

As Introduced

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

S. B. No. 143

Senator Romanchuk

A BILL

To amend sections 4928.01, 4928.05, 4928.14, 1
4928.141, 4928.142, 4928.144, 4928.148, 4928.17, 2
4928.20, 4928.23, 4928.231, 4928.232, 4928.34, 3
and 4928.542; to enact sections 4909.181 and 4
4928.041; and to repeal section 4928.143 of the 5
Revised Code to eliminate electric security 6
plans and require all electric standard service 7
offers to be delivered through market-rate 8
offers, and to strengthen corporate separation 9
requirements. 10

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

Section 1. That sections 4928.01, 4928.05, 4928.14, 11
4928.141, 4928.142, 4928.144, 4928.148, 4928.17, 4928.20, 12
4928.23, 4928.231, 4928.232, 4928.34, and 4928.542 be amended 13
and sections 4909.181 and 4928.041 of the Revised Code be 14
enacted to read as follows: 15

Sec. 4909.181. Not later than five years after the 16
effective date of this section and at least every five years 17
thereafter, an electric distribution utility shall file a rate 18
case application regarding distribution service under section 19

4909.18 of the Revised Code. 20

Sec. 4928.01. (A) As used in this chapter: 21

(1) "Ancillary service" means any function necessary to 22
the provision of electric transmission or distribution service 23
to a retail customer and includes, but is not limited to, 24
scheduling, system control, and dispatch services; reactive 25
supply from generation resources and voltage control service; 26
reactive supply from transmission resources service; regulation 27
service; frequency response service; energy imbalance service; 28
operating reserve-spinning reserve service; operating reserve- 29
supplemental reserve service; load following; back-up supply 30
service; real-power loss replacement service; dynamic 31
scheduling; system black start capability; and network stability 32
service. 33

(2) "Billing and collection agent" means a fully 34
independent agent, not affiliated with or otherwise controlled 35
by an electric utility, electric services company, electric 36
cooperative, or governmental aggregator subject to certification 37
under section 4928.08 of the Revised Code, to the extent that 38
the agent is under contract with such utility, company, 39
cooperative, or aggregator solely to provide billing and 40
collection for retail electric service on behalf of the utility 41
company, cooperative, or aggregator. 42

(3) "Certified territory" means the certified territory 43
established for an electric supplier under sections 4933.81 to 44
4933.90 of the Revised Code. 45

(4) "Competitive retail electric service" means a 46
component of retail electric service that is competitive as 47
provided under division (B) of this section. 48

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

(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.

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

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

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

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

(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit

basis ~~either~~ in the business of supplying at least a 78
noncompetitive retail electric service in this state ~~or in the~~ 79
~~businesses of supplying both a noncompetitive and a competitive~~ 80
~~retail electric service in this state.~~ "Electric utility" 81
excludes a municipal electric utility or a billing and 82
collection agent. 83

(12) "Firm electric service" means electric service other 84
than nonfirm electric service. 85

(13) "Governmental aggregator" means a legislative 86
authority of a municipal corporation, a board of township 87
trustees, or a board of county commissioners acting as an 88
aggregator for the provision of a competitive retail electric 89
service under authority conferred under section 4928.20 of the 90
Revised Code. 91

(14) A person acts "knowingly," regardless of the person's 92
purpose, when the person is aware that the person's conduct will 93
probably cause a certain result or will probably be of a certain 94
nature. A person has knowledge of circumstances when the person 95
is aware that such circumstances probably exist. 96

(15) "Level of funding for low-income customer energy 97
efficiency programs provided through electric utility rates" 98
means the level of funds specifically included in an electric 99
utility's rates on October 5, 1999, pursuant to an order of the 100
public utilities commission issued under Chapter 4905. or 4909. 101
of the Revised Code and in effect on October 4, 1999, for the 102
purpose of improving the energy efficiency of housing for the 103
utility's low-income customers. The term excludes the level of 104
any such funds committed to a specific nonprofit organization or 105
organizations pursuant to a stipulation or contract. 106

(16) "Low-income customer assistance programs" means the 107
percentage of income payment plan program, the home energy 108
assistance program, the home weatherization assistance program, 109
and the targeted energy efficiency and weatherization program. 110

(17) "Market development period" for an electric utility 111
means the period of time beginning on the starting date of 112
competitive retail electric service and ending on the applicable 113
date for that utility as specified in section 4928.40 of the 114
Revised Code, irrespective of whether the utility applies to 115
receive transition revenues under this chapter. 116

(18) "Market power" means the ability to impose on 117
customers a sustained price for a product or service above the 118
price that would prevail in a competitive market. 119

(19) "Mercantile customer" means a commercial or 120
industrial customer if the electricity consumed is for 121
nonresidential use and the customer consumes more than seven 122
hundred thousand kilowatt hours per year or is part of a 123
national account involving multiple facilities in one or more 124
states. 125

(20) "Municipal electric utility" means a municipal 126
corporation that owns or operates facilities to generate, 127
transmit, or distribute electricity. 128

(21) "Noncompetitive retail electric service" means a 129
component of retail electric service that is noncompetitive as 130
provided under division (B) of this section. 131

(22) "Nonfirm electric service" means electric service 132
provided pursuant to a schedule filed under section 4905.30 of 133
the Revised Code or pursuant to an arrangement under section 134
4905.31 of the Revised Code, which schedule or arrangement 135

includes conditions that may require the customer to curtail or 136
interrupt electric usage during nonemergency circumstances upon 137
notification by an electric utility. 138

(23) "Percentage of income payment plan arrears" means 139
funds eligible for collection through the percentage of income 140
payment plan rider, but uncollected as of July 1, 2000. 141

(24) "Person" has the same meaning as in section 1.59 of 142
the Revised Code. 143

(25) "Advanced energy project" means any technologies, 144
products, activities, or management practices or strategies that 145
facilitate the generation or use of electricity or energy and 146
that reduce or support the reduction of energy consumption or 147
support the production of clean, renewable energy for 148
industrial, distribution, commercial, institutional, 149
governmental, research, not-for-profit, or residential energy 150
users, including, but not limited to, advanced energy resources 151
and renewable energy resources. "Advanced energy project" also 152
includes any project described in division (A), (B), or (C) of 153
section 4928.621 of the Revised Code. 154

(26) "Regulatory assets" means the unamortized net 155
regulatory assets that are capitalized or deferred on the 156
regulatory books of the electric utility, pursuant to an order 157
or practice of the public utilities commission or pursuant to 158
generally accepted accounting principles as a result of a prior 159
commission rate-making decision, and that would otherwise have 160
been charged to expense as incurred or would not have been 161
capitalized or otherwise deferred for future regulatory 162
consideration absent commission action. "Regulatory assets" 163
includes, but is not limited to, all deferred demand-side 164
management costs; all deferred percentage of income payment plan 165

arrears; post-in-service capitalized charges and assets 166
recognized in connection with statement of financial accounting 167
standards no. 109 (receivables from customers for income taxes); 168
future nuclear decommissioning costs and fuel disposal costs as 169
those costs have been determined by the commission in the 170
electric utility's most recent rate or accounting application 171
proceeding addressing such costs; the undepreciated costs of 172
safety and radiation control equipment on nuclear generating 173
plants owned or leased by an electric utility; and fuel costs 174
currently deferred pursuant to the terms of one or more 175
settlement agreements approved by the commission. 176

(27) "Retail electric service" means any service involved 177
in supplying or arranging for the supply of electricity to 178
ultimate consumers in this state, from the point of generation 179
to the point of consumption. For the purposes of this chapter, 180
retail electric service includes one or more of the following 181
"service components": generation service, aggregation service, 182
power marketing service, power brokerage service, transmission 183
service, distribution service, ancillary service, metering 184
service, and billing and collection service. 185

(28) "Starting date of competitive retail electric 186
service" means January 1, 2001. 187

(29) "Customer-generator" means a user of a net metering 188
system. 189

(30) "Net metering" means measuring the difference in an 190
applicable billing period between the electricity supplied by an 191
electric service provider and the electricity generated by a 192
customer-generator that is fed back to the electric service 193
provider. 194

(31) "Net metering system" means a facility for the	195
production of electrical energy that does all of the following:	196
(a) Uses as its fuel either solar, wind, biomass, landfill	197
gas, or hydropower, or uses a microturbine or a fuel cell;	198
(b) Is located on a customer-generator's premises;	199
(c) Operates in parallel with the electric utility's	200
transmission and distribution facilities;	201
(d) Is intended primarily to offset part or all of the	202
customer-generator's requirements for electricity. For an	203
industrial customer-generator with a net metering system that	204
has a capacity of less than twenty megawatts and uses wind as	205
energy, this means the net metering system was sized so as to	206
not exceed one hundred per cent of the customer-generator's	207
annual requirements for electric energy at the time of	208
interconnection.	209
(32) "Self-generator" means an entity in this state that	210
owns or hosts on its premises an electric generation facility	211
that produces electricity primarily for the owner's consumption	212
and that may provide any such excess electricity to another	213
entity, whether the facility is installed or operated by the	214
owner or by an agent under a contract.	215
(33) "Rate plan" means the standard service offer in	216
effect on the effective date of the amendment of this section by	217
S.B. 221 of the 127th general assembly, July 31, 2008.	218
(34) "Advanced energy resource" means any of the	219
following:	220
(a) Any method or any modification or replacement of any	221
property, process, device, structure, or equipment that	222

