

As Introduced

**133rd General Assembly
Regular Session
2019-2020**

S. B. No. 363

**Senator Hoagland
Cosponsor: Senator Coley**

A BILL

To amend sections 4928.143, 4928.20, 4928.231, 1
4928.232, 4929.01, 4929.22, and 4929.29; to 2
enact sections 4928.201 and 4929.271; and to 3
repeal sections 4928.21 and 4929.26 of the 4
Revised Code to eliminate automatic enrollment 5
in governmental electric and natural gas 6
aggregation programs. 7

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

Section 1. That sections 4928.143, 4928.20, 4928.231, 8
4928.232, 4929.01, 4929.22, and 4929.29 be amended and sections 9
4928.201 and 4929.271 of the Revised Code be enacted to read as 10
follows: 11

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

the commission determines necessary, the utility immediately 19
shall conform its filing to those rules upon their taking 20
effect. 21

(B) Notwithstanding any other provision of Title XLIX of 22
the Revised Code to the contrary except division (D) of this 23
section, divisions ~~(I)~~(G), ~~(J)~~(H), and ~~(K)~~(I) of section 24
4928.20, division (E) of section 4928.64, and section 4928.69 of 25
the Revised Code: 26

(1) An electric security plan shall include provisions 27
relating to the supply and pricing of electric generation 28
service. In addition, if the proposed electric security plan has 29
a term longer than three years, it may include provisions in the 30
plan to permit the commission to test the plan pursuant to 31
division (E) of this section and any transitional conditions 32
that should be adopted by the commission if the commission 33
terminates the plan as authorized under that division. 34

(2) The plan may provide for or include, without 35
limitation, any of the following: 36

(a) Automatic recovery of any of the following costs of 37
the electric distribution utility, provided the cost is 38
prudently incurred: the cost of fuel used to generate the 39
electricity supplied under the offer; the cost of purchased 40
power supplied under the offer, including the cost of energy and 41
capacity, and including purchased power acquired from an 42
affiliate; the cost of emission allowances; and the cost of 43
federally mandated carbon or energy taxes; 44

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

environmental expenditure for any electric generating facility 48
of the electric distribution utility, provided the cost is 49
incurred or the expenditure occurs on or after January 1, 2009. 50
Any such allowance shall be subject to the construction work in 51
progress allowance limitations of division (A) of section 52
4909.15 of the Revised Code, except that the commission may 53
authorize such an allowance upon the incurrence of the cost or 54
occurrence of the expenditure. No such allowance for generating 55
facility construction shall be authorized, however, unless the 56
commission first determines in the proceeding that there is need 57
for the facility based on resource planning projections 58
submitted by the electric distribution utility. Further, no such 59
allowance shall be authorized unless the facility's construction 60
was sourced through a competitive bid process, regarding which 61
process the commission may adopt rules. An allowance approved 62
under division (B) (2) (b) of this section shall be established as 63
a nonbypassable surcharge for the life of the facility. 64

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

section and as a condition of the continuation of the surcharge, 79
the electric distribution utility shall dedicate to Ohio 80
consumers the capacity and energy and the rate associated with 81
the cost of that facility. Before the commission authorizes any 82
surcharge pursuant to this division, it may consider, as 83
applicable, the effects of any decommissioning, deratings, and 84
retirements. 85

(d) Terms, conditions, or charges relating to limitations 86
on customer shopping for retail electric generation service, 87
bypassability, standby, back-up, or supplemental power service, 88
default service, carrying costs, amortization periods, and 89
accounting or deferrals, including future recovery of such 90
deferrals, as would have the effect of stabilizing or providing 91
certainty regarding retail electric service; 92

(e) Automatic increases or decreases in any component of 93
the standard service offer price; 94

(f) Consistent with sections 4928.23 to 4928.2318 of the 95
Revised Code, both of the following: 96

(i) Provisions for the electric distribution utility to 97
securitize any phase-in, inclusive of carrying charges, of the 98
utility's standard service offer price, which phase-in is 99
authorized in accordance with section 4928.144 of the Revised 100
Code; 101

(ii) Provisions for the recovery of the utility's cost of 102
securitization. 103

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

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| or after that date pursuant to the standard service offer; | 108 |
| (h) Provisions regarding the utility's distribution | 109 |
| service, including, without limitation and notwithstanding any | 110 |
| provision of Title XLIX of the Revised Code to the contrary, | 111 |
| provisions regarding single issue ratemaking, a revenue | 112 |
| decoupling mechanism or any other incentive ratemaking, and | 113 |
| provisions regarding distribution infrastructure and | 114 |
| modernization incentives for the electric distribution utility. | 115 |
| The latter may include a long-term energy delivery | 116 |
| infrastructure modernization plan for that utility or any plan | 117 |
| providing for the utility's recovery of costs, including lost | 118 |
| revenue, shared savings, and avoided costs, and a just and | 119 |
| reasonable rate of return on such infrastructure modernization. | 120 |
| As part of its determination as to whether to allow in an | 121 |
| electric distribution utility's electric security plan inclusion | 122 |
| of any provision described in division (B) (2) (h) of this | 123 |
| section, the commission shall examine the reliability of the | 124 |
| electric distribution utility's distribution system and ensure | 125 |
| that customers' and the electric distribution utility's | 126 |
| expectations are aligned and that the electric distribution | 127 |
| utility is placing sufficient emphasis on and dedicating | 128 |
| sufficient resources to the reliability of its distribution | 129 |
| system. | 130 |
| (i) Provisions under which the electric distribution | 131 |
| utility may implement economic development, job retention, and | 132 |
| energy efficiency programs, which provisions may allocate | 133 |
| program costs across all classes of customers of the utility and | 134 |
| those of electric distribution utilities in the same holding | 135 |
| company system. | 136 |
| (C) (1) The burden of proof in the proceeding shall be on | 137 |

