

**As Introduced**

**135th General Assembly  
Regular Session  
2023-2024**

**S. B. No. 102**

**Senator Wilkin**

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**A BILL**

To amend sections 4903.083, 4905.491, 4909.04, 1  
4909.05, 4909.052, 4909.06, 4909.15, 4909.156, 2  
4909.18, 4909.19, 4909.42, 4909.43, 4928.01, 3  
4928.08, 4928.14, 4928.141, 4928.144, 4928.148, 4  
4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 5  
4928.54, 4928.542, 4928.64, 4929.161, 4929.163, 6  
and 4929.20; to enact new sections 4928.142 and 7  
4928.143 and sections 4903.101, 4905.131, 8  
4905.321, 4905.331, 4909.041, 4909.042, 9  
4909.173, 4909.174, 4909.175, 4909.177, 10  
4909.178, 4909.181, 4909.46, 4928.101, 4928.102, 11  
4928.147, 4928.149, 4928.1410, 4928.171, and 12  
4929.221; and to repeal sections 4928.142, 13  
4928.143, 4928.581, 4928.582, and 4928.583 of 14  
the Revised Code regarding public utilities and 15  
competitive retail electric and natural gas 16  
services. 17

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

**Section 1.** That sections 4903.083, 4905.491, 4909.04, 18  
4909.05, 4909.052, 4909.06, 4909.15, 4909.156, 4909.18, 4909.19, 19  
4909.42, 4909.43, 4928.01, 4928.08, 4928.14, 4928.141, 4928.144, 20

4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 21  
4928.54, 4928.542, 4928.64, 4929.161, 4929.163, and 4929.20 be 22  
amended and new sections 4928.142 and 4928.143 and sections 23  
4903.101, 4905.131, 4905.321, 4905.331, 4909.041, 4909.042, 24  
4909.173, 4909.174, 4909.175, 4909.177, 4909.178, 4909.181, 25  
4909.46, 4928.101, 4928.102, 4928.147, 4928.149, 4928.1410, 26  
4928.171, and 4929.221 of the Revised Code be enacted to read as 27  
follows: 28

**Sec. 4903.083.** (A) For all cases involving applications 29  
for an increase in rates pursuant to section 4909.18 of the 30  
Revised Code the public utilities commission shall hold public 31  
hearings in each municipal corporation in the affected service 32  
area having a population in excess of one hundred thousand 33  
persons, provided that, at least one public hearing shall be 34  
held in each affected service area. At least one such hearing 35  
shall be held after 5:00 p.m. Notice of such hearing shall be 36  
published by the commission ~~once each week for two consecutive~~ 37  
~~weeks in on the web site of a newspaper of general circulation~~ 38  
in the service area. ~~Said notice shall state prominently the~~ 39  
~~total amount of the revenue increase requested in the~~ 40  
~~application for the increase. The first publication of the~~ 41  
~~notice shall be made in its entirety and may be made in a~~ 42  
~~preprinted insert in the newspaper. The second publication may~~ 43  
~~be abbreviated if all of the following apply:—~~ 44

~~(1) The abbreviated notice is at least half the size of~~ 45  
~~the notice in the first publication.~~ 46

~~(2) At the same time the abbreviated notice is published,~~ 47  
~~the notice in the first publication is posted in its entirety on~~ 48  
~~the newspaper's web site, if the newspaper has a web site, and~~ 49  
~~the commission's web site.~~ 50

~~(3) The abbreviated notice contains a statement of the web- 51  
site posting or postings, as applicable, and instructions for 52  
accessing the posting or postings. 53~~

(B) The commission shall determine a format for the 54  
content of ~~all notices~~ the notice required under this section, 55  
and shall consider costs and technological efficiencies in 56  
making that determination. Defects in the publication of said 57  
notice shall not affect the legality or sufficiency of notices 58  
published under this section provided that the commission has 59  
substantially complied with this section, as described in 60  
section 4905.09 of the Revised Code. 61

Sec. 4903.101. The public utilities commission shall 62  
render a final decision on the merits of the issue not later 63  
than one hundred fifty days after the date of granting a 64  
rehearing under section 4903.10 of the Revised Code. If the 65  
commission fails to render a final decision in the time required 66  
under this section, the rehearing on the issue shall be 67  
considered denied by operation of law. This section does not 68  
apply during a state of emergency declared by the governor. 69

Sec. 4905.131. (A) If the public utilities commission 70  
authorizes a deferral as a regulatory asset on a public 71  
utility's books and records, then the commission also shall 72  
allow the utility to accrue carrying costs at the utility's 73  
long-term cost of debt, as most recently approved under section 74  
4909.18 of the Revised Code. If the commission allows recovery 75  
of all or a portion of the regulatory asset, then the commission 76  
also shall allow the continued accrual and collection of 77  
carrying charges on the unrecovered balance at the utility's 78  
long-term cost of debt, as most recently approved in a base rate 79  
case under section 4909.18 of the Revised Code. The carrying 80

charges shall accrue until the entire regulatory asset and all 81  
carrying costs have been recovered. 82

(B) If the commission requires a public utility to create 83  
a regulatory liability on the utility's books and records, then 84  
the commission also shall require the utility to accrue carrying 85  
costs at the utility's long-term cost of debt as most recently 86  
approved under section 4909.18 of the Revised Code. If the 87  
commission requires all or a portion of the regulatory liability 88  
to be credited to customers, then the commission also shall 89  
require, on the balance that has not yet been credited, the 90  
continued accrual of carrying charges at the utility's long-term 91  
cost of debt as most recently approved under section 4909.18 of 92  
the Revised Code. The carrying charges shall accrue until the 93  
entirety of the regulatory liability and all carrying costs have 94  
been credited to customers. 95

Sec. 4905.321. (A) Notwithstanding section 4905.32 of the 96  
Revised Code, all revenues collected from customers by a public 97  
utility as part of a rider or rate mechanism, rather than 98  
through base rates, that are later found to be unreasonable, 99  
unlawful, or otherwise improper by the supreme court shall be 100  
subject to refund from the date of the issuance of the supreme 101  
court's decision until the date when, on remand, the public 102  
utilities commission makes changes to the rider or mechanism to 103  
implement new rates to implement the supreme court's decision. 104

(B) The commission shall order the payment of the refunds 105  
described in division (A) of this section in a manner designed 106  
to allocate the refunds to customer classes in the same 107  
proportion as the charges were originally collected. 108

(C) The commission shall determine how to allocate any 109  
remaining funds described in division (A) of this section that 110

<u>cannot be refunded for whatever reason.</u>	111
<u>Sec. 4905.331. (A) As used in this section:</u>	112
<u>(1) "Electric distribution utility" has the same meaning</u>	113
<u>as in section 4928.01 of the Revised Code.</u>	114
<u>(2) "Electric service" means any service involved in</u>	115
<u>supplying or arranging for the supply of electricity to ultimate</u>	116
<u>consumers in this state. "Electric service" includes "retail</u>	117
<u>electric service" as defined in section 4928.01 of the Revised</u>	118
<u>Code.</u>	119
<u>(3) "Proceeding" includes a proceeding relating to</u>	120
<u>electric service under Chapters 4909. and 4928. of the Revised</u>	121
<u>Code.</u>	122
<u>(B) No electric distribution utility or its affiliate may</u>	123
<u>do either of the following to induce any party to a public</u>	124
<u>utilities commission proceeding to enter into a settlement of a</u>	125
<u>matter pending before the commission:</u>	126
<u>(1) Make a cash payment to that party;</u>	127
<u>(2) Enter into any agreement or any financial or private</u>	128
<u>arrangement with that party that is not made part of the public</u>	129
<u>case record.</u>	130
<u>(C) Notwithstanding division (B) of this section, the</u>	131
<u>commission may do any of the following:</u>	132
<u>(1) Reasonably allocate costs among rate schedules;</u>	133
<u>(2) Reasonably design rates within a rate schedule;</u>	134
<u>(3) Approve reasonable rates designed for particular</u>	135
<u>customers or classes of customers;</u>	136
<u>(4) Approve a resolution of a proceeding under section</u>	137

4905.26 of the Revised Code. 138

**Sec. 4905.491.** In an order issued under section 4905.481 139  
of the Revised Code approving an acquisition described in 140  
section 4909.052 of the Revised Code, the public utilities 141  
commission shall include both of the following: 142

(A) The commission's decision establishing the rate base 143  
of the company being acquired, as determined under sections 144  
4909.042, 4909.05, 4909.052, and 4909.055 of the Revised Code; 145

(B) The rate division under which the geographic area of 146  
the customers of the company being acquired shall be served. 147

**Sec. 4909.04.** (A) The public utilities commission, for the 148  
purpose of ascertaining the reasonableness and justice of rates 149  
and charges for the service rendered by public utilities or 150  
railroads, or for any other purpose authorized by law, may 151  
investigate and ascertain the value of the property of any 152  
public utility or railroad in this state used or useful for the 153  
service and convenience of the public, using the same criteria 154  
that are set forth in ~~section~~ sections 4909.042 and 4909.05 of 155  
the Revised Code. At the request of the legislative authority of 156  
any municipal corporation, the commission, after hearing and 157  
determining that such a valuation is necessary, may also 158  
investigate and ascertain the value of the property of any 159  
public utility used and useful for the service and convenience 160  
of the public where the whole or major portion of such public 161  
utility is situated in such municipal corporation. 162

(B) To assist the commission in preparing such a 163  
valuation, every public utility or railroad shall: 164

(1) Furnish to the commission, or to its agents, as the 165  
commission requires, maps, profiles, schedules of rates and 166

tariffs, contracts, reports of engineers, and other documents, 167  
records, and papers, or copies of any of them, in aid of any 168  
investigation and ascertainment of the value of its property; 169

(2) Grant to the commission or its agents free access to 170  
all of its premises and property and its accounts, records, and 171  
memoranda whenever and wherever requested by any such authorized 172  
agent; 173

(3) Cooperate with and aid the commission and its agents 174  
in the work of the valuation of its property in such further 175  
particulars and to such extent as the commission requires and 176  
directs. 177

(C) The commission may make all rules which seem necessary 178  
to ascertain the value of the property and plant of each public 179  
utility or railroad. 180

Sec. 4909.041. As used in sections 4909.041, 4909.042, and 181  
4909.05 of the Revised Code: 182

(A) A "lease purchase agreement" is an agreement pursuant 183  
to which a public utility leasing property is required to make 184  
rental payments for the term of the agreement and either the 185  
utility is granted the right to purchase the property upon the 186  
completion of the term of the agreement and upon the payment of 187  
an additional fixed sum of money or title to the property vests 188  
in the utility upon the making of the final rental payment. 189

(B) A "leaseback" is the sale or transfer of property by a 190  
public utility to another person contemporaneously followed by 191  
the leasing of the property to the public utility on a long-term 192  
basis. 193

Sec. 4909.042. (A) With respect to an electric light 194  
company that chooses to file a fully forecasted test period 195

under section 4909.18 of the Revised Code, the public utilities 196  
commission shall prescribe the form and details of the valuation 197  
report of the property of the utility. Such report shall include 198  
all the kinds and classes of property, with the value of each, 199  
owned, held, or projected to be owned or held during the test 200  
period, by the utility for the service and convenience of the 201  
public. 202

(B) Such report shall contain the following facts in 203  
detail: 204

(1) The original cost of each parcel of land owned in fee 205  
and projected to be owned in fee and in use during the test 206  
period, determined by the commission; and also a statement of 207  
the conditions of acquisition, whether by direct purchase, by 208  
donation, by exercise of the power of eminent domain, or 209  
otherwise; 210

(2) The actual acquisition cost, not including periodic 211  
rental fees, of rights-of-way, trailways, or other land rights 212  
projected to be held during the test period, by virtue of 213  
easements, leases, or other forms of grants of rights as to 214  
usage; 215

(3) The original cost of all other kinds and classes of 216  
property projected to be used and useful during the test period, 217  
in the rendition of service to the public. Such original costs 218  
of property, other than land owned in fee, shall be the cost, as 219  
determined to be reasonable by the commission, to the person 220  
that first dedicated or dedicates the property to the public use 221  
and shall be set forth in property accounts and subaccounts as 222  
prescribed by the commission; 223

(4) The cost of property constituting all or part of a 224



project projected to be leased to or used by the utility during 225  
the test period, under Chapter 165., 3706., 6121., or 6123. of 226  
the Revised Code and not included under division (B)(3) of this 227  
section exclusive of any interest directly or indirectly paid by 228  
the utility with respect thereto whether or not capitalized; 229

(5) In the discretion of the commission, the cost to a 230  
utility, in an amount determined to be reasonable by the 231  
commission, of property constituting all or part of a project 232  
projected to be leased to the utility during the test period, 233  
under a lease purchase agreement or a leaseback and not included 234  
under division (B)(3) of this section exclusive of any interest 235  
directly or indirectly paid by the utility with respect thereto 236  
whether or not capitalized; 237

(6) The proper and adequate reserve for depreciation, as 238  
determined to be reasonable by the commission; 239

(7) Any sums of money or property that the utility is 240  
projected to receive as of the date certain, as total or partial 241  
defrayal of the cost of its property; 242

(8) The valuation of the property of the utility, which 243  
shall be the sum of the amounts contained in the report pursuant 244  
to divisions (B)(1) to (5) of this section, less the sum of the 245  
amounts contained in the report pursuant to divisions (B)(6) and 246  
(7) of this section. 247

(C) The report shall show separately the property 248  
projected to be used and useful to or held by the utility during 249  
the test period, and such other items as the commission 250  
considers proper. The commission may require an additional 251  
report showing the extent to which the property is projected to 252  
be used and useful as of the date certain. Such reports shall be 253

filed in the office of the commission for the information of the 254  
governor and the general assembly. 255

**Sec. 4909.05.** As used in this section: 256

~~(A) A "lease purchase agreement" is an agreement pursuant-~~ 257  
~~to which a public utility leasing property is required to make-~~ 258  
~~rental payments for the term of the agreement and either the-~~ 259  
~~utility is granted the right to purchase the property upon the-~~ 260  
~~completion of the term of the agreement and upon the payment of-~~ 261  
~~an additional fixed sum of money or title to the property vests-~~ 262  
~~in the utility upon the making of the final rental payment.~~ 263

~~(B) A "leaseback" is the sale or transfer of property by a-~~ 264  
~~public utility to another person contemporaneously followed by-~~ 265  
~~the leasing of the property to the public utility on a long term-~~ 266  
~~basis.~~ 267

~~(C) The~~ With respect to every public utility, other than 268  
an electric light company that chooses to file a fully 269  
forecasted test period under section 4909.18 of the Revised 270  
Code, the public utilities commission shall prescribe the form 271  
and details of the valuation report of the property of each 272  
public utility or railroad in the state. Such report shall 273  
include all the kinds and classes of property, with the value of 274  
each, owned, held, or, with respect to a natural gas, water- 275  
works, or sewage disposal system company, projected to be owned 276  
or held as of the date certain, by each public utility or 277  
railroad used and useful, or, with respect to a natural gas, 278  
water-works, or sewage disposal system company, projected to be 279  
used and useful as of the date certain, for the service and 280  
convenience of the public. 281

(B) Such report shall contain the following facts in 282

detail:	283
(1) The original cost of each parcel of land owned in fee	284
and in use, or, with respect to a natural gas, water-works, or	285
sewage disposal system company, projected to be owned in fee and	286
in use as of the date certain, determined by the commission; and	287
also a statement of the conditions of acquisition, whether by	288
direct purchase, by donation, by exercise of the power of	289
eminent domain, or otherwise;	290
(2) The actual acquisition cost, not including periodic	291
rental fees, of rights-of-way, trailways, or other land rights	292
held, or, with respect to a natural gas, water-works, or sewage	293
disposal system company, projected to be held as of the date	294
certain, by virtue of easements, leases, or other forms of	295
grants of rights as to usage;	296
(3) The original cost of all other kinds and classes of	297
property used and useful, or, with respect to a natural gas,	298
water-works, or sewage disposal system company, projected to be	299
used and useful as of the date certain, in the rendition of	300
service to the public. Subject to section 4909.052 of the	301
Revised Code, such original costs of property, other than land	302
owned in fee, shall be the cost, as determined to be reasonable	303
by the commission, to the person that first dedicated or	304
dedicates the property to the public use and shall be set forth	305
in property accounts and subaccounts as prescribed by the	306
commission. To the extent that the costs of property comprising	307
a coal research and development facility, as defined in section	308
1555.01 of the Revised Code, or a coal development project, as	309
defined in section 1551.30 of the Revised Code, have been	310
allowed for recovery as Ohio coal research and development costs	311
under section 4905.304 of the Revised Code, none of those costs	312

shall be included as a cost of property under this division. 313

(4) The cost of property constituting all or part of a 314  
project leased to or used by the utility, or, with respect to a 315  
natural gas, water-works, or sewage disposal system company, 316  
projected to be leased to or used by the utility as of the date 317  
certain, under Chapter 165., 3706., 6121., or 6123. of the 318  
Revised Code and not included under division ~~(C) (3)~~ (B) (3) of 319  
this section exclusive of any interest directly or indirectly 320  
paid by the utility with respect thereto whether or not 321  
capitalized; 322

(5) In the discretion of the commission, the cost to a 323  
utility, in an amount determined to be reasonable by the 324  
commission, of property constituting all or part of a project 325  
leased to the utility, or, with respect to a natural gas, water- 326  
works, or sewage disposal system company, projected to be leased 327  
to the utility as of the date certain, under a lease purchase 328  
agreement or a leaseback and not included under division ~~(C) (3)~~ 329  
(B) (3) of this section exclusive of any interest directly or 330  
indirectly paid by the utility with respect thereto whether or 331  
not capitalized; 332

(6) The proper and adequate reserve for depreciation, as 333  
determined to be reasonable by the commission; 334

(7) Any sums of money or property that the company may 335  
have received, or, with respect to a natural gas, water-works, 336  
or sewage disposal system company, is projected to receive as of 337  
the date certain, as total or partial defrayal of the cost of 338  
its property; 339

(8) The valuation of the property of the company, which 340  
shall be the sum of the amounts contained in the report pursuant 341

to divisions ~~(C) (1)~~ (B) (1) to (5) of this section, less the sum 342  
of the amounts contained in the report pursuant to divisions ~~(C)~~ 343  
~~(6)~~ (B) (6) and (7) of this section. 344

(C) The report shall show separately the property used and 345  
useful to such public utility or railroad in the furnishing of 346  
the service to the public, the property held by such public 347  
utility or railroad for other purposes, and the property 348  
projected to be used and useful to or held by a natural gas, 349  
water-works, or sewage disposal system company as of the date 350  
certain, and such other items as the commission considers 351  
proper. The commission may require an additional report showing 352  
the extent to which the property is used and useful, or, with 353  
respect to a natural gas, water-works, or sewage disposal system 354  
company, projected to be used and useful as of the date certain. 355  
Such reports shall be filed in the office of the commission for 356  
the information of the governor and the general assembly. 357

