

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's)
Review of its Rules for Standard Service)
Offers for Electric Utilities Contained in) Case No. 13-2029-EL-ORD
Chapter 4901:1-35, Ohio Administrative)
Code.)

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. The rules in Ohio Adm.Code Chapter 4901:1-35 govern standard service offers.
- (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 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;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.

- (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 business impact analysis. 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.
- (5) On January 29, 2014, the Commission issued staff's proposed amendments and requested comments to assist in the review. Comments were filed by the Ohio Power Company (Ohio Power), Direct Energy Services, LLC (Direct Energy), Duke Energy Ohio, Inc. (Duke), the Ohio Consumers' Counsel (OCC), the Ohio Edison Company, the Toledo Edison Company, and the Cleveland Electric Illuminating Company (FirstEnergy). Reply comments were filed by Direct Energy, Duke, FirstEnergy, Nucor Steel Marion (Nucor Steel), Ohio Power, and OCC.
- (6) The Commission has carefully reviewed the existing rules, proposed Staff changes, comments, and reply comments filed by interested parties. The Commission addresses some of the more significant comments below. While all of the comments and reply comments have been considered by the Commission, they are not all addressed in this Finding and Order. Any recommended change that is not discussed below or incorporated into the proposed rules should be considered denied by the Commission.

Comments on Ohio Adm.Code 4901:1-35-01

- (7) In Staff's proposal, Staff removed the phrase "time differentiated pricing, dynamic retail pricing, and other alternative retail rate options" and replaced it with the term "alternative rate retail options."

Ohio Power argues that a definition of the term "alternative rate retail option" should be included in the definitions (Ohio Power at 1-2). Similarly, OCC asserts that the Commission should define alternative rate retail options to include time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options. OCC asserts that to remove the requirement for the CBP plan to include a discussion of time-differentiated pricing would violate the policy of the state of Ohio in R.C. 4928.02(D). (OCC at 2-4.)

Nucor Steel argues that the term "alternative rate retail options" is broad enough to encompass time-differentiated rates, dynamic pricing, and other alternative rate options, such as interruptible rates (Nucor Steel Reply at 2-3).

However, FirstEnergy argues that alternative rate retail options should not be required in any SSO plan. FirstEnergy argues that CRES providers should be responsible for providing alternative rates, not the electric distribution utilities (EDUs) (FirstEnergy Reply at 2, 5). However, Nucor Steel opposes FirstEnergy's arguments (Nucor Steel Reply at 3-6). OCC opposes FirstEnergy's proposition and argues that it is inconsistent with R.C. 4928.02(D) (OCC Reply at 3-5).

- (8) The Commission finds that the proposal by Ohio Power and OCC should be adopted. Accordingly, we find that the definition of the term "alternative retail rate option" should include time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options. We note that time-differentiated rates are just one example of many alternative retail rate options included in the rule. As we noted in Case No. 12-3151-EL-COI, until the competitive retail electric market develops to the point where a reasonable number of competitive retail electric service (CRES) providers are offering time-differentiated rates, the EDUs should continue

to offer pilot time-differentiated rate programs. *In re Commission's Investigation*, Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 37-38. Accordingly, we adopt Ohio Power and OCC's recommendation to add a definition for alternative retail rate options.

- (9) Duke argues that the definitions for "market development period" and "rate plan" should be deleted from the rule. Duke notes that with the deletion of Ohio Adm.Code 4901:1-35-04(A), these terms will no longer be used in the chapter (Duke at 1). However, Direct Energy argues that the term "rate plan" should be amended to state that a rate plan means an electric utility's current standard service offer approved by the Commission (Direct Energy at 2).
- (10) The Commission finds that Duke's proposal should be adopted. Since the terms "market development period" and "rate plan" are no longer used in Ohio Adm.Code Chapter 4901:1-35, there is no longer a need for definitions to define those terms. Further, with the deletion of Ohio Adm.Code 4901:1-35-03(B)(2)(j), the term "first application for a market rate offer" is no longer used in Chapter 4901:1-35 and should be deleted. Finally, we find that the term "competitive bidding process" should be deleted because the definition implies that a competitive bidding process (CBP) can only be proposed in an application for a standard service offer (SSO) in the form of a market rate offer (MRO). However, a CBP plan can be proposed in an application to establish an MRO or in an application to establish an electric security plan (ESP).

Comments on Ohio Adm.Code 4901:1-35-03

- (11) Paragraph (A). In Staff's proposal for paragraph (A), Staff had proposed to reduce the number of copies of an SSO application that must be filed from 20 to 15 copies.

Duke and FirstEnergy recommend that the Commission eliminate the requirement for hard copy filing of the SSO applications. Duke and FirstEnergy aver that this would make the rule more consistent with the procedural rules for the filing of an application to increase distribution rates. (Duke at 2; FirstEnergy at 3.)

- (12) The Commission adopts, in part, the recommendation by Duke and FirstEnergy to decrease the number of hard copy applications that must be filed. However, we cannot eliminate the hard copy filing requirement altogether because Staff uses the hard copy filings to review the application. Accordingly, the Commission finds that the electric utilities should file 10 hard copy SSO applications and should provide additional hard copy SSO applications to Staff upon request.
- (13) Paragraph (B). Duke recommends that the Commission clarify that the electric utility's electricity market is the electric utility's certified territory (Duke at 2). Additionally, Duke proposes that the Commission consolidate subparts (B)(2)(a) and (B)(2)(k), which Duke believes are duplicative (Duke at 2).
- (14) The Commission finds that Duke's recommendations should be adopted. We find that an electric utility's market, in this instance, should be recognized as the electric utility's certified territory. Additionally, we find that (B)(2)(k) should be deleted, since we believe that it is duplicative and outdated.
- (15) FirstEnergy asserts that Subpart (B)(2)(c) should be deleted from the rules. FirstEnergy argues that an EDU cannot know, prior to auction, what the price outcome will result from the CBP or any projected clearing price. Additionally, FirstEnergy avers that the EDU cannot provide any meaningful projected generation rate impacts at the time it files for approval of an MRO with the Commission. (FirstEnergy at 3-4.)
- (16) The Commission notes that we understand that it is difficult for an electric utility to know, prior to auction, what the rate impacts will be from the results of the CBP. However, the rule also requires that the projected rate impacts of the distribution and transmission aspects of the plan be disclosed. Additionally, the rule recognizes that the electric utilities will not know results of the CBP, which is why the electric utilities should use projected bid clearing prices to determine the rate impacts. Accordingly, we find that FirstEnergy's proposal should not be adopted.