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 169
expected increases or decreases in fuel costs from those 170
contained in that offer, until a subsequent offer is authorized 171
pursuant to this section or section 4928.142 of the Revised 172
Code, respectively. 173

(D) Regarding the rate plan requirement of division (A) of 174
section 4928.141 of the Revised Code, if an electric 175
distribution utility that has a rate plan that extends beyond 176
December 31, 2008, files an application under this section for 177
the purpose of its compliance with division (A) of section 178
4928.141 of the Revised Code, that rate plan and its terms and 179
conditions are hereby incorporated into its proposed electric 180
security plan and shall continue in effect until the date 181
scheduled under the rate plan for its expiration, and that 182
portion of the electric security plan shall not be subject to 183
commission approval or disapproval under division (C) of this 184
section, and the earnings test provided for in division (F) of 185
this section shall not apply until after the expiration of the 186
rate plan. However, that utility may include in its electric 187
security plan under this section, and the commission may 188
approve, modify and approve, or disapprove subject to division 189
(C) of this section, provisions for the incremental recovery or 190
the deferral of any costs that are not being recovered under the 191
rate plan and that the utility incurs during that continuation 192
period to comply with section 4928.141, division (B) of section 193
4928.64, or division (A) of section 4928.66 of the Revised Code. 194

(E) If an electric security plan approved under division 195
(C) of this section, except one withdrawn by the utility as 196
authorized under that division, has a term, exclusive of phase- 197
ins or deferrals, that exceeds three years from the effective 198
date of the plan, the commission shall test the plan in the 199

fourth year, and if applicable, every fourth year thereafter, to 200
determine whether the plan, including its then-existing pricing 201
and all other terms and conditions, including any deferrals and 202
any future recovery of deferrals, continues to be more favorable 203
in the aggregate and during the remaining term of the plan as 204
compared to the expected results that would otherwise apply 205
under section 4928.142 of the Revised Code. The commission shall 206
also determine the prospective effect of the electric security 207
plan to determine if that effect is substantially likely to 208
provide the electric distribution utility with a return on 209
common equity that is significantly in excess of the return on 210
common equity that is likely to be earned by publicly traded 211
companies, including utilities, that face comparable business 212
and financial risk, with such adjustments for capital structure 213
as may be appropriate. The burden of proof for demonstrating 214
that significantly excessive earnings will not occur shall be on 215
the electric distribution utility. For affiliated Ohio electric 216
distribution utilities that operate under a joint electric 217
security plan, their total earned return on common equity shall 218
be used for purposes of assessing significantly excessive 219
earnings. If the test results are in the negative or the 220
commission finds that continuation of the electric security plan 221
will result in a return on equity that is significantly in 222
excess of the return on common equity that is likely to be 223
earned by publicly traded companies, including utilities, that 224
will face comparable business and financial risk, with such 225
adjustments for capital structure as may be appropriate, during 226
the balance of the plan, the commission may terminate the 227
electric security plan, but not until it shall have provided 228
interested parties with notice and an opportunity to be heard. 229
The commission may impose such conditions on the plan's 230
termination as it considers reasonable and necessary to 231

accommodate the transition from an approved plan to the more 232
advantageous alternative. In the event of an electric security 233
plan's termination pursuant to this division, the commission 234
shall permit the continued deferral and phase-in of any amounts 235
that occurred prior to that termination and the recovery of 236
those amounts as contemplated under that electric security plan. 237

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

4928.142 of the Revised Code. Upon termination of a plan under 263
this division, rates shall be set on the same basis as specified 264
in division (C) (2) (b) of this section, and the commission shall 265
permit the continued deferral and phase-in of any amounts that 266
occurred prior to that termination and the recovery of those 267
amounts as contemplated under that electric security plan. In 268
making its determination of significantly excessive earnings 269
under this division, the commission shall not consider, directly 270
or indirectly, the revenue, expenses, or earnings of any 271
affiliate that is not an Ohio electric distribution utility or 272
parent company. 273

Sec. 4928.20. (A) The legislative authority of a municipal 274
corporation may adopt an ordinance, or the board of township 275
trustees of a township or the board of county commissioners of a 276
county may adopt a resolution, under which, on or after the 277
starting date of competitive retail electric service, it may 278
aggregate in accordance with this section the retail electrical 279
loads located, respectively, within the municipal corporation, 280
township, or unincorporated area of the county and, for that 281
purpose, may enter into service agreements to facilitate for 282
those loads the sale and purchase of electricity. The 283
legislative authority or board also may exercise such authority 284
jointly with any other such legislative authority or board. For 285
all customers ~~that are not mercantile customers~~, an ordinance or 286
resolution under this division shall specify ~~whether~~ that the 287
aggregation will occur only with the prior, affirmative consent 288
of each person owning, occupying, controlling, or using an 289
electric load center proposed to be aggregated ~~or will occur~~ 290
~~automatically for all such persons pursuant to the opt-out~~ 291
~~requirements of division (D) of this section. The aggregation of~~ 292
~~mercantile customers shall occur only with the prior,~~ 293

