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Senators Reineke, Wilkin

Cosponsors: Senators Antonio, Brenner, Chavez, Cirino, Craig, Cutrona, DeMora, Gavarone, Hicks-Hudson, Johnson, Koehler, Landis, Manning, Patton, Reynolds, Romanchuk, Schaffer, Smith, Timken, Weinstein

To amend sections 303.213, 519.213, 713.081, 3313.372, 3313.373, 4905.03, 4906.01, 4906.03, 4906.06, 4906.07, 4906.10, 4909.04, 4909.05, 4909.052, 4909.06, 4909.07, 4909.08, 4909.15, 4909.156, 4909.173, 4909.174, 4909.18, 4909.19, 4909.191, 4909.42, 4928.01, 4928.05, 4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 4928.542, 4928.64, 4928.645, 4929.20, 4933.81, 5711.01, 5727.01, 5727.031, 5727.06, 5727.11, 5727.111, and 5727.75; to enact sections 122.161, 3313.377, 3313.378, 4903.27, 4905.23, 4905.311, 4905.321, 4905.331, 4909.041, 4909.042, 4909.181, 4909.192, 4909.193, 4928.041, 4928.101, 4928.102, 4928.103, 4928.105, 4928.107, 4928.149, 4928.1410, 4928.73, 4929.221, 4929.222, and 5727.76; and to repeal sections 3706.40, 3706.41, 3706.43, 3706.431, 3706.45, 3706.46, 3706.49, 3706.491, 3706.55, 3706.551, 3706.59, 3706.63, 3706.65, 4928.143, 4928.148, and 4928.642 of the Revised Code regarding public utilities law, to make changes regarding utility tangible personal

property taxation, and to repeal parts of H.B. 6 of the 133rd General Assembly.

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

Section 1. That sections 303.213, 519.213, 713.081, 3313.372, 3313.373, 4905.03, 4906.01, 4906.03, 4906.06, 4906.07, 4906.10, 4909.04, 4909.05, 4909.052, 4909.06, 4909.07, 4909.08, 4909.15, 4909.156, 4909.173, 4909.174, 4909.18, 4909.19, 4909.191, 4909.42, 4928.01, 4928.05, 4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 4928.542, 4928.64, 4928.645, 4929.20, 4933.81, 5711.01, 5727.01, 5727.031, 5727.06, 5727.11, 5727.111, and 5727.75 be amended and sections 122.161, 3313.377, 3313.378, 4903.27, 4905.23, 4905.311, 4905.321, 4905.331, 4909.041, 4909.042, 4909.181, 4909.192, 4909.193, 4928.041, 4928.101, 4928.102, 4928.103, 4928.105, 4928.107, 4928.149, 4928.1410, 4928.73, 4929.221, 4929.222, and 5727.76 of the Revised Code be enacted to read as follows:

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

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

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

(3) "Subdivision's territory" means, in the case of a municipal corporation, the territory of the municipal corporation; in the case of a township, the unincorporated

territory of the township; or, in the case of a county, the unincorporated territory of the county.

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

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

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

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

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

The director shall notify the legislative authority of the director's decision within ninety days after receiving the certified ordinance or resolution. If the director does not issue a decision within those ninety days, the request for

designation shall be considered approved by operation of law.

(C) The director of development shall immediately notify the public utilities commission, the power siting board, and the tax commissioner if the director approves the designation of a priority investment area under division (B) of this section or if the designation is approved by operation of law.

Sec. 303.213. (A) As used in this section:

(1) "Small wind farm" means wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(2) "Small solar facility" means solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than fifty megawatts.

(3) "Anaerobic digester" means a facility used to treat organic materials, such as food waste, manure, and sewage sludge, to produce biogas and digestate.

(4) "Other small electric generating facility" means an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of less than fifty megawatts that is not a small wind farm, small solar facility, or anaerobic digester.

(B) Notwithstanding division (A) of section 303.211 of the Revised Code, sections 303.01 to 303.25 of the Revised Code confer power on a board of county commissioners or board of zoning appeals to adopt zoning regulations governing the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any

small wind farm ~~or~~ , small solar facility, anaerobic digester, or other small electric generating facility, whether publicly or privately owned, or the use of land for that purpose. With regard to a small wind farm, the regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm ~~or a~~ , small solar facility, anaerobic digester, or other small electric generating facility as a public utility for purposes of sections 303.01 to 303.25 of the Revised Code shall not affect the classification of a small wind farm ~~or a~~ , small solar facility, anaerobic digester, or other small electric generating facility for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 303.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 519.213. (A) As used in this section:

(1) "Small wind farm" means wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(2) "Small solar facility" means solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than fifty megawatts.

(3) "Anaerobic digester" means a facility used to treat organic materials, such as food waste, manure, and sewage

sludge, to produce biogas and digestate.

(4) "Other small electric generating facility" means an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of less than fifty megawatts that is not a small wind farm, small solar facility, or anaerobic digester.

(B) Notwithstanding division (A) of section 519.211 of the Revised Code, sections 519.02 to 519.25 of the Revised Code confer power on a board of township trustees or board of zoning appeals with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm ~~or~~ , small solar facility, anaerobic digester, or other small electric generating facility, whether publicly or privately owned, or the use of land for that purpose. With regard to a small wind farm, the regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind farm ~~or a~~ , small solar facility, anaerobic digester, or other small electric generating facility as a public utility for purposes of sections 519.02 to 519.25 of the Revised Code shall not affect the classification of a small wind farm, a small solar facility, an anaerobic digester, other small electric generating facility, or any other public utility for purposes of state or local taxation.

(D) Nothing in division (C) of this section shall be construed as affecting the classification of a telecommunications tower as defined in division (B) or (E) of section 519.211 of the Revised Code or any other public utility for purposes of state and local taxation.

Sec. 713.081. (A) As used in this section:

(1) "Small wind farm" means wind turbines and associated facilities that are not subject to the jurisdiction of the power siting board under sections 4906.20 and 4906.201 of the Revised Code.

(2) "Small solar facility" means solar panels and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than fifty megawatts.

(3) "Anaerobic digester" means a facility used to treat organic materials, such as food waste, manure, and sewage sludge, to produce biogas and digestate.

(4) "Other small electric generating facility" means an electric generating plant and associated facilities designed for, or capable of, operation at a capacity of less than fifty megawatts that is not a small wind farm, small solar facility, or anaerobic digester.

(B) Sections 713.06 to 713.15 of the Revised Code confer power on the legislative authority of a municipal corporation with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm ~~or~~ , small solar facility, anaerobic digester, or other small electric generating facility as a public utility, whether publicly or privately owned, or the use of land for that purpose. With regard to a small wind farm, the regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code.

(C) The designation under this section of a small wind

farm ~~or a~~, small solar facility, anaerobic digester, or other small electric generating facility as a public utility for purposes of sections 713.06 to 713.15 of the Revised Code shall not affect the classification of a small wind farm, a small solar facility, an anaerobic digester, other small electric generating facility, or any other public utility for purposes of state or local taxation.

Sec. 3313.372. (A) As used in this section, "energy conservation measure" means an installation or modification of an installation in, or remodeling of, a building, to reduce energy consumption. It includes:

(1) Insulation of the building structure and systems within the building;

(2) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;

(3) Automatic energy control systems;

(4) Heating, ventilating, or air conditioning system modifications or replacements;

(5) Caulking and weatherstripping;

(6) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;

(7) Energy recovery systems;

(8) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) Solar panels;

(10) Any other modification, installation, or remodeling approved by the Ohio facilities construction commission as an energy conservation measure.

(B) A board of education of a city, exempted village, local, or joint vocational school district may enter into an installment payment contract for the purchase and installation of energy conservation measures. The provisions of such installment payment contracts dealing with interest charges and financing terms shall not be subject to the competitive bidding requirements of section 3313.46 of the Revised Code, and shall be on the following terms:

(1) Not less than one-fifteenth of the costs thereof shall be paid within two years from the date of purchase.

(2) The remaining balance of the costs thereof shall be paid within fifteen years from the date of purchase.

The provisions of any installment payment contract entered into pursuant to this section shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, shall not exceed the calculated energy, water, or waste water cost savings, avoided operating costs, and avoided capital costs attributable to the one or more measures over a defined period of time. Those payments shall be made only to the extent that the savings described in this division actually occur. The energy services company shall warrant and guarantee that the energy conservation

measures shall realize guaranteed savings and shall be responsible to pay an amount equal to any savings shortfall.

An installment payment contract entered into by a board of education under this section shall require the board to contract in accordance with division (A) of section 3313.46 of the Revised Code for the installation, modification, or remodeling of energy conservation measures unless division (A) of section 3313.46 of the Revised Code does not apply pursuant to division (B)(3) of that section, in which case the contract shall be awarded through a competitive selection process pursuant to rules adopted by the facilities construction commission.

An installment payment contract entered into by a board of education under this section may include services for measurement and verification of energy savings associated with the guarantee. The annual cost of measurement and verification services shall not exceed ten per cent of the guaranteed savings in any year of the installment payment contract.

(C) If a board of education determines that a surety bond is necessary to secure energy, water, or waste water cost savings guaranteed in a contract entered into by the board of education under this section, the energy services company shall provide a surety bond that satisfies all of the following requirements:

(1) The penal sum of the surety bond for the first guarantee year shall equal the amount of savings included in the annual guaranteed savings amount that is measured and calculated in accordance with the measurement and verification plan included in the contract, but may not include guaranteed savings that are not measured or that are stipulated in the contract. The annual guaranteed savings amount shall include only the

savings guaranteed in the contract for the one-year term that begins on the first day of the first savings guarantee year and may not include amounts from subsequent years.

(2) The surety bond shall have a term of not more than one year unless renewed. At the option of the board of education, the surety bond may be renewed for one or two additional terms, each term not to exceed one year. The surety bond may not be renewed or extended so that it is in effect for more than three consecutive years.

In the event of a renewal, the penal sum of the surety bond for each renewed year shall be revised so that the penal sum equals the annual guaranteed savings amount for such renewal year that is measured and calculated in accordance with the measurement and verification plan included in the contract, but may not include guaranteed savings that are not measured or that are stipulated in the contract. Regardless of the number of renewals of the bond, the aggregate liability under each renewed bond may not exceed the penal sum stated in the renewal certificate for the applicable renewal year.

(3) The surety bond for the first year shall be issued within thirty days of the commencement of the first savings guarantee year under the contract.

In the event of renewal, the surety shall deliver to the board of education a renewal certificate reflecting the revised penal sum within thirty days of the board of education's request. The board of education shall deliver the request for renewal not less than thirty days prior to the expiration date of the surety bond then in existence. A surety bond furnished pursuant to section 153.54 of the Revised Code shall not secure obligations related to energy, water, or waste water cost

savings as referenced in division (C) of this section.

(D) The board may issue the notes of the school district signed by the president and the treasurer of the board and specifying the terms of the purchase and securing the deferred payments provided in this section, payable at the times provided and bearing interest at a rate not exceeding the rate determined as provided in section 9.95 of the Revised Code. The notes may contain an option for prepayment and shall not be subject to Chapter 133. of the Revised Code. In the resolution authorizing the notes, the board may provide, without the vote of the electors of the district, for annually levying and collecting taxes in amounts sufficient to pay the interest on and retire the notes, except that the total net indebtedness of the district without a vote of the electors incurred under this and all other sections of the Revised Code, except section 3318.052 of the Revised Code, shall not exceed one per cent of the district's tax valuation. Revenues derived from local taxes or otherwise, for the purpose of conserving energy or for defraying the current operating expenses of the district, may be applied to the payment of interest and the retirement of such notes. The notes may be sold at private sale or given to the energy services company under the installment payment contract authorized by division (B) of this section.

(E) Debt incurred under this section shall not be included in the calculation of the net indebtedness of a school district under section 133.06 of the Revised Code.

(F) No school district board shall enter into an installment payment contract under division (B) of this section unless it first obtains a report of the costs of the energy conservation measures and the savings thereof as described under

division (G)(1) of section 133.06 of the Revised Code as a requirement for issuing energy securities, makes a finding that the amount spent on such measures is not likely to exceed the amount of money it would save in energy costs and resultant operational and maintenance costs as described in that division, except that that finding shall cover the ensuing fifteen years, and the facilities construction commission determines that the district board's findings are reasonable and approves the contract as described in that division.

The district board shall monitor the savings and maintain a report of those savings, which shall be submitted to the commission in the same manner as required by division (G) of section 133.06 of the Revised Code in the case of energy securities.

(G) A board of education may apply to the Ohio facilities construction commission for a loan from the school energy performance contracting loan fund, established by section 3313.378 of the Revised Code, for purposes of paying for all or part of an installment contract under division (B) of this section.

Sec. 3313.373. (A) As used in this section:

(1) "Energy saving measure" means both of the following:

(a) The acquisition and installation, by purchase, lease, lease purchase, lease with an option to buy, or installment purchase, of an energy conservation measure as defined in section 3313.372 of the Revised Code and any attendant architectural and engineering consulting services.