- (17) Paragraph (C). FirstEnergy argues that the Commission should delete the requirement in (C)(2) that the ESP filing contain pro forma financial projections. FirstEnergy avers that its proposal would be consistent with the Staff's proposed deletion of the same requirement in the MRO filing requirements (FirstEnergy at 6). Ohio Power agrees with FirstEnergy's proposal and adds that division (C)(2) should also be deleted for exceeding the scope of R.C. 4928.143 (Ohio Power Reply at 1-2).

OCC argues that the Commission must employ the statutory test found in R.C. 4928.143. In making the determination about whether the plan is more favorable in the aggregate than the results that would otherwise apply, OCC argues that the Commission may review the "pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP," in the overall evaluation of an ESP. (OCC Reply at 5-6.)

- (18) The Commission finds that the proposal by FirstEnergy and Ohio Power should not be adopted. The Commission notes that the pro forma financial projections are used, among other things, to evaluate the nonbypassable riders that may be proposed in an ESP. However, in an MRO, no generation pro forma financial projections are needed.
- (19) Duke proposes that the Commission clarify subsections (C)(7) and (C)(8), which require the description of the impact on governmental aggregation of any nonbypassable charges. Duke asserts that these should be revised to clarify that they apply to any nonbypassable charge established under the ESP. Duke notes that since ESPs allow for nonbypassable charges that are not directly related to generation, the intent of the section would be clearer if the language simply referred to nonbypassable charges established under an ESP. (Duke at 3.)
- (20) The Commission finds that Duke's proposal is reasonable and should be adopted, in part. We find that the language in (C)(8) should be revised to recognize that the rule applies to all nonbypassable charges, not just nonbypassable generation charges.

- (21) Direct Energy argues that Ohio Adm.Code 4901:1-35-03(C)(9)(d) should require electric utilities to indicate whether their application to increase or decrease a component of the ESP is for a bypassable or nonbypassable component (Direct Energy at 2-3).
- (22) The Commission finds that Direct Energy's proposal is reasonable and should be adopted. Further, we note that this is already common practice in ESP applications, so this addition to the rule will not create a burden on the EDUs.
- (23) Paragraph (E). Duke asserts that Paragraph (E) should be deleted as it is duplicative of sections that specifically address MRO and ESP applications (Duke at 4).
- (24) The Commission finds that Duke's proposal should not be adopted. Paragraph (E) recognizes one of the fundamental aspects of an MRO, which is that an ESP may not be proposed once the electric utility has implemented an MRO authorized by the Commission.

Comments on Ohio Adm.Code 4901:1-35-04

- (25) Paragraph (A). Direct Energy argues that paragraph (A) should be revised to require all waiver requests to be filed 60 days prior to the filing of an SSO application (Direct Energy at 3-4). OCC is generally supportive of Direct Energy's proposal (OCC Reply at 2-3).

Duke and FirstEnergy oppose Direct Energy's request and argue that requiring waiver requests to be filed 60 days prior to filing of an SSO application would violate R.C. 4928.143(C)(1) because it would add an additional 60 days to the statutory 275 day timeframe to consider an SSO application. Further, Duke and FirstEnergy contend that Direct Energy's recommendation is unduly burdensome and will cause undue delay because the EDUs will need to wait for the Commission's ruling on the waiver request before filing the SSO application, even though the Commission won't have the application to rely on when making its decision (Duke Reply at 1-2; FirstEnergy Reply at 2-3.).

- (26) The Commission finds that Direct Energy's proposal should not be adopted. The Commission finds that it is reasonable for the EDU to include its waiver requests in its application for an SSO. Further, we find that it may be unreasonable to require the EDUs to file a waiver request 60 days before its application, when the EDU may still be determining what to include in its application for an SSO.
- (27) Duke asserts that the requirement in paragraph (A) for the electric utility to keep a copy of its application available at its main office should be eliminated. Duke argues that this requirement is unnecessary because customers do not go to the electric utility's headquarters to review a hardcopy of the application. (Duke at 4.)
- (28) The Commission finds that Duke's proposal is reasonable and should be adopted. We note that the rule still requires the electric utility to, at a minimum, maintain a copy of the application and all waiver requests through the Commission's and the electric utility's websites and at the Commission offices. Therefore, we find that there is sufficient availability of the electric utility's application for an SSO without the need for the electric utility to provide a copy to customers at its main office.

Comments on Ohio Adm.Code 4901:1-35-08

- (29) Paragraph (A). Staff's proposal for paragraph (A) was to apply the requirements for a CBP to an ESP, pursuant to R.C. 4928.143. Since ESPs can also include a CBP, Staff's proposal added that the rules should apply to both ESP and MRO applications.

Duke and FirstEnergy propose that the Commission revise the first sentence of this paragraph so that it does not appear that an ESP is required to contain a CBP. Duke and FirstEnergy note that R.C. 4928.143, which governs ESP applications, does not require EDUs to provide for a CBP in an ESP application. (Duke at 5; FirstEnergy at 6-7.) Ohio Power agrees with Duke and FirstEnergy that the Commission does not have statutory authority to require EDUs to provide for a CBP that meets all of the requirements

of the MRO statute in an ESP application (Ohio Power Reply at 2).

- (30) The Commission finds that the proposal by Duke, FirstEnergy, and Ohio Power should be adopted, in part. The Commission recognizes that R.C. 4928.143 does not require a CBP plan in an application for an ESP. However, the Commission finds that, if an ESP application is filed that contains a CBP, then the application should conform to the Commission's rules for CBP process requirements. Accordingly, the Commission has revised the rule to recognize that it only applies to those ESP applications in which a CBP is proposed.
- (31) Direct Energy recommends that the Commission add a requirement for utilities to provide the formula or process used to convert the results of any market based procurement or contracted wholesale prices into retail tariff rates. Direct Energy notes that this is already common practice in applications for an ESP, and that it would enable CRES providers and other parties to better predict the impact of ESPs, and SSO prices, for customers. (Direct Energy Reply at 3.)
- (32) The Commission finds that Direct Energy's proposal should not be adopted because it would be duplicative with existing rules. We note that Direct Energy's proposal would be duplicative of Ohio Adm.Code 4901:1-35-03(B)(2)(a) and (B)(2)(h), which require a discussion of the relationship between the wholesale procurement process and the retail rate design proposed in the CBP plan, as well as a clear description of the rate structure ultimately chosen by the electric utility and the methodology by which the electric utility proposes to convert the winning bids to retail rates. Additionally, Ohio Adm.Code 4901:1-35-08(B)(7) requires a listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how conversion from winning bids to retail rates was accomplished under the conversion process approved by the Commission in the CBP plan.

