BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan.	))))))	Case No. 14-1297-EL-SSO

APPENDIX C & D
TO
INITIAL BRIEF
OF
NORTHEAST OHIO PUBLIC ENERGY COUNCIL

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APPENDIX C

SB 221 as Reported in the H. Public Utilities, Section 4928.143(B)(1)

Legislative Service Commission Bill Analysis, 127th General Assembly, SB 221: As Reported by the H. Public Utilities.

As Reported by the House Public Utilities Committee

127th General Assembly
Regular Session
2007-2008

Sub. S. B. No. 221

Senator Schuler
(By Request)

Cosponsors: Senators Jacobson, Harris, Fedor, Boccieri, Miller, R., Morano, Mumper, Niehaus, Padgett, Roberts, Wilson, Spada
Representatives Hagan, J., Blessing, Coley, Jones, Uecker

A BILL

To amend sections 4905.31, 4928.01, 4928.02, 4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and 4929.02; to enact sections 9.835, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 4928.68, 4928.69, and 4929.051; and to repeal sections 4928.41, 4928.42, 4928.431, and 4928.44 of the Revised Code to revise state energy policy to address electric service price regulation, establish alternative energy benchmarks for electric distribution utilities and electric services companies, provide for the use of renewable energy credits, establish energy efficiency standards for electric distribution utilities, require greenhouse gas emission reporting and carbon dioxide control planning for utility-owned generating facilities, authorize energy price risk management contracts, and authorize for natural gas utilities revenue

~~market-based standard offer required by division (A) of this section. The commission may determine at any time that a competitive bidding process is not required, if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed.~~

~~(C) After the market development period, the~~ The failure of a supplier to provide retail electric generation service to customers within the certified territory of ~~the~~ an electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer ~~filed~~ under ~~division (A) of this section~~ sections 4928.141, 4928.142, and 4928.143 of the Revised Code until the customer chooses an alternative supplier. A supplier is deemed under this ~~division~~ section to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met:

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

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

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

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

Sec. 4928.141. (A) Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and

nondiscriminatory basis within its certified territory, a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. However, pursuant to division (D) of section 4928.143 of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term.

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

Sec. 4928.142. (A) For the purpose of complying with section 4928.141 of the Revised Code and subject to division (D) of this section and, as applicable, subject to the rate plan requirement

of division (A) of section 4928.141 of the Revised Code, an electric distribution utility may establish a standard service offer price for retail electric generation service that is delivered to the utility under a market-rate offer.

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

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

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

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

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

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

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

(B) Prior to initiating a competitive bidding process for a market-rate offer under division (A) of this section, the electric distribution utility shall file an application with the commission. An electric distribution utility may file its application with the commission prior to the effective date of the commission rules required under division (A)(2) of this section,

and, as the commission determines necessary, the utility shall immediately conform its filing to the rules upon their taking effect.

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

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

(2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.

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

The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may initiate its competitive bidding process. If the finding is negative as to one

or more requirements, the commission in the order shall direct the electric distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred twenty days after the filing date of those applications.

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

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

(2) There were four or more bidders.

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

All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or to procuring generation service to provide the standard service offer, including the costs of energy and capacity and the costs of all other products and services procured as a result of the

competitive bidding process, shall be timely recovered through the standard service offer price, and, for that purpose, the commission shall approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

(D) The first application filed under this section by an electric distribution utility that, as of the effective date of this section, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one and not less than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

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

(2) Its prudently incurred purchased power costs;

(3) Its costs of satisfying the supply and demand portfolio

requirements of this state, including, but not limited to, renewable energy resource and energy efficiency requirements;

(4) Its costs prudently incurred to comply with environmental laws and regulations.

In making any adjustment to the most recent standard service offer price on the basis of costs described in division (D)(4) of this section, the commission shall consider the benefits that may become available to the electric distribution utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits, and, accordingly, the commission may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility.

Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the standard service offer is not so inadequate as to result, directly or indirectly, in a taking of property without compensation pursuant to Section 19 of Article I, Ohio Constitution. The electric distribution utility has the burden of demonstrating that any adjustment to its most recent standard service offer price is proper in accordance with this division. The commission's determination of the electric distribution utility's most recent standard service offer price shall exclude any previously authorized allowance for transition costs with such exclusion being effective on and after the date that allowance is scheduled to end under the utility's rate plan.

(E) Beginning in the second year of a blended price under division (D) of this section and notwithstanding any other

requirement of this section, the commission may alter prospectively the proportions specified in that division to mitigate any effect of an abrupt change in the electric distribution utility's standard service offer price that would otherwise result in general or with respect to any rate group or rate schedule but for such alteration. Any such alteration shall be made not more often than annually, and the commission shall not, by altering those proportions and in any event, cause the duration of the blending period to exceed ten years as counted from the effective date of the approved market rate offer. Additionally, any such alteration shall be limited to an alteration affecting the prospective proportions used during the blending period and shall not affect any blending proportion previously approved and applied by the commission under this division.

(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.

Sec. 4928.143. (A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.

(B) Notwithstanding any other provision of Title XLIX of the Revised Code to the contrary except division (D) of this section:

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

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

(a) Automatic recovery of the electric distribution utility's costs of fuel used to generate the electricity supplied under the offer; purchased power supplied under the offer, including the cost of energy and capacity, and including purchased power acquired from an affiliate; emission allowances; and federally mandated carbon or energy taxes;

(b) A reasonable allowance for construction work in progress for any of the electric distribution utility's cost of constructing an electric generating facility or for an environmental expenditure for any electric generating facility of the electric distribution utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. Any such allowance shall be subject to the construction work in progress allowance limitations of division (A) of section 4909.15 of the Revised Code, except that the commission may authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. No such allowance for generating facility construction shall be authorized, however, unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Further, no such allowance shall be authorized unless the facility's construction was sourced through

a competitive bid process, regarding which process the commission may adopt rules. An allowance approved under division (B)(2)(b) of this section shall be established as a nonbypassable surcharge for the life of the facility.

(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no surcharge shall be authorized unless the commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (C) of this section and as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to the Ohio consumers bearing the surcharge all the electricity generated by that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.

(d) Provisions for the decommissioning, derating, or retirement of an electric generating facility;

(e) Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing

certainty regarding retail electric service;

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

(g) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code; and provisions for the recovery of the utility's cost of securitization. If the commission's order includes such a phase-in, the order also shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order shall authorize the collection of those deferrals through a nonbypassable surcharge on the utility's rates.

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

(i) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure

modernization.

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

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred twenty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

(2)(a) If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a

standard service offer under section 4928.142 of the Revised Code.

(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.

(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code.

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or

deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. If the test results are in the negative, the commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

Sec. 4928.144. The public utilities commission by order may authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers. If the commission's order includes such a phase-in, the order also shall provide for the creation of regulatory assets, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order shall authorize the collection of those deferrals through a nonbypassable surcharge on any such rate or price so established for the electric

Bill Analysis

Legislative Service Commission

Sub. S.B. 221*

127th General Assembly
(As Reported by H. Public Utilities)

Sens. Schuler, Jacobson, Harris, Fedor, Boccieri, R. Miller, Morano, Mumper, Niehaus, Padgett, Roberts, Wilson, Spada

BILL SUMMARY

- Focuses on two main subject areas: electricity prices and electricity sources.

Electricity prices:

- Preserves the right of customer choice enacted by S.B. 3 of the 123rd General Assembly.
- Revises and adds to the current objectives of state electric services policy enacted under S.B. 3.
- Provides that a "self-generator" under Electric Restructuring Law need not own the generating facility, rather, it can host it on its premises.
- Permits special contract law to be enforced for the purposes of the Electric Restructuring Law.
- Expressly authorizes under special contract law the filing of a financial device to recover costs incurred in conjunction with economic development and job retention, the bill's peak demand reduction and energy efficiency programs, advanced metering, and government mandates.
- Authorizes a mercantile customer or a group of those customers to establish a reasonable arrangement with a utility under special contract law.
- Provides that special contracts must be submitted to the PUCO by application for its approval.
- Preserves the requirement that each electric distribution utility have a standard service offer (SSO).

- Preserves current law's provision that each utility's SSO will be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.

- Expressly states that its SSO provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

- Modifies the corporate separation law so that the law applies to an electric utility "except as otherwise provided in" the market rate offer (MRO) and electric security plan (ESP) provisions of the bill.

- Removes any limitation on divestiture by an electric utility that is not a distribution utility.

- Removes the current law's provision that a utility's authority to divest is subject to the provisions of public utility law relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.

- Authorizes the PUCO to grant rate phase-ins and states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service does not limit that phase-in authority.

- Requires that an SSO be either an MRO or an ESP.

- Authorizes discovery requests of certain utility agreements during an MRO or ESP proceeding.

- Requires all utilities to file an SSO before 1/1/09.

- Requires the first SSO application of a utility to be an ESP, but allows a utility to simultaneously file an MRO.

- Provides SSO provisions that reflect differences among the electric distribution utilities.

- Authorizes "transitional" MROs that require utilities that own generating assets to "ramp up" to market and operate under a blended generation price during that period.

- Provides that an electric distribution utility that files an MRO cannot, and cannot be required to, file an ESP.

- Provides that the bids selected for an MRO be the least-cost bids and establishes several other criteria regarding the bid results that can preclude an MRO application from going forward.

- Authorizes the PUCO to adjust the blended price of a transitional MRO.

- States that public utility law (R.C. Title 49) does not apply to an ESP.

- Prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, the application can contain, but does not limit any discretionary items to those the bill enumerates.

- Requires an ESP to contain provisions related to the supply and pricing of electric generation service and, if the proposed ESP has a term longer than three years, requires that it must include provisions to permit the PUCO to test the ESP.

- Permits an ESP to include automatic cost recovery, a construction work in progress allowance/nonbypassable surcharge, a nonbypassable surcharge for a competitively bid generating facility, facility decommissioning, derating, and retirement, rate stabilization, automatic price adjustments, securitization, transmission and related services, distribution service, and economic development and energy efficiency.

- Prescribes as a standard for PUCO approval that the ESP pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.

- Requires that, if an ESP provides a nonbypassable surcharge for CWIP or a competitively sourced generating facility, the PUCO must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

- Allows an electric distribution utility to withdraw an ESP application, thereby terminating it, if the PUCO modifies and then approves the application.

- Requires the PUCO, if it modifies and approves or disapproves an ESP application, to issue an order continuing the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs, until a subsequent ESP or MRO is filed and authorized.

- Extends to a FERC-approved regional transmission organization that is responsible for maintaining reliability in all or part of Ohio the requirement to consent to service of process and designate an agent.

- Requires the PUCO to employ a Federal Energy Advocate to generally assist with transmission oversight.

- Prohibits an electric distribution utility charging a customer of a municipal utility in existence before 1/1/98 any surcharge, service termination charge, exit fee, or transition charge.

- Requires the PUCO, in carrying out the state electric services policy, to consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in Ohio.

- Requires the PUCO to adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities.

- Lengthens from two years to up to three years the time period for an automatic governmental aggregation before a participant can op-out.

- Authorizes a state official or the legislative or other governing authority of a county, city, village, township, park district, or school district to enter into an energy price risk management contract.

Electricity sources:

- Requires an electric distribution utility and an electric services company to provide from "alternative energy resources" a portion of their electricity supplies from alternative energy resources.

- Defines alternative energy resources as consisting of specified advanced energy resources and renewable energy resources with the placed-in-service date of January 1, 1998, and as consisting of existing or new mercantile customer-sited resources.

- Specifies that the requisite portion of the electric supply derived from alternative energy must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio.

- Provides that half of the alternative energy can be generated from advanced energy resources, but at least half must be generated from renewable energy resources,

including 0.05% from solar energy resources, with yearly benchmarks increasing in percentage of electric supply through 2024.

- Establishes a cost cap relative to a utility's or company's obligation to comply with a renewable energy resource benchmark.

- Authorizes the PUCO to make a force majeure determination regarding all or part of a utility's or company's compliance with a minimum, renewable energy resource benchmark.

- Authorizes the PUCO to enforce the renewable energy and solar energy resource benchmarks through the assessment of compliance payments.

- Requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee to semiannually review the bill's alternative energy requirements.

- Requires the PUCO to submit an annual report to the General Assembly describing alternative energy benchmark compliance and the use of alternative energy resources.

- Prescribes energy savings and peak demand reduction requirements for electric distribution utilities through 2025, sets yearly benchmarks, and authorizes PUCO enforcement of compliance through the assessment of forfeitures.

- Authorizes the PUCO to approve a revenue decoupling mechanism for an electric distribution utility if it reasonably aligns the interests of the utility and of its customers in favor of energy efficiency or energy conservation programs.

- Requires the Governor's Energy Advisor to periodically report to the General Assembly and as requested by House and Senate standing committees responsible for energy efficiency and conservation issues regarding energy efficiency and conservation initiatives undertaken by the Advisor and state government.

- Authorizes a natural gas utility to apply for Public Utilities Commission (PUCO) approval of an alternative rate plan that includes a revenue decoupling mechanism.

- Defines "revenue decoupling mechanism" as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.

- By declaring that such a plan is an application "not for an increase in rates," removes certain requirements for a hearing on any alternative rate plan that includes a revenue decoupling mechanism, proposes rates and charges based upon

the billing determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case, and establishes, continues, or expands an energy efficiency or energy conservation program.

- Prohibits the bill being construed as supporting a claim or finding that an application for such a conservation-related plan filed before the bill's effective date *is* an application to increase rates (and therefore generally subject to hearing).

- Adds the following, twelfth objective to the statutory natural gas policy: to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.

- Changes the requirement that the PUCO follow the state policy when carrying out its duties under the alternative regulation law, to require that both the PUCO and Ohio Consumers' Counsel (OCC) follow the policy in exercising their respective authorities under that law.

- Requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas emissions reporting and carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date.

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CONTENT AND OPERATION

The bill focuses on two main subject areas: electricity prices and electricity sources.

I. Electricity prices

State policy provisions

State electric services policy

(R.C. 4928.02)

The bill revises and adds to the current objectives of the state electric services policy enacted under S.B. 3. Under both current law and the bill, the statutory electric policy applies statewide, and the PUCO is required to ensure that the policy is effectuated (R.C. 4928.06(A), not in the bill).

The current policy objectives, which have their genesis in S.B. 3's competitive generation market concept, are as follows: (1) ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, (2) 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, (3) ensure diversity of electricity supplies and suppliers, by giving consumers effective choice of supplies and suppliers and by encouraging the development of distributed and small generation facilities, (4) encourage innovation and market access for cost-effective supply- and demand-side retail electric service, (5) encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service, (6) recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment, (7) ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, (8) ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power, and (9) facilitate the state's effectiveness in the global economy.

Although the bill does not amend the wording of objective (1), its change in the regulatory framework for retail electric service prices, discussed below, will provide a different pricing context for implementing the objective's concept of "reasonably priced retail electric service." In addition, the bill changes the state policy objectives by adding five new objectives and modifying three of the current objectives. Specifically, objective (4) above is changed to read: "encourage innovation and market access for cost-effective retail electric service, *including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure*."

Objective (5) above is changed to read: "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.*"

Objective (7) above is changed to read: "ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, *including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.*"

The following new objectives are added to the state electric services policy: (1) 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, (2) provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates, (3) encourage implementation of distributed generation across customer classes through regular review and updating of rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering, (4) protect at-risk populations, including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource, and (5) encourage the education of small business owners in Ohio regarding the use of energy efficiency programs and advanced energy technologies in their businesses and encourage that use.

"Self-generator"

(R.C. 4928.01(A)(7) and (32))

The bill makes certain changes that relate to customer generation of electricity. It modifies current law's definition of "self-generator." Under current law, a "self-generator" is an entity in Ohio that owns an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to retail electric service providers, whether the facility is installed or operated by the owner or by an agent under a contract.

The bill modifies that definition by providing, in effect, that a self-generator need not own the generating facility, rather it can host it on its premises. It similarly modifies the exclusion that current law grants to a self-generator from being considered an "electric light company" under the Electric Restructuring Law. In addition, the bill removes an undefined term--"retail electric service providers"--from the definition of "self-generator" and replaces it with the term "entity," thereby recognizing that a self-generator can sell excess electricity to anyone, not just to persons engaged in the retail sale of electric service.

Scope of PUCO authority regarding retail generation service

(R.C. 4905.31 and 4928.05(A)(1))

Current law specifies the scope of the PUCO's authority regarding a competitive retail electric service (generation service), by enumerating specific provisions of public utility rate-making law (R.C. Chapters 4905. and 4909.) that continue to apply to that service notwithstanding that the service is offered competitively in Ohio. The bill includes a reference to the special contract law (R.C. 4905.31), thereby clearly permitting that law to be enforced for the purposes of the Electric Restructuring Law.

Currently, the special contract law in effect authorizes a public utility to file a rate schedule or enter into any reasonable arrangement with another public utility or with its customers, consumers, or employees. The law describes a number of types of those schedules or arrangements, concluding with the general description of any financial device that may be practicable or advantageous to the parties. The bill states that, in the case of an electric distribution utility, such a financial device may include a device to recover costs incurred in conjunction with (1) any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program, (2) any development and implementation of peak demand reduction and energy efficiency programs under the bill's energy efficiency requirements (see "***Energy efficiency***," below), (3) any acquisition and deployment of advanced metering, including the costs of any meters retired as a result of advanced metering implementation, and (4) compliance with any government mandate.

The bill removes obsolete references in that list to schedules or arrangements relating to emissions fees.

More importantly, the bill authorizes a mercantile customer of an electric distribution utility or a group of those customers to establish a reasonable arrangement with that utility by filing an application with the PUCO.

The bill does not specify the standards the PUCO will use to approve a schedule or reasonable arrangement under the special contract law, but presumably, the PUCO will continue to approve schedules and arrangements under that law as it has done in the past. The bill does require that every schedule or arrangement is posted on the PUCO's docketing information system and is accessible through the internet.

Additionally, the bill states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service (currently only generation service) must not be construed to limit the commission's authority under the bill's rate phase-in provisions (see "***Rate or price phase-ins/nonbypassable surcharge***," below).

SSO requirement

General requirement

(R.C. 4928.141(A), 4928.142(B) and (F), 4928.143(A), 4928.145, and 4928.17(A))

The bill contains the requirement that each electric distribution utility in Ohio make available a standard service offer within its exclusive, certified distribution territory. Under both current law and the bill, a utility's SSO generally must be a market-based offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, and be offered on a comparable and nondiscriminatory basis. The bill preserves current law's provision that each utility's SSO will be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.

Under the bill, an SSO must be either an MRO or an ESP. The first SSO application of all the utilities must be an ESP application, but the bill also allows a utility to simultaneously file an MRO application. Once an MRO is approved for any distribution utility, its SSO must always be an MRO: the utility cannot, and cannot be required to, file an ESP.

A utility must file an MRO or ESP application before 1/1/2009, and can file an MRO or ESP before the effective date of the PUCO rules required under the bill, but, as the PUCO determines necessary, must immediately conform its filing to the rules upon their taking effect.

In connection with an MRO or ESP, the bill modifies the corporate separation law with a phrase that states that law applies to an electric utility "except as otherwise provided in" the MRO and ESP provisions of the bill.[1]

Additionally, the bill requires that, in any contested, MRO or ESP proceeding and upon submission of an appropriate discovery request, an electric distribution utility must make available to the requesting party every contract or agreement that is between the utility and a party to the proceeding and that is relevant to the proceeding. This requirement, however, is subject to such protection for proprietary or confidential information as the PUCO determines appropriate.

