

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-36, Electric)	Case No. 13-953-EL-ORD
Transmission Cost Recovery Riders.)	
)	
In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-37, Corporate)	Case No. 13-954-EL-ORD
Separation for Electric Utilities and)	
Affiliates.)	
)	
In the Matter of the Review of Ohio)	
Adm.Code Chapter 4901:1-38, Reasonable)	Case No. 13-955-EL-ORD
Arrangements for Electric Utility)	
Customers.)	

ENTRY

The Commission finds:

- (1) R.C. 119.032 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 Commission has established this docket in order to conduct an evaluation of Ohio Adm.Code Chapters 4901:1-36, concerning electric transition cost recovery riders, 4901:1-37, concerning corporate separation for electric utilities and affiliates, and 4901:1-38, concerning reasonable arrangements for electric utility customers.
- (2) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules that adversely affect businesses. If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis.

- (3) On April 22, 2013, the attorney examiner issued an entry scheduling a workshop to elicit stakeholder input on proposed revisions which was duly held on May 7, 2013. Notice of the workshop was served upon all Ohio electric distribution utilities and certified competitive retail electric service providers, as well as various industry stakeholders via the Commission's electric-energy email list-serve.
- (4) The only stakeholder comments received at the workshop were made by First Energy Solutions Corporation who asserted that any arrangements approved under Ohio Adm.Code Chapter 4901:1-38 should not impinge on a customer's ability to shop for generation service. Staff believes that generation options for a customer in a special arrangement should be determined on a case-by-case basis.
- (5) After consideration of stakeholder input, Staff proposes to make no changes to Ohio Adm.Code Chapters 4901:1-37 or 4901:1-38. Staff proposes to amend Ohio Adm.Code 4901:1-36-06 to provide quarterly updates from each electric utility seeking recovery of transmission and transmission-related costs. The utility would submit to Staff a report providing more current information on cost components and amounts, customer revenue, and other cost-related information. This will allow Staff to use more current data in determining if the current effective rates continue to reflect the costs and credits as presented in the annual application.
- (6) Staff's proposed rule changes and the corresponding business impact analysis documents attached to this entry will be posted at: www.puco.ohio.gov/puco/rules. Any person wishing to receive paper copies of these documents should contact the Commission's Docketing Division to be sent a paper copy.
- (7) Any person wishing to file comments regarding the review of these rules or the corresponding business impact analysis should do so by January 17, 2014. Any reply comments should be filed by January 24, 2014.

It is, therefore,

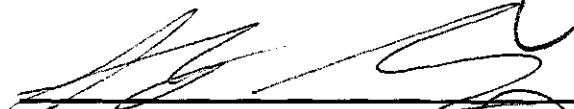
ORDERED, That all comments on the rules to be reviewed, Staff's proposed rule changes, and the corresponding business impact analysis be filed by January 17, 2014. It is, further,

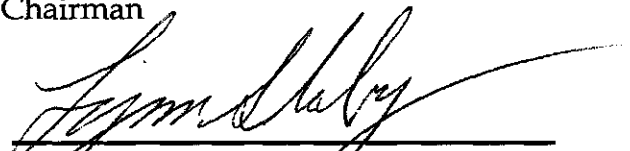
ORDERED, That any reply comments be filed by January 24, 2014. It is, further,

ORDERED, That a notice or copy of this entry without the attached rules or business impact analysis be served upon all investor-owned electric utilities and certified competitive retail electric service providers in the state of Ohio, and the electric-energy list-serve, and any persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Steven D. Lesser


Lynn Slaby

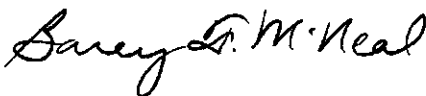

M. Beth Trombold


Asim Z. Haque

RMB/JML/dah

Entered in the Journal

DEC 18 2013



Barcy F. McNeal
Secretary

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“No Change”

4901:1-36-01 Definitions.

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

“No Change”

4901:1-36-02 Purpose and scope.

- (A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

“No Change”

4901:1-36-03 Application.

