process, device, structure, or equipment that 1641
increases the generation output of an electric generating 1642
facility to the extent such efficiency is achieved without 1643
additional carbon dioxide emissions by that facility; 1644
- (b) Any distributed generation system consisting of 1645
customer cogeneration technology; 1646
- (c) Clean coal technology that includes a carbon-based 1647
product that is chemically altered before combustion to 1648
demonstrate a reduction, as expressed as ash, in emissions of 1649
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 1650
sulfur trioxide in accordance with the American society of 1651
testing and materials standard D1757A or a reduction of metal 1652
oxide emissions in accordance with standard D5142 of that 1653
society, or clean coal technology that includes the design 1654
capability to control or prevent the emission of carbon dioxide, 1655
which design capability the commission shall adopt by rule and 1656
shall be based on economically feasible best available 1657
technology or, in the absence of a determined best available 1658
technology, shall be of the highest level of economically 1659
feasible design capability for which there exists generally 1660
accepted scientific opinion; 1661
- (d) Advanced nuclear energy technology consisting of 1662
generation III technology as defined by the nuclear regulatory 1663
commission; other, later technology; or significant improvements 1664
to existing facilities; 1665
- (e) Any fuel cell used in the generation of electricity, 1666

including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

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

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

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

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

"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.

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| (37) (a) "Renewable energy resource" means any of the following: | 1695 1696 |
| (i) Solar photovoltaic or solar thermal energy; | 1697 |
| (ii) Wind energy; | 1698 |
| (iii) Power produced by a hydroelectric facility; | 1699 |
| (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; | 1700 1701 1702 |
| (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; | 1703 1704 1705 1706 1707 |
| (vi) Geothermal energy; | 1708 |
| (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; | 1709 1710 1711 1712 |
| (viii) Biomass energy; | 1713 |
| (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 | 1714 1715 1716 1717 1718 1719 1720 1721 1722 |

to the most recent federal decennial census; 1723

(x) Biologically derived methane gas; 1724

(xi) Heat captured from a generator of electricity, 1725
boiler, or heat exchanger fueled by biologically derived methane 1726
gas; 1727

(xii) Energy derived from nontreated by-products of the 1728
pulping process or wood manufacturing process, including bark, 1729
wood chips, sawdust, and lignin in spent pulping liquors. 1730

"Renewable energy resource" includes, but is not limited 1731
to, any fuel cell used in the generation of electricity, 1732
including, but not limited to, a proton exchange membrane fuel 1733
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1734
solid oxide fuel cell; wind turbine located in the state's 1735
territorial waters of Lake Erie; methane gas emitted from an 1736
abandoned coal mine; waste energy recovery system placed into 1737
service or retrofitted on or after the effective date of the 1738
amendment of this section by S.B. 315 of the 129th general 1739
assembly, September 10, 2012, except that a waste energy 1740
recovery system described in division (A) (38) (b) of this section 1741
may be included only if it was placed into service between 1742
January 1, 2002, and December 31, 2004; storage facility that 1743
will promote the better utilization of a renewable energy 1744
resource; or distributed generation system used by a customer to 1745
generate electricity from any such energy. 1746

"Renewable energy resource" does not include a waste 1747
energy recovery system that is, or was, on or after January 1, 1748
2012, included in an energy efficiency program of an electric 1749
distribution utility pursuant to requirements under section 1750
4928.66 of the Revised Code. 1751

(b) As used in division (A) (37) of this section, 1752
"hydroelectric facility" means a hydroelectric generating 1753
facility that is located at a dam on a river, or on any water 1754
discharged to a river, that is within or bordering this state or 1755
within or bordering an adjoining state and meets all of the 1756
following standards: 1757

(i) The facility provides for river flows that are not 1758
detrimental for fish, wildlife, and water quality, including 1759
seasonal flow fluctuations as defined by the applicable 1760
licensing agency for the facility. 1761

(ii) The facility demonstrates that it complies with the 1762
water quality standards of this state, which compliance may 1763
consist of certification under Section 401 of the "Clean Water 1764
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 1765
demonstrates that it has not contributed to a finding by this 1766
state that the river has impaired water quality under Section 1767
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 1768
U.S.C. 1313. 1769

(iii) The facility complies with mandatory prescriptions 1770
regarding fish passage as required by the federal energy 1771
regulatory commission license issued for the project, regarding 1772
fish protection for riverine, anadromous, and catadromous fish. 1773

(iv) The facility complies with the recommendations of the 1774
Ohio environmental protection agency and with the terms of its 1775
federal energy regulatory commission license regarding watershed 1776
protection, mitigation, or enhancement, to the extent of each 1777
agency's respective jurisdiction over the facility. 1778

(v) The facility complies with provisions of the 1779
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 1780

to 1544, as amended. 1781

(vi) The facility does not harm cultural resources of the 1782
area. This can be shown through compliance with the terms of its 1783
federal energy regulatory commission license or, if the facility 1784
is not regulated by that commission, through development of a 1785
plan approved by the Ohio historic preservation office, to the 1786
extent it has jurisdiction over the facility. 1787

(vii) The facility complies with the terms of its federal 1788
energy regulatory commission license or exemption that are 1789
related to recreational access, accommodation, and facilities 1790
or, if the facility is not regulated by that commission, the 1791
facility complies with similar requirements as are recommended 1792
by resource agencies, to the extent they have jurisdiction over 1793
the facility; and the facility provides access to water to the 1794
public without fee or charge. 1795

(viii) The facility is not recommended for removal by any 1796
federal agency or agency of any state, to the extent the 1797
particular agency has jurisdiction over the facility. 1798

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1799
this section do not apply to a small hydroelectric facility 1800
under division (A) (37) (a) (iv) of this section. 1801

(38) "Waste energy recovery system" means any of the 1802
following: 1803

(a) A facility that generates electricity through the 1804
conversion of energy from either of the following: 1805

(i) Exhaust heat from engines or manufacturing, 1806
industrial, commercial, or institutional sites, except for 1807
exhaust heat from a facility whose primary purpose is the 1808
generation of electricity; 1809

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

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

(c) A facility that produces steam from recovered waste heat from a manufacturing process and uses that steam, or transfers that steam to another facility, to provide heat to another manufacturing process or to generate electricity.

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

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

~~(41) "Legacy generation resource" means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned utilities for the original purpose of providing power to the federal government for use in the nation's defense or in furtherance of national~~

~~interests, including the Ohio valley electric corporation.~~ 1839

~~(42) "Prudently incurred costs related to a legacy generation resource" means costs, including deferred costs, allocated pursuant to a power agreement approved by the federal energy regulatory commission that relates to a legacy generation resource, less any revenues realized from offering the contractual commitment for the power agreement into the wholesale markets, provided that where the net revenues exceed net costs, those excess revenues shall be credited to customers. Such costs shall exclude any return on investment in common equity and, in the event of a premature retirement of a legacy generation resource, shall exclude any recovery of remaining debt. Such costs shall include any incremental costs resulting from the bankruptcy of a current or former sponsor under such power agreement or co-owner of the legacy generation resource if not otherwise recovered through a utility rate cost recovery mechanism.~~ 1840
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~~(43)(a)-(41)(a)~~ "Green energy" means any energy generated by using an energy resource that does one or more of the following: 1856
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1858

(i) Releases reduced air pollutants, thereby reducing cumulative air emissions; 1859
1860

(ii) Is more sustainable and reliable relative to some fossil fuels. 1861
1862

(b) "Green energy" includes energy generated using the following: 1863
1864

(i) Natural gas as a resource; 1865

(ii) Nuclear reaction. 1866

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

Sec. 4928.041. (A) Except as provided in sections 4928.141 and 4928.142 of the Revised Code, no electric utility shall provide a competitive retail electric service in this state if that service was deemed competitive or otherwise legally classified as competitive prior to the effective date of this section.

(B) The standard service offer under section 4928.141 of the Revised Code shall continue to be provided to consumers in this state by electric utilities.

Sec. 4928.05. (A) (1) ~~On and after the starting date of competitive retail electric service, a~~ A competitive retail electric service supplied by an ~~electric utility or electric services company,~~ or by an electric utility consistent with section 4928.141 of the Revised Code, shall not be subject to supervision and regulation by a municipal corporation under Chapter 743. of the Revised Code or by the public utilities commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code, except sections 4905.10 and 4905.31, division (B) of section 4905.33, and sections 4905.35 and 4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, and 4963.41 of the Revised Code only to the extent related to service reliability and public safety; and except as otherwise

provided in this chapter. The commission's authority to enforce 1897
those excepted provisions with respect to a competitive retail 1898
electric service shall be such authority as is provided for 1899
their enforcement under Chapters 4901. to 4909., 4933., 4935., 1900
and 4963. of the Revised Code and this chapter. Nothing in this 1901
division shall be construed to limit the commission's authority 1902
under sections 4928.141 ~~to~~, 4928.142, and 4928.144 of the 1903
Revised Code. 1904

~~On and after the starting date of competitive retail~~ 1905
~~electric service, a~~ (2) A competitive retail electric service 1906
supplied by an electric cooperative shall not be subject to 1907
supervision and regulation by the commission under Chapters 1908
4901. to 4909., 4933., 4935., and 4963. of the Revised Code, 1909
except as otherwise expressly provided in sections 4928.01 to 1910
4928.10 and 4928.16 of the Revised Code. 1911

~~(2) On and after the starting date of competitive retail~~ 1912
~~electric service, a~~ (B) (1) A noncompetitive retail electric 1913
service supplied by an electric utility shall be subject to 1914
supervision and regulation by the commission under Chapters 1915
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 1916
this chapter, to the extent that authority is not preempted by 1917
federal law. The commission's authority to enforce those 1918
provisions with respect to a noncompetitive retail electric 1919
service shall be the authority provided under those chapters and 1920
this chapter, to the extent the authority is not preempted by 1921
federal law. Notwithstanding Chapters 4905. and 4909. of the 1922
Revised Code, commission authority under this chapter shall 1923
include the authority to provide for the recovery, through a 1924
reconcilable rider on an electric distribution utility's 1925
distribution rates, of all transmission and transmission-related 1926
costs, including ancillary and congestion costs, imposed on or 1927

charged to the utility by the federal energy regulatory 1928
commission or a regional transmission organization, independent 1929
transmission operator, or similar organization approved by the 1930
federal energy regulatory commission. 1931

(2) The commission shall exercise its jurisdiction with 1932
respect to the delivery of electricity by an electric utility in 1933
this state ~~on or after the starting date of competitive retail~~ 1934
~~electric service~~ so as to ensure that no aspect of the delivery 1935
of electricity by the utility to consumers in this state that 1936
consists of a noncompetitive retail electric service is 1937
unregulated. 1938

~~On and after that starting date, a~~ (3) A noncompetitive 1939
retail electric service supplied by an electric cooperative 1940
shall not be subject to supervision and regulation by the 1941
commission under Chapters 4901. to 4909., 4933., 4935., and 1942
4963. of the Revised Code, except sections 4933.81 to 4933.90 1943
and 4935.03 of the Revised Code. The commission's authority to 1944
enforce those excepted sections with respect to a noncompetitive 1945
retail electric service of an electric cooperative shall be such 1946
authority as is provided for their enforcement under Chapters 1947
4933. and 4935. of the Revised Code. 1948

~~(B) Nothing in this chapter affects the authority of the~~ 1949
~~commission under Title XLIX of the Revised Code to regulate an~~ 1950
~~electric light company in this state or an electric service~~ 1951
~~supplied in this state prior to the starting date of competitive~~ 1952
~~retail electric service.~~ 1953

Sec. 4928.08. (A) This section applies to an electric 1954
cooperative, or to a governmental aggregator that is a municipal 1955
electric utility, only to the extent of a competitive retail 1956
electric service it provides to a customer to whom it does not 1957

provide a noncompetitive retail electric service through 1958
transmission or distribution facilities it singly or jointly 1959
owns or operates. 1960

~~(B)~~ (B) (1) No electric utility, electric services company, 1961
electric cooperative, or governmental aggregator shall provide a 1962
competitive retail electric service to a consumer in this state 1963
on and after the starting date of competitive retail electric 1964
service without first being certified by the public utilities 1965
commission regarding its managerial, technical, and financial 1966
capability to provide that service and providing a financial 1967
guarantee sufficient to protect customers and electric 1968
distribution utilities from default. Certification shall be 1969
granted pursuant to procedures and standards the commission 1970
shall prescribe in accordance with division (C) of this section, 1971
except that certification or certification renewal shall be 1972
deemed approved thirty days after the filing of an application 1973
with the commission unless the commission suspends that approval 1974
for good cause shown. In the case of such a suspension, the 1975
commission shall act to approve or deny certification or 1976
certification renewal to the applicant not later than ninety 1977
days after the date of the suspension. 1978

(2) The public utilities commission shall establish rules 1979
to require an electric services company to maintain financial 1980
assurances sufficient to protect customers and electric 1981
distribution utilities from default. Such rules also shall 1982
specifically allow an electric distribution utility to set 1983
reasonable standards for its security and the security of its 1984
customers through financial requirements set in its tariffs. 1985

(3) As used in division (B) (2) of this section, an 1986
"electric services company" has the same meaning as in section 1987

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| <u>4928.01 of the Revised Code, but excludes a power broker or</u> | 1988 |
| <u>aggregator.</u> | 1989 |
| (C) Capability standards adopted in rules under division | 1990 |
| (B) of this section shall be sufficient to ensure compliance | 1991 |
| with the minimum service requirements established under section | 1992 |
| 4928.10 of the Revised Code and with section 4928.09 of the | 1993 |
| Revised Code. The standards shall allow flexibility for | 1994 |
| voluntary aggregation, to encourage market creativity in | 1995 |
| responding to consumer needs and demands, and shall allow | 1996 |
| flexibility for electric services companies that exclusively | 1997 |
| provide installation of small electric generation facilities, to | 1998 |
| provide ease of market access. The rules shall include | 1999 |
| procedures for biennially renewing certification. | 2000 |
| (D) The commission may suspend, rescind, or conditionally | 2001 |
| rescind the certification of any electric utility, electric | 2002 |
| services company, electric cooperative, or governmental | 2003 |
| aggregator issued under this section if the commission | 2004 |
| determines, after reasonable notice and opportunity for hearing, | 2005 |
| that the utility, company, cooperative, or aggregator has failed | 2006 |
| to comply with any applicable certification standards or has | 2007 |
| engaged in anticompetitive or unfair, deceptive, or | 2008 |
| unconscionable acts or practices in this state. | 2009 |
| (E) No electric distribution utility on and after the | 2010 |
| starting date of competitive retail electric service shall | 2011 |
| knowingly distribute electricity, to a retail consumer in this | 2012 |
| state, for any supplier of electricity that has not been | 2013 |
| certified by the commission pursuant to this section. | 2014 |
| (F) <u>Notwithstanding any provision of section 121.95 of the</u> | 2015 |
| <u>Revised Code to the contrary, a regulatory restriction contained</u> | 2016 |
| <u>in a rule adopted under section 4928.08 of the Revised Code is</u> | 2017 |

not subject to sections 121.95 to 121.953 of the Revised Code. 2018

Sec. 4928.081. The public utilities commission and the 2019
electric distribution utilities and competitive retail electric 2020
service suppliers that elect to participate in the consumer 2021
choice billing program are subject to the requirements 2022
established for that program under sections 4933.51 to 4933.59 2023
of the Revised Code. 2024

Sec. 4928.101. (A) As used in this section and section 2025
4928.102 of the Revised Code: 2026

(1) "Small commercial customer" means any customer that 2027
receives electric service pursuant to a nonresidential tariff if 2028
the customer's demand for electricity does not exceed twenty- 2029
five kilowatts within the last twelve months. 2030

(2) "Small commercial customer" excludes any customer that 2031
does one or both of the following: 2032

(a) Manages multiple electric meters and, within the last 2033
twelve months, the electricity demand for at least one of the 2034
meters is twenty-five kilowatts or more; 2035

(b) Has, at the customer's discretion, aggregated the 2036
demand for the customer-managed meters. 2037

(B) The consumer protections described in section 4928.10 2038
of the Revised Code and the rules adopted pursuant to that 2039
section apply to small commercial customers and to all other 2040
customers as set forth in the rules. 2041

Sec. 4928.102. (A) If a competitive retail electric 2042
service supplier offers a residential or small commercial 2043
customer a contract for a fixed introductory rate that converts 2044
to a variable rate upon the expiration of the fixed rate, the 2045

supplier shall send two notices to each residential and small 2046
commercial customer that enters into such a contract. Each 2047
notice shall provide all of the following information to the 2048
customer: 2049

(1) The fixed rate that is expiring under the contract; 2050

(2) The expiration date of the contract's fixed rate; 2051

(3) The rate to be charged upon the contract's conversion 2052
to a variable rate; 2053

