

*The following is the text of Ohio SB 3, signed into law by the Governor of Ohio in July of 1999, and implementing the restructuring of the Ohio electricity market. The excerpt below deals specifically with recovery of stranded costs and is provided to the Technical Working Group as a reference. The full text and legislative history for SB 3 is available at:*

[http://archives.legislature.state.oh.us/BillText123/123\\_SB\\_3\\_ENR.html](http://archives.legislature.state.oh.us/BillText123/123_SB_3_ENR.html)

**Sec. 4928.31.** (A) Not later than ninety days after the effective date of this section, an electric utility supplying retail electric service in this state on that date shall file with the public utilities commission a plan for the utility's provision of retail electric service in this state during the market development period. this transition plan shall be in such form as the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code and shall include all of the following:

(1) A RATE UNBUNDLING PLAN that specifies, consistent with divisions (A)(1) to (7) of section 4928.34 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, THE UNBUNDLED COMPONENTS FOR ELECTRIC GENERATION, TRANSMISSION, AND DISTRIBUTION SERVICE AND SUCH OTHER UNBUNDLED service COMPONENTS AS THE COMMISSION requires, to BE CHARGED BY THE UTILITY beginning on THE STARTING DATE OF COMPETITIVE RETAIL ELECTRIC SERVICE and that includes information the commission requires to fix and determine those components;

(2) A corporate separation plan consistent with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(3) Such plan or plans as the commission requires to address operational support systems and any other technical implementation issues pertaining to COMPETITIVE retail electric service consistent with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code;

(4) An employee assistance plan for providing severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter;

(5) A consumer education plan consistent with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

A transition plan under this section may include tariff terms and conditions to address reasonable requirements for changing suppliers, length of commitment by a customer for service, and such other matters as are necessary to ACCOMMODATE electric restructuring. Additionally, a transition plan under this SECTION MAY include An application for the opportunity to receive transition revenues as authorized under sections 4928.31 to 4928.40 of the Revised Code, which application shall be consistent with those sections and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code. The transition plan also may include a plan for the independent operation of THE UTILITY'S transmission facilities consistent with section 4928.12 of the Revised Code, division (A)(13) of section 4928.34 of the Revised Code, and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

The commission may reject and require refileing, in whole or in part, of any substantially inadequate transition plan.

(B) The electric utility shall provide public notice of its filing under division (A) of this section, in a form and manner that the commission shall prescribe by rule adopted under division (A) of section 4928.06 of the Revised Code. however, the adoption of rules regarding the public notice under this division, regarding the form of the transition plan under division (A) of this section, and regarding procedures for expedited discovery under division (A) of section 4928.32 of the Revised Code are not subject to division (D) of section 111.15 of the Revised Code.

**Sec. 4928.32.** (A) the public utilities commission shall establish reasonable procedures for expedited discovery in any proceeding initiated to consider a transition plan filed under section 4928.31 of the Revised Code.

(B) Not later than forty-five days after the date on which an electric utility files a transition plan under section 4928.31 of the Revised Code, any person having a real and substantial interest in the transition plan may file with the commission preliminary objections to the transition plan, which shall identify with specificity issues pertaining to any aspect of the transition plan, and any such person may propose specific responses to those issues. The commission shall address THOSE OBJECTIONS and RESPONSES in its final order.

In addition, not later than ninety days after the plan's filing, the commission staff shall file with the commission a report of its recommendations with respect to the plan. Prior to

commission approval of the plan, the commission shall afford a hearing upon those aspects of the plan that the commission determines reasonably require a hearing.

(C) The commission shall maintain a complete record of all proceedings relative to a transition plan filed under section 4928.31 of the Revised Code and shall issue and file with the record of the case findings of fact and written opinions setting forth the reasons for any modification to or its approval of a transition plan.

**Sec. 4928.33.** (A) Not later than two hundred seventy-five days after the date an electric utility files a transition plan under section 4928.31 of the Revised Code, but, in any event, not later THAN october 31, 2000, the public utilities commission shall issue a final order approving the transition plan as filed under section 4928.31 of the Revised Code or an order modifying and approving that plan. The order is subject to section 4903.15 of the Revised Code and is subject to review and appeal under chapter 4903. of the Revised Code.

(B) If the COMMISSION fails to issue, by october 31, 2000, a final order approving a transition plan, or such a final order has been enjoined in whole or in part pending appeal to a court, the commission shall issue an interim order prescribing a transition plan, to have effect on an interim basis only, and containing the plan components required by division (A) of section 4928.31 of the Revised Code and providing for the opportunity for transition revenue receipt if such an application were included in the plan filed by the utility under that section. the interim order is subject to section 4903.15 of the Revised Code but is not subject to review and appeal under Chapter 4903. of the Revised Code.

