

**As Reported by the Senate Energy and Public Utilities Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. S. B. No. 10**

**Senator Romanchuk**

**Cosponsor: Senator Brenner**

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**A BILL**

To amend section 4928.143 and to repeal section 1  
4928.471 of the Revised Code to terminate 2  
decoupling mechanisms authorized under H.B. 6 of 3  
the 133rd General Assembly, to modify the 4  
significantly excessive earnings determination 5  
for an electric security plan, and to provide 6  
refunds to retail electric customers in the 7  
state. 8

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

**Section 1.** That section 4928.143 of the Revised Code be 9  
amended to read as follows: 10

**Sec. 4928.143.** (A) For the purpose of complying with 11  
section 4928.141 of the Revised Code, an electric distribution 12  
utility may file an application for public utilities commission 13  
approval of an electric security plan as prescribed under 14  
division (B) of this section. The utility may file that 15  
application prior to the effective date of any rules the 16  
commission may adopt for the purpose of this section, and, as 17  
the commission determines necessary, the utility immediately 18

shall conform its filing to those rules upon their taking 19  
effect. 20

(B) Notwithstanding any other provision of Title XLIX of 21  
the Revised Code to the contrary except division (D) of this 22  
section, divisions (I), (J), and (K) of section 4928.20, 23  
division (E) of section 4928.64, and section 4928.69 of the 24  
Revised Code: 25

(1) An electric security plan shall include provisions 26  
relating to the supply and pricing of electric generation 27  
service. In addition, if the proposed electric security plan has 28  
a term longer than three years, it may include provisions in the 29  
plan to permit the commission to test the plan pursuant to 30  
division (E) of this section and any transitional conditions 31  
that should be adopted by the commission if the commission 32  
terminates the plan as authorized under that division. 33

(2) The plan may provide for or include, without 34  
limitation, any of the following: 35

(a) Automatic recovery of any of the following costs of 36  
the electric distribution utility, provided the cost is 37  
prudently incurred: the cost of fuel used to generate the 38  
electricity supplied under the offer; the cost of purchased 39  
power supplied under the offer, including the cost of energy and 40  
capacity, and including purchased power acquired from an 41  
affiliate; the cost of emission allowances; and the cost of 42  
federally mandated carbon or energy taxes; 43

(b) A reasonable allowance for construction work in 44  
progress for any of the electric distribution utility's cost of 45  
constructing an electric generating facility or for an 46  
environmental expenditure for any electric generating facility 47

of the electric distribution utility, provided the cost is 48  
incurred or the expenditure occurs on or after January 1, 2009. 49  
Any such allowance shall be subject to the construction work in 50  
progress allowance limitations of division (A) of section 51  
4909.15 of the Revised Code, except that the commission may 52  
authorize such an allowance upon the incurrence of the cost or 53  
occurrence of the expenditure. No such allowance for generating 54  
facility construction shall be authorized, however, unless the 55  
commission first determines in the proceeding that there is need 56  
for the facility based on resource planning projections 57  
submitted by the electric distribution utility. Further, no such 58  
allowance shall be authorized unless the facility's construction 59  
was sourced through a competitive bid process, regarding which 60  
process the commission may adopt rules. An allowance approved 61  
under division (B) (2) (b) of this section shall be established as 62  
a nonbypassable surcharge for the life of the facility. 63

(c) The establishment of a nonbypassable surcharge for the 64  
life of an electric generating facility that is owned or 65  
operated by the electric distribution utility, was sourced 66  
through a competitive bid process subject to any such rules as 67  
the commission adopts under division (B) (2) (b) of this section, 68  
and is newly used and useful on or after January 1, 2009, which 69  
surcharge shall cover all costs of the utility specified in the 70  
application, excluding costs recovered through a surcharge under 71  
division (B) (2) (b) of this section. However, no surcharge shall 72  
be authorized unless the commission first determines in the 73  
proceeding that there is need for the facility based on resource 74  
planning projections submitted by the electric distribution 75  
utility. Additionally, if a surcharge is authorized for a 76  
facility pursuant to plan approval under division (C) of this 77  
section and as a condition of the continuation of the surcharge, 78

the electric distribution utility shall dedicate to Ohio 79  
consumers the capacity and energy and the rate associated with 80  
the cost of that facility. Before the commission authorizes any 81  
surcharge pursuant to this division, it may consider, as 82  
applicable, the effects of any decommissioning, deratings, and 83  
retirements. 84