~~affirmative consent of each such person owning, occupying,~~ 294
~~controlling, or using an electric load center proposed to be~~ 295
~~aggregated.~~ Nothing in this division, however, authorizes the 296
aggregation of the retail electric loads of an electric load 297
center, as defined in section 4933.81 of the Revised Code, that 298
is located in the certified territory of a nonprofit electric 299
supplier under sections 4933.81 to 4933.90 of the Revised Code 300
or an electric load center served by transmission or 301
distribution facilities of a municipal electric utility. 302

~~(B) If an ordinance or resolution adopted under division~~ 303
~~(A) of this section specifies that aggregation of customers that~~ 304
~~are not mercantile customers will occur automatically as~~ 305
~~described in that division, the ordinance or resolution shall~~ 306
~~direct the board of elections to submit the question of the~~ 307
~~authority to aggregate to the electors of the respective~~ 308
~~municipal corporation, township, or unincorporated area of a~~ 309
~~county at a special election on the day of the next primary or~~ 310
~~general election in the municipal corporation, township, or~~ 311
~~county. The legislative authority or board shall certify a copy~~ 312
~~of the ordinance or resolution to the board of elections not~~ 313
~~less than ninety days before the day of the special election. No~~ 314
~~ordinance or resolution adopted under division (A) of this~~ 315
~~section that provides for an election under this division shall~~ 316
~~take effect unless approved by a majority of the electors voting~~ 317
~~upon the ordinance or resolution at the election held pursuant~~ 318
~~to this division.~~ 319

~~(C) Upon the applicable requisite authority under~~ 320
~~divisions~~ If authorized by an ordinance or resolution under 321
division (A) and (B) of this section, the legislative authority 322
or board shall develop a plan of operation and governance for 323
the aggregation program so authorized. Before adopting a plan 324

under this division, the legislative authority or board shall 325
hold at least two public hearings on the plan. Before the first 326
hearing, the legislative authority or board shall publish notice 327
of the hearings once a week for two consecutive weeks in a 328
newspaper of general circulation in the jurisdiction or as 329
provided in section 7.16 of the Revised Code. The notice shall 330
summarize the plan and state the date, time, and location of 331
each hearing. 332

~~(D) No legislative authority or board, pursuant to an 333
ordinance or resolution under divisions (A) and (B) of this 334
section that provides for automatic aggregation of customers 335
that are not mercantile customers as described in division (A) 336
of this section, shall aggregate the electrical load of any 337
electric load center located within its jurisdiction unless it 338
in advance clearly discloses to the person owning, occupying, 339
controlling, or using the load center that the person will be 340
enrolled automatically in the aggregation program and will 341
remain so enrolled unless the person affirmatively elects by a 342
stated procedure not to be so enrolled. The disclosure shall 343
state prominently the rates, charges, and other terms and 344
conditions of enrollment. The stated procedure shall allow any 345
person enrolled in the aggregation program the opportunity to 346
opt out of the program every three years, without paying a 347
switching fee. Any such person that opts out before the 348
commencement of the aggregation program pursuant to the stated 349
procedure shall default to the standard service offer provided 350
under section 4928.14 or division (D) of section 4928.35 of the 351
Revised Code until the person chooses an alternative supplier. 352~~

~~(E) (1) (C) (1) With respect to a governmental aggregation 353
for a municipal corporation that is authorized pursuant to 354
divisions (A) to (D) of under this section, resolutions may be 355~~

proposed by initiative or referendum petitions in accordance 356
with sections 731.28 to 731.41 of the Revised Code. 357

(2) With respect to a governmental aggregation for a 358
township or the unincorporated area of a county, which 359
aggregation is authorized ~~pursuant to divisions (A) to (D)~~ 360
~~of~~under this section, resolutions may be proposed by initiative 361
or referendum petitions in accordance with sections 731.28 to 362
731.40 of the Revised Code, except that: 363

(a) The petitions shall be filed, respectively, with the 364
township fiscal officer or the board of county commissioners, 365
who shall perform those duties imposed under those sections upon 366
the city auditor or village clerk. 367

(b) The petitions shall contain the signatures of not less 368
than ten per cent of the total number of electors in, 369
respectively, the township or the unincorporated area of the 370
county who voted for the office of governor at the preceding 371
general election for that office in that area. 372

~~(F)~~(D) A governmental aggregator under division (A) of 373
this section is not a public utility engaging in the wholesale 374
purchase and resale of electricity, and provision of the 375
aggregated service is not a wholesale utility transaction. A 376
governmental aggregator shall be subject to supervision and 377
regulation by the public utilities commission only to the extent 378
of any competitive retail electric service it provides and 379
commission authority under this chapter. 380

~~(G)~~(E) This section does not apply in the case of a 381
municipal corporation that supplies such aggregated service to 382
electric load centers to which its municipal electric utility 383
also supplies a noncompetitive retail electric service through 384

transmission or distribution facilities the utility singly or 385
jointly owns or operates. 386

~~(H)~~ (F) A governmental aggregator shall not include in its 387
aggregation the accounts of any of the following: 388

(1) A customer that has not enrolled in or has opted out 389
of the aggregation program; 390

(2) A customer in contract with a certified electric 391
services company; 392

(3) A customer that has a special contract with an 393
electric distribution utility; 394

(4) A customer that is not located within the governmental 395
aggregator's governmental boundaries; 396