(4) The public utilities commission web site that, as a 2054
comparison tool, lists rates offered by competitive retail 2055
electric service suppliers; 2056

(5) A statement explaining that appearing on each 2057
customer's bill is a price-to-compare notice that lists the 2058
utility's standard service offer price. 2059

(B) The notices shall be sent by standard United States 2060
mail as follows: 2061

(1) The supplier shall send the first notice not earlier 2062
than ninety days, and not later than sixty days, prior to the 2063
expiration of the fixed rate. 2064

(2) The supplier shall send the second notice not earlier 2065
than forty-five days, and not later than thirty days, prior to 2066
the expiration of the fixed rate. 2067

(C) A competitive retail electric service supplier shall 2068
provide an annual notice, by standard United States mail, to 2069
each residential and small commercial customer that has entered 2070
into a contract with the supplier that has converted to a 2071
variable rate upon the expiration of the contract's fixed 2072
introductory rate. The notice shall inform the customer that the 2073

customer is currently subject to a variable rate and that other 2074
fixed rate contracts are available. 2075

(D) Not later than one hundred fifty days after the 2076
effective date of this section, the commission shall adopt rules 2077
in order to implement divisions (A) to (C) of this section. The 2078
rules, at a minimum, shall include the following requirements 2079
regarding the notices required under divisions (A) to (C) of 2080
this section: 2081

(1) To use clear and unambiguous language in order to 2082
enable the customer to make an informed decision; 2083

(2) To design the notices in a way to ensure that they 2084
cannot be confused with marketing materials. 2085

(E) Notwithstanding any provision of section 121.95 of the 2086
Revised Code to the contrary, a regulatory restriction contained 2087
in a rule adopted under section 4928.102 of the Revised Code is 2088
not subject to sections 121.95 to 121.953 of the Revised Code. 2089

Sec. 4928.103. (A) As used in this section, "customer 2090
account information" means a unique electric distribution 2091
utility number or other customer identification number used by 2092
the utility to identify a customer and the customer's account 2093
record. 2094

(B) The public utilities commission shall adopt rules to 2095
ensure that an electric distribution utility processes a 2096
customer's change in competitive retail electric supplier by 2097
using customer account information. A customer who consents to a 2098
change of supplier shall not be required to provide customer 2099
account information to the supplier if the customer provides a 2100
valid form of government-issued identification issued to the 2101
customer or a sufficient alternative form of identification that 2102

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| <u>allows the supplier to establish the customer's identity</u> | 2103 |
| <u>accurately.</u> | 2104 |
| <u>(C) Notwithstanding any provision of section 121.95 of the</u> | 2105 |
| <u>Revised Code to the contrary, a regulatory restriction contained</u> | 2106 |
| <u>in a rule adopted under this section is not subject to sections</u> | 2107 |
| <u>121.95 to 121.953 of the Revised Code.</u> | 2108 |
| Sec. 4928.14. The <u>(A) Except as provided in division (C)</u> | 2109 |
| <u>of this section, the failure of a supplier to provide retail</u> | 2110 |
| <u>electric generation service to customers within the certified</u> | 2111 |
| <u>territory of an electric distribution utility shall result in</u> | 2112 |
| <u>the supplier's customers, after reasonable notice, defaulting to</u> | 2113 |
| <u>the utility's standard service offer under sections 4928.141, 7,</u> | 2114 |
| <u>and 4928.142, and 4928.143 of the Revised Code until the</u> | 2115 |
| <u>customer chooses an alternative supplier. A-</u> | 2116 |
| <u>(B) A supplier is deemed under this section to have failed</u> | 2117 |
| <u>to provide such retail electric generation service if the</u> | 2118 |
| <u>commission finds, after reasonable notice and opportunity for</u> | 2119 |
| <u>hearing, that any of the following conditions are met:</u> | 2120 |
| (A) <u>(1) The supplier has defaulted on its contracts with</u> | 2121 |
| <u>customers, is in receivership, or has filed for bankruptcy.</u> | 2122 |
| (B) <u>(2) The supplier is no longer capable of providing the</u> | 2123 |
| <u>service.</u> | 2124 |
| (C) <u>(3) The supplier is unable to provide delivery to</u> | 2125 |
| <u>transmission or distribution facilities for such period of time</u> | 2126 |
| <u>as may be reasonably specified by commission rule adopted under</u> | 2127 |
| <u>division (A) of section 4928.06 of the Revised Code.</u> | 2128 |
| (D) <u>(4) The supplier's certification has been suspended,</u> | 2129 |
| <u>conditionally rescinded, or rescinded under division (D) of</u> | 2130 |
| <u>section 4928.08 of the Revised Code.</u> | 2131 |

(C) If an electric distribution utility has an electric security plan that was approved under section 4928.143 of the Revised Code as that section existed prior to the amendments to this section by this act, the failure of a supplier to provide retail electric generation service to customers within the certified territory of that utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer under that electric security plan until the customer chooses an alternative supplier or until the utility's standard service offer is authorized under section 4928.142 of the Revised Code.

Sec. 4928.141. ~~(A) Beginning January 1, 2009, an~~ (A) (1) An electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 ~~or 4928.143~~ of the Revised Code ~~and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only~~ Except as provided in division (A) (2) of this section, a standard service offer authorized in accordance with section 4928.142 ~~or 4928.143~~ of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section~~+~~, and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code.

~~Notwithstanding the foregoing provision, the rate~~ 2163

(2) An electric distribution utility's electric security 2164
plan of an electric distribution utility that was approved under 2165
section 4928.143 of the Revised Code as that section existed 2166
prior to the amendments to this section by this act shall 2167
continue for the purpose of the utility's compliance with ~~this~~ 2168
division (A) (1) of this section until a standard service offer 2169
is ~~first~~ authorized under section 4928.142 ~~or 4928.143~~ of the 2170
Revised Code, ~~and, as applicable, pursuant to division (D) of~~ 2171
~~section 4928.143 of the Revised Code, any rate~~. No electric 2172
security plan that extends approved before the effective date of 2173
the amendments to this section by this act shall extend beyond 2174
December 31, 2008, shall continue to be in effect for the 2175
subject electric distribution utility for the duration the 2176
termination date of the plan's term. 2177

(3) A standard service offer under section 4928.142 or 2178
~~4928.143~~ of the Revised Code shall exclude any previously 2179
authorized allowances for transition costs, with such exclusion 2180
being effective on and after the date that the allowance is 2181
scheduled to end under the utility's ~~rate~~ electric security 2182
plan. 2183

(B) The commission shall set the time for hearing of a 2184
filing under section 4928.142 ~~or 4928.143~~ of the Revised Code, 2185
send written notice of the hearing to the electric distribution 2186
utility, and publish notice in a newspaper of general 2187
circulation in each county in the utility's certified territory. 2188
The commission shall adopt rules regarding filings under ~~these~~ 2189
~~sections~~ the section. 2190

Sec. 4928.142. (A) For the purpose of complying with 2191
section 4928.141 of the Revised Code and subject to division (D) 2192

of this section and, as applicable, subject to the ~~rate plan~~ 2193
~~requirement~~ requirements of division (A) of section 4928.141 of 2194
the Revised Code, an electric distribution utility ~~may~~ shall 2195
establish a standard service offer price for retail electric 2196
generation service that is delivered to the utility under a 2197
market-rate offer. 2198

(1) The market-rate offer shall be determined through a 2199
competitive bidding process that provides for all of the 2200
following: 2201

(a) Open, fair, and transparent competitive solicitation; 2202

(b) Clear product definition; 2203

(c) Standardized bid evaluation criteria; 2204

(d) Oversight by an independent third party that shall 2205
design the solicitation, administer the bidding, and ensure that 2206
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 2207
this section are met; 2208

(e) Evaluation of the submitted bids prior to the 2209
selection of the least-cost bid winner or winners. 2210

No generation supplier shall be prohibited from 2211
participating in the bidding process. 2212

(2) The public utilities commission shall modify rules, or 2213
adopt new rules as necessary, concerning the conduct of the 2214
competitive bidding process and the qualifications of bidders, 2215
which rules shall foster supplier participation in the bidding 2216
process and shall be consistent with the requirements of 2217
division (A) (1) of this section. 2218

(B) Prior to initiating a competitive bidding process for 2219
a market-rate offer under division (A) of this section, the 2220

electric distribution utility shall file an application with the 2221
commission. An electric distribution utility may file its 2222
application with the commission prior to the effective date of 2223
the commission rules required under division (A)(2) of this 2224
section, and, as the commission determines necessary, the 2225
utility shall immediately conform its filing to the rules upon 2226
their taking effect. 2227

An application under this division shall detail the 2228
electric distribution utility's proposed compliance with the 2229
requirements of division (A)(1) of this section and with 2230
commission rules under division (A)(2) of this section and 2231
demonstrate that all of the following requirements are met: 2232

(1) The electric distribution utility or its transmission 2233
service affiliate belongs to at least one regional transmission 2234
organization that has been approved by the federal energy 2235
regulatory commission; or there otherwise is comparable and 2236
nondiscriminatory access to the electric transmission grid. 2237

(2) Any such regional transmission organization has a 2238
market-monitor function and the ability to take actions to 2239
identify and mitigate market power or the electric distribution 2240
utility's market conduct; or a similar market monitoring 2241
function exists with commensurate ability to identify and 2242
monitor market conditions and mitigate conduct associated with 2243
the exercise of market power. 2244

(3) A published source of information is available 2245
publicly or through subscription that identifies pricing 2246
information for traded electricity on- and off-peak energy 2247
products that are contracts for delivery beginning at least two 2248
years from the date of the publication and is updated on a 2249
regular basis. 2250

The commission shall initiate a proceeding and, within 2251
ninety days after the application's filing date, shall determine 2252
by order whether the electric distribution utility and its 2253
market-rate offer meet all of the foregoing requirements. If the 2254
finding is positive, the electric distribution utility ~~may~~ shall 2255
initiate its competitive bidding process. If the finding is 2256
negative as to one or more requirements, the commission in the 2257
order shall direct the electric distribution utility regarding 2258
how any deficiency ~~may~~ shall be timely remedied in a timely 2259
~~manner~~ to the commission's satisfaction; ~~otherwise, the electric~~ 2260
~~distribution utility shall withdraw the application. However, if~~ 2261
~~such remedy is made and the subsequent finding is positive and~~ 2262
~~also if the electric distribution utility made a simultaneous~~ 2263
~~filing under this section and section 4928.143 of the Revised~~ 2264
~~Code, the utility shall not initiate its competitive bid until~~ 2265
~~at least one hundred fifty days after the filing date of those~~ 2266
~~applications.~~ 2267

(C) Upon the completion of the competitive bidding process 2268
authorized by divisions (A) and (B) of this section, ~~including~~ 2269
~~for the purpose of division (D) of this section,~~ the commission 2270
shall select the least-cost bid winner or winners of that 2271
process, and such selected bid or bids, as prescribed as retail 2272
rates by the commission, shall be the electric distribution 2273
utility's standard service offer unless the commission, by order 2274
issued before the third calendar day following the conclusion of 2275
the competitive bidding process for the market rate offer, 2276
determines that one or more of the following criteria were not 2277
met: 2278

(1) Each portion of the bidding process was 2279
oversubscribed, such that the amount of supply bid upon was 2280
greater than the amount of the load bid out. 2281

| | |
|---|--|
| (2) There were four or more bidders. | 2282 |
| (3) At least twenty-five per cent of the load is bid upon by one or more persons other than the electric distribution utility. | 2283 2284 2285 |
| All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility. | 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 |
| (D) The first application filed under this section by an electric distribution utility that, as of July 31, 2008, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that the utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one, not more than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, | 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 |

~~which latter price shall be equal to the electric distribution- 2312
utility's most recent standard service offer price, adjusted- 2313
upward or downward as the commission determines reasonable, 2314
relative to the jurisdictional portion of any known and- 2315
measurable changes from the level of any one or more of the 2316
following costs as reflected in that most recent standard- 2317
service offer price: 2318~~

~~(1) The electric distribution utility's prudently incurred 2319
cost of fuel used to produce electricity; 2320~~

~~(2) Its prudently incurred purchased power costs; 2321~~

~~(3) Its prudently incurred costs of satisfying the supply 2322
and demand portfolio requirements of this state, including, but 2323
not limited to, renewable energy resource and energy efficiency 2324
requirements; 2325~~

~~(4) Its costs prudently incurred to comply with- 2326
environmental laws and regulations, with consideration of the- 2327
derating of any facility associated with those costs. 2328~~

~~In making any adjustment to the most recent standard- 2329
service offer price on the basis of costs described in division- 2330
(D) of this section, the commission shall include the benefits- 2331
that may become available to the electric distribution utility- 2332
as a result of or in connection with the costs included in the- 2333
adjustment, including, but not limited to, the utility's receipt 2334
of emissions credits or its receipt of tax benefits or of other- 2335
benefits, and, accordingly, the commission may impose such- 2336
conditions on the adjustment to ensure that any such benefits- 2337
are properly aligned with the associated cost responsibility.- 2338
The commission shall also determine how such adjustments will- 2339
affect the electric distribution utility's return on common- 2340~~

~~equity that may be achieved by those adjustments. The commission 2341~~
~~shall not apply its consideration of the return on common equity 2342~~
~~to reduce any adjustments authorized under this division unless 2343~~
~~the adjustments will cause the electric distribution utility to 2344~~
~~earn a return on common equity that is significantly in excess 2345~~
~~of the return on common equity that is earned by publicly traded 2346~~
~~companies, including utilities, that face comparable business 2347~~
~~and financial risk, with such adjustments for capital structure 2348~~
~~as may be appropriate. The burden of proof for demonstrating 2349~~
~~that significantly excessive earnings will not occur shall be on 2350~~
~~the electric distribution utility. 2351~~

~~Additionally, the commission may adjust the electric 2352~~
~~distribution utility's most recent standard service offer price 2353~~
~~by such just and reasonable amount that the commission 2354~~
~~determines necessary to address any emergency that threatens the 2355~~
~~utility's financial integrity or to ensure that the resulting 2356~~
~~revenue available to the utility for providing the standard 2357~~
~~service offer is not so inadequate as to result, directly or 2358~~
~~indirectly, in a taking of property without compensation 2359~~
~~pursuant to Section 19 of Article I, Ohio Constitution. The 2360~~
~~electric distribution utility has the burden of demonstrating 2361~~
~~that any adjustment to its most recent standard service offer 2362~~
~~price is proper in accordance with this division. 2363~~

~~(E) Beginning in the second year of a blended price under 2364~~
~~division (D) of this section and notwithstanding any other 2365~~
~~requirement of this section, the commission may alter 2366~~
~~prospectively the proportions specified in that division to 2367~~
~~mitigate any effect of an abrupt or significant change in the 2368~~
~~electric distribution utility's standard service offer price 2369~~
~~that would otherwise result in general or with respect to any 2370~~
~~rate group or rate schedule but for such alteration. Any such 2371~~

~~alteration shall be made not more often than annually, and the~~ 2372
~~commission shall not, by altering those proportions and in any~~ 2373
~~event, including because of the length of time, as authorized~~ 2374
~~under division (C) of this section, taken to approve the market~~ 2375
~~rate offer, cause the duration of the blending period to exceed~~ 2376
~~ten years as counted from the effective date of the approved~~ 2377
~~market rate offer. Additionally, any such alteration shall be~~ 2378
~~limited to an alteration affecting the prospective proportions~~ 2379
~~used during the blending period and shall not affect any~~ 2380
~~blending proportion previously approved and applied by the~~ 2381
~~commission under this division.~~ 2382

~~(F) An electric distribution utility that has received~~ 2383
~~commission approval of its first application under division (C)~~ 2384
~~of this section shall not, nor ever shall be authorized or~~ 2385
~~required by the commission to, file an application under section~~ 2386
~~4928.143 of the Revised Code.~~ 2387

Sec. 4928.144. The public utilities commission by order 2388
may authorize any just and reasonable phase-in of any electric 2389
distribution utility ~~rate or price~~ established under sections 2390
4928.141 ~~to 4928.143~~ and 4928.142 of the Revised Code, and 2391
inclusive of carrying charges, as the commission considers 2392
necessary to ensure ~~rate or price~~ stability for consumers. If 2393
the commission's order includes such a phase-in, the order also 2394
shall provide for the creation of regulatory assets pursuant to 2395
generally accepted accounting principles, by authorizing the 2396
deferral of incurred costs equal to the amount not collected, 2397
plus carrying charges on that amount. Further, the order shall 2398
authorize the collection of those deferrals through a 2399
nonbypassable surcharge on any such rate or price so established 2400
for the electric distribution utility by the commission. 2401