(d) Terms, conditions, or charges relating to limitations 85  
on customer shopping for retail electric generation service, 86  
bypassability, standby, back-up, or supplemental power service, 87  
default service, carrying costs, amortization periods, and 88  
accounting or deferrals, including future recovery of such 89  
deferrals, as would have the effect of stabilizing or providing 90  
certainty regarding retail electric service; 91

(e) Automatic increases or decreases in any component of 92  
the standard service offer price; 93

(f) Consistent with sections 4928.23 to 4928.2318 of the 94  
Revised Code, both of the following: 95

(i) Provisions for the electric distribution utility to 96  
securitize any phase-in, inclusive of carrying charges, of the 97  
utility's standard service offer price, which phase-in is 98  
authorized in accordance with section 4928.144 of the Revised 99  
Code; 100

(ii) Provisions for the recovery of the utility's cost of 101  
securitization. 102

(g) Provisions relating to transmission, ancillary, 103  
congestion, or any related service required for the standard 104  
service offer, including provisions for the recovery of any cost 105  
of such service that the electric distribution utility incurs on 106  
or after that date pursuant to the standard service offer; 107

(h) Provisions regarding the utility's distribution 108  
service, including, without limitation and notwithstanding any 109  
provision of Title XLIX of the Revised Code to the contrary, 110  
provisions regarding single issue ratemaking, a revenue 111  
decoupling mechanism or any other incentive ratemaking, and 112  
provisions regarding distribution infrastructure and 113  
modernization incentives for the electric distribution utility. 114  
The latter may include a long-term energy delivery 115  
infrastructure modernization plan for that utility or any plan 116  
providing for the utility's recovery of costs, including lost 117  
revenue, shared savings, and avoided costs, and a just and 118  
reasonable rate of return on such infrastructure modernization. 119  
As part of its determination as to whether to allow in an 120  
electric distribution utility's electric security plan inclusion 121  
of any provision described in division (B) (2) (h) of this 122  
section, the commission shall examine the reliability of the 123  
electric distribution utility's distribution system and ensure 124  
that customers' and the electric distribution utility's 125  
expectations are aligned and that the electric distribution 126  
utility is placing sufficient emphasis on and dedicating 127  
sufficient resources to the reliability of its distribution 128  
system. 129

(i) Provisions under which the electric distribution 130  
utility may implement economic development, job retention, and 131  
energy efficiency programs, which provisions may allocate 132  
program costs across all classes of customers of the utility and 133  
those of electric distribution utilities in the same holding 134  
company system. 135

(C) (1) The burden of proof in the proceeding shall be on 136  
the electric distribution utility. The commission shall issue an 137  
order under this division for an initial application under this 138

section not later than one hundred fifty days after the 139  
application's filing date and, for any subsequent application by 140  
the utility under this section, not later than two hundred 141  
seventy-five days after the application's filing date. Subject 142  
to division (D) of this section, the commission by order shall 143  
approve or modify and approve an application filed under 144  
division (A) of this section if it finds that the electric 145  
security plan so approved, including its pricing and all other 146  
terms and conditions, including any deferrals and any future 147  
recovery of deferrals, is more favorable in the aggregate as 148  
compared to the expected results that would otherwise apply 149  
under section 4928.142 of the Revised Code. Additionally, if the 150  
commission so approves an application that contains a surcharge 151  
under division (B) (2) (b) or (c) of this section, the commission 152  
shall ensure that the benefits derived for any purpose for which 153  
the surcharge is established are reserved and made available to 154  
those that bear the surcharge. Otherwise, the commission by 155  
order shall disapprove the application. 156

(2) (a) If the commission modifies and approves an 157  
application under division (C) (1) of this section, the electric 158  
distribution utility may withdraw the application, thereby 159  
terminating it, and may file a new standard service offer under 160  
this section or a standard service offer under section 4928.142 161  
of the Revised Code. 162