increases the generation output of an electric generating	223
facility to the extent such efficiency is achieved without	224
additional carbon dioxide emissions by that facility;	225
(b) Any distributed generation system consisting of	226
customer cogeneration technology;	227
(c) Clean coal technology that includes a carbon-based	228
product that is chemically altered before combustion to	229
demonstrate a reduction, as expressed as ash, in emissions of	230
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or	231
sulfur trioxide in accordance with the American society of	232
testing and materials standard D1757A or a reduction of metal	233
oxide emissions in accordance with standard D5142 of that	234
society, or clean coal technology that includes the design	235
capability to control or prevent the emission of carbon dioxide,	236
which design capability the commission shall adopt by rule and	237
shall be based on economically feasible best available	238
technology or, in the absence of a determined best available	239
technology, shall be of the highest level of economically	240
feasible design capability for which there exists generally	241
accepted scientific opinion;	242
(d) Advanced nuclear energy technology consisting of	243
generation III technology as defined by the nuclear regulatory	244
commission; other, later technology; or significant improvements	245
to existing facilities;	246
(e) Any fuel cell used in the generation of electricity,	247
including, but not limited to, a proton exchange membrane fuel	248
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	249
solid oxide fuel cell;	250
(f) Advanced solid waste or construction and demolition	251

debris conversion technology, including, but not limited to,	252
advanced stoker technology, and advanced fluidized bed	253
gasification technology, that results in measurable greenhouse	254
gas emissions reductions as calculated pursuant to the United	255
States environmental protection agency's waste reduction model	256
(WARM);	257
(g) Demand-side management and any energy efficiency	258
improvement;	259
(h) Any new, retrofitted, refueled, or repowered	260
generating facility located in Ohio, including a simple or	261
combined-cycle natural gas generating facility or a generating	262
facility that uses biomass, coal, modular nuclear, or any other	263
fuel as its input;	264
(i) Any uprated capacity of an existing electric	265
generating facility if the uprated capacity results from the	266
deployment of advanced technology.	267
"Advanced energy resource" does not include a waste energy	268
recovery system that is, or has been, included in an energy	269
efficiency program of an electric distribution utility pursuant	270
to requirements under section 4928.66 of the Revised Code.	271
(35) "Air contaminant source" has the same meaning as in	272
section 3704.01 of the Revised Code.	273
(36) "Cogeneration technology" means technology that	274
produces electricity and useful thermal output simultaneously.	275
(37) (a) "Renewable energy resource" means any of the	276
following:	277
(i) Solar photovoltaic or solar thermal energy;	278
(ii) Wind energy;	279

(iii) Power produced by a hydroelectric facility;	280
(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;	281 282 283
(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;	284 285 286 287 288
(vi) Geothermal energy;	289
(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;	290 291 292 293
(viii) Biomass energy;	294
(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 contaminant source in this state, which source has been in operation since on or before January 1, 1985, provided that the cogeneration technology is a part of a facility located in a county having a population of more than three hundred sixty-five thousand but less than three hundred seventy thousand according to the most recent federal decennial census;	295 296 297 298 299 300 301 302 303 304
(x) Biologically derived methane gas;	305
(xi) Heat captured from a generator of electricity, boiler, or heat exchanger fueled by biologically derived methane	306 307

gas; 308

(xii) Energy derived from nontreated by-products of the 309
pulping process or wood manufacturing process, including bark, 310
wood chips, sawdust, and lignin in spent pulping liquors. 311

"Renewable energy resource" includes, but is not limited 312
to, any fuel cell used in the generation of electricity, 313
including, but not limited to, a proton exchange membrane fuel 314
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 315
solid oxide fuel cell; wind turbine located in the state's 316
territorial waters of Lake Erie; methane gas emitted from an 317
abandoned coal mine; waste energy recovery system placed into 318
service or retrofitted on or after the effective date of the 319
amendment of this section by S.B. 315 of the 129th general 320
assembly, September 10, 2012, except that a waste energy 321
recovery system described in division (A)(38)(b) of this section 322
may be included only if it was placed into service between 323
January 1, 2002, and December 31, 2004; storage facility that 324
will promote the better utilization of a renewable energy 325
resource; or distributed generation system used by a customer to 326
generate electricity from any such energy. 327

"Renewable energy resource" does not include a waste 328
energy recovery system that is, or was, on or after January 1, 329
2012, included in an energy efficiency program of an electric 330
distribution utility pursuant to requirements under section 331
4928.66 of the Revised Code. 332

(b) As used in division (A)(37) of this section, 333
"hydroelectric facility" means a hydroelectric generating 334
facility that is located at a dam on a river, or on any water 335
discharged to a river, that is within or bordering this state or 336
within or bordering an adjoining state and meets all of the 337

following standards: 338

(i) The facility provides for river flows that are not 339
detrimental for fish, wildlife, and water quality, including 340
seasonal flow fluctuations as defined by the applicable 341
licensing agency for the facility. 342

(ii) The facility demonstrates that it complies with the 343
water quality standards of this state, which compliance may 344
consist of certification under Section 401 of the "Clean Water 345
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 346
demonstrates that it has not contributed to a finding by this 347
state that the river has impaired water quality under Section 348
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 349
U.S.C. 1313. 350

(iii) The facility complies with mandatory prescriptions 351
regarding fish passage as required by the federal energy 352
regulatory commission license issued for the project, regarding 353
fish protection for riverine, anadromous, and catadromous fish. 354

(iv) The facility complies with the recommendations of the 355
Ohio environmental protection agency and with the terms of its 356
federal energy regulatory commission license regarding watershed 357
protection, mitigation, or enhancement, to the extent of each 358
agency's respective jurisdiction over the facility. 359

(v) The facility complies with provisions of the 360
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 361
to 1544, as amended. 362

(vi) The facility does not harm cultural resources of the 363
area. This can be shown through compliance with the terms of its 364
federal energy regulatory commission license or, if the facility 365
is not regulated by that commission, through development of a 366

plan approved by the Ohio historic preservation office, to the 367
extent it has jurisdiction over the facility. 368

(vii) The facility complies with the terms of its federal 369
energy regulatory commission license or exemption that are 370
related to recreational access, accommodation, and facilities 371
or, if the facility is not regulated by that commission, the 372
facility complies with similar requirements as are recommended 373
by resource agencies, to the extent they have jurisdiction over 374
the facility; and the facility provides access to water to the 375
public without fee or charge. 376

(viii) The facility is not recommended for removal by any 377
federal agency or agency of any state, to the extent the 378
particular agency has jurisdiction over the facility. 379

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 380
this section do not apply to a small hydroelectric facility 381
under division (A) (37) (a) (iv) of this section. 382

(38) "Waste energy recovery system" means either of the 383
following: 384

(a) A facility that generates electricity through the 385
conversion of energy from either of the following: 386

(i) Exhaust heat from engines or manufacturing, 387
industrial, commercial, or institutional sites, except for 388
exhaust heat from a facility whose primary purpose is the 389
generation of electricity; 390

(ii) Reduction of pressure in gas pipelines before gas is 391
distributed through the pipeline, provided that the conversion 392
of energy to electricity is achieved without using additional 393
fossil fuels. 394

(b) A facility at a state institution of higher education 395
as defined in section 3345.011 of the Revised Code that recovers 396
waste heat from electricity-producing engines or combustion 397
turbines and that simultaneously uses the recovered heat to 398
produce steam, provided that the facility was placed into 399
service between January 1, 2002, and December 31, 2004. 400

(39) "Smart grid" means capital improvements to an 401
electric distribution utility's distribution infrastructure that 402
improve reliability, efficiency, resiliency, or reduce energy 403
demand or use, including, but not limited to, advanced metering 404
and automation of system functions. 405

(40) "Combined heat and power system" means the 406
coproduction of electricity and useful thermal energy from the 407
same fuel source designed to achieve thermal-efficiency levels 408
of at least sixty per cent, with at least twenty per cent of the 409
system's total useful energy in the form of thermal energy. 410

(41) "Legacy generation resource" means all generating 411
facilities owned directly or indirectly by a corporation that 412
was formed prior to 1960 by investor-owned utilities for the 413
original purpose of providing power to the federal government 414
for use in the nation's defense or in furtherance of national 415
interests, including the Ohio valley electric corporation. 416

(42) "Prudently incurred costs related to a legacy 417
generation resource" means costs, including deferred costs, 418
allocated pursuant to a power agreement approved by the federal 419
energy regulatory commission that relates to a legacy generation 420
resource, less any revenues realized from offering the 421
contractual commitment for the power agreement into the 422
wholesale markets, provided that where the net revenues exceed 423
net costs, those excess revenues shall be credited to customers. 424

Such costs shall exclude any return on investment in common equity and, in the event of a premature retirement of a legacy generation resource, shall exclude any recovery of remaining debt. Such costs shall include any incremental costs resulting from the bankruptcy of a current or former sponsor under such power agreement or co-owner of the legacy generation resource if not otherwise recovered through a utility rate cost recovery mechanism.