- (33) Paragraph (B). Staff's proposal for paragraph (B)(7) states that, *if possible*, the EDU should provide a listing of the retail rates that would result from the CBP plan.

OCC argues that the requirement for the EDU to provide a listing of the retail rates that would result from the CBP plan should be a requirement. OCC asserts that it is imperative that the Commission understand how the resulting CBP prices are to be converted to retail rates for consumers. (OCC at 4-5.)

Duke opposes OCC's proposal and argues that there may be circumstances in which it is not possible for an independent third party to calculate retail rates, particularly if the term of the plan is lengthy. Duke notes that Ohio Adm.Code 4901:1-35-03(B)(2)(i) already requires the EDU to explain in detail, in the application, the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electricity utility. (Duke Reply at 3-4.)

Additionally, FirstEnergy argues that Staff's proposal provides the EDUs with flexibility and recognizes that at the time of filing the SSO application, a listing of retail rates may not be possible (FirstEnergy at 5).

- (34) The Commission finds that OCC's recommendation should be adopted. The Commission finds that the EDUs should be required to provide a listing of retail rates that would result from the CBP plan. If necessary, the EDU should rely on projections of future market rates to determine the retail rates. Accordingly, we find that the electric utilities, to the best of their ability, should determine the retail rates that would result from the CBP plan and potential CBP results, consistent with this rule, as well as with Ohio Adm.Code 4901:1-35-03(B)(2)(a) and (B)(2)(h).

Comments on Ohio Adm.Code 4901:1-35-09

- (35) Paragraph (D). Ohio Power argues that the rule should be revised to clarify that the CBP is not included in this section. Additionally, Ohio Power requests that the rule be revised to state that the costs of a consultant hired pursuant to Commission order are recoverable. (Ohio Power at 2.)
- (36) The Commission finds that Ohio Power's proposal should not be adopted. The Commission determines whether an electric utility may recover the costs of a consultant on a case-by-case basis.

Comments on Ohio Adm.Code 4901:1-35-11

- (37) Paragraph (C). Duke argues that Paragraph (C) should be combined with 4901:1-35-03(C)(10). Duke asserts that this would provide clarity and simplification to the rules. (Duke at 5).

FirstEnergy supports Duke's recommendation and asserts that both Ohio Adm.Code 4901:1-35-10 and 4901:1-35-03(C)(10) apply only in an ESP and only to the SEET test (FirstEnergy Reply at 10).

- (38) The Commission finds that Duke's proposal should not be adopted. We find that there would be little benefit to moving Ohio Adm.Code 4901:1-35-10, without making any substantive revisions to the rule.

It is, therefore,

ORDERED, That attached amended Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-04, 4901:1-35-08, and 4901:1-35-11 be adopted. It is, further,

ORDERED, That existing Ohio Adm.Code 4901:1-35-02, 4901:1-35-05, 4901:1-35-06, 4901:1-35-07, 4901:1-35-09, and 4901:1-35-10 be adopted with no changes. It is, further,

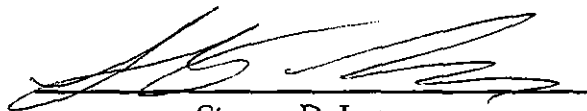
ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

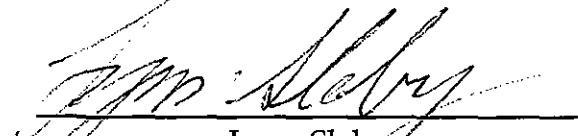
ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-35 shall be in compliance with R.C. 119.032. It is, further,

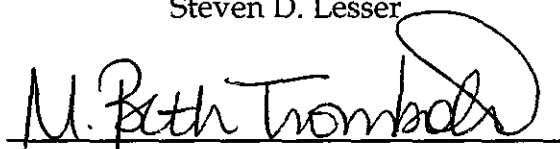
ORDERED, That a copy of this Finding and Order be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby


M. Beth Trombold


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Entered in the Journal

AUG 27 2014



Barcy F. McNeal
Secretary

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4901:1-35-01 Definitions.

- (A) "Alternative retail rate option" means time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options.
- (B) "Application" means an application for standard service offer pursuant to this chapter.
- ~~(B)~~(C) "Commission" means the public utilities commission of Ohio.
- ~~(C)~~ "Competitive bidding process" means a bidding process established pursuant to section 4928.142 of the Revised Code.
- ~~(D)~~(D) "Dynamic retail pricing" means a retail rate design which includes prices that can change based on changes in wholesale electricity prices, power system conditions, or the marginal cost of providing electric service.
- ~~(E)~~(E) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- ~~(F)~~(F) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service including other related matters pursuant to section 4928.143 of the Revised Code.
- ~~(G)~~ "First application for a market-rate offer" means the application filed under section 4928.142 of the Revised Code by an electric utility that has not previously implemented an approved market-rate offer.
- ~~(H)~~ "Market development period" shall have the meaning set forth in division (A)(17) of section 4928.01 of the Revised Code.
- ~~(H)~~(G) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.
- ~~(H)~~(H) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- ~~(K)~~ "Rate plan" means an electric utility's standard service offer approved by the commission prior to January 1, 2009, that established rates for electric service at the expiration of an electric utility's market development period.

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- (L)(I) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, pursuant to section 4928.141 of the Revised Code.
- (M)(J) "Staff" means the staff of the commission or its authorized representatives.
- (N)(K) "Time differentiated pricing" means a retail rate design which includes differing prices based upon the time that electricity is used in order to reflect differences in expected costs or wholesale electricity prices in different time periods.

4901:1-35-02 Purpose and scope.

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.
- (B) The commission may, 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.

