

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 317

Representative Wilkin

A BILL

To amend sections 4928.14, 4928.141, 4928.142, 1
4928.143, 4928.144, 4928.148, 4928.17, 4928.20, 2
4928.23, 4928.231, 4928.232, and 4928.542 of the 3
Revised Code to repeal electric security plans 4
and make other changes to the law regarding 5
competitive retail electric service. 6

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

Section 1. That sections 4928.14, 4928.141, 4928.142, 7
4928.143, 4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 8
4928.231, 4928.232, and 4928.542 of the Revised Code be amended 9
to read as follows: 10

Sec. 4928.14. (A) The failure of a supplier to provide 11
retail electric generation service to customers within the 12
certified territory of an electric distribution utility shall 13
result in the supplier's customers, after reasonable notice, 14
defaulting to the utility's standard service offer ~~under~~ 15
~~sections 4928.141, 4928.142, and 4928.143 of the Revised Code~~ 16
until the customer chooses an alternative supplier. The 17
utility's standard service offer to which the supplier's 18
customers default shall be provided under one of the following: 19

(1) The standard service offer under sections 4928.141 and 4928.142 of the Revised Code; 20
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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 B. ... of the 134th general assembly and that is still in effect. 22
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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: 26
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~~(A)~~ (1) The supplier has defaulted on its contracts with customers, is in receivership, or has filed for bankruptcy. 30
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~~(B)~~ (2) The supplier is no longer capable of providing the service. 32
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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. 34
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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. 38
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Sec. 4928.141. ~~(A) Beginning January 1, 2009, an An~~ 41
electric distribution utility shall provide consumers, on a 42
comparable and nondiscriminatory basis within its certified 43
territory, a standard service offer of all ~~competitive~~-retail 44
electric services necessary to maintain essential electric 45
service to consumers, including a firm supply of electric 46
generation service. To that end, the electric distribution 47
utility shall apply to the public utilities commission to 48

establish the standard service offer in accordance with section 49
4928.142 ~~or 4928.143~~ of the Revised Code ~~and, at its discretion,~~ 50
~~may apply simultaneously under both sections, except that the~~ 51
~~utility's first standard service offer application at minimum~~ 52
~~shall include a filing under section 4928.143 of the Revised~~ 53
~~Code. Only a standard service offer authorized in accordance~~ 54
~~with section 4928.142 or 4928.143 of the Revised Code, shall~~ 55
~~serve as the utility's standard service offer for the purpose of~~ 56
~~compliance with this section; and that standard service offer~~ 57
~~shall serve as the utility's default standard service offer for~~ 58
~~the purpose of section 4928.14 of the Revised Code.~~ 59

Notwithstanding the foregoing provision, the rate plan of an 60
electric distribution utility shall continue for the purpose of 61
the utility's compliance with this division until a standard 62
service offer is first authorized under section 4928.142 or 63
4928.143 of the Revised Code, and, as applicable, pursuant to 64
division (D) of section 4928.143 of the Revised Code, any rate 65
plan that extends beyond December 31, 2008, shall continue to be 66
in effect for the subject electric distribution utility for the 67
duration of the plan's term. A standard service offer under 68
section 4928.142 or 4928.143 of the Revised Code shall exclude 69
any previously authorized allowances for transition costs, with 70
such exclusion being effective on and after the date that the 71
allowance is scheduled to end under the utility's rate plan. 72

~~(B) The commission shall set the time for hearing of a~~ 73
~~filing under section 4928.142 or 4928.143 of the Revised Code,~~ 74
~~send written notice of the hearing to the electric distribution~~ 75
~~utility, and publish notice in a newspaper of general~~ 76
~~circulation in each county in the utility's certified territory.~~ 77
~~The commission shall adopt rules regarding filings under those~~ 78
~~sections.~~ 79

Sec. 4928.142. (A) For the purpose of complying with 80
section 4928.141 of the Revised Code ~~and subject to division (D)~~ 81
~~of this section and, as applicable, subject to the rate plan~~ 82
~~requirement of division (A) of section 4928.141 of the Revised~~ 83
Code, an electric distribution utility ~~may~~ shall establish a 84
standard service offer price for retail electric generation 85
service that is delivered to the utility under a market-rate 86
offer. 87

(1) The market-rate offer shall be determined through a 88
competitive bidding process that provides for all of the 89
following: 90

(a) Open, fair, and transparent competitive solicitation; 91

(b) Clear product definition; 92

(c) Standardized bid evaluation criteria; 93

(d) Oversight by an independent third party that shall 94
design the solicitation, administer the bidding, and ensure that 95
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 96
this section are met; 97

(e) Evaluation of the submitted bids prior to the 98
selection of the least-cost bid winner or winners. 99

No generation supplier shall be prohibited from 100
participating in the bidding process. 101

(2) The public utilities commission shall modify rules, or 102
adopt new rules as necessary, concerning the conduct of the 103
competitive bidding process and the qualifications of bidders, 104
which rules shall foster supplier participation in the bidding 105
process and shall be consistent with the requirements of 106
division (A) (1) of this section. 107

(B) Prior to initiating a competitive bidding process for 108
a market-rate offer under division (A) of this section, the 109
electric distribution utility shall file an application with the 110
commission. An electric distribution utility may file its 111
application with the commission prior to the effective date of 112
the commission rules required under division (A) (2) of this 113
section, and, as the commission determines necessary, the 114
utility shall immediately conform its filing to the rules upon 115
their taking effect. 116

An application under this division shall detail the 117
electric distribution utility's proposed compliance with the 118
requirements of division (A) (1) of this section and with 119
commission rules under division (A) (2) of this section and 120
demonstrate that all of the following requirements are met: 121

(1) The electric distribution utility or its transmission 122
service affiliate belongs to at least one regional transmission 123
organization that has been approved by the federal energy 124
regulatory commission; or there otherwise is comparable and 125
nondiscriminatory access to the electric transmission grid. 126

(2) Any such regional transmission organization has a 127
market-monitor function and the ability to take actions to 128
identify and mitigate market power or the electric distribution 129
utility's market conduct; or a similar market monitoring 130
function exists with commensurate ability to identify and 131
monitor market conditions and mitigate conduct associated with 132
the exercise of market power. 133

(3) A published source of information is available 134
publicly or through subscription that identifies pricing 135
information for traded electricity on- and off-peak energy 136
products that are contracts for delivery beginning at least two 137

years from the date of the publication and is updated on a 138
regular basis. 139

The commission shall initiate a proceeding and, within 140
ninety days after the application's filing date, shall determine 141
by order whether the electric distribution utility and its 142
market-rate offer meet all of the foregoing requirements. If the 143
finding is positive, the electric distribution utility may 144
initiate its competitive bidding process. If the finding is 145
negative as to one or more requirements, the commission in the 146
order shall direct the electric distribution utility regarding 147
how any deficiency may be remedied in a timely manner to the 148
commission's satisfaction; otherwise, the electric distribution 149
utility shall withdraw the application. ~~However, if such remedy~~ 150
~~is made and the subsequent finding is positive and also if the~~ 151
~~electric distribution utility made a simultaneous filing under~~ 152
~~this section and section 4928.143 of the Revised Code, the~~ 153
~~utility shall not initiate its competitive bid until at least~~ 154
~~one hundred fifty days after the filing date of those~~ 155
~~applications.~~ 156