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

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

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

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

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

Sec. 4928.041. (A) Except as provided in sections 4928.141 and 4928.142 of the Revised Code, no electric utility shall provide a competitive retail electric service in this state if that service was deemed competitive or otherwise legally classified as competitive prior to the effective date of this

section. 454

(B) The standard service offer under section 4928.141 of 455
the Revised Code shall continue to be provided to consumers in 456
this state by electric utilities. 457

Sec. 4928.05. (A) (1) ~~On and after the starting date of~~ 458
~~competitive retail electric service, a~~ A competitive retail 459
electric service supplied by an ~~electric utility or electric~~ 460
services company, or by an electric utility consistent with 461
section 4928.141 of the Revised Code, shall not be subject to 462
supervision and regulation by a municipal corporation under 463
Chapter 743. of the Revised Code or by the public utilities 464
commission under Chapters 4901. to 4909., 4933., 4935., and 465
4963. of the Revised Code, except sections 4905.10 and 4905.31, 466
division (B) of section 4905.33, and sections 4905.35 and 467
4933.81 to 4933.90; except sections 4905.06, 4935.03, 4963.40, 468
and 4963.41 of the Revised Code only to the extent related to 469
service reliability and public safety; and except as otherwise 470
provided in this chapter. The commission's authority to enforce 471
those excepted provisions with respect to a competitive retail 472
electric service shall be such authority as is provided for 473
their enforcement under Chapters 4901. to 4909., 4933., 4935., 474
and 4963. of the Revised Code and this chapter. Nothing in this 475
division shall be construed to limit the commission's authority 476
under sections 4928.141 ~~to~~, 4928.142, and 4928.144 of the 477
Revised Code. 478

~~On and after the starting date of competitive retail~~ 479
~~electric service, a~~ (2) A competitive retail electric service 480
supplied by an electric cooperative shall not be subject to 481
supervision and regulation by the commission under Chapters 482
4901. to 4909., 4933., 4935., and 4963. of the Revised Code, 483

except as otherwise expressly provided in sections 4928.01 to 484
4928.10 and 4928.16 of the Revised Code. 485

~~(2) On and after the starting date of competitive retail~~ 486
~~electric service, a~~ (B) (1) A noncompetitive retail electric 487
service supplied by an electric utility shall be subject to 488
supervision and regulation by the commission under Chapters 489
4901. to 4909., 4933., 4935., and 4963. of the Revised Code and 490
this chapter, to the extent that authority is not preempted by 491
federal law. The commission's authority to enforce those 492
provisions with respect to a noncompetitive retail electric 493
service shall be the authority provided under those chapters and 494
this chapter, to the extent the authority is not preempted by 495
federal law. Notwithstanding Chapters 4905. and 4909. of the 496
Revised Code, commission authority under this chapter shall 497
include the authority to provide for the recovery, through a 498
reconcilable rider on an electric distribution utility's 499
distribution rates, of all transmission and transmission-related 500
costs, including ancillary and congestion costs, imposed on or 501
charged to the utility by the federal energy regulatory 502
commission or a regional transmission organization, independent 503
transmission operator, or similar organization approved by the 504
federal energy regulatory commission. 505

(2) The commission shall exercise its jurisdiction with 506
respect to the delivery of electricity by an electric utility in 507
this state ~~on or after the starting date of competitive retail~~ 508
~~electric service~~ so as to ensure that no aspect of the delivery 509
of electricity by the utility to consumers in this state that 510
consists of a noncompetitive retail electric service is 511
unregulated. 512

~~On and after that starting date, a~~ (3) A noncompetitive 513

retail electric service supplied by an electric cooperative 514
shall not be subject to supervision and regulation by the 515
commission under Chapters 4901. to 4909., 4933., 4935., and 516
4963. of the Revised Code, except sections 4933.81 to 4933.90 517
and 4935.03 of the Revised Code. The commission's authority to 518
enforce those excepted sections with respect to a noncompetitive 519
retail electric service of an electric cooperative shall be such 520
authority as is provided for their enforcement under Chapters 521
4933. and 4935. of the Revised Code. 522

~~(B) Nothing in this chapter affects the authority of the 523
commission under Title XLIX of the Revised Code to regulate an 524
electric light company in this state or an electric service 525
supplied in this state prior to the starting date of competitive 526
retail electric service. 527~~

Sec. 4928.14. ~~The~~ (A) Except as provided in division (C) 528
of this section, the failure of a supplier to provide retail 529
electric generation service to customers within the certified 530
territory of an electric distribution utility shall result in 531
the supplier's customers, after reasonable notice, defaulting to 532
the utility's standard service offer under sections 4928.141, 533
and 4928.142, ~~and 4928.143~~ of the Revised Code until the 534
customer chooses an alternative supplier. ~~A~~ 535

(B) A supplier is deemed under this section to have failed 536
to provide ~~such retail electric generation~~ service if the 537
commission finds, after reasonable notice and opportunity for 538
hearing, that any of the following conditions are met: 539

~~(A)~~ (1) The supplier has defaulted on its contracts with 540
customers, is in receivership, or has filed for bankruptcy. 541

~~(B)~~ (2) The supplier is no longer capable of providing the 542

service. 543

~~(C)~~ (3) The supplier is unable to provide delivery to 544
transmission or distribution facilities for such period of time 545
as may be reasonably specified by commission rule adopted under 546
division (A) of section 4928.06 of the Revised Code. 547

~~(D)~~ (4) The supplier's certification has been suspended, 548
conditionally rescinded, or rescinded under division (D) of 549
section 4928.08 of the Revised Code. 550

(C) If an electric distribution utility has an electric 551
security plan that was approved under section 4928.143 of the 552
Revised Code as that section existed prior to the amendments to 553
this section by this act, the failure of a supplier to provide 554
retail electric generation service to customers within the 555
certified territory of that utility shall result in the 556
supplier's customers, after reasonable notice, defaulting to the 557
utility's standard service offer under that electric security 558
plan until the customer chooses an alternative supplier or until 559
the utility's standard service offer is authorized under section 560
4928.142 of the Revised Code. 561

Sec. 4928.141. ~~(A) Beginning January 1, 2009, an (A) (1) An 562
electric distribution utility shall provide consumers, on a 563
comparable and nondiscriminatory basis within its certified 564
territory, a standard service offer of all competitive retail 565
electric services necessary to maintain essential electric 566
service to consumers, including a firm supply of electric 567
generation service. To that end, the electric distribution 568
utility shall apply to the public utilities commission to 569
establish the standard service offer in accordance with section 570
4928.142 or 4928.143 of the Revised Code and, at its discretion, 571
may apply simultaneously under both sections, except that the 572~~

~~utility's first standard service offer application at minimum~~ 573
~~shall include a filing under section 4928.143 of the Revised~~ 574
~~Code. Only~~ Except as provided in division (A) (2) of this 575
section, a standard service offer authorized in accordance with 576
section 4928.142 ~~or 4928.143~~ of the Revised Code, shall serve as 577
the utility's standard service offer for the purpose of 578
compliance with this section~~+,~~ and that standard service offer 579
shall serve as the utility's default standard service offer for 580
the purpose of section 4928.14 of the Revised Code. 581
~~Notwithstanding the foregoing provision, the rate~~ 582

(2) An electric distribution utility's electric security 583
~~plan of an electric distribution utility that was approved under~~ 584
section 4928.143 of the Revised Code as that section existed 585
prior to the amendments to this section by this act shall 586
continue for the purpose of the utility's compliance with ~~this~~ 587
division (A) (1) of this section until a standard service offer 588
is ~~first~~ authorized under section 4928.142 ~~or 4928.143~~ of the 589
Revised Code, ~~and, as applicable, pursuant to division (D) of~~ 590
~~section 4928.143 of the Revised Code, any rate~~. No electric 591
security plan that extends approved after January 1, 2023, shall 592
extend beyond December 31~~June 1, 2008,~~ shall continue to be in- 593
effect for the subject electric distribution utility for the 594
duration of the plan's term~~2027~~. 595

(3) A standard service offer under section 4928.142 ~~or~~ 596
~~4928.143~~ of the Revised Code shall exclude any previously 597
authorized allowances for transition costs, with such exclusion 598
being effective on and after the date that the allowance is 599
scheduled to end under the utility's ~~rate~~ electric security 600
plan. 601

(B) The commission shall set the time for hearing of a 602

filing under section 4928.142 ~~or 4928.143~~ of the Revised Code, 603
send written notice of the hearing to the electric distribution 604
utility, and publish notice in a newspaper of general 605
circulation in each county in the utility's certified territory. 606
The commission shall adopt rules regarding filings under ~~those~~ 607
~~sections~~ the section. 608

Sec. 4928.142. (A) For the purpose of complying with 609
section 4928.141 of the Revised Code and subject to division (D) 610
of this section and, as applicable, subject to the ~~rate plan~~ 611
~~requirement~~ requirements of division (A) of section 4928.141 of 612
the Revised Code, an electric distribution utility ~~may~~ shall 613
establish a standard service offer price for retail electric 614
generation service that is delivered to the utility under a 615
market-rate offer. 616

(1) The market-rate offer shall be determined through a 617
competitive bidding process that provides for all of the 618
following: 619

(a) Open, fair, and transparent competitive solicitation; 620

(b) Clear product definition; 621

(c) Standardized bid evaluation criteria; 622

(d) Oversight by an independent third party that shall 623
design the solicitation, administer the bidding, and ensure that 624
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 625
this section are met; 626

(e) Evaluation of the submitted bids prior to the 627
selection of the least-cost bid winner or winners. 628

No generation supplier shall be prohibited from 629
participating in the bidding process. 630

(2) The public utilities commission shall modify rules, or 631
adopt new rules as necessary, concerning the conduct of the 632
competitive bidding process and the qualifications of bidders, 633
which rules shall foster supplier participation in the bidding 634
process and shall be consistent with the requirements of 635
division (A) (1) of this section. 636

(B) Prior to initiating a competitive bidding process for 637
a market-rate offer under division (A) of this section, the 638
electric distribution utility shall file an application with the 639
commission. An electric distribution utility may file its 640
application with the commission prior to the effective date of 641
the commission rules required under division (A) (2) of this 642
section, and, as the commission determines necessary, the 643
utility shall immediately conform its filing to the rules upon 644
their taking effect. 645

An application under this division shall detail the 646
electric distribution utility's proposed compliance with the 647
requirements of division (A) (1) of this section and with 648
commission rules under division (A) (2) of this section and 649
demonstrate that all of the following requirements are met: 650

(1) The electric distribution utility or its transmission 651
service affiliate belongs to at least one regional transmission 652
organization that has been approved by the federal energy 653
regulatory commission; or there otherwise is comparable and 654
nondiscriminatory access to the electric transmission grid. 655

(2) Any such regional transmission organization has a 656
market-monitor function and the ability to take actions to 657
identify and mitigate market power or the electric distribution 658
utility's market conduct; or a similar market monitoring 659
function exists with commensurate ability to identify and 660

monitor market conditions and mitigate conduct associated with 661
the exercise of market power. 662

