

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Sections 111.15 and 119.032, Revised Code, require the Commission to conduct a review, every five years, of its rules and to determine whether to continue its rules without change, amend its rules, or rescind its rules. The rules in the following Ohio Administrative Code (O.A.C.) chapters govern energy emergencies arising out of energy shortages: Chapter 4901:5-17 addresses the governor's emergency powers; Chapter 4901:5-19 governs fuel shortage emergencies related to the generation of electricity; Chapters 4901:5-21 and 4901:5-23 govern coal allotment and other matters affecting coal shortages; Chapter 4901:5-25 governs gas shortage emergencies; Chapter 4901:5-29 governs heating oil and propane shortage emergencies; Chapter 4901:5-33 governs transportation fuel emergencies in the event of a shortage; and Chapters 4901:5-35 and 4901:5-37 govern set-asides and emergency reporting in the event of a shortage.
- (2) Section 119.032(C), Revised Code, requires the Commission to determine all of the following:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted.
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level.

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- (c) Whether the rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rules incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by Section 121.74, Revised Code, and whether the incorporation by reference meets the standards stated in Sections 121.72, 121.75, and 121.76, Revised Code.
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (3) In making its review, an agency is required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules.
- (4) In addition, on February 12, 2008, the governor of the state of Ohio issued Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation," (executive order) which sets forth several factors to be considered in the promulgation of rules and requires the Commission to review its existing body of promulgated rules. Specifically, among other things, the Commission must review its rules to ensure that each of its rules is needed in order to implement the underlying statute; must amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that unnecessarily impede economic growth, or that have had unintended negative consequences; and must reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter.
- (5) By entry issued October 11, 2006, the Commission issued staff-proposed revisions and suggestions for comment. Initial comments were filed by the office of the Ohio Consumers' Counsel (OCC); Ohio Department of Public Safety, Emergency Management Agency (EMA); Industrial Energy Users-Ohio (IEU); Ohio Coal Association (Ohio Coal); Ohio Gas Marketers Group (consisting of Commerce Energy, Inc. dba Commerce Energy of Ohio, Inc.; Hess Corporation; Direct Energy Services, LLC; Interstate Gas Supply, Inc.; MxEnergy, Inc.; and Vectren Retail LLC dba Vectren Source) (collectively referred to as the

Gas Marketers); Ohio Oil and Gas Association (OOGA); Ohio Rural Electric Cooperatives, Inc., and Buckeye Power (jointly referred to as the Cooperatives); American Municipal Power-Ohio, Inc. (AMP-Ohio); Stand Energy Corporation (Stand); Eagle Energy, LLC (Eagle); Duke Energy Ohio, Inc. (Duke); Marathon Petroleum Company, LLC (Marathon); East Ohio Gas Company dba Dominion East Ohio (Dominion); Columbus Southern Power Company and Ohio Power Company (jointly referred to as AEP); the Dayton Power and Light Company (DP&L); Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively referred to as FE, for FirstEnergy companies); and Columbia Gas of Ohio, Inc. (Columbia). Reply comments were filed by OCC, the Gas Marketers, the Cooperatives, AMP-Ohio, Duke, Dominion, AEP, DP&L, and FE.

- (6) The Commission will address the more relevant comments below. Throughout this order, references or citations to comments will be designated as "initial" for initial comments and "reply" for reply comments. In response to comments presented in this case, some paragraph numbers and rule numbers have been changed. Therefore, rules that are currently in effect shall be referred to as "existing rules." The rules proposed by staff and issued for comment on October 11, 2006, shall be referred to as "staff-proposed rules." The amended rules set forth in the attachment to this order shall be referred to as the "amended rules." The Commission would also note that some minor, noncontroversial changes have been incorporated into the amended rules without Commission comment. Any recommended change that is not discussed below or incorporated into the amended rules should be considered denied.

General Comments

- (7) Industry Forum Prior to Order - AMP-Ohio maintains that the comment process is not adequate to determine all of the issues, their interrelationships, and the potential impact on the stakeholders. Therefore, AMP-Ohio recommends that the Commission convene a forum with all of the stakeholders to discuss the proposed revisions and ensure that they are legal, appropriate, and effective, prior to the Commission issuing its final order in this case (AMP-Ohio at 10). Duke, Ohio Coal,

and OCC agree that a forum involving all interested stakeholders should be held (Duke initial at 5; Ohio Coal initial at 5; OCC reply at 6). The Commission does not find that a forum is necessary prior to the issuance of our order in this case. The Commission has carefully considered the comments and replies submitted by the interested stakeholders and we believe that the attached amended rules appropriately address the issues raised. Therefore, the Commission believes that the most appropriate way to proceed is to schedule a technical conference once the amended rules are effective, in order to meet with stakeholders and discuss the changes in the rules. Accordingly, the attorney examiner shall issue an entry scheduling the technical conference once the rules are effective. The Commission finds that the commenters' request for a forum on these rules prior to the issuance of our order should be denied.

- (8) Rule Approval Process - Section 4935.03, Revised Code, states that the Commission shall adopt, and may amend or rescind the energy emergency rules, in accordance with Section 111.15, Revised Code, and with the approval of the governor. Duke proposes that the Commission include language in the rules referencing the governor's statutorily required approval (Duke initial at 2). When reviewing rules and considering amendments to rules, the Commission is cognizant of its responsibility to adhere to the procedures and requirements set forth in various chapters of the Revised Code. With regard to the energy emergency rules adopted in accordance with Section 4935.03, Revised Code, the Commission works with the office of the governor to ensure that rules are appropriate and necessary. The Commission finds it unnecessary to change the proposed rules to explain the exact process it follows in obtaining approval from the governor. Therefore, the Commission finds that Duke's request should be denied.
- (9) Fiscal Analysis - Section 127.18(B), Revised Code, requires that the Commission prepare a fiscal analysis of each proposed rule. AMP-Ohio states that the proposed revisions to Chapters 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-33, and 4901:5-37, O.A.C., impose additional administrative burdens that will result in increased costs for all AMP-Ohio members. Since the proposed revisions financially impact municipalities, AMP-Ohio submits that the Commission has an obligation to prepare

a fiscal analysis impact statement, as required by Sections 119.03(B) and 127.18(B), Revised Code, and to make the statement available for comment prior to filing any revisions with the Secretary of State's office and the Director of Legislative Service. AMP-Ohio avers that the Commission should not proceed further with the proposed amendments until the required fiscal analysis is complete (AMP-Ohio initial at 4-5). Contrary to AMP-Ohio's assertion, the Commission is subject to the rule-making procedure set forth in Section 111.15, Revised Code, not Section 119.03(B), Revised Code. In fact, as stated in Section 119.01(A)(1), Revised Code, with only certain identified exceptions, "sections 119.01 to 119.13 of the Revised Code do not apply to the public utilities commission." Section 119.03(B), Revised Code, is not one of those exceptions. Therefore, it does not apply to the Commission. In accordance with Section 111.15(D), Revised Code, the Commission files the fiscal analysis prepared pursuant to Section 127.18, Revised Code, with the Joint Committee on Agency Rule Review, after the Commission has received comments and has issued its final order in a rule-making proceeding. Therefore, the Commission finds no merit in AMP-Ohio's comment and it should be denied.

- (10) Emergency Simulation - OCC advocates that, prior to finalizing these rules, the Commission undertake a simulation to test the emergency preparedness of the Commission and energy suppliers (OCC initial at 10). AEP, Duke, FE, and Dominion object to OCC's suggestion (AEP reply at 3; Duke reply at 3; FE reply at 3; Dominion reply at 2). Dominion states that, while a simulation sounds like a reasonable thing to do, it is impractical and would be ineffective for the Commission to develop an emergency simulation (Dominion reply at 2). Duke points out that, since the electric market is regional, a simulation would require coordination among Ohio's energy suppliers, as well as participation of the regional transmission organizations (RTOs) and the independent system operators (ISOs). Therefore, Duke submits that, absent a cost recovery mechanism, it is unreasonable to force participants to engage in an emergency simulation (Duke reply at 8). However, if the Commission decides a simulation is appropriate, Dominion recommends the Commission first conduct a technical conference to establish objectives and receive input from stakeholders (Dominion reply at 3). The Gas Marketers agree

with the sentiment of OCC; however, they suggest that a lower cost, less intrusive way to upgrade emergency preparedness is to hold a set of preseason and postseason technical sessions, during which all stakeholders would discuss operations, projections, and emergency readiness (Gas Marketers reply at 5). Commission staff has worked with EMA and, in the past, has participated in numerous emergency simulations. Preparation for and implementation of an effective simulation is both time-consuming and costly. Therefore, the Commission does not agree with OCC's proposal, but believes that the most appropriate way to proceed is to discuss the changes in the rules at the technical conference that will be scheduled once the rules are final. The Commission would also note that these issues may also be addressed at meetings of the Fuel Source Advisory Council (FSAC). Therefore, the Commission finds that OCC's request should be denied.

- (11) Pricing Issues - AMP-Ohio points out that, once an energy emergency is declared, the proposed rules may result in suppliers being ordered to supply certain customers (e.g. staff-proposed Rules 4901:5-23-05(D), 4901:5-25-06(B)(3), and 4901:5-33-05). AMP-Ohio notes that the rules do not address the price at which the fuel supply is to be sold, thus creating an opportunity for an entity to take advantage of the limited supply to charge a premium. AMP-Ohio is also concerned that the rules would allow the Commission to order a party to sell excess fuel supply inventory at a price lower than the entity's purchase price and inventory costs. In addition, AMP-Ohio states that the rules do not address the appropriate allocation of the increased cost burdens that will result if the Commission orders an electric producer to run higher cost units for the benefit of other electric producers, their customers, or the state (AMP-Ohio initial at 8-9). The Commission acknowledges AMP-Ohio's concern. However, we believe that any pricing issues would more appropriately be addressed on a case-by-case basis within the context of a situation in which the rules are actually being applied. Without knowing the exact circumstances that could arise, it would be difficult to craft a rule that would address AMP-Ohio's concern. Therefore, we find that AMP-Ohio's request should be denied.

Comments Pertaining to Multiple Rules

- (12) Chapter Headers - At the suggestion of Duke, the Commission has added the language "as used in this chapter" at the beginning of the definitions section contained in each chapter (Duke initial at 10).
- (13) Consistency - Eagle suggests that the Commission consolidate chapters of the rules in order to avoid duplicative rules (Eagle initial at 3). While the Commission acknowledges Eagle's comment, we find that, at this time, we should move forward with the structure of the rules as proposed by staff. Therefore, Eagle's request should be denied. That being said, while the Commission will not consolidate the chapters at this time, we understand Eagle's concern with regard to similar rules not being entirely consistent. Therefore, we will make additional non-substantive changes to the amended rules in order to make the chapters more consistent, such as:
 - (a) Amended Rule 4901:5-19-01(J) - The word "minimum" is being added to the definition of priority use.
 - (b) Staff-proposed paragraphs (B)(1)(a), (C)(1), and (D)(1) of Rule 4901:5-19-05 have been deleted and the paragraphs are being reworded and amended to make them consistent with amended paragraphs (B), (C), and (D) of Rules 4901:5-23-04, 4901:5-25-05, and 4901:5-29-04.
 - (c) Amended Rules 4901:5-25-02(H), 4901:5-29-02(J), and 4901:5-33-02(K) - The description of the FSAC is being reworded to be consistent with the other rules.
 - (d) Amended Rules 4901:5-21-02, 4901:5-23-02, 4901:5-25-02, 4901:5-29-02, 4901:5-33-02 - These rules are being restructured to be consistent with the structure of amended Rule 4901:5-19-02. Further, reorganization is being done to Rule 4901:5-33-02 to make it consistent with 4901:5-29-02.

- (e) Amended Rules 4901:5-35-02(S) and 4901:5-37-02(F) - In order to make these rules consistent with the rules in the other chapters, language is being included regarding the enforcement of the Commission's rules and orders by the attorney general.
 - (f) Amended Rules 4901:5-21-04, 4901:5-29-02, and 4901:5-33-02 - These rules contain similar directives. Some of the paragraphs within these rules are being reworded to make them consistent with the wording of similar paragraphs in other chapters. For example, "in the current month" is being added to amended paragraph 4901:5-21-03(G) to make it consistent with amended paragraphs 4901:5-29-02(G) and 4901:5-33-02(D).
- (14) Waivers - Each chapter addressed in this case contains, as proposed, a provision stating that the Commission may alter or amend these rules, or waive any requirement for good cause shown or on its own motion. DP&L and Duke advocate, and FE agrees, that the reference to altering or amending the rules should be deleted or, in the alternative, clarified to provide that any such amendments would be made pursuant to the process for establishing rules (DP&L initial at 6; Duke initial at 14; FE reply at 3). Upon deliberation, the Commission agrees and is deleting, from the proposed rules, any language relating to alteration or amendment of these rules. While waivers may be allowed for good cause shown outside of rule-making procedures, actual amendment of rules will follow established procedures. Therefore, the Commission is revising or adding language to amended Rules 4901:5-19-02(K), 4901:5-21-02(D), 4901:5-23-02(G), 4901:5-25-02(J), 4901:5-29-02(L), 4901:5-33-02(M), 4901:5-35-02(R), and 4901:5-37-02(E) to make them consistent with this conclusion.
- (15) Emergency Stages - Amended Rules 4901:5-23-04, 4901:5-25-05, 4901:5-29-04, and 4901:5-33-04 set forth multiple stages of actions that may be taken in energy pre-emergency or emergency situations: voluntary curtailment; mandatory curtailment, stage one; mandatory curtailment, stage two; and mandatory curtailment, stage three. In addition, amended Rule 4901:5-25-05 has a fifth stage: mandatory curtailment, stage

four. AMP-Ohio states that the proposed stages of an emergency are vague and undefined and that the Commission should define what circumstances constitute the different stages and when the obligations associated with the various stages will be imposed (AMP-Ohio initial at 8). The Commission recognizes that the proposed rules do not define the circumstances that would result in transition among the various stages. Every emergency situation is unique and it is essential that the governor and the Commission have the ability to review the circumstances surrounding an event and to designate the appropriate emergency stage based upon the facts present at that time. Therefore, the Commission finds that the revisions proposed by AMP-Ohio should not be made and AMP-Ohio's request should be denied.

- (16) ISO/RTO Role - A number of commenters mention their concern that the proposed rules do not recognize the important role that RTOs and ISOs play in managing electric system reliability (Duke initial at 4 and 17; DP&L initial at 4). AMP-Ohio states that the rules do not address the situation where the Commission, an ISO, or an RTO impose differing obligations on an electric producer to run generation equipment (AMP-Ohio initial at 9). Duke believes that state restrictions may have an impact on the overall system integrity beyond Ohio borders and recommends that the Commission review the relevant emergency procedures of the ISOs and RTOs, prior to formulating its own statewide procedures (Duke initial at 5). OCC agrees that the Commission should review the emergency protocols of the RTOs to ensure that Ohio's requirements are not in conflict with them (OCC reply at 6). AEP expresses concern over what would happen if there were a conflict between the requirements imposed by the Commission's emergency rules and the FERC-approved RTO procedures. AEP submits that replacing the regional RTO system with a set of *ad hoc* state directives would be cumbersome, confusing, and unlikely to produce the desired result. In the alternative, AEP proposes that the Commission acknowledge the authority of the RTO and seek to implement an advisory role for the Commission and the governor in this situation (AEP initial at 5-6). FE agrees with the comments made by Duke and AEP (FE reply at 1). The Cooperatives agree with the concerns expressed by various commenters and recommends that the Commission either defer to the RTOs or

revise the rules to coordinate with the RTOs (Cooperatives reply at 3). The Commission finds that the commenters' requests should be granted, in part, to the extent that the role of the RTOs and the ISOs should be acknowledged and set forth in the rules. Therefore, the Commission has reviewed the processes of the RTOs and the ISOs and has amended the rules to reflect the Commission's anticipated consultation with the appropriate RTO or ISO. Accordingly, the Commission is modifying or adding language in amended Rules 4901:5-19-04(A); 4901:5-19-05(A)(4)(c); 4901:5-19-05(A)(5), (7), and (8); 4901:5-19-05(B) through (E); and 4901:5-37-02(D) to make them consistent with this conclusion.

- (17) Fuel Source Advisory Council - AEP proposes that the Commission include a definition of the FSAC in these chapters, since it is referred to in several of the rules without any further description (AEP initial at 3 and 13). OCC further advocates that the proposed rules be amended to identify agencies, departments and organizations, such as the Commission's staff, OCC, EMA, and industry representatives, who may participate on the FSAC (OCC initial at 7). Duke agrees with OCC's proposal and Dominion does not object to OCC's representation on the FSAC (Duke reply at 8; Dominion reply at 1). AEP objects to OCC being included on the FSAC, stating that OCC has no direct role in handling energy emergencies and that OCC's participation would further complicate an already difficult situation (AEP reply at 2). AMP-Ohio submits that the municipal electric systems should be represented on the FSAC (AMP-Ohio reply at 3). The Commission notes that, historically, FSAC membership and its meetings have been open to a broad range of interested stakeholders. With this in mind, while we agree that it is necessary to insert a definition of FSAC in the rules where appropriate, we do not find it appropriate to limit the membership of the council by listing various constituency groups in the definition. Therefore, the commenters' requests should be granted, in part. Accordingly, the Commission is modifying these chapters to include the definition of FSAC as set forth in amended Rules 4901:5-19-01(F), 4901:5-21-01(E), 4901:5-23-01(E), 4901:5-25-01(E), 4901:5-29-01(D), 4901:5-33-01(E), and 4901:5-35-01(E) to make them consistent with this conclusion.

- (18) **Imminent Emergencies and Unregulated Electric Providers** - With respect to pre-emergency obligations, the energy emergency rules establish two types of rules: (1) rules that require the provision of information regarding available fuel supplies to the Commission [e.g., amended Rule 4901:5-19-02 (E), (F), (G)] and (2) rules that require the taking of some type of action, i.e., conservation or curtailment [e.g., amended Rule 4901:5-19-02 (A)].

AMP-Ohio submits that the fuel emergency rules are unconstitutional to the extent the proposed revisions impose obligations on unregulated municipal utilities during a pre-emergency period because they infringe upon municipalities' utility powers under the Ohio constitution (AMP-Ohio initial at 5-7). Similarly, the Cooperatives maintain that the staff-proposed rules in Chapters 4901:5-19 and 4901:5-37, unlawfully extend the Commission's jurisdiction over cooperatives to situations other than declared emergencies (Cooperatives initial at 3-4). Specifically, the Cooperatives recommend that the Commission insert language in the rules stating that the requirements in various paragraphs apply to cooperatives only in the event of a declared emergency (Cooperatives initial at Ex. 1, v-viii, xvii). The Cooperatives acknowledge that they are bound by and will comply with the regulations that apply to declared emergencies (Cooperatives initial at 8).

With regard to the first general type of rules, requiring the submission of information to the Commission, upon request, in a pre-emergency situation, the Commission finds that the requests by AMP-Ohio and the Cooperatives to modify the staff-proposed rules should be granted, in part. Many of the rules that AMP-Ohio and the Cooperatives find objectionable refer to situations in which an energy emergency is imminent. In such situations, the Commission strongly believes that the availability of information is essential in order to forestall harm to the citizens of the state of Ohio. However, the Commission will clarify that the intent is to cover situations when an emergency is actually anticipated. Therefore, the Commission is modifying the staff-proposed rules, where appropriate, and, for consistency purposes, is modifying similar staff-proposed rules in other chapters. Where such rules appear in the general provisions portion of a chapter, the Commission is inserting the phrase "[i]n anticipation of an imminent energy emergency or

during a declared energy emergency." Where such rules appear in the pre-emergency portion of a chapter, the Commission is substituting the phrase "in anticipation of" in place of "prior to an energy emergency." Furthermore, throughout the chapters, the Commission is modifying the taglines of the staff-proposed rules titled "Pre-emergency actions" such that the taglines will now read, "Actions in anticipation of an imminent energy emergency." The amended rules that are being clarified consistent with this conclusion include: 4901:5-19-02(E) and (G); 4901:5-19-04; 4901:5-21-02(A); 4901:5-23-02(C); 4901:5-25-02(E) and (G); 4901:5-25-04; 4901:5-29-02(C) through (I); 4901:5-33-02(D) through (J); 4901:5-37-02(D); 4901:5-37-03(B); 4901:5-37-04; and 4901:5-37-05.

With regard to the rules that require the taking of some action prior to the declaration of an energy emergency, the Commission acknowledges the concerns raised by AMP-Ohio and the Cooperatives and finds that their requests should be granted. Therefore, we are removing any pre-emergency actions pertaining to unregulated entities from the amended rules, including staff-proposed Rules 4901:5-23-02(B) and 4901:5-29-02(C). The Commission notes, however, that we will continue to work with all stakeholders, including the municipalities, the cooperatives, and other unregulated utilities, prior to the onset of an emergency situation, in an effort to mitigate and potentially avoid the necessity for declaring an energy emergency. The Commission believes that this proactive approach is essential in order to protect the interests of all citizens of the state of Ohio.

- (19) Imminent Emergencies and Regulated Utilities - Duke and FE submit that the pre-emergency actions set forth in the rules are outside of the scope of the Commission's authority under Section 4935.03, Revised Code, and that, therefore, the rules should be either revised or removed (Duke initial at 2-3; FE initial at 2-3). FE states that the only requirement under Section 4935.03, Revised Code, on electric power producers is to produce emergency supplies to meet emergency needs when directed to do so by the governor (FE initial at 3-4). AEP submits that the Commission's power under Chapter 4935, Revised Code, should be exercised only when an energy emergency is imminent or anticipated (AEP initial at 8). The Commission believes that communications and cooperation

between the Commission and the utilities, in anticipation of an emergency, are essential. In the true spirit of the statutory mandate set forth in Section 4935.03, Revised Code, to “protect the public health or safety or prevent unnecessary or avoidable damage to property,” the Commission finds that it would be imprudent not to put language in the rules requiring utilities and the Commission to work together to mitigate potential harm to the citizens of Ohio when an emergency is imminent. Accordingly, the Commission finds no merit in Duke’s and FE’s comments and, therefore, their requests should be denied. However, upon a review of staff-proposed rules, the Commission concludes that it does find merit in AEP’s request; thus, AEP’s request should be granted. Accordingly, certain language in the rules is being modified to ensure that the intent is clear that any actions pursuant to these chapters prior to the declaration of an energy emergency by the governor would be required only in the event that an emergency is imminent. Such actions are essential in order to protect and preserve the public interest. The amended rules that are being revised consistent with this conclusion include: 4901:5-19-02(E) and (G); 4901:5-19-04; 4901:5-21-02(A); 4901:5-23-02(C); 4901:5-25-02(E) and (G); 4901:5-25-04; 4901:5-29-02(I); and 4901:5-33-02(J).