The bill expressly states that its provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

SSO variations

(R.C. 4928.142(D) and 4928.143(D))

The bill's SSO provisions reflect differences among the distribution utilities. Specifically, Dayton Power& Light (DP&L) is the only utility with a current rate plan (commonly called an RSP) that expires at the end of 2010, instead of 2008 as the other utilities. Additionally, the First Energy operating utilities reportedly are the only distribution utilities that do not directly own or control generating facilities. First Energy generating assets are owned by an affiliate of the distribution utilities. All the other distribution utilities transferred their generating assets to separate subsidiaries, pursuant to continuing law that

requires functional separation, but not necessarily divestiture, between any generation business and the transmission and distribution business of an electric distribution utility (R.C. 4928.17).

Under the bill, all electric distribution utilities are required to file new SSOs with the PUCO, in the form of an MRO or ESP, before 1/1/2009, and all current rate plans (commonly referred to as RSPs) of electric distribution utilities terminate on their scheduled termination date. In the case of DP&L, however, the bill requires that, regardless of the term of DP&L's initial ESP, the unexpired portion of its current rate plan will be incorporated into its ESP and must constitute its ESP until the end of 2010. Also, the bill authorizes DP&L to apply for supplemental authority under its first ESP (see "***DP&L variation***," below). Nothing in the bill prohibits DP&L from also simultaneously filing an MRO for its initial SSO. So, depending on whether it makes the simultaneous MRO and ESP filings and depending on which filing is approved by the PUCO, DP&L, as other utilities, could operate under either an MRO or an ESP beginning on 1/1/2009.

The bill also provides "transitional MROs"--the name this analysis gives to the first MRO filed by any distribution utility that owns or controls generating assets that had been used and useful in Ohio (in other words, any distribution utility except the First Energy utilities). Under such an MRO, the bill provides that the utility will transition to the market, in the sense that the utility can bid out only a certain portion of its electric load (see "***Transitional MROs***," below).

General filing process

(R.C. 4928.141(B))

The bill requires the PUCO to provide a hearing on an MRO or ESP application, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified distribution territory. The PUCO must adopt rules regarding MRO and ESP filings.

Market rate offers

Nature of an MRO (R.C. 4928.142(A)). Under the bill, an MRO must be determined through a competitive bidding process that provides for all of the following: (1) open, fair, and transparent competitive solicitation, (2) clear product definition, (3) standardized bid evaluation criteria, (4) oversight by an independent third party that will design the solicitation, administer the bidding, and ensure that the foregoing requirements are met, and (5) evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. The PUCO must modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules must foster supplier participation and be consistent with (1) through (5) above. But, no generation supplier can be prohibited from participating in the bidding process.

Transitional MROs (R.C. 4928.142(D)). The first MRO filed by an electric distribution utility that, as of the bill's effective date, directly owns, in whole or in part,

operating electric generating facilities that had been used and useful in Ohio must provide that a portion of that utility's SSO load for the first five years of the MRO be competitively bid as follows: 10% of the load in year one and not less than 20% in year two, 30% in year three, 40% in year four, and 50% in year five. The bill requires the PUCO, consistent with those percentages, to determine the actual percentages for each year of years one through five.

MRO application (R.C. 4928.142(B)). An MRO application must detail the electric distribution utility's proposed compliance with the requirements described under "***Nature of an MRO***" (above) for the competitive bidding process and with the PUCO rules.

Additionally, the application must demonstrate that all of the following requirements are met: (1) the utility or its transmission service affiliate belongs to at least one FERC-approved RTO, or there otherwise is comparable and nondiscriminatory access to the electric transmission grid, (2) any such RTO has a market-monitor function and the ability to take actions to identify and mitigate market power or the utility's market conduct, or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power, and (3) a published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

MRO approval process (R.C. 4928.142(B)). The PUCO must initiate a proceeding and, within 90 days after the application's filing date, determine by order whether the utility and its market-rate offer has demonstrated the items required in the application, as enumerated in (1) to (3) immediately above. If the finding is positive, the utility can initiate its competitive bidding process. If it is negative as to one or more requirements, the PUCO in the order must direct the utility regarding how any deficiency may be remedied in a timely manner to the PUCO's satisfaction; otherwise, the utility must withdraw the application. However, if such remedy is made and the subsequent finding is positive, and also if the utility made a simultaneous filing of an ESP application, the utility cannot initiate its competitive bid until at least 120 days after the filing date of those applications.

MRO generation price (R.C. 4928.142(C) and (D)). Upon the completion of the competitive bidding process, the PUCO must select the least-cost bid winner or winners of that process. Those selected bid or bids, as prescribed as retail rates by the PUCO, will be the utility's SSO unless the PUCO, by order issued before the third calendar day following the conclusion of the bidding process, determines that (1) any portion of the bidding process was not oversubscribed, such that the amount of supply bid upon was not greater than the amount of the load bid out, (2) there were fewer than four bidders, or (3) at least 25% of the load was not bid upon by one or more persons other than the electric distribution utility.

In addition, the bill requires all costs incurred by the utility as a result of or related to the competitive bidding process or to procuring generation service to provide the MRO, including the costs of energy and capacity and the costs of all other products and services

procured as a result of the competitive bidding process, must be timely recovered through the SSO price. For that purpose, the bill requires the PUCO to approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

Transitional MRO generation price (R.C. 4928.142(D) and (E)). In the case of a Transitional MRO, the bill requires that the SSO price for electric generation service will be a proportionate blend of the bid price and the generation service price for the remaining utility's remaining SSO load. The latter price must equal to the utility's most recent SSO price, adjusted upward or downward as the PUCO determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of one or more of the following as reflected in that most recent standard service offer price: (1) the utility's prudently incurred cost of fuel used to produce electricity, (2) its prudently incurred purchased power costs, (3) its costs of satisfying Ohio's supply and demand portfolio requirements, including, but not limited to, renewable energy resource and energy efficiency requirements, and (4) its costs prudently incurred to comply with environmental laws and regulations.

In making any such price adjustment to the most recent SSO price, the PUCO must consider the benefits that may become available to the utility as a result of or in connection with the costs included in the adjustment, including, but not limited to, the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits. Accordingly, the PUCO may impose such conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility.

Additionally, the PUCO can adjust the utility's most recent SSO price by such just and reasonable amount as it determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the MRO is not so inadequate as to result, directly or indirectly, in a taking of property under the Ohio Constitution (Article I, Section 19).

Too, the bill authorizes the PUCO, beginning in the second year of a blended price under a Transitional MRO and notwithstanding any other requirement concerning MROs, to alter, prospectively, the proportions constituting a blended price, to mitigate any effect of an abrupt change in the utility's SSO price that would otherwise result in general or with respect to any rate group or rate schedule if not for the alteration. Any such alteration cannot be made more often than annually, and the PUCO cannot, by altering those proportions and in any event, cause the duration of the blending period to exceed ten years as counted from the approved MRO's effective date. Additionally, any such alteration must be limited to an alteration affecting the prospective proportions used during the blending period and cannot affect any blending proportion previously approved and applied by the PUCO pursuant to the bill.

The PUCO's determination of the utility's most recent SSO price must exclude any previously authorized allowance for transition costs, with that exclusion being effective on and after the date the allowance is scheduled to end under the utility's present-day rate plan.

A utility has the burden of demonstrating that any adjustment to its most recent SSO price is proper under the bill's Transitional MRO provisions.

ESPs

Nature of an ESP (R.C. 4928.143(B) and (D)). The bill states, in effect, that any contrary provision of public utility law (R.C. Title 49) does not apply to an ESP. This means, for example, that, with the exceptions noted in "*CWIP allowance/nonbypassable surcharge*," and "*Nonbypassable surcharge for a competitively bid generating facility*," below), the bill will authorize an electric utility's distribution rates to be determined under an ESP in a manner different from the traditional rate-making requirements that applied to those rates before the enactment of this bill and that will continue to apply to a utility with an approved MRO.

The bill prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, it can contain. But any discretionary items in an ESP are not limited to the items the bill enumerates. Essentially, an ESP must contain provisions related to the supply and pricing of electric generation service and, if the proposed ESP has a term longer than three years, it must include provisions to permit the PUCO to test the plan as described in "***Testing an ESP***," below, as well as any transitional conditions that the utility would want the PUCO to adopt if the PUCO were to terminate the ESP after such a test.

As noted above in "***SSO variations***," in its initial ESP application DP&L can request PUCO approval of provisions for the incremental recovery or the deferral of any of the following costs that are not being recovered under its current rate plan and that it incurs during that rate plan continuation period under the ESP: (1) costs to comply with the bill's SSO/default service requirements, (2) costs to comply with the bill's alternative energy requirements (see "***Alternative energy requirements***," below), and (3) costs to comply with the bill's energy efficiency requirements (see "***Energy efficiency***," below).

As explained immediately below, enumerated items that the bill authorizes any utility to request in an ESP include the following: provisions for or regarding (1) automatic cost recovery, (2) a construction work in progress (CWIP) allowance/nonbypassable surcharge, (3) a nonbypassable surcharge for a competitively bid generating facility, (4) generating facility retirement, (5) rate stabilization, (6) automatic price adjustments, (7) securitization, (8) transmission and related services, (9) distribution service, and (10) economic development and energy efficiency.

ESP application (R.C. 4928.143(B)). *Automatic cost recovery*. An ESP can include provisions for the automatic recovery of the following costs of the utility (meaning, recovery without further PUCO authorization): (1) fuel used to generate the electricity supplied under the SSO, (2) purchased power supplied, including the cost of energy and capacity, and including purchased power acquired from an affiliate, (3) emission allowances, and (4) federally mandated carbon or energy taxes.

CWIP allowance/nonbypassable surcharge. An ESP can include a request for a reasonable CWIP for any of the utility's cost of constructing a generating facility or for an environmental expenditure for any such facility of the utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. The bill requires that any such CWIP allowance be subject to the CWIP limitations of public utility law (R.C. 4909.15, not in the bill), except that the PUCO can authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure. However, the bill prohibits such a CWIP allowance unless the PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the utility. Further, no CWIP allowance can be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the PUCO can adopt rules.

Under the bill, any authorized CWIP allowance must be established as a nonbypassable surcharge for the life of the facility.

Nonbypassable surcharge for a competitively bid generating facility. An ESP can request the establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any rules as the PUCO adopts under the bill's CWIP provisions (see "*CWIP allowance/nonbypassable surcharge*," above), and is newly used and useful on or after January 1, 2009. The surcharge must cover all of the utility's costs specified in the application, excluding costs recovered through a surcharge authorized for a CWIP allowance described above. But, no surcharge can be authorized unless the PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility.

Additionally, if the surcharge is authorized for such a facility pursuant to plan approval and as a condition of the continuation of the surcharge, the utility must dedicate to the Ohio consumers bearing the surcharge all the electricity generated by that facility. Before the PUCO authorizes such a surcharge, it can consider the effects, as applicable, of any decommissionings, deratings, and retirements.

Rate stabilization. An ESP can include terms, conditions, or charges that both would have the effect of stabilizing or providing certainty regarding retail electric service and relate to (1) limitations on customer shopping for retail electric generation service, (2) bypassability, (3) standby, back-up, or supplemental power service, (4) default service, (5) carrying costs, (6) amortization periods, and (7) accounting or deferrals, including future recovery of such deferrals.

Generation facility retirement. Under the bill, an ESP can contain provisions for generating facility decommissioning, derating, or retirement.

Automatic price adjustments. Under the bill, an ESP can include provisions for automatic increases or decreases in any component of the SSO price.

Securitization. An ESP can request approval of provisions for the utility to securitize any phase-in authorized under the bill (see "***Rate or price phase-ins/nonbypassable***

surcharge," below), inclusive of carrying charges, of its SSO price (see "***Rate or price phase-ins/nonbypassable surcharge***," below), as well as provisions for the recovery of the utility's cost of securitization. If the PUCO's order includes such a phase-in, the order also must provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order must authorize the collection of those deferrals through a nonbypassable surcharge on the utility's rates.

Under current law retained by the bill, "regulatory assets" are the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the PUCO or pursuant to generally accepted accounting principles as a result of a prior PUCO rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent PUCO action. They include, but are not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan (PIPP) arrears; post-in-service capitalized charges and assets recognized in connection with statement of Financial Accounting Standards No. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the PUCO. (R.C. 4928.01(A)(26).)

Transmission and related services. An ESP can include provisions relating to transmission, ancillary, congestion, or any related service required for the SSO, including provisions for the recovery of any cost of such service that the electric distribution utility incurs pursuant to the SSO.

Distribution service. An ESP can include provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of public utility law (R.C. Title 49) to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the utility. The infrastructure and modernization provisions can include a long-term energy delivery infrastructure modernization plan for the utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization.

Economic development and energy efficiency. An ESP can include provisions under which the electric distribution utility can implement economic development, job retention, and energy efficiency programs. Those provisions can allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

ESP approval process (R.C. 4928.143(C)). The burden of proof in an ESP proceeding is on the applicant utility.

The PUCO must issue an order approving, modifying and approving, or disapproving an initial ESP application not later than 120 days after the application's filing date and within 275 days for later applications. The PUCO must disapprove the application unless it finds that the ESP so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. If it makes that finding, the PUCO can approve or modify and approve the ESP. Additionally, if the ESP provides a nonbypassable surcharge for CWIP or a competitively sourced generating facility as authorized under the bill, the PUCO must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

If the PUCO modifies and then approves an ESP application, the electric distribution utility can withdraw the application, thereby terminating it. If the utility does so, or if the PUCO disapproves the ESP application, the PUCO must issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent ESP or MRO is filed and authorized under the bill.

Testing an ESP (R.C. 4928.143(E)). Regarding an ESP that has a term, exclusive of phase-ins or deferrals, of longer than three years, the bill requires the PUCO to test that plan in its fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under an MRO. If the test results are in the negative, the PUCO may terminate the ESP, but must permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that ESP. Before terminating the ESP, the PUCO must provide interested parties with notice and an opportunity to be heard. The PUCO can impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.

Rate or price phase-ins/nonbypassable surcharge

(R.C. 4928.144)

As it considers necessary to ensure rate or price stability for consumers, the PUCO by order can authorize, inclusive of carrying charges, any just and reasonable phase-in of any electric distribution utility rate or price established under an ESP or MRO. The order also must provide for the creation of regulatory assets (see "*Securitization*," above), by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying

charges on that amount. Further, the order must authorize the collection of those deferrals through a nonbypassable surcharge any rate or price established for the utility by the PUCO.

Transmission operations

RTO operating requirements

(R.C. 4928.09)

The bill extends to a FERC-approved regional transmission organization (RTO)[2] that is responsible for maintaining reliability in all or part of Ohio requirements that apply under continuing law to electric utilities, electric services companies, and billing and collection agents. Those requirements consist of (1) consenting to the jurisdiction of the Ohio courts and service of process in Ohio and (2) designating an agent authorized to receive that service of process, by filing with the commission a document designating that agent.

Federal Energy Advocate

(R.C. 4928.24)

The bill requires the PUCO to employ a Federal Energy Advocate. The advocate must examine the value of the participation of Ohio electric utilities in regional transmission organizations and submit a report to the PUCO on whether continued participation of those utilities is in the interest of retail electric consumers.

Additionally under the bill, the PUCO employee must monitor the activities of FERC and other federal agencies and, represented by the Attorney General, must advocate on behalf of the interests of Ohio retail electric service consumers. Currently, there is one, state-level entity that functions as a consumer advocate: the Ohio Consumers' Counsel, who advocates on both the state and federal levels, on behalf of the residential consumers of electric, gas, natural gas, and certain other public utilities (R.C. Chapter 4911.). The PUCO itself often is a party to federal proceedings.

Municipal customer charge prohibition

(R.C. 4928.69)

The bill provides that, notwithstanding any provision of the Electric Restructuring Law and except as otherwise provided in an agreement under special contract law (R.C. 4905.31), an electric distribution utility cannot charge any person that is a customer of a municipal electric utility in existence on or before 1/1/2008 any surcharge, service termination charge, exit fee, or transition charge.

Line extensions

(R.C. 4928.02 and 4928.151)

Continuing law requires that an electric utility's distribution rate schedule must include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with PUCO rules, policy, precedents, or orders (R.C. 4928.15(A)).

The bill requires the PUCO, in carrying out the state electric services policy (see "***State electric services policy***," above) to consider rules as they apply to the costs of electric distribution infrastructure, including, but not limited to, line extensions, for the purpose of development in Ohio.

It also requires the PUCO adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities, so that, on and after the effective date of the initial rules so adopted, all such utilities apply the same policies and charges to those customers. Initial rules must be adopted not later than six months after the bill's effective date. The rules must address the just and reasonable allocation to and utility recovery from the requesting customer or other customers of the utility of all costs of any such line extension and any requisite substation or related facility, including, but not limited to, the costs of necessary technical studies, operations and maintenance costs, and capital costs, including a return on capital costs.

Governmental aggregation

(R.C. 4928.20(D))

Current law authorizes the electric load of electric customers to be aggregated for the purpose of purchasing retail electric generation (R.C. 4928.03). Aggregators performing that function include governmental aggregators, specifically, municipalities, townships, and counties that can aggregate the electric load of customers within their respective jurisdictions. Current law establishes various requirements for and limitations on a governmental aggregation, including, for instance, a popular vote on the question of whether the local government can aggregate load without first obtaining the individual permission of each customer.

The bill changes current law's limitation that, in the case of such an "automatic" governmental aggregation, the local government must allow any person that is so enrolled in the aggregation an opportunity to opt out of the aggregation every *two* years, without paying a switching fee. Under the bill, a customer can opt-out *up to every three years* without paying a switching fee.

Energy price risk management contracts

(R.C. 9.835)

The bill authorizes a state official (an elected or appointed official or that person's designee, charged with the management of a state entity) or the legislative or other governing

authority of a political subdivision (county, city, village, township, park district, or school district) to enter into an energy price risk management contract if it determines that doing so is in the best interest of the state entity or such political subdivision, and subject to, respectively, state or local appropriation to pay amounts due. The bill defines a "state entity" as the General Assembly, the Supreme Court, the Court of Claims, the office of an elected state officer, or a state department, bureau, board, office, commission, agency, institution, or other instrumentality established by Ohio law to exercise any function of state government. "State entity" excludes a political subdivision, an institution of higher education, all the state retirement systems, and the City of Cincinnati retirement system.

Under the bill, an "energy price risk management contract" is a contract that mitigates for the term of the contract the price volatility of energy sources, including, but not limited to, natural gas, gasoline, oil, and diesel fuel, and that is a budgetary and financial tool only and not a contract for the procurement of an energy source. The bill prohibits the term of the contract extending beyond the end of the fiscal year in which the contract is entered into. Under the bill, money received pursuant to such a contract entered into by a state official must be deposited to the credit of the state General Revenue Fund, and, unless otherwise provided by ordinance or resolution enacted or adopted by the legislative authority of the political subdivision authorizing any such contract, money received under the contract must be deposited to the credit of the general fund of the political subdivision.

