

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of Chapters)
4901:5-17, 4901:5-19, 4901:5-21, 4901:5-)
23, 4901:5-25, 4901:5-29, 4901:5-33,)
4901:5-35, and 4901:5-37 of the Ohio)
Administrative Code.)
Case No. 06-1201-AU-ORD

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PUCO

**INITIAL COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

On October 11, 2006, the Public Utilities Commission of Ohio ("PUCO" or "Commission") issued an Entry pursuant to Section 119.032, Ohio Revised Code, in which the Commission calls for comments on current rules governing energy emergencies. The Staff of the PUCO ("Staff") proposed amendments to the following rules ("Energy Emergency Rules") in the Ohio Administrative Code: Chapters 4901:5-17 (addressing the governor's emergency powers), 4901:5-19 (addressing fuel emergencies related to the generation of electricity), 4901:5-21 and 4901:5-23 (addressing coal allotment and other matters affecting coal shortages), 4901:5-25 (addressing natural gas emergencies), 4901:5-29 (addressing heating oil and propane emergencies), 4901:5-33 (addressing transportation fuel emergencies), 4901:5-35 (addressing set-asides and emergency reporting), and 4901:5-37 (addressing outages on transmission facilities).¹

¹ Entry at 1 (October 11, 2006).

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On November 7, 2006, a Joint Motion for Extension of Time to File Comments and Reply Comments was filed.² On November 8, 2006, a Memorandum in Support of the Joint Motion for Extension of time was filed by the Ohio Rural Electric Cooperatives, Inc. and Buckeye Power, Inc. On November 14, 2006, the Commission issued an Entry granting the Joint Motion for Extension of time thereby requiring interested parties to file Initial Comments by December 15, 2006 and Reply Comments by January 16, 2007.³

The Office of the Ohio Consumers' Counsel ("OCC") commends the PUCO Staff for their review and proposed amendments to the Energy Emergency Rules. In particular, the OCC commends the Staff for recognizing the importance of increasing fuel diversity used in the generation of electrical power in the state of Ohio in addressing an energy emergency.⁴ The OCC has particular interest in assuring that Ohio's electric utilities are developing a renewable energy portfolio which, if developed, could be a significant factor in insulating Ohio electric utilities from emergency situations that involve shortages in traditional energy resources (i.e. coal and natural gas).

² The Joint Movants are Ohio Edison Company, The Cleveland Electric Illuminating Company, The Toledo Edison Company, Columbus Southern Power Company, Ohio Power Company, Dayton Power and Light Company, and Duke Energy.

³ Entry at 1 (November 14, 2006).

⁴ Entry Proposed Rules Ohio Adm. Code 4901:5-19(B)(2) at 12 (October 11, 2006).

II. COMMENTS

A. Reporting

1. Energy Suppliers Reporting to the Commission

Under the proposed Energy Emergency Rules there are reporting requirements of the Electric Power Producers,⁵ Electric Providers,⁶ and Gas Suppliers⁷ during pre-emergency and emergency situations. These requirements entail energy supplier reports to the Commission on the adequacy of the energy source supply.⁸ The reports should be provided to OCC as well.

The reports should be provided to OCC because there is a focus in the rules on residences. OCC is the state advocate for residential utility consumers. Under the rules for each energy source covered under the Energy Emergency Rules, priority use is defined as: "the amount of * * * energy necessary for protection of the public's health and safety, and for the prevention of unnecessary or avoidable damage to: (1) residences (including, but not limited to homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients)."⁹ It is important for the OCC to receive the same information from the electric and natural gas suppliers that the PUCO is

⁵ Entry Proposed Rules Ohio Adm. Code 4901:5-19-01(C) at 1 (October 11, 2006) (Electric Power Producers are defined) .

⁶ Entry Proposed Rules Ohio Adm. Code 4901:5-19-01(E) at 2 (October 11, 2006) (Electric Providers are defined).

⁷ Entry Proposed Rules Ohio Adm. Code 4901:5-25-01(F) at 29 (October 11, 2006) (Gas Suppliers are defined).

⁸ Entry Proposed Rules Ohio Adm. Code 4901:5-19-02(E) at 5; 4901:5-19-04(C) at 8; 4901:5-19-05(A)(3)(B) at 10; 4901:5-19(A)(4)(B) at 10; 4901:5-19(B)(2)(B) at 12; 4901:5-19(B)(3) at 12; 4901:5-25-04(E) at 34; 4901:5-25-05(1)(F) at 35 (October 11, 2006).

⁹ Entry Proposed Rules Ohio Adm. Code 4901:5-19-01(J), 4901:5-23-01(H), 4901:5-25-01(I), 4901:5-29-01(I) (October 11, 2006),

receiving, because under the Energy Emergency Rules, the use of energy, electricity or natural gas for the prevention of unnecessary or avoidable damage to residences by definition is considered a priority use.

