

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of its Electric Security Plan.) Case No. 2017-0204

In the Matter of the Application of The)
Dayton Power and Light Company for)
Approval of Revised Tariffs.)

In the Matter of the Application of The) On Appeal from the Public Utilities
Dayton Power and Light Company for) Commission of Ohio
Approval of Certain Accounting Authority)
Pursuant to Ohio Rev. Code Section)
4905.13.)

In the Matter of the Application of The) PUCO Case Nos. 08-1094-EL-
Dayton Power and Light Company for) SSO, 08-1095-EL-ATA, 08-1096-
Approval of its Amended Corporate) EL-AAM, 08-1097-EL-ESP
Separation Plan.)

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TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	2
II. ARGUMENT.....	3
A. The issues raised in this appeal are not moot.	3
B. This appeal raises issues that are capable of repetition, yet evading review, thus allowing the Court to hear the issues.	8
1. Appellants should not have to show that the review of the challenged action “always” evades review.....	9
2. Under Ohio’s regulatory framework and standard utility practice, replacement rates put into effect after withdrawal of a standard offer are too short in duration to be litigated. Review will likely be evaded.	12
a. The Laws provide a regulatory framework that makes it likely that the PUCO’s actions will evade review.....	13
b. The utility incentives to maximize profits contributes to the PUCO’s actions evading review.....	14
c. The length of the appellate process makes it likely that the PUCO’s actions will evade review.	14
3. OCC and others were diligent in seeking the Court’s review of the replacement rates, contrary to DP&L’s claims otherwise	15
4. There is a reasonable expectation that the issues raised in this appeal will recur	17
C. The appeal raises issues that are of great public or general interest and raises constitutional questions	20
1. There is a keen interest in preserving the Court’s statutory and constitutional authority to review PUCO decisions.	21
2. The appeal raises issues of great public and general interest to DP&L’s 456,000 residential customers, Ohio’s other 3,771,600 residential customers and the functioning of the competitive wholesale electric market and regional grid.	25
III. CONCLUSION	28

PROOF OF SERVICE.....16

APPENDIX

Appx. Page

R.C. 4903.12000792

H.B. 178000793

H.B. 381000794

H.B. 239000795

S.B. 128.....000796

S.B. 155.....000797

FERC 82 FR 46940
Docket No. RM18-1-000000798

Ohio Constitution, Article 1, Section 16.....000799

Ohio Constitution, Article IV, Section (2)(d)000800

TABLE OF AUTHORITIES

PAGE

CASES:

Armco Inc. v. Pub. Util. Comm.,
69 Ohio St.2d 401, 433 N.E.2d 923 (1982)5

Calvary v. City of Upper Arlington,
89 Ohio St.3d 229, 729 N.E. 2d 1182 (2000)8, 9, 10

Cincinnati Gas & Electric v. Pub. Util. Comm.,
103 Ohio St.3d 398, 2004-Ohio-5466.....4

Consumers’ Counsel v. Pub. Util. Comm.,
121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 8537, 22, 23

FERC v. Electric Power Supply Assn.,
136 S. Ct. 760, 193 L.Ed.2d 661 (2016).....26

In re the Application of the Dayton Power & Light Co.,
147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 1791, 3, 19

In re Columbus S. Power Co.,
128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 5554, 14

In re CSP, 147 Ohio St. 3d 439, 2016-Ohio-1608.....6

TABLE OF AUTHORITIES cont'd.

	<u>PAGE</u>
<i>In re Comm. Review of the Capacity Charges of Ohio Power Co.</i> , 147 Ohio St.3d 59, 2016-Ohio-1607, 60 N.E.3d 1221	7
<i>Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.</i> , 166 Ohio St. 254, 141 N.E.2d 465	2, 3, 4, 6
<i>Kingdomware Technologies, Inc. v. U.S.</i> 136 S. Ct. 1969, 195 L.Ed.2d 334 (2016)	8
<i>Nolan v. Nolan</i> , 11 Ohio St.3d 13, 462 N.E.2d 410 (1984)	21
<i>ODVN v. Pub. Util. Comm.</i> , 65 Ohio St.3d 438, 605 N.E. 2d 13 (1992)	5
<i>Ohio Consumers' Counsel v. Pub. Util. Comm.</i> , 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213	23
<i>Pollitz v. Pub. Util. Comm.</i> , 93 Ohio St. 483, 113 N.E. 1071 (1916)	4
<i>Ratliff v. Marshall</i> , 30 Ohio St.2d 101, 282 N.E.2d 582 (1972)	8
S. Ct. Case No. 2017-241.....	7, 19, 21
<i>Spencer v. Kemna</i> , 523 U.S. 1, 118 S. Ct. 978, 140 L.Ed.2d 43 (1998).....	8
<i>State ex rel. Beacon Journal Co. v. Donaldson</i> , 63 Ohio St.3d 173, 586 N.E.2d 101 (1992)	7, 9, 11
<i>State ex rel. Todd</i> 116 Ohio St.3d 207, 2007-Ohio-6053.....	14

TABLE OF AUTHORITIES cont'd.

	<u>PAGE</u>
<i>State v. Bodyke</i> , 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753	22, 24
<i>State ex rel. Cincinnati Enquire v Ohio Dept. of Pub. Safety</i> , 148 Ohio St.3d 433, 2016-Ohio-7987, 71 N.E.3d 258	9
<i>State ex rel. Cincinnati Enquirer v. Heath</i> , 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976	9
<i>State ex rel. Cincinnati Enquirer v. Ronan</i> , 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515	9
<i>State ex rel. Dispatch Printing Co. v. Geer</i> , 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314	9, 11
<i>Steward v. Evatt</i> , 143 Ohio St. 54, 756 N.E.2d 159 (1944)	21
<i>The Frankelite Company v. Lindley</i> , 28 Ohio St.3d 29, 502 N.E.2d 213 (1986)	21
<i>Travis v. Pub. Util. Comm.</i> , 123 Ohio St. 355, 359, 175 N.E. 586 (1931)	6

TABLE OF AUTHORITIES cont'd.

PAGE

OHIO REVISED CODE:

R.C. 4928.143(C)(1)	12
R.C. 4903.12	21
R.C. 4903.20	16
R.C. 4903.11	15
R.C. 4928.143(C)(2)	12
R.C. 4928.143(E)	12

PUBLIC UTILITIES COMMISSION OF OHIO CASES:

<i>In the Matter of the Application of the Dayton Power and Light Company To Establish a Standard Service Offer in the Form of an Electric Security Plan, Pub. Util. Comm. No. 16-395-EL-SSO et al., Opinion and Order (Oct. 20, 2017).....</i>	17, 18
---	--------

MISCELLANEOUS:

H.B. 178	26
H.B. 381	26
H.B. 239	26
S.B. 128.....	26
S.B. 155.....	26
FERC 82 FR 46940 Docket No. RM18-1-000	26
Ohio Constitution, Article 1, Section 16.....	25
Ohio Constitution, Article IV, Section (2)(d)	21

I. INTRODUCTION

This appeal is about how the Public Utilities Commission of Ohio (“PUCO”) circumvented an order of this Court meant to protect Dayton Power and Light Company’s (“DP&L”) customers from paying any more unlawful “stability” charges. The Court in 2016 found that the PUCO should not have approved DP&L’s so-called stability charge to its customers because the charge was an unlawful “transition” charge. *In re the Application of the Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179. The Court’s decision was issued after DP&L’s customers had paid approximately \$285 million in stability charges to unlawfully subsidize DP&L’s uneconomic power plants.

But, instead of requiring DP&L to reduce customers’ rates by excluding the unlawful stability charge, the PUCO allowed DP&L to circumvent the Court’s order. The PUCO approved replacement rates that included another stability charge, allowing DP&L to collect an additional \$76 million subsidy from its customers, starting September 1, 2016.

The PUCO’s decision was unlawful and unreasonable in a number of respects. In permitting DP&L to charge customers \$76 million in unlawful transition charges, the PUCO violated R.C. 4903.13. (OCC Proposition of Law 1, OCC Merit Brief at 9-12). In approving DP&L’s “rate stabilization” charge, the PUCO also violated R.C. 4928.38. That statute prohibits transition revenues or any equivalent revenues from being collected from customers after December 31, 2005. (OCC Proposition of Law 2, Merit Brief at 12-22). The PUCO’s decision was unreasonable as well as unlawful. The PUCO approved the rate stabilization charge as a provider of last resort charge when DP&L is no longer providing provider of last resort service. (OCC Proposition of Law 3, Merit Brief at 23-28). And, the PUCO unreasonably failed to prospectively adjust customers’ rates to account for the unlawful stability charge collections. IEU Ohio Merit Brief at 18-41.

II. ARGUMENT

There are three major issues presented by this appeal: the constitutional and statutory authority of the Court to review PUCO decisions; unlawful transition charges in replacement rates; and adjustments to prospective rates (refunds/credits) to customers.

The Appellees argue the Court should dismiss this appeal because these issues are moot since the PUCO has approved new rates and the replacement rates (that include the unlawful subsidies) are no longer being charged to customers. PUCO Supplemental Brief at 5-6; DP&L Supplemental Brief at 4-5. The Appellees are wrong. The issues raised in this appeal are not moot because the Court can grant relief the Appellants request. Additionally, the appeal is not moot because the issues raised in the appeal are capable of repetition, yet evading review. Nonetheless, even if the case is determined to be moot, the Court should not dismiss the appeal. Instead the Court should hear the appeal because the appeal raises issues of great public interest and involves a constitutional matter.

A. The issues raised in this appeal are not moot.

The PUCO's argument for mootness hinges on the Court's decision in *Keco Industries Inc. v. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 141 N.E.2d 465 (1957). The PUCO argues that the appeal is moot because there is no remedy available to Appellants due to the previous rates being no longer in effect. PUCO Supplemental Brief at 5-6. *See also* DP&L Supplemental Brief at 3-4. There is no remedy, according to the PUCO, because its ratemaking authority is only prospective in nature and *Keco* prohibits refunds if the rates at issue are no longer being collected. PUCO Supplemental Brief at 6-7. *See also* DP&L Supplemental Brief at 11-12. But this Court can, and should, overrule *Keco* in this case.

The Office of the Ohio Consumers' Counsel ("OCC") has already presented the Court with adequate reason to overturn *Keco*. *See* OCC Merit Brief at 36-44; OCC Reply Brief at 12-

17. In those briefs, OCC noted that *Keco* is no longer valid in an era where an electric company's ESP rates may expire before the appeals process can run its course. This is especially true where the PUCO allows an electric utility to withdraw its current electric security plan ("ESP") due to an adverse ruling by this Court and put previous electric security plan rates into effect. The PUCO should not be allowed to use *Keco* as a means to circumvent the Court's order and harm consumers.

The PUCO claims that this appeal is moot because the rates from DP&L's second electric security plan are no longer in effect. PUCO Supplemental Brief at 5. The PUCO argues that the ESP 2 rates were replaced 14 months ago when DP&L withdrew its electric security plan and the PUCO reinstated the ESP 1 rates. If not then, the PUCO argues, the ESP 2 rates vanished when it approved DP&L's ESP 3 last month. The PUCO's argument, however, demonstrates the shell game that has been nurtured by strictly adhering to *Keco*.

For 32 months, DP&L benefitted from the ESP 2 rates while the PUCO's rehearing process and the appeal process to this Court ran their course. Then, after the Court overturned the PUCO's ruling and remanded it, DP&L withdrew its ESP 2. This was eight months before ESP 2 was to end. The PUCO reinstated the ESP 1 rates without refunding unlawful rates to customers. Then, while the appeal of the withdrawal of ESP 2 was in progress, the PUCO approved ESP 3. The PUCO now claims that both appeals are moot and avers that it cannot order refunds to customers. In this appeal alone, DP&L has benefitted from 14 months of collecting rates from customers that included stability charges that were just as unlawful as the stability charges the Court overturned in *In re the Application of the Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179. The PUCO refuses to prospectively adjust customers' rates (i.e. credit, refund) because of *Keco*.

Keco stands for an antiquated concept that should be abolished in this era of electric security plans. The only alternative to refunds for customers is the requirement that appellants seek a stay and post a bond under R.C. 4903.16. But this Court has already recognized the impracticability of the bonding requirement for public agencies, like OCC, and how it can create hollow victories for consumers. *In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶20. Providing customers refunds of charges the Court determined to be unlawful is the only way to ensure that consumers receive justice.

Whether *Keco* should continue to exist is an important element of this case. *Keco* is the lynchpin of the PUCO's argument for mootness. And its demise would provide consumers with an effective remedy for the charges the Court found to be unlawful – charges that DP&L was allowed to collect for the past 14 months. This Court should not defer reexamining *Keco* to a future case, while leaving DP&L's customers footing the bill for more of DP&L's transition charges. The Court should overturn *Keco* now, in this case.

The cases cited by DP&L to support dismissing this case for mootness are inapt to this proceeding. In *Cincinnati Gas & Electric v. Pub. Util. Comm.*, 103 Ohio St.3d 398, 2004-Ohio-5466 (“*CG&E*”), the utility had appealed the reasonableness and lawfulness of the PUCO ordering the utility to comply with a PUCO rule. In a tariff application proceeding, the PUCO instructed the utility to comply with a PUCO rule requiring the utility to provide information to a governmental aggregator that sells electricity. After the PUCO denied rehearing of that order, the utility complied with the order and appealed it. The Court determined that because the utility had already complied with the rule, the reasonableness and lawfulness of the order to comply was moot. (The Court made a similar determination in *Pollitz v. Pub. Util. Comm.*, 93 Ohio St. 483, 484, 113 N.E. 1071 (1916), which DP&L also cited.) But because the application

proceeding was still ongoing at the PUCO, the Court in *CG&E* determined that issues surrounding the utility's compliance with the PUCO's order "can still be raised by CG&E in the ongoing commission proceedings, resulting in a final, appealable order subject to review by this court." *Id.*, ¶27.

The facts of the case in this appeal are different from the *CG&E* case. First, unlike *CG&E*, this case involves complex issues concerning statutory interpretation and the public interest that have a likelihood of repetition. Second, unlike *CG&E*, this case concerns the underlying notion that customers should receive refunds of rates the Court determined to be unlawful. And third, unlike *CG&E*, there is no ongoing PUCO proceeding to raise the issues in this appeal and to fashion a remedy for consumers.

DP&L also cited *ODVN v. Pub. Util. Comm.*, 65 Ohio St.3d 438, 440, 605 N.E. 2d 13 (1992). In that case, the Court ruled that there was no final order from which an appeal could be taken. ODVN thus lacked standing and no substantial rights of ODVN were affected. This is not the case here, where a PUCO final order affecting the substantial rights of DP&L customers is being appealed.

The appeal in *Armco Inc. v. Pub. Util. Comm.*, 69 Ohio St.2d 401, 406, 433 N.E.2d 923 (1982), cited by DP&L, is also distinguishable. That case involved the PUCO's authority to inject issues from a complaint case into a case brought under the ratemaking statutes and change a telephone company's rules, regulations, and practices. The Court found it unnecessary to decide whether the PUCO misapplied the statutes. The Court ruled that the PUCO clearly had the authority under its general ratemaking power to use the rate case to consider the issues raised in the complaint. In the instant appeal, however, there is no independent statutory basis for what the PUCO did.

DP&L also cited *Travis v. Pub. Util. Comm.*, 123 Ohio St. 355, 359, 175 N.E. 586 (1931). In that case, the PUCO allowed a railway company to discontinue its passenger and freight service. While the PUCO's order was on appeal, the railway's property and equipment were dismantled and disposed of so that the railway could not operate without extensive purchases of equipment and reestablishment of the property. The Court found that requiring the railway to restart service would be "wholly impractical***" This is not the situation in the instant appeal.

The cases cited by DP&L are irrelevant to the issues in this case. They do not support DP&L's arguments that the issues raised in this appeal are moot.

DP&L believes that no remedy is available in this appeal, and disputes that the Court and the PUCO are moving away from *Keco*. DP&L asserts that the Court did not order a refund in *In re CSP*, 147 Ohio St. 3d 439, 2016-Ohio-1608. DP&L Supplemental Brief at 11, n. 6. There, the Court ordered AEP Ohio to reduce the deferral account it would collect from customers to offset AEP's Ohio overcollection of non-deferrals from customers through the Retail Stability Rider ("RSR"). *In re CSP*, ¶40. According to DP&L, the Court merely ordered a reduction in the amount to be collected from customers through the deferral account on a going-forward basis. DP&L contends that this is not a refund. DP&L is wrong.

This Court's language in *In re CSP* was precise: "we order the PUCO to adjust the balance of its deferred capacity costs to eliminate the overcompensation of capacity revenue recovered through the non-deferral part of the RSR during the ESP." *Id.* (emphasis added). At the time the Court issued its decision, the electric security plan where AEP Ohio collected the non-deferrals through the RSR had terminated. *See* Case No. 2013-521, OCC Merit Brief (August 12, 2013) at 14, n.12. Thus, AEP Ohio had ceased collecting the non-deferrals through

the RSR. Therefore, the Court ordered the PUCO to adjust prospective rates (deferred capacity costs) to be adjusted for past overcollection of charges (non-deferred capacity costs) that were no longer being collected from customers. In other words, customers received a refund of their overpayments of non-deferred capacity charges. AEP Ohio, in pleadings filed before the PUCO, supported deducting the entire non-deferral portion of the RSR from the deferred capacity balance. *See In the Matter of the Commission Review of Capacity Charges of Ohio Power Company*, PUCO Case Nos. 10-2929-EL-UNC et al., Ohio Power Motion at 6 and Testimony of William Allen at 21, Ex. WAA-REM4 (June 2, 2016). AEP Ohio had it right. DP&L is plainly wrong in its claims. The Court should reject DP&L's argument.

The PUCO also asserts that its approval of DP&L's ESP 3 makes the appeal of DP&L's withdrawal of its second ESP "stale" and moot. PUCO Supplemental Brief at 3. The PUCO's arguments are misplaced. This appeal does not address DP&L's withdrawal. Its arguments belong in the companion appeal, S.Ct. Case No. 2017-241.

B. This appeal raises issues that are capable of repetition, yet evading review, thus allowing the Court to hear the issues.

Both the Appellants and the Appellees acknowledge that there are times when certain issues raised on appeal can and should be addressed, despite the fact that the issues otherwise might be considered moot. PUCO Supplemental Brief at 9; DP&L Supplemental Brief at 5; OCC Supplemental Brief at 6-13; IEU-Ohio Supplemental Brief at 9-12; Kroger/OMA Supplemental Brief at 2-5. The Court has recognized these instances as exceptions to the mootness doctrine. *See State ex rel. Beacon Journal Co. v. Donaldson*, 63 Ohio St.3d 173, 175, 586 N.E.2d 101 (1992); *Ohio Consumers' Counsel v Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853. Appellants and Appellees generally agree that the exceptions to mootness fall into two categories: (1) issues that are capable of repetition, yet evading review;

and (2) issues that raise a constitutional issue or a matter of great public or general interest. PUCO Supplemental Brief at 9; DP&L Supplemental Brief at 5; OCC Supplemental Brief at 6; IEU-Ohio Supplemental Brief at 3; Kroger/OMA Supplemental Brief at 3-4. Where the dispute lies is in how parties specifically define the exceptions and apply the exceptions to the issues raised in this appeal.

1. Appellants should not have to show that the review of the challenged action “always” evades review

The Appellees would have the Court narrowly construe the “capable of repetition, but evading review” exception by inserting a requirement that the challenged action is “always” so short as to evade review. PUCO Brief at 10-11; DP&L Brief at 5). The Appellees rely on a single Ohio Supreme Court opinion, issued in 2000, *State ex rel. Calvary v. City of Upper Arlington*, 89 Ohio St.3d 229, 231, 729 N.E.2d 1182 (2000).¹ But that case has not always been construed as requiring “always” in the test. And it is factually distinguishable from the appeal presently before the Court.

In *Calvary*, the Court was addressing a claim for a writ of mandamus, a prerogative writ of extraordinary nature. *See State ex rel. Ratliff v. Marshall*, 30 Ohio St.2d 101, 282 N.E.2d 582 (1972). In *Calvary*, the Court held that an appellant’s claim for a writ to produce public records (a draft agreement) was moot because the records were subsequently released (nine days after the writ was requested). 89 Ohio St.3d at 231. The Court found that the appellant had not shown that the capable of repetition, yet evading review exception to mootness applied. *Id.* The Court

¹ The Appellees also rely on a U.S. Supreme Court case, *Spencer v. Kemna*, 523 U.S. 1, 18, 118 S. Ct. 978, 140 L.Ed.2d 43 (1998). DP&L Supplemental Brief at 5; PUCO Supplemental Brief at 10. But since this 1998 case, the U.S. Supreme Court has not required a showing that the challenged action must *always* be so short as to evade review. *See, e.g., Kingdomware Technologies, Inc. v. U.S.*, 136 S. Ct. 1969, 195 L.Ed.2d 334 (2016).

also found that it could review the issues raised by the appellant in the context of other claims so that review was not evaded. *Id.*

Importantly, in *Calvary*, the grafting of “always” into the mootness exception did not occur when the Court initially defined the mootness exception. Instead, citing to precedent, the Court acknowledged that the mootness exception must include a showing that “the challenged action *is too short* in its duration to be fully litigated.” *Id.* (emphasis added). Not until later on in its opinion, did the “always” condition emerge. In applying the facts to the exception, the Court, without citation to any authority, added “always” to the test: “*Calvary* [appellant] has not shown that the time between submission of a tentative collective bargaining agreement to a municipal legislative authority and that authority’s decision the agreement is always so short as to evade review***.” *Id.* Thus, the use of “always” appears to have been a stretch away from the previous standard the Court used and cited earlier in its opinion.

Relying solely upon *Calvary* as authority to narrowly construe the exception to mootness doctrine in this case is wrong for two reasons. First, *Calvary* is an anomaly. Second, *Calvary* is factually distinguishable from the case at hand.

Since its decision in *Calvary*, the Supreme Court of Ohio has invoked the mootness exception in a number of cases, without including the added language that an issue must “always” evade review. *See State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314, ¶ 10; *State ex rel. Cincinnati Enquirer v Ohio Dept. of Pub. Safety*, 148 Ohio St.3d 433, 2016-Ohio-7987 ¶¶29-30, 71 N.E.3d 258; *see also State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515, ¶5; *see also State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, ¶ 12, quoting *State ex rel. Beacon Journal Publishing Co. v. Donaldson*, 63 Ohio St.3d 173, 586

N.E.2d 101 (1992) (“We have recognized that “[c]ourtroom closures **often** evade review, since a closure order **usually** expires before an appellate court can consider it.” (emphasis added)). Instead, the Court has been more than willing to apply the mootness exception when the issue “usually” or “often” evades review.

Calvary is also factually distinguishable from this appeal. In *Calvary*, the appellant raised the mootness exception in a writ of mandamus action, which requires the appellant to justify the need for “extraordinary” relief. When examining applications for writs, it may be appropriate for the Court to more narrowly apply exceptions to the mootness doctrine, consistent with the extraordinary relief being requested under a writ. Here, however, there was no action seeking an extraordinary writ. Instead the issues have been properly raised as an appeal from a PUCO order. There is no need to strictly apply exceptions to the mootness doctrine. Moreover, in *Calvary*, the Court was able to review the issues raised by the appellant in the context of other claims, so that review was not evaded. *Id.* at 231. Not so in this appeal. In this appeal, the Court will not be able to review the issues raised by the appellant. Review of the PUCO decision will be evaded.

As discussed in OCC’s Supplemental Brief, the PUCO has, at times, sought to evade judicial review. OCC Supplemental Brief at 10-13. Construing the mootness exception strictly, as the Appellees urge, will virtually ensure that the PUCO’s rulings will avoid judicial review. The Court should hold the PUCO accountable for its decisions. For the protection of Ohioans, the Court should not make it easier for the PUCO to avoid review. The Court should not require parties to show that the challenged action will “always” evade review. Instead, the Court should consider the mootness exception standard satisfied if a party shows that the action usually or often evades review.

2. Under Ohio’s regulatory framework and standard utility practice, replacement rates put into effect after withdrawal of a standard offer are too short in duration to be litigated. Review will likely be evaded.

Under the exception to mootness, a claim can be considered not moot if it is capable of repetition, yet evading review. *See State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314. In determining whether the claim is likely to evade review, the court considers whether the challenged action is so short as to evade review. *State ex rel. Beacon Journal Publishing Co. v. Donaldson*, 63 Ohio St.3d 173, 586 N.E.2d 101 (1992). In this appeal the challenged action was the setting of replacement rates that included unlawful transition charges, circumventing the Court’s ruling in *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490.

