

As Introduced

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Representatives Skindell, Denson

**Cosponsors: Representatives Kelly, Boggs, Leland, Troy, Smith, K., Weinstein,
Miller, A., O'Brien, Sheehy**

A BILL

To amend section 4928.143 of the Revised Code 1
regarding the significantly excessive earnings 2
determination for an electric distribution 3
utility's electric security plan. 4

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

Section 1. That section 4928.143 of the Revised Code be 5
amended to read as follows: 6

Sec. 4928.143. (A) For the purpose of complying with 7
section 4928.141 of the Revised Code, an electric distribution 8
utility may file an application for public utilities commission 9
approval of an electric security plan as prescribed under 10
division (B) of this section. The utility may file that 11
application prior to the effective date of any rules the 12
commission may adopt for the purpose of this section, and, as 13
the commission determines necessary, the utility immediately 14
shall conform its filing to those rules upon their taking 15
effect. 16

(B) Notwithstanding any other provision of Title XLIX of 17

the Revised Code to the contrary except division (D) of this 18
section, divisions (I), (J), and (K) of section 4928.20, 19
division (E) of section 4928.64, and section 4928.69 of the 20
Revised Code: 21

(1) An electric security plan shall include provisions 22
relating to the supply and pricing of electric generation 23
service. In addition, if the proposed electric security plan has 24
a term longer than three years, it may include provisions in the 25
plan to permit the commission to test the plan pursuant to 26
division (E) of this section and any transitional conditions 27
that should be adopted by the commission if the commission 28
terminates the plan as authorized under that division. 29

(2) The plan may provide for or include, without 30
limitation, any of the following: 31

(a) Automatic recovery of any of the following costs of 32
the electric distribution utility, provided the cost is 33
prudently incurred: the cost of fuel used to generate the 34
electricity supplied under the offer; the cost of purchased 35
power supplied under the offer, including the cost of energy and 36
capacity, and including purchased power acquired from an 37
affiliate; the cost of emission allowances; and the cost of 38
federally mandated carbon or energy taxes; 39

(b) A reasonable allowance for construction work in 40
progress for any of the electric distribution utility's cost of 41
constructing an electric generating facility or for an 42
environmental expenditure for any electric generating facility 43
of the electric distribution utility, provided the cost is 44
incurred or the expenditure occurs on or after January 1, 2009. 45
Any such allowance shall be subject to the construction work in 46
progress allowance limitations of division (A) of section 47

4909.15 of the Revised Code, except that the commission may 48
authorize such an allowance upon the incurrence of the cost or 49
occurrence of the expenditure. No such allowance for generating 50
facility construction shall be authorized, however, unless the 51
commission first determines in the proceeding that there is need 52
for the facility based on resource planning projections 53
submitted by the electric distribution utility. Further, no such 54
allowance shall be authorized unless the facility's construction 55
was sourced through a competitive bid process, regarding which 56
process the commission may adopt rules. An allowance approved 57
under division (B) (2) (b) of this section shall be established as 58
a nonbypassable surcharge for the life of the facility. 59

(c) The establishment of a nonbypassable surcharge for the 60
life of an electric generating facility that is owned or 61
operated by the electric distribution utility, was sourced 62
through a competitive bid process subject to any such rules as 63
the commission adopts under division (B) (2) (b) of this section, 64
and is newly used and useful on or after January 1, 2009, which 65
surcharge shall cover all costs of the utility specified in the 66
application, excluding costs recovered through a surcharge under 67
division (B) (2) (b) of this section. However, no surcharge shall 68
be authorized unless the commission first determines in the 69
proceeding that there is need for the facility based on resource 70
planning projections submitted by the electric distribution 71
utility. Additionally, if a surcharge is authorized for a 72
facility pursuant to plan approval under division (C) of this 73
section and as a condition of the continuation of the surcharge, 74
the electric distribution utility shall dedicate to Ohio 75
consumers the capacity and energy and the rate associated with 76
the cost of that facility. Before the commission authorizes any 77
surcharge pursuant to this division, it may consider, as 78

