

As Passed by the House

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 128

Representatives Hoops, Stein

Cosponsors: Representatives Carfagna, Abrams, Carruthers, Click, Crossman, Cutrona, Denson, Fraizer, Ghanbari, Gross, Hall, Holmes, Householder, Johnson, Jones, Lipps, McClain, Merrin, Miller, A., Ray, Riedel, Roemer, Seitz, Smith, K., Stephens, Wiggam, Young, T., Speaker Cupp

A BILL

To amend sections 3706.40, 3706.41, 3706.43, 1
3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 2
4928.143, 4928.642, and 4928.645; to enact 3
sections 3706.491, 3706.551, and 4906.105; and 4
to repeal sections 3706.53, 3706.61, 4928.471, 5
and 5727.231 of the Revised Code to make changes 6
regarding electric utility service law, to 7
repeal certain provisions of, and limit to solar 8
resources the credit payment provisions of, H.B. 9
6 of the 133rd General Assembly, and to provide 10
refunds to retail electric customers in the 11
state. 12

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

Section 1. That sections 3706.40, 3706.41, 3706.43, 13
3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 4928.143, 4928.642, 14
and 4928.645 be amended and sections 3706.491, 3706.551, and 15
4906.105 of the Revised Code be enacted to read as follows: 16

Sec. 3706.40. As used in sections 3706.40 to 3706.65 of
the Revised Code: 17
18

~~(A) "Qualifying nuclear resource" means an electric-
generating facility in this state fueled by nuclear power.~~ 19
20

~~(B) "Qualifying renewable solar resource" means an
electric generating facility in this state to which all of the
following apply:~~ 21
22
23

~~(1) The facility uses or will use solar energy as the
primary energy source.~~ 24
25

~~(2) The facility obtained a certificate for construction
of a major utility facility from the power siting board prior to
June 1, 2019.~~ 26
27
28

~~(3) The facility is interconnected with the transmission
grid that is subject to the operational control of PJM
interconnection, L.L.C., or its successor organization.~~ 29
30
31

~~(C) "Credit price adjustment" means a reduction to the
price for each nuclear resource credit equal to the market price-
index minus the strike price.~~ 32
33
34

~~(D) "Strike price" means forty six dollars per megawatt-
hour.~~ 35
36

~~(E) "Market price index" means the sum, expressed in
dollars per megawatt hour, of both of the following for the
upcoming twelve month period that begins the first day of June-
and ends the thirty first day of May:~~ 37
38
39
40

~~(1) Projected energy prices, determined using futures
contracts for the PJM AEP Dayton hub;~~ 41
42

~~(2) Projected capacity prices, determined using PJM's~~ 43

~~rest of RTO market clearing price.~~ 44

~~(F)~~ (B) "Electric distribution utility" has the same 45
meaning as in section 4928.01 of the Revised Code. 46

Sec. 3706.41. ~~(A)~~ Not later than February 1, 2020, the 47
owner or operator of a ~~qualifying nuclear resource or~~ qualifying 48
~~renewable solar~~ resource may apply to the Ohio air quality 49
development authority to receive payments for ~~nuclear resource~~ 50
~~credits or renewable solar energy credits, as applicable,~~ under 51
section 3706.55 of the Revised Code. 52

~~(B)~~ An application submitted under division ~~(A)~~ of this 53
section for a ~~qualifying nuclear resource~~ shall include all of 54
the following information pertaining to the resource: 55

~~(1) Financial information;~~ 56

~~(2) Certified cost and revenue projections through~~ 57
~~December 31, 2026;~~ 58

~~(3) Operation and maintenance expenses;~~ 59

~~(4) Fuel expenses, including spent fuel expenses;~~ 60

~~(5) Nonfuel capital expenses;~~ 61

~~(6) Fully allocated overhead costs;~~ 62

~~(7) The cost of operational risks and market risks that~~ 63
~~would be avoided by ceasing operation of the resource;~~ 64

~~(8) Any other information, financial or otherwise, that~~ 65
~~demonstrates that the resource is projected not to continue~~ 66
~~being operational.~~ 67

~~(C)~~ As used in this section: 68

~~(1) "Operational risks" include the risk that operating~~ 69

~~costs will be higher than anticipated because of new regulatory mandates or equipment failures and the risk that per megawatt-hour costs will be higher than anticipated because of a lower than expected capacity factor.~~ 70
71
72
73