According to the Appellees, the Appellants cannot prove that the time between the PUCO implementing replacement rates and approving the next set of electric security plan rates is so short that the replacement rates evade review. DP&L Brief at 6; PUCO Brief at 10-11. DP&L claims that it was mere coincidence that its ESP 3 was pending at the time DP&L’s motion to withdraw was granted. DP&L Brief at 6.

These claims are overstated. They do not comport with likely short-term nature of replacement rates that stay in effect only until subsequent rates are established. Short-term replacement rates are a reality for Ohio utilities because of the laws and the incentives for a utility to maximize profits. These short-term rates are likely to expire, especially under a regulatory framework which caters to the PUCO delaying parties’ appeals, *see OCC Supplemental Brief at 12*, and an appellate process that can last several years. This all means that claims made against a utility’s replacement rates will likely evade review, satisfying the exception to mootness standard.

a. The Laws provide a regulatory framework that makes it likely that the PUCO's actions will evade review.

Under R.C. 4928.143(C)(2)(b), once a utility withdraws its application in response to a PUCO order, the PUCO must issue an order to continue the provisions, terms and conditions of its most recent electric security plan. (OCC Appx. 000016). In the case below, the PUCO issued an order within one month of DP&L's notice of withdrawal, setting the replacement rates to be charged customers beginning September 1, 2016. *See* OCC Merit Brief at 1. And included in those replacement rates were unlawful transition charges – the challenged action under this appeal. *See id.* R.C. 4928.143(C)(2)(b) anticipates that the replacement rates are short-term – only in effect until a subsequent standard offer is authorized. For instance, here, the rates were in effect for fourteen months, an insufficient length of time for the Court to review the appeal.

The process for setting standard offer rates also is structured to move quickly. Standard offer rates can be established through a market rate offering or an electric security plan. (R.C. 4928.141, OCC Appx. 000001-000002). In the case of an electric security plan, under R.C. 4928.143(C)(1), the PUCO is obligated to issue an order “not later than two hundred seventy-five days after the application's filing date.” (OCC Appx. 000716). This places a duty upon the PUCO to issue orders in a relatively prompt fashion, enhancing the likelihood that replacement rates will be quickly superseded by permanent standard offer rates.

Also affecting the duration of replacement rates is the term of the standard offer. In the case below, and in DP&L's prior electric security plan, DP&L standard offer was structured to last approximately three years each. (OCC Appx. 000463). As discussed in OCC's Merit Brief, the length of the electric security plans have been geared to avoid additional review that is required under longer term electric security plans. *See* OCC Merit Brief at 13; R.C. 4928.143(E) (OCC Appx. 000711). Assuming a 275-day period between the filing of an application and a

PUCO order, and a three-year electric security plan, a utility will file a new application for standard offer rates every two years. Thus, it is not a coincidence that DP&L would have an electric security plan pending at the time a motion to withdraw is granted. Rather it would have been unexpected had DP&L *not* filed an application for a new plan when it did. The statute contributes to the likelihood that replacement rates will be short-lived.

b. The utility's incentives to maximize profits contributes to the PUCO's actions evading review.

Additionally, short-term replacement rates that relate back to the utility's most recent standard service offer, can take rates back many years. Implementing prior rates does not necessarily inure to the utility's benefit. (In fact in the case below, DP&L claimed that the replacement rates resulted in reduced collections from customers. *See* DP&L Merit Brief at 5. For DP&L, the most recent standard service offer (which was the basis of the replacement rates) was approved eight years ago, in 2009. (R. 117; OCC Appx. 000059). When replacement rates result in reduced collections from customers, as they did for DP&L, utilities are incited to move forward quickly with the very next standard offer. This contributes to the short-term nature of replacement rates.

c. The length of the appellate process makes it likely that the PUCO's actions will evade review.

The final factor contributing to the challenged action evading review is that it takes time to go through the appellate process. With the appellate process in some instances taking two or more years to come to conclusion, it is understandable that replacement rates (the challenged action) can be in effect for so short a time as to evade review. So the fourteen-month period during which DP&L's replacement rates were in effect and could be challenged is not atypical, but rather the norm. It is reasonable to conclude replacement rates will be short-term and so, likely to evade review.

3. OCC and others were diligent in seeking the Court’s review of the replacement rates, contrary to DP&L’s claims otherwise

DP&L avers that review of the replacement rates was possible if Appellants had acted with the “required diligence,” citing to *State ex rel. Todd*, 116 Ohio St.3d 207, 2007-Ohio-6053, ¶12. This case, however, provides no support for the unsound claims that Appellants did not act diligently. The case is also factually distinguishable. In relying on *State ex rel Todd*, DP&L seeks to improperly impute a duty of extreme diligence onto the appellants – a duty that is not found under Ohio law or case precedent. Moreover, there is no support for the claim that the Appellants did not act with diligence (the appropriate standard) in pursuing this appeal. *See, e.g., In re Application of Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶18

In *State ex rel. Todd*, 2007-Ohio-6053, the appellant had sought to place an issue on the ballot for a special election. The appellant sought a writ of mandamus in the court of appeals to compel the New Waterford Village Council to undertake activities (a canvass of the petition) to enable a special election on the petition in November. *Id.* The court of appeals granted the writ, but not before the November election. *Id.*

This Court reversed, finding that the mandamus claim was moot since the election was held before writ was decided. *Id.* This Court ruled that, like petitioners in all election cases, the appellant has a heightened duty to act – a duty to act “with extreme diligence.” *Id.* (citations omitted). The Court found the appellant did not act with utmost diligence. The Court reached this conclusion because the appellant waited two and one-half months before seeking expedited consideration and never again requested the court of appeals to act more promptly. *Id.*

In relying upon *State ex rel Todd*, DP&L appears to assert that extreme diligence, that is the standard for petitioners in election cases involving writs, should be applied to appeals of

PUCO orders. But DP&L cites to no case law that would support this claim. To OCC's knowledge, there is no case law that supports using an "extreme diligence" standard for an appeal from a PUCO decision.

Additionally, DP&L's claims that Appellants did not act diligently are unfounded.

DP&L claims that OCC and others did not act diligently because:

- Appellants could have filed notices of appeal on December 15, 2016, one day after the PUCO issued its final order in the case below. DP&L Brief at 7. Instead Appellants used the sixty days afforded under R.C. 4903.11 (OCC Appx. 000700) to perfect their timely appeals. *Id.*
- Appellants could have "sought expedited consideration in this court." *Id.* But they did not.
- Appellants sought extensions for their briefs. *Id.* (The extensions on the Appellants' Briefs in total amounted to forty days. Appellees also sought extensions on their merit briefs.)

Though DP&L is factually correct on the timing of the Appellants' notices of appeal and the extensions requested, these actions do not show a lack of diligence. Appellants timely filed their notices of appeal under the law. (*See* R.C. 4903.11, (OCC Appx. 000700) requiring an appeal to be filed with sixty days of the PUCO order). And Appellants availed themselves of Supreme Court Practice Rules that permit parties to seek extensions on the filing of briefs and reply briefs. *See* S. Ct. Prac. R. 3.03(B)(2). The Court should not conclude that a party that follows the law and the rules of the Court is acting with a lack of diligence.

Additionally, though DP&L claims that Appellants "could have sought expedited consideration in this court" its claim fails to recognize that Court already has a duty to

expeditiously consider the claims coming from the PUCO. Under R.C. 4903.20, (OCC Appx. 000729) the actions or proceedings in the Supreme Court arising from appeals of the PUCO “shall be taken up and disposed of by the court out of their order on the docket.” This makes claims for expedited consideration arguably superfluous.

4. There is a reasonable expectation that the issues raised in this appeal will recur

In this appeal the challenged action was the setting of replacement rates that included unlawful transition charges, circumventing the Court’s ruling in *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490. OCC Appx. 000009. The statutory and constitutional authority of the Court to review PUCO orders is also at issue. And the claims in this appeal also address whether customers can be made whole for \$76 million of unlawful transition charges that they paid for fourteen months, beginning September 1, 2016. IEU Notice of Appeal at 2.

And yet the Appellees claim that there is no reasonable expectation that these issues will arise again with DP&L. *See* DP&L Supp. Brief at 8, 13; PUCO Supp. Brief at 11-12. Appellees ignore the issues of the Court’s jurisdiction to review PUCO Orders and the transition charge issue. Instead Appellees are focused on two issues alone: the utility’s right to terminate an electric security plan (which is not an issue in this appeal)²; and the refund issue. The Appellees’ arguments should not detain the Court long.

With respect to the Court’s authority to review the PUCO Orders, which the Appellees ignored, it is reasonable to expect that the issue will arise again. As long as the PUCO issues opinions (and they will), appeals are filed (and they will be), Supreme Court mandates are issued

² OCC will address Appellees’ arguments on a utility’s right to terminate in the companion appeal, S.Ct. Case No. 2017-1204.

(and they will be), there will be issues raised about how the PUCO addresses the Court's mandates. These are the very events that led to this appeal. Here, a PUCO order was issued. (OCC Appx. 000008). Appeals were filed. The PUCO was reversed. *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166. The Court issued a mandate to the PUCO. OCC Appx. 000009. But the PUCO did not follow the Court's mandate. Instead the PUCO circumvented the Court's mandate by allowing replacement rates to be charged to customers that contained transition charges just as unlawful as the transition charges that the Court struck down in *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166.

Another issue the Appellees did not address was whether transition charge issues are likely to recur. The simple answer is: Yes. It is reasonable to expect that this Court will have to address unlawful transition charges to consumers again.

Currently there are two appeals pending at this Court from PUCO-approved electric security plans where the PUCO allowed the utilities (FirstEnergy and AEP) to collect from their customers more unlawful transition charges, much like the stability charge complained of in this appeal. Those appeals involve the collection of unlawful transition charges from customers to subsidize uneconomic power plants in various forms – through retail rate stability charges, power purchase agreement charges and so-called grid modernization charges. *In Re FirstEnergy*, S.Ct. Case No. 2017-1444; *In Re Ohio Power Company*, S. Ct. Case No. 2017-0749.

DP&L asserts that Appellants rely on generic claims of repetition, involving other utilities (DP&L Supplemental Brief at 9), that do not satisfy the mootness exception. But DP&L overlooks its own recently approved electric security plan, which is likely to be appealed. That plan contains alleged unlawful transition charges as well as a distribution modernization rider charge and a reconciliation rider charge. *In re Dayton Power and Light Co.*, Pub. Util. Comm.

Case No. 16-395-EL-SSO. This is the “what’s next” event that Chief Justice O’Connor asked about in the oral arguments in *In re Application of DP&L*, 147 Ohio St.3d 166. More unlawful subsidies.

DP&L (and the other utilities) are likely to find themselves once again, with their electric security plans reversed on appeal, and with the opportunity to establish replacement rates (after withdrawal.) And so the saga is likely to repeat itself.

As for the issues of prospective rate adjustments (i.e. credits, refunds), DP&L (but not the PUCO) addresses the probability of the issue repeating itself in two sentences: “Here, the issue of whether refunds are lawful has been decided repeatedly by this Court. (citation omitted). It thus plainly is not an issue that will “always [be] so short as to evade review.” DP&L Supplemental Brief at 13.

But Appellees also argue that a way to judge whether an issue is “capable of repetition,” is by how many times in the past the issue has arisen. For instance, DP&L posits that “given how rarely the issue [withdrawal] comes up, Appellants cannot establish a reasonable expectation that they will be subject to the same action again.” DP&L Supplemental Brief at 9. Similarly, the PUCO argues that because this is the first time that a utility has exercised its rights to withdraw, “it is not common and therefore there is no reasonable expectation that the same complaining party – Appellants – will be subject to the same action again.” PUCO Supplemental Brief at 11-12. If these are the standards to judge whether an issue is capable of repetition, then the refund issue, which “has been decided repeatedly by this Court” fits the bill. The refund issue is capable of repetition under Appellees’ interpretation of the “capable of repetition” standard.

C. The appeal raises issues that are of great public or general interest and raises constitutional questions

This case is about the PUCO's Finding and Order allowing DP&L to charge customers replacement rates that include yet another unlawful transition charge, contrary to the Court's ruling last summer in *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179. *See* OCC Merit Brief at 3-4. OCC and others have raised three major issues that involve great public, general interest and constitutional questions. First, the PUCO failed to follow the Court's mandate when approving replacement transition charges. *See, e.g.*, OCC Merit Brief at 9-12; IEU Merit Brief at 2. Second, the replacement transition charges are nothing more than unlawful subsidies. *See, e.g.*, OCC Merit Brief at 12-16. Third, the Court should prospectively adjust customers' rates (refund/credit) to account for the \$76 million of unlawful charges. *See* IEU Merit Brief at 22-26; OCC Merit Brief at 36-38.

Since September 1, 2016, DP&L's residential utility customers have paid approximately \$285 million in so-called "stability charge" subsidies to prop up DP&L's uneconomic power plants. *See* OCC Merit Brief at 1. The Court last year determined these subsidies were unlawful and acted to end them on June 20, 2016. *In the Matter of the Application of the Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-349, 62 N.E.3d 179. *See also In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 38 N.E.3d 734, ¶25. But the Court's mandate to end the subsidies was not carried out. Instead, the PUCO circumvented the Court's order and allowed DP&L' to charge its residential customers approximately \$76 million more over the next 14 months. Customers were charged replacement rates (after DP&L unlawfully withdrew its electric security plan) that included another stability charge as unlawful as the \$285 million in charges the Court ruled were unlawful in *In the Matter of the Application of the Dayton Power & Light Co.* *See* S.Ct. Case No. 2017-241.

DP&L and the PUCO nonetheless argue that there are no constitutional implications that warrant an “advisory opinion.” DP&L Supplemental Brief at 9-10; PUCO Supplemental Brief at 12-13. Appellees also claim there is nothing about this appeal that rises to the level of great public interest. DP&L Supplemental Brief at 9; PUCO Supplemental Brief at 12. According to Appellees this appeal is about statutory compliance and DP&L’s right to withdraw. PUCO Supplemental Brief at 12; DP&L Supplemental Brief at 10. Additionally, Appellees dispute that the decision will have an effect on the regional electric grid. DP&L Supplemental Brief at 10; PUCO Supplemental Brief at 12-13.

Appellees’ arguments should fail. Appellees pay no heed to the constitutional implications of allowing the PUCO to circumvent holdings of this Court. In doing so, Appellees ignore the great public interest in safeguarding the Court’s statutory and constitutional authority to review PUCO decisions. Appellees also disregard the fact this case has an impact on real people – including the 456,000 DP&L residential customers who have paid over \$360 million in subsidies since September 1, 2016. And the Appellees ignore the impact that the power plant subsidies DP&L collects from its customers have on the regional competitive electric market and the customers who rely upon it.

1. There is a keen interest in preserving the Court’s statutory and constitutional authority to review PUCO decisions.

The PUCO argues that this appeal is about a utility’s right to withdraw under R.C.4928.143 and therefore presents no questions of constitutional matter. *See* PUCO Supplemental Brief at 13. DP&L argues that the PUCO actions were consistent with R.C. 4928.143 and judiciary review is limited to that “conferred by law.” DP&L Supplemental Brief at 10. These arguments have no place in this appeal. Issues regarding the right to withdraw are

only appropriate to make in the companion appeal, S.Ct. Case No. 2017-241, where parties have appealed the issue.

Instead, the present case addresses if the PUCO can authorize transition charges that the Court has repeatedly found to be unlawful. *In the Matter of the Application of the Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2106-Ohio-3490, 62 N.E. 179. *See also In re Application of Columbus S. Power Co.*, 147 Ohio St.3d 437, 2016-Ohio-1608, 38, 67 N.E.3d 734, ¶25. And this case addresses how the PUCO circumvented the Court's ruling in *In the Matter of the Application of the Dayton Power & Light Co.*, 147 Ohio St.3d 166, when it allowed DP&L to charge customers replacement rates that contained a stability charge, just as unlawful as the first stability charge the Court struck down. This case has direct implications on the court's judicial oversight and powers as those powers are vested under the Ohio Constitution and Ohio Revised Code.

Article IV of the Ohio Constitution gives the Supreme Court appellate revisory jurisdiction of the proceedings of administrative agencies. *See Ohio Constitution Article IV Section (2)(d)*. (OCC Appx.000800). R.C. 4903.12 (OCC Appx.000792) also gives the Supreme Court statutory jurisdiction over the PUCO. R.C. 4903.13 (OCC Appx. 000701) gives authority to the Supreme Court to reverse, vacate, or modify a final order of the PUCO. The PUCO is strictly obligated to follow statutory demands set forth in the Revised Code and Supreme Court mandates. *See The Frankelite Company v. Lindley*, 28 Ohio St.3d 29, 502 N.E.2d 213 (1986) citing *Steward v. Evatt*, 143 Ohio St. 54, 756 N.E.2d 159 (1944) (ruling that the Board of Tax appeals (like the PUCO) must follow statutes and Supreme Court mandates). *See also Nolan v. Nolan*, 11 Ohio St.3d 13, 462 N.E.2d 410 (1984) (describing the law of the case doctrine as

compelling trial courts to follow the mandates of reviewing courts). The PUCO cannot circumvent a mandate from this Court.

But the PUCO did just that. The PUCO found a way to give DP&L more money to make up for the revenue DP&L would no longer receive once the PUCO eliminated the stability charge DP&L had relied upon to collect \$285 million.³ It allowed transition charges from the utility's ESP 1 to be resurrected, even though the nature of the charges were no different than the charges disallowed by this Court.

In *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶46, this Court held, "Jurists have long understood that they must be wary of any usurpation of the power conferred on the judiciary by constitutional mandate and any intrusion upon the courts' inherent powers." The Court also held it "must jealously guard the judicial power against encroachment from the other two branches of government and conscientiously perform our constitutional duties to continue our most precious legacy." *Id.* The Court's words should be heeded here especially because of the PUCO's trend to circumvent judicial authority. *See* OCC Supplemental Brief at 9-10.

The Court has on occasion squarely addressed efforts by the PUCO to evade judicial review, acknowledging that such efforts raise constitutional questions. It did so in a 2011 case, *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853. While Appellees acknowledge this case, they shift the focus to the fact that, at the same time, in the same case, the Court dismissed other issues in OCC's appeal as moot. *See* DP&L Supplemental Brief at 10; PUCO Supplemental Brief at 13. These arguments do not diminish the

³ The PUCO has often found creative ways to give utilities more money, while paying little attention to the law. *See, e.g., In re Columbus Southern Power Co.*, 128 Ohio St.2d 512, 2011-Ohio-1788, 947 N.E. 2d 655, ¶¶9-14 (where the Court found that giving the utility 12 months of revenue over six months was unlawful and amounted to retroactive ratemaking).

importance of *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, and its applicability to analogous facts in this appeal.

The 2011 *Ohio Consumers' Counsel v Pub. Util. Comm.* case originated from the Court's remand of an earlier appeal from a PUCO Order that approved a settlement establishing market-based standard service offer rates. See *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213 (“*CG&E Remand Order*”). In the *CG&E Remand Order*, the Court by remand instructed the PUCO to, among other things, permit discovery of side agreements so that parties could assess the bargaining that led to the settlement. *CG&E Remand Order*, ¶94.

Subsequently, the PUCO issued its own remand order, in response to the Court's ruling. In that order the PUCO found that portions of documents related to the side agreements constituted trade secrets. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, 904 N.E.2d 853, ¶23. The PUCO also found that the settlement was not reasonable and rejected it. *Id.*, ¶9. OCC appealed the trade secrets ruling (along with other rulings). The PUCO addressed the trade secrets issue in its brief and at oral arguments. *Id.*, ¶23. But, before the Court issued a decision, the PUCO moved the Court to dismiss the case, based on a series of orders the PUCO had issued to implement the Court's remand on the trade secrets issue. *Id.*, ¶7. The PUCO argued that its superseding orders made the Court's review of the trade secrets issue moot. *Id.* The Court overruled the PUCO's motion to dismiss. *Id.* This Court determined that “permitting the commission to issue subsequent orders that supersede orders that are on appeal to this court would circumvent this court's constitutional and statutory power to review the commission's orders.” *Id.* That is particularly what happened in this case.

The Court's ruling in the 2011 *Ohio Consumers' Counsel* case should be helpful to the Court in resolving the issues presently before it. Like the 2011 case, the appeal before this court relates to how the PUCO responded to a remand from the Court. In the 2011 *Ohio Consumer's Counsel* case, the PUCO issued superseding orders that it believed were dispositive of issues raised on appeal. The same is true here – the PUCO contends that its superseding order approving new electric security rates disposes of the issues OCC raised on appeal. But the Court in the 2011 *Ohio Consumer's Counsel* case recognized that the PUCO was circumventing the Court's constitutional and statutory powers of review. The Court put a stop to that by refusing to find that the trade secret issue was moot.

The Court, consistent with the 2011 *Ohio Consumer's Counsel* case, should likewise find that this appeal is not moot; otherwise the Court allows the PUCO to circumvent its constitutional and statutory power to review PUCO orders. The appeal should go forward because it invokes constitutional issues that this Court must address in order to preserve “its most precious legacy.” *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶46.

2. The appeal raises issues of great public and general interest to DP&L's 456,000 residential customers, Ohio's other 3,771,600 residential customers and the functioning of the competitive wholesale electric market and regional grid.

This appeal matters to DP&L's residential consumers, many who face financial distress.⁴ These are the customers whose hard-earned money was taken not once, but twice to fund DP&L's uneconomic power plants. The first take was enormous – \$285 million. The second take was significant – \$76 million. As part of this appeal, Appellants have raised the issue of prospectively adjusting rates (refunds/credits) for the \$76 million paid since September 1, 2016.

⁴ In the Dayton metropolitan area, 35% of the residents live at or below the federal poverty level. See OCC Merit Brief at 1.

See OCC Merit Brief at 1. DP&L customers have a great interest in this issue as it could mean that some of their hard-earned money will be returned to them.

DP&L residential customers as well as the other Ohio 3,771,600 residential customers also have an interest in knowing that an order from this Court cannot be circumvented. Frankly, all Ohio residential customers have an interest in knowing an order from this Court cannot be circumvented. Residential customers can be financially harmed when the PUCO disregards mandates from the court. This is especially so when the Court orders charges to be eliminated and the PUCO permits virtually identical charges to be reinstated.

Residential customers also have an interest in assuring that judicial authority cannot be disregarded. Residential customers expect that one of the Court's functions is to protect the rights of Ohio citizens by affording citizens and their representative access to judicial review and a remedy: "All courts shall be open and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy due course of law and shall have justice administered without denial or delay." Constitution Article 1 Section 16 (OCC Appx.000799). Ohio customers have an interest in knowing that this Court can provide a remedy when the PUCO violates a judicial mandate and allows utilities to collect more unlawful charges.

The appeal also presents larger issues that reach far beyond just DP&L customers. Issues in this appeal are directed to customer-funded subsidies that can have an impact on the regional electric grid. The stability charges that DP&L customers paid over the last 14 months were subsidies that supported DP&L's uneconomic power plants. *See* OCC Merit Brief at 31. They were, like the stability charges the Court struck down, unlawful transition charges. The transition charges were originally intended, to compensate DP&L as a Provider of Last Resort ("POLR"). *Id.* But on January 1, 2014, DP&L's POLR obligations changed. *Id.* DP&L's POLR

obligations shifted to marketers who bid in competitive auctions to supply standard service. *Id.* at 32. With DP&L's POLR obligations gone, the stability charge functions as a financial integrity charge – one that is similar to charges the court struck down as unlawful transition charges.

The PUCO argues that the market policy matters such as subsidies are not a public interest, yet at the same time the PUCO acknowledges that subsidy issues are currently before the Ohio General Assembly. *See* PUCO Supplemental Brief at 13, n. 1. Specifically, there are currently five bills introduced at the Ohio General Assembly that address subsidies for either nuclear power plants or Eisenhower era coal plants. *See* H.B. 178 (A Nuclear Plant Subsidy) (OCC Appx 000793.); H.B. 381 (A Nuclear Plant Subsidy) (OCC Appx 000794.); H.B. 239 (OVEC Subsidy) (OCC Appx 000795.); S.B. 128 (A Nuclear Plant Subsidy) (OCC Appx.000796); S.B. 155 (OVEC Subsidy) (OCC Appx 000797.). Additionally, subsidy issues pertaining to electric plants are currently being addressed in a high-profile public forum before the Federal Energy Regulatory Commission (“FERC”). The United States Energy Secretary Rick Perry instructed FERC to initiate expedited hearings regarding coal and nuclear subsidies. *See* FERC 82 FR 46940, Docket No. RM18-1-000. (OCC Appx. 000798) The fact that the Ohio General Assembly and FERC are currently addressing subsidy issues belies the PUCO's claim that subsidies affecting market policies are not an issue of public interest.