~~(5) Subject to division (C) of section 4928.21 of the~~ 397
~~Revised Code, a customer who appears on the "do not aggregate"~~ 398
~~list maintained under that section.~~ 399

~~(I)~~ (G) Customers that are part of a governmental 400
aggregation under this section shall be responsible only for 401
such portion of a surcharge under section 4928.144 of the 402
Revised Code that is proportionate to the benefits, as 403
determined by the commission, that electric load centers within 404
the jurisdiction of the governmental aggregation as a group 405
receive. The proportionate surcharge so established shall apply 406
to each customer of the governmental aggregation while the 407
customer is part of that aggregation. If a customer ceases being 408
such a customer, the otherwise applicable surcharge shall apply. 409
Nothing in this section shall result in less than full recovery 410
by an electric distribution utility of any surcharge authorized 411
under section 4928.144 of the Revised Code. Nothing in this 412
section shall result in less than the full and timely 413

imposition, charging, collection, and adjustment by an electric 414
distribution utility, its assignee, or any collection agent, of 415
the phase-in-recovery charges authorized pursuant to a final 416
financing order issued pursuant to sections 4928.23 to 4928.2318 417
of the Revised Code. 418

~~(J)~~(H) On behalf of the customers that are part of a 419
governmental aggregation under this section and by filing 420
written notice with the public utilities commission, the 421
legislative authority that formed or is forming that 422
governmental aggregation may elect not to receive standby 423
service within the meaning of division (B)(2)(d) of section 424
4928.143 of the Revised Code from an electric distribution 425
utility in whose certified territory the governmental 426
aggregation is located and that operates under an approved 427
electric security plan under that section. Upon the filing of 428
that notice, the electric distribution utility shall not charge 429
any such customer to whom competitive retail electric generation 430
service is provided by another supplier under the governmental 431
aggregation for the standby service. Any such consumer that 432
returns to the utility for competitive retail electric service 433
shall pay the market price of power incurred by the utility to 434
serve that consumer plus any amount attributable to the 435
utility's cost of compliance with the renewable energy resource 436
provisions of section 4928.64 of the Revised Code to serve the 437
consumer. Such market price shall include, but not be limited 438
to, capacity and energy charges; all charges associated with the 439
provision of that power supply through the regional transmission 440
organization, including, but not limited to, transmission, 441
ancillary services, congestion, and settlement and 442
administrative charges; and all other costs incurred by the 443
utility that are associated with the procurement, provision, and 444

administration of that power supply, as such costs may be 445
approved by the commission. The period of time during which the 446
market price and renewable energy resource amount shall be so 447
assessed on the consumer shall be from the time the consumer so 448
returns to the electric distribution utility until the 449
expiration of the electric security plan. However, if that 450
period of time is expected to be more than two years, the 451
commission may reduce the time period to a period of not less 452
than two years. 453

~~(K) (I) The commission shall adopt rules to encourage and 454
promote large-scale governmental aggregation in this state. For 455
that purpose, the commission shall conduct an immediate review 456
of any rules it has adopted for the purpose of this section that 457
are in effect on the effective date of the amendment of this 458
section by S.B. 221 of the 127th general assembly, July 31, 459
2008. Further, within the context of an electric security plan 460
under section 4928.143 of the Revised Code, the commission shall 461
consider the effect on large-scale governmental aggregation of 462
any nonbypassable generation charges, however collected, that 463
would be established under that plan, except any nonbypassable 464
generation charges that relate to any cost incurred by the 465
electric distribution utility, the deferral of which has been 466
authorized by the commission prior to the effective date of the 467
amendment of this section by S.B. 221 of the 127th general 468
assembly, July 31, 2008. 469~~

Sec. 4928.201. (A) Any person automatically enrolled in a 470
governmental aggregation program provided by a governmental 471
aggregator pursuant to section 4928.20 of the Revised Code as it 472
existed prior to the effective date of ____B.____ of the 133rd 473
general assembly may opt out of the program at any time, without 474
paying a switching fee. 475

(B) Any person that opts out of an aggregation program 476
under this section shall default to the standard service offer 477
provided under section 4928.14 or division (D) of section 478
4928.35 of the Revised Code until the person chooses an 479
alternative supplier. 480

Sec. 4928.231. (A) An electric distribution utility may 481
apply to the public utilities commission for a financing order 482
that authorizes the following: 483

(1) The issuance of phase-in-recovery bonds, in one or 484
more series, to recover uncollected phase-in costs; 485

(2) The imposition, charging, and collection of phase-in- 486
recovery charges, in accordance with the adjustment mechanism 487
approved by the commission under section 4928.232 of the Revised 488
Code, and consistent with the commission's authority regarding 489
governmental aggregation as provided in division ~~(I)~~ (G) of 490
section 4928.20 of the Revised Code, to recover both of the 491
following: 492

(a) Uncollected phase-in costs; 493

(b) Financing costs. 494

(3) The creation of phase-in-recovery property under the 495
financing order. 496

(B) The application shall include all of the following: 497

(1) A description of the uncollected phase-in costs that 498
the electric distribution utility seeks to recover through the 499
issuance of phase-in-recovery bonds; 500

(2) An estimate of the date each series of phase-in- 501
recovery bonds are expected to be issued; 502