~~(2) "Market risks" include the risk of a forced outage and the associated costs arising from contractual obligations, and the risk that output from the resource may not be able to be sold at projected levels.~~ 74
75
76
77

Sec. 3706.43. After receiving an application under section 3706.41 of the Revised Code, the Ohio air quality development authority shall review and approve the application, not later than March 31, 2020, if ~~all of the following apply, as applicable:~~ 78
79
80
81
82

~~(A) The the resource meets the definition of a qualifying nuclear resource or qualifying renewable solar resource in section 3706.40 of the Revised Code.~~ 83
84
85

~~(B) For a qualifying nuclear resource only, both of the following apply:~~ 86
87

~~(1) The application meets the requirements of section 3706.41 of the Revised Code.~~ 88
89

~~(2) The resource's operator maintains both a principal place of business in this state and a substantial presence in this state with regard to its business operations, offices, and transactions.~~ 90
91
92
93

Sec. 3706.45. (A) An owner or operator of a qualifying nuclear resource or qualifying renewable solar resource whose application was approved under section 3706.43 of the Revised Code shall report to the Ohio air quality development authority, not later than seven days after the close of each quarter, the 94
95
96
97
98

number of megawatt hours the resource produced, if any, in the 99
previous quarter. The first report shall be made not later than 100
April 7, 2020, and the last report shall be made not later than 101
January 7, 2027. The information reported shall be in accordance 102
with data from the generation attribute tracking designated by 103
the authority. 104

~~(B) The authority shall issue one nuclear resource credit~~ 105
~~to a qualifying nuclear resource for each megawatt hour of~~ 106
~~electricity that is both reported under division (A) of this~~ 107
~~section and approved by the authority.~~ The authority shall issue 108
one renewable solar energy credit to a qualifying renewable 109
solar resource for each megawatt hour of electricity that is 110
both reported under division (A) of this section and approved by 111
the authority. 112

~~(C) Except as provided in section 3706.61 of the Revised~~ 113
~~Code, the price for a nuclear resource credit paid under section~~ 114
~~3706.55 of the Revised Code shall be nine dollars.~~ 115

~~(D) The price for a renewable solar energy credit paid~~ 116
under section 3706.55 of the Revised Code shall be nine dollars. 117

Sec. 3706.46. (A) (1) Beginning for all bills rendered on 118
or after January 1, 2021, by an electric distribution utility in 119
this state, such electric distribution utility shall collect 120
from all of its retail electric customers in this state, each 121
month, a charge ~~or charges~~ which, in the aggregate, are is 122
sufficient to produce ~~the following a~~ revenue ~~requirements.~~ 123

~~(a) One hundred fifty million dollars annually for total~~ 124
~~disbursements required under section 3706.55 of the Revised Code~~ 125
~~from the nuclear generation fund;~~ 126

~~(b) Twenty requirement of twenty million dollars annually~~ 127

for total disbursements required under section 3706.55 of the 128
Revised Code from the ~~renewable~~-solar generation fund. 129

(2) The public utilities commission shall determine the 130
method by which the revenue is allocated or assigned to each 131
electric distribution utility for billing and collection, 132
provided that the method of allocation shall be based on the 133
relative number of customers, relative quantity of kilowatt hour 134
sales, or a combination of the two. The level and structure of 135
the charge shall be authorized by the commission through a 136
process that the commission shall determine is not for an 137
increase in any rate, joint rate, toll, classification, charge, 138
or rental, notwithstanding anything to the contrary in Title 139
XLIX of the Revised Code. 140

(B) In authorizing the level and structure of any charge 141
~~or charges~~ to be billed and collected by each electric 142
distribution utility, the commission shall ensure that the per- 143
customer monthly charge for residential customers does not 144
exceed ~~eighty-five~~-ten cents and that the per-customer monthly 145
charge for industrial customers eligible to become self- 146
assessing purchasers pursuant to division (C) of section 5727.81 147
of the Revised Code does not exceed two ~~thousand four~~-hundred 148
forty-two dollars. For nonresidential customers that are not 149
self-assessing purchasers, the level and design of the charge ~~or~~- 150
~~charges~~ shall be established in a manner that avoids abrupt or 151
excessive total net electric bill impacts for typical customers. 152