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

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

- (A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). ~~Twenty-Ten~~ copies plus an original of the application shall be filed. The electric utility shall provide Staff with additional hard copies of the application upon request. The application must

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include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.

- (B) An SSO application that contains a proposal for an MRO, or an SSO application containing a proposal for a CBP, shall comply with the applicable requirements set forth below.
 - (1) The following electric utility requirements are to be demonstrated in a separate section of the ~~standard service offer~~-SSO application proposing an ~~market rate offer~~-MRO:
 - (a) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission; or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.
 - (b) The electric utility shall establish one of the following: its RTO retains an independent market-monitor function and has the ability to identify any potential for a market participant or the electric utility to exercise market power in any energy, capacity, and/or ancillary service markets by virtue of access to the RTO and the market participant's data and personnel and has the ability to effectively mitigate the conduct of the market participants so as to prevent or preclude the exercise of such market power by any market participant or the electric utility; or the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of such market power.
 - (c) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any energy product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the competitive bidding process (CBP) is publicly available. The information may be offered through a pay subscription service, but the pay subscription service

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shall be available under standard pricing, terms, and conditions to any person requesting a subscription. The published information shall be representative of prices and changes in prices in the electric utility's ~~electricity market~~certified territory, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of the publication. The published information shall be updated on at least a monthly basis.

- (2) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a CBP with the commission. ~~The~~An electric utility that files an MRO or an application containing a CBP plan shall provide justification of its proposed CBP plan, considering alternative possible methods of procurement. Each CBP plan ~~that is to be used to establish an MRO~~ shall include the following:
 - (a) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan. The description shall include a discussion of any relationship between the wholesale procurement process and the retail rate design that may be proposed in the CBP plan. The description shall include a discussion of alternative methods of procurement that were considered and the rationale for selection of the CBP plan being presented. The description shall also include an explanation of every proposed non-avoidable charge, if any, and why the charge is proposed to be non-avoidable.
 - ~~(b) Pro forma financial projections of the effect of the CBP plan's implementation, including implementation of division (D) of section 4928.142 of the Revised Code, upon generation, transmission, and distribution of the electric utility, for the duration of the CBP plan.~~
 - ~~(e)~~(b) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan. The electric utility shall clearly indicate how projected bid clearing prices used for this purpose were derived.
 - ~~(d)~~(c) Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of

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the Revised Code.

- (e)(d) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect such customer loads. The descriptions shall include, but not be limited to, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class for at least the two most recent years, applicable tariffs, historical shopping data, and plans for meeting targets pertaining to load reductions, energy efficiency, renewable energy, advanced energy, and advanced energy technologies. If customers will be served pursuant to time-differentiated or dynamic pricing, the descriptions shall include a summary of available data regarding the price elasticity of the load. Any fixed load ~~provides~~proposed to be served by winning bidder(s) shall be described.
- (f)(e) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions shall include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions shall clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.
- (g)(f) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.
- (h)(g) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (i)(h) The CBP plan shall include a discussion of ~~time-differentiated pricing, dynamic retail pricing, and other alternative retail rate options~~ alternative retail rate options that were considered in the development of the CBP plan. A clear description of the rate structure ultimately chosen by the electric utility, the electric utility's rationale for selection of the chosen rate structure, and the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility shall be included in the CBP plan.
- (j) ~~The first application for a market rate offer by an electric utility that, as of July~~

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~~31, 2008, directly owned, in whole or in part, operating electric generation facilities that had been used and useful in this state shall include a description of the electric utility's proposed blending of the CBP rates for the first five years of the market rate offer pursuant to division (D) of section 4928.142 of the Revised Code. The proposed blending shall show the generation service price(s) that will be blended with the CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending will be accomplished. The proposed blending shall show all adjustments, to be made on a quarterly basis, included in the generation service price(s) that the electric utility proposes for changes in costs of fuel, purchased power, portfolio requirements, and environmental compliance incurred during the blending period. The electric utility shall provide its best current estimate of anticipated adjustment amounts for the duration of the blending period, and compare the projected adjusted generation service prices under the CBP plan to the projected adjusted generation service prices under its proposed electric security plan.~~

~~(k) The electric utility's application to establish a CBP shall include such information as necessary to demonstrate whether or not, as of July 31, 2008, the electric utility directly owned, in whole or in part, operating electric generation facilities that had been used and useful in the state of Ohio.~~

~~(i)~~(i) The CBP plan shall provide for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission. Recovery of the cost of such consultant(s) may be included by the electric utility in its CBP plan.

~~(m)~~(j) The CBP plan shall include a discussion of generation service procurement options that were considered in development of the CBP plan, including but not limited to, portfolio approaches, staggered procurement, forward procurement, electric utility participation in day-ahead and/or real-time balancing markets, and spot market purchases and sales. The CBP plan shall also include the rationale for selection of any or all of the procurement options.

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- (n)(k) The electric utility shall show, as a part of its CBP plan, any relationship between the CBP plan and the electric utility's plans to comply with alternative energy portfolio requirements of section 4928.64 of the Revised Code, and energy efficiency requirements and peak demand reduction requirements of section 4928.66 of the Revised Code. The initial filing of a CBP plan shall include a detailed account of how the plan is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include a discussion of how the state policy continues to be advanced by the plan.
- (e)(l) An explanation of known and anticipated obstacles that may create difficulties or barriers for the adoption of the proposed bidding process.
- (3) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (4) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
- (C) An SSO application that contains a proposal for an ESP shall comply with the requirements set forth below.
- (1) A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.
- (2) Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.
- (3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.

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- (4) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
- (5) ~~Division (A)(3) of section 4928.31 of the Revised Code required each electric utility to file an operational support plan as a part of its electric transition plan. Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.~~
- (6) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
- (7) A description of the effect on large-scale governmental aggregation of any unavoidable generation charge proposed to be established in the ESP.
- (8) ~~The initial filing for an ESP application shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include how the state policy is advanced by the ESP.~~
- (9) Specific information

Division (B)(2) of section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric utility includes any of these features in its ESP, it shall file the corresponding information in its application.
 - (a) Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:

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- (i) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.
 - (ii) The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.
 - (iii) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.
 - (iv) A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.
- (b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:
- (i) The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.
 - (ii) The application must also include a proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to

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that specific facility.

