

I_134_1936

134th General Assembly
Regular Session
2021-2022

Sub. H. B. No. 317

A BILL

To amend sections 4928.14, 4928.141, 4928.143, 1
4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 2
4928.231, 4928.232, and 4928.542; to enact 3
sections 4903.101, 4905.321, and 4909.181; and 4
to repeal section 4928.142 of the Revised Code 5
regarding retail electric customer refunds, a 6
Public Utilities Commission rehearing decision 7
time limit, and competitive power plans to 8
replace market rate offers and electric security 9
plans. 10

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

Section 1. That sections 4928.14, 4928.141, 4928.143, 11
4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 12
4928.232, and 4928.542 be amended and sections 4903.101, 13
4905.321, and 4909.181 of the Revised Code be enacted to read as 14
follows: 15

Sec. 4903.101. The public utilities commission shall 16
render a final decision not later than one hundred eighty days 17
after the date of granting a rehearing under section 4903.10 of 18



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the Revised Code. This section does not apply during a state of 19
emergency declared by the governor. 20

Sec. 4905.321. (A) Notwithstanding section 4905.32 of the 21
Revised Code, all rates, fares, or any other charges paid by 22
customers to a public utility that are later found to be 23
unreasonable, unlawful, or otherwise improper by the supreme 24
court shall be subject to refund from the date of the issuance 25
of the supreme court's decision until the date when, on remand, 26
the public utilities commission establishes new rates to 27
implement the supreme court's decision. 28

(B) The commission shall order the payment of the refunds 29
described in division (A) of this section in a manner designed 30
to allocate the refunds to customer classes in the same 31
proportion as the charges were originally collected. 32

(C) The commission shall determine how to allocate any 33
remaining funds described in division (A) of this section that 34
cannot be refunded for whatever reason. 35

Sec. 4909.181. Not later than five years after the 36
approval of an electric distribution utility's competitive power 37
plan pursuant to section 4928.143 of the Revised Code, and at 38
least once every five years thereafter, the utility shall file a 39
rate case application regarding distribution service under 40
section 4909.18 of the Revised Code. 41

Sec. 4928.14. (A) The failure of a supplier to provide 42
retail electric generation service to customers within the 43
certified territory of an electric distribution utility shall 44
result in the supplier's customers, after reasonable notice, 45
defaulting to the utility's standard service offer ~~under~~ 46
~~sections 4928.141, 4928.142, and 4928.143 of the Revised Code~~ 47

until the customer chooses an alternative supplier. The utility's standard service offer to which the supplier's customers default shall be provided under one of the following: 48
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(1) The standard service offer under section 4928.141 of the Revised Code and section 4928.143 of the Revised Code as amended by H.B. 317 of the 134th general assembly; 51
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(2) The standard service offer established under section 4928.143 of the Revised Code, as that section existed prior to the effective date of the amendments to that section by H.B. 317 of the 134th general assembly and that is still in effect. 54
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(B) A supplier is deemed under this section to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met: 58
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~~(A)~~ (1) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy. 62
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~~(B)~~ (2) The supplier is no longer capable of providing the service. 64
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~~(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. 66
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~~(D)~~ (4) The supplier's certification has been suspended, conditionally rescinded, or rescinded under division (D) of section 4928.08 of the Revised Code. 70
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Sec. 4928.141. ~~(A) Beginning January 1, 2009, an An~~ 73
electric distribution utility shall provide consumers, on a 74
comparable and nondiscriminatory basis within its certified 75

territory, a standard service offer of all competitive retail 76
electric services necessary to maintain essential electric 77
service to consumers, including a firm supply of electric 78
generation service. To that end, the electric distribution 79
utility shall apply to the public utilities commission to 80
establish the standard service offer in accordance with section 81
~~4928.142 or 4928.143 of the Revised Code and, at its discretion,~~ 82
~~may apply simultaneously under both sections, except that the~~ 83
~~utility's first standard service offer application at minimum~~ 84
~~shall include a filing under section 4928.143 of the Revised~~ 85
~~Code. Only a standard service offer authorized in accordance~~ 86
~~with section 4928.142 or 4928.143 of the Revised Code, shall~~ 87
~~serve as the utility's standard service offer for the purpose of~~ 88
~~compliance with this section; and that standard service offer~~ 89
~~shall serve as the utility's default standard service offer for~~ 90
~~the purpose of section 4928.14 of the Revised Code.~~ 91
~~Notwithstanding the foregoing provision, the rate plan of an~~ 92
~~electric distribution utility shall continue for the purpose of~~ 93
~~the utility's compliance with this division until a standard~~ 94
~~service offer is first authorized under section 4928.142 or~~ 95
~~4928.143 of the Revised Code, and, as applicable, pursuant to~~ 96
~~division (D) of section 4928.143 of the Revised Code, any rate~~ 97
~~plan that extends beyond December 31, 2008, shall continue to be~~ 98
~~in effect for the subject electric distribution utility for the~~ 99
~~duration of the plan's term. A standard service offer under~~ 100
~~section 4928.142 or 4928.143 of the Revised Code shall exclude~~ 101
~~any previously authorized allowances for transition costs, with~~ 102
~~such exclusion being effective on and after the date that the~~ 103
~~allowance is scheduled to end under the utility's rate plan.~~ 104

~~(B) The commission shall set the time for hearing of a~~ 105
~~filing under section 4928.142 or 4928.143 of the Revised Code,~~ 106

~~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.~~ 107
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Sec. 4928.143. (A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility ~~may~~ shall file an application for public utilities commission approval of ~~an electric security plan~~ a competitive power plan as prescribed under ~~division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.~~ 112
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~~(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section, divisions (I), (J), and (K) of section 4928.20, division (E) of section 4928.64, and section 4928.69 of the Revised Code:~~ 122
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(1) ~~An electric security~~ A competitive power plan shall include provisions relating to the supply and pricing of electric generation service through a standard service offer pursuant to section 4928.141 of the Revised Code for customers who do not shop for competitive electric generation service. ~~In addition, if the proposed electric security plan has a term longer than three years, it may include provisions in the plan to permit the commission to test the plan pursuant to division (E) of this section and any transitional conditions that should be adopted by the commission if the commission terminates the~~ 127
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~~plan as authorized under that division. The plan's provisions~~ 137
~~shall incorporate the commission's competitive bidding process~~ 138
~~that was implemented by the commission and in effect immediately~~ 139
~~prior to the effective date of the amendments to this section by~~ 140
~~H.B. 317 of the 134th general assembly and under which electric~~ 141
~~distribution utilities established a standard service offer~~ 142
~~under section 4928.141 of the Revised Code. The plan also shall~~ 143
~~incorporate any other commission procedures necessary to ensure~~ 144
~~least cost and reliable generation service. All costs directly~~ 145
~~incurred by the utility in conducting the competitive bidding~~ 146
~~process shall be recovered through the standard service offer~~ 147
~~price.~~ 148

(2) ~~The plan may provide for or include, without~~ 149
~~limitation, provisions that do any of the following:~~ 150