- (20) Pre-emergency Costs – Duke avers and FE agrees that it would be impractical and costly for the utilities to monitor consumer compliance with specific curtailment initiatives (Duke initial at 3; FE reply at 1). Duke submits, for example, that, to monitor the curtailment initiatives in staff-proposed Rule 4901:5-19-04(A)(3), would require an advanced metering infrastructure program and around the clock surveillance at an estimated cost of \$150 million. Absent a cost recovery mechanism, Duke does not believe the expenses are justified either outside of or during a declared emergency (Duke initial at 3-4). The Commission believes that there needs to be some observation of customer consumption; however, we recognize that actual monitoring could be both burdensome and costly. Therefore, we find that the commenters’ requests should be granted, in part. Accordingly, the following paragraphs are being amended and the words, “to the extent reasonably feasible,” where utilities are being specifically required to monitor compliance, are being added: 4901:5-19-04(A)(3)(b) and 4901:5-25-04(A)(3)(c).

- (21) Reports Provided to Commission - Staff-proposed paragraphs (E) and (F) of Rule 4901:5-19-02 required the filing of various reports pertaining to energy supply with the Commission. AEP requests that these paragraphs be revised, consistent with other rules, to require the reports to be submitted informally to the Commission staff (AEP initial at 4). The Commission finds that this proposal is appropriate and AEP's request should be granted. Therefore, the paragraphs are being modified accordingly. In addition, in order to be consistent, the Commission is also making this modification in amended Rules 4901:5-19-05(A)(3)(b) and (B)(3), and Rule 4901:5-37-02(C).
- (22) Confidentiality of Reports Provided to the Commission - There are several rules that require companies to provide information to the Commission. AEP suggests, and Duke agrees, that the information provided by the companies be treated as confidential, subject to a later confirmation by Commission order, so that the companies would not have to litigate confidentiality of their business data (which relates largely to unregulated activities) issues during an energy emergency (AEP initial at 6; Duke reply at 9). The Commission appreciates AEP's comments and finds that any information that is provided by the companies in accordance with these rules and that the companies deem confidential should be clearly marked as such when it is provided to the Commission. Since the information is not being formally filed with the Commission, it is not necessary for the companies to submit a motion for protective order along with the information. However, if any information that was so marked by the companies is requested through a public records request, the Commission will establish an appropriate process that will allow the companies a reasonable amount of time, taking into consideration any emergency that may be pending, to request a protective order. Therefore, the Commission does not find it necessary to codify this process.
- (23) Reports Provided to Entities Other Than the Commission - Throughout these chapters there are requirements that the utilities provide reports to the Commission and its staff regarding the adequacy of energy supply, conservation, and curtailment. OCC comments that the reports submitted to the Commission pursuant to the following staff-proposed rules should likewise be provided to OCC: 4901:5-19-02(E), 4901:5-

19-04(C), 4901:5-19-05(A)(3)(b), 4901:5-19-05(A)(4)(B), 4901:5-19-05(B)(2)(b), 4901:5-19-05(B)(3), 4901:5-25-04(E), and 4901:5-25-05(A)(1)(f). OCC submits that, since it is the state advocate for residential utility consumers and the use of energy by residences is considered a priority use under the rules, it is important for OCC to receive the same information the Commission receives. During an energy emergency, since there is potential for abuses in the allocation of scarce energy supplies, OCC maintains that it is important for it to understand the adequacy of the supply and the proposed allocations of the supply to end users (OCC initial at 3-5). Dominion does not object to OCC's request to receive information, as long as any language that is inserted into the rules does not imply that OCC has oversight authority over the natural gas supplier operations (Dominion reply at 1-2). Duke, FE, AEP, AMP-Ohio, and the Cooperatives object to OCC's request to receive the reports (Duke reply at 6; FE reply at 1; AEP reply at 1; AMP-Ohio initial at 1; Cooperatives reply at 3). Duke, AEP, and AMP-Ohio argue that OCC is not a regulatory agency with reporting oversight and that OCC will not be able to protect the confidential information that will be contained within the information provided in the reports (Duke reply at 6-7; AEP reply at 1-2; AMP-Ohio initial at 2). The Cooperatives concur that it would be unreasonable to impose additional reporting requirements on entities that are already overextended during an emergency (Cooperatives reply at 3). Duke avers that, after the declaration of an emergency, if OCC is concerned that there has been an abuse of the allocation of fuel supplies, OCC can file a complaint with the Commission and obtain the desired information through discovery in that case (Duke reply at 7). FE believes that OCC's suggestion would undermine the fundamental purpose of Section 4935.03, Revised Code, that the Commission, as well as the governor's office, be the point of coordination for all energy providers during an energy emergency. FE points out that, if the fact that residential use is a priority necessitates that OCC receive the reports, then all persons directly or indirectly associated with any priority-use customer would have to receive the reports, thus hampering efforts to manage the emergency (FE reply at 1-2). The purpose behind the Commission obtaining the information required in the utilities' reports is to assist the Commission in coordinating with the utilities, the governor's

office, and EMA in either preventing or managing an energy emergency. It is essential, in these crucial times, that there is open and direct communications between the utilities and the Commission. To complicate the communication process and bring OCC, which is no different than any other priority use customer and which has no oversight authority during an energy emergency, into the mix, would be both unnecessary and inappropriate. Accordingly, the Commission finds that OCC's request should be denied.

- (24) **Notifications/Information Provided to Consumers** - Throughout these chapters there are requirements that the energy suppliers provide notifications and informational updates to consumers. OCC requests that the following staff-proposed rules be amended to require the suppliers to provide OCC with the same notifications and information that they provide to consumers: 4901:5-19-04(A)(1) and (A)(2); 4901:5-19-05(A)(2) and (A)(3); 4901:5-25-04(A) and (B); 4901:5-25-05(A)(1)(a), (b), (c), and (e). OCC submits that, by providing the same information to OCC that the consumers receive, OCC will be in a better position to respond to consumer inquiries with current information (OCC initial at 6-7). While Duke does not object to OCC's suggestion, FE, AEP, AMP-Ohio, and the Cooperatives object to amending the rules to require that the information be provided to OCC (Duke reply at 7; FE reply at 2; AEP reply at 2; AMP-Ohio reply at 3; Cooperatives reply at 3). FE maintains that there should only be one agency as the point of coordination and contact for the energy providers during an emergency. According to FE, if OCC receives calls during an energy emergency, it should direct the calls to the Commission in order to ensure that a more consistent response will be given to the consumers (FE replies at 2). The Cooperatives suggest that, if the Commission agrees with OCC that OCC should receive this information, rather than amending the rules, the Commission itself should give the information to OCC, thus allowing the utilities to focus their efforts on maintaining and restoring service (Cooperatives reply at 4). The Commission agrees that, in an energy emergency, the Commission must coordinate and ensure that there is effective communication among all stakeholders. In light of the fact that there are any number of consumer groups which could claim a similar need to receive information from the utilities, the Commission does not agree with OCC that the rules should be modified.

Therefore, OCC's request should be denied. However, the Commission does see merit in the concept that the notifications and information submitted by the utilities in compliance with these chapters be disseminated to as many different constituencies and agencies as possible. Therefore, the Commission will work on developing a location on the Commission's website where up-to-date notifications and information that the utilities provide to the consumers during an energy emergency will be posted.

Comments Pertaining to Chapter 4901:5-17 - Governor's emergency powers

- (25) Rule 4901:5-17-02 generally sets forth the actions the governor may take when declaring an energy emergency pursuant to Section 4935.03, Revised Code. EMA comments that there is little need for this rule, since it largely repeats the language in the statute. Furthermore, EMA states that, while the phrase, "mobilize emergency management, national guard, law enforcement, or emergency medical services," appears in both the statute and the rule, EMA explains that it is not sure what the phrase means. EMA notes that the executive director of EMA is responsible for the implementation of the state emergency operations plan, which establishes Ohio's response to all types of disasters (EMA initial at 1). The Commission notes that Section 4935.03, Revised Code, directs the Commission to adopt rules defining types and levels of energy emergencies and specifying appropriate measures to be taken. The Commission believes that this rule is appropriate, in light of the fact that the intent of the rule is to set forth the statutory basis for the chapters governing energy emergencies and to iterate, in general, the actions the governor may take in exercising the powers conferred by the statute. This rule in no way supersedes the statute or affects the operations of EMA. EMA's objection should be denied.

Comments Pertaining to Chapter 4901:5-19 - Fuel emergencies

- (26) Rule 4901:5-19-01 Definitions
- (a) Staff-proposed paragraph (K) of Rule 4901:5-19-01 defined what "statewide normal burn days" means for an electric power producer. The staff-proposed rules utilized this definition when

determining curtailment levels. Duke and Eagle state that the staff-proposed rules do not reflect the regional nature of the generation market (Duke initial at 6; Eagle initial at 2). Duke avers that the staff-proposed rules do not consider the present condition of the industry with respect to the "active markets of fuel, capacity, and emissions allowances, as well as the day-ahead and real-time energy markets affected by the introduction of the ISOs and RTOs." Duke asserts that the utilization of the term "normal burn days," given the advent of the deregulation of generation, is both confusing and misleading (Duke initial at 6-7). Similarly, AEP proposes that the Commission clarify the definition of burn days and incorporate an appendix into the rules so that all power producers will calculate burn days in a consistent manner (AEP initial at 2). The Commission acknowledges the merit in these comments and is modifying the rules by eliminating the concept of "normal burn days." Because the concept of "normal burn days" is being eliminated, we find that it is not necessary to incorporate an appendix.

- (b) Staff-proposed paragraph (J) of Rule 4901:5-19-01 defined "priority use" and listed nine types of consumer facilities: residences; hospitals; medical facilities; electric power generating facilities and central heating plants; telephone, radio, television, and newspaper facilities; transit systems and air terminal facilities; emergency management and response facilities and defense facilities; water supply and pumping facilities; and sanitary service facilities. DP&L states that this definition includes virtually every type of customer class, with the exception of small commercial customers. In light of the fact that very few customers are left off the list, DP&L submits that customer messaging to achieve the desired results in an emergency will be extremely difficult. Therefore, DP&L proposes that this list be less inclusive and reflect different tiers of

priorities (DP&L initial at 2-3). The Commission does not agree with DP&L's proposal and finds that DP&L's request should be denied. Although the Commission realizes the communication difficulties that companies may face during an emergency, we believe that it is essential that the priority uses remain unchanged. We further note that targeted messaging may be determined based on the event and the circumstances of the emergency at hand.

(27) Rule 4901:5-19-02 General provisions

- (a) Staff-proposed paragraph (B) clarified that, except as provided by Chapter 19 or an order by the Commission, the regulatory relationship between the jurisdictional utilities and the Commission remains intact and the utilities shall continue to comply with all applicable regulations. EMA states that this paragraph and similar paragraphs in other chapters may result in confusion about the relationships between the regulated utilities and the Commission during other emergencies, such as floods and tornadoes (EMA initial at 1). The Commission disagrees. This language in this rule and any similar rule is intended to clarify that, during an energy emergency, regulated utilities must continue to comply with all rules and requirements of the Commission, unless either this chapter relieves them of the responsibility or the Commission specifically orders otherwise. This paragraph in no way changes the relationship of the regulated utilities and the Commission during other emergencies. The utilities are still required to comply with all Commission directives issued in accordance with Title 49 of the Revised Code.
- (b) Staff-proposed paragraph (D) required the electric providers and the electric power producers to implement the actions required by this chapter. Duke supports DP&L's recommendation that the Commission insert

language in this paragraph to clarify that electric power producers are not required to take any action that would adversely impact the safety of plant personnel or equipment (DP&L initial at 6; Duke reply at 10). The Commission finds this language appropriate and the commenters' requests should be granted. Accordingly, the paragraph is being modified.

- (c) Staff-proposed paragraph (E) required that, when an electric power producer with a generating capacity of five hundred megawatts or more advises the Commission of its intention to implement its long-term fuel emergency plan, such producer shall, upon direction by the Commission, file weekly reports regarding supply adequacy to the Commission. AEP submits that the term "long-term fuel emergency plan" is confusing, since the intent is to address temporary emergency circumstances (AEP initial at 4). The Commission agrees with AEP and finds that AEP's request should be granted and the paragraph should be clarified. Therefore, this rule is being modified to delete the reference to implementation of long-term fuel emergency plans as a trigger and to clarify that the Commission may require the submission of weekly reports in anticipation of an energy emergency or during such an emergency. In addition, the rule will now clearly state the information that must be provided in any required reports.
- (d) Staff-proposed paragraph (G) provided that, when an electric power producer reached 20 utility normal burn days remaining, the governor could order other electric power producers with greater fuel supplies to increase sales of electric energy. FE believes that this rule is unnecessary and should be deleted, given the detailed steps that are required in Rule 4901:5-19-05. FE submits that this rule gives the governor unlimited authority to increase sales of electricity without

having declared an energy emergency (FE initial at 3). FE's point is well taken and its request should be granted. Therefore, the Commission finds it appropriate to move this provision to amended paragraph (A)(8) of Rule 4901:5-19-05. By relocating this paragraph, the governor will have to declare an energy emergency prior to ordering electric power producers to increase sales of electric generation.

AEP believes, and Duke agrees, that this provision is not needed, given the advent of electric restructuring and the federal development of RTOs (AEP initial at 4-5; Duke reply at 9). DP&L is concerned that this rule would be triggered in a non-emergency situation and that it does not recognize how fuel inventories are managed by generators in a multi-state, interconnected, transmission grid system operated by RTOs. DP&L points out that RTOs monitor fuel inventory on a real-time basis, manage the market process by which prices are set, and have the authority, in an emergency situation, to order a generator to run (DP&L initial at 3-5). AEP adds that RTOs have the authority to maintain grid operations and follow reliability protocol in all situations, including energy emergencies. AEP notes that PJM Interconnection, L.L.C., (PJM) has fuel supply requirements, an emergency bid process to encourage the purchasing of additional supply, and procedures to help conserve fuel. AEP states that PJM must be aware of and in agreement with Ohio rules in order for an actual transfer of energy to take place because AEP cannot make a sale or purchase without the consent of PJM (AEP initial at 4-5). As stated previously in this order, the Commission is modifying the rules to reflect that the governor and the Commission will consult with the appropriate ISO or RTO prior to taking action. Therefore, the Commission finds that the companies' requests to delete this paragraph should be denied.

If the Commission adopts this paragraph, DP&L proposes, and Duke and FE agree, then the final rules should allow for recovery of the penalties that the RTO or ISO will impose because the company has deviated from the required procedures of the RTO or ISO (DP&L initial at 5; Duke reply at 10; FE reply at 2). The Commission does not believe that it would be appropriate for the Commission to put this type of cost recovery language in these rules. In the event this section of the rules is invoked, the Commission will consider possible recovery of any penalties, at an appropriate time. Therefore, the companies' requests should be denied.

With regard to the 20-burn-day trigger, AEP avers that this provision does not accurately reflect the existence of an imminent problem within AEP or PJM (AEP initial at 5). FE argues that there is no justification for the 20-day standard and that it may be standard business practice for some electric power producers to have less than a 20-day supply of fuel for their generators (FE initial at 3). DP&L submits that this trigger is an arbitrary number that is out of line with RTO requirements, which define "fuel limited" as 72 hours (DP&L initial at 4 and 7). DP&L contends, and Duke agrees, that the Commission should investigate the historical fuel inventory of electric power producers before continuing this requirement and should recognize the differences between the types of fuel used (DP&L initial at 4-5; Duke reply at 10). In the alternative, AEP submits that the Commission should acknowledge the authority of the RTO and should seek to implement an advisory role for the Commission and the governor. AEP recommends that, if this paragraph is retained, the term "utility normal burn days" be changed to "electric power producer normal burn days." Furthermore, AEP states that the rule should clarify what form and to whom the electric power producers are being ordered to increase sale of

energy (AEP initial at 6). The Commission agrees that the staff-proposed rules need to be updated. Therefore, in addition to removing the notion of burn days as a factor in the transition from one emergency stage to the next, we are also modifying the rules to eliminate the concept of remaining burn days with regard to ordering increased sales. As stated previously, all of these changes are reflected in amended paragraph (A)(8) of Rule 4901:5-19-05.

- (e) Staff-proposed paragraph (K) provided that, when and if it is appropriate, the governor could request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. 824A (1935) (Federal Power Act). EMA questions what the threshold for such a request would be and with what federal agency this would be coordinated (EMA initial at 2). The Commission does not believe that a threshold should be defined, since circumstances of an emergency are not predictable. This is an action that would be taken by the governor upon the exercise of his best judgment during an actual emergency. Furthermore, the Commission believes that, in order to clarify this paragraph, it is necessary to reword this provision to refer to any "appropriate federal laws and regulations" and not just the Federal Power Act.
- (28) Rule 4901:5-19-03 Enforcement on governor's instruction – Staff-proposed paragraph (A) stated that no rule in this chapter should be implemented and no person penalized under any rule, with the exception of Rules 4901:5-19-02, 4901:5-19-04, and pertinent definitions in 4901:5-19-01, until the governor declares an emergency. EMA supports this rule and would like to see it expanded to include non-energy emergency situations (EMA initial at 2). The Cooperatives state that they disagree with EMA's proposal to broaden the energy emergency rules (Cooperatives reply at 6). FE suggests that the existing paragraph is inappropriate because it allows electric power producers to be penalized for not following a rule that the

governor has not yet determined to be in effect because no emergency has been declared (FE initial at 3). AEP believes staff-proposed Rule 4901:5-19-04 should be deleted from this paragraph because the actions required by that rule are triggered by a Commission order, which is enforceable under the Revised Code. Further, AEP avers that only staff-proposed paragraphs (F) and (H) of Rule 4901:5-19-02 should be included in this paragraph because those are the only paragraphs that apply outside of an energy emergency (AEP initial at 8). The Commission does not believe it is appropriate to expand these chapters to cover non-energy emergency situations. The Commission agrees, however, that this paragraph would be clearer if the applicable paragraphs in Rule 4901:5-19-02 that may be invoked prior to the declaration of an emergency, namely amended paragraphs (B), and (E) through (L), were cited. Therefore, EMA's request should be granted, in part, and this rule should be modified. With regard to the reference to Rule 4901:5-19-04, the Commission acknowledges AEP's comments but believes that including this reference helps to clarify the Commission's intent to enforce orders issued under that rule. However, the specific paragraph that the Commission might enforce has also been cited. Further, since no actions are required by Rule 4901:5-19-01, reference to this rule has been deleted from the amended rule. Consistent with our decision in this finding, the Commission is including a rule in Chapter 4901:5-21, amended Rule 4901:5-21-03, titled Enforcement on governor's instruction, and is amending rules 4901:5-23-03(A), 4901:5-25-03(A), 4901:5-29-03(A), and 4901:5-33-03(A).

The Cooperatives assert that staff-proposed paragraph (A) of this rule should include language excluding cooperatives from being penalized under any rule in this chapter until the governor has declared an emergency (Cooperatives initial at viii). As the Commission stated previously in this order, the concern raised by the Cooperatives has been addressed by our removal, from the rules, of any pre-emergency actions pertaining to unregulated utilities. However, rules requiring that information be provided to the Commission in order to forestall harm, when an energy emergency is imminent, have been maintained. Therefore, there is no need to modify this paragraph to clarify the applicability of this paragraph to

unregulated utilities and the Cooperatives' request should be denied.

- (29) Amended Rule 4901:5-19-04 Actions in anticipation of an imminent energy emergency - This rule provides that the Commission may order electric providers to take action and provide customer notifications. As stated previously in this order, the title and focus of this section is being modified to reflect that the actions required in this rule only apply in anticipation of an imminent energy emergency and do not apply to unregulated utilities. Further, while language is being included in this rule to clarify that it applies to regulated providers, the Commission expects that all stakeholders, both regulated and unregulated, will work together when an emergency is imminent, in order to forestall potential harm to the citizens of Ohio.
- (a) Staff-proposed paragraph (A)(1) required regulated electric providers to notify consumers through reports in the news media or written notice. IEU-Ohio proposes that, given the cost of providing written or news media notice of an imminent shortage, the rules should be revised to permit telephonic or electronic notification for providers that serve fewer than 5,000 customers (IEU-Ohio initial at 2). The Commission finds that IEU-Ohio's comment has merit and its request should be granted. The paragraph is amended accordingly.
- (b) Staff-proposed paragraph (A)(2)(A) required regulated electric providers to issue periodic reports to notify consumers about electric supply levels. DP&L argues that this provision should be removed because the trigger point of 20 utility burn days is too high and will result in customer confusion when no "real" emergency occurs. Furthermore, DP&L states that electric supply levels are considered sensitive business information and should not be disseminated to the public (DP&L initial at 6). The Commission believes that DP&L has misinterpreted the intent of this requirement. The electric supply levels

referred to in this paragraph are not the measurement the governor considers when declaring an emergency. Rather, this information is to be geared toward the utilities' consumers and should contain the relevant information that is necessary in order to keep them abreast of a potential energy emergency. Sensitive information should not be included in this information. Therefore, DP&L's comment is without merit and should be denied.

- (c) As discussed previously, staff-proposed paragraph (C), which required electric providers to file reports with the Commission on the adequacy of the electric supply is deleted. The Commission believes that amended paragraph (E) of Rule 4901:5-19-02, which requires providers to submit the requisite information to the Commission's staff, appropriately addresses the necessity for this pertinent information in anticipation of an energy emergency.
- (30) Amended Rule 4901:5-19-05 Actions taken upon declaration of an energy emergency - This rule establishes the escalating stages of an energy emergency, namely voluntary curtailment and the various stages of mandatory curtailment, and sets forth the actions electric providers must take. As proposed by staff, these actions must be taken, either upon the declaration of an energy emergency or when the governor determines that such action is appropriate. AEP requests, and the Cooperatives agree, that this rule should be amended to reflect that the actions set forth in this rule are only required within the context of a properly declared energy emergency, in accordance with Section 4935.03, Revised Code (AEP initial at 9-10; Cooperatives reply at 5). The Commission agrees that this rule should be clarified and is making the appropriate revisions to reflect that the actions would only be required within the confines of a declared energy emergency situation. The phrase "or when it is otherwise determined by the governor of the Commission that such action is appropriate" is deleted throughout the amended rule.

AEP also submits that the burn-day triggers for each successive stage of an energy emergency should be eliminated, not only because they are outdated but, also, because the governor and the Commission should have flexibility in the management of an energy emergency once it is declared. AEP also points out that the gas emergency rules in Chapter 4901:5-25, O.A.C., do not have specific triggers tied to each stage of a fuel emergency (AEP initial at 11). Similarly, FE suggests that staff-proposed burn-day levels exceed the industry's standard operating procedure (FE initial at 4). DP&L submits that the fuel level be consistent with PJM's requirements (DP&L initial at 7). The Commission finds that, consistent with our decisions previously set forth in this order, the concept of burn days as the trigger for movement between the escalated stages in an energy emergency should be removed from the amended rules. We will note, below, where these deletions occur.