- (iii) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.
- (iv) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.
- (v) An application which provides for recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility.
- (c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:
 - (i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.
 - (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
 - (iii) A listing, description, and quantitative justification of any unavoidable

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charges for standby, back-up, or supplemental power.

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

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independent transmission operator, or similar organization approved by the federal energy regulatory commission.

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

- (g) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:
 - (i) A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.
 - (ii) A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages,

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whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan shall include a description of how the performance and outcomes of the plan will be measured.

- (iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan shall also include a description of efforts made to mitigate such stranded investment.
 - (iv) A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.
 - (v) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.
 - (h) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.
- (10) Additional required information
- Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of

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the ESP with respect to significantly excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any ESP and examines earnings after each year. In each case, the burden of proof for demonstrating that the return on equity is not significantly excessive is borne by the electric utility.

- (a) For the annual review pursuant to division (F) of section 4928.143 of the Revised Code, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned during the year and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility. In addition, the electric utility shall provide the following information:
 - (i) The federal energy regulatory commission form 1 (FERC form 1) in its entirety (via hard copy or an internet link) for the annual period under review. The electric utility may seek protection of any confidential or proprietary data if necessary. If the FERC form 1 is not available, the electric utility shall provide balance sheet and income statement information of at least the level of detail as required by FERC form 1.
 - (ii) The latest securities and exchange commission form 10-K (via hard copy or an internet link) in its entirety. The electric utility may seek protection of any confidential or proprietary data if necessary.
 - (iii) Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.
- (b) For demonstration under division (E) of section 4928.143 of the Revised Code, the electric utility shall also provide, in addition to the requirements under division (F) of section 4928.143 of the Revised Code, calculations of its projected return on equity for each remaining year of the ESP. The electric utility shall support these calculations by providing projected balance sheet and income statement information for the remainder of the ESP, together with testimony and work papers detailing the methodologies, adjustments, and assumptions used in making these projections.

~~(D) The first application for an SSO filed after the effective date of section 4928.141 of the~~

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~~Revised Code by each electric utility shall include an ESP and shall be filed at least one hundred fifty days before the electric utility proposes to have such SSO in effect. The first application may also include a proposal for an MRO. First applications that are filed with the commission prior to the initial effective date of this rule and that are determined by the commission to be not in substantive compliance with this rule shall be amended or refiled at the direction of the commission. The commission shall endeavor to make a determination on an amended or refiled ESP application, which substantively conforms to the requirements of this rule, within one hundred fifty days of the filing of the amended or refiled application.~~

~~(E)~~(D) Subsequent ~~a~~Applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission.

~~(F)~~(E) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

~~(G)~~(F) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.

~~(H)~~(G) All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

4901:1-35-04 Service of application.

(A) Concurrent with the filing of a standard service offer (SSO) application and the filing

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of any waiver requests, the electric utility shall provide notice of filings to each party in its most recent SSO proceeding ~~or, if this is its first SSO filing after the effective date of section 4928.141 of the Revised Code, then its last rate plan proceeding~~. At a minimum, that notice shall state that a copy of the application and all waiver requests are available through the electric utility's and commission's web sites, ~~available at the electric utility's main office~~, available at the commission's offices, and any other sites at which the electric utility will maintain a copy of the application and all waiver requests.

- (B) The electric utility shall also submit with its SSO application a proposed notice for newspaper publication that fully discloses the substance of the application, including projected rate impacts, and that prominently states that any person may request to become a party to the proceeding.
- (C) The electric utility shall provide electronic copies of the application upon request, without cost, and transmit the application within five business days, ~~or make a hard copy available for review at the electric utility's business office~~. Upon request, electronic copies shall be provided in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers.

4901:1-35-05 Technical conference.

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

4901:1-35-06 Hearings.

- (A) After the filing of a standard service offer application that conforms to the commission's rules, the commission shall set the matter for hearing and shall cause notice of the hearing to be published one time in a newspaper of general circulation in

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each county in the electric utility's certified territory. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable and are consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility.

- (B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than forty-five days after the issuance of the entry scheduling the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing.

4901:1-35-07 Discoverable agreements.

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

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

- (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). An electric utility proposing an ESP, pursuant to section 4928.143 of the Revised Code, may propose a plan for a CBP. The CBP plan shall comply with the requirements set forth in paragraph (B) of rule 4901:1-35-03 of the Administrative Code. The electric utility shall use an independent third party to design an open, fair, and transparent competitive solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. The independent third party shall incorporate into the solicitation such measures as the commission may prescribe, and shall incorporate into the bidding process any direction the commission may provide. Any modifications or additions to the approved CBP plan requested by the independent third party shall be submitted to the commission and Staff for review prior to implementation.
- (B) Within twenty-four hours after the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report shall include, but not be limited to, the following items:
- (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that the independent third party believes may have adversely affected the outcome.
 - (2) The level(s) of oversubscription for each product.
 - (3) The number of bidders for each product.
 - (4) The percentage of each product that was bid upon by persons other than the electric utility.
 - (5) The independent third party's evaluation of the submitted bids, including the bidders' *generation source and financial capabilities to perform*.
 - (6) The independent third party's final recommendation of the least cost winning bidder(s).

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- (7) AA listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how the conversion from winning bid(s) to retail rates was accomplished under the conversion process approved by the commission in the electric utility's CBP plan.
- (C) The electric utility and its independent third party auction manager shall provide access to staff and any consultant hired by the commission to assist in review of the CBP of any and all data, information, and communications pertaining to the bidding process, on a real time basis, regardless of the confidential nature of such data and information.
- (D) The commission shall make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP.

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

- (A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.
- (B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs and reconciliation requirements by filing an application four times per year. The staff shall review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information shall be summarized monthly.
- (C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments shall be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The electric utility shall demonstrate that the costs were prudently incurred as required under division (B)(2)(a) of section 4928.143 of the Revised Code and, if a significant change in costs has incurred, include an analysis comparing the electric utility's resource and/or environmental compliance strategy with supply and demand-side alternatives. The

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process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.

- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

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

By May fifteenth of each year, the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's electric security plan resulted in significantly excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The process and timeframes for that proceeding shall be set by order of the commission, the legal director, or attorney examiner. The electric utility's filing shall include the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings.