~~(a) Automatic recovery of any of the following costs of~~ 151
~~the electric distribution utility, provided the cost is~~ 152
~~prudently incurred: the cost of fuel used to generate the~~ 153
~~electricity supplied under the offer; the cost of purchased~~ 154
~~power supplied under the offer, including the cost of energy and~~ 155
~~capacity, and including purchased power acquired from an~~ 156
~~affiliate; the cost of emission allowances; and the cost of~~ 157
~~federally mandated carbon or energy taxes;~~ 158

~~(b) A reasonable allowance for construction work in~~ 159
~~progress for any of the electric distribution utility's cost of~~ 160
~~constructing an electric generating facility or for an~~ 161
~~environmental expenditure for any electric generating facility~~ 162
~~of the electric distribution utility, provided the cost is~~ 163
~~incurred or the expenditure occurs on or after January 1, 2009.~~ 164
~~Any such allowance shall be subject to the construction work in~~ 165
~~progress allowance limitations of division (A) of section~~ 166

~~4909.15 of the Revised Code, except that the commission may~~ 167
~~authorize such an allowance upon the incurrence of the cost or~~ 168
~~occurrence of the expenditure. No such allowance for generating~~ 169
~~facility construction shall be authorized, however, unless the~~ 170
~~commission first determines in the proceeding that there is need~~ 171
~~for the facility based on resource planning projections~~ 172
~~submitted by the electric distribution utility. Further, no such~~ 173
~~allowance shall be authorized unless the facility's construction~~ 174
~~was sourced through a competitive bid process, regarding which~~ 175
~~process the commission may adopt rules. An allowance approved~~ 176
~~under division (B) (2) (b) of this section shall be established as~~ 177
~~a nonbypassable surcharge for the life of the facility.~~ 178

~~(c) The establishment of a nonbypassable surcharge for the~~ 179
~~life of an electric generating facility that is owned or~~ 180
~~operated by the electric distribution utility, was sourced~~ 181
~~through a competitive bid process subject to any such rules as~~ 182
~~the commission adopts under division (B) (2) (b) of this section,~~ 183
~~and is newly used and useful on or after January 1, 2009, which~~ 184
~~surcharge shall cover all costs of the utility specified in the~~ 185
~~application, excluding costs recovered through a surcharge under~~ 186
~~division (B) (2) (b) of this section. However, no surcharge shall~~ 187
~~be authorized unless the commission first determines in the~~ 188
~~proceeding that there is need for the facility based on resource~~ 189
~~planning projections submitted by the electric distribution~~ 190
~~utility. Additionally, if a surcharge is authorized for a~~ 191
~~facility pursuant to plan approval under division (C) of this~~ 192
~~section and as a condition of the continuation of the surcharge,~~ 193
~~the electric distribution utility shall dedicate to Ohio~~ 194
~~consumers the capacity and energy and the rate associated with~~ 195
~~the cost of that facility. Before the commission authorizes any~~ 196
~~surcharge pursuant to this division, it may consider, as~~ 197

~~applicable, the effects of any decommissioning, deratings, and retirements.—~~ 198
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~~(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;—~~ 200
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~~(e) Automatic increases or decreases in any component of the standard service offer price;—~~ 207
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~~(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:—~~ 209
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~~(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;—~~ 211
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~~(ii) Provisions for the recovery of the utility's cost of securitization.—~~ 216
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~~(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;—~~ 218
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~~(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—~~ 223
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~~decoupling mechanism or any other incentive ratemaking, and~~ 227
~~provisions regarding distribution infrastructure and~~ 228
~~modernization incentives for the electric distribution utility.~~ 229
The latter may include a long-term energy delivery 230
infrastructure modernization plan for that utility or any plan 231
providing for the utility's recovery of costs, including lost 232
revenue, shared savings, and avoided costs, and a just and 233
reasonable rate of return on such infrastructure modernization. 234
As part of its determination as to whether to allow in an 235
electric distribution utility's electric security plan inclusion 236
of any provision described in division (B) (2) (h) of this 237
section, the commission shall examine the reliability of the 238
electric distribution utility's distribution system and ensure 239
that customers' and the electric distribution utility's 240
expectations are aligned and that the electric distribution 241
utility is placing sufficient emphasis on and dedicating 242
sufficient resources to the reliability of its distribution 243
system. (a) Establish alternative rate recovery mechanisms for 244
distribution costs, which recovery shall be in addition to the 245
base rate recovery approved for the electric distribution 246
utility under section 4909.18 of the Revised Code, provided 247
that: 248

(i) The mechanisms may include distribution riders for the 249
recovery of reasonable and prudent costs or credits, including 250
costs and credits for distribution system upgrades and 251
modernization, infrastructure improvements to accommodate 252
electric vehicle charging, and changes in taxes and in 253
environmental compliance; and 254

(ii) The riders described in division (A) (2) (a) (i) of this 255
section shall be subject to an annual reconciliation, including 256
refunds, as a result of audits conducted by the commission. 257

(b) Authorize full and timely transmission cost recovery 258
through annually reconciled transmission riders, including 259
programs that align retail rate recovery with how utilities 260
incur transmission costs or programs that allow customers to be 261
billed directly for transmission costs. 262

(c) Offer customer price transparency, in addition to the 263
consumer protections of section 4928.10 of the Revised Code. 264

~~(i) (d) Provisions under which~~ Authorize the electric 265
~~distribution utility may to implement economic development, job~~ 266
~~retention, and energy efficiency or interruptible rate programs,~~ 267
~~which provisions may allocate provided that such programs~~ 268
currently in existence on the effective date of the amendments 269
to this section by H.B. 317 of the 134th general assembly may 270
only be terminated on a gradual basis that avoids abrupt or 271
significant rate impacts and that the program costs may be 272
allocated across all classes of customers of the utility and 273
across those of electric distribution utilities in the same 274
holding company system. 275

~~(C) (1) (B) (1) The burden of proof in the proceeding shall~~ 276
~~be on the electric distribution utility. The commission shall~~ 277
initiate a proceeding and shall issue an order under this 278
~~division for an initial application under this section not later~~ 279
~~than one hundred fifty days after the application's filing date~~ 280
~~and, for any subsequent application by the utility under this~~ 281
~~section, not later than two hundred seventy five days after the~~ 282
~~application's filing date. Subject to division (D) of this~~ 283
~~section, the commission by order shall to approve or modify and~~ 284
approve an application filed under division (A) of this section 285
not later than two hundred seventy-five days after the 286
application's filing date. The commission shall approve or 287

~~modify and approve an application if it finds that the electric- 288
security plan so approved, including its pricing and all other- 289
terms and conditions, including any deferrals and any future- 290
recovery of deferrals, is more favorable in the aggregate as- 291
compared to the expected results that would otherwise apply- 292
under section 4928.142 of the Revised Code. Additionally, if the 293
commission so approves an application that contains a surcharge- 294
under division (B)(2)(b) or (c) of this section, the commission- 295
shall ensure that the benefits derived for any purpose for which 296
the surcharge is established are reserved and made available to- 297
those that bear the surcharge. Otherwise, the commission by- 298
order shall disapprove the application.- 299~~