applicable, the effects of any decommissioning, deratings, and retirements.	79 80
(d) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service;	81 82 83 84 85 86 87
(e) Automatic increases or decreases in any component of the standard service offer price;	88 89
(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:	90 91
(i) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code;	92 93 94 95 96
(ii) Provisions for the recovery of the utility's cost of securitization.	97 98
(g) Provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that the electric distribution utility incurs on or after that date pursuant to the standard service offer;	99 100 101 102 103
(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue	104 105 106 107

decoupling mechanism or any other incentive ratemaking, and 108
provisions regarding distribution infrastructure and 109
modernization incentives for the electric distribution utility. 110
The latter may include a long-term energy delivery 111
infrastructure modernization plan for that utility or any plan 112
providing for the utility's recovery of costs, including lost 113
revenue, shared savings, and avoided costs, and a just and 114
reasonable rate of return on such infrastructure modernization. 115
As part of its determination as to whether to allow in an 116
electric distribution utility's electric security plan inclusion 117
of any provision described in division (B) (2) (h) of this 118
section, the commission shall examine the reliability of the 119
electric distribution utility's distribution system and ensure 120
that customers' and the electric distribution utility's 121
expectations are aligned and that the electric distribution 122
utility is placing sufficient emphasis on and dedicating 123
sufficient resources to the reliability of its distribution 124
system. 125

(i) Provisions under which the electric distribution 126
utility may implement economic development, job retention, and 127
energy efficiency programs, which provisions may allocate 128
program costs across all classes of customers of the utility and 129
those of electric distribution utilities in the same holding 130
company system. 131

(C) (1) The burden of proof in the proceeding shall be on 132
the electric distribution utility. The commission shall issue an 133
order under this division for an initial application under this 134
section not later than one hundred fifty days after the 135
application's filing date and, for any subsequent application by 136
the utility under this section, not later than two hundred 137
seventy-five days after the application's filing date. Subject 138

to division (D) of this section, the commission by order shall 139
approve or modify and approve an application filed under 140
division (A) of this section if it finds that the electric 141
security plan so approved, including its pricing and all other 142
terms and conditions, including any deferrals and any future 143
recovery of deferrals, is more favorable in the aggregate as 144
compared to the expected results that would otherwise apply 145
under section 4928.142 of the Revised Code. Additionally, if the 146
commission so approves an application that contains a surcharge 147
under division (B) (2) (b) or (c) of this section, the commission 148
shall ensure that the benefits derived for any purpose for which 149
the surcharge is established are reserved and made available to 150
those that bear the surcharge. Otherwise, the commission by 151
order shall disapprove the application. 152

(2) (a) If the commission modifies and approves an 153
application under division (C) (1) of this section, the electric 154
distribution utility may withdraw the application, thereby 155
terminating it, and may file a new standard service offer under 156
this section or a standard service offer under section 4928.142 157
of the Revised Code. 158

(b) If the utility terminates an application pursuant to 159
division (C) (2) (a) of this section or if the commission 160
disapproves an application under division (C) (1) of this 161
section, the commission shall issue such order as is necessary 162
to continue the provisions, terms, and conditions of the 163
utility's most recent standard service offer, along with any 164
expected increases or decreases in fuel costs from those 165
contained in that offer, until a subsequent offer is authorized 166
pursuant to this section or section 4928.142 of the Revised 167
Code, respectively. 168

(D) Regarding the rate plan requirement of division (A) of 169
section 4928.141 of the Revised Code, if an electric 170
distribution utility that has a rate plan that extends beyond 171
December 31, 2008, files an application under this section for 172
the purpose of its compliance with division (A) of section 173
4928.141 of the Revised Code, that rate plan and its terms and 174
conditions are hereby incorporated into its proposed electric 175
security plan and shall continue in effect until the date 176
scheduled under the rate plan for its expiration, and that 177
portion of the electric security plan shall not be subject to 178
commission approval or disapproval under division (C) of this 179
section, and the earnings test provided for in division (F) of 180
this section shall not apply until after the expiration of the 181
rate plan. However, that utility may include in its electric 182
security plan under this section, and the commission may 183
approve, modify and approve, or disapprove subject to division 184
(C) of this section, provisions for the incremental recovery or 185
the deferral of any costs that are not being recovered under the 186
rate plan and that the utility incurs during that continuation 187
period to comply with section 4928.141, division (B) of section 188
4928.64, or division (A) of section 4928.66 of the Revised Code. 189