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

~~(A) The initial market rate offer (MRO), and subsequent offers, implemented by each electric utility that, as of July 31, 2008, directly owned, in whole or in part, operating electric generation facilities that had been used and useful in this state, shall include a blended price for electric generation services for the first five years of the MRO, or some other period determined by the commission under section 4928.142 of the Revised Code.~~

~~(B)~~(A) Once a competitive bidding process (CBP) plan subject to a price blending period is approved by the commission pursuant to section 4928.142 of the Revised Code, the electric utility shall file its proposed adjustments to the standard service offer (SSO) portion of the blended rates of its CBP in a filing to the commission on a quarterly basis (quarterly filing) for the duration of the price blending period of the CBP plan, on specific dates to be determined by the commission.

- (1) The quarterly filing shall include a separate listing of each cost or cost component

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including costs for fuel, purchased power, alternative portfolio requirements, and environmental compliance, in comparison with the costs or cost components included in the most recent SSO and the previously existing level of each cost. Any offsetting benefits, as defined in division (D) of section 4928.142 of the Revised Code, obtained directly or as a result of expenditures in the specified cost areas shall be listed separately and be used to reduce the cost levels requested for recovery. Rates are to be adjusted on a quarterly basis. Such adjustments may include, or be made pursuant to, the application of incentive factors or formulas that the commission determined to be reasonable in its approval of the CBP plan. The cost information shall consist of monthly data submitted on a quarterly basis.

- (2) The quarterly filing shall include any descriptions, formulas, and/or tables necessary to show how the adjusted cost levels are translated into blended CBP rates.
- (3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity.
- (4) The staff shall review the quarterly filing for completeness, computational accuracy, and consistency with prior commission determinations regarding the adjustments. If the staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.
- (5) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed. The commission shall determine the frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments. The cost to the electric utility of the commission's use of such consultants may be included by the electric utility in its quarterly rate adjustment filing.

(C)(B) If the CBP plan is approved by the commission subject to a price blending period, approximately one year after filing the CBP plan, and annually thereafter for the duration of the price blending period of the CBP plan, on dates to be determined by the commission, the electric utility shall file an annual report on its CBP.

- (1) The annual report shall provide a general statement about the operation of the

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CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers.

- (2) The annual report shall describe any defaults and/or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
- (3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated and/or known for the following year.
- (4) The annual report shall describe the financial condition of the electric utility, its current and projected return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. The electric utility shall show that its earnings under the price blending period will not be significantly excessive as compared with similarly situated companies. Information submitted by the electric utility to demonstrate its projected earnings shall include, but not be limited to, balance sheet information, income statement information, and capital budget requirements for future investments in Ohio. This information should be provided separately for generation, transmission, and distribution for the electric utility and its affiliates. Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity earned by publicly traded companies that face comparable business and financial risks as the electric utility.
- (5) If in an emergency situation the electric utility claims that its financial integrity is threatened by the operation of the CBP price blending period, it shall demonstrate its claim through information and data filed in its annual report. The electric utility has the burden of proof in any such claim of threatened financial integrity.
- (6) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification

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requested.

- (7) The annual report shall describe the blended phase-in rates projected to be charged to its customers under the continuation of the CBP plan, as modified pursuant to paragraph (C)(6) of this rule. The rate projections shall show the existing and projected generation service price(s) blended with the CBP determined rates and projected CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending is accomplished. The projected blended phase-in rates shall be compared in the annual report to the existing blended phase-in rates.
- (8) The annual report shall describe the operation to date of ~~any time-differentiated and dynamic rate designs~~ alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.
- (9) The annual report shall include a status report of the market conditions relevant to the continued operation of the electric utility's MRO, including but not limited to information about the existence of published source(s) of electric market pricing information, whether the electric utility or its affiliate still belongs to an regional transmission organization (RTO), and whether the RTO's market monitoring function has mitigation authority over the transactions resulting from the CBP.
- (10) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.
- (D)(C) If the CBP plan is approved by the commission without the requirement of a price blending period, or after the expiration of any such required price blending period, on an annual basis, on dates to be determined by the commission, the electric utility shall file an annual report with the commission.
- (1) The annual report shall provide a general statement about the operation of the CBP to date. The annual report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP on the electric utility's customers' rates.
- (2) The annual report shall describe any defaults or other difficulties encountered in

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obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.

- (3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated or known for the following year.
- (4) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
- (5) The annual report shall describe the operation to date of ~~any time-differentiated and dynamic rate designs~~alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.
- (6) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)

Attention: Angela Hawkins, Legal Director

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Regulation/Package Title: Standard Service Offers

Rule Number(s): Ohio Adm.Code Chapter 4901:1-35

4901:1-35-01; 4901:1-35-02; 4901:1-35-03; 4901:1-35-04; 4901:1-35-05; 4901:1-35-06;

4901:1-35-07; 4901:1-35-08; 4901:1-35-09; 4901:1-35-10; 4901:1-35-11

Date: August 27, 2014

Rule Type:

☐ New

☒ 5-Year Review

☒ 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.

The revisions to the rules in Ohio Adm.Code Chapter 4901:1-35 are in accordance with the State of Ohio's 5-year rule review procedures. 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 rules in Ohio Adm.Code Chapter 4901:1-35 set forth the provisions for electric utility standard service offers (SSOs). The revisions to Ohio Adm.Code Chapter 4901:1-35 would update the Commission's policies regarding the SSOs provided by the electric utilities of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

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

The amendments to the rules in Ohio Adm.Code Chapter 4901:1-35 are in response to R.C. 119.032, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue the rules without change, with amendments, or with rescissions. The statutory authority for the rules is R.C. 4928.06 and 4928.141.

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 regulation implements state requirements. It does not implement a federal requirement. The state statutory authority for the rules is R.C. 4928.06, 4928.141, 4928.142, and 4928.143.

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

The regulation does not contain provisions specifically required by the federal government. The rationale for the rules is to implement the statutory provisions adopted by the General Assembly in R.C. Chapter 4928. Specifically, the statutory authority for the rules is R.C. 4928.06, 4928.141, 4928.142, and 4928.143.

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)?