- (A) Each electric utility which seeks recovery of transmission and transmission-related costs shall file an application with the commission for a transmission cost recovery rider. The initial application shall include all information set forth in
- (B) Each electric utility with an approved transmission cost recovery rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the transmission cost recovery rider shall include all information set forth in the appendix to this rule.

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- (C) The commission may order that consultants be hired, with the costs billed to the electric utility and recoverable through the rider, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.
- (D) Each annual application to update the transmission cost recovery rider should be made not less than seventy-five days prior to the proposed effective date of the updated rider.
- (E) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the amounts authorized as the result of the electric utility's previous application, the electric utility should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.
- (F) Affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.

“No Change”

4901:1-36-04 Limitations.

- (A) The transmission cost recovery rider costs are reconcilable on an annual basis, with carrying charges to be applied to both over- and under-recovery of costs.
- (B) The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.
- (C) The transmission cost recovery rider shall include transmission and transmission-related costs and off-setting revenues, including ancillary and congestion-related costs and revenues, charged or credited to the utility by the federal energy regulatory commission or a regional transmission organization, independent transmission operator, or similar organization approved by the federal energy regulatory commission to the extent such costs and revenues are not included in any other schedule or rider in the electric utility's tariff on file with the commission.

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4901:1-36-05 Hearings.

Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission shall approve the application or set the matter for hearing within seventy-five days after the filing of a complete application under this chapter. Proposed rates will become effective on the seventh-fifth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing.

4901:1-36-06 Additional information.

- (A) On a biennial basis, the electric utility shall provide additional information detailing the electric utility's policies and procedures for minimizing any costs in the transmission cost recovery rider where the electric utility has control over such costs.
- (B) On a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs shall submit to staff a report listing the cost components and amounts, customer revenue, and the monthly over and under-recovery in a format similar to that used in the application schedules for the reconciliation adjustment.

Appendix to Rule 4901:1-36-03

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

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4901:1-37-01 Definitions.

- (A) "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal merchant function of the electric utility whereby the electric utility provides a competitive service.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) Competitive retail electric service provider means a provider of a competitive retail electric service as defined in division (A)(4) of section 4928.01 of the Revised Code.
- (D) Electric services company shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (E) Electric utility shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (F) Employees are all full- or part-time employees of an electric utility or its affiliates, as well as consultants, independent contractors, or any other persons performing various duties or obligations on behalf of or for an electric utility or its affiliate.
- (G) Fully allocated costs are the sum of direct costs plus an appropriate share of indirect costs. For purposes of these rules, the term fully allocated costs shall have the same meaning as the term fully loaded embedded costs as that term appears in division (A)(3) of section 4928.17 of the Revised Code.
- (H) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Staff" means the staff of the commission or its authorized representative.

“No Change”

4901:1-37-02 Purpose and scope.

- (A) The purpose of this chapter is to require all of the state's electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation.

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- (B) This chapter is intended to create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market power and effectuate the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (C) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (D) To ensure compliance with this chapter, examination of the books and records of affiliates may be necessary.
- (E) Violations of this chapter shall be subject to section 4928.18 of the Revised Code. The electric utility has the burden of proof to demonstrate compliance with this chapter.

“No Change”

4901:1-37-03 Applicability.

- (A) The provisions of this chapter shall be applicable in accordance with sections 4928.17 and 4928.18 of the Revised Code and apply to:
 - (1) The activities of the electric utility and its transactions or other arrangements with its affiliates.
 - (2) Any shared services of the electric utilities with any affiliates.
 - (3) The sale or transfer of generating assets.
- (B) Nothing in this chapter is to be construed as prohibiting or otherwise impeding an electric utility's ability to conduct activities pursuant to rules 4901:1-38-03 to 4901:1-38-05 of the Administrative Code.

“No Change”

4901:1-37-04 General provisions.

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

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

(B) Separate accounting.

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

(C) Financial arrangements.

Unless otherwise approved by the commission, the financial arrangements of an electric utility are subject to the following restrictions:

- (1) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.
- (2) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
- (3) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.

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

(D) Code of conduct.

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

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electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.