(C) Each charge authorized by the commission under this 153
section shall be subject to adjustment so as to reconcile actual 154
revenue collected with the revenue needed to meet the revenue 155
~~requirements~~-requirement under division (A) (1) of this section. 156
The commission shall authorize each electric distribution 157

utility to adopt accounting practices to facilitate such 158
reconciliation. Notwithstanding any other provisions of the 159
Revised Code, the charge ~~or charges~~ authorized by the commission 160
may continue beyond December 31, 2027, only if it is necessary 161
to reconcile actual revenue collected under this section during 162
the period ending on December 31, 2027, with the actual revenue 163
needed to meet the revenue ~~requirements~~ requirement under 164
division (A)(1) of this section for required disbursements under 165
section 3706.55 of the Revised Code that may be due and owing 166
during the same period. Such continuation shall be authorized 167
only for such period of time beyond December 31, 2027, as may be 168
reasonably necessary to complete the reconciliation. 169

Sec. 3706.49. (A) There is hereby created ~~the nuclear~~ 170
~~generation fund and the renewable solar~~ generation fund. ~~Each~~ 171
The fund shall be in the custody of the treasurer of state but 172
shall not be part of the state treasury. ~~Each~~ The fund shall 173
consist of the charges collected under section 3706.46 of the 174
Revised Code and deposited ~~in accordance with section 3706.53 of~~ 175
~~the Revised Code~~ by the Ohio air quality development authority, 176
in consultation with the public utilities commission. The 177
interest generated by ~~each~~ the fund shall be retained ~~by each~~ 178
~~respective~~ in the fund and used for the purposes set forth in 179
sections 3706.40 to 3706.65 of the Revised Code. 180

(B) The fund shall be administered by the Ohio air quality 181
development authority, and the authority shall request the 182
treasurer of state to create the account for the fund. The 183
treasurer of state shall distribute the moneys in the ~~funds~~ fund 184
in accordance with directions provided by the ~~Ohio air quality~~ 185
~~development~~ authority. Before giving directions under this 186
division, the authority shall consult with the public utilities 187
commission. 188

Sec. 3706.491. (A) Except as provided in division (B) of 189
this section, each fiscal year, beginning July 1, 2021, and 190
ending June 30, 2029, and subject to controlling board approval, 191
the Ohio air quality development authority may use, from the 192
solar generation fund created under section 3706.49 of the 193
Revised Code, up to a maximum of three hundred thousand dollars 194
to pay for the authority's administrative costs for that year 195
under sections 3706.40 to 3706.65 of the Revised Code. 196

(B) In addition to the amount approved in division (A) of 197
this section for fiscal year 2022 and subject to controlling 198
board approval, the authority may use the following amounts in 199
fiscal year 2022 from the solar generation fund: 200

(1) Up to three hundred thousand dollars to pay for the 201
authority's administrative costs incurred in fiscal year 2020; 202

(2) Up to three hundred thousand dollars to pay for the 203
authority's administrative costs incurred in fiscal year 2021. 204

Sec. 3706.55. (A) For the period beginning with April of 205
2021 and ending with January of 2028, the Ohio air quality 206
development authority shall, in April of 2021 and every three 207
months thereafter through the end of the period, and not later 208
than the twenty-first day of the month, direct the treasurer of 209
state to remit money from the ~~funds~~ solar generation fund 210
created under section 3706.49 of the Revised Code ~~as follows:~~ 211

~~(1) Subject to sections 3706.59 and 3706.61 of the Revised~~ 212
~~Code, from the nuclear generation fund to the owner or operator~~ 213
~~of a qualifying nuclear resource, in the amount equivalent to~~ 214
~~the number of credits earned by the resource during the quarter~~ 215
~~that ended twelve months prior to the last day of the previous~~ 216
~~quarter multiplied by the credit price, and as directed by the~~ 217

~~authority in accordance with section 3706.61 of the Revised Code,~~ 218
~~Code,~~ 219

~~(2) Subject to section 3706.59 of the Revised Code, from~~ 220
~~the renewable generation fund the moneys from the fund shall be~~ 221
~~remitted to the owners or operators of qualifying renewable~~ 222
~~solar resources, in the amount equivalent to the number of~~ 223
~~credits earned by the resources during the quarter that ended~~ 224
~~twelve months prior to the last day of the previous quarter~~ 225
~~multiplied by the credit price.~~ 226

(B) Notwithstanding section 4905.32 of the Revised Code, 227
any amounts remaining in the ~~nuclear generation fund and the~~ 228
~~renewable generation fund~~ as of December 31, 2027, minus the 229
remittances that are required to be made between that date and 230
January 21, 2028, shall be refunded to customers in a manner 231
that shall be determined by the authority in consultation with 232
the public utilities commission. 233