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|---|---|
| (3) The expected term during which the phase-in costs associated with the issuance of each series of phase-in-recovery bonds are expected to be recovered; | 503 504 505 |
| (4) An estimate of the financing costs, as described in section 4928.23 of the Revised Code, associated with the issuance of each series of phase-in-recovery bonds; | 506 507 508 |
| (5) An estimate of the amount of phase-in-recovery charges necessary to recover the phase-in costs and financing costs set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of phase-in-recovery bonds; | 509 510 511 512 513 514 |
| (6) For phase-in-recovery charges not subject to allocation according to an existing order, a proposed methodology for allocating phase-in-recovery charges among customer classes, including a proposed methodology for allocating such charges to governmental aggregation customers based upon the proportionate benefit determination made under division (I) <u>(G)</u> of section 4928.20 of the Revised Code; | 515 516 517 518 519 520 521 |
| (7) A description of a proposed adjustment mechanism for use as described in division (A) (2) of this section; | 522 523 |
| (8) A description and valuation of how the issuance of the phase-in-recovery bonds, including financing costs, will both result in cost savings to customers and mitigate rate impacts to customers when compared to the use of other financing mechanisms or cost-recovery methods available to the electric distribution utility; | 524 525 526 527 528 529 |
| (9) Any other information required by the commission. | 530 |
| (C) The electric distribution utility may restate or | 531 |

incorporate by reference in the application any information 532
required under division (B) (9) of this section that the electric 533
distribution utility filed with the commission under section 534
4909.18 or sections 4928.141 to 4928.144 of the Revised Code or 535
section 4928.14 of the Revised Code as it existed prior to July 536
31, 2008. 537

Sec. 4928.232. (A) Proceedings before the public utilities 538
commission on an application submitted by an electric 539
distribution utility under section 4928.231 of the Revised Code 540
shall be governed by Chapter 4903. of the Revised Code, but only 541
to the extent that chapter is not inconsistent with this section 542
or section 4928.233 of the Revised Code. Any party that 543
participated in the proceeding in which phase-in costs were 544
approved under section 4909.18 or sections 4928.141 to 4928.144 545
of the Revised Code or section 4928.14 of the Revised Code as it 546
existed prior to July 31, 2008, shall have standing to 547
participate in proceedings under sections 4928.23 to 4928.2318 548
of the Revised Code. 549

(B) When reviewing an application for a financing order 550
pursuant to sections 4928.23 to 4928.2318 of the Revised Code, 551
the commission may hold such hearings, make such inquiries or 552
investigations, and examine such witnesses, books, papers, 553
documents, and contracts as the commission considers proper to 554
carry out these sections. Within thirty days after the filing of 555
an application under section 4928.231 of the Revised Code, the 556
commission shall publish a schedule of the proceeding. 557

(C) (1) Not later than one hundred thirty-five days after 558
the date the application is filed, the commission shall issue 559
either a financing order, granting the application in whole or 560
with modifications, or an order suspending or rejecting the 561

application. 562

(2) If the commission suspends an application for a 563
financing order, the commission shall notify the electric 564
distribution utility of the suspension and may direct the 565
electric distribution utility to provide additional information 566
as the commission considers necessary to evaluate the 567
application. Not later than ninety days after the suspension, 568
the commission shall issue either a financing order, granting 569
the application in whole or with modifications, or an order 570
rejecting the application. 571

(D) (1) The commission shall not issue a financing order 572
under division (C) of this section unless the commission 573
determines that the financing order is consistent with section 574
4928.02 of the Revised Code. 575

(2) Except as provided in division (D) (1) of this section, 576
the commission shall issue a financing order under division (C) 577
of this section if, at the time the financing order is issued, 578
the commission finds that the issuance of the phase-in-recovery 579
bonds and the phase-in-recovery charges authorized by the order 580
results in, consistent with market conditions, both measurably 581
enhancing cost savings to customers and mitigating rate impacts 582
to customers as compared with traditional financing mechanisms 583
or traditional cost-recovery methods available to the electric 584
distribution utility or, if the commission previously approved a 585
recovery method, as compared with that recovery method. 586

(E) The commission shall include all of the following in a 587
financing order issued under division (C) of this section: 588

(1) A determination of the maximum amount and a 589
description of the phase-in costs that may be recovered through 590

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|---|-----|
| phase-in-recovery bonds issued under the financing order; | 591 |
| (2) A description of phase-in-recovery property, the | 592 |
| creation of which is authorized by the financing order; | 593 |
| (3) A description of the financing costs that may be | 594 |
| recovered through phase-in-recovery charges and the period over | 595 |
| which those costs may be recovered; | 596 |
| (4) For phase-in-recovery charges not subject to | 597 |
| allocation according to an existing order, a description of the | 598 |
| methodology and calculation for allocating phase-in-recovery | 599 |
| charges among customer classes, including the allocation of such | 600 |
| charges, if any, to governmental aggregation customers based | 601 |
| upon the proportionate benefit determination made under division | 602 |
| (I) <u>(G)</u> of section 4928.20 of the Revised Code; | 603 |
| (5) A description of the adjustment mechanism for use in | 604 |
| the imposition, charging, and collection of the phase-in- | 605 |
| recovery charges; | 606 |
| (6) The maximum term of the phase-in-recovery bonds; | 607 |
| (7) Any other provision the commission considers | 608 |
| appropriate to ensure the full and timely imposition, charging, | 609 |
| collection, and adjustment, pursuant to an approved adjustment | 610 |
| mechanism, of the phase-in-recovery charges described in | 611 |
| divisions (E) (3) to (5) of this section. | 612 |
| (F) The commission may, in a financing order, afford the | 613 |
| electric distribution utility flexibility in establishing the | 614 |
| terms and conditions for the phase-in-recovery bonds to | 615 |
| accommodate changes in market conditions, including repayment | 616 |
| schedules, interest rates, financing costs, collateral | 617 |
| requirements, required debt service and other reserves, and the | 618 |
| ability of the electric distribution utility, at its option, to | 619 |

effect a series of issuances of phase-in-recovery bonds and 620
correlated assignments, sales, pledges, or other transfers of 621
phase-in-recovery property. Any changes made under this section 622
to terms and conditions for the phase-in-recovery bonds shall be 623
in conformance with the financing order. 624