II. Energy sources

Corporate separation

(R.C. 4928.17(E))

Current statute authorizes, but does not require, an electric utility to divest itself of any generating asset without prior PUCO approval. The bill focuses divestiture policy on electric distribution utilities specifically, thereby removing any limitation on divestiture by an electric utility that is not a distribution utility. The bill also removes the current law's provision that a utility's authority to divest is subject to the provisions of Title 49 of the Revised Code relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset.

Alternative energy requirements

(R.C. 4928.01 and 4928.64)

The bill requires an electric distribution utility, by 2025 and thereafter, to provide from "alternative energy resources" a portion of the electricity supply required for its requisite SSO, and an electric services company to provide a portion of its Ohio retail electricity supply, from alternative energy resources.

Under the bill, an alternative energy resource means an advanced energy resource or renewable energy resource that has a placed-in-service date of January 1, 1998, or after; or a mercantile customer-sited advance energy resource or renewable energy resource, whether

new or existing, that the mercantile customer[3] commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided in the energy efficiency provisions of the bill (see "***Energy efficiency***," below). The bill specifically includes as such programs (1) a resource that has the effect of improving the relationship between real and reactive power, (2) a resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer, (3) storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics, (4) electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource, and (5) any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility. Additionally, under the bill and as it considers appropriate, the PUCO can classify any new technology as such an advanced energy resource or a renewable energy resource.

"Advanced energy resource"

The bill defines an "advanced energy resource" as (1) any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of any electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility, (2) any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities, (3) clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials Standard D1757A or a reduction of metal oxide emissions in accordance with the Society's Standard D5142, (4) advanced nuclear energy technology consisting of generation III technology as defined by the Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities, (5) any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell, and (6) demand-side management and any energy efficiency improvement.

"Renewable energy resource"

The bill defines a "renewable energy resource" as solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes[4] through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. The term includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric

acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; any wind turbine located in the state's territorial waters of Lake Erie; any storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy.

For the purpose of the bill's renewable energy resource requirement only, the bill defines the term "hydroelectric facility" to mean energy produced by a hydroelectric generating facility that is located at a dam on a river within or bordering Ohio or an adjoining state and (1) provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility, (2) demonstrates that it complies with the water quality standards of Ohio, which compliance may consist of certification under the federal "Clean Water Act of 1977" and demonstrates that it has not contributed to a finding by the State of Ohio that the river has impaired water quality under that act, (3) complies with mandatory prescriptions regarding fish passage as required by the FERC license issued for the project, regarding fish protection for riverine, anadromous, and catadromus fish, (4) complies with the recommendations of the OEPA and with the terms of the facility's FERC license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility, (5) complies with the federal "Endangered Species Act of 1973," (6) does not harm cultural resources of the area, as shown through compliance with the terms of its FERC license or, if not regulated by FERC, through development of a plan approved by the Ohio Historic Preservation Office, to the extent it has jurisdiction over the facility, (7) complies with the terms of its FERC license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by FERC, complies with similar requirements as are recommended by resource agencies, and provides access to water to the public without fee or charge, and (8) is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

Mercantile customer-sited resources

A mercantile customer-sited advanced energy or renewable energy resource qualifies as an alternative energy resource under this bill if the mercantile customer[5] commits the resource for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided under the energy efficiency provisions of the bill including, but not limited to, any of the following: (1) a resource that has the effect of improving the relationship between real and reactive power, (2) a resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by the mercantile customer, (3) storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics, (4) electric generation equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource, and (5) any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility.

Benchmarks

The requisite portion of electric supply derived from alternative energy resources must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio. The bill states, however, that its alternative energy resource provisions do not preclude a utility or company from providing a greater percentage. The baseline for a utility's or company's compliance with the alternative energy resource requirements must be the average of such total kilowatt hours it sold in the preceding three calendar years, except that the PUCO can reduce a utility's or company's baseline to adjust for new economic growth in the utility's certified territory or, in the case of an electric services company, in the company's service area in Ohio.

Of the alternative energy resources implemented by a utility or company, the bill provides that half can be generated from advanced energy resources. However, at least half must be generated from renewable energy resources, including 0.5% from solar energy resources, in accordance with the following benchmarks:

By end of year	Renewable energy resources	Solar energy resources
2009	0.25%	0.004%
2010	0.50%	0.008%
2011	1%	0.015%
2012	1.5%	0.02%
2013	2%	0.06%
2014	2.5%	0.10%
2015	3.5%	0.14%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.3%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each calendar year thereafter	12.5%	0.5%

Further, under the bill, at least half of the renewable energy resources implemented by the utility or company must be met through facilities located in Ohio; the remainder must be met with resources that can be shown to be deliverable into Ohio.

The bill specifies that all costs incurred by a utility in complying with the bill's alternative energy resource requirements are bypassable by any consumer choosing an alternative generation supplier.

The bill establishes a cost cap relative to a utility's or company's obligation to comply with a renewable energy resource benchmark. Under the bill, no electric distribution utility or electric services company can, nor can be required to or be subject to a compliance payment the enforcement provisions of the bill, exceed that benchmark if that would result in an annual, estimated, average net increase in the total amounts paid by its customers due to the cost of the renewable energy resources to exceed 3% of the total amounts paid by each customer class in the previous calendar year, as determined by the PUCO. "Total amounts paid by customers" is defined as all costs for generation, transmission, distribution, metering, taxes, and all other costs comprising customer bills. The bill states that nothing in its force majeure provision affects the right of the utility or company to construct or operate any renewable energy resource or affects any electricity supply contract.

Regarding adjustments to the 3% limitation, the bill authorizes the PUCO, not later than 1/1/2013 and in consultation with DOD, the Ohio Air Quality Development Authority, and the Office of the Consumers' Counsel, to review the cost cap limitation and report to the House and Senate standing committees of the General Assembly that primarily deal with alternative energy issues regarding whether the 3% limitation unduly constrains the procurement of renewable energy resources. The report must include recommendations regarding whether that limitation should be maintained, eliminated, or changed.

Renewable and solar benchmark enforcement

Penalties. The bill requires the PUCO to review annually a utility's or company's compliance with the most recent, applicable, renewable energy resource or solar energy resource benchmark and, in the course of that review, identify any undercompliance or noncompliance that the PUCO determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the utility's or company's control. If the PUCO determines, after notice and opportunity for hearing, and based upon its findings in that review regarding avoidable undercompliance or noncompliance, that the utility or company has failed to comply with any such benchmark, it must impose a renewable energy compliance payment on the utility or company.

The compliance payment pertaining to the bill's solar energy resource benchmarks must be an amount per megawatt hour of undercompliance or noncompliance in the period under review, starting at $450 for 2009, $400 for 2010 and 2011, and similarly reduced every two years thereafter through 2024 by $50, to a minimum of $50.

The compliance payment pertaining to the bill's renewable energy resource benchmarks must equal the number of additional renewable energy credits (see "***Renewable energy credits***," below) that the utility or company would have needed to comply with the applicable benchmark in the period under review times an amount beginning at $45 and adjusted annually by the PUCO to reflect any change in the Consumer Price Index, but cannot be less than $45.

The bill prohibits the compliance payment being passed through to consumers. It must be remitted to the PUCO, for deposit to the credit of the Advanced Energy Fund (see "***Advanced Energy Fund assistance***," below). Payment of the compliance payment will be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in the bill).

The bill also requires the PUCO to establish a process to provide for at least an annual review of the alternative energy resource market in Ohio and in the service territories of RTOs that manage transmission systems located in Ohio. The PUCO must use the study results to identify any needed changes to the bill's amount of a renewable energy compliance payment. Specifically, the PUCO may increase the amount to ensure that payment of compliance payments is not used to achieve compliance in lieu of actually acquiring or realizing energy derived from renewable energy resources. However, under the bill, if it finds that the amount of the compliance payment should be otherwise changed, the PUCO must present this finding to the General Assembly for legislative enactment.

Force majeure exception

The bill authorizes an electric utility or electric services company to request the PUCO to make a force majeure determination regarding all or part of the utility's or company's compliance with any minimum, renewable energy resource benchmark during the period of compliance review as described above. The PUCO can require the utility or company to make solicitations for renewable energy resource credits as part of its default service before the utility or company can make a force majeure request.

Within 90 days after the filing of such a request, the PUCO must determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the PUCO must consider whether the utility or company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including, but not limited to, by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the PUCO must consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM Interconnection regional transmission organization or its successor and the Midwest System Operator or its successor.

If the PUCO determines that renewable energy or solar energy resources are not reasonably available to permit the utility or company to comply during the period of review

with the applicable minimum benchmark, the PUCO must modify that compliance obligation of the utility or company as it determines appropriate to accommodate the finding. The bill provides that such a PUCO modification does not automatically reduce the obligation for the utility's or company's compliance in subsequent years, and the PUCO can require the utility or company, if sufficient renewable energy resource credits exist in the marketplace, to acquire additional renewable energy resource credits in subsequent years equivalent to the utility's or company's modified obligation.

Annual report

The bill requires the PUCO to submit an annual report to the General Assembly describing the compliance of electric distribution utilities and electric services companies with the bill's alternative energy resource requirements and any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying Ohio's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The PUCO must allow and consider public comments on the report prior to submission. The bill states that nothing in the report is binding on any person, including any utility or company for the purpose of its compliance with any alternative energy resource benchmark or the enforcement of a benchmark requirement.

Alternative Energy Advisory Committee

The bill requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee. The Committee must examine available technology for and related timetables, goals, and costs of the bill's alternative energy resource requirements and submit to the PUCO a semiannual report of its recommendations.

Advanced Energy Fund assistance

(R.C. 4928.01(A)(25), 4928.61, and 4928.621)

The bill adds revenue sources for continuing law's Advanced Energy Fund, which is administered by DOD to provide grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives for advanced energy projects, and revises the definition of "advanced energy project."

Revenue sources

The bill adds two new revenue sources for the Advanced Energy Fund: renewable energy compliance payments imposed by the PUCO pursuant to the bill (see "***Renewable and solar benchmark enforcement***," above) and forfeitures assessed by the PUCO for violations of the bill's energy efficiency provisions (see "***Energy efficiency***," above). The Fund will continue under the bill to receive revenue from the sources currently authorized by law: namely, a surcharge on all customers of electric distribution utilities and any participating municipal electric utilities and electric cooperatives;[6] payments, repayments, and income from funded projects; and interest earnings on the Fund.

"Advanced energy project"

Under current law, an "advanced energy project" is any technology, product, activity, or management practice or strategy that facilitates the generation or use of electricity and reduces or supports the reduction of energy consumption or supports the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users. Such energy expressly includes, but is not limited to, wind power; geothermal energy; solar thermal energy; and energy produced by micro turbines in distributed generation applications with high electric efficiencies, by combined heat and power applications, by fuel cells powered by hydrogen derived from wind, solar, biomass, hydroelectric, landfill gas, or geothermal sources, or by solar electric generation, landfill gas, or hydroelectric generation.

Instead of that last sentence, the bill provides that an "advanced energy project" includes, but is not limited to, advanced energy resources and renewable energy resources, the definitions for which appear in the "***Alternative energy requirements***," section of this analysis, above).

Additionally, without intending to limit who otherwise can apply for state assistance for advanced energy projects, the bill makes all of the following eligible for funding as an "advanced energy project":

(1) Any Edison Technology Center,[7] for the purposes of creating an Advanced Energy Manufacturing Center in Ohio that will provide for the exchange of information and expertise regarding advanced energy, assisting with the design of advanced energy projects, developing workforce training programs for such projects, and encouraging investment in advanced energy manufacturing technologies for advanced energy products and investment in sustainable manufacturing operations that create high-paying jobs in Ohio;

(2) Any university or group of universities in Ohio that conducts research on any advanced energy resource (see "***Alternative energy requirements***," above) or any not-for-profit corporation formed to address issues affecting the price and availability of electricity and having members that are small businesses, for the purpose of encouraging research in Ohio that is directed at innovation in or the refinement of those resources or for the purpose of educational outreach regarding those resources.

The bill requires the university, university group, or not-for-profit corporation to use the funding to establish such a program of research or education outreach and requires that any such educational outreach be directed at an increase in, innovation regarding, or refinement of access by or of application or understanding of Ohio businesses and consumers regarding, advanced energy resources;

(3) Any independent group located in Ohio, the express objective of which is to educate Ohio small businesses regarding renewable energy resources and energy efficiency programs;

(4) Any small business located in Ohio electing to utilize an advanced energy project or participate in an energy efficiency program.

Renewable energy credits

(R.C. 4928.65)

The bill authorizes an electric distribution utility or electric services company to use renewable energy credits any time in the five calendar years following the purchase or acquisition of such credits from any entity, including, but not limited to, a mercantile customer or an owner or operator of a hydroelectric generating facility that is located at a dam on a river that is within or bordering Ohio or an adjoining state, for the purpose of complying with the bill's renewable energy and solar energy resource requirements (see "***Alternative energy requirements***," above). The PUCO must adopt rules specifying that one unit of credit equals one megawatt hour of electricity derived from renewable energy resources. The rules also must provide for Ohio a system of registering renewable energy credits by specifying which of any generally available registries must be used for that purpose and not by creating a registry. That selected system of registering renewable energy credits shall allow a hydroelectric generating facility eligible for obtaining renewable energy credits and shall allow customer-sited projects or actions the broadest opportunities to be eligible for obtaining renewable energy credits.

Energy efficiency

General requirements

(R.C. 4928.66(A))

The bill requires electric distribution utilities to implement energy efficiency programs. Such programs expressly can include demand-response programs, customer-sited programs, and transmission and distribution infrastructure improvements that reduce line losses. The bill requires that its energy efficiency provisions must be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the commission pursuant to section 4905.31 of the Revised Code."

The bill also prohibits any such program or improvement to conflict with any statewide building code adopted by the Board of Building Standards.

Energy savings benchmarks

(R.C. 4928.66(A)(1)(a) and (2)(a))

Under the bill, beginning in 2009, an electric distribution utility must implement energy efficiency programs that achieve energy savings equivalent to at least 0.3% of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility

during the preceding three calendar years to its Ohio customers. The savings requirement, using such a three-year average, must increase to an additional 0.5% in 2010, 0.7% in 2011, 0.8% in 2012, 0.9% in 2013, 1% in years 2014 to 2018, and 2% each year thereafter, achieving a cumulative, annual energy savings in excess of 22% by the end of 2025. The baseline for such energy savings will be the average of the total kilowatt hours the utility sold in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

Peak demand reduction benchmarks

(R.C. 4928.66(A)(1)(b) and (2)(a))

Beginning in 2009, an electric distribution utility must implement peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional 0.75% reduction each year through 2018. In 2018, the standing committees in the Ohio House and Senate primarily dealing with energy issues must make recommendations to the General Assembly regarding future peak demand reduction targets.[8] The baseline for a peak demand reduction will be the average peak demand on the utility in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

Baseline adjustments

(R.C. 4928.66(A)(2)(b) and (c))

The bill authorizes the PUCO to amend the energy savings benchmarks and the peak demand reduction benchmarks if, after application by the electric distribution utility, the PUCO determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks for regulatory, economic, or technological reasons beyond its reasonable control.

Additionally, the bill requires that a utility's compliance with the energy savings benchmarks and the peak demand reduction benchmarks must be measured by including the effects of all demand-response programs for its mercantile customers and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the "appropriate loss factors." If a mercantile customer commits such existing or new demand-response, energy efficiency, or peak demand reduction capability for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, the utility's baseline must be adjusted to exclude the effects of all such demand-response, energy efficiency, or peak demand reduction programs that may have existed during the period used to establish the baseline. An energy savings or peak demand reduction baseline also must be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

Energy efficiency enforcement

(R.C. 4928.66(B) and (C))

The bill requires the PUCO, in accordance with rules it must adopt, to produce and docket an annual report containing the results of its verification of the annual levels of energy efficiency and peak demand reductions achieved by each electric distribution utility as required by the bill. A copy of the report must be provided to the Consumers' Counsel.

If it determines, after notice and opportunity for hearing and based upon the report, that an electric distribution utility has failed to comply with an energy efficiency or peak demand reduction requirement established by the bill, the PUCO must assess forfeiture on the utility as provided under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in the bill), either in the amount, per day per undercompliance or noncompliance, relative to the period of the report, equal to that so prescribed for noncompliances (a maximum of $10,000 currently), or in an amount equal to the then existing market value of one renewable energy credit per megawatt hour of undercompliance or noncompliance. Revenue from any such forfeiture assessed must be deposited to the credit of the Advanced Energy Fund (see "***Advanced Energy Fund assistance***," above).

Revenue decoupling/energy efficiency

(R.C. 4928.66(D))

The PUCO may establish rules regarding the content of an application by an electric distribution utility for PUCO approval of a revenue decoupling mechanism. The bill provides that such a revenue decoupling application is not to be considered an application to increase rates[9] and that the application may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs.

The PUCO can approve the revenue decoupling mechanism if it determines that the mechanism provides for the recovery of revenue that otherwise may be foregone by the utility as a result of or in connection with the utility's implementation of any energy efficiency or energy conservation programs and that the mechanism reasonably aligns the interests of the utility and of its customers in favor of those programs.

However, the bill also provides that any mechanism designed to recover the cost of the bill's energy efficiency and peak demand reduction requirements can exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, provided the PUCO determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.

Energy Advisor report

(Section 5)

The bill requires the Governor's Energy Advisor to periodically submit a written report to the General Assembly and report in person to and as requested by the standing committees of the Ohio House of Representatives and the Senate that have primary responsibility for energy efficiency and conservation issues regarding initiatives undertaken by the Advisor and state government pursuant to numbered paragraphs 3 and 4 of Executive Order 2007-02S, "Coordinating Ohio Energy Policy and State Energy Utilization." The first written report must be submitted not later than 60 days after the bill's effective date. Paragraph 3 pertains to energy efficiency and conservation measures by state agencies and paragraph 4 pertains to measures by state universities and colleges.

Customer information

(R.C. 4928.66(E))

The bill requires the PUCO to adopt rules that require an electric distribution utility to provide a customer upon request with two years' consumption data in an accessible form.

Net metering

(R.C. 4928.67)

Generally

Current law requires a retail electric service provider to develop a standard contract or tariff providing for net energy metering and requires the utility to make this contract or tariff available to customer-generators upon request and on a first-come, first-served basis, but only when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio. It requires that the contract or tariff be identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator.

The bill provides that this net metering requirement pertains to electric utilities and removes the reference to a "retail electric service provider." This conforms the statute to PUCO rules. The current term is not defined in the Restructuring Law and has been interpreted in PUCO rules as meaning an electric utility.

In addition, the bill removes current law's limitation that a net metering contract or tariff be made available when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio.

Hospital net metering

The bill newly requires an electric utility to develop a separate standard contract or tariff providing for net metering for a hospital that is also a customer-generator. Such a "hospital" includes a public health center and general, mental, chronic disease, or other type of hospital, and any related facility, such as a laboratory, outpatient department, nurses' home

facility, extended care facility, self-care unit, or central service facility operated in connection with a hospital, and also includes an education and training facility for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care (R.C. 3701.01(C), not in the bill).

Under the bill, a hospital seeking such a contract or tariff need not comply with two requirements that apply to other net metering systems: a hospital's system need not (1) use as its fuel either solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell or (2) be intended primarily to offset part or all of the customer-generator's requirements for electricity.