(b) Architectural and engineering consulting services related to energy conservation.

(2) "Shared-savings contract" means a contract for one or more energy savings measures, which contract provides that all payments, except payments for maintenance and repairs and obligations on termination of the contract prior to its expiration, are to be a stated percentage of calculated savings of energy costs attributable to the energy saving measure over a defined period of time and are to be made only to the extent that such savings occur. A contract that requires any additional capital investment or contribution of funds, other than funds available from state or federal energy grants, or that is for an initial term of longer than ten years is not a shared-savings contract.

(B) The board of education of a city, local, exempted village, or joint vocational school district may enter into a shared-savings contract with any person experienced in the design and implementation of energy saving measures for buildings owned or rented by the board. Such contract is not subject to section 3313.46 of the Revised Code. If the contract is for a term extending beyond the fiscal year, it shall be considered to be a continuing contract within the meaning of division (D) of section 5705.41 of the Revised Code. A board of education entering into an installment contract under this section shall also comply with section 3313.372 of the Revised Code.

(C) In the case of a shared-savings contract running beyond the fiscal year in which it is entered into, the board shall include in its annual appropriations measure for each subsequent year any amounts payable under shared-savings contracts during such year and shall furnish the certification required by section 5705.44 of the Revised Code, but the failure of a board to make such an appropriation or furnish the

certificates referred to in division (D) of section 5705.41, or 5705.412 or 5705.44 of the Revised Code, shall not affect the validity of the shared-savings contract or the board's obligations under the contract.

(D) A board of education may apply to the Ohio facilities construction commission for a loan from the school energy performance contracting loan fund, established by section 3313.378 of the Revised Code, for purposes of paying for all or part of a shared-savings contract under this section.

Sec. 3313.377. (A) As used in this section:

(1) "Energy conservation measure" has the same meaning as in section 3313.372 of the Revised Code;

(2) "Energy saving measure" has the same meaning as in section 3313.373 of the Revised Code.

(B) The Ohio facilities construction commission may issue a loan from funds in the school energy performance contracting loan fund created in section 3313.378 of the Revised Code to a board of education of a city, exempted village, local, or joint vocational school district that applies for a loan under section 3313.372 or 3313.373 of the Revised Code.

(C) Nothing in this section prohibits a board of education that receives a loan under this section from utilizing any other energy efficiency program.

(D) The terms of a loan issued under this section shall be as follows:

(1) Two per cent annual interest on the loan;

(2) The full loan amount, plus interest, shall be repaid in not more than ten years from the issuance of the loan;

(3) Repayment on the loan begins six months after the installation of the energy conservation measures is complete or the implementation of energy savings measures is completed;

(4) Any other provision considered appropriate by the commission.

(E) All repayment amounts for any loans issued under this section shall be made to the commission. The commission shall deposit all repayment amounts received in the school energy performance contracting loan fund created in section 3313.378 of the Revised Code.

(F) If the commission enters into an agreement with a board for a loan under this section, the commission shall promptly direct the treasurer of state to remit money from the school energy performance contracting loan fund to the board as provided in the terms of the agreement.

(G) The commission shall adopt rules to implement this section, including a loan application.

Sec. 3313.378. (A) The school energy performance contracting loan fund is created in the custody of the state treasurer, but is not part of the state treasury. The money in the fund shall be used for purposes of funding loans issued under section 3313.377 of the Revised Code. The fund shall consist of the funds transferred from the solar generation fund, repayments of loans from this fund, interest on amounts in the school energy performance contracting loan fund, and any appropriations, grants, or gifts made to the fund.

(B) The fund shall be administered by the Ohio facilities construction commission, and the commission shall request the treasurer of state to create the account for the fund. The

treasurer of state shall distribute the money in the fund in accordance with directions provided by the commission.

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

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

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

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

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

commission~~;~~ .

An electric light company does not include a self-generator or mercantile customer self-power system.

(D) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(E) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4905.23. (A) As used in this section, "base load electric generating facility" means an electric generating plant and associated facilities located in this state that primarily uses a nonrenewable fuel source to generate electricity, including natural gas and nuclear reaction, and that is not owned or operated by a public utility, municipal corporation, or electric cooperative.

(B) No person shall enter into a settlement to abandon, close, or shut down a base load electric generating facility or a generating plant owned or operated by a public utility.

Sec. 4905.311. (A) As used in this section, "electric distribution utility" has the same meaning as in section 4928.01

of the Revised Code.

(B) Notwithstanding any provision of the Revised Code to the contrary, an electric distribution utility may supply behind the meter electric generation service, provided that any behind the meter electric generation facilities that the utility intends to use to supply such service were in operation prior to the effective date of this section.

(C) No electric distribution utility shall recover any of the following costs through any rate, charge, or recovery from retail electric service customers that are not receiving behind the meter electric generation service from the utility:

(1) Costs associated with supplying behind the meter electric generation service;

(2) Costs associated with any behind the meter electric generation service facility;

(3) Stranded costs associated with the closing of any behind the meter electric generation service facility or an end-use customer of the behind the meter electric generation service ceasing operations.

(D) No electric distribution utility shall offer direct, associated inducements for contracting with the utility for any behind the meter electric generation service.

(E) The public utilities commission shall periodically audit all electric distribution utilities that provide any behind the meter electric generation service to ensure compliance with this section.

Sec. 4905.321. (A) Notwithstanding section 4905.32 of the Revised Code, all revenues collected from customers by a public

utility as part of a rider or rates that are later found to be unreasonable, unlawful, or otherwise improper by the supreme court shall be subject to refund from the date of the issuance of the supreme court's decision until the date when, on remand, the public utilities commission makes changes to the rider or rates to implement the supreme court's decision.

(B) The commission shall order the payment of the refunds described in division (A) of this section in a manner designed to allocate the refunds to customer classes in the same proportion as the charges were originally collected.

(C) The commission shall determine how to allocate any remaining funds described in division (A) of this section that cannot be refunded for whatever reason.

(D) The commission shall order the payment of the funds described in division (A) of this section and shall determine how to allocate any remaining funds that cannot be refunded not more than thirty days after the date of the issuance of the supreme court's decision.

Sec. 4905.331. (A) As used in this section:

(1) "Electric distribution utility" has the same meaning as in section 4928.01 of the Revised Code.

(2) "Electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state. "Electric service" includes "retail electric service" as defined in section 4928.01 of the Revised Code.

(3) "Proceeding" includes a proceeding relating to electric service under Chapters 4909. and 4928. of the Revised Code.

(B) No electric distribution utility or its affiliate may do either of the following to induce any party to a public utilities commission proceeding to enter into a settlement of a matter pending before the commission:

(1) Make a cash payment to that party;

(2) Enter into any agreement or any financial or private arrangement with that party that is not made part of the public case record.

(C) Notwithstanding division (B) of this section, the commission may do any of the following:

(1) Reasonably allocate costs among rate schedules;

(2) Reasonably design rates within a rate schedule;

(3) Approve reasonable rates designed for particular customers or classes of customers;

(4) Approve a resolution of a proceeding under section 4905.26 of the Revised Code;

(5) Approve payments to any governmental entity, nonprofit organization, or other association for implementing low-income weatherization service programs, subject to the following conditions:

(a) The payments are at a rate that is reasonably tailored to the costs of providing the programs.

(b) The payments are for programs that are subject to an existing or new audit procedure.

(c) The payments are not for low-income weatherization education programs.

Sec. 4906.01. As used in Chapter 4906. of the Revised

Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

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

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

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

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

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

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

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

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

(d) Any manufacturing facility that creates byproducts

that may be used in the generation of electricity as defined by the power siting board;

(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;

(f) Any gas processing plant as defined in section 4905.90 of the Revised Code;

(g) Natural gas liquids finished product pipelines;

(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;

(i) Any natural gas liquids fractionation plant;

(j) A production operation as defined in section 1509.01 of the Revised Code, including all pipelines upstream of any gathering lines;

(k) Any compressor stations used by the following:

(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;

(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

(iii) A production operation as defined in section 1509.01 of the Revised Code.

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

(D) "Certificate" means a certificate of environmental compatibility and public need issued by the power siting board under section 4906.10 of the Revised Code or a construction certificate issued by the board under rules adopted under ~~division~~ divisions (E) ~~or (F)~~ to (H) of section 4906.03 of the Revised Code.

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

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

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

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

(I) "Natural gas liquids fractionation plant" means a facility that takes a feed of raw natural gas liquids and

produces finished product natural gas liquids.

(J) "Raw natural gas" means hydrocarbons that are produced in a gaseous state from gas wells and that generally include methane, ethane, propane, butanes, pentanes, hexanes, heptanes, octanes, nonanes, and decanes, plus other naturally occurring impurities like water, carbon dioxide, hydrogen sulfide, nitrogen, oxygen, and helium.

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

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

Sec. 4906.03. The power siting board shall:

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

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

(C) Adopt rules establishing criteria for evaluating the effects on environmental values of proposed and alternative sites, and projected needs for electric power, and such other rules as are necessary and convenient to implement this chapter, including rules governing application fees, supplemental

application fees, and other reasonable fees to be paid by persons subject to the board's jurisdiction. The board shall make an annual accounting of its collection and use of these fees and shall issue an annual report of its accounting, in the form and manner prescribed by its rules, not later than the last day of June of the year following the calendar year to which the report applies.

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

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

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

section 4906.10 of the Revised Code.

(F) Notwithstanding sections 4906.06 to 4906.14 of the Revised Code, the board shall adopt rules to provide for an accelerated review of an application for a construction certificate for any of the following:

(1) An electric transmission line that is:

(a) Not more than two miles in length;

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

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

(d) A rebuilding of an existing transmission line.

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

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

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

(G) Notwithstanding sections 4906.06 to 4906.14 of the Revised Code, the board shall adopt rules to provide for the accelerated review of an application for a construction certificate for any of the following that are located in a priority investment area designated and approved under section 122.161 of the Revised Code:

(1) An electric generating plant and associated facilities;

(2) An electric transmission line and associated facilities;

(3) Gas Pipeline infrastructure.

The chairperson of the board, not later than forty-five days after receipt of an application submitted under division (G) of this section, shall determine if it complies with all application requirements set by the public utilities commission by rule. If the chairperson does not issue a determination within the time period required by this division, the application shall be deemed in compliance by operation of law.

The board shall render a decision on an application submitted under this division not later than forty-five days after the application is determined in compliance with all requirements set by the commission. If the board does not render a decision within forty-five days, the application shall be considered approved by operation of law, and the board shall issue a certificate to the applicant.

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

(H) Notwithstanding sections 4906.06 to 4906.14 of the

Revised Code, the board shall adopt rules to provide for the accelerated review of an application for a construction certificate for a major utility facility if at the time the application is filed the construction will be located, in whole, on property owned by, or under a lease with a term of twenty-five years or more with, the applicant; in whole or in part, on an easement or right-of-way; or on any combination of such property, easement, or right-of-way.

No accelerated application shall be granted under the rules adopted under division (H) of this section for construction of a major utility facility, in whole or in part, on property under a lease or an easement or right-of-way, if additional consent for construction on the property, easement, or right-of-way is required by any person or entity other than the power siting board.

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

Sec. 4906.06. (A) An applicant for a certificate shall file with the office of the chairperson of the power siting board an application, in such form as the board prescribes, containing the following information:

(1) A description of the location and of the major utility facility;

(2) A summary of any studies that have been made by or for the applicant of the environmental impact of the facility;

(3) A statement explaining the need for the facility;

(4) A statement of the reasons why the proposed location is best suited for the facility;

(5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section 4935.04 of the Revised Code;

(6) Such other information as the applicant may consider relevant or as the board by rule or order may require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the office of the chairperson, if ordered, and shall be available for public inspection.

The application shall be filed not more than five years prior to the planned date of commencement of construction. The five-year period may be waived by the board for good cause shown.

(B) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipal corporation and county, and the head of each public agency charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located.

(C) Each applicant within fifteen days after the date of the filing of the application shall give public notice to persons residing in the municipal corporations and counties entitled to receive notice under division (B) of this section, by the publication of a summary of the application in newspapers of general circulation in such area. Proof of such publication shall be filed with the office of the chairperson.

(D) Inadvertent failure of service on, or notice to, any

of the persons identified in divisions (B) and (C) of this section may be cured pursuant to orders of the board designed to afford them adequate notice to enable them to participate effectively in the proceeding. In addition, the board, after filing, may require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the board considers appropriate.

(E) An application for an amendment of a certificate shall be in such form and contain such information as the board prescribes. Notice of such an application shall be given as required in divisions (B) and (C) of this section.