(C) Upon the completion of the competitive bidding process 157
authorized by divisions (A) and (B) of this section, including 158
for the purpose of division (D) of this section, the commission 159
shall select the least-cost bid winner or winners of that 160
process, ~~and such.~~ Such selected bid or bids, as prescribed as 161
retail rates by the commission, shall be the electric 162
distribution utility's standard service offer unless the 163
commission, by order issued before the third calendar day 164
following the conclusion of the competitive bidding process for 165
the market rate offer, determines that one or more of the 166
following criteria were not met: 167

(1) Each portion of the bidding process was 168
oversubscribed, such that the amount of supply bid upon was 169
greater than the amount of the load bid out. 170

(2) There were four or more bidders. 171

(3) At least twenty-five per cent of the load is bid upon 172
by one or more persons other than the electric distribution 173
utility. 174

All costs incurred by the electric distribution utility as 175
a result of or related to the competitive bidding process or to 176
procuring generation service to provide the standard service 177
offer, including the costs of energy and capacity and the costs 178
of all other products and services procured as a result of the 179
competitive bidding process, shall be timely recovered through 180
the standard service offer price, and, for that purpose, the 181
commission shall approve a reconciliation mechanism, other 182
recovery mechanism, or a combination of such mechanisms for the 183
utility. 184

~~(D) The first application filed under this section by an 185
electric distribution utility that, as of July 31, 2008, 186
directly owns, in whole or in part, operating electric 187
generating facilities that had been used and useful in this 188
state shall require that a portion of that utility's standard 189
service offer load for the first five years of the market rate 190
offer be competitively bid under division (A) of this section as 191
follows: ten per cent of the load in year one, not more than 192
twenty per cent in year two, thirty per cent in year three, 193
forty per cent in year four, and fifty per cent in year five. 194
Consistent with those percentages, the commission shall 195
determine the actual percentages for each year of years one 196
through five. The standard service offer price for retail 197~~

~~electric generation service under this first application shall~~ 198
~~be a proportionate blend of the bid price and the generation~~ 199
~~service price for the remaining standard service offer load,~~ 200
~~which latter price shall be equal to the electric distribution~~ 201
~~utility's most recent standard service offer price, adjusted~~ 202
~~upward or downward as the commission determines reasonable,~~ 203
~~relative to the jurisdictional portion of any known and~~ 204
~~measurable changes from the level of any one or more of the~~ 205
~~following costs as reflected in that most recent standard~~ 206
~~service offer price:~~ 207

~~(1) The electric distribution utility's prudently incurred~~ 208
~~cost of fuel used to produce electricity;~~ 209

~~(2) Its prudently incurred purchased power costs;~~ 210

~~(3) Its prudently incurred costs of satisfying the supply~~ 211
~~and demand portfolio requirements of this state, including, but~~ 212
~~not limited to, renewable energy resource and energy efficiency~~ 213
~~requirements;~~ 214

~~(4) Its costs prudently incurred to comply with~~ 215
~~environmental laws and regulations, with consideration of the~~ 216
~~derating of any facility associated with those costs.~~ 217

~~In making any adjustment to the most recent standard~~ 218
~~service offer price on the basis of costs described in division~~ 219
~~(D) of this section, the commission shall include the benefits~~ 220
~~that may become available to the electric distribution utility~~ 221
~~as a result of or in connection with the costs included in the~~ 222
~~adjustment, including, but not limited to, the utility's receipt~~ 223
~~of emissions credits or its receipt of tax benefits or of other~~ 224
~~benefits, and, accordingly, the commission may impose such~~ 225
~~conditions on the adjustment to ensure that any such benefits~~ 226

~~are properly aligned with the associated cost responsibility. 227~~
~~The commission shall also determine how such adjustments will 228~~
~~affect the electric distribution utility's return on common 229~~
~~equity that may be achieved by those adjustments. The commission 230~~
~~shall not apply its consideration of the return on common equity 231~~
~~to reduce any adjustments authorized under this division unless 232~~
~~the adjustments will cause the electric distribution utility to 233~~
~~earn a return on common equity that is significantly in excess 234~~
~~of the return on common equity that is earned by publicly traded 235~~
~~companies, including utilities, that face comparable business 236~~
~~and financial risk, with such adjustments for capital structure 237~~
~~as may be appropriate. The burden of proof for demonstrating 238~~
~~that significantly excessive earnings will not occur shall be on 239~~
~~the electric distribution utility. 240~~

~~Additionally, the commission may adjust the electric 241~~
~~distribution utility's most recent standard service offer price 242~~
~~by such just and reasonable amount that the commission 243~~
~~determines necessary to address any emergency that threatens the 244~~
~~utility's financial integrity or to ensure that the resulting 245~~
~~revenue available to the utility for providing the standard 246~~
~~service offer is not so inadequate as to result, directly or 247~~
~~indirectly, in a taking of property without compensation 248~~
~~pursuant to Section 19 of Article I, Ohio Constitution. The 249~~
~~electric distribution utility has the burden of demonstrating 250~~
~~that any adjustment to its most recent standard service offer 251~~
~~price is proper in accordance with this division. 252~~

~~(E) Beginning in the second year of a blended price under 253~~
~~division (D) of this section and notwithstanding any other 254~~
~~requirement of this section, the commission may alter 255~~
~~prospectively the proportions specified in that division to 256~~
~~mitigate any effect of an abrupt or significant change in the 257~~

~~electric distribution utility's standard service offer price~~ 258
~~that would otherwise result in general or with respect to any~~ 259
~~rate group or rate schedule but for such alteration. Any such~~ 260
~~alteration shall be made not more often than annually, and the~~ 261
~~commission shall not, by altering those proportions and in any~~ 262
~~event, including because of the length of time, as authorized~~ 263
~~under division (C) of this section, taken to approve the market~~ 264
~~rate offer, cause the duration of the blending period to exceed~~ 265
~~ten years as counted from the effective date of the approved~~ 266
~~market rate offer. Additionally, any such alteration shall be~~ 267
~~limited to an alteration affecting the prospective proportions~~ 268
~~used during the blending period and shall not affect any~~ 269
~~blending proportion previously approved and applied by the~~ 270
~~commission under this division.~~ 271

~~(F) An electric distribution utility that has received~~ 272
~~commission approval of its first application under division (C)~~ 273
~~of this section shall not, nor ever shall be authorized or~~ 274
~~required by the commission to, file an application under section~~ 275
~~4928.143 of the Revised Code.~~ 276

Sec. 4928.143. ~~(A) For the purpose of complying with~~ 277
~~section 4928.141 of the Revised Code, an electric distribution~~ 278
~~utility may file an application for public utilities commission~~ 279
~~approval of an electric security plan as prescribed under~~ 280
~~division (B) of this section. The utility may file that~~ 281
~~application prior to the effective date of any rules the~~ 282
~~commission may adopt for the purpose of this section, and, as~~ 283
~~the commission determines necessary, the utility immediately~~ 284
~~shall conform its filing to those rules upon their taking~~ 285
~~effect.~~ 286