(3) A published source of information is available 663
publicly or through subscription that identifies pricing 664
information for traded electricity on- and off-peak energy 665
products that are contracts for delivery beginning at least two 666
years from the date of the publication and is updated on a 667
regular basis. 668

The commission shall initiate a proceeding and, within 669
ninety days after the application's filing date, shall determine 670
by order whether the electric distribution utility and its 671
market-rate offer meet all of the foregoing requirements. If the 672
finding is positive, the electric distribution utility ~~may~~ shall 673
initiate its competitive bidding process. If the finding is 674
negative as to one or more requirements, the commission in the 675
order shall direct the electric distribution utility regarding 676
how any deficiency may be remedied in a timely manner to the 677
commission's satisfaction; ~~otherwise, the electric distribution~~ 678
~~utility shall withdraw the application. However, if such remedy~~ 679
~~is made and the subsequent finding is positive and also if the~~ 680
~~electric distribution utility made a simultaneous filing under~~ 681
~~this section and section 4928.143 of the Revised Code, the~~ 682
~~utility shall not initiate its competitive bid until at least~~ 683
~~one hundred fifty days after the filing date of those~~ 684
~~applications.~~ 685

(C) Upon the completion of the competitive bidding process 686
authorized by divisions (A) and (B) of this section, ~~including~~ 687
~~for the purpose of division (D) of this section,~~ the commission 688
shall select the least-cost bid winner or winners of that 689
process, and such selected bid or bids, as prescribed as retail 690

rates by the commission, shall be the electric distribution 691
utility's standard service offer unless the commission, by order 692
issued before the third calendar day following the conclusion of 693
the competitive bidding process for the market rate offer, 694
determines that one or more of the following criteria were not 695
met: 696

(1) Each portion of the bidding process was 697
oversubscribed, such that the amount of supply bid upon was 698
greater than the amount of the load bid out. 699

(2) There were four or more bidders. 700

(3) At least twenty-five per cent of the load is bid upon 701
by one or more persons other than the electric distribution 702
utility. 703

All costs incurred by the electric distribution utility as 704
a result of or related to the competitive bidding process or to 705
procuring generation service to provide the standard service 706
offer, including the costs of energy and capacity and the costs 707
of all other products and services procured as a result of the 708
competitive bidding process, shall be timely recovered through 709
the standard service offer price, and, for that purpose, the 710
commission shall approve a reconciliation mechanism, other 711
recovery mechanism, or a combination of such mechanisms for the 712
utility. 713

(D) The ~~first~~ application filed under this section by an 714
electric distribution utility ~~that, as of July 31, 2008,~~ 715
~~directly owns, in whole or in part, operating electric~~ 716
~~generating facilities that had been used and useful in this~~ 717
~~state shall require that a portion of that~~ the utility's 718
standard service offer load ~~for the first five years of the~~ 719

~~market rate offer be competitively bid under division (A) of 720
this section as follows: ten per cent of the load in year one, 721
not more than twenty per cent in year two, thirty per cent in 722
year three, forty per cent in year four, and fifty per cent in 723
year five. Consistent with those percentages, the commission 724
shall determine the actual percentages for each year of years 725
one through five. The standard service offer price for retail 726
electric generation service under this first application shall 727
be a proportionate blend of the bid price and the generation 728
service price for the remaining standard service offer load, 729
which latter price shall be equal to the electric distribution 730
utility's most recent standard service offer price, adjusted 731
upward or downward as the commission determines reasonable, 732
relative to the jurisdictional portion of any known and 733
measurable changes from the level of any one or more of the 734
following costs as reflected in that most recent standard 735
service offer price: 736~~

~~(1) The electric distribution utility's prudently incurred 737
cost of fuel used to produce electricity; 738~~

~~(2) Its prudently incurred purchased power costs; 739~~

~~(3) Its prudently incurred costs of satisfying the supply 740
and demand portfolio requirements of this state, including, but 741
not limited to, renewable energy resource and energy efficiency 742
requirements; 743~~

~~(4) Its costs prudently incurred to comply with 744
environmental laws and regulations, with consideration of the 745
derating of any facility associated with those costs. 746~~

~~In making any adjustment to the most recent standard 747
service offer price on the basis of costs described in division 748~~

~~(D) of this section, the commission shall include the benefits— 749
that may become available to the electric distribution utility— 750
as a result of or in connection with the costs included in the— 751
adjustment, including, but not limited to, the utility's receipt— 752
of emissions credits or its receipt of tax benefits or of other— 753
benefits, and, accordingly, the commission may impose such— 754
conditions on the adjustment to ensure that any such benefits— 755
are properly aligned with the associated cost responsibility.— 756
The commission shall also determine how such adjustments will— 757
affect the electric distribution utility's return on common— 758
equity that may be achieved by those adjustments. The commission— 759
shall not apply its consideration of the return on common equity— 760
to reduce any adjustments authorized under this division unless— 761
the adjustments will cause the electric distribution utility to— 762
earn a return on common equity that is significantly in excess— 763
of the return on common equity that is earned by publicly traded— 764
companies, including utilities, that face comparable business— 765
and financial risk, with such adjustments for capital structure— 766
as may be appropriate. The burden of proof for demonstrating— 767
that significantly excessive earnings will not occur shall be on— 768
the electric distribution utility. 769~~

~~Additionally, the commission may adjust the electric— 770
distribution utility's most recent standard service offer price— 771
by such just and reasonable amount that the commission— 772
determines necessary to address any emergency that threatens the— 773
utility's financial integrity or to ensure that the resulting— 774
revenue available to the utility for providing the standard— 775
service offer is not so inadequate as to result, directly or— 776
indirectly, in a taking of property without compensation— 777
pursuant to Section 19 of Article I, Ohio Constitution. The— 778
electric distribution utility has the burden of demonstrating— 779~~

~~that any adjustment to its most recent standard service offer price is proper in accordance with this division.~~ 780
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~~(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt or significant change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, including because of the length of time, as authorized under division (C) of this section, taken to approve the market rate offer, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.~~ 782
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~~(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.~~ 801
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Sec. 4928.144. The public utilities commission by order may authorize any just and reasonable phase-in of any electric distribution utility ~~rate or price~~ established under sections 4928.141 ~~to 4928.143~~ and 4928.142 of the Revised Code, and 806
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inclusive of carrying charges, as the commission considers 810
necessary to ensure ~~rate or~~ price stability for consumers. If 811
the commission's order includes such a phase-in, the order also 812
shall provide for the creation of regulatory assets pursuant to 813
generally accepted accounting principles, by authorizing the 814
deferral of incurred costs equal to the amount not collected, 815
plus carrying charges on that amount. Further, the order shall 816
authorize the collection of those deferrals through a 817
nonbypassable surcharge on any such rate or price so established 818
for the electric distribution utility by the commission. 819

Sec. 4928.148. (A) On January 1, 2020, any mechanism 820
authorized by the public utilities commission prior to ~~the~~ 821
~~effective date of this section~~ October 22, 2019, for retail 822
recovery of prudently incurred costs related to a legacy 823
generation resource shall be replaced by a nonbypassable rate 824
mechanism established by the commission for recovery of those 825
costs through December 31, 2030, from customers of all electric 826
distribution utilities in this state. The nonbypassable rate 827
mechanism shall be established through a process that the 828
commission shall determine is not for an increase in any rate, 829
joint rate, toll, classification, charge, or rental, 830
notwithstanding anything to the contrary in Title XLIX of the 831
Revised Code. All of the following shall apply to the 832
nonbypassable rate mechanism established under this section: 833

(1) The commission shall determine, in the years specified 834
in this division, the prudence and reasonableness of the actions 835
of electric distribution utilities with ownership interests in 836
the legacy generation resource, including their decisions 837
related to offering the contractual commitment into the 838
wholesale markets, and exclude from recovery those costs that 839
the commission determines imprudent and unreasonable. The 840

initial determination shall be made during 2021 regarding the 841
prudence and reasonableness of such actions during calendar year 842
2020. The commission shall again make the determination in 2024, 843
2027, and 2030 regarding the prudence and reasonableness of such 844
actions during the three calendar years that preceded the year 845
in which the determination is made. 846

(2) The commission shall determine the proper rate design 847
for recovering or remitting the prudently incurred costs related 848
to a legacy generation resource, provided, however, that the 849
monthly charge or credit for those costs, including any 850
deferrals or credits, shall not exceed one dollar and fifty 851
cents per customer per month for residential customers. For all 852
other customer classes, the commission shall establish 853
comparable monthly caps for each class at or below one thousand 854
five hundred dollars per customer. Insofar as the prudently 855
incurred costs related to a legacy generation resource exceed 856
these monthly limits, the electric distribution utility shall 857
defer the remaining prudently incurred costs as a regulatory 858
asset or liability that shall be recovered as determined by the 859
commission subject to the monthly caps set forth in this 860
division. 861

(3) The commission shall provide for discontinuation, 862
subject to final reconciliation, of the nonbypassable rate 863
mechanism on December 31, 2030, including recovery of any 864
deferrals that exist at that time. 865

(4) The commission shall determine the manner in which 866
charges collected under this section by a utility with no 867
ownership interest in a legacy generation resource shall be 868
remitted to the utilities with such ownership interests, in 869
direct proportion to each utility's sponsorship interest. 870

(B) An electric distribution utility, including all 871
electric distribution utilities in the same holding company, 872
shall bid all output from a legacy generation resource into the 873
wholesale market and shall not use the output in supplying its 874
standard service offer provided under section 4928.142 ~~or~~ 875
~~4928.143~~ of the Revised Code. 876

