

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review )  
of Chapter 4901:1-23, Ohio Administrative ) Case No. 12-2052-EL-ORD  
Code, Regarding Electric Reliability, )  
Service and Safety. )

FINDING AND ORDER

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. At this time, the Commission is reviewing the rules contained in Ohio Adm.Code Chapter 4901:1-23, as required by R.C. 119.032.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
  - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;
  - (b) The rules need amendment or rescission to give more flexibility at the local level;
  - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74 and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76; and
  - (d) The rules duplicate, overlap with, or conflict with other rules.

- (e) The rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.
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- (3) In addition, on January 10, 2011, the Governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
  - (4) Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against a business impact analysis (BIA). 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.
  - (5) By Entry issued on July 16, 2012, a workshop was scheduled at the offices of the Commission on August 17, 2012, to engage interested stakeholders on the appropriate revisions to the rules contained in Ohio Adm.Code Chapter 4901:1-23. The workshop was held as scheduled.
  - (6) Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-23, as well as the feedback received at the workshop and recommended minor amendments to the rules.
  - (7) On January 15, 2014, the Commission issued an Entry seeking comments on Staff's proposed amendments and sent Staff's recommended changes and BIA to CSI for review and recommendations in accordance with R.C. 121.82. Comments were filed by the Ohio Consumers' Counsel (OCC). Reply comments were filed by Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy).

- (8) At this time, the Commission finds that the rules in Ohio Adm.Code Chapter 4901:1-23 should be filed with the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission. The Commission has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding these rules. The Commission addresses the more relevant comments below. Any comments or recommended changes not addressed below or incorporated into the proposed rules have been considered by the Commission and should be considered denied.
- (9) OCC proposes that the Commission amend Ohio Adm.Code 4901:1-23-02 and 4901:1-23-03 so that notices of probable noncompliance are publicly filed. Pursuant to Ohio Adm.Code 4901:1-23-02(A), staff may issue a notice of probable noncompliance after an inspection, investigation, or complaint. Staff issues notices of probable noncompliance to enforce the electric reliability, customer service, and safety code set forth in Ohio Adm.Code Chapters 4901:1-21 and 4901:1-10. OCC asserts that the public filing of notices of probable noncompliance would be consistent with R.C. 4905.07 and would provide transparency to the public. Additionally, OCC asserts that the public could be presented an opportunity to be heard regarding any probable violation of the Commission's rules.

FirstEnergy opposes OCC's proposal and notes that the Commission has already twice rejected this same proposal. *Citing In re Commission's Promulgation of Rules*, Case No. 99-1611-EL-ORD, Finding and Order (Apr. 6, 2000); *also citing, In re Commission's Review of Chapters*, Case No. 06-653-EL-ORD, Finding and Order (Nov. 5, 2008). FirstEnergy argues that the same reasons that the Commission has already twice denied OCC's proposal still exist today. FirstEnergy argues that the purpose of Ohio Adm.Code Chapter 4901:1-23 is to expedite resolution of the alleged violations and avoid extended and protracted litigation on each alleged violation. Additionally, FirstEnergy contends that if the Commission determines that alleged violations are numerous, flagrant, egregious, or involve matters of public safety, the Commission may initiate an investigation.

- (10) The Commission finds that OCC's proposal should be denied. We find that the rules appropriately balance the Commission's objectives of providing transparency, fairness, and accountability. Staff routinely monitors and conducts investigations of all public utilities and entities within the Commission's jurisdiction to ensure compliance with the Commission's rules and regulations. These investigations include an ongoing review of the Commission's customer complaint data and communicating with customers and local government officials. We find that if the daily activities of Staff required public input, or if each investigation required a hearing, Staff's performance would be unduly hindered. Additionally, if a customer has an interest or right that it believes has been affected by an alleged rule violation; the customer may seek recourse through the Commission's complaint procedures in Ohio Adm.Code 4901-9-01.

Further, we find that publicly filing notices of probable noncompliance could result in conflicts with the Commission's responsibility in R.C. 4928.06(F) to maintain the confidentiality of certain information.

- (11) An agency must demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that the purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation. The Commission has included stakeholders in the development of these rules and has sought to eliminate excessive or duplicative rules that stand in the way of job creation.
- (12) In order to avoid needless production of paper copies, the Commission will serve a paper copy of this Finding and Order only and will make the rules, as well as the business impact analysis, available online at: [www.puco.ohio.gov/puco/rules](http://www.puco.ohio.gov/puco/rules). All interested persons may download the rules and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.

It is, therefore,

ORDERED, That attached amended Ohio Adm.Code 4901:1-23-04, 4901:1-23-05, and 4901:1-23-06 be adopted. It is, further,

ORDERED, That existing Ohio Adm.Code 4901:1-23-01, 4901:1-23-02, and 4901:1-23-03 be adopted with no changes. It is, further,

ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-23 shall be in compliance with R.C. 119.032. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Thomas W. Johnson, Chairman

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Steven D. Lesser

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M. Beth Trombold

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Lynn Slaby

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Asim Z. Haque

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Entered in the Journal

**MAY 14 2014**

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Barcy F. McNeal

Barcy F. McNeal  
Secretary

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**4901:1-23-01      Purpose and scope.**