(F) Each application for certificate or an amendment shall be accompanied by the application fee prescribed by board rule. All application fees, supplemental application fees, and other fees collected by the board shall be deposited in the state treasury to the credit of the power siting board fund, which is hereby created. The chairperson shall administer and authorize expenditures from the fund for any of the purposes of this chapter. If the chairperson determines that moneys credited to the fund from an applicant's fee are not sufficient to pay the board's expenses associated with its review of the application, the chairperson shall request the approval of the controlling board to assess a supplemental application fee upon an applicant to pay anticipated additional expenses associated with the board's review of the application or an amendment to an application. If the chairperson finds that an application fee exceeds the amount needed to pay the board's expenses for review of the application, the chairperson shall cause a refund of the excess amount to be issued to the applicant from the fund.

(G) The chairperson shall determine whether an application

is in compliance with this section not more than forty-five days after the application is filed. If the chairperson does not issue a determination within the time period required by this division, the application shall be deemed in compliance by operation of law.

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

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

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

Sec. 4906.10. (A) The power siting board shall render a decision upon the record either granting or denying the

application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the board considers appropriate. The certificate shall be subject to sections 4906.101, 4906.102, and 4906.103 of the Revised Code and conditioned upon the facility being in compliance with standards and rules adopted under section 4561.32 and Chapters 3704., 3734., and 6111. of the Revised Code. An applicant may withdraw an application if the board grants a certificate on terms, conditions, or modifications other than those proposed by the applicant in the application.

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

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

(2) The nature of the probable environmental impact;

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

(4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704.,

3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters and under section 4561.32 of the Revised Code. In determining whether the facility will comply with all rules and standards adopted under section 4561.32 of the Revised Code, the board shall consult with the office of aviation of the division of multi-modal planning and programs of the department of transportation under section 4561.341 of the Revised Code.

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

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

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

(B) If the board determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon that modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification shall have been given

reasonable notice thereof.

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

(D) The board shall render a decision under this section not later than one hundred twenty days after the date the application is found in compliance with section 4906.06 of the Revised Code. If the board does not render a decision within the time period required by this division, the application shall be deemed approved by operation of law, and the board shall issue a certificate to the applicant subject to the conditions contained within the staff report issued under section 4906.07 of the Revised Code.

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

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

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

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

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

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

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

(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.

(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.

Sec. 4909.042. (A) With respect to an electric light company that chooses to file a 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 the utility. Such report shall include all the kinds and classes of property, with the value of each, owned, held, or projected to be owned or held during the test period, by the utility for the service and convenience of the public.

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

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

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

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

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

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

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

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

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

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

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

Sec. 4909.05. As used in this section:

(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.~~

~~(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.~~

~~(C) The~~ With respect to every public utility, other than an electric light company that chooses to file a 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~~

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

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

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

(3) The original cost of all other kinds and classes of property 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, in the rendition of service to the public. Subject to section 4909.052 of the Revised Code, such original costs of property, other than land owned in fee, shall be the cost, as determined to be reasonable by the commission, to the person that first dedicated or dedicates the property to the public use and shall be set forth in property accounts and subaccounts as prescribed by the commission. To the extent that the costs of property comprising a coal research and development facility, as defined in section 1555.01 of the Revised Code, or a coal development project, as defined in section 1551.30 of the Revised Code, have been allowed for recovery as Ohio coal research and development costs

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

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

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

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

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

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

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

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

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

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

determined according to all of the following requirements:

(A) The acquiring company has three appraisals performed on the property of the company being acquired.

(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.

(C) The average of the three appraisals is used as the fair market value of the company being acquired.

(D) Each utility-valuation expert does all of the following:

(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;

(2) Determines the fair market value in compliance with the uniform standards of professional appraisal practice;

(3) Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired;

(4) Incorporates the assessment described in division (D)(5) of this section into the appraisal under the cost, market, and income approach;

(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.

(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

Revised Code;

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

Sec. 4909.07. The public utilities commission, during the making of the valuation provided for in sections 4909.04 to 4909.13 of the Revised Code, and after its completion, shall in like manner keep itself informed through its engineers, experts, and other assistants of all extensions, improvements, or other changes in the condition and value of the property of all public utilities or railroads and shall ascertain the value of such extensions, improvements, and changes. The commission shall, as is required for the proper regulation of such public utilities or railroads, revise and correct its valuations of property, showing such revisions and corrections as a whole and as to each county. Such revisions and corrections shall be filed in the same manner as original reports.

"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 Revised Code;

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

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

"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 Revised Code;

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

Sec. 4909.15. (A) The public utilities commission, when fixing and determining just and reasonable rates, 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 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 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 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 supplies and a reasonable allowance for cash working capital as determined by the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Electric light companies may propose a forecasted test period. If the company proposes a forecasted test period, the company shall propose annual base rates for three consecutive twelve-month periods in a single forecasted test period application. During the first twelve-month period, the company may propose a reasonably forecasted rate base during a thirteen-month average, revenues, and expenses for the first twelve months that new base rates will be in effect.

During the second twelve-month period, the base rate revenue requirement shall be adjusted for the return of, and return on, incremental rate base additions approved by the commission in the initial application. During the third twelve-month period, the base rate revenue requirement may be adjusted for the return of and return on incremental rate base additions approved by the commission in the initial application.

For each twelve-month period, forecasted plant investment, forecasted revenue, and forecasted expenses versus actual investment, actual revenue, and actual expenses shall be trued up via a cost recovery mechanism approved by the commission.

Each true-up process shall include an adjustment to actual

for the rate of return that the company is authorized to earn on the actual investments made. The company shall provide the commission with actual financial information during the true-up process to ensure accuracy. As part of the true-up process, the commission shall include only rate base components that have been found by the commission to be used and useful in rendering public utility service.

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

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

(D) ~~A natural gas, water-works, or sewage disposal system company~~ Utilities filing under division (C)(1)(b) of this section may propose adjustments to the revenues and expenses ~~to be determined under division (C)(1) of this section~~ for any changes that are, during the test period or the twelve-month period immediately following the test period, reasonably expected to occur. The ~~natural gas, water-works, or sewage disposal system company~~ utility shall identify and quantify, individually, any proposed adjustments. The commission shall

incorporate the proposed adjustments into the determination if the adjustments are just and reasonable.

(E) When the commission is of the opinion, after hearing and after making the determinations under divisions (A) and (B) of this section, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, that the service is, or will be, inadequate, or that the maximum rates, charges, tolls, or rentals chargeable by any such public utility are insufficient to yield reasonable compensation for the service rendered, and are unjust and unreasonable, the commission shall:

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

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

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

(b) But not including the portion of any periodic rental or use payments representing that cost of property that is included in the valuation report under divisions ~~(C)(4)~~ (B)(4) and (5) of section 4909.042 of the Revised Code and divisions (B)(4) and (5) of section 4909.05 of the Revised Code, fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected for the performance or rendition of the service that will provide the public utility the allowable gross annual revenues under division (B) of this section, and order such just and reasonable rate, fare, charge, toll, rental, or service to be substituted for the existing one. After such determination and order no change in the rate, fare, toll, charge, rental, schedule, classification, or service shall be made, rendered, charged, demanded, exacted, or changed by such public utility without the order of the commission, and any other rate, fare, toll, charge, rental, classification, or service is prohibited.

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

Sec. 4909.156. In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission shall, in action upon an application filed pursuant to section 4909.18 of the Revised Code, require a public utility to file a report showing the proportionate amounts of the valuation of the property of the utility, as determined under section 4909.042 or 4909.05 of the Revised Code, and the proportionate amounts of the revenues and expenses of the utility that are proposed to be considered as attributable to the service area involved in the application.

"Valuation," 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 as of the date certain, if applicable 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 forecasted test period under section 4909.18 of the Revised Code, the valuation and value during the forecasted test period.

Sec. 4909.173. (A) As used in this section and section 4909.174 of the Revised Code:

(1) "Customer-owned water service line" means the water service line connected to the water-works company's water service line at the curb of a customer's property.

(2) "Water-works company" means an entity defined under division (G) of section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code.

(B) A water-works company may do any of the following:

(1) Replace lead customer-owned water service lines concurrently with a scheduled utility main replacement project, an emergency replacement, or company-initiated lead water service line replacement program;

(2) Replace lead customer-owned water service lines when mandated or ordered to replace such lines by law or a state or federal regulatory agency;

(3) Replace customer-owned water service lines of other composition when mandated or ordered to replace such lines by law or a state or federal regulatory agency.

(C) If a water-works company replaces customer-owned water service lines under this section, then the company shall include the cost of the replacement of the water service lines, including the cost of replacement of both company side and customer-owned water service lines and the cost to evaluate customer-owned water service lines of unknown composition, in the valuation report of the property of the company as required under division ~~(C)(6)~~ (B)(6) of section 4909.05 of the Revised Code for inclusion in a rate case under this chapter.

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

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

(1) The company confirms that the customer-owned water service line was composed of lead or other composition that was

mandated or ordered to be replaced by law or a state or federal regulatory agency;

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

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

Sec. 4909.18. Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission. Except for actions under section 4909.16 of the Revised Code, no public utility may issue the notice of intent to file an application pursuant to division (B) of section 4909.43 of the Revised Code to increase any existing rate, joint rate, toll, classification, charge, or rental, until a final order under this section has been issued by the commission on any pending prior application to increase the same rate, joint rate, toll, classification, charge, or rental or until two hundred seventy-five days after filing such application, whichever is sooner. Such application shall be verified by the president or a vice-president and the secretary or treasurer of the applicant. Such application shall contain a schedule of the existing rate, joint rate, toll, classification, charge, or rental, or regulation or practice affecting the same, a schedule of the modification amendment,

change, increase, or reduction sought to be established, and a statement of the facts and grounds upon which such application is based. If such application proposes a new service or the use of new equipment, or proposes the establishment or amendment of a regulation, the application shall fully describe the new service or equipment, or the regulation proposed to be established or amended, and shall explain how the proposed service or equipment differs from services or equipment presently offered or in use, or how the regulation proposed to be established or amended differs from regulations presently in effect. The application shall provide such additional information as the commission may require in its discretion. If the commission determines that such application is not for an increase in any rate, joint rate, toll, classification, charge, or rental, the commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect. If it appears to the commission that the proposals in the application may be unjust or unreasonable, the commission shall set the matter for hearing and shall give notice of such hearing by sending written notice of the date set for the hearing to the public utility and publishing notice of the hearing one time in a newspaper of general circulation in each county in the service area affected by the application. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable shall be upon the public utility. After such hearing, the commission shall, where practicable, issue an appropriate order within six months from the date the application was filed.

If the commission determines that said application is for an increase in any rate, joint rate, toll, classification, charge, or rental there shall also, unless otherwise ordered by

the commission, be filed with the application in duplicate the following exhibits:

(A) A report of its property 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, or during the forecasted test period, if the application is filed under division (C)(1)(a) of section 4909.15 of the Revised Code, in rendering the service referred to in such application, as provided in ~~section~~ sections 4909.042 and 4909.05 of the Revised Code;

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

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

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

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

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

(B) Not later than December 31, 2029, and at least every three years thereafter, each electric distribution utility shall file a rate case application regarding distribution service under section 4909.18 of the Revised Code.

Sec. 4909.19. (A) Upon the filing of any application for increase provided for by section 4909.18 of the Revised Code the public utility shall forthwith publish notice of such application, in a form approved by the public utilities commission, once a week for two consecutive weeks in a newspaper published and in general circulation throughout the territory in which such public utility operates and directly affected by the matters referred to in said application. The notice shall include instructions for direct electronic access to the application or other documents on file with the public utilities commission. The first publication of the notice shall be made in its entirety and may be made in a preprinted insert in the newspaper. The second publication may be abbreviated if all of the following apply:

(1) The abbreviated notice is at least one-fourth of the size of the notice in the first publication.

(2) At the same time the abbreviated notice is published, the notice in the first publication is posted in its entirety on the newspaper's web site, if the newspaper has a web site, and the commission's web site.

(3) The abbreviated notice contains a statement of the web site posting or postings, as applicable, and instructions for accessing the posting or postings.

(B) The commission shall determine a format for the content of all notices required under this section, and shall consider costs and technological efficiencies in making that determination. Defects in the publication of said notice shall not affect the legality or sufficiency of notices published under this section provided that the commission has substantially complied with this section, as described in

section 4905.09 of the Revised Code.

(C) The commission shall at once cause an investigation to be made of the facts set forth in said application and the exhibits attached thereto, and of the matters connected therewith. Within ~~a reasonable time as determined by the commission~~ one hundred eighty days after the ~~filing of such~~ application is determined to be complete, a written report shall be made and filed with the commission, a copy of which shall be sent by certified mail to the applicant, the mayor of any municipal corporation affected by the application, and to such other persons as the commission deems interested. If no objection to such report is made by any party interested within thirty days after such filing and the mailing of copies thereof, the commission shall fix a date within ten days for the final hearing upon said application, giving notice thereof to all parties interested. At such hearing the commission shall consider the matters set forth in said application and make such order respecting the prayer thereof as to it seems just and reasonable.

If objections are filed with the commission, the commission shall cause a pre-hearing conference to be held between all parties, intervenors, and the commission staff in all cases involving more than one hundred thousand customers.