~~(2)(a) If the commission modifies and approves an- 300
application under division (C)(1) of this section, the electric- 301
distribution utility may withdraw the application, thereby- 302
terminating it, and may file a new standard service offer under- 303
this section or a standard service offer under section 4928.142- 304
of the Revised Code.- 305~~

~~(b) If the utility terminates an application pursuant to- 306
division (C)(2)(a) of this section or if the commission- 307
disapproves an application under division (C)(1) of this- 308
section, the commission shall issue such order as is necessary- 309
to continue the provisions, terms, and conditions of the- 310
utility's most recent standard service offer, along with any- 311
expected increases or decreases in fuel costs from those- 312
contained in that offer, until a subsequent offer is authorized- 313
pursuant to this section or section 4928.142 of the Revised- 314
Code, respectively.- 315~~

~~(D) Regarding the rate plan requirement of division (A) of 316
section 4928.141 of the Revised Code, if an electric- 317~~

~~distribution utility that has a rate plan that extends beyond 318
December 31, 2008, files an application under this section for 319
the purpose of its compliance with division (A) of section 320
4928.141 of the Revised Code, that rate plan and its terms and 321
conditions are hereby incorporated into its proposed electric 322
security plan and shall continue in effect until the date 323
scheduled under the rate plan for its expiration, and that 324
portion of the electric security plan shall not be subject to 325
commission approval or disapproval under division (C) of this 326
section, and the earnings test provided for in division (F) of 327
this section shall not apply until after the expiration of the 328
rate plan. However, that utility may include in its electric 329
security plan under this section, and the commission may 330
approve, modify and approve, or disapprove subject to division 331
(C) of this section, provisions for the incremental recovery or 332
the deferral of any costs that are not being recovered under the 333
rate plan and that the utility incurs during that continuation 334
period to comply with section 4928.141, division (B) of section 335
4928.64, or division (A) of section 4928.66 of the Revised Code. 336~~

~~(E) If an electric security plan approved under division 337
(C) of this section, except one withdrawn by the utility as 338
authorized under that division, has a term, exclusive of phase 339
ins or deferrals, that exceeds three years from the effective 340
date of the plan, the commission shall test the plan in the 341
fourth year, and if applicable, every fourth year thereafter, to 342
determine whether the plan, including its then existing pricing 343
and all other terms and conditions, including any deferrals and 344
any future recovery of deferrals, continues to be more favorable 345
in the aggregate and during the remaining term of the plan as 346
compared to the expected results that would otherwise apply 347
under section 4928.142 of the Revised Code. The commission shall 348~~

~~also determine the prospective effect of the electric security-~~ 349
~~plan to determine if that effect is substantially likely to-~~ 350
~~provide the electric distribution utility with a return on-~~ 351
~~common equity that is significantly in excess of competitive~~ 352
power plan accurately reflects the utility's cost of capital, 353
results in rates that are just and reasonable, and furthers the 354
policies of this state as set forth in section 4928.02 of the 355
Revised Code. The burden of proof in the proceeding shall be on 356
the utility. 357

(2) No plan approved under this section may have a term 358
that exceeds five years. 359

(3) No utility may do either of the following to induce 360
any intervening party in the proceeding to enter into a 361
stipulation for a matter pending with the commission: 362

(a) Make, directly or indirectly, a cash payment to that 363
party; 364

(b) Enter into any agreement or any financial or private 365
arrangement with that party that is not made part of the public 366
case record. 367

(C) Following the end of each annual period of the plan, 368
the commission shall determine whether the utility's earnings 369
were excessive. Excessive earnings shall be measured according 370
to whether the earned return on common equity of the utility is 371
greater by two hundred basis points or more than the return on 372
common equity that is likely to be~~was~~ earned during the same 373
period by publicly traded companies, including electric 374
utilities, that face comparable business and financial risk, 375
~~with such adjustments for capital structure as may be~~ 376
appropriate. The calculation of the utility's earned return on 377

common equity shall exclude utility capitalization and 378
associated expenses not required for the utility's transmission 379
or distribution operations. Utility earnings shall be normalized 380
for changes in weather and shall exclude special, extraordinary, 381
and non-recurring revenues and expenses. The burden of proof for 382
demonstrating that significantly excessive earnings ~~will~~did not 383
occur shall be on the ~~electric distribution~~ utility. 384

~~If the test results are in the negative or the commission~~ 385
~~finds that continuation of the electric security plan will~~ 386
~~result in a return on equity that is significantly in excess of~~ 387
~~the return on common equity that is likely to be earned by~~ 388
~~publicly traded companies, including utilities, that will face~~ 389
~~comparable business and financial risk, with such adjustments~~ 390
~~for capital structure as may be appropriate, during the balance~~ 391
~~of the plan, the commission may terminate the electric security~~ 392
~~plan, but not until it shall have provided interested parties~~ 393
~~with notice and an opportunity to be heard. The commission may~~ 394
~~impose such conditions on the plan's termination as it considers~~ 395
~~reasonable and necessary to accommodate the transition from an~~ 396
~~approved plan to the more advantageous alternative. In the event~~ 397
~~of an electric security plan's termination pursuant to this~~ 398
~~division, the commission shall permit the continued deferral and~~ 399
~~phase in of any amounts that occurred prior to that termination~~ 400
~~and the recovery of those amounts as contemplated under that~~ 401
~~electric security plan.~~ 402

~~(F) With regard to the provisions that are included in an~~ 403
~~electric security plan under this section, the commission shall~~ 404
~~consider, following the end of each annual period of the plan,~~ 405
~~if any such adjustments resulted in excessive earnings as~~ 406
~~measured by whether the earned return on common equity of the~~ 407
~~electric distribution utility is significantly in excess of the~~ 408

~~return on common equity that was earned during the same period~~ 409
~~by publicly traded companies, including utilities, that face~~ 410
~~comparable business and financial risk, with such adjustments~~ 411
~~for capital structure as may be appropriate. Consideration also~~ 412
~~shall be given to the capital requirements of future committed~~ 413
~~investments in this state. The burden of proof for demonstrating~~ 414
~~that significantly excessive earnings did not occur shall be on~~ 415
~~the electric distribution utility. If the commission finds that~~ 416
~~such adjustments, in the aggregate, did result in significantly~~ 417
~~excessive earnings, it shall require the electric distribution~~ 418
~~utility to return to consumers the amount of the excess by~~ 419
~~prospective adjustments; provided that, upon making such~~ 420
~~prospective adjustments, the electric distribution utility shall~~ 421
~~have the right to terminate the plan and immediately file an~~ 422
~~application pursuant to section 4928.142 of the Revised Code.~~ 423
~~Upon termination of a plan under this division, rates shall be~~ 424
~~set on the same basis as specified in division (C) (2) (b) of this~~ 425
~~section, and the commission shall permit the continued deferral~~ 426
~~and phase-in of any amounts that occurred prior to that~~ 427
~~termination and the recovery of those amounts as contemplated~~ 428
~~under that electric security plan. In making its determination~~ 429
~~of significantly excessive earnings under this division, the~~ 430
~~commission shall not consider, directly or indirectly, the~~ 431
~~revenue, expenses, or earnings of any affiliate or parent~~ 432
~~company.~~ 433
the utility had excessive earnings, the commission 433
shall require the utility to return to customers the amount of 434
the excess by prospective adjustments to customers' bills. In 435
making its determination of excessive earnings, the commission 436
shall not consider, directly or indirectly, the revenue, 437
expenses, or earnings of any affiliate or parent company. 438