~~(B) Notwithstanding any other provision of Title XLIX of~~ 287

~~the Revised Code to the contrary except division (D) of this~~ 288
~~section, divisions (I), (J), and (K) of section 4928.20,~~ 289
~~division (E) of section 4928.64, and section 4928.69 of the~~ 290
~~Revised Code:~~ 291

~~(1) An electric security plan shall include provisions~~ 292
~~relating to the supply and pricing of electric generation~~ 293
~~service. In addition, if the proposed electric security plan has~~ 294
~~a term longer than three years, it may include provisions in the~~ 295
~~plan to permit the commission to test the plan pursuant to~~ 296
~~division (E) of this section and any transitional conditions~~ 297
~~that should be adopted by the commission if the commission~~ 298
~~terminates the plan as authorized under that division.~~ 299

~~(2) The plan may provide for or include, without~~ 300
~~limitation, any of the following:~~ 301

~~(a) Automatic recovery of any of the following costs of~~ 302
~~the electric distribution utility, provided the cost is~~ 303
~~prudently incurred: the cost of fuel used to generate the~~ 304
~~electricity supplied under the offer; the cost of purchased~~ 305
~~power supplied under the offer, including the cost of energy and~~ 306
~~capacity, and including purchased power acquired from an~~ 307
~~affiliate; the cost of emission allowances; and the cost of~~ 308
~~federally mandated carbon or energy taxes;~~ 309

~~(b) A reasonable allowance for construction work in~~ 310
~~progress for any of the electric distribution utility's cost of~~ 311
~~constructing an electric generating facility or for an~~ 312
~~environmental expenditure for any electric generating facility~~ 313
~~of the electric distribution utility, provided the cost is~~ 314
~~incurred or the expenditure occurs on or after January 1, 2009.~~ 315
~~Any such allowance shall be subject to the construction work in~~ 316
~~progress allowance limitations of division (A) of section~~ 317

~~4909.15 of the Revised Code, except that the commission may 318
authorize such an allowance upon the incurrence of the cost or 319
occurrence of the expenditure. No such allowance for generating 320
facility construction shall be authorized, however, unless the 321
commission first determines in the proceeding that there is need 322
for the facility based on resource planning projections 323
submitted by the electric distribution utility. Further, no such 324
allowance shall be authorized unless the facility's construction 325
was sourced through a competitive bid process, regarding which 326
process the commission may adopt rules. An allowance approved 327
under division (B) (2) (b) of this section shall be established as 328
a nonbypassable surcharge for the life of the facility. 329~~

~~(c) The establishment of a nonbypassable surcharge for the 330
life of an electric generating facility that is owned or 331
operated by the electric distribution utility, was sourced 332
through a competitive bid process subject to any such rules as 333
the commission adopts under division (B) (2) (b) of this section, 334
and is newly used and useful on or after January 1, 2009, which 335
surcharge shall cover all costs of the utility specified in the 336
application, excluding costs recovered through a surcharge under 337
division (B) (2) (b) of this section. However, no surcharge shall 338
be authorized unless the commission first determines in the 339
proceeding that there is need for the facility based on resource 340
planning projections submitted by the electric distribution 341
utility. Additionally, if a surcharge is authorized for a 342
facility pursuant to plan approval under division (C) of this 343
section and as a condition of the continuation of the surcharge, 344
the electric distribution utility shall dedicate to Ohio 345
consumers the capacity and energy and the rate associated with 346
the cost of that facility. Before the commission authorizes any 347
surcharge pursuant to this division, it may consider, as 348~~

~~applicable, the effects of any decommissioning, deratings, and retirements.—~~ 349
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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;—~~ 351
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~~(e) Automatic increases or decreases in any component of the standard service offer price;—~~ 358
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~~(f) Consistent with sections 4928.23 to 4928.2318 of the Revised Code, both of the following:—~~ 360
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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;—~~ 362
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~~(ii) Provisions for the recovery of the utility's cost of securitization.—~~ 367
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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;—~~ 369
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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—~~ 374
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~~decoupling mechanism or any other incentive ratemaking, and 378~~
~~provisions regarding distribution infrastructure and 379~~
~~modernization incentives for the electric distribution utility. 380~~
~~The latter may include a long term energy delivery 381~~
~~infrastructure modernization plan for that utility or any plan 382~~
~~providing for the utility's recovery of costs, including lost 383~~
~~revenue, shared savings, and avoided costs, and a just and 384~~
~~reasonable rate of return on such infrastructure modernization. 385~~
~~As part of its determination as to whether to allow in an 386~~
~~electric distribution utility's electric security plan inclusion 387~~
~~of any provision described in division (B) (2) (h) of this 388~~
~~section, the commission shall examine the reliability of the 389~~
~~electric distribution utility's distribution system and ensure 390~~
~~that customers' and the electric distribution utility's 391~~
~~expectations are aligned and that the electric distribution 392~~
~~utility is placing sufficient emphasis on and dedicating 393~~
~~sufficient resources to the reliability of its distribution 394~~
~~system. 395~~

~~(i) Provisions under which the An electric distribution 396~~
~~utility may implement economic development, and job retention, 397~~
~~and energy efficiency programs, which provisions under sections 398~~
~~4928.141 and 4928.142 of the Revised Code. The electric 399~~
~~distribution utility may apply to the public utilities 400~~
~~commission to recover nonbypassable prudently incurred costs of 401~~
~~those programs and allocate the program costs across all classes 402~~
~~of customers of the utility and those of electric distribution 403~~
~~utilities in the same holding company system. 404~~

~~(C) (1) The burden of proof in the proceeding shall be on 405~~
~~the electric distribution utility. The commission shall issue an 406~~
~~order under this division for an initial application under this 407~~
~~section not later than one hundred fifty days after the 408~~

~~application's filing date and, for any subsequent application by 409
the utility under this section, not later than two hundred 410
seventy five days after the application's filing date. Subject 411
to division (D) of this section, the commission by order shall 412
approve or modify and approve an application filed under 413
division (A) of this section if it finds that the electric 414
security plan so approved, including its pricing and all other 415
terms and conditions, including any deferrals and any future 416
recovery of deferrals, is more favorable in the aggregate as 417
compared to the expected results that would otherwise apply 418
under section 4928.142 of the Revised Code. Additionally, if the 419
commission so approves an application that contains a surcharge 420
under division (B) (2) (b) or (c) of this section, the commission 421
shall ensure that the benefits derived for any purpose for which 422
the surcharge is established are reserved and made available to 423
those that bear the surcharge. Otherwise, the commission by 424
order shall disapprove the application. 425~~

~~(2) (a) If the commission modifies and approves an 426
application under division (C) (1) of this section, the electric 427
distribution utility may withdraw the application, thereby 428
terminating it, and may file a new standard service offer under 429
this section or a standard service offer under section 4928.142 430
of the Revised Code. 431~~

~~(b) If the utility terminates an application pursuant to 432
division (C) (2) (a) of this section or if the commission 433
disapproves an application under division (C) (1) of this 434
section, the commission shall issue such order as is necessary 435
to continue the provisions, terms, and conditions of the 436
utility's most recent standard service offer, along with any 437
expected increases or decreases in fuel costs from those 438
contained in that offer, until a subsequent offer is authorized 439~~