Sec. 4928.149. No electric distribution utility may use 2402
any electric energy storage system to participate in the 2403
wholesale market, if the utility purchased or acquired that 2404
system for distribution service. 2405

Sec. 4928.1410. If an electric distribution utility has an 2406
existing electric security plan under which the commission had 2407
authorized the creation or continuation of riders, then, to the 2408
extent those riders will cease to exist after termination of the 2409
electric security plan, the electric distribution utility is 2410
authorized to create necessary regulatory assets or liabilities, 2411
along with carrying costs at the utility's weighted average cost 2412
of debt, for the resolution of any outstanding under-collection 2413
or over-collection of funds under such riders. The resolution of 2414
such regulatory assets or liabilities shall be addressed in the 2415
first distribution rate case under section 4909.18 of the 2416
Revised Code that occurs after the plan's expiration. 2417

Sec. 4928.17. (A) Except as otherwise provided in sections 2418
4928.141 or 4928.142 ~~or 4928.143~~ or 4928.31 to 4928.40 of the 2419
Revised Code ~~and beginning on the starting date of competitive-~~ 2420
~~retail electric service,~~ no electric utility shall engage in 2421
this state, either directly or through an affiliate, ~~in the~~ 2422
~~businesses of supplying a noncompetitive retail electric service~~ 2423
~~and supplying a competitive retail electric service, or in the~~ 2424
businesses of supplying a noncompetitive retail electric service 2425
and supplying a product or service other than retail electric 2426
service, unless the utility implements and operates under a 2427
corporate separation plan that is approved by the public 2428
utilities commission under this section, is consistent with the 2429
policy specified in section 4928.02 of the Revised Code, and 2430
achieves all of the following: 2431

(1) The plan provides, at minimum, for the provision of 2432
~~the competitive retail electric service or the nonelectric~~ 2433
product or service through a fully separated affiliate of the 2434
utility, and the plan includes separate accounting requirements, 2435
the code of conduct as ordered by the commission pursuant to a 2436
rule it shall adopt under division (A) of section 4928.06 of the 2437
Revised Code, and such other measures as are necessary to 2438
effectuate the policy specified in section 4928.02 of the 2439
Revised Code. 2440

(2) The plan satisfies the public interest in ~~preventing~~ 2441
~~unfair competitive advantage and~~ preventing the abuse of market 2442
power. 2443

(3) The plan is sufficient to ensure that the utility will 2444
not extend any undue preference or advantage to any affiliate, 2445
division, or part of its own business engaged in the business of 2446
supplying the ~~competitive retail electric service or nonelectric~~ 2447
product or service, including, but not limited to, utility 2448
resources such as trucks, tools, office equipment, office space, 2449
supplies, customer and marketing information, advertising, 2450
billing and mailing systems, personnel, and training, without 2451
compensation based upon fully loaded embedded costs charged to 2452
the affiliate; and to ensure that any such affiliate, division, 2453
or part will not receive undue preference or advantage from any 2454
affiliate, division, or part of the business engaged in business 2455
of supplying the noncompetitive retail electric service. No such 2456
utility, affiliate, division, or part shall extend such undue 2457
preference. ~~Notwithstanding any other division of this section,~~ 2458
~~a utility's obligation under division (A)(3) of this section~~ 2459
~~shall be effective January 1, 2000.~~ 2460

(B) The commission may approve, modify and approve, or 2461

disapprove a corporate separation plan filed with the commission 2462
under division (A) of this section. As part of the code of 2463
conduct required under division (A) (1) of this section, the 2464
commission shall adopt rules pursuant to division (A) of section 2465
4928.06 of the Revised Code regarding corporate separation and 2466
procedures for plan filing and approval. The rules shall include 2467
limitations on affiliate practices solely for the purpose of 2468
maintaining a separation of the affiliate's business from the 2469
business of the utility to prevent ~~unfair competitive advantage~~ 2470
abuse of market power by virtue of that relationship. The rules 2471
also shall include an opportunity for any person having a real 2472
and substantial interest in the corporate separation plan to 2473
file specific objections to the plan and propose specific 2474
responses to issues raised in the objections, which objections 2475
and responses the commission shall address in its final order. 2476
Prior to commission approval of the plan, the commission shall 2477
afford a hearing upon those aspects of the plan that the 2478
commission determines reasonably require a hearing. The 2479
commission may reject and require refiling of a substantially 2480
inadequate plan under this section. 2481

(C) The commission shall issue an order approving or 2482
modifying and approving a corporate separation plan under this 2483
section, to be effective on the date specified in the order, 2484
only upon findings that the plan reasonably complies with the 2485
requirements of division (A) of this section and will provide 2486
for ongoing compliance with the policy specified in section 2487
4928.02 of the Revised Code. However, for good cause shown, the 2488
commission may issue an order approving or modifying and 2489
approving a corporate separation plan under this section that 2490
does not comply with division (A) (1) of this section but 2491
complies with such functional separation requirements as the 2492

commission authorizes to apply for an interim period prescribed 2493
in the order, upon a finding that such alternative plan will 2494
provide for ongoing compliance with the policy specified in 2495
section 4928.02 of the Revised Code. 2496

(D) Any party may seek an amendment to a corporate 2497
separation plan approved under this section, and the commission, 2498
pursuant to a request from any party or on its own initiative, 2499
may order as it considers necessary the filing of an amended 2500
corporate separation plan to reflect changed circumstances. 2501

~~(E) No electric distribution utility shall sell or 2502
transfer any generating asset it wholly or partly owns at any 2503
time without obtaining prior commission approval. 2504~~

Sec. 4928.20. (A) The legislative authority of a municipal 2505
corporation may adopt an ordinance, or the board of township 2506
trustees of a township or the board of county commissioners of a 2507
county may adopt a resolution, under which, ~~on or after the~~ 2508
~~starting date of competitive retail electric service,~~ it may 2509
aggregate in accordance with this section the retail electrical 2510
loads located, respectively, within the municipal corporation, 2511
township, or unincorporated area of the county and, for that 2512
purpose, may enter into service agreements to facilitate for 2513
those loads the sale and purchase of electricity. The 2514
legislative authority or board also may exercise such authority 2515
jointly with any other such legislative authority or board. For 2516
customers that are not mercantile customers, an ordinance or 2517
resolution under this division shall specify whether the 2518
aggregation will occur only with the prior, affirmative consent 2519
of each person owning, occupying, controlling, or using an 2520
electric load center proposed to be aggregated or will occur 2521
automatically for all such persons pursuant to the opt-out 2522

requirements of division (D) of this section. The aggregation of 2523
mercantile customers shall occur only with the prior, 2524
affirmative consent of each such person owning, occupying, 2525
controlling, or using an electric load center proposed to be 2526
aggregated. Nothing in this division, however, authorizes the 2527
aggregation of the retail electric loads of an electric load 2528
center, as defined in section 4933.81 of the Revised Code, that 2529
is located in the certified territory of a nonprofit electric 2530
supplier under sections 4933.81 to 4933.90 of the Revised Code 2531
or an electric load center served by transmission or 2532
distribution facilities of a municipal electric utility. 2533

(B) If an ordinance or resolution adopted under division 2534
(A) of this section specifies that aggregation of customers that 2535
are not mercantile customers will occur automatically as 2536
described in that division, the ordinance or resolution shall 2537
direct the board of elections to submit the question of the 2538
authority to aggregate to the electors of the respective 2539
municipal corporation, township, or unincorporated area of a 2540
county at a special election on the day of the next primary or 2541
general election in the municipal corporation, township, or 2542
county. The legislative authority or board shall certify a copy 2543
of the ordinance or resolution to the board of elections not 2544
less than ninety days before the day of the special election. No 2545
ordinance or resolution adopted under division (A) of this 2546
section that provides for an election under this division shall 2547
take effect unless approved by a majority of the electors voting 2548
upon the ordinance or resolution at the election held pursuant 2549
to this division. 2550

(C) Upon the applicable requisite authority under 2551
divisions (A) and (B) of this section, the legislative authority 2552
or board shall develop a plan of operation and governance for 2553

the aggregation program so authorized. Before adopting a plan 2554
under this division, the legislative authority or board shall 2555
hold at least two public hearings on the plan. Before the first 2556
hearing, the legislative authority or board shall publish notice 2557
of the hearings once a week for two consecutive weeks in a 2558
newspaper of general circulation in the jurisdiction or as 2559
provided in section 7.16 of the Revised Code. The notice shall 2560
summarize the plan and state the date, time, and location of 2561
each hearing. 2562

(D) No legislative authority or board, pursuant to an 2563
ordinance or resolution under divisions (A) and (B) of this 2564
section that provides for automatic aggregation of customers 2565
that are not mercantile customers as described in division (A) 2566
of this section, shall aggregate the electrical load of any 2567
electric load center located within its jurisdiction unless it 2568
in advance clearly discloses to the person owning, occupying, 2569
controlling, or using the load center that the person will be 2570
enrolled automatically in the aggregation program and will 2571
remain so enrolled unless the person affirmatively elects by a 2572
stated procedure not to be so enrolled. The disclosure shall 2573
state prominently the rates, charges, and other terms and 2574
conditions of enrollment. The stated procedure shall allow any 2575
person enrolled in the aggregation program the opportunity to 2576
opt out of the program every three years, without paying a 2577
switching fee. Any such person that opts out before the 2578
commencement of the aggregation program pursuant to the stated 2579
procedure shall default to the standard service offer provided 2580
under section 4928.14 or division (D) of section 4928.35 of the 2581
Revised Code until the person chooses an alternative supplier. 2582

(E) (1) With respect to a governmental aggregation for a 2583
municipal corporation that is authorized pursuant to divisions 2584

(A) to (D) of this section, resolutions may be proposed by 2585
initiative or referendum petitions in accordance with sections 2586
731.28 to 731.41 of the Revised Code. 2587

(2) With respect to a governmental aggregation for a 2588
township or the unincorporated area of a county, which 2589
aggregation is authorized pursuant to divisions (A) to (D) of 2590
this section, resolutions may be proposed by initiative or 2591
referendum petitions in accordance with sections 731.28 to 2592
731.40 of the Revised Code, except that: 2593

(a) The petitions shall be filed, respectively, with the 2594
township fiscal officer or the board of county commissioners, 2595
who shall perform those duties imposed under those sections upon 2596
the city auditor or village clerk. 2597

(b) The petitions shall contain the signatures of not less 2598
than ten per cent of the total number of electors in, 2599
respectively, the township or the unincorporated area of the 2600
county who voted for the office of governor at the preceding 2601
general election for that office in that area. 2602

(F) A governmental aggregator under division (A) of this 2603
section is not a public utility engaging in the wholesale 2604
purchase and resale of electricity, and provision of the 2605
aggregated service is not a wholesale utility transaction. A 2606
governmental aggregator shall be subject to supervision and 2607
regulation by the public utilities commission only to the extent 2608
of any competitive retail electric service it provides and 2609
commission authority under this chapter. 2610

(G) This section does not apply in the case of a municipal 2611
corporation that supplies such aggregated service to electric 2612
load centers to which its municipal electric utility also 2613

supplies a noncompetitive retail electric service through 2614
transmission or distribution facilities the utility singly or 2615
jointly owns or operates. 2616

(H) A governmental aggregator shall not include in its 2617
aggregation the accounts of any of the following: 2618

(1) A customer that has opted out of the aggregation; 2619

(2) A customer in contract with a certified electric 2620
services company; 2621

(3) A customer that has a special contract with an 2622
electric distribution utility; 2623

(4) A customer that is not located within the governmental 2624
aggregator's governmental boundaries; 2625

(5) Subject to division (C) of section 4928.21 of the 2626
Revised Code, a customer who appears on the "do not aggregate" 2627
list maintained under that section. 2628

(I) Customers that are part of a governmental aggregation 2629
under this section shall be responsible only for such portion of 2630
a surcharge under section 4928.144 of the Revised Code that is 2631
proportionate to the benefits, as determined by the commission, 2632
that electric load centers within the jurisdiction of the 2633
governmental aggregation as a group receive. The proportionate 2634
surcharge so established shall apply to each customer of the 2635
governmental aggregation while the customer is part of that 2636
aggregation. If a customer ceases being such a customer, the 2637
otherwise applicable surcharge shall apply. Nothing in this 2638
section shall result in less than full recovery by an electric 2639
distribution utility of any surcharge authorized under section 2640
4928.144 of the Revised Code. Nothing in this section shall 2641
result in less than the full and timely imposition, charging, 2642

collection, and adjustment by an electric distribution utility, 2643
its assignee, or any collection agent, of the phase-in-recovery 2644
charges authorized pursuant to a final financing order issued 2645
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 2646

~~(J) On behalf of the customers that are part of a 2647
governmental aggregation under this section and by filing 2648
written notice with the public utilities commission, the 2649
legislative authority that formed or is forming that 2650
governmental aggregation may elect not to receive standby 2651
service within the meaning of division (B) (2) (d) of section 2652
4928.143 of the Revised Code from an electric distribution 2653
utility in whose certified territory the governmental 2654
aggregation is located and that operates under an approved 2655
electric security plan under that section. Upon the filing of 2656
that notice, the electric distribution utility shall not charge 2657
any such customer to whom competitive retail electric generation 2658
service is provided by another supplier under the governmental 2659
aggregation for the standby service. Any such consumer that 2660
returns to the utility for competitive retail electric service 2661
shall pay the market price of power incurred by the utility to 2662
serve that consumer plus any amount attributable to the 2663
utility's cost of compliance with the renewable energy resource 2664
provisions of section 4928.64 of the Revised Code to serve the 2665
consumer. Such market price shall include, but not be limited 2666
to, capacity and energy charges; all charges associated with the 2667
provision of that power supply through the regional transmission 2668
organization, including, but not limited to, transmission, 2669
ancillary services, congestion, and settlement and 2670
administrative charges; and all other costs incurred by the 2671
utility that are associated with the procurement, provision, and 2672
administration of that power supply, as such costs may be 2673~~

~~approved by the commission. The period of time during which the~~ 2674
~~market price and renewable energy resource amount shall be so~~ 2675
~~assessed on the consumer shall be from the time the consumer so~~ 2676
~~returns to the electric distribution utility until the~~ 2677
~~expiration of the electric security plan. However, if that~~ 2678
~~period of time is expected to be more than two years, the~~ 2679
~~commission may reduce the time period to a period of not less~~ 2680
~~than two years.~~ 2681

~~(K) The commission shall adopt rules and issue orders in~~ 2682
~~proceedings under sections 4928.141 and 4928.142 of the Revised~~ 2683
~~Code to encourage and promote large-scale governmental~~ 2684
~~aggregation in this state. For that purpose, the commission~~ 2685
~~shall conduct an immediate review of any rules it has adopted~~ 2686
~~for the purpose of this section that are in effect on the~~ 2687
~~effective date of the amendment of this section by S.B. 221 of~~ 2688
~~the 127th general assembly, July 31, 2008. ~~Further, within the~~~~ 2689
~~~~context of an electric security plan under section 4928.143 of~~~~ 2690  
~~~~the Revised Code, the~~ The commission shall consider the effect~~ 2691  
~~~~on large-scale governmental aggregation of any nonbypassable~~~~ 2692  
~~~~generation charges, however collected, that would be established~~~~ 2693  
~~~~under that plan, except any nonbypassable generation charges~~~~ 2694  
~~~~that relate to any cost incurred by the~~ review each application~~ 2695  
~~~~filed under section 4928.142 of the Revised Code by an electric~~~~ 2696  
~~~~distribution utility,~~ to ensure that the deferral of which has~~ 2697  
~~~~been authorized by the commission prior to the effective date of~~~~ 2698  
~~~~application and the amendment of this section by S.B. 221 of the~~~~ 2699  
~~~~127th general assembly, July 31, 2008~~ resulting market rate~~ 2700  
~~~~offer shall not contain any rate, price, term, condition, or~~~~ 2701  
~~~~provision that would have an adverse effect on large-scale~~~~ 2702  
~~~~governmental aggregation in this state.~~~~ 2703

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of 2704

the Revised Code: 2705

(A) "Ancillary agreement" means any bond insurance policy, 2706
letter of credit, reserve account, surety bond, swap 2707
arrangement, hedging arrangement, liquidity or credit support 2708
arrangement, or other similar agreement or arrangement entered 2709
into in connection with the issuance of phase-in-recovery bonds 2710
that is designed to promote the credit quality and marketability 2711
of the bonds or to mitigate the risk of an increase in interest 2712
rates. 2713

(B) "Assignee" means any person or entity to which an 2714
interest in phase-in-recovery property is sold, assigned, 2715
transferred, or conveyed, other than as security, and any 2716
successor to or subsequent assignee of such a person or entity. 2717