**Sec. 4909.052.** Subject to a finding that such costs are 358  
just and reasonable, the public utilities commission in 359  
evaluating a petition submitted under section 4905.481 of the 360  
Revised Code shall accept the original cost, reported under 361  
division ~~(C) (3)~~ (B) (3) of section 4909.05 of the Revised Code, 362  
of the acquisition of a municipal water-works or sewage disposal 363  
system company that is acquired by a large water-works or sewage 364  
disposal system company, provided that the original cost is 365  
determined according to all of the following requirements: 366

(A) The acquiring company has three appraisals performed 367  
on the property of the company being acquired. 368

(B) The three appraisals are performed by three 369  
independent utility-valuation experts mutually selected by the 370  
acquiring company and the company being acquired from the list 371

maintained under section 4909.054 of the Revised Code.	372
(C) The average of the three appraisals is used as the fair market value of the company being acquired.	373 374
(D) Each utility-valuation expert does all of the following:	375 376
(1) Determines the fair market value of the company to be acquired by establishing the amount for which the company would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell;	377 378 379 380
(2) Determines the fair market value in compliance with the uniform standards of professional appraisal practice;	381 382
(3) Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired;	383 384 385
(4) Incorporates the assessment described in division (D) (5) of this section into the appraisal under the cost, market, and income approach;	386 387 388
(5) Engages one engineer who is licensed to prepare an assessment of the tangible assets of the company to be acquired. The original source of funding for any part of the tangible assets shall not be relevant to the determination of the value of those assets.	389 390 391 392 393
(E) The lesser of the purchase price or the fair market value, described in division (C) of this section, is reported as the original cost under division <del>(C) (3)</del> <u>(B) (3)</u> of section 4909.05 of the Revised Code of the company to be acquired.	394 395 396 397
<b>Sec. 4909.06.</b> The investigation and report required by <del>section</del> <u>section 4909.042 or</u> 4909.05 of the Revised Code shall	398 399

show, when the public utilities commission deems it necessary, 400  
the amounts, dates, and rates of interest of all bonds 401  
outstanding against each public utility or railroad, the 402  
property upon which such bonds are a lien, the amounts paid for 403  
them, and, the original capital stock and the moneys received by 404  
any such public utility or railroad by reason of any issue of 405  
stock, bonds, or other securities. Such report shall also show 406  
the net and gross receipts of such public utility or railroad 407  
and the method by which moneys were expended or paid out and the 408  
purpose of such payments. The commission may prescribe the 409  
procedure to be followed in making the investigation and 410  
valuation, the form in which the results of the ascertainment of 411  
the value of each public utility or railroad shall be submitted, 412  
and the classifications of the elements that constitute the 413  
ascertained value. Such investigation shall also show the value 414  
of the property of every public utility or railroad as a whole, 415  
and if such property is in more than one county, the value of 416  
its property in each of such counties. 417

"Valuation" and "value," as used in this section, may 418  
include, ~~with~~ : 419

(A) With respect to a public utility that is a natural 420  
gas, water-works, or sewage disposal system company, or that is 421  
an electric light company that chooses not to file a fully 422  
forecasted test period under section 4909.18 of the Revised 423  
Code, projected valuation and value as of the date certain, if 424  
applicable because of a future date certain under section 425  
4909.15 of the Revised Code; 426

(B) With respect to an electric light company that chooses 427  
to file a fully forecasted test period under section 4909.18 of 428  
the Revised Code, the valuation and value during the fully 429

forecasted test period. 430

**Sec. 4909.15.** (A) The public utilities commission, when 431  
fixing and determining just and reasonable rates, rate 432  
mechanisms, fares, tolls, rentals, and charges, shall determine: 433

~~(1) The~~ (1) (a) With respect to a public utility that is a 434  
natural gas, water-works, or sewage disposal system company, or 435  
that is an electric light company that chooses not to file a 436  
fully forecasted test period under section 4909.18 of the 437  
Revised Code, the valuation as of the date certain of the 438  
property of the public utility that is used and useful or, ~~with~~ 439  
~~respect to a natural gas, water-works, or sewage disposal system~~ 440  
~~company, is projected to be used and useful as of the date~~ 441  
certain, in rendering the public utility service for which rates 442  
are to be fixed and determined. 443

(b) With respect to an electric light company that chooses 444  
to file a fully forecasted test period under section 4909.18 of 445  
the Revised Code, the valuation of the property of the utility 446  
that is projected to be used and useful during the fully 447  
forecasted test period in rendering the public utility service 448  
for which rates are to be fixed and determined. 449

(c) The valuation so determined under division (A) (1) of 450  
this section for any public utility shall be the total value as 451  
set forth in division ~~(C) (8)~~ (B) (8) of section 4909.042 of the 452  
Revised Code and division (B) (8) of section 4909.05 of the 453  
Revised Code, and a reasonable allowance for materials and 454  
supplies and a reasonable allowance for cash working capital as 455  
determined by the commission. 456

~~The commission, in its discretion, may include in the~~ 457  
~~valuation a reasonable allowance for construction work in~~ 458



~~progress but, in no event, may such an allowance be made by the~~ 459  
~~commission until it has determined that the particular~~ 460  
~~construction project is at least seventy five per cent complete.~~ 461

~~In determining the percentage completion of a particular~~ 462  
~~construction project, the commission shall consider, among other~~ 463  
~~relevant criteria, the per cent of time elapsed in construction;~~ 464  
~~the per cent of construction funds, excluding allowance for~~ 465  
~~funds used during construction, expended, or obligated to such~~ 466  
~~construction funds budgeted where all such funds are adjusted to~~ 467  
~~reflect current purchasing power; and any physical inspection~~ 468  
~~performed by or on behalf of any party, including the~~ 469  
~~commission's staff.~~ 470

~~A reasonable allowance for construction work in progress~~ 471  
~~shall not exceed ten per cent of the total valuation as stated~~ 472  
~~in this division, not including such allowance for construction~~ 473  
~~work in progress.~~ 474

~~Where the commission permits an allowance for construction~~ 475  
~~work in progress, the dollar value of the project or portion~~ 476  
~~thereof included in the valuation as construction work in~~ 477  
~~progress shall not be included in the valuation as plant in~~ 478  
~~service until such time as the total revenue effect of the~~ 479  
~~construction work in progress allowance is offset by the total~~ 480  
~~revenue effect of the plant in service exclusion. Carrying~~ 481  
~~charges calculated in a manner similar to allowance for funds~~ 482  
~~used during construction shall accrue on that portion of the~~ 483  
~~project in service but not reflected in rates as plant in~~ 484  
~~service, and such accrued carrying charges shall be included in~~ 485  
~~the valuation of the property at the conclusion of the offset~~ 486  
~~period for purposes of division (C) (8) of section 4909.05 of the~~ 487  
~~Revised Code.~~ 488

~~From and after April 10, 1985, no allowance for~~ 489  
~~construction work in progress as it relates to a particular~~ 490  
~~construction project shall be reflected in rates for a period~~ 491  
~~exceeding forty-eight consecutive months commencing on the date~~ 492  
~~the initial rates reflecting such allowance become effective,~~ 493  
~~except as otherwise provided in this division.~~ 494

~~The applicable maximum period in rates for an allowance~~ 495  
~~for construction work in progress as it relates to a particular~~ 496  
~~construction project shall be tolled if, and to the extent, a~~ 497  
~~delay in the in-service date of the project is caused by the~~ 498  
~~action or inaction of any federal, state, county, or municipal~~ 499  
~~agency having jurisdiction, where such action or inaction~~ 500  
~~relates to a change in a rule, standard, or approval of such~~ 501  
~~agency, and where such action or inaction is not the result of~~ 502  
~~the failure of the utility to reasonably endeavor to comply with~~ 503  
~~any rule, standard, or approval prior to such change.~~ 504

~~In the event that such period expires before the project~~ 505  
~~goes into service, the commission shall exclude, from the date~~ 506  
~~of expiration, the allowance for the project as construction~~ 507  
~~work in progress from rates, except that the commission may~~ 508  
~~extend the expiration date up to twelve months for good cause~~ 509  
~~shown.~~ 510

~~In the event that a utility has permanently canceled,~~ 511  
~~abandoned, or terminated construction of a project for which it~~ 512  
~~was previously permitted a construction work in progress~~ 513  
~~allowance, the commission immediately shall exclude the~~ 514  
~~allowance for the project from the valuation.~~ 515

~~In the event that a construction work in progress project~~ 516  
~~previously included in the valuation is removed from the~~ 517  
~~valuation pursuant to this division, any revenues collected by~~ 518

~~the utility from its customers after April 10, 1985, that~~ 519  
~~resulted from such prior inclusion shall be offset against~~ 520  
~~future revenues over the same period of time as the project was~~ 521  
~~included in the valuation as construction work in progress. The~~ 522  
~~total revenue effect of such offset shall not exceed the total~~ 523  
~~revenues previously collected.~~ 524

~~In no event shall the total revenue effect of any offset~~ 525  
~~or offsets provided under division (A) (1) of this section exceed~~ 526  
~~the total revenue effect of any construction work in progress~~ 527  
~~allowance.~~ 528

(2) A fair and reasonable rate of return to the utility on 529  
the valuation as determined in division (A) (1) of this section; 530

(3) The dollar annual return to which the utility is 531  
entitled by applying the fair and reasonable rate of return as 532  
determined under division (A) (2) of this section to the 533  
valuation of the utility determined under division (A) (1) of 534  
this section; 535

(4) The cost to the utility of rendering the public 536  
utility service for the test period used for the determination 537  
under division (C) (1) of this section, less the total of any 538  
interest on cash or credit refunds paid, pursuant to section 539  
4909.42 of the Revised Code, by the utility during the test 540  
period. 541

~~(a)~~ Federal, state, and local taxes imposed on or measured 542  
by net income may, in the discretion of the commission, be 543  
computed by the normalization method of accounting, provided the 544  
utility maintains accounting reserves that reflect differences 545  
between taxes actually payable and taxes on a normalized basis, 546  
provided that no determination as to the treatment in the rate- 547

making process of such taxes shall be made that will result in 548  
loss of any tax depreciation or other tax benefit to which the 549  
utility would otherwise be entitled, and further provided that 550  
such tax benefit as redounds to the utility as a result of such 551  
a computation may not be retained by the company, used to fund 552  
any dividend or distribution, or utilized for any purpose other 553  
than the defrayal of the operating expenses of the utility and 554  
the defrayal of the expenses of the utility in connection with 555  
construction work. 556

~~(b) The amount of any tax credits granted to an electric 557  
light company under section 5727.391 of the Revised Code for 558  
Ohio coal burned prior to January 1, 2000, shall not be retained 559  
by the company, used to fund any dividend or distribution, or 560  
utilized for any purposes other than the defrayal of the 561  
allowable operating expenses of the company and the defrayal of 562  
the allowable expenses of the company in connection with the 563  
installation, acquisition, construction, or use of a compliance 564  
facility. The amount of the tax credits granted to an electric 565  
light company under that section for Ohio coal burned prior to 566  
January 1, 2000, shall be returned to its customers within three 567  
years after initially claiming the credit through an offset to 568  
the company's rates or fuel component, as determined by the 569  
commission, as set forth in schedules filed by the company under 570  
section 4905.30 of the Revised Code. As used in division (A)(4) 571  
(b) of this section, "compliance facility" has the same meaning 572  
as in section 5727.391 of the Revised Code. 573~~

(B) The commission shall compute the gross annual revenues 574  
to which the utility is entitled by adding the dollar amount of 575  
return under division (A)(3) of this section to the cost, for 576  
the test period used for the determination under division (C)(1) 577  
of this section, of rendering the public utility service under 578

division (A) (4) of this section. 579

(C) (1) Except as provided in division (D) of this section, 580  
the revenues and expenses of the utility shall be determined 581  
during a test period. ~~The utility may as follows:~~ 582

(a) Electric light companies may propose a fully 583  
forecasted test period utilizing reasonably forecasted rate 584  
base, revenues, and expenses for the first twelve months that 585  
new rates will be in effect. Initially, rates shall be set using 586  
the thirteen-month average rate base ending in the last month of 587  
the test period, based on the end-of-month balance for the 588  
twelve consecutive calendar months of the test period plus the 589  
end-of-month balance for the month immediately prior to the 590  
beginning of the forecasted test period. Final rates for this 591  
thirteen-month average test period shall use the lower of 592  
forecasted plant investment or actual plant investment, actual 593  
revenues, and actual expenses. Forecasted plant investment, 594  
forecasted revenues, and forecasted expenses versus actual 595  
investment, actual revenues, and actual expenses shall be trued 596  
up via a rate mechanism approved by the commission. The fully 597  
forecasted test period shall commence not later than the 598  
application's filing date. 599

(b) All utilities, except for electric light companies 600  
that choose to file under division (C) (1) (a) of this section, 601  
shall propose a test period for this determination that is any 602  
twelve-month period beginning not more than six months prior to 603  
the date the application is filed and ending not more than nine 604  
months subsequent to that date. ~~The test period for determining~~ 605  
~~revenues and expenses of the utility shall be the test period~~ 606  
~~proposed by the utility, unless otherwise ordered by the~~ 607  
~~commission.~~ 608

(2) ~~The~~ For utilities filing under division (C) (1) (b) of 609  
this section, the date certain shall be not later than the date 610  
of filing, except that it shall be, for a natural gas, water- 611  
works, or sewage disposal system company, not later than the end 612  
of the test period. 613

(D) ~~A natural gas, water works, or sewage disposal system-~~ 614  
~~company~~ Utilities filing under division (C) (1) (b) of this 615  
section may propose adjustments to the revenues and expenses ~~to-~~ 616  
~~be determined under division (C) (1) of this section~~ for any 617  
changes that are, during the test period or the twelve-month 618  
period immediately following the test period, reasonably 619  
expected to occur. The ~~natural gas, water works, or sewage-~~ 620  
~~disposal system company~~ utility shall identify and quantify, 621  
individually, any proposed adjustments. The commission shall 622  
incorporate the proposed adjustments into the determination if 623  
the adjustments are just and reasonable. 624

(E) When the commission is of the opinion, after hearing 625  
and after making the determinations under divisions (A) and (B) 626  
of this section, that any rate, rate mechanism, fare, charge, 627  
toll, rental, schedule, classification, or service, or any joint 628  
rate, fare, charge, toll, rental, schedule, classification, or 629  
service rendered, charged, demanded, exacted, or proposed to be 630  
rendered, charged, demanded, or exacted, is, or will be, unjust, 631  
unreasonable, unjustly discriminatory, unjustly preferential, or 632  
in violation of law, that the service is, or will be, 633  
inadequate, or that the maximum rates, charges, tolls, or 634  
rentals chargeable by any such public utility are insufficient 635  
to yield reasonable compensation for the service rendered, and 636  
are unjust and unreasonable, the commission shall: 637

(1) With due regard among other things to the value of all 638

property of the public utility ~~actually used and useful for the~~ 639  
~~convenience of the public~~ as determined under division (A) (1) of 640  
this section, excluding from such value the value of any 641  
franchise or right to own, operate, or enjoy the same in excess 642  
of the amount, exclusive of any tax or annual charge, actually 643  
paid to any political subdivision of the state or county, as the 644  
consideration for the grant of such franchise or right, and 645  
excluding any value added to such property by reason of a 646  
monopoly or merger, with due regard in determining the dollar 647  
annual return under division (A) (3) of this section to the 648  
necessity of making reservation out of the income for surplus, 649  
depreciation, and contingencies, and; 650

(2) With due regard to all such other matters as are 651  
proper, according to the facts in each case, 652

(a) Including a fair and reasonable rate of return 653  
determined by the commission with reference to a cost of debt 654  
equal to the actual embedded cost of debt of such public 655  
utility, 656

(b) But not including the portion of any periodic rental 657  
or use payments representing that cost of property that is 658  
included in the valuation report under divisions ~~(C) (4)~~ (B) (4) 659  
and (5) of section 4909.042 of the Revised Code and divisions 660  
(B) (4) and (5) of section 4909.05 of the Revised Code, fix and 661  
determine the just and reasonable rate, rate mechanism, fare, 662  
charge, toll, rental, or service to be rendered, charged, 663  
demanded, exacted, or collected for the performance or rendition 664  
of the service that will provide the public utility the 665  
allowable gross annual revenues under division (B) of this 666  
section, and order such just and reasonable rate, rate 667  
mechanism, fare, charge, toll, rental, or service to be 668

substituted for the existing one. After such determination and 669  
order no change in the rate, rate mechanism, fare, toll, charge, 670  
rental, schedule, classification, or service shall be made, 671  
rendered, charged, demanded, exacted, or changed by such public 672  
utility without the order of the commission, and any other rate, 673  
rate mechanism, fare, toll, charge, rental, classification, or 674  
service is prohibited. 675

(F) Upon application of any person or any public utility, 676  
and after notice to the parties in interest and opportunity to 677  
be heard as provided in Chapters 4901., 4903., 4905., 4907., 678  
4909., 4921., and 4923. of the Revised Code for other hearings, 679  
has been given, the commission may rescind, alter, or amend an 680  
order fixing any rate, rate mechanism, fare, toll, charge, 681  
rental, classification, or service, or any other order made by 682  
the commission. Certified copies of such orders shall be served 683  
and take effect as provided for original orders. 684

**Sec. 4909.156.** In fixing the just, reasonable, and 685  
compensatory rates, rate mechanisms, joint rates, tolls, 686  
classifications, charges, or rentals to be observed and charged 687  
for service by any public utility, the public utilities 688  
commission shall, in action upon an application filed pursuant 689  
to section 4909.18 of the Revised Code, require a public utility 690  
to file a report showing the proportionate amounts of the 691  
valuation of the property of the utility, as determined under 692  
section 4909.042 or 4909.05 of the Revised Code, and the 693  
proportionate amounts of the revenues and expenses of the 694  
utility that are proposed to be considered as attributable to 695  
the service area involved in the application. 696

"Valuation," as used in this section, may include, ~~with~~ : 697

(A) With respect to a public utility that is a natural 698



gas, water-works, or sewage disposal system company or that is 699  
an electric light company that chooses not to file a fully 700  
forecasted test period under section 4909.18 of the Revised 701  
Code, projected valuation as of the date certain, if applicable 702  
because of a future date certain under section 4909.15 of the 703  
Revised Code; 704

(B) With respect to an electric light company that chooses 705  
to file a fully forecasted test period under section 4909.18 of 706  
the Revised Code, the valuation and value during the fully 707  
forecasted test period. 708

**Sec. 4909.173.** (A) An electric light company may file an 709  
application with the public utilities commission for approval to 710  
collect the revenue requirement associated with distribution 711  
infrastructure investments through an interim distribution 712  
mechanism, determined in accordance with this section. The 713  
application shall contain such information as the commission 714  
prescribes. A single application for an interim distribution 715  
mechanism may include any combination of investments described 716  
in division (C) of this section. 717

A company for which an interim distribution mechanism is 718  
authorized under this section may file an application for 719  
another such mechanism not sooner than twelve months after the 720  
filing date of its most recent interim distribution mechanism 721  
application. The commission shall not authorize a company to 722  
have more than three interim distribution mechanisms for any 723  
single company tariff in effect at any time. 724

(B) The following apply to the interim distribution 725  
application process: 726

