

BEFORE


THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
Standard Service Offer, Corporate Separation,)
Reasonable Arrangements, and Transmission)
Riders for Electric Utilities Pursuant to) Case No. 08-777-EL-ORD
Sections 4928.14, 4928.17, and 4905.31,)
Revised Code, as amended by Amended)
Substitute Senate Bill No. 221.)

ENTRY

The Commission finds:

- (1) On July 7, 1999, the governor of the state of Ohio signed Amended Substitute Senate Bill No. 3 (SB 3). That legislation, among many things, established a starting date for competitive retail electric service in the state of Ohio and provided for the establishment of market development periods (MDP) for each electric utility. After the MDP, pursuant to Section 4928.14(A), Revised Code, as originally enacted into law, each electric utility was required to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a market-based standard service offer (MBSSO) to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to Section 4928.14(B), Revised Code, each electric utility was required to offer customers within its certified territory an option to purchase competitive retail electric service after its MDP ends, the price of which is to be determined through a competitive bidding process (CBP).
- (2) On December 17, 2003, the Commission issued a Finding and Order in Case No. 01-2164-EL-ORD which adopted, with certain modifications, staff's proposed rules for processing applications to establish the MBSSO and CBP in Chapter 4901:1-35-01, Ohio Administrative Code (O.A.C.).
- (3) On May 1, 2008, the governor signed into law Amended Substitute Senate Bill No. 221 (SB 221) amending various provisions of SB 3. Among those amendments were changes to Section 4928.14, Revised Code, to establish a standard service offer (SSO); Section 4905.31, Revised Code, to approve

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reasonable arrangements and utility schedules; and Section 4928.17, Revised Code, to establish corporate separation plans. Pursuant to the amended language of Section 4928.14, Revised Code, electric utilities are required to provide consumers with an SSO, consisting of either a market-rate offer (MRO) or an electric security plan (ESP). The SSO shall serve as the electric utility's default SSO. Electric utilities may apply simultaneously under both options; however, at a minimum, the first SSO application must include an application for an ESP. The amendments to Section 4905.31, Revised Code, modify the applicability of reasonable arrangements and the amendments to Section 4928.17, Revised Code, impose additional requirements on electric utilities relating to the transfer of assets.

- (4) The staff of the Commission has proposed a complete rewrite of Chapter 4901:1-35, O.A.C., and its incorporated appendices, which include procedural requirements for filing applications for an MRO and ESP as well as filing requirements for such applications in accordance with SB 221. The staff is also proposing Chapter 4901:1-36 to establish procedures for the implementation of transmission riders and Chapter 4901:1-38 to establish procedures for approving reasonable arrangements between the electric utility and customers. Further, the staff is proposing to rescind Rule 4901:1-20-16, O.A.C., and revise and place the existing Commission requirements in a stand-alone Chapter 4901:1-37 to address electric utility corporate separation between affiliated entities, as well as new SB 221 requirements.
- (5) The Commission requests comments from interested persons to assist in the review of staff's proposed Chapters 4901:1-35 through 4901:1-38. Comments should be filed in this docket by July 22, 2008, and reply comments should be filed by August 1, 2008. Filed comments may be viewed on the Commission's web site by going to www.puc.ohio.gov/PUCO, clicking on DIS, and inserting the case number, 08-777, in the case look-up search box. If any entity filing comments requires a paper copy of the comments filed, it shall file a notice of its request in this docket. The other commenters shall serve a copy of the comments upon the requesting party via email or hard-copy to the address provided.

- (6) The Commission notes that the rules and appendices attached to this entry are over 40 pages. While the Commission finds that a hard copy of this entry should be served upon all stakeholders, we believe that, rather than mail hard copies of the rules and appendices to the stakeholders, it would be prudent and more efficient to provide a web address where the attachment can be accessed. Accordingly, interested entities can access the attachment by going to the Commission's web site at www.puco.ohio.gov/PUCO/Rules, and clicking on the link to Staff's Proposed Rules for Electric Utility Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders to implement Senate Bill 221. If an entity has questions regarding how to access the attachment or does not have access to the internet, it may contact the Commission's Docketing Division at (614) 466-4095, Monday through Friday between the hours of 7:30 a.m. and 5:30 p.m.
- (7) To assist the Commission in its evaluation of Staff's proposed rules, the Commission requests that interested parties file with their comments responses to the following questions.
- (a) Should the rules on the competitive bidding process (Proposed O.A.C. §4901:1-35-03, Appendix A, Part (B)) provide for consideration of alternative products and approaches to conducting competitive bidding?
 - (b) Should the Commission require consideration of the value of lost load in ensuring that customers' and the electric utility's expectations are aligned as required by Section 4928.143(B)(2)(h), Revised Code?
 - (c) Should the Commission by rule invite an electric utility to identify in an ESP specific long-term objectives (e.g., objectives related to the implementation of state policies or meeting standards contained in S.B. 221), together with milestones and metrics for measuring progress? If so, are there specific topics which should be addressed?
 - (d) With respect to an energy efficiency schedule based on a reduction in electricity consumption (Proposed O.A.C. §4901:1-38-04 (B)), how should the rules define the baseline level of customer energy consumption from which a reduction would be measured?

- (e) Should special arrangements provided for in Chapter 4901:1-38 be applicable only to customers of an electric utility providing service pursuant to an electric security plan?
- (f) Should there be a cap on the level of incentives for special arrangements authorized pursuant to Chapter 4901:1-38?