Sec. 4928.144. The public utilities commission by order 439

may authorize any just and reasonable phase-in of any electric 440
distribution utility rate or price established under ~~sections~~ 441
section 4928.141 to of the Revised Code, section 4928.143 of the 442
Revised Code as amended by H.B. 317 of the 134th general 443
assembly, and section 4928.143 of the Revised Code, as that 444
section existed prior to the effective date of the amendments to 445
that section by that act, and inclusive of carrying charges, as 446
the commission considers necessary to ensure rate or price 447
stability for consumers. If the commission's order includes such 448
a phase-in, the order also shall provide for the creation of 449
regulatory assets pursuant to generally accepted accounting 450
principles, by authorizing the deferral of incurred costs equal 451
to the amount not collected, plus carrying charges on that 452
amount. Further, the order shall authorize the collection of 453
those deferrals through a nonbypassable surcharge on any such 454
rate or price so established for the electric distribution 455
utility by the commission. 456

Sec. 4928.148. (A) On January 1, 2020, any mechanism 457
authorized by the public utilities commission prior to ~~the~~ 458
~~effective date of this section October 22, 2019,~~ for retail 459
recovery of prudently incurred costs related to a legacy 460
generation resource shall be replaced by a nonbypassable rate 461
mechanism established by the commission for recovery of those 462
costs through December 31, 2030, from customers of all electric 463
distribution utilities in this state. The nonbypassable rate 464
mechanism shall be established through a process that the 465
commission shall determine is not for an increase in any rate, 466
joint rate, toll, classification, charge, or rental, 467
notwithstanding anything to the contrary in Title XLIX of the 468
Revised Code. All of the following shall apply to the 469
nonbypassable rate mechanism established under this section: 470

(1) The commission shall determine, in the years specified 471
in this division, the prudence and reasonableness of the actions 472
of electric distribution utilities with ownership interests in 473
the legacy generation resource, including their decisions 474
related to offering the contractual commitment into the 475
wholesale markets, and exclude from recovery those costs that 476
the commission determines imprudent and unreasonable. The 477
initial determination shall be made during 2021 regarding the 478
prudence and reasonableness of such actions during calendar year 479
2020. The commission shall again make the determination in 2024, 480
2027, and 2030 regarding the prudence and reasonableness of such 481
actions during the three calendar years that preceded the year 482
in which the determination is made. 483

(2) The commission shall determine the proper rate design 484
for recovering or remitting the prudently incurred costs related 485
to a legacy generation resource, provided, however, that the 486
monthly charge or credit for those costs, including any 487
deferrals or credits, shall not exceed one dollar and fifty 488
cents per customer per month for residential customers. For all 489
other customer classes, the commission shall establish 490
comparable monthly caps for each class at or below one thousand 491
five hundred dollars per customer. Insofar as the prudently 492
incurred costs related to a legacy generation resource exceed 493
these monthly limits, the electric distribution utility shall 494
defer the remaining prudently incurred costs as a regulatory 495
asset or liability that shall be recovered as determined by the 496
commission subject to the monthly caps set forth in this 497
division. 498

(3) The commission shall provide for discontinuation, 499
subject to final reconciliation, of the nonbypassable rate 500
mechanism on December 31, 2030, including recovery of any 501

deferrals that exist at that time. 502

(4) The commission shall determine the manner in which 503
charges collected under this section by a utility with no 504
ownership interest in a legacy generation resource shall be 505
remitted to the utilities with such ownership interests, in 506
direct proportion to each utility's sponsorship interest. 507

(B) An electric distribution utility, including all 508
electric distribution utilities in the same holding company, 509
shall bid all output from a legacy generation resource into the 510
wholesale market and shall not use the output in supplying its 511
standard service offer provided under section ~~4928.142-4928.143~~ 512
of the Revised Code, as amended by H.B. 317 of the 134th general 513
assembly, or section 4928.143 of the Revised Code, as that 514
section existed prior to the effective date of the amendments to 515
that section by that act. 516

Sec. 4928.17. (A) Except as otherwise provided in sections 517
~~4928.141 and 4928.142 or 4928.143 or 4928.31 to 4928.40~~ of the 518
Revised Code and beginning on the starting date of competitive 519
retail electric service, no electric utility shall engage in 520
this state, either directly or through an affiliate, in the 521
businesses of supplying a noncompetitive retail electric service 522
and supplying a competitive retail electric service, or in the 523
businesses of supplying a noncompetitive retail electric service 524
and supplying a product or service other than retail electric 525
service, unless the utility implements and operates under a 526
corporate separation plan that is approved by the public 527
utilities commission under this section, is consistent with the 528
policy specified in section 4928.02 of the Revised Code, and 529
achieves all of the following: 530

(1) The plan provides, at minimum, for the provision of 531

the competitive retail electric service or the nonelectric 532
product or service through a fully separated affiliate of the 533
utility, and the plan includes separate accounting requirements, 534
the code of conduct as ordered by the commission pursuant to a 535
rule it shall adopt under division (A) of section 4928.06 of the 536
Revised Code, and such other measures as are necessary to 537
effectuate the policy specified in section 4928.02 of the 538
Revised Code. 539

(2) The plan satisfies the public interest in preventing 540
unfair competitive advantage and preventing the abuse of market 541
power. 542

(3) The plan is sufficient to ensure that the utility will 543
not extend any undue preference or advantage to any affiliate, 544
division, or part of its own business engaged in the business of 545
supplying the competitive retail electric service or nonelectric 546
product or service, including, but not limited to, utility 547
resources such as trucks, tools, office equipment, office space, 548
supplies, customer and marketing information, advertising, 549
billing and mailing systems, personnel, and training, without 550
compensation based upon fully loaded embedded costs charged to 551
the affiliate; and to ensure that any such affiliate, division, 552
or part will not receive undue preference or advantage from any 553
affiliate, division, or part of the business engaged in business 554
of supplying the noncompetitive retail electric service. No such 555
utility, affiliate, division, or part shall extend such undue 556
preference. Notwithstanding any other division of this section, 557
a utility's obligation under division (A)(3) of this section 558
shall be effective January 1, 2000. 559