And subsidies of uneconomic power plants that are part of a regional wholesale market can have far reaching impacts beyond Ohio. The PUCO wants to pretend that the stability subsidy it gave DP&L in this case has nothing to do with the regional power grid. *See* PUCO Supplemental Brief at 12-13. But, the PUCO has been wrong before about that. In the not too recent past, the Federal Energy Regulatory Commission derailed a power plant subsidy the PUCO had approved for FirstEnergy. *See FERC v. Electric Power Supply Assn.*, 136 S. Ct. 760,

193 L.Ed. 2d 661 (2016). There FERC found that the PUCO's Ohio plan for subsidies would have to be reviewed by FERC under affiliate standards before the plan could move forward.

Additionally, such arguments ignore the realities of today's electric market. DP&L's power plants produce electricity that is part of a regional electric grid managed by PJM interconnection. The regional electric grid is composed of 13 states, including Ohio, and the District of Columbia. *See* OCC Supplemental Brief at 9. PJM arranges for competitive prices in the wholesale electric markets by managing the competitive wholesale markets for electric generation. *Id.* The Ohio-created subsidies for uneconomic power plants can impact the competitive wholesale markets of PJM. That impact would be felt throughout the entire regional electric grid.

III. CONCLUSION

The Court should not dismiss this appeal. Instead the Court should address the important issues before it – issues of its authority to review PUCO decisions; issues of unlawful transition charges; and issues concerning how to provide remedies to customers through prospective rate adjustments. The 456,000 customers of DP&L have paid twice now for unlawful transition charges (\$360 million), and have yet to see a penny of those unlawful charges returned. The Court should end this injustice by addressing these issues now.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Reply Brief by the Office of the Ohio Consumers' Counsel was served upon all parties of record via electronic transmission this 9th day of November 2017.

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4903.12 Jurisdiction.

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Effective Date: 10-01-1953 .

As Introduced

**132nd General Assembly
Regular Session
2017-2018**

H. B. No. 178

Representative DeVitis

A BILL

To amend section 4928.02 and to enact sections 1
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 2
4928.755, 4928.756, 4928.757, 4928.7511, 3
4928.7513, 4928.7514, 4928.7515, 4928.7520, 4
4928.7521, 4928.7522, 4928.7523, 4928.7524, 5
4928.7525, 4928.7526, 4928.7527, 4928.7530, 6
4928.7532, 4928.7533, 4928.7534, and 4928.7540 7
of the Revised Code regarding the zero-emissions 8
nuclear resource program. 9
10

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

Section 1. That section 4928.02 be amended and sections 11
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 4928.755, 12
4928.756, 4928.757, 4928.7511, 4928.7513, 4928.7514, 4928.7515, 13
4928.7520, 4928.7521, 4928.7522, 4928.7523, 4928.7524, 14
4928.7525, 4928.7526, 4928.7527, 4928.7530, 4928.7532, 15
4928.7533, 4928.7534, and 4928.7540 of the Revised Code be 16
enacted to read as follows: 17

Sec. 4928.02. It is the policy of this state to do the 18
following throughout this state: 19

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity ~~the following~~:

(1) Electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(2) Resources, including zero-emissions nuclear resources as defined in section 4928.75 of the Revised Code, that provide fuel diversity and environmental and other benefits.

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and

distribution systems are available to a customer-generator or 49
owner of distributed generation, so that the customer-generator 50
or owner can market and deliver the electricity it produces; 51

(G) Recognize the continuing emergence of competitive 52
electricity markets through the development and implementation 53
of flexible regulatory treatment, while simultaneously 54
recognizing the need for nuclear energy resources, as defined in 55
section 4928.75 of the Revised Code, and resources that provide 56
fuel diversity and environmental and other benefits; 57

(H) Ensure effective competition in the provision of 58
retail electric service by avoiding anticompetitive subsidies 59
flowing from a noncompetitive retail electric service to a 60
competitive retail electric service or to a product or service 61
other than retail electric service, and vice versa, including by 62
prohibiting the recovery of any generation-related costs through 63
distribution or transmission rates; 64

(I) Ensure retail electric service consumers protection 65
against unreasonable sales practices, market deficiencies, and 66
market power; 67

(J) Provide coherent, transparent means of giving 68
appropriate incentives to technologies that can adapt 69
successfully to potential environmental mandates; 70

(K) Encourage implementation of distributed generation 71
across customer classes through regular review and updating of 72
administrative rules governing critical issues such as, but not 73
limited to, interconnection standards, standby charges, and net 74
metering; 75

(L) Protect at-risk populations, including, but not 76
limited to, when considering the implementation of any new 77

advanced energy or renewable energy resource; 78

(M) Encourage the education of small business owners in 79
this state regarding the use of, and encourage the use of, 80
energy efficiency programs and alternative energy resources in 81
their businesses; 82

(N) Facilitate the state's effectiveness in the global 83
economy. 84

In carrying out this policy, the commission shall consider 85
rules as they apply to the costs of electric distribution 86
infrastructure, including, but not limited to, line extensions, 87
for the purpose of development in this state. 88

Sec. 4928.75. As used in sections 4928.75 to 4928.7540 of 89
the Revised Code: 90

(A) "Nuclear energy resource" means an electric generation 91
unit fueled, in whole or in part, by nuclear power and licensed 92
by the nuclear regulatory commission. 93

(B) "PJM" means the PJM Interconnection, L.L.C., or its 94
successor. 95

(C) "Zero-emissions nuclear credit" means the attributes 96
associated with one megawatt hour of electricity generated by a 97
zero-emissions nuclear resource. 98

(D) "Zero-emissions nuclear resource" means a nuclear 99
energy resource that meets the criteria of section 4928.754 of 100
the Revised Code. 101

Sec. 4928.751. There is hereby created a zero-emissions 102
nuclear resource program to enable the state to meet its policy 103
goals and requirements under which zero-emissions nuclear 104
credits are purchased by electric distribution utilities to 105

provide long-term energy security and environmental and other 106
benefits to the region and to retail electric service customers 107
in the state. An electric distribution utility in this state 108
that has a zero-emissions nuclear resource located within its 109
certified territory shall participate in the program. All 110
electric distribution utilities in the same holding company 111
system shall participate jointly and shall allocate costs across 112
all classes of each participating utility's customers. 113

Sec. 4928.752. The zero-emissions nuclear resource program 114
shall operate for successive two-year program periods beginning 115
with the initial program period commencing on the effective date 116
of this section and terminating on the last day of the eighth 117
program period. 118

Sec. 4928.753. To provide zero-emissions nuclear credits 119
under the zero-emissions nuclear program, an entity that owns or 120
operates a nuclear energy resource shall file with the public 121
utilities commission a written notice verifying that the 122
resource meets the criteria under section 4928.754 of the 123
Revised Code. The entity shall file the written notice not later 124
than ninety days after the commencement of the initial program 125
period. 126

Sec. 4928.754. A nuclear energy resource that satisfies 127
all of the following criteria is a zero-emissions nuclear 128
resource for purposes of zero-emissions nuclear credits: 129

(A) The resource is interconnected within the transmission 130
system of PJM. 131

(B) PJM has determined the resource is transmission 132
deliverable under the metrics by which PJM calculates 133
deliverability for purposes of capacity planning on a round-the- 134

clock baseload basis into the transmission zone or zones of 135
electric distribution utilities participating in the zero- 136
emissions nuclear resource program under sections 4928.75 to 137
4928.7540 of the Revised Code. 138

(C) (1) For in-state nuclear energy resources: 139

(a) The resource has benefited the air quality profile of 140
the state more than the predominant electric generation source 141
with similar capacity and baseload characteristics as the 142
resource as of the time the resource commenced operation. 143

(b) All of the following could occur if the resource 144
ceased operation and its capacity were replaced at the same 145
location by the then predominant electric generation source with 146
similar capacity and baseload characteristics as the resource: 147

(i) The ability of the state, or region of the state, to 148
maintain or decrease existing intensity of fine particulate 149
matter or to comply with one or more state or federal air 150
pollution control programs, standards, or goals is reduced. 151

(ii) The carbon dioxide emissions intensity of the state 152
is negatively impacted. 153

(iii) The ability of the state to maintain or decrease 154
existing intensity of carbon monoxide, lead, ground-level ozone, 155
particulate matter, nitrogen oxide, or sulfur dioxide is 156
negatively impacted. 157

(2) For all other nuclear energy resources, each such 158
resource is shown to provide no less than the same level of 159
environmental benefits to the state as nuclear energy resources 160
located within the state, pursuant to the requirements in 161
division (C) (1) of this section. 162

<u>(D) The resource, on or after January 1, 2017:</u>	163
<u>(1) Did not receive from another state tax exemptions,</u>	164
<u>deferrals, exclusions, allowances, payments, credits,</u>	165
<u>deductions, or reimbursements calculated in whole or in part</u>	166
<u>using a metric that provides value for emissions not produced by</u>	167
<u>the resource;</u>	168
<u>(2) Is not wholly owned by a municipal or cooperative</u>	169
<u>corporation or a group, association, or consortium of those</u>	170
<u>corporations; or</u>	171
<u>(3) Did not, during a program period described in section</u>	172
<u>4928.752 of the Revised Code, recover some or all of the capital</u>	173
<u>or operating costs of the resource through rates regulated by a</u>	174
<u>state.</u>	175
<u>Sec. 4928.755. With respect to a written notice filed</u>	176
<u>under section 4928.753 of the Revised Code relating to a nuclear</u>	177
<u>energy resource located in this state, any interested person may</u>	178
<u>file comments with the public utilities commission not later</u>	179
<u>than twenty days after the written notice was filed.</u>	180
<u>Sec. 4928.756. An entity that owns or operates a nuclear</u>	181
<u>energy resource may file with the public utilities commission a</u>	182
<u>response to any comment made under section 4928.755 of the</u>	183
<u>Revised Code, not later than ten days after the comment was</u>	184
<u>filed.</u>	185
<u>Sec. 4928.757. Not later than fifty days after the filing</u>	186
<u>of a written notice under section 4928.753 of the Revised Code</u>	187
<u>relating to a nuclear energy resource located in this state, the</u>	188
<u>public utilities commission shall designate a resource that</u>	189
<u>satisfies the criteria in section 4928.754 of the Revised Code</u>	190
<u>as a zero-emissions nuclear resource and issue an order</u>	191

consistent with that designation. If the commission does not 192
issue an order in the time required by this section, the 193
resource shall be deemed to be a zero-emissions nuclear 194
resource. 195

Sec. 4928.7511. The public utilities commission, under a 196
procedure it adopts, shall determine and issue the appropriate 197
order regarding whether a nuclear energy resource described in 198
division (C) (2) of section 4928.754 of the Revised Code 199
satisfies the criteria in section 4928.754 of the Revised Code 200
as a zero-emissions nuclear resource. The nuclear energy 201
resource shall submit an environmental study showing that the 202
resource meets the criteria under section 4928.754 of the 203
Revised Code. At minimum, the adopted procedure shall provide 204
the opportunity for comment and response similar to the 205
opportunities described under sections 4928.755 and 4928.756 of 206
the Revised Code. 207

Sec. 4928.7513. A nuclear energy resource determined under 208
section 4928.757 or 4928.7511 of the Revised Code to be a zero- 209
emissions nuclear resource shall continue to be considered such 210
a resource for all successive program periods as long as the 211
resource continues to meet the criteria of divisions (A), (B), 212
and (D) of section 4928.754 of the Revised Code. The provisions 213
of sections 4928.75 to 4928.7540 of the Revised Code shall apply 214
to any person to which zero-emissions nuclear resources are 215
sold, assigned, transferred, or conveyed. 216

Sec. 4928.7514. Zero-emission nuclear resources shall 217
provide zero-emissions nuclear credits for the zero-emissions 218
nuclear resource program. Not later than thirty days before a 219
program period commences, each zero-emissions nuclear resource 220
shall confirm with the public utilities commission its intent to 221

continue to commit its credits under the program. 222

Sec. 4928.7515. All financial statements, financial data, 223
and trade secrets submitted to or received by the public 224
utilities commission for purposes of satisfying the criteria as 225
a zero-emissions nuclear resource and any information taken for 226
any purpose from the statements, data, or trade secrets are not 227
public records under section 149.43 of the Revised Code. 228

Sec. 4928.7520. Not later than sixty days after the 229
initial program period commences and not later than thirty days 230
before a subsequent program period commences, the public 231
utilities commission shall set the price for zero-emissions 232
nuclear credits applicable for the period. For the initial 233
program period the price shall be seventeen dollars per credit. 234
For each subsequent program period, that price shall be adjusted 235
for inflation using the gross domestic product implicit price 236
deflator as published by the United States department of 237
commerce, bureau of economic analysis, index numbers 2007=100. 238

Sec. 4928.7521. At the same time the public utilities 239
commission sets the price for zero-emissions nuclear credits, 240
the commission shall determine the maximum number of credits to 241
be purchased by electric distribution utilities during the 242
program period. The amount the commission sets shall equal one- 243
third of the total "Total End User Consumption" in megawatt- 244
hours over the previous two calendar years as shown on PUCO Form 245
D1 of each participating electric distribution utility's most 246
recently filed long-term forecast report. 247

Sec. 4928.7522. Not later than seven days following the 248
close of each quarter of a program period, each zero-emissions 249
nuclear resource shall transfer all of its zero-emissions 250
nuclear credits generated that quarter to the public utilities 251

commission, which shall hold the credits for the sole purpose of 252
administering the program. 253

Sec. 4928.7523. Not later than seven days after the zero- 254
emissions nuclear resource transfers its credits, the public 255
utilities commission shall notify each participating electric 256
distribution utility of the total amount of zero-emissions 257
nuclear credits received from zero-emissions nuclear resources. 258

Sec. 4928.7524. (A) Except as provided in division (B) of 259
this section, all participating electric distribution utilities 260
shall purchase all zero-emissions nuclear credits transferred to 261
the public utilities commission up to the maximum number of 262
credits determined under section 4928.7521 of the Revised Code. 263
The commission shall allocate the amounts to be purchased by 264
each participating utility based on the total "Total End User 265
Consumption" in megawatt-hours over the previous two calendar 266
years as shown on PUCO Form D1 of each participating electric 267
distribution utility's most recently filed long-term forecast 268
report. Each participating electric distribution utility shall 269
pay the credit price for each credit purchased. 270

(B) If the owner, as of December 31, 2016, of a zero- 271
emissions nuclear resource sells or transfers the zero-emissions 272
nuclear resource, the commission shall reduce the number of 273
zero-emissions nuclear credits to be purchased from that 274
resource during the program period and, if necessary, successive 275
program periods, to reflect an adjustment equal to one-half of 276
the dollar amount of any net proceeds available after the 277
payment or provision for the seller's known obligations, but in 278
no instance shall this adjustment apply to a sale or transfer 279
under the United States Bankruptcy Code, including, but not 280
limited to, sections 363 and 1123, 11 U.S.C. sections 363 and 281

<u>1123.</u>	282
<u>Sec. 4928.7525. The public utilities commission shall</u>	283
<u>deposit all payments for credits into the zero-emissions nuclear</u>	284
<u>resources fund created under section 4928.7532 of the Revised</u>	285
<u>Code.</u>	286
<u>Sec. 4928.7526. Not later than seven days after receipt of</u>	287
<u>utility payment, the public utilities commission shall pay to</u>	288
<u>each zero-emissions nuclear resource the amount paid for each of</u>	289
<u>the resource's zero-emissions nuclear credits purchased from the</u>	290
<u>zero-emissions nuclear resources fund.</u>	291
<u>Sec. 4928.7527. Credits purchased by participating</u>	292
<u>electric distribution utilities may not be transferred, sold, or</u>	293
<u>assigned to any other entity.</u>	294
<u>Sec. 4928.7530. Each participating electric distribution</u>	295
<u>utility shall recover any and all direct and indirect costs for</u>	296
<u>the purchase of zero-emissions nuclear credits through a</u>	297
<u>nonbypassable rider charged to all of its retail electric</u>	298
<u>service customers, which rider shall be established not later</u>	299
<u>than sixty days after the effective date of this section. The</u>	300
<u>nonbypassable charge shall be designed such that no retail</u>	301
<u>electric service customer shall have an increase resulting from</u>	302
<u>the nonbypassable rider in the customer's total retail electric</u>	303
<u>service bill of more than five per cent as compared to June</u>	304
<u>2015. The participating electric distribution utility shall</u>	305
<u>defer as a regulatory asset an amount equal to the revenue</u>	306
<u>reduction resulting from the five per cent limit on customer</u>	307
<u>bill increases and recover the deferral plus carrying charges</u>	308
<u>through a nonbypassable charge assessed over a twelve-month</u>	309
<u>period.</u>	310

Sec. 4928.7532. There is hereby created the zero-emissions nuclear resources fund that shall be in the custody of the treasurer of state but shall not be part of the state treasury. The fund shall consist of all money collected by the public utilities commission from purchases of zero-emissions nuclear credits. The amounts deposited into the fund shall be used to pay the credit purchase price to the resources that generated the credits. All investment earnings from the fund shall be transferred by the treasurer to the general revenue fund in the state treasury. 311
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Sec. 4928.7533. During each program period in which a zero-emissions nuclear resource receives payment for credits under section 4928.7526 of the Revised Code, an entity that owns or operates that zero-emissions nuclear resource and that has its corporate headquarters located in this state shall continue to maintain its corporate headquarters in this state. 321
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Sec. 4928.7534. During the sixth and eleventh years of the zero-emissions nuclear resource program, the public utilities commission shall evaluate the zero-emissions nuclear credit price established under section 4928.7520 of the Revised Code for the purpose of discerning whether the program is achieving the policy goals in section 4928.751 of the Revised Code and whether those policy goals are being met through other federal environmental laws, programs, rules or regulations, or through amendments to the federal tax code. Upon the conclusion of its evaluation, the commission shall report the results of its evaluation to the standing committees of both houses of the general assembly that have primary jurisdiction regarding public utility legislation. In no case shall the zero-emissions nuclear resource program terminate earlier than the last day of the second program period. 327
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<u>Sec. 4928.7540. (A) For purposes of this section:</u>	342
<u>(1) "Employment levels" means the number of full-time</u>	343
<u>employees regularly providing services at the location of a</u>	344
<u>zero-emissions nuclear resource.</u>	345
<u>(2) "Full-time employee" means an individual who is</u>	346
<u>employed for consideration for at least thirty-five hours per</u>	347
<u>week, or who renders any other standard of service generally</u>	348
<u>accepted by custom or specified by contract as full-time</u>	349
<u>employment.</u>	350
<u>(B) During each program period in which a zero-emissions</u>	351
<u>nuclear resource receives payment for zero-emissions nuclear</u>	352
<u>credits under section 4928.7526 of the Revised Code, the</u>	353
<u>employment levels at that zero-emissions nuclear resource shall</u>	354
<u>continue to be similar to that of nuclear energy resources</u>	355
<u>constructed prior to 1990 in the United States with the same</u>	356
<u>reactor type, similar nameplate capacity, and single-unit</u>	357
<u>location.</u>	358
Section 2. That existing section 4928.02 of the Revised	359
Code is hereby repealed.	360

As Introduced

132nd General Assembly

Regular Session

2017-2018

H. B. No. 381

Representative DeVitis

Cosponsors: Representatives Henne, Householder, Johnson, Seitz, Slaby, Stein, Vitale, Faber, Patton, Young, Roegner, Sweeney, Retherford, Celebrezze, Keller

A BILL

To amend section 4928.02 and to enact sections 1
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 2
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regarding the zero-emissions nuclear resource 8
program. 9
10

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

Section 1. That section 4928.02 be amended and sections 11
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 4928.755, 12
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4928.7525, 4928.7526, 4928.7527, 4928.7532, 4928.7533, and 15
4928.7540 of the Revised Code be enacted to read as follows: 16

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following throughout this state: 18

(A) Ensure the availability to consumers of adequate,	19
reliable, safe, efficient, nondiscriminatory, and reasonably	20
priced retail electric service;	21
(B) Ensure the availability of unbundled and comparable	22
retail electric service that provides consumers with the	23
supplier, price, terms, conditions, and quality options they	24
elect to meet their respective needs;	25
(C) Ensure diversity of <u>electricity</u> the following:	26
(1) <u>Electricity</u> supplies and suppliers, by giving	27
consumers effective choices over the selection of those supplies	28
and suppliers and by encouraging the development of distributed	29
and small generation facilities;	30
(2) <u>Resources, including zero-emissions nuclear resources</u>	31
<u>as defined in section 4928.75 of the Revised Code, that provide</u>	32
<u>fuel diversity and environmental and other benefits.</u>	33
(D) Encourage innovation and market access for cost-	34
effective supply- and demand-side retail electric service	35
including, but not limited to, demand-side management, time-	36
differentiated pricing, waste energy recovery systems, smart	37
grid programs, and implementation of advanced metering	38
infrastructure;	39
(E) Encourage cost-effective and efficient access to	40
information regarding the operation of the transmission and	41
distribution systems of electric utilities in order to promote	42
both effective customer choice of retail electric service and	43
the development of performance standards and targets for service	44
quality for all consumers, including annual achievement reports	45
written in plain language;	46
(F) Ensure that an electric utility's transmission and	47

distribution systems are available to a customer-generator or 48
owner of distributed generation, so that the customer-generator 49
or owner can market and deliver the electricity it produces; 50

(G) Recognize the continuing emergence of competitive 51
electricity markets through the development and implementation 52
of flexible regulatory treatment, while simultaneously 53
recognizing the need for nuclear energy resources, as defined in 54
section 4928.75 of the Revised Code, and resources that provide 55
fuel diversity and environmental and other benefits; 56

(H) Ensure effective competition in the provision of 57
retail electric service by avoiding anticompetitive subsidies 58
flowing from a noncompetitive retail electric service to a 59
competitive retail electric service or to a product or service 60
other than retail electric service, and vice versa, including by 61
prohibiting the recovery of any generation-related costs through 62
distribution or transmission rates; 63

(I) Ensure retail electric service consumers protection 64
against unreasonable sales practices, market deficiencies, and 65
market power; 66

(J) Provide coherent, transparent means of giving 67
appropriate incentives to technologies that can adapt 68
successfully to potential environmental mandates; 69

(K) Encourage implementation of distributed generation 70
across customer classes through regular review and updating of 71
administrative rules governing critical issues such as, but not 72
limited to, interconnection standards, standby charges, and net 73
metering; 74

(L) Protect at-risk populations, including, but not 75
limited to, when considering the implementation of any new 76

advanced energy or renewable energy resource; 77

(M) Encourage the education of small business owners in 78
this state regarding the use of, and encourage the use of, 79
energy efficiency programs and alternative energy resources in 80
their businesses; 81

(N) Facilitate the state's effectiveness in the global 82
economy. 83

In carrying out this policy, the commission shall consider 84
rules as they apply to the costs of electric distribution 85
infrastructure, including, but not limited to, line extensions, 86
for the purpose of development in this state. 87

Sec. 4928.75. As used in sections 4928.75 to 4928.7540 of 88
the Revised Code: 89

(A) "Nuclear energy resource" means an electric generation 90
unit fueled, in whole or in part, by nuclear power and licensed 91
by the nuclear regulatory commission. 92

(B) "PJM" means the PJM Interconnection, L.L.C., or its 93
successor. 94

(C) "Zero-emissions nuclear credit" means the attributes 95
associated with one megawatt hour of electricity generated by a 96
zero-emissions nuclear resource. 97

(D) "Zero-emissions nuclear resource" means a nuclear 98
energy resource that meets the criteria of section 4928.754 of 99
the Revised Code. 100

Sec. 4928.751. There is hereby created a zero-emissions 101
nuclear resource program to enable the state to meet its policy 102
goals and requirements under which zero-emissions nuclear 103
credits are allocated to electric distribution utilities to 104

provide long-term energy security and environmental and other 105
benefits to the region and to retail electric service customers 106
in the state. An electric distribution utility in this state 107
that has a zero-emissions nuclear resource located within its 108
certified territory shall participate in the program. All 109
electric distribution utilities in the same holding company 110
system shall participate jointly and shall allocate revenue 111
collection across all classes of each participating utility's 112
customers. 113

Sec. 4928.752. (A) The zero-emissions nuclear resource 114
program shall operate for successive two-year program periods 115
beginning with the initial program period commencing on the 116
effective date of this section and terminating on December 31, 117
2030, unless extended by the general assembly. Following 118
termination, any over-collection of revenue during the last 119
program period shall be credited to customers. 120

(B) The public utilities commission shall conduct an 121
inquiry in 2029 to determine whether it is in the public 122
interest to continue the zero-emissions nuclear resource program 123
after 2030, and shall report its findings to the general 124
assembly. 125