(C) "Bond" includes debentures, notes, certificates of 2718
participation, certificates of beneficial interest, certificates 2719
of ownership or other evidences of indebtedness or ownership 2720
that are issued by an electric distribution utility or an 2721
assignee under a final financing order, the proceeds of which 2722
are used directly or indirectly to recover, finance, or 2723
refinance phase-in costs and financing costs, and that are 2724
secured by or payable from revenues from phase-in-recovery 2725
charges. 2726

(D) "Bondholder" means any holder or owner of a phase-in- 2727
recovery bond. 2728

(E) "Financing costs" means any of the following: 2729

(1) Principal, interest, and redemption premiums that are 2730
payable on phase-in-recovery bonds; 2731

(2) Any payment required under an ancillary agreement; 2732

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| (3) Any amount required to fund or replenish a reserve | 2733 |
| account or another account established under any indenture, | 2734 |
| ancillary agreement, or other financing document relating to | 2735 |
| phase-in-recovery bonds; | 2736 |
| (4) Any costs of retiring or refunding any existing debt | 2737 |
| and equity securities of an electric distribution utility in | 2738 |
| connection with either the issuance of, or the use of proceeds | 2739 |
| from, phase-in-recovery bonds; | 2740 |
| (5) Any costs incurred by an electric distribution utility | 2741 |
| to obtain modifications of or amendments to any indenture, | 2742 |
| financing agreement, security agreement, or similar agreement or | 2743 |
| instrument relating to any existing secured or unsecured | 2744 |
| obligation of the electric distribution utility in connection | 2745 |
| with the issuance of phase-in-recovery bonds; | 2746 |
| (6) Any costs incurred by an electric distribution utility | 2747 |
| to obtain any consent, release, waiver, or approval from any | 2748 |
| holder of an obligation described in division (E) (5) of this | 2749 |
| section that are necessary to be incurred for the electric | 2750 |
| distribution utility to issue or cause the issuance of phase-in- | 2751 |
| recovery bonds; | 2752 |
| (7) Any taxes, franchise fees, or license fees imposed on | 2753 |
| phase-in-recovery revenues; | 2754 |
| (8) Any costs related to issuing or servicing phase-in- | 2755 |
| recovery bonds or related to obtaining a financing order, | 2756 |
| including servicing fees and expenses, trustee fees and | 2757 |
| expenses, legal, accounting, or other professional fees and | 2758 |
| expenses, administrative fees, placement fees, underwriting | 2759 |
| fees, capitalized interest and equity, and rating-agency fees; | 2760 |
| (9) Any other similar costs that the public utilities | 2761 |

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| commission finds appropriate. | 2762 |
| (F) "Financing order" means an order issued by the public utilities commission under section 4928.232 of the Revised Code that authorizes an electric distribution utility or an assignee to issue phase-in-recovery bonds and recover phase-in-recovery charges. | 2763 2764 2765 2766 2767 |
| (G) "Final financing order" means a financing order that has become final and has taken effect as provided in section 4928.233 of the Revised Code. | 2768 2769 2770 |
| (H) "Financing party" means either of the following: | 2771 |
| (1) Any trustee, collateral agent, or other person acting for the benefit of any bondholder; | 2772 2773 |
| (2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of phase-in-recovery property, the enforcement and priority of a security interest in phase-in-recovery property, the timely collection and payment of phase-in-recovery revenues, or a combination of these factors. | 2774 2775 2776 2777 2778 2779 |
| (I) "Financing statement" has the same meaning as in section 1309.102 of the Revised Code. | 2780 2781 |
| (J) "Phase-in costs" means costs, inclusive of carrying charges incurred before, on, or after the effective date of this section <u>March 22, 2012</u> , authorized by the commission before, on, or after the effective date of this section <u>March 22, 2012</u> , to be securitized or deferred as regulatory assets in proceedings under section 4909.18 of the Revised Code, sections 4928.141 to 4928.143, 4928.142, or 4928.144 of the Revised Code, or section 4928.14 of the Revised Code as it existed prior to July 31, 2008, or section 4928.143 of the Revised Code as it existed | 2782 2783 2784 2785 2786 2787 2788 2789 2790 |

prior to the effective date of the amendments to this section by 2791
this act pursuant to a final order for which appeals have been 2792
exhausted. "Phase-in costs" excludes the following: 2793

(1) With respect to any electric generating facility that, 2794
on and after ~~the effective date of this section~~ March 22, 2012, 2795
is owned, in whole or in part, by an electric distribution 2796
utility applying for a financing order under section 4928.231 of 2797
the Revised Code, costs that are authorized under division (B) 2798
(2) (b) or (c) of section 4928.143 of the Revised Code as that 2799
section existed prior to the effective date of the amendments to 2800
this section by this act; 2801

(2) Costs incurred after ~~the effective date of this~~ 2802
~~section~~ March 22, 2012, related to the ongoing operation of an 2803
electric generating facility, but not environmental clean-up or 2804
remediation costs incurred by an electric distribution utility 2805
because of its ownership or operation of an electric generating 2806
facility prior to ~~the effective date of this section~~ March 22, 2807
2012, which such clean-up or remediation costs are imposed or 2808
incurred pursuant to federal or state law, rules, or regulations 2809
and for which the commission approves or approved recovery in 2810
accordance with section 4909.18 ~~of the Revised Code, sections~~ 2811
~~4928.141 to 4928.143,~~ 4928.142, or 4928.144 of the Revised Code, 2812
~~or~~ section 4928.14 of the Revised Code as it existed prior to 2813
July 31, 2008, or section 4928.143 of the Revised Code as it 2814
existed prior to the effective date of the amendments to this 2815
section by this act. 2816

(K) "Phase-in-recovery property" means the property, 2817
rights, and interests of an electric distribution utility or an 2818
assignee under a final financing order, including the right to 2819
impose, charge, and collect the phase-in-recovery charges that 2820

shall be used to pay and secure the payment of phase-in-recovery 2821
bonds and financing costs, and including the right to obtain 2822
adjustments to those charges, and any revenues, receipts, 2823
collections, rights to payment, payments, moneys, claims, or 2824
other proceeds arising from the rights and interests created 2825
under the final financing order. 2826

(L) "Phase-in-recovery revenues" means all revenues, 2827
receipts, collections, payments, moneys, claims, or other 2828
proceeds arising from phase-in-recovery property. 2829

(M) "Successor" means, with respect to any entity, another 2830
entity that succeeds by operation of law to the rights and 2831
obligations of the first legal entity pursuant to any 2832
bankruptcy, reorganization, restructuring, or other insolvency 2833
proceeding, any merger, acquisition, or consolidation, or any 2834
sale or transfer of assets, regardless of whether any of these 2835
occur as a result of a restructuring of the electric power 2836
industry or otherwise. 2837

Sec. 4928.231. (A) An electric distribution utility may 2838
apply to the public utilities commission for a financing order 2839
that authorizes the following: 2840

(1) The issuance of phase-in-recovery bonds, in one or 2841
more series, to recover uncollected phase-in costs; 2842

(2) The imposition, charging, and collection of phase-in- 2843
recovery charges, in accordance with the adjustment mechanism 2844
approved by the commission under section 4928.232 of the Revised 2845
Code, and consistent with the commission's authority regarding 2846
governmental aggregation as provided in division (I) of section 2847
4928.20 of the Revised Code, to recover both of the following: 2848

(a) Uncollected phase-in costs; 2849

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| (b) Financing costs. | 2850 |
| (3) The creation of phase-in-recovery property under the financing order. | 2851 2852 |
| (B) The application shall include all of the following: | 2853 |
| (1) A description of the uncollected phase-in costs that the electric distribution utility seeks to recover through the issuance of phase-in-recovery bonds; | 2854 2855 2856 |
| (2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued; | 2857 2858 |
| (3) The expected term during which the phase-in costs associated with the issuance of each series of phase-in-recovery bonds are expected to be recovered; | 2859 2860 2861 |
| (4) An estimate of the financing costs, as described in section 4928.23 of the Revised Code, associated with the issuance of each series of phase-in-recovery bonds; | 2862 2863 2864 |
| (5) An estimate of the amount of phase-in-recovery charges necessary to recover the phase-in costs and financing costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of phase-in-recovery bonds; | 2865 2866 2867 2868 2869 2870 |
| (6) For phase-in-recovery charges not subject to allocation according to an existing order, a proposed methodology for allocating phase-in-recovery charges among customer classes, including a proposed methodology for allocating such charges to governmental aggregation customers based upon the proportionate benefit determination made under division (I) of section 4928.20 of the Revised Code; | 2871 2872 2873 2874 2875 2876 2877 |

(7) A description of a proposed adjustment mechanism for use as described in division (A) (2) of this section; 2878
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(8) A description and valuation of how the issuance of the phase-in-recovery bonds, including financing costs, will both result in cost savings to customers and mitigate rate impacts to customers when compared to the use of other financing mechanisms or cost-recovery methods available to the electric distribution utility; 2880
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(9) Any other information required by the commission. 2886

(C) The electric distribution utility may restate or incorporate by reference in the application any information required under division (B) (9) of this section that the electric distribution utility filed with the commission under section 4909.18 or sections 4928.141 to 4928.144 of the Revised Code ~~or~~ section 4928.14 of the Revised Code as it existed prior to July 31, 2008, or section 4928.143 of the Revised Code as it existed prior to the amendments to this section by this act. 2887
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Sec. 4928.232. (A) Proceedings before the public utilities commission on an application submitted by an electric distribution utility under section 4928.231 of the Revised Code shall be governed by Chapter 4903. of the Revised Code, but only to the extent that chapter is not inconsistent with this section or section 4928.233 of the Revised Code. Any party that participated in the proceeding in which phase-in costs were approved under section 4909.18 or sections 4928.141 to 4928.144 of the Revised Code ~~or~~ section 4928.14 of the Revised Code as it existed prior to July 31, 2008, or section 4928.143 of the Revised Code as it existed prior to the amendments to this section by this act shall have standing to participate in proceedings under sections 4928.23 to 4928.2318 of the Revised 2895
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Code. 2908

(B) When reviewing an application for a financing order 2909
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 2910
the commission may hold such hearings, make such inquiries or 2911
investigations, and examine such witnesses, books, papers, 2912
documents, and contracts as the commission considers proper to 2913
carry out these sections. Within thirty days after the filing of 2914
an application under section 4928.231 of the Revised Code, the 2915
commission shall publish a schedule of the proceeding. 2916

(C) (1) Not later than one hundred thirty-five days after 2917
the date the application is filed, the commission shall issue 2918
either a financing order, granting the application in whole or 2919
with modifications, or an order suspending or rejecting the 2920
application. 2921

(2) If the commission suspends an application for a 2922
financing order, the commission shall notify the electric 2923
distribution utility of the suspension and may direct the 2924
electric distribution utility to provide additional information 2925
as the commission considers necessary to evaluate the 2926
application. Not later than ninety days after the suspension, 2927
the commission shall issue either a financing order, granting 2928
the application in whole or with modifications, or an order 2929
rejecting the application. 2930

(D) (1) The commission shall not issue a financing order 2931
under division (C) of this section unless the commission 2932
determines that the financing order is consistent with section 2933
4928.02 of the Revised Code. 2934

(2) Except as provided in division (D) (1) of this section, 2935
the commission shall issue a financing order under division (C) 2936

of this section if, at the time the financing order is issued, 2937
the commission finds that the issuance of the phase-in-recovery 2938
bonds and the phase-in-recovery charges authorized by the order 2939
results in, consistent with market conditions, both measurably 2940
enhancing cost savings to customers and mitigating rate impacts 2941
to customers as compared with traditional financing mechanisms 2942
or traditional cost-recovery methods available to the electric 2943
distribution utility or, if the commission previously approved a 2944
recovery method, as compared with that recovery method. 2945

(E) The commission shall include all of the following in a 2946
financing order issued under division (C) of this section: 2947

(1) A determination of the maximum amount and a 2948
description of the phase-in costs that may be recovered through 2949
phase-in-recovery bonds issued under the financing order; 2950

(2) A description of phase-in-recovery property, the 2951
creation of which is authorized by the financing order; 2952

(3) A description of the financing costs that may be 2953
recovered through phase-in-recovery charges and the period over 2954
which those costs may be recovered; 2955

(4) For phase-in-recovery charges not subject to 2956
allocation according to an existing order, a description of the 2957
methodology and calculation for allocating phase-in-recovery 2958
charges among customer classes, including the allocation of such 2959
charges, if any, to governmental aggregation customers based 2960
upon the proportionate benefit determination made under division 2961
(I) of section 4928.20 of the Revised Code; 2962

(5) A description of the adjustment mechanism for use in 2963
the imposition, charging, and collection of the phase-in- 2964
recovery charges; 2965

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| (6) The maximum term of the phase-in-recovery bonds; | 2966 |
| (7) Any other provision the commission considers | 2967 |
| appropriate to ensure the full and timely imposition, charging, | 2968 |
| collection, and adjustment, pursuant to an approved adjustment | 2969 |
| mechanism, of the phase-in-recovery charges described in | 2970 |
| divisions (E) (3) to (5) of this section. | 2971 |
| (F) The commission may, in a financing order, afford the | 2972 |
| electric distribution utility flexibility in establishing the | 2973 |
| terms and conditions for the phase-in-recovery bonds to | 2974 |
| accommodate changes in market conditions, including repayment | 2975 |
| schedules, interest rates, financing costs, collateral | 2976 |
| requirements, required debt service and other reserves, and the | 2977 |
| ability of the electric distribution utility, at its option, to | 2978 |
| effect a series of issuances of phase-in-recovery bonds and | 2979 |
| correlated assignments, sales, pledges, or other transfers of | 2980 |
| phase-in-recovery property. Any changes made under this section | 2981 |
| to terms and conditions for the phase-in-recovery bonds shall be | 2982 |
| in conformance with the financing order. | 2983 |
| (G) A financing order may provide that the creation of | 2984 |
| phase-in-recovery property shall be simultaneous with the sale | 2985 |
| of that property to an assignee as provided in the application | 2986 |
| and the pledge of the property to secure phase-in-recovery | 2987 |
| bonds. | 2988 |
| (H) The commission shall, in a financing order, require | 2989 |
| that after the final terms of each issuance of phase-in-recovery | 2990 |
| bonds have been established, and prior to the issuance of those | 2991 |
| bonds, the electric distribution utility shall determine the | 2992 |
| resulting phase-in-recovery charges in accordance with the | 2993 |
| adjustment mechanism described in the financing order. These | 2994 |
| phase-in-recovery charges shall be final and effective upon the | 2995 |

issuance of the phase-in-recovery bonds, without further 2996
commission action. 2997

Sec. 4928.34. (A) The public utilities commission shall 2998
not approve or prescribe a transition plan under division (A) or 2999
(B) of section 4928.33 of the Revised Code unless the commission 3000
first makes all of the following determinations: 3001

(1) The unbundled components for the electric transmission 3002
component of retail electric service, as specified in the 3003
utility's rate unbundling plan required by division (A) (1) of 3004
section 4928.31 of the Revised Code, equal the tariff rates 3005
determined by the federal energy regulatory commission that are 3006
in effect on the date of the approval of the transition plan 3007
under sections 4928.31 to 4928.40 of the Revised Code, as each 3008
such rate is determined applicable to each particular customer 3009
class and rate schedule by the commission. The unbundled 3010
transmission component shall include a sliding scale of charges 3011
under division (B) of section 4905.31 of the Revised Code to 3012
ensure that refunds determined or approved by the federal energy 3013
regulatory commission are flowed through to retail electric 3014
customers. 3015

(2) The unbundled components for retail electric 3016
distribution service in the rate unbundling plan equal the 3017
difference between the costs attributable to the utility's 3018
transmission and distribution rates and charges under its 3019
schedule of rates and charges in effect on the effective date of 3020
this section, based upon the record in the most recent rate 3021
proceeding of the utility for which the utility's schedule was 3022
established, and the tariff rates for electric transmission 3023
service determined by the federal energy regulatory commission 3024
as described in division (A) (1) of this section. 3025

(3) All other unbundled components required by the 3026
commission in the rate unbundling plan equal the costs 3027
attributable to the particular service as reflected in the 3028
utility's schedule of rates and charges in effect on the 3029
effective date of this section. 3030

(4) The unbundled components for retail electric 3031
generation service in the rate unbundling plan equal the 3032
residual amount remaining after the determination of the 3033
transmission, distribution, and other unbundled components, and 3034
after any adjustments necessary to reflect the effects of the 3035
amendment of section 5727.111 of the Revised Code by Sub. S.B. 3036
No. 3 of the 123rd general assembly. 3037

