

Provisions for the Treatment of Generation Supply:

Amendments to Section 4928.14:

The purposes of these amendments are: to require electric distribution utility to file within three months of the effective date of the legislation a standard service offer through an electric security plan that encourages investment in new generation resources with appropriate and timely cost recovery; to provide for as an alternative a standard service offer established through a competitive bidding process upon satisfaction of specified market criteria to verify that the wholesale market is workably competitive and the process for such a competitive solicitation including timelines for commission rulemakings and utility filings; to provide a mechanism for the commission to moderate the price impact on retail customers, if appropriate; to provide for an efficient process applicable to the proceedings involved; and to allow for continuation of existing rate plans where appropriate.

Insert at line 1478 before the period the following: “, as determined under division (B) or (C) of this section.”

Delete lines 1503 through 1512, and insert the following:

“Within three months after the effective date of the amendment of this section by SB 221 of the 127th general assembly or at least six months prior to the termination of any electric security plan or other rate plan existing as of such effective date previously approved by the public utilities commission, each electric distribution utility shall file to establish its standard service offer under division (B) of this section. The application shall be subject to such filing and procedural requirements as the commission shall prescribe by rule, except that no filing shall be rejected nor shall the proceeding be delayed as a result of any deficiencies in the filing. The rules, which shall be adopted no later than thirty days after the effective date of SB 221, may include transition rules necessary for the initial implementation of this section as so amended.”

Delete lines 1513 through 1535, and insert the following:

(B) Each electric distribution utility in this state shall file with the commission an electric security plan, which may be a continuation of or an extension of an existing rate stabilization plan, that provides for a standard service offer for the supply of electric generation service. Such electric security plan shall provide for a plan period of not less than two years.

(1) Such plan may include provisions relating to (a) the supply and pricing of generation, distribution and transmission service including all requirements or costs imposed or authorized by or through the Federal Energy Regulatory Commission including without limitation transmission, ancillary and related services, (b) recovery through variable rates or riders of the costs of fuel and associated additives, purchased power including the cost of energy and capacity and other ancillary services, emission allowances, government-mandated carbon or energy taxes, costs resulting from environmental upgrades, demand response and energy efficiency programs, (c)

accounting and deferral of incurred costs in order to mitigate price increases, (d) carrying and other costs resulting from provisions of the plan, (e) the costs of new generation resources, generation resources newly dedicated to the provision of the standard service offer, environmental expenditures, infrastructure improvements, including costs that improve reliability of service, improve transmission or distribution efficiency or result from governmental imposed relocation projects, (f) a risk premium associated with the obligation to maintain an offer of firm generation service and the provision of default service pursuant to this section, and (g) such other terms conditions and charges related to the provision of electric service, including terms and conditions related to shopping in order to provide certainty of obligations during the plan period.

(2) In its determination of the reasonableness of an electric security plan filed by an electric distribution utility, the commission shall consider the (a) the value of the generating assets used to provide generation service, including the costs of any new generation or expenditures to upgrade any existing generation assets expected to be incurred during the plan period, (b) the extent to which such generating assets have been depreciated and the net generation transition revenues, exclusive of regulatory assets and other items deferred for recovery as a part of an approved transition plan and/or rate stabilization plans, received by the electric distribution utility under section 4928.40 of the Revised Code, (c) the cost of comparable generating assets, (d) the projected costs of purchased power including the cost of energy, capacity and other ancillary services, (e) the expected competitive market prices, and (f) such other matters as the commission deems appropriate.

New generation as used in this section shall refer to any generating facility for which on-site construction is initiated after the effective date of Senate Bill 221 of the 127th general assembly and that, notwithstanding Chapter 4906. of the Revision Code to the contrary, the commission determines and certifies the need for on the basis of resource planning projections developed in accordance with policies and procedures the commission shall prescribe by rule.

The commission shall have the authority to approve the plan as filed, or modify and approve a plan that contains such provisions as to pricing, accounting, deferrals including the future recovery of such deferrals and those authorized under division (D) of this section and any other terms and conditions, as the commission finds just and reasonable. The commission shall render its order regarding the electric security plan within 120 days of the initial filing of such plan. Notwithstanding any provision of the Revised Code to the contrary, any application for rehearing shall be filed with the commission within ten days of such order. If the commission does not grant or deny such application for rehearing within twenty days from the date of filing, it is denied by application of law. If the commission's final order modifies the electric distribution utility's proposed electric security plan, such utility shall within forty days of the commission's initial order establishing the plan file a statement to either accept or reject the modified electric security plan.

Nothing in this section shall preclude an electric distribution utility from simultaneously filing both its electric security plan and its competitive bid process under division (C) of this section.

Delete lines 1536 through 1590, and insert the following:

“(C)(1) If the electric security plan filed by an electric distribution utility under division (B) of this section is not approved as filed, or if the modified plan approved by the commission is rejected by such utility, then the standard service offer of the electric distribution utility shall be determined through a competitive bidding process.

