

As Passed by the Senate

134th General Assembly

Regular Session

2021-2022

Sub. S. B. No. 10

Senator Romanchuk

Cosponsors: Senators Brenner, Antonio, Blessing, Cirino, Craig, Fedor, Gavarone, Hackett, Hoagland, Huffman, S., Lang, Manning, McColley, Peterson, Reineke, Schaffer, Schuring, Sykes, Thomas, Williams, Wilson, Yuko

A BILL

To amend section 4928.143 and to repeal section 1
4928.471 of the Revised Code to terminate 2
decoupling mechanisms authorized under H.B. 6 of 3
the 133rd General Assembly, to modify the 4
significantly excessive earnings determination 5
for an electric security plan, and to provide 6
refunds to retail electric customers in the 7
state. 8

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

Section 1. That section 4928.143 of the Revised Code be 9
amended to read as follows: 10

Sec. 4928.143. (A) For the purpose of complying with 11
section 4928.141 of the Revised Code, an electric distribution 12
utility may file an application for public utilities commission 13
approval of an electric security plan as prescribed under 14
division (B) of this section. The utility may file that 15
application prior to the effective date of any rules the 16
commission may adopt for the purpose of this section, and, as 17

the commission determines necessary, the utility immediately 18
shall conform its filing to those rules upon their taking 19
effect. 20

(B) Notwithstanding any other provision of Title XLIX of 21
the Revised Code to the contrary except division (D) of this 22
section, divisions (I), (J), and (K) of section 4928.20, 23
division (E) of section 4928.64, and section 4928.69 of the 24
Revised Code: 25

(1) An electric security plan shall include provisions 26
relating to the supply and pricing of electric generation 27
service. In addition, if the proposed electric security plan has 28
a term longer than three years, it may include provisions in the 29
plan to permit the commission to test the plan pursuant to 30
division (E) of this section and any transitional conditions 31
that should be adopted by the commission if the commission 32
terminates the plan as authorized under that division. 33

(2) The plan may provide for or include, without 34
limitation, any of the following: 35

(a) Automatic recovery of any of the following costs of 36
the electric distribution utility, provided the cost is 37
prudently incurred: the cost of fuel used to generate the 38
electricity supplied under the offer; the cost of purchased 39
power supplied under the offer, including the cost of energy and 40
capacity, and including purchased power acquired from an 41
affiliate; the cost of emission allowances; and the cost of 42
federally mandated carbon or energy taxes; 43

(b) A reasonable allowance for construction work in 44
progress for any of the electric distribution utility's cost of 45
constructing an electric generating facility or for an 46

environmental expenditure for any electric generating facility 47
of the electric distribution utility, provided the cost is 48
incurred or the expenditure occurs on or after January 1, 2009. 49
Any such allowance shall be subject to the construction work in 50
progress allowance limitations of division (A) of section 51
4909.15 of the Revised Code, except that the commission may 52
authorize such an allowance upon the incurrence of the cost or 53
occurrence of the expenditure. No such allowance for generating 54
facility construction shall be authorized, however, unless the 55
commission first determines in the proceeding that there is need 56
for the facility based on resource planning projections 57
submitted by the electric distribution utility. Further, no such 58
allowance shall be authorized unless the facility's construction 59
was sourced through a competitive bid process, regarding which 60
process the commission may adopt rules. An allowance approved 61
under division (B) (2) (b) of this section shall be established as 62
a nonbypassable surcharge for the life of the facility. 63

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

section and as a condition of the continuation of the surcharge, 78
the electric distribution utility shall dedicate to Ohio 79
consumers the capacity and energy and the rate associated with 80
the cost of that facility. Before the commission authorizes any 81
surcharge pursuant to this division, it may consider, as 82
applicable, the effects of any decommissioning, deratings, and 83
retirements. 84

(d) Terms, conditions, or charges relating to limitations 85
on customer shopping for retail electric generation service, 86
bypassability, standby, back-up, or supplemental power service, 87
default service, carrying costs, amortization periods, and 88
accounting or deferrals, including future recovery of such 89
deferrals, as would have the effect of stabilizing or providing 90
certainty regarding retail electric service; 91

(e) Automatic increases or decreases in any component of 92
the standard service offer price; 93

(f) Consistent with sections 4928.23 to 4928.2318 of the 94
Revised Code, both of the following: 95

(i) Provisions for the electric distribution utility to 96
securitize any phase-in, inclusive of carrying charges, of the 97
utility's standard service offer price, which phase-in is 98
authorized in accordance with section 4928.144 of the Revised 99
Code; 100

(ii) Provisions for the recovery of the utility's cost of 101
securitization. 102