Sec. 3706.551. (A) Notwithstanding the solar energy credit 234
application deadlines for qualifying solar resources under 235
sections 3706.41 and 3706.43 of the Revised Code, the Ohio air 236
quality development authority shall rereview and approve an 237
application from a qualifying solar resource if the resource 238
submitted the application before March 1, 2020. 239

(B) The deadlines for the quarterly reports required under 240
section 3706.45 of the Revised Code that have passed before the 241
effective date of this section do not apply to a qualifying 242
solar resource whose application for solar energy credits is 243
approved under division (A) of this section. 244

Sec. 3706.59. ~~(A) If the money in the nuclear generation~~ 245
~~fund is insufficient in a particular quarter to make the~~ 246

~~payments in the amount required under division (A) (1) of section 3706.55 of the Revised Code, then the Ohio air quality development authority shall, not later than twenty one days after the close of any quarter in which the owner or operator was not fully compensated, direct the treasurer of state to remit money from the nuclear generation fund to pay for the unpaid credits.~~ 247
248
249
250
251
252
253

~~(B)~~ If the money in the ~~renewable solar~~ generation fund is insufficient to make the payments in the amounts required under ~~division (A) (2) of section 3706.55 of the Revised Code for all owners and operators of qualifying renewable solar resources,~~ then the authority shall do both of the following: 254
255
256
257
258

~~(1)~~ (A) Not later than twenty-one days after the close of the quarter in which the charges collected were insufficient, direct the treasurer to prorate payments from the total amount available in the ~~renewable solar~~ generation fund, based on the number of each resource's credits earned during the quarter that ended twelve months prior to the last day of the previous quarter; 259
260
261
262
263
264
265

~~(2)~~ (B) Not later than twenty-one days after the close of any quarter in which the owners or operators received prorated payments under division ~~(B) (1)~~ (A) of this section, direct the treasurer of state to remit money from the ~~renewable solar~~ generation fund to pay for the unpaid credits. Unpaid credits paid for under division ~~(B) (2)~~ of this section shall be paid before any other remittances are made under ~~division (A) (2) of section 3706.55 of the Revised Code.~~ 266
267
268
269
270
271
272
273

Sec. 4906.105. The power siting board shall submit a report to the general assembly, not later than December 1, 2021, on whether the current requirements for the planning of the 274
275
276

power transmission system and associated facilities investment 277
in this state are cost effective and in the interest of 278
consumers. The board shall hold at least one public meeting 279
before completing the report. The board shall complete the 280
report in consultation with JobsOhio and may consult with or 281
request the assistance of PJM interconnection regional 282
transmission organization, L.L.C., the independent market 283
monitor for PJM interconnection regional transmission 284
organization, L.L.C. and other interested stakeholders, such as 285
transmission owners. The report may include any recommendations 286
for legislative changes to ensure transmission planning is cost 287
effective and in the interest of consumers, including 288
recommendations regarding any of the following: 289

(A) Whether the definition of a major utility facility 290
should include an electric transmission line of a design 291
capacity at or above sixty-nine kilovolts and associated 292
facilities the costs of which are recovered as a transmission 293
asset by the transmission owners; 294

(B) Whether the criteria for an accelerated certificate 295
application should be modified; 296

(C) Whether the certification process is sufficiently 297
transparent; 298

(D) Whether the board should require the following for, or 299
determine if the following apply to, a transmission project 300
certification application: 301

(1) That alternative transmission projects were 302
considered; 303

(2) That the project was competitively bid or compared to 304
the results of a competitive bid; 305

(3) That the project has been considered in the context of 306
the utility's larger transmission plan; 307

(4) That the project has been considered in the context of 308
the regional transmission planning process of PJM 309
interconnection regional transmission organization, L.L.C.; 310

(5) That the project could not have been deferred or 311
redesigned to achieve the same operational result at a lower 312
overall cost; 313

(6) That the project has provided historical information 314
for an existing transmission project or information for a 315
planned or proposed project. 316

Sec. 4928.143. (A) For the purpose of complying with 317
section 4928.141 of the Revised Code, an electric distribution 318
utility may file an application for public utilities commission 319
approval of an electric security plan as prescribed under 320
division (B) of this section. The utility may file that 321
application prior to the effective date of any rules the 322
commission may adopt for the purpose of this section, and, as 323
the commission determines necessary, the utility immediately 324
shall conform its filing to those rules upon their taking 325
effect. 326