The bill provides that such a hospital net metering contract or tariff is not limited as to its availability and must be based upon (1) the rate structure, rate components, and any charges to which the hospital would otherwise be assigned if it were not a customer-generator and (2) the market value of the customer-generated electricity at the time it is generated. In addition, transmission and distribution charges in the contract or tariff apply to the flow of electricity both to the customer and from the customer to the electric utility.

The hospital contract or tariff also must allow the hospital customer-generator to operate its electric generating facilities individually or collectively without any wattage limitation on size.

Greenhouse gas emissions

(R.C. 4928.68)

Ohio currently does not have any rules regarding reporting by any types of emitter of greenhouse gases, which include, but are not limited to, electric generating facilities. A recent federal act requires the U.S. EPA to prescribe mandatory reporting requirements for greenhouse gas emissions and appropriate emission thresholds for particular economic sectors, including electric generation. Draft rules are expected this summer and final rules must be in place in mid-2009. The rules apparently will be issued under existing authority of the federal Clean Air Act, under which OEPA typically is the implementing state agency. Reportedly, other state agencies that wish to enforce such federal rules must petition the federal government for permission.

The bill requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas[10] emission reporting requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date. The rules must include participation in the Climate Registry.[11] The Registry's web site describes the Registry as "a collaboration between states, provinces, and tribes aimed at developing and managing a common greenhouse gas emissions reporting system with high integrity that is capable of supporting various greenhouse gas emissions reporting and reduction policies for its member states and tribes and reporting entities."

Neither continuing state law nor the bill provide for any type of penalty for a violation of any rule so adopted, although federal law may govern in this regard.

Carbon dioxide control

(R.C. 4928.68)

The bill requires the PUCO, expressly to the extent permitted by federal law, to adopt rules establishing carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the bill's effective date.

There currently are no such federal or state requirements, and none are being proposed for the foreseeable future. The bill does not describe the scope of the carbon control planning requirements, for example, whether the rules will be directed at the filing of long-term plans or address technology standards. Further, neither continuing state law nor the bill provide for any type of penalty for a violation of any rule so adopted.

Natural gas revenue decoupling

(R.C. 4929.01 and 4929.051; Section 4)

Alternative rate plan

Continuing Ohio law generally affirms PUCO authority to regulate the commodity sales service, distribution service, and ancillary service[12] of a natural gas utility (R.C. 4929.03). Under continuing law, a natural gas utility can apply for PUCO approval of an alternative rate plan for its commodity sales service or ancillary service (R.C. 4929.05). Such a plan would establish a different method for determining the rates and charges for the service than ordinarily would occur under the traditional rate-making provisions of continuing law (R.C. 4909.15). Those provisions, for the purpose of setting the utility's rate schedule (tariff), require determination of the revenue requirement of the utility necessary to cover its identified operating costs and receive a fair and reasonable rate of return on its investment in plant used and useful in rendering the service.

As stated, an alternative rate plan allows other methods of determining the rate schedule of the utility than the previously described cost/rate of return method. The definition "alternative rate plan" specifies two, actual alternative mechanisms: (1) an automatic adjustment in rates based on a specified index or changes in a specified cost or costs[13] and (2) a mechanism that tends to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred. Otherwise, current law specifies as allowable methods what are actually possible outcomes of alternative ratemaking. Those methods can include, but are not limited to, rate-setting methods that will (3) provide adequate and reliable natural gas services and goods in Ohio, (4) minimize the costs and time expended in the regulatory process, (5) afford rate stability, (6) promote and

reward efficiency, quality of service, or cost containment, and (7) provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges. (R.C. 4929.01.)

Under the bill, an alternative rate plan could newly include (8) a revenue decoupling mechanism, which the bill defines as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of "system throughput" (the amount of gas entering the transmission/distribution system) or volumetric sales.

Plan approval process

Current law prescribes the process for obtaining PUCO approval of an alternative rate plan. It specifies that there must be notice, investigation, and hearing of an alternative rate plan. The standards the PUCO must use to approve the plan are that (1) the plan will produce just and reasonable rates and charges and, after a showing by the utility, (2) the utility is in compliance with the nondiscrimination provisions of Ohio law (R.C. 4905.35)[14] and in substantial compliance with the state natural gas policy (which is amended by the bill, as described below), and (3) the utility is expected to be in substantial compliance with that policy following the plan's implementation. (R.C. 4929.05.)

The current approval process authorizes the request for approval of an alternative rate plan as part of an application filed under the rate-making law (R.C. 4909.18) that governs applications by utilities to establish new, or change existing, rates and charges for service. That law prescribes certain timelines for filing such an application and the information the application must contain. It also requires that, if the PUCO believes the application may be unjust or unreasonable, it must hold hearings on the matter. This could apply, for instance, when a utility was asking for a rate increase. However, if the PUCO determines an application is *not for an increase in rates*, the PUCO can permit the filing of the rate schedule and set the date it is to take effect; no hearing is required.

The bill provides that an alternative rate plan filed by a natural gas company under R.C. 4929.05 of continuing law and proposing a revenue decoupling mechanism can be an application "not for an increase in rates" if both of the following apply: (1) the rates, joint rates, tolls, classifications, charges, or rentals the plan proposes are based upon the billing determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case proceeding and (2) the plan also establishes, continues, or expands an energy efficiency or energy conservation program (R.C. 4929.051).

Bill's effect on existing applications

Regarding any alternative rate plan that was filed before the bill's effective date under R.C. 4929.05 and that proposes a revenue decoupling mechanism and meets the two conditions described immediately above, uncodified law in the bill expressly prohibits the bill being applied in favor of (that is, construed as supporting) a claim or finding that the

application *is* an application to increase rates (and therefore generally subject to hearing under traditional rate-making law).

State natural gas policy

(R.C. 4929.02)

Current Ohio law articulates a state policy that lists eleven objectives regarding natural gas service and requires the Public Utilities Commission (PUCO) to follow that policy when carrying out R.C. Chapter 4929. Aside from authorizing approval of alternative rate plans as described above, that chapter also establishes the conditions under which the PUCO can deregulate natural gas commodity sales and ancillary services upon a filing by a utility and certify governmental aggregators of natural gas and retail natural gas suppliers to operate in Ohio.

The bill adds a twelfth objective to the state policy: to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. It also requires both the PUCO and OCC to follow the state policy in exercising their respective authorities relative to Chapter 4929. Under continuing law, OCC serves as the advocate for residential consumers of utility services.

Miscellaneous

(R.C. 4928.20, 4928.31, 4928.34, 4928.35, 4928.41, 4928.42, 4928.431, and 4928.44)

The bill repeals four sections of the Electric Restructuring Law: R.C. 4928.41, regarding electric cooperative transition revenues; R.C. 4928.42, regarding transitional requirements for electric consumer education; R.C. 4928.431, regarding an obsolete Electric Employee Assistance Advisory Board created under S.B. 3; and R.C. 4928.44, regarding service offering for nonfirm electric service customers. Accordingly, the bill amends R.C. 4928.20, 4928.31, 4938.34, and 4938.35 to remove references to those repealed sections.

HISTORY

ACTION	DATE
Introduced	09-25-07
Reported, S. Energy & Public Utilities	10-31-07
Passed Senate (32-0)	10-31-07
Reported, H. Public Utilities	---

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* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

[1] Although this change may be read as possibly allowing an MRO or ESP to provide for corporate separation other than as required by R.C. 4928.17, it may be intended to preclude the PUCO's exercise of authority in authorizing an MRO or ESP from being challenged on the grounds that the PUCO lacked the authority to do so in light of R.C. 4928.05's corporate separation requirement.

[2] Regional transmission organizations coordinate the movement of electricity on a regional basis throughout North America via the electric transmission grid.

[3] Under continuing law, a "mercantile customer" is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states (R.C. 4928.01(A)(19)).

[4] As used here, "solid wastes" means "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than 50% of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste." (R.C. 3734.01(E).)

[5] Under the bill, based on the definition of current law, a "mercantile customer" is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states. Current law uses this definition for the term "mercantile commercial customers" and removes "commercial" from that phrase.

[6] Under continuing law, surcharge remittances continue only until December 31, 2011, or until the Fund reaches $100 million, whichever is first.

[7] There are seven such centers in Ohio, three in Columbus and one each in Cleveland, Dayton, Toledo, and Cincinnati. A DOD web site describes the Centers as providing "a variety of product and process innovation and commercialization services to both established and early-stage technology-based businesses such as: new product design; CAD/CAM; prototyping; materials selection and handling; plant layout and design; quality systems; information systems; machining; joining technology assistance; and biotechnology business consulting." (<http://www.odod.state.oh.gov/tech/edison/ tiedc.htm>(4/11/08).

[8] Because actions of a General Assembly are not binding on future General Assemblies, this recommendation requirement cannot be construed as mandatory. (See, OH Const. Art. II, §§1, 15).

[9] Referring to an application under R.C. 4909.18, which type of application would require a hearing.

[10] "[Greenhouse gases] allow sunlight to enter the atmosphere freely. When sunlight strikes the Earth's surface, some of it is reflected back towards space as infrared radiation (heat). Greenhouse gases absorb this infrared radiation and trap the heat in the atmosphere. . . . Some of [the gases] occur in nature (water vapor, carbon dioxide, methane, and nitrous oxide), while others are exclusively human-made (like gases used for aerosols). . . . During the past 20 years, about three-quarters of human-made carbon dioxide emissions were from burning fossil fuels." From the U.S. Energy Information Administration, at http://www.eia.doe.gov/oiaf/1605/ggccebro/chapter1.html (March 31, 2008).

[11] <http://www.theclimateregistry.org/>. According to the web site, as of April 11, 2008, Ohio is listed as having joined the Registry, along with all other states except Alaska, Texas, Louisiana, Mississippi, Arkansas, North Dakota, South Dakota, Nebraska, Kentucky, Indiana, and West Virginia. The Ohio contact listed on the site is the Director of Ohio EPA. The state's listing currently enables a utility's voluntary participation in the Registry.

[12] "Commodity sales service" is the sale of natural gas to consumers, excluding distribution or ancillary service (R.C. 4929.01(C)). In other words, it is the sale of the natural gas commodity to retail customers. "Ancillary service" is any service that is ancillary to the receipt or delivery of that natural gas commodity, including, but not limited to, storage, pooling, balancing, and transmission (R.C. 4929.01(B)).

[13] In addition, R.C. 4929.11 of the alternative regulation law authorizes the PUCO to allow "any automatic adjustment mechanism or device in a [utility's] rate schedules that allows [the] rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs."

[14] Generally, prohibitions against a utility giving undue preference or advantage, or undue or unreasonable prejudice or disadvantage, to anyone relative to utility service, discriminating among suppliers, or treating similarly situated consumers differently as to the terms and conditions of service.

APPENDIX D

SB 221 as Passed by the General Assembly, Section 4928.143(C)(1)

Legislative Service Commission Bill Analysis, 127th General Assembly, SB 221: As Passed by the General Assembly.

(127th General Assembly)
(Amended Substitute Senate Bill Number 221)

AN ACT

To amend sections 4905.31, 4928.01, 4928.02, 4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and 4929.02; to enact sections 9.835, 3318.112, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 4928.68, 4928.69, and 4929.051; and to repeal sections 4928.41, 4928.42, 4928.431, and 4928.44 of the Revised Code to revise state energy policy to address electric service price regulation, establish alternative energy benchmarks for electric distribution utilities and electric services companies, provide for the use of renewable energy credits, establish energy efficiency standards for electric distribution utilities, require greenhouse gas emission reporting and carbon dioxide control planning for utility-owned generating facilities, authorize energy price risk management contracts, and authorize for natural gas utilities revenue decoupling related to energy conservation and efficiency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4905.31, 4928.01, 4928.02, 4928.05, 4928.09, 4928.14, 4928.17, 4928.20, 4928.31, 4928.34, 4928.35, 4928.61, 4928.67, 4929.01, and 4929.02 be amended and sections 9.835, 3318.112, 4928.141, 4928.142, 4928.143, 4928.144, 4928.145, 4928.146, 4928.151, 4928.24, 4928.621, 4928.64, 4928.65, 4928.66, 4928.68, 4928.69, and 4929.051 of the Revised Code be enacted to read as follows:

Sec. 9.835. (A) As used in this section:

(1) "Energy price risk management contract" means a contract that

applicable, the appropriate amended documents filed under division (A)(3) of this section. Such refiling shall occur during the month of December of every fourth year after the initial filing of a document under division (A)(1) of this section.

(3) If the address of the person filing a document under division (A)(1) or (2) of this section changes, or if a person's agent or the address of the agent changes, from that listed on the most recently filed of such documents, the person shall file an amended document containing the new information.

(4) The consent and designation required by divisions (A)(1) to (3) of this section shall be in writing, on forms prescribed by the public utilities commission. The original of each such document or amended document shall be legible and shall be filed with the commission, with a copy filed with the office of the consumers' counsel and with the attorney general's office.

(B) A person who enters this state pursuant to a summons, subpoena, or other form of process authorized by this section is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person's entrance into this state pursuant to such summons, subpoena, or other form of process.

(C) Divisions (A) and (B) of this section do not apply to any of the following:

(1) A corporation incorporated under the laws of this state that has appointed a statutory agent pursuant to section 1701.07 or 1702.06 of the Revised Code;

(2) A foreign corporation licensed to transact business in this state that has appointed a designated agent pursuant to section 1703.041 of the Revised Code;

(3) Any other person that is a resident of this state or that files consent to service of process and designates a statutory agent pursuant to other laws of this state.

Sec. 4928.14. ~~(A) After its market development period, an electric distribution utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Such offer shall be filed with the public utilities commission under section 4909.18 of the Revised Code.~~

~~(B) After that market development period, each electric distribution utility also shall offer customers within its certified territory an option to purchase competitive retail electric service the price of which is determined~~

~~through a competitive bidding process. Prior to January 1, 2004, the commission shall adopt rules concerning the conduct of the competitive bidding process, including the information requirements necessary for customers to choose this option and the requirements to evaluate qualified bidders. The commission may require that the competitive bidding process be reviewed by an independent third party. No generation supplier shall be prohibited from participating in the bidding process, provided that any winning bidder shall be considered a certified supplier for purposes of obligations to customers. At the election of the electric distribution utility, and approval of the commission, the competitive bidding option under this division may be used as the market-based standard offer required by division (A) of this section. The commission may determine at any time that a competitive bidding process is not required, if other means to accomplish generally the same option for customers is readily available in the market and a reasonable means for customer participation is developed.~~

~~(C) After the market development period, the~~ The failure of a supplier to provide retail electric generation service to customers within the certified territory of ~~the~~ an electric distribution utility shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer ~~filed~~ under ~~division (A) of this section~~ sections 4928.141, 4928.142, and 4928.143 of the Revised Code until the customer chooses an alternative supplier. A supplier is deemed under this ~~division~~ section to have failed to provide such service if the commission finds, after reasonable notice and opportunity for hearing, that any of the following conditions are met:

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

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

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

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

Sec. 4928.141. (A) Beginning January 1, 2009, an electric distribution utility shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. To that end, the electric distribution utility shall apply to the public utilities

commission to establish the standard service offer in accordance with section 4928.142 or 4928.143 of the Revised Code and, at its discretion, may apply simultaneously under both sections, except that the utility's first standard service offer application at minimum shall include a filing under section 4928.143 of the Revised Code. Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code, and, as applicable, pursuant to division (D) of section 4928.143 of the Revised Code, any rate plan that extends beyond December 31, 2008, shall continue to be in effect for the subject electric distribution utility for the duration of the plan's term. A standard service offer under section 4928.142 or 4928.143 of the Revised Code shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the utility's rate plan.

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

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

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

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

(b) Clear product definition;

(c) Standardized bid evaluation criteria;

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

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

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

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

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

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

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

(2) Any such regional transmission organization has a market-monitor function and the ability to take actions to identify and mitigate market power or the electric distribution utility's market conduct; or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power.

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

The commission shall initiate a proceeding and, within ninety days after the application's filing date, shall determine by order whether the electric distribution utility and its market-rate offer meet all of the foregoing requirements. If the finding is positive, the electric distribution utility may initiate its competitive bidding process. If the finding is negative as to one or more requirements, the commission in the order shall direct the electric

distribution utility regarding how any deficiency may be remedied in a timely manner to the commission's satisfaction; otherwise, the electric distribution utility shall withdraw the application. However, if such remedy is made and the subsequent finding is positive and also if the electric distribution utility made a simultaneous filing under this section and section 4928.143 of the Revised Code, the utility shall not initiate its competitive bid until at least one hundred fifty days after the filing date of those applications.

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

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

(2) There were four or more bidders.

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

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

(D) The first application filed under this section by an electric distribution utility that, as of the effective date of this section, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in this state shall require that a portion of that utility's standard service offer load for the first five years of the market rate offer be competitively bid under division (A) of this section as follows: ten per cent of the load in year one and not less than twenty per cent in year two, thirty per cent in year three, forty per cent in year four, and fifty per cent in year five. Consistent with those percentages, the commission shall determine the

actual percentages for each year of years one through five. The standard service offer price for retail electric generation service under this first application shall be a proportionate blend of the bid price and the generation service price for the remaining standard service offer load, which latter price shall be equal to the electric distribution utility's most recent standard service offer price, adjusted upward or downward as the commission determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of any one or more of the following costs as reflected in that most recent standard service offer price:

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

(2) Its prudently incurred purchased power costs;

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

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

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

Additionally, the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency

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

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

(F) An electric distribution utility that has received commission approval of its first application under division (C) of this section shall not, nor ever shall be authorized or required by the commission to, file an application under section 4928.143 of the Revised Code.

Sec. 4928.143. (A) For the purpose of complying with section 4928.141 of the Revised Code, an electric distribution utility may file an application for public utilities commission approval of an electric security plan as prescribed under division (B) of this section. The utility may file that application prior to the effective date of any rules the commission may adopt for the purpose of this section, and, as the commission determines necessary, the utility immediately shall conform its filing to those rules upon their taking effect.

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

(1) An electric security plan shall include provisions relating to the

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

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

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

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

(c) The establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility, was sourced through a competitive bid process subject to any such rules as the commission adopts under division (B)(2)(b) of this section, and is newly used and useful on or after January 1, 2009, which surcharge shall cover all costs of the utility specified in the application, excluding costs recovered through a surcharge under division (B)(2)(b) of this section. However, no surcharge shall be authorized unless the

commission first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the electric distribution utility. Additionally, if a surcharge is authorized for a facility pursuant to plan approval under division (C) of this section and as a condition of the continuation of the surcharge, the electric distribution utility shall dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. Before the commission authorizes any surcharge pursuant to this division, it may consider, as applicable, the effects of any decommissioning, deratings, and retirements.

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

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

(f) Provisions for the electric distribution utility to securitize any phase-in, inclusive of carrying charges, of the utility's standard service offer price, which phase-in is authorized in accordance with section 4928.144 of the Revised Code; and provisions for the recovery of the utility's cost of securitization.

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

(h) Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution

utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

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

(C)(1) The burden of proof in the proceeding shall be on the electric distribution utility. The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date. Subject to division (D) of this section, the commission by order shall approve or modify and approve an application filed under division (A) of this section if it finds that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. Additionally, if the commission so approves an application that contains a surcharge under division (B)(2)(b) or (c) of this section, the commission shall ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge. Otherwise, the commission by order shall disapprove the application.