(g) Provisions relating to transmission, ancillary, 103
congestion, or any related service required for the standard 104
service offer, including provisions for the recovery of any cost 105
of such service that the electric distribution utility incurs on 106

or after that date pursuant to the standard service offer;	107
(h) Provisions regarding the utility's distribution	108
service, including, without limitation and notwithstanding any	109
provision of Title XLIX of the Revised Code to the contrary,	110
provisions regarding single issue ratemaking, a revenue	111
decoupling mechanism or any other incentive ratemaking, and	112
provisions regarding distribution infrastructure and	113
modernization incentives for the electric distribution utility.	114
The latter may include a long-term energy delivery	115
infrastructure modernization plan for that utility or any plan	116
providing for the utility's recovery of costs, including lost	117
revenue, shared savings, and avoided costs, and a just and	118
reasonable rate of return on such infrastructure modernization.	119
As part of its determination as to whether to allow in an	120
electric distribution utility's electric security plan inclusion	121
of any provision described in division (B) (2) (h) of this	122
section, the commission shall examine the reliability of the	123
electric distribution utility's distribution system and ensure	124
that customers' and the electric distribution utility's	125
expectations are aligned and that the electric distribution	126
utility is placing sufficient emphasis on and dedicating	127
sufficient resources to the reliability of its distribution	128
system.	129
(i) Provisions under which the electric distribution	130
utility may implement economic development, job retention, and	131
energy efficiency programs, which provisions may allocate	132
program costs across all classes of customers of the utility and	133
those of electric distribution utilities in the same holding	134
company system.	135
(C) (1) The burden of proof in the proceeding shall be on	136

the electric distribution utility. The commission shall issue an 137
order under this division for an initial application under this 138
section not later than one hundred fifty days after the 139
application's filing date and, for any subsequent application by 140
the utility under this section, not later than two hundred 141
seventy-five days after the application's filing date. Subject 142
to division (D) of this section, the commission by order shall 143
approve or modify and approve an application filed under 144
division (A) of this section if it finds that the electric 145
security plan so approved, including its pricing and all other 146
terms and conditions, including any deferrals and any future 147
recovery of deferrals, is more favorable in the aggregate as 148
compared to the expected results that would otherwise apply 149
under section 4928.142 of the Revised Code. Additionally, if the 150
commission so approves an application that contains a surcharge 151
under division (B) (2) (b) or (c) of this section, the commission 152
shall ensure that the benefits derived for any purpose for which 153
the surcharge is established are reserved and made available to 154
those that bear the surcharge. Otherwise, the commission by 155
order shall disapprove the application. 156

(2) (a) If the commission modifies and approves an 157
application under division (C) (1) of this section, the electric 158
distribution utility may withdraw the application, thereby 159
terminating it, and may file a new standard service offer under 160
this section or a standard service offer under section 4928.142 161
of the Revised Code. 162

(b) If the utility terminates an application pursuant to 163
division (C) (2) (a) of this section or if the commission 164
disapproves an application under division (C) (1) of this 165
section, the commission shall issue such order as is necessary 166
to continue the provisions, terms, and conditions of the 167

utility's most recent standard service offer, along with any 168
expected increases or decreases in fuel costs from those 169
contained in that offer, until a subsequent offer is authorized 170
pursuant to this section or section 4928.142 of the Revised 171
Code, respectively. 172

(D) Regarding the rate plan requirement of division (A) of 173
section 4928.141 of the Revised Code, if an electric 174
distribution utility that has a rate plan that extends beyond 175
December 31, 2008, files an application under this section for 176
the purpose of its compliance with division (A) of section 177
4928.141 of the Revised Code, that rate plan and its terms and 178
conditions are hereby incorporated into its proposed electric 179
security plan and shall continue in effect until the date 180
scheduled under the rate plan for its expiration, and that 181
portion of the electric security plan shall not be subject to 182
commission approval or disapproval under division (C) of this 183
section, and the earnings test provided for in division (F) of 184
this section shall not apply until after the expiration of the 185
rate plan. However, that utility may include in its electric 186
security plan under this section, and the commission may 187
approve, modify and approve, or disapprove subject to division 188
(C) of this section, provisions for the incremental recovery or 189
the deferral of any costs that are not being recovered under the 190
rate plan and that the utility incurs during that continuation 191
period to comply with section 4928.141, division (B) of section 192
4928.64, or division (A) of section 4928.66 of the Revised Code. 193