(B) Notwithstanding any other provision of Title XLIX of 327
the Revised Code to the contrary except division (D) of this 328
section, divisions (I), (J), and (K) of section 4928.20, 329
division (E) of section 4928.64, and section 4928.69 of the 330
Revised Code: 331

(1) An electric security plan shall include provisions 332
relating to the supply and pricing of electric generation 333
service. In addition, if the proposed electric security plan has 334

a term longer than three years, it may include provisions in the 335
plan to permit the commission to test the plan pursuant to 336
division (E) of this section and any transitional conditions 337
that should be adopted by the commission if the commission 338
terminates the plan as authorized under that division. 339

(2) The plan may provide for or include, without 340
limitation, any of the following: 341

(a) Automatic recovery of any of the following costs of 342
the electric distribution utility, provided the cost is 343
prudently incurred: the cost of fuel used to generate the 344
electricity supplied under the offer; the cost of purchased 345
power supplied under the offer, including the cost of energy and 346
capacity, and including purchased power acquired from an 347
affiliate; the cost of emission allowances; and the cost of 348
federally mandated carbon or energy taxes; 349

(b) A reasonable allowance for construction work in 350
progress for any of the electric distribution utility's cost of 351
constructing an electric generating facility or for an 352
environmental expenditure for any electric generating facility 353
of the electric distribution utility, provided the cost is 354
incurred or the expenditure occurs on or after January 1, 2009. 355
Any such allowance shall be subject to the construction work in 356
progress allowance limitations of division (A) of section 357
4909.15 of the Revised Code, except that the commission may 358
authorize such an allowance upon the incurrence of the cost or 359
occurrence of the expenditure. No such allowance for generating 360
facility construction shall be authorized, however, unless the 361
commission first determines in the proceeding that there is need 362
for the facility based on resource planning projections 363
submitted by the electric distribution utility. Further, no such 364

allowance shall be authorized unless the facility's construction 365
was sourced through a competitive bid process, regarding which 366
process the commission may adopt rules. An allowance approved 367
under division (B) (2) (b) of this section shall be established as 368
a nonbypassable surcharge for the life of the facility. 369

(c) The establishment of a nonbypassable surcharge for the 370
life of an electric generating facility that is owned or 371
operated by the electric distribution utility, was sourced 372
through a competitive bid process subject to any such rules as 373
the commission adopts under division (B) (2) (b) of this section, 374
and is newly used and useful on or after January 1, 2009, which 375
surcharge shall cover all costs of the utility specified in the 376
application, excluding costs recovered through a surcharge under 377
division (B) (2) (b) of this section. However, no surcharge shall 378
be authorized unless the commission first determines in the 379
proceeding that there is need for the facility based on resource 380
planning projections submitted by the electric distribution 381
utility. Additionally, if a surcharge is authorized for a 382
facility pursuant to plan approval under division (C) of this 383
section and as a condition of the continuation of the surcharge, 384
the electric distribution utility shall dedicate to Ohio 385
consumers the capacity and energy and the rate associated with 386
the cost of that facility. Before the commission authorizes any 387
surcharge pursuant to this division, it may consider, as 388
applicable, the effects of any decommissioning, deratings, and 389
retirements. 390

(d) Terms, conditions, or charges relating to limitations 391
on customer shopping for retail electric generation service, 392
bypassability, standby, back-up, or supplemental power service, 393
default service, carrying costs, amortization periods, and 394
accounting or deferrals, including future recovery of such 395

deferrals, as would have the effect of stabilizing or providing	396
certainty regarding retail electric service;	397
(e) Automatic increases or decreases in any component of	398
the standard service offer price;	399
(f) Consistent with sections 4928.23 to 4928.2318 of the	400
Revised Code, both of the following:	401
(i) Provisions for the electric distribution utility to	402
securitize any phase-in, inclusive of carrying charges, of the	403
utility's standard service offer price, which phase-in is	404
authorized in accordance with section 4928.144 of the Revised	405
Code;	406
(ii) Provisions for the recovery of the utility's cost of	407
securitization.	408
(g) Provisions relating to transmission, ancillary,	409
congestion, or any related service required for the standard	410
service offer, including provisions for the recovery of any cost	411
of such service that the electric distribution utility incurs on	412
or after that date pursuant to the standard service offer;	413
(h) Provisions regarding the utility's distribution	414
service, including, without limitation and notwithstanding any	415
provision of Title XLIX of the Revised Code to the contrary,	416
provisions regarding single issue ratemaking, a revenue	417
decoupling mechanism or any other incentive ratemaking, and	418
provisions regarding distribution infrastructure and	419
modernization incentives for the electric distribution utility.	420
The latter may include a long-term energy delivery	421
infrastructure modernization plan for that utility or any plan	422
providing for the utility's recovery of costs, including lost	423
revenue, shared savings, and avoided costs, and a just and	424