- (a) Staff-proposed paragraph (A)(1) required electric providers that have not imposed mandatory curtailments under their emergency curtailment plans on file with the Commission to increase their efforts to effect voluntary curtailments. Duke comments that this paragraph requires providers to file emergency curtailment plans, even though the providers are not currently required to do so. Duke submits that the ISOs and RTOs already have procedures in place that outline curtailment plans and any statewide plans should be consistent with the ISO/RTO plans (Duke initial at 10). The Commission notes that electric providers are already required to prepare emergency plans, pursuant to the provisions of existing Rule 4901:5-37-02(B)(2). As we discussed previously in this order, however, we are modifying Rule 4901:5-37-02(B)(2) to clarify that curtailment plans need only be submitted to Commission staff. Therefore, the Commission finds that this paragraph should be amended and the reference to curtailment plans on file with the Commission should be deleted.
- (b) Staff-proposed paragraph (A)(4)(a) required each electric power producer to issue periodic bulletins

to consumers reporting the fuel supply level calculated based on Appendix A to staff-proposed Rule 4901:5-19-01. FE contends that it is not clear what benefit this notice to consumers would have, that it could lead to panic and, therefore, that it should be deleted (FE initial at 4). The amended paragraph includes language that clarifies that these notices are not automatically required, but are only required if the Commission or the governor orders such notice. Therefore, the Commission finds that FE's request should be denied. Furthermore, the Commission would note that, in light of our decision to remove the notion of burn days as the trigger for movement between stages in an emergency, Appendix A is no longer needed and is removed.

- (c) Staff-proposed paragraph (A)(4)(b) is modified in order to clarify that the electric power producers may submit the estimated fuel savings resulting from load reduction or other measures along with the report required in amended paragraph (E) of Rule 4901:5-19-02. With this clarification the producers will only be required to submit one report with all of the required information, rather than multiple reports.
- (d) Staff-proposed paragraph (A)(4)(c) required each electric power producer to operate generating plants to optimize fuel usage, upon the order of the Commission or the governor. FE questions whether the Commission has the authority under Section 4935.03, Revised Code, to require generating plants to optimize fuel usage. FE states that, pursuant to statute, the governor may only require producers to produce supplies to meet emergency needs (FE initial at 4). Duke suggests that any requirement that a producer adjust the operation of its generating facilities must be done in coordination with the ISO or RTO (Duke initial at 10). The Commission notes that this rule has been in place for many years. In

the event of an actual energy emergency, which is contemplated under this rule, it stands to reason that one of the primary goals will be to optimize fuel usage. This concept is tantamount to the requirement for the producers to meet energy needs in the event of an emergency envisioned in the statute and, therefore, the Commission finds that this requirement should be retained. The Commission does, however, find merit in Duke's point and is amending the paragraph to reflect that, prior to issuing an order, the Commission or the governor will consult with the ISO or RTO.

- (e) Staff-proposed paragraph (A)(5), which would have required the Commission to calculate the statewide normal burn days, is deleted in keeping with our decision delineated previously in this order.
- (f) Staff-proposed paragraph (A)(8) provided that the governor or the Commission, in consultation with the Ohio Environmental Protection Agency, may take certain actions. EMA is concerned that this paragraph singles out one state agency for consultation (EMA initial at 2). In recognition of EMA's comment, as well as the need to involve the ISO or RTO, the Commission is amending this language, which is now amended paragraph (A)(7), to reflect that any consultation will also include the RTO, ISO, and any other oversight agency.
- (g) Staff-proposed paragraph (A)(8)(a) provided for curtailing the use of pollution control facilities. DP&L requests that this section of the rules allow for the utilities to recover the amount of any penalties or lost opportunity costs, if the state orders that pollution control equipment be shut down (DP&L initial at 9). Duke agrees with DP&L's proposal (Duke reply at 11). The Commission does not believe that it would be appropriate for the Commission to put this type of cost recovery language in these rules.

Therefore, to the extent the commenters are requesting that this paragraph be amended, their requests are denied. In the event this section of the rules is invoked, the utilities will have the opportunity to apply for recovery of costs at an appropriate time. Therefore, this request should be denied.

- (h) Staff-proposed paragraph (B)(2)(b) is modified in order to clarify that the information required by this paragraph is in addition to the information required in amended paragraph (E) of Rule 4901:5-19-02.
- (i) Staff-proposed paragraph (B)(5) set forth several actions which the EMA may be requested to implement during stage one of a mandatory curtailment in an energy emergency. EMA comments that this paragraph should be deleted because it establishes an artificial timeline that may, or may not, be followed (EMA initial at 2). The Commission disagrees. There are no timelines mentioned in this paragraph. This paragraph merely details several actions which the governor may request the EMA to take in the event of an energy emergency, none of which is contradictory to EMA's vital role or restrictive to EMA.
- (j) Staff-proposed paragraphs (C)(2) and (D)(2) provided that, during stages two and three of a mandatory curtailment in an energy emergency, consumers would discontinue nonpriority use of electricity by one of two methods. Depending on the method chosen, the consumer would have to keep records to document the reduction. DP&L states, and Duke agrees, that these paragraphs should be deleted because the utility does not have the resources or systems in place to track this information and has no way to enforce this reduction (DP&L initial at 10; Duke reply at 4). The Commission recognizes that requiring the utilities to ensure consumer compliance would be

unreasonable and costly. Previously, in this order, at finding (20), we found that "to the extent reasonably feasible" should be included in amended Rule 4901:5-19-04(A)(3)(b). Through this amendment the Commission is recognizing that the utilities cannot necessarily ensure consumer compliance with the curtailment rules. Because this issue has already been addressed in a previous rule, we do not find it necessary to amend these paragraphs and the commenters' requests should be denied.

Comments Pertaining to Chapter 4901:5-21 - Coal Allotment

- (31) The Commission notes that staff-proposed Rule 4901:5-21-02 is now amended Rule 4901:5-21-04. As discussed above with regard to overall consistency, amended Rule 4901:5-21-02 is now appropriately more reflective of the general provisions sections located in the other chapters dealing with energy emergencies.
- (32) For consistency throughout the chapters which address energy emergencies, the Commission is including in this chapter an amended Rule 4901:5-21-03, titled Enforcement on governor's instruction.
- (33) Staff-proposed paragraph (A) of Rule 4901:5-21-01 defined a "coal supplier" as "all prime coal suppliers, wholesale purchaser resellers, and any other persons who sell or resell coal to consumers" within the areas in which an energy emergency has been declared or at such time as the Commission determines there is an actual or threatened coal shortage.
 - (a) Ohio Coal states that this definition is confusing because it would appear that an entity is only considered a "coal supplier" under this chapter if an energy emergency has been declared; however, later in the chapter requirements have been established for a "coal supplier" prior to the declaration of an emergency. In addition, Ohio Coal submits that, if the Commission is empowered to trigger the requirements based on

its determination that there is a coal shortage, then such a determination should be spelled out and include an opportunity for public review and comment (Ohio Coal initial at 2-3). The Commission acknowledges that this language is somewhat misleading and, therefore, the paragraph has been revised to clarify this definition. In addition, any reference to pre-emergency actions or a Commission determination of a coal shortage has been removed from this rule.

- (b) Duke submits the definition of "coal supplier" has been broadened by staff and that, under the expanded definition, Duke would now qualify as a coal supplier and a consumer (Duke initial at 11). The Commission agrees with Duke's interpretation of this paragraph that Duke would now qualify as both a coal supplier and a consumer.

(34) Amended Rule 4901:5-21-04 Actions upon declaration of an energy emergency

- (a) Amended paragraph (A) establishes what is expected of a coal supplier once an energy emergency has been declared; namely, that it: assure, to the extent reasonably possible, that coal is provided to consumers for priority use and that the consumers practice conservation; and that the supplier reduce the provision of coal to its consumers for nonpriority use. Duke comments that, while it does not oppose this requirement, it questions how a supplier can make such an assurance. Duke states that suppliers can ask questions, but they have no way of knowing or verifying whether a consumer is burning coal for a priority or nonpriority use (Duke initial at 11). The Commission recognizes that it is difficult to know whether consumers are using the coal for priority purposes or whether they are conserving. However, we believe that the suppliers are on the front line of this issue and are in the best position

to notice if there are any infractions. We believe the paragraph already accounts for Duke's concern by requiring that the companies make such assurances "to the extent reasonably possible." Therefore, Duke's request should be denied.

- (b) Furthermore, Duke recommends that, subject to safety and maintenance constraints, the coal suppliers who operate mines should be encouraged to maximize mining capacity through overtime and adding shifts in emergencies (Duke initial at 12). The Commission acknowledges Duke's comment in this regard, but believes that such encouragement is more appropriately made outside of these rules. Therefore, Duke's request is denied.
- (c) Amended paragraph (B) requires each coal supplier with surplus supply for its consumers' priority use requirements to assure, to the extent reasonably possible, provision of coal to its normal consumers for their priority use. Duke agrees with the proposed changes, but recommends that the Commission go further and require that the supplier be obligated to fulfill the existing contracts with its consumers prior to selling new or excess inventory on the spot market (Duke initial at 12). The Commission believes that this type of determination must be made on a case-by-case basis and that it would not be appropriate for the Commission to establish a generic rule to this effect. Therefore, Duke's request should be denied.

Comments Pertaining to Chapter 4901:5-23 - Coal Emergency

(35) Rule 4901:5-23-01 - Definitions

- (a) Staff-proposed paragraph (A) defined a "coal supplier." Ohio Coal again states that this definition is confusing because it would appear that an entity is only considered a "coal supplier"

under this chapter if an energy emergency has been declared (Ohio Coal initial at 2). Consistent with our decision above, this paragraph is being revised and the reference to a declared emergency is being deleted.

- (b) Staff-proposed paragraph (C) defined a "consumer" under this chapter as a person who consumes coal at a specified location. DP&L suggests that this definition should be clarified to exclude electric power generating facilities. DP&L reasons that staff-proposed paragraph (A) of Rule 4901:5-23-02 stated that the rules in this chapter cover the availability of coal for use other than electric power generation (DP&L initial at 10). The Commission believes that any entity that supplies coal should be included in this definition, regardless of whether that entity also consumes coal. Therefore, DP&L's request is denied.
- (36) Staff-proposed Rule 4901:5-23-04 Pre-emergency actions – this rule provided that the Commission could require coal suppliers to notify their consumers of an imminent shortage and request that the consumers reduce their consumption, and that the Commission could also require coal suppliers to implement measures that include the reallocation or transfer of coal supplies. Duke and Ohio Coal question whether the Commission has the authority, under Section 4935.03, Revised Code, to impose these requirements on coal suppliers in the absence of a declared emergency (Duke initial at 13; Ohio Coal initial at 3-4). Duke submits that a coal supplier may be contractually obligated to deliver coal to its customers and that the Commission has no authority to interfere with this obligation prior to an actual emergency. Duke avers that the transferring of coal supplies is a drastic measure that should only be used in the event of an actual emergency and only as a last resort. Furthermore, Duke believes that paragraph (C) of this rule, which requires the coal suppliers to monitor consumer compliance with the curtailments, is unreasonable (Duke initial at 12-13). The Commission finds merit in the arguments made by Duke and Ohio Coal and, therefore, their request should be granted and this rule should be removed.

However, the Commission would note that paragraph (B) of staff-proposed rule 4901:5-23-04 was moved to amended rule 4901:5-23-02(F), because it is, in fact, a general provision not linked to the pre-emergency connotation. Further, by retaining this paragraph, amended Rule 4901:5-23-02 is now consistent with similar rules in other chapters.

- (37) Staff-proposed Rule 4901:5-23-05 Actions Taken Upon Declaration of Energy Emergency - Due to the Commission's decision above, this rule has been renumbered as Rule 4901:5-23-04. This rule established the escalating stages of an energy emergency, namely voluntary curtailment and the three stages of mandatory curtailment, and set forth the actions coal suppliers must take. As proposed by staff, these actions must be taken, either upon the declaration of an energy emergency or when the governor determines that such action is appropriate.
- (a) AEP requests that this rule be amended to reflect that the actions set forth in this rule are only required within the context of a properly declared energy emergency in accordance with Section 4935.03, Revised Code (AEP initial at 14). The Commission agrees and finds that AEP's request should be granted. Therefore, the appropriate revisions will be made to clearly reflect that the required actions are within the confines of a declared energy emergency situation.
 - (b) Duke states that it would not object to a requirement to report to the Commission on the availability of coal, as long as it is coordinated through the ISOs and RTOs (Duke initial at 13). In response, the Commission notes that any fuel shortages involving electric power producers would be handled through Chapter 4901:5-19, O.A.C. As previously stated, the Commission is amending the rules in that chapter to include consultation with the appropriate ISO or RTO.
 - (c) Staff-proposed paragraph (B)(3), relating to the first stage of a mandatory curtailment, provided that the Commission may require coal suppliers

to sell or provide fuel to nonpriority consumers. Ohio Coal states that the term "fuel" should really be "coal" since these suppliers may not sell other types of fuel. Furthermore, Ohio Coal believes that it is unreasonable to require coal suppliers to "provide" fuel because it implies that they must do so regardless of compensation (Ohio Coal initial at 4). The Commission acknowledges Ohio Coal's comments and is removing the term "provide" from the rule, and replaced the term "fuel" with the term "coal." Specifically, with regard to any associated costs resulting from the Commission's exercise of this rule in the event of an energy emergency, the Commission would consider the appropriate manner in which such costs should be handled at the time the order is given. Therefore, Ohio Coal's request should be granted, in part.

- (d) Staff-proposed paragraph (D)(4)(a) and (b), relating to the third stage of mandatory curtailment, provided that, upon approval of an application for emergency priority use of coal allocations, the Commission could either authorize release of coal from a state stockpile to a consumer, who would be billed at cost by the state, or assign the consumer to a coal supplier and order the supplier to provide delivery. Ohio Coal states that this section is ambiguous because it allows for the state to be compensated, but does not provide similar compensation language for private suppliers (Ohio Coal initial at 4-5). As noted previously, the Commission believes that any pricing requirements should be addressed at the time the order is given.

Comments Pertaining to Chapter 4901:5-25 - Natural Gas

- (38) Duke recommends that the Commission review the ISO and RTO curtailment plans with respect to natural gas and fuel for electric generation prior to implementing changes to Chapter 4901:5-25 (Duke initial at 13). The Commission once again notes that any fuel shortages involving electric power

producers would be handled through Chapter 4901:5-19, O.A.C., and those amended rules, as attached to this order, require consultation with the appropriate ISO or RTO.

(39) Rule 4901:5-25-01 Definitions

- (a) Staff-proposed paragraph (B) defined a "consumer" as "any person purchasing, delivering, storing or transporting, or seeking to purchase, deliver, store, or transport, natural gas at a specified location . . . but not including natural gas companies." Dominion believes that the staff-proposed definition was expanded unnecessarily from the definition in the current rules, which describes a consumer as "a person who controls consumption of gas from a gas utility including sales and transportation customers of a gas utility." Dominion avers that curtailment plans required under this chapter focus on protecting priority end uses of gas in the event of an energy emergency and that the current definition properly defines a consumer in that context (Dominion initial at 1). The Commission finds no merit in Dominion's comment and believes that the definition, as proposed, is appropriate. However, Dominion also states that the proposed definition may conflict with the proposed definition of a gas supplier because many entities included in the definition of a gas supplier also fit into the expanded definition of consumer (Dominion initial at 1). The Commission recognizes the potential for confusion as pointed out by Dominion and is replacing the words "natural gas companies" with "gas suppliers" to cure this problem. Therefore, Dominion's request should be granted, in part.
- (b) Staff-proposed paragraph (C) defined "customer" as "a person legally responsible to pay for gas." Columbia comments that this definition should be broadened to read that a "[c]ustomer" means a person legally responsible to pay for gas or for

gas delivery services" (Columbia initial at 1). The Commission finds that Columbia's request should be granted and, therefore, the paragraph should be amended.

- (c) Staff-proposed paragraph (F)(4), defined "gas supplier" as including "any producer, gas broker, retail natural gas supplier, governmental aggregator, or person engaged in the business of supplying gas to gas companies, natural gas companies, pipeline companies or consumers" Columbia, Dominion, the Gas Marketers, and the Cooperatives submit that, if the proposed definition is implemented, consumers may receive multiple notices and be confused as to what action to take during an energy emergency because this definition may apply to multiple providers and not just the local distribution company (Columbia initial at 1; Dominion initial at 2; Gas Marketers initial at 3; Cooperatives reply at 5). As an example, Columbia points to staff-proposed paragraph (H) of Rule 4901.5-25-02, which provides that a gas supplier may disconnect service to a consumer who fails to disconnect or curtail consumption after notification from the gas supplier. Columbia recommends that the definition be revised to distinguish between the parties that have the ability to deliver gas and those that only buy and sell gas, but have no ability to actually disconnect service to the consumer (Columbia initial at 1-2). The Gas Marketers find merit in Columbia's proposed revision of the definition (Gas Marketers reply at 2). Duke agrees that the local distribution companies (LDCs) are in the best position to ensure that the consumers receive accurate and consistent information and that they should not be subjected to multiple, possibly conflicting, notices. In addition, Duke states that the LDCs should be the only entities responsible for disconnection during an emergency (Duke reply at 4). Eagle believes that government aggregators are not in a position to undertake the

vital tasks required during a natural gas emergency (Eagle initial at 2). The Gas Marketers recommend that the Commission work with the utilities to marshal the supplies needed and that the utilities, in turn, would work with the competitive retail natural gas service (CRNGS) suppliers, aggregators, and producers via the tariffs and contracts to ensure that the gas supplies arrive (Gas Marketers initial at 3). OOGA maintains that the Commission does not have the authority under Section 4935.06, Revised Code, to impose obligations on natural gas producers, unless those producers are gas or natural gas companies governed by the Commission under Section 4905.03, Revised Code. OOGA, therefore, proposes that natural gas producers be excluded from this definition (OOGA initial at 1). OOGA submits that the appropriate Commission authority in the event of an emergency is over the gas marketers and LDCs who actually supply consumers (OOGA initial at 5). The Commission agrees that the proposed definition of "gas supplier" may lead to confusion and the definition, which is now set forth in amended paragraph (G) of Rule 4901:5-25-01, is being modified accordingly.

Furthermore, the Commission agrees that Rule 4901:5-25-05 should be modified to reflect the intent that only those companies in the business of delivering gas to consumers, including the cooperatives and municipals, as well as government aggregators should be required to provide notices to consumers during energy emergencies. Therefore, paragraph (A)(1) of Rule 4901:5-25-05 is being modified to clarify this requirement.

- (d) Staff-proposed paragraph (I)(4) defined "priority use" as the minimum amount of gas necessary for protection and set forth a list of entities to which this protection applies, including electric generating facilities and central heating plants.

OCC believes that this definition should be clarified to alleviate any potential debate during an energy emergency over gas priority use between gas suppliers and the electric generators. OCC contends that this definition could be interpreted different ways. One possible interpretation, according to OCC, is that priority use is limited to the gas needed to protect the electric plant from freezing, but not the fuel to power the electric generation. OCC's alternative interpretation is that the gas necessary to power the generation units should be protected (OCC initial at 8). Dominion states that it has no objection to OCC's comment (Dominion reply at 1). The Commission does not find merit in OCC's comment. Rather, the Commission believes that the definitions need to be sufficient to enable the Commission and the governor to adapt to the circumstance of the energy emergency and that it should not be limited to a specific set of facts.

(40) Rule 4901:5-25-02 General provisions

- (a) Staff-proposed paragraphs (C) and (D) required gas suppliers with tariffs on file with the Commission to file curtailment plans in their existing tariffs. Stand Energy notes that all LDCs, with the exception of Columbia, have curtailment plans on file with the Commission. According to Stand, Columbia has relied on the Commission's order in Case No. 85-800-GA-COI (85-800) in lieu of filing its own curtailment plan. Stand submits that 85-800 does not address how a marketer whose gas is seized would be compensated and, therefore, the Commission needs to address this issue with Columbia before circumstances require or allow for confiscation of marketer gas (Stand initial at 1-2). The Commission acknowledges Stand's comments and we agree that 85-800 is not a substitute for complying with the requirement that all regulated gas suppliers must have their curtailment plans on file with the Commission. Therefore, the Commission finds that each

regulated gas supplier should review its tariff to ensure that its curtailment plan is on file. If the plan is not on file, the supplier should work with the Commission's staff and adhere to the requirements established in paragraph (C) of this rule.

In addition, Stand submits that significant changes have occurred over the 30 years since curtailment and confiscation policies were last exercised. Consequently, Stand believes that the confiscation of a marketer's gas needs to be addressed to determine how, when, and where confiscation might be authorized and how much would be paid to the marketer for confiscated gas. Stand submits that the Commission must ensure that the LDCs' curtailment and confiscation policies do not disadvantage marketers to the advantage of LDCs or other parties. For example, Stand mentions that some LDCs use market deliveries to balance their distribution systems during the winter, thus requiring marketers to make direct deliveries of a certain percentage of total marketer gas to various points on the LDC's system. Stand questions what will happen if *force majeure*s or flow restrictions are declared and whether the LDCs will nevertheless penalize marketers for under-delivery (Stand initial at 2-3). Similarly, the Gas Marketers propose that the Commission review all of the gas utilities' transportation plans to ensure that the tariffs coincide with the energy emergency rules (Gas Marketers initial at 12). The Gas Marketers request that the issue of how compensation for gas that has been reallocated will be handled should be addressed in the tariffs. The Gas Marketers cite Duke's tariff and state that, while the reference in the tariff to 85-800 needs to be updated, Duke's concept of having a ready-made formula to pay the customers and suppliers who are having the supplies confiscated is beneficial (Gas Marketers initial at 12). The Commission believes that these issues should be addressed on

a case-by-case basis based upon the circumstances of the event. Therefore, we find that the commenters requests should be denied.

Further, with regard to the tariff provisions pertaining to curtailment, the Gas Marketers submit that, as a general rule, similarly situated GCR and transportation customers should be treated the same for curtailment purposes. The Gas Marketers advocate that a consumer who transports gas should not be treated any better or worse than GCR customers in the queue for curtailment (Gas Marketers at 12). The Commission agrees that, for curtailment purposes, those who are similarly situated should not be treated any differently.

- (b) Staff- proposed paragraph (H) permitted each gas supplier to disconnect service to nonpriority use consumers who fail to disconnect or curtail consumption after they are notified to do so. Dominion suggests that this rule be revised to provide that only LDC employees or qualified contractors acting on the company's behalf be allowed to disconnect service (Dominion initial at 2). The Commission agrees with the concern expressed by Dominion and, therefore, the request should be granted and the rule is being amended accordingly.

Duke also believes that it is implicit in this paragraph that the gas suppliers must police the consumption levels of those nonpriority consumers, which would be impossible especially during an emergency (Duke initial at 14). The Commission is not convinced that this paragraph requires the gas suppliers to monitor consumption. However, to the extent that monitoring is implicit, the Commission recognizes that requiring suppliers to ensure compliance would be costly. Therefore, we would only expect suppliers to monitor consumption to the extent reasonably feasible.

With this clarification, we find that it is unnecessary to amend this paragraph and Duke's request should be denied.