- (6) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.
- (7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.
- (8) The electric utility shall use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power and the electric utility's compliance officer shall promptly report any such unreasonable sales practices, market deficiencies, and market power to the director of the utilities department (or their designee).
- (9) Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company.
- (10) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:
 - (a) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services.
 - (b) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation.
 - (c) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates or customers of affiliates preferential treatment or advantages over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service.
 - (d) The electric utility shall strictly follow all tariff provisions.
 - (e) Except to the extent allowed by any applicable law, regulation, or commission order, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.

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- (11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services.

(E) Emergency.

- (1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.
- (2) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff.

“No Change”

4901:1-37-05 Application.

- (A) Consistent with section 4928.17 of the Revised Code, an electric utility that provides in this state, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service (or a noncompetitive retail electric service and a product or service other than retail electric service) shall file with the commission an application for approval of a proposed corporate separation plan. The application shall include a narrative describing how the plan ensures competitive equality, prevents unfair competitive advantage, prohibits the abuse of market power, and effectuates the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (B) The proposed corporate separation plan shall be a stand alone document that, at a minimum, includes the following:
 - (1) Provisions that maintain structural safeguards.
 - (2) Provisions that maintain separate accounting.
 - (3) A list of all current affiliates identifying each affiliate's product(s) and/or service(s) that it provides.
 - (4) A list identifying and describing the financial arrangements between the electric utility and all affiliates.
 - (5) A code of conduct policy that complies with this chapter and that employees of the electric utility and affiliates must follow.
 - (6) A description of any joint advertising and/or joint marketing activities between the electric utility and an affiliate that the electric utility intends to utilize, including

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when and where the name and logo of the electric utility will be utilized, and explain how such activities will comply with this chapter.

- (7) Provisions related to maintaining a cost allocation manual (CAM).
- (8) A description and timeline of all planned education and training, throughout the holding company structure, to ensure that electric utility and affiliate employees know and can implement the policies and procedures of this rule. The information shall be maintained on the electric utilities' public web site.
- (9) A copy of a policy statement to be signed by electric utility and affiliate employees who have access to any nonpublic electric utility information, which indicates that they are aware of, have read, and will follow all policies and procedures regarding limitation on the use of nonpublic electric utility information. The statement will include a provision stating that failure to observe these limitations will result in appropriate disciplinary action.
- (10) A description of the internal compliance monitoring procedures and the methods for corrective action for compliance with this chapter.
- (11) A designation of the electric utility's compliance officer who will be the contact for the commission and staff on corporate separation matters. The compliance officer shall certify that the approved corporation separation plan is up to date and in compliance with the commission's rules and orders. The electric utility shall notify the commission and the director of the utilities department (or their designee) of changes in the compliance officer.
- (12) A detailed description outlining how the electric utility and its affiliates will comply with this chapter. The format shall identify the provision and then provide the description.
- (13) A detailed listing of the electric utility's electric services and the electric utility's transmission and distribution affiliates' electric services.
- (14) A complaint procedure to address issues concerning compliance with this chapter, which, at a minimum, shall include the following:
 - (a) All complaints, whether written or verbal, shall be referred to the compliance officer designated by the electric utility to handle corporate separation matters or the compliance officer's designee.
 - (b) The complaint shall be acknowledged within five working days of its receipt.

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- (c) A written statement of the complaint shall be prepared and include the name of the complainant, a detailed factual report of the complaint, all relevant dates, the entities involved, the employees involved, and the specific claim.
 - (d) The results of the preliminary investigation shall be provided to the complainant in writing within thirty days after the complaint was received, including a description of any course of action that was taken.
 - (e) The written statements of the complaints and resulting investigations required by paragraphs (B)(14)(c) and (B)(14)(d) of this rule shall be kept in the CAM, in accordance with rule 4901:1-37-08 of the Administrative Code for a period of not less than three years.
 - (f) This complaint procedure shall not in any way limit the rights of any person to file a formal complaint with the commission.
- (C) Each electric utility shall file its approved corporate separation plan in its tariff docket.

“No Change”

4901:1-37-06 Revisions and amendments.

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

“No Change”

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

- (A) The electric utility shall maintain records sufficient to demonstrate compliance with this chapter, and shall produce, upon the request of staff, all books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to

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the businesses for which corporate separation is required under section 4928.17 of the Revised Code, including those required under section 4928.145 of the Revised Code.