Sec. 4928.753. To provide zero-emissions nuclear credits 126
under the zero-emissions nuclear resource program, an entity 127
that owns or operates a nuclear energy resource shall file with 128
the public utilities commission a written notice verifying that 129
the resource meets the criteria under section 4928.754 of the 130
Revised Code. The entity shall file the written notice not later 131
than ninety days after the commencement of the initial program 132
period. 133

Sec. 4928.754. A nuclear energy resource that satisfies 134

<u>all of the following criteria is a zero-emissions nuclear</u>	135
<u>resource for purposes of zero-emissions nuclear credits:</u>	136
<u>(A) The resource is interconnected within the transmission</u>	137
<u>system of PJM.</u>	138
<u>(B) PJM has determined the resource is transmission</u>	139
<u>deliverable under the metrics by which PJM calculates</u>	140
<u>deliverability for purposes of capacity planning on a round-the-</u>	141
<u>clock baseload basis into the transmission zone or zones of</u>	142
<u>electric distribution utilities participating in the zero-</u>	143
<u>emissions nuclear resource program under sections 4928.75 to</u>	144
<u>4928.7540 of the Revised Code.</u>	145
<u>(C) (1) For in-state nuclear energy resources:</u>	146
<u>(a) The resource has benefited the air quality profile of</u>	147
<u>the state more than the predominant electric generation source</u>	148
<u>with similar capacity and baseload characteristics as the</u>	149
<u>resource as of the time the resource commenced operation.</u>	150
<u>(b) All of the following could occur if the resource</u>	151
<u>ceased operation and its capacity were replaced at the same</u>	152
<u>location by the then predominant electric generation source with</u>	153
<u>similar capacity and baseload characteristics as the resource:</u>	154
<u>(i) The ability of the state, or region of the state, to</u>	155
<u>maintain or decrease existing levels of volatile organic</u>	156
<u>compounds or to comply with one or more state or federal air</u>	157
<u>pollution control programs, standards, or goals is reduced.</u>	158
<u>(ii) The carbon dioxide emissions intensity of the state</u>	159
<u>is negatively impacted.</u>	160
<u>(iii) The ability of the state to maintain or decrease</u>	161
<u>existing levels of carbon monoxide, lead, ground-level ozone,</u>	162

particulate matter, nitrogen oxide, or sulfur dioxide is 163
negatively impacted. 164

(2) For all other nuclear energy resources, each such 165
resource is shown to provide no less than the same level of 166
environmental benefits to the state as nuclear energy resources 167
located within the state, pursuant to the requirements in 168
division (C) (1) of this section. 169

(D) The resource, on or after January 1, 2017: 170

(1) Did not receive from another state tax exemptions, 171
deferrals, exclusions, allowances, payments, credits, 172
deductions, or reimbursements calculated in whole or in part 173
using a metric that provides value for emissions not produced by 174
the resource; 175

(2) Is not wholly owned by a municipal or cooperative 176
corporation or a group, association, or consortium of those 177
corporations; or 178

(3) Did not, during a program period described in section 179
4928.752 of the Revised Code, recover some or all of the capital 180
or operating costs of the resource through rates regulated by a 181
state. 182

Sec. 4928.755. With respect to a written notice filed 183
under section 4928.753 of the Revised Code relating to a nuclear 184
energy resource located in this state, any interested person may 185
file comments with the public utilities commission not later 186
than twenty days after the written notice was filed. 187

Sec. 4928.756. An entity that owns or operates a nuclear 188
energy resource may file with the public utilities commission a 189
response to any comment made under section 4928.755 of the 190
Revised Code, not later than ten days after the comment was 191

filed. 192

Sec. 4928.757. Not later than fifty days after the filing 193
of a written notice under section 4928.753 of the Revised Code 194
relating to a nuclear energy resource located in this state, the 195
public utilities commission shall designate a resource that 196
satisfies the criteria in section 4928.754 of the Revised Code 197
as a zero-emissions nuclear resource and issue an order 198
consistent with that designation. If the commission does not 199
issue an order in the time required by this section, the 200
resource shall be deemed to be a zero-emissions nuclear 201
resource. 202

Sec. 4928.7511. The public utilities commission, under a 203
procedure it adopts, shall determine and issue the appropriate 204
order regarding whether a nuclear energy resource described in 205
division (C)(2) of section 4928.754 of the Revised Code 206
satisfies the criteria in section 4928.754 of the Revised Code 207
as a zero-emissions nuclear resource. The nuclear energy 208
resource shall submit an environmental study showing that the 209
resource meets the criteria under section 4928.754 of the 210
Revised Code. At minimum, the adopted procedure shall provide 211
the opportunity for comment and response similar to the 212
opportunities described under sections 4928.755 and 4928.756 of 213
the Revised Code. 214

Sec. 4928.7513. A nuclear energy resource determined under 215
section 4928.757 or 4928.7511 of the Revised Code to be a zero- 216
emissions nuclear resource shall continue to be considered such 217
a resource for all successive program periods as long as the 218
resource continues to meet the criteria of divisions (A), (B), 219
and (D) of section 4928.754 of the Revised Code. The provisions 220
of sections 4928.75 to 4928.7540 of the Revised Code shall apply 221

to any person to which zero-emissions nuclear resources are 222
sold, assigned, transferred, or conveyed. 223

Sec. 4928.7514. Zero-emission nuclear resources shall 224
provide zero-emissions nuclear credits for the zero-emissions 225
nuclear resource program. Not later than thirty days before a 226
program period commences, each zero-emissions nuclear resource 227
shall confirm with the public utilities commission its intent to 228
continue to commit its credits under the program. 229

Sec. 4928.7515. All financial statements, financial data, 230
and trade secrets submitted to or received by the public 231
utilities commission for purposes of satisfying the criteria as 232
a zero-emissions nuclear resource and any information taken for 233
any purpose from the statements, data, or trade secrets are not 234
public records under section 149.43 of the Revised Code. 235

Sec. 4928.7520. Not later than sixty days after the 236
initial program period commences and not later than thirty days 237
before a subsequent program period commences, the public 238
utilities commission shall set the price for zero-emissions 239
nuclear credits applicable for the period. For the initial 240
program period the price shall be seventeen dollars per credit. 241
For each subsequent program period, that price shall be adjusted 242
for inflation using the gross domestic product implicit price 243
deflator as published by the United States department of 244
commerce, bureau of economic analysis, index numbers 2007=100. 245

Sec. 4928.7521. At the same time the public utilities 246
commission sets the price for zero-emissions nuclear credits, 247
the commission shall determine the maximum number of credits to 248
be allocated to participating electric distribution utilities 249
during the program period. The amount the commission sets shall 250
equal one-third of the total "Total End User Consumption" in 251

megawatt-hours over the previous two calendar years as shown on 252
PUCO Form D1 of each participating electric distribution 253
utility's most recently filed long-term forecast report. 254

Sec. 4928.7522. Not later than seven days following the 255
close of each quarter of a program period, each zero-emissions 256
nuclear resource shall transfer all of its zero-emissions 257
nuclear credits generated that quarter to the public utilities 258
commission, which shall hold the credits for the sole purpose of 259
administering the program. 260

Sec. 4928.7523. Not later than seven days after the zero- 261
emissions nuclear resource transfers its credits, the public 262
utilities commission shall allocate to the participating 263
electric distribution utilities all of the zero-emissions 264
nuclear credits transferred to the commission, up to the maximum 265
number of credits determined for each participating utility 266
under section 4928.7521 of the Revised Code. The commission 267
shall allocate the credits to each participating utility in 268
proportion to the total "Total End User Consumption" in 269
megawatt-hours over the previous two calendar years as shown on 270
PUCO Form D1 of each participating utility's most recently filed 271
long-term forecast report. The commission shall notify each 272
participating utility of the allocation for that utility. 273

Sec. 4928.7524. (A) Except as provided in division (B) of 274
this section, each participating electric distribution utility 275
shall collect, through a nonbypassable rider charged to all of 276
its retail electric service customers, an amount equal to the 277
number of credits allocated to the utility under section 278
4928.7523 of the Revised Code multiplied by the credit price 279
established under section 4928.7520 of the Revised Code. 280

(B) (1) A residential customer's monthly nonbypassable 281

charge shall be set at two dollars and fifty cents. A 282
nonresidential customer's monthly nonbypassable charge shall be 283
set at the lesser of three thousand five hundred dollars or five 284
per cent of the customer's total bill. The participating utility 285
may adjust these charges downward if a lower rate will allow 286
full collection of the total amount to be collected under 287
division (A) of this section. 288

(2) Each participating utility shall transfer to the 289
public utilities commission all revenues that it collects from 290
its nonbypassable rider. During each program period, if the 291
total revenues collected are less for that period than the total 292
amount to be collected under division (A) of this section, the 293
participating utility shall not be responsible for or required 294
to transfer any amounts in excess of those collected from its 295
nonbypassable rider. 296

(3) The participating utility shall apply for the 297
establishment of the nonbypassable rider, which the commission 298
shall approve not later than sixty days after the effective date 299
of this section. 300

(C) If the owner, as of December 31, 2016, of a zero- 301
emissions nuclear resource sells or transfers the zero-emissions 302
nuclear resource, the commission shall reduce the number of 303
zero-emissions nuclear credits to be allocated from that 304
resource during the program period and, if necessary, successive 305
program periods, to reflect an adjustment equal to one-half of 306
the dollar amount of any net proceeds available after the 307
payment or provision for the seller's known obligations, but in 308
no instance shall this adjustment apply to a sale or transfer 309
under the United States Bankruptcy Code, including, but not 310
limited to, sections 363 and 1123, 11 U.S.C. sections 363 and 311

<u>1123.</u>	312
<u>Sec. 4928.7525. The public utilities commission shall</u>	313
<u>deposit all revenues received for credits under section</u>	314
<u>4928.7524 of the Revised Code into the zero-emissions nuclear</u>	315
<u>resources fund created under section 4928.7532 of the Revised</u>	316
<u>Code.</u>	317
<u>Sec. 4928.7526. Not later than seven days after receipt of</u>	318
<u>utility revenues, the public utilities commission shall use all</u>	319
<u>amounts in the zero-emissions nuclear resources fund to pay to</u>	320
<u>each zero-emissions nuclear resource the total revenues received</u>	321
<u>for each of the resource's zero-emissions nuclear credits.</u>	322
<u>Sec. 4928.7527. Credits allocated to participating</u>	323
<u>electric distribution utilities may not be transferred, sold, or</u>	324
<u>allocated to any other entity.</u>	325
<u>Sec. 4928.7532. There is hereby created the zero-emissions</u>	326
<u>nuclear resources fund that shall be in the custody of the</u>	327
<u>treasurer of state but shall not be part of the state treasury.</u>	328
<u>The fund shall consist of all revenues received by the public</u>	329
<u>utilities commission from participating electric distribution</u>	330
<u>utilities for their allocations of zero-emissions nuclear</u>	331
<u>credits. The amounts deposited into the fund shall be used to</u>	332
<u>compensate the zero-emissions nuclear resources that generated</u>	333
<u>the credits. All investment earnings from the fund shall be</u>	334
<u>transferred by the treasurer to the general revenue fund in the</u>	335
<u>state treasury.</u>	336
<u>Sec. 4928.7533. During each program period in which a</u>	337
<u>zero-emissions nuclear resource receives payment for credits</u>	338
<u>under section 4928.7526 of the Revised Code, an entity that owns</u>	339
<u>or operates that zero-emissions nuclear resource and that has</u>	340

its corporate headquarters located in this state shall continue 341
to maintain its corporate headquarters in this state. 342

Sec. 4928.7540. (A) For purposes of this section: 343

(1) "Employment levels" means the number of full-time 344
employees regularly providing services at the location of a 345
zero-emissions nuclear resource. 346

(2) "Full-time employee" means an individual who is 347
employed for consideration for at least thirty-five hours per 348
week, or who renders any other standard of service generally 349
accepted by custom or specified by contract as full-time 350
employment. 351

(B) During each program period in which a zero-emissions 352
nuclear resource receives payment for zero-emissions nuclear 353
credits under section 4928.7526 of the Revised Code, the 354
employment levels at that zero-emissions nuclear resource shall 355
continue to be similar to that of nuclear energy resources 356
constructed prior to 1990 in the United States with the same 357
reactor type, similar nameplate capacity, and single-unit 358
location. 359

Section 2. That existing section 4928.02 of the Revised 360
Code is hereby repealed. 361

4903.12 Jurisdiction.

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Effective Date: 10-01-1953 .

I_132_1270-10

132nd General Assembly
Regular Session
2017-2018

Sub. H. B. No. 239

A BILL

To amend sections 4928.01, 4928.02, 4928.141, 1
4928.142, and 4928.143 and to enact section 2
4928.147 of the Revised Code to allow electric 3
distribution utilities to recover costs for a 4
national security generation resource. 5

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

Section 1. That sections 4928.01, 4928.02, 4928.141, 6
4928.142, and 4928.143 be amended and section 4928.147 of the 7
Revised Code be enacted to read as follows: 8

Sec. 4928.01. (A) As used in this chapter: 9

(1) "Ancillary service" means any function necessary to 10
the provision of electric transmission or distribution service 11
to a retail customer and includes, but is not limited to, 12
scheduling, system control, and dispatch services; reactive 13
supply from generation resources and voltage control service; 14
reactive supply from transmission resources service; regulation 15
service; frequency response service; energy imbalance service; 16
operating reserve-spinning reserve service; operating reserve- 17



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supplemental reserve service; load following; back-up supply 18
service; real-power loss replacement service; dynamic 19
scheduling; system black start capability; and network stability 20
service. 21

(2) "Billing and collection agent" means a fully 22
independent agent, not affiliated with or otherwise controlled 23
by an electric utility, electric services company, electric 24
cooperative, or governmental aggregator subject to certification 25
under section 4928.08 of the Revised Code, to the extent that 26
the agent is under contract with such utility, company, 27
cooperative, or aggregator solely to provide billing and 28
collection for retail electric service on behalf of the utility 29
company, cooperative, or aggregator. 30

(3) "Certified territory" means the certified territory 31
established for an electric supplier under sections 4933.81 to 32
4933.90 of the Revised Code. 33

(4) "Competitive retail electric service" means a 34
component of retail electric service that is competitive as 35
provided under division (B) of this section. 36

(5) "Electric cooperative" means a not-for-profit electric 37
light company that both is or has been financed in whole or in 38
part under the "Rural Electrification Act of 1936," 49 Stat. 39
1363, 7 U.S.C. 901, and owns or operates facilities in this 40
state to generate, transmit, or distribute electricity, or a 41
not-for-profit successor of such company. 42

(6) "Electric distribution utility" means an electric 43
utility that supplies at least retail electric distribution 44
service. 45

(7) "Electric light company" has the same meaning as in 46

section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

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

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

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

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

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

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an

aggregator for the provision of a competitive retail electric 76
service under authority conferred under section 4928.20 of the 77
Revised Code. 78

(14) A person acts "knowingly," regardless of the person's 79
purpose, when the person is aware that the person's conduct will 80
probably cause a certain result or will probably be of a certain 81
nature. A person has knowledge of circumstances when the person 82
is aware that such circumstances probably exist. 83

(15) "Level of funding for low-income customer energy 84
efficiency programs provided through electric utility rates" 85
means the level of funds specifically included in an electric 86
utility's rates on October 5, 1999, pursuant to an order of the 87
public utilities commission issued under Chapter 4905. or 4909. 88
of the Revised Code and in effect on October 4, 1999, for the 89
purpose of improving the energy efficiency of housing for the 90
utility's low-income customers. The term excludes the level of 91
any such funds committed to a specific nonprofit organization or 92
organizations pursuant to a stipulation or contract. 93

(16) "Low-income customer assistance programs" means the 94
percentage of income payment plan program, the home energy 95
assistance program, the home weatherization assistance program, 96
and the targeted energy efficiency and weatherization program. 97

(17) "Market development period" for an electric utility 98
means the period of time beginning on the starting date of 99
competitive retail electric service and ending on the applicable 100
date for that utility as specified in section 4928.40 of the 101
Revised Code, irrespective of whether the utility applies to 102
receive transition revenues under this chapter. 103

(18) "Market power" means the ability to impose on 104

customers a sustained price for a product or service above the 105
price that would prevail in a competitive market. 106

(19) "Mercantile customer" means a commercial or 107
industrial customer if the electricity consumed is for 108
nonresidential use and the customer consumes more than seven 109
hundred thousand kilowatt hours per year or is part of a 110
national account involving multiple facilities in one or more 111
states. 112

(20) "Municipal electric utility" means a municipal 113
corporation that owns or operates facilities to generate, 114
transmit, or distribute electricity. 115

(21) "Noncompetitive retail electric service" means a 116
component of retail electric service that is noncompetitive as 117
provided under division (B) of this section. 118

(22) "Nonfirm electric service" means electric service 119
provided pursuant to a schedule filed under section 4905.30 of 120
the Revised Code or pursuant to an arrangement under section 121
4905.31 of the Revised Code, which schedule or arrangement 122
includes conditions that may require the customer to curtail or 123
interrupt electric usage during nonemergency circumstances upon 124
notification by an electric utility. 125

(23) "Percentage of income payment plan arrears" means 126
funds eligible for collection through the percentage of income 127
payment plan rider, but uncollected as of July 1, 2000. 128

(24) "Person" has the same meaning as in section 1.59 of 129
the Revised Code. 130

(25) "Advanced energy project" means any technologies, 131
products, activities, or management practices or strategies that 132
facilitate the generation or use of electricity or energy and 133

that reduce or support the reduction of energy consumption or 134
support the production of clean, renewable energy for 135
industrial, distribution, commercial, institutional, 136
governmental, research, not-for-profit, or residential energy 137
users, including, but not limited to, advanced energy resources 138
and renewable energy resources. "Advanced energy project" also 139
includes any project described in division (A), (B), or (C) of 140
section 4928.621 of the Revised Code. 141

(26) "Regulatory assets" means the unamortized net 142
regulatory assets that are capitalized or deferred on the 143
regulatory books of the electric utility, pursuant to an order 144
or practice of the public utilities commission or pursuant to 145
generally accepted accounting principles as a result of a prior 146
commission rate-making decision, and that would otherwise have 147
been charged to expense as incurred or would not have been 148
capitalized or otherwise deferred for future regulatory 149
consideration absent commission action. "Regulatory assets" 150
includes, but is not limited to, all deferred demand-side 151
management costs; all deferred percentage of income payment plan 152
arrears; post-in-service capitalized charges and assets 153
recognized in connection with statement of financial accounting 154
standards no. 109 (receivables from customers for income taxes); 155
future nuclear decommissioning costs and fuel disposal costs as 156
those costs have been determined by the commission in the 157
electric utility's most recent rate or accounting application 158
proceeding addressing such costs; the undepreciated costs of 159
safety and radiation control equipment on nuclear generating 160
plants owned or leased by an electric utility; and fuel costs 161
currently deferred pursuant to the terms of one or more 162
settlement agreements approved by the commission. 163

(27) "Retail electric service" means any service involved 164

in supplying or arranging for the supply of electricity to 165
ultimate consumers in this state, from the point of generation 166
to the point of consumption. For the purposes of this chapter, 167
retail electric service includes one or more of the following 168
"service components": generation service, aggregation service, 169
power marketing service, power brokerage service, transmission 170
service, distribution service, ancillary service, metering 171
service, and billing and collection service. 172

(28) "Starting date of competitive retail electric 173
service" means January 1, 2001. 174

(29) "Customer-generator" means a user of a net metering 175
system. 176

(30) "Net metering" means measuring the difference in an 177
applicable billing period between the electricity supplied by an 178
electric service provider and the electricity generated by a 179
customer-generator that is fed back to the electric service 180
provider. 181

(31) "Net metering system" means a facility for the 182
production of electrical energy that does all of the following: 183

(a) Uses as its fuel either solar, wind, biomass, landfill 184
gas, or hydropower, or uses a microturbine or a fuel cell; 185

(b) Is located on a customer-generator's premises; 186

(c) Operates in parallel with the electric utility's 187
transmission and distribution facilities; 188

(d) Is intended primarily to offset part or all of the 189
customer-generator's requirements for electricity. 190

(32) "Self-generator" means an entity in this state that 191
owns or hosts on its premises an electric generation facility 192

that produces electricity primarily for the owner's consumption 193
and that may provide any such excess electricity to another 194
entity, whether the facility is installed or operated by the 195
owner or by an agent under a contract. 196

(33) "Rate plan" means the standard service offer in 197
effect on the effective date of the amendment of this section by 198
S.B. 221 of the 127th general assembly, July 31, 2008. 199

(34) "Advanced energy resource" means any of the 200
following: 201

(a) Any method or any modification or replacement of any 202
property, process, device, structure, or equipment that 203
increases the generation output of an electric generating 204
facility to the extent such efficiency is achieved without 205
additional carbon dioxide emissions by that facility; 206

(b) Any distributed generation system consisting of 207
customer cogeneration technology; 208

(c) Clean coal technology that includes a carbon-based 209
product that is chemically altered before combustion to 210
demonstrate a reduction, as expressed as ash, in emissions of 211
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 212
sulfur trioxide in accordance with the American society of 213
testing and materials standard D1757A or a reduction of metal 214
oxide emissions in accordance with standard D5142 of that 215
society, or clean coal technology that includes the design 216
capability to control or prevent the emission of carbon dioxide, 217
which design capability the commission shall adopt by rule and 218
shall be based on economically feasible best available 219
technology or, in the absence of a determined best available 220
technology, shall be of the highest level of economically 221

feasible design capability for which there exists generally	222
accepted scientific opinion;	223
(d) Advanced nuclear energy technology consisting of	224
generation III technology as defined by the nuclear regulatory	225
commission; other, later technology; or significant improvements	226
to existing facilities;	227
(e) Any fuel cell used in the generation of electricity,	228
including, but not limited to, a proton exchange membrane fuel	229
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	230
solid oxide fuel cell;	231
(f) Advanced solid waste or construction and demolition	232
debris conversion technology, including, but not limited to,	233
advanced stoker technology, and advanced fluidized bed	234
gasification technology, that results in measurable greenhouse	235
gas emissions reductions as calculated pursuant to the United	236
States environmental protection agency's waste reduction model	237
(WARM);	238
(g) Demand-side management and any energy efficiency	239
improvement;	240
(h) Any new, retrofitted, refueled, or repowered	241
generating facility located in Ohio, including a simple or	242
combined-cycle natural gas generating facility or a generating	243
facility that uses biomass, coal, modular nuclear, or any other	244
fuel as its input;	245
(i) Any uprated capacity of an existing electric	246
generating facility if the uprated capacity results from the	247
deployment of advanced technology.	248
"Advanced energy resource" does not include a waste energy	249
recovery system that is, or has been, included in an energy	250

efficiency program of an electric distribution utility pursuant	251
to requirements under section 4928.66 of the Revised Code.	252
(35) "Air contaminant source" has the same meaning as in	253
section 3704.01 of the Revised Code.	254
(36) "Cogeneration technology" means technology that	255
produces electricity and useful thermal output simultaneously.	256
(37) (a) "Renewable energy resource" means any of the	257
following:	258
(i) Solar photovoltaic or solar thermal energy;	259
(ii) Wind energy;	260
(iii) Power produced by a hydroelectric facility;	261
(iv) Power produced by a small hydroelectric facility,	262
which is a facility that operates, or is rated to operate, at an	263
aggregate capacity of less than six megawatts;	264
(v) Power produced by a run-of-the-river hydroelectric	265
facility placed in service on or after January 1, 1980, that is	266
located within this state, relies upon the Ohio river, and	267
operates, or is rated to operate, at an aggregate capacity of	268
forty or more megawatts;	269
(vi) Geothermal energy;	270
(vii) Fuel derived from solid wastes, as defined in	271
section 3734.01 of the Revised Code, through fractionation,	272
biological decomposition, or other process that does not	273
principally involve combustion;	274
(viii) Biomass energy;	275
(ix) Energy produced by cogeneration technology that is	276
placed into service on or before December 31, 2015, and for	277

which more than ninety per cent of the total annual energy input 278
is from combustion of a waste or byproduct gas from an air 279
contaminant source in this state, which source has been in 280
operation since on or before January 1, 1985, provided that the 281
cogeneration technology is a part of a facility located in a 282
county having a population of more than three hundred sixty-five 283
thousand but less than three hundred seventy thousand according 284
to the most recent federal decennial census; 285

(x) Biologically derived methane gas; 286

(xi) Heat captured from a generator of electricity, 287
boiler, or heat exchanger fueled by biologically derived methane 288
gas; 289

(xii) Energy derived from nontreated by-products of the 290
pulping process or wood manufacturing process, including bark, 291
wood chips, sawdust, and lignin in spent pulping liquors. 292