(G) A financing order may provide that the creation of 625
phase-in-recovery property shall be simultaneous with the sale 626
of that property to an assignee as provided in the application 627
and the pledge of the property to secure phase-in-recovery 628
bonds. 629

(H) The commission shall, in a financing order, require 630
that after the final terms of each issuance of phase-in-recovery 631
bonds have been established, and prior to the issuance of those 632
bonds, the electric distribution utility shall determine the 633
resulting phase-in-recovery charges in accordance with the 634
adjustment mechanism described in the financing order. These 635
phase-in-recovery charges shall be final and effective upon the 636
issuance of the phase-in-recovery bonds, without further 637
commission action. 638

Sec. 4929.01. As used in this chapter: 639

(A) "Alternative rate plan" means a method, alternate to 640
the method of section 4909.15 of the Revised Code, for 641
establishing rates and charges, under which rates and charges 642
may be established for a commodity sales service or ancillary 643
service that is not exempt pursuant to section 4929.04 of the 644
Revised Code or for a distribution service. Alternative rate 645
plans may include, but are not limited to, methods that provide 646
adequate and reliable natural gas services and goods in this 647
state; minimize the costs and time expended in the regulatory 648
process; tend to assess the costs of any natural gas service or 649

goods to the entity, service, or goods that cause such costs to 650
be incurred; afford rate stability; promote and reward 651
efficiency, quality of service, or cost containment by a natural 652
gas company; provide sufficient flexibility and incentives to 653
the natural gas industry to achieve high quality, 654
technologically advanced, and readily available natural gas 655
services and goods at just and reasonable rates and charges; or 656
establish revenue decoupling mechanisms. Alternative rate plans 657
also may include, but are not limited to, automatic adjustments 658
based on a specified index or changes in a specified cost or 659
costs. 660

(B) "Ancillary service" means a service that is ancillary 661
to the receipt or delivery of natural gas to consumers, 662
including, but not limited to, storage, pooling, balancing, and 663
transmission. 664

(C) "Commodity sales service" means the sale of natural 665
gas to consumers, exclusive of any distribution or ancillary 666
service. 667

(D) "Comparable service" means any regulated service or 668
goods whose availability, quality, price, terms, and conditions 669
are the same as or better than those of the services or goods 670
that the natural gas company provides to a person with which it 671
is affiliated or which it controls, or, as to any consumer, that 672
the natural gas company offers to that consumer as part of a 673
bundled service that includes both regulated and exempt services 674
or goods. 675

(E) "Consumer" means any person or association of persons 676
purchasing, delivering, storing, or transporting, or seeking to 677
purchase, deliver, store, or transport, natural gas, including 678
industrial consumers, commercial consumers, and residential 679

consumers, but not including natural gas companies. 680

(F) "Distribution service" means the delivery of natural 681
gas to a consumer at the consumer's facilities, by and through 682
the instrumentalities and facilities of a natural gas company, 683
regardless of the party having title to the natural gas. 684

(G) "Natural gas company" means a natural gas company, as 685
defined in section 4905.03 of the Revised Code, that is a public 686
utility as defined in section 4905.02 of the Revised Code and 687
excludes a retail natural gas supplier. 688

(H) "Person," except as provided in division (N) of this 689
section, has the same meaning as in section 1.59 of the Revised 690
Code, and includes this state and any political subdivision, 691
agency, or other instrumentality of this state and includes the 692
United States and any agency or other instrumentality of the 693
United States. 694

(I) "Billing or collection agent" means a fully 695
independent agent, not affiliated with or otherwise controlled 696
by a retail natural gas supplier or governmental aggregator 697
subject to certification under section 4929.20 of the Revised 698
Code, to the extent that the agent is under contract with such 699
supplier or aggregator solely to provide billing and collection 700
for competitive retail natural gas service on behalf of the 701
supplier or aggregator. 702

(J) "Competitive retail natural gas service" means any 703
retail natural gas service that may be competitively offered to 704
consumers in this state as a result of revised schedules 705
approved under division (C) of section 4929.29 of the Revised 706
Code, a rule or order adopted or issued by the public utilities 707
commission under Chapter 4905. of the Revised Code, or an 708

exemption granted by the commission under sections 4929.04 to 709
4929.08 of the Revised Code. 710

(K) "Governmental aggregator" means either of the 711
following: 712

(1) A legislative authority of a municipal corporation, a 713
board of township trustees, or a board of county commissioners 714
acting exclusively under section ~~4929.26~~ or 4929.27 of the 715
Revised Code as an aggregator for the provision of competitive 716
retail natural gas service; 717

(2) A municipal corporation acting exclusively under 718
Section 4 of Article XVIII, Ohio Constitution, as an aggregator 719
for the provision of competitive retail natural gas service. 720