- (B) The staff may investigate such electric utility and/or affiliate operations and the interrelationship of those operations at the staff's discretion. In addition, the employees and officers of the electric utility and its affiliates shall be made available for informational interviews, at a mutually agreed time and place, as required by the staff to ensure proper separations are being followed.
- (C) If such employees, officers, books, and records cannot be reasonably made available to the staff in the state of Ohio, then upon request of the staff, the appropriate electric utility or affiliate shall reimburse the commission for reasonable travel expenses incurred.

“No Change”

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

- (A) Each electric utility that receives products and/or services from an affiliate and/or that provides products and/or services to an affiliate shall maintain information in the CAM, documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations.
- (B) The CAM will be maintained by the electric utility.
- (C) The CAM is intended to ensure the commission that no cross-subsidization is occurring between the electric utility and its affiliates.
- (D) The CAM will include:
 - (1) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved.
 - (2) A description of all assets, services, and products provided to and from the electric utility and its affiliates.
 - (3) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates.
 - (4) A copy of the job description of each shared employee.

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

“No Change”

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

- (A) Consistent with division (E) of section 4928.17 of the Revised Code, an electric utility shall not sell or transfer any generating asset it wholly or partly owns without prior commission approval.
- (B) An electric utility may apply for commission approval to sell or transfer its generating assets by filing an application to sell or transfer.

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- (C) An application to sell or transfer generating assets shall, at a minimum:
- (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
 - (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
 - (3) Demonstrate how the proposed sale or transfer will affect the public interest.
 - (4) State the fair market value and book value of all property to be transferred from the electric utility, and state how the fair market value was determined.
- (D) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest. The commission shall fix a time and place for a hearing with respect to any application that proposes to alter the jurisdiction of the commission over a generation asset.
- (E) If, after such hearing or in the case that no hearing is required, the commission is satisfied that the sale or transfer is just, reasonable, and in the public interest, it shall issue an order approving the application to sell or transfer.
- (F) Staff shall have access to all books, accounts, and/or other pertinent records maintained by the transferor and transferee as related to the application to sell or transfer generating assets and in accordance with rule 4901:1-37-07 of the Administrative Code.

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“No Change”

4901:1-38-01 Definitions.

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission.
- (D) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.
- (F) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.
- (H) "Staff" means the staff of the commission or its authorized representative.

“No Change”

4901:1-38-02 Purpose and scope.

- (A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt

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successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.

- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

“No Change”

4901:1-38-03 Economic development arrangements.

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
- (1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility and the commission verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
- (a) Eligible projects shall be for non-retail purposes.
 - (b) At least twenty-five new, full-time or full-time equivalent jobs shall be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty per cent of the federal minimum wage.
 - (d) The customer shall demonstrate financial viability.
 - (e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.

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- (f) The customer shall identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.
 - (g) The customer shall agree to maintain operations at the project site for the term of the incentives.
- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention of an existing customer(s) likely to cease, reduce, or relocate its operations out of state. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
- (1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
 - (2) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
 - (a) Eligible projects shall be for non-retail purposes.
 - (b) The number of full-time or full-time equivalent jobs to be retained shall be at least twenty-five.
 - (c) The average billing load (in kilowatts to be retained) shall be at least two hundred fifty kilowatts.
 - (d) The customer shall demonstrate that the cost of electricity is a major factor

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in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) shall be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.

- (e) The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.
 - (f) The customer shall agree to maintain its current operations for the term of the incentives.
- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (C) Upon the filing of an economic development application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (1) The economic development arrangement shall be subject to change, alteration, or modification by the commission.
 - (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.
- (D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (E) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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“No Change”

4901:1-38-04 Energy efficiency arrangements.