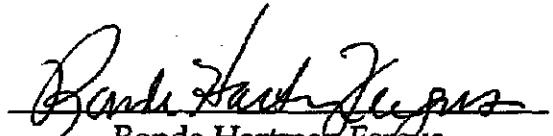
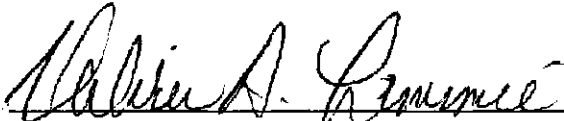

It is, therefore,

ORDERED, That public comments on the staff's proposed rules be filed in accordance with finding (5). It is, further,

ORDERED, That entities access the rules and appendices at the above internet site or contact the Commission's Docketing Division. It is further,

ORDERED, That a copy of this entry, without the attachments, be served upon electric utility companies regulated by the Commission, competitive retail electric service providers certified by the Commission, the Office of the Ohio Consumers' Counsel, and all interested parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman
Paul A. Centolella
Ronda Hartman Fergus
Valerie A. Lemmie
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RRG:ct

Entered in the Journal

JUL 02 2008Renee J. Jenkins
Secretary

Chapter 4901:1-35

Electric Utility Standard Service Offer

- 4901:1-35-01 Definitions.
- 4901:1-35-02 Purpose and scope.
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- 4901:1-35-07 Discoverable agreements.
- 4901:1-35-08 Competitive bidding process requirements and use of independent third party.
- 4901:1-35-09 Electric security plan fuel and purchased power adjustments.
- 4901:1-35-10 Annual review of electric security plan.
- 4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.

4901:1-35-01 Definitions.

- (A) "Application" means an application for standard service offer pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Competitive bidding process" means a bidding process established pursuant to section 4928.142 of the Revised Code.
- (D) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.143 of the Revised Code.
- (F) "Market development period" has the meaning set forth in division (A)(17) of section 4928.01 of the Revised Code.
- (G) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.
- (H) "Person" has the same meaning as in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Rate plan" means an electric utility's standard service offer approved by the commission prior to January 1, 2009 that established rates for electric service at the expiration of an electric utility's market development period.
- (J) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.
- (K) "Staff" means the staff of the commission or its authorized representative.

4901:1-35-02 Purpose and scope.

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain

essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.

- (B) The commission may waive any requirement of Chapter 4901:1-35 of the Administrative Code for good cause shown.

4901:1-35-03 Filing and contents of applications.

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, shall comply with the requirements set forth in this rule.

- (A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). Twenty copies plus an original of the application shall be filed. The application must include a complete set of testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.
- (B) An SSO application that contains a proposal for an MRO shall comply with the requirements of appendix A to this rule. An SSO application that contains a proposal for an ESP shall comply with the requirements of appendix B to this rule.
- (C) The first application for an SSO by each electric utility shall include an ESP and shall be filed at least one hundred fifty days before the electric utility proposes to have such SSO in effect. The first application may also include a proposal for an MRO. First applications that are filed with the commission prior to the effective date of this rule and that are determined by the commission to be not in substantive compliance with this rule, shall be refiled at the direction of the commission. The commission shall endeavor to make a determination on an application that substantively conforms to the requirements of this rule within one hundred fifty days of the filing of such complete application.
- (D) Subsequent applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission. An SSO application that contains a proposal for an

MRO shall comply with the requirements of appendix A to this rule. An SSO application that contains a proposal for an ESP shall comply with the requirements of appendix B to this rule.

- (E) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and achieves the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.
- (F) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, any and all documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.
- (G) All schedules, tariff sheets, and work papers included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

4901:1-35-04 Service of application.

- (A) Concurrent with the filing of a standard service offer (SSO) application and the filing of any waiver requests, the electric utility shall provide notice of proposed filings to each party in its most recent SSO or, if this is its first SSO filing, then its last rate plan proceeding. At a minimum, that notice shall state that a copy of the application and any waiver requests are available through the electric utility's and commission's web sites, available at the electric utility's main office, available at the commission's offices, and any other sites at which the electric utility will maintain a copy of the application and any waiver requests.
- (B) The electric utility shall provide copies of the application upon request, without cost, and within a reasonable period of time.

4901:1-35-05 Technical conference.

Upon filing of a standard service offer (SSO) application, the commission, legal director, deputy legal director, or attorney examiner shall schedule a technical conference. The purpose of the technical conference is to allow interested persons an opportunity to better understand the electric utility's application. The electric utility will have the necessary personnel in attendance at this conference so as to explain, among other things, the structure of the filing, the work papers, the data sources, and the manner in which methodologies were devised. The conference will be held at the commission offices, unless the commission, legal director, deputy legal director, or attorney examiner determines otherwise.

4901:1-35-06 Hearings.

- (A) After the filing of a standard service offer application that conforms with the commission's rules, the commission shall set the matter for hearing and shall publish notice of the hearing one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable and achieve the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility.
- (B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than thirty days after the issuance of the entry scheduling the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing.

4901:1-35-07 Discoverable agreements.

Upon submission of an appropriate discovery request during a proceeding establishing a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.

4901:1-35-08 Competitive bidding process requirements and use of independent third party.

- (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). The CBP plan shall comply with the requirements set forth in appendix A to rule 4901:1-35-03 of this chapter. The electric utility shall use an independent third party to design an open, fair, and transparent bid solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. Any modifications or additions to the CBP made by the independent third party shall be submitted to staff prior to implementation. The independent third party shall incorporate into the solicitation such measures as the Commission or its staff may prescribe, and shall incorporate into the bidding process any direction the Commission may provide.
- (B) Immediately upon the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report shall include, but not be limited to, the following items:
 - (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that could have adversely affected the outcome.
 - (2) The level(s) of oversubscription for each product.
 - (3) The number of bidders for each product.
 - (4) The percentage of each product that was bid upon by persons other than the electric utility.
 - (5) The independent third party's evaluation of the submitted bids.
 - (6) The independent third party's final recommendation of the least cost winning bidder(s).
 - (7) A listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how the conversion from winning bid(s) to retail rates was accomplished.