(1) Not later than fourteen calendar days after the filing 727

of an application under this section, the commission shall 728  
establish a procedural schedule with an evidentiary hearing. 729

(2) The commission may only authorize an interim 730  
distribution mechanism for a company under the following 731  
circumstances: 732

(a) The mechanism is just and reasonable. 733

(b) The mechanism does not result in revenues in excess of 734  
the requirement to recover infrastructure costs that are: 735

(i) Associated with the distribution-related 736  
infrastructure investments described in division (C) of this 737  
section that are not already reflected in the affected schedules 738  
filed by the company under section 4905.32 of the Revised Code; 739

(ii) Either incurred before the date of filing or are 740  
projected to be incurred not later than twelve months following 741  
the company's application date. 742

(3) In its review of an application made under this 743  
section, the commission shall consider factors, including the 744  
following: 745

(a) Any benefits the company's investments contribute to 746  
the company's distribution grid and to customers; 747

(b) Any incremental cost savings resulting from such 748  
investments. 749

(4) The revenue requirement for each interim distribution 750  
mechanism shall be allocated to base distribution rate classes 751  
consistent with the revenue requirement allocation in the 752  
company's most recently approved application under section 753  
4909.18 of the Revised Code. 754

(5) To the extent a mechanism is based on expenditures 755  
included in division (C) (2) (a) of this section, the mechanism 756  
shall not collect in excess of four per cent of the base 757  
distribution revenue requirement approved by the commission in 758  
the company's most recent application under section 4909.18 of 759  
the Revised Code. 760

(6) Each interim distribution mechanism shall be trued up 761  
annually, subject to the limitation under division (B) (5) of 762  
this section. 763

(C) Distribution-related infrastructure investments that 764  
the commission may approve for an interim distribution mechanism 765  
include distribution-related capital expenditures that the 766  
commission determines meet all of the following criteria: 767

(1) The investments meet the requirement under section 768  
4909.15 of the Revised Code to be used and useful in rendering 769  
public utility service or projected to be used and useful in 770  
rendering public utility service not later than twelve months 771  
following the date of application filed under this section; 772

(2) The investments are any of the following: 773

(a) Determined necessary by the commission for maintaining 774  
or improving safety, reliability, system efficiency, security, 775  
or resiliency purposes; 776

(b) Related to external conditions or circumstances that 777  
were not reasonably foreseeable at the time the company filed 778  
its most recent notice of intent to file an application for an 779  
increase in rates under section 4909.18 of the Revised Code, 780  
including the following: 781

(i) Capital expenditures for the installation of 782  
replacement plant necessitated by weather or other factors 783

outside of the company's control that cause damage to existing 784  
infrastructure; 785

(ii) Unreimbursed capital expenditures made by the company 786  
for facility relocation required by a governmental entity due to 787  
a street or highway project; 788

(iii) Capital expenditures made by the company to comply 789  
with any consent decree, final order, or final rule of any 790  
local, state, or federal agency or legislative body. 791

(D) An application made under this section shall not be 792  
considered an application to increase rates under section 793  
4909.18 of the Revised Code. 794

(E) An order issued by the commission regarding an 795  
application by an electric light company for an increase in 796  
rates under section 4909.18 of the Revised Code shall provide 797  
for the termination, as of the effective date of the rate 798  
increase, of any interim distribution mechanisms authorized for 799  
the company under this section, to the extent the underlying 800  
investments are then being recovered through base rates. 801

(F) As used in division (B) of this section, 802  
infrastructure costs shall include depreciation, property taxes, 803  
debt service, and a fair and reasonable rate of return on 804  
equity, equivalent to the rate of return on equity most recently 805  
authorized for the company in an application filed under section 806  
4909.18 of the Revised Code, on the filing date valuation of 807  
that particular infrastructure. 808

**Sec. 4909.174.** (A) If the public utilities commission 809  
fails to issue a final order not later than one hundred eighty 810  
days after the date an application is filed under section 811  
4909.173 of the Revised Code, an application submitted pursuant 812

to that section shall go into effect immediately subject to 813  
refund including interest at the rate stated in section 1343.03 814  
of the Revised Code. The refund shall be accomplished in a 815  
manner as prescribed by the commission. 816

(B) If the commission fails to issue a final order not 817  
later than two hundred seventy-five days after the date the 818  
application is filed, an electric light company is not obligated 819  
to refund amounts that exceed the amounts authorized by the 820  
commission's final order and are collected during the period 821  
beginning after the two hundred seventy-fifth day and ending on 822  
the date of the commission's final order. 823

(C) The commission may extend the deadlines established 824  
for commission orders in division (A) or (B) of this section, if 825  
the commission finds that the electric light company that filed 826  
the application has caused a delay in the application 827  
proceeding. The commission may extend the deadline in division 828  
(A) or (B) of this section commensurate with the delay caused by 829  
the utility. 830

**Sec. 4909.175.** During the period that an interim 831  
distribution mechanism authorized by the public utilities 832  
commission under section 4909.173 of the Revised Code is in 833  
effect, the commission, by order and on its own motion or upon 834  
good cause shown, may reduce the amount of, or terminate, the 835  
mechanism, if it determines that the mechanism, on a normalized 836  
basis, has caused the company to earn a rate of return on equity 837  
on distribution rate base that is greater than two hundred fifty 838  
basis points in excess of the rate of return on equity most 839  
recently authorized for the company in an application filed 840  
under section 4909.18 of the Revised Code. 841

**Sec. 4909.177.** An electric light company shall provide 842

notice of any interim distribution mechanism authorized under 843  
section 4909.173 of the Revised Code to each affected customer 844  
with, or on, the customer's first bill containing the mechanism. 845  
The company also shall list, on all customer bills sent by the 846  
company, the individual customer cost of the company's interim 847  
distribution mechanism under section 4909.173 of the Revised 848  
Code for the applicable billing period. 849

**Sec. 4909.178.** Not later than ninety days after the 850  
effective date this section, the public utilities commission 851  
shall adopt such rules and public notice requirements as it 852  
considers necessary to carry out sections 4909.173 to 4909.178 853  
of the Revised Code. 854

Notwithstanding any provision of section 121.95 of the 855  
Revised Code to the contrary, a regulatory restriction contained 856  
in a rule adopted under section 4909.178 of the Revised Code is 857  
not subject to sections 121.95 to 121.953 of the Revised Code. 858

**Sec. 4909.18.** Any public utility desiring to establish any 859  
rate, rate mechanism, joint rate, toll, classification, charge, 860  
or rental, or to modify, amend, change, increase, or reduce any 861  
existing rate, rate mechanism, joint rate, toll, classification, 862  
charge, or rental, or any regulation or practice affecting the 863  
same, shall file a written application with the public utilities 864  
commission. Except for actions under section 4909.16 of the 865  
Revised Code, no public utility may issue the notice of intent 866  
to file an application pursuant to division (B) of section 867  
4909.43 of the Revised Code to increase any existing rate, rate 868  
mechanism, joint rate, toll, classification, charge, or rental, 869  
until a final order under this section has been issued by the 870  
commission on any pending prior application to increase the same 871  
rate, rate mechanism, joint rate, toll, classification, charge, 872

or rental or until two hundred seventy-five days after filing 873  
such application, whichever is sooner. Such application shall be 874  
verified by the president or a vice-president and the secretary 875  
or treasurer of the applicant. Such application shall contain a 876  
schedule of the existing rate, rate mechanism, joint rate, toll, 877  
classification, charge, or rental, or regulation or practice 878  
affecting the same, a schedule of the modification amendment, 879  
change, increase, or reduction sought to be established, and a 880  
statement of the facts and grounds upon which such application 881  
is based. If such application proposes a new service or the use 882  
of new equipment, or proposes the establishment or amendment of 883  
a regulation, the application shall fully describe the new 884  
service or equipment, or the regulation proposed to be 885  
established or amended, and shall explain how the proposed 886  
service or equipment differs from services or equipment 887  
presently offered or in use, or how the regulation proposed to 888  
be established or amended differs from regulations presently in 889  
effect. The application shall provide such additional 890  
information as the commission may require in its discretion. If 891  
the commission determines that such application is not for an 892  
increase in any rate, rate mechanism, joint rate, toll, 893  
classification, charge, or rental, the commission may permit the 894  
filing of the schedule proposed in the application and fix the 895  
time when such schedule shall take effect. If it appears to the 896  
commission that the proposals in the application may be unjust 897  
or unreasonable, the commission shall set the matter for hearing 898  
~~and shall give notice of such hearing by sending written notice~~ 899  
~~of the date set for the hearing to the public utility and~~ 900  
~~publishing notice of the hearing one time in a newspaper of~~ 901  
~~general circulation in each county in the service area affected~~ 902  
~~by the application.~~ At such hearing, the burden of proof to show 903  
that the proposals in the application are just and reasonable 904

shall be upon the public utility. ~~After such hearing, the~~ 905  
~~commission shall, where practicable, issue an appropriate order~~ 906  
~~within six months from the date the application was filed.~~ 907

If the commission determines that said application is for 908  
an increase in any rate, rate mechanism, joint rate, toll, 909  
classification, charge, or rental there shall also, unless 910  
otherwise ordered by the commission, be filed with the 911  
application in duplicate the following exhibits: 912

(A) A report of its property used and useful, or, with 913  
respect to a natural gas, electric light company, water-works, 914  
or sewage disposal system company, projected to be used and 915  
useful as of the date certain or during the test period, if the 916  
application is filed under division (C) (1) (a) of section 4909.15 917  
of the Revised Code, in rendering the service referred to in 918  
such application, as provided in ~~section~~ sections 4909.042 and 919  
4909.05 of the Revised Code; 920

(B) A complete operating statement of its last fiscal 921  
year, showing in detail all its receipts, revenues, and incomes 922  
from all sources, all of its operating costs and other 923  
expenditures, and any analysis such public utility deems 924  
applicable to the matter referred to in said application; 925

(C) A statement of the income and expense anticipated 926  
under the application filed; 927

(D) A statement of financial condition summarizing assets, 928  
liabilities, and net worth; 929

(E) Such other information as the commission may require 930  
in its discretion. 931

Sec. 4909.181. Not later than five years after the 932  
effective date of this section and at least every five years 933



thereafter, an electric distribution utility shall file a rate 934  
case application regarding distribution service under section 935  
4909.18 of the Revised Code. 936

**Sec. 4909.19.** (A) Upon the filing of any application for 937  
increase in any rate, rate mechanism, joint rate, toll, 938  
classification, charge, or rental provided for by section 939  
4909.18 of the Revised Code, ~~the public utility shall forthwith~~ 940  
~~publish notice of such application, in a form approved by the~~ 941  
~~public utilities commission, once a week for two consecutive~~ 942  
~~weeks in~~ on the web site of a newspaper published and in general 943  
circulation throughout the territory in which such public 944  
utility operates and directly affected by the matters referred 945  
to in said application. ~~The notice shall include instructions~~ 946  
~~for direct electronic access to the application or other~~ 947  
~~documents on file with the public utilities commission. The~~ 948  
~~first publication of the notice shall be made in its entirety~~ 949  
~~and may be made in a preprinted insert in the newspaper. The~~ 950  
~~second publication may be abbreviated if all of the following~~ 951  
~~apply:—~~ 952

~~(1) The abbreviated notice is at least one fourth of the~~ 953  
~~size of the notice in the first publication.~~ 954

~~(2) At the same time the abbreviated notice is published,~~ 955  
~~the notice in the first publication is posted in its entirety on~~ 956  
~~the newspaper's web site, if the newspaper has a web site, and~~ 957  
~~the commission's web site.~~ 958

~~(3) The abbreviated notice contains a statement of the web~~ 959  
~~site posting or postings, as applicable, and instructions for~~ 960  
~~accessing the posting or postings.~~ 961

~~(B)~~The commission shall determine a format for the 962

content of ~~all notices~~ the notice required under this section, 963  
and shall consider costs and technological efficiencies in 964  
making that determination. Defects in the publication of said 965  
notice shall not affect the legality or sufficiency of notices 966  
published under this section provided that the commission has 967  
substantially complied with this section, as described in 968  
section 4905.09 of the Revised Code. 969

~~(C)~~ (B) The commission shall at once cause an 970  
investigation to be made of the facts set forth in said 971  
application and the exhibits attached thereto, and of the 972  
matters connected therewith. ~~Within~~ Not later than a reasonable 973  
~~time as determined by the commission~~ one hundred fifty days 974  
after the filing of such application, the commission staff shall 975  
make and file in the case a written report ~~shall be made and~~ 976  
~~filed with the commission, a copy of which shall be sent by~~ 977  
~~certified mail to the applicant, the mayor of any municipal~~ 978  
~~corporation affected by the application, and to such other~~ 979  
~~persons as the commission deems interested~~ of recommendations, 980  
including all work papers in electronic format with all formulas 981  
intact. 982

(C) If no objection to such report is made by any party 983  
interested within thirty days after such filing ~~and the mailing~~ 984  
~~of copies thereof~~, the commission shall fix a date within ten 985  
days for the final hearing upon said application, giving notice 986  
thereof to all parties interested. At such hearing the 987  
commission shall consider the matters set forth in said 988  
application and make such order respecting the prayer thereof as 989  
~~to~~ it seems just and reasonable. 990

If objections are filed with the commission, the 991  
commission shall cause a pre-hearing conference to be held 992

between all parties, intervenors, and the commission staff in 993  
all cases involving more than one hundred thousand customers. 994

If objections are filed with the commission within thirty 995  
days after the filing of such report, the application shall be 996  
promptly set down for hearing of testimony before the commission 997  
or be forthwith referred to an attorney examiner designated by 998  
the commission to take all the testimony with respect to the 999  
application and objections which may be offered by any 1000  
interested party. 1001

The commission shall also fix the time and place to take 1002  
testimony giving ten days' written notice of such time and place 1003  
to all parties. The taking of testimony shall commence on the 1004  
date fixed in said notice and shall continue from day to day 1005  
until completed. The attorney examiner may, upon good cause 1006  
shown, grant continuances for not more than three days, 1007  
excluding Saturdays, Sundays, and holidays. The commission may 1008  
grant continuances for a longer period than three days upon its 1009  
order for good cause shown. At any hearing involving rates or 1010  
charges sought to be increased, the burden of proof to show that 1011  
the increased rates or charges are just and reasonable shall be 1012  
on the public utility. 1013

When the taking of testimony is completed, a full and 1014  
complete record of such testimony noting all objections made and 1015  
exceptions taken by any party or counsel, shall be made, signed 1016  
by the attorney examiner, and filed with the commission. Prior 1017  
to the formal consideration of the application by the commission 1018  
and the rendition of any order respecting the prayer of the 1019  
application, a quorum of the commission shall consider the 1020  
recommended opinion and order of the attorney examiner, in an 1021  
open, formal, public proceeding in which an overview and 1022

explanation is presented orally. Thereafter, the commission 1023  
shall make such order respecting the prayer of such application 1024  
as seems just and reasonable to it. 1025

In all proceedings before the commission in which the 1026  
taking of testimony is required, except when heard by the 1027  
commission, attorney examiners shall be assigned by the 1028  
commission to take such testimony and fix the time and place 1029  
therefor, and such testimony shall be taken in the manner 1030  
prescribed in this section. All testimony shall be under oath or 1031  
affirmation and taken down and transcribed by a reporter and 1032  
made a part of the record in the case. The commission may hear 1033  
the testimony or any part thereof in any case without having the 1034  
same referred to an attorney examiner and may take additional 1035  
testimony. Testimony shall be taken and a record made in 1036  
accordance with such general rules as the commission prescribes 1037  
and subject to such special instructions in any proceedings as 1038  
it, by order, directs. 1039

**Sec. 4909.42.** If the proceeding on an application filed 1040  
with the public utilities commission under section 4909.18 of 1041  
the Revised Code by any public utility requesting an increase on 1042  
any rate, rate mechanism, joint rate, toll, classification, 1043  
charge, or rental or requesting a change in a regulation or 1044  
practice affecting the same has not been concluded and an 1045  
opinion and order entered pursuant to section 4909.19 of the 1046  
Revised Code at the expiration of two hundred seventy-five days 1047  
from the date of filing the application, the public utility may 1048  
request an increase, which shall go into effect temporarily and 1049  
shall remain in effect until modified by commission order based 1050  
on the merits of the application. Rates modified by the 1051  
commission order shall apply retroactively. A temporary increase 1052  
under this section shall not to exceed the proposed increase 1053

~~shall go into effect upon the filing of a bond or a letter of~~ 1054  
~~credit by the public utility. The bond or letter of credit shall~~ 1055  
~~be filed with the commission and shall be payable to the state~~ 1056  
~~for the use and benefit of the customers affected by the~~ 1057  
~~proposed increase or change midpoint of the rates recommended in~~ 1058  
~~the staff report filed pursuant to section 4909.19 of the~~ 1059  
~~Revised Code and shall be subject to refund.~~ 1060

~~An affidavit attached to the bond or letter of credit must~~ 1061  
~~be signed by two of the officers of the utility, under oath, and~~ 1062  
~~must contain a promise on behalf of the utility to refund any~~ 1063  
~~amounts collected by the utility over the rate, joint rate,~~ 1064  
~~toll, classification, charge, or rental, as determined in the~~ 1065  
~~final order of the commission. All refunds shall include~~ 1066  
~~interest at the rate stated in section 1343.03 of the Revised~~ 1067  
~~Code. The refund shall be in the form of a temporary reduction~~ 1068  
~~in rates following the final order of the commission, and shall~~ 1069  
~~be accomplished in such manner as shall be prescribed by the~~ 1070  
~~commission in its final order. The commission shall exercise~~ 1071  
~~continuing and exclusive jurisdiction over such refunds.~~ 1072

~~If the public utilities commission has not entered a final~~ 1073  
~~an opinion and order within five-three hundred forty-five-sixty-~~ 1074  
~~five days from the date of the filing of an application for an~~ 1075  
~~increase in rates under section 4909.18 of the Revised Code, a~~ 1076  
~~public utility shall have no obligation to make a refund of~~ 1077  
~~amounts collected after the five-three hundred forty-fifth-~~ 1078  
~~sixty-fifth day which exceed the amounts authorized by the~~ 1079  
~~commission's final order.~~ 1080

~~Nothing in this section shall be construed to mitigate any~~ 1081  
~~duty of the commission to issue a final order under section~~ 1082  
~~4909.19 of the Revised Code.~~ 1083

**Sec. 4909.43.** (A) No public utility shall file a rate increase application covering a municipal corporation pursuant to section 4909.18 or 4909.35 of the Revised Code at any time prior to six months before the expiration of an ordinance of that municipal corporation enacted for the purpose of establishing the rates of that public utility.

(B) Not later than thirty days prior to the filing of an application pursuant to section 4909.18 or 4909.35 of the Revised Code, a public utility shall notify, in writing, the mayor and legislative authority of each municipality included in such application of the intent of the public utility to file an application, and of the proposed rates to be contained therein.

(C) Not later than ninety days prior to the filing of an application pursuant to section 4909.18 or 4909.35 of the Revised Code, a public utility that has more than one hundred thousand customers shall notify the public utilities commission of the utility's intent to file an application. The notice of intent shall include the number of customers of the utility, the proposed valuation of the utility's property, the proposed date certain, the proposed rate of return for the utility, the proposed cost to the utility of rendering public utility service, and the proposed test period to be included in the application.