reasonable rate of return on such infrastructure modernization. 425
As part of its determination as to whether to allow in an 426
electric distribution utility's electric security plan inclusion 427
of any provision described in division (B) (2) (h) of this 428
section, the commission shall examine the reliability of the 429
electric distribution utility's distribution system and ensure 430
that customers' and the electric distribution utility's 431
expectations are aligned and that the electric distribution 432
utility is placing sufficient emphasis on and dedicating 433
sufficient resources to the reliability of its distribution 434
system. 435

(i) Provisions under which the electric distribution 436
utility may implement economic development, job retention, and 437
energy efficiency programs, which provisions may allocate 438
program costs across all classes of customers of the utility and 439
those of electric distribution utilities in the same holding 440
company system. 441

(C) (1) The burden of proof in the proceeding shall be on 442
the electric distribution utility. The commission shall issue an 443
order under this division for an initial application under this 444
section not later than one hundred fifty days after the 445
application's filing date and, for any subsequent application by 446
the utility under this section, not later than two hundred 447
seventy-five days after the application's filing date. Subject 448
to division (D) of this section, the commission by order shall 449
approve or modify and approve an application filed under 450
division (A) of this section if it finds that the electric 451
security plan so approved, including its pricing and all other 452
terms and conditions, including any deferrals and any future 453
recovery of deferrals, is more favorable in the aggregate as 454
compared to the expected results that would otherwise apply 455

under section 4928.142 of the Revised Code. Additionally, if the 456
commission so approves an application that contains a surcharge 457
under division (B) (2) (b) or (c) of this section, the commission 458
shall ensure that the benefits derived for any purpose for which 459
the surcharge is established are reserved and made available to 460
those that bear the surcharge. Otherwise, the commission by 461
order shall disapprove the application. 462

(2) (a) If the commission modifies and approves an 463
application under division (C) (1) of this section, the electric 464
distribution utility may withdraw the application, thereby 465
terminating it, and may file a new standard service offer under 466
this section or a standard service offer under section 4928.142 467
of the Revised Code. 468

(b) If the utility terminates an application pursuant to 469
division (C) (2) (a) of this section or if the commission 470
disapproves an application under division (C) (1) of this 471
section, the commission shall issue such order as is necessary 472
to continue the provisions, terms, and conditions of the 473
utility's most recent standard service offer, along with any 474
expected increases or decreases in fuel costs from those 475
contained in that offer, until a subsequent offer is authorized 476
pursuant to this section or section 4928.142 of the Revised 477
Code, respectively. 478

(D) Regarding the rate plan requirement of division (A) of 479
section 4928.141 of the Revised Code, if an electric 480
distribution utility that has a rate plan that extends beyond 481
December 31, 2008, files an application under this section for 482
the purpose of its compliance with division (A) of section 483
4928.141 of the Revised Code, that rate plan and its terms and 484
conditions are hereby incorporated into its proposed electric 485

security plan and shall continue in effect until the date 486
scheduled under the rate plan for its expiration, and that 487
portion of the electric security plan shall not be subject to 488
commission approval or disapproval under division (C) of this 489
section, and the earnings test provided for in division (F) of 490
this section shall not apply until after the expiration of the 491
rate plan. However, that utility may include in its electric 492
security plan under this section, and the commission may 493
approve, modify and approve, or disapprove subject to division 494
(C) of this section, provisions for the incremental recovery or 495
the deferral of any costs that are not being recovered under the 496
rate plan and that the utility incurs during that continuation 497
period to comply with section 4928.141, division (B) of section 498
4928.64, or division (A) of section 4928.66 of the Revised Code. 499