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

(b) If the utility terminates an application pursuant to division (C)(2)(a) of this section or if the commission disapproves an application under division (C)(1) of this section, the commission shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized pursuant to this section or section 4928.142 of the Revised Code, respectively.

(D) Regarding the rate plan requirement of division (A) of section 4928.141 of the Revised Code, if an electric distribution utility that has a

rate plan that extends beyond December 31, 2008, files an application under this section for the purpose of its compliance with division (A) of section 4928.141 of the Revised Code, that rate plan and its terms and conditions are hereby incorporated into its proposed electric security plan and shall continue in effect until the date scheduled under the rate plan for its expiration, and that portion of the electric security plan shall not be subject to commission approval or disapproval under division (C) of this section, and the earnings test provided for in division (F) of this section shall not apply until after the expiration of the rate plan. However, that utility may include in its electric security plan under this section, and the commission may approve, modify and approve, or disapprove subject to division (C) of this section, provisions for the incremental recovery or the deferral of any costs that are not being recovered under the rate plan and that the utility incurs during that continuation period to comply with section 4928.141, division (B) of section 4928.64, or division (A) of section 4928.66 of the Revised Code.

(E) If an electric security plan approved under division (C) of this section, except one withdrawn by the utility as authorized under that division, has a term, exclusive of phase-ins or deferrals, that exceeds three years from the effective date of the plan, the commission shall test the plan in the fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code. The commission shall also determine the prospective effect of the electric security plan to determine if that effect is substantially likely to provide the electric distribution utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur shall be on the electric distribution utility. If the test results are in the negative or the commission finds that continuation of the electric security plan will result in a return on equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that will face comparable business and financial risk, with such adjustments for capital structure as may be appropriate, during the balance of the plan, the

commission may terminate the electric security plan, but not until it shall have provided interested parties with notice and an opportunity to be heard. The commission may impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative. In the event of an electric security plan's termination pursuant to this division, the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan.

(F) With regard to the provisions that are included in an electric security plan under this section, the commission shall consider, following the end of each annual period of the plan, if any such adjustments resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. Consideration also shall be given to the capital requirements of future committed investments in this state. The burden of proof for demonstrating that significantly excessive earnings did not occur shall be on the electric distribution utility. If the commission finds that such adjustments, in the aggregate, did result in significantly excessive earnings, it shall require the electric distribution utility to return to consumers the amount of the excess by prospective adjustments; provided that, upon making such prospective adjustments, the electric distribution utility shall have the right to terminate the plan and immediately file an application pursuant to section 4928.142 of the Revised Code. Upon termination of a plan under this division, rates shall be set on the same basis as specified in division (C)(2)(b) of this section, and the commission shall permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that electric security plan. In making its determination of significantly excessive earnings under this division, the commission shall not consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company.

Sec. 4928.144. The public utilities commission by order may authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers. If the commission's order includes such a phase-in, the order also shall provide for the creation of

regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order shall authorize the collection of those deferrals through a nonbypassable surcharge on any such rate or price so established for the electric distribution utility by the commission.

Sec. 4928.145. During a proceeding under sections 4928.141 to 4928.144 of the Revised Code and upon submission of an appropriate discovery request, an electric distribution utility shall make available to the requesting party every contract or agreement that is between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the public utilities commission.

Sec. 4928.146. Nothing in sections 4928.141 to 4928.145 of the Revised Code precludes or prohibits an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

Sec. 4928.151. The public utilities commission shall adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities, so that, on and after the effective date of the initial rules so adopted, all such utilities apply the same policies and charges to those customers. Initial rules shall be adopted not later than six months after the effective date of this section. The rules shall address the just and reasonable allocation to and utility recovery from the requesting customer or other customers of the utility of all costs of any such line extension and any requisite substation or related facility, including, but not limited to, the costs of necessary technical studies, operations and maintenance costs, and capital costs, including a return on capital costs.

Sec. 4928.17. (A) Except as otherwise provided in sections 4928.142 or 4928.143 or 4928.31 to 4928.40 of the Revised Code and beginning on the starting date of competitive retail electric service, no electric utility shall engage in this state, either directly or through an affiliate, in the businesses of supplying a noncompetitive retail electric service and supplying a competitive retail electric service, or in the businesses of supplying a noncompetitive retail electric service and supplying a product or service other than retail electric service, unless the utility implements and operates under a corporate separation plan that is approved by the public utilities

Bill Analysis

Legislative Service Commission

Am. Sub. S.B. 221

127th General Assembly
(As Passed by the General Assembly)

Sens. **Schuler, Jacobson, Harris, Fedor, Boccieri, R. Miller, Morano, Mumper, Niehaus, Padgett, Roberts, Wilson, Spada**

Reps. **J. Hagan, Blessing, Jones, Uecker, Budish, Chandler, Domenick, Evans, Flowers, J. McGregor, Yuko**

Effective date: July 31, 2008

ACT SUMMARY

- Focuses on two main subject areas: energy pricing and energy sources.

Energy pricing:

- Preserves the right of consumer choice of electric generation supplier.
- Revises and adds to the objectives of state electric services policy.
- Provides that a "self-generator" under Electric Restructuring Law need not own the generating facility, rather, it can host it on its premises.
- Preserves the requirement that each electric distribution utility have a standard service offer (SSO).
- Continues to provide that each utility's SSO will be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.
- Requires that an SSO be either a market rate offer (MRO) or an electric security plan (ESP).
- Requires all utilities to have either an MRO or ESP by January 1, 2009, but provides that a utility's current SSO continues until such an MRO or ESP is approved.

- Expressly requires that an MRO or ESP exclude any previously authorized allowances for transition costs.

- Requires the first SSO application of a utility to be an ESP, but allows a utility to simultaneously file an MRO.

- Provides SSO provisions that reflect differences among the electric distribution utilities.

- Authorizes "transitional" MROs that require utilities that own generating assets to "ramp up" to market and operate under a blended generation price during that period.

- Provides that an electric distribution utility that files an MRO cannot, and cannot be required to, file an ESP.

- Provides that the bids selected for an MRO be the least-cost bids and establishes several other criteria regarding the bid results that can preclude an MRO application from going forward.

- Authorizes the PUCO to adjust the blended price of a transitional MRO.

- States that public utility law (R.C. Title 49) does not apply to an ESP.

- Prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, the application can contain, but does not limit any discretionary items to those the act enumerates.

- Requires an ESP to contain provisions related to the supply and pricing of electric generation service and, if the proposed ESP has a term longer than three years, requires that it must include provisions to permit the PUCO to test the ESP.

- Permits an ESP to include automatic cost recovery, a construction work in progress allowance/nonbypassable surcharge, a nonbypassable surcharge for a competitively bid generating facility, rate stabilization, automatic price adjustments, securitization, transmission and related services, distribution service, and economic development and energy efficiency.

- Requires that, if an ESP provides a nonbypassable surcharge for a new, competitively sourced generating facility, the utility must dedicate to Ohio consumers the capacity and energy and the rate associated with that facility.

- Prescribes as the standard for PUCO approval of an ESP that its pricing and other terms and conditions, including any deferrals and any future recovery of deferrals,

are more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO.

- Requires that, if the PUCO approves an ESP that contains a nonbypassable surcharge for construction work in progress or for a new, competitively sourced generating facility, it must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

- Allows an electric distribution utility to withdraw an ESP application, thereby terminating it, if the PUCO modifies and then approves the application.

- Requires the PUCO to issue an order continuing the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs, until a subsequent ESP or MRO is filed and authorized, if a utility so withdraws its ESP application or if the PUCO disapproves an ESP application.

- Requires the PUCO periodically to test an approved ESP against the expected results that would otherwise apply under an MRO and to determine if an ESP is likely to provide the electric distribution utility prospectively with excessive earnings, and authorizes the PUCO to remedy any such finding by terminating the plan.

- Requires the PUCO to consider at the end of each year of an ESP if any adjustments to the ESP price actually resulted in excessive earnings to the utility and to remedy any excessive earnings by requiring prospective price adjustments.

- Authorizes discovery requests of certain utility or affiliate agreements during an MRO or ESP proceeding.

- Expressly states that the act's SSO provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

- Modifies the corporate separation law so that the law applies to an electric utility "except as otherwise provided in" the act's MRO and ESP provisions.

- Removes any limitation on divestiture by an electric utility that is not a distribution utility.

- Replaces prior law's authority that a utility can divest generating assets without prior PUCO approval subject to the provisions of public utility law relating to the transfer of transmission, distribution, or ancillary service provided by such

generating asset, with a prohibition against any such divesture without prior PUCO approval.

- Authorizes the PUCO to grant rate or price phase-ins under an MRO or ESP and states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service does not limit that phase-in authority.

- Authorizes collection of the amounts deferred under a rate or price phase-in, plus carrying charges, to be collected through a nonbypassable surcharge or any rate or price established for the utility, but provides that customers in a governmental aggregation are responsible only for that portion of the phase-in surcharge that is proportionate to the benefits they receive as an aggregated group.

- Permits special contract law to be enforced for the purposes of the Electric Restructuring Law.

- Expressly authorizes under special contract law the filing of a financial device to recover costs incurred in conjunction with economic development and job retention, the act's peak demand reduction and energy efficiency programs, advanced metering, and government mandates.

- Authorizes a mercantile customer or a group of those customers to establish a reasonable arrangement with a utility under special contract law.

- Provides that special contracts must be submitted to the PUCO by application for its approval.

- Extends to a FERC-approved regional transmission organization that is responsible for maintaining reliability in all or part of Ohio the requirement to consent to service of process and designate an agent.

- Requires the PUCO to employ a Federal Energy Advocate to generally assist with transmission oversight.

- Prohibits an electric distribution utility charging a customer of a municipal utility in existence before January 1, 1998, any surcharge, service termination charge, exit fee, or transition charge.

- Requires the PUCO, in carrying out the state electric services policy, to consider rules as they apply to the costs of electric distribution infrastructure, including line extensions, for the purpose of development in Ohio.

- Requires the PUCO to adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite

substations and related facilities that are requested by nonresidential customers of electric utilities.

- Lengthens from two years to up to three years the time period for an automatic governmental aggregation before a participant can op-out.

- Provides that the default service of a person that opts out of a government aggregation before the commencement of the aggregation is a utility's SSO.

- Allows a legislative authority, on behalf of the customers that are part of its governmental aggregation, to choose not to receive standby service from the electric distribution utility in whose certified territory the aggregation is located and that operates under an approved ESP.

- Provides that a customer of a governmental aggregation that has so refused standby service and that leaves the aggregation and returns to the utility for competitive retail electric service has to pay the market price of power incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the act's alternative energy resource provisions to serve the consumer.

- Requires the PUCO to adopt rules to encourage and promote "large-scale" governmental, electric, aggregation in Ohio.

- Removes the statutory definition of "small generating facility" in Electric Restructuring Law and repeals certain transitional provisions of that law.

- Authorizes a natural gas utility to apply for PUCO approval of an alternative rate plan that includes a revenue decoupling mechanism.

- Defines such a "revenue decoupling mechanism" as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of system throughput or volumetric sales.

- By declaring that such a plan is an application "not for an increase in rates," removes certain requirements for a hearing on any alternative rate plan that includes a revenue decoupling mechanism, proposes rates and charges based upon the acting determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case, and establishes, continues, or expands an energy efficiency or energy conservation program.

- Prohibits the act being construed as supporting a claim or finding that an application for such a conservation-related plan filed before the act's effective date is an application to increase rates (and therefore generally subject to hearing).

- Adds the following, twelfth objective to the statutory natural gas policy: to promote an alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation.

- Changes the requirement that the PUCO follow the state policy when carrying out its duties under the alternative regulation law, to require that both the PUCO and Ohio Consumers' Counsel follow the policy in exercising their respective authorities under that law.

- Authorizes a state official or the legislative or other governing authority of a county, city, village, township, park district, or school district to enter into an energy price risk management contract.

Energy sources:

- Requires an electric distribution utility and an electric services company to provide from "alternative energy resources" a portion of their electricity supplies from alternative energy resources.

- Defines alternative energy resources as consisting of specified advanced energy resources and renewable energy resources with a placed-in-service date of January 1, 1998, or later, and as consisting of existing or new mercantile customer-sited resources.

- Specifies that the requisite portion of the electric supply derived from alternative energy must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio.

- Provides that half of the alternative energy can be generated from advanced energy resources, but at least half must be generated from renewable energy resources, including 0.5% from solar energy resources, subject to yearly, minimum, renewable and solar benchmarks that increase as a percentage of electric supply through 2024.

- Establishes a cost cap relative to a utility's or company's obligation to comply with the alternative energy resource benchmarks.

- Authorizes the PUCO to make a force majeure determination regarding all or part of a utility's or company's compliance with a minimum, renewable energy resource benchmark.

- Authorizes the PUCO to enforce the renewable energy and solar energy resource benchmarks through the assessment of compliance payments.

- Confers on the Ohio School Facilities Commission the authority to adopt rules prescribing standards for solar ready equipment in school buildings under its jurisdiction and to waive all or part of those standards for a school district for good cause.

- Requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee to semiannually review the act's alternative energy requirements.

- Requires the PUCO to submit an annual report to the General Assembly describing alternative energy benchmark compliance and the use of alternative energy resources.

- Prescribes energy savings and peak demand reduction requirements for electric distribution utilities through 2025, sets yearly benchmarks, and authorizes PUCO enforcement of compliance through the assessment of forfeitures.

- Authorizes the PUCO to approve a revenue decoupling mechanism for an electric distribution utility if it reasonably aligns the interests of the utility and of its customers in favor of energy efficiency or energy conservation programs.

- Requires the Governor's Energy Advisor to periodically report to the General Assembly and as requested by House and Senate standing committees responsible for energy efficiency and conservation issues regarding energy efficiency and conservation initiatives undertaken by the Advisor and state government.

- Requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas emissions reporting and carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the act's effective date.

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CONTENT AND OPERATION

The act addresses state energy policy primarily by making changes to the Electric Restructuring Law of R.C. Chapter 4928., including by establishing an alternative energy portfolio requirement for electric suppliers, although it also makes certain changes to the natural gas law of R.C. Chapter 4929. It focuses on two main subject areas: energy pricing and energy sources.

I. Energy pricing

Electricity policy

State electric services policy

(R.C. 4928.02)

The act revises and adds to the objectives of the state electric services policy enacted under S.B. 3 of the 123rd General Assembly. Under both prior law and the act, the statutory electric policy applies statewide, and the PUCO is required to ensure that the policy is effectuated (R.C. 4928.06(A), not in act).

The policy objectives, which had their genesis in S.B. 3's competitive generation market concept and are changed by the act as described below, are as follows: (1) ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service, (2) 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, (3) ensure diversity of electricity supplies and suppliers, by giving consumers effective choice of supplies and suppliers and by encouraging the development of distributed and small generation facilities, (4) encourage innovation and market access for cost-effective supply- and demand-side retail electric service, (5) encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems of electric utilities in order to promote effective customer choice of retail electric service, (6) recognize the continuing emergence of competitive electricity markets through the development and implementation of flexible regulatory treatment, (7) ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, (8) ensure retail electric service consumers protection against

unreasonable sales practices, market deficiencies, and market power, and (9) facilitate the state's effectiveness in the global economy.

Although the act does not amend the wording of objective (1), its change in the regulatory framework for retail electric service prices, discussed below, provides a different pricing context for implementing the objective's concept of "reasonably priced retail electric service." In addition, the act changes the state policy objectives by adding five new objectives and modifying three of the objectives listed above. Specifically, objective (4) is changed to read: "encourage innovation and market access for cost-effective retail electric service, *including, but not limited to, demand-side management, time-differentiated pricing, and implementation of advanced metering infrastructure*."

Objective (5) is changed to read: "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*."

Objective (7) is changed to read: "ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa, *including by prohibiting the recovery of any generation-related costs through distribution or transmission rates.*"

The act adds the following new objectives to the state electric services policy: (1) 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, (2) provide coherent, transparent means of giving appropriate incentives to technologies that can adapt successfully to potential environmental mandates, (3) encourage implementation of distributed generation across customer classes through regular review and updating of rules governing critical issues such as interconnection standards, standby charges, and net metering, (4) protect at-risk populations, including when considering the implementation of any new advanced energy or renewable energy resource, and (5) encourage the education of small business owners in Ohio regarding the use of energy efficiency programs and alternative energy resources in their businesses and encourage that use.

"Self-generator"

(R.C. 4928.01(A)(7) and (32))

Under prior law, a "self-generator" was described as an entity in Ohio that owns an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to retail electric service providers, whether the facility is installed or operated by the owner or by an agent under a contract. That term is significant primarily for two purposes relating to the scope of the Electric Restructuring Law of S.B. 3 and an electric utility's duty to provide back-up electricity supply to any such

entity. The act modifies prior law's definition of that term to provide, in effect, that a self-generator can host, but need not own, a generating asset that produces electricity on its premises. This broadens the concept of "self-generator" and thus broadens who is excluded as an electric light company under that law and, consequently, not subject to state utility regulation as to electricity it produces.

In addition, the act removes an undefined term--"retail electric service providers"--from the definition of "self-generator" and replaces it with the term "entity," thereby recognizing that a self-generator can sell excess electricity to anyone, not just to persons engaged in the retail sale of electric service.

Special contracts

(R.C. 4905.31 and 4928.05(A)(1))

Continuing Electric Restructuring Law specifies the scope of the PUCO's authority regarding a competitive retail electric service (generation service), by enumerating specific provisions of public utility rate-making law (R.C. Chapters 4905. and 4909.) that continue to apply to that service notwithstanding that the service is offered competitively in Ohio. The act includes a reference to special contract law (R.C. 4905.31), thereby permitting that law to be enforced for the purposes of the Electric Restructuring Law.

Continuing special contract law in effect authorizes any public utility to file a rate schedule or enter into any reasonable arrangement with another public utility or with its customers, consumers, or employees. The law describes a number of types of those schedules or arrangements, concluding with the general description of any financial device that may be practicable or advantageous to the parties. The act states that, in the case of an electric distribution utility, such a financial device may include a device to recover costs incurred in conjunction with (1) any economic development and job retention program of the utility within its certified territory, including recovery of revenue foregone as a result of any such program, (2) any development and implementation of peak demand reduction and energy efficiency programs under the act's energy efficiency requirements (see "***Energy efficiency***," below), (3) any acquisition and deployment of advanced metering, including the costs of any meters prematurely retired as a result of advanced metering implementation, and (4) compliance with any government mandate.

The act removes obsolete references in that list to schedules or arrangements relating to emissions fees.

Additionally, the act authorizes a mercantile customer of an electric distribution utility or a group of those customers to establish a reasonable arrangement with that utility by filing an application with the PUCO.

The act does not specify the standards the PUCO will use to approve a schedule or reasonable arrangement under the special contract law. The act does require that every schedule or arrangement is posted on the PUCO's docketing information system and is accessible through the internet.

Generation service

General SSO requirement

(R.C. 4928.141(A), 4928.142(B) and (F), 4928.143(A), 4928.145, 4928.146, and 4928.17(A))

The act requires that, beginning January 1, 2009, each electric distribution utility in Ohio must make available a standard service offer (SSO) within its exclusive, certified distribution territory. It provides that, until a utility's first SSO under the act is approved, the rate plan currently in effect for the utility will continue. It additionally states that the act's provisions do not affect the legal validity or force and effect of any such rate plan, including any cost recovery provisions.

