

As Introduced

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

S. B. No. 102

Senator Wilkin

A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>4905.26 of the Revised Code.</u>	138
Sec. 4905.491. In an order issued under section 4905.481	139
of the Revised Code approving an acquisition described in	140
section 4909.052 of the Revised Code, the public utilities	141
commission shall include both of the following:	142
(A) The commission's decision establishing the rate base	143
of the company being acquired, as determined under sections	144
<u>4909.042, 4909.05, 4909.052, and 4909.055</u> of the Revised Code;	145
(B) The rate division under which the geographic area of	146
the customers of the company being acquired shall be served.	147
Sec. 4909.04. (A) The public utilities commission, for the	148
purpose of ascertaining the reasonableness and justice of rates	149
and charges for the service rendered by public utilities or	150
railroads, or for any other purpose authorized by law, may	151
investigate and ascertain the value of the property of any	152
public utility or railroad in this state used or useful for the	153
service and convenience of the public, using the same criteria	154
that are set forth in section <u>sections 4909.042 and 4909.05</u> of	155
the Revised Code. At the request of the legislative authority of	156
any municipal corporation, the commission, after hearing and	157
determining that such a valuation is necessary, may also	158
investigate and ascertain the value of the property of any	159
public utility used and useful for the service and convenience	160
of the public where the whole or major portion of such public	161
utility is situated in such municipal corporation.	162
(B) To assist the commission in preparing such a	163
valuation, every public utility or railroad shall:	164
(1) Furnish to the commission, or to its agents, as the	165
commission requires, maps, profiles, schedules of rates and	166

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4909.05. As used in this section: 256

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

forecasted test period. 430

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The mechanism is just and reasonable. 733

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4909.177. An electric light company shall provide 842

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Except for the staff of the public utilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity. 1257
1258
1259

(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section. 1260
1261
1262

(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility. 1263
1264
1265
1266
1267
1268
1269

(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000. 1270
1271
1272

(24) "Person" has the same meaning as in section 1.59 of the Revised Code. 1273
1274

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621 of the Revised Code. 1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285

(26) "Regulatory assets" means the unamortized net 1286
regulatory assets that are capitalized or deferred on the 1287
regulatory books of the electric utility, pursuant to an order 1288
or practice of the public utilities commission or pursuant to 1289
generally accepted accounting principles as a result of a prior 1290
commission rate-making decision, and that would otherwise have 1291
been charged to expense as incurred or would not have been 1292
capitalized or otherwise deferred for future regulatory 1293
consideration absent commission action. "Regulatory assets" 1294
includes, but is not limited to, all deferred demand-side 1295
management costs; all deferred percentage of income payment plan 1296
arrears; post-in-service capitalized charges and assets 1297
recognized in connection with statement of financial accounting 1298
standards no. 109 (receivables from customers for income taxes); 1299
future nuclear decommissioning costs and fuel disposal costs as 1300
those costs have been determined by the commission in the 1301
electric utility's most recent rate or accounting application 1302
proceeding addressing such costs; the undepreciated costs of 1303
safety and radiation control equipment on nuclear generating 1304
plants owned or leased by an electric utility; and fuel costs 1305
currently deferred pursuant to the terms of one or more 1306
settlement agreements approved by the commission. 1307

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

- (28) "Starting date of competitive retail electric service" means January 1, 2001. 1317
1318
- (29) "Customer-generator" means a user of a net metering system. 1319
1320
- (30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider. 1321
1322
1323
1324
1325
- (31) "Net metering system" means a facility for the production of electrical energy that does all of the following: 1326
1327
- (a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell; 1328
1329
- (b) Is located on a customer-generator's premises; 1330
- (c) Operates in parallel with the electric utility's transmission and distribution facilities; 1331
1332
- (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity. For an industrial customer-generator with a net metering system that has a capacity of less than twenty megawatts and uses wind as energy, this means the net metering system was sized so as to not exceed one hundred per cent of the customer-generator's annual requirements for electric energy at the time of interconnection. 1333
1334
1335
1336
1337
1338
1339
1340
- (32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another 1341
1342
1343
1344

entity, whether the facility is installed or operated by the 1345
owner or by an agent under a contract. 1346

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) Biologically derived methane gas; 1436

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A facility that generates electricity through the 1516

conversion of energy from either of the following: 1517

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

customers as set forth in the rules. 1664

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Acquiring energy and capacity; 1812

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

(3) Costs for independent consultants; 1815

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

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

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

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

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

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

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

(C) Programs for energy-intensive industrial customers to 1842
implement cost-effective economic development, job retention, 1843
and interruptible rate programs that enhance distribution or 1844
transmission grid reliability, provided that such programs 1845
currently in existence on the effective date of this section may 1846
only be terminated or modified on a gradual basis that avoids 1847
abrupt or significant rate impacts on participating customers 1848
and provided that the programs' costs may be allocated across 1849
all classes of customers and across those of utilities in the 1850
same holding company system; 1851