(E) If an electric security plan approved under division 500
(C) of this section, except one withdrawn by the utility as 501
authorized under that division, has a term, exclusive of phase- 502
ins or deferrals, that exceeds three years from the effective 503
date of the plan, the commission shall test the plan in the 504
fourth year, and if applicable, every fourth year thereafter, to 505
determine whether the plan, including its then-existing pricing 506
and all other terms and conditions, including any deferrals and 507
any future recovery of deferrals, continues to be more favorable 508
in the aggregate and during the remaining term of the plan as 509
compared to the expected results that would otherwise apply 510
under section 4928.142 of the Revised Code. The commission shall 511
also determine the prospective effect of the electric security 512
plan to determine if that effect is substantially likely to 513
provide the electric distribution utility with a return on 514
common equity that is significantly in excess of the return on 515
common equity that is likely to be earned by publicly traded 516

companies, including utilities, that face comparable business 517
and financial risk, with such adjustments for capital structure 518
as may be appropriate. The burden of proof for demonstrating 519
that significantly excessive earnings will not occur shall be on 520
the electric distribution utility. ~~For affiliated Ohio electric~~ 521
~~distribution utilities that operate under a joint electric~~ 522
~~security plan, their total earned return on common equity shall~~ 523
~~be used for purposes of assessing significantly excessive~~ 524
~~earnings.~~ If the test results are in the negative or the 525
commission finds that continuation of the electric security plan 526
will result in a return on equity that is significantly in 527
excess of the return on common equity that is likely to be 528
earned by publicly traded companies, including utilities, that 529
will face comparable business and financial risk, with such 530
adjustments for capital structure as may be appropriate, during 531
the balance of the plan, the commission may terminate the 532
electric security plan, but not until it shall have provided 533
interested parties with notice and an opportunity to be heard. 534
The commission may impose such conditions on the plan's 535
termination as it considers reasonable and necessary to 536
accommodate the transition from an approved plan to the more 537
advantageous alternative. In the event of an electric security 538
plan's termination pursuant to this division, the commission 539
shall permit the continued deferral and phase-in of any amounts 540
that occurred prior to that termination and the recovery of 541
those amounts as contemplated under that electric security plan. 542

(F) With regard to the provisions that are included in an 543
electric security plan under this section, the commission shall 544
consider, following the end of each annual period of the plan, 545
if any such adjustments resulted in excessive earnings as 546
measured by whether the earned return on common equity of the 547

electric distribution utility is significantly in excess of the 548
return on common equity that was earned during the same period 549
by publicly traded companies, including utilities, that face 550
comparable business and financial risk, with such adjustments 551
for capital structure as may be appropriate. ~~In making its~~ 552
~~determination of significantly excessive earnings under this~~ 553
~~division, the commission shall, for affiliated Ohio electric~~ 554
~~distribution utilities that operate under a joint electric~~ 555
~~security plan, use the total of the utilities' earned return on~~ 556
~~common equity.~~ Consideration also shall be given to the capital 557
requirements of future committed investments in this state. The 558
burden of proof for demonstrating that significantly excessive 559
earnings did not occur shall be on the electric distribution 560
utility. If the commission finds that such adjustments, in the 561
aggregate, did result in significantly excessive earnings, it 562
shall require the electric distribution utility to return to 563
consumers the amount of the excess by prospective adjustments; 564
provided that, upon making such prospective adjustments, the 565
electric distribution utility shall have the right to terminate 566
the plan and immediately file an application pursuant to section 567
4928.142 of the Revised Code. Upon termination of a plan under 568
this division, rates shall be set on the same basis as specified 569
in division (C) (2) (b) of this section, and the commission shall 570
permit the continued deferral and phase-in of any amounts that 571
occurred prior to that termination and the recovery of those 572
amounts as contemplated under that electric security plan. In 573
making its determination of significantly excessive earnings 574
under this division, the commission shall not consider, directly 575
or indirectly, the revenue, expenses, or earnings of any 576
~~affiliate that is not an Ohio electric distribution utility or~~ 577
parent company. 578

Sec. 4928.642. Beginning with compliance year 2020, the public utilities commission shall, in accordance with this section, reduce the number of kilowatt hours required for compliance with section 4928.64 of the Revised Code for all electric distribution utilities and all electric services companies in this state. The commission shall determine each utility's and each company's reduction by taking the total amount of kilowatt hours produced, if any, by all qualifying ~~renewable~~ solar resources, as defined in section 3706.40 of the Revised Code, during the preceding compliance year, allocating that total among all electric distribution utilities and electric services companies in proportion to their baselines for the subject compliance year, and subtracting that allocated amount from the utility's or company's compliance amount as otherwise determined under section 4928.64 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 609
amounts of gas. 610