The reason for OCC's concern is that during an energy emergency, there is a potential for controversy and/or abuses in the allocation of scarce energy supplies. The information provided to the Commission will be important to understanding the adequacy of energy supplies and the proposed allocations of those supplies to end users.

Accordingly, OCC requests that the Commission amend the following Energy Emergency Rules to include additional language that requires the energy supplier to also provide OCC with the required reports.

OCC requests the following rules be amended to include additional language as follows:

4901:5-19-02(E) at 5

Each weekly/daily supply adequacy report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-19-04(C) at 8

Each weekly/daily supply adequacy report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-19-05(A)(3)(B) at 10

Each weekly/daily anticipated and actual load report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-19(A)(4)(B) at 10

Each estimate of fuel savings resulting from load reduction(s) report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-19(B)(2)(B) at 12

Each supply adequacy report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-19(B)(3) at 12

Each weekly/daily anticipated and actual load report prepared by an electric power producer shall also be required to be provided to the OCC.

4901:5-25-04(E) at 34

Each periodic report prepared by a gas supplier required by the Commission shall also be required to be provided to the OCC.

4901:5-25-05(1)(F) at 35

The information provided by the energy suppliers in the above reports is necessary for OCC to assure the residential consumers' entitlement to the energy supply during an emergency will be protected.¹⁰

2. Reporting to Consumers

The Energy Emergency Rules include requirements that the energy suppliers during an energy emergency, will provide their consumers with notifications/informational updates pertaining to energy supplies and conservation or curtailment requirements. OCC requests the Commission to amend the following rules pertaining to electric and natural gas suppliers by requiring the energy suppliers to provide the OCC with the same notification/information provided to their consumers.

¹⁰ OCC will sign a negotiated Protective Agreement with any electric/natural gas energy supplier providing the Commission with energy supply information in compliance with these rules.

Accordingly, OCC asks the Commission to amend the following Energy
Emergency Rules to include language as follows:

4901:5-19-04(A)(1) and (A)(2) at 7

Each electric power producer that provides notice to its consumers regarding an imminent shortage of electric service and a request to reduce consumption shall also be required to provide the same notice to the OCC.

4901:5-19-05(A)(2) at 9

Each electric provider that prepares a public appeals campaign through the news media regarding suggestions to reduce consumption shall also be required to provide the same information to the OCC.

4901:5-19-05(A)(3) at 10

Each electric provider that issues periodic bulletins to inform consumers about curtailments shall also be required to provide the same information to the OCC.

4901:5-25-04(A) and (B) at 32

Each gas supplier that provides notice to its consumers regarding an imminent shortage or interruption of gas service and a request to reduce consumption shall also be required to provide the same information to the OCC.

4901:5-25-05(A)(1)(A), (B), (C), and (E) at 34-35

Each gas supplier that provides notice to its consumers regarding an imminent shortage or interruption of gas service and a request to reduce consumption shall also be required to provide the same information to the OCC.

By providing OCC with the same pertinent information that the customers receive regarding energy supply shortages or requests to reduce consumption, OCC will be in a

better position to quickly respond to consumer inquiries on the energy emergency with current information.

B. Fuel Source Advisory Council

Proposed rule 4901:5-19-02(I) states:

The Commission's Fuel Source Advisory Council may notify and advise the Chairman of the Commission about electric power supply problems and shortages and may make recommendations, including the need for the Governor to declare an energy emergency and to implement Rule 4901:5-19-05 of the Ohio Administrative Code.

The rule should establish which agencies, departments and/or organizations participate on the Commission's Fuel Source Advisory Council. The rule's silence on this issue suggests that it is a membership comprised of only Commissioners and/or Commission Staff members.

The Fuel Advisory Council plays an important role in identifying emergency situations, advising the Chairman on energy supply issues, and formulating a recommendation to the Governor, including the need to declare an energy emergency that implicates these rules. Because of the important responsibilities and the potential wide-spreading repercussions that implementation of proposed Rule 4901:5-19-5 will have, it is important for the Council to also include members from outside the Staff. The proposed rules should be amended to include and identify other agencies, departments and/or organizations whose representatives are eligible to participate on the Fuel Advisory Council. Therefore, the Fuel Advisory Council should include, in part, representatives from the Commission Staff, OCC, Ohio Emergency Management Agency, and industry representatives to assure the interests of all parties affected by an energy emergency are appropriately considered.

C. Natural Gas Use for Electric Generation

One area of potential interest is the priority use of natural gas for the electric industry. The proposed rule has not changed the existing rule; however, the use of gas in the electric industry is changing. The proposed rule 4901:5-25-01(I) states:

The Priority use [in relation to the electric industry] means the minimum amount of gas necessary for protection of the public health and safety, and for the prevention of unnecessary or avoidable damage to:

* * *

- (4) Electric generating facilities and central heating plants serving the public.