(B) The commission may approve, modify and approve, or 560
disapprove a corporate separation plan filed with the commission 561

under division (A) of this section. As part of the code of 562
conduct required under division (A) (1) of this section, the 563
commission shall adopt rules pursuant to division (A) of section 564
4928.06 of the Revised Code regarding corporate separation and 565
procedures for plan filing and approval. The rules shall include 566
limitations on affiliate practices solely for the purpose of 567
maintaining a separation of the affiliate's business from the 568
business of the utility to prevent unfair competitive advantage 569
by virtue of that relationship. The rules also shall include an 570
opportunity for any person having a real and substantial 571
interest in the corporate separation plan to file specific 572
objections to the plan and propose specific responses to issues 573
raised in the objections, which objections and responses the 574
commission shall address in its final order. Prior to commission 575
approval of the plan, the commission shall afford a hearing upon 576
those aspects of the plan that the commission determines 577
reasonably require a hearing. The commission may reject and 578
require refiling of a substantially inadequate plan under this 579
section. 580

(C) The commission shall issue an order approving or 581
modifying and approving a corporate separation plan under this 582
section, to be effective on the date specified in the order, 583
only upon findings that the plan reasonably complies with the 584
requirements of division (A) of this section and will provide 585
for ongoing compliance with the policy specified in section 586
4928.02 of the Revised Code. However, for good cause shown, the 587
commission may issue an order approving or modifying and 588
approving a corporate separation plan under this section that 589
does not comply with division (A) (1) of this section but 590
complies with such functional separation requirements as the 591
commission authorizes to apply for an interim period prescribed 592

in the order, upon a finding that such alternative plan will 593
provide for ongoing compliance with the policy specified in 594
section 4928.02 of the Revised Code. 595

(D) Any party may seek an amendment to a corporate 596
separation plan approved under this section, and the commission, 597
pursuant to a request from any party or on its own initiative, 598
may order as it considers necessary the filing of an amended 599
corporate separation plan to reflect changed circumstances. 600

(E) No electric distribution utility shall sell or 601
transfer any generating asset it wholly or partly owns at any 602
time without obtaining prior commission approval. 603

Sec. 4928.20. (A) The legislative authority of a municipal 604
corporation may adopt an ordinance, or the board of township 605
trustees of a township or the board of county commissioners of a 606
county may adopt a resolution, under which, on or after the 607
starting date of competitive retail electric service, it may 608
aggregate in accordance with this section the retail electrical 609
loads located, respectively, within the municipal corporation, 610
township, or unincorporated area of the county and, for that 611
purpose, may enter into service agreements to facilitate for 612
those loads the sale and purchase of electricity. The 613
legislative authority or board also may exercise such authority 614
jointly with any other such legislative authority or board. For 615
customers that are not mercantile customers, an ordinance or 616
resolution under this division shall specify whether the 617
aggregation will occur only with the prior, affirmative consent 618
of each person owning, occupying, controlling, or using an 619
electric load center proposed to be aggregated or will occur 620
automatically for all such persons pursuant to the opt-out 621
requirements of division (D) of this section. The aggregation of 622

mercantile customers shall occur only with the prior, 623
affirmative consent of each such person owning, occupying, 624
controlling, or using an electric load center proposed to be 625
aggregated. Nothing in this division, however, authorizes the 626
aggregation of the retail electric loads of an electric load 627
center, as defined in section 4933.81 of the Revised Code, that 628
is located in the certified territory of a nonprofit electric 629
supplier under sections 4933.81 to 4933.90 of the Revised Code 630
or an electric load center served by transmission or 631
distribution facilities of a municipal electric utility. 632

(B) If an ordinance or resolution adopted under division 633
(A) of this section specifies that aggregation of customers that 634
are not mercantile customers will occur automatically as 635
described in that division, the ordinance or resolution shall 636
direct the board of elections to submit the question of the 637
authority to aggregate to the electors of the respective 638
municipal corporation, township, or unincorporated area of a 639
county at a special election on the day of the next primary or 640
general election in the municipal corporation, township, or 641
county. The legislative authority or board shall certify a copy 642
of the ordinance or resolution to the board of elections not 643
less than ninety days before the day of the special election. No 644
ordinance or resolution adopted under division (A) of this 645
section that provides for an election under this division shall 646
take effect unless approved by a majority of the electors voting 647
upon the ordinance or resolution at the election held pursuant 648
to this division. 649

(C) Upon the applicable requisite authority under 650
divisions (A) and (B) of this section, the legislative authority 651
or board shall develop a plan of operation and governance for 652
the aggregation program so authorized. Before adopting a plan 653

under this division, the legislative authority or board shall 654
hold at least two public hearings on the plan. Before the first 655
hearing, the legislative authority or board shall publish notice 656
of the hearings once a week for two consecutive weeks in a 657
newspaper of general circulation in the jurisdiction or as 658
provided in section 7.16 of the Revised Code. The notice shall 659
summarize the plan and state the date, time, and location of 660
each hearing. 661

(D) No legislative authority or board, pursuant to an 662
ordinance or resolution under divisions (A) and (B) of this 663
section that provides for automatic aggregation of customers 664
that are not mercantile customers as described in division (A) 665
of this section, shall aggregate the electrical load of any 666
electric load center located within its jurisdiction unless it 667
in advance clearly discloses to the person owning, occupying, 668
controlling, or using the load center that the person will be 669
enrolled automatically in the aggregation program and will 670
remain so enrolled unless the person affirmatively elects by a 671
stated procedure not to be so enrolled. The disclosure shall 672
state prominently the rates, charges, and other terms and 673
conditions of enrollment. The stated procedure shall allow any 674
person enrolled in the aggregation program the opportunity to 675
opt out of the program every three years, without paying a 676
switching fee. Any such person that opts out before the 677
commencement of the aggregation program pursuant to the stated 678
procedure shall default to the standard service offer provided 679
under section 4928.14 or division (D) of section 4928.35 of the 680
Revised Code until the person chooses an alternative supplier. 681

(E) (1) With respect to a governmental aggregation for a 682
municipal corporation that is authorized pursuant to divisions 683
(A) to (D) of this section, resolutions may be proposed by 684

initiative or referendum petitions in accordance with sections 685
731.28 to 731.41 of the Revised Code. 686

(2) With respect to a governmental aggregation for a 687
township or the unincorporated area of a county, which 688
aggregation is authorized pursuant to divisions (A) to (D) of 689
this section, resolutions may be proposed by initiative or 690
referendum petitions in accordance with sections 731.28 to 691
731.40 of the Revised Code, except that: 692

(a) The petitions shall be filed, respectively, with the 693
township fiscal officer or the board of county commissioners, 694
who shall perform those duties imposed under those sections upon 695
the city auditor or village clerk. 696

(b) The petitions shall contain the signatures of not less 697
than ten per cent of the total number of electors in, 698
respectively, the township or the unincorporated area of the 699
county who voted for the office of governor at the preceding 700
general election for that office in that area. 701