An interim plan prescribed under the interim order shall be effective for the electric utility beginning on the starting date of competitive retail electric service and shall continue in effect until such time as any other replacement transition plan takes effect pursuant to a final commission order or resolution of an appeal. any interim plan so prescribed shall comply with THE aPPLICABLE provisions of section 4928.34 of the revised Code. A final commission order shall provide for a reconciliation of those amounts determined in the final order relative to division (A) of section 4928.31 of the Revised Code as compared to the interim amounts as determined under this division.

(C) No electric utility required to file a transition plan under section 4928.31 of the Revised Code shall fail to implement a transition plan approved or prescribed for the utility by a commission order issued under division (a) or (b) of this section. No electric utility shall provide retail electric service in this state during the market development period except pursuant to such an approved or prescribed transition plan.

**Sec. 4928.34.** (A) The public utilities commission shall not approve or prescribe a transition plan under division (A) or (B) of section 4928.33 of the Revised Code unless the commission first makes all of the following determinations:

(1) The unbundled components for the electric transmission component of retail electric service, as specified in the utility's rate unbundling plan required by division (A)(1) of section 4928.31 of the Revised Code, equal the tariff rates determined by the federal energy regulatory commission that are in effect on the date of the approval of the transition plan under sections 4928.31 to 4928.40 of the Revised Code, as each such rate is determined applicable to each particular customer class and rate schedule by the commission. **THE UNBUNDLED TRANSMISSION COMPONENT SHALL INCLUDE A SLIDING SCALE OF CHARGES UNDER DIVISION (B) OF SECTION 4905.31 OF THE REVISED CODE TO ENSURE THAT REFUNDS DETERMINED OR APPROVED BY THE FEDERAL ENERGY REGULATORY COMMISSION ARE FLOWED THROUGH TO RETAIL ELECTRIC CUSTOMERS.**

(2) the unbundled components for retail electric distribution service in the rate unbundling plan equal the difference between the costs ATTRIBUTABLE to the utility's transmission and distribution rates and charges under its schedule of rates and charges in effect on the effective date of this section, based upon the record in the most recent rate proceeding of the utility for which the utility's schedule was established, and the tariff rates for electric transmission service determined by the federal energy regulatory commission as described in division (A)(1) of this section.

(3) all other unbundled components required by the commission in the rate unbundling plan equal the costs attributable to the particular service as reflected in the utility's schedule of rates and charges in effect on the effective date of this section.

(4) the unbundled components for retail electric generation service in the rate unbundling plan equal the residual amount remaining after the determination of the transmission, distribution, and other unbundled components, and after any adjustments necessary to reflect the effects of the amendment of section 5727.111 of the Revised Code by Sub. S. B. No. 3 of the 123rd general assembly.

(5) all unbundled components in the rate unbundling plan have been adjusted to reflect any base rate reductions on file with the commission and as scheduled to be in effect by December 31, 2005, under rate settlements in effect on the effective date of this section. However, all earnings obligations, RESTRICTIONS, or caps imposed on an electric utility in a commission order prior to the effective date of this section are void.

(6) Subject to division (A)(5) of this section, the total of all unbundled components in the rate UNBUNDLING plan are capped and shall equal during the market development period, except as specifically provided in this chapter, the total of all rates and charges in effect under the applicable bundled schedule of the electric utility PURSUANT TO SECTION 4905.30 OF THE REVISED CODE in effect on the day before the effective date of this section, including the transition charge determined under section 4928.40 of the Revised Code, adjusted for any changes in the taxation of electric UTILITIES and retail electric service under Sub. S.B. No. 3 of the 123rd General Assembly, the universal service rider authorized by section 4928.51 of the Revised Code, and the temporary rider authorized by section 4928.61 of the Revised Code. for the purpose of this division, the rate cap applicable to a customer receiving electric service pursuant to an arrangement approved by the commission under section 4905.31 of the Revised Code is, for the term of the arrangement, the total of all rates and charges in effect under the arrangement.

FOR ANY RATE SCHEDULE FILED PURSUANT TO SECTION 4905.30 OF THE REVISED CODE OR ANY ARRANGEMENT SUBJECT TO APPROVAL PURSUANT TO SECTION 4905.31 OF THE REVISED CODE, THE INITIAL TAX-RELATED ADJUSTMENT TO THE RATE CAP REQUIRED BY THIS DIVISION SHALL BE EQUAL TO THE RATE OF TAXATION SPECIFIED IN SECTION 5727.81 OF THE REVISED CODE AND APPLICABLE TO THE SCHEDULE OR ARRANGEMENT.