If objections are filed with the commission within thirty days after the filing of such report, the application shall be promptly set down for hearing of testimony before the commission or be forthwith referred to an attorney examiner designated by the commission to take all the testimony with respect to the application and objections which may be offered by any interested party. The commission shall also fix the time and

place to take testimony giving ten days' written notice of such time and place to all parties. The taking of testimony shall commence on the date fixed in said notice and shall continue from day to day until completed. The attorney examiner may, upon good cause shown, grant continuances for not more than three days, excluding Saturdays, Sundays, and holidays. The commission may grant continuances for a longer period than three days upon its order for good cause shown. At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.

When the taking of testimony is completed, a full and complete record of such testimony noting all objections made and exceptions taken by any party or counsel, shall be made, signed by the attorney examiner, and filed with the commission. Prior to the formal consideration of the application by the commission and the rendition of any order respecting the prayer of the application, a quorum of the commission shall consider the recommended opinion and order of the attorney examiner, in an open, formal, public proceeding in which an overview and explanation is presented orally. Thereafter, the commission shall make such order respecting the prayer of such application as seems just and reasonable to it.

In all proceedings before the commission in which the taking of testimony is required, except when heard by the commission, attorney examiners shall be assigned by the commission to take such testimony and fix the time and place therefor, and such testimony shall be taken in the manner prescribed in this section. All testimony shall be under oath or affirmation and taken down and transcribed by a reporter and made a part of the record in the case. The commission may hear

the testimony or any part thereof in any case without having the same referred to an attorney examiner and may take additional testimony. Testimony shall be taken and a record made in accordance with such general rules as the commission prescribes and subject to such special instructions in any proceedings as it, by order, directs.

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

(B) If the commission incorporated projected value or valuation of property into the commission's determination under division ~~(A)(1)~~ (A)(1)(a) of section 4909.15 of the Revised Code, the natural gas, water-works, or sewage disposal system company shall, not later than ninety days after data for the actual value or valuation as of the date certain becomes known, submit to the commission proposed rate or charge adjustments that provide for the recalculation of rates or charges, reflective of customer-class responsibility, corresponding to the differences, if any, between the projected value or valuation incorporated into the commission's determination and the actual value or valuation as of the date certain.

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

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

After the commission has issued such a final order, the ~~natural gas, water-works, or sewage disposal system company~~public utility, if applicable, shall submit to the commission proposed reconciliation adjustments that refund to customers the difference between the actual revenues collected by the ~~natural gas, water-works, or sewage disposal system company,~~utility under the rates and charges determined by the commission under section 4909.15 of the Revised Code, and the rates or charges recalculated under the adjustments authorized under this division. The reconciliation adjustments shall be effective for a twelve-month period.

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

Sec. 4909.192. When considering an application to increase rates under section 4909.18 of the Revised Code, the public utilities commission may approve the following:

(A) Nondiscriminatory programs available for all energy-intensive customers to implement economic development, job growth, job retention, or interruptible rates that enhance distribution and transmission grid reliability and promote economic development.

(B) Nondiscriminatory programs available for all mercantile customers, as defined in section 4928.01 of the Revised Code, that align retail rate recovery with how transmission costs are incurred by or charged to the electric distribution utility, as defined in section 4928.01 of the Revised Code, or programs that allow customers to be billed directly for transmission service by a competitive retail electric service provider.

(C) Nondiscriminatory programs available for residential customers and small commercial customers, as defined in section 4928.101 of the Revised Code, that reduce demand at peak times for purposes of grid reliability or to help lower customer rates, including peak demand reduction programs under section 4928.107 of the Revised Code. Any programs to reduce demand proposed in an application to increase rates shall include terms permitting competitive retail electric service providers, certified under section 4928.08 of the Revised Code, to offer

their customers access to these programs.

Sec. 4909.193. The public utilities commission shall determine whether an application for an increase filed under section 4909.18 of the Revised Code is complete not more than forty-five days after the application is filed. If the commission does not issue a determination within the time period required by this section, the application shall be deemed complete by operation of law.

Sec. 4909.42. If the proceeding on an application filed with the public utilities commission under section 4909.18 of the Revised Code by any public utility requesting an increase on any rate, rate mechanism, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same has not been concluded and an order entered pursuant to section 4909.19 of the Revised Code at the expiration of ~~two hundred seventy-five~~ two hundred ninety days from the date ~~of filing~~ the application is determined complete, ~~an~~ the public utility may request a temporary increase ~~not to exceed the proposed increase~~ and any party to the proceeding may request a temporary decrease, which shall go into effect ~~upon the filing of a bond or a letter of credit by the public utility~~and remain in effect until modified in accordance with the commission's determination on the merits of the application. ~~The bond or letter of credit shall be filed with the commission and shall be payable to the state for the use and benefit of the customers affected by the proposed increase or change~~If the commission does not issue an order within three hundred twenty days after the application is deemed complete, the application shall be deemed approved by operation of law. A temporary increase or decrease under this section shall not exceed the midpoint of the rates recommended in the staff report filed

pursuant to section 4909.19 of the Revised Code and is subject to refund.

~~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. 4928.01. (A) As used in this chapter:

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive

supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

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

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

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

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

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

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

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

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

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

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

collection agent.

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

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

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

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

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

(17) "Market development period" for an electric utility

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

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

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

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

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

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

(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income

payment plan rider, but uncollected as of July 1, 2000.

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

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

(26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the public utilities commission or pursuant to generally accepted accounting principles as a result of a prior commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan arrears; post-in-service capitalized charges and assets recognized in connection with statement of financial accounting standards no. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the

electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission.

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

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

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

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

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

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

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

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

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

(32) "Self-generator" means an entity in this state that owns or hosts on ~~its premises~~ property the entity controls an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, ~~whether the~~ and that meets all of the following:

(a) The facility is installed or operated by the owner or by ~~an agent~~ a third party under a contract, including a lease, purchase power agreement, or other service contract.

(b) The facility connects directly to the owner's side of the electric meter.

(c) The facility delivers electricity to the owner's side of the electric meter without the use of an electric distribution utility's or electric cooperative's distribution system or transmission system.

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

(34) "Advanced energy resource" means any of the

following:

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

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

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

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

(e) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel

cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(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.

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

following:

(i) Solar photovoltaic or solar thermal energy;

(ii) Wind energy;

(iii) Power produced by a hydroelectric facility;

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

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

(vi) Geothermal energy;

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

(viii) Biomass energy;

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

(x) Biologically derived methane gas;

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

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

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

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

(b) As used in division (A)(37) of this section,

"hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

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

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

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

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

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

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

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

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

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

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

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

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

(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.~~

~~(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.~~

~~(43)(a)~~ (41)(a) "Green energy" means any energy generated by using an energy resource that does one or more of the following:

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

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

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

(i) Natural gas as a resource;

(ii) Nuclear reaction.

(42) "Linear generator" means an integrated system consisting of oscillators, cylinders, electricity conversion

equipment, and associated balance of plant components that meet the following criteria:

(a) Converts the linear motion of oscillators directly into electricity without the use of a flame or spark;

(b) Is dispatchable with the ability to vary power output across all loads;

(c) Can operate on multiple fuel types including renewable fuels such as hydrogen, ammonia, and biogas.

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

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

~~(2) On and after the starting date of competitive retail electric service, a~~ (B)(1) A noncompetitive retail electric service supplied by an electric utility shall be subject to supervision and regulation by the commission under Chapters 4901. to 4909., 4933., 4935., and 4963. of the Revised Code and this chapter, to the extent that authority is not preempted by federal law. The commission's authority to enforce those

provisions with respect to a noncompetitive retail electric service shall be the authority provided under those chapters and this chapter, to the extent the authority is not preempted by federal law. Notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

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

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

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

Sec. 4928.08. (A) This section applies to an electric cooperative, or to a governmental aggregator that is a municipal electric utility, only to the extent of a competitive retail electric service it provides to a customer to whom it does not provide a noncompetitive retail electric service through transmission or distribution facilities it singly or jointly owns or operates.

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

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

(3) As used in division (B)(2) of this section, an "electric services company" has the same meaning as in section 4928.01 of the Revised Code, but excludes a power broker or aggregator.

(C) Capability standards adopted in rules under division (B) of this section shall be sufficient to ensure compliance with the minimum service requirements established under section 4928.10 of the Revised Code and with section 4928.09 of the Revised Code. The standards shall allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands, and shall allow flexibility for electric services companies that exclusively provide installation of small electric generation facilities, to provide ease of market access. The rules shall include procedures for biennially renewing certification.

(D) The commission may suspend, rescind, or conditionally rescind the certification of any electric utility, electric services company, electric cooperative, or governmental aggregator issued under this section if the commission determines, after reasonable notice and opportunity for hearing, that the utility, company, cooperative, or aggregator has failed to comply with any applicable certification standards or has engaged in anticompetitive or unfair, deceptive, or

unconscionable acts or practices in this state.

(E) No electric distribution utility on and after the starting date of competitive retail electric service shall knowingly distribute electricity, to a retail consumer in this state, for any supplier of electricity that has not been certified by the commission pursuant to this section.

(F) Notwithstanding any provision of section 121.95 of the Revised Code to the contrary, a regulatory restriction contained in a rule adopted under section 4928.08 of the Revised Code is not subject to sections 121.95 to 121.953 of the Revised Code.

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

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

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

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

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

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

Sec. 4928.102. (A) If a competitive retail electric

service supplier offers a residential or small commercial customer a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate, the supplier shall send two notices to each residential and small commercial customer that enters into such a contract. Each notice shall provide all of the following information to the customer:

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

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

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

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

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

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

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

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

(C) A competitive retail electric service supplier shall provide an annual notice, by standard United States mail, to each residential and small commercial customer that has entered

into a contract with the supplier that has converted to a variable rate upon the expiration of the contract's fixed introductory rate. The notice shall inform the customer that the customer is currently subject to a variable rate and that other fixed rate contracts are available.

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

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

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

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

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

(B) The public utilities commission shall adopt rules to ensure that an electric distribution utility processes a customer's change in competitive retail electric supplier by using customer account information. A customer who consents to a change of supplier shall not be required to provide customer

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

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

Sec. 4928.105. (A) Upon receiving a certified request from a competitive retail electric service supplier under a service agreement that explicitly authorizes an expedited return to an electric distribution utility's standard service offer, voluntarily entered into by a mercantile customer, a utility shall complete the request within three business days.

(B) The electric distribution utility shall not be held liable for any disputes arising from the expedited return to the utility's standard service offer, provided the utility acts in accordance with the public utilities commission's rules.

(C) The commission shall establish rules governing the process for an expedited return to the utility's standard service offer pursuant to this section, including the content of the certified request and any notice to the affected customer, and permitting electric distribution utilities to recover the administrative costs of processing requests under this section through reasonable fees assessed to competitive retail electric service suppliers.

Sec. 4928.107. (A) As used in this section, "small commercial customer" has the same meaning as in section 4928.101

of the Revised Code.

(B) An electric distribution utility may create a voluntary demand response program to lower demand at peak times for residential customers and small commercial customers as described by this section.

(C)(1) Each demand response program under this section shall be evaluated by the public utilities commission to determine if the program is cost-effective for customers.

(2) No electric distribution utility shall offer a demand reduction program under this section unless the program is approved by the commission.

(D) An electric distribution utility may enter into an agreement with a residential customer or small commercial customer for the customer to participate in the utility's demand response program.

(E) For customers that participate in the program, the utility may take actions to reduce the customer's load at peak times, such as reducing the temperature on the customer's air conditioner.

(F) A customer that participates in the program may override the utility's action to reduce the customer's load.

(G) A customer that agrees to participate in the utility's demand response program shall be paid by the utility an annual fee of forty dollars, or other amount determined by the commission under division (H) of this section, if the customer does not override the utility's action to reduce the customer's load more than fifty per cent of the requested time.

(H) The commission may raise or lower the fee amount under

division (G) of this section at the time of the utility's rate case or true up based on the current demand in the utility's certified territory.

Sec. 4928.14. ~~The~~ (A) Except as provided in division (C) of this section, the failure of a supplier to provide retail electric generation service to customers within the certified territory of an electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer under sections 4928.141~~,~~ and 4928.142~~, and 4928.143~~ of the Revised Code until the customer chooses an alternative supplier. ~~A~~

(B) A supplier is deemed under this section to have failed to provide ~~such~~ retail electric generation service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met:

~~(A)~~ (1) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy.

~~(B)~~ (2) The supplier is no longer capable of providing the service.

~~(C)~~ (3) The supplier is unable to provide delivery to transmission or distribution facilities for such period of time as may be reasonably specified by commission rule adopted under division (A) of section 4928.06 of the Revised Code.

~~(D)~~ (4) The supplier's certification has been suspended, conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code.