(2) The commission shall adopt rules concerning the conduct of the competitive bidding process, including the information requirements necessary for customers to choose this option and the requirements to evaluate qualified bidders, that foster and encourage suppliers to participate in the process. No generation supplier shall be prohibited from participating in the bidding process. All costs incurred by the electric distribution utility as a result of or related to the competitive bidding process or procuring generation service to provide a standard service offer, including the costs of energy, capacity and costs of all other products procured as a result of the competitive bidding process, for administrative support, including costs of outside counsel and consultants, and related to the provision of electric service, including working capital, under a competitive bidding process framework shall be timely recovered through the standard service offer price by the electric distribution utility. The commission shall approve upon the request of the electric distribution utility a reconciliation mechanism, other recovery mechanism, or a combination thereof to recover such costs.

(3) The competitive bidding process filed by the electric distribution utility shall provide for:

- (a) An open, fair and transparent competitive solicitation process;
- (b) Product definition so that the product or products sought through the competitive solicitation are precisely defined;
- (c) Evaluation criteria that is standardized and applied equally to all bids and bidders; and
- (d) Oversight by an independent third party who shall design the solicitation, administer bidding, assure that criteria contained in division (C)(3) (a), (b) and (c) of this section are met, and evaluate bids prior to the winner’s selection.

(4) The results of the competitive bidding process shall be deemed final and approved, and shall, with other matters applied for by the electric distribution utility and approved by the commission, be the standard service offer of the electric distribution utility, if the following criteria are met:

- (a) The electric distribution utility belongs to a FERC-approved Regional Transmission Organization or otherwise establishes that there is non-discriminatory, open access to the transmission grid;
- (b) That such Regional Transmission Organization has a market monitor function, with the ability to take actions both to identify and mitigate market conditions or market conduct associated with the exercise of market power or the electric distribution utility otherwise establishes that a similar market monitoring function with commensurate ability to identify and mitigate market conditions or conduct associated with the exercise of market power exists;
- (c) Each bidder individually or all bidders in the aggregate possess sufficient physical capacity or financial capability to fulfill their offers to serve all load within the certified territory of the utility establishing the competitive bid process or each portion of the procurement process has been oversubscribed, such that the amount of supply initially

seeking to participate in the process exceeds the amount of load served through the process; and

(d) At least four suppliers offer supply into the procurement process.

If the competitive bidding process fails as a result of not satisfying any of the criteria set forth in division (C) (4) above, then the standard service offer shall be established as previously approved by the commission's final order under division (B) of this section for a period of one year. Once an electric distribution utility's competitive bidding process has met the criteria in division (C) (4) of this section, there shall thereafter exist a rebuttable presumption that a competitive market exists and that such criteria continue to be met.

(5) Nothing in division (C) of this section shall preclude an electric distribution utility from filing an electric security plan, which if approved by the commission, with or without modification, and accepted by the electric distribution utility, shall become the standard service offer of such electric distribution utility."

Insert before line 1591 the following:

"(D) At the request of the electric distribution utility or upon its own initiative, the commission may order that the retail rates resulting from either division (B) or (C) of this section be phased-in over a period not to exceed three years. If the commission orders rates to be phased-in, then, notwithstanding section 4928.02 (G) of the Revised Code, it shall prescribe the creation of regulatory assets pursuant to accounting principles generally accepted in the United States (GAAP), by authorizing deferral of incurred costs equal to the amount not collected, plus carrying charges thereon, and shall approve a non-bypassable distribution charge for all customers whereby the electric distribution utility is made whole by being allowed to recover the above-defined regulatory assets resulting from the phase-in, including carrying charges, over a period that complies with GAPP but not to exceed ten years. An electric distribution utility, at its sole option, may securitize the phase-in regulatory assets inclusive of carrying charges thereon and the other related costs including cost arising from such securitization. The commission shall adopt such rules and enter such orders as are necessary to facilitate such securitization to the maximum extent possible and enter such orders as are necessary to preserve the revenue stream supporting it."

At line 1594, insert a period after the word "order" and delete the remainder of that line through line 1596.

Insert after line 1623 the following:

"(H) A standard service offer provided pursuant to division (B) or (C) of this section shall be deemed a competitive electric generation service, just and reasonable if it conforms to the requirements of sections 4905.33 (B) and 4905.35 of the Revised Code and to constitute state action with respect to the provision of supplying competitive electric generation service. The ratemaking provisions set forth in chapter 4905 and 4909 of the Revised Code are not applicable to the establishment of a standard service offer pursuant to this section.

Amendments to Section 4928.17:

The purposes of these amendments are to broaden the commission authority in order: to reinstate the existing subsection 4928.17(E), whereby utilities can advance corporate separation and facilitate a competitively bid standard service offer through market-driven capability to transfer or sell generation assets; and to recognize an exception for newly constructed generation assets.

In line 1663 after “service,” insert “other than a standard service offer under section 4928.14 of the Revised Code,”.

Delete the amendments set forth on lines 1739 through 1746, restore the original language and insert at the end of that section “Notwithstanding the above, any newly constructed generation asset approved by the commission as a part of an electric security plan shall not be sold or transferred without prior commission approval. For purposes of this section, a merger shall not constitute a transfer or sale.”