The act removes prior law's requirement that an SSO be "market-based," but under both prior law and the act, a utility's SSO generally must be an offer of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, and be offered on a comparable and nondiscriminatory basis. The act preserves the requirement that each utility's SSO be the default service for a customer, but changes the statutory nature and process for PUCO approval of an SSO.

Under the act, an SSO must be either a market rate option (MRO) or electric security plan (ESP). An SSO application can include both an ESP and an MRO proposal or be only an ESP or an MRO proposal, but, if a utility's first SSO application is for an MRO, that application must include an ESP proposal as well. Once an MRO is approved for any distribution utility, its SSO must always be an MRO: the utility cannot, and cannot be required to, file an ESP.

A utility can file an MRO or ESP before the effective date of the PUCO rules required under the act, but, as the PUCO determines necessary, must immediately conform its filing to the rules upon their taking effect.

Further, the act expressly requires that an MRO or ESP exclude any previously authorized allowances for transition costs, with that exclusion being effective on and after the date that the allowance is scheduled to end under the utility's current rate plan.

In connection with an MRO or ESP, the act modifies the corporate separation law with a phrase that states that law applies to an electric utility "except as otherwise provided in" the MRO and ESP provisions of the act. Although this change may be read as possibly allowing an MRO or ESP to provide for corporate separation other than as required by statute (R.C. 4928.17), it may be intended to preclude the PUCO's exercise of authority in authorizing an MRO or ESP from being challenged on the grounds that the PUCO lacked the authority to do so in light of the statutory corporate separation requirement.

Additionally, the act requires that, in any MRO, ESP, or rate or price phase-in (see "***Rate or price phase-ins/nonbypassable surcharge***," below) proceeding, and upon

submission of an appropriate discovery request, an electric distribution utility must make available to the requesting party every contract or agreement that is relevant to the proceeding and is between the utility or any of its affiliates and a party to the proceeding, consumer, electric services company, or political subdivision. This requirement, however, is subject to such protection for proprietary or confidential information as the PUCO determines appropriate.

Additionally, the act states that the authority continuing law confers on the PUCO to supervise or regulate a competitive retail electric service (currently only generation service) must not be construed to limit the PUCO's authority under the act's SSO and rate or price phase-in provisions.

The act also expressly states that its provisions do not preclude or prohibit an electric distribution utility providing competitive retail electric service to electric load centers within the certified territory of another such utility.

SSO variations

(R.C. 4928.01(A)(33), 4928.141(A), 4928.142(D), and 4928.143(D))

The act's SSO provisions reflect differences among the distribution utilities. Specifically, Dayton Power & Light (DP&L) is the only utility with a current rate plan that is scheduled to expire at the end of 2010, instead of 2008 as the other utilities. Additionally, the First Energy operating utilities reportedly are the only distribution utilities that do not directly own or control generating facilities; rather, First Energy generating assets are owned by an affiliate of those distribution utilities. Every other distribution utility transferred its generating assets to a subsidiary of the utility.

Under the act, all electric distribution utilities are required to file new SSOs with the PUCO in the form of an MRO or ESP. In the case of DP&L, however, the act requires that, regardless of the term of DP&L's initial ESP, the unexpired portion of its current rate plan will be incorporated into its ESP and must constitute its ESP until the end of 2010. Also, the act authorizes DP&L to apply for supplemental authority under its first ESP (see "***Nature of an ESP***," below). Nothing in the act prohibits DP&L from also simultaneously filing an MRO for its initial SSO, which filing must be accompanied by an ESP proposal.

The act also provides "transitional MROs"--the name this analysis gives to the first MRO filed by any distribution utility that owns or controls generating assets that had been used and useful in Ohio (in other words, any distribution utility except the First Energy utilities). Under such an MRO, the act provides that the utility will transition to the market, in the sense that the utility can bid out only a certain portion of its electric load during a prescribed period (see "***Transitional MROs***," below).

General filing process

(R.C. 4928.141(B))

The act requires the PUCO to provide a hearing on an MRO or ESP application, send written notice of the hearing to the electric distribution utility, and publish notice in a newspaper of general circulation in each county in the utility's certified distribution territory. The PUCO must adopt rules regarding MRO and ESP filings.

Market rate offers

Nature of an MRO (R.C. 4928.142(A)). Under the act, an MRO must be determined through a competitive bidding process that provides for all of the following: (1) open, fair, and transparent competitive solicitation, (2) clear product definition, (3) standardized bid evaluation criteria, (4) oversight by an independent third party that will design the solicitation, administer the bidding, and ensure that the foregoing requirements are met, and (5) evaluation of the submitted bids prior to the selection of the least-cost bid winner or winners. The PUCO must modify rules, or adopt new rules as necessary, concerning the conduct of the competitive bidding process and the qualifications of bidders, which rules must foster supplier participation and be consistent with (1) through (5) above. But, no generation supplier can be prohibited from participating in the bidding process.

Transitional MROs (R.C. 4928.142(D)). The first MRO filed by an electric distribution utility that, as of the act's effective date, directly owns, in whole or in part, operating electric generating facilities that had been used and useful in Ohio must provide that a portion of that utility's SSO load for the first five years of the MRO be competitively bid as follows: 10% of the load in year one, not less than 20% in year two, not less than 30% in year three, not less than 40% in year four, and not less than 50% in year five. The act requires the PUCO, consistent with those percentages, to determine the actual percentages for each year of years one through five.

MRO application (R.C. 4928.142(B)). An MRO application must detail the electric distribution utility's proposed compliance with the requirements described under "***Nature of an MRO***" (above) for the competitive bidding process and with the PUCO rules.

Additionally, the application must demonstrate that all of the following requirements are met: (1) the utility or its transmission service affiliate belongs to at least one FERC-approved RTO, or there otherwise is comparable and nondiscriminatory access to the electric transmission grid, (2) any such RTO has a market-monitor function and the ability to take actions to identify and mitigate market power or the utility's market conduct, or a similar market monitoring function exists with commensurate ability to identify and monitor market conditions and mitigate conduct associated with the exercise of market power, and (3) a published source of information is available publicly or through subscription that identifies pricing information for traded electricity on- and off-peak energy products that are contracts for delivery beginning at least two years from the date of the publication and is updated on a regular basis.

MRO approval process (R.C. 4928.142(B)). The PUCO must initiate a proceeding and, within 90 days after the application's filing date, determine by order whether the utility and its MRO has demonstrated the items required in the application, as enumerated in (1) to

(3) immediately above. If the finding is positive, the utility can initiate its competitive bidding process. If it is negative as to one or more requirements, the PUCO in the order must direct the utility regarding how any deficiency may be remedied in a timely manner to the PUCO's satisfaction; otherwise, the utility must withdraw the application. However, if such remedy is made and the subsequent finding is positive, and also if the utility made a simultaneous filing of an ESP application, the utility cannot initiate its competitive bid until at least 150 days after the filing date of those applications.

MRO generation price (R.C. 4928.142(C) and (D)). Upon the completion of the competitive bidding process, the PUCO must select the least-cost bid winner or winners of that process. The selected bid or bids, as prescribed as retail rates by the PUCO, are then the utility's SSO unless the PUCO, by order issued before the third calendar day following the conclusion of the bidding process, determines that (1) any portion of the bidding process was not oversubscribed, such that the amount of supply bid upon was not greater than the amount of the load bid out, (2) there were fewer than four bidders, or (3) at least 25% of the load was not bid upon by one or more persons other than the utility itself.

In addition, the act requires that all costs that are incurred by the utility as a result of or related to the competitive bidding process or to procuring generation service to provide the MRO, including the costs of energy and capacity and the costs of all other products and services procured as a result of the competitive bidding process, be timely recovered through the SSO price. For that purpose, the act requires the PUCO to approve a reconciliation mechanism, other recovery mechanism, or a combination of such mechanisms for the utility.

Transitional MRO generation price (R.C. 4928.142(D) and (E)). In the case of a Transitional MRO, the act requires that the SSO price for electric generation service will be a proportionate blend of the bid price and the generation service price for the utility's remaining SSO load. The latter price must equal the utility's most recent SSO price, adjusted upward or downward as the PUCO determines reasonable, relative to the jurisdictional portion of any known and measurable changes from the level of one or more of the following as reflected in that most recent SSO price: (1) the utility's prudently incurred cost of fuel used to produce electricity, (2) its prudently incurred purchased power costs, (3) its prudently incurred costs of satisfying Ohio's supply and demand portfolio requirements, including renewable energy resource and energy efficiency requirements, and (4) its costs prudently incurred to comply with environmental laws and regulations, with consideration of the derating of any facility associated with those costs. (Derating refers to a reduction in a generating unit's net dependable capacity due to an equipment or other component failure that requires repair, whether immediately or otherwise.)

In making any such price adjustment to the most recent SSO price, the PUCO must include the benefits that may become available to the utility as a result of or in connection with the costs included in the adjustment, including the utility's receipt of emissions credits or its receipt of tax benefits or of other benefits. Accordingly, the PUCO may impose conditions on the adjustment to ensure that any such benefits are properly aligned with the associated cost responsibility.

The PUCO also must determine how such SSO price adjustments will affect the utility's return on common equity that may be achieved by those adjustments. The PUCO cannot apply its consideration of the return on common equity to reduce any adjustment unless the adjustment will cause the utility to earn a return on common equity that is significantly in excess of the return on common equity that is earned by publicly traded companies, including utilities, that face comparable business and financial risk, with adjustments for capital structure as appropriate. The burden of proof for demonstrating that significantly excessive earnings will not occur is on the electric distribution utility.

Additionally, the PUCO can adjust the utility's most recent SSO price by a just and reasonable amount as it determines necessary to address any emergency that threatens the utility's financial integrity or to ensure that the resulting revenue available to the utility for providing the MRO is not so inadequate as to result, directly or indirectly, in a taking of property under the Ohio Constitution (Article I, Section 19).

Too, the act authorizes the PUCO, beginning in the second year of a blended price under a Transitional MRO and notwithstanding any other requirement concerning MROs, to alter, prospectively, the proportions constituting a blended price, to mitigate any effect of an abrupt or significant change in the utility's SSO price that would otherwise result in general or with respect to any rate group or rate schedule if not for the alteration. Any such alteration cannot be made more often than annually, and the PUCO cannot, by altering those proportions and in any event, including because of the length of time taken to approve the MRO as allowed under the act, cause the duration of the blending period to exceed ten years as counted from the approved MRO's effective date. Additionally, any such alteration must be limited to an alteration affecting the prospective proportions used during the blending period and cannot affect any blending proportion previously approved and applied by the PUCO pursuant to the act.

A utility has the burden of demonstrating that any adjustment to its most recent SSO price is proper under the act's Transitional MRO provisions.

ESPs

Nature of an ESP (R.C. 4928.143(B) and (D)). The act states that, with few exceptions, any contrary provision of public utility law (R.C. Title 49) does not apply to an ESP. This means, for example, that the act authorizes a utility's distribution rates to be determined under an ESP in a manner different from the traditional rate-making requirements that previously applied to those rates and that will continue to apply to a utility with an approved MRO.

The act prescribes what an ESP application must contain and also enumerates certain things that, at the utility's discretion, it can contain. But, any discretionary items in an ESP are not limited to the items the act enumerates. Essentially, an ESP must contain provisions related to the supply and pricing of electric generation service. If the proposed ESP has a term longer than three years, it can include provisions to permit the PUCO to test the plan as

described in "***Testing an ESP***," below, as well as any transitional conditions that the utility would want the PUCO to adopt if the PUCO were to terminate the ESP after such a test.

As alluded to above in "***SSO variations***," in its initial ESP application DP&L can request PUCO approval of provisions for the incremental recovery or the deferral of any of the following costs that are not being recovered under its current rate plan and that it incurs during that rate plan continuation period under the ESP: (1) costs to comply with the act's SSO/default service requirements, (2) costs to comply with the act's alternative energy requirements (see "***Alternative energy requirements***," below), and (3) costs to comply with the act's energy efficiency requirements (see "***Energy efficiency***," below).

As explained immediately below, enumerated items that the act authorizes any utility to request in an ESP include the following: provisions for or regarding (1) automatic cost recovery, (2) a construction work in progress (CWIP) allowance/nonbypassable surcharge, (3) a nonbypassable surcharge for a competitively bid generating facility, (4) rate stabilization, (5) automatic price adjustments, (6) securitization, (7) transmission and related services, (8) distribution service, and (9) economic development and energy efficiency.

ESP application (R.C. 4928.143(B)). *Automatic cost recovery*. An ESP can include provisions for the automatic recovery of any of the following, prudently incurred, costs of the utility (meaning, recovery without further PUCO authorization): (1) fuel used to generate the electricity supplied under the SSO, (2) purchased power supplied, including the cost of energy and capacity, and including purchased power acquired from an affiliate, (3) emission allowances, and (4) federally mandated carbon or energy taxes.

CWIP allowance/nonbypassable surcharge. An ESP can include a request for a reasonable CWIP for any of the utility's cost of constructing a generating facility or for an environmental expenditure for any such facility of the utility, provided the cost is incurred or the expenditure occurs on or after January 1, 2009. The act requires that any such CWIP allowance be subject to the CWIP limitations of public utility law (R.C. 4909.15, not in act), except that the PUCO can authorize such an allowance upon the incurrence of the cost or occurrence of the expenditure, rather than when the facility is at least 75% complete, as under prior law. However, the act prohibits such a CWIP allowance unless the PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the utility. Further, no CWIP allowance can be authorized unless the facility's construction was sourced through a competitive bid process, regarding which process the PUCO can adopt rules.

Under the act, any authorized CWIP allowance must be established as a nonbypassable surcharge for the life of the facility.

Nonbypassable surcharge for a competitively bid generating facility. An ESP can request the establishment of a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the utility, was sourced through a competitive bid process subject to any rules as the PUCO adopts under the act's CWIP provisions (see "*CWIP allowance/nonbypassable surcharge*," above), and is newly used and useful on or after

January 1, 2009. The surcharge must cover all of the utility's costs specified in the application, excluding costs recovered through a surcharge authorized for a CWIP allowance described above. But, no surcharge can be authorized unless the PUCO first determines in the proceeding that there is need for the facility based on resource planning projections submitted by the utility.

Additionally, if the surcharge is authorized for such a facility pursuant to plan approval and as a condition of the continuation of the surcharge, the utility must dedicate to Ohio consumers the capacity and energy and the rate associated with the cost of that facility. Before the PUCO authorizes such a surcharge, it can consider the effects, as applicable, of any decommissionings, deratings, and retirements.

Rate stabilization. An ESP can include terms, conditions, or charges that both would have the effect of stabilizing or providing certainty regarding retail electric service and relate to (1) limitations on customer shopping for retail electric generation service, (2) bypassability, (3) standby, back-up, or supplemental power service, (4) default service, (5) carrying costs, (6) amortization periods, and (7) accounting or deferrals, including future recovery of such deferrals.

Automatic price adjustments. Under the act, an ESP can include provisions for automatic increases or decreases in any component of the SSO price.

Securitization. An ESP can request approval of provisions for the utility to securitize any rate phase-in of its ESP price (see "***Rate or price phase-ins/nonbypassable surcharge***," below), as well as provisions for the recovery of the utility's cost of securitization.

Transmission and related services. An ESP can include provisions relating to transmission, ancillary, congestion, or any related service required for the SSO, including provisions for the recovery of any cost of such service that the electric distribution utility incurs pursuant to the SSO.

Distribution service. An ESP can include provisions regarding the utility's distribution service, including, without limitation, and notwithstanding any provision of public utility law (R.C. Title 49) to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the utility. The infrastructure and modernization provisions can include a long-term energy delivery infrastructure modernization plan for the utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. In determining whether to allow an ESP to include any provisions regarding distribution service, the PUCO must examine the reliability of the utility's distribution system and ensure that customers' and the utility's expectations are aligned and that the utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system.

Economic development and energy efficiency. An ESP can include provisions under which the electric distribution utility can implement economic development, job retention,

and energy efficiency programs. Those provisions can allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system.

ESP approval process (R.C. 4928.143(C)). The burden of proof in an ESP proceeding is on the applicant utility. The PUCO must issue an order approving, modifying and approving, or disapproving an initial ESP application not later than 150 days after the application's filing date and within 275 days for later applications. The PUCO must disapprove the application unless it finds that the ESP, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under an MRO. If it makes that finding, the PUCO can approve or modify and approve the ESP. Additionally, if the ESP provides a nonbypassable surcharge for CWIP or a competitively sourced generating facility as authorized under the act, the PUCO must ensure that the benefits derived for any purpose for which the surcharge is established are reserved and made available to those that bear the surcharge.

If the PUCO modifies and then approves an ESP application, the utility can withdraw the application, thereby terminating it. If the utility does so, or if the PUCO disapproves the ESP application, the PUCO must issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent ESP or MRO is authorized under the act.

Testing an ESP (R.C. 4928.143(E) and (F)). Regarding an ESP that has a term, exclusive of phase-ins or deferrals, of longer than three years, the act requires the PUCO to test that plan in its fourth year, and if applicable, every fourth year thereafter, to determine whether the plan, including its then-existing pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, continues to be more favorable in the aggregate and during the remaining term of the plan as compared to the expected results that would otherwise apply under an MRO. Additionally, the PUCO must determine the *prospective* effect of the ESP, to determine if that effect will result in "excessive earnings," that is, if the effect is substantially likely to provide the utility with a return on common equity that is significantly in excess of the return on common equity that is likely to be earned by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate. The burden of proof is on the utility.

If the comparability test results are in the negative or earnings are determined to be prospectively excessive, the PUCO may terminate the ESP, but must permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under that ESP. Before terminating the ESP, the PUCO must provide interested parties with notice and an opportunity to be heard. The PUCO can impose such conditions on the plan's termination as it considers reasonable and necessary to accommodate the transition from an approved plan to the more advantageous alternative.

Further, after the end of each annual period of an ESP (except DP&L's first ESP in which its current rate plan has been grandfathered), the PUCO must determine if any price adjustments granted under the plan resulted in excessive earnings for the utility as measured on the same basis as described above. But, in making that determination, the PUCO cannot consider, directly or indirectly, the revenue, expenses, or earnings of any affiliate or parent company. The act also requires that consideration be given to the capital requirements of future committed investments in Ohio. The burden of proof is on the utility.

If the PUCO finds that the adjustments, in the aggregate, did result in significantly excessive earnings, it must require the utility to return to consumers the amount of the excess by prospective adjustments, subject to the proviso that, upon making those prospective adjustments, the utility has the right to terminate the ESP and to file an MRO application immediately. If the utility so terminates the ESP, the PUCO must issue such order as is necessary to continue the provisions, terms, and conditions of the utility's most recent SSO, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent ESP or MRO is authorized. Further, the PUCO must permit the continued deferral and phase-in of any amounts that occurred prior to that termination and the recovery of those amounts as contemplated under the terminated ESP.

Rate or price phase-ins/nonbypassable surcharge

(R.C. 4928.144 and 4928.20(I))

As it considers necessary to ensure rate or price stability for consumers, the PUCO by order can authorize, inclusive of carrying charges, any just and reasonable phase-in of any electric distribution utility rate or price established under an ESP or MRO. The order also must provide for the creation of regulatory assets, pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount.