"Renewable energy resource" includes, but is not limited 293
to, any fuel cell used in the generation of electricity, 294
including, but not limited to, a proton exchange membrane fuel 295
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 296
solid oxide fuel cell; wind turbine located in the state's 297
territorial waters of Lake Erie; methane gas emitted from an 298
abandoned coal mine; waste energy recovery system placed into 299
service or retrofitted on or after the effective date of the 300
amendment of this section by S.B. 315 of the 129th general 301
assembly, September 10, 2012, except that a waste energy 302
recovery system described in division (A) (38) (b) of this section 303
may be included only if it was placed into service between 304
January 1, 2002, and December 31, 2004; storage facility that 305
will promote the better utilization of a renewable energy 306
resource; or distributed generation system used by a customer to 307

generate electricity from any such energy. 308

"Renewable energy resource" does not include a waste 309
energy recovery system that is, or was, on or after January 1, 310
2012, included in an energy efficiency program of an electric 311
distribution utility pursuant to requirements under section 312
4928.66 of the Revised Code. 313

(b) As used in division (A) (37) of this section, 314
"hydroelectric facility" means a hydroelectric generating 315
facility that is located at a dam on a river, or on any water 316
discharged to a river, that is within or bordering this state or 317
within or bordering an adjoining state and meets all of the 318
following standards: 319

(i) The facility provides for river flows that are not 320
detrimental for fish, wildlife, and water quality, including 321
seasonal flow fluctuations as defined by the applicable 322
licensing agency for the facility. 323

(ii) The facility demonstrates that it complies with the 324
water quality standards of this state, which compliance may 325
consist of certification under Section 401 of the "Clean Water 326
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 327
demonstrates that it has not contributed to a finding by this 328
state that the river has impaired water quality under Section 329
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 330
U.S.C. 1313. 331

(iii) The facility complies with mandatory prescriptions 332
regarding fish passage as required by the federal energy 333
regulatory commission license issued for the project, regarding 334
fish protection for riverine, anadromous, and catadromous fish. 335

(iv) The facility complies with the recommendations of the 336

Ohio environmental protection agency and with the terms of its 337
federal energy regulatory commission license regarding watershed 338
protection, mitigation, or enhancement, to the extent of each 339
agency's respective jurisdiction over the facility. 340

(v) The facility complies with provisions of the 341
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 342
to 1544, as amended. 343

(vi) The facility does not harm cultural resources of the 344
area. This can be shown through compliance with the terms of its 345
federal energy regulatory commission license or, if the facility 346
is not regulated by that commission, through development of a 347
plan approved by the Ohio historic preservation office, to the 348
extent it has jurisdiction over the facility. 349

(vii) The facility complies with the terms of its federal 350
energy regulatory commission license or exemption that are 351
related to recreational access, accommodation, and facilities 352
or, if the facility is not regulated by that commission, the 353
facility complies with similar requirements as are recommended 354
by resource agencies, to the extent they have jurisdiction over 355
the facility; and the facility provides access to water to the 356
public without fee or charge. 357

(viii) The facility is not recommended for removal by any 358
federal agency or agency of any state, to the extent the 359
particular agency has jurisdiction over the facility. 360

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 361
this section do not apply to a small hydroelectric facility 362
under division (A) (37) (a) (iv) of this section. 363

(38) "Waste energy recovery system" means either of the 364
following: 365

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

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

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

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

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

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

(41) "National security generation resource" means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned

utilities for the original purpose of providing capacity and 395
electricity to the federal government for use in the nation's 396
defense or in furtherance of national interests, including the 397
Ohio valley electric corporation. 398

(42) "Prudently incurred costs related to a national 399
security generation resource" means, subject to section 4928.147 400
of the Revised Code, costs, including deferred costs, allocated 401
pursuant to a power agreement approved by the federal energy 402
regulatory commission that relates to a national security 403
generation resource. Such costs shall exclude any return on 404
investment in common equity and, in the event of a premature 405
retirement of a national security generation resource, shall 406
exclude any recovery of remaining debt. 407

(43) "National security generation resource net impact" 408
means retail recovery of prudently incurred costs related to a 409
national security generation resource less any revenues realized 410
from offering the contractual commitment related to a national 411
security generation resource into the wholesale markets, 412
provided, where the net revenues exceed net costs, such excess 413
revenues shall be credited to customers. 414

(B) For the purposes of this chapter, a retail electric 415
service component shall be deemed a competitive retail electric 416
service if the service component is competitive pursuant to a 417
declaration by a provision of the Revised Code or pursuant to an 418
order of the public utilities commission authorized under 419
division (A) of section 4928.04 of the Revised Code. Otherwise, 420
the service component shall be deemed a noncompetitive retail 421
electric service. 422

Sec. 4928.02. It is the policy of this state to do the 423
following throughout this state: 424

- (A) Ensure the availability to consumers of adequate, 425
reliable, safe, efficient, nondiscriminatory, and reasonably 426
priced retail electric service; 427
- (B) Ensure the availability of unbundled and comparable 428
retail electric service that provides consumers with the 429
supplier, price, terms, conditions, and quality options they 430
elect to meet their respective needs; 431
- (C) Ensure diversity of electricity supplies and 432
suppliers, by giving consumers effective choices over the 433
selection of those supplies and suppliers and by encouraging the 434
development of distributed and small generation facilities; 435
- (D) Encourage innovation and market access for cost- 436
effective supply- and demand-side retail electric service 437
including, but not limited to, demand-side management, time- 438
differentiated pricing, waste energy recovery systems, smart 439
grid programs, and implementation of advanced metering 440
infrastructure; 441
- (E) Encourage cost-effective and efficient access to 442
information regarding the operation of the transmission and 443
distribution systems of electric utilities in order to promote 444
both effective customer choice of retail electric service and 445
the development of performance standards and targets for service 446
quality for all consumers, including annual achievement reports 447
written in plain language; 448
- (F) Ensure that an electric utility's transmission and 449
distribution systems are available to a customer-generator or 450
owner of distributed generation, so that the customer-generator 451
or owner can market and deliver the electricity it produces; 452
- (G) Recognize the continuing emergence of competitive 453

electricity markets through the development and implementation	454
of flexible regulatory treatment;	455
(H) Ensure effective competition in the provision of	456
retail electric service by avoiding anticompetitive subsidies	457
flowing from a noncompetitive retail electric service to a	458
competitive retail electric service or to a product or service	459
other than retail electric service, and vice versa, including by	460
prohibiting the recovery of any generation-related costs through	461
distribution or transmission rates;	462
(I) Ensure retail electric service consumers protection	463
against unreasonable sales practices, market deficiencies, and	464
market power;	465
(J) Provide coherent, transparent means of giving	466
appropriate incentives to technologies that can adapt	467
successfully to potential environmental mandates;	468
(K) Encourage implementation of distributed generation	469
across customer classes through regular review and updating of	470
administrative rules governing critical issues such as, but not	471
limited to, interconnection standards, standby charges, and net	472
metering;	473
(L) Protect at-risk populations, including, but not	474
limited to, when considering the implementation of any new	475
advanced energy or renewable energy resource;	476
(M) Encourage the education of small business owners in	477
this state regarding the use of, and encourage the use of,	478
energy efficiency programs and alternative energy resources in	479
their businesses;	480
(N) Facilitate the state's effectiveness in the global	481
economy;	482

(O) Provide clarity in cost recovery for Ohio-based 483
electric utilities in conjunction with national security 484
generation resources and support electric distribution utility 485
and affiliate divestiture of ownership interest in any national 486
security generation resource if divestiture efforts result in no 487
adverse consequence to the utility. 488

In carrying out this policy, the commission shall consider 489
rules as they apply to the costs of electric distribution 490
infrastructure, including, but not limited to, line extensions, 491
for the purpose of development in this state. 492

Sec. 4928.141. (A) Beginning January 1, 2009, an electric 493
distribution utility shall provide consumers, on a comparable 494
and nondiscriminatory basis within its certified territory, a 495
standard service offer of all competitive retail electric 496
services necessary to maintain essential electric service to 497
consumers, including a firm supply of electric generation 498
service. To that end, the electric distribution utility shall 499
apply to the public utilities commission to establish the 500
standard service offer in accordance with section 4928.142 or 501
4928.143 of the Revised Code and, at its discretion, may apply 502
simultaneously under both sections, ~~except that the utility's~~ 503
~~first standard service offer application at minimum shall~~ 504
~~include a filing under section 4928.143 of the Revised Code.~~ 505
Only a standard service offer authorized in accordance with 506
section 4928.142 or 4928.143 of the Revised Code, shall serve as 507
the utility's standard service offer for the purpose of 508
compliance with this section; and that standard service offer 509
shall serve as the utility's default standard service offer for 510
the purpose of section 4928.14 of the Revised Code. 511
~~Notwithstanding the foregoing provision, the rate plan of an~~ 512
~~electric distribution utility shall continue for the purpose of~~ 513

~~the utility's compliance with this division until a standard~~ 514
~~service offer is first authorized under section 4928.142 or~~ 515
~~4928.143 of the Revised Code, and, as applicable, pursuant to~~ 516
~~division (D) of section 4928.143 of the Revised Code, any rate~~ 517
~~plan that extends beyond December 31, 2008, shall continue to be~~ 518
~~in effect for the subject electric distribution utility for the~~ 519
~~duration of the plan's term. A standard service offer under~~ 520
section 4928.142 or 4928.143 of the Revised Code shall include 521
automatic recovery, subject to audit and reconciliation, of all 522
national security generation resource net impacts that are 523
calculated and recovered in accordance with the rate mechanism 524
established under section 4928.147 of the Revised Code, but 525
shall exclude any previously authorized allowances for 526
transition costs, with such exclusion being effective on and 527
after the date that the allowance is scheduled to end under the 528
utility's rate plan. 529

(B) An electric distribution utility, including all 530
electric distribution utilities in the same holding company, 531
shall bid all output from the national security generation 532
resource into the wholesale market and shall not use the output 533
in supplying its standard service offer provided under section 534
4928.142 or 4928.143 of the Revised Code. 535

(C) The commission shall set the time for hearing of a 536
filing under section 4928.142 or 4928.143 of the Revised Code, 537
send written notice of the hearing to the electric distribution 538
utility, and publish notice in a newspaper of general 539
circulation in each county in the utility's certified territory. 540
The commission shall adopt rules regarding filings under those 541
sections. 542

Sec. 4928.142. (A) For the purpose of complying with 543

section 4928.141 of the Revised Code and subject to division (D) 544
of this section and, ~~as applicable, subject to the rate plan~~ 545
~~requirement of division (A) of section 4928.141 of the Revised~~ 546
~~Code,~~ an electric distribution utility may establish a standard 547
service offer price for retail electric generation service that 548
is delivered to the utility under a market-rate offer. An 549
electric distribution utility shall have the right within one 550
hundred twenty days of the effective date of H.B. 239 of the 551
132nd general assembly to file an application to reopen, update, 552
or amend its then-current market-rate offer in order to 553
implement the amended version of this section, which proceeding 554
shall not otherwise reopen matters previously decided. 555

(1) The supply and pricing of electric generation service 556
under a market-rate offer shall be determined through a 557
competitive bidding process that provides for all of the 558
following: 559

(a) Open, fair, and transparent competitive solicitation; 560

(b) Clear product definition; 561

(c) Standardized bid evaluation criteria; 562

(d) Oversight by an independent third party that shall 563
design the solicitation, administer the bidding, and ensure that 564
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 565
this section are met; 566

(e) Evaluation of the submitted bids prior to the 567
selection of the least-cost bid winner or winners. 568

No generation supplier shall be prohibited from 569
participating in the bidding process. 570

(2) The market-rate offer shall include provisions for 571

recovery, through a nonbypassable rate mechanism, of all 572
national security generation resource net impacts pursuant to 573
section 4928.147 of the Revised Code. 574

(3) The public utilities commission shall modify rules, or 575
adopt new rules as necessary, concerning the conduct of the 576
competitive bidding process and the qualifications of bidders, 577
which rules shall foster supplier participation in the bidding 578
process and shall be consistent with the requirements of 579
division (A) (1) of this section. 580

(B) Prior to initiating a competitive bidding process for 581
a market-rate offer under division (A) of this section, the 582
electric distribution utility shall file an application with the 583
commission. An electric distribution utility may file its 584
application with the commission prior to the effective date of 585
the commission rules required under division (A) ~~(2)~~ (3) of this 586
section, and, as the commission determines necessary, the 587
utility shall immediately conform its filing to the rules upon 588
their taking effect. 589

An application under this division shall detail the 590
electric distribution utility's proposed compliance with the 591
requirements of division (A) (1) of this section and with 592
commission rules under division (A) ~~(2)~~ (3) of this section and 593
demonstrate that all of the following requirements are met: 594

(1) The electric distribution utility or its transmission 595
service affiliate belongs to at least one regional transmission 596
organization that has been approved by the federal energy 597
regulatory commission; or there otherwise is comparable and 598
nondiscriminatory access to the electric transmission grid. 599

(2) Any such regional transmission organization has a 600

market-monitor function and the ability to take actions to 601
identify and mitigate market power or the electric distribution 602
utility's market conduct; or a similar market monitoring 603
function exists with commensurate ability to identify and 604
monitor market conditions and mitigate conduct associated with 605
the exercise of market power. 606

(3) A published source of information is available 607
publicly or through subscription that identifies pricing 608
information for traded electricity on- and off-peak energy 609
products that are contracts for delivery beginning at least two 610
years from the date of the publication and is updated on a 611
regular basis. 612

The commission shall initiate a proceeding and, within 613
ninety days after the application's filing date, shall determine 614
by order whether the electric distribution utility and its 615
market-rate offer meet all of the foregoing requirements. If the 616
finding is positive, the electric distribution utility may 617
initiate its competitive bidding process. If the finding is 618
negative as to one or more requirements in division (A) (1) or 619
(B) of this section, the commission in the order shall direct 620
the electric distribution utility regarding how any deficiency 621
may be remedied in a timely manner to the commission's 622
satisfaction; otherwise, the electric distribution utility shall 623
withdraw the application. However, if such remedy is made and 624
the subsequent finding is positive and also if the electric 625
distribution utility made a simultaneous filing under this 626
section and section 4928.143 of the Revised Code, the utility 627
shall not initiate its competitive bid until at least one 628
hundred fifty days after the filing date of those applications. 629
If the electric distribution utility withdraws the application, 630
the commission shall issue an order as is necessary to ensure 631

automatic recovery of all national security generation resource 632
net impacts. 633

(C) Upon the completion of the competitive bidding process 634
authorized by divisions (A) and (B) of this section, including 635
for the purpose of division (D) of this section, the commission 636
shall select the least-cost bid winner or winners of that 637
process, and such selected bid or bids, as prescribed as retail 638
rates by the commission, shall be the electric distribution 639
utility's standard service offer unless the commission, by order 640
issued before the third calendar day following the conclusion of 641
the competitive bidding process for the market rate offer, 642
determines that one or more of the following criteria were not 643
met: 644

(1) Each portion of the bidding process was 645
oversubscribed, such that the amount of supply bid upon was 646
greater than the amount of the load bid out. 647

(2) There were four or more bidders. 648

(3) At least twenty-five per cent of the load is bid upon 649
by one or more persons other than the electric distribution 650
utility. 651

All costs incurred by the electric distribution utility as 652
a result of or related to the competitive bidding process or to 653
procuring generation service to provide the standard service 654
offer, including the costs of energy and capacity and the costs 655
of all other products and services procured as a result of the 656
competitive bidding process, shall be timely recovered through 657
the standard service offer price, and, for that purpose, the 658
commission shall approve a reconciliation mechanism, other 659
recovery mechanism, or a combination of such mechanisms for the 660

utility. 661

(D) The first application filed under this section by an 662
electric distribution utility that, as of July 31, 2008, 663
directly owns, in whole or in part, operating electric 664
generating facilities that had been used and useful in this 665
state shall require that a portion of that utility's standard 666
service offer load for the first five years of the market rate 667
offer be competitively bid under division (A) of this section as 668
follows: ten per cent of the load in year one, not more than 669
twenty per cent in year two, thirty per cent in year three, 670
forty per cent in year four, and fifty per cent in year five. 671
Consistent with those percentages, the commission shall 672
determine the actual percentages for each year of years one 673
through five. The standard service offer price for retail 674
electric generation service under this first application shall 675
be a proportionate blend of the bid price and the generation 676
service price for the remaining standard service offer load, 677
which latter price shall be equal to the electric distribution 678
utility's most recent standard service offer price, adjusted 679
upward or downward as the commission determines reasonable, 680
relative to the jurisdictional portion of any known and 681
measurable changes from the level of any one or more of the 682
following costs as reflected in that most recent standard 683
service offer price: 684

(1) The electric distribution utility's prudently incurred 685
cost of fuel used to produce electricity; 686

(2) Its prudently incurred purchased power costs; 687

(3) Its prudently incurred costs of satisfying the supply 688
and demand portfolio requirements of this state, including, but 689
not limited to, renewable energy resource and energy efficiency 690

requirements; 691

(4) Its costs prudently incurred to comply with 692
environmental laws and regulations, with consideration of the 693
derating of any facility associated with those costs. 694

In making any adjustment to the most recent standard 695
service offer price on the basis of costs described in division 696
(D) of this section, the commission shall include the benefits 697
that may become available to the electric distribution utility 698
as a result of or in connection with the costs included in the 699
adjustment, including, but not limited to, the utility's receipt 700
of emissions credits or its receipt of tax benefits or of other 701
benefits, and, accordingly, the commission may impose such 702
conditions on the adjustment to ensure that any such benefits 703
are properly aligned with the associated cost responsibility. 704
The commission shall also determine how such adjustments will 705
affect the electric distribution utility's return on common 706
equity that may be achieved by those adjustments. The commission 707
shall not apply its consideration of the return on common equity 708
to reduce any adjustments authorized under this division unless 709
the adjustments will cause the electric distribution utility to 710
earn a return on common equity that is significantly in excess 711
of the return on common equity that is earned by publicly traded 712
companies, including utilities, that face comparable business 713
and financial risk, with such adjustments for capital structure 714
as may be appropriate. The burden of proof for demonstrating 715
that significantly excessive earnings will not occur shall be on 716
the electric distribution utility. 717

Additionally, the commission may adjust the electric 718
distribution utility's most recent standard service offer price 719
by such just and reasonable amount that the commission 720

determines necessary to address any emergency that threatens the 721
utility's financial integrity or to ensure that the resulting 722
revenue available to the utility for providing the standard 723
service offer is not so inadequate as to result, directly or 724
indirectly, in a taking of property without compensation 725
pursuant to Section 19 of Article I, Ohio Constitution. The 726
electric distribution utility has the burden of demonstrating 727
that any adjustment to its most recent standard service offer 728
price is proper in accordance with this division. 729

(E) Beginning in the second year of a blended price under 730
division (D) of this section and notwithstanding any other 731
requirement of this section, the commission may alter 732
prospectively the proportions specified in that division to 733
mitigate any effect of an abrupt or significant change in the 734
electric distribution utility's standard service offer price 735
that would otherwise result in general or with respect to any 736
rate group or rate schedule but for such alteration. Any such 737
alteration shall be made not more often than annually, and the 738
commission shall not, by altering those proportions and in any 739
event, including because of the length of time, as authorized 740
under division (C) of this section, taken to approve the market 741
rate offer, cause the duration of the blending period to exceed 742
ten years as counted from the effective date of the approved 743
market rate offer. Additionally, any such alteration shall be 744
limited to an alteration affecting the prospective proportions 745
used during the blending period and shall not affect any 746
blending proportion previously approved and applied by the 747
commission under this division. 748

(F) An electric distribution utility that has received 749
commission approval of its first application under division (C) 750
of this section shall not, nor ever shall be authorized or 751

required by the commission to, file an application under section 752
4928.143 of the Revised Code. 753

Sec. 4928.143. (A) For the purpose of complying with 754
section 4928.141 of the Revised Code, an electric distribution 755
utility may file an application for public utilities commission 756
approval of an electric security plan as prescribed under 757
division (B) of this section. The utility may file that 758
application prior to the effective date of any rules the 759
commission may adopt for the purpose of this section, and, as 760
the commission determines necessary, the utility immediately 761
shall conform its filing to those rules upon their taking 762
effect. An electric distribution utility shall have the right 763
within one hundred twenty days of the effective date of H.B. 239 764
of the 132nd general assembly to file an application to reopen, 765
update, or amend its then-current standard service offer or 766
initiate a separate proceeding in order to implement the amended 767
version of this section, which proceeding shall not otherwise 768
reopen matters previously decided. Upon approval of an update or 769
amendment to implement the change in law, any terms and 770
conditions of the prior electric security plan relating to a 771
national security generation resource shall no longer be in 772
effect. 773

(B) Notwithstanding any other provision of Title XLIX of 774
the Revised Code to the contrary except division (D) of this 775
section, divisions (I), (J), and (K) of section 4928.20, 776
division (E) of section 4928.64, and section 4928.69 of the 777
Revised Code: 778

(1) An electric security plan shall include provisions 779
relating to the supply and pricing of electric generation 780
service and shall include provisions for recovery, through a 781

nonbypassable rate mechanism, of all national security 782
generation resource net impacts pursuant to section 4928.147 of 783
the Revised Code. In addition, if the proposed electric security 784
plan has a term longer than three years, it may include 785
provisions in the plan to permit the commission to test the plan 786
pursuant to division (E) of this section and any transitional 787
conditions that should be adopted by the commission if the 788
commission terminates the plan as authorized under that 789
division. 790

(2) The plan may provide for or include, without 791
limitation, any of the following: 792

(a) Automatic recovery of any of the following costs of 793
the electric distribution utility, provided the cost is 794
prudently incurred: the cost of fuel used to generate the 795
electricity supplied under the offer; the cost of purchased 796
power supplied under the offer, including the cost of energy and 797
capacity, and including purchased power acquired from an 798
affiliate; the cost of emission allowances; and the cost of 799
federally mandated carbon or energy taxes; 800

(b) A reasonable allowance for construction work in 801
progress for any of the electric distribution utility's cost of 802
constructing an electric generating facility or for an 803
environmental expenditure for any electric generating facility 804
of the electric distribution utility, provided the cost is 805
incurred or the expenditure occurs on or after January 1, 2009. 806
Any such allowance shall be subject to the construction work in 807
progress allowance limitations of division (A) of section 808
4909.15 of the Revised Code, except that the commission may 809
authorize such an allowance upon the incurrence of the cost or 810
occurrence of the expenditure. No such allowance for generating 811

facility construction shall be authorized, however, unless the 812
commission first determines in the proceeding that there is need 813
for the facility based on resource planning projections 814
submitted by the electric distribution utility. Further, no such 815
allowance shall be authorized unless the facility's construction 816
was sourced through a competitive bid process, regarding which 817
process the commission may adopt rules. An allowance approved 818
under division (B) (2) (b) of this section shall be established as 819
a nonbypassable surcharge for the life of the facility. 820

(c) The establishment of a nonbypassable surcharge for the 821
life of an electric generating facility that is owned or 822
operated by the electric distribution utility, was sourced 823
through a competitive bid process subject to any such rules as 824
the commission adopts under division (B) (2) (b) of this section, 825
and is newly used and useful on or after January 1, 2009, which 826
surcharge shall cover all costs of the utility specified in the 827
application, excluding costs recovered through a surcharge under 828
division (B) (2) (b) of this section. However, no surcharge shall 829
be authorized unless the commission first determines in the 830
proceeding that there is need for the facility based on resource 831
planning projections submitted by the electric distribution 832
utility. Additionally, if a surcharge is authorized for a 833
facility pursuant to plan approval under division (C) of this 834
section and as a condition of the continuation of the surcharge, 835
the electric distribution utility shall dedicate to Ohio 836
consumers the capacity and energy and the rate associated with 837
the cost of that facility. Before the commission authorizes any 838
surcharge pursuant to this division, it may consider, as 839
applicable, the effects of any decommissioning, deratings, and 840
retirements. 841

(d) Terms, conditions, or charges relating to limitations 842

on customer shopping for retail electric generation service, 843
bypassability, standby, back-up, or supplemental power service, 844
default service, carrying costs, amortization periods, and 845
accounting or deferrals, including future recovery of such 846
deferrals, as would have the effect of stabilizing or providing 847
certainty regarding retail electric service; 848

(e) Automatic increases or decreases in any component of 849
the standard service offer price; 850

(f) Consistent with sections 4928.23 to 4928.2318 of the 851
Revised Code, both of the following: 852

(i) Provisions for the electric distribution utility to 853
securitize any phase-in, inclusive of carrying charges, of the 854
utility's standard service offer price, which phase-in is 855
authorized in accordance with section 4928.144 of the Revised 856
Code; 857