**Sec. 4909.46.** The following apply to a company's application under section 4909.18 of the Revised Code:

(A) All work papers supporting a company's application shall be filed with the application in electronic format, with formulas intact.

(B) Except for the staff of the public utilities

commission, each party in the case, including the company, shall 1113  
be limited to issuing not more than three rounds of written 1114  
discovery prior to the filing of the staff report of 1115  
recommendations required under section 4909.19 of the Revised 1116  
Code and not more than three rounds of written discovery after 1117  
the filing of the report. Each party shall be limited to not 1118  
more than fifty questions, including subparts, during each 1119  
round. Each response to a discovery request shall include the 1120  
name of the person responsible for responding to the questions 1121  
and shall be answered under oath or, for representatives of a 1122  
corporation, other association, or governmental agency, shall be 1123  
accompanied by a signed certification of the preparer that the 1124  
response is true and accurate to the best of that person's 1125  
knowledge, information, and belief formed after a reasonable 1126  
inquiry. Each response shall be filed in the commission's 1127  
docketing system. 1128

(C) The staff of the commission are subject to discovery. 1129

(D) Depositions shall be taken only with the authorization 1130  
of the commission based on a finding of extraordinary 1131  
circumstance, and the scope of any such depositions shall be 1132  
limited to those issues found by the commission to be relevant 1133  
and necessary to the proceeding. 1134

(E) Any party and the staff of the commission shall be 1135  
entitled to file testimony. Any party also shall be entitled to 1136  
file rebuttal testimony. 1137

(F) The commission shall hold a single hearing, at which 1138  
all witnesses who filed direct or rebuttal testimony are subject 1139  
to cross-examination. 1140

(G) Cost increases or decreases outside of the company's 1141

control, such as storm damage or tax law changes, may be 1142  
deferred for later recovery or refund outside of the rate case 1143  
process through an accounting order. 1144

**Sec. 4928.01.** (A) As used in this chapter: 1145

(1) "Ancillary service" means any function necessary to 1146  
the provision of electric transmission or distribution service 1147  
to a retail customer and includes, but is not limited to, 1148  
scheduling, system control, and dispatch services; reactive 1149  
supply from generation resources and voltage control service; 1150  
reactive supply from transmission resources service; regulation 1151  
service; frequency response service; energy imbalance service; 1152  
operating reserve-spinning reserve service; operating reserve- 1153  
supplemental reserve service; load following; back-up supply 1154  
service; real-power loss replacement service; dynamic 1155  
scheduling; system black start capability; and network stability 1156  
service. 1157

(2) "Billing and collection agent" means a fully 1158  
independent agent, not affiliated with or otherwise controlled 1159  
by an electric utility, electric services company, electric 1160  
cooperative, or governmental aggregator subject to certification 1161  
under section 4928.08 of the Revised Code, to the extent that 1162  
the agent is under contract with such utility, company, 1163  
cooperative, or aggregator solely to provide billing and 1164  
collection for retail electric service on behalf of the utility 1165  
company, cooperative, or aggregator. 1166

(3) "Certified territory" means the certified territory 1167  
established for an electric supplier under sections 4933.81 to 1168  
4933.90 of the Revised Code. 1169

(4) "Competitive retail electric service" means a 1170



component of retail electric service that is competitive as 1171  
provided under division (B) of this section. 1172

(5) "Electric cooperative" means a not-for-profit electric 1173  
light company that both is or has been financed in whole or in 1174  
part under the "Rural Electrification Act of 1936," 49 Stat. 1175  
1363, 7 U.S.C. 901, and owns or operates facilities in this 1176  
state to generate, transmit, or distribute electricity, or a 1177  
not-for-profit successor of such company. 1178

(6) "Electric distribution utility" means an electric 1179  
utility that supplies at least retail electric distribution 1180  
service and does not own or operate an electric generating 1181  
facility, other than through: 1182

(a) Ownership of a mercantile customer-sited renewable 1183  
energy resource under section 4928.47 of the Revised Code; 1184

(b) Participation in a power agreement approved by the 1185  
federal energy regulatory commission that relates to a legacy 1186  
generation resource; or 1187

(c) Ownership of an energy storage system that is used for 1188  
distribution reliability. 1189

(7) "Electric light company" has the same meaning as in 1190  
section 4905.03 of the Revised Code and includes an electric 1191  
services company, but excludes any self-generator to the extent 1192  
that it consumes electricity it so produces, sells that 1193  
electricity for resale, or obtains electricity from a generating 1194  
facility it hosts on its premises. 1195

(8) "Electric load center" has the same meaning as in 1196  
section 4933.81 of the Revised Code. 1197

(9) "Electric services company" means an electric light 1198

company that is engaged on a for-profit or not-for-profit basis 1199  
in the business of supplying or arranging for the supply of only 1200  
a competitive retail electric service in this state. "Electric 1201  
services company" includes a power marketer, power broker, 1202  
aggregator, or independent power producer but excludes an 1203  
electric cooperative, municipal electric utility, governmental 1204  
aggregator, or billing and collection agent. 1205

(10) "Electric supplier" has the same meaning as in 1206  
section 4933.81 of the Revised Code. 1207

(11) "Electric utility" means an electric light company 1208  
that has a certified territory and is engaged on a for-profit 1209  
basis either in the business of supplying a noncompetitive 1210  
retail electric service in this state or in the businesses of 1211  
supplying both a noncompetitive and a competitive retail 1212  
electric service in this state. "Electric utility" excludes a 1213  
municipal electric utility or a billing and collection agent. 1214

(12) "Firm electric service" means electric service other 1215  
than nonfirm electric service. 1216

(13) "Governmental aggregator" means a legislative 1217  
authority of a municipal corporation, a board of township 1218  
trustees, or a board of county commissioners acting as an 1219  
aggregator for the provision of a competitive retail electric 1220  
service under authority conferred under section 4928.20 of the 1221  
Revised Code. 1222

(14) A person acts "knowingly," regardless of the person's 1223  
purpose, when the person is aware that the person's conduct will 1224  
probably cause a certain result or will probably be of a certain 1225  
nature. A person has knowledge of circumstances when the person 1226  
is aware that such circumstances probably exist. 1227

(15) "Level of funding for low-income customer energy	1228
efficiency programs provided through electric utility rates"	1229
means the level of funds specifically included in an electric	1230
utility's rates on October 5, 1999, pursuant to an order of the	1231
public utilities commission issued under Chapter 4905. or 4909.	1232
of the Revised Code and in effect on October 4, 1999, for the	1233
purpose of improving the energy efficiency of housing for the	1234
utility's low-income customers. The term excludes the level of	1235
any such funds committed to a specific nonprofit organization or	1236
organizations pursuant to a stipulation or contract.	1237
(16) "Low-income customer assistance programs" means the	1238
percentage of income payment plan program, the home energy	1239
assistance program, the home weatherization assistance program,	1240
and the targeted energy efficiency and weatherization program.	1241
(17) "Market development period" for an electric utility	1242
means the period of time beginning on the starting date of	1243
competitive retail electric service and ending on the applicable	1244
date for that utility as specified in section 4928.40 of the	1245
Revised Code, irrespective of whether the utility applies to	1246
receive transition revenues under this chapter.	1247
(18) "Market power" means the ability to impose on	1248
customers a sustained price for a product or service above the	1249
price that would prevail in a competitive market.	1250
(19) "Mercantile customer" means a commercial or	1251
industrial customer if the electricity consumed is for	1252
nonresidential use and the customer consumes more than seven	1253
hundred thousand kilowatt hours per year or is part of a	1254
national account involving multiple facilities in one or more	1255
states.	1256

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity. 1257  
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(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section. 1260  
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(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility. 1263  
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(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000. 1270  
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(24) "Person" has the same meaning as in section 1.59 of the Revised Code. 1273  
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(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code. 1275  
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(26) "Regulatory assets" means the unamortized net 1286  
regulatory assets that are capitalized or deferred on the 1287  
regulatory books of the electric utility, pursuant to an order 1288  
or practice of the public utilities commission or pursuant to 1289  
generally accepted accounting principles as a result of a prior 1290  
commission rate-making decision, and that would otherwise have 1291  
been charged to expense as incurred or would not have been 1292  
capitalized or otherwise deferred for future regulatory 1293  
consideration absent commission action. "Regulatory assets" 1294  
includes, but is not limited to, all deferred demand-side 1295  
management costs; all deferred percentage of income payment plan 1296  
arrears; post-in-service capitalized charges and assets 1297  
recognized in connection with statement of financial accounting 1298  
standards no. 109 (receivables from customers for income taxes); 1299  
future nuclear decommissioning costs and fuel disposal costs as 1300  
those costs have been determined by the commission in the 1301  
electric utility's most recent rate or accounting application 1302  
proceeding addressing such costs; the undepreciated costs of 1303  
safety and radiation control equipment on nuclear generating 1304  
plants owned or leased by an electric utility; and fuel costs 1305  
currently deferred pursuant to the terms of one or more 1306  
settlement agreements approved by the commission. 1307

(27) "Retail electric service" means any service involved 1308  
in supplying or arranging for the supply of electricity to 1309  
ultimate consumers in this state, from the point of generation 1310  
to the point of consumption. For the purposes of this chapter, 1311  
retail electric service includes one or more of the following 1312  
"service components": generation service, aggregation service, 1313  
power marketing service, power brokerage service, transmission 1314  
service, distribution service, ancillary service, metering 1315  
service, and billing and collection service. 1316

- (28) "Starting date of competitive retail electric service" means January 1, 2001. 1317  
1318
- (29) "Customer-generator" means a user of a net metering system. 1319  
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- (30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider. 1321  
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- (31) "Net metering system" means a facility for the production of electrical energy that does all of the following: 1326  
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- (a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell; 1328  
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- (b) Is located on a customer-generator's premises; 1330
- (c) Operates in parallel with the electric utility's transmission and distribution facilities; 1331  
1332
- (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity. For an industrial customer-generator with a net metering system that has a capacity of less than twenty megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed one hundred per cent of the customer-generator's annual requirements for electric energy at the time of interconnection. 1333  
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- (32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another 1341  
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entity, whether the facility is installed or operated by the 1345  
owner or by an agent under a contract. 1346

(33) "Rate plan" means the standard service offer in 1347  
effect on the effective date of the amendment of this section by 1348  
S.B. 221 of the 127th general assembly, July 31, 2008. 1349

(34) "Advanced energy resource" means any of the 1350  
following: 1351

(a) Any method or any modification or replacement of any 1352  
property, process, device, structure, or equipment that 1353  
increases the generation output of an electric generating 1354  
facility to the extent such efficiency is achieved without 1355  
additional carbon dioxide emissions by that facility; 1356

(b) Any distributed generation system consisting of 1357  
customer cogeneration technology; 1358

(c) Clean coal technology that includes a carbon-based 1359  
product that is chemically altered before combustion to 1360  
demonstrate a reduction, as expressed as ash, in emissions of 1361  
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 1362  
sulfur trioxide in accordance with the American society of 1363  
testing and materials standard D1757A or a reduction of metal 1364  
oxide emissions in accordance with standard D5142 of that 1365  
society, or clean coal technology that includes the design 1366  
capability to control or prevent the emission of carbon dioxide, 1367  
which design capability the commission shall adopt by rule and 1368  
shall be based on economically feasible best available 1369  
technology or, in the absence of a determined best available 1370  
technology, shall be of the highest level of economically 1371  
feasible design capability for which there exists generally 1372  
accepted scientific opinion; 1373

(d) Advanced nuclear energy technology consisting of 1374  
generation III technology as defined by the nuclear regulatory 1375  
commission; other, later technology; or significant improvements 1376  
to existing facilities; 1377

(e) Any fuel cell used in the generation of electricity, 1378  
including, but not limited to, a proton exchange membrane fuel 1379  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1380  
solid oxide fuel cell; 1381

(f) Advanced solid waste or construction and demolition 1382  
debris conversion technology, including, but not limited to, 1383  
advanced stoker technology, and advanced fluidized bed 1384  
gasification technology, that results in measurable greenhouse 1385  
gas emissions reductions as calculated pursuant to the United 1386  
States environmental protection agency's waste reduction model 1387  
(WARM); 1388

(g) Demand-side management and any energy efficiency 1389  
improvement; 1390

(h) Any new, retrofitted, refueled, or repowered 1391  
generating facility located in Ohio, including a simple or 1392  
combined-cycle natural gas generating facility or a generating 1393  
facility that uses biomass, coal, modular nuclear, or any other 1394  
fuel as its input; 1395

(i) Any uprated capacity of an existing electric 1396  
generating facility if the uprated capacity results from the 1397  
deployment of advanced technology. 1398

"Advanced energy resource" does not include a waste energy 1399  
recovery system that is, or has been, included in an energy 1400  
efficiency program of an electric distribution utility pursuant 1401  
to requirements under section 4928.66 of the Revised Code. 1402



(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.	1403 1404
(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	1405 1406
(37) (a) "Renewable energy resource" means any of the following:	1407 1408
(i) Solar photovoltaic or solar thermal energy;	1409
(ii) Wind energy;	1410
(iii) Power produced by a hydroelectric facility;	1411
(iv) Power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts;	1412 1413 1414
(v) Power produced by a run-of-the-river hydroelectric facility placed in service on or after January 1, 1980, that is located within this state, relies upon the Ohio river, and operates, or is rated to operate, at an aggregate capacity of forty or more megawatts;	1415 1416 1417 1418 1419
(vi) Geothermal energy;	1420
(vii) Fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion;	1421 1422 1423 1424
(viii) Biomass energy;	1425
(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for which more than ninety per cent of the total annual energy input is from combustion of a waste or byproduct gas from an air	1426 1427 1428 1429

contaminant source in this state, which source has been in 1430  
operation since on or before January 1, 1985, provided that the 1431  
cogeneration technology is a part of a facility located in a 1432  
county having a population of more than three hundred sixty-five 1433  
thousand but less than three hundred seventy thousand according 1434  
to the most recent federal decennial census; 1435

(x) Biologically derived methane gas; 1436

(xi) Heat captured from a generator of electricity, 1437  
boiler, or heat exchanger fueled by biologically derived methane 1438  
gas; 1439

(xii) Energy derived from nontreated by-products of the 1440  
pulping process or wood manufacturing process, including bark, 1441  
wood chips, sawdust, and lignin in spent pulping liquors. 1442

"Renewable energy resource" includes, but is not limited 1443  
to, any fuel cell used in the generation of electricity, 1444  
including, but not limited to, a proton exchange membrane fuel 1445  
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 1446  
solid oxide fuel cell; wind turbine located in the state's 1447  
territorial waters of Lake Erie; methane gas emitted from an 1448  
abandoned coal mine; waste energy recovery system placed into 1449  
service or retrofitted on or after the effective date of the 1450  
amendment of this section by S.B. 315 of the 129th general 1451  
assembly, September 10, 2012, except that a waste energy 1452  
recovery system described in division (A) (38) (b) of this section 1453  
may be included only if it was placed into service between 1454  
January 1, 2002, and December 31, 2004; storage facility that 1455  
will promote the better utilization of a renewable energy 1456  
resource; or distributed generation system used by a customer to 1457  
generate electricity from any such energy. 1458

"Renewable energy resource" does not include a waste energy recovery system that is, or was, on or after January 1, 2012, included in an energy efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.

(b) As used in division (A) (37) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

(i) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility.

(ii) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

(iii) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

(iv) The facility complies with the recommendations of the Ohio environmental protection agency and with the terms of its

federal energy regulatory commission license regarding watershed 1488  
protection, mitigation, or enhancement, to the extent of each 1489  
agency's respective jurisdiction over the facility. 1490

(v) The facility complies with provisions of the 1491  
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 1492  
to 1544, as amended. 1493

(vi) The facility does not harm cultural resources of the 1494  
area. This can be shown through compliance with the terms of its 1495  
federal energy regulatory commission license or, if the facility 1496  
is not regulated by that commission, through development of a 1497  
plan approved by the Ohio historic preservation office, to the 1498  
extent it has jurisdiction over the facility. 1499

(vii) The facility complies with the terms of its federal 1500  
energy regulatory commission license or exemption that are 1501  
related to recreational access, accommodation, and facilities 1502  
or, if the facility is not regulated by that commission, the 1503  
facility complies with similar requirements as are recommended 1504  
by resource agencies, to the extent they have jurisdiction over 1505  
the facility; and the facility provides access to water to the 1506  
public without fee or charge. 1507

(viii) The facility is not recommended for removal by any 1508  
federal agency or agency of any state, to the extent the 1509  
particular agency has jurisdiction over the facility. 1510

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 1511  
this section do not apply to a small hydroelectric facility 1512  
under division (A) (37) (a) (iv) of this section. 1513

(38) "Waste energy recovery system" means either of the 1514  
following: 1515

(a) A facility that generates electricity through the 1516

conversion of energy from either of the following: 1517

(i) Exhaust heat from engines or manufacturing, 1518  
industrial, commercial, or institutional sites, except for 1519  
exhaust heat from a facility whose primary purpose is the 1520  
generation of electricity; 1521

(ii) Reduction of pressure in gas pipelines before gas is 1522  
distributed through the pipeline, provided that the conversion 1523  
of energy to electricity is achieved without using additional 1524  
fossil fuels. 1525

(b) A facility at a state institution of higher education 1526  
as defined in section 3345.011 of the Revised Code that recovers 1527  
waste heat from electricity-producing engines or combustion 1528  
turbines and that simultaneously uses the recovered heat to 1529  
produce steam, provided that the facility was placed into 1530  
service between January 1, 2002, and December 31, 2004. 1531

(39) "Smart grid" means capital improvements to an 1532  
electric distribution utility's distribution infrastructure that 1533  
improve reliability, efficiency, resiliency, or reduce energy 1534  
demand or use, including, but not limited to, advanced metering 1535  
and automation of system functions. 1536

(40) "Combined heat and power system" means the 1537  
coproduction of electricity and useful thermal energy from the 1538  
same fuel source designed to achieve thermal-efficiency levels 1539  
of at least sixty per cent, with at least twenty per cent of the 1540  
system's total useful energy in the form of thermal energy. 1541

(41) "Legacy generation resource" means all generating 1542  
facilities owned directly or indirectly by a corporation that 1543  
was formed prior to 1960 by investor-owned utilities for the 1544  
original purpose of providing power to the federal government 1545

for use in the nation's defense or in furtherance of national 1546  
interests, including the Ohio valley electric corporation. 1547

(42) "Prudently incurred costs related to a legacy 1548  
generation resource" means costs, including deferred costs, 1549  
allocated pursuant to a power agreement approved by the federal 1550  
energy regulatory commission that relates to a legacy generation 1551  
resource, less any revenues realized from offering the 1552  
contractual commitment for the power agreement into the 1553  
wholesale markets, provided that where the net revenues exceed 1554  
net costs, those excess revenues shall be credited to customers. 1555  
Such costs shall exclude any return on investment in common 1556  
equity and, in the event of a premature retirement of a legacy 1557  
generation resource, shall exclude any recovery of remaining 1558  
debt. Such costs shall include any incremental costs resulting 1559  
from the bankruptcy of a current or former sponsor under such 1560  
power agreement or co-owner of the legacy generation resource if 1561  
not otherwise recovered through a utility rate cost recovery 1562  
mechanism. 1563