- (41) Staff-proposed paragraph (A) of Rule 4901:5-25-03 Enforcement on governor's instruction - This paragraph provided that, with only two identified exceptions, no rule shall be implemented and no person penalized under this chapter, until the governor, by executive order during a declared energy emergency designates the rules to be implemented. Dominion is concerned that waiting for an executive order to designate which rules are enacted will unduly delay response to an energy emergency and, therefore, that the paragraph should be modified to allow some flexibility to the responding suppliers (Dominion initial at 3). The Commission believes that Dominion has misunderstood the purpose of this rule. This rule is intended to set forth the different types of actions the governor may take when declaring an emergency and to clarify that penalties for noncompliance with any of the rules will not be considered until such time as the governor designates the applicable rules. This rule in no way prohibits the providers from taking all prudent and reasonable measures necessary to forestall or address an energy emergency.
- (42) Amended Rule 4901:5-25-04 Actions in anticipation of an imminent energy emergency - This rule provides that the Commission may order regulated gas providers to take action and provide customer notifications. As stated previously in this order, the title and focus of this section have been modified to reflect more clearly that the actions required in this rule only apply in anticipation of an energy emergency.
 - (a) Initially, the Commission notes that the numbering of this rule has been amended to make it consistent with corresponding rules in other chapters.
 - (b) OOGA asserts that the Commission only has authority to prescribe rules in the event of a declared emergency and not for a "pre-emergency" (OOGA initial at 4). The Gas Marketers argue, and the Cooperatives agree that, in accordance with that Section 4935.03, Revised

Code, CRNGS suppliers and aggregators are subject to the Commission's orders when an energy emergency is declared. However, the Gas Marketers argue that the Commission has no such authority over CRNGS suppliers or aggregators prior to a declared emergency (Gas Marketers initial at 4-5; Cooperatives reply at 6). The Gas Marketers posit that the Commission's general supervisory powers in Sections 4905.04 through 4905.06, Revised Code, only allow the Commission to levy pre-emergency requirements on regulated utilities (Gas Marketers initial at 8). The Gas Marketers submit that, in a pre-emergency gas shortage, the planning, reporting, and contact with the public should come from the gas company that physically supplies the gas to the consumer, which in turn should use its tariff provisions that address shortages to work with the CRNGS suppliers, aggregators, and producers (Gas Marketers initial at 7-8). The Commission finds merit in the comments made by OOGA and the Gas Marketers and, therefore, to paragraph (A) of Rule 4901:5-25-04 is modified to reflect that this provision only applies to regulated gas suppliers.

- (c) Staff-proposed paragraph (D) required a gas supplier to notify the Commission when it initiates its curtailment plan. Duke comments that this reporting requirement should exclude instances where the supplier curtails service to an interruptible rate consumer because to do otherwise would create unnecessary delays and expenses (Duke initial at 15). The Commission disagrees with Duke's comment. We do not believe that requiring notification will cause delays and expenses. The Commission also notes that interruption of interruptible rate consumers would not trigger a notification requirement, unless the curtailment plans were being initiated by the gas supplier.

- (d) Staff-proposed paragraph (E) required that each gas supplier submit reports, as required by the Commission, regarding its gas supplies and system conditions. Duke objects to any reporting requirements that impose new and significant operating processes and costs on the companies (Duke initial at 15). The Commission acknowledges Duke's concern and is revising the rules to clarify that these reports may only be required if an energy emergency is imminent. Furthermore, the Commission notes that, in order to make this rule consistent with the rules in other chapters, this paragraph is moved to the general provisions section of this chapter and is now amended paragraph (E) of Rule 4901:5-25-02.
- (43) Staff-proposed Rule 4901:5-25-05 Actions taken upon declaration of an energy emergency - This rule established the escalating stages of an energy emergency, namely voluntary curtailment and the four stages of mandatory curtailment, and set forth the actions gas suppliers must take. As proposed by staff, these actions must be taken, either upon the declaration of an energy emergency or when the governor determines that such action is appropriate.
- (a) AEP requests that this rule be amended to reflect that the actions set forth in this rule are only required within the context of a properly declared energy emergency in accordance with Section 4935.03, Revised Code (AEP initial at 15). The Commission agrees and finds that AEP's request should be granted. Therefore, modifications are being made to reflect more clearly that the required actions are within the confines of a declared energy emergency situation.
 - (b) Staff-proposed paragraph (A)(1) set forth the actions gas suppliers must take under a voluntary curtailment in an energy emergency. The Gas Marketers note that there are only a few isolated cases in which customers are not served by a utility and receive their gas directly from a supplier and that, in those cases, the supplier will

need to convey information about the emergency to the consumer. With regard to other situations, however, the Gas Marketers submit that, if the proposed definition is implemented, consumers may receive multiple messages and be confused as to what action to take during an energy emergency. To prevent this occurrence, the Gas Marketers recommend that the term "gas supplier" be replaced with the phrase "gas and natural gas companies and those who directly supply end use customers through pipes or distribution systems that they own" (Gas Marketers initial at 9). The Cooperatives agree with this recommendation (Cooperatives reply at 6). In light of the Commission's revision, previously in this order, to the definition of a "gas supplier" found in amended paragraph (G) of Rule 4901:5-25-01 and our revisions found in amended paragraph (A)(1) of Rule 4901:5-25-05, the concerns of the Gas Marketers have been addressed.

- (c) Staff-proposed paragraph (A)(1)(C) required a gas supplier to notify its consumers whose forecasted supplies are inadequate. Dominion states that this provision is impractical because the forecast of gas supplies could be superseded within minutes after it is prepared and, therefore, this paragraph should be deleted (Dominion initial at 4). In the alternative, Dominion avers that consumers with access to the supplier's electronic bulletin board should be directed to monitor the system on their own account and that consumers in aggregation pools would receive the notice established in staff-proposed paragraphs (A)(1)(A) and (B) of this rule (Dominion initial at 4). The Commission finds that Dominion's point is well made and Dominion's request should be granted. Therefore, the proposed rule is deleted.

- (d) Staff-proposed paragraph (A)(1)(e)(iii) required a gas supplier to inform consumers how to substantiate a claim for priority use. Dominion recommends that the words "where practical to do so" be inserted into this paragraph because, if a quick response is required in an energy emergency, an administrative process of this sort would not be feasible (Dominion initial at 4). The Commission understands that, during a time of energy emergency, it may be difficult to provide information; however, we do not believe that it is necessary to amend the rule in this regard. Therefore, Dominion's request should be denied. In the event that a company has such difficulty, it should work with the Commission's staff to resolve the issue and the Commission would entertain waiver requests.
- (e) Staff-proposed paragraph (A)(2)(d) provided that the Commission may require gas suppliers to reallocate and/or curtail gas supplies, fulfill gas priority use requirements, transfer gas supplies to other suppliers, and monitor consumer compliance. The Gas Marketers note that the current rule is limited to reallocation of gas among jurisdictional gas utilities, while the staff-proposed definition of "gas supplier" would potentially authorize reallocation of gas from one marketer or supplier to another marketer or supplier, both of which may be engaged in commercial activities both in Ohio and in interstate commerce. The Gas Marketers submit that, unlike the Commission's supervisory powers over utilities, Chapter 4929, Revised Code, does not authorize the Commission to confiscate gas from marketers or suppliers or to force a sale to or from marketers or suppliers. The Gas Marketers submit that the paragraph should be limited to regulated gas utilities and suggest that the CRNGS and suppliers will work with the utilities via the tariffs (Gas Marketers initial at 10-11). The Gas Marketers state that, in any event, curtailment, confiscation, or reduction

in service to any consumer should only be implemented when essential and in order to protect human needs. Further, the Gas Marketers posit that customers or suppliers that are subjected to loss of service or confiscation of natural gas supplies should be made financially whole (Gas Marketers reply at 3). The Commission believes that, during an energy emergency, it is essential that the Commission use the discretion permitted by Section 4935.02, Revised Code, to evaluate the situation and act accordingly. Furthermore, with regard to the financial issues arising out of an emergency, we believe that those issues should be addressed on a case-by-case basis taking all aspects of the situation into consideration. Therefore, we find that the Gas Marketers' request should be denied.

- (f) Staff-proposed paragraphs (C) and (D) established the requirements for mandatory curtailment, stages two and three, respectively, during a declared energy emergency. Duke states that, while it is not opposed to the requirements and agrees that such is a necessity in the event of an emergency, it questions its own ability to monitor and enforce the requirements. Duke notes that, at present, it does not have the smart metering capabilities to monitor and ensure consumers' compliance (Duke initial at 16). As stated previously in finding (20), Rule 4901:5-25-04(A)(3)(c) has been amended to require that utilities monitor consumer compliance "to the extent reasonably feasible." The Commission recognizes that it would be unreasonable and costly to expect utilities to ensure consumer compliance. The Commission expects the utilities to monitor consumer usage only to the extent reasonably feasible. Because this issue has already been addressed in a previous rule, we do not find it necessary to amend these paragraphs and Duke's request should be denied.

- (44) Staff-proposed Rule 4901:5-25-06 Service restrictions - Staff-proposed paragraph (B) established the requirements for restoration of gas service to unserved residential or small commercial premises during an emergency. This provision requires that the consumption pattern must be similar to the pattern at the premises during the last five-year period and that the volume consumed does not exceed the largest volume consumed in the last five-year period during which the premises received gas service. Dominion comments that the phrase "or such period for which information is readily available" should be added after the references to five-year periods because not all gas suppliers have access to historical consumption for such a long period of time (Dominion initial at 4). The Commission finds the Dominion's request is well made and should be granted. Therefore, the rule is amended to acknowledge that, if the gas supplier does not have records covering the entire preceding five-year period, then it may use data from the period for which such information is readily available.

Comments Pertaining to Chapter 4901:5-29 - Heating Oil and Propane Emergency

- (45) Staff-proposed Rule 4901:5-29-04 Pre-emergency actions - As proposed, this rule set forth notification requirements and actions that the heating and propane suppliers may be required to take in a pre-emergency situation. Marathon states that the Commission does not have the authority to prescribe actions prior to a declaration of an energy emergency by the governor. Marathon believes that these provisions subject the heating and propane companies to formal regulation by the Commission (Marathon initial at 1). The Commission acknowledges Marathon's comments and notes that the rule pertaining to pre-emergency actions is being removed from this chapter, in accordance with our conclusion in finding (18).
- (46) Staff-proposed Rule 4901:5-29-05 Actions upon declaration of an energy emergency - Staff-proposed paragraph (B)(5) stated that, in the first stage of a mandatory curtailment, the Commission may direct suppliers to sell or provide fuel to consumers for priority use. The current rule that addresses this issue is current paragraph (J) of Rule 4901:5-29-02, which provides that "[e]ach supplier which has a surplus supply of product for its customers' priority use . . . shall honor . . .

requests by the commission to provide product to customers who are not its customers for their priority use . . .” Marathon requests that the words “with surplus volumes,” which has been removed from the staff-proposed rule, be restored. Marathon explains that suppliers often have contractual commitments to customers and regular supply relationships with non-contract customers. If there is no precondition of a “surplus” and the Commission disrupts supply patterns with existing customers, the resulting unintended harm may outweigh the benefits (Marathon initial at 2). The Commission acknowledges Marathon’s comment, but does not believe this rule should contain such restrictive language. During each stage of an energy emergency, it is necessary for the governor and the Commission to have the ability to evaluate the circumstances and address them as necessary. Therefore, Marathon’s request is denied; however, we believe that the language in staff-proposed paragraph (B)(5) should be modified slightly to clarify the intent of the paragraph. In addition, in order to be consistent with our decision in this finding, the Commission finds that staff-proposed paragraph (B)(4) of Rule 4901:5-33-04 should be amended.

Comments Pertaining to Chapter 4901:5-33 - Transportation Fuel Emergency

- (47) Staff-proposed Rule 4901:5-33-04 Pre-emergency actions - As proposed, this rule set forth notification requirements and actions that may be required of the heating and propane suppliers in a pre-emergency situation. Marathon states that the Commission does not have the authority to prescribe actions prior to a declaration of an energy emergency by the governor. Marathon believes that these provisions subject the heating and propane companies to formal regulation by the Commission (Marathon initial at 1). Once again, the Commission takes note of Marathon’s comments and verifies that the rule pertaining to pre-emergency actions is being removed from this chapter, in accordance with finding (18).
- (48) Staff-proposed Rule 4901:5-33-05 Actions taken upon declaration of emergency
 - (a) Staff-proposed paragraph (B)(4) stated that, in the first stage of a mandatory curtailment, the Commission may direct suppliers to sell or

provide fuel to consumers who are not customers for priority use. The current rule that addresses this issue is current paragraph (J) of Rule 4901:5-29-02, which provides that "[e]ach supplier which has a surplus supply of product for its customers' priority use . . . shall honor . . . requests by the commission to provide product to customers who are not its customers for their priority use" Marathon again requests that the words "with surplus volumes," which the staff has removed from the current rule addressing this issue, be restored (Marathon initial at 2). As the Commission stated above, we do not believe that this rule should contain restrictive language that would prevent the governor and the Commission, during each stage of an energy emergency, from having the ability to evaluate the circumstances and address them as necessary. Therefore, Marathon's request is denied. However, the language should be modified to make it consistent with a similar provision paragraph (B)(5) of Rule 4901:5-29-05.

- (b) Staff-proposed Rule 4901:5-33-05 Actions upon declaration of emergency - EMA asks that the designation in staff-proposed paragraph (A)(6) be updated to reflect the "Ohio state highway patrol," rather than the "Ohio department of highway safety." EMA's comment is well-made and its request should be granted and the what is now amended paragraph (A)(6) of Rule 4901:5-33-04 should reflect this change.

Comments Pertaining to Chapter 4901:5-35 - Application for Assignment Under State Set-Aside System

- (49) Staff-proposed Rule 4901:5-35-01 Definitions - Staff-proposed paragraphs (F), (K), and (M) define the terms heating oil and propane by referring to the definition of those terms in Rule 4901:5-29-01, and transportation fuel by referring to the definition of those terms in Rule 4901:5-33-01. To be consistent with the other chapters, the Commission finds that, rather than referring to rules in other chapters, the definitions should be

spelled out in this chapter. Therefore, this rule is being amended to reflect the definitions of these terms.

- (50) Staff-proposed Rule 4901:5-35-02 General provisions – Staff-proposed paragraph (C) of this rule provided that the governor shall determine the state set-aside program percentage level, not to exceed five percent, for each product subject to the program.
- (a) Marathon believes that this provision may cause unintended supply disruptions if a seller must maintain up to five percent of its supply in reserve, at the Commission's discretion, and must wait until the Commission says how to use it (Marathon initial at 2). The Commission does not find merit in Marathon's comment in that the rule allows a percentage up to five percent and, if the governor believes this is too high, then a lower percentage will be established.
 - (b) Furthermore, Marathon states that it is unclear whether the Commission can "bank" the reserve from month-to-month (Marathon initial at 2). To clarify, the Commission would direct Marathon to staff-proposed paragraph (E) of this same rule, which stated that the volume may be accumulated or deferred.
 - (c) Finally, Marathon submits that the rules are not clear on how the state set-aside program volumes relate to the allocation process set forth in other chapters dealing with energy emergencies (Marathon initial at 2). In response to Marathon's comment, the Commission finds it necessary to clarify the intent of Chapter 4901:5-35. This chapter addresses the state set-aside program, which involves the allocation relationships between suppliers and allocations to suppliers that do not have enough supply. The previous chapters referred to by Marathon deal with the provision of services to end use customers or consumers and how they will be assisted during an emergency. Therefore, the goals of Chapter

4901:5-35 are different than those of the previous chapters.

Comments Pertaining to Chapter 4901:5-37 - Emergency Reporting by Electric Entities

(51) Rule 4901:5-37-01 Definitions

- (a) Staff-proposed paragraph (C) defines "electric entity," which is subject to the requirements of this chapter. FE states that the Commission derives its statutory authority to promulgate rules in this chapter from Sections 4928.06 and 4928.11, Revised Code, and the Commission's entry in this proceeding provides no other statutory authority. FE offers that Section 4928.06, Revised Code, only applies to the Commission's authority to promulgate rules, address competitive retail electric service products, and address market abuses. Further, FE states that Section 4928.11, Revised Code, only pertains to noncompetitive retail electric service, which would include electric distribution companies; however, suppliers subject to certification under Section 4928.08, Revised Code, do not provide noncompetitive retail electric service. Therefore, FE comments that the scope of this paragraph should be modified, because it appears to exceed the Commission's underlying statutory authorization (FE initial at 5). Contrary to FE's assertion, the Commission derives the statutory authority for these rules from Section 4935.03, Revised Code, rather than Chapter 4928, Revised Code. Section 4935.03, Revised Code, provides that the Commission may establish rules "defining various foreseen types and levels of energy emergency conditions...and specifying appropriate measures to be taken at each level or for each type of energy emergency as necessary to protect the public health and safety or prevent unnecessary or avoidable damage to property." The rules contained in this chapter are essential in order for the Commission to carry out the

responsibilities place on the Commission by virtue of Section 4935.03, Revised Code. Accordingly, the Commission finds that FE's statements are without merit.

- (b) AEP recommends adding a definition of "bulk electric system" to this chapter (AEP initial at 17). The Commission agrees and the rule is being modified to include a definition of bulk electric system.
- (c) The Cooperatives recommend adding a definition for "electric cooperative" to this chapter (Cooperatives initial at 5). The Commission agrees that we need a definition because, as we discuss below, there are certain provisions from which the municipal providers and the cooperatives will be exempted. Therefore, a definition is included.
- (d) Staff-proposed paragraph (D) defines "emergency" as "an anticipated or existing shortage in the supply of electric energy, or constraint in the transmission, distribution, or generation . . . which has or may adversely affect the operation or reliability. . . ." EMA believes that, since the term "emergency" is defined in Chapter 5502, Revised Code, defining the term here would be confusing (EMA initial at 2). The Commission finds no merit in EMA's concern. The definition of "emergency" in this chapter is unique to this chapter and does not relate to the term found in Chapter 5502, Revised Code.

FE posits that the rule is overly broad in that an emergency could exist every day under the definition because every day it is reasonable to anticipate a constraint will exist somewhere on the transmission or distribution system. Furthermore, FE states that an emergency could exist even when the constraint has no impact on the reliability of electric service (FE initial at 5). AEP recommends replacing the phrase "may

adversely affect” with the phrase “is likely to affect” in order to clarify that the meaning of emergency in this chapter is different than the term “energy emergency” used in other chapters and is defined more broadly to include anticipated emergencies (AEP initial at 17). The Commission appreciates FE’s and AEP’s comments and finds merit in AEP’s proposal. With this revision, the Commission believes the concerns of both FE and AEP are addressed.

- (e) Staff-proposed paragraph (G) defines “reliability council.” Duke suggests that the definition be revised to recognize and incorporate the involvement of the RTO and ISO (Duke at 17). The Commission agrees with Duke that the involvement of the RTO and ISO should be incorporated into the rule and Duke’s request in this regard should be granted. The Commission notes, however, that “reliability council” is only referenced once in this chapter, in staff-proposed paragraph (A)(5) of Rule 4901:5-37-03. We find that staff-proposed paragraph (A)(5) of Rule 4901:5-37-03 should be amended to refer to the RTO and ISO rather than the “reliability council.” Therefore, the definition of “reliability council” can be deleted from this rule because it is no longer used in this chapter.

(52) Rule 4901:5-37-02 General provisions

- (a) Staff-proposed paragraph (B) provides that electric entities “. . . shall comply with the rules of this chapter . . .” during an emergency that has adversely affected or may adversely affect the reliability of service. AEP notes that the analogous provision currently in effect, current Rule 4901:5-37-01(C), contains language indicating that the obligation applies, “unless otherwise ordered by [the Federal Energy Regulatory Commission] FERC.” AEP believes that this is an important qualification especially in light of today’s RTO market structure (AEP initial

at 18). This paragraph, as proposed by staff, is intended to emphasize that electric entities must comply with the Commission's rules and orders. To the extent that federal mandates may supersede these rules or a Commission order, those situations will be reviewed on a case-by-case basis, but that is not the purpose of this paragraph. We do not believe that it is necessary to amend this staff-proposed paragraph in order to expand it to refer to federal powers that may or may not be applicable when the focus is on the Commission's authority. Therefore, the Commission finds that AEP's request should be denied.

The Cooperatives recommend that the word "applicable" be added to staff-proposed paragraph (B) so that it would read ". . . shall comply with the applicable rules of this chapter. . ." (Cooperatives initial at xvii). The Commission does not believe that this language is necessary, since no inapplicable rule would ever require compliance. Therefore, the Cooperatives' request is denied.

FE states that this staff-proposed paragraph (B) does not explain how an emergency is determined to exist, what entity would make the determination that it exists, over what time frame or geographic area an emergency would exist, or how the electric entities will know of the emergency. FE avers that neither Section 4928.06 nor 4928.11, Revised Code, provide authority for the Commission to declare an emergency as contemplated in this chapter. FE points out that the governor's authority is covered in Section 4935.03, Revised Code (FE initial at 6). Initially, the Commission notes that the rules contained in this chapter cover critical situations which may occur that require the Commission to be kept informed and apprised of the situation. Contrary to FE's view, the Commission's general supervisory powers contained in Sections 4905.04

through 4905.06, Revised Code, authorize the Commission to obtain the information and require the communication contemplated by this chapter. This chapter should not be confused with the chapters concerning energy emergencies. With regard to entities that do not fall within our general supervisory powers, it is our hope that we will be able to communicate with those entities in order to protect the citizens of Ohio in the types of situations contemplated by this chapter. In order to clarify the types of situation to which this chapter pertains, the Commission is amending the staff-proposed language throughout the chapter to refer to "critical situations," as opposed to "emergencies."

- (b) The Cooperatives suggest that a new rule be inserted that states that no rule in this chapter applies to the electric cooperatives, unless there is a declared energy emergency as defined in staff-proposed Rule 4901:5-19-01 (Cooperatives initial at xvii). In finding (18) above, the Commission clarified the distinction between requiring cooperatives to provide information in a pre-emergency situation and requiring that the cooperatives take some action prior to an emergency. In keeping with that distinction, the Commission found that paragraphs (D) of Rule 4901:5-37-02 and (B) of 4901:5-37-03, as well as Rules 4901:5-37-04, and 4901:5-37-05, require some action prior to an emergency and, therefore, they should be amended to reflect that they do not apply to any cooperative or municipal, unless the governor declares an emergency. However, the remaining paragraphs in Rules 4901:5-37-02 and 4901:5-37-03, require the submission of information to the Commission in a critical situation when an emergency is imminent and, therefore, those provisions should apply to all entities, including cooperatives and municipals. Accordingly, the Commission concludes that the Cooperatives' request should be granted, in part, and denied, in part.