(5) All unbundled components in the rate unbundling plan 3038
have been adjusted to reflect any base rate reductions on file 3039
with the commission and as scheduled to be in effect by December 3040
31, 2005, under rate settlements in effect on the effective date 3041
of this section. However, all earnings obligations, 3042
restrictions, or caps imposed on an electric utility in a 3043
commission order prior to the effective date of this section are 3044
void. 3045

(6) Subject to division (A) (5) of this section, the total 3046
of all unbundled components in the rate unbundling plan are 3047
capped and shall equal during the market development period, 3048
except as specifically provided in this chapter, the total of 3049
all rates and charges in effect under the applicable bundled 3050
schedule of the electric utility pursuant to section 4905.30 of 3051
the Revised Code in effect on the day before the effective date 3052
of this section, including the transition charge determined 3053
under section 4928.40 of the Revised Code, adjusted for any 3054
changes in the taxation of electric utilities and retail 3055

electric service under Sub. S.B. No. 3 of the 123rd General 3056
Assembly, the universal service rider authorized by section 3057
4928.51 of the Revised Code, and the temporary rider authorized 3058
by section 4928.61 of the Revised Code. For the purpose of this 3059
division, the rate cap applicable to a customer receiving 3060
electric service pursuant to an arrangement approved by the 3061
commission under section 4905.31 of the Revised Code is, for the 3062
term of the arrangement, the total of all rates and charges in 3063
effect under the arrangement. For any rate schedule filed 3064
pursuant to section 4905.30 of the Revised Code or any 3065
arrangement subject to approval pursuant to section 4905.31 of 3066
the Revised Code, the initial tax-related adjustment to the rate 3067
cap required by this division shall be equal to the rate of 3068
taxation specified in section 5727.81 of the Revised Code and 3069
applicable to the schedule or arrangement. To the extent such 3070
total annual amount of the tax-related adjustment is greater 3071
than or less than the comparable amount of the total annual tax 3072
reduction experienced by the electric utility as a result of the 3073
provisions of Sub. S.B. No. 3 of the 123rd general assembly, 3074
such difference shall be addressed by the commission through 3075
accounting procedures, refunds, or an annual surcharge or credit 3076
to customers, or through other appropriate means, to avoid 3077
placing the financial responsibility for the difference upon the 3078
electric utility or its shareholders. Any adjustments in the 3079
rate of taxation specified in section 5727.81 of the Revised 3080
Code ~~section~~ shall not occur without a corresponding adjustment 3081
to the rate cap for each such rate schedule or arrangement. The 3082
department of taxation shall advise the commission and self- 3083
assessors under section 5727.81 of the Revised Code prior to the 3084
effective date of any change in the rate of taxation specified 3085
under that section, and the commission shall modify the rate cap 3086
to reflect that adjustment so that the rate cap adjustment is 3087

effective as of the effective date of the change in the rate of 3088
taxation. This division shall be applied, to the extent 3089
possible, to eliminate any increase in the price of electricity 3090
for customers that otherwise may occur as a result of 3091
establishing the taxes contemplated in section 5727.81 of the 3092
Revised Code. 3093

(7) The rate unbundling plan complies with any rules 3094
adopted by the commission under division (A) of section 4928.06 3095
of the Revised Code. 3096

(8) The corporate separation plan required by division (A) 3097
(2) of section 4928.31 of the Revised Code complies with section 3098
4928.17 of the Revised Code and any rules adopted by the 3099
commission under division (A) of section 4928.06 of the Revised 3100
Code. 3101

(9) Any plan or plans the commission requires to address 3102
operational support systems and any other technical 3103
implementation issues pertaining to competitive retail electric 3104
service comply with any rules adopted by the commission under 3105
division (A) of section 4928.06 of the Revised Code. 3106

(10) The employee assistance plan required by division (A) 3107
(4) of section 4928.31 of the Revised Code sufficiently provides 3108
severance, retraining, early retirement, retention, 3109
outplacement, and other assistance for the utility's employees 3110
whose employment is affected by electric industry restructuring 3111
under this chapter. 3112

(11) The consumer education plan required under division 3113
(A) (5) of section 4928.31 of the Revised Code complies with 3114
former section 4928.42 of the Revised Code and any rules adopted 3115
by the commission under division (A) of section 4928.06 of the 3116

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| Revised Code. | 3117 |
| (12) The transition revenues for which an electric utility | 3118 |
| is authorized a revenue opportunity under sections 4928.31 to | 3119 |
| 4928.40 of the Revised Code are the allowable transition costs | 3120 |
| of the utility as such costs are determined by the commission | 3121 |
| pursuant to section 4928.39 of the Revised Code, and the | 3122 |
| transition charges for the customer classes and rate schedules | 3123 |
| of the utility are the charges determined pursuant to section | 3124 |
| 4928.40 of the Revised Code. | 3125 |
| (13) Any independent transmission plan included in the | 3126 |
| transition plan filed under section 4928.31 of the Revised Code | 3127 |
| reasonably complies with section 4928.12 of the Revised Code and | 3128 |
| any rules adopted by the commission under division (A) of | 3129 |
| section 4928.06 of the Revised Code, unless the commission, for | 3130 |
| good cause shown, authorizes the utility to defer compliance | 3131 |
| until an order is issued under division (G) of section 4928.35 | 3132 |
| of the Revised Code. | 3133 |
| (14) The utility is in compliance with sections 4928.01 to | 3134 |
| 4928.11 of the Revised Code and any rules or orders of the | 3135 |
| commission adopted or issued under those sections. | 3136 |
| (15) All unbundled components in the rate unbundling plan | 3137 |
| have been adjusted to reflect the elimination of the tax on | 3138 |
| gross receipts imposed by section 5727.30 of the Revised Code. | 3139 |
| In addition, a transition plan approved by the commission | 3140 |
| under section 4928.33 of the Revised Code but not containing an | 3141 |
| approved independent transmission plan shall contain the express | 3142 |
| conditions that the utility will comply with an order issued | 3143 |
| under division (G) of section 4928.35 of the Revised Code. | 3144 |
| (B) Subject to division (E) of section 4928.17 of the | 3145 |

~~Revised Code, if~~ If the commission finds that any part of the transition plan would constitute an abandonment under sections 4905.20 and 4905.21 of the Revised Code, the commission shall not approve that part of the transition plan unless it makes the finding required for approval of an abandonment application under section 4905.21 of the Revised Code. Sections 4905.20 and 4905.21 of the Revised Code otherwise shall not apply to a transition plan under sections 4928.31 to 4928.40 of the Revised Code.

Sec. 4928.542. The winning bid or bids selected through the competitive procurement process established under section 4928.54 of the Revised Code shall meet all of the following requirements:

(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers;

(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under sections 4928.141, ~~and~~ 4928.142, ~~and 4928.143~~ of the Revised Code;

(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code.

Sec. 4928.64. (A) (1) As used in this section, "qualifying renewable energy resource" means a renewable energy resource, as defined in section 4928.01 of the Revised Code that:

(a) Has a placed-in-service date on or after January 1, 1998;

(b) Is any run-of-the-river hydroelectric facility that

| | |
|--|--|
| has an in-service date on or after January 1, 1980; | 3175 |
| (c) Is a small hydroelectric facility; | 3176 |
| (d) Is created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or | 3177 3178 3179 |
| (e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the following: | 3180 3181 3182 3183 3184 3185 3186 |
| (i) A resource that has the effect of improving the relationship between real and reactive power; | 3187 3188 |
| (ii) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer; | 3189 3190 3191 |
| (iii) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics; | 3192 3193 3194 |
| (iv) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource. | 3195 3196 |
| (2) For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such a qualifying renewable energy resource. | 3197 3198 3199 |
| (B) (1) By the end of 2026, an electric distribution utility shall have provided from qualifying renewable energy resources, including, at its discretion, qualifying renewable | 3200 3201 3202 |

energy resources obtained pursuant to an electricity supply 3203
contract, a portion of the electricity supply required for its 3204
standard service offer under ~~section~~sections 4928.141 and 3205
4928.142 of the Revised Code, and an electric services company 3206
shall have provided a portion of its electricity supply for 3207
retail consumers in this state from qualifying renewable energy 3208
resources, including, at its discretion, qualifying renewable 3209
energy resources obtained pursuant to an electricity supply 3210
contract. That portion shall equal eight and one-half per cent 3211
of the total number of kilowatt hours of electricity sold by the 3212
subject utility or company to any and all retail electric 3213
consumers whose electric load centers are served by that utility 3214
and are located within the utility's certified territory or, in 3215
the case of an electric services company, are served by the 3216
company and are located within this state. However, nothing in 3217
this section precludes a utility or company from providing a 3218
greater percentage. 3219

(2) ~~Subject to section 4928.642 of the Revised Code, the~~ 3220
The portion required under division (B) (1) of this section shall 3221
be generated from renewable energy resources in accordance with 3222
the following benchmarks: 3223

| | 1 | 2 | 3 |
|---|----------------|----------------------------|------------------------|
| A | By end of year | Renewable energy resources | Solar energy resources |
| B | 2009 | 0.25% | 0.004% |
| C | 2010 | 0.50% | 0.010% |
| D | 2011 | 1% | 0.030% |

3224

| | | | |
|---|------|------|--------|
| E | 2012 | 1.5% | 0.060% |
| F | 2013 | 2% | 0.090% |
| G | 2014 | 2.5% | 0.12% |
| H | 2015 | 2.5% | 0.12% |
| I | 2016 | 2.5% | 0.12% |
| J | 2017 | 3.5% | 0.15% |
| K | 2018 | 4.5% | 0.18% |
| L | 2019 | 5.5% | 0.22% |
| M | 2020 | 5.5% | 0% |
| N | 2021 | 6% | 0% |
| O | 2022 | 6.5% | 0% |
| P | 2023 | 7% | 0% |
| Q | 2024 | 7.5% | 0% |
| R | 2025 | 8% | 0% |
| S | 2026 | 8.5% | 0% |

- (3) The qualifying renewable energy resources implemented 3225
by the utility or company shall be met either: 3226
- (a) Through facilities located in this state; or 3227
- (b) With resources that can be shown to be deliverable 3228
into this state. 3229

(C) (1) The commission annually shall review an electric 3230
distribution utility's or electric services company's compliance 3231
with the most recent applicable benchmark under division (B) (2) 3232
of this section and, in the course of that review, shall 3233
identify any undercompliance or noncompliance of the utility or 3234
company that it determines is weather-related, related to 3235
equipment or resource shortages for qualifying renewable energy 3236
resources as applicable, or is otherwise outside the utility's 3237
or company's control. 3238

(2) Subject to the cost cap provisions of division (C) (3) 3239
of this section, if the commission determines, after notice and 3240
opportunity for hearing, and based upon its findings in that 3241
review regarding avoidable undercompliance or noncompliance, but 3242
subject to division (C) (4) of this section, that the utility or 3243
company has failed to comply with any such benchmark, the 3244
commission shall impose a renewable energy compliance payment on 3245
the utility or company. 3246

(a) The compliance payment pertaining to the solar energy 3247
resource benchmarks under division (B) (2) of this section shall 3248
be an amount per megawatt hour of undercompliance or 3249
noncompliance in the period under review, as follows: 3250

- (i) Three hundred dollars for 2014, 2015, and 2016; 3251
- (ii) Two hundred fifty dollars for 2017 and 2018; 3252
- (iii) Two hundred dollars for 2019. 3253

(b) The compliance payment pertaining to the renewable 3254
energy resource benchmarks under division (B) (2) of this section 3255
shall equal the number of additional renewable energy credits 3256
that the electric distribution utility or electric services 3257
company would have needed to comply with the applicable 3258

benchmark in the period under review times an amount that shall 3259
begin at forty-five dollars and shall be adjusted annually by 3260
the commission to reflect any change in the consumer price index 3261
~~as defined in section 101.27 of the Revised Code~~, but shall not 3262
be less than forty-five dollars. As used in this division, 3263
"consumer price index" means the consumer price index prepared 3264
by the United States bureau of labor statistics (U.S. city 3265
average for urban wage earners and clerical workers: all items, 3266
1982-1984=100), or, if that index is no longer published, a 3267
generally available comparable index. 3268

(c) The compliance payment shall not be passed through by 3269
the electric distribution utility or electric services company 3270
to consumers. The compliance payment shall be remitted to the 3271
commission, for deposit to the credit of the advanced energy 3272
fund created under section 4928.61 of the Revised Code. Payment 3273
of the compliance payment shall be subject to such collection 3274
and enforcement procedures as apply to the collection of a 3275
forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the 3276
Revised Code. 3277

(3) An electric distribution utility or an electric 3278
services company need not comply with a benchmark under division 3279
(B) (2) of this section to the extent that its reasonably 3280
expected cost of that compliance exceeds its reasonably expected 3281
cost of otherwise producing or acquiring the requisite 3282
electricity by three per cent or more. The cost of compliance 3283
shall be calculated as though any exemption from taxes and 3284
assessments had not been granted under section 5727.75 of the 3285
Revised Code. 3286

(4) (a) An electric distribution utility or electric 3287
services company may request the commission to make a force 3288

majeure determination pursuant to this division regarding all or 3289
part of the utility's or company's compliance with any minimum 3290
benchmark under division (B) (2) of this section during the 3291
period of review occurring pursuant to division (C) (2) of this 3292
section. The commission may require the electric distribution 3293
utility or electric services company to make solicitations for 3294
renewable energy resource credits as part of its default service 3295
before the utility's or company's request of force majeure under 3296
this division can be made. 3297

(b) Within ninety days after the filing of a request by an 3298
electric distribution utility or electric services company under 3299
division (C) (4) (a) of this section, the commission shall 3300
determine if qualifying renewable energy resources are 3301
reasonably available in the marketplace in sufficient quantities 3302
for the utility or company to comply with the subject minimum 3303
benchmark during the review period. In making this 3304
determination, the commission shall consider whether the 3305
electric distribution utility or electric services company has 3306
made a good faith effort to acquire sufficient qualifying 3307
renewable energy or, as applicable, solar energy resources to so 3308
comply, including, but not limited to, by banking or seeking 3309
renewable energy resource credits or by seeking the resources 3310
through long-term contracts. Additionally, the commission shall 3311
consider the availability of qualifying renewable energy or 3312
solar energy resources in this state and other jurisdictions in 3313
the PJM interconnection regional transmission organization, 3314
L.L.C., or its successor and the midcontinent independent system 3315
operator or its successor. 3316

(c) If, pursuant to division (C) (4) (b) of this section, 3317
the commission determines that qualifying renewable energy or 3318
solar energy resources are not reasonably available to permit 3319

the electric distribution utility or electric services company 3320
to comply, during the period of review, with the subject minimum 3321
benchmark prescribed under division (B) (2) of this section, the 3322
commission shall modify that compliance obligation of the 3323
utility or company as it determines appropriate to accommodate 3324
the finding. Commission modification shall not automatically 3325
reduce the obligation for the electric distribution utility's or 3326
electric services company's compliance in subsequent years. If 3327
it modifies the electric distribution utility or electric 3328
services company obligation under division (C) (4) (c) of this 3329
section, the commission may require the utility or company, if 3330
sufficient renewable energy resource credits exist in the 3331
marketplace, to acquire additional renewable energy resource 3332
credits in subsequent years equivalent to the utility's or 3333
company's modified obligation under division (C) (4) (c) of this 3334
section. 3335

(5) The commission shall establish a process to provide 3336
for at least an annual review of the renewable energy resource 3337
market in this state and in the service territories of the 3338
regional transmission organizations that manage transmission 3339
systems located in this state. The commission shall use the 3340
results of this study to identify any needed changes to the 3341
amount of the renewable energy compliance payment specified 3342
under divisions (C) (2) (a) and (b) of this section. Specifically, 3343
the commission may increase the amount to ensure that payment of 3344
compliance payments is not used to achieve compliance with this 3345
section in lieu of actually acquiring or realizing energy 3346
derived from qualifying renewable energy resources. However, if 3347
the commission finds that the amount of the compliance payment 3348
should be otherwise changed, the commission shall present this 3349
finding to the general assembly for legislative enactment. 3350

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

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

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

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

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

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

Sec. 4928.645. (A) An electric distribution utility or electric services company may use, for the purpose of complying with the requirements under divisions (B) (1) and (2) of section

4928.64 of the Revised Code, renewable energy credits any time 3380
in the five calendar years following the date of their purchase 3381
or acquisition from any entity, including, but not limited to, 3382
the following: 3383

(1) A mercantile customer; 3384

(2) An owner or operator of a hydroelectric generating 3385
facility that is located at a dam on a river, or on any water 3386
discharged to a river, that is within or bordering this state or 3387
within or bordering an adjoining state, or that produces power 3388
that can be shown to be deliverable into this state; 3389