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
- (1) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (2) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall meet the following criteria, submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
- (a) The customer shall be an energy efficiency production facility as defined in this chapter.
 - (b) At least ten new, full-time or full-time equivalent jobs shall be created within three years of initial operations.
 - (c) The average hourly base wage rate of the new, full-time, or full-time equivalent jobs shall be at least one hundred fifty per cent of federal minimum wage.
 - (d) The customer shall demonstrate financial viability.
 - (e) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - (f) The customer shall agree to maintain operations at the project site for the term of the incentives.
- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an energy

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- efficiency arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (B) Upon the filing of an energy efficiency application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (1) The energy efficiency arrangement shall be subject to change, alteration, or modification by the commission.
 - (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.
 - (C) Customer information provided to demonstrate eligibility under paragraph (A) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
 - (D) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

“No Change”

4901:1-38-05 Unique arrangements.

- (A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its customers, consumers, or employees.
 - (1) An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
 - (2) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

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- (3) The unique arrangement shall be subject to change, alteration, or modification by the commission.
- (B) A mercantile customer, or a group of mercantile customers, of an electric utility may apply to the commission for a unique arrangement with the electric utility.
 - (1) Each customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.
 - (2) The customer shall provide an affidavit from a company official as to the veracity of the information provided.
 - (3) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (4) The unique arrangement shall be subject to change, alteration, or modification by the commission.
- (C) Each applicant applying for approval of a unique arrangement between an electric utility and one or more of its customers, consumers, or employees shall describe how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (D) Unique arrangements shall reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.
- (E) Customer information provided to the electric utility to obtain a unique arrangement shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (F) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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“No Change”

4901:1-38-06 Reporting requirements.

- (A) Each electric utility shall require each of its customers served under any reasonable arrangement established pursuant to this chapter to submit an annual report to the electric utility and staff no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by the customer(s) is identified, and the potential impact on other customers can be calculated.
- (B) The burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with the customer(s). The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.

“No Change”

4901:1-38-07 Level of incentives.

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

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- (1) Posted on the commission's docketing information system.
- (2) Accessible through the commission's web site.
- (3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.

“No Change”

4901:1-38-08 Revenue recovery.

- (A) Each electric utility that is serving customers pursuant to approved reasonable arrangements, may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements in accordance with the following:
 - (1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion.
 - (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such cost recovery shall be subject to audit, review, and approval by the commission.
 - (3) For reasonable arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings shall be an offset to the recovery of the delta revenues.
 - (4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.
 - (5) The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.
- (B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission shall set the matter for hearing.

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- (1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.
 - (2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.
 - (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recover the costs associated with said delta revenue.
- (C) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

“No Change”

4901:1-38-09 Failure to comply.

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

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Greg Price, Chief Attorney Examiner, Electric
	Phone: 614-752-9410 Fax: 614-728-8373
	Greg.Price@puc.state.oh.us
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-36 /
	Electric Transmission Cost Recovery Riders
Rule Number(s):	4901:1-36-01, 4901:1-36-02, 4901:1-36-03,
	4901:1-36-04, 4901:1-36-05, 4901:1-36-06
Date:	December 18, 2013
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change
	<input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code 4901:1-36 establishes the means by which an electric utility may file an application for recovery of transmission and transmission-related costs through a cost recovery rider. If the rider is approved, each utility is required to update the rider annually. If, between annual updates, the utility determines that costs are or will differ substantially from what has been authorized from a prior application, the utility may file an interim application to adjust the rider.

The only amendment proposed for this chapter is an addition to Ohio Adm.Code 4901:1-36-06 to provide quarterly updates from utilities seeking recovery of transmission and transmission-related costs. The utility would provide Staff with more current information on cost components and amounts, customer revenue, and other cost-related information, that would allow Staff to determine if the current effective rates continue to reflect the costs and credits as presented in the annual application.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Statutory Authority – Ohio Revised Code
4901:1-36-01	4928.06, 4928.141, 4918.143
4901:1-36-02	4928.06, 4928.141, 4918.143
4901:1-36-03	4928.06, 4928.141, 4918.143
4901:1-36-04	4928.06, 4928.141, 4918.143
4901:1-36-05	4928.06, 4928.141, 4918.143
4901:1-36-06	4928.06, 4928.141, 4918.143

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

This chapter does not implement a federal requirement, nor is it being amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