- (c) Staff-proposed paragraphs (D)(1) and (D)(2) stated that, in addition to the rules in this chapter, the Commission may adopt orders to require electric entities to take action before and during an emergency. The Cooperatives recommend that paragraph (D) be revised and language inserted that excludes electric cooperatives from such requirements (Cooperatives initial at xviii). As we stated previously, staff-proposed paragraph (D) of Rule 4901:5-37-02 is being amended to clarify that it does not apply to cooperatives and municipals unless there is a declared emergency.
- (53) Rule 4901:5-37-03 Emergency reporting to the commission; emergency actions
 - (a) Staff-proposed paragraph (A) delineated reports that electric entities must provide to the Commission. AEP submits that this chapter and this paragraph should contain a preface that clarifies that the reporting obligations only apply during an emergency (AEP initial at 18). The Commission believes that each of these requirements defines situations that could lead to wider emergency situations. Thus, we do not agree that the language proposed by AEP would be appropriate. As we stated previously in this order this chapter pertains to critical situations and not energy emergencies that are covered in other chapters. Therefore, AEP's request is denied.
 - (b) AEP suggests that staff-proposed paragraph (A) should be modified for clarity and to make it more consistent with the comparable reporting obligations of the United States Department of Energy (USDOE). For example, AEP suggests that the one hundred megawatts reporting trigger for loss in service in paragraph (A)(1) should be increased to three hundred megawatts, consistent with USDOE's requirements (AEP initial at 18-19). The Commission finds that this comment is

well-made and AEP's request should be granted. Therefore, this paragraph is being amended so that it is more consistent with other reporting obligations.

- (c) Staff-proposed paragraph (A)(2) required electric entities to report any action to reduce firm customer loads to maintain reliability. AEP recommends that this provision be deleted (AEP initial at 19). The Commission finds no merit in this request and, therefore, it is denied.
- (d) Staff-proposed paragraph (A)(5) required electric entities to report any emergency alert issued by a reliability council relating to the entity's overall generation output. AEP and Duke agree that this provision should be replaced by language that reflects the ISO and RTO markets and North American Electric Reliability Council's (NERC's) role as the Energy Reliability Organization (AEP initial at 19; Duke initial at 17). As we stated previously in this order, the Commission agrees with the commenters to the extent that paragraph (A)(5) should be amended to reflect role of the ISO and RTO. With regard to the role of NERC, the Commission finds that a new paragraph should be added to this rule, amended paragraph (A)(6), to reflect that reports regarding the implementation of any other legally imposed energy emergency alert procedures may be required. Therefore, the commenters' requests are granted, in part, and denied, in part.
- (e) Staff-proposed paragraph (A)(6) required electric entities to report any outage or incident which damages or renders inoperable system equipment. AEP recommends that the phrase "during an emergency" be added to this paragraph and that the words "bulk electric" be added to describe the type of system equipment this provision is referring to (AEP initial at 19). The Commission agrees with AEP's proposal and, therefore, AEP's request should be granted. The

paragraph is being amended, as set forth in amended paragraph (A)(7).

- (f) Staff-proposed paragraph (A)(7) required electric entities to report when a transmission company determines a net operating reserve deficiency will exist. AEP proposes that this provision be deleted (AEP initial at 19). As we stated previously in this order this chapter pertains to critical situations and not energy emergencies that are covered in other chapters. Therefore, AEP's request is denied.
- (g) Staff-proposed paragraph (B) pertained to what the electric entity will implement when it is unable to relieve an existing or anticipated energy shortage through the interconnected system. AEP recommends that language be added to this provision such that when an electric entity is unable to relieve an energy shortage by obtaining or purchasing power through a "regional transmission organization, or an independent system operator," the electric entity shall implement its emergency plan, as approved by the Commission (AEP initial at 20). The Commission agrees with AEP's proposal and finds that AEP's request should be granted. Therefore, the rule is amended accordingly.
- (h) Staff-proposed paragraph (B)(1) stated that, when the electric entity is unable to relieve an existing or anticipated energy shortage through the interconnected system, it will implement and follow "the reliability council's load shedding procedures." AEP suggests that this provision be deleted (AEP initial at 20). Duke recommends that the ISO and RTO be added to this section (Duke initial at 17). While the Commission does not believe that the section should be deleted, we do believe that it should be amended in order to be more comprehensive and cover the all of the procedures implemented by the ISO or RTO. Therefore, AEP's request should be denied and

Duke's request should be granted. Accordingly, the words "load shedding" should be stricken from the paragraph and the paragraph should be amended consistent with this finding.

- (i) Staff-proposed paragraph (B)(2) stated that, when the electric entity is unable to relieve an existing or anticipated energy shortage through the interconnected system it will implement "the provision of the electric entity's emergency plan, as approved by the commission. . . ." AEP proposes that the words "the provision of" be deleted from this section (AEP initial at 20). The Commission agrees with this proposal and finds that AEP's request should be granted. Therefore, the paragraph is amended.

With regard to the requirements in staff-proposed paragraph (B)(2), Duke submits that currently there is no requirement for Commission approval. Duke maintains that the distribution utilities are required to file these plans with NERC for approval and that NERC's approval is sufficient. Duke states that it does not oppose sharing the information with the Commission, but believes that a second approval process is not necessary (Duke initial at 18). The Commission finds that Duke's request is reasonable and should be granted. Therefore, the words "as approved by the Commission" are deleted from this paragraph.

- (54) Staff-proposed Rule 4901:5-37-04, Sudden or unanticipated emergency resulting in overloading transmission facilities, and staff-proposed Rule 4901:5-37-05 Anticipated emergency conditions (when this rule went out for comment it was incorrectly numbered as Rule 4901:5-37-04) - Both of these rules list actions, any or all of which an electric entity might perform in these situations. These rules state that the entity will perform these actions "as required." AEP suggests that the words "as required" be replaced by "as applicable" because, depending on the situation, only some of the actions would apply (AEP initial at 20-21). The Commission finds merit in

AEP's proposal and, therefore, AEP's request should be granted. This paragraph is being amended accordingly.

- (55) In making the determinations required by Section 119.032(C), Revised Code, the Commission considered those matters set forth in the executive order and in Section 119.032(C), Revised Code, as well as the continued need for the rules; the nature of any complaints or comments received concerning these rules; and any relevant factors that have changed in the subject matter area affected by the rules. With these factors in mind and, upon consideration of the staff proposal and the initial and reply comments, the Commission concludes that: existing Rules 4901:5-17-02, 4901:5-19-03, 4901:5-21-01, 4901:5-23-01 and 03, 4901:5-25-06, 4901:5-33-02, 4901:5-35-02 and 03, should be amended; existing Rules 4901:5-19-01 and 02, 4901:5-19-04, 4901:5-21-02, 4901:5-23-02 and 04, 4901:5-25-01 through 05, 4901:5-29-01 and 04, 4901:5-33-01 and 03 through 04, 4901:5-35-01, 4901:5-37-01 through 04, should be rescinded and reenacted; new Rules 4901:5-19-05, 4901:5-21-03, 4901:5-37-05, should be adopted; and existing Rules 4901:5-23-05 through 07, 4901:5-29-05 through 07, 4901:5-33-05 through 07, should be rescinded.

It is therefore,

ORDERED, That, in accordance with finding (40)(a), each regulated gas supplier should review its tariff to ensure that its curtailment plan is on file. If the plan is not on file, the supplier should work with the Commission's staff to ensure that the tariffs adhere to the requirements established in paragraph (C) of Rule 4901:5-25-02. It is, further,

ORDERED, That attached amended Rules 4901:5-17-02, 4901:5-19-01 through 04, 4901:5-21-01 through 02, 4901:5-23-01 through 04, 4901:5-25-01 through 06, 4901:5-29-01 and 04, 4901:5-33-01 through 04, 4901:5-35-01 through 03, 4901:5-37-01 through 04; and new Rules 4901:5-19-05, 4901:5-21-03, and 4901:5-37-05 be adopted and be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That existing Rules 4901:5-23-05 through 07, 4901:5-29-05 through 07, 4901:5-33-05 through 07 be rescinded. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the review date for Chapters 4901:5-17,

4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37, O.A.C., shall be November 30, 2011. It is, further,

ORDERED, That a copy of this entry be served upon all parties that filed comments in this proceeding and any other interested party.

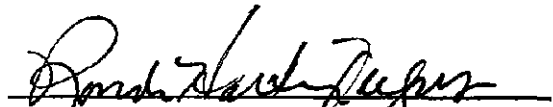
THE PUBLIC UTILITIES COMMISSION OF OHIO



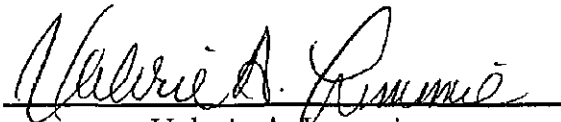
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

CMTP/JWK/vrm

Entered in the Journal

FEB 11 2009



Renee J. Jenkins
Secretary

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4901:5-17-02 Governor's emergency powers.

For any type or level of ~~declared~~ energy emergency, declared under the provisions of section 4935.03 of the Revised Code, the governor shall have the power to take any of the following actions:

- (A) Restrict the energy consumption of state and local government offices and industrial and commercial establishments;
- (B) Restrict or curtail public or private transportation, or require or encourage the use of car pools or mass transit systems;
- (C) Order any electric light, ~~electric service company as defined in division (A)(9) of section 4928.01 of the Revised Code, natural gas, or gas, or pipeline company;~~ any supplier subject to certification under section 4928.08 of the Revised Code or section 4929.20 of the Revised Code; electric power or gas utility that is owned by a municipal corporation, or not-for-profit; coal producer or supplier; electric power producer or marketer; or petroleum fuel producer, refiner, wholesale distributor, or retail dealer to sell electricity, gas, coal, or petroleum fuel in order to alleviate hardship, or, if possible, to acquire or produce emergency supplies to meet emergency needs;
- (D) Order other energy conservation or emergency energy production or distribution measures to be taken in order to alleviate hardship; ~~and~~
- (E) Mobilize ~~civil defense~~emergency management, national guard, law enforcement, or emergency medical services.

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4901:5-19-01 Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Consumer" means a person who consumes electric energy.

(C) "Electric power producer" means a person, municipality, or governmental or political subdivision, located in this state and engaged in the business of generating electricity for lighting, heat, or power purposes.

(D) "Electric provider" means any:

(1) Electric distribution utility, as defined in division (A) of section 4928.01 of the Revised Code.

(2) Municipal electric utility, as defined in division (A) of section 4928.01 of the Revised Code.

(3) Electric cooperative, as defined in division (A) of section 4928.01 of the Revised Code.

(4) Electric services company, as defined in division (A) of section 4928.01 of the Revised Code, that is subject to certification under section 4928.08 of the Revised Code.

(E) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of fuel for electric power generation that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(F) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(G) "Nonpriority use" means all use of electricity other than priority use.

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(H) "Normal usage" means electric energy consumption during the comparable period during the previous year, adjusted for weather or other major changes in usage.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

(J) "Priority use" means the minimum amount of electric energy necessary for protection of the public's health and safety, and for the prevention of unnecessary or avoidable damage to:

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).

(2) Hospitals.

(3) Medical and human life-support systems and facilities.

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

(5) Telephone, radio, television, and newspaper facilities.

(6) Local and suburban transit systems and air terminal facilities.

(7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.

(8) Water supply and pumping facilities.

(9) Sanitary service facilities for collection, treatment, or disposal of community sewage.

(10) Production facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuel, and for fuel refineries (including ethanol and other fuel products).

(11) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels.

(12) Coal mines and related facilities.

(13) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.

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(14) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other personal or real property.

(15) Such other similar facilities as may be determined by the commission to be a priority use.

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4901:5-19-02

General provisions.

- (A) The requirements of this chapter are intended to provide the governor with the means of managing, on a statewide basis, a continuing fuel shortage. These requirements are keyed to remaining supplies of fuel for electric generation. It is expected that electric providers and electric power producers will take all prudent measures prior to reaching mandatory action levels under rule 4901:5-19-05 of the Administrative Code. Once the mandatory stages of action are invoked under rule 4901:5-19-05 of the Administrative Code, electric providers and electric power producers are required to initiate and to continue implementation of requisite actions until directed to do otherwise.
- (B) The institutional and regulatory relationship between jurisdictional utilities and the commission remains intact. Except as otherwise provided by this chapter or commission order during an energy emergency, each electric provider and electric power producer shall comply with all applicable rules and requirements of the commission.
- (C) Measures required by the governor under these rules, implemented or enforced pursuant to rule 4901:5-19-03 of the Administrative Code, shall prevail over any existing requirements of the commission inconsistent with said measures.
- (D) The actions required of electric providers and electric power producers in this chapter shall be implemented by the electric providers and electric power producers. All actions required in this chapter are intended to be implemented by each electric provider and electric power producer to the extent reasonably possible. Actions ordered of consumers stay in effect until terminated or changed. Electric power producers are not required to take any action that may adversely impact the safety of plant personnel or plant equipment.
- (E) In anticipation of an imminent energy emergency or during a declared energy emergency, the commission may order all electric power producers having a generating capacity of fifty megawatts or more to submit to staff a weekly report of electric supply adequacy. Upon request of the chairman of the commission, the report of electric supply adequacy shall be submitted daily. The report shall contain the following information:
- (1) Name of unit.
 - (2) Fuel type(s) utilized by the unit.
 - (3) Maximum capacity of the unit.
 - (4) Current megawatt output of the unit.

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- (5) Minimum amount of energy necessary to sustain the safe operation of a unit that is not able to cycle due to the uncertainty of restarting.
- (6) Available primary fuel for the unit.
- (7) Available secondary fuel for the unit.
- (8) Projected fuel inventory in terms of megawatt hours for the unit.
- (9) Typical fuel inventory in terms of megawatt hours for the unit.
- (10) Average amount of fuel per delivery to the unit.
- (11) Delivery frequency to the unit.
- (12) Amount of firm gas scheduled for the unit.
- (13) Total burn hours remaining with unit at maximum capacity.
- (14) Additional relevant comments.
- (F) Upon request, each electric power producer shall submit to commission staff the calculations and a detailed description of all assumptions made in the reports required under paragraph (E) of this rule.
- (G) In anticipation of an imminent energy emergency or during a declared energy emergency, each electric provider and electric power producer shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.
- (H) The commission's fuel source advisory council may notify and advise the chairman of the commission about electric power supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-19-05 of the Administrative Code.
- (I) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
 - (1) An energy emergency may exist with regard to the supply of fuel for electric generation.
 - (2) An energy emergency no longer exists with regard to the supply of fuel for electric generation.

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- (J) When and if it is determined such action is appropriate, the governor may request the secretary of the United States department of energy to invoke appropriate federal laws and regulations.
- (K) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (L) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-19-03 **Enforcement on governor's instruction.**

- (A) No rule shall be implemented and no person shall be penalized under any rule in ~~Chapter 4901:5-19~~ this chapter, other than paragraphs (B) and (E) to (L) of rule ~~4901:5-19-02~~ of the Administrative Code and paragraph (A) of rule ~~4901:5-19-04~~ of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of ~~these rules~~ this chapter.

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4901:5-19-04

Actions in anticipation of an imminent energy emergency.

(A) In anticipation of an imminent energy emergency, the commission may consult with the appropriate independent system operator or regional transmission organization. At such time, the commission may, by order, require that each regulated electric provider:

(1) Notify its consumers through reports in the news media, or written notice where appropriate, or, for electric providers who serve fewer than five thousand customers, provide telephonic or electronic notice to each of its customers, about an imminent shortage of electric service and request its consumers to reduce their consumption of electricity and to implement energy conservation measures. These measures shall include, but are not limited to, the following:

(a) Curtailing outdoor lighting, except for essential safety and security purposes.

(b) Reducing water heating temperatures.

(c) Adjusting temperatures for buildings, factories, and transportation facilities.

(2) Issue periodic reports to notify consumers about the following:

(a) Electric supply levels.

(b) Plans and procedures for transfers, restrictions, curtailments, and reallocations pursuant to its curtailment plan or commission order.

(c) Projected or actual dates when consumers or classes of consumers would be subject to curtailment, reallocation, or restriction.

(3) Implement measures that include:

(a) Fulfilling electric requirements for priority use by its consumers.

(b) Reallocating and/or curtailing supplies among its consumers. Each electric provider that curtails deliveries to consumers that purchase power on an interruptible basis shall curtail electric deliveries pursuant to its curtailment plan and voluntary arrangements with individual consumers. Each electric provider shall, to the extent reasonably feasible, monitor consumer compliance with its curtailments and shall report the level of compliance to the commission, as requested.

(B) Nothing in this rule shall preclude the electric provider, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.

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4901:5-19-05

Actions taken upon declaration of an energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable:

(1) Each electric provider that has not imposed mandatory curtailments under its emergency curtailment plan shall increase its efforts to effect voluntary conservation, by all consumers, of at least twenty-five per cent of all nonpriority use of electricity.

(2) Each electric provider shall implement a public appeals campaign through news media to its consumers, making appropriate suggestions for achieving usage reductions. These reductions should include, but not be limited to, the following:

(a) Reduce outdoor lighting that is not related to safety or security.

(b) Reduce general interior lighting levels to minimum levels, to the extent this contributes to decreased electricity usage.

(c) Reduce show window and display lighting to minimum levels to protect property.

(d) Reduce the number of elevators operating in office buildings during nonpeak hours.

(e) Reduce electric water heating temperature to minimum level.

(f) Minimize work schedules for building cleaning and maintenance, restocking, etc., in order to eliminate the necessity for office or commercial and industrial facilities to be open beyond normal working hours.

(g) Minimize electricity use by maintaining a building temperature of no less than seventy-eight degrees Fahrenheit by operation of cooling equipment and no more than sixty-eight degrees Fahrenheit by operation of heating equipment.

(h) Encourage, to the extent possible, daytime scheduling of entertainment and recreational facilities.

(3) Each electric provider:

(a) Shall issue periodic bulletins, informing consumers of:

(i) The actions which will be required of consumers if it becomes necessary to initiate mandatory curtailment of electric energy, and the procedures

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to be followed prior to and during the period when electric usage is restricted.

(ii) The procedures to be followed by consumers wishing to substantiate a claim for priority use, as defined in rule 4901:5-19-01 of the Administrative Code.

(b) Shall provide to the commission written information concerning its anticipated and actual load in kilowatt-hours consumed, in the form prescribed by the commission. This report shall be submitted weekly or daily, as instructed by the commission.

(4) Each electric power producer:

(a) Shall issue periodic bulletins informing consumers of the fuel supply level, at least weekly, upon order of the commission or the governor.

(b) Shall report to the commission estimates of fuel savings resulting from load reduction or other measures as part of the report required by paragraph (E) of rule 4901:5-19-02 of the Administrative Code, relating to electric supply adequacy.

(c) Shall operate generating plant to optimize fuel usage, upon order of the commission or the governor. The governor or the commission may consult with the appropriate independent system operator or regional transmission organization.

(5) The commission may consult with the appropriate independent system operator or regional transmission organization and may encourage all electric providers to purchase and to share energy among themselves to aid in alleviating existing energy shortages and to prevent even more severe future energy shortages.

(6) All electric providers and electric power producers shall reduce internal consumption of electric energy to the maximum degree possible, consistent with safe, efficient operation. The use of electricity on premises, including parking and large area lighting and interior lighting, shall be curtailed, except lighting essential for security or safety.

(7) When it is determined that such action is appropriate, the governor or the commission may consult with the director of the Ohio environmental protection agency, the appropriate independent system operator or regional transmission organization, and any other oversight agency. At such time, the governor or the commission:

(a) May request authorization from the proper authorities to curtail use of pollution control facilities.

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- (b) May request authorization from the proper authorities to burn nonconforming coal in order to maximize use of the remaining stockpiles.
 - (c) May request industry to utilize industrial-owned generation equipment to supplement utility generation to the maximum extent possible.
- (8) The governor may consult with the appropriate independent system operator or regional transmission organization and, if the governor deems it appropriate, may order other electric power producers with greater fuel supplies to increase sales of electric energy.
- (B) Mandatory curtailment - stage one. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:
 - (1) Consumer use of electricity shall be curtailed as follows:
 - (a) All nonpriority use of outdoor lighting is prohibited.
 - (b) All public, commercial, and industrial buildings shall minimize electricity use by maintaining a building temperature of no less than eight-five degrees Fahrenheit by cooling equipment and no more than sixty degrees Fahrenheit by the operation of heating equipment, except where health requirements or equipment protection cause such measures to be inappropriate.
 - (c) All public, commercial, and industrial buildings shall reduce interior lighting to the minimum levels essential for continued work and operations, to the extent this contributes to decreased use of electric energy.
 - (2) Each electric power producer:
 - (a) Shall, wherever possible, switch to an alternate fuel, provided that the following are met:
 - (i) The electric power producer has informed the commission that it will be switching fuels.
 - (ii) The commission has confirmed to the electric power producer that the specific alternate fuels are not themselves in short supply.
 - (iii) The switch complies with all applicable independent system operator or regional transmission organization policies and procedures.

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- (b) Shall report to the commission, as part of its report of electric supply adequacy, in addition to the categories described in paragraph (E) of rule 4901:5-19-02 of the Administrative Code, its daily fuel usage burn, energy purchases by source, fuel deliveries, and estimated fuel savings resulting from load reduction or other measures.
- (3) Each electric provider shall report to the commission its anticipated and actual load in kilowatt-hours consumed in the form prescribed by the commission. This report shall be submitted daily or weekly, as instructed by the commission.
- (4) The commission:
 - (a) May monitor and verify each Ohio electric power producer's fuel supply, burn day level, and energy purchases on a daily basis.
 - (b) May assure that each electric power producer considers all possible fuels for generation.
 - (c) May take other actions it considers to be reasonable and appropriate.
- (5) The Ohio emergency management agency may be requested to:
 - (a) Establish and maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.
 - (b) Plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, fuel for electric generation, where life, property, health, or safety are threatened.
 - (c) Establish and maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.
- (C) Mandatory curtailment - stage two. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions will be applicable in addition to the provisions set forth in paragraph (B) of this rule:
 - (1) All consumers shall discontinue nonpriority use of electricity on two days of each week. Consumers shall not increase nonpriority uses above mandatory stage one levels during other days of the week. Consumers may, in the alternative, elect to reduce total electricity consumption by twenty-five per cent below normal

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usage. Consumers choosing the alternate option must keep records sufficient to document the reduction.

(2) Each electric provider shall inform consumers of the days that nonpriority use shall be discontinued.

(D) Mandatory curtailment - stage three. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions will be applicable in addition to the provisions set forth in paragraph (C) of this rule:

(1) Consumers shall discontinue nonpriority use of electricity on three days of each week. Consumers shall not increase nonpriority use above mandatory stage two levels during other days of the week. Consumers may, in the alternative, elect to reduce total electricity consumption by fifty per cent below normal usage. Consumers choosing the alternate option must keep records sufficient to document the reduction.

(2) Each electric provider shall inform consumers of the days when nonpriority use shall be discontinued.

(E) Mandatory curtailment - stage four. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, all consumers shall discontinue all nonpriority use of electricity on all days of each week. All previous measures shall be continued except as amended by this paragraph.

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4901:5-21-01 **Definitions.**

(A) "Coal supplier" ~~shall mean means~~ all prime coal suppliers, wholesale purchaser resellers, and other persons who sell or resell coal to users within the geographic areas specified consumers.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Consumer" means a person who consumes coal at a specified location.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of coal that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(E) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.