(3) A seller of compressed natural gas that has been 3390
produced from biologically derived methane gas, provided that 3391
the seller may only provide renewable energy credits for metered 3392
amounts of gas. 3393

(B) (1) The public utilities commission shall adopt rules 3394
specifying that one unit of credit shall equal one megawatt hour 3395
of electricity derived from renewable energy resources, except 3396
that, for a generating facility of seventy-five megawatts or 3397
greater that is situated within this state and has committed by 3398
December 31, 2009, to modify or retrofit its generating unit or 3399
units to enable the facility to generate principally from 3400
biomass energy by June 30, 2013, each megawatt hour of 3401
electricity generated principally from that biomass energy shall 3402
equal, in units of credit, the product obtained by multiplying 3403
the actual percentage of biomass feedstock heat input used to 3404
generate such megawatt hour by the quotient obtained by dividing 3405
the then existing unit dollar amount used to determine a 3406
renewable energy compliance payment as provided under division 3407
(C) (2) (b) of section 4928.64 of the Revised Code by the then 3408
existing market value of one renewable energy credit, but such 3409

megawatt hour shall not equal less than one unit of credit. 3410
Renewable energy resources do not have to be converted to 3411
electricity in order to be eligible to receive renewable energy 3412
credits. The rules shall specify that, for purposes of 3413
converting the quantity of energy derived from biologically 3414
derived methane gas to an electricity equivalent, one megawatt 3415
hour equals 3,412,142 British thermal units. 3416

(2) The rules also shall provide for this state a system 3417
of registering renewable energy credits by specifying which of 3418
any generally available registries shall be used for that 3419
purpose and not by creating a registry. That selected system of 3420
registering renewable energy credits shall allow a hydroelectric 3421
generating facility to be eligible for obtaining renewable 3422
energy credits and shall allow customer-sited projects or 3423
actions the broadest opportunities to be eligible for obtaining 3424
renewable energy credits. 3425

~~(C) Beginning January 1, 2020, a qualifying solar resource 3426
as defined in section 3706.40 of the Revised Code is not 3427
eligible to obtain a renewable energy credit under this section 3428
for any megawatt hour for which the resource has been issued a 3429
solar energy credit under section 3706.45 of the Revised Code. 3430~~

~~(D) Except for compressed natural gas that has been 3431
produced from biologically derived methane gas, energy generated 3432
by using natural gas as a resource is not eligible to obtain a 3433
renewable energy credit under this section. 3434~~

Sec. 4928.73. (A) As used in this section: 3435

(1) "Mercantile customer member" means a mercantile 3436
customer connected to a mercantile customer self-power system. 3437

(2) "Mercantile customer self-power system" means one or 3438

more electric generation facilities, electric storage 3439
facilities, or both, along with any associated facilities, that 3440
meet all of the following: 3441

(a) Produce electricity primarily for the consumption of a 3442
mercantile customer member or a group of mercantile customer 3443
members; 3444

(b) Connect directly to the mercantile customer member's 3445
side of the electric meter; 3446

(c) Deliver electricity to the mercantile customer 3447
member's side of the electric meter without the use of an 3448
electric distribution utility's distribution system or 3449
transmission system; 3450

(d) Is located on a property owned or controlled by a 3451
mercantile customer member or the entity that owns or operates 3452
the mercantile customer self-power system. 3453

(B) The mercantile customer self-power system may be owned 3454
or operated by a mercantile customer member, group of mercantile 3455
customer members, or an entity that is not a mercantile customer 3456
member. 3457

(C) A mercantile customer self-power system may provide 3458
electric generation service to one or more mercantile customers. 3459

(D) The public utilities commission shall adopt rules to 3460
implement this section. 3461

Sec. 4929.20. ~~(A)~~ (A) (1) No governmental aggregator as 3462
defined in division (K) (1) of section 4929.01 of the Revised 3463
Code or no retail natural gas supplier shall provide a 3464
competitive retail natural gas service on or after thirteen 3465
months following ~~the effective date of this section~~ June 26, 3466

2001, to a consumer in this state without first being certified 3467
by the public utilities commission regarding its managerial, 3468
technical, and financial capability to provide that service and 3469
providing reasonable financial assurances sufficient to protect 3470
customers and natural gas companies from default. ~~In addition, a~~ 3471
~~retail natural gas supplier may be required to provide a~~ 3472
~~performance bond sufficient to protect customers and natural gas~~ 3473
~~companies from default.~~ Certification shall be granted pursuant 3474
to procedures and standards the commission shall prescribe in 3475
accordance with rules adopted under section 4929.10 of the 3476
Revised Code. However, certification or certification renewal 3477
shall be deemed approved thirty days after the filing of an 3478
application with the commission unless the commission suspends 3479
that approval for good cause shown. In the case of such a 3480
suspension, the commission shall act to approve or deny 3481
certification or certification renewal to the applicant not 3482
later than ninety days after the date of the suspension. 3483

(2) The commission shall establish rules to require a 3484
competitive retail natural gas supplier to maintain financial 3485
assurances sufficient to protect customers and natural gas 3486
companies from default. Such rules also shall specifically allow 3487
a natural gas company to set reasonable standards for its 3488
security and the security of its customers through financial 3489
requirements set in its tariffs. 3490

(3) As used in division (A)(2) of this section, "retail 3491
natural gas supplier" has the same meaning as in section 4929.01 3492
of the Revised Code, but excludes a broker or aggregator. 3493

(B) Capability standards adopted in rules pursuant to 3494
division (A) of this section shall be sufficient to ensure 3495
compliance with section 4929.22 of the Revised Code and with the 3496

minimum service requirements established under section 4929.23 3497
of the Revised Code. The standards shall allow flexibility for 3498
voluntary aggregation, to encourage market creativity in 3499
responding to consumer needs and demands. The rules shall 3500
include procedures for biennially renewing certification. 3501

(C) (1) The commission may suspend, rescind, or 3502
conditionally rescind the certification of any retail natural 3503
gas supplier or governmental aggregator issued under this 3504
section if the commission determines, after reasonable notice 3505
and opportunity for hearing, that the retail natural gas 3506
supplier or governmental aggregator has failed to comply with 3507
any applicable certification standards prescribed in rules 3508
adopted pursuant to this section or section 4929.22 of the 3509
Revised Code. 3510

(2) An affected natural gas company may file an 3511
application with the commission for approval of authority to 3512
recover in accordance with division (C) (2) of this section 3513
incremental costs reasonably and prudently incurred by the 3514
company in connection with the commission's continuation, 3515
suspension, rescission, or conditional rescission of a 3516
particular retail natural gas supplier's certification under 3517
division (C) (1) of this section. Upon the filing of such an 3518
application, the commission shall conduct an audit of such 3519
incremental costs as are specified in the application. Cost 3520
recovery shall be through a rider on the base rates of customers 3521
of the company for which there is a choice of supplier of 3522
commodity sales service as a result of revised schedules 3523
approved under division (C) of section 4929.29 of the Revised 3524
Code, a rule or order adopted or issued by the commission under 3525
Chapter 4905. of the Revised Code, or an exemption granted by 3526
the commission under sections 4929.04 to 4929.08 of the Revised 3527

Code. The rider shall take effect ninety days after the date of 3528
the application's filing unless the commission, based on the 3529
audit results and for good cause shown, sets the matter for 3530
hearing. After the hearing, the commission shall approve the 3531
application, and authorize such cost recovery rider effective on 3532
the date specified in the order, only for such incremental costs 3533
as the commission determines were reasonably and prudently 3534
incurred by the company in connection with the continuation, 3535
suspension, rescission, or conditional rescission of a retail 3536
natural gas supplier's certification under division (C) (1) of 3537
this section. Any proceeding under division (C) (2) of this 3538
section shall be governed by Chapter 4903. of the Revised Code. 3539

(D) No natural gas company, on and after thirteen months 3540
following ~~the effective date of this section~~ June 26, 2001, 3541
shall knowingly distribute natural gas, to a retail consumer in 3542
this state, for any governmental aggregator, as defined in 3543
division (K) (1) of section 4929.01 of the Revised Code, or 3544
retail natural gas supplier, that has not been certified by the 3545
commission pursuant to this section. 3546

(E) Notwithstanding any provision of section 121.95 of the 3547
Revised Code to the contrary, a regulatory restriction contained 3548
in a rule adopted under section 4929.20 of the Revised Code is 3549
not subject to sections 121.95 to 121.953 of the Revised Code. 3550

Sec. 4929.201. The public utilities commission and the 3551
natural gas companies and competitive retail natural gas 3552
suppliers that elect to participate in the consumer choice 3553
billing program are subject to the requirements established for 3554
that program under sections 4933.51 to 4933.59 of the Revised 3555
Code. 3556

Sec. 4929.221. (A) If a competitive retail natural gas 3557

service supplier offers a residential customer or non-mercantile 3558
commercial customer a contract for a fixed introductory rate 3559
that converts to a variable rate upon the expiration of the 3560
fixed rate, the supplier shall send two notices to each 3561
residential customer and non-mercantile commercial customer that 3562
enters into such a contract. Each notice shall provide all of 3563
the following information to the customer: 3564

(1) The fixed rate that is expiring under the contract; 3565

(2) The expiration date of the contract's fixed rate; 3566

(3) The rate to be charged upon the contract's conversion 3567
to a variable rate; 3568

(4) The public utilities commission web site that, as a 3569
comparison tool, lists rates offered by competitive retail 3570
natural gas service suppliers; 3571

(5) A statement explaining that appearing on each 3572
customer's bill is a price-to-compare notice that lists the 3573
natural gas company's default rate for natural gas charged to 3574
customers who decide not to shop for a competitive supplier. 3575

(B) The notices shall be sent by standard United States 3576
mail as follows: 3577

(1) The supplier shall send the first notice not earlier 3578
than ninety days and not later than sixty days prior to the 3579
expiration of the fixed rate. 3580

(2) The supplier shall send the second notice not earlier 3581
than forty-five days and not later than thirty days prior to the 3582
expiration of the fixed rate. 3583

(C) A competitive retail natural gas service supplier 3584
shall provide an annual notice, by standard United States mail, 3585

to each residential customer and non-mercantile commercial 3586
customer that has entered into a contract with the supplier that 3587
has converted to a variable rate upon the expiration of the 3588
contract's fixed introductory rate. The notice shall inform the 3589
customer that the customer is currently subject to a variable 3590
rate and that other fixed rate contracts are available. 3591

(D) Not later than one hundred fifty days after the 3592
effective date of this section, the commission shall adopt rules 3593
in order to implement divisions (A) to (C) of this section. The 3594
rules, at a minimum, shall include the following requirements 3595
regarding the notices required under divisions (A) to (C) of 3596
this section: 3597

(1) To use clear and unambiguous language in order to 3598
enable the customer to make an informed decision; 3599

(2) To design the notices in a way to ensure that they 3600
cannot be confused with marketing materials. 3601

(E) Notwithstanding any provision of section 121.95 of the 3602
Revised Code to the contrary, a regulatory restriction contained 3603
in a rule adopted under section 4929.221 of the Revised Code is 3604
not subject to sections 121.95 to 121.953 of the Revised Code. 3605

Sec. 4929.222. (A) As used in this section, "customer 3606
account information" means a unique natural gas company number 3607
or other customer identification number used by the company to 3608
identify a customer and the customer's account record. 3609

(B) The public utilities commission shall adopt rules to 3610
ensure that a natural gas company processes a customer's change 3611
in competitive retail natural gas supplier by using customer 3612
account information. A customer who consents to a change of 3613
supplier shall not be required to provide customer account 3614

information to the supplier if the customer provides a valid 3615
form of government-issued identification issued to the customer 3616
or a sufficient alternative form of identification that allows 3617
the supplier to establish the customer's identity accurately. 3618

(C) Notwithstanding any provision of section 121.95 of the 3619
Revised Code to the contrary, a regulatory restriction contained 3620
in a rule adopted under this section is not subject to sections 3621
121.95 to 121.953 of the Revised Code. 3622

Sec. 4933.51. As used in sections 4933.51 to 4933.59 of 3623
the Revised Code: 3624

(A) "Applicant" means a supplier that has applied for 3625
certification under the consumer choice billing program 3626
established under sections 4933.51 to 4933.59 of the Revised 3627
Code. 3628

(B) "Consumer" means a residential, commercial, or 3629
industrial customer of retail electric service or retail natural 3630
gas service. 3631

(C) "Competitive retail electric service" and "electric 3632
distribution utility" have the same meanings as in section 3633
4928.01 of the Revised Code. 3634

(D) "Competitive retail natural gas supplier" and "natural 3635
gas company" have the same meanings as in section 4929.01 of the 3636
Revised Code. 3637

(E) "Supplier" means a supplier of competitive retail 3638
electric service or a competitive retail natural gas supplier. 3639

Sec. 4933.52. (A) There is created the consumer choice 3640
billing program, which shall be administered by the public 3641
utilities commission. The purpose of the program is to do the 3642

| | |
|---|------|
| <u>following:</u> | 3643 |
| <u>(1) Permit suppliers to offer consumers consolidated</u> | 3644 |
| <u>billing of retail electric services or retail natural gas</u> | 3645 |
| <u>services for all electric or natural gas charges, including an</u> | 3646 |
| <u>electric distribution utility's or natural gas company's</u> | 3647 |
| <u>distribution and transmission charges;</u> | 3648 |
| <u>(2) Enhance consumer protections for consumers who select</u> | 3649 |
| <u>a supplier and elect to be billed by that supplier for all</u> | 3650 |
| <u>charges for electric service or natural gas service;</u> | 3651 |
| <u>(3) Increase competition in supplier marketplaces;</u> | 3652 |
| <u>(4) Develop direct and transparent relationships between</u> | 3653 |
| <u>consumers and suppliers.</u> | 3654 |
| <u>(B) The commission shall adopt rules to authorize consumer</u> | 3655 |
| <u>choice billing and accomplish the purposes described in division</u> | 3656 |
| <u>(A) of this section.</u> | 3657 |
| Sec. 4933.54. <u>(A) The public utilities commission shall</u> | 3658 |
| <u>adopt rules to implement the consumer choice billing program</u> | 3659 |
| <u>created under section 4933.52 of the Revised Code. The rules</u> | 3660 |
| <u>shall require a supplier to do the following:</u> | 3661 |
| <u>(1) Apply for a new or amended certification under section</u> | 3662 |
| <u>4928.08 or 4929.20 of the Revised Code, as applicable, that also</u> | 3663 |
| <u>authorizes the supplier's participation in the consumer choice</u> | 3664 |
| <u>billing program;</u> | 3665 |
| <u>(2) If the applicant is applying for an amended</u> | 3666 |
| <u>certification, maintain a current, valid certification under</u> | 3667 |
| <u>section 4928.08 or 4929.20 of the Revised Code and, prior to</u> | 3668 |
| <u>offering or providing consumer choice billing, submit to the</u> | 3669 |
| <u>commission a statement affirming that the applicant will not</u> | 3670 |

offer or provide consumer choice billing without such 3671
certification and commission authorization to provide such 3672
billing under the program; 3673

(3) Maintain the following, in addition to meeting 3674
applicable financial assurances required under section 4928.08 3675
or 4929.20 of the Revised Code: 3676

(a) If the applicant is a competitive retail electric 3677
supplier, bonding or financial assurances with the commission 3678
for sales of electricity in the amount of two hundred fifty 3679
thousand dollars or ten per cent of the applicant's annual gross 3680
receipts, whichever is greater; 3681

(b) If the applicant is a competitive retail natural gas 3682
supplier, bonding or financial assurances with each natural gas 3683
company in the service territory where the applicant provides 3684
service; 3685

(c) Bonding or financial assurances with each electric 3686
distribution utility and natural gas company where the applicant 3687
plans to offer consumer choice billing in an amount equal to the 3688
sum of the two highest months of utility receivables in the 3689
previous twelve months. 3690

(4) (a) Certify that the applicant has not had its 3691
certification under section 4928.08 or 4929.20 revoked during 3692
the previous five-year period; 3693

(b) Certify that, for bills that include supplier charges 3694
and electric distribution utility or natural gas company 3695
charges, the applicant will comply with the standards for 3696
billing practices and minimum service requirements under 3697
sections 4928.10 and 4929.22 of the Revised Code, as applicable; 3698

(c) Demonstrate that the applicant is able to meet the 3699

demands of increased consumer service and dispute resolution 3700
functions, including the operation of call centers, support of 3701
complex billing requirements, responsible execution of 3702
collections functions, quality assurance, and recordkeeping 3703
necessary to handle electric distribution utility and natural 3704
gas company charges that contribute to potential electric or 3705
natural gas service disconnections; 3706