- (C) The electric utility shall provide access to staff and any consultant hired by the commission to assist in review of the CBP of any and all data, information, and communications pertaining to the bidding process, on a real time basis, regardless of the confidential nature of such data and information.
- (D) The commission shall make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP.

4901:1-35-09 Electric security plan fuel and purchased power adjustments.

- (A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.
- (B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs by filing an application four times per year. The staff shall review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information shall be summarized monthly.
- (C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments shall be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.
- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

4901:1-35-10 Annual review of electric security plan.

- (A) Within ninety days after the end of each annual period of an electric utility's electric security plan (ESP), the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's ESP resulted in excessive earnings during the review period as measured by division (F) of section

4928.143 of the Revised Code. The electric utility's filing shall include the information set forth in appendix B to rule 4901:1-35-03 of this chapter as it relates to excessive earnings.

- (B) Any person may file comments to the electric utility's filing made pursuant to paragraph (A) of this rule within thirty days of the filing.
- (C) Based upon the above filings, if the commission finds that there are reasonable grounds that such adjustments, in the aggregate, may have resulted in significant excess earnings for the electric utility, the commission may set the matter for hearing.

4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.

- (A) The initial MRO implemented by each electric utility subject to the provisions of division (D) of section 4928.142 of the Revised Code shall include a blended price for electric generation services.
- (B) Once a competitive bidding process (CBP) plan subject to a price blending period is approved by the commission pursuant to section 4928.142 of the Revised Code, the electric utility shall file its proposed adjustments to the standard service offer (SSO) portion of the blended rates of its CBP in a filing to the commission on a quarterly basis (quarterly filing) for the duration of the price blending period of the CBP plan, on specific dates to be determined by the commission.
 - (1) The quarterly filing shall include a separate listing of each cost or cost component including costs for fuel, purchased power, portfolio requirements, and environmental compliance, in comparison with the costs or cost components included in the most recent SSO and the previously existing level of each cost. Any offsetting benefits, as defined in division (D) of section 4928.142 of the Revised Code, obtained in the specified cost areas shall be listed separately and be used to reduce the cost levels requested for recovery. Rates are to be adjusted on a quarterly basis. The cost information shall consist of monthly data submitted on a quarterly basis.
 - (2) The quarterly filing shall include any descriptions, formulas, and/or tables necessary to show how the adjusted cost levels are translated into blended CBP rates.

- (3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity.
 - (4) The staff shall review the quarterly filing for completeness and computational accuracy. If the staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.
 - (5) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed. The commission shall determine the frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.
- (C) If the CBP plan is approved by the commission subject to a price blending period, approximately one year after filing the CBP plan, and annually thereafter for the duration of the price blending period of the CBP plan, on dates to be determined by the commission, the electric utility shall file an annual status report on its CBP.
- (1) The annual status report shall provide a general statement about the operation of the CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers.
 - (2) The annual status report shall describe any defaults and/or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
 - (3) The annual status report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated and/or known for the following year.
 - (4) The annual status report shall describe the financial condition of the electric utility, its current return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. The electric utility shall show that its earnings under the price

blending period have not been significantly excessive as compared with similarly situated companies. Information submitted by the electric utility shall include, but not be limited to, balance sheet information, income statement information, and capital budget requirements for future investments in Ohio. This information should be provided for generation, transmission, and distribution for the electric utility and its affiliates, as well as functionalized as to distribution, transmission, and generation activities. Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned by publicly traded companies that face comparable business and financial risks as the electric utility.

- (5) If in an emergency situation the electric utility claims that its financial integrity is threatened by the operation of the CBP price blending period, it shall demonstrate its claim through information and data filed in its annual status report.
- (6) The electric utility shall discuss, in its annual status report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
- (7) The annual status report shall describe the blended phase-in rates projected to be charged to its customers under the continuation of the CBP plan, as modified pursuant to paragraph (B)(6) of this rule. The rate projections shall show the existing and projected generation service price(s) blended with the CBP determined rates and projected CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending is accomplished. The projected blended phase-in rates shall be compared in the annual status report to the existing blended phase-in rates.
- (8) The annual report shall include a status report of the market conditions necessary and prerequisite for a utility to propose an MRO - namely, whether prices for each service necessary for a winning bidder to fulfill its contractual obligations resulting from the CBP are published for at least two years in the future, whether the electric utility or its affiliate still belongs to an RTO, and whether the RTOs market monitoring function has mitigation authority over the transactions resulting from the CBP.
- (9) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or

requests set forth in the annual status report, and set any necessary schedules through an entry.

- (D) If the CBP plan is approved by the commission without the requirement of a price blending period, or after the expiration of any such required price blending period, on an annual basis, on dates to be determined by the commission, the electric utility shall file an annual CBP report with the commission.
- (1) The annual CBP report shall provide a general statement about the operation of the CBP to date. The annual CBP report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP on the electric utility's customers' rates.
 - (2) The annual CBP report shall describe any defaults or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
 - (3) The annual CBP report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated or known for the following year.
 - (4) The electric utility shall discuss, in its annual CBP report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
 - (5) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual CBP report, and set any necessary schedules through an entry.