(b) If the utility terminates an application pursuant to 163  
division (C) (2) (a) of this section or if the commission 164  
disapproves an application under division (C) (1) of this 165  
section, the commission shall issue such order as is necessary 166  
to continue the provisions, terms, and conditions of the 167  
utility's most recent standard service offer, along with any 168  
expected increases or decreases in fuel costs from those 169

contained in that offer, until a subsequent offer is authorized 170  
pursuant to this section or section 4928.142 of the Revised 171  
Code, respectively. 172

(D) Regarding the rate plan requirement of division (A) of 173  
section 4928.141 of the Revised Code, if an electric 174  
distribution utility that has a rate plan that extends beyond 175  
December 31, 2008, files an application under this section for 176  
the purpose of its compliance with division (A) of section 177  
4928.141 of the Revised Code, that rate plan and its terms and 178  
conditions are hereby incorporated into its proposed electric 179  
security plan and shall continue in effect until the date 180  
scheduled under the rate plan for its expiration, and that 181  
portion of the electric security plan shall not be subject to 182  
commission approval or disapproval under division (C) of this 183  
section, and the earnings test provided for in division (F) of 184  
this section shall not apply until after the expiration of the 185  
rate plan. However, that utility may include in its electric 186  
security plan under this section, and the commission may 187  
approve, modify and approve, or disapprove subject to division 188  
(C) of this section, provisions for the incremental recovery or 189  
the deferral of any costs that are not being recovered under the 190  
rate plan and that the utility incurs during that continuation 191  
period to comply with section 4928.141, division (B) of section 192  
4928.64, or division (A) of section 4928.66 of the Revised Code. 193

(E) If an electric security plan approved under division 194  
(C) of this section, except one withdrawn by the utility as 195  
authorized under that division, has a term, exclusive of phase- 196  
ins or deferrals, that exceeds three years from the effective 197  
date of the plan, the commission shall test the plan in the 198  
fourth year, and if applicable, every fourth year thereafter, to 199  
determine whether the plan, including its then-existing pricing 200

and all other terms and conditions, including any deferrals and 201  
any future recovery of deferrals, continues to be more favorable 202  
in the aggregate and during the remaining term of the plan as 203  
compared to the expected results that would otherwise apply 204  
under section 4928.142 of the Revised Code. The commission shall 205  
also determine the prospective effect of the electric security 206  
plan to determine if that effect is substantially likely to 207  
provide the electric distribution utility with a return on 208  
common equity that is significantly in excess of the return on 209  
common equity that is likely to be earned by publicly traded 210  
companies, including utilities, that face comparable business 211  
and financial risk, with such adjustments for capital structure 212  
as may be appropriate. The burden of proof for demonstrating 213  
that significantly excessive earnings will not occur shall be on 214  
the electric distribution utility. ~~For affiliated Ohio electric-~~ 215  
~~distribution utilities that operate under a joint electric-~~ 216  
~~security plan, their total earned return on common equity shall-~~ 217  
~~be used for purposes of assessing significantly excessive-~~ 218  
~~earnings.~~ If the test results are in the negative or the 219  
commission finds that continuation of the electric security plan 220  
will result in a return on equity that is significantly in 221  
excess of the return on common equity that is likely to be 222  
earned by publicly traded companies, including utilities, that 223  
will face comparable business and financial risk, with such 224  
adjustments for capital structure as may be appropriate, during 225  
the balance of the plan, the commission may terminate the 226  
electric security plan, but not until it shall have provided 227  
interested parties with notice and an opportunity to be heard. 228  
The commission may impose such conditions on the plan's 229  
termination as it considers reasonable and necessary to 230  
accommodate the transition from an approved plan to the more 231  
advantageous alternative. In the event of an electric security 232

plan's termination pursuant to this division, the commission 233  
shall permit the continued deferral and phase-in of any amounts 234  
that occurred prior to that termination and the recovery of 235  
those amounts as contemplated under that electric security plan. 236