TO THE EXTENT SUCH TOTAL ANNUAL AMOUNT OF THE TAX-RELATED ADJUSTMENT IS GREATER THAN OR LESS THAN THE COMPARABLE AMOUNT OF THE TOTAL ANNUAL TAX REDUCTION EXPERIENCED BY THE ELECTRIC UTILITY AS A RESULT OF THE PROVISIONS OF SUB. S.B. NO. 3 OF THE 123rd GENERAL ASSEMBLY, SUCH DIFFERENCE SHALL BE ADDRESSED BY THE COMMISSION THROUGH ACCOUNTING PROCEDURES, REFUNDS, OR AN ANNUAL SURCHARGE OR CREDIT TO CUSTOMERS, OR THROUGH OTHER APPROPRIATE MEANS, TO AVOID PLACING THE FINANCIAL RESPONSIBILITY FOR THE DIFFERENCE UPON THE ELECTRIC UTILITY OR ITS SHAREHOLDERS. ANY ADJUSTMENTS IN THE RATE OF TAXATION SPECIFIED IN 5727.81 of the Revised Code SECTION SHALL NOT OCCUR WITHOUT A CORRESPONDING ADJUSTMENT TO THE RATE CAP FOR EACH SUCH RATE SCHEDULE OR ARRANGEMENT. THE DEPARTMENT OF TAXATION SHALL ADVISE THE COMMISSION AND SELF-ASSESSORS UNDER SECTION 5727.81 OF THE REVISED CODE PRIOR TO THE EFFECTIVE DATE OF ANY CHANGE IN THE RATE OF TAXATION SPECIFIED UNDER THAT SECTION, AND THE COMMISSION SHALL MODIFY THE RATE CAP TO REFLECT THAT ADJUSTMENT SO THAT THE RATE CAP ADJUSTMENT IS

EFFECTIVE AS OF THE EFFECTIVE DATE OF THE CHANGE IN THE RATE OF TAXATION. THIS DIVISION SHALL BE APPLIED, TO THE EXTENT POSSIBLE, TO ELIMINATE ANY INCREASE IN THE PRICE OF ELECTRICITY FOR CUSTOMERS THAT OTHERWISE MAY OCCUR AS A RESULT OF ESTABLISHING THE TAXES CONTEMPLATED IN SECTION 5727.81 OF THE REVISED CODE.

(7) The rate unbundling plan complies with any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(8) The corporate separation plan required by division (a)(2) of section 4928.31 of the Revised Code complies with section 4928.17 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(9) any plan or plans the commission requires to address operational support systems and any other technical implementation issues pertaining to COMPETITIVE retail electric service COMPLY WITH any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(10) The employee assistance plan required by division (A)(4) of section 4928.31 of the Revised Code sufficiently provides severance, retraining, early retirement, retention, outplacement, and other assistance for the utility's employees whose employment is affected by electric industry restructuring under this chapter.

(11) The consumer education plan required under division (A)(5) of section 4928.31 of the Revised Code complies with section 4928.42 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code.

(12) The TRANSITION REVENUES FOR WHICH AN ELECTRIC UTILITY IS AUTHORIZED A REVENUE OPPORTUNITY UNDER SECTIONS 4928.31 TO 4928.40 OF THE REVISED CODE ARE THE ALLOWABLE TRANSITION COSTS OF THE UTILITY AS SUCH COSTS ARE DETERMINED BY THE COMMISSION PURSUANT TO SECTION 4928.39 OF THE REVISED CODE, AND THE transition charges for the customer classes and rate schedules of the utility are the charges determined pursuant to section 4928.40 of the Revised Code.

(13) Any independent transmission plan included in the transition plan filed under section 4928.31 of the Revised Code reasonably complies with section 4928.12 of the Revised Code and any rules adopted by the commission under division (A) of section 4928.06 of the Revised Code, unless the commission, for good cause shown, authorizes the utility to

defer compliance until an order is issued under division (G) of section 4928.35 of the Revised Code.

(14) The utility is in compliance with sections 4928.01 to 4928.11 of the Revised Code and any rules or orders of the commission adopted or issued under those sections.

(15) All unbundled components in the rate unbundling plan have been adjusted to reflect the elimination of the tax on gross receipts imposed by section 5727.30 of the Revised Code.

In addition, a transition plan approved by the commission under section 4928.33 of the Revised Code but not containing an approved independent transmission plan shall contain the express conditions that the utility will comply with an order issued under division (G) of section 4928.35 of the Revised Code.

(B) Subject to division (E) of section 4928.17 of the Revised Code, if the commission finds that any part of the transition plan would constitute an abandonment under sections 4905.20 and 4905.21 of the Revised Code, the commission shall not approve that part of the transition plan unless it makes the finding required for approval of an abandonment application under section 4905.21 of the Revised Code. sections 4905.20 and 4905.21 of the Revised Code otherwise shall not apply to a transition plan under sections 4928.31 to 4928.40 of the Revised Code.