Appendix A

Requirements for Market-Rate Offers

- (A) The following electric utility requirements are to be demonstrated in a separate section of the standard service offer (SSO) application proposing a market-rate offer (MRO):
- (1) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the Federal Energy Regulatory Commission; or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.
 - (2) The electric utility shall establish one of the following: that its RTO retains an independent market monitor that has the ability to identify any potential for a market participant to exercise market power in any energy, capacity, and/or ancillary service markets necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP, whether such market is administered by the RTO or whether it is a bilateral market necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP, by virtue of access to the RTO and the market participant's data and personnel, and that has the authority to mitigate the conduct of the market participants so as to prevent or preclude the exercise of market power by any market participant; or, if no such market monitor exists, the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of market power.
 - (3) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the CBP is publicly available. The information may be offered through a pay subscription service, but the pay subscription service shall be available to any person requesting it, and the information shall be sufficiently reliable and available for use in a proceeding before the commission. The published information shall be relevant to the electric utility's electricity market, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of

the publication. The published information shall be updated on at least a monthly basis.

- (B) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a competitive bidding process (CBP) with the commission. Each CBP plan that is to be used to establish an MRO shall include the following:
- (1) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan.
 - (2) Pro forma financial projections of the effect of the CBP plan's implementation upon generation, transmission, and distribution of the electric utility or its affiliates for the duration of the CBP plan.
 - (3) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan.
 - (4) Provisions for an open, fair, and transparent competitive solicitation of the generation services necessary to serve the customer load that is the subject of the CBP.
 - (5) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect customer loads. The descriptions shall include, at a minimum, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class for at least the two most recent years, applicable tariffs, historical shopping behavior, and plans for meeting targets pertaining to load reductions, energy efficiency, renewable energy, advanced energy, and advanced energy technologies.
 - (6) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions shall include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions shall clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.
 - (7) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.

- (8) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (9) A clear description of the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility.
- (10) If applicable, a description of the electric utility's proposed blending of the CBP rates pursuant to division (D) of section 4928.142 of the Revised Code. The proposed blending shall show the generation service price(s) that will be blended with the CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending will be accomplished. The proposed blending shall show all adjustments, to be made on a quarterly basis, included in the generation service price(s) that the electric utility proposes for changes in costs of fuel, purchased power, portfolio requirements, and environmental compliance incurred during the blending period. The electric utility shall provide its best current estimate of anticipated adjustment amounts for the duration of the blending period, and compare the projected adjusted generation service prices under the CBP plan to the projected adjusted generation service prices under its proposed electric security plan.
- (11) The electric utility's application to establish a CBP shall include such information as necessary to demonstrate whether or not, as of July 31, 2008, the electric utility directly owned, in whole or in part, operating electric generation facilities that had been used and useful in the state of Ohio.
- (12) The CBP plan shall provide for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission.
- (13) The electric utility may propose, as part of its CBP plan, a portfolio approach to the procurement of SSO generation supply, including such aspects as staggered procurements and spot solicitations during peak periods.
- (14) The initial filing of a CBP plan shall include a detailed account of how the plan achieves the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing,

subsequent filings shall include how the state policy is advanced by the plan.

- (C) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the Commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the Commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (D) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I) and (J) of section 4928.20 of the Revised Code.

Appendix B

Requirements for Electric Security Plans

Each filing for an electric security plan (ESP) shall include the following:

- (A) A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.
- (B) Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP.
- (C) Projected rate impacts by customer class/rate schedules for the duration of the ESP.
- (D) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the Commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the Commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (E) Division (A)(2) of section 4928.31 of the Revised Code required each electric utility to file an operational support plan as a part of its electric transition plan. Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.
- (F) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I) and (J) of section 4928.20 of the Revised Code.
- (G) A description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.
- (H) The initial filing for an ESP shall include a detailed account of how the ESP achieves the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.

Specific Information

Division (B)(2) of Section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric utility includes any of these features in its ESP, it should file the corresponding information in its application.

(A) Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

- (1) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.
- (2) The electric utility shall include in the application, as an offset, any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.
- (3) Demonstration by the electric utility that the cost as defined was prudently incurred as required under division (B)(2) of section 4928.143 of the Revised Code.
- (4) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.
- (5) A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, any and all documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.

(B) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction expenditures or environmental expenditures of generation resources. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

- (1) The application must include a description of the projected costs of the proposed facility and an integrated resource plan, demonstrating the need for the proposed facility, which has been previously approved by the commission.
 - (2) The application must also include a proposed process, subject to modification and approval by the Commission, for the competitive bidding of the construction of the facility unless the Commission has previously approved the process for competitive bidding of that specific facility.
 - (3) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.
 - (4) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.
- (C) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:
- (1) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or incentivizing customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale or a quantitative justification shall be provided.
 - (2) A listing and description of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.

- (3) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.
- (D) Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.
- (E) Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is being securitized, the electric utility shall provide a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy.
- (F) Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services. Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905 and 4909 of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.

Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

- (G) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility must provide a narrative explanation and information to allow appropriate evaluation of the proposal. In general, and to the extent applicable, the electric utility should include, for each separate mechanism or program, quantification of the estimated impact on rates over time and on the electric utility's finances over time. Specific requirements for infrastructure modernization plans include the following:
- (1) The application shall include a description of the infrastructure modernization plan, including but not limited to, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity.
 - (2) The application shall include a description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to, the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits.
 - (3) The application shall include a detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement.
 - (4) The application shall include a detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.

- (5) The application shall include a detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.
- (H) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.

Additional Required Information

- (A) Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of the ESP with respect to excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any ESP and examines earnings after each year. In each case, the burden of proof for demonstrating that earnings are not excessive is borne by the electric utility. For this demonstration, at a minimum, the electric utility shall provide the following information for the total electric utility as well as functionalized as to distribution, transmission, and generation activities:
 - (1) Balance sheet information.
 - (2) Income statement information.
 - (3) Capital budget requirements for future committed investments in Ohio.
- (B) The electric utility shall provide testimony and analysis demonstrating the return on equity that was earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility.