(G) "Nonpriority use" means all use of coal other than priority use.

(H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

~~(B)~~(I) "Priority ~~uses~~use" ~~shall mean means~~ the minimum amount of coal necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to ~~property, at:~~

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients);

(2) Hospitals;

(3) Medical and human life-support systems and facilities;

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- (4) Electric power generating facilities and central heating plants serving the public;
 - (5) Telephone, radio, television, and newspaper facilities;
 - (6) Local and suburban transit system and air terminal facilities;
 - (7) Police and fire fighting firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities;
 - (8) Water supply and pumping facilities;
 - (9) Sanitary service facilities for collection, treatment, or disposal of community sewage;
 - ~~(10) Federal facilities essential to national defense;~~
 - ~~(14)~~(10) Production facilities and refineries for natural gas, artificial or synthetic gas, propane, and petroleum fuel refineries;
 - ~~(12)~~(11) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuel facilities; fuels.
 - ~~(13)~~(12) Coal mines and related facilities;
 - ~~(14)~~(13) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, fresh-produce, grain, bread, rolls, and buns; breads, and livestock and poultry feed.
 - ~~(15)~~(14) Buildings and facilities, limited to uses protecting the physical plant and structure, appurtenances, equipment, contents, product inventories, raw materials, livestock, and other real or personal property;
 - ~~(16)~~(15) And such Such other similar uses facilities as may be determined by the commission to be a priority use.
- (C) ~~"Non-priority uses" shall mean all uses of coal other than priority uses.~~
- (D) ~~"Customer" shall mean that person or entity legally responsible to pay for coal.~~
- (E) ~~"User" shall mean the person or entity who consumes coal at a specified location.~~
- (F) ~~"Hardship" shall mean actual or threatened conditions of substantial discomfort and/or economic dislocation.~~

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~~(G) "Emergency" shall mean actual or threatened conditions or danger to the health, safety, or welfare of people, or an imminent threat of irreparable damage to property.~~

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4901:5-21-02

General provisions.

- (A) In anticipation of an imminent energy emergency or during a declared energy emergency, each coal supplier shall be required to answer commission staff's questions, as well as to update its contact information with the commission.
- (B) The commission's fuel source advisory council may notify and advise the chairman of the commission about coal supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-21-03 of the Administrative Code.
- (C) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
 - (1) An energy emergency may exist with regard to the supply of coal.
 - (2) An energy emergency no longer exists with regard to the supply of coal.
- (D) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (E) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-21-03

Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than rule 4901:5-21-02 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-21-04

Actions taken upon declaration of an energy emergency.

(A) Each coal supplier is expected:

- (1) To reduce, on an equitable basis, the provision of coal to its consumers for nonpriority use.
- (2) To assure, to the extent reasonably possible, that all of its consumers practice conservation and restrict their nonessential or wasteful use of coal.

(B) Each coal supplier that has a surplus supply of coal for its consumers' priority use requirements for the foreseeable future is expected to assure, to the extent reasonably possible, provision of coal to its normal consumers for their priority use requirements for the subsequent thirty-day period, provided:

- (1) Fair compensation is proffered by any new priority use consumers.
- (2) Any new priority use consumers can substantiate their priority usage requirements.
- (3) No threat to the life, property, health, or safety of the coal suppliers' existing consumers would result.

(C) Each coal supplier that has an inadequate supply of coal for its consumers' priority use requirements for the subsequent thirty-day period is expected to notify the commission of the number, names, and coal type and tonnage required for priority use consumers beyond the capability of the supplier.

(D) The commission may provide assistance in locating a supply for consumers with inadequate coal for priority use. The commission may accept requests for such assistance for relief of verifiable consumer hardship and emergency conditions. Such requests may be accepted by the commission from either the affected consumer or the coal supplier that would supply the affected consumer. All requests shall be in a manner and form prescribed by the commission and shall comply with any applicable federal laws, regulations, or guidelines.

(E) The commission may establish a toll-free telephone number for consumers in this state to request state assistance for relief from verifiable emergency or hardship conditions.

(F) The commission may designate, as priority use, the volume of coal necessary to relieve emergency or hardship conditions found to be extant and may request the consumer's supplier to deliver such product volume to the consumer, provided the consumer offers fair compensation.

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- (G) If the commission finds that a supplier has insufficient supply of coal to provide for all consumers' priority use requirements in the current month and/or is unable to provide product for consumers who, facing emergency or hardship conditions, have had priority usage designation by the commission, the commission may request another supplier to provide product.
- (H) Each supplier shall encourage all of its consumers to practice coal conservation and to restrict their nonessential or wasteful use of coal.

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4901:5-23-01 **Definitions.**

As used in this chapter:

(A) "Coal supplier" ~~shall mean~~ means all prime coal suppliers, wholesaler purchaser resellers, and other persons who sell or resell coal to users ~~within the geographic or service areas in which an emergency has been declared~~ consumers.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Consumer" means a person who consumes coal at a specified location.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of coal that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(E) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.

(G) "Nonpriority use" means all use of coal other than priority use.

(H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

~~(B)(1)~~ (I) "Priority ~~uses~~ use" ~~shall mean~~ means the minimum amount of coal necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to ~~property, at:~~

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients);

(2) Hospitals;

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- (3) Medical and human life-support systems and facilities;
- (4) Electric power generating facilities and central heating plants serving the public;
- (5) Telephone, radio, television, and newspaper facilities;
- (6) Local and suburban transit systems and air terminal facilities;
- (7) Police and fire-fighting firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.
- (8) Water supply and pumping facilities;
- (9) Sanitary service facilities for collection, treatment, or disposal of community sewage;
- ~~(10) Federal facilities essential to national defense;~~
- ~~(11)(10)~~ Production facilities and refineries for natural gas, artificial or synthetic gas, propane, and petroleum fuel refineries;fuels.
- ~~(12)(11)~~ Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuel, and for fuel refineries (including ethanol and other fuel products.
- ~~(13)(12)~~ Coal mines and related facilities;
- ~~(14)(13)~~ Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, fresh-produce, bread, rolls,grain, breads, and buns;livestock and poultry feed.
- ~~(15)(14)~~ Buildings and facilities, limited to uses-protecting the physical plant and structure, appurtenances, equipment, eontents,—product inventories, raw materials, livestock, and other real or personal property; and,
- ~~(16)(15)~~ Such other similar uses-facilities as may be determined by the commission.
- (C) ~~"Non-priority use" shall mean all uses of coal other than priority uses.~~
- (D) ~~"Customer" shall mean that person or entity legally responsible to pay for coal.~~
- (E) ~~"User" shall mean the person or entity who consumes coal at a specified location.~~

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4901:5-23-02

General provisions.

- (A) Emergency rules to respond to fuel shortages threatening electric generation and consumer power supplies are found in Chapter 4901:5-19 of the Administrative Code. The rules contained in Chapter 4901:5-23 of the Administrative Code cover the availability of coal for use other than electric power generation. The requirements of Chapter 4901:5-23 of the Administrative Code are keyed to the remaining supply of coal.
- (B) The actions required of coal suppliers in Chapter 4901:5-23 of the Administrative Code shall be implemented by the coal suppliers to the extent reasonably possible.
- (C) In anticipation of an imminent energy emergency or during a declared energy emergency, each coal supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.
- (D) The commission's fuel source advisory council may notify and advise the chairman of the commission about coal supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-23-04 of the Administrative Code.
- (E) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
 - (1) An energy emergency may exist with regard to the supply of coal.
 - (2) An energy emergency no longer exists with regard to the supply of coal.
- (F) Nothing in this rule shall preclude a coal supplier, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.
- (G) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (H) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-23-03

Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (B) to (H) of rule 4901:5-23-02 of the Administrative Code until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-23-04

Actions taken upon declaration of an energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable.

(1) Each coal supplier:

- (a) Shall contact its consumers and alert them to the declaration of an energy emergency and impending shortage of coal.
- (b) Shall appeal to its consumers to reduce their consumption of coal on a voluntary basis. The appeals shall, where appropriate, include suggestions for achieving such reductions by all coal consumers.
- (c) Shall notify any of its consumers for whom its forecasted coal supplies are inadequate for the foreseeable future.
- (d) Shall provide its consumers information regarding:
 - (i) Actions that the coal supplier will take to allocate the available coal supply.
 - (ii) The time period(s) during which any consumers or class of consumers is expected to be subject to curtailment, allocation, or other restriction of coal supply.
 - (iii) Procedures to be followed by consumers wishing to substantiate a claim for priority use.

(2) Each coal supplier maintaining stocks of coal:

- (a) Shall report to the commission information that the commission determines necessary to manage the energy emergency.
- (b) Shall make an oral report to the commission by telephone, at least twice weekly, at such time as it has an inadequate supply of coal for the foreseeable future. This report shall reflect the situation for the reporting supplier as of the previous day. Telephonic reports shall be made as prescribed by the commission.

(3) The commission:

- (a) May calculate the remaining coal supply for priority use, other than electric power generation, in a reasonable manner.

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- (b) May provide information to suppliers and consumers regarding appropriate coal conservation measures.
 - (c) May provide public service announcements on television or other media regarding the declaration of an energy emergency and the impending shortage of coal.
 - (d) May take other actions it considers to be reasonable and appropriate.
- (B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:
 - (1) Each coal supplier shall be prohibited from selling directly to consumers, or selling for resale, for use other than priority use.
 - (2) The commission:
 - (a) May monitor each coal supplier's stock and the supply available for priority use.
 - (b) May determine the average number of days of coal supply remaining for each type of priority use.
 - (c) May identify suppliers with surplus volumes of coal in excess of their priority use consumers' requirements.
 - (d) May provide direct assistance in obtaining coal supply for consumers with inadequate coal for priority use.
 - (e) May take other actions it considers to be reasonable and appropriate.
 - (3) Suppliers may be directed by the commission to sell coal to consumers that are not its customers for priority use required to alleviate such consumers' hardship or extraordinary need.
 - (4) The Ohio emergency management agency may be requested:
 - (a) To establish and to maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.

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- (b) To plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, coal to designated priority consumers, where life, property, health, or safety are threatened.
 - (c) To establish and to maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.
- (C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (B) of this rule:
 - (1) All use of coal other than priority use shall be prohibited in five days.
 - (2) Each coal consumer of more than ten thousand tons per annum, other than electric generating companies, shall report to the commission within five days the number of tons and type of coal stockpiled and any priority use for which this coal is required.
- (D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (C) of this rule:
 - (1) No consumer shall use coal for other than priority use.
 - (2) Each coal supplier with forecasted coal stocks in excess of its consumers' priority use requirements for the foreseeable future shall inform the commission of the volume of coal available for assigned priority use consumers.
 - (3) The commission may be requested to accept applications from persons requiring coal for priority use and whose supplier is unable to oblige. Such applications shall be in a form and manner to be prescribed by the commission or its designee.
 - (4) The commission shall be responsible for approval or denial of all applications for emergency priority use coal allocations. Upon approval of an application, the commission:
 - (a) May authorize, by pre-approved procedure, the release of an appropriate amount of coal from a state stockpile and order delivery by state vehicle to the applicant consumer, who will be billed at cost by the state for coal received.

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(b) May assign the consumer, as a temporary priority use consumer, to an appropriate coal supplier and order the supplier to provide delivery.

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4901:5-25-01 **Definitions.**

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Consumer" means any person purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas at a specified location, including industrial, commercial, and residential consumers, but not including gas suppliers.

(C) "Customer" means a person legally responsible to pay for gas or gas delivery services.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of gas that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(E) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Gas" means natural gas, artificial or synthetic gas, or a mixture of those gases, liquefied natural gas, and petroleum gas.

(G) "Gas supplier" means:

(1) A retail natural gas supplier as defined in section 4929.01 of the Revised Code.

(2) A pipeline company, as defined in section 4905.03 of the Revised Code, when engaged in the business of transporting gas by pipeline.

(3) A governmental aggregator as defined in section 4929.01 of the Revised Code.

(4) A gas or natural gas company that is owned or operated by a municipal corporation.

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- (5) A cooperative gas or natural gas company, as described in division (A) of section 4905.02 of the Revised Code.
- (6) A company in the business of delivering gas to end use consumers, including municipal gas companies and cooperative gas companies.
- (H) "Nonpriority use" means all use of gas other than priority use.
- (I) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.
- (J) "Priority use" means the minimum amount of gas necessary for protection of the public health and safety, and for prevention of unnecessary or avoidable damage to:

 - (1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).
 - (2) Hospitals.
 - (3) Medical and human life-support systems and facilities.
 - (4) Electric generation and central heat production, as well as electric generating facilities and central heating plants serving the public.
 - (5) Telephone, radio, television, and newspaper facilities.
 - (6) Local and suburban transit systems and air terminal facilities.
 - (7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.
 - (8) Sanitary service facilities for collection, treatment, or disposal of community sewage.
 - (9) Production facilities for gas, propane, and petroleum fuels and for fuel refineries.
 - (10) Pipeline transmission and distribution facilities for gas, propane, and petroleum fuels.
 - (11) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.

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- (12) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other personal or real property.
- (13) Water supply and pumping facilities.
- (14) Coal mines and related facilities.
- (15) Such other similar facilities as may be determined by the commission to be a priority use.

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4901:5-25-02

General provisions.

- (A) The rules contained in this chapter prescribe requirements to protect priority use. Gas suppliers shall comply with the rules of this chapter and commission orders adopted under this chapter.
- (B) The institutional and regulatory relationship between jurisdictional utilities and the commission remains intact. Except as otherwise provided by this chapter or commission order during an energy emergency, each gas supplier shall comply with all applicable rules and requirements of the commission.
- (C) In order to respond to shortages of gas, each gas supplier with tariffs on file with the commission shall file with the commission its curtailment plan which specifies the order of curtailments for all gas sales and transportation service to its consumers, and the interconnections and related capacities with other gas suppliers. Curtailment plans shall be established so as not to discriminate among consumers based upon the supplier of commodity. The plan shall consider curtailment options from both supply and capacity shortage scenarios. Gas suppliers shall also include, as part of their curtailment planning, a program of voluntary curtailment arrangements with consumers.
- (D) Each curtailment plan shall be filed in the gas supplier's existing tariff filing docket or other docket, as designated by the commission. Each year after the initial filing, each gas supplier shall file, on or before September first, any revisions it is proposing to make to its curtailment plan. If no revisions are to be made, a statement to that effect shall be filed.
- (E) In anticipation of an imminent energy emergency, or during a declared energy emergency, each gas supplier shall submit periodic reports, as required by the commission, regarding its pipeline supply entitlement, pipeline supply draw, amount of gas in storage, storage withdrawal, other interstate deliveries, estimates of Ohio-produced gas deliveries, estimated gas sendout, and other information which may be required by the commission to administer this chapter.
- (F) Each gas supplier may disconnect service, through the use of qualified supplier employees or qualified contractors acting on the supplier's behalf, to nonpriority use consumers who fail immediately to disconnect or curtail consumption after notification by the gas supplier pursuant to this chapter.
- (G) In anticipation of an imminent energy emergency or during a declared energy emergency, each gas supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

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- (H) The commission's fuel source advisory council may notify and advise the chairman of the commission about gas supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-25-05 of the Administrative Code.
- (I) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:

 - (1) An energy emergency may exist with regard to the supply of gas.
 - (2) An energy emergency no longer exists with regard to the supply of gas.
- (J) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (K) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-25-03

Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (A) to (E) and (G) to (K) of rule 4901:5-25-02 of the Administrative Code and all of rule 4901:5-25-04 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-25-04

Actions in anticipation of an imminent energy emergency.

(A) In anticipation of an imminent energy emergency, the commission may, by order, require that each regulated gas supplier:

(1) Notify its consumers through reports in the news media, or written notice where appropriate, about an imminent shortage of gas or interruption of gas service and request its consumers to reduce their consumption of gas and to implement energy conservation measures. These measures shall include, but are not limited to, the following:

(a) Curtailing outdoor gas lighting, except for essential safety and security purposes.

(b) Reducing gas water heating temperatures.

(c) Reducing space heating temperatures for buildings, factories, and transportation facilities.

(2) Issue periodic reports to notify consumers about the following:

(a) Gas supply levels.

(b) Plans and procedures for gas transfers, restrictions, curtailments, and reallocations pursuant to the gas supplier's curtailment plan or commission order.

(c) Projected or actual dates when consumers or classes of consumers would be subject to curtailment, reallocation, or restriction.

(3) Implement gas supply measures that include:

(a) Fulfilling gas requirements for priority use by its consumers.

(b) Transferring gas supplies to other gas suppliers to fulfill priority use requirements of consumers of the recipient gas suppliers.

(c) Reallocating and/or curtailing gas supplies among its consumers. Each gas supplier that curtails deliveries of sales and/or transportation gas to consumers who obtain gas on an interruptible basis shall curtail gas deliveries pursuant to its curtailment plan and voluntary arrangements with individual consumers. Each gas supplier shall, to the extent reasonably feasible, monitor consumer compliance with its curtailments of gas, and shall report the level of compliance to the commission periodically, as requested.

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(B) Nothing in this rule shall preclude a gas supplier, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.

(C) Actions ordered by the commission pursuant to this rule shall supersede filed curtailment plans to the extent there is a conflict.

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4901:5-25-05

Actions taken upon declaration of energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable:

(1) Each gas supplier included within paragraphs (G)(3) to (G)(6) of rule 4901:5-25-01 of the Administrative Code:

(a) Shall contact its consumers and alert them to the declaration of an energy emergency and impending shortage of gas.

(b) Shall appeal to its consumers to reduce their consumption of gas on a voluntary basis. The appeals shall, where appropriate, include suggestions for achieving such reductions by all gas consumers.

(c) May initiate service restrictions, as set forth in rule 4901:5-25-06 of the Administrative Code.

(d) Shall provide its consumers information regarding:

(i) Actions the gas supplier will take to allocate the available gas supply.

(ii) The time period(s) during which any consumer or class of consumers is expected to be subject to curtailment, allocation, or other restriction of gas supply.

(iii) Procedures to be followed by consumers wishing to substantiate a claim for priority use.

(e) Shall report to the commission information that the commission determines necessary to manage the energy emergency.

(f) Shall make an oral report to the commission by telephone, twice weekly, at such time as it has an inadequate supply of gas for the foreseeable future. This report shall reflect the situation for the reporting supplier as of the previous day. Telephonic reports shall be made as prescribed by the commission.

(2) The commission:

(a) May, in a reasonable manner, calculate the remaining gas supply for priority use in a reasonable manner.

(b) May provide information to suppliers and consumers regarding appropriate gas conservation measures.

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(c) May provide public service announcements on television or other media, regarding the declaration of an energy emergency and the impending shortage of gas.

(d) May, by order, require any gas supplier to:

(i) Reallocate and/or curtail gas supplies among its consumers.

(ii) Fulfill gas priority use requirements for its consumers.

(iii) Transfer gas supplies to other gas suppliers to fulfill gas priority use requirements of consumers of the recipient gas suppliers.

(iv) Monitor consumer compliance with mandatory emergency actions.

(B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:

(1) All outdoor gas lighting, except for essential safety and security purposes, shall be prohibited.

(2) All interruptible gas service shall be curtailed.

(3) Gas usage for space heating purposes shall be restricted to maintaining temperatures within all:

(a) Public and private elementary and secondary schools, colleges, universities, vocational schools, government buildings, factories, and industrial buildings no higher than sixty-five degrees Fahrenheit during business hours and no higher than fifty-five degrees Fahrenheit during nonbusiness hours.

(b) Buildings and facilities not included in paragraph (B)(3)(a) of this rule no higher than the minimum temperatures required to protect health, safety, or welfare.

(4) The Ohio emergency management agency may be requested to:

(a) Establish and maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.

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- (b) Plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, gas to designated priority consumers, where life, property, health, or safety are threatened.
 - (c) Establish and maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.
 - (5) The Commission may take other actions it considers to be reasonable and appropriate.
- (C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (B) of this rule:
 - (1) All firm gas service to any consumer in excess of fifty thousand cubic feet per day shall be curtailed, except for service for any priority use.
 - (2) Gas usage for space heating purposes shall be restricted to maintaining temperatures within all:
 - (a) Retail stores and transportation facilities no higher than sixty degrees Fahrenheit during business hours and no higher than fifty-five degrees Fahrenheit during nonbusiness hours.
 - (b) Facilities not included in paragraphs (B)(3)(a) and (C)(2)(a) of this rule no higher than sixty-five degrees Fahrenheit during business hours and no higher than the minimum temperatures required to protect health, safety, or welfare during nonbusiness hours.
- (D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (C) of this rule:
 - (1) All firm gas service shall be curtailed, except for service for any gas priority use.
 - (2) Gas usage for space heating purposes shall be restricted as follows:
 - (a) Temperatures within all residences, hospitals, medical and human life-support systems, blood banks, and outpatient health facilities shall be maintained at no higher than sixty-five degrees Fahrenheit from six a.m. to eleven p.m. and no higher than fifty-five degrees Fahrenheit at other times, except where necessary to protect health, safety, or welfare.

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(b) Residential hot water heaters shall be set at no higher than low or medium settings, except where necessary to protect health, safety, or welfare.

(E) Mandatory curtailment - stage four. If the commission or the governor determines that the provisions of paragraph (D) of this rule do not adequately protect priority use or the public health, safety, or welfare, the commission, by order, may further curtail or restrict gas supply and usage.

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4901:5-25-06 **Service restrictions.**

(A) During an energy emergency, each gas supplier, unless otherwise ordered by the commission, may:

(1) Suspend promotional activities to acquire new gas ~~customers~~ consumers through advertising and mass media, bill inserts or other direct mailings to consumers and telephone calls to obtain or arrange "conversions" to gas space heating or to sell or promote gas appliances. This prohibition does not apply to:

(a) Service calls to repair existing gas equipment;

(b) Recommendations and information relating to the replacement of ~~such existing gas equipment~~;

(c) Counseling consumers about heating efficiency and safety measures for existing gas equipment;

(d) Direct contact with existing or potential ~~customers~~ consumers to promote the installation of dual-fuel equipment; ~~and~~

(e) Responses to consumer-initiated inquiries.

(2) Refuse new service to applicants unless the gas supplier receives approval from the commission of a non-discriminatory limited growth policy. Such policy should be based on actual gas supplies available to the gas supplier and its ability to meet the needs of its existing consumers. Preference should be given to the addition of gas-priority ~~uses~~ use loads before adding other types of loads;

(3) Prohibit consumers from increasing consumption of gas above the normal usage of presently installed equipment;

(4) Prohibit consumers from installing equipment that would increase gas consumption; ~~and~~

(5) Require consumers to ~~obtain gas supplier certification~~ verify that installing replacement equipment would not increase fuel burning capacity.