(d) Attest to the applicant's ability to comply with 3707
applicable requirements related to payment plans for utility 3708
service and to assist consumers with other payment plan options 3709
by employing new or existing consumer assistance programs prior 3710
to initiating the process for service termination; 3711

(e) Agree to purchase the receivables for regulated 3712
charges of an electric distribution utility or natural gas 3713
distribution company, as applicable; 3714

(f) Agree to timely inform the commission of any material 3715
change or the cancellation of the bonding or assurances required 3716
under division (A) (3) of this section; 3717

(g) Agree to comply with Ohio administrative rules 3718
regarding standards of conduct for suppliers and disclosures, 3719
marketing, and sales practice requirements for suppliers. 3720

(B) The commission also shall adopt rules that do the 3721
following: 3722

(1) Establish a process for an applicant to petition the 3723
commission for authorization to provide consumer choice billing 3724
through a third party if the applicant meets the qualifications 3725
under divisions (A) (3) and (4) of this section; 3726

(2) Authorize a mechanism to create a bypassable billing 3727
service charge that: 3728

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|---|------|
| <u>(a) Is wholly based on the fully unbundled direct and</u> | 3729 |
| <u>indirect costs of an electric distribution utility's or a</u> | 3730 |
| <u>natural gas company's billing system;</u> | 3731 |
| <u>(b) Guarantees the recovery of all prudent investments in</u> | 3732 |
| <u>billing infrastructure;</u> | 3733 |
| <u>(c) May be imposed only after a commission-imposed</u> | 3734 |
| <u>prudency review that occurs prior to the implementation of</u> | 3735 |
| <u>consumer choice billing.</u> | 3736 |
| <u>(3) Require an electric distribution utility and a natural</u> | 3737 |
| <u>gas company to timely furnish necessary billing data to</u> | 3738 |
| <u>suppliers participating in the consumer choice billing program;</u> | 3739 |
| <u>(4) Create a standardized form of consumer notice to be</u> | 3740 |
| <u>used when a supplier ceases to provide a particular type of</u> | 3741 |
| <u>billing or other service;</u> | 3742 |
| <u>(5) Establish a consumer choice billing working group for</u> | 3743 |
| <u>stakeholders to draft tariff provisions, collect data, design</u> | 3744 |
| <u>business processes, configure electronic transactions, review</u> | 3745 |
| <u>similar consumer choice billing programs in other states, define</u> | 3746 |
| <u>a comprehensive consumer choice billing education program to</u> | 3747 |
| <u>support the launch of consumer choice billing in the state, and</u> | 3748 |
| <u>consider any other relevant matters, including the process for</u> | 3749 |
| <u>disconnection or termination of utility service;</u> | 3750 |
| <u>(6) Establish an electronic data exchange working group to</u> | 3751 |
| <u>develop proposed electronic transactions for an electric</u> | 3752 |
| <u>distribution utility, natural gas company, or supplier to</u> | 3753 |
| <u>exchange necessary consumption, billing, payment, and related</u> | 3754 |
| <u>data;</u> | 3755 |
| <u>(7) Prohibit an electric distribution utility or natural</u> | 3756 |
| <u>gas company from requiring a supplier to purchase a consumer's</u> | 3757 |

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|---|------|
| <u>arrears from the electric distribution utility or natural gas</u> | 3758 |
| <u>company;</u> | 3759 |
| <u>(8) Prohibit an electric distribution utility or natural</u> | 3760 |
| <u>gas company from utilizing consumer information to do the</u> | 3761 |
| <u>following:</u> | 3762 |
| <u>(a) Market the standard service offer for electric service</u> | 3763 |
| <u>or the standard choice offer for natural gas service;</u> | 3764 |
| <u>(b) Research or market other electric distribution utility</u> | 3765 |
| <u>or natural gas company services;</u> | 3766 |
| <u>(c) Share information the electric distribution utility or</u> | 3767 |
| <u>natural gas company acquires through electronic transactions</u> | 3768 |
| <u>that facilitate consumer choice billing with unregulated</u> | 3769 |
| <u>affiliates of the electric distribution utility, natural gas</u> | 3770 |
| <u>company, or any other nongovernmental entity.</u> | 3771 |
| <u>(9) Establish the terms and conditions for the following:</u> | 3772 |
| <u>(a) A supplier to change a consumer's billing method to or</u> | 3773 |
| <u>from consumer choice billing and the corresponding content and</u> | 3774 |
| <u>timing of notifications to consumers;</u> | 3775 |
| <u>(b) For a consumer that is on budget billing with an</u> | 3776 |
| <u>electric distribution utility or natural gas company at the time</u> | 3777 |
| <u>of the switch to consumer choice billing;</u> | 3778 |
| <u>(c) A supplier's purchase of an electric distribution</u> | 3779 |
| <u>utility's or natural gas company's receivables, including</u> | 3780 |
| <u>prioritization for partial payments and a dispute resolution</u> | 3781 |
| <u>process;</u> | 3782 |
| <u>(d) Nonpayment by a consumer choice billing consumer,</u> | 3783 |
| <u>including the content of collection notices, purchase of</u> | 3784 |
| <u>arrears, unpaid charges, and limitations.</u> | 3785 |

(10) A consumer choice billing consumer's participation in 3786
the percentage of income assistance program under section 3787
4928.53 of the Revised Code. 3788

(C) In addition to the penalties described in divisions 3789
(A) (1) and (2) of section 4933.59 of the Revised Code, the 3790
commission shall adopt rules to establish fines or other 3791
penalties for violations of requirements established under 3792
sections 4933.52 to 4933.58 of the Revised Code. 3793

(D) Notwithstanding any provision of section 121.95 of the 3794
Revised Code to the contrary, a regulatory restriction contained 3795
in a rule adopted under section 4933.54 of the Revised Code is 3796
not subject to sections 121.95 to 121.953 of the Revised Code. 3797

Sec. 4933.56. (A) Not later than forty-five days after the 3798
effective date of this section, the public utilities commission 3799
shall issue an order requiring electric distribution utilities 3800
and natural gas companies to prepare a consumer choice billing 3801
implementation plan, which shall be subject to commission 3802
approval. Each electric distribution utility and natural gas 3803
company shall submit its implementation plan to the commission 3804
not later than one hundred eighty days after the commission has 3805
adopted the consumer choice billing rules pursuant to section 3806
4933.54 of the Revised Code. 3807

The implementation plan shall demonstrate how the electric 3808
distribution utility or natural gas company will meet the 3809
consumer choice billing requirements established by rule 3810
pursuant to section 4933.54 of the Revised Code and shall 3811
include all tariffs, agreements, processes, proposed cost 3812
recovery mechanisms, and other components that will require 3813
commission approval in accordance with the commission's consumer 3814
choice billing order. 3815

If necessary, the commission may approve an implementation plan on an expedited basis. 3816
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(B) An electric distribution utility or natural gas company shall maintain a record of recoverable consumer choice billing costs as regulatory assets. Such regulatory assets shall be recovered in the utility's or company's next rate case application under section 4909.18 of the Revised Code. 3818
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Sec. 4933.58. Not later than one year after the effective date of the consumer choice billing rules adopted pursuant to section 4933.54 of the Revised Code, the public utilities commission shall issue a consumer choice billing report to the standing committees of the house of representatives and the senate with primary responsibility for utility legislation. The report shall detail the status of the consumer choice billing program in the state and shall include the following information regarding the program: 3823
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(A) Statistics for the number of consumers who shop for retail electric and natural gas service; 3832
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(B) The number and description of consumer complaints; 3834

(C) The number of billing disputes; 3835

(D) The number of service terminations; 3836

(E) Any other information needed to determine whether modifications to consumer choice billing qualifications or requirements are necessary to improve shopping for retail electric and natural gas service in the state. 3837
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Sec. 4933.59. (A) If a supplier violates a provision of the consumer choice billing program under sections 4933.51 to 4933.58 of the Revised Code, the public utilities commission may 3841
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impose any of the following penalties, subject to notice and a hearing: 3844
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(1) A suspension or revocation of the supplier's participation in the consumer choice billing program; 3846
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(2) A suspension or revocation of the supplier's certification under section 4928.08 or 4928.20 of the Revised Code, as applicable; 3848
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(3) A fine in an amount determined and imposed by the commission, on a supplier for marketing practices that are fraudulent, deceptive, or otherwise unlawful. 3851
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(B) A supplier shall be responsible for fraudulent, deceptive, or other unlawful marketing acts performed by an agent of the supplier. The commission may impose on the supplier the penalties described in division (A) of this section if the agent of a supplier violates a provision of the consumer choice billing program under sections 4933.51 to 4933.58 of the Revised Code. 3854
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(C) The commission may impose penalties on an electric distribution utility or a natural gas company that violates requirements adopted pursuant to section 4933.54 of the Revised Code. 3861
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Sec. 5727.01. As used in this chapter: 3865

(A) "Public utility" means each person referred to as a telephone company, telegraph company, electric company, natural gas company, pipe-line company, water-works company, water transportation company, heating company, rural electric company, railroad company, combined company, or energy company. 3866
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(B) "Gross receipts" means the entire receipts for 3871

business done by any person from operations as a public utility, 3872
or incidental thereto, or in connection therewith, including any 3873
receipts received under Chapter 4928. of the Revised Code. The 3874
gross receipts for business done by an incorporated company 3875
engaged in operation as a public utility includes the entire 3876
receipts for business done by such company under the exercise of 3877
its corporate powers, whether from the operation as a public 3878
utility or from any other business. 3879

(C) "Rural electric company" means any nonprofit 3880
corporation, organization, association, or cooperative engaged 3881
in the business of supplying electricity to its members or 3882
persons owning an interest therein in an area the major portion 3883
of which is rural. "Rural electric company" excludes an energy 3884
company. 3885

(D) Any person: 3886

(1) Is a telegraph company when engaged in the business of 3887
transmitting telegraphic messages to, from, through, or in this 3888
state; 3889

(2) Is a telephone company when primarily engaged in the 3890
business of providing local exchange telephone service, 3891
excluding cellular radio service, in this state; 3892

(3) Is an electric company when engaged in the business of 3893
generating, transmitting, or distributing electricity within 3894
this state for use by others, but excludes a rural electric 3895
company or an energy company; 3896

(4) Is a natural gas company when engaged in the business 3897
of supplying or distributing natural gas for lighting, power, or 3898
heating purposes to consumers within this state, excluding a 3899
person that is a governmental aggregator or retail natural gas 3900

supplier as defined in section 4929.01 of the Revised Code; 3901

(5) Is a pipe-line company when engaged in the business of 3902
transporting natural gas, oil, or coal or its derivatives 3903
through pipes or tubing, either wholly or partially within this 3904
state; 3905

(6) Is a water-works company when engaged in the business 3906
of supplying water through pipes or tubing, or in a similar 3907
manner, to consumers within this state; 3908

(7) Is a water transportation company when engaged in the 3909
transportation of passengers or property, by boat or other 3910
watercraft, over any waterway, whether natural or artificial, 3911
from one point within this state to another point within this 3912
state, or between points within this state and points without 3913
this state; 3914

(8) Is a heating company when engaged in the business of 3915
supplying water, steam, or air through pipes or tubing to 3916
consumers within this state for heating purposes; 3917

(9) Is a railroad company when engaged in the business of 3918
owning or operating a railroad either wholly or partially within 3919
this state on rights-of-way acquired and held exclusively by 3920
such company, or otherwise, and includes a passenger, street, 3921
suburban, or interurban railroad company; 3922

(10) Is an energy company when engaged in the business of 3923
generating, transmitting, or distributing electricity within 3924
this state for use by others solely from an energy facility with 3925
an aggregate nameplate capacity in excess of two hundred fifty 3926
kilowatts. 3927

As used in division (D) (2) of this section, "local 3928
exchange telephone service" means making available or furnishing 3929

access and a dial tone to all persons within a local calling 3930
area for use in originating and receiving voice grade 3931
communications over a switched network operated by the provider 3932
of the service within the area and for gaining access to other 3933
telecommunication services. 3934

(E) "Taxable property" means the property required by 3935
section 5727.06 of the Revised Code to be assessed by the tax 3936
commissioner, but does not include either of the following: 3937

(1) An item of tangible personal property that for the 3938
period subsequent to the effective date of an air, water, or 3939
noise pollution control certificate and continuing so long as 3940
the certificate is in force, has been certified as part of the 3941
pollution control facility with respect to which the certificate 3942
has been issued; 3943

(2) An item of tangible personal property that during the 3944
construction of a plant or facility and until the item is first 3945
capable of operation, whether actually used in operation or not, 3946
is incorporated in or being held exclusively for incorporation 3947
in that plant or facility. 3948

Notwithstanding section 5701.03 of the Revised Code, for 3949
tax year 2006 and thereafter, "taxable property" includes 3950
patterns, jigs, dies, and drawings of an electric company or a 3951
combined company for use in the activity of an electric company. 3952

(F) "Taxing district" means a municipal corporation or 3953
township, or part thereof, in which the aggregate rate of 3954
taxation is uniform. 3955

(G) "Telecommunications service" has the same meaning as 3956
in division (AA) of section 5739.01 of the Revised Code. 3957

(H) "Interexchange telecommunications company" means a 3958

person that is engaged in the business of transmitting 3959
telephonic messages to, from, through, or in this state, but 3960
that is not a telephone company. 3961

(I) "Sale and leaseback transaction" means a transaction 3962
in which a public utility or interexchange telecommunications 3963
company sells any tangible personal property to a person other 3964
than a public utility or interexchange telecommunications 3965
company and leases that property back from the buyer. 3966

(J) "Production equipment" means all taxable steam, 3967
nuclear, hydraulic, renewable resource, clean coal technology, 3968
and other production plant equipment used to generate 3969
electricity. For tax years prior to 2001, "production equipment" 3970
includes taxable station equipment that is located at a 3971
production plant. 3972

(K) "Tax year" means the year for which property or gross 3973
receipts are subject to assessment under this chapter. This 3974
division does not limit the tax commissioner's ability to assess 3975
and value property or gross receipts outside the tax year. 3976

(L) "Combined company" means any person engaged in the 3977
activity of an electric company or rural electric company that 3978
is also engaged in the activity of a heating company or a 3979
natural gas company, or any combination thereof. 3980

(M) "Public utility property lessor" means any person, 3981
other than a public utility or an interexchange 3982
telecommunications company, that leases personal property, other 3983
than in a sale and leaseback transaction, to a public utility, 3984
other than a railroad, water transportation, telephone, or 3985
telegraph company if the property would be taxable property if 3986
owned by the public utility. A public utility property lessor is 3987

subject to this chapter only for the purposes of reporting and 3988
paying tax on taxable property it leases to a public utility 3989
other than a telephone or telegraph company. A public utility 3990
property lessor that leases property to a public utility other 3991
than a telephone or telegraph company is not a public utility, 3992
but it shall report its property and be assessed in the same 3993
manner as the utility to which it leases the property. 3994

(N) "Energy resource" means any of the following: 3995

(1) "Renewable energy resource" as defined in section 3996
4928.01 of the Revised Code; 3997

(2) "Clean coal technology" as described in division (A) 3998
(34) (c) of section 4928.01 of the Revised Code; 3999

(3) "Advanced nuclear technology" as described in division 4000
(A) (34) (d) of section 4928.01 of the Revised Code; 4001

(4) "Cogeneration technology" as described in division (A) 4002
(34) (b) of section 4928.01 of the Revised Code. 4003

(O) "Energy conversion equipment" means tangible personal 4004
property connected to a wind turbine tower, connected to and 4005
behind solar radiation collector areas and designed to convert 4006
the radiant energy of the sun into electricity or heat, or 4007
connected to any other property used to generate electricity 4008
from an energy resource, through which electricity is 4009
transferred to controls, transformers, or power electronics and 4010
to the transmission interconnection point. 4011

"Energy conversion equipment" includes, but is not limited 4012
to, inverters, batteries, switch gears, wiring, collection 4013
lines, substations, ancillary tangible personal property, or any 4014
lines and associated tangible personal property located between 4015
substations and the transmission interconnection point. 4016

(P) "Energy facility" means one or more interconnected 4017
wind turbines, solar panels, or other tangible personal property 4018
used to generate electricity from an energy resource owned by 4019
the same person, including: 4020

(1) All interconnection equipment, devices, and related 4021
apparatus connected to such tangible personal property; 4022

(2) All cables, equipment, devices, and related apparatus 4023
that connect the generators to an electricity grid or to a 4024
building or facility that directly consumes the electricity 4025
produced, that facilitate the transmission of electrical energy 4026
from the generators to the grid, building, or facility, and, 4027
where applicable, that transform voltage before ultimate 4028
delivery of electricity to the grid, building, or facility. 4029