Sec. 4928.17. (A) Except as otherwise provided in sections 877
~~4928.141 or 4928.142 or 4928.143~~ or 4928.31 to 4928.40 of the 878
Revised Code ~~and beginning on the starting date of competitive~~ 879
~~retail electric service~~, no electric utility shall engage in 880
this state, either directly or through an affiliate, ~~in the~~ 881
~~businesses of supplying a noncompetitive retail electric service~~ 882
~~and supplying a competitive retail electric service, or in the~~ 883
businesses of supplying a noncompetitive retail electric service 884
and supplying a product or service other than retail electric 885
service, unless the utility implements and operates under a 886
corporate separation plan that is approved by the public 887
utilities commission under this section, is consistent with the 888
policy specified in section 4928.02 of the Revised Code, and 889
achieves all of the following: 890

(1) The plan provides, at minimum, for the provision of 891
~~the competitive retail electric service or the nonelectric~~ 892
product or service through a fully separated affiliate of the 893
utility, and the plan includes separate accounting requirements, 894
the code of conduct as ordered by the commission pursuant to a 895
rule it shall adopt under division (A) of section 4928.06 of the 896
Revised Code, and such other measures as are necessary to 897
effectuate the policy specified in section 4928.02 of the 898
Revised Code. 899

(2) The plan satisfies the public interest in ~~preventing~~ 900

~~unfair competitive advantage and preventing the abuse of market~~ 901
~~power.~~ 902

(3) The plan is sufficient to ensure that the utility will 903
not extend any undue preference or advantage to any affiliate, 904
division, or part of its own business engaged in the business of 905
supplying the ~~competitive retail electric service or nonelectric~~ 906
product or service, including, but not limited to, utility 907
resources such as trucks, tools, office equipment, office space, 908
supplies, customer and marketing information, advertising, 909
billing and mailing systems, personnel, and training, without 910
compensation based upon fully loaded embedded costs charged to 911
the affiliate; and to ensure that any such affiliate, division, 912
or part will not receive undue preference or advantage from any 913
affiliate, division, or part of the business engaged in business 914
of supplying the noncompetitive retail electric service. No such 915
utility, affiliate, division, or part shall extend such undue 916
preference. ~~Notwithstanding any other division of this section,~~ 917
~~a utility's obligation under division (A) (3) of this section~~ 918
~~shall be effective January 1, 2000.~~ 919

(B) The commission may approve, modify and approve, or 920
disapprove a corporate separation plan filed with the commission 921
under division (A) of this section. As part of the code of 922
conduct required under division (A) (1) of this section, the 923
commission shall adopt rules pursuant to division (A) of section 924
4928.06 of the Revised Code regarding corporate separation and 925
procedures for plan filing and approval. The rules shall include 926
limitations on affiliate practices solely for the purpose of 927
maintaining a separation of the affiliate's business from the 928
business of the utility to prevent ~~unfair competitive advantage~~ 929
abuse of market power by virtue of that relationship. The rules 930
also shall include an opportunity for any person having a real 931

and substantial interest in the corporate separation plan to 932
file specific objections to the plan and propose specific 933
responses to issues raised in the objections, which objections 934
and responses the commission shall address in its final order. 935
Prior to commission approval of the plan, the commission shall 936
afford a hearing upon those aspects of the plan that the 937
commission determines reasonably require a hearing. The 938
commission may reject and require refiling of a substantially 939
inadequate plan under this section. 940

(C) The commission shall issue an order approving or 941
modifying and approving a corporate separation plan under this 942
section, to be effective on the date specified in the order, 943
only upon findings that the plan reasonably complies with the 944
requirements of division (A) of this section and will provide 945
for ongoing compliance with the policy specified in section 946
4928.02 of the Revised Code. However, for good cause shown, the 947
commission may issue an order approving or modifying and 948
approving a corporate separation plan under this section that 949
does not comply with division (A) (1) of this section but 950
complies with such functional separation requirements as the 951
commission authorizes to apply for an interim period prescribed 952
in the order, upon a finding that such alternative plan will 953
provide for ongoing compliance with the policy specified in 954
section 4928.02 of the Revised Code. 955

(D) Any party may seek an amendment to a corporate 956
separation plan approved under this section, and the commission, 957
pursuant to a request from any party or on its own initiative, 958
may order as it considers necessary the filing of an amended 959
corporate separation plan to reflect changed circumstances. 960

~~(E) No electric distribution utility shall sell or~~ 961

~~transfer any generating asset it wholly or partly owns at any~~ 962
~~time without obtaining prior commission approval.~~ 963

Sec. 4928.20. (A) The legislative authority of a municipal 964
corporation may adopt an ordinance, or the board of township 965
trustees of a township or the board of county commissioners of a 966
county may adopt a resolution, under which, ~~on or after the~~ 967
~~starting date of competitive retail electric service,~~ it may 968
aggregate in accordance with this section the retail electrical 969
loads located, respectively, within the municipal corporation, 970
township, or unincorporated area of the county and, for that 971
purpose, may enter into service agreements to facilitate for 972
those loads the sale and purchase of electricity. The 973
legislative authority or board also may exercise such authority 974
jointly with any other such legislative authority or board. For 975
customers that are not mercantile customers, an ordinance or 976
resolution under this division shall specify whether the 977
aggregation will occur only with the prior, affirmative consent 978
of each person owning, occupying, controlling, or using an 979
electric load center proposed to be aggregated or will occur 980
automatically for all such persons pursuant to the opt-out 981
requirements of division (D) of this section. The aggregation of 982
mercantile customers shall occur only with the prior, 983
affirmative consent of each such person owning, occupying, 984
controlling, or using an electric load center proposed to be 985
aggregated. Nothing in this division, however, authorizes the 986
aggregation of the retail electric loads of an electric load 987
center, as defined in section 4933.81 of the Revised Code, that 988
is located in the certified territory of a nonprofit electric 989
supplier under sections 4933.81 to 4933.90 of the Revised Code 990
or an electric load center served by transmission or 991
distribution facilities of a municipal electric utility. 992

(B) If an ordinance or resolution adopted under division 993
(A) of this section specifies that aggregation of customers that 994
are not mercantile customers will occur automatically as 995
described in that division, the ordinance or resolution shall 996
direct the board of elections to submit the question of the 997
authority to aggregate to the electors of the respective 998
municipal corporation, township, or unincorporated area of a 999
county at a special election on the day of the next primary or 1000
general election in the municipal corporation, township, or 1001
county. The legislative authority or board shall certify a copy 1002
of the ordinance or resolution to the board of elections not 1003
less than ninety days before the day of the special election. No 1004
ordinance or resolution adopted under division (A) of this 1005
section that provides for an election under this division shall 1006
take effect unless approved by a majority of the electors voting 1007
upon the ordinance or resolution at the election held pursuant 1008
to this division. 1009

(C) Upon the applicable requisite authority under 1010
divisions (A) and (B) of this section, the legislative authority 1011
or board shall develop a plan of operation and governance for 1012
the aggregation program so authorized. Before adopting a plan 1013
under this division, the legislative authority or board shall 1014
hold at least two public hearings on the plan. Before the first 1015
hearing, the legislative authority or board shall publish notice 1016
of the hearings once a week for two consecutive weeks in a 1017
newspaper of general circulation in the jurisdiction or as 1018
provided in section 7.16 of the Revised Code. The notice shall 1019
summarize the plan and state the date, time, and location of 1020
each hearing. 1021

(D) No legislative authority or board, pursuant to an 1022
ordinance or resolution under divisions (A) and (B) of this 1023

section that provides for automatic aggregation of customers 1024
that are not mercantile customers as described in division (A) 1025
of this section, shall aggregate the electrical load of any 1026
electric load center located within its jurisdiction unless it 1027
in advance clearly discloses to the person owning, occupying, 1028
controlling, or using the load center that the person will be 1029
enrolled automatically in the aggregation program and will 1030
remain so enrolled unless the person affirmatively elects by a 1031
stated procedure not to be so enrolled. The disclosure shall 1032
state prominently the rates, charges, and other terms and 1033
conditions of enrollment. The stated procedure shall allow any 1034
person enrolled in the aggregation program the opportunity to 1035
opt out of the program every three years, without paying a 1036
switching fee. Any such person that opts out before the 1037
commencement of the aggregation program pursuant to the stated 1038
procedure shall default to the standard service offer provided 1039
under section 4928.14 or division (D) of section 4928.35 of the 1040
Revised Code until the person chooses an alternative supplier. 1041

(E) (1) With respect to a governmental aggregation for a 1042
municipal corporation that is authorized pursuant to divisions 1043
(A) to (D) of this section, resolutions may be proposed by 1044
initiative or referendum petitions in accordance with sections 1045
731.28 to 731.41 of the Revised Code. 1046

(2) With respect to a governmental aggregation for a 1047
township or the unincorporated area of a county, which 1048
aggregation is authorized pursuant to divisions (A) to (D) of 1049
this section, resolutions may be proposed by initiative or 1050
referendum petitions in accordance with sections 731.28 to 1051
731.40 of the Revised Code, except that: 1052

(a) The petitions shall be filed, respectively, with the 1053

township fiscal officer or the board of county commissioners, 1054
who shall perform those duties imposed under those sections upon 1055
the city auditor or village clerk. 1056

(b) The petitions shall contain the signatures of not less 1057
than ten per cent of the total number of electors in, 1058
respectively, the township or the unincorporated area of the 1059
county who voted for the office of governor at the preceding 1060
general election for that office in that area. 1061

(F) A governmental aggregator under division (A) of this 1062
section is not a public utility engaging in the wholesale 1063
purchase and resale of electricity, and provision of the 1064
aggregated service is not a wholesale utility transaction. A 1065
governmental aggregator shall be subject to supervision and 1066
regulation by the public utilities commission only to the extent 1067
of any competitive retail electric service it provides and 1068
commission authority under this chapter. 1069