R.C.4928.143(B)(2)(g) includes certain provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that an electric distribution utility incurs to be

included in an application for approval of electric security plan. The purpose of this chapter, as stated in Ohio Adm.Code 4901:1-36-02, is to provide a framework for an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, imposed on or charged to the utility by the Federal Energy Regulatory Commission (FERC) or a regional transmission organization, independent transmission operator, or similar organization approved by FERC.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

This chapter fulfills a statutory requirement through the establishment of rules for Commission approval of an electric utility's electric transmission recovery cost rider, pursuant to R.C. 4928.143. The success of this chapter should be evaluated by the efficacy with which electric utilities are able to file, and obtain Commission approval of, appropriate rider applications. No alternatives or changes were proposed by any Ohio electric utility subject to these regulations.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Stakeholders were notified of the review of these rules in *In re the Review of Ohio Adm.Code Chapter 4901:1-36*, Case No. 13-953-EL-ORD, Entry (Apr. 22, 2013), that scheduled a workshop on May 7, 2013. Notice was served upon all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, as well as all stakeholders subscribed to the Commission's electric-energy industry email list-serve.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The workshop was conducted on May 7, 2013, but no comments were provided by any stakeholders concerning this chapter.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

This chapter prescribes the requirements for an electric utility's application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. No alternatives have been proposed by any Ohio electric utility subject to these regulations.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

This chapter prescribes the requirements for an electric utility's application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. No alternatives were proposed by any Ohio electric utility subject to these regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4928 concerning competitive retail electric service.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission will issue an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm. Code Chapter 4901:1-36*, Case No. 13-953-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4901.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. *Specifically, please do the following:*

a. Identify the scope of the impacted business community;

These rules only apply to an Ohio electric utility filing an application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The Commission does not charge any fees for the filing of applications to approve electric transmission recovery cost riders, pursuant to R.C. 4928.143; although electric utilities presumably incur administrative costs in the filing of these applications.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

Any adverse impacts of these only apply to an Ohio electric utility filing an application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. An electric utility would presumably incur administrative costs in filing of an application to approve its transmission recovery cost rider.

The cost of Ohio Adm.Code 4901:1-36-03 involve the preparation of the application for a transmission cost recovery rider, and annual updates of the data used for approval of the rider. Paragraph C provides that the Commission could hire consultants to conduct prudence and/or financial reviews, with the costs billed to the utility, but such costs would be recoverable through the rider. Paragraph E would also involve some administrative compliance costs if the filing of an interim application becomes necessary to reflect costs that are substantially different than the amounts authorized as a result of the utility's prior application.

Costs relating to Ohio Adm.Code 4901:1-36-05 may include a hearing for approval of the application, if necessary. Costs relating to Ohio Adm.Code 4901:1-36-06 involve the time needed to provide, on a biennial basis, additional information detailing the electric utility's policies and procedures for minimizing any costs in the rider, when the utility has control over such costs. In addition, there are costs regarding the time to comply with staff's proposal that, on a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs must file with Staff a report listing cost components, cost amounts, and customer revenue.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As noted above, these rules were adopted pursuant to R.C. 4928.143 to allow electric utilities to recover appropriate costs through an electric transmission recovery cost rider. No alternatives have been proposed by the Ohio electric utilities.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. These rules do not apply to small businesses.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

These rules do not apply to small businesses.

18. What resources are available to assist small businesses with compliance of the regulation?

These rules do not apply to small businesses.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Greg Price, Chief Attorney Examiner, Electric
	Phone: 614-752-9410 Fax: 614-728-8373
	Greg.Price@puc.state.oh.us
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-37 / Corporate Separation for Electric Utilities and Affiliates
Rule Number(s):	4901:1-37-01, 4901:1-37-02, 4901:1-37-03, 4901:1-37-04, 4901:1-37-05, 4901:1-37-06, 4901:1-37-07, 4901:1-37-08, 4901:1-37-09
Date:	December 18, 2013
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change <input type="checkbox"/> Amended <input type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio. This chapter applies to electric utilities that provide, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service. The chapter requires such utilities to file an application with the Commission for approval of a proposed corporate separation plan. In addition, the rules specify what must be contained in a corporate separation plan application, require filing

of any revisions to the separation plan, and indicate when a cost allocation manual must be prepared. In addition, the rules require Commission approval before an electric utility sells or transfers any generating asset, and specify the accounting and financial arrangements for electric utilities.