"Energy facility" includes buildings, structures, 4030
improvements, or fixtures exclusively used to house, support, or 4031
stabilize tangible personal property constituting the facility 4032
or that are otherwise necessary for the operation of that 4033
property; and so much of the land on which such tangible 4034
personal property is situated as is required for operation of 4035
the facility and is not devoted to some other use, not to 4036
exceed, in the case of wind turbines, one-half acre for each 4037
wind turbine, and regardless of whether the land is owned by the 4038
owner or lessee of the tangible personal property or by another 4039
person. 4040

(Q) "Nameplate capacity" means the original interconnected 4041
maximum rated alternating current output of a generator or other 4042
electric production equipment under specific conditions 4043
designated by the manufacturer, expressed in the number of 4044
kilowatts or megawatts. 4045

(R) "Qualifying production equipment" means production 4046
equipment that is placed into service on or after the last day 4047
of the year that includes the effective date of this amendment. 4048

Sec. 5727.031. (A) A person that is engaged in some other 4049
primary business to which the supplying of electricity to others 4050
is incidental shall file a report under section 5727.08 of the 4051
Revised Code as an electric company but shall only report 4052
therein as taxable property the amounts required in divisions 4053
(B) and (C) of this section. All time limits and other 4054
procedural requirements of this chapter for the reporting and 4055
assessment of property of electric companies apply to persons 4056
required to file a report under this section. For the purposes 4057
of this section, "the supplying of electricity to others" shall 4058
not include donating all of the electricity a person generates 4059
to a political subdivision of the state. 4060

(B) A person subject to this section shall report the true 4061
value of the boilers, machinery, equipment, and any personal 4062
property used to supply electricity to others, which shall be 4063
the sum of the following: 4064

(1) The true value of the property that is taxable 4065
production equipment, as such true value ~~it~~ would be determined 4066
for an electric company under section 5727.11 of the Revised 4067
Code, multiplied by the per cent of the electricity generated in 4068
the preceding calendar year that was not used by the person who 4069
generated it; plus 4070

(2) The true value of the property that is not production 4071
equipment, as ~~it~~ such true value would be determined for an 4072
electric company under section 5727.11 of the Revised Code, 4073
multiplied by the per cent of the electricity generated in the 4074
preceding calendar year that was not used by the person who 4075

generated it. 4076

(C) The property reported under division (B) of this 4077
section shall be listed and assessed at an amount equal to the 4078
sum of the products determined under divisions (C) (1) and (2) of 4079
this section. 4080

(1) Multiply the portion of the true value determined 4081
under division (B) (1) of this section by the assessment rate in 4082
section 5727.111 of the Revised Code that is applicable to the_ 4083
taxable production equipment of an electric company; 4084

(2) Multiply the portion of the true value determined 4085
under division (B) (2) of this section by the assessment rate in 4086
section 5727.111 of the Revised Code that is applicable to the 4087
taxable property of an electric company that is not production 4088
equipment. 4089

Sec. 5727.06. (A) Except as otherwise provided by law, the 4090
following constitutes the taxable property of a public utility, 4091
interexchange telecommunications company, or public utility 4092
property lessor that shall be assessed by the tax commissioner: 4093

(1) For tax years before tax year 2006: 4094

(a) In the case of a railroad company, all real property 4095
and tangible personal property owned or operated by the railroad 4096
company in this state on the thirty-first day of December of the 4097
preceding year; 4098

(b) In the case of a water transportation company, all 4099
tangible personal property, except watercraft, owned or operated 4100
by the water transportation company in this state on the thirty- 4101
first day of December of the preceding year and all watercraft 4102
owned or operated by the water transportation company in this 4103
state during the preceding calendar year; 4104

(c) In the case of all other public utilities and 4105
interexchange telecommunications companies, all tangible 4106
personal property that on the thirty-first day of December of 4107
the preceding year was both located in this state and: 4108

(i) Owned by the public utility or interexchange 4109
telecommunications company; or 4110

(ii) Leased by the public utility or interexchange 4111
telecommunications company under a sale and leaseback 4112
transaction. 4113

(2) For tax years 2006, 2007, and 2008: 4114

(a) In the case of a railroad company, all real property 4115
used in railroad operations and tangible personal property owned 4116
or operated by the railroad company in this state on the thirty- 4117
first day of December of the preceding year; 4118

(b) In the case of a water transportation company, all 4119
tangible personal property, except watercraft, owned or operated 4120
by the water transportation company in this state on the thirty- 4121
first day of December of the preceding year and all watercraft 4122
owned or operated by the water transportation company in this 4123
state during the preceding calendar year; 4124

(c) In the case of all other public utilities except 4125
telephone and telegraph companies, all tangible personal 4126
property that on the thirty-first day of December of the 4127
preceding year was both located in this state and either owned 4128
by the public utility or leased by the public utility under a 4129
sale and leaseback transaction. 4130

(3) For tax year 2009 and each tax year thereafter: 4131

(a) In the case of a railroad company, all real property 4132

used in railroad operations and tangible personal property owned 4133
or operated by the railroad company in this state on the thirty- 4134
first day of December of the preceding year; 4135

(b) In the case of a water transportation company, all 4136
tangible personal property, except watercraft, owned or operated 4137
by the water transportation company in this state on the thirty- 4138
first day of December of the preceding year and all watercraft 4139
owned or operated by the water transportation company in this 4140
state during the preceding calendar year; 4141

(c) In the case of all other public utilities except 4142
telephone and telegraph companies, all tangible personal 4143
property except qualifying production equipment that on the 4144
thirty-first day of December of the preceding year was both 4145
located in this state and either owned by the public utility or 4146
leased by the public utility under a sale and leaseback 4147
transaction, and that is not exempted from taxation under 4148
section 5727.75 of the Revised Code; 4149

(d) In the case of a public utility property lessor, all 4150
personal property except qualifying production equipment that on 4151
the thirty-first day of December of the preceding year was both 4152
located in this state and leased, in other than a sale and 4153
leaseback transaction, to a public utility other than a 4154
railroad, telephone, telegraph, or water transportation company. 4155
The assessment rate used under section 5727.111 of the Revised 4156
Code shall be based on the assessment rate that would apply if 4157
the public utility owned the property, and that is not exempted 4158
from taxation under section 5727.75 of the Revised Code. 4159

(4) For tax years 2005 and 2006, in the case of telephone, 4160
telegraph, or interexchange telecommunications companies, all 4161
tangible personal property that on the thirty-first day of 4162

December of the preceding year was both located in this state 4163
and either owned by the telephone, telegraph, or interexchange 4164
telecommunications company or leased by the telephone, 4165
telegraph, or interexchange telecommunications company under a 4166
sale and leaseback transaction. 4167

(5) (a) For tax year 2007 and thereafter, in the case of 4168
telephone, telegraph, or interexchange telecommunications 4169
companies, all tangible personal property shall be listed and 4170
assessed for taxation under Chapter 5711. of the Revised Code, 4171
but the tangible personal property shall be valued in accordance 4172
with this chapter using the composite annual allowances and 4173
other valuation procedures prescribed under section 5727.11 of 4174
the Revised Code by the tax commissioner for such property for 4175
tax year 2006, notwithstanding any section of Chapter 5711. of 4176
the Revised Code to the contrary. 4177

(b) A telephone, telegraph, or interexchange 4178
telecommunications company subject to division (A) (5) (a) of this 4179
section shall file a combined return with the tax commissioner 4180
in accordance with section 5711.13 of the Revised Code even if 4181
the company has tangible personal property in only one county. 4182
Such a company also is subject to the issuance of a preliminary 4183
assessment certificate by the tax commissioner under section 4184
5711.25 of the Revised Code. Such a company is not required to 4185
file a county supplemental return under section 5711.131 of the 4186
Revised Code. 4187

(6) In the case of an energy company, for tax year 2011 4188
and each tax year thereafter, all tangible personal property 4189
except qualifying production equipment that on the thirty-first 4190
day of December of the preceding year was both located in this 4191
state and either owned by the company or leased by the company 4192

under a sale and leaseback transaction, and that is not exempted 4193
from taxation under section 5727.75 of the Revised Code. 4194

(B) This division applies to tax years before tax year 4195
2007. 4196

In the case of an interexchange telecommunications 4197
company, all taxable property shall be subject to the provisions 4198
of this chapter and shall be valued by the commissioner in 4199
accordance with division (A) of section 5727.11 of the Revised 4200
Code. A person described by this division shall file the report 4201
required by section 5727.08 of the Revised Code. Persons 4202
described in this division shall not be considered taxpayers, as 4203
defined in division (B) of section 5711.01 of the Revised Code, 4204
and shall not be required to file a return and list their 4205
taxable property under any provision of Chapter 5711. of the 4206
Revised Code. 4207

(C) The lien of the state for taxes levied each year on 4208
the real and personal property of public utilities and 4209
interexchange telecommunications companies and on the personal 4210
property of public utility property lessors shall attach thereto 4211
on the thirty-first day of December of the preceding year. 4212

(D) Property that is required by division (A) (3) (b) of 4213
this section to be assessed by the tax commissioner under this 4214
chapter shall not be listed by the owner of the property under 4215
Chapter 5711. of the Revised Code. 4216

(E) The ten-thousand-dollar exemption provided for in 4217
division (C) (3) of section 5709.01 of the Revised Code does not 4218
apply to any personal property that is valued under this 4219
chapter. 4220

(F) The tax commissioner may adopt rules governing the 4221

listing of the taxable property of public utilities and 4222
interexchange telecommunications companies and the determination 4223
of true value. 4224

Sec. 5727.11. (A) Except as otherwise provided in this 4225
section, the true value of all taxable property, except property 4226
of a railroad company, required by section 5727.06 of the 4227
Revised Code to be assessed by the tax commissioner shall be 4228
determined by a method of valuation using cost as capitalized on 4229
the public utility's books and records less composite annual 4230
allowances as prescribed by the commissioner. If the 4231
commissioner finds that application of this method will not 4232
result in the determination of true value of the public 4233
utility's taxable property, the commissioner may use another 4234
method of valuation. 4235

(B) (1) Except as provided in division (B) (2) of this 4236
section, the true value of current gas stored underground is the 4237
cost of that gas shown on the books and records of the public 4238
utility on the thirty-first day of December of the preceding 4239
year. 4240

(2) For tax year 2001 and thereafter, the true value of 4241
current gas stored underground is the quotient obtained by 4242
dividing (a) the average value of the current gas stored 4243
underground, which shall be determined by adding the value of 4244
the gas on hand at the end of each calendar month in the 4245
calendar year preceding the tax year, or, if applicable, the 4246
last day of business of each month for a partial month, divided 4247
by (b) the total number of months the natural gas company was in 4248
business during the calendar year prior to the beginning of the 4249
tax year. With the approval of the tax commissioner, a natural 4250
gas company may use a date other than the end of a calendar 4251

month to value its current gas stored underground. 4252

(C) The true value of noncurrent gas stored underground is 4253
thirty-five per cent of the cost of that gas shown on the books 4254
and records of the public utility on the thirty-first day of 4255
December of the preceding year. 4256

(D) (1) Except as provided in division (D) (2) of this 4257
section, the true value of the taxable production equipment of 4258
an electric company and the true value of all taxable property 4259
of a rural electric company is the equipment's or property's 4260
cost as capitalized on the company's books and records less 4261
fifty per cent of that cost as an allowance for depreciation and 4262
obsolescence. 4263

(2) The true value of the taxable production equipment or 4264
energy conversion equipment of an electric company, rural 4265
electric company, or energy company purchased, transferred, or 4266
placed into service after October 5, 1999, is the purchase price 4267
of the equipment as capitalized on the company's books and 4268
records less composite annual allowances as prescribed by the 4269
tax commissioner. 4270

(E) The true value of taxable property, except property of 4271
a railroad company, required by section 5727.06 of the Revised 4272
Code to be assessed by the tax commissioner shall not include 4273
the allowance for funds used during construction or interest 4274
during construction that has been capitalized on the public 4275
utility's books and records as part of the total cost of the 4276
taxable property. This division shall not apply to the taxable 4277
property of an electric company or a rural electric company, 4278
excluding transmission and distribution property, first placed 4279
into service after December 31, 2000, or to the taxable property 4280
a person purchases, which includes transfers, if that property 4281

was used in business by the seller prior to the purchase. 4282

(F) The true value of watercraft owned or operated by a 4283
water transportation company shall be determined by multiplying 4284
the true value of the watercraft as determined under division 4285
(A) of this section by a fraction, the numerator of which is the 4286
number of revenue-earning miles traveled by the watercraft in 4287
the waters of this state and the denominator of which is the 4288
number of revenue-earning miles traveled by the watercraft in 4289
all waters. 4290

(G) The cost of property subject to a sale and leaseback 4291
transaction is the cost of the property as capitalized on the 4292
books and records of the public utility owning the property 4293
immediately prior to the sale and leaseback transaction. 4294

(H) The cost as capitalized on the books and records of a 4295
public utility includes amounts capitalized that represent 4296
regulatory assets, if such amounts previously were included on 4297
the company's books and records as capitalized costs of taxable 4298
personal property. 4299

(I) Any change in the composite annual allowances as 4300
prescribed by the commissioner on a prospective basis shall not 4301
be admissible in any judicial or administrative action or 4302
proceeding as evidence of value with regard to prior years' 4303
taxes. Information about the business, property, or transactions 4304
of any taxpayer obtained by the commissioner for the purpose of 4305
adopting or modifying the composite annual allowances shall not 4306
be subject to discovery or disclosure. 4307

Sec. 5727.76. (A) As used in this section: 4308

(1) "Qualifying property" means property that is dedicated 4309
to transporting or transmitting electricity or natural gas and 4310

that is placed into service in a priority investment area 4311
designated under section 122.161 of the Revised Code during a 4312
time when that designation is in effect. 4313

(2) "Authorizing ordinance or resolution" means an 4314
ordinance or resolution adopted under division (B) of section 4315
122.161 of the Revised Code. 4316

(B) Qualifying property shall be exempt from taxation for 4317
the tax year following the year in which the property is placed 4318
into service and for the ensuing four tax years. 4319

Section 2. That existing sections 4905.03, 4906.01, 4320
4906.03, 4906.04, 4906.07, 4906.10, 4909.04, 4909.05, 4909.052, 4321
4909.06, 4909.07, 4909.08, 4909.15, 4909.156, 4909.17, 4909.173, 4322
4909.174, 4909.18, 4909.191, 4909.42, 4911.15, 4928.01, 4928.05, 4323
4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4324
4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 4928.542, 4325
4928.64, 4928.645, 4929.20, 5727.01, 5727.031, 5727.06, and 4326
5727.11 of the Revised Code are hereby repealed. 4327

Section 3. That sections 3706.40, 3706.41, 3706.43, 4328
3706.431, 3706.45, 3706.46, 3706.49, 3706.491, 3706.55, 4329
3706.551, 3706.59, 3706.63, 3706.65, 4928.143, 4928.148, and 4330
4928.642 of the Revised Code are hereby repealed. 4331

Section 4. (A) Notwithstanding the repeal by this act of 4332
section 4928.148 of the Revised Code, a rider or cost recovery 4333
mechanism for a legacy generation resource authorized under an 4334
electric distribution utility's electric security plan in effect 4335
on the effective date of this section shall remain in effect 4336
until the termination date of the electric security plan. After 4337
the termination date of the electric security plan, the electric 4338
distribution utility shall not apply for, and the public 4339

utilities commission shall not authorize, any rider or cost 4340
recovery mechanism for a legacy generation resource. 4341

(B) Beginning on the effective date of this section, no 4342
electric distribution utility shall collect from its retail 4343
customers in the state any charge that was authorized under 4344
section 3706.46 of the Revised Code to meet the revenue 4345
requirement for disbursements from the Solar Generation Fund to 4346
owners or operators of qualifying solar resources that was 4347
required under section 3706.55 of the Revised Code before the 4348
repeal of these sections by this act. 4349

Beginning on the effective date of this section, the Ohio 4350
Air Quality Development Authority is prohibited from directing 4351
the Treasurer of State to remit, and the Treasurer is prohibited 4352
from remitting, any money from the Solar Generation Fund to 4353
owners or operators of qualifying solar resources, which 4354
remittance was permitted under section 3706.55 of the Revised 4355
Code prior to the repeal of that section by this act. 4356

Section 5. Section 4928.01 of the Revised Code is 4357
presented in this act as a composite of the section as amended 4358
by both H.B. 308 and H.B. 315 of the 135th General Assembly. The 4359
General Assembly, applying the principle stated in division (B) 4360
of section 1.52 of the Revised Code that amendments are to be 4361
harmonized if reasonably capable of simultaneous operation, 4362
finds that the composite is the resulting version of the section 4363
in effect prior to the effective date of the section as 4364
presented in this act. 4365