(D) Lease financing arrangements the utility enters into 1852
with its customers, or potential customers that are mercantile 1853
customers, as follows: 1854

(1) A lease financing arrangement shall be for 1855
distribution or transmission-related equipment, including 1856
transformers and substations and shall not require preapproval 1857
by the commission. Under such financing arrangements, the 1858
mercantile customers participating in the arrangements shall pay 1859
for all direct and indirect costs of the utility's capital 1860
investment and related expenses through periodic lease payments 1861
to the utility. The burden of proof shall be on the utility to 1862
demonstrate, in its distribution rate case under section 4909.18 1863
of the Revised Code, that such financing arrangements are fully 1864
paid for by its mercantile customers. 1865

(2) The utility also may enter into lease financing 1866

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

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

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

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

(2) Project costs eligible for recovery are project 1896

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4928.20. (A) The legislative authority of a municipal 2108
corporation may adopt an ordinance, or the board of township 2109
trustees of a township or the board of county commissioners of a 2110
county may adopt a resolution, under which, on or after the 2111
starting date of competitive retail electric service, it may 2112
aggregate in accordance with this section the retail electrical 2113
loads located, respectively, within the municipal corporation, 2114
township, or unincorporated area of the county and, for that 2115
purpose, may enter into service agreements to facilitate for 2116
those loads the sale and purchase of electricity. The 2117
legislative authority or board also may exercise such authority 2118
jointly with any other such legislative authority or board. For 2119
customers that are not mercantile customers, an ordinance or 2120
resolution under this division shall specify whether the 2121
aggregation will occur only with the prior, affirmative consent 2122
of each person owning, occupying, controlling, or using an 2123
electric load center proposed to be aggregated or will occur 2124
automatically for all such persons pursuant to the opt-out 2125
requirements of division (D) of this section. The aggregation of 2126
mercantile customers shall occur only with the prior, 2127
affirmative consent of each such person owning, occupying, 2128
controlling, or using an electric load center proposed to be 2129
aggregated. Nothing in this division, however, authorizes the 2130
aggregation of the retail electric loads of an electric load 2131
center, as defined in section 4933.81 of the Revised Code, that 2132
is located in the certified territory of a nonprofit electric 2133
supplier under sections 4933.81 to 4933.90 of the Revised Code 2134
or an electric load center served by transmission or 2135
distribution facilities of a municipal electric utility. 2136

(B) If an ordinance or resolution adopted under division 2137
(A) of this section specifies that aggregation of customers that 2138

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

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

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

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

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

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

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

the city auditor or village clerk. 2200

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

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

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

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

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

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

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

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

aggregator's governmental boundaries; 2228

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Any payment required under an ancillary agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Uncollected phase-in costs; 2450

(b) Financing costs. 2451

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

requirements:	2610
(A) Be designed to provide reliable competitive retail electric service to percentage of income payment plan program customers;	2611 2612 2613
(B) Reduce the cost of the percentage of income payment plan program relative to the otherwise applicable standard service offer established under sections 4928.141 7 and 4928.142 7 and 4928.143 of the Revised Code;	2614 2615 2616 2617
(C) Result in the best value for persons paying the universal service rider under section 4928.52 of the Revised Code.	2618 2619 2620
Sec. 4928.64. (A) (1) As used in this section, "qualifying renewable energy resource" means a renewable energy resource, as defined in section 4928.01 of the Revised Code that:	2621 2622 2623
(a) Has a placed-in-service date on or after January 1, 1998;	2624 2625
(b) Is any run-of-the-river hydroelectric facility that has an in-service date on or after January 1, 1980;	2626 2627
(c) Is a small hydroelectric facility;	2628
(d) Is created on or after January 1, 1998, by the modification or retrofit of any facility placed in service prior to January 1, 1998; or	2629 2630 2631
(e) Is a mercantile customer-sited renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under division (A) (2) (c) of section 4928.66 of the Revised Code, including, but not limited to, any of the	2632 2633 2634 2635 2636 2637

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

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

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

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

2667
2668
2669
2670
2671
2672
2673
2674
2675

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

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

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

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

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

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

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

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

(i) Three hundred dollars for 2014, 2015, and 2016; 2702

(ii) Two hundred fifty dollars for 2017 and 2018; 2703

(iii) Two hundred dollars for 2019. 2704

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

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

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

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

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

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

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

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

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

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

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

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

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

The commission shall begin providing the information 2810

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

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

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

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

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

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

section 715.70 or 715.71 of the Revised Code; 2867

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

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

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

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

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

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

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

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

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

include procedures for biennially renewing certification. 2926

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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