**Sec. 4928.35.** (A) Upon approval of its transition plan under sections 4928.31 to 4928.40 of the Revised Code, an electric utility shall file in accordance with section 4905.30 of the Revised Code schedules containing the unbundled rate components set in the approved plan in accordance with section 4928.34 of the Revised Code. the schedules shall be in effect for the duration of the utility's market development period, shall be subject to the cap specified in division (A)(6) of section 4928.34 of the Revised Code, and shall not be adjusted during that period by the public UTILITIES commission except as otherwise AUTHORIZED by division (B) of this section or as otherwise AUTHORIZED by federal law or except to reflect any change in tax law or tax regulation that has a material effect on the electric utility.

(B) Efforts shall be made to reach agreements with electric UTILITIES in matters of LITIGATION regarding property valuation issues. Irrespective of those efforts, the unbundled components for an electric utility's retail electric generation service and distribution service, as provided in division (A) of this section, are not subject to adjustment for the utility's market development period, except that the commission shall order an equitable reduction in those components for all customer classes to reflect any refund a utility receives as a result of the resolution of utility personal property tax

valuation litigation that is resolved on or after the effective date of this section and not later than December 31, 2005. immediately upon the issuance of that order, the electric utility shall file revised rate schedules under section 4909.18 of the Revised Code to effect the order.

(C) The schedule under division (A) of this section containing the unbundled distribution components shall provide that electric distribution service under the schedule will be available to all retail electric service customers in the electric utility's certified territory and their suppliers on a nondiscriminatory and comparable basis on and after the starting date of competitive retail electric service. The schedule also shall 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 rules, policy, precedents, or orders of the commission.

(D) during the market development period, 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 priced in accordance with the schedule containing the utility's UNBUNDLED generation service component. IMMEDIATELY upon approval of its transition plan, the utility shall file the standard service offer with the commission under section 4909.18 of the Revised Code. during the market development period, the failure of a supplier to deliver retail electric generation service shall result in the supplier's customers, after reasonable notice, defaulting to the utility's standard service offer filed under this division until the customer chooses an alternative supplier. a supplier is deemed under this section to have failed to deliver such service if any of the conditions specified in divisions (b)(1) to (4) of section 4928.14 of the Revised Code is met.

(E) An amendment of a corporate separation plan contained in a transition plan approved by the commission under section 4928.33 of the Revised Code shall be filed and approved as a corporate separation plan pursuant to section 4928.17 of the Revised Code.

(F) Any change to an electric utility's opportunity to receive transition revenues under a transition plan approved in accordance with section 4928.33 of the Revised Code shall be authorized only as provided in sections 4928.31 to 4928.40 of the Revised Code.

(G) The commission, by order, shall require each electric utility whose approved transition plan did not include an independent transmission plan as described in division (A)(13) of section 4928.34 of the Revised Code to be a member of, and transfer control of



transmission facilities it owns or controls in this state to, one or more qualifying transmission entities, as described in division (B) of section 4928.12 of the Revised Code, that are planned to be operational on and after december 31, 2003. HOWEVER, THE COMMISSION MAY EXTEND THAT DATE IF, FOR REASONS BEYOND THE CONTROL OF THE UTILITY, A QUALIFYING TRANSMISSION ENTITY IS NOT PLANNED TO BE OPERATIONAL ON THAT DATE. The commission's order may specify an earlier date on which the transmission entity or entities are planned to be operational if the commission considers it necessary to carry out the policy specified in section 4928.02 of the Revised Code or to encourage effective competition in retail electric service in this state.

Upon the issuance of the order, each such utility shall file with the commission a plan for such independent operation of the utility's transmission facilities consistent with this division. the commission may reject and require refileing of any substantially inadequate plan submitted under this division.

After REASONABLE notice and opportunity for hearing, the commission shall approve the plan upon a finding that the plan will result in the utility's COMPLIANCE with the order, this division, and any rules adopted under division (A) of section 4928.06 of the Revised Code. the approved independent transmission plan shall be deemed a part of the utility's transition plan for purposes of sections 4928.31 to 4928.40 of the Revised Code.

**Sec. 4928.36.** The public utilities commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint by any person or upon complaint or initiative of the commission on or after the starting date of competitive retail electric service, to determine whether an electric utility has failed to implement, in conformance with an order under section 4928.33 of the Revised Code or in ongoing compliance with applicable provisions of the policy specified in section 4928.02 of the Revised Code, a transition plan approved under section 4928.33 of the Revised Code. If, after reasonable notice and opportunity for hearing as provided in section 4905.26 of the Revised Code, the commission determines that the utility has failed to so comply, the commission, in addition to any other remedies provided by law, may use the remedies specified in divisions (C)(1) to (3) and (D)(1) and (2) of section 4928.18 of the Revised Code to enforce compliance.