~~pursuant to this section or section 4928.142 of the Revised Code, respectively.~~ 440
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~~(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code.~~ 442
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~~(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and~~ 463
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~~any future recovery of deferrals, continues to be more favorable— 471
in the aggregate and during the remaining term of the plan as— 472
compared to the expected results that would otherwise apply— 473
under section 4928.142 of the Revised Code. The commission shall— 474
also determine the prospective effect of the electric security— 475
plan to determine if that effect is substantially likely to— 476
provide the electric distribution utility with a return on— 477
common equity that is significantly in excess of the return on— 478
common equity that is likely to be earned by publicly traded— 479
companies, including utilities, that face comparable business— 480
and financial risk, with such adjustments for capital structure— 481
as may be appropriate. The burden of proof for demonstrating— 482
that significantly excessive earnings will not occur shall be on— 483
the electric distribution utility. If the test results are in— 484
the negative or the commission finds that continuation of the— 485
electric security plan will result in a return on equity that is— 486
significantly in excess of the return on common equity that is— 487
likely to be earned by publicly traded companies, including— 488
utilities, that will face comparable business and financial— 489
risk, with such adjustments for capital structure as may be— 490
appropriate, during the balance of the plan, the commission may— 491
terminate the electric security plan, but not until it shall— 492
have provided interested parties with notice and an opportunity— 493
to be heard. The commission may impose such conditions on the— 494
plan's termination as it considers reasonable and necessary to— 495
accommodate the transition from an approved plan to the more— 496
advantageous alternative. In the event of an electric security— 497
plan's termination pursuant to this division, the commission— 498
shall permit the continued deferral and phase in of any amounts— 499
that occurred prior to that termination and the recovery of— 500
those amounts as contemplated under that electric security plan.— 501~~

~~(F) With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. Consideration also shall be given to the capital requirements of future committed investments in this state. The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility. If the commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments; provided that, upon making such prospective adjustments, the electric distribution utility shall have the right to terminate the plan and immediately file an application pursuant to section 4928.142 of the Revised Code. Upon termination of a plan under this division, rates shall be set on the same basis as specified in division (C) (2) (b) of this section, and the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan. In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.~~

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Sec. 4928.144. The public utilities commission by order 533
may authorize any just and reasonable phase-in of any electric 534
distribution utility rate or price established under sections 535
4928.141 ~~to~~ and 4928.142 of the Revised Code, and section 536
4928.143 of the Revised Code, as that section existed prior to 537
the effective date of the amendments to that section by.B. ... 538
of the 134th general assembly, and inclusive of carrying 539
charges, as the commission considers necessary to ensure rate or 540
price stability for consumers. If the commission's order 541
includes such a phase-in, the order also shall provide for the 542
creation of regulatory assets pursuant to generally accepted 543
accounting principles, by authorizing the deferral of incurred 544
costs equal to the amount not collected, plus carrying charges 545
on that amount. Further, the order shall authorize the 546
collection of those deferrals through a nonbypassable surcharge 547
on any such rate or price so established for the electric 548
distribution utility by the commission. 549

Sec. 4928.148. (A) On January 1, 2020, any mechanism 550
authorized by the public utilities commission prior to ~~the~~ 551
~~effective date of this section~~ October 22, 2019, for retail 552
recovery of prudently incurred costs related to a legacy 553
generation resource shall be replaced by a nonbypassable rate 554
mechanism established by the commission for recovery of those 555
costs through December 31, 2030, from customers of all electric 556
distribution utilities in this state. The nonbypassable rate 557
mechanism shall be established through a process that the 558
commission shall determine is not for an increase in any rate, 559
joint rate, toll, classification, charge, or rental, 560
notwithstanding anything to the contrary in Title XLIX of the 561
Revised Code. All of the following shall apply to the 562
nonbypassable rate mechanism established under this section: 563

(1) The commission shall determine, in the years specified 564
in this division, the prudence and reasonableness of the actions 565
of electric distribution utilities with ownership interests in 566
the legacy generation resource, including their decisions 567
related to offering the contractual commitment into the 568
wholesale markets, and exclude from recovery those costs that 569
the commission determines imprudent and unreasonable. The 570
initial determination shall be made during 2021 regarding the 571
prudence and reasonableness of such actions during calendar year 572
2020. The commission shall again make the determination in 2024, 573
2027, and 2030 regarding the prudence and reasonableness of such 574
actions during the three calendar years that preceded the year 575
in which the determination is made. 576

(2) The commission shall determine the proper rate design 577
for recovering or remitting the prudently incurred costs related 578
to a legacy generation resource, provided, however, that the 579
monthly charge or credit for those costs, including any 580
deferrals or credits, shall not exceed one dollar and fifty 581
cents per customer per month for residential customers. For all 582
other customer classes, the commission shall establish 583
comparable monthly caps for each class at or below one thousand 584
five hundred dollars per customer. Insofar as the prudently 585
incurred costs related to a legacy generation resource exceed 586
these monthly limits, the electric distribution utility shall 587
defer the remaining prudently incurred costs as a regulatory 588
asset or liability that shall be recovered as determined by the 589
commission subject to the monthly caps set forth in this 590
division. 591

(3) The commission shall provide for discontinuation, 592
subject to final reconciliation, of the nonbypassable rate 593
mechanism on December 31, 2030, including recovery of any 594

deferrals that exist at that time. 595

(4) The commission shall determine the manner in which 596
charges collected under this section by a utility with no 597
ownership interest in a legacy generation resource shall be 598
remitted to the utilities with such ownership interests, in 599
direct proportion to each utility's sponsorship interest. 600

(B) An electric distribution utility, including all 601
electric distribution utilities in the same holding company, 602
shall bid all output from a legacy generation resource into the 603
wholesale market and shall not use the output in supplying its 604
standard service offer provided under section 4928.142 of the 605
Revised Code or section 4928.143 of the Revised Code, as that 606
section existed prior to the effective date of the amendments to 607
that section by.B. ... of the 134th general assembly. 608

Sec. 4928.17. (A) Except as otherwise provided in sections 609
4928.141 and 4928.142 or 4928.143 or 4928.31 to 4928.40 of the 610
Revised Code and beginning on the starting date of competitive 611
retail electric service, no electric utility shall engage in 612
this state, either directly or through an affiliate, in the 613
businesses of supplying a noncompetitive retail electric service 614
and supplying a competitive retail electric service, or in the 615
businesses of supplying a noncompetitive retail electric service 616
and supplying a product or service other than retail electric 617
service, unless the utility implements and operates under a 618
corporate separation plan that is approved by the public 619
utilities commission under this section, is consistent with the 620
policy specified in section 4928.02 of the Revised Code, and 621
achieves all of the following: 622

(1) The plan provides, at minimum, for the provision of 623
the competitive retail electric service or the nonelectric 624

product or service through a fully separated affiliate of the 625
utility, and the plan includes separate accounting requirements, 626
the code of conduct as ordered by the commission pursuant to a 627
rule it shall adopt under division (A) of section 4928.06 of the 628
Revised Code, and such other measures as are necessary to 629
effectuate the policy specified in section 4928.02 of the 630
Revised Code. 631

(2) The plan satisfies the public interest in preventing 632
unfair competitive advantage and preventing the abuse of market 633
power. 634