Chapter 4901:1-36

Transmission Cost Recovery

4901:1-36-01	Definitions.
4901:1-36-02	Purpose and scope.
4901:1-36-03	Application.
	Appendix
4901:1-36-04	Limitations.
4901:1-36-05	Hearings.
4901:1-36-06	Additional information.

4901:1-36-01 Definitions.

- (A) "Application" means an application for a transmission cost recovery rider pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (D) "Staff" means the staff of the commission or its authorized representative.

4901:1-36-02 Purpose and scope.

- (A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.
- (B) The commission may waive any requirement of Chapter 4901:1-36 of the Administrative Code for good cause shown.

4901:1-36-03 Application.

- (A) Each electric utility which seeks recovery of transmission and transmission-related costs shall file an application with the commission for a transmission cost recovery rider. The initial application shall include all information set forth in the appendix to this rule.
- (B) Each electric utility with an approved transmission cost recovery rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the transmission cost recovery rider shall include all information set forth in the appendix to this rule.
- (C) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.
- (D) Each annual application to update the transmission cost recovery rider shall be made seventy-five days prior to the proposed effective date of the updated rider.

- (E) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the projected amounts included in their previous application, the electric utility shall file an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.
- (F) Affected parties may file detailed comments on any issue concerning any application filed under this rule within thirty days of the date of the filing of the application.

4901:1-36-04 Limitations.

- (A) The transmission cost recovery rider costs shall be reconcilable on an annual basis, with carrying charges to be applied to both over and under recovery of costs.
- (B) The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers.
- (C) The transmission cost recovery rider shall include only federal energy regulatory commission approved transmission, ancillary service, and other regional transmission organization related charges that the electric utility is not recovering in any other schedule or rider included in the electric utility's tariff on file with the commission.

4901:1-36-05 Hearings.

Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission shall approve the application or set the matter for hearing within seventy-five days after the filing of a complete application under this chapter.

4901:1-36-06 Additional information.

On a biennial basis, the electric utility shall provide additional information in its annual application detailing the electric utility's policies and procedures for minimizing any costs in the transmission cost recovery rider where the electric utility has control over such costs.

Appendix

Schedule I.D.	Schedule Name and Required Data
A-1	Copy of proposed tariff schedules
A-2	Copy of redlined current tariff schedules
B-1	<p>Summary of Total Projected Transmission Costs</p> <p>Provide the total forecasted cost for each cost component.</p> <p>Provide all costs, including, but not limited to, costs related to network integration transmission service, ancillary service, regional transmission organization, and reconciliation adjustment.</p> <p>Indicate whether each component is energy or demand related.</p>
B-2	<p>Summary of Current versus Proposed Transmission Revenues</p> <p>Provide a table that includes billing determinants for each class applied to current transmission cost recovery rider rates and proposed transmission cost recovery rider rates, including current and proposed class revenues, and the dollar and percentage differences.</p>
B-3	<p>Summary of Current and Proposed Rates</p> <p>For each rate class provide the current transmission cost recovery rider rate and proposed transmission cost recovery rider rate, the dollar difference, and percentage change.</p>
B-4	<p>Graphs</p> <p>For each cost component provide a bar graph of quarterly actual transmission cost recovery rider costs beginning January 06.</p> <p>Also include the original projected cost for each quarter.</p> <p>Also include the next period projections on the graph.</p>
B-5	<p>Typical Bill Comparisons</p> <p>Provide a typical bill comparison for each rate schedule affected by the proposed adjustments to the transmission cost recovery rider.</p>
C-1	<p>Projected Transmission Cost Recovery Rider Costs</p> <p>For each cost component include the monthly projected transmission cost recovery rider cost.</p>
C-2	For each rate schedule provide the monthly projected cost.
C-3	<p>Provide the projected transmission cost recovery rider rate calculations.</p> <p>Provide all necessary support for the rate calculations, including support for demand and energy allocators.</p>
D-1	<p>Reconciliation Adjustment</p> <p>Provide actual transmission cost recovery rider costs for each component used to calculate the reconciliation adjustment.</p>
D-2	Provide monthly revenues collected from each rate schedule.
D-3	Provide monthly over and under recovery amounts.
D-3a...z	<p>Include all additional and necessary schedules for support, including, but not limited to:</p> <p>*Carrying cost calculation.</p> <p>*Reconciliation of throughput to company financial records.</p> <p>*Reconciliation of one month's bill from RTO to Financial Records of the company.</p>

Chapter 4901:1-37

Corporate Separation

4901:1-37-01	Definitions.
4901:1-37-02	Purpose and scope.
4901:1-37-03	Applicability.
4901:1-37-04	General provisions.
4901:1-37-05	Application.
4901:1-37-06	Revisions and amendments.
4901:1-37-07	Access to books and records.
4901:1-37-08	Cost allocation manual (CAM).
4901:1-37-09	Sale or transfer of generating assets.

NEW CHAPTER
(rescind 4901:1-20-16)

4901:1-37-01 Definitions.

- (A) "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal merchant function of the electric utility whereby the electric utility provides a competitive service.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Competitive retail electric service provider" means a provider of a competitive retail electric service as defined in division (A)(4) of section 4928.01 of the Revised Code.
- (D) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer, but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.
- (E) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (F) "Employees" are all full-time or part-time employees of an electric utility or its affiliates, as well as consultants, independent contractors, or any other persons performing various duties or obligations on behalf of or for an electric utility or its affiliate.
- (G) "Fully allocated costs" are the sum of direct costs plus an appropriate share of indirect costs. For purposes of these rules, the term "fully allocated costs" shall have the same meaning as the term "fully loaded embedded costs" as that term appears in division (A)(3) of section 4928.17 of the Revised Code.
- (H) "Staff" means the staff of the commission or its authorized representative.