**Sec. 4928.37.** (A)(1) Sections 4928.31 to 4928.40 of the Revised Code provide an electric utility the opportunity to receive transition revenues that may assist it in making the transition to a fully competitive retail electric generation market. An electric Utility for which transition revenues are approved pursuant to sections 4928.31 to 4928.40 of the Revised Code shall receive those revenues through both of the following mechanisms beginning on the starting date of competitive retail electric service and ending on the

expiration date of its market development period as determined under section 4928.40 of the Revised Code:

(a) payment of unbundled rates for retail electric services by each customer that is supplied retail electric generation service during the market development period by the customer's electric distribution utility, which rates shall be specified in schedules filed under section 4928.35 of the Revised Code;

(b) Payment of a non-bypassable and competitively neutral transition charge by each customer that is supplied retail electric generation service during the market development period by an entity other than the customer's electric distribution utility, as such transition charge is determined under section 4928.40 of the Revised Code. the transition charge shall be payable by each such retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved and shall be billed on each kilowatt hour of electricity delivered to the customer by the electric distribution utility as registered on the customer's meter during the utility's market development period as kilowatt hour is defined in section 4909.161 of the Revised Code or, if no meter is used, as based on an estimate of kilowatt hours used or consumed by the customer. The transition charge for each customer class shall reflect the cost allocation to that class as provided under bundled rates and charges in effect on the day before the effective date of this section. Additionally, as reflected in section 4928.40 of the Revised Code, the transition charges shall be structured to provide shopping incentives to customers sufficient to encourage the development of effective competition in the supply of retail electric generation service. **TO THE EXTENT POSSIBLE, THE LEVEL AND STRUCTURE OF THE TRANSITION CHARGE SHALL BE DESIGNED TO AVOID REVENUE RESPONSIBILITY SHIFTS AMONG THE UTILITY'S CUSTOMER CLASSES AND RATE SCHEDULES.**

(2)(a) Notwithstanding division (A)(1)(b) of this section, the transition charge shall not be payable on electricity supplied by a municipal electric utility to a retail electric distribution service customer in the certified territory of the electric utility for which the transition revenues are approved, if the municipal electric utility provides electric transmission or distribution service, or both services, through transmission or distribution facilities singly or jointly owned or operated by the municipal electric utility, and if the municipal electric utility was in existence, operating, and providing service as of January 1, 1999.

(b) The transition charge shall not be payable on electricity supplied or consumed in this state except such electricity as is delivered to a retail customer by an electric distribution utility and is registered on the customer's meter during the utility's market development period or, if no meter is used, is based on an estimate of kilowatt hours used or consumed

by the customer. However, no transition charge shall be payable on electricity that is both produced and consumed in this state by a self-generator.

(3) the transition charge shall not be discounted by any party.

(4) Nothing prevents payment of all or part of the transition charge by another party on a customer's behalf if that payment does not contravene sections 4905.33 to 4905.35 of the Revised Code or this chapter.

(B) The electric utility shall separately itemize and disclose, or cause its billing and collection agent to separately itemize and disclose, the transition charge on the customer's bill in accordance with reasonable SPECIFICATIONS the commission shall prescribe by rule under division (A) of section 4928.06 of the Revised Code.

**Sec. 4928.38.** Pursuant to a transition plan approved under section 4928.33 of the Revised Code, An electric utility in this state may receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, beginning on The starting date of competitive retail electric service. Except as provided in sections 4905.33 to 4905.35 of the Revised Code and this Chapter, an electric utility that receives such transition revenues shall be wholly responsible for how to use those revenues and wholly responsible for whether it is in a competitive position after the market development period. The utility's receipt of transition revenues shall terminate at the end of the market development period. With the termination of that approved revenue source, the utility shall be fully on its own in the competitive market. The commission shall not authorize the receipt of transition revenues or any equivalent revenues by an electric utility except as expressly authorized in sections 4928.31 to 4928.40 of the Revised Code.

**Sec. 4928.39.** Upon the filing of an application by an electric utility under section 4928.31 of the Revised Code for the opportunity to receive transition revenues under sections 4928.31 to 4928.40 of the Revised Code, the public utilities commission, by order under section 4928.33 of the Revised Code, shall determine the total allowable amount of the transition costs of the utility to be received as transition revenues under those sectionS. such amount shall be the just and reasonable transition COSTS of the utility, which costs the commission finds meet all of the following criteria:

(A) The costs were prudently incurred.