One possible interpretation of this proposed rule could be that priority use of gas is limited to the gas needed to protect an electric plant from freezing and maybe boiler pilot lights, but not the fuel to power electric generation. However, another interpretation of this rule could be to expand the priority use of gas to include the gas necessary to power generation in order to protect public health and safety. With the expansion of gas peaking generation units (Gas units comprise over 25% of Ohio's generating capacity, but generate a much lower percentage of total electricity), the demand for gas for generation in an emergency could be a large portion of the gas available on the pipelines. This could lead to a challenge over gas priority use between gas suppliers and the electric generators during an emergency. In order to alleviate the potential for future debate over the priority use of gas, this rule should be clarified.

The priority use of gas is currently at issue before the Federal Energy Regulatory Commission ("FERC"). A recent FERC Order involves FERC's efforts to get gas and electric companies to better cooperate with each other in terms of scheduling gas for

peaking operations.¹¹ In FERC's Order it stated: "[t]he Commission is concerned that the scheduling practices of independent system operators (ISOs) and regional transmission organizations (RTOs) are not effectively coordinated with the scheduling of natural gas purchase and transportation transactions, so that gas-fired must-run generators may be unable to obtain gas during periods when gas transportation is constrained or gas prices are volatile".¹² FERC has established January 16, 2007 as the date for the RTOs and ISOs to make a filing either proposing necessary changes to their scheduling and compensation systems or explaining why such changes are unnecessary. Because the potential exists for a controversy to develop around the allocation of natural gas during an emergency situation, it only makes sense for the proposed emergency rules to be clarified to avoid future problems with the interpretation of the rules during an actual emergency.

D. Simulate an Emergency to Put the Rules to the Test

These Energy Emergency Rules are a tremendous first step towards the state of Ohio addressing an energy emergency. However, if this country has learned anything from the 2005 hurricane season it should be that in an emergency one must expect the unexpected. It is clear that the City of New Orleans, the States of Louisiana, Mississippi, and Alabama, in addition to the Federal government, all had emergency plans and procedures drafted to address a hurricane the magnitude of Katrina. Unfortunately, plans and procedures alone were not enough to efficiently and effectively manage the crisis following the damage and devastation caused by hurricane Katrina. Think back to

¹¹ *California Independent System Operator Corp.*, FERC Docket No. EL07-1-000; *ISO New England, Inc.*, FERC Docket No. EL07-2-000; *PJM Interconnection, LLC*, FERC Docket No. EL07-3-000; *Midwest Independent Transmission System Operator, Inc.*, FERC Docket No. EL07-4-000; *New York Independent System Operator, Inc.*, FERC Docket No. EL07-5-000; *Southwest Power Pool Inc.*, FERC Docket No. EL07-6-000 Order instituting inquiries into gas-electric coordination issues (Issued October 25, 2006).

¹² *Id.* at 1.

August 29, 2005, and who would have believed that citizens of the United States could have sought shelter in a domed sports arena without sufficient food or water supplies, stranded for days while the country watched the catastrophic events unfold on television.

In this case, it would be unfortunate to review the rules, take comments from interested parties, and put the modified Energy Emergency Rules back on the shelf for five more years until their next review, and hope that an emergency never arises. Prior to finalizing these rules, the Commission should undertake an emergency simulation in order to test the emergency preparedness of the Commission and energy suppliers affected by the rules.

Through such a simulation, the Commission could assure that the rules effectively and efficiently address a supply emergency. It would allow the Commission to assure all contact information is current, accurate, and disseminated to all energy suppliers affected by these rules. The Commission could also assure that the reporting requirements are sufficiently defined, and that the energy suppliers know what information is to be provided to the Commission and when so that in a crisis the energy suppliers will be in compliance with the rules. Finally, the Commission through an emergency simulation could make an objective determination that through these rules the Commission possesses appropriate leadership, situational awareness, and that the rules establish clear lines of delegated decision making in order to efficiently address an energy related supply shortage.

Uninterrupted energy supply is important to Ohio's citizens and its economy, but in case of an emergency, adequate supply of energy may be adversely affected necessitating the implementation of these rules. These rules are to assure the appropriate

allocation of energy supplies for priority use when the energy suppliers' ability to supply full energy requirements is being compromised by an energy supply emergency. The Commission should insure that if the Energy Emergency Rules are implemented that those affected by their implementation effectively and efficiently address the emergency through a simulated emergency.

III. CONCLUSION

The OCC supports the Commission's amendments to the Energy Emergency Rules and urges the Commission to adopt the proposed rules with the changes discussed above.

Respectfully submitted,

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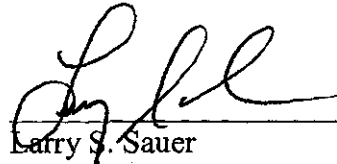


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Office of the Ohio Consumers' Counsel Initial Comments*, was served by first class mail, postage prepaid, on the parties identified below this 15th day of December 2006.



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