(G) This section does not apply in the case of a municipal 1070
corporation that supplies such aggregated service to electric 1071
load centers to which its municipal electric utility also 1072
supplies a noncompetitive retail electric service through 1073
transmission or distribution facilities the utility singly or 1074
jointly owns or operates. 1075

(H) A governmental aggregator shall not include in its 1076
aggregation the accounts of any of the following: 1077

(1) A customer that has opted out of the aggregation; 1078

(2) A customer in contract with a certified electric 1079
services company; 1080

(3) A customer that has a special contract with an 1081
electric distribution utility; 1082

(4) A customer that is not located within the governmental 1083
aggregator's governmental boundaries; 1084

(5) Subject to division (C) of section 4928.21 of the 1085
Revised Code, a customer who appears on the "do not aggregate" 1086
list maintained under that section. 1087

(I) Customers that are part of a governmental aggregation 1088
under this section shall be responsible only for such portion of 1089
a surcharge under section 4928.144 of the Revised Code that is 1090
proportionate to the benefits, as determined by the commission, 1091
that electric load centers within the jurisdiction of the 1092
governmental aggregation as a group receive. The proportionate 1093
surcharge so established shall apply to each customer of the 1094
governmental aggregation while the customer is part of that 1095
aggregation. If a customer ceases being such a customer, the 1096
otherwise applicable surcharge shall apply. Nothing in this 1097
section shall result in less than full recovery by an electric 1098
distribution utility of any surcharge authorized under section 1099
4928.144 of the Revised Code. Nothing in this section shall 1100
result in less than the full and timely imposition, charging, 1101
collection, and adjustment by an electric distribution utility, 1102
its assignee, or any collection agent, of the phase-in-recovery 1103
charges authorized pursuant to a final financing order issued 1104
pursuant to sections 4928.23 to 4928.2318 of the Revised Code. 1105

~~(J) On behalf of the customers that are part of a 1106
governmental aggregation under this section and by filing 1107
written notice with the public utilities commission, the 1108
legislative authority that formed or is forming that 1109
governmental aggregation may elect not to receive standby 1110
service within the meaning of division (B) (2) (d) of section 1111
4928.143 of the Revised Code from an electric distribution 1112~~

~~utility in whose certified territory the governmental- 1113
aggregation is located and that operates under an approved- 1114
electric security plan under that section. Upon the filing of- 1115
that notice, the electric distribution utility shall not charge- 1116
any such customer to whom competitive retail electric generation- 1117
service is provided by another supplier under the governmental- 1118
aggregation for the standby service. Any such consumer that- 1119
returns to the utility for competitive retail electric service- 1120
shall pay the market price of power incurred by the utility to- 1121
serve that consumer plus any amount attributable to the- 1122
utility's cost of compliance with the renewable energy resource- 1123
provisions of section 4928.64 of the Revised Code to serve the- 1124
consumer. Such market price shall include, but not be limited- 1125
to, capacity and energy charges; all charges associated with the- 1126
provision of that power supply through the regional transmission- 1127
organization, including, but not limited to, transmission,- 1128
ancillary services, congestion, and settlement and- 1129
administrative charges; and all other costs incurred by the- 1130
utility that are associated with the procurement, provision, and- 1131
administration of that power supply, as such costs may be- 1132
approved by the commission. The period of time during which the- 1133
market price and renewable energy resource amount shall be so- 1134
assessed on the consumer shall be from the time the consumer so- 1135
returns to the electric distribution utility until the- 1136
expiration of the electric security plan. However, if that- 1137
period of time is expected to be more than two years, the- 1138
commission may reduce the time period to a period of not less- 1139
than two years. 1140~~

~~(K) The commission shall adopt rules and issue orders in 1141
proceedings under sections 4928.141 and 4928.142 of the Revised 1142
Code to encourage and promote large-scale governmental 1143~~

aggregation in this state. For that purpose, the commission 1144
shall conduct an immediate review of any rules it has adopted 1145
for the purpose of this section that are in effect on the 1146
effective date of the amendment of this section by S.B. 221 of 1147
the 127th general assembly, July 31, 2008. ~~Further, within the~~ 1148
~~context of an electric security plan under section 4928.143 of~~ 1149
~~the Revised Code, the~~ The ~~commission shall consider the effect~~ 1150
~~on large scale governmental aggregation of any nonbypassable~~ 1151
~~generation charges, however collected, that would be established~~ 1152
~~under that plan, except any nonbypassable generation charges~~ 1153
~~that relate to any cost incurred by the~~ review each application 1154
filed under section 4928.142 of the Revised Code by an electric 1155
distribution utility, to ensure that the deferral of which has 1156
been authorized by the commission prior to the effective date of 1157
application and the amendment of this section by S.B. 221 of the 1158
127th general assembly, July 31, 2008 resulting market rate 1159
offer shall not contain any rate, price, term, condition, or 1160
provision that would have an adverse effect on large-scale 1161
governmental aggregation in this state. 1162

Sec. 4928.23. As used in sections 4928.23 to 4928.2318 of 1163
the Revised Code: 1164

(A) "Ancillary agreement" means any bond insurance policy, 1165
letter of credit, reserve account, surety bond, swap 1166
arrangement, hedging arrangement, liquidity or credit support 1167
arrangement, or other similar agreement or arrangement entered 1168
into in connection with the issuance of phase-in-recovery bonds 1169
that is designed to promote the credit quality and marketability 1170
of the bonds or to mitigate the risk of an increase in interest 1171
rates. 1172

(B) "Assignee" means any person or entity to which an 1173

interest in phase-in-recovery property is sold, assigned, 1174
transferred, or conveyed, other than as security, and any 1175
successor to or subsequent assignee of such a person or entity. 1176

(C) "Bond" includes debentures, notes, certificates of 1177
participation, certificates of beneficial interest, certificates 1178
of ownership or other evidences of indebtedness or ownership 1179
that are issued by an electric distribution utility or an 1180
assignee under a final financing order, the proceeds of which 1181
are used directly or indirectly to recover, finance, or 1182
refinance phase-in costs and financing costs, and that are 1183
secured by or payable from revenues from phase-in-recovery 1184
charges. 1185

(D) "Bondholder" means any holder or owner of a phase-in- 1186
recovery bond. 1187

(E) "Financing costs" means any of the following: 1188

(1) Principal, interest, and redemption premiums that are 1189
payable on phase-in-recovery bonds; 1190

(2) Any payment required under an ancillary agreement; 1191

(3) Any amount required to fund or replenish a reserve 1192
account or another account established under any indenture, 1193
ancillary agreement, or other financing document relating to 1194
phase-in-recovery bonds; 1195

(4) Any costs of retiring or refunding any existing debt 1196
and equity securities of an electric distribution utility in 1197
connection with either the issuance of, or the use of proceeds 1198
from, phase-in-recovery bonds; 1199

(5) Any costs incurred by an electric distribution utility 1200
to obtain modifications of or amendments to any indenture, 1201

financing agreement, security agreement, or similar agreement or 1202
instrument relating to any existing secured or unsecured 1203
obligation of the electric distribution utility in connection 1204
with the issuance of phase-in-recovery bonds; 1205

(6) Any costs incurred by an electric distribution utility 1206
to obtain any consent, release, waiver, or approval from any 1207
holder of an obligation described in division (E) (5) of this 1208
section that are necessary to be incurred for the electric 1209
distribution utility to issue or cause the issuance of phase-in- 1210
recovery bonds; 1211

(7) Any taxes, franchise fees, or license fees imposed on 1212
phase-in-recovery revenues; 1213

(8) Any costs related to issuing or servicing phase-in- 1214
recovery bonds or related to obtaining a financing order, 1215
including servicing fees and expenses, trustee fees and 1216
expenses, legal, accounting, or other professional fees and 1217
expenses, administrative fees, placement fees, underwriting 1218
fees, capitalized interest and equity, and rating-agency fees; 1219

(9) Any other similar costs that the public utilities 1220
commission finds appropriate. 1221

(F) "Financing order" means an order issued by the public 1222
utilities commission under section 4928.232 of the Revised Code 1223
that authorizes an electric distribution utility or an assignee 1224
to issue phase-in-recovery bonds and recover phase-in-recovery 1225
charges. 1226

(G) "Final financing order" means a financing order that 1227
has become final and has taken effect as provided in section 1228
4928.233 of the Revised Code. 1229

(H) "Financing party" means either of the following: 1230

(1) Any trustee, collateral agent, or other person acting 1231
for the benefit of any bondholder; 1232

(2) Any party to an ancillary agreement, the rights and 1233
obligations of which relate to or depend upon the existence of 1234
phase-in-recovery property, the enforcement and priority of a 1235
security interest in phase-in-recovery property, the timely 1236
collection and payment of phase-in-recovery revenues, or a 1237
combination of these factors. 1238

(I) "Financing statement" has the same meaning as in 1239
section 1309.102 of the Revised Code. 1240

(J) "Phase-in costs" means costs, inclusive of carrying 1241
charges incurred before, on, or after ~~the effective date of this~~ 1242
~~section~~ March 22, 2012, authorized by the commission before, on, 1243
or after ~~the effective date of this section~~ March 22, 2012, to 1244
be securitized or deferred as regulatory assets in proceedings 1245
under section 4909.18 ~~of the Revised Code, sections 4928.141 to~~ 1246
~~4928.143, 4928.142, or 4928.144 of the Revised Code, or~~ section 1247
4928.14 of the Revised Code as it existed prior to July 31, 1248
2008, or section 4928.143 of the Revised Code as it existed 1249
prior to the effective date of the amendments to this section by 1250
this act pursuant to a final order for which appeals have been 1251
exhausted. "Phase-in costs" excludes the following: 1252