4901:1-37-02 Purpose and scope.

- (A) The purpose of this chapter is to require all of the state's electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation.
- (B) This chapter is intended to create competitive equality, prevent unfair competitive advantage, and prohibit the abuse of market power in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (C) The commission may waive any requirement of Chapter 4901:1-37 of the Administrative Code for good cause shown.
- (D) To ensure compliance with this chapter, examination of the books and records of affiliates may be necessary.
- (E) Violations of this chapter shall be subject to section 4928.18 of the Revised Code.
- (F) The electric utility has the burden of proof to demonstrate compliance with this chapter.

4901:1-37-03 Applicability.

- (A) The provisions of this chapter shall apply to the activities of the electric utility and its transactions, or other arrangements, with its affiliates.
- (B) The provisions of this chapter shall apply to any shared services of the electric utilities with any affiliates.
- (C) The provisions of this chapter shall also apply to the sale or transfer of generating assets.

4901:1-37-04 General provisions.

- (A) Structural safeguards.
 - (1) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function independently of each other.

- (2) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall not share facilities and services if such sharing in any way violates paragraph (D) of this rule.
- (3) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall work/function independently of each other.
- (4) An electric utility may not share employees and/or facilities with any affiliate, if the sharing, in any way, violates paragraph (D) of this rule.
- (5) An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs.
- (6) Transactions made in accordance with rules or regulations approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in this chapter.

(B) Separate accounting.

Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

(C) Financial arrangements.

- (1) Unless otherwise approved by the commission, the financial arrangements of an electric utility are subject to the following restrictions:
 - (a) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.
 - (b) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
 - (c) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be

liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.

- (d) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
- (e) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.
- (f) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

(D) *Code of conduct.*

- (1) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.
- (2) On or after the effective date of the chapter, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.
- (3) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services) that is not contemporaneously and in the same form and manner available to a nonaffiliated competitor of retail electric service.
- (4) An electric utility shall treat as confidential all information obtained from a competitive retail electric service provider, both affiliated and nonaffiliated, and shall not release such information, unless a competitive retail electric service provider provides authorization to do so or unless the information was or thereafter becomes available to the public other than as a result of disclosure by the electric utility.

- (5) The electric utility shall not tie (or allow an affiliate to tie) or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.
- (6) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.
- (7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.
- (7) The electric utility shall ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power.
- (8) Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company.
- (10) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:
 - (a) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services.
 - (b) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation.
 - (c) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates preference over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service.

- (d) The electric utility shall strictly follow all tariff provisions.
 - (e) Except to the extent allowed by state law, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.
- (11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made.
- (E) Emergency.
- (1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.
 - (2) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff.

4901:1-37-05 Application.

- (A) Consistent with section 4928.17 of the Revised Code, an electric utility that provides in this state, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service (or a noncompetitive retail electric service and a product or service other than retail electric service) shall file with the commission an application for approval of a proposed corporate separation plan.
- (B) The proposed corporate separation plan shall, at a minimum, include the following:
- (1) Provisions that maintain structural safeguards.
 - (2) Provisions that maintain separate accounting.
 - (3) Identify and describe the financial arrangements between the electric utility and all affiliates.
 - (4) A code of conduct policy that complies with this chapter and that employees of the electric utility and affiliates must follow.

- (5) Identify and describe any joint advertising and/or joint marketing activities between the electric utility and an affiliate that the electric utility intends to utilize, including when and where the name and logo of the electric utility will be utilized, and explain how such activities will comply with this chapter.
- (6) Provisions related to maintaining a cost allocation manual (CAM).
- (7) A description and timeline of all planned education and training, throughout the holding company structure, to ensure that electric utility and affiliate employees know and can implement the policies and procedures of this rule. The information shall be maintained on the electric utilities' public website.
- (8) A copy of a policy statement to be signed by electric utility and affiliate employees who have access to any nonpublic electric utility information, which indicates that they are aware of, have read, and will follow all policies and procedures regarding limitation on the use of nonpublic electric utility information. The statement will include a provision stating that failure to observe these limitations will result in appropriate disciplinary action.
- (9) A description of the internal compliance monitoring procedures and the methods for corrective action for compliance with this chapter.
- (10) Each electric utility shall name a compliance officer who will be the contact for the commission and staff on corporate separation matters. The compliance officer shall certify that the approved corporation separation plan is up to date and in compliance with the commission's rules and orders. The electric utility shall notify the commission and staff of changes in the compliance officer.
- (11) A detailed description outlining how the electric utility and its affiliates will comply with this chapter. The format shall identify the provision and then provide the description.
- (12) A detailed listing of the electric utility's electric services and the electric utility's transmission and distribution affiliates' electric services.
- (13) The electric utility shall establish a complaint procedure for issues concerning compliance with this chapter, which, at a minimum, shall include the following:

- (a) All complaints, whether written or verbal, shall be referred to the legal counsel of the utility or their designee.
- (b) The legal counsel shall orally acknowledge the complaint within five working days of its receipt.
- (c) The legal counsel shall prepare a written statement of the complaint that shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and the specific claim.
- (d) The legal counsel shall communicate the results of the preliminary investigation to the complainant in writing within thirty days after the complaint was received, including a description of any course of action that was taken.
- (e) The legal counsel shall keep a file in the CAM, in accordance with rule 4901:1-37-08 of this chapter, of the written statements of the complaints and resulting investigations required by paragraphs (B)(13)(c) and (d) of this rule for a period of not less than three years.
- (f) This complaint procedure shall not in any way limit the rights of a party to file a formal complaint with the commission.