Under continuing law, "regulatory assets" are the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the PUCO or pursuant to generally accepted accounting principles as a result of a prior PUCO rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent PUCO action. They include all deferred demand-side management costs; all deferred percentage of income payment plan (PIPP) arrears; post-in-service capitalized charges and assets recognized in connection with statement of Financial Accounting Standards No. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the PUCO. (R.C. 4928.01(A)(26).)

Additionally, under the act, a PUCO rate or price phase-in order must authorize the collection of those deferrals through a nonbypassable surcharge on any rate or price established for the utility by the PUCO. However, customers that are part of a governmental aggregation are responsible only for that portion of the phase-in surcharge that is proportionate to the benefits, as determined by the PUCO, that the governmental aggregation's customers as an aggregated group receive. The proportionate surcharge so established will apply to each customer of the governmental aggregation while the customer is part of that aggregation. If a customer ceases being such a customer, the otherwise applicable surcharge will apply. The act expressly states that its provisions regarding the proportionate surcharge must not result in less than the utility's full recovery of a rate or phase-in surcharge.

Transmission service

Distribution surcharge for transmission cost recovery

(R.C. 4928.05(A)(2))

The act expressly allows the PUCO to authorize an electric distribution utility to collect from its customers a reconcilable rider on its electric distribution rates to recover all of the utility's transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged by the FERC or by an RTO, independent transmission operator, or similar organization approved by the FERC.

RTO operating requirements

(R.C. 4928.09)

The act extends to a FERC-approved RTO that is responsible for maintaining electric system reliability in all or part of Ohio requirements that apply under continuing law to electric utilities, electric services companies, and billing and collection agents. Those requirements consist of (1) consenting to the jurisdiction of the Ohio courts and service of process in Ohio and (2) designating an agent authorized to receive that service of process, by filing with the PUCO a document designating that agent.

Federal Energy Advocate

(R.C. 4928.24)

The act requires the PUCO to employ a Federal Energy Advocate. The advocate must examine the value of the participation of Ohio electric utilities in RTOs and submit a report to the PUCO on whether their continued participation is in the interest of retail electric consumers. Additionally, under the act, the PUCO employee must monitor the activities of FERC and other federal agencies and, represented by the Attorney General, must advocate on behalf of the interests of Ohio retail electric service consumers. As a matter of information, this advocacy is in addition to that provided under continuing law by the Ohio Consumers' Counsel, who advocates on both the state and federal levels, on behalf of the residential

consumers of electric, gas, natural gas, and certain other public utilities (R.C. Chapter 4911., not in act) and to that provided by the PUCO itself as a potential party to federal proceedings.

Municipal customer charge prohibition

(R.C. 4928.69)

The act provides that, notwithstanding any provision of the Electric Restructuring Law and except as otherwise provided in an agreement under special contract law (R.C. 4905.31), an electric distribution utility cannot charge any person that is a customer of a municipal electric utility in existence on or before January 1, 2008, any surcharge, service termination charge, exit fee, or transition charge.

Line extensions

(R.C. 4928.02 and 4928.151)

Continuing law requires that an electric utility's distribution rate schedule must include an obligation to build distribution facilities when necessary to provide adequate distribution service, provided that a customer requesting that service may be required to pay all or part of the reasonable incremental cost of the new facilities, in accordance with PUCO rules, policy, precedents, or orders (R.C. 4928.15(A), not in act)).

The act requires the PUCO, in carrying out the state electric services policy (see "***State electric services policy***," above), to consider rules as they apply to the costs of electric distribution infrastructure, including line extensions, for the purpose of development in Ohio. It also requires the PUCO adopt and enforce rules prescribing a uniform, statewide policy regarding electric transmission and distribution line extensions and requisite substations and related facilities that are requested by nonresidential customers of electric utilities, so that, on and after the effective date of the initial rules so adopted, all such utilities apply the same policies and charges to those customers. Initial rules must be adopted not later than six months after the act's effective date. The rules must address the just and reasonable allocation to and utility recovery from the requesting customer or other customers of the utility of all costs of any such line extension and any requisite substation or related facility, including the costs of necessary technical studies, operations and maintenance costs, and capital costs, including a return on capital costs.

Governmental aggregation

(R.C. 4928.20(D), (H), (J), and (K))

Continuing law authorizes the electric load of electric customers to be aggregated for the purpose of purchasing retail electric generation (R.C. 4928.03, not in act). Aggregators performing that function include governmental aggregators, specifically, municipalities, townships, and counties that can aggregate the electric load of customers within their respective jurisdictions. Various requirements and limitations apply to a governmental aggregation, including, for instance, the requirement of a popular vote on the question of

whether the local government can aggregate load without first obtaining the individual permission of each customer.

Opting out

The act changes prior law's limitation that, in the case of such an "automatic" governmental aggregation, the local government must allow any person that is so enrolled in the aggregation an opportunity to opt out of the aggregation every *two* years, without paying a switching fee. Under the act, a customer can opt-out *up to every three years* without paying a switching fee.

Further, the act changes a provision of law that states that any person enrolled in an aggregation and that properly opts out of the aggregation will then default to the SSO of the person's electric distribution utility until the person chooses an alternative supplier. The act makes this default provision apply to a person that opts out of the aggregation *before the commencement of the aggregation*. It is not clear whether the change means that a person can opt out of an aggregation only before its "commencement" or whether such a post-commencement opt-out is just not contemplated in default SSO situations. Under prior statute, a person could opt out of a governmental aggregation at any time, but the local government had to allow the person an opportunity every two years to opt out without paying a switching fee.

Refusal of standby service

The act allows a legislative authority, on behalf of the customers that are part of its governmental aggregation, to choose not to receive standby service from an electric distribution utility in whose certified territory the governmental aggregation is located and that operates under an approved ESP. The act incorrectly references R.C. 4928.143(B)(2)(e), instead of (B)(2)(d), assigning meaning to the term "standby service" for the purpose of making this decision. "Standby service" is not defined in statute but is distinguished in the act from back-up or supplemental power service. Regardless, upon the filing of that notice, the electric distribution utility cannot charge any such customer to whom electricity is delivered under the governmental aggregation for the standby service.

Under the act, a customer of a governmental aggregation that has so refused standby service and that leaves the aggregation and returns to the utility for competitive retail electric service must pay the market price of power incurred by the utility to serve that consumer plus any amount attributable to the utility's cost of compliance with the act's alternative energy resource provisions to serve the consumer (see "***Alternative energy requirements***," below). That market price will include capacity and energy charges; all charges associated with the provision of that power supply through the RTO, including transmission, ancillary services, congestion, and settlement and administrative charges; and all other costs incurred by the utility that are associated with the procurement, provision, and administration of that power supply, as such costs may be approved by the PUCO. The period of time during which the market price and alternative energy resource amount will be so assessed on the consumer will be from the time the consumer returns to the utility until the expiration of the utility's ESP.

However, if that period of time is expected to be more than two years, the PUCO can reduce the time period to a period of not less than two years.

Exempted customers

A governmental aggregator is expressly prohibited from including in its aggregation the accounts of types of customers described in statute, including a customer that is in contract with a certified "competitive retail electric services provider." The act replaces that undefined term with its equivalent, defined term, "electric services company."

Large-scale governmental aggregation

The act requires the PUCO to adopt rules to encourage and promote "large-scale" governmental aggregation in Ohio. For that purpose, the PUCO must conduct an immediate review of any rules it has already adopted. Further, within the context of a utility's ESP, the PUCO must consider the effect on large-scale governmental aggregation of any nonbypassable generation charges, however collected, that would be established under that plan, with the exception of any nonbypassable generation charge that relates to a cost incurred by the utility, the deferral of which was authorized by the PUCO before the act's effective date.

Repeals

(R.C. 4928.20, 4928.31, 4928.34, 4928.35, 4928.41, 4928.42, 4928.431, and 4928.44)

The act removes prior law's definition of "small electric generation facility" as a generation plant and associated facilities designed for, or capable of, operation at a capacity of less than two megawatts. The term continues to appear in a provision of the Electric Restructuring Law that requires that certification standards the PUCO adopts must allow flexibility for electric services companies that exclusively provide installation of small electric generation facilities, to provide ease of market access (R.C. 4928.08(C), not in act).

The act repeals four sections of the Electric Restructuring Law: R.C. 4928.41, regarding electric cooperative transition revenues; R.C. 4928.42, regarding transitional requirements for electric consumer education; R.C. 4928.431, regarding an obsolete Electric Employee Assistance Advisory Board created under S.B. 3; and R.C. 4928.44, regarding service offering for nonfirm electric service customers. Accordingly, the act amends R.C. 4928.20, 4928.31, 4938.34, and 4938.35 to remove references to those repealed sections.

Natural gas

Revenue decoupling

(R.C. 4929.01 and 4929.051; Section 4)

Continuing Ohio law generally affirms PUCO authority to regulate the commodity sales service, distribution service, and ancillary service of a natural gas utility (R.C. 4929.03, not in act; see R.C. 4929.01 for definitions). Under continuing law, a natural gas utility can

apply for PUCO approval of an alternative rate plan for its commodity sales service or ancillary service (R.C. 4929.05, not in act). Such a plan would establish a different method for determining the rates and charges for the service than ordinarily would occur under the traditional rate-making provisions of continuing law (R.C. 4909.15, not in act). Those provisions, for the purpose of setting the utility's rate schedule (tariff), require determination of the revenue requirement of the utility necessary to cover its identified operating costs and receive a fair and reasonable rate of return on its investment in plant used and useful in rendering the service.

As stated, an alternative rate plan allows other methods of determining the rate schedule of the utility than the previously described cost/rate of return method. The definition of "alternative rate plan" specifies two, actual alternative mechanisms: (1) an automatic adjustment in rates based on a specified index or changes in a specified cost or costs and (2) a mechanism that tends to assess the costs of any natural gas service or goods to the entity, service, or goods that cause such costs to be incurred (R.C. 4929.01). In addition, continuing alternative regulation law authorizes the PUCO to allow "any automatic adjustment mechanism or device in a [utility's] rate schedules that allows [the] rates or charges for a regulated service or goods to fluctuate automatically in accordance with changes in a specified cost or costs" (R.C. 4929.11, not in act). Otherwise, continuing law specifies as allowable methods what are actually possible outcomes of alternative ratemaking. Those methods can include rate-setting methods that will (3) provide adequate and reliable natural gas services and goods in Ohio, (4) minimize the costs and time expended in the regulatory process, (5) afford rate stability, (6) promote and reward efficiency, quality of service, or cost containment, and (7) provide sufficient flexibility and incentives to the natural gas industry to achieve high quality, technologically advanced, and readily available natural gas services and goods at just and reasonable rates and charges.

Under the act, an alternative rate plan could newly include (8) a revenue decoupling mechanism, which the act defines as a rate design or other cost recovery mechanism that provides recovery of the fixed costs of service and a fair and reasonable rate of return, irrespective of "system throughput" (the amount of gas entering the transmission/distribution system) or volumetric sales.

Continuing law prescribes the process for obtaining PUCO approval of an alternative rate plan. It states that there must be notice, investigation, and hearing of an alternative rate plan. The approval process authorizes the request for approval of an alternative rate plan as part of an application filed under rate-making law (R.C. 4909.18, not in act) that governs applications by utilities to establish new, or change existing, rates and charges for service. That law prescribes certain timelines for filing such an application and the information the application must contain. It also requires that, if the PUCO believes the application may be unjust or unreasonable, it must hold hearings on the matter. This could apply, for instance, when a utility was asking for a rate increase. However, if the PUCO determines an application is *not for an increase in rates*, the PUCO can permit the filing of the rate schedule and set the date it is to take effect; no hearing is required.

The act provides that an alternative rate plan filed by a natural gas company under R.C. 4929.05 of continuing law (not in act) and proposing a revenue decoupling mechanism can be an application "not for an increase in rates" if both of the following apply: (1) the rates, joint rates, tolls, classifications, charges, or rentals the plan proposes are based upon the billing determinants and revenue requirements authorized by the PUCO in the utility's most recent rate case proceeding and (2) the plan also establishes, continues, or expands an energy efficiency or energy conservation program (R.C. 4929.051).

Regarding any alternative rate plan that was filed before the act's effective date under R.C. 4929.05 and that proposes a revenue decoupling mechanism and meets the two conditions described immediately above, uncodified law in the act expressly prohibits the act being applied in favor of (that is, construed as supporting) a claim or finding that the application *is* an application to increase rates (and therefore generally subject to hearing under traditional rate-making law).

State natural gas policy

(R.C. 4929.02)

Continuing Ohio law articulates a state policy that lists eleven objectives regarding natural gas service and requires the PUCO to follow that policy when carrying out the alternative natural gas rate-making statute (R.C. Chapter 4929.). Aside from authorizing approval of alternative rate plans as described above, that law also establishes the conditions under which the PUCO can deregulate natural gas commodity sales and ancillary services upon a filing by a utility and certify governmental aggregators of natural gas and retail natural gas suppliers to operate in Ohio.

The act adds a twelfth objective to the state policy: to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. It also requires both the PUCO and OCC to follow the state policy in exercising their respective authorities relative to the alternative natural gas rate-making statute.

Energy price risk management contracts

(R.C. 9.835)

The act newly authorizes a state official (an elected or appointed official or that person's designee, charged with the management of a state entity) or the legislative or other governing authority of a political subdivision (county, city, village, township, park district, or school district) to enter into an energy price risk management contract if it determines that doing so is in the best interest of the state entity or such political subdivision, and subject to, respectively, state or local appropriation to pay amounts due. The act defines a "state entity" as the General Assembly, the Supreme Court, the Court of Claims, the office of an elected state officer, or a state department, bureau, board, office, commission, agency, institution, or other instrumentality established by Ohio law to exercise any function of state government.

"State entity" excludes a political subdivision, an institution of higher education, all the state retirement systems, and the City of Cincinnati retirement system.

Under the act, an "energy price risk management contract" is a contract that mitigates for the term of the contract the price volatility of energy sources, including natural gas, gasoline, oil, and diesel fuel, and that is a budgetary and financial tool only and not a contract for the procurement of an energy source. Under the act, money received pursuant to such a contract entered into by a state official must be deposited to the credit of the state General Revenue Fund, and, unless otherwise provided by ordinance or resolution enacted or adopted by the legislative authority of the political subdivision authorizing any such contract, money received under the contract must be deposited to the credit of the general fund of the political subdivision.

II. Energy sources

Corporate separation

(R.C. 4928.17(E))

Prior statute allowed (but did not require) an electric utility to divest itself of any generating asset without prior PUCO approval, subject to the provisions of public utility law (R.C. Title 49) relating to the transfer of transmission, distribution, or ancillary service provided by such generating asset. The act focuses divestiture policy on electric distribution utilities specifically, thereby removing any limitation on divestiture by an electric utility that is not a distribution utility. Additionally, the act prohibits an electric distribution utility divesting a generating asset at any time without prior PUCO approval.

Alternative energy requirements

(R.C. 4928.01 and 4928.64)

The act requires an electric distribution utility, by 2025 and thereafter, to provide from "alternative energy resources" a portion of the electricity supply required for its requisite SSO, and an electric services company to provide a portion of its Ohio retail electricity supply, from alternative energy resources.

Under the act, an alternative energy resource means an advanced energy resource or renewable energy resource that has a placed-in-service date of January 1, 1998, or after; or a mercantile customer-sited advance energy resource or renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided in the energy efficiency provisions of the act (see "***Energy efficiency***," below). The act specifically includes as an "alternative energy resource" (1) a resource that has the effect of improving the relationship between real and reactive power, (2) a resource that makes efficient use of waste heat or other thermal capabilities owned or controlled by a mercantile customer, (3) storage technology that allows a mercantile customer more flexibility to modify its demand or load and usage characteristics, (4) electric generation

equipment owned or controlled by a mercantile customer that uses an advanced energy resource or renewable energy resource, and (5) any advanced energy resource or renewable energy resource of the mercantile customer that can be utilized effectively as part of any advanced energy resource plan of an electric distribution utility and would otherwise qualify as an alternative energy resource if it were utilized directly by an electric distribution utility. Additionally, under the act and as it considers appropriate, the PUCO can classify any new technology as such an advanced energy resource or a renewable energy resource. Under continuing law, a "mercantile customer" is a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kilowatt hours per year or is part of a national account involving multiple facilities in one or more states (R.C. 4928.01(A)(19)).

"Advanced energy resource"

The act defines an "advanced energy resource" as (1) any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of any electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility, (2) any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities, (3) clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American Society of Testing and Materials Standard D1757A or a reduction of metal oxide emissions in accordance with the Society's Standard D5142, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the PUCO must adopt by rule and be based on economically feasible best available technology or, in the absence of a determined best available technology, be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion, (4) advanced nuclear energy technology consisting of generation III technology as defined by the Nuclear Regulatory Commission; other, later technology; or significant improvements to existing facilities, (5) any fuel cell used in the generation of electricity, including a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell, (6) advanced solid waste or construction and demolition debris conversion technology, including advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States Environmental Protection Agency's (EPA's) waste reduction model (WARM), and (7) demand-side management and any energy efficiency improvement.

"Renewable energy resource"

The act defines a "renewable energy resource" as solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood

manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. The term includes any fuel cell used in the generation of electricity, including a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; any wind turbine located in the state's territorial waters of Lake Erie; any storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy.

As used here, "solid wastes" means "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than 50% of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. 'Solid wastes' does not include any material that is an infectious waste or a hazardous waste." (R.C. 3734.01(E), not in act.)

Additionally, for the purpose of the act's renewable energy resource requirement only, the act defines the term "hydroelectric facility" to mean a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, within or bordering Ohio or an adjoining state and (1) provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility, (2) demonstrates that it complies with the water quality standards of Ohio, which compliance may consist of certification under the federal "Clean Water Act of 1977" and demonstrates that it has not contributed to a finding by the State of Ohio that the river has impaired water quality under that act, (3) complies with mandatory prescriptions regarding fish passage as required by the FERC license issued for the project, regarding fish protection for riverine, anadromous, and catadromus fish, (4) complies with the recommendations of the OEPA and with the terms of the facility's FERC license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility, (5) complies with the federal "Endangered Species Act of 1973," (6) does not harm cultural resources of the area, as shown through compliance with the terms of its FERC license or, if not regulated by FERC, through development of a plan approved by the Ohio Historic Preservation Office, to the extent it has jurisdiction over the facility, (7) complies with the terms of its FERC license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by FERC, complies with similar requirements as are recommended by resource agencies, and provides access to water to the public without fee or charge, and (8) is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

Benchmarks

The requisite portion of electric supply derived from alternative energy resources must equal 25% of the total number of kilowatt hours of electricity sold by the utility or company to any and all retail electric consumers whose electric load centers are served by the utility and are located within the utility's certified territory or, in the case of an electric services company, are served by the company and are located within Ohio. The act states, however, that its alternative energy resource provisions do not preclude a utility or company from providing a greater percentage. The baseline for a utility's or company's compliance with the alternative energy resource requirements must be the average of such total kilowatt hours it sold in the preceding three calendar years, except that the PUCO can reduce a utility's or company's baseline to adjust for new economic growth in the utility's certified territory or, in the case of an electric services company, in the company's service area in Ohio.