(1) With respect to any electric generating facility that, 1253
on and after ~~the effective date of this section~~ March 22, 2012, 1254
is owned, in whole or in part, by an electric distribution 1255
utility applying for a financing order under section 4928.231 of 1256
the Revised Code, costs that are authorized under division (B) 1257
(2) (b) or (c) of section 4928.143 of the Revised Code as that 1258
section existed prior to the effective date of the amendments to 1259
this section by this act; 1260

(2) Costs incurred after ~~the effective date of this~~ 1261
~~section~~ March 22, 2012, related to the ongoing operation of an 1262
electric generating facility, but not environmental clean-up or 1263
remediation costs incurred by an electric distribution utility 1264
because of its ownership or operation of an electric generating 1265
facility prior to ~~the effective date of this section~~ March 22, 1266
2012, which such clean-up or remediation costs are imposed or 1267
incurred pursuant to federal or state law, rules, or regulations 1268
and for which the commission approves or approved recovery in 1269
accordance with section 4909.18 ~~of the Revised Code, sections~~ 1270
~~4928.141 to 4928.143,~~ 4928.142, or 4928.144 of the Revised Code, 1271
~~or~~ section 4928.14 of the Revised Code as it existed prior to 1272
July 31, 2008, or section 4928.143 of the Revised Code as it 1273
existed prior to the effective date of the amendments to this 1274
section by this act. 1275

(K) "Phase-in-recovery property" means the property, 1276
rights, and interests of an electric distribution utility or an 1277
assignee under a final financing order, including the right to 1278
impose, charge, and collect the phase-in-recovery charges that 1279
shall be used to pay and secure the payment of phase-in-recovery 1280
bonds and financing costs, and including the right to obtain 1281
adjustments to those charges, and any revenues, receipts, 1282
collections, rights to payment, payments, moneys, claims, or 1283
other proceeds arising from the rights and interests created 1284
under the final financing order. 1285

(L) "Phase-in-recovery revenues" means all revenues, 1286
receipts, collections, payments, moneys, claims, or other 1287
proceeds arising from phase-in-recovery property. 1288

(M) "Successor" means, with respect to any entity, another 1289
entity that succeeds by operation of law to the rights and 1290

obligations of the first legal entity pursuant to any 1291
bankruptcy, reorganization, restructuring, or other insolvency 1292
proceeding, any merger, acquisition, or consolidation, or any 1293
sale or transfer of assets, regardless of whether any of these 1294
occur as a result of a restructuring of the electric power 1295
industry or otherwise. 1296

Sec. 4928.231. (A) An electric distribution utility may 1297
apply to the public utilities commission for a financing order 1298
that authorizes the following: 1299

(1) The issuance of phase-in-recovery bonds, in one or 1300
more series, to recover uncollected phase-in costs; 1301

(2) The imposition, charging, and collection of phase-in- 1302
recovery charges, in accordance with the adjustment mechanism 1303
approved by the commission under section 4928.232 of the Revised 1304
Code, and consistent with the commission's authority regarding 1305
governmental aggregation as provided in division (I) of section 1306
4928.20 of the Revised Code, to recover both of the following: 1307

(a) Uncollected phase-in costs; 1308

(b) Financing costs. 1309

(3) The creation of phase-in-recovery property under the 1310
financing order. 1311

(B) The application shall include all of the following: 1312

(1) A description of the uncollected phase-in costs that 1313
the electric distribution utility seeks to recover through the 1314
issuance of phase-in-recovery bonds; 1315

(2) An estimate of the date each series of phase-in- 1316
recovery bonds are expected to be issued; 1317

(3) The expected term during which the phase-in costs 1318
associated with the issuance of each series of phase-in-recovery 1319
bonds are expected to be recovered; 1320

(4) An estimate of the financing costs, as described in 1321
section 4928.23 of the Revised Code, associated with the 1322
issuance of each series of phase-in-recovery bonds; 1323

(5) An estimate of the amount of phase-in-recovery charges 1324
necessary to recover the phase-in costs and financing costs set 1325
forth in the application and the calculation for that estimate, 1326
which calculation shall take into account the estimated date or 1327
dates of issuance and the estimated principal amount of each 1328
series of phase-in-recovery bonds; 1329

(6) For phase-in-recovery charges not subject to 1330
allocation according to an existing order, a proposed 1331
methodology for allocating phase-in-recovery charges among 1332
customer classes, including a proposed methodology for 1333
allocating such charges to governmental aggregation customers 1334
based upon the proportionate benefit determination made under 1335
division (I) of section 4928.20 of the Revised Code; 1336

(7) A description of a proposed adjustment mechanism for 1337
use as described in division (A) (2) of this section; 1338

(8) A description and valuation of how the issuance of the 1339
phase-in-recovery bonds, including financing costs, will both 1340
result in cost savings to customers and mitigate rate impacts to 1341
customers when compared to the use of other financing mechanisms 1342
or cost-recovery methods available to the electric distribution 1343
utility; 1344

(9) Any other information required by the commission. 1345

(C) The electric distribution utility may restate or 1346

incorporate by reference in the application any information 1347
required under division (B) (9) of this section that the electric 1348
distribution utility filed with the commission under section 1349
4909.18 or sections 4928.141 to 4928.144 of the Revised Code ~~or~~ 1350
section 4928.14 of the Revised Code as it existed prior to 1351
July 31, 2008, or section 4928.143 of the Revised Code as it 1352
existed prior to the amendments to this section by this act. 1353

Sec. 4928.232. (A) Proceedings before the public utilities 1354
commission on an application submitted by an electric 1355
distribution utility under section 4928.231 of the Revised Code 1356
shall be governed by Chapter 4903. of the Revised Code, but only 1357
to the extent that chapter is not inconsistent with this section 1358
or section 4928.233 of the Revised Code. Any party that 1359
participated in the proceeding in which phase-in costs were 1360
approved under section 4909.18 or sections 4928.141 to 4928.144 1361
of the Revised Code ~~or~~ section 4928.14 of the Revised Code as 1362
it existed prior to July 31, 2008, or section 4928.143 of the 1363
Revised Code as it existed prior to the amendments to this 1364
section by this act shall have standing to participate in 1365
proceedings under sections 4928.23 to 4928.2318 of the Revised 1366
Code. 1367

(B) When reviewing an application for a financing order 1368
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 1369
the commission may hold such hearings, make such inquiries or 1370
investigations, and examine such witnesses, books, papers, 1371
documents, and contracts as the commission considers proper to 1372
carry out these sections. Within thirty days after the filing of 1373
an application under section 4928.231 of the Revised Code, the 1374
commission shall publish a schedule of the proceeding. 1375

(C) (1) Not later than one hundred thirty-five days after 1376

the date the application is filed, the commission shall issue 1377
either a financing order, granting the application in whole or 1378
with modifications, or an order suspending or rejecting the 1379
application. 1380

(2) If the commission suspends an application for a 1381
financing order, the commission shall notify the electric 1382
distribution utility of the suspension and may direct the 1383
electric distribution utility to provide additional information 1384
as the commission considers necessary to evaluate the 1385
application. Not later than ninety days after the suspension, 1386
the commission shall issue either a financing order, granting 1387
the application in whole or with modifications, or an order 1388
rejecting the application. 1389

(D) (1) The commission shall not issue a financing order 1390
under division (C) of this section unless the commission 1391
determines that the financing order is consistent with section 1392
4928.02 of the Revised Code. 1393

(2) Except as provided in division (D) (1) of this section, 1394
the commission shall issue a financing order under division (C) 1395
of this section if, at the time the financing order is issued, 1396
the commission finds that the issuance of the phase-in-recovery 1397
bonds and the phase-in-recovery charges authorized by the order 1398
results in, consistent with market conditions, both measurably 1399
enhancing cost savings to customers and mitigating rate impacts 1400
to customers as compared with traditional financing mechanisms 1401
or traditional cost-recovery methods available to the electric 1402
distribution utility or, if the commission previously approved a 1403
recovery method, as compared with that recovery method. 1404

(E) The commission shall include all of the following in a 1405
financing order issued under division (C) of this section: 1406

(1) A determination of the maximum amount and a	1407
description of the phase-in costs that may be recovered through	1408
phase-in-recovery bonds issued under the financing order;	1409
(2) A description of phase-in-recovery property, the	1410
creation of which is authorized by the financing order;	1411
(3) A description of the financing costs that may be	1412
recovered through phase-in-recovery charges and the period over	1413
which those costs may be recovered;	1414
(4) For phase-in-recovery charges not subject to	1415
allocation according to an existing order, a description of the	1416
methodology and calculation for allocating phase-in-recovery	1417
charges among customer classes, including the allocation of such	1418
charges, if any, to governmental aggregation customers based	1419
upon the proportionate benefit determination made under division	1420
(I) of section 4928.20 of the Revised Code;	1421
(5) A description of the adjustment mechanism for use in	1422
the imposition, charging, and collection of the phase-in-	1423
recovery charges;	1424
(6) The maximum term of the phase-in-recovery bonds;	1425
(7) Any other provision the commission considers	1426
appropriate to ensure the full and timely imposition, charging,	1427
collection, and adjustment, pursuant to an approved adjustment	1428
mechanism, of the phase-in-recovery charges described in	1429
divisions (E) (3) to (5) of this section.	1430
(F) The commission may, in a financing order, afford the	1431
electric distribution utility flexibility in establishing the	1432
terms and conditions for the phase-in-recovery bonds to	1433
accommodate changes in market conditions, including repayment	1434
schedules, interest rates, financing costs, collateral	1435

requirements, required debt service and other reserves, and the 1436
ability of the electric distribution utility, at its option, to 1437
effect a series of issuances of phase-in-recovery bonds and 1438
correlated assignments, sales, pledges, or other transfers of 1439
phase-in-recovery property. Any changes made under this section 1440
to terms and conditions for the phase-in-recovery bonds shall be 1441
in conformance with the financing order. 1442