4901:1-37-06 Revisions and amendments.

- (A) All proposed revisions and/or amendments to the electric utility's approved corporate separation plan shall be filed with the commission, and a copy of the filing shall be provided simultaneously to the director of the utilities department.
- (B) Except for proposals related to the sale or transfer of assets filed pursuant to rule 4901:1-37-09 of this chapter, if a filing to revise and/or amend the electric utility's corporate separation plan is not acted upon by the commission within sixty days after it is filed, the modified corporate separation plan shall be deemed approved on the sixty-first day after filing.

4901:1-37-07 Access to books and records.

- (A) The electric utility shall maintain records sufficient to demonstrate compliance with this chapter, and shall produce, upon the request of staff, all books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, including those required under section 4928.145 of the Revised Code.
- (B) The staff may investigate such electric utility and/or affiliate operations and the interrelationship of those operations at the staff's discretion. In addition, the employees and officers of the electric utility and its affiliates shall be made available for informational interviews, at a mutually agreed time and place, as required by the staff to ensure proper separations are being followed.
- (C) If such employees, officers, books, and records cannot be reasonably made available to the staff in the state of Ohio, then upon request of the staff, the appropriate electric utility or affiliate shall reimburse the commission for reasonable travel expenses incurred.

4901:1-37-08 Cost allocation manual (CAM).

- (A) Each electric utility that receives products and/or services from an affiliate and/or that provides products and/or services to an affiliate shall maintain information in the CAM, documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations.
- (B) The CAM will be maintained by the electric utility.
- (C) The CAM is intended to ensure the commission that no cross-subsidization is occurring between the electric utility and its affiliates.
- (D) The CAM will include:
 - (1) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved.
 - (2) A description of all assets, services, and products provided to and from the electric utility and its affiliates.

- (3) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates.
 - (4) A copy of the job description of each shared employee.
 - (5) A list of names and job summaries for shared consultants and shared independent contractors.
 - (6) A copy of all transferred employees' (from the electric utility to an affiliate or vice versa) previous and new job descriptions.
 - (7) A log of all complaints brought to the utility regarding this chapter.
 - (8) A copy of the minutes of each board of directors meeting, where it shall be maintained for a minimum of three years.
- (E) The method for charging costs and transferring assets shall be based on fully allocated costs.
 - (F) The costs should be traceable to the books of the applicable corporate entity.
 - (G) The electric utility and affiliates shall maintain all underlying affiliate transaction information for a minimum of three years.
 - (H) Following approval of a corporate separation plan, an electric utility shall provide the director of the utilities department (or their designee) with a summary of any changes in the CAM at least every twelve months.
 - (I) The compliance officer designated by the electric utility will act as the contact for the staff when staff seeks data regarding affiliate transactions, personnel transfers, and the sharing of employees.
 - (J) The staff may perform an audit of the CAM in order to ensure compliance with this rule.

4901:1-37-09 Sale or transfer of generating assets.

- (A) Consistent with division (E) of section 4928.17 of the Revised Code, an electric utility shall not sell or transfer any generating asset it wholly or partly owns without prior commission approval.

- (B) An electric utility may apply for commission approval to sell or transfer its generating assets by filing an application to sell or transfer.
- (C) An application to sell or transfer generating assets shall, at a minimum:
 - (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
 - (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
 - (3) Demonstrate how the proposed sale or transfer will affect the public interest.
- (D) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest.
- (E) If, after such hearing or in the case that no hearing is required, the commission is satisfied that the sale or transfer is just, reasonable, and in the public interest, it shall issue an order approving the application to sell or transfer.
- (F) Staff shall have access to all books, accounts, and/or other pertinent records maintained by the transferor and transferee as related to the application to sell or transfer generating assets and in accordance with rule 4901:1-37-07 of this chapter.

Chapter 4901:1-38

Special Arrangements

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4901:1-38-01 Definitions.

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any economic development schedule, energy efficiency schedule, or unique arrangement.
- (D) "Economic Development," for the purpose of this chapter, includes, but is not limited to, incremental job creation, job retention, incremental capital investment, incremental or retained load, and incremental or retained benefits (e.g., local and state tax dollars, employment from business opportunities related to the core business of the customer).
- (E) "Electric utility" has the same meaning as in division (A)(11) of section 4928.01 of the Revised Code.
- (F) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.
- (G) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.
- (H) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.
- (I) "Staff" means the staff of the commission or its authorized representative.

4901:1-38-02 Purpose and scope.

- (A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (B) The commission may waive any requirement of Chapter 4901:1-38 of the Administrative Code for good cause shown.

4901:1-38-03 Economic development schedule.

- (A) Each electric utility shall file an application for commission approval for an economic development schedule applicable to new or expanding customers.
 - (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying for the schedule must meet the criteria set forth in paragraphs (a) to (h) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
 - (a) Eligible projects must be for non-retail purposes.
 - (b) At least twenty-five new, full-time jobs must be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time jobs must be at least one hundred fifty per cent of federal minimum wage.
 - (d) The project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least five hundred thousand dollars.
 - (e) The applicant must demonstrate financial viability.