(B) (1) The public utilities commission shall adopt rules 611
specifying that one unit of credit shall equal one megawatt hour 612
of electricity derived from renewable energy resources, except 613
that, for a generating facility of seventy-five megawatts or 614
greater that is situated within this state and has committed by 615
December 31, 2009, to modify or retrofit its generating unit or 616
units to enable the facility to generate principally from 617
biomass energy by June 30, 2013, each megawatt hour of 618
electricity generated principally from that biomass energy shall 619
equal, in units of credit, the product obtained by multiplying 620
the actual percentage of biomass feedstock heat input used to 621
generate such megawatt hour by the quotient obtained by dividing 622
the then existing unit dollar amount used to determine a 623
renewable energy compliance payment as provided under division 624
(C) (2) (b) of section 4928.64 of the Revised Code by the then 625
existing market value of one renewable energy credit, but such 626
megawatt hour shall not equal less than one unit of credit. 627
Renewable energy resources do not have to be converted to 628
electricity in order to be eligible to receive renewable energy 629
credits. The rules shall specify that, for purposes of 630
converting the quantity of energy derived from biologically 631
derived methane gas to an electricity equivalent, one megawatt 632
hour equals 3,412,142 British thermal units. 633

(2) The rules also shall provide for this state a system 634
of registering renewable energy credits by specifying which of 635
any generally available registries shall be used for that 636
purpose and not by creating a registry. That selected system of 637
registering renewable energy credits shall allow a hydroelectric 638
generating facility to be eligible for obtaining renewable 639

energy credits and shall allow customer-sited projects or 640
actions the broadest opportunities to be eligible for obtaining 641
renewable energy credits. 642

~~(C) Beginning January 1, 2020, a qualifying renewable 643
resource as defined in section 3706.40 of the Revised Code is 644
not eligible to obtain a renewable energy credit under this 645
section for any megawatt hour for which the resource has been 646
issued a renewable energy credit under section 3706.45 of the 647
Revised Code. 648~~

Section 2. That existing sections 3706.40, 3706.41, 649
3706.43, 3706.45, 3706.46, 3706.49, 3706.55, 3706.59, 4928.143, 650
4928.642, and 4928.645 of the Revised Code are hereby repealed. 651

Section 3. That sections 3706.53, 3706.61, 4928.471, and 652
5727.231 of the Revised Code are hereby repealed. 653

Section 4. On and after the effective date of this 654
section, and notwithstanding any provision in Title XLIX of the 655
Revised Code to the contrary, no decoupling mechanism 656
established under section 4928.471 of the Revised Code, as that 657
section existed prior to the effective date of this section, 658
shall remain in effect, and no amount, charge, mechanism, or 659
rider related to that section may be assessed or collected from 660
customers. 661

Section 5. Upon the effective date of this section, and 662
notwithstanding section 4905.32 of the Revised Code and any 663
other provision in Title XLIX of the Revised Code to the 664
contrary, the full amount of revenues collected from customers 665
through an amount, charge, mechanism, or rider established under 666
section 4928.471 of the Revised Code, as that section existed 667
prior to the effective date of this section, shall be promptly 668

refunded to customers from whom the revenues were collected. 669
Refunds paid to customers shall be allocated to customer classes 670
in the same proportion as originally collected. 671

Section 6. Upon the effective date of this section, and 672
notwithstanding section 4905.32 of the Revised Code and any 673
other provision in Title XLIX of the Revised Code to the 674
contrary, both of the following apply: 675

(A) The amounts of money collected from customers 676
resulting from, or attributable to, the amendments to divisions 677
(E) and (F) of section 4928.143 of the Revised Code by H.B. 166 678
of the 133rd General Assembly, shall be treated as follows: 679

(1) The amounts shall be promptly refunded to customers 680
from whom they were collected. 681

(2) The amounts refunded shall be allocated to customer 682
classes in the same proportion as originally collected. 683

(B) The public utilities commission shall reconsider any 684
order or determination it made in compliance with the amendments 685
to divisions (E) and (F) of section 4928.143 of the Revised Code 686
made by H.B. 166 of the 133rd General Assembly prior to the 687
effective date of this section and shall issue a new order or 688
determination in compliance with the provisions of divisions (E) 689
and (F) of section 4928.143 as amended by this act. 690