(B) the costs are LEGITIMATE, net, verifiable, and directly assignable or allocable to retail electric generation service provided to electric consumers in this state.

(C) The costs are unrecoverable in a competitive market.

(D) The utility would OTHERWISE be entitled an opportunity to recover the costs.

Transition costs under this section shall include the costs of employee assistance under the employee assistance plan included in the utility's approved transition plan under section 4928.33 of the Revised Code, which costs exceed those costs contemplated in labor contracts in effect on the effective date of this section.

Further, the commission's order under this section shall separately identify regulatory assets of the utility that are a part of the total allowable amount of transition costs determined under this section and separately identify that portion of a transition charge determined under section 4928.40 of the Revised Code that is allocable to those assets, WHICH PORTION OF A TRANSITION CHARGE SHALL BE SUBJECT TO ADJUSTMENT ONLY PROSPECTIVELY AND AFTER December 31, 2004, unless the commission authorizes an adjustment prospectively with an earlier date for any customer class based upon an earlier termination of the utility's market development period pursuant to division (B)(2) of section 4928.40 of the Revised Code.

The electric utility shall have the burden of demonstrating allowable transition costs as AUTHORIZED under this section. the commission may impose reasonable commitments upon the utility's collection of the transition revenues to ensure that those revenues are used to eliminate the allowable transition costs of the utility during the market development period and are not available for use by the utility to achieve an undue competitive advantage, or to impose an undue disadvantage, in the provision by the utility of regulated or unregulated products or services.

**Sec. 4928.40.** (A) UPON determining under section 4928.39 of the Revised Code the allowable transition costs of an electric utility AUTHORIZED for collection as transition revenues under sections 4928.31 to 4928.40 of the Revised Code, the public utilities commission, by order under section 4928.33 of the Revised Code, shall establish the transition charge for each customer class of the electric utility and, to the extent possible, each rate schedule within each such customer class, with all such transition charges being collected as provided in division (A)(1)(b) of section 4928.37 of the Revised Code during a market development period for the utility, ending on such date as the commission shall reasonably prescribe. The market development period shall end on December 31, 2005, unless otherwise authorized under division (B)(2) of this section. HOWEVER, THE COMMISSION MAY SET THE UTILITY'S RECOVERY OF THE REVENUE REQUIREMENTS ASSOCIATED WITH REGULATORY ASSETS, as established pursuant to section 4928.39 of the Revised Code, TO END NOT LATER THAN DECEMBER 31, 2010. The commission shall not permit the creation or amortization of additional regulatory assets without notice and an opportunity to be heard through an

evidentiary hearing and SHALL NOT INCREASE THE CHARGE RECOVERING SUCH REVENUE REQUIREMENTS ASSOCIATED WITH REGULATORY ASSETS.

factors the commission shall consider in prescribing the expiration date of the utility's market development period and the transition charge for each customer class and rate schedule of the utility include, but are not limited to, the total allowable amount of transition costs of the electric utility as determined under section 4928.39 of the Revised Code; the relevant market price for the delivered supply of electricity to customers in that customer class and, to the extent possible, in each rate schedule as determined by the commission; and such shopping incentives by customer class as are considered necessary to induce, at the minimum, a twenty per cent load switching rate by customer class halfway through the utility's market development period but not later than December 31, 2003. In no case shall the commission establish a shopping incentive in an amount exceeding the unbundled component for retail electric generation service set in the utility's approved transition plan under section 4928.33 of the Revised Code, and in no case shall the commission establish a transition charge in an amount less than zero.

(B)(1) THE COMMISSION may CONDUCT A PERIODIC REVIEW no more often than annually AND, AS IT DETERMINES NECESSARY, ADJUST THE TRANSITION CHARGES OF THE ELECTRIC UTILITY as INITIALLY established under division (A) of this section or subsequently adjusted under this division. any such adjustment shall be in accordance with division (A) of this section and may reflect changes in the relevant market.

(2) FOR PURPOSES OF THIS CHAPTER, THE MARKET DEVELOPMENT PERIOD SHALL NOT END EARLIER THAN DECEMBER 31, 2005, UNLESS, UPON APPLICATION BY AN ELECTRIC UTILITY, THE COMMISSION ISSUES AN ORDER AUTHORIZING SUCH EARLIER DATE FOR ONE OR MORE CUSTOMER CLASSES AS IS SPECIFIED IN THE ORDER, UPON A DEMONSTRATION BY THE UTILITY AND A FINDING BY THE COMMISSION OF EITHER OF THE FOLLOWING:

(a) THERE IS A TWENTY PER CENT SWITCHING RATE OF THE UTILITY'S LOAD BY THE CUSTOMER CLASS.