(ii) Provisions for the recovery of the utility's cost of 858
securitization. 859

(g) Provisions relating to transmission, ancillary, 860
congestion, or any related service required for the standard 861
service offer, including provisions for the recovery of any cost 862
of such service that the electric distribution utility incurs on 863
or after that date pursuant to the standard service offer; 864

(h) Provisions regarding the utility's distribution 865
service, including, without limitation and notwithstanding any 866
provision of Title XLIX of the Revised Code to the contrary, 867
provisions regarding single issue ratemaking, a revenue 868
decoupling mechanism or any other incentive ratemaking, and 869
provisions regarding distribution infrastructure and 870
modernization incentives for the electric distribution utility. 871

The latter may include a long-term energy delivery 872
infrastructure modernization plan for that utility or any plan 873
providing for the utility's recovery of costs, including lost 874
revenue, shared savings, and avoided costs, and a just and 875
reasonable rate of return on such infrastructure modernization. 876
As part of its determination as to whether to allow in an 877
electric distribution utility's electric security plan inclusion 878
of any provision described in division (B) (2) (h) of this 879
section, the commission shall examine the reliability of the 880
electric distribution utility's distribution system and ensure 881
that customers' and the electric distribution utility's 882
expectations are aligned and that the electric distribution 883
utility is placing sufficient emphasis on and dedicating 884
sufficient resources to the reliability of its distribution 885
system. 886

(i) Provisions under which the electric distribution 887
utility may implement economic development, job retention, and 888
energy efficiency programs, which provisions may allocate 889
program costs across all classes of customers of the utility and 890
those of electric distribution utilities in the same holding 891
company system. 892

(C) (1) The burden of proof in the proceeding shall be on 893
the electric distribution utility, provided that the public 894
utilities commission must approve automatic cost recovery of all 895
national security generation resource net impacts consistent 896
with the prudence review in section 4928.147 of the Revised 897
Code. The commission shall issue an order under this division 898
for an initial application under this section not later than one 899
hundred fifty days after the application's filing date and, for 900
any subsequent application by the utility under this section, 901
not later than two hundred seventy-five days after the 902

application's filing date. Subject to division (D) of this 903
section, the commission by order shall approve or modify and 904
approve an application filed under division (A) of this section 905
if it finds that the electric security plan so approved, 906
including its pricing and all other terms and conditions, 907
including any deferrals and any future recovery of deferrals, is 908
more favorable in the aggregate as compared to the expected 909
results that would otherwise apply under section 4928.142 of the 910
Revised Code. Additionally, if the commission so approves an 911
application that contains a surcharge under division (B) (2) (b) 912
or (c) of this section, the commission shall ensure that the 913
benefits derived for any purpose for which the surcharge is 914
established are reserved and made available to those that bear 915
the surcharge. Otherwise, the commission by order shall 916
disapprove the application. 917

(2) (a) If the commission modifies and approves an 918
application under division (C) (1) of this section, the electric 919
distribution utility may withdraw the application, thereby 920
terminating it, and may file a new standard service offer under 921
this section or a standard service offer under section 4928.142 922
of the Revised Code. 923

(b) If the utility terminates an application pursuant to 924
division (C) (2) (a) of this section or if the commission 925
disapproves an application under division (C) (1) of this 926
section, the commission shall issue such order as is necessary 927
to ensure automatic cost recovery of all national security 928
generation resource net impacts and to continue the provisions, 929
terms, and conditions of the utility's most recent standard 930
service offer, along with any expected increases or decreases in 931
fuel costs from those contained in that offer, until a 932
subsequent offer is authorized pursuant to this section or 933

section 4928.142 of the Revised Code, respectively. 934

(D) Regarding the rate plan requirement of division (A) of 935
section 4928.141 of the Revised Code, if an electric 936
distribution utility that has a rate plan that extends beyond 937
December 31, 2008, files an application under this section for 938
the purpose of its compliance with division (A) of section 939
4928.141 of the Revised Code, that rate plan and its terms and 940
conditions are hereby incorporated into its proposed electric 941
security plan and shall continue in effect until the date 942
scheduled under the rate plan for its expiration, and that 943
portion of the electric security plan shall not be subject to 944
commission approval or disapproval under division (C) of this 945
section, and the earnings test provided for in division (F) of 946
this section shall not apply until after the expiration of the 947
rate plan. However, that utility may include in its electric 948
security plan under this section, and the commission may 949
approve, modify and approve, or disapprove subject to division 950
(C) of this section, provisions for the incremental recovery or 951
the deferral of any costs that are not being recovered under the 952
rate plan and that the utility incurs during that continuation 953
period to comply with section 4928.141, division (B) of section 954
4928.64, or division (A) of section 4928.66 of the Revised Code. 955

(E) If an electric security plan approved under division 956
(C) of this section, except one withdrawn by the utility as 957
authorized under that division, has a term, exclusive of phase- 958
ins or deferrals, that exceeds three years from the effective 959
date of the plan, the commission shall test the plan in the 960
fourth year, and if applicable, every fourth year thereafter, to 961
determine whether the plan, including its then-existing pricing 962
and all other terms and conditions, including any deferrals and 963
any future recovery of deferrals, continues to be more favorable 964

in the aggregate and during the remaining term of the plan as 965
compared to the expected results that would otherwise apply 966
under section 4928.142 of the Revised Code. The commission shall 967
also determine the prospective effect of the electric security 968
plan to determine if that effect is substantially likely to 969
provide the electric distribution utility with a return on 970
common equity that is significantly in excess of the return on 971
common equity that is likely to be earned by publicly traded 972
companies, including utilities, that face comparable business 973
and financial risk, with such adjustments for capital structure 974
as may be appropriate. The burden of proof for demonstrating 975
that significantly excessive earnings will not occur shall be on 976
the electric distribution utility. If the test results are in 977
the negative or the commission finds that continuation of the 978
electric security plan will result in a return on equity that is 979
significantly in excess of the return on common equity that is 980
likely to be earned by publicly traded companies, including 981
utilities, that will face comparable business and financial 982
risk, with such adjustments for capital structure as may be 983
appropriate, during the balance of the plan, the commission may 984
terminate the electric security plan, but not until it shall 985
have provided interested parties with notice and an opportunity 986
to be heard. The commission may impose such conditions on the 987
plan's termination as it considers reasonable and necessary to 988
accommodate the transition from an approved plan to the more 989
advantageous alternative. In the event of an electric security 990
plan's termination pursuant to this division, the commission 991
shall permit the continued deferral and phase-in of any amounts 992
that occurred prior to that termination and the recovery of 993
those amounts as contemplated under that electric security plan. 994

(F) With regard to the provisions that are included in an 995

electric security plan under this section, the commission shall 996
consider, following the end of each annual period of the plan, 997
if any such adjustments resulted in excessive earnings as 998
measured by whether the earned return on common equity of the 999
electric distribution utility is significantly in excess of the 1000
return on common equity that was earned during the same period 1001
by publicly traded companies, including utilities, that face 1002
comparable business and financial risk, with such adjustments 1003
for capital structure as may be appropriate. Consideration also 1004
shall be given to the capital requirements of future committed 1005
investments in this state. The burden of proof for demonstrating 1006
that significantly excessive earnings did not occur shall be on 1007
the electric distribution utility. If the commission finds that 1008
such adjustments, in the aggregate, did result in significantly 1009
excessive earnings, it shall require the electric distribution 1010
utility to return to consumers the amount of the excess by 1011
prospective adjustments; provided that, upon making such 1012
prospective adjustments, the electric distribution utility shall 1013
have the right to terminate the plan and immediately file an 1014
application pursuant to section 4928.142 of the Revised Code. 1015
Upon termination of a plan under this division, rates shall be 1016
set on the same basis as specified in division (C) (2) (b) of this 1017
section, and the commission shall permit the continued deferral 1018
and phase-in of any amounts that occurred prior to that 1019
termination and the recovery of those amounts as contemplated 1020
under that electric security plan. In making its determination 1021
of significantly excessive earnings under this division, the 1022
commission shall not consider, directly or indirectly, the 1023
revenue, expenses, or earnings of any affiliate or parent 1024
company. 1025

Sec. 4928.147. (A) In establishing a nonbypassable rate 1026

mechanism for recovery of national security generation resource 1027
net impacts under division (A) (2) of section 4928.142 or 1028
division (B) (1) of section 4928.143 of the Revised Code, the 1029
public utilities commission shall do the following: 1030

(1) Determine, every three years, the prudence and 1031
reasonableness of the electric distribution utility's actions 1032
related to the national security generation resource, including 1033
its decisions related to offering the contractual commitment 1034
into the wholesale markets, and exclude from recovery those 1035
costs it determines imprudent and unreasonable; 1036

(2) Determine the proper rate design for recovering or 1037
remitting the national security generation resource net impact, 1038
provided, however, that the monthly charge or credit recovering 1039
such impact, including any deferrals or credits, shall not 1040
exceed two dollars and fifty cents per customer per month for 1041
residential customers and two thousand five hundred dollars per 1042
customer per month for all other customers, with the commission 1043
establishing comparable monthly caps for each nonresidential 1044
customer class at or below the two thousand five hundred dollar 1045
per customer level. Insofar as the national security generation 1046
resource net impact exceeds these monthly limits, the electric 1047
distribution utility shall defer the remaining net impact as a 1048
regulatory asset or liability that shall be recovered as 1049
determined by the commission subject to the monthly rate caps 1050
set forth herein. 1051

(3) Provide for discontinuation, subject to final 1052
reconciliation, of the nonbypassable recovery mechanism on 1053
December 31, 2030, unless such mechanism is extended by the 1054
general assembly pursuant to division (B) of this section. 1055

(B) The commission shall conduct an inquiry in 2029 to 1056

determine whether it is in the public interest to continue 1057
recovery of national security generation resource net impacts 1058
after 2030, and report its findings to the general assembly. 1059

Section 2. That existing sections 4928.01, 4928.02, 1060
4928.141, 4928.142, and 4928.143 of the Revised Code are hereby 1061
repealed. 1062

Section 3. The items of law contained in division (B) of 1063
section 4928.141 of the Revised Code, and their applications, 1064
are severable. If any item of law contained in that division, or 1065
if any application of any item of law contained in that 1066
division, is held invalid, the invalidity does not affect other 1067
items of law contained in this act and their applications that 1068
can be given effect without the invalid item of law or 1069
application. 1070

Section 4. The amendments by this act to division (A) of 1071
section 4928.142 and division (A) of section 4928.143 of the 1072
Revised Code are not intended to render moot any issue raised in 1073
an appeal under section 4903.13 of the Revised Code that is not 1074
directly related to recovery of national security generation 1075
resource net impacts. 1076

I_132_0723-3

132nd General Assembly
Regular Session
2017-2018

Sub. S. B. No. 128

A BILL

To amend section 4928.02 and to enact sections 1
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 2
4928.755, 4928.756, 4928.757, 4928.7511, 3
4928.7513, 4928.7514, 4928.7515, 4928.7520, 4
4928.7521, 4928.7522, 4928.7523, 4928.7524, 5
4928.7525, 4928.7526, 4928.7527, 4928.7532, 6
4928.7533, and 4928.7540 of the Revised Code 7
regarding the zero-emissions nuclear resource 8
program. 9
10

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

Section 1. That section 4928.02 be amended and sections 11
4928.75, 4928.751, 4928.752, 4928.753, 4928.754, 4928.755, 12
4928.756, 4928.757, 4928.7511, 4928.7513, 4928.7514, 4928.7515, 13
4928.7520, 4928.7521, 4928.7522, 4928.7523, 4928.7524, 14
4928.7525, 4928.7526, 4928.7527, 4928.7532, 4928.7533, and 15
4928.7540 of the Revised Code be enacted to read as follows: 16

Sec. 4928.02. It is the policy of this state to do the 17
following throughout this state: 18


mari5sgqqktjtzq3kxoeq

(A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service;

(B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;

(C) Ensure diversity of electricity ~~the following~~:

(1) Electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities;

(2) Resources, including zero-emissions nuclear resources as defined in section 4928.75 of the Revised Code, that provide fuel diversity and environmental and other benefits.

(D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure;

(E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language;

(F) Ensure that an electric utility's transmission and

distribution systems are available to a customer-generator or 48
owner of distributed generation, so that the customer-generator 49
or owner can market and deliver the electricity it produces; 50

(G) Recognize the continuing emergence of competitive 51
electricity markets through the development and implementation 52
of flexible regulatory treatment, while simultaneously 53
recognizing the need for nuclear energy resources, as defined in 54
section 4928.75 of the Revised Code, and resources that provide 55
fuel diversity and environmental and other benefits; 56

(H) Ensure effective competition in the provision of 57
retail electric service by avoiding anticompetitive subsidies 58
flowing from a noncompetitive retail electric service to a 59
competitive retail electric service or to a product or service 60
other than retail electric service, and vice versa, including by 61
prohibiting the recovery of any generation-related costs through 62
distribution or transmission rates; 63

(I) Ensure retail electric service consumers protection 64
against unreasonable sales practices, market deficiencies, and 65
market power; 66

(J) Provide coherent, transparent means of giving 67
appropriate incentives to technologies that can adapt 68
successfully to potential environmental mandates; 69

(K) Encourage implementation of distributed generation 70
across customer classes through regular review and updating of 71
administrative rules governing critical issues such as, but not 72
limited to, interconnection standards, standby charges, and net 73
metering; 74

(L) Protect at-risk populations, including, but not 75
limited to, when considering the implementation of any new 76

advanced energy or renewable energy resource; 77

(M) Encourage the education of small business owners in 78
this state regarding the use of, and encourage the use of, 79
energy efficiency programs and alternative energy resources in 80
their businesses; 81

(N) Facilitate the state's effectiveness in the global 82
economy. 83

In carrying out this policy, the commission shall consider 84
rules as they apply to the costs of electric distribution 85
infrastructure, including, but not limited to, line extensions, 86
for the purpose of development in this state. 87

Sec. 4928.75. As used in sections 4928.75 to 4928.7540 of 88
the Revised Code: 89

(A) "Nuclear energy resource" means an electric generation 90
unit fueled, in whole or in part, by nuclear power and licensed 91
by the nuclear regulatory commission. 92

(B) "PJM" means the PJM Interconnection, L.L.C., or its 93
successor. 94

(C) "Zero-emissions nuclear credit" means the attributes 95
associated with one megawatt hour of electricity generated by a 96
zero-emissions nuclear resource. 97

(D) "Zero-emissions nuclear resource" means a nuclear 98
energy resource that meets the criteria of section 4928.754 of 99
the Revised Code. 100

Sec. 4928.751. There is hereby created a zero-emissions 101
nuclear resource program to enable the state to meet its policy 102
goals and requirements under which zero-emissions nuclear 103
credits are allocated to electric distribution utilities to 104

provide long-term energy security and environmental and other 105
benefits to the region and to retail electric service customers 106
in the state. An electric distribution utility in this state 107
that has a zero-emissions nuclear resource located within its 108
certified territory shall participate in the program. All 109
electric distribution utilities in the same holding company 110
system shall participate jointly and shall allocate revenue 111
collection across all classes of each participating utility's 112
customers. 113

Sec. 4928.752. (A) The zero-emissions nuclear resource 114
program shall operate for successive two-year program periods 115
beginning with the initial program period commencing on the 116
effective date of this section and terminating on December 31, 117
2030, unless extended by the general assembly. Following 118
termination, any over-collection of revenue during the last 119
program period shall be credited to customers. 120

(B) The public utilities commission shall conduct an 121
inquiry in 2029 to determine whether it is in the public 122
interest to continue the zero-emissions nuclear resource program 123
after 2030, and shall report its findings to the general 124
assembly. 125

Sec. 4928.753. To provide zero-emissions nuclear credits 126
under the zero-emissions nuclear resource program, an entity 127
that owns or operates a nuclear energy resource shall file with 128
the public utilities commission a written notice verifying that 129
the resource meets the criteria under section 4928.754 of the 130
Revised Code. The entity shall file the written notice not later 131
than ninety days after the commencement of the initial program 132
period. 133

Sec. 4928.754. A nuclear energy resource that satisfies 134

all of the following criteria is a zero-emissions nuclear 135
resource for purposes of zero-emissions nuclear credits: 136

(A) The resource is interconnected within the transmission 137
system of PJM. 138

(B) PJM has determined the resource is transmission 139
deliverable under the metrics by which PJM calculates 140
deliverability for purposes of capacity planning on a round-the- 141
clock baseload basis into the transmission zone or zones of 142
electric distribution utilities participating in the zero- 143
emissions nuclear resource program under sections 4928.75 to 144
4928.7540 of the Revised Code. 145

(C) (1) For in-state nuclear energy resources: 146

(a) The resource has benefited the air quality profile of 147
the state more than the predominant electric generation source 148
with similar capacity and baseload characteristics as the 149
resource as of the time the resource commenced operation. 150

(b) All of the following could occur if the resource 151
ceased operation and its capacity were replaced at the same 152
location by the then predominant electric generation source with 153
similar capacity and baseload characteristics as the resource: 154

(i) The ability of the state, or region of the state, to 155
maintain or decrease existing levels of volatile organic 156
compounds or to comply with one or more state or federal air 157
pollution control programs, standards, or goals is reduced. 158

(ii) The carbon dioxide emissions intensity of the state 159
is negatively impacted. 160

(iii) The ability of the state to maintain or decrease 161
existing levels of carbon monoxide, lead, ground-level ozone, 162

particulate matter, nitrogen oxide, or sulfur dioxide is 163
negatively impacted. 164

(2) For all other nuclear energy resources, each such 165
resource is shown to provide no less than the same level of 166
environmental benefits to the state as nuclear energy resources 167
located within the state, pursuant to the requirements in 168
division (C) (1) of this section. 169

(D) The resource, on or after January 1, 2017: 170

(1) Did not receive from another state tax exemptions, 171
deferrals, exclusions, allowances, payments, credits, 172
deductions, or reimbursements calculated in whole or in part 173
using a metric that provides value for emissions not produced by 174
the resource; 175

(2) Is not wholly owned by a municipal or cooperative 176
corporation or a group, association, or consortium of those 177
corporations; or 178

(3) Did not, during a program period described in section 179
4928.752 of the Revised Code, recover some or all of the capital 180
or operating costs of the resource through rates regulated by a 181
state. 182

Sec. 4928.755. With respect to a written notice filed 183
under section 4928.753 of the Revised Code relating to a nuclear 184
energy resource located in this state, any interested person may 185
file comments with the public utilities commission not later 186
than twenty days after the written notice was filed. 187

Sec. 4928.756. An entity that owns or operates a nuclear 188
energy resource may file with the public utilities commission a 189
response to any comment made under section 4928.755 of the 190
Revised Code, not later than ten days after the comment was 191

filed. 192

Sec. 4928.757. Not later than fifty days after the filing 193
of a written notice under section 4928.753 of the Revised Code 194
relating to a nuclear energy resource located in this state, the 195
public utilities commission shall designate a resource that 196
satisfies the criteria in section 4928.754 of the Revised Code 197
as a zero-emissions nuclear resource and issue an order 198
consistent with that designation. If the commission does not 199
issue an order in the time required by this section, the 200
resource shall be deemed to be a zero-emissions nuclear 201
resource. 202

Sec. 4928.7511. The public utilities commission, under a 203
procedure it adopts, shall determine and issue the appropriate 204
order regarding whether a nuclear energy resource described in 205
division (C)(2) of section 4928.754 of the Revised Code 206
satisfies the criteria in section 4928.754 of the Revised Code 207
as a zero-emissions nuclear resource. The nuclear energy 208
resource shall submit an environmental study showing that the 209
resource meets the criteria under section 4928.754 of the 210
Revised Code. At minimum, the adopted procedure shall provide 211
the opportunity for comment and response similar to the 212
opportunities described under sections 4928.755 and 4928.756 of 213
the Revised Code. 214

Sec. 4928.7513. A nuclear energy resource determined under 215
section 4928.757 or 4928.7511 of the Revised Code to be a zero- 216
emissions nuclear resource shall continue to be considered such 217
a resource for all successive program periods as long as the 218
resource continues to meet the criteria of divisions (A), (B), 219
and (D) of section 4928.754 of the Revised Code. The provisions 220
of sections 4928.75 to 4928.7540 of the Revised Code shall apply 221

to any person to which zero-emissions nuclear resources are 222
sold, assigned, transferred, or conveyed. 223

Sec. 4928.7514. Zero-emission nuclear resources shall 224
provide zero-emissions nuclear credits for the zero-emissions 225
nuclear resource program. Not later than thirty days before a 226
program period commences, each zero-emissions nuclear resource 227
shall confirm with the public utilities commission its intent to 228
continue to commit its credits under the program. 229

Sec. 4928.7515. All financial statements, financial data, 230
and trade secrets submitted to or received by the public 231
utilities commission for purposes of satisfying the criteria as 232
a zero-emissions nuclear resource and any information taken for 233
any purpose from the statements, data, or trade secrets are not 234
public records under section 149.43 of the Revised Code. 235

Sec. 4928.7520. Not later than sixty days after the 236
initial program period commences and not later than thirty days 237
before a subsequent program period commences, the public 238
utilities commission shall set the price for zero-emissions 239
nuclear credits applicable for the period. For the initial 240
program period the price shall be seventeen dollars per credit. 241
For each subsequent program period, that price shall be adjusted 242
for inflation using the gross domestic product implicit price 243
deflator as published by the United States department of 244
commerce, bureau of economic analysis, index numbers 2007=100. 245

Sec. 4928.7521. At the same time the public utilities 246
commission sets the price for zero-emissions nuclear credits, 247
the commission shall determine the maximum number of credits to 248
be allocated to participating electric distribution utilities 249
during the program period. The amount the commission sets shall 250
equal one-third of the total "Total End User Consumption" in 251

megawatt-hours over the previous two calendar years as shown on 252
PUCO Form D1 of each participating electric distribution 253
utility's most recently filed long-term forecast report. 254

Sec. 4928.7522. Not later than seven days following the 255
close of each quarter of a program period, each zero-emissions 256
nuclear resource shall transfer all of its zero-emissions 257
nuclear credits generated that quarter to the public utilities 258
commission, which shall hold the credits for the sole purpose of 259
administering the program. 260

Sec. 4928.7523. Not later than seven days after the zero- 261
emissions nuclear resource transfers its credits, the public 262
utilities commission shall allocate to the participating 263
electric distribution utilities all of the zero-emissions 264
nuclear credits transferred to the commission, up to the maximum 265
number of credits determined for each participating utility 266
under section 4928.7521 of the Revised Code. The commission 267
shall allocate the credits to each participating utility in 268
proportion to the total "Total End User Consumption" in 269
megawatt-hours over the previous two calendar years as shown on 270
PUCO Form D1 of each participating utility's most recently filed 271
long-term forecast report. The commission shall notify each 272
participating utility of the allocation for that utility. 273

Sec. 4928.7524. (A) Except as provided in division (B) of 274
this section, each participating electric distribution utility 275
shall collect, through a nonbypassable rider charged to all of 276
its retail electric service customers, an amount equal to the 277
number of credits allocated to the utility under section 278
4928.7523 of the Revised Code multiplied by the credit price 279
established under section 4928.7520 of the Revised Code. 280

(B) (1) A residential customer's monthly nonbypassable 281

charge shall be set at two dollars and fifty cents. A 282
nonresidential customer's monthly nonbypassable charge shall be 283
set at the lesser of three thousand five hundred dollars or five 284
per cent of the customer's total bill. The participating utility 285
may adjust these charges downward if a lower rate will allow 286
full collection of the total amount to be collected under 287
division (A) of this section. 288

(2) Each participating utility shall transfer to the 289
public utilities commission all revenues that it collects from 290
its nonbypassable rider. During each program period, if the 291
total revenues collected are less for that period than the total 292
amount to be collected under division (A) of this section, the 293
participating utility shall not be responsible for or required 294
to transfer any amounts in excess of those collected from its 295
nonbypassable rider. 296

(3) The participating utility shall apply for the 297
establishment of the nonbypassable rider, which the commission 298
shall approve not later than sixty days after the effective date 299
of this section. 300

(C) If the owner, as of December 31, 2016, of a zero- 301
emissions nuclear resource sells or transfers the zero-emissions 302
nuclear resource, the commission shall reduce the number of 303
zero-emissions nuclear credits to be allocated from that 304
resource during the program period and, if necessary, successive 305
program periods, to reflect an adjustment equal to one-half of 306
the dollar amount of any net proceeds available after the 307
payment or provision for the seller's known obligations, but in 308
no instance shall this adjustment apply to a sale or transfer 309
under the United States Bankruptcy Code, including, but not 310
limited to, sections 363 and 1123, 11 U.S.C. sections 363 and 311