(E) If an electric security plan approved under division 190
(C) of this section, except one withdrawn by the utility as 191
authorized under that division, has a term, exclusive of phase- 192
ins or deferrals, that exceeds three years from the effective 193
date of the plan, the commission shall test the plan in the 194
fourth year, and if applicable, every fourth year thereafter, to 195
determine whether the plan, including its then-existing pricing 196
and all other terms and conditions, including any deferrals and 197
any future recovery of deferrals, continues to be more favorable 198
in the aggregate and during the remaining term of the plan as 199

compared to the expected results that would otherwise apply 200
under section 4928.142 of the Revised Code. The commission shall 201
also determine the prospective effect of the electric security 202
plan to determine if that effect is substantially likely to 203
provide the electric distribution utility with a return on 204
common equity that is significantly in excess of the return on 205
common equity that is likely to be earned by publicly traded 206
companies, including utilities, that face comparable business 207
and financial risk, with such adjustments for capital structure 208
as may be appropriate. The burden of proof for demonstrating 209
that significantly excessive earnings will not occur shall be on 210
the electric distribution utility. ~~For affiliated Ohio electric-~~ 211
~~distribution utilities that operate under a joint electric-~~ 212
~~security plan, their total earned return on common equity shall-~~ 213
~~be used for purposes of assessing significantly excessive-~~ 214
~~earnings.~~ If the test results are in the negative or the 215
commission finds that continuation of the electric security plan 216
will result in a return on equity that is significantly in 217
excess of the return on common equity that is likely to be 218
earned by publicly traded companies, including utilities, that 219
will face comparable business and financial risk, with such 220
adjustments for capital structure as may be appropriate, during 221
the balance of the plan, the commission may terminate the 222
electric security plan, but not until it shall have provided 223
interested parties with notice and an opportunity to be heard. 224
The commission may impose such conditions on the plan's 225
termination as it considers reasonable and necessary to 226
accommodate the transition from an approved plan to the more 227
advantageous alternative. In the event of an electric security 228
plan's termination pursuant to this division, the commission 229
shall permit the continued deferral and phase-in of any amounts 230
that occurred prior to that termination and the recovery of 231

those amounts as contemplated under that electric security plan. 232

(F) With regard to the provisions that are included in an 233
electric security plan under this section, the commission shall 234
consider, following the end of each annual period of the plan, 235
if any such adjustments resulted in excessive earnings as 236
measured by whether the earned return on common equity of the 237
electric distribution utility is significantly in excess of the 238
return on common equity that was earned during the same period 239
by publicly traded companies, including utilities, that face 240
comparable business and financial risk, with such adjustments 241
for capital structure as may be appropriate. ~~In making its~~ 242
~~determination of significantly excessive earnings under this~~ 243
~~division, the commission shall, for affiliated Ohio electric~~ 244
~~distribution utilities that operate under a joint electric~~ 245
~~security plan, use the total of the utilities' earned return on~~ 246
~~common equity.~~ Consideration also shall be given to the capital 247
requirements of future committed investments in this state. The 248
burden of proof for demonstrating that significantly excessive 249
earnings did not occur shall be on the electric distribution 250
utility. If the commission finds that such adjustments, in the 251
aggregate, did result in significantly excessive earnings, it 252
shall require the electric distribution utility to return to 253
consumers the amount of the excess by prospective adjustments; 254
provided that, upon making such prospective adjustments, the 255
electric distribution utility shall have the right to terminate 256
the plan and immediately file an application pursuant to section 257
4928.142 of the Revised Code. Upon termination of a plan under 258
this division, rates shall be set on the same basis as specified 259
in division (C) (2) (b) of this section, and the commission shall 260
permit the continued deferral and phase-in of any amounts that 261
occurred prior to that termination and the recovery of those 262

amounts as contemplated under that electric security plan. In 263
making its determination of significantly excessive earnings 264
under this division, the commission shall not consider, directly 265
or indirectly, the revenue, expenses, or earnings of any 266
~~affiliate that is not an Ohio electric distribution utility~~ or 267
parent company. 268

Section 2. That existing section 4928.143 of the Revised 269
Code is hereby repealed. 270