(3) The plan is sufficient to ensure that the utility will 635
not extend any undue preference or advantage to any affiliate, 636
division, or part of its own business engaged in the business of 637
supplying the competitive retail electric service or nonelectric 638
product or service, including, but not limited to, utility 639
resources such as trucks, tools, office equipment, office space, 640
supplies, customer and marketing information, advertising, 641
billing and mailing systems, personnel, and training, without 642
compensation based upon fully loaded embedded costs charged to 643
the affiliate; and to ensure that any such affiliate, division, 644
or part will not receive undue preference or advantage from any 645
affiliate, division, or part of the business engaged in business 646
of supplying the noncompetitive retail electric service. No such 647
utility, affiliate, division, or part shall extend such undue 648
preference. Notwithstanding any other division of this section, 649
a utility's obligation under division (A)(3) of this section 650
shall be effective January 1, 2000. 651

(B) The commission may approve, modify and approve, or 652
disapprove a corporate separation plan filed with the commission 653
under division (A) of this section. As part of the code of 654

conduct required under division (A) (1) of this section, the 655
commission shall adopt rules pursuant to division (A) of section 656
4928.06 of the Revised Code regarding corporate separation and 657
procedures for plan filing and approval. The rules shall include 658
limitations on affiliate practices solely for the purpose of 659
maintaining a separation of the affiliate's business from the 660
business of the utility to prevent unfair competitive advantage 661
by virtue of that relationship. The rules also shall include an 662
opportunity for any person having a real and substantial 663
interest in the corporate separation plan to file specific 664
objections to the plan and propose specific responses to issues 665
raised in the objections, which objections and responses the 666
commission shall address in its final order. Prior to commission 667
approval of the plan, the commission shall afford a hearing upon 668
those aspects of the plan that the commission determines 669
reasonably require a hearing. The commission may reject and 670
require refiling of a substantially inadequate plan under this 671
section. 672

(C) The commission shall issue an order approving or 673
modifying and approving a corporate separation plan under this 674
section, to be effective on the date specified in the order, 675
only upon findings that the plan reasonably complies with the 676
requirements of division (A) of this section and will provide 677
for ongoing compliance with the policy specified in section 678
4928.02 of the Revised Code. However, for good cause shown, the 679
commission may issue an order approving or modifying and 680
approving a corporate separation plan under this section that 681
does not comply with division (A) (1) of this section but 682
complies with such functional separation requirements as the 683
commission authorizes to apply for an interim period prescribed 684
in the order, upon a finding that such alternative plan will 685

provide for ongoing compliance with the policy specified in 686
section 4928.02 of the Revised Code. 687

(D) Any party may seek an amendment to a corporate 688
separation plan approved under this section, and the commission, 689
pursuant to a request from any party or on its own initiative, 690
may order as it considers necessary the filing of an amended 691
corporate separation plan to reflect changed circumstances. 692

(E) No electric distribution utility shall sell or 693
transfer any generating asset it wholly or partly owns at any 694
time without obtaining prior commission approval. 695

Sec. 4928.20. (A) The legislative authority of a municipal 696
corporation may adopt an ordinance, or the board of township 697
trustees of a township or the board of county commissioners of a 698
county may adopt a resolution, under which, on or after the 699
starting date of competitive retail electric service, it may 700
aggregate in accordance with this section the retail electrical 701
loads located, respectively, within the municipal corporation, 702
township, or unincorporated area of the county and, for that 703
purpose, may enter into service agreements to facilitate for 704
those loads the sale and purchase of electricity. The 705
legislative authority or board also may exercise such authority 706
jointly with any other such legislative authority or board. For 707
customers that are not mercantile customers, an ordinance or 708
resolution under this division shall specify whether the 709
aggregation will occur only with the prior, affirmative consent 710
of each person owning, occupying, controlling, or using an 711
electric load center proposed to be aggregated or will occur 712
automatically for all such persons pursuant to the opt-out 713
requirements of division (D) of this section. The aggregation of 714
mercantile customers shall occur only with the prior, 715

affirmative consent of each such person owning, occupying, 716
controlling, or using an electric load center proposed to be 717
aggregated. Nothing in this division, however, authorizes the 718
aggregation of the retail electric loads of an electric load 719
center, as defined in section 4933.81 of the Revised Code, that 720
is located in the certified territory of a nonprofit electric 721
supplier under sections 4933.81 to 4933.90 of the Revised Code 722
or an electric load center served by transmission or 723
distribution facilities of a municipal electric utility. 724

(B) If an ordinance or resolution adopted under division 725
(A) of this section specifies that aggregation of customers that 726
are not mercantile customers will occur automatically as 727
described in that division, the ordinance or resolution shall 728
direct the board of elections to submit the question of the 729
authority to aggregate to the electors of the respective 730
municipal corporation, township, or unincorporated area of a 731
county at a special election on the day of the next primary or 732
general election in the municipal corporation, township, or 733
county. The legislative authority or board shall certify a copy 734
of the ordinance or resolution to the board of elections not 735
less than ninety days before the day of the special election. No 736
ordinance or resolution adopted under division (A) of this 737
section that provides for an election under this division shall 738
take effect unless approved by a majority of the electors voting 739
upon the ordinance or resolution at the election held pursuant 740
to this division. 741

(C) Upon the applicable requisite authority under 742
divisions (A) and (B) of this section, the legislative authority 743
or board shall develop a plan of operation and governance for 744
the aggregation program so authorized. Before adopting a plan 745
under this division, the legislative authority or board shall 746

hold at least two public hearings on the plan. Before the first 747
hearing, the legislative authority or board shall publish notice 748
of the hearings once a week for two consecutive weeks in a 749
newspaper of general circulation in the jurisdiction or as 750
provided in section 7.16 of the Revised Code. The notice shall 751
summarize the plan and state the date, time, and location of 752
each hearing. 753

(D) No legislative authority or board, pursuant to an 754
ordinance or resolution under divisions (A) and (B) of this 755
section that provides for automatic aggregation of customers 756
that are not mercantile customers as described in division (A) 757
of this section, shall aggregate the electrical load of any 758
electric load center located within its jurisdiction unless it 759
in advance clearly discloses to the person owning, occupying, 760
controlling, or using the load center that the person will be 761
enrolled automatically in the aggregation program and will 762
remain so enrolled unless the person affirmatively elects by a 763
stated procedure not to be so enrolled. The disclosure shall 764
state prominently the rates, charges, and other terms and 765
conditions of enrollment. The stated procedure shall allow any 766
person enrolled in the aggregation program the opportunity to 767
opt out of the program every three years, without paying a 768
switching fee. Any such person that opts out before the 769
commencement of the aggregation program pursuant to the stated 770
procedure shall default to the standard service offer provided 771
under section 4928.14 or division (D) of section 4928.35 of the 772
Revised Code until the person chooses an alternative supplier. 773

(E) (1) With respect to a governmental aggregation for a 774
municipal corporation that is authorized pursuant to divisions 775
(A) to (D) of this section, resolutions may be proposed by 776
initiative or referendum petitions in accordance with sections 777