(43) "Green energy" means any energy generated by using an 1564  
energy resource that does one or more of the following: 1565

(a) Releases reduced air pollutants, thereby reducing 1566  
cumulative air emissions; 1567

(b) Is more sustainable and reliable relative to some 1568  
fossil fuels. 1569

"Green energy" includes energy generated by using natural 1570  
gas as a resource. 1571

(44) "Standard service offer" means the provision of 1572  
competitive retail electric service to consumers as required 1573  
under section 4928.141 of the Revised Code. 1574

(B) For the purposes of this chapter, a retail electric 1575  
service component shall be deemed a competitive retail electric 1576  
service if the service component is competitive pursuant to a 1577  
declaration by a provision of the Revised Code or pursuant to an 1578  
order of the public utilities commission authorized under 1579  
division (A) of section 4928.04 of the Revised Code. Otherwise, 1580  
the service component shall be deemed a noncompetitive retail 1581  
electric service. 1582

**Sec. 4928.08.** (A) This section applies to an electric 1583  
cooperative, or to a governmental aggregator that is a municipal 1584  
electric utility, only to the extent of a competitive retail 1585  
electric service it provides to a customer to whom it does not 1586  
provide a noncompetitive retail electric service through 1587  
transmission or distribution facilities it singly or jointly 1588  
owns or operates. 1589

~~(B)~~ (B) (1) No electric utility, electric services company, 1590  
electric cooperative, or governmental aggregator shall provide a 1591  
competitive retail electric service to a consumer in this state 1592  
on and after the starting date of competitive retail electric 1593  
service without first being certified by the public utilities 1594  
commission regarding its managerial, technical, and financial 1595  
capability to provide that service and providing a financial 1596  
guarantee sufficient to protect customers and electric 1597  
distribution utilities from default. Certification shall be 1598  
granted pursuant to procedures and standards the commission 1599  
shall prescribe in accordance with division (C) of this section, 1600  
except that certification or certification renewal shall be 1601  
deemed approved thirty days after the filing of an application 1602  
with the commission unless the commission suspends that approval 1603  
for good cause shown. In the case of such a suspension, the 1604  
commission shall act to approve or deny certification or 1605

certification renewal to the applicant not later than ninety 1606  
days after the date of the suspension. 1607

(2) The public utilities commission shall establish rules 1608  
to require an electric services company to maintain financial 1609  
assurances sufficient to protect customers and electric 1610  
distribution utilities from default. Such rules also shall 1611  
specifically allow an electric distribution utility to set 1612  
reasonable standards for its security and the security of its 1613  
customers through financial requirements set in its tariffs. 1614

(3) As used in division (B) (2) of this section, an 1615  
"electric services company" has the same meaning as in section 1616  
4928.01 of the Revised Code, but excludes a power broker or 1617  
aggregator. 1618

(C) Capability standards adopted in rules under division 1619  
(B) of this section shall be sufficient to ensure compliance 1620  
with the minimum service requirements established under section 1621  
4928.10 of the Revised Code and with section 4928.09 of the 1622  
Revised Code. The standards shall allow flexibility for 1623  
voluntary aggregation, to encourage market creativity in 1624  
responding to consumer needs and demands, and shall allow 1625  
flexibility for electric services companies that exclusively 1626  
provide installation of small electric generation facilities, to 1627  
provide ease of market access. The rules shall include 1628  
procedures for biennially renewing certification. 1629

(D) The commission may suspend, rescind, or conditionally 1630  
rescind the certification of any electric utility, electric 1631  
services company, electric cooperative, or governmental 1632  
aggregator issued under this section if the commission 1633  
determines, after reasonable notice and opportunity for hearing, 1634  
that the utility, company, cooperative, or aggregator has failed 1635



to comply with any applicable certification standards or has 1636  
engaged in anticompetitive or unfair, deceptive, or 1637  
unconscionable acts or practices in this state. 1638

(E) No electric distribution utility on and after the 1639  
starting date of competitive retail electric service shall 1640  
knowingly distribute electricity, to a retail consumer in this 1641  
state, for any supplier of electricity that has not been 1642  
certified by the commission pursuant to this section. 1643

(F) Notwithstanding any provision of section 121.95 of the 1644  
Revised Code to the contrary, a regulatory restriction contained 1645  
in a rule adopted under section 4928.08 of the Revised Code is 1646  
not subject to sections 121.95 to 121.953 of the Revised Code. 1647

**Sec. 4928.101.** (A) As used in this section and section 1648  
4928.102 of the Revised Code: 1649

(1) "Small commercial customer" means any customer that 1650  
receives electric service pursuant to a nonresidential tariff if 1651  
the customer's demand for electricity does not exceed twenty- 1652  
five kilowatts within the last twelve months. 1653

(2) "Small commercial customer" excludes any customer that 1654  
does one or both of the following: 1655

(a) Manages multiple electric meters and, within the last 1656  
twelve months, the electricity demand for at least one of the 1657  
meters is twenty-five kilowatts or more; 1658

(b) Has, at the customer's discretion, aggregated the 1659  
demand for the customer-managed meters. 1660

(B) The consumer protections described in section 4928.10 1661  
of the Revised Code and the rules adopted pursuant to that 1662  
section apply to small commercial customers and to all other 1663

customers as set forth in the rules. 1664

Sec. 4928.102. (A) If a competitive retail electric 1665  
service provider offers a residential or small commercial 1666  
customer a contract for a fixed introductory rate that converts 1667  
to a variable rate upon the expiration of the fixed rate, the 1668  
provider shall send two notices to each residential and small 1669  
commercial customer that enters into such a contract. Each 1670  
notice shall provide all of the following information to the 1671  
customer: 1672

(1) The fixed rate that is expiring under the contract; 1673

(2) The expiration date of the contract's fixed rate; 1674

(3) The rate to be charged upon the contract's conversion 1675  
to a variable rate; 1676

(4) The public utilities commission web site that, as a 1677  
comparison tool, lists rates offered by competitive retail 1678  
electric service providers; 1679

(5) A statement explaining that appearing on each 1680  
customer's bill is a price-to-compare notice that lists the 1681  
utility's standard service offer price. 1682

(B) The notices shall be sent by standard United States 1683  
mail as follows: 1684

(1) The provider shall send the first notice not earlier 1685  
than ninety days, and not later than sixty days, prior to the 1686  
expiration of the fixed rate. 1687

(2) The provider shall send the second notice not earlier 1688  
than forty-five days, and not later than thirty days, prior to 1689  
the expiration of the fixed rate. 1690

(C) A competitive retail electric service provider shall 1691  
provide an annual notice, by standard United States mail, to 1692  
each residential and small commercial customer that has entered 1693  
into a contract with the provider that has converted to a 1694  
variable rate upon the expiration of the contract's fixed 1695  
introductory rate. The notice shall inform the customer that the 1696  
customer is currently subject to a variable rate and that other 1697  
fixed rate contracts are available. 1698

(D) Not later than one hundred fifty days after the 1699  
effective date of this section, the commission shall adopt rules 1700  
in order to implement divisions (A) to (C) of this section. The 1701  
rules, at a minimum, shall include the following requirements 1702  
regarding the notices required under divisions (A) to (C) of 1703  
this section: 1704

(1) To use clear and unambiguous language in order to 1705  
enable the customer to make an informed decision; 1706

(2) To design the notices in a way to ensure that they 1707  
cannot be confused with marketing materials. 1708

(E) Notwithstanding any provision of section 121.95 of the 1709  
Revised Code to the contrary, a regulatory restriction contained 1710  
in a rule adopted under section 4928.102 of the Revised Code is 1711  
not subject to sections 121.95 to 121.953 of the Revised Code. 1712

**Sec. 4928.14.** (A) The failure of a supplier to provide 1713  
retail electric generation service to customers within the 1714  
certified territory of an electric distribution utility shall 1715  
result in the supplier's customers, after reasonable notice, 1716  
defaulting to the utility's standard service offer ~~under~~ 1717  
~~sections 4928.141, 4928.142, and 4928.143 of the Revised Code~~ 1718  
until the customer chooses an alternative supplier. The 1719

utility's standard service offer to which the supplier's 1720  
customers default shall be provided under one of the following: 1721

(1) The standard service offer established under section 1722  
4928.142 of the Revised Code as enacted by this act; 1723

(2) The standard service offer established under section 1724  
4928.143 of the Revised Code, as that section existed prior to 1725  
its repeal and reenactment by this act and that is still in 1726  
effect. 1727

(B) A supplier is deemed under this section to have failed 1728  
to provide such service if the public utilities commission 1729  
finds, after reasonable notice and opportunity for hearing, that 1730  
any of the following conditions are met: 1731

~~(A)~~ (1) The supplier has defaulted on its contracts with 1732  
customers, is in receivership, or has filed for bankruptcy. 1733

~~(B)~~ (2) The supplier is no longer capable of providing the 1734  
service. 1735

~~(C)~~ (3) The supplier is unable to provide delivery to 1736  
transmission or distribution facilities for such period of time 1737  
as may be reasonably specified by commission rule adopted under 1738  
division (A) of section 4928.06 of the Revised Code. 1739

~~(D)~~ (4) The supplier's certification has been suspended, 1740  
conditionally rescinded, or rescinded under division (D) of 1741  
section 4928.08 of the Revised Code. 1742

**Sec. 4928.141.** ~~(A) Beginning January 1, 2009, an An~~ 1743  
electric distribution utility shall provide consumers, on a 1744  
comparable and nondiscriminatory basis within its certified 1745  
territory, a standard service offer of all competitive retail 1746  
electric services necessary to maintain essential electric 1747

service to consumers, including a firm supply of electric 1748  
generation service. To that end, the electric distribution 1749  
utility shall apply to the public utilities commission to 1750  
establish the standard service offer in accordance with section 1751  
4928.142 or ~~4928.143~~ of the Revised Code and, ~~at its discretion,~~ 1752  
~~may apply simultaneously under both sections, except that the~~ 1753  
~~utility's first standard service offer application at minimum~~ 1754  
~~shall include a filing under section 4928.143 of the Revised~~ 1755  
~~Code. Only a standard service offer authorized in accordance~~ 1756  
~~with section 4928.142 or 4928.143 of the Revised Code, shall~~ 1757  
~~serve as the utility's standard service offer for the purpose of~~ 1758  
~~compliance with this section; and that standard service offer~~ 1759  
~~shall serve as the utility's default standard service offer for~~ 1760  
~~the purpose of section 4928.14 of the Revised Code.~~ 1761  
~~Notwithstanding the foregoing provision, the rate plan of an~~ 1762  
~~electric distribution utility shall continue for the purpose of~~ 1763  
~~the utility's compliance with this division until a standard~~ 1764  
~~service offer is first authorized under section 4928.142 or~~ 1765  
~~4928.143 of the Revised Code, and, as applicable, pursuant to~~ 1766  
~~division (D) of section 4928.143 of the Revised Code, any rate~~ 1767  
~~plan that extends beyond December 31, 2008, shall continue to be~~ 1768  
~~in effect for the subject electric distribution utility for the~~ 1769  
~~duration of the plan's term. A standard service offer under~~ 1770  
~~section 4928.142 or 4928.143 of the Revised Code shall exclude~~ 1771  
~~any previously authorized allowances for transition costs, with~~ 1772  
~~such exclusion being effective on and after the date that the~~ 1773  
~~allowance is scheduled to end under the utility's rate plan.~~ 1774

~~(B) The commission shall set the time for hearing of a~~ 1775  
~~filing under section 4928.142 or 4928.143 of the Revised Code,~~ 1776  
~~send written notice of the hearing to the electric distribution~~ 1777  
~~utility, and publish notice in a newspaper of general~~ 1778

~~circulation in each county in the utility's certified territory.~~ 1779  
~~The commission shall adopt rules regarding filings under these~~ 1780  
~~sections.~~ 1781

Sec. 4928.142. (A) (1) For the purpose of complying with 1782  
section 4928.141 of the Revised Code, an electric distribution 1783  
utility shall file an application for public utilities 1784  
commission approval of a standard service offer plan. 1785

(2) An electric distribution utility with an electric 1786  
security plan that is in effect on the effective date of this 1787  
section shall submit an application for a standard service offer 1788  
plan prior to the expiration of the utility's electric security 1789  
plan. A standard service offer plan approved under division (A) 1790  
(2) of this section shall not take effect until the utility's 1791  
electric security plan expires. 1792

(B) A standard service offer plan shall include provisions 1793  
relating to the supply and pricing of electric generation 1794  
service through a standard service offer for customers who do 1795  
not shop for competitive retail electric generation service. 1796  
Except as provided in division (C) of this section, the plan's 1797  
provisions shall incorporate the commission's competitive 1798  
bidding process, retail cost allocation, and rate design that 1799  
were implemented by the commission and in effect immediately 1800  
prior to the effective date of this section. The commission may 1801  
amend the competitive bidding process, retail cost allocation, 1802  
or rate design as necessary to result in just and reasonable 1803  
rates. 1804

(C) Under a standard service offer plan, all direct and 1805  
indirect costs that the utility incurs to support or provide its 1806  
standard service offer shall be recovered through the standard 1807  
service offer price. Each utility shall be entitled to full and 1808

timely recovery of all costs associated with its standard 1809  
service offer, including the recovery of the exact cost of the 1810  
following: 1811

(1) Acquiring energy and capacity; 1812

(2) Costs associated with conducting, administering, and 1813  
implementing the competitive bidding process; 1814

(3) Costs for independent consultants; 1815

(4) All other direct or indirect costs incurred to support 1816  
or provide the standard service offer. 1817

(D) The commission shall ensure that any direct costs 1818  
allocated to the standard service offer price are not recovered 1819  
twice from distribution customers. Under this section, the 1820  
commission may authorize a credit rider to avoid such double 1821  
recovery. 1822

(E) The public utilities commission shall initiate a 1823  
proceeding and shall issue an order to approve or modify and 1824  
approve an application filed under division (A) of this section 1825  
not later than one hundred eighty days after the application's 1826  
filing date. 1827

(F) A plan approved under this section shall have a 1828  
minimum term of three years and a maximum term of five years. 1829

**Sec. 4928.143.** As part of a standard service offer plan 1830  
under section 4928.142 of the Revised Code, the public utilities 1831  
commission shall authorize: 1832

(A) Through annually reconciled transmission riders, full 1833  
and timely cost recovery of all nonmarket transmission costs 1834  
imposed on the utility by the federal energy regulatory 1835  
commission; 1836

(B) Programs for customers that align retail rate recovery with how transmission and transmission-related costs are imposed on, incurred by, or charged to, the utility or programs that allow such customers to be billed directly for transmission service by a competitive retail electric service provider; 1837  
1838  
1839  
1840  
1841

(C) Programs for energy-intensive industrial customers to implement cost-effective economic development, job retention, and interruptible rate programs that enhance distribution or transmission grid reliability, provided that such programs currently in existence on the effective date of this section may only be terminated or modified on a gradual basis that avoids abrupt or significant rate impacts on participating customers and provided that the programs' costs may be allocated across all classes of customers and across those of utilities in the same holding company system; 1842  
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(D) Lease financing arrangements the utility enters into with its customers, or potential customers that are mercantile customers, as follows: 1852  
1853  
1854

(1) A lease financing arrangement shall be for distribution or transmission-related equipment, including transformers and substations and shall not require preapproval by the commission. Under such financing arrangements, the mercantile customers participating in the arrangements shall pay for all direct and indirect costs of the utility's capital investment and related expenses through periodic lease payments to the utility. The burden of proof shall be on the utility to demonstrate, in its distribution rate case under section 4909.18 of the Revised Code, that such financing arrangements are fully paid for by its mercantile customers. 1855  
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(2) The utility also may enter into lease financing 1866



arrangements under section 4905.31 of the Revised Code to 1867  
promote economic development. Under such economic development 1868  
lease financing arrangements, mercantile customers participating 1869  
in the arrangements shall not be responsible for paying the full 1870  
cost of capital investments under the arrangements, if the 1871  
utility is fully and timely reimbursed for the capital 1872  
investments through a rate or rider mechanism. The commission 1873  
shall approve, approve with conditions, or deny such an 1874  
arrangement not later than one hundred twenty days after the 1875  
arrangement is filed with the commission pursuant to section 1876  
4905.31 of the Revised Code. Nothing in this division prohibits 1877  
a nonresidential customer's right to purchase or sell equipment 1878  
described in this division or prohibits a bilateral contract 1879  
between a nonresidential customer and a utility to purchase or 1880  
sell such equipment. 1881

(3) In the event of a mercantile customer's default with 1882  
respect to a lease financing arrangement pursuant to division 1883  
(D) of this section, ratepayers shall not be responsible for any 1884  
costs resulting from the default. 1885

(E) Cost recovery for the utility's economic development 1886  
electric transmission infrastructure projects held for future 1887  
use as specified under division (E) of this section. 1888

(1) Recovery for such projects may only be authorized for 1889  
sites certified by the director of development under section 1890  
122.6511 or 122.9511 of the Revised Code and for which the 1891  
utility, in its application to the commission, provides 1892  
evidence, such as a letter of support, that demonstrates that 1893  
the project is supported by JobsOhio and the department of 1894  
development. 1895

(2) Project costs eligible for recovery are project 1896

planning and construction costs, contribution-in-aid-of- 1897  
construction costs that may be waived as part of these projects 1898  
based on the expected system benefits of projected additional 1899  
electric load, and the costs associated with obtaining the right 1900  
of way for such projects. 1901

(3) Any property installed or constructed by a utility for 1902  
a project under this section shall be considered used and useful 1903  
for purposes of section 4909.15 of the Revised Code. Cost 1904  
recovery for the project shall occur as follows: 1905

(a) Through the utility's economic development cost 1906  
recovery rider, or any similar mechanism during the period when 1907  
the property for the project is held for future use and before 1908  
it starts providing electric service to an end use customer; 1909

(b) Through the utility's standard transmission tariffed 1910  
rates, after such property is in use and starts providing 1911  
electric service to an end use customer. 1912

(4) The total amount that a utility is authorized to 1913  
collect from ratepayers for the revenue requirement for such 1914  
projects shall not exceed the greater of five million dollars or 1915  
one-half of one per cent of the utility's total revenue 1916  
requirement for transmission that has been authorized by the 1917  
commission. 1918

**Sec. 4928.144.** The public utilities commission by order 1919  
may authorize any just and reasonable phase-in of any electric 1920  
distribution utility rate or price under a standard service 1921  
offer established under ~~sections~~ section 4928.141 to 4928.142 of 1922  
the Revised Code as enacted by this act, and section 4928.143 of 1923  
the Revised Code, as that section existed prior to its repeal 1924  
and reenactment by this act, and inclusive of carrying charges, 1925

as the commission considers necessary to ensure rate or price 1926  
stability for consumers. If the commission's order includes such 1927  
a phase-in, the order also shall provide for the creation of 1928  
regulatory assets pursuant to generally accepted accounting 1929  
principles, by authorizing the deferral of incurred costs equal 1930  
to the amount not collected, plus carrying charges on that 1931  
amount. Further, the order shall authorize the collection of 1932  
those deferrals through a nonbypassable surcharge on any such 1933  
rate or price so established for the electric distribution 1934  
utility by the commission. 1935