(b) effective competition exists in the utility's certified territory.

(C) Notwithstanding any provision of this chapter, the commission shall issue an order under section 4928.33 of the Revised Code approving a transition plan for an electric utility that contains a rate reduction for residential customers of that utility, provided that the rate reduction shall not increase the rates or transition cost RESPONSIBILITY of any

other customer class of the utility. the rate reduction shall be in effect only for such portion of the UTILITY'S market development period as the commission shall specify AND shall be applied to the unbundled generation component for retail electric generation service as set in the utility's approved transition plan under section 4928.33 of the Revised Code subject to the price cap for residential customers required under division (A)(6) of section 4928.34 of the Revised Code. The amount of the rate reduction shall be FIVE PER CENT OF THE AMOUNT OF THAT UNBUNDLED GENERATION COMPONENT, but shall not unduly discourage market entry by alternative suppliers seeking to serve the residential market in this state. THE COMMISSION, AFTER REASONABLE NOTICE AND OPPORTUNITY FOR HEARING, may terminate the rate reduction by order UPON A FINDING THAT THE RATE REDUCTION IS UNDULY DISCOURAGING MARKET ENTRY BY SUCH ALTERNATIVE SUPPLIERS. No such termination of the rate reduction shall take effect prior to the midpoint of the utility's market development period.

(D) Beginning on the starting date of competitive retail electric service, no electric utility in this state SHALL prohibit the resale of electric generation service OR impose unreasonable or discriminatory conditions or limitations on the resale of electric generation service.

(E) NOTWITHSTANDING ANY PROVISION OF TITLE XLIX OF THE REVISED CODE TO THE CONTRARY, ANY CUSTOMER THAT RECEIVES A NONCOMPETITIVE RETAIL ELECTRIC SERVICE FROM AN ELECTRIC DISTRIBUTION UTILITY SHALL BE A RETAIL ELECTRIC DISTRIBUTION SERVICE CUSTOMER, IRRESPECTIVE OF THE VOLTAGE LEVEL AT WHICH SERVICE IS TAKEN.

**Sec. 4928.41.** The transition revenue authority provided under sections 4928.31 to 4928.40 of the Revised Code for electric utilities does not affect the authority of an electric cooperative in this state to receive transition revenues.

**Sec. 4928.42.** PRIOR TO THE STARTING DATE OF COMPETITIVE RETAIL ELECTRIC SERVICE, THE public utilities COMMISSION, IN CONSULTATION WITH THE CONSUMERS' COUNSEL AND WITH OTHER STATE AGENCIES AS CONSIDERED NECESSARY, SHALL PRESCRIBE AND ADOPT BY ORDER A GENERAL PLAN BY WHICH EACH ELECTRIC UTILITY shaLL PROVIDE DURING ITS MARKET DEVELOPMENT PERIOD CONSUMER EDUCATION ON ELECTRIC RESTRUCTURING UNDER this chapter. THE GENERAL PLAN SHALL REQUIRE the UTILITIES TO SPEND ON SUCH CONSUMER EDUCATION WITHIN their respective CERTIFIED SERVICE TERRITORies IN THE AGGREGATE UP TO SIXTEEN MILLION DOLLARS IN THE FIRST YEAR OF THAT PERIOD AND AN

ADDITIONAL SEVENTEEN MILLION DOLLARS IN THE AGGREGATE IN DECREASING AMOUNTS OVER THE REMAINING YEARS OF each utility's MARKET DEVELOPMENT PERIOD, WITH THE AGGREGATE AMOUNTS DIVIDED AMONG THE UTILITIES BASED ON THEIR RESPECTIVE NUMBER OF CUSTOMERS AS OF DECEMBER 31, 1997. THE GENERAL PLAN SHALL PROHIBIT SUCH CONSUMER EDUCATION FROM OCCURRING IN COMBINATION WITH MARKETING FOR THE UTILITY'S OR ITS AFFILIATE'S RETAIL ELECTRIC SERVICES.

**Sec. 4928.43.** (A) Each state agency that provides employment assistance and job training programs, including the bureau of employment services and the department of development, shall provide concentrated attention through those programs to assisting employees whose employment is affected by electric industry restructuring under this chapter.

(B) TO THE EXTENT NOT PROHIBITED BY FEDERAL LAW OR ANY LAW OF THIS STATE AND EXCEPT AS OTHERWISE PROVIDED IN A LABOR CONTRACT OR OTHER AGREEMENT, NO UNENCUMBERED MONEY IN A PENSION FUND FOR EMPLOYEES OF ELECTRIC UTILITIES SHALL BE USED FOR ANY PURPOSE OTHER THAN TO PAY ALLOWABLE PENSIONS OR EARLY RETIREMENT BUYOUTS FOR THE EMPLOYEES.