731.28 to 731.41 of the Revised Code. 778

(2) With respect to a governmental aggregation for a 779
township or the unincorporated area of a county, which 780
aggregation is authorized pursuant to divisions (A) to (D) of 781
this section, resolutions may be proposed by initiative or 782
referendum petitions in accordance with sections 731.28 to 783
731.40 of the Revised Code, except that: 784

(a) The petitions shall be filed, respectively, with the 785
township fiscal officer or the board of county commissioners, 786
who shall perform those duties imposed under those sections upon 787
the city auditor or village clerk. 788

(b) The petitions shall contain the signatures of not less 789
than ten per cent of the total number of electors in, 790
respectively, the township or the unincorporated area of the 791
county who voted for the office of governor at the preceding 792
general election for that office in that area. 793

(F) A governmental aggregator under division (A) of this 794
section is not a public utility engaging in the wholesale 795
purchase and resale of electricity, and provision of the 796
aggregated service is not a wholesale utility transaction. A 797
governmental aggregator shall be subject to supervision and 798
regulation by the public utilities commission only to the extent 799
of any competitive retail electric service it provides and 800
commission authority under this chapter. 801

(G) This section does not apply in the case of a municipal 802
corporation that supplies such aggregated service to electric 803
load centers to which its municipal electric utility also 804
supplies a noncompetitive retail electric service through 805
transmission or distribution facilities the utility singly or 806

jointly owns or operates. 807

(H) A governmental aggregator shall not include in its 808
aggregation the accounts of any of the following: 809

(1) A customer that has opted out of the aggregation; 810

(2) A customer in contract with a certified electric 811
services company; 812

(3) A customer that has a special contract with an 813
electric distribution utility; 814

(4) A customer that is not located within the governmental 815
aggregator's governmental boundaries; 816

(5) Subject to division (C) of section 4928.21 of the 817
Revised Code, a customer who appears on the "do not aggregate" 818
list maintained under that section. 819

(I) Customers that are part of a governmental aggregation 820
under this section shall be responsible only for such portion of 821
a surcharge under section 4928.144 of the Revised Code that is 822
proportionate to the benefits, as determined by the commission, 823
that electric load centers within the jurisdiction of the 824
governmental aggregation as a group receive. The proportionate 825
surcharge so established shall apply to each customer of the 826
governmental aggregation while the customer is part of that 827
aggregation. If a customer ceases being such a customer, the 828
otherwise applicable surcharge shall apply. Nothing in this 829
section shall result in less than full recovery by an electric 830
distribution utility of any surcharge authorized under section 831
4928.144 of the Revised Code. Nothing in this section shall 832
result in less than the full and timely imposition, charging, 833
collection, and adjustment by an electric distribution utility, 834
its assignee, or any collection agent, of the phase-in-recovery 835

charges authorized pursuant to a final financing order issued 836
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 837

(J) On behalf of the customers that are part of a 838
governmental aggregation under this section and by filing 839
written notice with the public utilities commission, the 840
legislative authority that formed or is forming that 841
governmental aggregation may elect not to receive any standby 842
service ~~within the meaning of division (B) (2) (d) of section~~ 843
~~4928.143 of the Revised Code~~ from an electric distribution 844
utility in whose certified territory the governmental 845
aggregation is located and that operates under an approved 846
electric security plan under that section. Upon the filing of 847
that notice, the electric distribution utility shall not charge 848
any such customer to whom competitive retail electric generation 849
service is provided by another supplier under the governmental 850
aggregation for the standby service. Any such consumer that 851
returns to the utility for competitive retail electric service 852
shall pay the market price of power incurred by the utility to 853
serve that consumer plus any amount attributable to the 854
utility's cost of compliance with the renewable energy resource 855
provisions of section 4928.64 of the Revised Code to serve the 856
consumer. Such market price shall include, but not be limited 857
to, capacity and energy charges; all charges associated with the 858
provision of that power supply through the regional transmission 859
organization, including, but not limited to, transmission, 860
ancillary services, congestion, and settlement and 861
administrative charges; and all other costs incurred by the 862
utility that are associated with the procurement, provision, and 863
administration of that power supply, as such costs may be 864
approved by the commission. The period of time during which the 865
market price and renewable energy resource amount shall be so 866

assessed on the consumer shall be from the time the consumer so 867
returns to the electric distribution utility until the 868
expiration of the electric security plan. However, if that 869
period of time is expected to be more than two years, the 870
commission may reduce the time period to a period of not less 871
than two years. 872

(K) The commission shall adopt rules to encourage and 873
promote large-scale governmental aggregation in this state. For 874
that purpose, the commission shall conduct an immediate review 875
of any rules it has adopted for the purpose of this section that 876
are in effect on the effective date of the amendment of this 877
section by S.B. 221 of the 127th general assembly, July 31, 878
2008. Further, within the context of ~~an electric security plan~~ 879
~~under~~ section 4928.143 of the Revised Code, the commission shall 880
consider the effect on large-scale governmental aggregation of 881
any nonbypassable generation charges, however collected, that 882
~~would~~ could be established under that ~~plan~~ section, except any 883
nonbypassable generation charges that relate to any cost 884
incurred by the electric distribution utility, the deferral of 885
which has been authorized by the commission prior to the 886
effective date of the amendment of this section by S.B. 221 of 887
the 127th general assembly, July 31, 2008. 888

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of 889
the Revised Code: 890

(A) "Ancillary agreement" means any bond insurance policy, 891
letter of credit, reserve account, surety bond, swap 892
arrangement, hedging arrangement, liquidity or credit support 893
arrangement, or other similar agreement or arrangement entered 894
into in connection with the issuance of phase-in-recovery bonds 895
that is designed to promote the credit quality and marketability 896

of the bonds or to mitigate the risk of an increase in interest rates.	897 898
(B) "Assignee" means any person or entity to which an interest in phase-in-recovery property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assignee of such a person or entity.	899 900 901 902
(C) "Bond" includes debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an electric distribution utility or an assignee under a final financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance phase-in costs and financing costs, and that are secured by or payable from revenues from phase-in-recovery charges.	903 904 905 906 907 908 909 910 911
(D) "Bondholder" means any holder or owner of a phase-in-recovery bond.	912 913
(E) "Financing costs" means any of the following:	914
(1) Principal, interest, and redemption premiums that are payable on phase-in-recovery bonds;	915 916
(2) Any payment required under an ancillary agreement;	917
(3) Any amount required to fund or replenish a reserve account or another account established under any indenture, ancillary agreement, or other financing document relating to phase-in-recovery bonds;	918 919 920 921
(4) Any costs of retiring or refunding any existing debt and equity securities of an electric distribution utility in connection with either the issuance of, or the use of proceeds	922 923 924

from, phase-in-recovery bonds;	925
(5) Any costs incurred by an electric distribution utility	926
to obtain modifications of or amendments to any indenture,	927
financing agreement, security agreement, or similar agreement or	928
instrument relating to any existing secured or unsecured	929
obligation of the electric distribution utility in connection	930
with the issuance of phase-in-recovery bonds;	931
(6) Any costs incurred by an electric distribution utility	932
to obtain any consent, release, waiver, or approval from any	933
holder of an obligation described in division (E) (5) of this	934
section that are necessary to be incurred for the electric	935
distribution utility to issue or cause the issuance of phase-in-	936
recovery bonds;	937
(7) Any taxes, franchise fees, or license fees imposed on	938
phase-in-recovery revenues;	939
(8) Any costs related to issuing or servicing phase-in-	940
recovery bonds or related to obtaining a financing order,	941
including servicing fees and expenses, trustee fees and	942
expenses, legal, accounting, or other professional fees and	943
expenses, administrative fees, placement fees, underwriting	944
fees, capitalized interest and equity, and rating-agency fees;	945
(9) Any other similar costs that the public utilities	946
commission finds appropriate.	947
(F) "Financing order" means an order issued by the public	948
utilities commission under section 4928.232 of the Revised Code	949
that authorizes an electric distribution utility or an assignee	950
to issue phase-in-recovery bonds and recover phase-in-recovery	951
charges.	952
(G) "Final financing order" means a financing order that	953

has become final and has taken effect as provided in section 954
4928.233 of the Revised Code. 955