Of the alternative energy resources implemented by a utility or company, the act provides that half can be generated from advanced energy resources. However, at least half must be generated from renewable energy resources, including 0.5% from solar energy resources, in accordance with the following benchmarks:

By end of year	Renewable energy resources	Solar energy resources
2009	0.25%	0.004%
2010	0.50%	0.010%
2011	1%	0.030%
2012	1.5%	0.060%
2013	2%	0.090%
2014	2.5%	0.12%
2015	3.5%	0.15%
2016	4.5%	0.18%
2017	5.5%	0.22%
2018	6.5%	0.26%
2019	7.5%	0.3%
2020	8.5%	0.34%
2021	9.5%	0.38%
2022	10.5%	0.42%
2023	11.5%	0.46%
2024 and each calendar year thereafter	12.5%	0.5%

Further, under the act, at least half of the renewable energy resources implemented by the utility or company must be met through facilities located in Ohio; the remainder must be met with resources that can be shown to be deliverable into Ohio.

The act specifies that all costs incurred by a utility in complying with the act's alternative energy resource requirements are bypassable by any consumer choosing an alternative generation supplier.

The act establishes a cost cap relative to a utility's or company's obligation to comply with a renewable energy resource benchmark. Under the act, a utility or company need not comply with an advanced or renewable (or solar) energy resource benchmark to the extent that its reasonably expected cost of that compliance exceeds by 3% or more its reasonably expected cost of otherwise producing or acquiring the requisite electricity.

Renewable and solar benchmark enforcement

Penalties. The act requires the PUCO to review annually a utility's or company's compliance with the most recent, applicable, renewable energy resource or solar energy resource benchmark and, in the course of that review, identify any undercompliance or noncompliance that the PUCO determines is weather-related, related to equipment or resource shortages for advanced energy or renewable energy resources as applicable, or is otherwise outside the utility's or company's control. If the PUCO determines, after notice and opportunity for hearing, and based upon its findings in that review regarding avoidable undercompliance or noncompliance, that the utility or company has failed to comply with any such benchmark, it must impose a renewable energy compliance payment on the utility or company.

The compliance payment pertaining to the act's solar energy resource benchmarks must be an amount per megawatt hour of undercompliance or noncompliance in the period under review, starting at $450 for 2009, $400 for 2010 and 2011, and similarly reduced every two years thereafter through 2024 by $50, to a minimum of $50.

The compliance payment pertaining to the act's renewable energy resource benchmarks must equal the number of additional renewable energy credits (see "***Renewable energy credits***," below) that the utility or company would have needed to comply with the applicable benchmark in the period under review times an amount that begins at $45 and must be adjusted annually by the PUCO to reflect any change in the Consumer Price Index, but cannot be less than $45.

The act prohibits the compliance payment being passed through to consumers. It must be remitted to the PUCO, for deposit to the credit of the Advanced Energy Fund (see "***Advanced Energy Fund assistance***," below). Payment of the compliance payment will be subject to such collection and enforcement procedures as apply to the collection of a forfeiture under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in act).

The act also requires the PUCO to establish a process to provide for at least an annual review of the alternative energy resource market in Ohio and in the service territories of

RTOs that manage transmission systems located in Ohio. The PUCO must use the study results to identify any needed changes to the act's amount of a renewable energy compliance payment. Specifically, the PUCO may increase the amount to ensure that payment of compliance payments is not used to achieve compliance in lieu of actually acquiring or realizing energy derived from renewable energy resources. However, under the act, if it finds that the amount of the compliance payment should be otherwise changed, the PUCO must present this finding to the General Assembly for legislative enactment.

Force majeure exception

The act authorizes a utility or company to request the PUCO to make a force majeure determination regarding all or part of the utility's or company's compliance with any minimum, renewable energy resource benchmark during the period of compliance review as described above. The PUCO can require the utility or company to make solicitations for renewable energy resource credits as part of its default service before the utility or company can make a force majeure request.

Within 90 days after the filing of such a request, the PUCO must determine if renewable energy resources are reasonably available in the marketplace in sufficient quantities for the utility or company to comply with the subject minimum benchmark during the review period. In making this determination, the PUCO must consider whether the utility or company has made a good faith effort to acquire sufficient renewable energy or, as applicable, solar energy resources to so comply, including by banking or seeking renewable energy resource credits or by seeking the resources through long-term contracts. Additionally, the PUCO must consider the availability of renewable energy or solar energy resources in this state and other jurisdictions in the PJM Interconnection RTO or its successor and the Midwest System Operator or its successor.

If the PUCO determines that renewable energy or solar energy resources are not reasonably available to permit the utility or company to comply during the period of review with the applicable minimum benchmark, the PUCO must modify that compliance obligation of the utility or company as it determines appropriate to accommodate the finding. The act provides that such a PUCO modification does not automatically reduce the obligation for the utility's or company's compliance in subsequent years, and the PUCO can require the utility or company, if sufficient renewable energy resource credits exist in the marketplace, to acquire additional renewable energy resource credits in subsequent years equivalent to the utility's or company's modified obligation.

Annual report

The act requires the PUCO to submit an annual report to the General Assembly describing the compliance of utilities and companies with the act's alternative energy resource requirements and any strategy for utility and company compliance or for encouraging the use of alternative energy resources in supplying Ohio's electricity needs in a manner that considers available technology, costs, job creation, and economic impacts. The PUCO must allow and consider public comments on the report prior to submission. The act

states that nothing in the report is binding on any person, including any utility or company for the purpose of its compliance with any alternative energy resource benchmark or the enforcement of a benchmark requirement.

Alternative Energy Advisory Committee

The act requires the Governor, in consultation with the PUCO chairperson, to appoint an Alternative Energy Advisory Committee. The committee must examine available technology for and related timetables, goals, and costs of the act's alternative energy resource requirements and submit to the PUCO a semiannual report of its recommendations.

Solar ready school buildings

(R.C. 3318.112)

The act expressly confers on the Ohio School Facilities Commission (OSFC) the authority to adopt rules prescribing standards for solar ready equipment in school buildings under its jurisdiction. "Solar ready" means capable of accommodating the eventual installation of roof top, solar photovoltaic energy equipment. The OSFC rules must include standards regarding roof space limitations, shading and obstruction, building orientation, roof loading capacity, and electric systems.

Under the act, a school district can seek a waiver from part or all of the solar ready standards and the OSFC to grant the waiver for good cause shown.

Advanced Energy Fund assistance

(R.C. 4928.01(A)(25), 4928.61, and 4928.621)

The act adds revenue sources for continuing law's Advanced Energy Fund, which is administered by DOD to provide grants, contracts, loans, loan participation agreements, linked deposits, and energy production incentives for advanced energy projects, and revises the definition of "advanced energy project."

Revenue sources

The act adds two new revenue sources for the Advanced Energy Fund: renewable energy compliance payments imposed by the PUCO pursuant to the act (see "***Renewable and solar benchmark enforcement***," above) and forfeitures assessed by the PUCO for violations of the act's energy efficiency provisions (see "***Energy efficiency***," above). The fund will continue under the act to receive revenue from the sources currently authorized by law: namely, a surcharge on all customers of electric distribution utilities and any participating municipal electric utilities and electric cooperatives; payments, repayments, and income from funded projects; and interest earnings on the fund. (As a matter of information, under continuing law, surcharge remittances continue only until December 31, 2011, or until the fund reaches $100 million, whichever is first.)

"Advanced energy project"

Under law retained in part by the act, an "advanced energy project" is any technology, product, activity, or management practice or strategy that facilitates the generation or use of electricity and reduces or supports the reduction of energy consumption or supports the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users. Such energy expressly includes wind power; geothermal energy; solar thermal energy; and energy produced by micro turbines in distributed generation applications with high electric efficiencies, by combined heat and power applications, by fuel cells powered by hydrogen derived from wind, solar, biomass, hydroelectric, landfill gas, or geothermal sources, or by solar electric generation, landfill gas, or hydroelectric generation. Instead of listing specific types of projects included as "advanced energy projects," the act provides that an "advanced energy project" includes advanced energy resources and renewable energy resources, the definitions for which appear in the "***Alternative energy requirements***," section of this analysis, above.

Additionally, expressly without intending to limit who otherwise can apply for or receive state assistance for advanced energy projects, the act makes all of the following eligible for funding as an "advanced energy project":

(1) Any Edison Technology Center, for the purposes of creating an Advanced Energy Manufacturing Center in Ohio that will provide for the exchange of information and expertise regarding advanced energy, assisting with the design of advanced energy projects, developing workforce training programs for such projects, and encouraging investment in advanced energy manufacturing technologies for advanced energy products and investment in sustainable manufacturing operations that create high-paying jobs in Ohio;

(2) Any university or group of universities in Ohio that conducts research on any advanced energy resource as defined by the act (see "***Advanced energy resources***," above) or any not-for-profit corporation formed to address issues affecting the price and availability of electricity and having members that are small businesses, for the purpose of encouraging research in Ohio that is directed at innovation in or the refinement of those resources or for the purpose of educational outreach regarding those resources;

(3) Any independent group located in Ohio, the express objective of which is to educate Ohio small businesses regarding renewable energy resources and energy efficiency programs;

(4) Any small business located in Ohio electing to utilize an advanced energy project or participate in an energy efficiency program.

The act requires a university, university group, or not-for-profit corporation in (2) above to use the funding to establish such a program of research or education outreach and requires that any such educational outreach be directed at an increase in, innovation regarding, or refinement of access by or of application or understanding of Ohio businesses and consumers regarding, advanced energy resources.

Renewable energy credits

(R.C. 4928.65)

The act authorizes an electric distribution utility or electric services company to use renewable energy credits any time in the five calendar years following the purchase or acquisition of such credits from any entity, including a mercantile customer or an owner or operator of a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering Ohio or an adjoining state, for the purpose of complying with the act's renewable energy and solar energy resource requirements (see "***Alternative energy requirements***," above). The PUCO must adopt rules specifying that one unit of credit equals one megawatt hour of electricity derived from renewable energy resources. The rules also must provide for Ohio a system of registering renewable energy credits by specifying which of any generally available registries must be used for that purpose and not by creating a registry. That selected system of registering renewable energy credits shall allow such a hydroelectric generating facility to be eligible for obtaining renewable energy credits and shall allow customer-sited projects or actions the broadest opportunities to be eligible for obtaining renewable energy credits.

Energy efficiency

General requirements

(R.C. 4928.66(A))

The act requires electric distribution utilities to implement energy efficiency programs. Such programs expressly can include demand-response programs, customer-sited programs, and transmission and distribution infrastructure improvements that reduce line losses. The act requires that its energy efficiency provisions must be applied to include facilitating efforts by a mercantile customer or group of those customers to offer customer-sited demand-response, energy efficiency, or peak demand reduction capabilities to the electric distribution utility as part of a reasonable arrangement submitted to the PUCO pursuant to special contract law (R.C. 4905.31).

The act also prohibits any such program or improvement to conflict with any statewide building code adopted by the Board of Building Standards.

Energy savings benchmarks

(R.C. 4928.66(A)(1)(a) and (2)(a))

Under the act, beginning in 2009, an electric distribution utility must implement energy efficiency programs that achieve energy savings equivalent to at least 0.3% of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to its Ohio customers. The savings requirement, using such a three-year average, must increase to an additional 0.5% in 2010, 0.7% in 2011, 0.8% in 2012, 0.9% in 2013, 1% in years 2014 to 2018, and 2% each year thereafter,

achieving a cumulative, annual energy savings in excess of 22% by the end of 2025. The baseline for such energy savings will be the average of the total kilowatt hours the utility sold in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

Peak demand reduction benchmarks

(R.C. 4928.66(A)(1)(b) and (2)(a))

Beginning in 2009, an electric distribution utility must implement peak demand reduction programs designed to achieve a 1% reduction in peak demand in 2009 and an additional 0.75% reduction each year through 2018. In 2018, the standing committees in the Ohio House and Senate primarily dealing with energy issues must make recommendations to the General Assembly regarding future peak demand reduction targets. The baseline for a peak demand reduction will be the average peak demand on the utility in the preceding three calendar years, except that the PUCO may reduce that baseline to adjust for new economic growth in the utility's certified territory.

Baseline adjustments

(R.C. 4928.66(A)(2)(b) and (c))

The act authorizes the PUCO to amend the energy savings benchmarks and the peak demand reduction benchmarks if, after application by the electric distribution utility, the PUCO determines that the amendment is necessary because the utility cannot reasonably achieve the benchmarks for regulatory, economic, or technological reasons beyond its reasonable control.

Additionally, the act requires that a utility's compliance with the energy savings benchmarks and the peak demand reduction benchmarks must be measured by including the effects of all demand-response programs for its mercantile customers and all such mercantile customer-sited energy efficiency and peak demand reduction programs, adjusted upward by the appropriate loss factors. If a mercantile customer commits such existing or new demand-response, energy efficiency, or peak demand reduction capability for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, the utility's baseline must be adjusted to exclude the effects of all such demand-response, energy efficiency, or peak demand reduction programs that may have existed during the period used to establish the baseline. An energy savings or peak demand reduction baseline also must be normalized for changes in numbers of customers, sales, weather, peak demand, and other appropriate factors so that the compliance measurement is not unduly influenced by factors outside the control of the electric distribution utility.

Energy efficiency enforcement

(R.C. 4928.66(B) and (C))

The act requires the PUCO, in accordance with rules it must adopt, to produce and docket an annual report containing the results of its verification of the annual levels of energy efficiency and peak demand reductions achieved by each electric distribution utility as required by the act. A copy of the report must be provided to the Consumers' Counsel.

If it determines, after notice and opportunity for hearing and based upon the report, that an electric distribution utility has failed to comply with an energy efficiency or peak demand reduction requirement established by the act, the PUCO must assess a forfeiture on the utility as provided under continuing law (R.C. 4905.55 to 4905.60 and 4905.64, not in act), either in the amount, per day per undercompliance or noncompliance, relative to the period of the report, equal to that so prescribed for noncompliances (a maximum of $10,000), or in an amount equal to the then existing market value of one renewable energy credit per megawatt hour of undercompliance or noncompliance. Revenue from any such forfeiture assessed must be deposited to the credit of the Advanced Energy Fund (see "***Advanced Energy Fund assistance***," above).

Revenue decoupling/energy efficiency cost recovery

(R.C. 4928.66(A)(2)(c) and (D))

The PUCO may establish rules regarding the content of an application by an electric distribution utility for PUCO approval of a revenue decoupling mechanism. The act provides that such a revenue decoupling application is not to be considered an application to increase rates (referring to an application under R.C. 4909.18, which type of application would require a hearing) and that the application may be included as part of a proposal to establish, continue, or expand energy efficiency or conservation programs.

The PUCO can approve the revenue decoupling mechanism if it determines that the mechanism provides for the recovery of revenue that otherwise may be foregone by the utility as a result of or in connection with the utility's implementation of any energy efficiency or energy conservation programs and that the mechanism reasonably aligns the interests of the utility and of its customers in favor of those programs.

However, the act also provides that *any* mechanism designed to recover the cost of the act's energy efficiency and peak demand reduction requirements can exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, provided the PUCO determines that that exemption reasonably encourages such customers to commit those capabilities to those programs.

Energy Advisor report

(Section 5)

The act requires the Governor's Energy Advisor to periodically submit a written report to the General Assembly and report in person to and as requested by the standing committees

of the Ohio House of Representatives and the Senate that have primary responsibility for energy efficiency and conservation issues regarding initiatives undertaken by the Advisor and state government pursuant to numbered paragraphs 3 and 4 of Executive Order 2007-02S, "Coordinating Ohio Energy Policy and State Energy Utilization." The first written report must be submitted not later than 60 days after the act's effective date. Paragraph 3 pertains to energy efficiency and conservation measures by state agencies and paragraph 4 pertains to measures by state universities and colleges.

Customer information

(R.C. 4928.66(E))

The act requires the PUCO to adopt rules that require an electric distribution utility to provide a customer upon request with two years' consumption data in an accessible form.

Net metering

(R.C. 4928.67)

Generally

Law retained in part by the act requires a retail electric service provider to develop a standard contract or tariff providing for net metering and requires the utility to make this contract or tariff available to customer-generators upon request and on a first-come, first-served basis, but only when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio. It requires that the contract or tariff be identical in rate structure, all retail rate components, and any monthly charges to the contract or tariff to which the same customer would be assigned if that customer were not a customer-generator.

The act provides that this net metering requirement pertains to electric utilities and removes the reference to a "retail electric service provider." This conforms the statute to PUCO rules. The term being replaced is not defined in the Restructuring Law and has been interpreted in PUCO rules as meaning an electric utility.

In addition, the act removes the limitation that a net metering contract or tariff be made available when the total rated generating capacity used by customer-generators is less than 1% of the provider's aggregate customer peak demand in Ohio.

Hospital net metering

The act newly requires an electric utility to develop a separate standard contract or tariff providing for net metering for a hospital that is also a customer-generator. Such a "hospital" includes a public health center and general, mental, chronic disease, or other type of hospital, and any related facility, such as a laboratory, outpatient department, nurses' home facility, extended care facility, self-care unit, or central service facility operated in connection with a hospital, and also includes an education and training facility for health

professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care (R.C. 3701.01(C), not in act).

Under the act, a hospital seeking such a contract or tariff need not comply with two requirements that apply to other net metering systems: a hospital's system need not (1) use as its fuel either solar, wind, biomass, landfill gas, or hydropower, or use a microturbine or a fuel cell or (2) be intended primarily to offset part or all of the customer-generator's requirements for electricity.

The act specifies that such a hospital net metering contract or tariff is not limited as to its availability and must be based upon (1) the rate structure, rate components, and any charges to which the hospital would otherwise be assigned if it were not a customer-generator and (2) the market value of the customer-generated electricity at the time it is generated.

The hospital contract or tariff also must allow the hospital customer-generator to operate its electric generating facilities individually or collectively without any wattage limitation on size.

Greenhouse gas emissions

(R.C. 4928.68)

The act requires the PUCO, to the extent permitted by federal law, to adopt rules establishing greenhouse gas emission reporting requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the act's effective date. The rules must include participation in the Climate Registry. As a matter of information, a recent federal act requires the U.S. EPA to prescribe mandatory reporting requirements for greenhouse gas emissions and appropriate emission thresholds for particular economic sectors, including electric generation. Draft rules are expected this summer and final rules must be in place in mid-2009. The rules apparently will be issued under existing authority of the federal Clean Air Act. Reportedly, state agencies other than OEPA that wish to enforce such federal rules must petition the federal government for permission.

Carbon dioxide control

(R.C. 4928.68)

The act requires the PUCO, expressly to the extent permitted by federal law, to adopt rules establishing carbon dioxide control planning requirements for each electric generating facility located in Ohio that is owned or operated by a public utility that is subject to PUCO jurisdiction and that emits greenhouse gases, including facilities in operation on the act's effective date. As a matter of information, there are no such federal or Ohio requirements, and none are proposed for the foreseeable future.

HISTORY

ACTION	DATE
Introduced	09-25-07
Reported, S. Energy & Public Utilities	10-31-07
Passed Senate (32-0)	10-31-07
Reported, H. Public Utilities	04-15-08
Passed House (93-1)	04-22-08
Senate concurred in House amendments (32-0)	04-23-08

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Summary: Brief electronically filed by Teresa Orahood on behalf of Glenn S. Krassen