(F) With regard to the provisions that are included in an 237  
electric security plan under this section, the commission shall 238  
consider, following the end of each annual period of the plan, 239  
if any such adjustments resulted in excessive earnings as 240  
measured by whether the earned return on common equity of the 241  
electric distribution utility is significantly in excess of the 242  
return on common equity that was earned during the same period 243  
by publicly traded companies, including utilities, that face 244  
comparable business and financial risk, with such adjustments 245  
for capital structure as may be appropriate. ~~In making its~~ 246  
~~determination of significantly excessive earnings under this~~ 247  
~~division, the commission shall, for affiliated Ohio electric~~ 248  
~~distribution utilities that operate under a joint electric~~ 249  
~~security plan, use the total of the utilities' earned return on~~ 250  
~~common equity.~~ Consideration also shall be given to the capital 251  
requirements of future committed investments in this state. The 252  
burden of proof for demonstrating that significantly excessive 253  
earnings did not occur shall be on the electric distribution 254  
utility. If the commission finds that such adjustments, in the 255  
aggregate, did result in significantly excessive earnings, it 256  
shall require the electric distribution utility to return to 257  
consumers the amount of the excess by prospective adjustments; 258  
provided that, upon making such prospective adjustments, the 259  
electric distribution utility shall have the right to terminate 260  
the plan and immediately file an application pursuant to section 261  
4928.142 of the Revised Code. Upon termination of a plan under 262  
this division, rates shall be set on the same basis as specified 263

in division (C) (2) (b) of this section, and the commission shall 264  
permit the continued deferral and phase-in of any amounts that 265  
occurred prior to that termination and the recovery of those 266  
amounts as contemplated under that electric security plan. In 267  
making its determination of significantly excessive earnings 268  
under this division, the commission shall not consider, directly 269  
or indirectly, the revenue, expenses, or earnings of any 270  
affiliate ~~that is not an Ohio electric distribution utility or~~ 271  
parent company. 272

**Section 2.** That existing section 4928.143 of the Revised 273  
Code is hereby repealed. 274

**Section 3.** That section 4928.471 of the Revised Code is 275  
hereby repealed. 276

**Section 4.** On and after the effective date of this 277  
section, and notwithstanding any provision in Title XLIX of the 278  
Revised Code to the contrary, no decoupling mechanism 279  
established under section 4928.471 of the Revised Code, as that 280  
section existed prior to the effective date of this section, 281  
shall remain in effect, and no amount, charge, mechanism, or 282  
rider related to that section may be assessed or collected from 283  
customers. 284

**Section 5.** Upon the effective date of this section, and 285  
notwithstanding section 4905.32 of the Revised Code and any 286  
other provision in Title XLIX of the Revised Code to the 287  
contrary, the full amount of revenues collected from customers 288  
through an amount, charge, mechanism, or rider established under 289  
section 4928.471 of the Revised Code, as that section existed 290  
prior to the effective date of this section, shall be promptly 291  
refunded to customers from whom the revenues were collected. 292  
Refunds paid to customers shall be allocated to customer classes 293

in the same proportion as originally collected. 294

**Section 6.** Upon the effective date of this section, and 295  
notwithstanding section 4905.32 of the Revised Code and any 296  
other provision in Title XLIX of the Revised Code to the 297  
contrary, both of the following apply: 298

(A) The amounts of money collected from customers 299  
resulting from, or attributable to, the amendments to divisions 300  
(E) and (F) of section 4928.143 of the Revised Code by H.B. 166 301  
of the 133rd General Assembly, shall be treated as follows: 302

(1) The amounts shall be promptly refunded to customers 303  
from whom they were collected. 304

(2) The amounts refunded shall be allocated to customer 305  
classes in the same proportion as originally collected. 306

(B) The public utilities commission shall reconsider any 307  
order or determination it made in compliance with the amendments 308  
to divisions (E) and (F) of section 4928.143 of the Revised Code 309  
made by H.B. 166 of the 133rd General Assembly prior to the 310  
effective date of this section and shall issue a new order or 311  
determination in compliance with the provisions of divisions (E) 312  
and (F) of section 4928.143 as amended by this act. 313