(F) A governmental aggregator under division (A) of this 702
section is not a public utility engaging in the wholesale 703
purchase and resale of electricity, and provision of the 704
aggregated service is not a wholesale utility transaction. A 705
governmental aggregator shall be subject to supervision and 706
regulation by the public utilities commission only to the extent 707
of any competitive retail electric service it provides and 708
commission authority under this chapter. 709

(G) This section does not apply in the case of a municipal 710
corporation that supplies such aggregated service to electric 711
load centers to which its municipal electric utility also 712
supplies a noncompetitive retail electric service through 713

transmission or distribution facilities the utility singly or 714
jointly owns or operates. 715

(H) A governmental aggregator shall not include in its 716
aggregation the accounts of any of the following: 717

(1) A customer that has opted out of the aggregation; 718

(2) A customer in contract with a certified electric 719
services company; 720

(3) A customer that has a special contract with an 721
electric distribution utility; 722

(4) A customer that is not located within the governmental 723
aggregator's governmental boundaries; 724

(5) Subject to division (C) of section 4928.21 of the 725
Revised Code, a customer who appears on the "do not aggregate" 726
list maintained under that section. 727

(I) Customers that are part of a governmental aggregation 728
under this section shall be responsible only for such portion of 729
a surcharge under section 4928.144 of the Revised Code that is 730
proportionate to the benefits, as determined by the commission, 731
that electric load centers within the jurisdiction of the 732
governmental aggregation as a group receive. The proportionate 733
surcharge so established shall apply to each customer of the 734
governmental aggregation while the customer is part of that 735
aggregation. If a customer ceases being such a customer, the 736
otherwise applicable surcharge shall apply. Nothing in this 737
section shall result in less than full recovery by an electric 738
distribution utility of any surcharge authorized under section 739
4928.144 of the Revised Code. Nothing in this section shall 740
result in less than the full and timely imposition, charging, 741
collection, and adjustment by an electric distribution utility, 742

its assignee, or any collection agent, of the phase-in-recovery 743
charges authorized pursuant to a final financing order issued 744
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 745

(J) On behalf of the customers that are part of a 746
governmental aggregation under this section and by filing 747
written notice with the public utilities commission, the 748
legislative authority that formed or is forming that 749
governmental aggregation may elect not to receive any standby 750
service ~~within the meaning of division (B) (2) (d) of section~~ 751
~~4928.143 of the Revised Code~~ from an electric distribution 752
utility in whose certified territory the governmental 753
aggregation is located and that operates under an approved 754
electric security plan under that section. Upon the filing of 755
that notice, the electric distribution utility shall not charge 756
any such customer to whom competitive retail electric generation 757
service is provided by another supplier under the governmental 758
aggregation for the standby service. Any such consumer that 759
returns to the utility for competitive retail electric service 760
shall pay the market price of power incurred by the utility to 761
serve that consumer plus any amount attributable to the 762
utility's cost of compliance with the renewable energy resource 763
provisions of section 4928.64 of the Revised Code to serve the 764
consumer. Such market price shall include, but not be limited 765
to, capacity and energy charges; all charges associated with the 766
provision of that power supply through the regional transmission 767
organization, including, but not limited to, transmission, 768
ancillary services, congestion, and settlement and 769
administrative charges; and all other costs incurred by the 770
utility that are associated with the procurement, provision, and 771
administration of that power supply, as such costs may be 772
approved by the commission. The period of time during which the 773

market price and renewable energy resource amount shall be so 774
assessed on the consumer shall be from the time the consumer so 775
returns to the electric distribution utility until the 776
expiration of the electric security plan. However, if that 777
period of time is expected to be more than two years, the 778
commission may reduce the time period to a period of not less 779
than two years. 780

(K) The commission shall adopt rules to encourage and 781
promote large-scale governmental aggregation in this state. For 782
that purpose, the commission shall conduct an immediate review 783
of any rules it has adopted for the purpose of this section that 784
are in effect on the effective date of the amendment of this 785
section by S.B. 221 of the 127th general assembly, July 31, 786
2008. Further, within the context of ~~an electric security plan~~ 787
~~under~~ section 4928.143 of the Revised Code, the commission shall 788
consider the effect on large-scale governmental aggregation of 789
any nonbypassable generation charges, however collected, that 790
~~would be were~~ established under that ~~plan~~ section as it existed 791
prior to the effective date of its amendment by H.B. 317 of the 792
134th general assembly and that may still be in effect as of 793
that effective date, except any nonbypassable generation charges 794
that relate to any cost incurred by the electric distribution 795
utility, the deferral of which has been authorized by the 796
commission prior to the effective date of the amendment of this 797
section by S.B. 221 of the 127th general assembly, July 31, 798
2008. 799

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of 800
the Revised Code: 801

(A) "Ancillary agreement" means any bond insurance policy, 802
letter of credit, reserve account, surety bond, swap 803

arrangement, hedging arrangement, liquidity or credit support 804
arrangement, or other similar agreement or arrangement entered 805
into in connection with the issuance of phase-in-recovery bonds 806
that is designed to promote the credit quality and marketability 807
of the bonds or to mitigate the risk of an increase in interest 808
rates. 809

(B) "Assignee" means any person or entity to which an 810
interest in phase-in-recovery property is sold, assigned, 811
transferred, or conveyed, other than as security, and any 812
successor to or subsequent assignee of such a person or entity. 813

(C) "Bond" includes debentures, notes, certificates of 814
participation, certificates of beneficial interest, certificates 815
of ownership or other evidences of indebtedness or ownership 816
that are issued by an electric distribution utility or an 817
assignee under a final financing order, the proceeds of which 818
are used directly or indirectly to recover, finance, or 819
refinance phase-in costs and financing costs, and that are 820
secured by or payable from revenues from phase-in-recovery 821
charges. 822

(D) "Bondholder" means any holder or owner of a phase-in- 823
recovery bond. 824

(E) "Financing costs" means any of the following: 825

(1) Principal, interest, and redemption premiums that are 826
payable on phase-in-recovery bonds; 827

(2) Any payment required under an ancillary agreement; 828

(3) Any amount required to fund or replenish a reserve 829
account or another account established under any indenture, 830
ancillary agreement, or other financing document relating to 831
phase-in-recovery bonds; 832