Sec. 4928.147. Nothing in this act limits the commission's 1936  
authority to implement, maintain, or modify riders or rate 1937  
mechanisms that recover costs imposed on the utility by a 1938  
governmental authority or which recover costs upon which the 1939  
utility earns no rate of return. 1940

**Sec. 4928.148.** (A) On January 1, 2020, any mechanism 1941  
authorized by the public utilities commission prior to ~~the~~ 1942  
~~effective date of this section~~ October 22, 2019, for retail 1943  
recovery of prudently incurred costs related to a legacy 1944  
generation resource shall be replaced by a nonbypassable rate 1945  
mechanism established by the commission for recovery of those 1946  
costs through December 31, 2030, from customers of all electric 1947  
distribution utilities in this state. The nonbypassable rate 1948  
mechanism shall be established through a process that the 1949  
commission shall determine is not for an increase in any rate, 1950  
joint rate, toll, classification, charge, or rental, 1951  
notwithstanding anything to the contrary in Title XLIX of the 1952  
Revised Code. All of the following shall apply to the 1953  
nonbypassable rate mechanism established under this section: 1954

(1) The commission shall determine, in the years specified 1955

in this division, the prudence and reasonableness of the actions 1956  
of electric distribution utilities with ownership interests in 1957  
the legacy generation resource, including their decisions 1958  
related to offering the contractual commitment into the 1959  
wholesale markets, and exclude from recovery those costs that 1960  
the commission determines imprudent and unreasonable. The 1961  
initial determination shall be made during 2021 regarding the 1962  
prudence and reasonableness of such actions during calendar year 1963  
2020. The commission shall again make the determination in 2024, 1964  
2027, and 2030 regarding the prudence and reasonableness of such 1965  
actions during the three calendar years that preceded the year 1966  
in which the determination is made. 1967

(2) The commission shall determine the proper rate design 1968  
for recovering or remitting the prudently incurred costs related 1969  
to a legacy generation resource, provided, however, that the 1970  
monthly charge or credit for those costs, including any 1971  
deferrals or credits, shall not exceed one dollar and fifty 1972  
cents per customer per month for residential customers. For all 1973  
other customer classes, the commission shall establish 1974  
comparable monthly caps for each class at or below one thousand 1975  
five hundred dollars per customer. Insofar as the prudently 1976  
incurred costs related to a legacy generation resource exceed 1977  
these monthly limits, the electric distribution utility shall 1978  
defer the remaining prudently incurred costs as a regulatory 1979  
asset or liability that shall be recovered as determined by the 1980  
commission subject to the monthly caps set forth in this 1981  
division. 1982

(3) The commission shall provide for discontinuation, 1983  
subject to final reconciliation, of the nonbypassable rate 1984  
mechanism on December 31, 2030, including recovery of any 1985  
deferrals that exist at that time. 1986

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

(B) An electric distribution utility, including all electric distribution utilities in the same holding company, shall bid all output from a legacy generation resource into the wholesale market and shall not use the output in supplying its standard service offer provided under section 4928.142-4928.142 of the Revised Code, as enacted by this act, or section 4928.143 of the Revised Code, as that section existed prior to its repeal and reenactment by this act.

Sec. 4928.149. No electric distribution utility may use any electric energy storage system to participate in the wholesale market, if the utility purchased or acquired that system for distribution service.

Sec. 4928.1410. If an electric distribution utility has an existing electric security plan under which the commission had authorized the creation or continuation of riders, then, to the extent those riders will cease to exist after termination of the electric security plan, the electric distribution utility is authorized to create necessary regulatory assets or liabilities, along with carrying costs at the utility's weighted average cost of debt, for the resolution of any outstanding under-collection or over-collection of funds under such riders. The resolution of such regulatory assets or liabilities shall be addressed in the first distribution rate case under section 4909.18 of the Revised Code that occurs after the plan's expiration.

Sec. 4928.17. (A) Except as otherwise provided in sections-

section 4928.142 or 4928.143 ~~or 4928.31 to 4928.40~~ of the 2017  
Revised Code and beginning on the starting date of competitive 2018  
retail electric service, no electric utility shall engage in 2019  
this state, either directly or through an affiliate, in the 2020  
businesses of supplying a noncompetitive retail electric service 2021  
and supplying a competitive retail electric service, or in the 2022  
businesses of supplying a noncompetitive retail electric service 2023  
and supplying a product or service other than retail electric 2024  
service, unless the utility implements and operates under a 2025  
corporate separation plan that is approved by the public 2026  
utilities commission under this section, is consistent with the 2027  
policy specified in section 4928.02 of the Revised Code, and 2028  
achieves all of the following: 2029

(1) The plan provides, at minimum, for the provision of 2030  
the competitive retail electric service or the nonelectric 2031  
product or service through a fully separated affiliate of the 2032  
utility, and the plan includes separate accounting requirements, 2033  
the code of conduct as ordered by the commission pursuant to a 2034  
rule it shall adopt under division (A) of section 4928.06 of the 2035  
Revised Code, and such other measures as are necessary to 2036  
effectuate the policy specified in section 4928.02 of the 2037  
Revised Code. 2038

(2) The plan satisfies the public interest in preventing 2039  
unfair competitive advantage and preventing the abuse of market 2040  
power. 2041

(3) The plan is sufficient to ensure that the utility will 2042  
not extend any undue preference or advantage to any affiliate, 2043  
division, or part of its own business engaged in the business of 2044  
supplying the competitive retail electric service or nonelectric 2045  
product or service, including, but not limited to, utility 2046

resources such as trucks, tools, office equipment, office space, 2047  
supplies, customer and marketing information, advertising, 2048  
billing and mailing systems, personnel, and training, without 2049  
compensation based upon fully loaded embedded costs charged to 2050  
the affiliate; and to ensure that any such affiliate, division, 2051  
or part will not receive undue preference or advantage from any 2052  
affiliate, division, or part of the business engaged in business 2053  
of supplying the noncompetitive retail electric service. No such 2054  
utility, affiliate, division, or part shall extend such undue 2055  
preference. Notwithstanding any other division of this section, 2056  
a utility's obligation under division (A) (3) of this section 2057  
shall be effective January 1, 2000. 2058

(B) The commission may approve, modify and approve, or 2059  
disapprove a corporate separation plan filed with the commission 2060  
under division (A) of this section. As part of the code of 2061  
conduct required under division (A) (1) of this section, the 2062  
commission shall adopt rules pursuant to division (A) of section 2063  
4928.06 of the Revised Code regarding corporate separation and 2064  
procedures for plan filing and approval. The rules shall include 2065  
limitations on affiliate practices solely for the purpose of 2066  
maintaining a separation of the affiliate's business from the 2067  
business of the utility to prevent unfair competitive advantage 2068  
by virtue of that relationship. The rules also shall include an 2069  
opportunity for any person having a real and substantial 2070  
interest in the corporate separation plan to file specific 2071  
objections to the plan and propose specific responses to issues 2072  
raised in the objections, which objections and responses the 2073  
commission shall address in its final order. Prior to commission 2074  
approval of the plan, the commission shall afford a hearing upon 2075  
those aspects of the plan that the commission determines 2076  
reasonably require a hearing. The commission may reject and 2077

require refiling of a substantially inadequate plan under this 2078  
section. 2079

(C) The commission shall issue an order approving or 2080  
modifying and approving a corporate separation plan under this 2081  
section, to be effective on the date specified in the order, 2082  
only upon findings that the plan reasonably complies with the 2083  
requirements of division (A) of this section and will provide 2084  
for ongoing compliance with the policy specified in section 2085  
4928.02 of the Revised Code. However, for good cause shown, the 2086  
commission may issue an order approving or modifying and 2087  
approving a corporate separation plan under this section that 2088  
does not comply with division (A) (1) of this section but 2089  
complies with such functional separation requirements as the 2090  
commission authorizes to apply for an interim period prescribed 2091  
in the order, upon a finding that such alternative plan will 2092  
provide for ongoing compliance with the policy specified in 2093  
section 4928.02 of the Revised Code. 2094

(D) Any party may seek an amendment to a corporate 2095  
separation plan approved under this section, and the commission, 2096  
pursuant to a request from any party or on its own initiative, 2097  
may order as it considers necessary the filing of an amended 2098  
corporate separation plan to reflect changed circumstances. 2099

(E) No electric distribution utility shall sell or 2100  
transfer any generating asset it wholly or partly owns at any 2101  
time without obtaining prior commission approval. 2102

Sec. 4928.171. Notwithstanding section 4928.17 of the 2103  
Revised Code, a competitive affiliate of an electric 2104  
distribution utility may own or operate an electric generating 2105  
facility but may not be subsidized by the electric distribution 2106  
utility. 2107



**Sec. 4928.20.** (A) The legislative authority of a municipal corporation may adopt an ordinance, or the board of township trustees of a township or the board of county commissioners of a county may adopt a resolution, under which, on or after the starting date of competitive retail electric service, it may aggregate in accordance with this section the retail electrical loads located, respectively, within the municipal corporation, township, or unincorporated area of the county and, for that purpose, may enter into service agreements to facilitate for those loads the sale and purchase of electricity. The legislative authority or board also may exercise such authority jointly with any other such legislative authority or board. For customers that are not mercantile customers, an ordinance or resolution under this division shall specify whether the aggregation will occur only with the prior, affirmative consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated or will occur automatically for all such persons pursuant to the opt-out requirements of division (D) of this section. The aggregation of mercantile customers shall occur only with the prior, affirmative consent of each such person owning, occupying, controlling, or using an electric load center proposed to be aggregated. Nothing in this division, however, authorizes the aggregation of the retail electric loads of an electric load center, as defined in section 4933.81 of the Revised Code, that is located in the certified territory of a nonprofit electric supplier under sections 4933.81 to 4933.90 of the Revised Code or an electric load center served by transmission or distribution facilities of a municipal electric utility.

(B) If an ordinance or resolution adopted under division (A) of this section specifies that aggregation of customers that

are not mercantile customers will occur automatically as 2139  
described in that division, the ordinance or resolution shall 2140  
direct the board of elections to submit the question of the 2141  
authority to aggregate to the electors of the respective 2142  
municipal corporation, township, or unincorporated area of a 2143  
county at a special election on the day of the next primary or 2144  
general election in the municipal corporation, township, or 2145  
county. The legislative authority or board shall certify a copy 2146  
of the ordinance or resolution to the board of elections not 2147  
less than ninety days before the day of the special election. No 2148  
ordinance or resolution adopted under division (A) of this 2149  
section that provides for an election under this division shall 2150  
take effect unless approved by a majority of the electors voting 2151  
upon the ordinance or resolution at the election held pursuant 2152  
to this division. 2153

(C) Upon the applicable requisite authority under 2154  
divisions (A) and (B) of this section, the legislative authority 2155  
or board shall develop a plan of operation and governance for 2156  
the aggregation program so authorized. Before adopting a plan 2157  
under this division, the legislative authority or board shall 2158  
hold at least two public hearings on the plan. Before the first 2159  
hearing, the legislative authority or board shall publish notice 2160  
of the hearings once a week for two consecutive weeks in a 2161  
newspaper of general circulation in the jurisdiction or as 2162  
provided in section 7.16 of the Revised Code. The notice shall 2163  
summarize the plan and state the date, time, and location of 2164  
each hearing. 2165

(D) No legislative authority or board, pursuant to an 2166  
ordinance or resolution under divisions (A) and (B) of this 2167  
section that provides for automatic aggregation of customers 2168  
that are not mercantile customers as described in division (A) 2169

of this section, shall aggregate the electrical load of any 2170  
electric load center located within its jurisdiction unless it 2171  
in advance clearly discloses to the person owning, occupying, 2172  
controlling, or using the load center that the person will be 2173  
enrolled automatically in the aggregation program and will 2174  
remain so enrolled unless the person affirmatively elects by a 2175  
stated procedure not to be so enrolled. The disclosure shall 2176  
state prominently the rates, charges, and other terms and 2177  
conditions of enrollment. The stated procedure shall allow any 2178  
person enrolled in the aggregation program the opportunity to 2179  
opt out of the program every three years, without paying a 2180  
switching fee. Any such person that opts out before the 2181  
commencement of the aggregation program pursuant to the stated 2182  
procedure shall default to the standard service offer provided 2183  
under section 4928.14 or division (D) of section 4928.35 of the 2184  
Revised Code until the person chooses an alternative supplier. 2185

(E) (1) With respect to a governmental aggregation for a 2186  
municipal corporation that is authorized pursuant to divisions 2187  
(A) to (D) of this section, resolutions may be proposed by 2188  
initiative or referendum petitions in accordance with sections 2189  
731.28 to 731.41 of the Revised Code. 2190

(2) With respect to a governmental aggregation for a 2191  
township or the unincorporated area of a county, which 2192  
aggregation is authorized pursuant to divisions (A) to (D) of 2193  
this section, resolutions may be proposed by initiative or 2194  
referendum petitions in accordance with sections 731.28 to 2195  
731.40 of the Revised Code, except that: 2196

(a) The petitions shall be filed, respectively, with the 2197  
township fiscal officer or the board of county commissioners, 2198  
who shall perform those duties imposed under those sections upon 2199

the city auditor or village clerk. 2200

(b) The petitions shall contain the signatures of not less 2201  
than ten per cent of the total number of electors in, 2202  
respectively, the township or the unincorporated area of the 2203  
county who voted for the office of governor at the preceding 2204  
general election for that office in that area. 2205

(F) A governmental aggregator under division (A) of this 2206  
section is not a public utility engaging in the wholesale 2207  
purchase and resale of electricity, and provision of the 2208  
aggregated service is not a wholesale utility transaction. A 2209  
governmental aggregator shall be subject to supervision and 2210  
regulation by the public utilities commission only to the extent 2211  
of any competitive retail electric service it provides and 2212  
commission authority under this chapter. 2213

(G) This section does not apply in the case of a municipal 2214  
corporation that supplies such aggregated service to electric 2215  
load centers to which its municipal electric utility also 2216  
supplies a noncompetitive retail electric service through 2217  
transmission or distribution facilities the utility singly or 2218  
jointly owns or operates. 2219

(H) A governmental aggregator shall not include in its 2220  
aggregation the accounts of any of the following: 2221

(1) A customer that has opted out of the aggregation; 2222

(2) A customer in contract with a certified electric 2223  
services company; 2224

(3) A customer that has a special contract with an 2225  
electric distribution utility; 2226

(4) A customer that is not located within the governmental 2227

aggregator's governmental boundaries; 2228

(5) Subject to division (C) of section 4928.21 of the 2229  
Revised Code, a customer who appears on the "do not aggregate" 2230  
list maintained under that section. 2231

(I) Customers that are part of a governmental aggregation 2232  
under this section shall be responsible only for such portion of 2233  
a surcharge under section 4928.144 of the Revised Code that is 2234  
proportionate to the benefits, as determined by the commission, 2235  
that electric load centers within the jurisdiction of the 2236  
governmental aggregation as a group receive. The proportionate 2237  
surcharge so established shall apply to each customer of the 2238  
governmental aggregation while the customer is part of that 2239  
aggregation. If a customer ceases being such a customer, the 2240  
otherwise applicable surcharge shall apply. Nothing in this 2241  
section shall result in less than full recovery by an electric 2242  
distribution utility of any surcharge authorized under section 2243  
4928.144 of the Revised Code. Nothing in this section shall 2244  
result in less than the full and timely imposition, charging, 2245  
collection, and adjustment by an electric distribution utility, 2246  
its assignee, or any collection agent, of the phase-in-recovery 2247  
charges authorized pursuant to a final financing order issued 2248  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 2249

~~(J) On behalf of the customers that are part of a 2250  
governmental aggregation under this section and by filing 2251  
written notice with the public utilities commission, the 2252  
legislative authority that formed or is forming that 2253  
governmental aggregation may elect not to receive standby 2254  
service within the meaning of division (B) (2) (d) of section 2255  
4928.143 of the Revised Code from an electric distribution 2256  
utility in whose certified territory the governmental 2257~~

~~aggregation is located and that operates under an approved~~ 2258  
~~electric security plan under that section. Upon the filing of~~ 2259  
~~that notice, the electric distribution utility shall not charge~~ 2260  
~~any such customer to whom competitive retail electric generation~~ 2261  
~~service is provided by another supplier under the governmental~~ 2262  
~~aggregation for the standby service. Any such aggregation~~ 2263  
consumer that returns to the utility for competitive retail 2264  
electric service shall pay the market price of power incurred by 2265  
the utility to serve that consumer plus any amount attributable 2266  
to the utility's cost of compliance with the renewable energy 2267  
resource provisions of section 4928.64 of the Revised Code to 2268  
serve the consumer. Such market price shall include, but not be 2269  
limited to, capacity and energy charges; all charges associated 2270  
with the provision of that power supply through the regional 2271  
transmission organization, including, but not limited to, 2272  
transmission, ancillary services, congestion, and settlement and 2273  
administrative charges; and all other costs incurred by the 2274  
utility that are associated with the procurement, provision, and 2275  
administration of that power supply, as such costs may be 2276  
approved by the commission. The period of time during which the 2277  
market price and renewable energy resource amount shall be so 2278  
assessed on the consumer shall be from the time the consumer so 2279  
returns to the electric distribution utility until the 2280  
expiration of the electric security plan. However, if that 2281  
period of time is expected to be more than two years, the 2282  
commission may reduce the time period to a period of not less 2283  
than two years. 2284

(K) The commission shall adopt rules to encourage and 2285  
promote large-scale governmental aggregation in this state. For 2286  
that purpose, ~~the commission shall conduct an immediate review~~ 2287  
~~of any rules it has adopted for the purpose of this section that~~ 2288

~~are in effect on the effective date of the amendment of this~~ 2289  
~~section by S.B. 221 of the 127th general assembly, July 31,~~ 2290  
~~2008. Further, within the context of an electric security plan~~ 2291  
~~under section 4928.143 of the Revised Code,~~ the commission shall 2292  
consider the effect on large-scale governmental aggregation of 2293  
any nonbypassable generation charges, however collected, ~~that~~ 2294  
~~would be established under that plan,~~ except any nonbypassable 2295  
generation charges that relate to any cost incurred by the 2296  
electric distribution utility, the deferral of which has been 2297  
authorized by the commission prior to ~~the effective date of the~~ 2298  
~~amendment of this section by S.B. 221 of the 127th general~~ 2299  
~~assembly,~~ July 31, 2008. 2300

(L) Notwithstanding any provision of section 121.95 of the 2301  
Revised Code to the contrary, a regulatory restriction contained 2302  
in a rule adopted under section 4928.20 of the Revised Code is 2303  
not subject to sections 121.95 to 121.953 of the Revised Code. 2304

**Sec. 4928.23.** As used in sections 4928.23 to 4928.2318 of 2305  
the Revised Code: 2306

(A) "Ancillary agreement" means any bond insurance policy, 2307  
letter of credit, reserve account, surety bond, swap 2308  
arrangement, hedging arrangement, liquidity or credit support 2309  
arrangement, or other similar agreement or arrangement entered 2310  
into in connection with the issuance of phase-in-recovery bonds 2311  
that is designed to promote the credit quality and marketability 2312  
of the bonds or to mitigate the risk of an increase in interest 2313  
rates. 2314

(B) "Assignee" means any person or entity to which an 2315  
interest in phase-in-recovery property is sold, assigned, 2316  
transferred, or conveyed, other than as security, and any 2317  
successor to or subsequent assignee of such a person or entity. 2318

(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.

