Ohio | Public Utilities Commission

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Energy Shortage Emergency Rules Contained in Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37 of the Ohio Administrative Code.	Case No. 11-4624-AU-ORD

ENTRY

The Commission finds:

(1) Section 4935.03, Revised Code, provides that the Commission shall adopt rules defining various types of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels. These rules may specify appropriate measures to be taken at each level of emergency in order to protect the public health or safety, or prevent unnecessary or avoidable damage to property.

(2) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rule in Chapter 4901:5-17, Ohio Administrative Code (O.A.C.), addresses the governor's emergency powers. The rules in Chapter 4901:5-19, O.A.C., govern fuel emergencies related to the generation of electricity. The rules in Chapters 4901:5-21 and 4901:5-23, O.A.C., govern coal allotment and other matters affecting coal shortages. The rules in Chapter 4901:5-25, O.A.C., are related to gas emergencies. Heating oil and propane emergencies are governed by Chapter 4901:5-29, O.A.C. Transportation fuel emergencies are covered in Chapter 4901:5-33, O.A.C. Chapters 4901:5-35 and 4901:5-37, O.A.C., address set-asides and emergency reporting.

(3) Section 119.032(C), Revised Code, requires that the Commission determine:

(a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;

(b) Whether the rules need amendment or rescission to give more flexibility at the local level;

(c) Whether the rules need amendment to eliminate unnecessary paperwork; and

(d) Whether the rules duplicate, overlap with, or conflict with other rules.

(4) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

(5) In making its review, an agency is also 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.

(6) The Commission's staff has evaluated the rules contained in 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., and recommends amendments to several rules as shown in the attachment to this entry. Specifically, staff recommends numerous nonsubstantive edits, which are designed to fix typographical and grammatical errors, correct a number of cross-references, use gender neutral language, and ensure consistency in common language that is repeated throughout the chapters (*e.g.*, definition of "priority use").

(7) Staff's proposed changes to rules in 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., are posted at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a paper copy of only this entry. All interested persons are directed to download the proposed rules from the above website, or to contact the Commission's Docketing Division to be sent a paper copy.

(8) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code, and Executive Order 2011-01K. Comments should be filed, either via electronic filing or in hard copy, by September 16, 2011. Reply comments should be filed by October 6, 2011.

(9) At this time, the Commission is issuing the existing rules in Chapters 4901:5-17 through 4901:5-37, O.A.C., with nonsubstantive edits, in compliance with the five-year review process. However, the Commission notes that, consistent with Section 4935.03, Revised Code, we maintain the authority to adopt or amend rules in order to address other various foreseen types and levels of energy emergency conditions for interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels. For example, in Case No. 11-277-GE-UNC (11-277),[1] the Commission initiated a review of consumer privacy protection, customer data access, and cyber security issues associated with advanced metering and smart grid programs. By entry issued February 2, 2011, the Commission invited comments on whether we should consider, develop, and adopt rules regarding smart grid related privacy or data access issues. We further indicated that issues pertaining to cyber security would be addressed at a later time. Therefore, 11-277 will afford us the opportunity to consider whether there is a need to amend or adopt rules regarding energy emergency conditions for interruptions resulting from a cyber attack or imminent cyber threat, pursuant to Section 4935.03, Revised Code, or other statutory authority.

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1 *In the Matter of the Review of the Consumer Privacy Protection, Customer Data Access, and Cyber Security Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs,* Case No. 11-277-GE-UNC, Entry (February 2, 2011).

It is, therefore,

ORDERED, That all interested persons file comments on the proposed rule changes by September 16, 2011, and file any reply comments by October 6, 2011. It is, further,

ORDERED, That a copy of this entry without the attached rules be served upon all regulated electric and natural gas companies; Reliability First Corporation; Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Ohio Energy Resources Division, Ohio Department of Development; Ohio Electric Utility Institute; Ohio Propane Gas Association; Ohio Petroleum Marketers & Convenience Store Association; Ohio Oil and Gas Association; Ohio Petroleum Council; Ohio Emergency Management Agency; Ohio Homeland Security; Ohio Trucking Association; Ohio Railroad Association; Ohio Telecom Association; Ohio Cable Telecommunications Association; Ohio Manufacturers' Association; Ohio Municipal League; Ohio Environmental Council; Ohio State Bar Association; and the Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Paul A. Centolella

Steven D. Lesser

Andre T. Porter

Cheryl L. Roberto

SJP/sc

Entered in the Journal

AUG 17 2011

Betty McCauley

Betty McCauley
Secretary