<u>1123.</u>	312
<u>Sec. 4928.7525. The public utilities commission shall</u>	313
<u>deposit all revenues received for credits under section</u>	314
<u>4928.7524 of the Revised Code into the zero-emissions nuclear</u>	315
<u>resources fund created under section 4928.7532 of the Revised</u>	316
<u>Code.</u>	317
<u>Sec. 4928.7526. Not later than seven days after receipt of</u>	318
<u>utility revenues, the public utilities commission shall use all</u>	319
<u>amounts in the zero-emissions nuclear resources fund to pay to</u>	320
<u>each zero-emissions nuclear resource the total revenues received</u>	321
<u>for each of the resource's zero-emissions nuclear credits.</u>	322
<u>Sec. 4928.7527. Credits allocated to participating</u>	323
<u>electric distribution utilities may not be transferred, sold, or</u>	324
<u>allocated to any other entity.</u>	325
<u>Sec. 4928.7532. There is hereby created the zero-emissions</u>	326
<u>nuclear resources fund that shall be in the custody of the</u>	327
<u>treasurer of state but shall not be part of the state treasury.</u>	328
<u>The fund shall consist of all revenues received by the public</u>	329
<u>utilities commission from participating electric distribution</u>	330
<u>utilities for their allocations of zero-emissions nuclear</u>	331
<u>credits. The amounts deposited into the fund shall be used to</u>	332
<u>compensate the zero-emissions nuclear resources that generated</u>	333
<u>the credits. All investment earnings from the fund shall be</u>	334
<u>transferred by the treasurer to the general revenue fund in the</u>	335
<u>state treasury.</u>	336
<u>Sec. 4928.7533. During each program period in which a</u>	337
<u>zero-emissions nuclear resource receives payment for credits</u>	338
<u>under section 4928.7526 of the Revised Code, an entity that owns</u>	339
<u>or operates that zero-emissions nuclear resource and that has</u>	340

its corporate headquarters located in this state shall continue 341
to maintain its corporate headquarters in this state. 342

Sec. 4928.7540. (A) For purposes of this section: 343

(1) "Employment levels" means the number of full-time 344
employees regularly providing services at the location of a 345
zero-emissions nuclear resource. 346

(2) "Full-time employee" means an individual who is 347
employed for consideration for at least thirty-five hours per 348
week, or who renders any other standard of service generally 349
accepted by custom or specified by contract as full-time 350
employment. 351

(B) During each program period in which a zero-emissions 352
nuclear resource receives payment for zero-emissions nuclear 353
credits under section 4928.7526 of the Revised Code, the 354
employment levels at that zero-emissions nuclear resource shall 355
continue to be similar to that of nuclear energy resources 356
constructed prior to 1990 in the United States with the same 357
reactor type, similar nameplate capacity, and single-unit 358
location. 359

Section 2. That existing section 4928.02 of the Revised 360
Code is hereby repealed. 361

I_132_1316-5

132nd General Assembly
Regular Session
2017-2018

Sub. S. B. No. 155

A BILL

To amend sections 4928.01, 4928.02, 4928.141, 1
4928.142, and 4928.143 and to enact section 2
4928.147 of the Revised Code to allow electric 3
distribution utilities to recover costs for a 4
national security generation resource. 5

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

Section 1. That sections 4928.01, 4928.02, 4928.141, 6
4928.142, and 4928.143 be amended and section 4928.147 of the 7
Revised Code be enacted to read as follows: 8

Sec. 4928.01. (A) As used in this chapter: 9

(1) "Ancillary service" means any function necessary to 10
the provision of electric transmission or distribution service 11
to a retail customer and includes, but is not limited to, 12
scheduling, system control, and dispatch services; reactive 13
supply from generation resources and voltage control service; 14
reactive supply from transmission resources service; regulation 15
service; frequency response service; energy imbalance service; 16
operating reserve-spinning reserve service; operating reserve- 17



nxbhtrycdfqaqqzblwseva

supplemental reserve service; load following; back-up supply 18
service; real-power loss replacement service; dynamic 19
scheduling; system black start capability; and network stability 20
service. 21

(2) "Billing and collection agent" means a fully 22
independent agent, not affiliated with or otherwise controlled 23
by an electric utility, electric services company, electric 24
cooperative, or governmental aggregator subject to certification 25
under section 4928.08 of the Revised Code, to the extent that 26
the agent is under contract with such utility, company, 27
cooperative, or aggregator solely to provide billing and 28
collection for retail electric service on behalf of the utility 29
company, cooperative, or aggregator. 30

(3) "Certified territory" means the certified territory 31
established for an electric supplier under sections 4933.81 to 32
4933.90 of the Revised Code. 33

(4) "Competitive retail electric service" means a 34
component of retail electric service that is competitive as 35
provided under division (B) of this section. 36

(5) "Electric cooperative" means a not-for-profit electric 37
light company that both is or has been financed in whole or in 38
part under the "Rural Electrification Act of 1936," 49 Stat. 39
1363, 7 U.S.C. 901, and owns or operates facilities in this 40
state to generate, transmit, or distribute electricity, or a 41
not-for-profit successor of such company. 42

(6) "Electric distribution utility" means an electric 43
utility that supplies at least retail electric distribution 44
service. 45

(7) "Electric light company" has the same meaning as in 46

section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

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

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

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

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

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

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an

aggregator for the provision of a competitive retail electric 76
service under authority conferred under section 4928.20 of the 77
Revised Code. 78

(14) A person acts "knowingly," regardless of the person's 79
purpose, when the person is aware that the person's conduct will 80
probably cause a certain result or will probably be of a certain 81
nature. A person has knowledge of circumstances when the person 82
is aware that such circumstances probably exist. 83

(15) "Level of funding for low-income customer energy 84
efficiency programs provided through electric utility rates" 85
means the level of funds specifically included in an electric 86
utility's rates on October 5, 1999, pursuant to an order of the 87
public utilities commission issued under Chapter 4905. or 4909. 88
of the Revised Code and in effect on October 4, 1999, for the 89
purpose of improving the energy efficiency of housing for the 90
utility's low-income customers. The term excludes the level of 91
any such funds committed to a specific nonprofit organization or 92
organizations pursuant to a stipulation or contract. 93

(16) "Low-income customer assistance programs" means the 94
percentage of income payment plan program, the home energy 95
assistance program, the home weatherization assistance program, 96
and the targeted energy efficiency and weatherization program. 97

(17) "Market development period" for an electric utility 98
means the period of time beginning on the starting date of 99
competitive retail electric service and ending on the applicable 100
date for that utility as specified in section 4928.40 of the 101
Revised Code, irrespective of whether the utility applies to 102
receive transition revenues under this chapter. 103

(18) "Market power" means the ability to impose on 104

customers a sustained price for a product or service above the 105
price that would prevail in a competitive market. 106

(19) "Mercantile customer" means a commercial or 107
industrial customer if the electricity consumed is for 108
nonresidential use and the customer consumes more than seven 109
hundred thousand kilowatt hours per year or is part of a 110
national account involving multiple facilities in one or more 111
states. 112

(20) "Municipal electric utility" means a municipal 113
corporation that owns or operates facilities to generate, 114
transmit, or distribute electricity. 115

(21) "Noncompetitive retail electric service" means a 116
component of retail electric service that is noncompetitive as 117
provided under division (B) of this section. 118

(22) "Nonfirm electric service" means electric service 119
provided pursuant to a schedule filed under section 4905.30 of 120
the Revised Code or pursuant to an arrangement under section 121
4905.31 of the Revised Code, which schedule or arrangement 122
includes conditions that may require the customer to curtail or 123
interrupt electric usage during nonemergency circumstances upon 124
notification by an electric utility. 125

(23) "Percentage of income payment plan arrears" means 126
funds eligible for collection through the percentage of income 127
payment plan rider, but uncollected as of July 1, 2000. 128

(24) "Person" has the same meaning as in section 1.59 of 129
the Revised Code. 130

(25) "Advanced energy project" means any technologies, 131
products, activities, or management practices or strategies that 132
facilitate the generation or use of electricity or energy and 133

that reduce or support the reduction of energy consumption or 134
support the production of clean, renewable energy for 135
industrial, distribution, commercial, institutional, 136
governmental, research, not-for-profit, or residential energy 137
users, including, but not limited to, advanced energy resources 138
and renewable energy resources. "Advanced energy project" also 139
includes any project described in division (A), (B), or (C) of 140
section 4928.621 of the Revised Code. 141

(26) "Regulatory assets" means the unamortized net 142
regulatory assets that are capitalized or deferred on the 143
regulatory books of the electric utility, pursuant to an order 144
or practice of the public utilities commission or pursuant to 145
generally accepted accounting principles as a result of a prior 146
commission rate-making decision, and that would otherwise have 147
been charged to expense as incurred or would not have been 148
capitalized or otherwise deferred for future regulatory 149
consideration absent commission action. "Regulatory assets" 150
includes, but is not limited to, all deferred demand-side 151
management costs; all deferred percentage of income payment plan 152
arrears; post-in-service capitalized charges and assets 153
recognized in connection with statement of financial accounting 154
standards no. 109 (receivables from customers for income taxes); 155
future nuclear decommissioning costs and fuel disposal costs as 156
those costs have been determined by the commission in the 157
electric utility's most recent rate or accounting application 158
proceeding addressing such costs; the undepreciated costs of 159
safety and radiation control equipment on nuclear generating 160
plants owned or leased by an electric utility; and fuel costs 161
currently deferred pursuant to the terms of one or more 162
settlement agreements approved by the commission. 163

(27) "Retail electric service" means any service involved 164

in supplying or arranging for the supply of electricity to 165
ultimate consumers in this state, from the point of generation 166
to the point of consumption. For the purposes of this chapter, 167
retail electric service includes one or more of the following 168
"service components": generation service, aggregation service, 169
power marketing service, power brokerage service, transmission 170
service, distribution service, ancillary service, metering 171
service, and billing and collection service. 172

(28) "Starting date of competitive retail electric 173
service" means January 1, 2001. 174

(29) "Customer-generator" means a user of a net metering 175
system. 176

(30) "Net metering" means measuring the difference in an 177
applicable billing period between the electricity supplied by an 178
electric service provider and the electricity generated by a 179
customer-generator that is fed back to the electric service 180
provider. 181

(31) "Net metering system" means a facility for the 182
production of electrical energy that does all of the following: 183

(a) Uses as its fuel either solar, wind, biomass, landfill 184
gas, or hydropower, or uses a microturbine or a fuel cell; 185

(b) Is located on a customer-generator's premises; 186

(c) Operates in parallel with the electric utility's 187
transmission and distribution facilities; 188

(d) Is intended primarily to offset part or all of the 189
customer-generator's requirements for electricity. 190

(32) "Self-generator" means an entity in this state that 191
owns or hosts on its premises an electric generation facility 192

that produces electricity primarily for the owner's consumption 193
and that may provide any such excess electricity to another 194
entity, whether the facility is installed or operated by the 195
owner or by an agent under a contract. 196

(33) "Rate plan" means the standard service offer in 197
effect on the effective date of the amendment of this section by 198
S.B. 221 of the 127th general assembly, July 31, 2008. 199

(34) "Advanced energy resource" means any of the 200
following: 201

(a) Any method or any modification or replacement of any 202
property, process, device, structure, or equipment that 203
increases the generation output of an electric generating 204
facility to the extent such efficiency is achieved without 205
additional carbon dioxide emissions by that facility; 206

(b) Any distributed generation system consisting of 207
customer cogeneration technology; 208

(c) Clean coal technology that includes a carbon-based 209
product that is chemically altered before combustion to 210
demonstrate a reduction, as expressed as ash, in emissions of 211
nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or 212
sulfur trioxide in accordance with the American society of 213
testing and materials standard D1757A or a reduction of metal 214
oxide emissions in accordance with standard D5142 of that 215
society, or clean coal technology that includes the design 216
capability to control or prevent the emission of carbon dioxide, 217
which design capability the commission shall adopt by rule and 218
shall be based on economically feasible best available 219
technology or, in the absence of a determined best available 220
technology, shall be of the highest level of economically 221

feasible design capability for which there exists generally	222
accepted scientific opinion;	223
(d) Advanced nuclear energy technology consisting of	224
generation III technology as defined by the nuclear regulatory	225
commission; other, later technology; or significant improvements	226
to existing facilities;	227
(e) Any fuel cell used in the generation of electricity,	228
including, but not limited to, a proton exchange membrane fuel	229
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or	230
solid oxide fuel cell;	231
(f) Advanced solid waste or construction and demolition	232
debris conversion technology, including, but not limited to,	233
advanced stoker technology, and advanced fluidized bed	234
gasification technology, that results in measurable greenhouse	235
gas emissions reductions as calculated pursuant to the United	236
States environmental protection agency's waste reduction model	237
(WARM);	238
(g) Demand-side management and any energy efficiency	239
improvement;	240
(h) Any new, retrofitted, refueled, or repowered	241
generating facility located in Ohio, including a simple or	242
combined-cycle natural gas generating facility or a generating	243
facility that uses biomass, coal, modular nuclear, or any other	244
fuel as its input;	245
(i) Any uprated capacity of an existing electric	246
generating facility if the uprated capacity results from the	247
deployment of advanced technology.	248
"Advanced energy resource" does not include a waste energy	249
recovery system that is, or has been, included in an energy	250

efficiency program of an electric distribution utility pursuant to requirements under section 4928.66 of the Revised Code.	251 252
(35) "Air contaminant source" has the same meaning as in section 3704.01 of the Revised Code.	253 254
(36) "Cogeneration technology" means technology that produces electricity and useful thermal output simultaneously.	255 256
(37) (a) "Renewable energy resource" means any of the following:	257 258
(i) Solar photovoltaic or solar thermal energy;	259
(ii) Wind energy;	260
(iii) Power produced by a hydroelectric facility;	261
(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;	262 263 264
(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;	265 266 267 268 269
(vi) Geothermal energy;	270
(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;	271 272 273 274
(viii) Biomass energy;	275
(ix) Energy produced by cogeneration technology that is placed into service on or before December 31, 2015, and for	276 277

which more than ninety per cent of the total annual energy input 278
is from combustion of a waste or byproduct gas from an air 279
contaminant source in this state, which source has been in 280
operation since on or before January 1, 1985, provided that the 281
cogeneration technology is a part of a facility located in a 282
county having a population of more than three hundred sixty-five 283
thousand but less than three hundred seventy thousand according 284
to the most recent federal decennial census; 285

(x) Biologically derived methane gas; 286

(xi) Heat captured from a generator of electricity, 287
boiler, or heat exchanger fueled by biologically derived methane 288
gas; 289

(xii) Energy derived from nontreated by-products of the 290
pulping process or wood manufacturing process, including bark, 291
wood chips, sawdust, and lignin in spent pulping liquors. 292

"Renewable energy resource" includes, but is not limited 293
to, any fuel cell used in the generation of electricity, 294
including, but not limited to, a proton exchange membrane fuel 295
cell, phosphoric acid fuel cell, molten carbonate fuel cell, or 296
solid oxide fuel cell; wind turbine located in the state's 297
territorial waters of Lake Erie; methane gas emitted from an 298
abandoned coal mine; waste energy recovery system placed into 299
service or retrofitted on or after the effective date of the 300
amendment of this section by S.B. 315 of the 129th general 301
assembly, September 10, 2012, except that a waste energy 302
recovery system described in division (A) (38) (b) of this section 303
may be included only if it was placed into service between 304
January 1, 2002, and December 31, 2004; storage facility that 305
will promote the better utilization of a renewable energy 306
resource; or distributed generation system used by a customer to 307

generate electricity from any such energy. 308

"Renewable energy resource" does not include a waste 309
energy recovery system that is, or was, on or after January 1, 310
2012, included in an energy efficiency program of an electric 311
distribution utility pursuant to requirements under section 312
4928.66 of the Revised Code. 313

(b) As used in division (A) (37) of this section, 314
"hydroelectric facility" means a hydroelectric generating 315
facility that is located at a dam on a river, or on any water 316
discharged to a river, that is within or bordering this state or 317
within or bordering an adjoining state and meets all of the 318
following standards: 319

(i) The facility provides for river flows that are not 320
detrimental for fish, wildlife, and water quality, including 321
seasonal flow fluctuations as defined by the applicable 322
licensing agency for the facility. 323

(ii) The facility demonstrates that it complies with the 324
water quality standards of this state, which compliance may 325
consist of certification under Section 401 of the "Clean Water 326
Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and 327
demonstrates that it has not contributed to a finding by this 328
state that the river has impaired water quality under Section 329
303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 330
U.S.C. 1313. 331

(iii) The facility complies with mandatory prescriptions 332
regarding fish passage as required by the federal energy 333
regulatory commission license issued for the project, regarding 334
fish protection for riverine, anadromous, and catadromous fish. 335

(iv) The facility complies with the recommendations of the 336

Ohio environmental protection agency and with the terms of its 337
federal energy regulatory commission license regarding watershed 338
protection, mitigation, or enhancement, to the extent of each 339
agency's respective jurisdiction over the facility. 340

(v) The facility complies with provisions of the 341
"Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 342
to 1544, as amended. 343

(vi) The facility does not harm cultural resources of the 344
area. This can be shown through compliance with the terms of its 345
federal energy regulatory commission license or, if the facility 346
is not regulated by that commission, through development of a 347
plan approved by the Ohio historic preservation office, to the 348
extent it has jurisdiction over the facility. 349

(vii) The facility complies with the terms of its federal 350
energy regulatory commission license or exemption that are 351
related to recreational access, accommodation, and facilities 352
or, if the facility is not regulated by that commission, the 353
facility complies with similar requirements as are recommended 354
by resource agencies, to the extent they have jurisdiction over 355
the facility; and the facility provides access to water to the 356
public without fee or charge. 357

(viii) The facility is not recommended for removal by any 358
federal agency or agency of any state, to the extent the 359
particular agency has jurisdiction over the facility. 360

(c) The standards in divisions (A) (37) (b) (i) to (viii) of 361
this section do not apply to a small hydroelectric facility 362
under division (A) (37) (a) (iv) of this section. 363

(38) "Waste energy recovery system" means either of the 364
following: 365

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

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

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

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

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

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

(41) "National security generation resource" means all generating facilities owned directly or indirectly by a corporation that was formed prior to 1960 by investor-owned

utilities for the original purpose of providing capacity and 395
electricity to the federal government for use in the nation's 396
defense or in furtherance of national interests, including the 397
Ohio valley electric corporation. 398

(42) "Prudently incurred costs related to a national 399
security generation resource" means, subject to section 4928.147 400
of the Revised Code, costs, including deferred costs, allocated 401
pursuant to a power agreement approved by the federal energy 402
regulatory commission that relates to a national security 403
generation resource. Such costs shall exclude any return on 404
investment in common equity and, in the event of a premature 405
retirement of a national security generation resource, shall 406
exclude any recovery of remaining debt. 407

(43) "National security generation resource net impact" 408
means retail recovery of prudently incurred costs related to a 409
national security generation resource less any revenues realized 410
from offering the contractual commitment related to a national 411
security generation resource into the wholesale markets, 412
provided, where the net revenues exceed net costs, such excess 413
revenues shall be credited to customers. 414

(B) For the purposes of this chapter, a retail electric 415
service component shall be deemed a competitive retail electric 416
service if the service component is competitive pursuant to a 417
declaration by a provision of the Revised Code or pursuant to an 418
order of the public utilities commission authorized under 419
division (A) of section 4928.04 of the Revised Code. Otherwise, 420
the service component shall be deemed a noncompetitive retail 421
electric service. 422

Sec. 4928.02. It is the policy of this state to do the 423
following throughout this state: 424

- (A) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service; 425
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- (B) Ensure the availability of unbundled and comparable retail electric service that provides consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; 428
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- (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; 432
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- (D) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management, time-differentiated pricing, waste energy recovery systems, smart grid programs, and implementation of advanced metering infrastructure; 436
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- (E) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote both effective customer choice of retail electric service and the development of performance standards and targets for service quality for all consumers, including annual achievement reports written in plain language; 442
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- (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces; 449
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452
- (G) Recognize the continuing emergence of competitive 453

electricity markets through the development and implementation	454
of flexible regulatory treatment;	455
(H) Ensure effective competition in the provision of	456
retail electric service by avoiding anticompetitive subsidies	457
flowing from a noncompetitive retail electric service to a	458
competitive retail electric service or to a product or service	459
other than retail electric service, and vice versa, including by	460
prohibiting the recovery of any generation-related costs through	461
distribution or transmission rates;	462
(I) Ensure retail electric service consumers protection	463
against unreasonable sales practices, market deficiencies, and	464
market power;	465
(J) Provide coherent, transparent means of giving	466
appropriate incentives to technologies that can adapt	467
successfully to potential environmental mandates;	468
(K) Encourage implementation of distributed generation	469
across customer classes through regular review and updating of	470
administrative rules governing critical issues such as, but not	471
limited to, interconnection standards, standby charges, and net	472
metering;	473
(L) Protect at-risk populations, including, but not	474
limited to, when considering the implementation of any new	475
advanced energy or renewable energy resource;	476
(M) Encourage the education of small business owners in	477
this state regarding the use of, and encourage the use of,	478
energy efficiency programs and alternative energy resources in	479
their businesses;	480
(N) Facilitate the state's effectiveness in the global	481
economy;	482

(O) Provide clarity in cost recovery for Ohio-based 483
electric utilities in conjunction with national security 484
generation resources and support electric distribution utility 485
and affiliate divestiture of ownership interest in any national 486
security generation resource if divestiture efforts result in no 487
adverse consequence to the utility. 488

In carrying out this policy, the commission shall consider 489
rules as they apply to the costs of electric distribution 490
infrastructure, including, but not limited to, line extensions, 491
for the purpose of development in this state. 492

Sec. 4928.141. (A) Beginning January 1, 2009, an electric 493
distribution utility shall provide consumers, on a comparable 494
and nondiscriminatory basis within its certified territory, a 495
standard service offer of all competitive retail electric 496
services necessary to maintain essential electric service to 497
consumers, including a firm supply of electric generation 498
service. To that end, the electric distribution utility shall 499
apply to the public utilities commission to establish the 500
standard service offer in accordance with section 4928.142 or 501
4928.143 of the Revised Code and, at its discretion, may apply 502
simultaneously under both sections, ~~except that the utility's~~ 503
~~first standard service offer application at minimum shall~~ 504
~~include a filing under section 4928.143 of the Revised Code.~~ 505
Only a standard service offer authorized in accordance with 506
section 4928.142 or 4928.143 of the Revised Code, shall serve as 507
the utility's standard service offer for the purpose of 508
compliance with this section; and that standard service offer 509
shall serve as the utility's default standard service offer for 510
the purpose of section 4928.14 of the Revised Code. 511
~~Notwithstanding the foregoing provision, the rate plan of an~~ 512
~~electric distribution utility shall continue for the purpose of~~ 513

~~the utility's compliance with this division until a standard-~~ 514
~~service offer is first authorized under section 4928.142 or~~ 515
~~4928.143 of the Revised Code, and, as applicable, pursuant to~~ 516
~~division (D) of section 4928.143 of the Revised Code, any rate-~~ 517
~~plan that extends beyond December 31, 2008, shall continue to be~~ 518
~~in effect for the subject electric distribution utility for the~~ 519
~~duration of the plan's term. A standard service offer under~~ 520
section 4928.142 or 4928.143 of the Revised Code shall include 521
automatic recovery, subject to audit and reconciliation, of all 522
national security generation resource net impacts that are 523
calculated and recovered in accordance with the rate mechanism 524
established under section 4928.147 of the Revised Code, but 525
shall exclude any previously authorized allowances for 526
transition costs, with such exclusion being effective on and 527
after the date that the allowance is scheduled to end under the 528
utility's rate plan. 529

(B) An electric distribution utility, including all 530
electric distribution utilities in the same holding company, 531
shall bid all output from the national security generation 532
resource into the wholesale market and shall not use the output 533
in supplying its standard service offer provided under section 534
4928.142 or 4928.143 of the Revised Code. 535

(C) The commission shall set the time for hearing of a 536
filing under section 4928.142 or 4928.143 of the Revised Code, 537
send written notice of the hearing to the electric distribution 538
utility, and publish notice in a newspaper of general 539
circulation in each county in the utility's certified territory. 540
The commission shall adopt rules regarding filings under those 541
sections. 542

Sec. 4928.142. (A) For the purpose of complying with 543

section 4928.141 of the Revised Code and subject to division (D) 544
of this section ~~and, as applicable, subject to the rate plan~~ 545
~~requirement of division (A) of section 4928.141 of the Revised~~ 546
~~Code,~~ an electric distribution utility may establish a standard 547
service offer price for retail electric generation service that 548
is delivered to the utility under a market-rate offer. An 549
electric distribution utility shall have the right within one 550
hundred twenty days of the effective date of S.B. 155 of the 551
132nd general assembly to file an application to reopen, update, 552
or amend its then-current market-rate offer in order to 553
implement the amended version of this section, which proceeding 554
shall not otherwise reopen matters previously decided. 555