- (A) The rules contained in this chapter prescribe procedures for staff of the public utilities commission of Ohio to administer and enforce the electric reliability, customer service, and safety code set forth in Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
- (B) This chapter also governs customer service, reliability, and safety proceedings of the public utilities commission of Ohio to:
  - (1) Investigate and determine an electric utility's or competitive retail electric service provider's compliance with Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
  - (2) Review settlement agreements and approve stipulations by the staff and the electric utility or competitive retail electric service provider.
  - (3) Issue and enforce compliance orders.
  - (4) Assess forfeitures.
  - (5) Direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court to protect the public safety, reliability, and customer service.
- (C) As used in this chapter:
  - (1) "Commission" means the public utilities commission of Ohio.
  - (2) "Competitive retail electric service provider" means a provider of competitive retail electric service, subject to certification under section 4928.08 of the Revised Code.
  - (3) "Electric utility" includes electric distribution utilities, as that term is defined in division (A)(6) of section 4928.01 of the Revised Code, and electric transmission owners.
  - (4) "Staff" means the commission staff or its authorized representative.
- (D) 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.

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**4901:1-23-02      Staff notice of probable noncompliance, proposed corrective action, and proposed forfeiture.**

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture;
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-23-05 of the Administrative Code, in order to modify or include additional probable noncompliance or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-23-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding, from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).
- (C) Any staff notice of probable noncompliance, proposed corrective action, proposed forfeiture, or amendments thereto shall be served pursuant to rule 4901:1-23-03 of the Administrative Code.

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**4901:1-23-03      Service of staff notices of probable noncompliance, proposed corrective action, and proposed forfeiture.**

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-23-02 of the Administrative Code and investigative reports under rule 4901:1-23-05 of the Administrative Code shall be served on the electric utility or competitive retail electric service (CRES) provider by certified United States mail. Service is effective upon receipt by any employee, agent of, or person designated by the electric utility or CRES provider. Unless otherwise provided in this paragraph, service upon an electric utility or CRES provider shall be made at the address

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designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.

- (B) Each electric utility or CRES provider shall provide the commission with its current service address. If the service address has changed since the most recent annual report was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the service envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

**4901:1-23-04      Settlement agreements and stipulations.**

- (A) If staff and the electric utility or competitive retail electric service (CRES) provider reach agreement regarding the violation of a rule within this chapter or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, the violation of a commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until both of the following have occurred:
  - (1) The stipulation is filed with the commission for approval pursuant to a compliance or other proceeding.
  - (2) The stipulation is approved by and made the order of the commission.
- (B) If the settlement agreement provides for the payment of a forfeiture or other payment by an electric utility or CRES provider of ten thousand dollars or less, the agreement shall be deemed accepted by the commission and fully enforceable upon the electric utility or CRES provider upon its execution.
- (C) Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) Where an electric utility or competitive retail electric service provider has demonstrated to the staff's satisfaction, as confirmed in writing ~~from~~ by the



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~~staff~~director of the commission's service monitoring and enforcement department or the director of the commission's utilities department or his/her designee, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected and where the company submits full payment of the proposed forfeiture prior to the execution of a written settlement agreement or final commission order, the violation(s) listed in such staff notice of probable noncompliance or investigative report shall only be considered by the commission as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violation. If a company pays a proposed forfeiture of more than one thousand dollars without executing a written settlement agreement, the payment shall be fully effective when approved by and made the order of the commission.

**4901:1-23-05      Commission proceedings.**

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, or after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- (B) The commission shall conduct such compliance or other proceedings in accordance with Chapter 4901-1 of the Administrative Code.
- (C) Unless otherwise ordered by the commission or an attorney examiner assigned to the proceeding, the staff shall file with the commission and serve upon the electric utility or competitive retail electric service (CRES) provider a written report of investigation (investigative report) in each proceeding, within forty-five calendar days after the commission issues an entry initiating a compliance proceeding. The investigative report shall present:
  - (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which may include:
    - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
    - (b) Staff's findings on the electric utility or CRES provider's practices and policies.

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- (2) Staff's recommendations for commission action.
- (D) The commission shall hold an evidentiary hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.
- (E) If, after a hearing, the commission finds an electric utility or CRES provider has violated or is violating Chapter 4928. of the Revised Code, or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any order adopted thereunder, the commission, by order:
  - (1) Shall require the electric utility or CRES provider to comply with Chapter 4928. of the Revised Code, Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any commission order thereunder, and to undertake corrective action necessary to protect the public safety, reliability, and customer service. The commission is not restricted in the making of the compliance order by the terms of any proposed corrective action and/or forfeiture by staff.
  - (2) May assess forfeitures upon an electric utility or CRES provider of not more than ten thousand dollars for each day of each violation.
  - (3) May direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court.
  - (4) May determine other appropriate remedies to protect the public safety, reliability, and customer service.

**4901:1-23-06      Payment of forfeitures and other payments.**

- (A) All forfeitures and other payments shall be paid by certified check or money order made payable to "Treasurer, State of Ohio," and shall be mailed or delivered to:

"Public Utilities Commission of Ohio

Fiscal Division

180 East Broad Street, ~~Thirteenth Floor~~

Columbus, Ohio 43215-3793"

- (B) All instruments of payment shall contain the identifying number of the violation/staff notice for which payment is tendered.

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- (C) No electric utility or competitive retail electric service provider may recover any forfeiture, or other payment in any pending or subsequent proceeding before the commission.