The rules contained in this chapter are intended to implement R.C. 4928.06, 4928.141, 4928.142, and 4928.143. The public purpose of the rules is to ensure that the electric utilities provide all of the competitive retail electric services necessary to maintain essential electric

service to consumers, including a firm supply of electric generation service. These rules establish the procedures and requirements for filing an application to establish an SSO. The SSO will establish and determine the price and supply of electricity for all SSO customers in the electric utility's certified territory.

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

The rules contained in this chapter govern the Commission's policies regarding the SSOs provided by the electric utilities of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. The success of the regulation in terms of outputs and outcomes will be measured based upon electric distribution utility compliance with R.C. 4928 and Ohio Adm.Code 4901:1-35. Many of the rules in Ohio Adm.Code 4901:1-35 are procedural rules implementing the procedures for filing an application to establish an SSO. However, Ohio Adm.Code 4901:1-35-11 contains provisions for the ongoing review of the competitive bidding process for establishing competitively bid SSO rates.

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.

The Commission conducted a workshop on December 10, 2013, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-35 is 13-2029-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned 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 any other interested persons.

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

Stakeholders provided general comments on the rules at the workshop. The Commission then provided proposed rules for comments and reply comments from interested stakeholders. Comments were filed by the Ohio Power Company (Ohio Power), Direct Energy Services, LLC (Direct Energy), Duke Energy Ohio, Inc. (Duke), the Ohio Consumers' Counsel (OCC), the Ohio Edison Company, the Toledo Edison Company, and

the Cleveland Electric Illuminating Company (FirstEnergy). Reply comments were filed by Direct Energy, Duke, FirstEnergy, Nucor Steel Marion (Nucor Steel), Ohio Power, and OCC.

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?

No scientific data was used to develop Staff's proposal. However, Staff reviewed the existing SSOs and used its experience in working through SSO cases for the development of its proposals.

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?

The Commission did not consider regulatory alternatives; the Commission believes that the rules and revisions in Ohio Adm.Code Chapter 4901:1-35 are necessary for the implementation of R.C. Chapter 4928. Additionally, no regulatory alternatives were proposed by stakeholders in their comments and reply comments. R.C. 4928.141(B) states that the Commission shall adopt rules regarding filings under R.C. 4928.142 and 4928.143, so the Commission believes that the adoption of these rules is necessary and no regulatory alternatives were identified.

Additionally, the Commission notes that Ohio Adm.Code Chapter 4901:1-35-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

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.*

The regulations in Ohio Adm.Code Chapter 4901:1-35 are primarily procedural regulations. The rules themselves are not intended to define the required outcome; rather they dictate the process the stakeholders must use to achieve compliance with the statute. The rules implement the procedural provisions of R.C. Chapter 4928, which the rules are proposed pursuant to.

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

The Commission has reviewed other Ohio regulations and found no duplicate.

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.

Upon completion of the rulemaking process, the rule changes made in Ohio Adm.Code Chapter 4901:1-35 will be attached to the Commission's finding and order and served upon all investor-owned 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 any other interested persons.

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;

Ohio Adm.Code 4901:1-35-02 indicates that the rules in Ohio Adm.Code Chapter 4901:1-35 apply specifically to electric utilities. The purpose of the rules is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the Commission's review of that application.

However, the scope of the impacted business community may be broader than delineated in the rules, as any business has the opportunity to elect to purchase generation through the SSO instead of shopping for generation through a competitive retail electric services provider. Additionally, any business may choose to intervene in a case to engage in litigation on an application to establish an SSO.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while implementing the provisions of R.C. Chapter 4928 and promoting the policies of the state of Ohio in R.C. 4928.02. The rules in Ohio Adm.Code Chapter 4901:1-35 are primarily procedural, and do not provide an adverse impact on business. However, being mindful of the filing requirements, the Commission seeks to ease any administrative burden that may exist for filing an SSO application. It is for this reason that Commission Staff has proposed decreasing the number of copies of the application that must be filed, and searched for other means to streamline the filing process to decrease the time required for filing an application.

We note that many of the filing requirements in Ohio Adm.Code Chapter 4901:1-35 may be considered adverse impacts to business. However, these filing requirements

have been adopted pursuant to the General Assembly's adoption of R.C. 4928.141, 4928.142, and 4928.143. The filing requirements are extensive because the application to establish an SSO is to provide necessary electric service to consumers for a period of three years. The applications to establish an SSO can be hundreds of pages long, and the issues can contemplate up to billions of dollars. It would be difficult for the Commission to identify all of the adverse impacts to business resulting from R.C. 4928.141, 4928.142, and 4928.143. However, in an effort to comply with the CSI requirements, we have attempted to identify and quantify the adverse impacts to business, as well as to provide the fundamental justification for those adverse impacts.

One of the first adverse impacts to business in Ohio Adm.Code Chapter 4901:1-35 is the number of hard copy applications that must be filed. The Commission has amended Ohio Adm.Code 4901:1-35-03(A) to decrease the number of hard copy applications that must be filed from 20 to 10 hard copy applications. However, to ensure that Commission Staff has sufficient hard copies of the application, the electric utilities must provide hard copies of the application to Staff upon request. This will decrease the adverse impact on business by decreasing the required number of hard copy applications that must be filed. The Commission finds that a minimum of 10 copies must be provided because there are numerous Staff departments and Commission employees who need a hard copy of the application to review.

Next, Ohio Adm.Code 4901:1-35-03(B) and 4901:1-35-03(C) detail the filing requirements for SSO applications, which may contain a proposal for a market rate offer (MRO) or an electric security plan (ESP). By statute, an MRO must include a competitive bidding process (CBP), which is an auction process for serving electric load in the electric utility's certified territory. However, an ESP may contain a proposal for a CBP, but it is not required. Many of the requirements in Ohio Adm.Code 4901:1-35-03 contain administrative requirements that do not require substantial effort from the electric utility to comply with, including Ohio Adm.Code 4901:1-35-03(B)(1)(a), (B)(1)(b), (B)(3), (B)(4), (C)(4), (C)(5), (C)(6), (C)(7), and (C)(8). However, some requirements require much more analysis and effort from the electric utility. An application for an SSO can contain a CBP, which is the auction process for electric load that the electric utility must serve in its certified territory. The auction to serve the electric load will directly impact the retail electric rates that customers pay in that electric utility's certified territory. The electricity to serve such a substantial number of customers can cost millions, and even billions, of dollars. Accordingly, the filing requirements detailing the CBP plan and the effects of the

CBP plan are extensive. While the filing requirements may be considered an adverse impact on business, they are fundamentally necessary to ensure that customers are provided with reliable electricity and that the electric utility has sourced sufficient generation to provide electricity to those customers. Further, the filing requirements and the analysis that the electric utility must provide and comply with provide the Commission with sufficient information to determine if the SSO application complies with R.C. 4928.141, 4928.142, and 4928.143.