(G) A financing order may provide that the creation of 1443
phase-in-recovery property shall be simultaneous with the sale 1444
of that property to an assignee as provided in the application 1445
and the pledge of the property to secure phase-in-recovery 1446
bonds. 1447

(H) The commission shall, in a financing order, require 1448
that after the final terms of each issuance of phase-in-recovery 1449
bonds have been established, and prior to the issuance of those 1450
bonds, the electric distribution utility shall determine the 1451
resulting phase-in-recovery charges in accordance with the 1452
adjustment mechanism described in the financing order. These 1453
phase-in-recovery charges shall be final and effective upon the 1454
issuance of the phase-in-recovery bonds, without further 1455
commission action. 1456

Sec. 4928.34. (A) The public utilities commission shall 1457
not approve or prescribe a transition plan under division (A) or 1458
(B) of section 4928.33 of the Revised Code unless the commission 1459
first makes all of the following determinations: 1460

(1) The unbundled components for the electric transmission 1461
component of retail electric service, as specified in the 1462
utility's rate unbundling plan required by division (A) (1) of 1463
section 4928.31 of the Revised Code, equal the tariff rates 1464
determined by the federal energy regulatory commission that are 1465

in effect on the date of the approval of the transition plan 1466
under sections 4928.31 to 4928.40 of the Revised Code, as each 1467
such rate is determined applicable to each particular customer 1468
class and rate schedule by the commission. The unbundled 1469
transmission component shall include a sliding scale of charges 1470
under division (B) of section 4905.31 of the Revised Code to 1471
ensure that refunds determined or approved by the federal energy 1472
regulatory commission are flowed through to retail electric 1473
customers. 1474

(2) The unbundled components for retail electric 1475
distribution service in the rate unbundling plan equal the 1476
difference between the costs attributable to the utility's 1477
transmission and distribution rates and charges under its 1478
schedule of rates and charges in effect on the effective date of 1479
this section, based upon the record in the most recent rate 1480
proceeding of the utility for which the utility's schedule was 1481
established, and the tariff rates for electric transmission 1482
service determined by the federal energy regulatory commission 1483
as described in division (A)(1) of this section. 1484

(3) All other unbundled components required by the 1485
commission in the rate unbundling plan equal the costs 1486
attributable to the particular service as reflected in the 1487
utility's schedule of rates and charges in effect on the 1488
effective date of this section. 1489

(4) The unbundled components for retail electric 1490
generation service in the rate unbundling plan equal the 1491
residual amount remaining after the determination of the 1492
transmission, distribution, and other unbundled components, and 1493
after any adjustments necessary to reflect the effects of the 1494
amendment of section 5727.111 of the Revised Code by Sub. S.B. 1495

No. 3 of the 123rd general assembly. 1496

(5) All unbundled components in the rate unbundling plan 1497
have been adjusted to reflect any base rate reductions on file 1498
with the commission and as scheduled to be in effect by December 1499
31, 2005, under rate settlements in effect on the effective date 1500
of this section. However, all earnings obligations, 1501
restrictions, or caps imposed on an electric utility in a 1502
commission order prior to the effective date of this section are 1503
void. 1504

(6) Subject to division (A)(5) of this section, the total 1505
of all unbundled components in the rate unbundling plan are 1506
capped and shall equal during the market development period, 1507
except as specifically provided in this chapter, the total of 1508
all rates and charges in effect under the applicable bundled 1509
schedule of the electric utility pursuant to section 4905.30 of 1510
the Revised Code in effect on the day before the effective date 1511
of this section, including the transition charge determined 1512
under section 4928.40 of the Revised Code, adjusted for any 1513
changes in the taxation of electric utilities and retail 1514
electric service under Sub. S.B. No. 3 of the 123rd General 1515
Assembly, the universal service rider authorized by section 1516
4928.51 of the Revised Code, and the temporary rider authorized 1517
by section 4928.61 of the Revised Code. For the purpose of this 1518
division, the rate cap applicable to a customer receiving 1519
electric service pursuant to an arrangement approved by the 1520
commission under section 4905.31 of the Revised Code is, for the 1521
term of the arrangement, the total of all rates and charges in 1522
effect under the arrangement. For any rate schedule filed 1523
pursuant to section 4905.30 of the Revised Code or any 1524
arrangement subject to approval pursuant to section 4905.31 of 1525
the Revised Code, the initial tax-related adjustment to the rate 1526

cap required by this division shall be equal to the rate of 1527
taxation specified in section 5727.81 of the Revised Code and 1528
applicable to the schedule or arrangement. To the extent such 1529
total annual amount of the tax-related adjustment is greater 1530
than or less than the comparable amount of the total annual tax 1531
reduction experienced by the electric utility as a result of the 1532
provisions of Sub. S.B. No. 3 of the 123rd general assembly, 1533
such difference shall be addressed by the commission through 1534
accounting procedures, refunds, or an annual surcharge or credit 1535
to customers, or through other appropriate means, to avoid 1536
placing the financial responsibility for the difference upon the 1537
electric utility or its shareholders. Any adjustments in the 1538
rate of taxation specified in section 5727.81 of the Revised 1539
Code ~~section~~ shall not occur without a corresponding adjustment 1540
to the rate cap for each such rate schedule or arrangement. The 1541
department of taxation shall advise the commission and self- 1542
assessors under section 5727.81 of the Revised Code prior to the 1543
effective date of any change in the rate of taxation specified 1544
under that section, and the commission shall modify the rate cap 1545
to reflect that adjustment so that the rate cap adjustment is 1546
effective as of the effective date of the change in the rate of 1547
taxation. This division shall be applied, to the extent 1548
possible, to eliminate any increase in the price of electricity 1549
for customers that otherwise may occur as a result of 1550
establishing the taxes contemplated in section 5727.81 of the 1551
Revised Code. 1552

(7) The rate unbundling plan complies with any rules 1553
adopted by the commission under division (A) of section 4928.06 1554
of the Revised Code. 1555

(8) The corporate separation plan required by division (A) 1556
(2) of section 4928.31 of the Revised Code complies with section 1557

4928.17 of the Revised Code and any rules adopted by the 1558
commission under division (A) of section 4928.06 of the Revised 1559
Code. 1560

(9) Any plan or plans the commission requires to address 1561
operational support systems and any other technical 1562
implementation issues pertaining to competitive retail electric 1563
service comply with any rules adopted by the commission under 1564
division (A) of section 4928.06 of the Revised Code. 1565

(10) The employee assistance plan required by division (A) 1566
(4) of section 4928.31 of the Revised Code sufficiently provides 1567
severance, retraining, early retirement, retention, 1568
outplacement, and other assistance for the utility's employees 1569
whose employment is affected by electric industry restructuring 1570
under this chapter. 1571

(11) The consumer education plan required under division 1572
(A) (5) of section 4928.31 of the Revised Code complies with 1573
former section 4928.42 of the Revised Code and any rules adopted 1574
by the commission under division (A) of section 4928.06 of the 1575
Revised Code. 1576

(12) The transition revenues for which an electric utility 1577
is authorized a revenue opportunity under sections 4928.31 to 1578
4928.40 of the Revised Code are the allowable transition costs 1579
of the utility as such costs are determined by the commission 1580
pursuant to section 4928.39 of the Revised Code, and the 1581
transition charges for the customer classes and rate schedules 1582
of the utility are the charges determined pursuant to section 1583
4928.40 of the Revised Code. 1584

(13) Any independent transmission plan included in the 1585
transition plan filed under section 4928.31 of the Revised Code 1586

reasonably complies with section 4928.12 of the Revised Code and 1587
any rules adopted by the commission under division (A) of 1588
section 4928.06 of the Revised Code, unless the commission, for 1589
good cause shown, authorizes the utility to defer compliance 1590
until an order is issued under division (G) of section 4928.35 1591
of the Revised Code. 1592

(14) The utility is in compliance with sections 4928.01 to 1593
4928.11 of the Revised Code and any rules or orders of the 1594
commission adopted or issued under those sections. 1595

(15) All unbundled components in the rate unbundling plan 1596
have been adjusted to reflect the elimination of the tax on 1597
gross receipts imposed by section 5727.30 of the Revised Code. 1598

In addition, a transition plan approved by the commission 1599
under section 4928.33 of the Revised Code but not containing an 1600
approved independent transmission plan shall contain the express 1601
conditions that the utility will comply with an order issued 1602
under division (G) of section 4928.35 of the Revised Code. 1603

(B) ~~Subject to division (E) of section 4928.17 of the~~ 1604
~~Revised Code, if~~ If the commission finds that any part of the 1605
transition plan would constitute an abandonment under sections 1606
4905.20 and 4905.21 of the Revised Code, the commission shall 1607
not approve that part of the transition plan unless it makes the 1608
finding required for approval of an abandonment application 1609
under section 4905.21 of the Revised Code. Sections 4905.20 and 1610
4905.21 of the Revised Code otherwise shall not apply to a 1611
transition plan under sections 4928.31 to 4928.40 of the Revised 1612
Code. 1613

Sec. 4928.542. The winning bid or bids selected through 1614
the competitive procurement process established under section 1615

4928.54 of the Revised Code shall meet all of the following requirements: 1616
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(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers; 1618
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(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under ~~sections~~ section 4928.141, ~~4928.142,~~ and ~~4928.143~~ of the Revised Code; 1621
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(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code. 1625
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Section 2. That existing sections 4928.01, 4928.05, 4928.14, 4928.141, 4928.142, 4928.144, 4928.148, 4928.17, 4928.20, 4928.23, 4928.231, 4928.232, 4928.34, and 4928.542 of the Revised Code are hereby repealed. 1628
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Section 3. That section 4928.143 of the Revised Code is hereby repealed. 1632
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