**Sec. 4928.431.** (A)(1) there is hereby created an electric EMPLOYEE assistance advisory board, CONSISTING of twelve members, as follows: two members of the house of representatives appointed by the speaker of the house of representatives, neither of the same political party; two members of the senate appointed by the president of the senate, neither of the same political party; and four representatives of electric utilities in this state and four representatives of electric industry employees, all appointed by the governor. initial APPOINTMENTS shall be made not later than december 31, 1999.

(2) initial terms of the members appointed by the governor shall end on december 31, 2001. thereafter, terms of APPOINTED members shall be for two years with each term ending on the same day OF the same month as the term it succeeds. each member shall hold office from the date of the member's appointment UNTIL the end of the term for which the member was appointed. members may be reappointed.

Vacancies shall be filled in the manner provided for original appointments. any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed shall hold office as a member for the remainder of that term. a member shall continue in office after the expiration date of the member's term

UNTIL the member's successor takes office or UNTIL A period of SIXTY days has elapsed, whichever occurs first. Board members shall receive no compensation or REIMBURSEMENT for expenses.

(3) The advisory board shall select a chairperson from among its members. Only board members appointed by the governor shall be VOTING members of the board; each shall have one vote in all deliberations of the board. A majority of the VOTING members constitutes a quorum.

(B) The duties of the advisory board shall be to make recommendations to the public utilities commission regarding its approval of an Employee assistance plan filed in accordance with section 4928.31 of the Revised Code and regarding general eligibility standards applicable to benefits under the plan for affected EMPLOYEES.

**Sec. 4928.44.** (A) The public utilities commission may determine, by order and after reasonable notice and opportunity for hearing, that CUSTOMERS THAT ARE NONFIRM ELECTRIC SERVICE customers of electric UTILITIES ON THE EFFECTIVE DATE OF THIS SECTION would be assisted by the implementation by each such utility of a service schedule that complies with division (C) of this section. in the order, the commission shall specify the period of time, ending not later than december 31, 2005, during which the service OFFERING would be available to ANY SUCH NONFIRM ELECTRIC SERVICE customers or A group of such customers. upon the issuance of the order, ANY SUCH NONFIRM ELECTRIC SERVICE customer or A group of SUCH customers shall be, for the purposes of this section, eligible customers in each electric utility's transmission tariff subject to the JURISDICTION of the federal energy regulatory commission FOR THE PERIOD SPECIFIED IN THE ORDER, and each electric UTILITY with nonfirm customers shall file a service schedule pursuant to section 4909.18 of the Revised Code to effectuate this service offering.

(b) the service schedule AUTHORIZED under division (A) of this section, FOR THE PERIOD ENDING NOT LATER THAN DECEMBER 31, 2005, AS SPECIFIED IN THE COMMISSION'S ORDER UNDER THAT DIVISION, shall PROVIDE for direct, comparable and nondiscriminatory access to the transmission and distribution services, capacities, functions, and facilities of the electric UTILITY BY any CUSTOMER THAT IS A nonFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or BY A group of ANY SUCH customers, for the purpose of securing from a supplier or suppliers of the customer's or group's choice all or a portion of the customer's or group's electric power and energy requirements not served by an electric utility during a time of nonemergency curtailment or interruption.



the failure of an electric UTILITY to file such schedule constitutes inadequate service under title XLIX of the Revised Code.

(C) the service offering authorized pursuant to this section shall be in addition to any service options otherwise available to A NONFIRM ELECTRIC SERVICE customer or group of NONFIRM ELECTRIC SERVICE customers. if a CUSTOMER THAT IS A NONFIRM ELECTRIC SERVICE customer ON THE EFFECTIVE DATE OF THIS SECTION or A group of SUCH customers elects to meet all or a portion of the customer's or group's electric power and energy requirements not served by an electric utility during a time of nonemergency curtailment or interruption, by purchasing electricity and related services from a supplier or suppliers other than that electric utility, any existing service arrangement under section 4905.31 of the Revised Code or any existing schedule under section 4905.30 of the Revised Code shall be modified to permit this election to occur without economic penalty and to facilitate the customer's or group's access to the electric market for the purpose of managing supply and price volatility risks.

(d) NOTHING IN DIVISIONS (a) TO (c) OF THIS SECTION AFFECTS ANY OBLIGATION OF an electric utility TO curtail or interrupt electric transmission or distribution service to the extent required to protect the interests of firm ELECTRIC SERVICE customers from an injury that is otherwise unavoidable but for the curtailment or interruption. Nothing in those divisions shall be construed or applied to increase rates and charges for firm electric service customers including residential firm electric service customers.