(H) "Financing party" means either of the following: 956

(1) Any trustee, collateral agent, or other person acting 957
for the benefit of any bondholder; 958

(2) Any party to an ancillary agreement, the rights and 959
obligations of which relate to or depend upon the existence of 960
phase-in-recovery property, the enforcement and priority of a 961
security interest in phase-in-recovery property, the timely 962
collection and payment of phase-in-recovery revenues, or a 963
combination of these factors. 964

(I) "Financing statement" has the same meaning as in 965
section 1309.102 of the Revised Code. 966

(J) "Phase-in costs" means costs, inclusive of carrying 967
charges incurred before, on, or after ~~the effective date of this~~ 968
~~section~~March 22, 2012, authorized by the commission before, on, 969
or after ~~the effective date of this section~~March 22, 2012, to be 970
securitized or deferred as regulatory assets in proceedings 971
under section 4909.18 of the Revised Code, sections 4928.141 to 972
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 973
under those sections as they existed prior to the effective date 974
of the amendments to this section by B. ... of the 134th general 975
assembly, or section 4928.14 of the Revised Code as it existed 976
prior to July 31, 2008, pursuant to a final order for which 977
appeals have been exhausted. "Phase-in costs" excludes the 978
following: 979

(1) With respect to any electric generating facility that, 980
on and after ~~the effective date of this section~~March 22, 2012, 981
is owned, in whole or in part, by an electric distribution 982

utility applying for a financing order under section 4928.231 of 983
the Revised Code, costs ~~that are~~ authorized under division (B) 984
(2) (b) or (c) of section 4928.143 of the Revised Code as those 985
divisions existed prior to the effective date of the amendments 986
to that section by.B. ... of the 134th general assembly; 987

(2) Costs incurred after ~~the effective date of this~~ 988
~~section~~March 22, 2012, related to the ongoing operation of an 989
electric generating facility, but not environmental clean-up or 990
remediation costs incurred by an electric distribution utility 991
because of its ownership or operation of an electric generating 992
facility prior to ~~the effective date of this section~~March 22, 993
2012, which such clean-up or remediation costs are imposed or 994
incurred pursuant to federal or state law, rules, or regulations 995
and for which the commission approves recovery in accordance 996
with section 4909.18 of the Revised Code, sections 4928.141 to 997
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 998
under those sections as they existed prior to the effective date 999
of the amendments to this section by.B. ... of the 134th general 1000
assembly, or section 4928.14 of the Revised Code as it existed 1001
prior to July 31, 2008. 1002

(K) "Phase-in-recovery property" means the property, 1003
rights, and interests of an electric distribution utility or an 1004
assignee under a final financing order, including the right to 1005
impose, charge, and collect the phase-in-recovery charges that 1006
shall be used to pay and secure the payment of phase-in-recovery 1007
bonds and financing costs, and including the right to obtain 1008
adjustments to those charges, and any revenues, receipts, 1009
collections, rights to payment, payments, moneys, claims, or 1010
other proceeds arising from the rights and interests created 1011
under the final financing order. 1012

(L) "Phase-in-recovery revenues" means all revenues, 1013
receipts, collections, payments, moneys, claims, or other 1014
proceeds arising from phase-in-recovery property. 1015

(M) "Successor" means, with respect to any entity, another 1016
entity that succeeds by operation of law to the rights and 1017
obligations of the first legal entity pursuant to any 1018
bankruptcy, reorganization, restructuring, or other insolvency 1019
proceeding, any merger, acquisition, or consolidation, or any 1020
sale or transfer of assets, regardless of whether any of these 1021
occur as a result of a restructuring of the electric power 1022
industry or otherwise. 1023

Sec. 4928.231. (A) An electric distribution utility may 1024
apply to the public utilities commission for a financing order 1025
that authorizes the following: 1026

(1) The issuance of phase-in-recovery bonds, in one or 1027
more series, to recover uncollected phase-in costs; 1028

(2) The imposition, charging, and collection of phase-in- 1029
recovery charges, in accordance with the adjustment mechanism 1030
approved by the commission under section 4928.232 of the Revised 1031
Code, and consistent with the commission's authority regarding 1032
governmental aggregation as provided in division (I) of section 1033
4928.20 of the Revised Code, to recover both of the following: 1034

(a) Uncollected phase-in costs; 1035

(b) Financing costs. 1036

(3) The creation of phase-in-recovery property under the 1037
financing order. 1038

(B) The application shall include all of the following: 1039

(1) A description of the uncollected phase-in costs that 1040

the electric distribution utility seeks to recover through the 1041
issuance of phase-in-recovery bonds; 1042

(2) An estimate of the date each series of phase-in- 1043
recovery bonds are expected to be issued; 1044

(3) The expected term during which the phase-in costs 1045
associated with the issuance of each series of phase-in-recovery 1046
bonds are expected to be recovered; 1047

(4) An estimate of the financing costs, as described in 1048
section 4928.23 of the Revised Code, associated with the 1049
issuance of each series of phase-in-recovery bonds; 1050

(5) An estimate of the amount of phase-in-recovery charges 1051
necessary to recover the phase-in costs and financing costs set 1052
forth in the application and the calculation for that estimate, 1053
which calculation shall take into account the estimated date or 1054
dates of issuance and the estimated principal amount of each 1055
series of phase-in-recovery bonds; 1056

(6) For phase-in-recovery charges not subject to 1057
allocation according to an existing order, a proposed 1058
methodology for allocating phase-in-recovery charges among 1059
customer classes, including a proposed methodology for 1060
allocating such charges to governmental aggregation customers 1061
based upon the proportionate benefit determination made under 1062
division (I) of section 4928.20 of the Revised Code; 1063

(7) A description of a proposed adjustment mechanism for 1064
use as described in division (A) (2) of this section; 1065

(8) A description and valuation of how the issuance of the 1066
phase-in-recovery bonds, including financing costs, will both 1067
result in cost savings to customers and mitigate rate impacts to 1068
customers when compared to the use of other financing mechanisms 1069

or cost-recovery methods available to the electric distribution utility; 1070
1071

(9) Any other information required by the commission. 1072

(C) The electric distribution utility may restate or 1073
incorporate by reference in the application any information 1074
required under division (B) (9) of this section that the electric 1075
distribution utility filed with the commission under section 1076
4909.18 or sections 4928.141 to 4928.144 of the Revised Code, 1077
including filings made under those sections as they existed 1078
prior to the effective date of the amendments to this section 1079
by.B. ... of the 134th general assembly, or section 4928.14 of 1080
the Revised Code as it existed prior to July 31, 2008. 1081