- (f) The applicant must identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (g) The applicant must identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.
 - (h) The applicant must agree to maintain operations at the project site for at least twice the term of the incentives.
- (B) Each electric utility shall file an application for an economic development schedule for the retention of existing customers likely to cease, reduce operations, or relocate the operations out of state.
 - (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (g) below, must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
 - (a) Eligible projects must be for non-retail purposes.
 - (b) The number of full-time jobs to be retained must be at least twenty-five.
 - (c) The average billing load (in kilowatts to be retained) must be at least two hundred fifty kilowatts.
 - (d) The electricity-intensity of the operations (i.e., the ratio of the cost of electricity to the total operational expenses) must be at least ten per cent.
 - (e) The customer must demonstrate that the cost of electricity is a "major factor" in its decision to cease, reduce, or relocate its facilities to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) must be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.

- (f) The customer must identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.
 - (g) The customer must agree to maintain its current operations for the term of the incentives.
- (C) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall remain confidential by the electric utility. Nonetheless, the name and address of customers eligible for the schedules shall be public information.
 - (D) The staff shall have access to all customer and electric utility information related to service provided pursuant to these schedules for periodic and random audits.

4901:1-38-04 Energy efficiency schedule.

- (A) Each electric utility shall file an application for commission approval for an energy efficiency schedule applicable to energy efficiency production facilities with loads not more than one thousand kilowatts.
 - (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (h) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
 - (a) The customer must be an energy efficiency production facility as defined in this chapter.
 - (b) At least ten new, full-time jobs must be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time jobs must be at least one hundred fifty per cent of federal minimum wage.
 - (d) The load must be for no more than one thousand kilowatts.

- (e) The project must have a fixed asset investment in land, building, machinery/equipment, and infrastructure of at least two hundred fifty thousand dollars.
 - (f) The applicant must demonstrate financial viability.
 - (g) The applicant must identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (h) The applicant must agree to maintain operations at the project site for at least twice the term of the incentives.
- (B) The electric utility shall file an application for an energy efficiency schedule that recognizes the efforts by a customer with loads not more than one thousand kilowatts to reduce its electricity consumption per unit of production.
 - (1) The filing shall include a standard application form for customers.
 - (2) Each customer applying with the utility for the schedule must meet the criteria set forth in paragraphs (a) to (e) below and must submit to the electric utility verifiable information detailing how the criteria are met, and must provide an affidavit from a company official as to the veracity of the information provided.
 - (a) Eligible projects must be for manufacturing.
 - (b) The average billing load must be no more than one thousand kilowatts.
 - (c) The customer must identify its capital investments and expenses related to energy efficient measures.
 - (d) The customer must provide sufficient financial data to illustrate that it has reduced its electricity consumption per unit of production.
 - (e) The customer must agree that the electric utility may count the reduction in electricity consumption attributable to its investments and expenses toward its energy efficiency targets as set forth in section 4928.66 of the Revised Code.
- (C) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall remain confidential by the electric utility. Nonetheless,

the name and address of customers eligible for the schedules shall be public information.

- (D) The staff shall have access to all customer and electric utility information related to service provided pursuant to these schedules for periodic and random audits.

4901:1-38-05 Unique arrangements.

- (A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of this chapter, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a reasonable arrangement with one or more of its customers, consumers, or employees.
 - (1) An electric utility filing an application for commission approval of a reasonable arrangement with one or more of its customers, consumers, or employees bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission verifiable information detailing the rationale for the arrangement.
 - (2) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (3) The arrangement is subject to change, alteration, or modification by the commission.
- (B) A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a reasonable arrangement with the electric utility.
 - (1) Each customer applying for an arrangement bears the burden of proof as to the reasonableness of the arrangement and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.
 - (2) The customer shall provide an affidavit from a company official as to the veracity of the information provided.
 - (3) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

- (4) The arrangement is subject to change, alteration, or modification by the commission.
- (C) Reasonable arrangements must reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.

4901:1-38-06 Reporting requirements.

- (A) Each customer served under any schedule or unique arrangement established pursuant to this chapter must submit an annual report to the electric utility no later than April 30th of each year. The format of that report shall be determined by the electric utility and staff such that a determination of the compliance with the eligibility criteria can be determined.
- (B) The burden of proof to demonstrate on-going compliance with the schedule or unique arrangement lies with the customer. The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June 15th of each year.

4901:1-38-07 Level of incentives.

- (A) The level of the incentives associated with any schedule or unique arrangement established pursuant to this chapter shall be determined as part of the commission's review and approval of the applications filed pursuant to this chapter.
- (B) Incentives may be based on, but not limited to:
 - (1) Demand discounts.
 - (2) Percentages of total bills, or portions of bills.
 - (3) Direct contributions.
 - (4) Reflections of cost savings to the electric utility.
 - (5) Shared savings.
 - (6) Some combination of the required criteria.

- (C) Upon commission approval of an application, the schedule or arrangement, as approved, shall be:
 - (1) Posted on the commission's docketing information system.
 - (2) Accessible through the commission's web page.
 - (3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.
- (D) No customer shall be provided incentives from more than one schedule or arrangement approved by the commission pursuant to this chapter.

4901:1-38-08 Revenue recovery.

- (A) Each electric utility may apply for a rider for the recovery of certain costs associated with its delta revenue in accordance with the following:
 - (1) The rider is subject to commission approval.
 - (2) The rider may be updated, by application to the commission, semi-annually by the electric utility. All data submitted in support of the rider update is subject to commission review and audit.
 - (3) The approval of the request for revenue recovery, including the level of such recovery, is at the commission's discretion and the application is subject to change, alteration or modification by the commission.
 - (4) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (B) The electric utility may request recovery of administrative costs related to the programs as part of the rider. Such request is subject to audit, review and approval by the commission.
- (C) Any special arrangement in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates) are not subject to the delta revenue recovery mechanism.

- (D) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission.

4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a schedule or unique arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility, the electric utility after reasonable notice to the customer shall terminate the arrangement unless otherwise ordered by the commission.
- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, such amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of this chapter.