(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~~

(2) An electric distribution utility's electric security plan ~~of an electric distribution utility~~ 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 shall continue for the purpose of the utility's compliance with ~~this~~ division (A)(1) of this section until a standard service offer is ~~first~~ authorized to be effective under section 4928.142 ~~or 4928.143~~ of the Revised Code~~, and, as applicable, pursuant to division (D) of section 4928.143 of the Revised Code, any rate~~. Each security plan ~~that extends~~ approved before the effective date of the amendments to this section by this act shall extend ~~beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term~~through the final standard service offer auction delivery period approved by the public utilities commission under the plan as of the effective date of the amendments to this section by this act and thereafter shall terminate.

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

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

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

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

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

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

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) There were four or more bidders.

(3) At least twenty-five per cent of the load is bid upon by one or more persons other than the electric distribution utility.

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.

(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,~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(K)~~ The commission shall adopt rules and issue orders in proceedings under sections 4928.141 and 4928.142 of the Revised Code to encourage and promote large-scale governmental aggregation in this state. For that purpose, the commission shall conduct an immediate review of any rules it has adopted for the purpose of this section that are in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008. Further, within the context of an electric security plan under section 4928.143 of the Revised Code, as that section existed prior to its repeal by this act, or a market rate offer under section 4928.142 of the Revised Code, as amended by this act, the commission shall consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, under that plan, or that would be established under that ~~plan~~offer, except any nonbypassable generation charges that relate to any cost incurred by the electric distribution utility, the deferral of which has been authorized by the commission prior to the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of the Revised Code:

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

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

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

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

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

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

(2) Any payment required under an ancillary agreement;

(3) Any amount required to fund or replenish a reserve account or another account established under any indenture,

ancillary agreement, or other financing document relating to phase-in-recovery bonds;

(4) Any costs of retiring or refunding any existing debt and equity securities of an electric distribution utility in connection with either the issuance of, or the use of proceeds from, phase-in-recovery bonds;

(5) Any costs incurred by an electric distribution utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement, or similar agreement or instrument relating to any existing secured or unsecured obligation of the electric distribution utility in connection with the issuance of phase-in-recovery bonds;

(6) Any costs incurred by an electric distribution utility to obtain any consent, release, waiver, or approval from any holder of an obligation described in division (E)(5) of this section that are necessary to be incurred for the electric distribution utility to issue or cause the issuance of phase-in-recovery bonds;

(7) Any taxes, franchise fees, or license fees imposed on phase-in-recovery revenues;

(8) Any costs related to issuing or servicing phase-in-recovery bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal, accounting, or other professional fees and expenses, administrative fees, placement fees, underwriting fees, capitalized interest and equity, and rating-agency fees;

(9) Any other similar costs that the public utilities commission finds appropriate.

(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.

(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.

(H) "Financing party" means either of the following:

(1) Any trustee, collateral agent, or other person acting for the benefit of any bondholder;

(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.

(I) "Financing statement" has the same meaning as in section 1309.102 of the Revised Code.

(J) "Phase-in costs" means costs, inclusive of carrying charges incurred before, on, or after ~~the effective date of this section~~ March 22, 2012, authorized by the commission before, on, or after ~~the effective date of this section~~ March 22, 2012, 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 prior to the effective date of the amendments to this section by this act pursuant to a final order for which appeals have been

exhausted. "Phase-in costs" excludes the following:

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

(2) Costs incurred after ~~the effective date of this section~~ March 22, 2012, related to the ongoing operation of an electric generating facility, but not environmental clean-up or remediation costs incurred by an electric distribution utility because of its ownership or operation of an electric generating facility prior to ~~the effective date of this section~~ March 22, 2012, which such clean-up or remediation costs are imposed or incurred pursuant to federal or state law, rules, or regulations and for which the commission approves or approved recovery in accordance with 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 prior to the effective date of the amendments to this section by this act.

(K) "Phase-in-recovery property" means the property, rights, and interests of an electric distribution utility or an assignee under a final financing order, including the right to impose, charge, and collect the phase-in-recovery charges that shall be used to pay and secure the payment of phase-in-recovery bonds and financing costs, and including the right to obtain

adjustments to those charges, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created under the final financing order.

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

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

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

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

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

(a) Uncollected phase-in costs;

(b) Financing costs.

(3) The creation of phase-in-recovery property under the financing order.

(B) The application shall include all of the following:

(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;

(2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued;

(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;

(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;

(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;

(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;

(7) A description of a proposed adjustment mechanism for

use as described in division (A)(2) of this section;

(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;

(9) Any other information required by the commission.

(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.

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 Code.

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

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

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

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

(2) Except as provided in division (D)(1) of this section, the commission shall issue a financing order under division (C) of this section if, at the time the financing order is issued, the commission finds that the issuance of the phase-in-recovery

bonds and the phase-in-recovery charges authorized by the order results in, consistent with market conditions, both measurably enhancing cost savings to customers and mitigating rate impacts to customers as compared with traditional financing mechanisms or traditional cost-recovery methods available to the electric distribution utility or, if the commission previously approved a recovery method, as compared with that recovery method.

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

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

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

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

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

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

(6) The maximum term of the phase-in-recovery bonds;

(7) Any other provision the commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the phase-in-recovery charges described in divisions (E)(3) to (5) of this section.

(F) The commission may, in a financing order, afford the electric distribution utility flexibility in establishing the terms and conditions for the phase-in-recovery bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the electric distribution utility, at its option, to effect a series of issuances of phase-in-recovery bonds and correlated assignments, sales, pledges, or other transfers of phase-in-recovery property. Any changes made under this section to terms and conditions for the phase-in-recovery bonds shall be in conformance with the financing order.

(G) A financing order may provide that the creation of phase-in-recovery property shall be simultaneous with the sale of that property to an assignee as provided in the application and the pledge of the property to secure phase-in-recovery bonds.

(H) The commission shall, in a financing order, require that after the final terms of each issuance of phase-in-recovery bonds have been established, and prior to the issuance of those bonds, the electric distribution utility shall determine the resulting phase-in-recovery charges in accordance with the adjustment mechanism described in the financing order. These phase-in-recovery charges shall be final and effective upon the issuance of the phase-in-recovery bonds, without further

commission action.

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

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

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

(3) All other unbundled components required by the

commission in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates and charges in effect on the effective date of this section.

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

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

(6) Subject to division (A)(5) of this section, the total of all unbundled components in the rate unbundling plan are capped and shall equal during the market development period, except as specifically provided in this chapter, the total of all rates and charges in effect under the applicable bundled schedule of the electric utility pursuant to section 4905.30 of the Revised Code in effect on the day before the effective date of this section, including the transition charge determined under section 4928.40 of the Revised Code, adjusted for any changes in the taxation of electric utilities and retail electric service under Sub. S.B. No. 3 of the 123rd General

Assembly, the universal service rider authorized by section 4928.51 of the Revised Code, and the temporary rider authorized by section 4928.61 of the Revised Code. For the purpose of this division, the rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the commission under section 4905.31 of the Revised Code is, for the term of the arrangement, the total of all rates and charges in effect under the arrangement. For any rate schedule filed pursuant to section 4905.30 of the Revised Code or any arrangement subject to approval pursuant to section 4905.31 of the Revised Code, the initial tax-related adjustment to the rate cap required by this division shall be equal to the rate of taxation specified in section 5727.81 of the Revised Code and applicable to the schedule or arrangement. To the extent such total annual amount of the tax-related adjustment is greater than or less than the comparable amount of the total annual tax reduction experienced by the electric utility as a result of the provisions of Sub. S.B. No. 3 of the 123rd general assembly, such difference shall be addressed by the commission through accounting procedures, refunds, or an annual surcharge or credit to customers, or through other appropriate means, to avoid placing the financial responsibility for the difference upon the electric utility or its shareholders. Any adjustments in the rate of taxation specified in section 5727.81 of the Revised Code ~~section~~ shall not occur without a corresponding adjustment to the rate cap for each such rate schedule or arrangement. The department of taxation shall advise the commission and self-assessors under section 5727.81 of the Revised Code prior to the effective date of any change in the rate of taxation specified under that section, and the commission shall modify the rate cap to reflect that adjustment so that the rate cap adjustment is effective as of the effective date of the change in the rate of

taxation. This division shall be applied, to the extent possible, to eliminate any increase in the price of electricity for customers that otherwise may occur as a result of establishing the taxes contemplated in section 5727.81 of the Revised Code.

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

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

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

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

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

(12) The transition revenues for which an electric utility is authorized a revenue opportunity under sections 4928.31 to 4928.40 of the Revised Code are the allowable transition costs of the utility as such costs are determined by the commission pursuant to section 4928.39 of the Revised Code, and the transition charges for the customer classes and rate schedules of the utility are the charges determined pursuant to section 4928.40 of the Revised Code.

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

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

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

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

(B) ~~Subject to division (E) of section 4928.17 of the 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;

(c) Is a small hydroelectric facility;

(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

(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:

(i) A resource that has the effect of improving the relationship between real and reactive power;

(ii) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;

(iii) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;

(iv) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.

(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.

(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 energy resources obtained pursuant to an electricity supply

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

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

	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%
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 by the utility or company shall be met either:

(a) Through facilities located in this state; or

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

(C)(1) The commission annually shall review an electric

distribution utility's or electric services company's compliance with the most recent applicable benchmark under division (B)(2) of this section and, in the course of that review, shall identify any undercompliance or noncompliance of the utility or company that it determines is weather-related, related to equipment or resource shortages for qualifying renewable energy resources as applicable, or is otherwise outside the utility's or company's control.

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

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

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

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

(iii) Two hundred dollars for 2019.

(b) The compliance payment pertaining to the renewable energy resource benchmarks under division (B)(2) of this section shall equal the number of additional renewable energy credits that the electric distribution utility or electric services company would have needed to comply with the applicable benchmark in the period under review times an amount that shall

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

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

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

(4)(a) An electric distribution utility or electric services company may request the commission to make a force majeure determination pursuant to this division regarding all or

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

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

(c) If, pursuant to division (C)(4)(b) of this section, the commission determines that qualifying renewable energy or solar energy resources are not reasonably available to permit the electric distribution utility or electric services company

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

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

(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

in the five calendar years following the date of their purchase or acquisition from any entity, including, but not limited to, the following:

(1) A mercantile customer;

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

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

(B)(1) The public utilities commission shall adopt rules specifying that one unit of credit shall equal one megawatt hour of electricity derived from renewable energy resources, except that, for a generating facility of seventy-five megawatts or greater that is situated within this state and has committed by December 31, 2009, to modify or retrofit its generating unit or units to enable the facility to generate principally from biomass energy by June 30, 2013, each megawatt hour of electricity generated principally from that biomass energy shall equal, in units of credit, the product obtained by multiplying the actual percentage of biomass feedstock heat input used to generate such megawatt hour by the quotient obtained by dividing the then existing unit dollar amount used to determine a renewable energy compliance payment as provided under division (C)(2)(b) of section 4928.64 of the Revised Code by the then existing market value of one renewable energy credit, but such megawatt hour shall not equal less than one unit of credit.

Renewable energy resources do not have to be converted to electricity in order to be eligible to receive renewable energy credits. The rules shall specify that, for purposes of converting the quantity of energy derived from biologically derived methane gas to an electricity equivalent, one megawatt hour equals 3,412,142 British thermal units.

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

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

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

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

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

(2) "Mercantile customer self-power system" means one or more electric generation facilities, electric storage

facilities, or both, along with any associated facilities, that meet all of the following:

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

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

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

(d) Is located on either of the following:

(i) A property owned or controlled by a mercantile customer member or the entity that owns or operates the mercantile customer self-power system, provided that the property is not located more than one mile from the customer or group of customers that consume the electricity produced by the facilities;

(ii) Land adjacent to a mercantile customer member if the facilities connect directly with the customer.

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

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

(D) The public utilities commission shall adopt rules to implement this section that are applicable to electric

distribution utilities.

(E) Nothing in this section prohibits an electric distribution utility or an electric cooperative from charging a mercantile customer for distribution or transmission service used by a mercantile customer.

Sec. 4929.20. ~~(A)~~ (A)(1) No governmental aggregator as defined in division (K)(1) of section 4929.01 of the Revised Code or no retail natural gas supplier shall provide a competitive retail natural gas service on or after thirteen months following ~~the effective date of this section~~ June 26, 2001, to a consumer in this state without first being certified by the public utilities commission regarding its managerial, technical, and financial capability to provide that service and providing reasonable financial assurances sufficient to protect customers and natural gas companies from default. ~~In addition, a retail natural gas supplier may be required to provide a performance bond sufficient to protect customers and natural gas companies from default.~~ Certification shall be granted pursuant to procedures and standards the commission shall prescribe in accordance with rules adopted under section 4929.10 of the Revised Code. However, certification or certification renewal shall be deemed approved thirty days after the filing of an application with the commission unless the commission suspends that approval for good cause shown. In the case of such a suspension, the commission shall act to approve or deny certification or certification renewal to the applicant not later than ninety days after the date of the suspension.