(B) The following plan shall be followed to restore or commence service to residential and small commercial premises during an energy emergency while new service restrictions are in effect:

(1) The following residential and small commercial locations are ineligible for restoration or commencement of gas service:

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- (a) ~~Any existing structure which has never received gas service or had gas service transferred to a different location, unless gas service is transferred to the structure from another location.:~~
 - (i) Which has never received gas service.
 - (ii) With regard to which service has been transferred to a different location, unless gas service is transferred to that existing structure from another location.
 - (b) ~~Any vacant site which has not received gas service within the last five years, or had gas service transferred to a different location unless gas service is transferred to the site from another location within five years.:~~
 - (i) Which has not received gas service within the last five years.
 - (ii) With regard to which gas service has been transferred to a different location, unless gas service has been transferred to the vacant site from another location within the last five years.
- (2) Gas service for eligible ~~existing or restored to new and~~, currently unserved residential and small commercial premises may be restored provided that both of the following provisions are met:
- (a) ~~The residential and small commercial consumption pattern shall must be similar to the consumption pattern of the premises during the last five-year-year period that the premises was receiving gas service and the volume consumed shall must not exceed the largest volume consumed at that premises during the last five-year period that during which the premises received gas service; and. If the gas supplier does not have records covering the entire preceding five-year period, then it may, for purposes of this paragraph, use data from the period for which such information is readily available.~~
 - (b) The customer shall reimburse the gas supplier for all direct costs to commence service at such ~~new or currently unserved premises.~~
- (3) The owner of premises may submit a written application to the gas supplier to transfer gas to new or currently unserved premises that are owned by applicant. The applicant shall demonstrate ~~that he or she qualifies qualification~~ for the exclusion. Such an application may be approved provided that:
- (a) The applicant demonstrates that ~~the conditions set forth in paragraph (B)(2) of this rule are satisfied, if all gas burning equipment and all visible piping have been removed from the original premises by the applicant and an on-~~

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~~site inspection has been conducted by the gas supplier to verify that these conditions have been met.;~~

(i) The conditions set forth in paragraph (B)(2) of this rule are satisfied.

(ii) All gas burning equipment and all visible piping have been removed by the applicant from the premises from which gas service is to be transferred.

(iii) An onsite inspection has been conducted by the gas supplier to verify that the conditions set forth in paragraph (B)(3) of this rule have been met.

(b) If gas is transferred to a new or currently unserved premises, an application for service at the site of the ~~original~~ premises from which service was transferred will be treated as an application for new service under this plan, unless gas service is transferred to the ~~original site~~ those premises from another location within the preceding five years.

(c) No gas service shall be transferred from a ~~premises~~ located within a geographical area designated as "inner city" or "impacted area" by a municipal corporation to a new or currently unserved premises outside this "inner city" or "impacted area". The gas supplier shall request the municipal corporation it serves to file with the utility a written document indicating the geographical limits of the areas the municipality defines as "inner city" or "impacted area". The gas supplier shall file copies of these documents with the commission.

Any disputes concerning the designation of an "inner city" or an "impacted area" will be resolved by the commission after reviewing the locations of existing urban renewal projects, and the criteria set forth in the definitions of a "blighted area" and a "slum area" contained in section 725.01 of the Revised Code.

(4) In computing the five-year period referred to in ~~paragraph (B)(1)(b)~~ of this rule, the gas supplier shall exclude:

(a) Any period of time during which the property was subject to probate proceedings under title 21 of the Revised Code; ~~and,~~

(b) Any period of time during which the property was held by any governmental entity, whether federal, state, municipal, township, or county, or any agency or division thereof.

(5) If residential or small commercial consumers are curtailed pursuant to a curtailment plan, then the volume allocated upon restoration of service shall be

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limited according to the curtailment plan rather than paragraph (B)(2)(a) of this rule.

- (6) For each gas supplier, the definition of small commercial consumer shall be as set forth in previous orders authorizing curtailment or restrictions on new service. If no such definition has been approved, the following definition shall apply: small commercial customers are those engaged primarily in the sale of goods and services, and local, state and federal governmental agencies and departments other than those involved in manufacturing or electric power generation, whose average daily usage during the customer's peak billing period is less than fifty thousand cubic feet.

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4901:5-29-01

Definitions.

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Consumer" means the person who consumes heating oil or propane at a specified location.
- (C) "Energy emergency" means:
- (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to heating oil or propane that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
 - (2) Such written declaration is in effect and has not been terminated.
- (D) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.
- (E) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.
- (F) "Heating oil supplier" and "propane supplier" mean:
- (1) A heating oil company or propane company owned by a municipal corporation.
 - (2) Any producer, broker, or person engaged in the business of supplying heating oil or propane to heating oil companies, propane companies, or consumers within this state.
 - (3) Any person that owns, operates, manages, controls, or leases intrastate storage fields or pools.
- (G) "Heating oil" means all oil which can be used as boiler or space heating fuel, including kerosene, number two heating oil, and number six heating oil; but excluding fuel used primarily for internal combustion or other types of automotive transportation vehicles or equipment, such as gasoline, diesel, aviation and jet fuel, naphtha, butane, ethane, methane, and pentane; and excluding oil which is not used

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as boiler or space heating fuel, such as solvent, cutting oil, lubricating oil, and asphalt.

(H) "Kerosene" means a petroleum distillate that has a maximum distillation temperature of four hundred and one degrees Fahrenheit at the ten per cent recovery point, a final boiling point of five hundred and seventy-two degrees Fahrenheit, and a minimum flash point of one hundred degrees Fahrenheit. Included are the two grades generally known as number 1-K and number 2-K, and all grades of kerosene called range or stove oil. Kerosene is used in space heaters, cook stoves, and water heaters and is suitable for use as an illuminant when burned in wick lamps.

(I) "Nonpriority use" means all use of heating oil and propane for other than priority use.

(J) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

(K) Priority use" means the minimum amount of heating oil or propane necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to:

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients),

(2) Hospitals,

(3) Medical and human life-support systems and facilities,

(4) Electric power generating facilities and central heating plants serving the public,

(5) Telephone, radio, television, and newspaper facilities,

(6) Local and suburban transit systems and air terminal facilities,

(7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities,

(8) Sanitary service facilities for collection, treatment, or disposal of sewage,

(9) Production facilities for natural gas, artificial or synthetic gas, propane and petroleum fuels, and fuel refineries,

(10) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels,

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- (11) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
- (12) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other personal or real property.
- (13) Water supply and pumping facilities.
- (14) Coal mines and related facilities.
- (15) Such other similar facilities as may be determined by the commission to be a priority use.
- (L) "Propane" means a normally gaseous straight-chain hydrocarbon that is colorless and boils at a temperature of minus forty-three point sixty-seven degrees Fahrenheit. Propane is extracted from natural gas or refinery gas streams. It includes all products generally used for commercial purposes and products generally known as HD-5 propane.
- (M) "Supplier" means heating oil or propane supplier.

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4901:5-29-02

General provisions.

- (A) Suppliers shall continue their normal operations and distribution of all heating oil and propane product types and volumes reported on monthly forms to the United States department of energy and the commission following a declaration of an energy emergency. Pursuant to all federal and state laws and regulations, suppliers shall assure, to the extent reasonably possible, the provision of such products under their distribution control to ultimate Ohio consumers for priority use and shall reduce, on an equitable basis, provision of such products under their distribution to consumers for nonpriority use.
- (B) Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set-aside system, or dictates supplier/purchaser relationships, any of which are in conflict with these rules. In the case of conflict, the federal regulations supersede all conflicting rules in this chapter.
- (C) During an energy emergency, in the exceptional circumstance in which a supplier is unable to meet fully its consumers' priority use requirements for the current calendar month from volumes available, the commission may provide assistance in obtaining adequate product for priority use for the balance of the current month. Each supplier that has an inadequate supply of product for its consumers' priority use requirements for the current calendar month shall notify the commission of the number, names, product type, and volume required for priority use consumers beyond the capability of the supplier.
- (D) During an energy emergency, the commission may accept requests for such assistance for relief of verifiable consumer hardship or extraordinary conditions. Such requests may be accepted by the commission from suppliers that would supply the affected consumer. All requests shall be submitted in a manner and form prescribed by the commission and shall comply with any applicable federal and state laws, regulations, or guidelines.
- (E) During an energy emergency, the commission may establish a toll-free telephone number for consumers in this state to request state assistance for relief from verifiable emergency or hardship conditions.
- (F) During an energy emergency, the commission may designate, as priority use, the volume of such product necessary to relieve emergency or hardship conditions found to be extant and may request the consumer's supplier to deliver such product volume to the consumer, provided the consumer offers fair compensation.
- (G) During an energy emergency, if the commission finds that a supplier has insufficient product to provide for all consumers' priority use requirements in the current month and/or is unable to provide product for consumers who, facing emergency or

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hardship conditions, have had priority usage designation by the commission, the commission may request another supplier to provide product.

(H) During an energy emergency, each supplier that has a surplus supply of product for its consumers' priority use requirements for the current calendar month is expected to assure, to the extent reasonably possible, provision of product to consumers that are not its customers for their priority use requirements for the balance of the current month, provided:

(1) Fair compensation is offered by the new priority use consumers.

(2) The new priority use consumers can substantiate their priority use requirements.

(3) No threat to the life, property, health, or safety of the supplier's customers would result.

(I) In anticipation of an imminent energy emergency or during a declared energy emergency, each heating oil and propane supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

(J) The commission's fuel source advisory council may notify and advise the chairman of the commission about heating oil and propane supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-29-04 of the Administrative Code.

(K) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:

(1) An energy emergency may exist with regard to the supply of heating oil or propane.

(2) An energy emergency no longer exists with regard to the supply of heating oil or propane.

(L) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.

(M) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-29-03

Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (B) and (I) to (M) of rule 4901:5-29-02 of the Administrative Code until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-29-04

Actions taken upon declaration of an energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, or at such time as it is otherwise determined by the governor that such action is appropriate, the following provisions shall be applicable:

- (1) The commission may implement, or cause to be implemented, a public appeals campaign through appropriate news media to alert the public to the impending shortage of heating oil or propane. This appeal may seek voluntary reduction in the consumption of such fuels and may include specific suggested conservation measures for achieving such reduction.
- (2) The governor may request that federal priority be given to all air, rail, barge, and pipeline traffic of essential fuel supplies into this state or a region of this state affected by the energy emergency.
- (3) The governor may request that the United States department of transportation suspend federal limits on highway drivers' hours of service for heating oil or propane delivery for the duration of the energy emergency.
- (4) The Ohio department of transportation may be requested to suspend truck size and weight limitations which constrain the delivery of heating oil or propane, for the duration of the energy emergency.
- (5) The governor may suspend intrastate motor carrier weight and drivers' hours of service limitations and waive economic permits and fees which constrain the delivery of heating oil or propane for the duration of the energy emergency.
- (6) Each supplier, to the extent possible, shall notify any of its consumers for whom forecasted fuel supplies are inadequate for the foreseeable future and shall provide to its consumers information on:
 - (a) Actions the supplier will take to allocate the available supply of heating oil or propane.
 - (b) The time period(s) in which any consumer or class of consumers would be subject to curtailment, allocation, or other restriction of supply of heating oil or propane.
 - (c) Procedures to be followed by consumers wishing to substantiate a claim for priority use.
- (7) Each supplier shall report to the commission the information that the commission determines necessary to evaluate the supply of heating oil or propane in Ohio.

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- (8) The commission may calculate the remaining supply of heating oil or propane for priority use.
- (9) Suppliers' highest priority shall be to meet in full the heating oil or propane product priority use requirements for the current calendar month of all consumers from such supplier's available volumes. Suppliers shall reduce sales and/or deliveries to consumers for nonpriority use sufficiently to assure that all consumers' priority use requirements for the balance of the current calendar month are met in full.
- (10) The commission may designate certain geographical areas within the state as suffering from a supply imbalance. The commission may order suppliers to release part or all of their state set-aside volume, as determined under Chapter 4901:5-35 of the Administrative Code, in order to increase the supply of heating oil or propane in such designated areas. Orders issued pursuant to this paragraph shall be in writing and effective immediately upon issuance. Such orders shall represent an option on the supplier's set-aside volumes for the month of issuance regardless of the fact that delivery cannot be made until the following month.
- (B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (A) of this rule:
- (1) The commission may issue directives to suppliers such that they shall be prohibited from selling directly to nonpriority use consumers, or selling for resale for use other than priority use.
- (2) The commission may issue directives to each electric or gas utility that requires heating oil or propane in order to provide service to the public.
- (3) The commission:
- (a) May monitor each supplier's stock and the supply of heating oil or propane remaining for each type of priority use.
 - (b) May determine the average days' supply of heating oil or propane remaining for each type of priority use.
 - (c) May identify suppliers with volumes of heating oil or propane in excess of their consumers' priority use requirements.
 - (d) May provide direct assistance to consumers experiencing hardship or extraordinary conditions, through the allocation of heating oil or propane from the state set-aside, as set forth in Chapter 4901:5-35 of the Administrative Code.

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(e) May take other actions it considers to be reasonable and appropriate.

(4) The Ohio emergency management agency may be requested:

(a) To establish and to maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.

(b) To plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, heating oil or propane to designated priority consumers, where life, property, health, or safety are threatened.

(c) To establish and to maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.

(5) Suppliers, regardless of whether or not they have surplus supply, may be directed by the commission to sell fuel to consumers who are not customers of that supplier, for priority use required to alleviate such consumers' hardship or extraordinary need.

(6) With respect to consumers of heating oil and propane:

(a) All public, commercial, and industrial buildings heated with heating oil or propane are to reduce space heating temperatures to a level specified by the governor, but not less than sixty degrees Fahrenheit, except where health requirements deem such measures inappropriate or where such a setting would increase energy consumption.

(b) All or some nonpriority industrial use of heating oils and propane may be prohibited.

(7) The commission may be requested to accept applications from suppliers regarding priority use. Such applications shall be in a manner and form prescribed by the commission.

(C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (B) of this rule:

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- (1) All nonpriority use of heating oil or propane may be prohibited within the time frame determined by the governor.
- (2) All public, commercial, and industrial buildings heated with heating oil or propane are to reduce space heating temperature to a level specified by the governor or the commission, except where health requirements deem such measures inappropriate or where such a setting would increase energy consumption.
- (3) Any nonpriority heating oil or propane consumer with a storage capacity of ten thousand gallons or more may be required to report to the commission, within the time frame determined by the governor or the commission, the current product type and volume stockpiled.
- (4) All persons may be required to report stocks of heating oils and propane to the commission.
- (D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (C) of this rule:
 - (1) Consumers may be prohibited from using heating oil or propane for other than priority use.
 - (2) Heating oil or propane stocks in excess of priority use requirements for the following ten-day period, currently stockpiled by suppliers and consumers, may be made available for assignment to designated priority use consumers.

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4901:5-33-01

Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Consumer" means the person who consumes transportation fuel.

(C) "Customer" means that person legally responsible to pay for transportation fuel.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to transportation fuel that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(E) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.

(G) "Nonpriority use" means all use of transportation fuel for other than priority use.

(H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

(I) "Priority use" means the minimum amount of transportation fuel necessary, in order to protect the public's health and safety, to operate and to prevent unnecessary or avoidable damage to:

(1) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, Ohio national guard facilities, and the Ohio department of public safety.

(2) Utility, water supply, emergency road works, sanitation maintenance and repair, and emergency road service vehicles and related equipment.

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- (3) Public transit vehicles, United States mail vehicles, buses, taxis, school buses, other common passenger carriers, and air, water, rail, or highway vehicles and related equipment.
- (4) Farm food production machinery and equipment.
- (5) Commercial motor vehicles and other carriers of essential needs such as coal, artificial or synthetic gas, propane, petroleum fuel, perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
- (6) Nonvehicular stationary use required for any priority use designated in rule 4901:5-29-01 of the Administrative Code.
- (7) Such other similar items as may be determined by the commission to be a priority use.
- (J) "Transportation fuel" means all petroleum-based fuel which is used for internal combustion or other types of transportation vehicles or equipment, specifically including but not limited to gasoline, diesel, aviation gasoline, jet fuel, and fuel used by railroad locomotives and track mounted equipment; but excluding kerosene, number two heating oil, number four heating oil, number six heating oil, naphtha, butane, ethane, methane, pentane, and all cutting oil, lubricating oil, and solvents.
- (K) "Transportation fuel supplier" or "supplier" means:

 - (1) A transportation fuel company owned by a municipal corporation.
 - (2) Any producer, broker, or person engaged in the business of supplying transportation fuel within this state.
 - (3) Any person that owns, operates, manages, controls, or leases intrastate storage of transportation fuel.

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4901:5-33-02 General provisions.

- (A) ~~The "fuel source advisory council" appointed by the commission shall notify and advise the chairman about transportation fuel supply problems and shortages and make recommendations, including the need for the governor to declare an emergency and for implementing Chapter 4901:5-33 of the Administrative Code.~~
- (B) ~~The chairman shall notify the governor when, based on the information available to him, he believes that the current and foreseeable shortage of transportation fuels could constitute a threat to life, property, public health, safety, or welfare.~~
- (C)(A) The requirements of Chapter 4901:5-33 of the Administrative Code are keyed to the remaining supply of transportation fuels for priority uses. The commission expects suppliers to take all prudent measures prior to reaching the stages of action under Chapter 4901:5-33 of the Administrative Code. Once the stages of action are reached, all suppliers shall initiate and continue implementation of required actions until directed to do otherwise.
- (D)(B) Suppliers shall continue normal operations and distribution of all transportation fuel types and volumes reported on monthly forms submitted to the United States department of energy and the commission, following a declaration of an energy emergency. Pursuant to all federal and state laws and regulations, suppliers shall assure, to the extent reasonably possible, the provision of such products under their distribution control to ultimate Ohio ~~customers~~ consumers for priority ~~uses~~ use and shall ~~reduce accordingly, on an equitable basis, the provision of such products under their distribution control to their reseller customers and/or end-user customers to consumers for nonpriority uses on an equitable basis~~ use.
- (C) Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set-aside system or dictates supplier/purchaser relationships, any of which are in conflict with these rules. In the case of conflict the federal regulations supersede all conflicting rules in this chapter.
- (E)(D) ~~In~~ During an energy emergency, in the exceptional circumstance in which a supplier is unable to meet fully his customers'—its consumers' priority use requirements for the current calendar month from volumes available to it, the commission may provide assistance in obtaining adequate product for priority—uses use for the balance of the current month. Each supplier who—that has an inadequate supply of product for its customers'—consumers' priority use requirements for the current calendar month shall notify the commission of the number, names, product type and volume required for priority use customers—consumers beyond the capability of the supplier.

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~~(F)~~(E) ~~The~~ During an energy emergency, the commission may accept requests for such assistance for relief of verifiable ~~end-user emergency consumer hardship or extraordinary conditions~~. Such requests may be accepted by the commission from suppliers who would supply the affected ~~end-user consumer or from the consumer~~. All requests shall be submitted in a manner and ~~from form~~ prescribed by the commission and shall comply with any applicable federal and state laws, regulations, and guidelines.

~~(G)~~(F) ~~The~~ During an energy emergency, the commission may establish a toll-free telephone number for ~~end-users consumers~~ in this state to request such assistance for relief from verifiable emergency or hardship conditions.

~~(H)~~(G) ~~The~~ During an energy emergency, the commission may designate as "priority use" the volume of such product necessary to relieve ~~end-user consumer emergency or hardship~~ conditions found to be extant and may request the ~~end-user's consumer's~~ supplier to provide such product volume to the ~~end-user consumer~~, provided the ~~end-user consumer~~ offers fair compensation.

~~(I)~~(H) ~~If~~ During an energy emergency, if the commission finds that a supplier has insufficient product to provide for all ~~customers' consumers'~~ priority use requirements in the current month and/or is unable to provide product for ~~customers consumers~~ who, facing emergency or hardship conditions, have had priority usage designation by the commission, the commission may request another supplier to provide product.

~~(J)~~(I) ~~Each~~ During an energy emergency, each supplier ~~which that~~ has a surplus supply of product for its ~~customers' consumers'~~ priority use requirements for the current calendar month shall honor, to the extent reasonably possible, requests by the commission to provide product to ~~customers who consumers~~ that are not its customers for their priority use requirements for the balance of the current month, provided all of the following standards are met:

- (1) Fair compensation is offered by the new priority use ~~customer consumers~~.
- (2) The new priority use ~~customer consumers~~ can substantiate ~~his their~~ priority use requirements; ~~and~~.
- (3) No threat to the life, property, health, or safety of the supplier's ~~normal~~ customers would result.

~~(K)~~(J) ~~Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set aside system or dictates supplier/purchaser relationships which are in conflict with these rules. In the case of conflict the federal regulations supersede all conflicting rules in this chapter.~~ In anticipation of an imminent energy emergency or during a declared energy emergency, each

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transportation fuel supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

(K) The commission's fuel source advisory council may notify and advise the chairman of the commission about transportation fuel supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-33-04 of the Administrative Code.

(L) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that the current and foreseeable shortage of transportation fuels no longer constitutes a threat to life, property, public health, safety, or welfare either of the following conditions exists:

(1) An energy emergency may exist with regard to the supply of transportation fuel.

(2) An energy emergency no longer exists with regard to the supply of transportation fuel.

(M) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.

(N) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-33-03

Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (A), (C), and (J) to (N) of rule 4901:5-33-02 of the Administrative Code until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-33-04

Actions taken upon declaration of an energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, or at such time as it is otherwise determined by the governor to be appropriate, the following provisions shall become effective:

- (1) The commission may implement, or cause to be implemented, a public appeals campaign through appropriate news media to alert the public to the impending shortage of transportation fuel. This appeal may seek voluntary reductions in the consumption of such fuel and may include specific suggested conservation measures for achieving such reductions.
- (2) The governor may request that federal priority be given to all air, rail, barge, and pipeline traffic of essential fuel supplies into this state or a region of this state affected by the energy emergency.
- (3) The governor may request the federal department of transportation to suspend federal limits on highway drivers' hours of service for transportation fuel delivery for the duration of the energy emergency.
- (4) The Ohio department of transportation may be requested to suspend truck size and weight limitations which constrain the delivery of transportation fuel for the duration of the energy emergency.
- (5) The governor may suspend intrastate common carrier weight and log limitations and waive economic permits and fees which constrain the delivery of transportation fuel for the duration of the energy emergency.
- (6) The Ohio state highway patrol and all political subdivisions may be requested to enforce existing speed limits and traffic regulations strictly.
- (7) Each supplier, to the extent possible, shall notify any of its consumers for whom forecasted fuel supplies are inadequate for the foreseeable future, and shall provide its consumers information on:
 - (a) Actions the supplier will take to allocate the available supply of fuel(s).
 - (b) The time period(s) in which any consumer or class of consumers would be subject to curtailment, allocation, or other restriction of fuel supply.
 - (c) Procedures to be followed by consumers wishing to substantiate a claim for priority use.
- (8) Each supplier shall report to the commission the information the commission determines necessary to manage the energy emergency.