(4) Any costs of retiring or refunding any existing debt	833
and equity securities of an electric distribution utility in	834
connection with either the issuance of, or the use of proceeds	835
from, phase-in-recovery bonds;	836
(5) Any costs incurred by an electric distribution utility	837
to obtain modifications of or amendments to any indenture,	838
financing agreement, security agreement, or similar agreement or	839
instrument relating to any existing secured or unsecured	840
obligation of the electric distribution utility in connection	841
with the issuance of phase-in-recovery bonds;	842
(6) Any costs incurred by an electric distribution utility	843
to obtain any consent, release, waiver, or approval from any	844
holder of an obligation described in division (E) (5) of this	845
section that are necessary to be incurred for the electric	846
distribution utility to issue or cause the issuance of phase-in-	847
recovery bonds;	848
(7) Any taxes, franchise fees, or license fees imposed on	849
phase-in-recovery revenues;	850
(8) Any costs related to issuing or servicing phase-in-	851
recovery bonds or related to obtaining a financing order,	852
including servicing fees and expenses, trustee fees and	853
expenses, legal, accounting, or other professional fees and	854
expenses, administrative fees, placement fees, underwriting	855
fees, capitalized interest and equity, and rating-agency fees;	856
(9) Any other similar costs that the public utilities	857
commission finds appropriate.	858
(F) "Financing order" means an order issued by the public	859
utilities commission under section 4928.232 of the Revised Code	860
that authorizes an electric distribution utility or an assignee	861

to issue phase-in-recovery bonds and recover phase-in-recovery 862
charges. 863

(G) "Final financing order" means a financing order that 864
has become final and has taken effect as provided in section 865
4928.233 of the Revised Code. 866

(H) "Financing party" means either of the following: 867

(1) Any trustee, collateral agent, or other person acting 868
for the benefit of any bondholder; 869

(2) Any party to an ancillary agreement, the rights and 870
obligations of which relate to or depend upon the existence of 871
phase-in-recovery property, the enforcement and priority of a 872
security interest in phase-in-recovery property, the timely 873
collection and payment of phase-in-recovery revenues, or a 874
combination of these factors. 875

(I) "Financing statement" has the same meaning as in 876
section 1309.102 of the Revised Code. 877

(J) "Phase-in costs" means costs, inclusive of carrying 878
charges incurred before, on, or after ~~the effective date of this~~ 879
~~section~~March 22, 2012, authorized by the commission before, on, 880
or after ~~the effective date of this section~~March 22, 2012, to be 881
securitized or deferred as regulatory assets in proceedings 882
under section 4909.18 of the Revised Code, sections 4928.141 to 883
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 884
under those sections as they existed prior to the effective date 885
of the amendments to this section by H.B. 317 of the 134th 886
general assembly, or section 4928.14 of the Revised Code as it 887
existed prior to July 31, 2008, pursuant to a final order for 888
which appeals have been exhausted. "Phase-in costs" excludes the 889
following: 890

(1) With respect to any electric generating facility that, 891
on and after ~~the effective date of this section~~ March 22, 2012, 892
is owned, in whole or in part, by an electric distribution 893
utility applying for a financing order under section 4928.231 of 894
the Revised Code, costs ~~that are~~ authorized under division (B) 895
(2) (b) or (c) of section 4928.143 of the Revised Code as those 896
divisions existed prior to the effective date of the amendments 897
to that section by H.B. 317 of the 134th general assembly; 898

(2) Costs incurred after ~~the effective date of this~~ 899
~~section~~ March 22, 2012, related to the ongoing operation of an 900
electric generating facility, but not environmental clean-up or 901
remediation costs incurred by an electric distribution utility 902
because of its ownership or operation of an electric generating 903
facility prior to ~~the effective date of this section~~ March 22, 904
2012, which such clean-up or remediation costs are imposed or 905
incurred pursuant to federal or state law, rules, or regulations 906
and for which the commission approves recovery in accordance 907
with section 4909.18 of the Revised Code, sections 4928.141 to 908
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 909
under those sections as they existed prior to the effective date 910
of the amendments to this section by H.B. 317 of the 134th 911
general assembly, or section 4928.14 of the Revised Code as it 912
existed prior to July 31, 2008. 913

(K) "Phase-in-recovery property" means the property, 914
rights, and interests of an electric distribution utility or an 915
assignee under a final financing order, including the right to 916
impose, charge, and collect the phase-in-recovery charges that 917
shall be used to pay and secure the payment of phase-in-recovery 918
bonds and financing costs, and including the right to obtain 919
adjustments to those charges, and any revenues, receipts, 920
collections, rights to payment, payments, moneys, claims, or 921

other proceeds arising from the rights and interests created 922
under the final financing order. 923

(L) "Phase-in-recovery revenues" means all revenues, 924
receipts, collections, payments, moneys, claims, or other 925
proceeds arising from phase-in-recovery property. 926

(M) "Successor" means, with respect to any entity, another 927
entity that succeeds by operation of law to the rights and 928
obligations of the first legal entity pursuant to any 929
bankruptcy, reorganization, restructuring, or other insolvency 930
proceeding, any merger, acquisition, or consolidation, or any 931
sale or transfer of assets, regardless of whether any of these 932
occur as a result of a restructuring of the electric power 933
industry or otherwise. 934

Sec. 4928.231. (A) An electric distribution utility may 935
apply to the public utilities commission for a financing order 936
that authorizes the following: 937

(1) The issuance of phase-in-recovery bonds, in one or 938
more series, to recover uncollected phase-in costs; 939

(2) The imposition, charging, and collection of phase-in- 940
recovery charges, in accordance with the adjustment mechanism 941
approved by the commission under section 4928.232 of the Revised 942
Code, and consistent with the commission's authority regarding 943
governmental aggregation as provided in division (I) of section 944
4928.20 of the Revised Code, to recover both of the following: 945

(a) Uncollected phase-in costs; 946

(b) Financing costs. 947

(3) The creation of phase-in-recovery property under the 948
financing order. 949

(B) The application shall include all of the following:	950
(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;	951 952 953
(2) An estimate of the date each series of phase-in-recovery bonds are expected to be issued;	954 955
(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;	956 957 958
(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;	959 960 961
(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;	962 963 964 965 966 967
(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;	968 969 970 971 972 973 974
(7) A description of a proposed adjustment mechanism for use as described in division (A)(2) of this section;	975 976
(8) A description and valuation of how the issuance of the	977

phase-in-recovery bonds, including financing costs, will both 978
result in cost savings to customers and mitigate rate impacts to 979
customers when compared to the use of other financing mechanisms 980
or cost-recovery methods available to the electric distribution 981
utility; 982

(9) Any other information required by the commission. 983

(C) The electric distribution utility may restate or 984
incorporate by reference in the application any information 985
required under division (B) (9) of this section that the electric 986
distribution utility filed with the commission under section 987
4909.18 or sections 4928.141 to 4928.144 of the Revised Code, 988
including filings made under those sections as they existed 989
prior to the effective date of the amendments to this section by 990
H.B. 317 of the 134th general assembly, or section 4928.14 of 991
the Revised Code as it existed prior to July 31, 2008. 992

Sec. 4928.232. (A) Proceedings before the public utilities 993
commission on an application submitted by an electric 994
distribution utility under section 4928.231 of the Revised Code 995
shall be governed by Chapter 4903. of the Revised Code, but only 996
to the extent that chapter is not inconsistent with this section 997
or section 4928.233 of the Revised Code. Any party that 998
participated in the proceeding in which phase-in costs were 999
approved under section 4909.18 ~~or~~ of the Revised Code, sections 1000
4928.141 to 4928.144 of the Revised Code, including in 1001
proceedings under those sections as they existed prior to the 1002
effective date of the amendments to this section by H.B. 317 of 1003
the 134th general assembly, or section 4928.14 of the Revised 1004
Code as it existed prior to July 31, 2008, shall have standing 1005
to participate in proceedings under sections 4928.23 to 1006
4928.2318 of the Revised Code. 1007