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

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

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

(2) Any payment required under an ancillary agreement;

(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;

(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 from, phase-in-recovery bonds;

(5) Any costs incurred by an electric distribution utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement, or similar agreement or instrument relating to any existing secured or unsecured obligation of the electric distribution utility in connection with the issuance of phase-in-recovery bonds;



(6) Any costs incurred by an electric distribution utility 2348  
to obtain any consent, release, waiver, or approval from any 2349  
holder of an obligation described in division (E) (5) of this 2350  
section that are necessary to be incurred for the electric 2351  
distribution utility to issue or cause the issuance of phase-in- 2352  
recovery bonds; 2353

(7) Any taxes, franchise fees, or license fees imposed on 2354  
phase-in-recovery revenues; 2355

(8) Any costs related to issuing or servicing phase-in- 2356  
recovery bonds or related to obtaining a financing order, 2357  
including servicing fees and expenses, trustee fees and 2358  
expenses, legal, accounting, or other professional fees and 2359  
expenses, administrative fees, placement fees, underwriting 2360  
fees, capitalized interest and equity, and rating-agency fees; 2361

(9) Any other similar costs that the public utilities 2362  
commission finds appropriate. 2363

(F) "Financing order" means an order issued by the public 2364  
utilities commission under section 4928.232 of the Revised Code 2365  
that authorizes an electric distribution utility or an assignee 2366  
to issue phase-in-recovery bonds and recover phase-in-recovery 2367  
charges. 2368

(G) "Final financing order" means a financing order that 2369  
has become final and has taken effect as provided in section 2370  
4928.233 of the Revised Code. 2371

(H) "Financing party" means either of the following: 2372

(1) Any trustee, collateral agent, or other person acting 2373  
for the benefit of any bondholder; 2374

(2) Any party to an ancillary agreement, the rights and 2375

obligations of which relate to or depend upon the existence of 2376  
phase-in-recovery property, the enforcement and priority of a 2377  
security interest in phase-in-recovery property, the timely 2378  
collection and payment of phase-in-recovery revenues, or a 2379  
combination of these factors. 2380

(I) "Financing statement" has the same meaning as in 2381  
section 1309.102 of the Revised Code. 2382

(J) "Phase-in costs" means costs, inclusive of carrying 2383  
charges incurred before, on, or after ~~the effective date of this~~ 2384  
~~section~~March 22, 2012, authorized by the commission before, on, 2385  
or after ~~the effective date of this section~~March 22, 2012, to be 2386  
securitized or deferred as regulatory assets in proceedings 2387  
under section 4909.18 of the Revised Code, sections 4928.141 to 2388  
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 2389  
under those sections as they existed prior to the effective date 2390  
of the amendments to this section by this act, or section 2391  
4928.14 of the Revised Code as it existed prior to July 31, 2392  
2008, pursuant to a final order for which appeals have been 2393  
exhausted. "Phase-in costs" excludes the following: 2394

(1) With respect to any electric generating facility that, 2395  
on and after ~~the effective date of this section~~March 22, 2012, 2396  
is owned, in whole or in part, by an electric distribution 2397  
utility applying for a financing order under section 4928.231 of 2398  
the Revised Code, costs ~~that are~~ authorized under division (B) 2399  
(2) (b) or (c) of section 4928.143 of the Revised Code as those 2400  
divisions existed prior to the repeal and reenactment of that 2401  
section by this act; 2402

(2) Costs incurred after ~~the effective date of this~~ 2403  
~~section~~March 22, 2012, related to the ongoing operation of an 2404  
electric generating facility, but not environmental clean-up or 2405

remediation costs incurred by an electric distribution utility 2406  
because of its ownership or operation of an electric generating 2407  
facility prior to ~~the effective date of this section~~ March 22, 2408  
2012, which such clean-up or remediation costs are imposed or 2409  
incurred pursuant to federal or state law, rules, or regulations 2410  
and for which the commission approves recovery in accordance 2411  
with section 4909.18 of the Revised Code, sections 4928.141 to 2412  
~~4928.143, or 4928.144~~ of the Revised Code, including proceedings 2413  
under those sections as they existed prior to the effective date 2414  
of the amendments to this section by this act, or section 2415  
4928.14 of the Revised Code as it existed prior to July 31, 2416  
2008. 2417

(K) "Phase-in-recovery property" means the property, 2418  
rights, and interests of an electric distribution utility or an 2419  
assignee under a final financing order, including the right to 2420  
impose, charge, and collect the phase-in-recovery charges that 2421  
shall be used to pay and secure the payment of phase-in-recovery 2422  
bonds and financing costs, and including the right to obtain 2423  
adjustments to those charges, and any revenues, receipts, 2424  
collections, rights to payment, payments, moneys, claims, or 2425  
other proceeds arising from the rights and interests created 2426  
under the final financing order. 2427

(L) "Phase-in-recovery revenues" means all revenues, 2428  
receipts, collections, payments, moneys, claims, or other 2429  
proceeds arising from phase-in-recovery property. 2430

(M) "Successor" means, with respect to any entity, another 2431  
entity that succeeds by operation of law to the rights and 2432  
obligations of the first legal entity pursuant to any 2433  
bankruptcy, reorganization, restructuring, or other insolvency 2434  
proceeding, any merger, acquisition, or consolidation, or any 2435

sale or transfer of assets, regardless of whether any of these 2436  
occur as a result of a restructuring of the electric power 2437  
industry or otherwise. 2438

**Sec. 4928.231.** (A) An electric distribution utility may 2439  
apply to the public utilities commission for a financing order 2440  
that authorizes the following: 2441

(1) The issuance of phase-in-recovery bonds, in one or 2442  
more series, to recover uncollected phase-in costs; 2443

(2) The imposition, charging, and collection of phase-in- 2444  
recovery charges, in accordance with the adjustment mechanism 2445  
approved by the commission under section 4928.232 of the Revised 2446  
Code, and consistent with the commission's authority regarding 2447  
governmental aggregation as provided in division (I) of section 2448  
4928.20 of the Revised Code, to recover both of the following: 2449

(a) Uncollected phase-in costs; 2450

(b) Financing costs. 2451

(3) The creation of phase-in-recovery property under the 2452  
financing order. 2453

(B) The application shall include all of the following: 2454

(1) A description of the uncollected phase-in costs that 2455  
the electric distribution utility seeks to recover through the 2456  
issuance of phase-in-recovery bonds; 2457

(2) An estimate of the date each series of phase-in- 2458  
recovery bonds are expected to be issued; 2459

(3) The expected term during which the phase-in costs 2460  
associated with the issuance of each series of phase-in-recovery 2461  
bonds are expected to be recovered; 2462

(4) An estimate of the financing costs, as described in	2463
section 4928.23 of the Revised Code, associated with the	2464
issuance of each series of phase-in-recovery bonds;	2465
(5) An estimate of the amount of phase-in-recovery charges	2466
necessary to recover the phase-in costs and financing costs set	2467
forth in the application and the calculation for that estimate,	2468
which calculation shall take into account the estimated date or	2469
dates of issuance and the estimated principal amount of each	2470
series of phase-in-recovery bonds;	2471
(6) For phase-in-recovery charges not subject to	2472
allocation according to an existing order, a proposed	2473
methodology for allocating phase-in-recovery charges among	2474
customer classes, including a proposed methodology for	2475
allocating such charges to governmental aggregation customers	2476
based upon the proportionate benefit determination made under	2477
division (I) of section 4928.20 of the Revised Code;	2478
(7) A description of a proposed adjustment mechanism for	2479
use as described in division (A) (2) of this section;	2480
(8) A description and valuation of how the issuance of the	2481
phase-in-recovery bonds, including financing costs, will both	2482
result in cost savings to customers and mitigate rate impacts to	2483
customers when compared to the use of other financing mechanisms	2484
or cost-recovery methods available to the electric distribution	2485
utility;	2486
(9) Any other information required by the commission.	2487
(C) The electric distribution utility may restate or	2488
incorporate by reference in the application any information	2489
required under division (B) (9) of this section that the electric	2490
distribution utility filed with the commission under section	2491

4909.18 or sections 4928.141 to 4928.144 of the Revised Code, 2492  
including filings made under those sections as they existed 2493  
prior to the effective date of the amendments to this section by 2494  
this act, or section 4928.14 of the Revised Code as it existed 2495  
prior to July 31, 2008. 2496

**Sec. 4928.232.** (A) Proceedings before the public utilities 2497  
commission on an application submitted by an electric 2498  
distribution utility under section 4928.231 of the Revised Code 2499  
shall be governed by Chapter 4903. of the Revised Code, but only 2500  
to the extent that chapter is not inconsistent with this section 2501  
or section 4928.233 of the Revised Code. Any party that 2502  
participated in the proceeding in which phase-in costs were 2503  
approved under section 4909.18 ~~or~~ of the Revised Code, sections 2504  
4928.141 to 4928.144 of the Revised Code, including in 2505  
proceedings under those sections as they existed prior to the 2506  
effective date of the amendments to this section by this act, or 2507  
section 4928.14 of the Revised Code as it existed prior to July 2508  
31, 2008, shall have standing to participate in proceedings 2509  
under sections 4928.23 to 4928.2318 of the Revised Code. 2510

(B) When reviewing an application for a financing order 2511  
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 2512  
the commission may hold such hearings, make such inquiries or 2513  
investigations, and examine such witnesses, books, papers, 2514  
documents, and contracts as the commission considers proper to 2515  
carry out these sections. Within thirty days after the filing of 2516  
an application under section 4928.231 of the Revised Code, the 2517  
commission shall publish a schedule of the proceeding. 2518

(C) (1) Not later than one hundred thirty-five days after 2519  
the date the application is filed, the commission shall issue 2520  
either a financing order, granting the application in whole or 2521

with modifications, or an order suspending or rejecting the 2522  
application. 2523

(2) If the commission suspends an application for a 2524  
financing order, the commission shall notify the electric 2525  
distribution utility of the suspension and may direct the 2526  
electric distribution utility to provide additional information 2527  
as the commission considers necessary to evaluate the 2528  
application. Not later than ninety days after the suspension, 2529  
the commission shall issue either a financing order, granting 2530  
the application in whole or with modifications, or an order 2531  
rejecting the application. 2532

(D) (1) The commission shall not issue a financing order 2533  
under division (C) of this section unless the commission 2534  
determines that the financing order is consistent with section 2535  
4928.02 of the Revised Code. 2536

(2) Except as provided in division (D) (1) of this section, 2537  
the commission shall issue a financing order under division (C) 2538  
of this section if, at the time the financing order is issued, 2539  
the commission finds that the issuance of the phase-in-recovery 2540  
bonds and the phase-in-recovery charges authorized by the order 2541  
results in, consistent with market conditions, both measurably 2542  
enhancing cost savings to customers and mitigating rate impacts 2543  
to customers as compared with traditional financing mechanisms 2544  
or traditional cost-recovery methods available to the electric 2545  
distribution utility or, if the commission previously approved a 2546  
recovery method, as compared with that recovery method. 2547

(E) The commission shall include all of the following in a 2548  
financing order issued under division (C) of this section: 2549

(1) A determination of the maximum amount and a 2550

description of the phase-in costs that may be recovered through	2551
phase-in-recovery bonds issued under the financing order;	2552
(2) A description of phase-in-recovery property, the	2553
creation of which is authorized by the financing order;	2554
(3) A description of the financing costs that may be	2555
recovered through phase-in-recovery charges and the period over	2556
which those costs may be recovered;	2557
(4) For phase-in-recovery charges not subject to	2558
allocation according to an existing order, a description of the	2559
methodology and calculation for allocating phase-in-recovery	2560
charges among customer classes, including the allocation of such	2561
charges, if any, to governmental aggregation customers based	2562
upon the proportionate benefit determination made under division	2563
(I) of section 4928.20 of the Revised Code;	2564
(5) A description of the adjustment mechanism for use in	2565
the imposition, charging, and collection of the phase-in-	2566
recovery charges;	2567
(6) The maximum term of the phase-in-recovery bonds;	2568
(7) Any other provision the commission considers	2569
appropriate to ensure the full and timely imposition, charging,	2570
collection, and adjustment, pursuant to an approved adjustment	2571
mechanism, of the phase-in-recovery charges described in	2572
divisions (E) (3) to (5) of this section.	2573
(F) The commission may, in a financing order, afford the	2574
electric distribution utility flexibility in establishing the	2575
terms and conditions for the phase-in-recovery bonds to	2576
accommodate changes in market conditions, including repayment	2577
schedules, interest rates, financing costs, collateral	2578
requirements, required debt service and other reserves, and the	2579



ability of the electric distribution utility, at its option, to 2580  
effect a series of issuances of phase-in-recovery bonds and 2581  
correlated assignments, sales, pledges, or other transfers of 2582  
phase-in-recovery property. Any changes made under this section 2583  
to terms and conditions for the phase-in-recovery bonds shall be 2584  
in conformance with the financing order. 2585

(G) A financing order may provide that the creation of 2586  
phase-in-recovery property shall be simultaneous with the sale 2587  
of that property to an assignee as provided in the application 2588  
and the pledge of the property to secure phase-in-recovery 2589  
bonds. 2590

(H) The commission shall, in a financing order, require 2591  
that after the final terms of each issuance of phase-in-recovery 2592  
bonds have been established, and prior to the issuance of those 2593  
bonds, the electric distribution utility shall determine the 2594  
resulting phase-in-recovery charges in accordance with the 2595  
adjustment mechanism described in the financing order. These 2596  
phase-in-recovery charges shall be final and effective upon the 2597  
issuance of the phase-in-recovery bonds, without further 2598  
commission action. 2599

**Sec. 4928.54.** The director of development ~~services~~ shall 2600  
aggregate percentage of income payment plan program customers 2601  
for the purpose of establishing a competitive procurement 2602  
process for the supply of competitive retail electric service 2603  
for those customers. The process shall be an auction. ~~Only~~ 2604  
~~bidders certified under section 4928.08 of the Revised Code may~~ 2605  
~~participate in the auction.~~ 2606

**Sec. 4928.542.** The winning bid or bids selected through 2607  
the competitive procurement process established under section 2608  
4928.54 of the Revised Code shall meet all of the following 2609

requirements:	2610
(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers;	2611 2612 2613
(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 <del>7</del> and 4928.142 <del>7</del> and <del>4928.143</del> of the Revised Code;	2614 2615 2616 2617
(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code.	2618 2619 2620
<b>Sec. 4928.64.</b> (A) (1) As used in this section, "qualifying renewable energy resource" means a renewable energy resource, as defined in section 4928.01 of the Revised Code that:	2621 2622 2623
(a) Has a placed-in-service date on or after January 1, 1998;	2624 2625
(b) Is any run-of-the-river hydroelectric facility that has an in-service date on or after January 1, 1980;	2626 2627
(c) Is a small hydroelectric facility;	2628
(d) Is created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or	2629 2630 2631
(e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the	2632 2633 2634 2635 2636 2637

following:	2638
(i) A resource that has the effect of improving the relationship between real and reactive power;	2639 2640
(ii) A resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer;	2641 2642 2643
(iii) Storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics;	2644 2645 2646
(iv) Electric generation equipment owned or controlled by a mercantile customer that uses a renewable energy resource.	2647 2648
(2) For the purpose of this section and as it considers appropriate, the public utilities commission may classify any new technology as such a qualifying renewable energy resource.	2649 2650 2651
(B) (1) By the end of 2026, an electric distribution utility shall have provided from qualifying renewable energy resources, including, at its discretion, qualifying renewable energy resources obtained pursuant to an electricity supply contract, a portion of the electricity supply required for its standard service offer <del>under section 4928.141 of the Revised Code</del> , and an electric services company shall have provided a portion of its electricity supply for retail consumers in this state from qualifying renewable energy resources, including, at its discretion, qualifying renewable energy resources obtained pursuant to an electricity supply contract. That portion shall equal eight and one-half per cent of the total number of kilowatt hours of electricity sold by the subject utility or company to any and all retail electric consumers whose electric load centers are served by that utility and are located within	2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666

the utility's certified territory or, in the case of an electric services company, are served by the company and are located within this state. However, nothing in this section precludes a utility or company from providing a greater percentage.