(E) If an electric security plan approved under division 194
(C) of this section, except one withdrawn by the utility as 195
authorized under that division, has a term, exclusive of phase- 196
ins or deferrals, that exceeds three years from the effective 197
date of the plan, the commission shall test the plan in the 198

fourth year, and if applicable, every fourth year thereafter, to 199
determine whether the plan, including its then-existing pricing 200
and all other terms and conditions, including any deferrals and 201
any future recovery of deferrals, continues to be more favorable 202
in the aggregate and during the remaining term of the plan as 203
compared to the expected results that would otherwise apply 204
under section 4928.142 of the Revised Code. The commission shall 205
also determine the prospective effect of the electric security 206
plan to determine if that effect is substantially likely to 207
provide the electric distribution utility with a return on 208
common equity that is significantly in excess of the return on 209
common equity that is likely to be earned by publicly traded 210
companies, including utilities, that face comparable business 211
and financial risk, with such adjustments for capital structure 212
as may be appropriate. The burden of proof for demonstrating 213
that significantly excessive earnings will not occur shall be on 214
the electric distribution utility. ~~For affiliated Ohio electric-~~ 215
~~distribution utilities that operate under a joint electric-~~ 216
~~security plan, their total earned return on common equity shall-~~ 217
~~be used for purposes of assessing significantly excessive-~~ 218
~~earnings.~~ If the test results are in the negative or the 219
commission finds that continuation of the electric security plan 220
will result in a return on equity that is significantly in 221
excess of the return on common equity that is likely to be 222
earned by publicly traded companies, including utilities, that 223
will face comparable business and financial risk, with such 224
adjustments for capital structure as may be appropriate, during 225
the balance of the plan, the commission may terminate the 226
electric security plan, but not until it shall have provided 227
interested parties with notice and an opportunity to be heard. 228
The commission may impose such conditions on the plan's 229
termination as it considers reasonable and necessary to 230

accommodate the transition from an approved plan to the more 231
advantageous alternative. In the event of an electric security 232
plan's termination pursuant to this division, the commission 233
shall permit the continued deferral and phase-in of any amounts 234
that occurred prior to that termination and the recovery of 235
those amounts as contemplated under that electric security plan. 236

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

4928.142 of the Revised Code. Upon termination of a plan under 262
this division, rates shall be set on the same basis as specified 263
in division (C) (2) (b) of this section, and the commission shall 264
permit the continued deferral and phase-in of any amounts that 265
occurred prior to that termination and the recovery of those 266
amounts as contemplated under that electric security plan. In 267
making its determination of significantly excessive earnings 268
under this division, the commission shall not consider, directly 269
or indirectly, the revenue, expenses, or earnings of any 270
affiliate ~~that is not an Ohio electric distribution utility or~~ 271
parent company. 272

Section 2. That existing section 4928.143 of the Revised 273
Code is hereby repealed. 274

Section 3. That section 4928.471 of the Revised Code is 275
hereby repealed. 276

Section 4. On and after the effective date of this 277
section, and notwithstanding any provision in Title XLIX of the 278
Revised Code to the contrary, no decoupling mechanism 279
established under section 4928.471 of the Revised Code, as that 280
section existed prior to the effective date of this section, 281
shall remain in effect, and no amount, charge, mechanism, or 282
rider related to that section may be assessed or collected from 283
customers. 284

Section 5. Upon the effective date of this section, and 285
notwithstanding section 4905.32 of the Revised Code and any 286
other provision in Title XLIX of the Revised Code to the 287
contrary, the full amount of revenues collected from customers 288
through an amount, charge, mechanism, or rider established under 289
section 4928.471 of the Revised Code, as that section existed 290
prior to the effective date of this section, shall be promptly 291

refunded to customers from whom the revenues were collected. 292
Refunds paid to customers shall be allocated to customer classes 293
in the same proportion as originally collected. 294

Section 6. Upon the effective date of this section, and 295
notwithstanding section 4905.32 of the Revised Code and any 296
other provision in Title XLIX of the Revised Code to the 297
contrary, both of the following apply: 298

(A) The amounts of money collected from customers 299
resulting from, or attributable to, the amendments to divisions 300
(E) and (F) of section 4928.143 of the Revised Code by H.B. 166 301
of the 133rd General Assembly, shall be treated as follows: 302

(1) The amounts shall be promptly refunded to customers 303
from whom they were collected. 304

(2) The amounts refunded shall be allocated to customer 305
classes in the same proportion as originally collected. 306

(B) The public utilities commission shall reconsider any 307
order or determination it made in compliance with the amendments 308
to divisions (E) and (F) of section 4928.143 of the Revised Code 309
made by H.B. 166 of the 133rd General Assembly prior to the 310
effective date of this section and shall issue a new order or 311
determination in compliance with the provisions of divisions (E) 312
and (F) of section 4928.143 as amended by this act. 313