(L) (1) "Mercantile customer" means a customer that 721
consumes, other than for residential use, more than five hundred 722
thousand cubic feet of natural gas per year at a single location 723
within this state or consumes natural gas, other than for 724
residential use, as part of an undertaking having more than 725
three locations within or outside of this state. "Mercantile 726
customer" excludes a customer for which a declaration under 727
division (L) (2) of this section is in effect pursuant to that 728
division. 729

(2) A not-for-profit customer that consumes, other than 730
for residential use, more than five hundred thousand cubic feet 731
of natural gas per year at a single location within this state 732
or consumes natural gas, other than for residential use, as part 733
of an undertaking having more than three locations within or 734
outside this state may file a declaration under division (L) (2) 735
of this section with the public utilities commission. The 736
declaration shall take effect upon the date of filing, and by 737

virtue of the declaration, the customer is not a mercantile 738
customer for the purposes of this section and sections 4929.20 739
to 4929.29 of the Revised Code or the purposes of a governmental 740
natural gas aggregation or arrangement or other contract entered 741
into after the declaration's effective date for the supply or 742
arranging of the supply of natural gas to the customer to a 743
location within this state. The customer may file a rescission 744
of the declaration with the commission at any time. The 745
rescission shall not affect any governmental natural gas 746
aggregation or arrangement or other contract entered into by the 747
customer prior to the date of the filing of the rescission and 748
shall have effect only with respect to any subsequent such 749
aggregation or arrangement or other contract. The commission 750
shall prescribe rules under section 4929.10 of the Revised Code 751
specifying the form of the declaration or a rescission and 752
procedures by which a declaration or rescission may be filed. 753

(M) "Retail natural gas service" means commodity sales 754
service, ancillary service, natural gas aggregation service, 755
natural gas marketing service, or natural gas brokerage service. 756

(N) "Retail natural gas supplier" means any person, as 757
defined in section 1.59 of the Revised Code, that is engaged on 758
a for-profit or not-for-profit basis in the business of 759
supplying or arranging for the supply of a competitive retail 760
natural gas service to consumers in this state that are not 761
mercantile customers. "Retail natural gas supplier" includes a 762
marketer, broker, or aggregator, but excludes a natural gas 763
company, a governmental aggregator as defined in division (K) (1) 764
or (2) of this section, an entity described in division (A) (2) 765
or (3) of section 4905.02 of the Revised Code, or a billing or 766
collection agent, and excludes a producer or gatherer of gas to 767
the extent such producer or gatherer is not a natural gas 768

company under section 4905.03 of the Revised Code. 769

(O) "Revenue decoupling mechanism" means a rate design or 770
other cost recovery mechanism that provides recovery of the 771
fixed costs of service and a fair and reasonable rate of return, 772
irrespective of system throughput or volumetric sales. 773

Sec. 4929.22. For the protection of consumers in this 774
state, the public utilities commission shall adopt rules under 775
section 4929.10 of the Revised Code specifying the necessary 776
minimum service requirements of a retail natural gas supplier or 777
governmental aggregator subject to certification under section 778
4929.20 of the Revised Code regarding the marketing, 779
solicitation, sale, or provision, directly or through its 780
billing and collection agent, of any competitive retail natural 781
gas service for which it is subject to certification. Rules 782
adopted under this section shall include additional consumer 783
protections concerning all of the following: 784

(A) Contract disclosure. The rules shall include 785
requirements that a retail natural gas supplier or governmental 786
aggregator subject to certification under section 4929.20 of the 787
Revised Code do both of the following: 788

(1) Provide consumers with adequate, accurate, and 789
understandable pricing and terms and conditions of service, 790
including any switching fees, and with a document containing the 791
terms and conditions of pricing and service before the consumer 792
enters into the contract for service; 793

(2) Disclose the conditions under which a customer may 794
rescind a contract without penalty. 795

(B) Service qualification and termination. The rules shall 796
include a requirement that, before a consumer is eligible for 797

service from a retail natural gas supplier or governmental 798
aggregator subject to certification under section 4929.20 of the 799
Revised Code, the consumer shall discharge, or enter into a plan 800
to discharge, all existing arrearages owed to or being billed by 801
the natural gas company from which the consumer presently is 802
receiving service. The rules also shall provide for disclosure 803
of the terms identifying how customers may switch or terminate 804
service, including any required notice and any penalties. 805

(C) Minimum content of customer bills. The rules shall 806
include all of the following requirements, which shall be 807
standardized: 808

(1) Price disclosure and disclosures of total billing 809
units for the billing period and historical annual usage; 810

(2) To the maximum extent practicable, separate listing of 811
each service component to enable a customer to recalculate its 812
bill for accuracy; 813

(3) Identification of the supplier of each service; 814

(4) Statement of where and how payment may be made and 815
provision of a toll-free or local customer assistance and 816
complaint number for the retail natural gas supplier or 817
governmental aggregator, as well as a consumer assistance 818
telephone number or numbers for state agencies, such as the 819
commission, the office of the consumers' counsel, and the 820
attorney general's office, with the available hours noted; 821

(5) Other than for the first billing after the effective 822
date of initial rules adopted pursuant to division (A) of 823
section 4929.20 of the Revised Code, highlighting and clear 824
explanation on each customer bill, for two consecutive billing 825
periods, of any changes in the rates, terms, and conditions of 826