No amendments to this chapter have been proposed by the Commission's Staff, or by any electric utility or other stakeholder.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Statutory Authority – Ohio Revised Code
4901:1-37-01	4928.17, 4928.06
4901:1-37-02	4928.17, 4928.06
4901:1-37-03	4928.17, 4928.06
4901:1-37-04	4928.17, 4928.06
4901:1-37-05	4928.17, 4928.06
4901:1-37-06	4928.17, 4928.06
4901:1-37-07	4928.17, 4928.06
4901:1-37-08	4928.17, 4928.06
4901:1-37-09	4928.17, 4928.06

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

This rule does not implement a federal requirement, nor is it being amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio. This chapter requires all Ohio electric utilities to meet the same standards, so that a competitive advantage is not gained solely because of corporate affiliation. Further, this chapter is intended to create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market power, and better implement state policies delineated in R.C. Chapter 4928.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

These rules were adopted to accomplish the statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Stakeholders were notified of the review of these rules in *In re the Review of Ohio Adm. Code Chapter 4901:1-37*, Case No. 13-954-EL-ORD, Entry (Apr. 22, 2013), that scheduled a workshop on May 7, 2013. Notice was served upon all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, as well as all stakeholders subscribed to the Commission's electric-energy industry email list-serve.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The workshop was conducted on May 7, 2013, but no comments were provided by any stakeholders concerning this chapter.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio. No alternatives have been proposed by any Ohio electric utility subject to these regulations, or any other stakeholder.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio. No alternatives have been proposed by any Ohio electric utility subject to these regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4928, concerning competitive retail electric service.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission will issue an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm. Code Chapter 4901:1-37*, Case No. 13-954-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4901.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. *Specifically, please do the following:*

a. Identify the scope of the impacted business community;

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio, and only apply to electric

utilities that provide, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The Commission does not charge any fees for the filing of applications to approve corporate separation plans, or the sale or transfer of generating assets; although electric utilities presumably incur administrative costs in making such filings.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.*

As noted above, these rules only apply to Ohio electric utilities, and the only adverse impacts would be a utility's administrative costs in complying with the statutory mandates in R.C. 4928.17 and 4928.06, such as the filing of a corporate separation plan, or applications to sell or transfer generating assets.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

As noted above, these rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio, and only apply to electric utilities that provide, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service. No alternatives have been proposed by the Ohio electric utilities.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

No. These rules do not apply to small businesses.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

These rules do not apply to small businesses.

18. What resources are available to assist small businesses with compliance of the regulation?

These rules do not apply to small businesses.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Greg Price, Chief Attorney Examiner, Electric
Phone: 614-752-9410 Fax: 614-728-8373
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Regulation/Package Title: Ohio Adm.Code Chapter 4901:1-38 /
Reasonable Arrangements for Electric Utility Customers

Rule Number(s): 4901:1-38-01, 4901:1-38-02, 4901:1-38-03,
4901:1-38-04, 4901:1-38-05, 4901:1-38-06,
4901:1-38-07, 4901:1-38-08, 4901:1-38-09

Date: December 18, 2013

Rule Type:

☐ New

☒ 5-Year Review

☒ No Change

☐ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. These rules include applications for Commission approval of an economic development arrangement, energy efficiency arrangement, or other unique arrangement. In addition, the rules establish reporting standards that require customers who are served via such an arrangement to submit, by April 30, annual

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reports to the electric utility and the Commission's staff so that compliance with reasonable arrangement criteria can be verified.