(2) The commission shall establish rules to require a competitive retail natural gas supplier to maintain financial assurances sufficient to protect customers and natural gas

companies from default. Such rules also shall specifically allow a natural gas company to set reasonable standards for its security and the security of its customers through financial requirements set in its tariffs.

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

(B) Capability standards adopted in rules pursuant to division (A) of this section shall be sufficient to ensure compliance with section 4929.22 of the Revised Code and with the minimum service requirements established under section 4929.23 of the Revised Code. The standards shall allow flexibility for voluntary aggregation, to encourage market creativity in responding to consumer needs and demands. The rules shall include procedures for biennially renewing certification.

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

(2) An affected natural gas company may file an application with the commission for approval of authority to recover in accordance with division (C)(2) of this section incremental costs reasonably and prudently incurred by the company in connection with the commission's continuation, suspension, rescission, or conditional rescission of a

particular retail natural gas supplier's certification under division (C)(1) of this section. Upon the filing of such an application, the commission shall conduct an audit of such incremental costs as are specified in the application. Cost recovery shall be through a rider on the base rates of customers of the company for which there is a choice of supplier of commodity sales service as a result of revised schedules approved under division (C) of section 4929.29 of the Revised Code, a rule or order adopted or issued by the commission under Chapter 4905. of the Revised Code, or an exemption granted by the commission under sections 4929.04 to 4929.08 of the Revised Code. The rider shall take effect ninety days after the date of the application's filing unless the commission, based on the audit results and for good cause shown, sets the matter for hearing. After the hearing, the commission shall approve the application, and authorize such cost recovery rider effective on the date specified in the order, only for such incremental costs as the commission determines were reasonably and prudently incurred by the company in connection with the continuation, suspension, rescission, or conditional rescission of a retail natural gas supplier's certification under division (C)(1) of this section. Any proceeding under division (C)(2) of this section shall be governed by Chapter 4903. of the Revised Code.

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

(E) Notwithstanding any provision of section 121.95 of the

Revised Code to the contrary, a regulatory restriction contained in a rule adopted under section 4929.20 of the Revised Code is not subject to sections 121.95 to 121.953 of the Revised Code.

Sec. 4929.221. (A) If a competitive retail natural gas service supplier offers a residential customer or non-mercantile commercial customer a contract for a fixed introductory rate that converts to a variable rate upon the expiration of the fixed rate, the supplier shall send two notices to each residential customer and non-mercantile commercial customer that enters into such a contract. Each notice shall provide all of the following information to the customer:

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

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

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

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

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

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

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

(2) The supplier shall send the second notice not earlier

than forty-five days and not later than thirty days prior to the expiration of the fixed rate.

(C) A competitive retail natural gas service supplier shall provide an annual notice, by standard United States mail, to each residential customer and non-mercantile commercial customer that has entered into a contract with the supplier that has converted to a variable rate upon the expiration of the contract's fixed introductory rate. The notice shall inform the customer that the customer is currently subject to a variable rate and that other fixed rate contracts are available.

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

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

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

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

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

(B) The public utilities commission shall adopt rules to

ensure that a natural gas company processes a customer's change in competitive retail natural gas supplier by using customer account information. A customer who consents to a change of supplier shall not be required to provide customer account information to the supplier if the customer provides a valid form of government-issued identification issued to the customer or a sufficient alternative form of identification that allows the supplier to establish the customer's identity accurately.

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

Sec. 4933.81. As used in sections 4933.81 to 4933.90 of the Revised Code:

(A) "Electric supplier" means any electric light company as defined in section 4905.03 of the Revised Code, including electric light companies organized as nonprofit corporations, but not including municipal corporations or other units of local government that provide electric service.

(B) "Adequate facilities" means distribution lines or facilities having sufficient capacity to meet the maximum estimated electric service requirements of its existing customers and of any new customer occurring during the year following the commencement of permanent electric service, and to assure all such customers of reasonable continuity and quality of service. Distribution facilities and lines of an electric supplier shall be considered "adequate facilities" if such supplier offers to undertake to make its distribution facilities and lines meet such service requirements and, in the determination of the public utilities commission, can do so

within a reasonable time.

(C) "Distribution line" means any electric line that is being or has been used primarily to provide electric service directly to electric load centers by the owner of such line.

(D) "Existing distribution line" means any distribution line of an electric supplier which was in existence on January 1, 1977, or under construction on that date.

(E) "Electric load center" means all the electric-consuming facilities of any type or character owned, occupied, controlled, or used by a person at a single location, which facilities have been, are, or will be connected to and served at a metered point of delivery and to which electric service has been, is, or will be rendered.

(F) "Electric service" means retail electric service furnished to an electric load center for ultimate consumption, but excludes furnishing electric power or energy at wholesale for resale. In the case of a for-profit electric supplier and beginning on the starting date of competitive retail electric service as defined in section 4928.01 of the Revised Code, "electric service" also excludes a competitive retail electric service~~.~~, and, starting after the effective date of amendments to this section by this act, excludes:

(1) Retail electric service provided to a mercantile customer member by its own mercantile customer self-power system as those terms are defined in section 4928.73 of the Revised Code;

(2) Retail electric service provided to an electric load center to the extent the center is acting as a self-generator as defined in section 4928.01 of the Revised Code.

In the case of a not-for-profit electric supplier and beginning on that competitive retail electric service starting date, "electric service" also excludes any service component of competitive retail electric service that is specified in an irrevocable filing the electric supplier makes with the public utilities commission for informational purposes only to eliminate permanently its certified territory under sections 4933.81 to 4933.90 of the Revised Code as to that service component and further excludes any new electric load centers going into service after the effective date of amendments to this section by this act that use retail electric service described in division (F)(1) or (2) of this section. The filing shall specify the date on which such territory is so eliminated. Notwithstanding division (B) of section 4928.01 of the Revised Code, such a service component may include retail ancillary, metering, or billing and collection service irrespective of whether that service component has or has not been declared competitive under section 4928.04 of the Revised Code. Upon receipt of the filing by the commission, the not-for-profit electric supplier's certified territory shall be eliminated permanently as to the service component specified in the filing as of the date specified in the filing. As used in this division, "competitive retail electric service" and "retail electric service" have the same meanings as in section 4928.01 of the Revised Code.

(G) "Certified territory" means a geographical area the boundaries of which have been established pursuant to sections 4933.81 to 4933.90 of the Revised Code within which an electric supplier is authorized and required to provide electric service.

(H) "Other unit of local government" means any governmental unit or body that may come into existence after

July 12, 1978, with powers and authority similar to those of a municipal corporation, or that is created to replace or exercise the relevant powers of any one or more municipal corporations.

Sec. 5711.01. As used in this chapter:

(A)(1) "Taxable property" includes all the kinds of property mentioned in division (B) of section 5709.01 and section 5709.02 of the Revised Code, and also the amount or value as of the date of conversion of all taxable property converted into bonds or other securities not taxed on or after the first day of November in the year preceding the date of listing, and of all other taxable property converted into deposits after the date as of which deposits are required to be listed in such year, except in the usual course of the taxpayer's business, to the extent the taxpayer may hold or control such bonds, securities, or deposits on such day, without deduction for indebtedness created in the purchase of such bonds or securities from the taxpayer's credits. "Taxable property" does not include such investments and deposits as are taxable at the source as provided in sections 5725.01 to 5725.26 of the Revised Code, surrender values under policies of insurance, or any tangible personal property acquired from a public utility or interexchange telecommunications company as defined in section 5727.01 of the Revised Code and leased back to the public utility or interexchange telecommunications company pursuant to a sale and leaseback transaction as defined in division (I) of section 5727.01 of the Revised Code. For tax year 2007 and thereafter, "taxable property" of a telephone, telegraph, or interexchange telecommunications company, as defined in section 5727.01 of the Revised Code, includes property subject to such a sale and leaseback transaction.

(2) For tax year 2007 and thereafter, taxable property leased to a telephone, telegraph, or interexchange telecommunications company, as defined in section 5727.01 of the Revised Code, other than pursuant to a sale and leaseback transaction, shall be listed and assessed by the owner of the property as follows:

(a) If the property leased to such a company is not governed by division (C) of section 5711.22 of the Revised Code in tax years 2007 and 2008, it shall be listed and assessed at the percentage of true value in money required under division (G) of section 5711.22 of the Revised Code.

(b) All property leased to such a company in tax years 2009 and 2010 shall be listed and assessed at the percentage of true value in money required under division (H) of section 5711.22 of the Revised Code.

(3) For tax years 2009 and 2010, the lessor of property subject to division (A)(2) of this section shall have the true value of the property the lessor leases to a telephone, telegraph, or interexchange telecommunications company determined under divisions ~~(A)(5)~~ (A)(6) and (E) of section 5727.06 of the Revised Code.

(B) "Taxpayer" means any owner of taxable property, including property exempt under division (C) of section 5709.01 of the Revised Code, and includes every person residing in, or incorporated or organized by or under the laws of this state, or doing business in this state, or owning or having a beneficial interest in taxable personal property in this state and every fiduciary required by sections 5711.01 to 5711.36 of the Revised Code, to make a return for or on behalf of another. For tax year 2007 and thereafter, "taxpayer" includes telephone companies,

telegraph companies, and interexchange telecommunications company as defined in section 5727.01 of the Revised Code. The tax commissioner may by rule define and designate the taxpayer, as to any taxable property which would not otherwise be required by this section to be returned; and any such rule shall be considered supplementary to the enumeration of kinds of taxpayers following:

(1) Individuals of full age and sound mind residing in this state;

(2) Partnerships, corporations, associations, and joint-stock companies, under whatever laws organized or existing, doing business or having taxable property in this state; and corporations incorporated by or organized under the laws of this state, wherever their actual business is conducted;

(3) Fiduciaries appointed by any court in this state or having title, possession, or custody of taxable personal property in this state or engaged in business in this state;

(4) Unincorporated mutual funds.

"Taxpayer" excludes all individuals, partnerships, corporations, associations, and joint-stock companies, their executors, administrators, and receivers who are defined in Title LVII of the Revised Code as financial institutions, dealers in intangibles, domestic insurance companies, or public utilities, except to the extent they may be required by sections 5711.01 to 5711.36 of the Revised Code, to make returns as fiduciaries, or by section 5725.26 of the Revised Code, to make returns of property leased, or held for the purpose of leasing, to others if the owner or lessor of the property acquired it for the sole purpose of leasing it to others or to the extent that

property is taxable under section 5725.25 of the Revised Code.

(C) "Return" means the taxpayer's annual report of taxable property.

(D) "List" means the designation, in a return, of the description of taxable property, the valuation or amount thereof, the name of the owner, and the taxing district where assessable.

(E) "Taxing district" means, in the case of property assessable on the classified tax list and duplicate, a municipal corporation or the territory in a county outside the limits of all municipal corporations therein; in the case of property assessable on the general tax list and duplicate, a municipal corporation or township, or part thereof, in which the aggregate rate of taxation is uniform.

(F) "Assessor" includes the tax commissioner and the county auditor as deputy of the commissioner.

(G) "Fiduciary" includes executors, administrators, parents, guardians, receivers, assignees, official custodians, factors, bailees, lessees, agents, attorneys, and employees, but does not include trustees unless the sense so requires.

(H) "General tax list and duplicate" means the books or records containing the assessments of property subject to local tax levies.

(I) "Classified tax list and duplicate" means the books or records containing the assessments of property not subject to local tax levies.

(J) "Investment company" means any corporation, the shares of which are regularly offered for sale to the public, engaged

solely in the business of investing and reinvesting funds in real property or investments, or holding or selling real property or investments for the purpose of realizing income or profit which is distributed to its shareholders. Investment company does not include any dealer in intangibles, as defined in section 5725.01 of the Revised Code.

(K) "Unincorporated mutual fund" means any partnership, each partner of which is a corporation, engaged solely in the business of investing and reinvesting funds in investments, or holding or selling investments for the purpose of realizing income or profit which is distributed to its partners and which is subject to Chapter 1707. of the Revised Code. An unincorporated mutual fund does not include any dealer in intangibles as defined in section 5725.01 of the Revised Code.

Sec. 5727.01. As used in this chapter:

(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.

(B) "Gross receipts" means the entire receipts for business done by any person from operations as a public utility, or incidental thereto, or in connection therewith, including any receipts received under Chapter 4928. of the Revised Code. The gross receipts for business done by an incorporated company engaged in operation as a public utility includes the entire receipts for business done by such company under the exercise of its corporate powers, whether from the operation as a public utility or from any other business.

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

(D) Any person:

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

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

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

(4) Is a natural gas company when engaged in the business of supplying or distributing natural gas for lighting, power, or heating purposes to consumers within this state, excluding a person that is a governmental aggregator or retail natural gas supplier as defined in section 4929.01 of the Revised Code;

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

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

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

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

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

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

As used in division (D)(2) of this section, "local exchange telephone service" means making available or furnishing access and a dial tone to all persons within a local calling area for use in originating and receiving voice grade communications over a switched network operated by the provider of the service within the area and for gaining access to other telecommunication services.