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| service. | 827 |
| (D) Disconnection and service termination, including requirements with respect to master-metered buildings. The rules shall include policies and procedures that are consistent with sections 4933.12 and 4933.122 of the Revised Code and the commission's rules adopted under those sections, and that provide for all of the following: | 828 829 830 831 832 833 |
| (1) Coordination between suppliers for the purpose of maintaining service; | 834 835 |
| (2) The allocation of partial payments between suppliers when service components are jointly billed; | 836 837 |
| (3) A prohibition against switching, or authorizing the switching of, a customer's supplier of competitive retail natural gas service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures; | 838 839 840 841 842 |
| (4) A requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty; | 843 844 845 |
| (5) Specification of any required notice and any penalty for early termination of contract. | 846 847 |
| (E) Minimum service quality, safety, and reliability. | 848 |
| (F) Customer information. The rules shall include requirements that a natural gas company make generic customer load pattern information available to a retail natural gas supplier or governmental aggregator as defined in division (K) (1) or (2) of section 4929.01 of the Revised Code on a comparable and nondiscriminatory basis, and make customer | 849 850 851 852 853 854 |

information available to a retail natural gas supplier or 855
governmental aggregator as defined in division (K) (1) or (2) of 856
section 4929.01 of the Revised Code on a comparable and 857
nondiscriminatory basis unless, as to customer information, the 858
customer objects. The rules shall ensure that each natural gas 859
company provide clear and frequent notice to its customers of 860
the right to object and of applicable procedures. The rules 861
shall establish the exact language that shall be used in all 862
such notices. The rules also shall require that, ~~upon the~~ 863
~~request of a governmental aggregator defined in division (K) (1)~~ 864
~~of section 4929.01 of the Revised Code, solely for purposes of~~ 865
~~the disclosure required by division (D) of section 4929.26 of~~ 866
~~the Revised Code, or for purposes of a governmental aggregator~~ 867
defined in division (K) (2) of section 4929.01 of the Revised 868
Code, a natural gas company or retail natural gas supplier must 869
provide the governmental aggregator, in a timely manner and at 870
such cost as the commission shall provide for in the rules, with 871
the billing names and addresses of the customers of the company 872
or supplier whose retail natural gas loads are to be included in 873
the governmental aggregation. 874

(G) Ohio office. The rules shall require that a retail 875
natural gas supplier maintain an office and an employee in this 876
state. 877

Sec. 4929.271. (A) Any person automatically enrolled in a 878
governmental aggregation program provided by a governmental 879
aggregator pursuant to section 4929.26 of the Revised Code as it 880
existed prior to the effective date of ____ .B. ____ of the 133rd 881
general assembly may opt out of the program at any time, without 882
paying a switching fee. 883

(B) Any such person that opts out of the aggregation 884

program shall default to the natural gas company providing 885
distribution service for the person's retail natural gas load, 886
until the person chooses an alternative supplier. 887

Sec. 4929.29. (A) (1) The legislative authority of a 888
municipal corporation described in division (K) (1) of section 889
4929.01 of the Revised Code, the board of township trustees of a 890
township, or the board of county commissioners of a county may 891
petition the public utilities commission to require a natural 892
gas company with fifteen thousand or more customers in this 893
state to provide, upon the effective date of an ordinance or 894
resolution authorized and adopted under section ~~4929.26~~ or 895
4929.27 of the Revised Code, distribution service on a fully 896
open, equal, and nondiscriminatory basis to consumers that are 897
not mercantile customers and are within the area of the 898
governmental aggregation and to which the company provides 899
distribution service through distribution facilities it singly 900
or jointly owns or operates. 901

(2) The legislative authority of a municipal corporation 902
described in division (K) (2) of section 4929.01 of the Revised 903
Code may petition the commission to require a natural gas 904
company with fifteen thousand or more customers in this state to 905
provide, upon the effective date of an ordinance adopted under 906
Section 5 of Article XVIII, Ohio Constitution, distribution 907
service on a fully open, equal, and nondiscriminatory basis to 908
consumers that are within the area of the governmental 909
aggregation and to which the company provides distribution 910
service through distribution facilities it singly or jointly 911
owns or operates. 912

(3) A retail natural gas supplier may petition the 913
commission to require a natural gas company with fifteen 914

thousand or more customers in this state to so provide such 915
fully open, equal, and nondiscriminatory service to all 916
consumers that are not mercantile customers and to which the 917
company provides distribution service through distribution 918
facilities it singly or jointly owns or operates. 919

(B) Upon petition under division (A) (1), (2), or (3) of 920
this section, the commission, after notice and opportunity for 921
hearing and by order, may require that the natural gas company 922
provide the service within the area specified in the petition, 923
provided that the commission finds that the provision of the 924
service within the area is in the public interest. The applicant 925
shall have the burden of proof under this division. Chapter 926
4903. of the Revised Code shall apply to a proceeding under this 927
division. 928

(C) Upon the issuance of an order under division (B) of 929
this section requiring distribution service on a comparable and 930
nondiscriminatory basis within the area specified in the order, 931
the natural gas company shall file with the commission under 932
section 4905.30 of the Revised Code revised schedules under 933
which the company shall provide the service so ordered. The 934
commission shall act promptly to approve the schedules. 935

Section 2. That existing sections 4928.143, 4928.20, 936
4928.231, 4928.232, 4929.01, 4929.22, and 4929.29 of the Revised 937
Code are hereby repealed. 938

Section 3. That sections 4928.21 and 4929.26 of the 939
Revised Code are hereby repealed. 940