No amendments to this chapter have been proposed by the Commission's Staff.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Rule	Statutory Authority – Ohio Revised Code
4901:1-38-01	4938.17, 4938.06
4901:1-38-02	4938.17, 4938.06
4901:1-38-03	4938.17, 4938.06
4901:1-38-04	4938.17, 4938.06
4901:1-38-05	4938.17, 4938.06
4901:1-38-06	4938.17, 4938.06
4901:1-38-07	4938.17, 4938.06
4901:1-38-08	4938.17, 4938.06
4901:1-38-09	4938.17, 4938.06

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

This rule does not implement a federal requirement, nor is it being amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. Ohio Adm.Code 4901:1-38-02 states that the purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency, and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates contained in R.C. 4938.02.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. These rules will be deemed successful if customers seeking reasonable economic or energy efficiency arrangements can file appropriate applications for Commission approval as well as the annual compliance reports. No alternatives or changes were proposed by any Ohio electric utility or mercantile customer subject to these regulations.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Stakeholders were notified of the review of these rules in *In re the Review of Ohio Adm.Code Chapter 4901:1-38*, Case No. 13-955-EL-ORD, Entry (Apr. 22, 2013), that scheduled a workshop on May 7, 2013. Notice was served upon all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, as well as all stakeholders subscribed to the Commission's electric-energy industry email list-serve.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The workshop was conducted as scheduled on May 7, 2013. The only comments were made by First Energy Solutions Corporation (FES), a certified retail electric generation supplier. FES asserts that any reasonable arrangements approved under this chapter should not impinge on the customer's ability to shop for generation service. Staff declines to adopt such a broad provision, as generation options for a customer in a special arrangement should be determined on a case-by-case basis.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4938, or the approval of reasonable arrangements, pursuant to R.C. 4905.31.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The Commission will issue an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm. Code Chapter 4901:1-38*, Case No. 13-955-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4901.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. *Specifically, please do the following:*

a. Identify the scope of the impacted business community;

These rules only apply to electric utilities and mercantile customers seeking Commission approval of reasonable arrangements, pursuant to R.C. 4905.31. Mercantile customers, as defined in R.C. 4938.01(A)(19), include a commercial or industrial customer, if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kWh annually, or is part of a national account involving multiple facilities in one or more states.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The Commission does not charge any fees for the filing of applications to approve reasonable arrangements, pursuant to R.C. 4905.31; although electric utilities and mercantile customers presumably incur administrative costs in the filing of these applications.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The cost of Ohio Adm.Code 4901:1-38-03(A) involves the time for an electric utility, mercantile customer, or group of mercantile customers of an electric utility to file an application seeking Commission approval of an economic development arrangement between an electric utility and a new or expanding customer or group of customers.

The cost of Ohio Adm.Code 4901:1-38-04(A) involves the time for an electric utility, mercantile customer, or group of mercantile customers to file an application for Commission approval of an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities.

The cost of Ohio Adm.Code 4901:1-38-05(A) involves the time needed for an electric utility to file an application for Commission approval of a unique arrangement with

one or more of its customers, consumers, or employees. Similarly, the cost of Ohio Adm.Code 4901:1-38-05(B) involves the time for a mercantile customer, or group of mercantile customers, of an electric utility to apply to the Commission for a unique arrangement with an electric utility.

The cost of Ohio Adm.Code 4901:1-38-06(A) involves the time needed for the customers of an electric utility who are served under a reasonable arrangement pursuant to this chapter to submit an annual report to the electric utility and to Commission staff no later than April 30 of each year. The format and contents of the report shall be determined by staff.

The cost of Ohio Adm.Code 4901:1-38-08(A) involves the time needed for each electric utility that serves customers pursuant to approved reasonable arrangements to apply for a rider to recover certain costs associated with the utility's delta revenue for serving those customers.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

This chapter fulfills a statutory obligation for the Commission to establish rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer or customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations. The only stakeholder at the workshop to comment on these rules did not raise any adverse impacts imposed by the current rules.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

These rules only apply to electric utilities and mercantile customers, which are defined by R.C. 4938.01(A)(19) as commercial or industrial customers that consume more than 700,000 kWh annually, or are part of a national account involving multiple facilities in one or more states. R.C. 119.14(G)(1) provides that small business has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121. It appears unlikely that an entity would be able to fit both statutory definitions.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. As noted above, it appears unlikely that an entity would qualify as both a mercantile customer and small business. In addition, these rules do not impose fines or penalties for paperwork violations.

18. What resources are available to assist small businesses with compliance of the regulation?

As noted above, it appears unlikely that a small business would qualify as a mercantile customer eligible for a reasonable arrangement under R.C. 4905.31. However, the Commission's staff is available to answer questions regarding the application and approval process set forth in this chapter.