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- (9) The commission may calculate the remaining supply of each fuel for priority consumers.
- (10) Suppliers' highest priority shall be to meet in full the transportation fuel product priority use requirements for the current calendar month of all consumers of record from such supplier's available volumes. Suppliers shall reduce sales and/or deliveries to customers for nonpriority use sufficiently to assure that all consumers' priority use for the balance of the current calendar month are met in full.
- (11) The commission may designate certain geographical areas within the state as suffering from a supply imbalance. The commission may order suppliers to release part or all of their state set-aside volume, as determined in Chapter 4901:5-35 of the Administrative Code, in order to increase the supply of transportation fuel in such designated areas. Orders issued pursuant to this paragraph shall be in writing and effective immediately upon issuance. Such orders shall represent an option on the supplier's set-aside volumes for the month of issuance regardless of the fact that delivery cannot be made until the following month.
- (B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (A) of this rule:
- (1) The commission may issue directives to suppliers such that they shall be prohibited from selling directly to nonpriority users, or selling for resale for use other than for priority use.
- (2) The commission may issue directives to each electric and gas utility which requires transportation fuel in order to provide service to the public.
- (3) The commission:
- (a) May monitor each supplier's stock and the supply of transportation fuel remaining for each type of priority use.
 - (b) May determine the average days' supply of transportation fuel remaining for each type of priority use.
 - (c) May identify suppliers with surplus volumes of fuel in excess of their consumers' priority use requirements.

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- (d) May provide direct assistance to consumers experiencing emergency conditions through the allocation of product from the state set-aside, as set forth in Chapter 4901:5-35 of the Administrative Code.
 - (e) May take other actions it considers to be reasonable and appropriate.
- (4) Suppliers, regardless of whether or not they have surplus supply, may be directed to sell fuel to consumers who are not customers of that supplier, for priority use required to alleviate such consumers' hardship or extraordinary need.
- (5) The Ohio emergency management agency may be requested:
 - (a) To establish and to maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.
 - (b) To plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, transportation fuel to designated priority consumers, where life, property, health, or safety are threatened.
 - (c) To establish and to maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.
- (6) With respect to sale and use of transportation fuel:
 - (a) The use of state, political subdivision, or other public authority vehicles for other than priority use purposes may be prohibited.
 - (b) The retail sale of transportation fuel for nonpriority use may be prohibited for not more than two days per week.
 - (c) All or some nonpriority industrial use of transportation fuel may be prohibited.
- (7) The commission may be requested to accept applications from suppliers regarding priority use. Such applications shall be in a manner and form prescribed by the commission.
- (C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (B) of this rule:

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- (1) Nonpriority use of transportation fuel may be prohibited within the time frame determined by the governor or the commission.
- (2) Any nonpriority transportation fuel consumer other than a public authority, with a storage capacity of ten thousand gallons or more, may be required to report to the commission, within the time frame determined by the governor or the commission, the current product type and volume stockpiled.
- (3) With respect to sale and use of transportation fuel:
 - (a) Retail gasoline and diesel fuel stations may sell gasoline or diesel fuel only in accordance with the following procedures:
 - (i) On even-numbered days of the month, fuel may be sold to and purchased by the operator or occupant of a vehicle having a license plate the last numeral of which is even. For purposes hereof, the numeral zero shall be even.
 - (ii) On odd-numbered days of the month, fuel may be sold to and purchased by the operator or occupant of a vehicle having a license plate the last numeral of which is odd.
 - (iii) A vehicle having a license plate with no numerals shall be odd or even based on the number of letters on the license plate.
 - (iv) A "free day" is a day when odd and even sales and purchases are permissible. The thirty-first day of January, March, May, July, August, October, and December and the twenty-ninth day of February (leap year) are designated as "free days."
 - (b) Service stations shall estimate the amount of each fuel they can pump each day and remain open for limited hours of operation. Based on this amount of fuel(s) available to them each day, each service station shall have prominently displayed a sign visible from the street indicating that:
 - (i) The station is out of gasoline but open for other business.
 - (ii) Gasoline sales are limited to priority use and emergencies.
 - (iii) Gasoline sales will be made to license plate holders with odd-numbered digits.
 - (iv) Gasoline sales will be made to license plate holders with even-numbered digits.

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Service station operators may display different signs at different times of day at their discretion.

(c) Retail gasoline station customers shall be required to purchase a minimum amount of gasoline for automobiles. The specific minimum purchase volume shall be set by the governor or the commission, based on the extent of the energy emergency.

(d) The commission may designate certain transportation fuel supply terminals, bulk supply plants, and/or retail service stations or portions thereof as priority use supply only. One-time emergency fuel needs and priority use needs of consumers without suppliers shall be met at these designated locations.

(e) Not more than two gallons of transportation fuel may at any time be sold or purchased for delivery into a container other than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Nothing in this paragraph shall be construed to authorize the sale of gasoline in any container not satisfying applicable safety requirements.

(f) The application of this rule may exclude any person or class necessary to avoid threat to life, property, public health, or safety.

(4) All persons shall report stocks of transportation fuel to the commission.

(D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (C) of this rule:

(1) No consumer may use transportation fuel for other than priority use.

(2) Transportation fuel product stocks in excess of priority use requirements for the following ten-day period, currently stockpiled by suppliers and consumers specified in paragraph (C)(2) of this rule, may be made available for assignment to designated priority use users.

(3) With respect to sale and use of transportation fuel in this state:

(a) No person shall sell, store, deliver, or use any transportation fuel for other than priority use.

(b) Gasoline and diesel stations may only sell transportation fuel for priority use.

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4901:5-35-01 Definitions.

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Consumer" means any person that consumes heating oil, propane, or transportation fuel.
- (C) "Customer" means any person legally responsible to pay for heating oil, propane, or transportation fuel.
- (D) "Energy emergency" means:
 - (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to heating oil, propane, or transportation fuel that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
 - (2) Such written declaration is in effect and has not been terminated.
- (E) "Fuel source advisory council" means the advisory group formed by the chairman of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.
- (F) "Heating oil supplier" and "propane supplier" mean:
 - (1) A heating oil company or propane company owned by a municipal corporation.
 - (2) Any producer, broker, or person engaged in the business of supplying heating oil or propane to heating oil companies, propane companies, or consumers within this state.
 - (3) Any person that owns, operates, manages, controls, or leases intrastate storage fields or pools.
- (G) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.
- (H) "Primary supplier" means any person that brings heating oil, propane, or transportation fuel into this state for first sale.

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- (I) "Priority use" and "nonpriority use" shall have the same meaning as assigned to these terms in rule 4901:5-29-01 of the Administrative Code when related to an energy emergency affecting heating oil or propane and in rule 4901:5-33-01 of the Administrative Code when related to an energy emergency affecting transportation fuel.
- (J) "Program" means a state set-aside program established by the commission pursuant to the provisions of this chapter.
- (K) "Secondary supplier" means any person, including any wholesale purchaser or reseller or distributor, who sells heating oil, propane, or transportation fuel to customers and/or consumers in this state.
- (L) "Transportation fuel" means all petroleum-based fuel which is used for internal combustion or other types of transportation vehicles or equipment, specifically including but not limited to gasoline, diesel, aviation gasoline, jet fuel, and fuel used by railroad locomotives and track-mounted equipment; but excluding kerosene, number two heating oil, number four heating oil, number six heating oil, naphtha, butane, ethane, methane, pentane, and all cutting oil, lubricating oil, and solvents.

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4901:5-35-02 General provisions.

A state set-aside program (SSA) may be established for ~~products governed by Chapters 4901:5-29 and 4901:5-33 of the Administrative Code~~ heating oil, propane, and transportation fuel, for the purpose of providing relief to ~~Ohio end users~~ consumers experiencing an energy emergency. In such event, the following shall apply:

- (A) Authority shall be delegated to the commission by order of the governor to administer the SSA-program. The SSA-program shall be utilized by the commission to meet emergency requirements of all ~~users~~ consumers and customers within the state from SSA-program volumes, including state and local government ~~end users~~ consumers and customers. To facilitate relief of emergency requirements of ~~end users~~ consumers and customers, the commission may direct that a secondary supplier be supplied from SSA ~~of amounts set aside by another primary or secondary supplier pursuant to the program~~, in order that the secondary supplier can supply the ~~end users~~ consumers and customers experiencing an emergency.
- (B) Primary and secondary suppliers shall inform the commission, in accordance with paragraph ~~(G)-(A)(7)~~ of rule 4901:5-29-04 and paragraph ~~(H)-(A)(8)~~ of rule 4901:5-33-04 of the Administrative Code, of the product subject to SSA ~~the program~~ and of the estimated volume of each product to be sold into the state for consumption within the state.
- (C) The governor, after consultation with the chairman of the commission, shall determine the SSA-program percentage level, not to exceed five percent, for each product subject to SSA ~~the program~~.
- (D) The SSA ~~set-aside~~ volume available to the commission for a particular month pursuant to the program shall be calculated by multiplying the ~~SSA program~~ percentage level by each primary and secondary supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the state.
- (E) The SSA ~~set-aside~~ volume for a particular month can be accumulated or deferred; ~~it~~. That set-aside volume shall be made available to the commission from stocks of primary and secondary suppliers ~~whether, either~~ directly or through their suppliers.
- (F) The commission may authorize allocations from SSA ~~the program~~ during this period for "emergency" needs only.
- (G) Each primary and secondary supplier shall meet the full priority ~~end user~~ consumer product requirements of ~~customers~~ from available volumes. Each supplier shall reduce deliveries for nonpriority use to ~~customers~~ consumers sufficiently to assure priority use needs are met in full.

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- (H) The commission may accept applications for ~~SSA-emergency allocations under the program~~ from the secondary supplier who would supply the affected ~~end-user consumer~~. An application submitted by a secondary supplier for an allocation under the program, to supply verifiable consumer emergency needs, shall:

~~An application submitted by a secondary supplier for an SSA product allocation to supply verifiable end-user emergency needs shall contain a statement of certifications, subject to the penalties of division (E) of section 4935.03 of the Revised Code, that:~~

- ~~(1) All information provided is truthful and accurate; Contain a statement of certifications, subject to the penalties of division (E) of section 4935.03 of the Revised Code, that:~~

~~(a) All information provided is truthful and accurate.~~

~~(2)(b) No product volume granted from the SSA-program will be diverted to uses use other than the alleviation of the emergency use described; in the application.~~

~~(3)(c) The secondary supplier has delivered, or will deliver, one hundred percent of all monthly prime supply volumes available to it to its end user customers;.~~

~~(2) Identify the consumer's existing primary or secondary supplier or, if the consumer does not have an existing primary or secondary supplier, at least two primary or secondary suppliers (including one primary and one secondary supplier) that the applicant has contacted to provide the allocated product.~~

~~(3) Meet the requirements set forth in rule 4901:5-35-03 of the Administrative Code.~~

- (I) The commission will make every effort to assure that ~~end-users~~ consumers with emergency product needs will receive sufficient product. The allocation of product to and the fulfillment of an emergency need shall be considered a priority use.

- (J) A secondary supplier requesting an allocation from the ~~SSA-program~~ may be requested to provide to the commission a list of those ~~customers-consumers~~ for whom product is requested. This list shall identify the volume of each ~~end-use customer's-consumer's~~ request, as well as the type of ~~end-use~~ for which application is made.

- (K) All emergency applications for assignment from the ~~SSA-system program~~, and appeals therefrom, shall be filed with and resolved by the commission in accordance with this chapter. ~~Applicants shall identify their existing primary or secondary supplier or, if they do not have an existing primary or secondary supplier, at least two primary or secondary suppliers (including one primary and one secondary supplier) which the applicant has contacted and which could provide the allocated~~

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~~product.~~—The final decision of the commission regarding an application for assignment due to emergency requirements shall be subject to and governed by Chapter 4903. of the Revised Code.

- (L) If the commission approves an emergency application, it shall assign a supplier and an amount from the SSA-program to the applicant.
- (M) The commission shall issue to an applicant that is granted an assignment a document authorizing such assignment. A copy of the authorized document shall also be provided to the primary or secondary supplier's representative. The authorizing document is effective upon issuance and represents an option on that primary or secondary supplier's SSA-program volumes for the month of issuance, ~~irrespective~~ regardless of the fact that delivery of the product ~~cannot~~ may not be made until the following month. An authorizing document not presented to the primary or secondary supplier within ten days of issuance shall expire after that time.
- (N) The primary or secondary supplier shall provide the assigned amount of the allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from the primary or secondary supplier from which the state set-aside assignment has been made.
- (O) All primary and secondary suppliers shall supply products from their SSA-program volume each month, as directed by the commission, not to exceed the total SSA-program volume for each product for that month. That portion of a primary or secondary supplier's SSA-program volume for a particular month which is not allocated by the commission during that month or which is not subject to an authorizing document issued no later than the last day of that month shall be a part of the primary or secondary supplier's total supply for the subsequent month and shall be distributed according to the allocation procedures set forth in this chapter.
- (P) At any time during the month, the commission may order the release of part or all of a primary or secondary supplier's SSA-program volume through the primary or secondary supplier's normal distribution system in the state.
- (Q) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
 - (1) An energy emergency may exist with regard to the supply of heating oil, propane or transportation fuel.
 - (2) An energy emergency no longer exists with regard to the supply of heating oil, propane, or transportation fuel.

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- (R) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.
- (S) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-35-03 General procedures.

This rule establishes the procedures that govern application for assignment under the state set aside (SSA) ~~system~~program.

(A) Who may apply.

A secondary supplier seeking an assignment from the SSA ~~system~~program to meet an emergency requirement may apply for an assignment under the SSA ~~system~~program.

(B) What to file.

Application for assignment from the SSA ~~program~~ shall be by a form approved by the commission.

(C) Where to file.

All applications shall be filed with the ~~office~~docketing division of the commission.

(D) Notice.

The commission may notify any person that it determines ~~will~~may be aggrieved by the assignment, that comments regarding the application will be accepted.

(E) Contents.

The commission shall require that an applicant provide sufficient information so that it may be determined that the proposed allocation satisfies the objectives of section 4935.03 of the Revised Code. At a minimum, such information shall include, but not be limited to:

- (1) The identification of any previous assignment order from the SSA ~~system~~program that was issued to the applicant or to any person that controls the applicant or is controlled by the applicant;
- (2) A statement that the applicant's primary supplier is unable to supply ~~his~~the applicant's requirements or, if the applicant does not have a primary supplier, a statement that ~~he~~the applicant has contacted two primary suppliers that could supply the allocated product and the identification of those suppliers; and,
- (3) For purposes of Chapter 4901:5-29 of the Administrative Code, a description of the ~~eustomers and end-users~~consumers that will be supplied and their emergency requirements.

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(F) Commission evaluation.

The commission may investigate any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The commission may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third party submissions.

- (1) In evaluating an application, the commission may consider any other source of information. The commission on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.
- (2) If the commission determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the commission may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the commission may dismiss the application with prejudice.
- (3) There shall be assignment from the program only to secondary suppliers that are located within the state ~~who and that~~ demonstrate emergency requirements.

(G) Decision and order.

Upon consideration of the application and other relevant information received or obtained during the proceeding, the commission's legal director, deputy legal director, or attorney examiner shall issue an order denying or granting the application.

- (1) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued.
- (2) The order shall provide that any person aggrieved thereby may file an appeal with the commission in accordance with paragraph (I) of this rule. The order shall state that it is effective upon issuance and shall expire within ten days of its issuance unless the applicant presents his copy of the order to the primary supplier or a designated local representative of such primary supplier within ~~those ten days~~ that ten-day period.
- (3) The commission shall serve a copy of the order upon the applicant, the designated state representative of the primary or secondary supplier assigned to the applicant and any other person ~~readily identifiable~~ identified as one who ~~would~~ might be aggrieved by said order.

(H) Timeliness.

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- (1) If the commission's legal director, deputy legal director, or attorney examiner fails to take action on an application within ~~ten~~five days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in paragraph (I)(1) of this rule.
- (2) Notwithstanding paragraph (H)(1) of this rule, the commission may temporarily suspend the running of the ~~ten-day~~ten-day period if it finds that additional information is necessary, if it finds that the application was improperly filed, or any reason deemed appropriate. The ~~A~~ temporary suspension shall remain in effect until the commission serves upon the ~~person~~applicant notice that the additional information has been received and accepted or that the application has been properly filed, or until such time as is specified by the commission, as appropriate. Unless otherwise provided by the commission, the ~~ten-day~~ten-day period shall resume running on the first day that is not a Saturday, Sunday, or legal holiday and that follows the day on which the commission serves upon the person notice as provided in this rule.

(I) Appeal.

- (1) Any person aggrieved by ~~a SSA~~an order issued by the commission's legal director, deputy legal director, or attorney examiner pursuant to this chapter, or by the denial of an application pursuant to paragraph (H)(1) of this rule may file an appeal to the commission.
- (2) Any person wishing to take an appeal must file an application for review with the commission within ~~ten~~five days from the issuance of ~~an~~the order ~~denying, in whole or in part, an application for emergency allocation, or from the denial of such application pursuant to paragraph (H)(1) of this rule~~from which appeal is being taken. An extension of time for the filing of an appeal may be granted only under extraordinary circumstances. Any appeal filed shall set forth specifically the legal and factual grounds serving as the basis of the appeal. A memorandum in support thereof may be filed by the appealing party. The appealing party shall serve a copy of the appeal on all primary and secondary suppliers affected by the order.
- (3) Any affected person may file a memorandum in support or in opposition to the appeal within ~~five~~three days after the filing of an appeal.
- (4) The commission shall affirm, reverse, or modify the decision of the commission's legal director, deputy legal director, or attorney examiner within ~~thirty~~ten days of the filing of the appeal.
- (5) Any person aggrieved by ~~a SSA~~an order issued by the commission pursuant to the provisions of this chapter may file an appeal in accordance with Chapter 4903, of the Revised Code.

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4901:5-37-01 **Definitions.**

As used within this chapter:

(A) "Bulk electric system" means facilities and control systems necessary for operating an interconnected electric energy transmission network, one hundred kilovolts or higher, and any underlying transmission system that could limit or supplement the operation of the higher voltage transmission systems.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Critical situation" means an anticipated or existing shortage in the supply of electric energy, or constraint in the transmission, distribution, or generation of electrical energy, which has adversely affected, or is likely to adversely affect, the operation or reliability of transmission, distribution, or generation facilities.

(D) "Electric distribution utility" has the meaning set forth in division (A) of section 4928.01 of the Revised Code.

(E) "Electric entity" means any electric light company, supplier subject to certification under section 4928.08 of the Revised Code, electric power utility that is owned by a municipal corporation or not for profit, or electric power producer or marketer, as enumerated in division (A)(3) of section 4935.03 of the Revised Code.

(F) "Essential consumers" means the following consumers of an electric supplier:

(1) Hospitals and emergency care facilities, each of which provides medical care and performs in-patient procedures.

(2) Prisons and governmental detention institutions.

(3) Fire and police stations, Ohio national guard facilities, military bases, and federal facilities essential to the national defense.

(4) Any consumer on a medical or life-support system who has provided appropriate documentation to the electric supplier that an interruption of service would be immediately life-threatening.

(5) Radio and television stations used to transmit emergency messages and public information broadcasts relating to emergencies.

(6) Water pumping plants essential to the supply of potable water to a community.

(7) Sewage plants essential to the collection, treatment and disposal of a community's sewage, except lift stations.

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(8) Emergency management and response facilities and the countywide "911" system.

(9) Blood banks.

(G) "Municipal or cooperative" means any municipal electric utility, as defined in division (A) of section 4928.01 of the Revised Code, or any electric cooperative, as defined in division (A) of section 4928.01 of the Revised Code.

(H) "Noncompetitive retail electric service" has the meaning set forth in division (B) of section 4928.01 of the Revised Code.

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4901:5-37-02

General provisions.

(A) The rules in this chapter are intended to result in electric entities:

(1) Preventing emergencies.

(2) Initiating and performing system restoration for any electric service which suffered an outage due to a critical situation.

(3) Preserving and protecting electric services whose operations continued or were restored during a critical situation.

(B) Each electric entity shall comply with the rules of this chapter and orders of the commission during a critical situation that has adversely affected, or may adversely affect, the operation or reliability of electric service.

(C) Each electric distribution utility shall submit to the commission its curtailment plan and amendments on energy shortages or delivery constraints.

(D) The commission may consult with the independent system operator or regional transmission organization, and may, in addition to the rules of this chapter, adopt orders to require any electric entity to take prescribed actions before an emergency and/or to initiate or to terminate any action during an emergency. The provisions of this paragraph do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.

(E) The commission may, for good cause shown, as supported by a motion and supporting memorandum, waive any requirement, standard, or rule set forth in this chapter.

(F) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-37-03

Reporting to the commission during a critical situation.

(A) Each electric entity shall promptly report to the commission:

- (1) Uncontrolled loss in firm system load for fifteen minutes or more of electric power supply to a firm load of three hundred megawatts or more from a single incident.
- (2) Any action to reduce firm customer loads or voltage in order to maintain reliability of the power supply system.
- (3) Any appeal for the public to conserve electricity for purposes of maintaining the continuity of the electric power system.
- (4) Fuel supply emergencies that could impact electric power system adequacy or reliability.
- (5) Any emergency alert, warning, notice, or statement issued by an independent system operator or regional transmission organization which relates to or affects an electric entity.
- (6) Implementation of any other legally imposed energy emergency alert procedure on behalf of the affected reporting electric entity.
- (7) During an emergency, any outage or incident which damages or renders inoperable bulk electric system equipment located in Ohio.
- (8) Any action taken pursuant to the rules of this chapter.

Each report shall be made by fax, voice mail, personal contact or other commission-determined means with a designated commission representative and shall include a description of the situation.

(B) When an electric entity is unable to relieve an existing or anticipated energy shortage by obtaining or purchasing power through an interconnected system, the independent system operator, or a regional transmission organization, each electric entity shall implement and follow the procedures of the independent system operator or regional transmission organization and the procedures in the electric entity's emergency plan, if applicable. The provisions of this paragraph do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.

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4901:5-37-04 Sudden or unanticipated critical situation resulting in overloading transmission facilities.

When sudden or unanticipated generation or transmission outages cause an overloading of an electric entity's facilities or interconnection circuits that operate at a nominal sixty hertz, that electric entity shall perform any or all of the following actions, as applicable:

- (A) Interrupt service to customers served under interruptible tariffs or contracts.
- (B) Interrupt service to firm service customers.
- (C) Reduce voltage not more than five per cent if the transmission system is isolated.
- (D) Disconnect the overloaded facility or circuit.

The provisions of this rule 4901:5-37-04 do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.

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4901:5-37-05

Anticipated conditions during a critical situation.

When anticipated shortages of electrical energy cannot be relieved by automatic reserve sharing and emergency purchases or other sources within or outside the interconnected area, each electric entity shall perform any or all of the following actions, as applicable:

(A) Interrupt service to customers served under interruptible tariffs or contracts.

(B) Interrupt service to customers with controlled service loads.

(C) Reduce voltage not more than five per cent on the distribution system.

(D) Request voluntary load reductions of large volume firm customers.

(E) Appeal to the public to conserve electricity.

(F) Initiate manual load shedding of firm customer loads.

(G) Each electric distribution utility shall:

(1) Make reasonable efforts to maintain service to essential customers.

(2) Select distribution circuits and lines to interrupt service.

The provisions of this rule 4905:1-37-05 do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.