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

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

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

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

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

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

(H) "Interexchange telecommunications company" means a person that is engaged in the business of transmitting telephonic messages to, from, through, or in this state, but that is not a telephone company.

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

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

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

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

(M) "Public utility property lessor" means any person, other than a public utility or an interexchange telecommunications company, that leases personal property, other than in a sale and leaseback transaction, to a public utility, other than a railroad, water transportation, telephone, or telegraph company if the property would be taxable property if owned by the public utility. A public utility property lessor is subject to this chapter only for the purposes of reporting and paying tax on taxable property it leases to a public utility other than a telephone or telegraph company. A public utility property lessor that leases property to a public utility other than a telephone or telegraph company is not a public utility, but it shall report its property and be assessed in the same manner as the utility to which it leases the property.

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

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

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

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

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

(5) Energy storage system.

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

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

(P) "Energy facility" means one or more interconnected wind turbines, solar panels, energy storage systems, or other tangible personal property used to generate or store and release electricity from an energy resource owned by the same person, including:

(1) All interconnection equipment, devices, and related

apparatus connected to such tangible personal property;

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

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

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

(R) "Qualifying production equipment" means production equipment and energy conversion equipment that is first used in business in this state beginning in calendar year 2026 and thereafter.

(S) "Energy storage system" means tangible personal

property that is capable of storing and releasing energy.

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

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

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

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

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

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

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

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

(1) For tax years before tax year 2006:

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

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

(c) In the case of all other public utilities and

interexchange telecommunications companies, all tangible personal property that on the thirty-first day of December of the preceding year was both located in this state and:

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

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

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

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

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

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

(3) For tax ~~year~~ years 2009 ~~and each tax year thereafter~~to 2026:

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

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

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

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

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

(4) For tax year 2027 and each tax year thereafter:

(a) In the case of a railroad company, all real property used in railroad operations and tangible personal property owned

or operated by the railroad company in this state on the thirty-first day of December of the preceding year;

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

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

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

(5) For tax years 2005 and 2006, in the case of telephone, telegraph, or interexchange telecommunications companies, all tangible personal property that on the thirty-first day of December of the preceding year was both located in this state

and either owned by the telephone, telegraph, or interexchange telecommunications company or leased by the telephone, telegraph, or interexchange telecommunications company under a sale and leaseback transaction.

~~(5)(a)~~(6)(a) For tax year 2007 and thereafter, in the case of telephone, telegraph, or interexchange telecommunications companies, all tangible personal property shall be listed and assessed for taxation under Chapter 5711. of the Revised Code, but the tangible personal property shall be valued in accordance with this chapter using the composite annual allowances and other valuation procedures prescribed under section 5727.11 of the Revised Code by the tax commissioner for such property for tax year 2006, notwithstanding any section of Chapter 5711. of the Revised Code to the contrary.

(b) A telephone, telegraph, or interexchange telecommunications company subject to division ~~(A)(5)(a)~~(A)(6)(a) of this section shall file a combined return with the tax commissioner in accordance with section 5711.13 of the Revised Code even if the company has tangible personal property in only one county. Such a company also is subject to the issuance of a preliminary assessment certificate by the tax commissioner under section 5711.25 of the Revised Code. Such a company is not required to file a county supplemental return under section 5711.131 of the Revised Code.

~~(6)~~(7) In the case of an energy company~~, for~~ :

(a) For tax ~~year~~ years 2011 ~~and each tax year thereafter~~to 2026, all tangible personal property that on the thirty-first day of December of the preceding year was both located in this state and either owned by the company or leased by the company under a sale and leaseback transaction, and that is not exempted

from taxation under section 5727.75 of the Revised Code.

(b) For tax year 2027 and each tax year thereafter, all tangible personal property except qualifying production equipment that on the thirty-first day of December of the preceding year was both located in this state and either owned by the company or leased by the company under a sale and leaseback transaction, and that is not exempted from taxation under section 5727.75 of the Revised Code.

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

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

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

(D) Property that is required by division (A)(3)(b) of this section to be assessed by the tax commissioner under this chapter shall not be listed by the owner of the property under

Chapter 5711. of the Revised Code.

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

(F) The tax commissioner may adopt rules governing the listing of the taxable property of public utilities and interexchange telecommunications companies and the determination of true value.

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

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

(2) For tax year 2001 and thereafter, the true value of current gas stored underground is the quotient obtained by dividing (a) the average value of the current gas stored underground, which shall be determined by adding the value of

the gas on hand at the end of each calendar month in the calendar year preceding the tax year, or, if applicable, the last day of business of each month for a partial month, divided by (b) the total number of months the natural gas company was in business during the calendar year prior to the beginning of the tax year. With the approval of the tax commissioner, a natural gas company may use a date other than the end of a calendar month to value its current gas stored underground.

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

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

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

(E) The true value of taxable property, except property of a railroad company, required by section 5727.06 of the Revised Code to be assessed by the tax commissioner shall not include the allowance for funds used during construction or interest

during construction that has been capitalized on the public utility's books and records as part of the total cost of the taxable property. This division shall not apply to the taxable property of an electric company or a rural electric company, excluding transmission and distribution property, first placed into service after December 31, 2000, or to the taxable property a person purchases, which includes transfers, if that property was used in business by the seller prior to the purchase.

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

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

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

(I) Any change in the composite annual allowances as prescribed by the commissioner on a prospective basis shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions

of any taxpayer obtained by the commissioner for the purpose of adopting or modifying the composite annual allowances shall not be subject to discovery or disclosure.

Sec. 5727.111. The taxable property of each public utility, except a railroad company, and of each interexchange telecommunications company shall be assessed at the following percentages of true value:

(A) In the case of a rural electric company, fifty per cent in the case of its taxable transmission and distribution property first subject to taxation in this state before tax year 2027 and its energy conversion equipment, and twenty-five per cent for all its other taxable property;

(B) In the case of a telephone or telegraph company, twenty-five per cent for taxable property first subject to taxation in this state for tax year 1995 or thereafter for tax years before tax year 2007, and pursuant to division (H) of section 5711.22 of the Revised Code for tax year 2007 and thereafter, and the following for all other taxable property:

(1) For tax years prior to 2005, eighty-eight per cent;

(2) For tax year 2005, sixty-seven per cent;

(3) For tax year 2006, forty-six per cent;

(4) For tax year 2007 and thereafter, pursuant to division (H) of section 5711.22 of the Revised Code.

(C) Twenty-five per cent in the case of (1) a natural gas company or (2) a water-works company for taxable property first subject to taxation in this state for tax year 2017 and thereafter;

(D) Eighty-eight per cent in the case of taxable property

of a pipe-line company first subject to taxation in this state before tax year 2027, a water-works company for taxable property first subject to taxation in this state before tax year 2017, or a heating company;

(E)(1) For tax year 2005, eighty-eight per cent in the case of the taxable transmission and distribution property of an electric company, and twenty-five per cent for all its other taxable property;

(2) For tax ~~year~~ years 2006 ~~and each tax year thereafter~~to 2026, in the case of an electric company, eighty-five per cent in the case of its taxable transmission and distribution property and its energy conversion equipment, and twenty-four per cent for all its other taxable property.

(3) For tax year 2027 and each tax year thereafter, in the case of an electric company, eighty-five per cent of its taxable transmission and distribution property first subject to taxation in this state before tax year 2027 and its energy conversion equipment, twenty-five per cent in the case of its other taxable transmission and distribution property, and twenty-four per cent for all its other taxable property.

(F)(1) Twenty-five per cent in the case of an interexchange telecommunications company for tax years before tax year 2007;

(2) Pursuant to division (H) of section 5711.22 of the Revised Code for tax year 2007 and thereafter.

(G) Twenty-five per cent in the case of a water transportation company;

~~(H)~~(H)(1) For tax ~~year~~ years 2011 ~~and each tax year thereafter~~ to 2026, in the case of an energy company, twenty-

four per cent in the case of its taxable production equipment, and eighty-five per cent for all its other taxable property.

(2) For tax year 2027 and each tax year thereafter, in the case of an energy company, twenty-four per cent in the case of its taxable production equipment, twenty-five per cent for its taxable transmission and distribution property first subject to taxation in this state for tax year 2027 and thereafter, and eighty-five per cent for all its other taxable property.

(I) Twenty-five per cent in the case of taxable property of a pipe-line company first subject to taxation in this state for tax year 2027 and thereafter.

Sec. 5727.75. (A) For purposes of this section:

(1) "Qualified energy project" means an energy project certified by the director of development pursuant to this section.

(2) "Energy project" means a project to provide electric power through the construction, installation, and use of an energy facility.

(3) "Alternative energy zone" means a county declared as such by the board of county commissioners under division (E)(1)(b) or (c) of this section.

(4) "Full-time equivalent employee" means the total number of employee-hours for which compensation was paid to individuals employed at a qualified energy project for services performed at the project during the calendar year divided by two thousand eighty hours. For the purpose of this calculation, "performed at the project" includes only hours worked at the qualified energy project and devoted to site preparation or protection, construction and installation, and the unloading and

distribution of materials at the project site, but does not include hours worked by superintendents, owners, manufacturers' representatives, persons employed in a bona fide executive, management, supervisory, or administrative capacity, or persons whose sole employment on the project is transporting materials or persons to the project site.

(5) "Solar energy project" means an energy project composed of an energy facility using solar panels to generate electricity.

(6) "Internet identifier of record" has the same meaning as in section 9.312 of the Revised Code.

(7) "Applicable year" means the later of the following:

(a) The tax year in which the secretary of the treasury of the United States, or the secretary's delegate, determines, in accordance with section 45Y of the Internal Revenue Code, that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than twenty-five per cent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022;

(b) Tax year 2029.

(8) "Internal Revenue Code" means the Internal Revenue Code as of ~~the effective date of this amendment~~ October 3, 2023.

(B)(1) Tangible personal property of a qualified energy project using renewable energy resources is exempt from taxation for tax years 2011 through the applicable year if all of the following conditions are satisfied:

(a) On or before the last day of the tax year preceding

the applicable year, the owner or a lessee pursuant to a sale and leaseback transaction of the project submits an application to the power siting board for a certificate under section 4906.20 of the Revised Code, or if that section does not apply, submits an application for any approval, consent, permit, or certificate or satisfies any condition required by a public agency or political subdivision of this state for the construction or initial operation of an energy project.

(b) Construction or installation of the energy facility begins on or after January 1, 2009, and before the first day of the applicable year. For the purposes of this division, construction begins on the earlier of the date of application for a certificate or other approval or permit described in division (B)(1)(a) of this section, or the date the contract for the construction or installation of the energy facility is entered into.

(c) For a qualified energy project with a nameplate capacity of twenty megawatts or greater, a board of county commissioners of a county in which property of the project is located has adopted a resolution under division (E)(1)(b) or (c) of this section to approve the application submitted under division (E) of this section to exempt the property located in that county from taxation. A board's adoption of a resolution rejecting an application or its failure to adopt a resolution approving the application does not affect the tax-exempt status of the qualified energy project's property that is located in another county.

(2) If tangible personal property of a qualified energy project using renewable energy resources was exempt from taxation under this section beginning in any of tax years 2011

through the applicable year, and the certification under division (E)(2) of this section has not been revoked, the tangible personal property of the qualified energy project is exempt from taxation for the tax year following the applicable year and all ensuing tax years if the property was placed into service before the first day of the tax year following the applicable year, as certified in the construction progress report required under division (F)(2) of this section. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation. An energy project for which certification has been revoked is ineligible for further exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

(C) Tangible personal property of a qualified energy project using clean coal technology, advanced nuclear technology, or cogeneration technology is exempt from taxation for the first tax year that the property would be listed for taxation and all subsequent years if all of the following circumstances are met:

(1) The property was placed into service before January 1, 2021. Tangible personal property that has not been placed into service before that date is taxable property subject to taxation.

(2) For such a qualified energy project with a nameplate capacity of twenty megawatts or greater, a board of county commissioners of a county in which property of the qualified energy project is located has adopted a resolution under division (E)(1)(b) or (c) of this section to approve the

application submitted under division (E) of this section to exempt the property located in that county from taxation. A board's adoption of a resolution rejecting the application or its failure to adopt a resolution approving the application does not affect the tax-exempt status of the qualified energy project's property that is located in another county.

(3) The certification for the qualified energy project issued under division (E)(2) of this section has not been revoked. An energy project for which certification has been revoked is ineligible for exemption under this section. Revocation does not affect the tax-exempt status of the project's tangible personal property for the tax year in which revocation occurs or any prior tax year.

(D) Except as otherwise provided in this section, real property of a qualified energy project is exempt from taxation for any tax year for which the tangible personal property of the qualified energy project is exempted under this section.