(2) Subject to section 4928.642 of the Revised Code, the portion required under division (B)(1) of this section shall be generated from renewable energy resources in accordance with the following benchmarks:

	1	2	3
A	By end of year	Renewable energy resources	Solar energy resources
B	2009	0.25%	0.004%
C	2010	0.50%	0.010%
D	2011	1%	0.030%
E	2012	1.5%	0.060%
F	2013	2%	0.090%
G	2014	2.5%	0.12%
H	2015	2.5%	0.12%
I	2016	2.5%	0.12%
J	2017	3.5%	0.15%
K	2018	4.5%	0.18%

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L	2019	5.5%	0.22%
M	2020	5.5%	0%
N	2021	6%	0%
O	2022	6.5%	0%
P	2023	7%	0%
Q	2024	7.5%	0%
R	2025	8%	0%
S	2026	8.5%	0%

(3) The qualifying renewable energy resources implemented 2676  
by the utility or company shall be met either: 2677

(a) Through facilities located in this state; or 2678

(b) With resources that can be shown to be deliverable 2679  
into this state. 2680

(C) (1) The commission annually shall review an electric 2681  
distribution utility's or electric services company's compliance 2682  
with the most recent applicable benchmark under division (B) (2) 2683  
of this section and, in the course of that review, shall 2684  
identify any undercompliance or noncompliance of the utility or 2685  
company that it determines is weather-related, related to 2686  
equipment or resource shortages for qualifying renewable energy 2687  
resources as applicable, or is otherwise outside the utility's 2688  
or company's control. 2689

(2) Subject to the cost cap provisions of division (C) (3) 2690  
of this section, if the commission determines, after notice and 2691

opportunity for hearing, and based upon its findings in that 2692  
review regarding avoidable undercompliance or noncompliance, but 2693  
subject to division (C) (4) of this section, that the utility or 2694  
company has failed to comply with any such benchmark, the 2695  
commission shall impose a renewable energy compliance payment on 2696  
the utility or company. 2697

(a) The compliance payment pertaining to the solar energy 2698  
resource benchmarks under division (B) (2) of this section shall 2699  
be an amount per megawatt hour of undercompliance or 2700  
noncompliance in the period under review, as follows: 2701

- (i) Three hundred dollars for 2014, 2015, and 2016; 2702
- (ii) Two hundred fifty dollars for 2017 and 2018; 2703
- (iii) Two hundred dollars for 2019. 2704

(b) The compliance payment pertaining to the renewable 2705  
energy resource benchmarks under division (B) (2) of this section 2706  
shall equal the number of additional renewable energy credits 2707  
that the electric distribution utility or electric services 2708  
company would have needed to comply with the applicable 2709  
benchmark in the period under review times an amount that shall 2710  
begin at forty-five dollars and shall be adjusted annually by 2711  
~~the commission to reflect any change in the consumer price index~~ 2712  
~~as defined in section 101.27 of the Revised Code,~~ but shall not 2713  
be less than forty-five dollars. 2714

(c) The compliance payment shall not be passed through by 2715  
the electric distribution utility or electric services company 2716  
to consumers. The compliance payment shall be remitted to the 2717  
commission, for deposit to the credit of the advanced energy 2718  
fund created under section 4928.61 of the Revised Code. Payment 2719  
of the compliance payment shall be subject to such collection 2720

and enforcement procedures as apply to the collection of a 2721  
forfeiture under sections 4905.55 to 4905.60 and 4905.64 of the 2722  
Revised Code. 2723

(3) An electric distribution utility or an electric 2724  
services company need not comply with a benchmark under division 2725  
(B) (2) of this section to the extent that its reasonably 2726  
expected cost of that compliance exceeds its reasonably expected 2727  
cost of otherwise producing or acquiring the requisite 2728  
electricity by three per cent or more. The cost of compliance 2729  
shall be calculated as though any exemption from taxes and 2730  
assessments had not been granted under section 5727.75 of the 2731  
Revised Code. 2732

(4) (a) An electric distribution utility or electric 2733  
services company may request the commission to make a force 2734  
majeure determination pursuant to this division regarding all or 2735  
part of the utility's or company's compliance with any minimum 2736  
benchmark under division (B) (2) of this section during the 2737  
period of review occurring pursuant to division (C) (2) of this 2738  
section. The commission may require the electric distribution 2739  
utility or electric services company to make solicitations for 2740  
renewable energy resource credits as part of its default service 2741  
before the utility's or company's request of force majeure under 2742  
this division can be made. 2743

(b) Within ninety days after the filing of a request by an 2744  
electric distribution utility or electric services company under 2745  
division (C) (4) (a) of this section, the commission shall 2746  
determine if qualifying renewable energy resources are 2747  
reasonably available in the marketplace in sufficient quantities 2748  
for the utility or company to comply with the subject minimum 2749  
benchmark during the review period. In making this 2750

determination, the commission shall consider whether the 2751  
electric distribution utility or electric services company has 2752  
made a good faith effort to acquire sufficient qualifying 2753  
renewable energy or, as applicable, solar energy resources to so 2754  
comply, including, but not limited to, by banking or seeking 2755  
renewable energy resource credits or by seeking the resources 2756  
through long-term contracts. Additionally, the commission shall 2757  
consider the availability of qualifying renewable energy or 2758  
solar energy resources in this state and other jurisdictions in 2759  
the PJM interconnection regional transmission organization, 2760  
L.L.C., or its successor and the midcontinent independent system 2761  
operator or its successor. 2762

(c) If, pursuant to division (C) (4) (b) of this section, 2763  
the commission determines that qualifying renewable energy or 2764  
solar energy resources are not reasonably available to permit 2765  
the electric distribution utility or electric services company 2766  
to comply, during the period of review, with the subject minimum 2767  
benchmark prescribed under division (B) (2) of this section, the 2768  
commission shall modify that compliance obligation of the 2769  
utility or company as it determines appropriate to accommodate 2770  
the finding. Commission modification shall not automatically 2771  
reduce the obligation for the electric distribution utility's or 2772  
electric services company's compliance in subsequent years. If 2773  
it modifies the electric distribution utility or electric 2774  
services company obligation under division (C) (4) (c) of this 2775  
section, the commission may require the utility or company, if 2776  
sufficient renewable energy resource credits exist in the 2777  
marketplace, to acquire additional renewable energy resource 2778  
credits in subsequent years equivalent to the utility's or 2779  
company's modified obligation under division (C) (4) (c) of this 2780  
section. 2781



(5) The commission shall establish a process to provide 2782  
for at least an annual review of the renewable energy resource 2783  
market in this state and in the service territories of the 2784  
regional transmission organizations that manage transmission 2785  
systems located in this state. The commission shall use the 2786  
results of this study to identify any needed changes to the 2787  
amount of the renewable energy compliance payment specified 2788  
under divisions (C) (2) (a) and (b) of this section. Specifically, 2789  
the commission may increase the amount to ensure that payment of 2790  
compliance payments is not used to achieve compliance with this 2791  
section in lieu of actually acquiring or realizing energy 2792  
derived from qualifying renewable energy resources. However, if 2793  
the commission finds that the amount of the compliance payment 2794  
should be otherwise changed, the commission shall present this 2795  
finding to the general assembly for legislative enactment. 2796

(D) The commission annually shall submit to the general 2797  
assembly in accordance with section 101.68 of the Revised Code a 2798  
report describing all of the following: 2799

(1) The compliance of electric distribution utilities and 2800  
electric services companies with division (B) of this section; 2801

(2) The average annual cost of renewable energy credits 2802  
purchased by utilities and companies for the year covered in the 2803  
report; 2804

(3) Any strategy for utility and company compliance or for 2805  
encouraging the use of qualifying renewable energy resources in 2806  
supplying this state's electricity needs in a manner that 2807  
considers available technology, costs, job creation, and 2808  
economic impacts. 2809

The commission shall begin providing the information 2810

described in division (D) (2) of this section in each report 2811  
submitted after September 10, 2012. The commission shall allow 2812  
and consider public comments on the report prior to its 2813  
submission to the general assembly. Nothing in the report shall 2814  
be binding on any person, including any utility or company for 2815  
the purpose of its compliance with any benchmark under division 2816  
(B) of this section, or the enforcement of that provision under 2817  
division (C) of this section. 2818

(E) All costs incurred by an electric distribution utility 2819  
in complying with the requirements of this section shall be 2820  
bypassable by any consumer that has exercised choice of supplier 2821  
under section 4928.03 of the Revised Code. 2822

**Sec. 4929.161.** (A) A natural gas company may file an 2823  
application with the public utilities commission for approval of 2824  
an infrastructure development rider to recover prudently 2825  
incurred infrastructure development costs of one or more 2826  
economic development projects approved under section 4929.163 of 2827  
the Revised Code, including the costs of planning, obtaining the 2828  
right of way for, and constructing economic development projects 2829  
held for future use. 2830

(B) The commission shall approve a maximum of one 2831  
infrastructure development rider per company. 2832

**Sec. 4929.163.** (A) A natural gas company may file an 2833  
application with the public utilities commission for approval of 2834  
an economic development project, including a project for which 2835  
an application has been made under section 122.9511 of the 2836  
Revised Code for certification under the SiteOhio certification 2837  
program or a project that has received funding under the 2838  
brownfield remediation program under section 122.6511 of the 2839  
Revised Code. 2840

(B) The company shall file the application for project approval prior to beginning the project.	2841 2842
(C) The application for project approval shall contain a description of each of the following:	2843 2844
(1) The economic development project;	2845
(2) The infrastructure development costs to be expended on the project;	2846 2847
(3) How the project meets the criteria set forth in rules adopted under division (D) of this section;	2848 2849
(4) The support for the project by an economic development entity or chamber of commerce. For purposes of this application requirement, "economic development entity" includes any of the following:	2850 2851 2852 2853
(a) JobsOhio or any JobsOhio network or regional partner;	2854
(b) <del>Development services agency</del> <u>Department of development</u> ;	2855
(c) Port authority created under Chapter 4582. of the Revised Code;	2856 2857
(d) Special improvement district created under Chapter 1710. of the Revised Code;	2858 2859
(e) Community urban redevelopment corporation qualified to operate under Chapter 1728. of the Revised Code;	2860 2861
(f) Community improvement corporation organized under Chapter 1724. of the Revised Code;	2862 2863
(g) New community authority organized under Chapter 349. of the Revised Code;	2864 2865
(h) Joint economic development district created under	2866

section 715.70 or 715.71 of the Revised Code; 2867

(i) Development corporation organized under Chapter 1726. 2868  
of the Revised Code; 2869

(j) Municipal utility district designated under section 2870  
715.84 of the Revised Code. 2871

(D) The commission shall adopt rules setting forth the 2872  
criteria for project approval under this section. The commission 2873  
may approve a project under this section if the infrastructure 2874  
development costs are projected to generate a return on the 2875  
company's investment that is less than the most recently 2876  
authorized rate of return. 2877

(E) The commission shall adopt rules to provide for an 2878  
accelerated review of an application filed under division (A) of 2879  
this section. The rules shall provide for the automatic approval 2880  
of the application not later than thirty days after the date of 2881  
the application filing unless the commission suspends the 2882  
application for good cause shown. If the application is 2883  
suspended, the commission shall approve, deny, modify, or hold a 2884  
hearing on the application not later than forty-five days after 2885  
the date that the suspension begins. 2886

**Sec. 4929.20.** ~~(A)~~ (A) (1) No governmental aggregator as 2887  
defined in division (K) (1) of section 4929.01 of the Revised 2888  
Code or no retail natural gas supplier shall provide a 2889  
competitive retail natural gas service on or after thirteen 2890  
months following ~~the effective date of this section~~ June 26, 2891  
2001, to a consumer in this state without first being certified 2892  
by the public utilities commission regarding its managerial, 2893  
technical, and financial capability to provide that service and 2894  
providing reasonable financial assurances sufficient to protect 2895

customers and natural gas companies from default. ~~In addition, a~~ 2896  
~~retail natural gas supplier may be required to provide a~~ 2897  
~~performance bond sufficient to protect customers and natural gas~~ 2898  
~~companies from default.~~ Certification shall be granted pursuant 2899  
to procedures and standards the commission shall prescribe in 2900  
accordance with rules adopted under section 4929.10 of the 2901  
Revised Code. However, certification or certification renewal 2902  
shall be deemed approved thirty days after the filing of an 2903  
application with the commission unless the commission suspends 2904  
that approval for good cause shown. In the case of such a 2905  
suspension, the commission shall act to approve or deny 2906  
certification or certification renewal to the applicant not 2907  
later than ninety days after the date of the suspension. 2908

(2) The commission shall establish rules to require a 2909  
competitive retail natural gas supplier to maintain financial 2910  
assurances sufficient to protect customers and natural gas 2911  
companies from default. Such rules also shall specifically allow 2912  
a natural gas company to set reasonable standards for its 2913  
security and the security of its customers through financial 2914  
requirements set in its tariffs. 2915

(3) As used in division (A) (2) of this section, "retail 2916  
natural gas supplier" has the same meaning as in section 4929.01 2917  
of the Revised Code, but excludes a broker or aggregator. 2918

(B) Capability standards adopted in rules pursuant to 2919  
division (A) of this section shall be sufficient to ensure 2920  
compliance with section 4929.22 of the Revised Code and with the 2921  
minimum service requirements established under section 4929.23 2922  
of the Revised Code. The standards shall allow flexibility for 2923  
voluntary aggregation, to encourage market creativity in 2924  
responding to consumer needs and demands. The rules shall 2925

include procedures for biennially renewing certification. 2926

(C) (1) The commission may suspend, rescind, or 2927  
conditionally rescind the certification of any retail natural 2928  
gas supplier or governmental aggregator issued under this 2929  
section if the commission determines, after reasonable notice 2930  
and opportunity for hearing, that the retail natural gas 2931  
supplier or governmental aggregator has failed to comply with 2932  
any applicable certification standards prescribed in rules 2933  
adopted pursuant to this section or section 4929.22 of the 2934  
Revised Code. 2935

(2) An affected natural gas company may file an 2936  
application with the commission for approval of authority to 2937  
recover in accordance with division (C) (2) of this section 2938  
incremental costs reasonably and prudently incurred by the 2939  
company in connection with the commission's continuation, 2940  
suspension, rescission, or conditional rescission of a 2941  
particular retail natural gas supplier's certification under 2942  
division (C) (1) of this section. Upon the filing of such an 2943  
application, the commission shall conduct an audit of such 2944  
incremental costs as are specified in the application. Cost 2945  
recovery shall be through a rider on the base rates of customers 2946  
of the company for which there is a choice of supplier of 2947  
commodity sales service as a result of revised schedules 2948  
approved under division (C) of section 4929.29 of the Revised 2949  
Code, a rule or order adopted or issued by the commission under 2950  
Chapter 4905. of the Revised Code, or an exemption granted by 2951  
the commission under sections 4929.04 to 4929.08 of the Revised 2952  
Code. The rider shall take effect ninety days after the date of 2953  
the application's filing unless the commission, based on the 2954  
audit results and for good cause shown, sets the matter for 2955  
hearing. After the hearing, the commission shall approve the 2956

application, and authorize such cost recovery rider effective on 2957  
the date specified in the order, only for such incremental costs 2958  
as the commission determines were reasonably and prudently 2959  
incurred by the company in connection with the continuation, 2960  
suspension, rescission, or conditional rescission of a retail 2961  
natural gas supplier's certification under division (C) (1) of 2962  
this section. Any proceeding under division (C) (2) of this 2963  
section shall be governed by Chapter 4903. of the Revised Code. 2964

(D) No natural gas company, on and after thirteen months 2965  
following ~~the effective date of this section~~ June 26, 2001, 2966  
shall knowingly distribute natural gas, to a retail consumer in 2967  
this state, for any governmental aggregator, as defined in 2968  
division (K) (1) of section 4929.01 of the Revised Code, or 2969  
retail natural gas supplier, that has not been certified by the 2970  
commission pursuant to this section. 2971

(E) Notwithstanding any provision of section 121.95 of the 2972  
Revised Code to the contrary, a regulatory restriction contained 2973  
in a rule adopted under section 4929.20 of the Revised Code is 2974  
not subject to sections 121.95 to 121.953 of the Revised Code. 2975

**Sec. 4929.221.** (A) If a competitive retail natural gas 2976  
service provider offers a residential customer or non-mercantile 2977  
commercial customer a contract for a fixed introductory rate 2978  
that converts to a variable rate upon the expiration of the 2979  
fixed rate, the provider shall send two notices to each 2980  
residential customer and non-mercantile commercial customer that 2981  
enters into such a contract. Each notice shall provide all of 2982  
the following information to the customer: 2983

(1) The fixed rate that is expiring under the contract; 2984

(2) The expiration date of the contract's fixed rate; 2985

<u>(3) The rate to be charged upon the contract's conversion</u>	2986
<u>to a variable rate;</u>	2987
<u>(4) The public utilities commission web site that, as a</u>	2988
<u>comparison tool, lists rates offered by competitive retail</u>	2989
<u>natural gas service providers;</u>	2990
<u>(5) A statement explaining that appearing on each</u>	2991
<u>customer's bill is a price-to-compare notice that lists the</u>	2992
<u>natural gas company's default rate for natural gas charged to</u>	2993
<u>customers who decide not to shop for a competitive supplier.</u>	2994
<u>(B) The notices shall be sent by standard United States</u>	2995
<u>mail as follows:</u>	2996
<u>(1) The provider shall send the first notice not earlier</u>	2997
<u>than ninety days and not later than sixty days prior to the</u>	2998
<u>expiration of the fixed rate.</u>	2999
<u>(2) The provider shall send the second notice not earlier</u>	3000
<u>than forty-five days and not later than thirty days prior to the</u>	3001
<u>expiration of the fixed rate.</u>	3002
<u>(C) A competitive retail natural gas service provider</u>	3003
<u>shall provide an annual notice, by standard United States mail,</u>	3004
<u>to each residential customer and non-mercantile commercial</u>	3005
<u>customer that has entered into a contract with the provider that</u>	3006
<u>has converted to a variable rate upon the expiration of the</u>	3007
<u>contract's fixed introductory rate. The notice shall inform the</u>	3008
<u>customer that the customer is currently subject to a variable</u>	3009
<u>rate and that other fixed rate contracts are available.</u>	3010
<u>(D) Not later than one hundred fifty days after the</u>	3011
<u>effective date of this section, the commission shall adopt rules</u>	3012
<u>in order to implement divisions (A) to (C) of this section. The</u>	3013
<u>rules, at a minimum, shall include the following requirements</u>	3014



regarding the notices required under divisions (A) to (C) of 3015  
this section: 3016

(1) To use clear and unambiguous language in order to 3017  
enable the customer to make an informed decision; 3018

(2) To design the notices in a way to ensure that they 3019  
cannot be confused with marketing materials. 3020

(E) Notwithstanding any provision of section 121.95 of the 3021  
Revised Code to the contrary, a regulatory restriction contained 3022  
in a rule adopted under section 4929.221 of the Revised Code is 3023  
not subject to sections 121.95 to 121.953 of the Revised Code. 3024

**Section 2.** That existing sections 4903.083, 4905.491, 3025  
4909.04, 4909.05, 4909.052, 4909.06, 4909.15, 4909.156, 4909.18, 3026  
4909.19, 4909.42, 4909.43, 4928.01, 4928.08, 4928.14, 4928.141, 3027  
4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 3028  
4928.232, 4928.54, 4928.542, 4928.64, 4929.161, 4929.163, and 3029  
4929.20 of the Revised Code are hereby repealed. 3030

**Section 3.** That sections 4928.142, 4928.143, 4928.581, 3031  
4928.582, and 4928.583 of the Revised Code are hereby repealed. 3032

**Section 4.** (A) (1) Notwithstanding the amendments by this 3033  
act to section 4928.143 of the Revised Code and any other 3034  
section of the Revised Code authorizing and governing electric 3035  
security plans, the following shall apply to an electric 3036  
distribution utility with an electric security plan in effect on 3037  
the effective date of this section: 3038

(a) If an electric distribution utility's electric 3039  
security plan has a specific termination date that is before 3040  
June 1, 2024, the utility shall continue that plan until the 3041  
plan's termination date. If an electric distribution utility's 3042  
electric security plan has a termination date that is after June 3043

1, 2024, the utility may continue that plan until the plan's 3044  
termination date. 3045

(b) If an electric distribution utility's electric 3046  
security plan does not have a specific termination date, the 3047  
utility may continue that plan until not later than January 1, 3048  
2024. 3049

(2) An electric security plan described in division (A) (1) 3050  
of this section shall continue in accordance with all applicable 3051  
orders and rules of the Public Utilities Commission and any 3052  
provisions of the Revised Code that existed and applied to the 3053  
plan prior to the effective date of this section. After an 3054  
electric distribution utility's electric security plan 3055  
terminates under this section, the electric distribution utility 3056  
shall not extend the electric security plan or apply for a new 3057  
electric security plan. 3058

(B) The Commission may amend its rules to meet the 3059  
requirements of division (A) of this section and the amendments 3060  
contained in this act. 3061

**Section 5.** Each electric distribution utility that has not 3062  
filed a rate case application regarding distribution service 3063  
under section 4909.18 of the Revised Code during the five-year 3064  
period prior to the effective date of this section shall file 3065  
such a rate case not later than six months after the effective 3066  
date of this section. 3067