Sec. 4928.232. (A) Proceedings before the public utilities 1082
commission on an application submitted by an electric 1083
distribution utility under section 4928.231 of the Revised Code 1084
shall be governed by Chapter 4903. of the Revised Code, but only 1085
to the extent that chapter is not inconsistent with this section 1086
or section 4928.233 of the Revised Code. Any party that 1087
participated in the proceeding in which phase-in costs were 1088
approved under section 4909.18 ~~of the Revised Code,~~ sections 1089
4928.141 to 4928.144 of the Revised Code, including in 1090
proceedings under those sections as they existed prior to the 1091
effective date of the amendments to this section by.B. ... of 1092
the 134th general assembly, or section 4928.14 of the Revised 1093
Code as it existed prior to July 31, 2008, shall have standing 1094
to participate in proceedings under sections 4928.23 to 1095
4928.2318 of the Revised Code. 1096

(B) When reviewing an application for a financing order 1097
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 1098
the commission may hold such hearings, make such inquiries or 1099

investigations, and examine such witnesses, books, papers, 1100
documents, and contracts as the commission considers proper to 1101
carry out these sections. Within thirty days after the filing of 1102
an application under section 4928.231 of the Revised Code, the 1103
commission shall publish a schedule of the proceeding. 1104

(C) (1) Not later than one hundred thirty-five days after 1105
the date the application is filed, the commission shall issue 1106
either a financing order, granting the application in whole or 1107
with modifications, or an order suspending or rejecting the 1108
application. 1109

(2) If the commission suspends an application for a 1110
financing order, the commission shall notify the electric 1111
distribution utility of the suspension and may direct the 1112
electric distribution utility to provide additional information 1113
as the commission considers necessary to evaluate the 1114
application. Not later than ninety days after the suspension, 1115
the commission shall issue either a financing order, granting 1116
the application in whole or with modifications, or an order 1117
rejecting the application. 1118

(D) (1) The commission shall not issue a financing order 1119
under division (C) of this section unless the commission 1120
determines that the financing order is consistent with section 1121
4928.02 of the Revised Code. 1122

(2) Except as provided in division (D) (1) of this section, 1123
the commission shall issue a financing order under division (C) 1124
of this section if, at the time the financing order is issued, 1125
the commission finds that the issuance of the phase-in-recovery 1126
bonds and the phase-in-recovery charges authorized by the order 1127
results in, consistent with market conditions, both measurably 1128
enhancing cost savings to customers and mitigating rate impacts 1129

to customers as compared with traditional financing mechanisms 1130
or traditional cost-recovery methods available to the electric 1131
distribution utility or, if the commission previously approved a 1132
recovery method, as compared with that recovery method. 1133

(E) The commission shall include all of the following in a 1134
financing order issued under division (C) of this section: 1135

(1) A determination of the maximum amount and a 1136
description of the phase-in costs that may be recovered through 1137
phase-in-recovery bonds issued under the financing order; 1138

(2) A description of phase-in-recovery property, the 1139
creation of which is authorized by the financing order; 1140

(3) A description of the financing costs that may be 1141
recovered through phase-in-recovery charges and the period over 1142
which those costs may be recovered; 1143

(4) For phase-in-recovery charges not subject to 1144
allocation according to an existing order, a description of the 1145
methodology and calculation for allocating phase-in-recovery 1146
charges among customer classes, including the allocation of such 1147
charges, if any, to governmental aggregation customers based 1148
upon the proportionate benefit determination made under division 1149
(I) of section 4928.20 of the Revised Code; 1150

(5) A description of the adjustment mechanism for use in 1151
the imposition, charging, and collection of the phase-in- 1152
recovery charges; 1153

(6) The maximum term of the phase-in-recovery bonds; 1154

(7) Any other provision the commission considers 1155
appropriate to ensure the full and timely imposition, charging, 1156
collection, and adjustment, pursuant to an approved adjustment 1157

mechanism, of the phase-in-recovery charges described in 1158
divisions (E) (3) to (5) of this section. 1159

(F) The commission may, in a financing order, afford the 1160
electric distribution utility flexibility in establishing the 1161
terms and conditions for the phase-in-recovery bonds to 1162
accommodate changes in market conditions, including repayment 1163
schedules, interest rates, financing costs, collateral 1164
requirements, required debt service and other reserves, and the 1165
ability of the electric distribution utility, at its option, to 1166
effect a series of issuances of phase-in-recovery bonds and 1167
correlated assignments, sales, pledges, or other transfers of 1168
phase-in-recovery property. Any changes made under this section 1169
to terms and conditions for the phase-in-recovery bonds shall be 1170
in conformance with the financing order. 1171

(G) A financing order may provide that the creation of 1172
phase-in-recovery property shall be simultaneous with the sale 1173
of that property to an assignee as provided in the application 1174
and the pledge of the property to secure phase-in-recovery 1175
bonds. 1176

(H) The commission shall, in a financing order, require 1177
that after the final terms of each issuance of phase-in-recovery 1178
bonds have been established, and prior to the issuance of those 1179
bonds, the electric distribution utility shall determine the 1180
resulting phase-in-recovery charges in accordance with the 1181
adjustment mechanism described in the financing order. These 1182
phase-in-recovery charges shall be final and effective upon the 1183
issuance of the phase-in-recovery bonds, without further 1184
commission action. 1185

Sec. 4928.542. The winning bid or bids selected through 1186
the competitive procurement process established under section 1187

4928.54 of the Revised Code shall meet all of the following requirements: 1188
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(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers; 1190
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(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under sections 4928.141~~7~~ and 4928.142~~7~~ of the Revised Code and section 4928.143 of the Revised Code as that section existed prior to the effective date of the amendments to that section by B. ... of the 134th general assembly; 1193
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(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code. 1200
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Section 2. That existing sections 4928.14, 4928.141, 4928.142, 4928.143, 4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, and 4928.542 of the Revised Code are hereby repealed. 1203
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Section 3. (A) (1) Notwithstanding the amendments by this act to eliminate provisions of section 4928.143 of the Revised Code and any other section of the Revised Code authorizing and governing electric security plans, the following shall apply to an electric distribution utility with an electric security plan in effect on the effective date of this section: 1207
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(a) If an electric distribution utility's electric security plan has a specific termination date, the utility may continue that plan until the plan's termination date. 1213
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(b) If an electric distribution utility's electric 1216

security plan does not have a specific termination date, the 1217
utility may continue that plan until not later than January 1, 1218
2024. 1219

(2) An electric security plan described in division (A) (1) 1220
of this section may continue in accordance with all applicable 1221
orders and rules of the Public Utilities Commission and any 1222
provisions of the Revised Code that existed and applied to the 1223
plan prior to the effective date of this section. After an 1224
electric distribution utility's electric security plan 1225
terminates under this section, the electric distribution utility 1226
shall not extend the electric security plan or apply for a new 1227
electric security plan. 1228

(B) The Commission may amend its rules to meet the 1229
requirements of division (A) of this section and the amendments 1230
contained in this act. 1231