(E)(1)(a) A person may apply to the director of development for certification of an energy project as a qualified energy project on or before the following dates:

(i) The last day of the tax year preceding the applicable year, for an energy project using renewable energy resources;

(ii) December 31, 2017, for an energy project using clean coal technology, advanced nuclear technology, or cogeneration technology.

(b) The director shall forward a copy of each application for certification of an energy project with a nameplate capacity of twenty megawatts or greater to the board of county commissioners of each county in which the project is located and

to each taxing unit with territory located in each of the affected counties. Any board that receives from the director a copy of an application submitted under this division shall adopt a resolution approving or rejecting the application unless it has adopted a resolution under division (E)(1)(c) of this section. A resolution adopted under division (E)(1)(b) or (c) of this section may require an annual service payment to be made in addition to the service payment required under division (G) of this section. The sum of the service payment required in the resolution and the service payment required under division (G) of this section shall not exceed nine thousand dollars per megawatt of nameplate capacity located in the county. The resolution shall specify the time and manner in which the payments required by the resolution shall be paid to the county treasurer. The county treasurer shall deposit the payment to the credit of the county's general fund to be used for any purpose for which money credited to that fund may be used.

The board shall send copies of the resolution to the owner of the facility and the director by certified mail or, if the board has record of an internet identifier of record associated with the owner or director, by ordinary mail and by that internet identifier of record. The board shall send such notice within thirty days after receipt of the application, or a longer period of time if authorized by the director.

(c) A board of county commissioners may adopt a resolution declaring the county to be an alternative energy zone and declaring all applications submitted to the director of development under this division after the adoption of the resolution, and prior to its repeal, to be approved by the board.

All tangible personal property and real property of an energy project with a nameplate capacity of twenty megawatts or greater is taxable if it is located in a county in which the board of county commissioners adopted a resolution rejecting the application submitted under this division or failed to adopt a resolution approving the application under division (E)(1)(b) or (c) of this section.

(2) The director shall certify an energy project if all of the following circumstances exist:

(a) The application was timely submitted.

(b) For an energy project with a nameplate capacity of twenty megawatts or greater, a board of county commissioners of at least one county in which the project is located has adopted a resolution approving the application under division (E)(1)(b) or (c) of this section.

(c) No portion of the project's facility was used to supply electricity before December 31, 2009.

(d) For construction or installation of a qualified energy project described in division (B)(1)(b) of this section, that the project is subject to wage requirements described in section 45(b)(7)(A) of the Internal Revenue Code and apprenticeship requirements described in section 45(b)(8)(A)(i) of the Internal Revenue Code, provided both of the following apply:

(i) The person applies for such certificate after ~~the effective date of this amendment~~ October 3, 2023.

(ii) A board of commissioners of at least one county in which the project is located is required to adopt a resolution approving the application under division (E)(1)(b) or (c) of this section.

(3) The director shall deny a certification application if the director determines the person has failed to comply with any requirement under this section. The director may revoke a certification if the director determines the person, or subsequent owner or lessee pursuant to a sale and leaseback transaction of the qualified energy project, has failed to comply with any requirement under this section. Upon certification or revocation, the director shall notify the person, owner, or lessee, the tax commissioner, and the county auditor of a county in which the project is located of the certification or revocation. Notice shall be provided in a manner convenient to the director.

(F) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall do each of the following:

(1) Comply with all applicable regulations;

(2) File with the director of development a certified construction progress report before the first day of March of each year during the energy facility's construction or installation indicating the percentage of the project completed, and the project's nameplate capacity, as of the preceding thirty-first day of December. Unless otherwise instructed by the director of development, the owner or lessee of an energy project shall file a report with the director on or before the first day of March each year after completion of the energy facility's construction or installation indicating the project's nameplate capacity as of the preceding thirty-first day of December. Not later than sixty days after June 17, 2010, the owner or lessee of an energy project, the construction of which was completed before June 17, 2010, shall file a certificate

indicating the project's nameplate capacity.

(3) File with the director of development, in a manner prescribed by the director, a report of the total number of full-time equivalent employees, and the total number of full-time equivalent employees domiciled in Ohio, who are employed in the construction or installation of the energy facility;

(4) For energy projects with a nameplate capacity of twenty megawatts or greater, repair all roads, bridges, and culverts affected by construction as reasonably required to restore them to their preconstruction condition, as determined by the county engineer in consultation with the local jurisdiction responsible for the roads, bridges, and culverts. In the event that the county engineer deems any road, bridge, or culvert to be inadequate to support the construction or decommissioning of the energy facility, the road, bridge, or culvert shall be rebuilt or reinforced to the specifications established by the county engineer prior to the construction or decommissioning of the facility. The owner or lessee of the facility shall post a bond in an amount established by the county engineer and to be held by the board of county commissioners to ensure funding for repairs of roads, bridges, and culverts affected during the construction. The bond shall be released by the board not later than one year after the date the repairs are completed. The energy facility owner or lessee pursuant to a sale and leaseback transaction shall post a bond, as may be required by the Ohio power siting board in the certificate authorizing commencement of construction issued pursuant to section 4906.10 of the Revised Code, to ensure funding for repairs to roads, bridges, and culverts resulting from decommissioning of the facility. The energy facility owner or lessee and the county engineer may enter into an agreement

regarding specific transportation plans, reinforcements, modifications, use and repair of roads, financial security to be provided, and any other relevant issue.

(5) Provide or facilitate training for fire and emergency responders for response to emergency situations related to the energy project and, for energy projects with a nameplate capacity of twenty megawatts or greater, at the person's expense, equip the fire and emergency responders with proper equipment as reasonably required to enable them to respond to such emergency situations;

(6)(a) Except as otherwise provided in this division, for projects for which certification as a qualified energy project was applied for, under division (E) of this section, before ~~the effective date of this amendment~~ October 3, 2023, maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to total full-time equivalent employees employed in the construction or installation of the energy project of not less than eighty per cent in the case of a solar energy project, and not less than fifty per cent in the case of any other energy project. A person applying for such a qualified energy project may certify to the director of development that the project will be voluntarily subject to the wage requirements described in section 45(b)(7)(A) of the Internal Revenue Code and apprenticeship requirements described in section 45(b)(8)(A)(i) of the Internal Revenue Code as authorized in division (F)(6)(b) of this section. Upon receipt of that certification, the project shall comply with division (F)(6)(b) of this section rather than division (F)(6)(a) of this section.

(b) For projects for which certification as a qualified

energy project was applied for, under division (E) of this section, on or after ~~the effective date of this amendment~~ October 3, 2023, maintain a ratio of Ohio-domiciled full-time equivalent employees employed in the construction or installation of the energy project to total full-time equivalent employees employed in the construction or installation of the energy project of not less than seventy per cent in the case of a solar energy project, and not less than fifty per cent in the case of any other energy project.

(c) For purposes of divisions (F)(6)(a) and (b) of this section, in the case of an energy project for which certification from the power siting board is required under section 4906.20 of the Revised Code, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed in the certificate application, if such projection is required under regulations adopted pursuant to section 4906.03 of the Revised Code, whichever is greater. For all other energy projects, the number of full-time equivalent employees employed in the construction or installation of the energy project equals the number actually employed or the number projected to be employed by the director of development, whichever is greater. To estimate the number of employees to be employed in the construction or installation of an energy project, the director shall use a generally accepted job-estimating model in use for renewable energy projects, including but not limited to the job and economic development impact model. The director may adjust an estimate produced by a model to account for variables not accounted for by the model.

(7) For energy projects with a nameplate capacity in

excess of twenty megawatts, establish a relationship with any of the following to educate and train individuals for careers in the wind or solar energy industry:

(a) A member of the university system of Ohio as defined in section 3345.011 of the Revised Code;

(b) A person offering an apprenticeship program registered with the employment and training administration within the United States department of labor or with the apprenticeship council created by section 4139.02 of the Revised Code;

(c) A career-technical center, joint vocational school district, comprehensive career-technical center, or compact career-technical center;

(d) A training center operated by a labor organization, or with a training center operated by a for-profit or nonprofit organization.

The relationship may include endowments, cooperative programs, internships, apprenticeships, research and development projects, and curriculum development.

(8) Offer to sell power or renewable energy credits from the energy project to electric distribution utilities or electric service companies subject to renewable energy resource requirements under section 4928.64 of the Revised Code that have issued requests for proposal for such power or renewable energy credits. If no electric distribution utility or electric service company issues a request for proposal on or before December 31, 2010, or accepts an offer for power or renewable energy credits within forty-five days after the offer is submitted, power or renewable energy credits from the energy project may be sold to other persons. Division (F)(8) of this section does not apply

if:

(a) The owner or lessee is a rural electric company or a municipal power agency as defined in section 3734.058 of the Revised Code.

(b) The owner or lessee is a person that, before completion of the energy project, contracted for the sale of power or renewable energy credits with a rural electric company or a municipal power agency.

(c) The owner or lessee contracts for the sale of power or renewable energy credits from the energy project before June 17, 2010.

(9) Make annual service payments as required by division (G) of this section and as may be required in a resolution adopted by a board of county commissioners under division (E) of this section.

(G) The owner or a lessee pursuant to a sale and leaseback transaction of a qualified energy project shall make annual service payments in lieu of taxes to the county treasurer on or before the final dates for payments of taxes on public utility personal property on the real and public utility personal property tax list for each tax year for which property of the energy project is exempt from taxation under this section. The county treasurer shall allocate the payment on the basis of the project's physical location. Upon receipt of a payment, or if timely payment has not been received, the county treasurer shall certify such receipt or non-receipt to the director of development and tax commissioner in a form determined by the director and commissioner, respectively. Each payment shall be in the following amount:

(1) In the case of a solar energy project, seven thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first-day of December of the preceding tax year;

(2) In the case of any other energy project using renewable energy resources, the following:

(a) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of not less than seventy-five per cent, six thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(b) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than seventy-five per cent but not less than sixty per cent, seven thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(c) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than sixty per cent but not less than fifty per cent, eight thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year.

(3) In the case of an energy project using clean coal technology, advanced nuclear technology, or cogeneration

technology, the following:

(a) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of not less than seventy-five per cent, six thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(b) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than seventy-five per cent but not less than sixty per cent, seven thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year;

(c) If the project maintains during the construction or installation of the energy facility a ratio of Ohio-domiciled full-time equivalent employees to total full-time equivalent employees of less than sixty per cent but not less than fifty per cent, eight thousand dollars per megawatt of nameplate capacity located in the county as of the thirty-first day of December of the preceding tax year.

(H) The director of development in consultation with the tax commissioner shall adopt rules pursuant to Chapter 119. of the Revised Code to implement and enforce this section.

(I) This section and any payments in lieu of taxes made as required under this section continue to apply and be required notwithstanding the enactment of S.B. 2 of the 136th general assembly.

Sec. 5727.76. (A) As used in this section, "qualifying property" means tangible personal property that is dedicated to transporting or transmitting electricity or natural gas and that is placed into service in a priority investment area designated under section 122.161 of the Revised Code during a time when that designation is in effect.

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

Section 2. That existing sections 303.213, 519.213, 713.081, 3313.372, 3313.373, 4905.03, 4906.01, 4906.03, 4906.06, 4906.07, 4906.10, 4909.04, 4909.05, 4909.052, 4909.06, 4909.07, 4909.08, 4909.15, 4909.156, 4909.173, 4909.174, 4909.18, 4909.19, 4909.191, 4909.42, 4928.01, 4928.05, 4928.08, 4928.14, 4928.141, 4928.142, 4928.144, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 4928.542, 4928.64, 4928.645, 4929.20, 4933.81, 5711.01, 5727.01, 5727.031, 5727.06, 5727.11, 5727.111, and 5727.75 of the Revised Code are hereby repealed.

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

Section 4. (A) Beginning on the effective date of this section, no electric distribution utility shall collect from its retail customers in this state any charge that was authorized under section 4928.148 of the Revised Code prior to the repeal of that section by this act for retail recovery of prudently incurred costs related to a legacy generation resource. Beginning on the effective date of this section, the electric distribution utility shall not apply for, and the public

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

The public utilities commission shall continue any investigation commenced pursuant to section 4928.148 of the Revised Code prior to the repeal of that section by this act for purposes of determining the prudence and reasonableness of the actions of electric distribution utilities with ownership interests in the legacy generation resource, including their decisions related to offering the contractual commitment into the wholesale markets, and excluding from recovery those costs that the commission determines imprudent and unreasonable.

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

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

Section 5. Section 4909.193 as enacted by this act and the amendments to sections 4909.19 and 4909.42 of the Revised Code by this act apply to applications filed under section 4909.18 of the Revised Code on or after the effective date of this section.

Section 6. On the effective date of this section, or as soon as possible thereafter, the Treasurer of State shall transfer the cash balance of amounts remaining in the solar generation fund to the school energy performance contracting loan fund created in section 3313.378 of the Revised Code.

Section 7. Section 4928.01 of the Revised Code is presented in this act as a composite of the section as amended by both H.B. 308 and H.B. 315 of the 135th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.