(B) When reviewing an application for a financing order 1008
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 1009
the commission may hold such hearings, make such inquiries or 1010
investigations, and examine such witnesses, books, papers, 1011
documents, and contracts as the commission considers proper to 1012
carry out these sections. Within thirty days after the filing of 1013
an application under section 4928.231 of the Revised Code, the 1014
commission shall publish a schedule of the proceeding. 1015

(C) (1) Not later than one hundred thirty-five days after 1016
the date the application is filed, the commission shall issue 1017
either a financing order, granting the application in whole or 1018
with modifications, or an order suspending or rejecting the 1019
application. 1020

(2) If the commission suspends an application for a 1021
financing order, the commission shall notify the electric 1022
distribution utility of the suspension and may direct the 1023
electric distribution utility to provide additional information 1024
as the commission considers necessary to evaluate the 1025
application. Not later than ninety days after the suspension, 1026
the commission shall issue either a financing order, granting 1027
the application in whole or with modifications, or an order 1028
rejecting the application. 1029

(D) (1) The commission shall not issue a financing order 1030
under division (C) of this section unless the commission 1031
determines that the financing order is consistent with section 1032
4928.02 of the Revised Code. 1033

(2) Except as provided in division (D) (1) of this section, 1034
the commission shall issue a financing order under division (C) 1035
of this section if, at the time the financing order is issued, 1036
the commission finds that the issuance of the phase-in-recovery 1037

bonds and the phase-in-recovery charges authorized by the order 1038
results in, consistent with market conditions, both measurably 1039
enhancing cost savings to customers and mitigating rate impacts 1040
to customers as compared with traditional financing mechanisms 1041
or traditional cost-recovery methods available to the electric 1042
distribution utility or, if the commission previously approved a 1043
recovery method, as compared with that recovery method. 1044

(E) The commission shall include all of the following in a 1045
financing order issued under division (C) of this section: 1046

(1) A determination of the maximum amount and a 1047
description of the phase-in costs that may be recovered through 1048
phase-in-recovery bonds issued under the financing order; 1049

(2) A description of phase-in-recovery property, the 1050
creation of which is authorized by the financing order; 1051

(3) A description of the financing costs that may be 1052
recovered through phase-in-recovery charges and the period over 1053
which those costs may be recovered; 1054

(4) For phase-in-recovery charges not subject to 1055
allocation according to an existing order, a description of the 1056
methodology and calculation for allocating phase-in-recovery 1057
charges among customer classes, including the allocation of such 1058
charges, if any, to governmental aggregation customers based 1059
upon the proportionate benefit determination made under division 1060
(I) of section 4928.20 of the Revised Code; 1061

(5) A description of the adjustment mechanism for use in 1062
the imposition, charging, and collection of the phase-in- 1063
recovery charges; 1064

(6) The maximum term of the phase-in-recovery bonds; 1065

(7) Any other provision the commission considers 1066
appropriate to ensure the full and timely imposition, charging, 1067
collection, and adjustment, pursuant to an approved adjustment 1068
mechanism, of the phase-in-recovery charges described in 1069
divisions (E) (3) to (5) of this section. 1070

(F) The commission may, in a financing order, afford the 1071
electric distribution utility flexibility in establishing the 1072
terms and conditions for the phase-in-recovery bonds to 1073
accommodate changes in market conditions, including repayment 1074
schedules, interest rates, financing costs, collateral 1075
requirements, required debt service and other reserves, and the 1076
ability of the electric distribution utility, at its option, to 1077
effect a series of issuances of phase-in-recovery bonds and 1078
correlated assignments, sales, pledges, or other transfers of 1079
phase-in-recovery property. Any changes made under this section 1080
to terms and conditions for the phase-in-recovery bonds shall be 1081
in conformance with the financing order. 1082

(G) A financing order may provide that the creation of 1083
phase-in-recovery property shall be simultaneous with the sale 1084
of that property to an assignee as provided in the application 1085
and the pledge of the property to secure phase-in-recovery 1086
bonds. 1087

(H) The commission shall, in a financing order, require 1088
that after the final terms of each issuance of phase-in-recovery 1089
bonds have been established, and prior to the issuance of those 1090
bonds, the electric distribution utility shall determine the 1091
resulting phase-in-recovery charges in accordance with the 1092
adjustment mechanism described in the financing order. These 1093
phase-in-recovery charges shall be final and effective upon the 1094
issuance of the phase-in-recovery bonds, without further 1095

commission action. 1096

Sec. 4928.542. The winning bid or bids selected through 1097
the competitive procurement process established under section 1098
4928.54 of the Revised Code shall meet all of the following 1099
requirements: 1100

(A) Be designed to provide reliable competitive retail 1101
electric service to percentage of income payment plan program 1102
customers; 1103

(B) Reduce the cost of the percentage of income payment 1104
plan program relative to the otherwise applicable standard 1105
service offer established under ~~sections~~ section 4928.141, 1106
4928.142, of the Revised Code, section 4928.143 of the Revised 1107
Code as amended by H.B. 317 of the 134th general assembly, and 1108
section 4928.143 of the Revised Code as that section existed 1109
prior to the effective date of the amendments to that section by 1110
that act; 1111

(C) Result in the best value for persons paying the 1112
universal service rider under section 4928.52 of the Revised 1113
Code. 1114

Section 2. That existing sections 4928.14, 4928.141, 1115
4928.143, 4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 1116
4928.231, 4928.232, and 4928.542 of the Revised Code are hereby 1117
repealed. 1118

Section 3. That section 4928.142 of the Revised Code is 1119
hereby repealed. 1120

Section 4. (A) (1) Notwithstanding the amendments by this 1121
act to section 4928.143 of the Revised Code and any other 1122
section of the Revised Code authorizing and governing electric 1123
security plans, the following shall apply to an electric 1124

distribution utility with an electric security plan in effect on 1125
the effective date of this section: 1126

(a) If an electric distribution utility's electric 1127
security plan has a specific termination date, the utility may 1128
continue that plan until the plan's termination date. 1129

(b) If an electric distribution utility's electric 1130
security plan does not have a specific termination date, the 1131
utility may continue that plan until not later than January 1, 1132
2024. 1133

(2) An electric security plan described in division (A) (1) 1134
of this section may continue in accordance with all applicable 1135
orders and rules of the Public Utilities Commission and any 1136
provisions of the Revised Code that existed and applied to the 1137
plan prior to the effective date of this section. After an 1138
electric distribution utility's electric security plan 1139
terminates under this section, the electric distribution utility 1140
shall not extend the electric security plan or apply for a new 1141
electric security plan. 1142

(B) The Commission may amend its rules to meet the 1143
requirements of division (A) of this section and the amendments 1144
contained in this act. 1145