Next, pursuant to Ohio Adm.Code 4901:1-35-04(A), the electric utility must provide notice of its filing to interested parties. The electric utility is also required to submit a proposed notice for newspaper publication and publish notice of the application. Finally, pursuant to Ohio Adm.Code 4901:1-35-04(C), the electric utility must provide electronic copies of the application to any person upon request.

Further, pursuant to Ohio Adm.Code 4901:1-35-05, the electric utility must participate in a technical conference to allow interested persons an opportunity to better understand the electric utility's application.

Pursuant to Ohio Adm.Code 4901:1-35-06, the electric utility must participate in a hearing on the application. Interested persons may file a motion to intervene if they wish to participate in the hearing.

Additionally, pursuant to Ohio Adm.Code 4901:1-35-07, the electric utility must comply with appropriate discovery requests.

Next, Ohio Adm.Code 4901:1-35-08 requires additional detail on any CBP plan that may be proposed by an electric utility. Specifically, Ohio Adm.Code 4901:1-35-08(B) requires that an independent third-party must submit a report to the Commission summarizing the CBP results.

Pursuant to Ohio Adm.Code 4901:1-35-09, an electric utility that has been authorized to establish an ESP must make adjustments based on projected costs and reconciliation requirements for fuel and purchased power. Additionally, the electric utility is required to demonstrate that the costs were prudently incurred.

Further, pursuant to Ohio Adm.Code 4901:1-35-10, the electric utility must make an annual filing demonstrating whether or not any rate adjustments resulted in significantly excessive earnings, consistent with R.C. 4928.143.

Finally, pursuant to Ohio Adm.Code 4901:1-35-11, once a CBP plan has been authorized by the Commission, the electric utility shall file its proposed adjustments

to the SSO portion of the blended rates in a filing to the Commission on a quarterly basis. This quarterly filing contains numerous filing requirements to inform the Commission and provide it with sufficient data to review the plan and ensure that the electric utilities are providing the competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

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 Commission has identified numerous adverse impacts to business in Ohio Adm.Code Chapter 4901:1-35, which we assert are fundamentally necessary to ensure that essential electric service is provided to consumers. While we attempt to quantify the adverse impacts to business, we note that Ohio Adm.Code 4901:1-35-02(B) permits the Commission, upon an application or motion by any party, to waive any requirement of Ohio Adm.Code Chapter 4901:1-34, other than one of the requirements mandated by statute.

In an attempt to quantify the adverse impacts to business of preparing and filing an application to establish an SSO, the Commission has relied upon its Staff to reach out to the electric utilities and to collaborate with stakeholders. The Commission used the stakeholder workshop, the comments, and the reply comments in this case to review its rules and to quantify the impact of the rules on business. In working with Staff, we believe that a reasonable quantification of the adverse impact of preparing an application to establish an SSO is approximately two months of time. This estimate includes the amount of time it takes to prepare and compile the required documents, to compile the required testimony and forms, and to organize the application into the proper format. However, this estimate does not include the cumulative amount of time spent by electric utility employees drafting their testimony, or the amount of time for the electric utility to prepare its strategic litigation position in a case to establish an SSO. Further, this estimate also does not include the amount of time for continuing review or the adjustments and reconciliations that may need to be made for fuel and purchased power costs, as well as other continuing administrative requirements. Rather, the Commission estimates that an electric utility can begin an application to establish an SSO and have it substantially prepared to file with the Commission in approximately two months.

Additionally, Ohio Adm.Code 4901:1-35-04, 4901:1-35-05, 4901:1-35-06, and 4901:1-35-07 are procedural requirements to establish proper due process for establishing an SSO. It is difficult to quantify the adverse impact to business for

these rules because they depend entirely on how contentious the filing is and what issues are included in the application. The adverse impact to business will be much less in a stipulated (settled) case that has few discovery disputes, few intervenors, and a short hearing. However, there could be a significant adverse impacts to business if there are significant discovery disputes and multiple parties representing opposing positions. Hearings on applications to establish an SSO can range from as short as 30 minutes to as long as four weeks. Similarly, the issues in an application to establish an SSO can range from being small dollar-amount issues in the tens of thousands of dollars, to larger issues regarding billions of dollars.

Further, we note that our estimated quantification of the adverse impact to business is regarding the amount of time we believe it would take an electric utility to compile an application. We note that the rules in Ohio Adm.Code Chapter 4901:1-35 apply to electric utilities, therefore they are a representative business.

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

The rules in Ohio Adm.Code Chapter 4901:1-35 establish rules for the form and process under which an electric utility shall file an application for an SSO and the Commission's review of that application. The Commission notes that an application to establish an SSO will affect every electric utility customer in that electric utility's certified territory, which can include millions of customers. The SSO will affect each of the customers in an electric utility's certified territory by establishing the monthly price of electricity that will be paid by many of those customers. With so much money and so many impacted customers at stake, the Commission believes that the regulatory intent behind the rules justifies the adverse impact to business. Pursuant to R.C. 4928.141, the Commission is required to ensure that each electric utility in the state of Ohio provides consumers an SSO of all competitive retail electric services necessary to maintain essential electric service, including a firm supply of electric generation service. The Commission has complied with R.C. 4928.141, 4928.142, and 4928.143 by ensuring that sufficient information is provided to the Commission and stakeholders to determine if the rates that are proposed for electricity are just and reasonable.

Regulatory Flexibility

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

The rules in Ohio Adm.Code Chapter 4901:1-35 apply to the electric utilities and not to small businesses. The rules are primarily procedural in nature, yet an exemption does exist. Ohio Adm.Code 4901:1-35-02(B) indicates that the Commission may, upon an application or a

motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

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?

Ohio Adm.Code 4901:1-35-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 13-2029-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any adverse impacts on business. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.