(1) The supply and pricing of electric generation service 556
under a market-rate offer shall be determined through a 557
competitive bidding process that provides for all of the 558
following: 559

(a) Open, fair, and transparent competitive solicitation; 560

(b) Clear product definition; 561

(c) Standardized bid evaluation criteria; 562

(d) Oversight by an independent third party that shall 563
design the solicitation, administer the bidding, and ensure that 564
the criteria specified in ~~division~~ divisions (A) (1) (a) to (c) of 565
this section are met; 566

(e) Evaluation of the submitted bids prior to the 567
selection of the least-cost bid winner or winners. 568

No generation supplier shall be prohibited from 569
participating in the bidding process. 570

(2) The market-rate offer shall include provisions for 571

recovery, through a nonbypassable rate mechanism, of all 572
national security generation resource net impacts pursuant to 573
section 4928.147 of the Revised Code. 574

(3) The public utilities commission shall modify rules, or 575
adopt new rules as necessary, concerning the conduct of the 576
competitive bidding process and the qualifications of bidders, 577
which rules shall foster supplier participation in the bidding 578
process and shall be consistent with the requirements of 579
division (A) (1) of this section. 580

(B) Prior to initiating a competitive bidding process for 581
a market-rate offer under division (A) of this section, the 582
electric distribution utility shall file an application with the 583
commission. An electric distribution utility may file its 584
application with the commission prior to the effective date of 585
the commission rules required under division (A) ~~(2)~~ (3) of this 586
section, and, as the commission determines necessary, the 587
utility shall immediately conform its filing to the rules upon 588
their taking effect. 589

An application under this division shall detail the 590
electric distribution utility's proposed compliance with the 591
requirements of division (A) (1) of this section and with 592
commission rules under division (A) ~~(2)~~ (3) of this section and 593
demonstrate that all of the following requirements are met: 594

(1) The electric distribution utility or its transmission 595
service affiliate belongs to at least one regional transmission 596
organization that has been approved by the federal energy 597
regulatory commission; or there otherwise is comparable and 598
nondiscriminatory access to the electric transmission grid. 599

(2) Any such regional transmission organization has a 600

market-monitor function and the ability to take actions to 601
identify and mitigate market power or the electric distribution 602
utility's market conduct; or a similar market monitoring 603
function exists with commensurate ability to identify and 604
monitor market conditions and mitigate conduct associated with 605
the exercise of market power. 606

(3) A published source of information is available 607
publicly or through subscription that identifies pricing 608
information for traded electricity on- and off-peak energy 609
products that are contracts for delivery beginning at least two 610
years from the date of the publication and is updated on a 611
regular basis. 612

The commission shall initiate a proceeding and, within 613
ninety days after the application's filing date, shall determine 614
by order whether the electric distribution utility and its 615
market-rate offer meet all of the foregoing requirements. If the 616
finding is positive, the electric distribution utility may 617
initiate its competitive bidding process. If the finding is 618
negative as to one or more requirements in division (A) (1) or 619
(B) of this section, the commission in the order shall direct 620
the electric distribution utility regarding how any deficiency 621
may be remedied in a timely manner to the commission's 622
satisfaction; otherwise, the electric distribution utility shall 623
withdraw the application. However, if such remedy is made and 624
the subsequent finding is positive and also if the electric 625
distribution utility made a simultaneous filing under this 626
section and section 4928.143 of the Revised Code, the utility 627
shall not initiate its competitive bid until at least one 628
hundred fifty days after the filing date of those applications. 629
If the electric distribution utility withdraws the application, 630
the commission shall issue an order as is necessary to ensure 631

automatic recovery of all national security generation resource 632
net impacts. 633

(C) Upon the completion of the competitive bidding process 634
authorized by divisions (A) and (B) of this section, including 635
for the purpose of division (D) of this section, the commission 636
shall select the least-cost bid winner or winners of that 637
process, and such selected bid or bids, as prescribed as retail 638
rates by the commission, shall be the electric distribution 639
utility's standard service offer unless the commission, by order 640
issued before the third calendar day following the conclusion of 641
the competitive bidding process for the market rate offer, 642
determines that one or more of the following criteria were not 643
met: 644

(1) Each portion of the bidding process was 645
oversubscribed, such that the amount of supply bid upon was 646
greater than the amount of the load bid out. 647

(2) There were four or more bidders. 648

(3) At least twenty-five per cent of the load is bid upon 649
by one or more persons other than the electric distribution 650
utility. 651

All costs incurred by the electric distribution utility as 652
a result of or related to the competitive bidding process or to 653
procuring generation service to provide the standard service 654
offer, including the costs of energy and capacity and the costs 655
of all other products and services procured as a result of the 656
competitive bidding process, shall be timely recovered through 657
the standard service offer price, and, for that purpose, the 658
commission shall approve a reconciliation mechanism, other 659
recovery mechanism, or a combination of such mechanisms for the 660

utility. 661

(D) The first application filed under this section by an 662
electric distribution utility that, as of July 31, 2008, 663
directly owns, in whole or in part, operating electric 664
generating facilities that had been used and useful in this 665
state shall require that a portion of that utility's standard 666
service offer load for the first five years of the market rate 667
offer be competitively bid under division (A) of this section as 668
follows: ten per cent of the load in year one, not more than 669
twenty per cent in year two, thirty per cent in year three, 670
forty per cent in year four, and fifty per cent in year five. 671
Consistent with those percentages, the commission shall 672
determine the actual percentages for each year of years one 673
through five. The standard service offer price for retail 674
electric generation service under this first application shall 675
be a proportionate blend of the bid price and the generation 676
service price for the remaining standard service offer load, 677
which latter price shall be equal to the electric distribution 678
utility's most recent standard service offer price, adjusted 679
upward or downward as the commission determines reasonable, 680
relative to the jurisdictional portion of any known and 681
measurable changes from the level of any one or more of the 682
following costs as reflected in that most recent standard 683
service offer price: 684

(1) The electric distribution utility's prudently incurred 685
cost of fuel used to produce electricity; 686

(2) Its prudently incurred purchased power costs; 687

(3) Its prudently incurred costs of satisfying the supply 688
and demand portfolio requirements of this state, including, but 689
not limited to, renewable energy resource and energy efficiency 690

requirements; 691

(4) Its costs prudently incurred to comply with 692
environmental laws and regulations, with consideration of the 693
derating of any facility associated with those costs. 694

In making any adjustment to the most recent standard 695
service offer price on the basis of costs described in division 696
(D) of this section, the commission shall include the benefits 697
that may become available to the electric distribution utility 698
as a result of or in connection with the costs included in the 699
adjustment, including, but not limited to, the utility's receipt 700
of emissions credits or its receipt of tax benefits or of other 701
benefits, and, accordingly, the commission may impose such 702
conditions on the adjustment to ensure that any such benefits 703
are properly aligned with the associated cost responsibility. 704
The commission shall also determine how such adjustments will 705
affect the electric distribution utility's return on common 706
equity that may be achieved by those adjustments. The commission 707
shall not apply its consideration of the return on common equity 708
to reduce any adjustments authorized under this division unless 709
the adjustments will cause the electric distribution utility to 710
earn a return on common equity that is significantly in excess 711
of the return on common equity that is earned by publicly traded 712
companies, including utilities, that face comparable business 713
and financial risk, with such adjustments for capital structure 714
as may be appropriate. The burden of proof for demonstrating 715
that significantly excessive earnings will not occur shall be on 716
the electric distribution utility. 717

Additionally, the commission may adjust the electric 718
distribution utility's most recent standard service offer price 719
by such just and reasonable amount that the commission 720

determines necessary to address any emergency that threatens the 721
utility's financial integrity or to ensure that the resulting 722
revenue available to the utility for providing the standard 723
service offer is not so inadequate as to result, directly or 724
indirectly, in a taking of property without compensation 725
pursuant to Section 19 of Article I, Ohio Constitution. The 726
electric distribution utility has the burden of demonstrating 727
that any adjustment to its most recent standard service offer 728
price is proper in accordance with this division. 729

(E) Beginning in the second year of a blended price under 730
division (D) of this section and notwithstanding any other 731
requirement of this section, the commission may alter 732
prospectively the proportions specified in that division to 733
mitigate any effect of an abrupt or significant change in the 734
electric distribution utility's standard service offer price 735
that would otherwise result in general or with respect to any 736
rate group or rate schedule but for such alteration. Any such 737
alteration shall be made not more often than annually, and the 738
commission shall not, by altering those proportions and in any 739
event, including because of the length of time, as authorized 740
under division (C) of this section, taken to approve the market 741
rate offer, cause the duration of the blending period to exceed 742
ten years as counted from the effective date of the approved 743
market rate offer. Additionally, any such alteration shall be 744
limited to an alteration affecting the prospective proportions 745
used during the blending period and shall not affect any 746
blending proportion previously approved and applied by the 747
commission under this division. 748

(F) An electric distribution utility that has received 749
commission approval of its first application under division (C) 750
of this section shall not, nor ever shall be authorized or 751

required by the commission to, file an application under section 752
4928.143 of the Revised Code. 753

Sec. 4928.143. (A) For the purpose of complying with 754
section 4928.141 of the Revised Code, an electric distribution 755
utility may file an application for public utilities commission 756
approval of an electric security plan as prescribed under 757
division (B) of this section. The utility may file that 758
application prior to the effective date of any rules the 759
commission may adopt for the purpose of this section, and, as 760
the commission determines necessary, the utility immediately 761
shall conform its filing to those rules upon their taking 762
effect. An electric distribution utility shall have the right 763
within one hundred twenty days of the effective date of S.B. 155 764
of the 132nd general assembly to file an application to reopen, 765
update, or amend its then-current standard service offer or 766
initiate a separate proceeding in order to implement the amended 767
version of this section, which proceeding shall not otherwise 768
reopen matters previously decided. Upon approval of an update or 769
amendment to implement the change in law, any terms and 770
conditions of the prior electric security plan relating to a 771
national security generation resource shall no longer be in 772
effect. 773

(B) Notwithstanding any other provision of Title XLIX of 774
the Revised Code to the contrary except division (D) of this 775
section, divisions (I), (J), and (K) of section 4928.20, 776
division (E) of section 4928.64, and section 4928.69 of the 777
Revised Code: 778

(1) An electric security plan shall include provisions 779
relating to the supply and pricing of electric generation 780
service and shall include provisions for recovery, through a 781

nonbypassable rate mechanism, of all national security 782
generation resource net impacts pursuant to section 4928.147 of 783
the Revised Code. In addition, if the proposed electric security 784
plan has a term longer than three years, it may include 785
provisions in the plan to permit the commission to test the plan 786
pursuant to division (E) of this section and any transitional 787
conditions that should be adopted by the commission if the 788
commission terminates the plan as authorized under that 789
division. 790

(2) The plan may provide for or include, without 791
limitation, any of the following: 792

(a) Automatic recovery of any of the following costs of 793
the electric distribution utility, provided the cost is 794
prudently incurred: the cost of fuel used to generate the 795
electricity supplied under the offer; the cost of purchased 796
power supplied under the offer, including the cost of energy and 797
capacity, and including purchased power acquired from an 798
affiliate; the cost of emission allowances; and the cost of 799
federally mandated carbon or energy taxes; 800

(b) A reasonable allowance for construction work in 801
progress for any of the electric distribution utility's cost of 802
constructing an electric generating facility or for an 803
environmental expenditure for any electric generating facility 804
of the electric distribution utility, provided the cost is 805
incurred or the expenditure occurs on or after January 1, 2009. 806
Any such allowance shall be subject to the construction work in 807
progress allowance limitations of division (A) of section 808
4909.15 of the Revised Code, except that the commission may 809
authorize such an allowance upon the incurrence of the cost or 810
occurrence of the expenditure. No such allowance for generating 811

facility construction shall be authorized, however, unless the 812
commission first determines in the proceeding that there is need 813
for the facility based on resource planning projections 814
submitted by the electric distribution utility. Further, no such 815
allowance shall be authorized unless the facility's construction 816
was sourced through a competitive bid process, regarding which 817
process the commission may adopt rules. An allowance approved 818
under division (B) (2) (b) of this section shall be established as 819
a nonbypassable surcharge for the life of the facility. 820

(c) The establishment of a nonbypassable surcharge for the 821
life of an electric generating facility that is owned or 822
operated by the electric distribution utility, was sourced 823
through a competitive bid process subject to any such rules as 824
the commission adopts under division (B) (2) (b) of this section, 825
and is newly used and useful on or after January 1, 2009, which 826
surcharge shall cover all costs of the utility specified in the 827
application, excluding costs recovered through a surcharge under 828
division (B) (2) (b) of this section. However, no surcharge shall 829
be authorized unless the commission first determines in the 830
proceeding that there is need for the facility based on resource 831
planning projections submitted by the electric distribution 832
utility. Additionally, if a surcharge is authorized for a 833
facility pursuant to plan approval under division (C) of this 834
section and as a condition of the continuation of the surcharge, 835
the electric distribution utility shall dedicate to Ohio 836
consumers the capacity and energy and the rate associated with 837
the cost of that facility. Before the commission authorizes any 838
surcharge pursuant to this division, it may consider, as 839
applicable, the effects of any decommissioning, deratings, and 840
retirements. 841

(d) Terms, conditions, or charges relating to limitations 842

on customer shopping for retail electric generation service, 843
bypassability, standby, back-up, or supplemental power service, 844
default service, carrying costs, amortization periods, and 845
accounting or deferrals, including future recovery of such 846
deferrals, as would have the effect of stabilizing or providing 847
certainty regarding retail electric service; 848

(e) Automatic increases or decreases in any component of 849
the standard service offer price; 850

(f) Consistent with sections 4928.23 to 4928.2318 of the 851
Revised Code, both of the following: 852

(i) Provisions for the electric distribution utility to 853
securitize any phase-in, inclusive of carrying charges, of the 854
utility's standard service offer price, which phase-in is 855
authorized in accordance with section 4928.144 of the Revised 856
Code; 857

(ii) Provisions for the recovery of the utility's cost of 858
securitization. 859

(g) Provisions relating to transmission, ancillary, 860
congestion, or any related service required for the standard 861
service offer, including provisions for the recovery of any cost 862
of such service that the electric distribution utility incurs on 863
or after that date pursuant to the standard service offer; 864

(h) Provisions regarding the utility's distribution 865
service, including, without limitation and notwithstanding any 866
provision of Title XLIX of the Revised Code to the contrary, 867
provisions regarding single issue ratemaking, a revenue 868
decoupling mechanism or any other incentive ratemaking, and 869
provisions regarding distribution infrastructure and 870
modernization incentives for the electric distribution utility. 871

The latter may include a long-term energy delivery 872
infrastructure modernization plan for that utility or any plan 873
providing for the utility's recovery of costs, including lost 874
revenue, shared savings, and avoided costs, and a just and 875
reasonable rate of return on such infrastructure modernization. 876
As part of its determination as to whether to allow in an 877
electric distribution utility's electric security plan inclusion 878
of any provision described in division (B) (2) (h) of this 879
section, the commission shall examine the reliability of the 880
electric distribution utility's distribution system and ensure 881
that customers' and the electric distribution utility's 882
expectations are aligned and that the electric distribution 883
utility is placing sufficient emphasis on and dedicating 884
sufficient resources to the reliability of its distribution 885
system. 886

(i) Provisions under which the electric distribution 887
utility may implement economic development, job retention, and 888
energy efficiency programs, which provisions may allocate 889
program costs across all classes of customers of the utility and 890
those of electric distribution utilities in the same holding 891
company system. 892

(C) (1) The burden of proof in the proceeding shall be on 893
the electric distribution utility, provided that the public 894
utilities commission must approve automatic cost recovery of all 895
national security generation resource net impacts consistent 896
with the prudence review in section 4928.147 of the Revised 897
Code. The commission shall issue an order under this division 898
for an initial application under this section not later than one 899
hundred fifty days after the application's filing date and, for 900
any subsequent application by the utility under this section, 901
not later than two hundred seventy-five days after the 902

application's filing date. Subject to division (D) of this 903
section, the commission by order shall approve or modify and 904
approve an application filed under division (A) of this section 905
if it finds that the electric security plan so approved, 906
including its pricing and all other terms and conditions, 907
including any deferrals and any future recovery of deferrals, is 908
more favorable in the aggregate as compared to the expected 909
results that would otherwise apply under section 4928.142 of the 910
Revised Code. Additionally, if the commission so approves an 911
application that contains a surcharge under division (B) (2) (b) 912
or (c) of this section, the commission shall ensure that the 913
benefits derived for any purpose for which the surcharge is 914
established are reserved and made available to those that bear 915
the surcharge. Otherwise, the commission by order shall 916
disapprove the application. 917

(2) (a) If the commission modifies and approves an 918
application under division (C) (1) of this section, the electric 919
distribution utility may withdraw the application, thereby 920
terminating it, and may file a new standard service offer under 921
this section or a standard service offer under section 4928.142 922
of the Revised Code. 923

(b) If the utility terminates an application pursuant to 924
division (C) (2) (a) of this section or if the commission 925
disapproves an application under division (C) (1) of this 926
section, the commission shall issue such order as is necessary 927
to ensure automatic cost recovery of all national security 928
generation resource net impacts and to continue the provisions, 929
terms, and conditions of the utility's most recent standard 930
service offer, along with any expected increases or decreases in 931
fuel costs from those contained in that offer, until a 932
subsequent offer is authorized pursuant to this section or 933

section 4928.142 of the Revised Code, respectively. 934

(D) Regarding the rate plan requirement of division (A) of 935
section 4928.141 of the Revised Code, if an electric 936
distribution utility that has a rate plan that extends beyond 937
December 31, 2008, files an application under this section for 938
the purpose of its compliance with division (A) of section 939
4928.141 of the Revised Code, that rate plan and its terms and 940
conditions are hereby incorporated into its proposed electric 941
security plan and shall continue in effect until the date 942
scheduled under the rate plan for its expiration, and that 943
portion of the electric security plan shall not be subject to 944
commission approval or disapproval under division (C) of this 945
section, and the earnings test provided for in division (F) of 946
this section shall not apply until after the expiration of the 947
rate plan. However, that utility may include in its electric 948
security plan under this section, and the commission may 949
approve, modify and approve, or disapprove subject to division 950
(C) of this section, provisions for the incremental recovery or 951
the deferral of any costs that are not being recovered under the 952
rate plan and that the utility incurs during that continuation 953
period to comply with section 4928.141, division (B) of section 954
4928.64, or division (A) of section 4928.66 of the Revised Code. 955

(E) If an electric security plan approved under division 956
(C) of this section, except one withdrawn by the utility as 957
authorized under that division, has a term, exclusive of phase- 958
ins or deferrals, that exceeds three years from the effective 959
date of the plan, the commission shall test the plan in the 960
fourth year, and if applicable, every fourth year thereafter, to 961
determine whether the plan, including its then-existing pricing 962
and all other terms and conditions, including any deferrals and 963
any future recovery of deferrals, continues to be more favorable 964

in the aggregate and during the remaining term of the plan as 965
compared to the expected results that would otherwise apply 966
under section 4928.142 of the Revised Code. The commission shall 967
also determine the prospective effect of the electric security 968
plan to determine if that effect is substantially likely to 969
provide the electric distribution utility with a return on 970
common equity that is significantly in excess of the return on 971
common equity that is likely to be earned by publicly traded 972
companies, including utilities, that face comparable business 973
and financial risk, with such adjustments for capital structure 974
as may be appropriate. The burden of proof for demonstrating 975
that significantly excessive earnings will not occur shall be on 976
the electric distribution utility. If the test results are in 977
the negative or the commission finds that continuation of the 978
electric security plan will result in a return on equity that is 979
significantly in excess of the return on common equity that is 980
likely to be earned by publicly traded companies, including 981
utilities, that will face comparable business and financial 982
risk, with such adjustments for capital structure as may be 983
appropriate, during the balance of the plan, the commission may 984
terminate the electric security plan, but not until it shall 985
have provided interested parties with notice and an opportunity 986
to be heard. The commission may impose such conditions on the 987
plan's termination as it considers reasonable and necessary to 988
accommodate the transition from an approved plan to the more 989
advantageous alternative. In the event of an electric security 990
plan's termination pursuant to this division, the commission 991
shall permit the continued deferral and phase-in of any amounts 992
that occurred prior to that termination and the recovery of 993
those amounts as contemplated under that electric security plan. 994

(F) With regard to the provisions that are included in an 995

electric security plan under this section, the commission shall 996
consider, following the end of each annual period of the plan, 997
if any such adjustments resulted in excessive earnings as 998
measured by whether the earned return on common equity of the 999
electric distribution utility is significantly in excess of the 1000
return on common equity that was earned during the same period 1001
by publicly traded companies, including utilities, that face 1002
comparable business and financial risk, with such adjustments 1003
for capital structure as may be appropriate. Consideration also 1004
shall be given to the capital requirements of future committed 1005
investments in this state. The burden of proof for demonstrating 1006
that significantly excessive earnings did not occur shall be on 1007
the electric distribution utility. If the commission finds that 1008
such adjustments, in the aggregate, did result in significantly 1009
excessive earnings, it shall require the electric distribution 1010
utility to return to consumers the amount of the excess by 1011
prospective adjustments; provided that, upon making such 1012
prospective adjustments, the electric distribution utility shall 1013
have the right to terminate the plan and immediately file an 1014
application pursuant to section 4928.142 of the Revised Code. 1015
Upon termination of a plan under this division, rates shall be 1016
set on the same basis as specified in division (C) (2) (b) of this 1017
section, and the commission shall permit the continued deferral 1018
and phase-in of any amounts that occurred prior to that 1019
termination and the recovery of those amounts as contemplated 1020
under that electric security plan. In making its determination 1021
of significantly excessive earnings under this division, the 1022
commission shall not consider, directly or indirectly, the 1023
revenue, expenses, or earnings of any affiliate or parent 1024
company. 1025

Sec. 4928.147. (A) In establishing a nonbypassable rate 1026

mechanism for recovery of national security generation resource 1027
net impacts under division (A) (2) of section 4928.142 or 1028
division (B) (1) of section 4928.143 of the Revised Code, the 1029
public utilities commission shall do the following: 1030

(1) Determine, every three years, the prudence and 1031
reasonableness of the electric distribution utility's actions 1032
related to the national security generation resource, including 1033
its decisions related to offering the contractual commitment 1034
into the wholesale markets, and exclude from recovery those 1035
costs it determines imprudent and unreasonable; 1036

(2) Determine the proper rate design for recovering or 1037
remitting the national security generation resource net impact, 1038
provided, however, that the monthly charge or credit recovering 1039
such impact, including any deferrals or credits, shall not 1040
exceed two dollars and fifty cents per customer per month for 1041
residential customers and two thousand five hundred dollars per 1042
customer per month for all other customers, with the commission 1043
establishing comparable monthly caps for each nonresidential 1044
customer class at or below the two thousand five hundred dollar 1045
per customer level. Insofar as the national security generation 1046
resource net impact exceeds these monthly limits, the electric 1047
distribution utility shall defer the remaining net impact as a 1048
regulatory asset or liability that shall be recovered as 1049
determined by the commission subject to the monthly rate caps 1050
set forth herein. 1051

(3) Provide for discontinuation, subject to final 1052
reconciliation, of the nonbypassable recovery mechanism on 1053
December 31, 2030, unless such mechanism is extended by the 1054
general assembly pursuant to division (B) of this section. 1055

(B) The commission shall conduct an inquiry in 2029 to 1056

determine whether it is in the public interest to continue 1057
recovery of national security generation resource net impacts 1058
after 2030, and report its findings to the general assembly. 1059

Section 2. That existing sections 4928.01, 4928.02, 1060
4928.141, 4928.142, and 4928.143 of the Revised Code are hereby 1061
repealed. 1062

Section 3. The items of law contained in division (B) of 1063
section 4928.141 of the Revised Code, and their applications, 1064
are severable. If any item of law contained in that division, or 1065
if any application of any item of law contained in that 1066
division, is held invalid, the invalidity does not affect other 1067
items of law contained in this act and their applications that 1068
can be given effect without the invalid item of law or 1069
application. 1070

Section 4. The amendments by this act to division (A) of 1071
section 4928.142 and division (A) of section 4928.143 of the 1072
Revised Code are not intended to render moot any issue raised in 1073
an appeal under section 4903.13 of the Revised Code that is not 1074
directly related to recovery of national security generation 1075
resource net impacts. 1076