

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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 Commission has established this docket in order to conduct an evaluation of Ohio Adm.Code Chapters 4901:1-36, concerning electric transition cost recovery riders, 4901:1-37, concerning corporate separation for electric utilities and affiliates, and 4901:1-38, concerning reasonable arrangements for electric utility customers.
- (2) R.C. 119.032(C) requires that the Commission 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 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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;
 - (d) The rules duplicate, overlap with, or conflict with other rules; and
 - (e) Whether the rules have an adverse impact on businesses and whether any such adverse impact has been eliminated or reduced.
- (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 that adversely affect businesses. If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the business impact analysis.
- (5) On April 22, 2013, the attorney examiner issued an entry scheduling a workshop to elicit stakeholder input on

proposed revisions which was duly held on May 7, 2013. Notice of the workshop was served upon all Ohio electric distribution utilities (EDUs) and certified competitive retail electric service (CRES) providers, as well as various industry stakeholders via the Commission's electric-energy email list-serve. The only stakeholder comments received at the workshop were made by FirstEnergy Solutions Corporation (FES). FES asserted that any arrangements approved under Ohio Adm.Code Chapter 4901:1-38 should not impinge on a customer's ability to shop for generation service. It was Staff's opinion that generation options for a customer in a special arrangement should be determined on a case-by-case basis.

- (6) After consideration of stakeholder input, Staff proposed no changes to Ohio Adm.Code Chapters 4901:1-37 and 4901:1-38. Staff proposed amending Ohio Adm.Code 4901:1-36-06 to provide quarterly updates from each electric utility seeking recovery of transmission and transmission-related costs. The utility would submit to Staff a report providing more current information on cost components and amounts, customer revenue, and other cost-related information. This would allow Staff to use more current data in determining if the current effective rates continue to reflect the costs and credits as presented in the annual application. Staff did not propose any further changes to Ohio Adm.Code Chapter 4901:1-36.
- (7) Staff's proposals for Ohio Adm.Code Chapters 4901:1-36, 4901:1-37, and 4901:1-38 were issued in a December 18, 2013, Entry, which indicated a January 17, 2014, deadline for comments and a January 24, 2014, deadline for reply comments. The entry also contained, pursuant to the requirements of Executive Order 2011-01K and Senate Bill 2 of the 129th General Assembly, business impact analyses (BIAs) for Ohio Adm.Code Chapters 4901:1-36, 4901:1-37, and 4901:1-38, to assess and justify any adverse impact the proposed rules have on the business community.
- (8) A motion was filed on January 16, 2014, by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy), Duke Energy Ohio, Inc. (Duke), The Dayton Power and Light Company (DP&L), and Ohio Power Company requesting an

extension of time until February 7, 2014, for filing reply comments. The attorney examiner granted the request for additional time on January 22, 2014, by extending the deadline for reply comments to January 31, 2014.

- (9) Comments were filed by Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, Direct Energy), FES, FirstEnergy, DP&L, Duke, and the Office of the Ohio Consumers' Counsel (OCC). Reply comments were filed by Direct Energy, FirstEnergy, DP&L, Duke, OCC, and Industrial Energy Users-Ohio (IEU).

Chapter 4901:1-36 Electric Transmission Cost Recovery Riders

4901:1-36-02 Purpose and Scope

- (10) Direct Energy proposes to add language to Ohio Adm.Code 4901:1-36-02 (Rule 36-02) to explicitly exclude from the EDU's transmission cost recovery rider any costs assigned to a CRES provider and not transferred to the utility. Direct Energy claims such a provision is necessary to prevent the possibility of duplicating charges to CRES customers.
- (11) Duke and DP&L object to Direct Energy's proposal. Duke observes that Rule 36-02 already states that recoverable costs are limited to costs imposed on or charged to the utility by the Federal Energy Regulatory Commission (FERC), a regional transmission organization (RTO), independent transmission operator, or similar organization. DP&L argues that the existing rule allows for a bypassable transmission cost recovery rider. DP&L contends that a utility should be permitted to charge its standard service offer to customers for any charge or fee that is also assigned to a competitive retail electric supply provider and not transferred to the utility via line item transfer.
- (12) The Commission notes that Rule 36-02 is titled "Purpose and Scope," in keeping with the Commission's practice of assigning the first rule of an Administrative Code chapter to include all definitions, while the second rule delineates the purpose and scope of the chapter. Consequently, Rule 36-02 is intended to merely summarize the Transmission Cost Recovery Rider chapter, rather than provide the details

suggested by Direct Energy. We therefore decline to adopt the proposed change.

4901:1-36-03 Application

- (13) FirstEnergy proposes amending Ohio Adm.Code 4901:1-36-03 (Rule 36-03) to allow a Commission order to change the effective date of an application. DP&L proposes eliminating Schedule B-4 of Rule 36-03, arguing that such graphical representations of each cost component don't provide any new information. In reply comments, Duke asserts that FirstEnergy's proposal is unnecessary, as Rule 36-02 already grants the Commission the authority to waive the effective date of an application. Duke does, however, agree with DP&L's proposal to eliminate the graphs in Schedule B-4 listed in the Appendix to this rule.
- (14) The Commission finds that First Energy's proposal is unnecessary, and will not be adopted. We do, however, agree with DP&L's suggestion to delete the graphs in Schedule B-4 of the Appendix to Rule 36-03, since the information depicted will still be available in the schedules.

4901:1-36-04 Limitations

- (15) FirstEnergy advocates adding additional language to Ohio Adm.Code 4901:1-36-04 (Rule 36-04) stating that a non-bypassable cost recovery rider may be established to recover from all customers non-market based costs, fees, or charges imposed on or charged to the electric utility by FERC, an RTO, or a similar organization approved by FERC. DP&L and Direct Energy support completely deleting paragraph (B) of Rule 36-04, noting that this provision has been waived for three of the four Ohio utilities; but, as noted above, Direct Energy also wants to add language to the Chapter's Purpose and Scope Rule 36-02 to prevent the possibility of duplicating charges to CRES customers. IEU and OCC object to FirstEnergy's suggested additional language as unnecessary given the current waiver process, and also state their concerns that any rebundling of transmission service would be contrary to R.C. 4928.02(B).

- (16) Although these transmission riders have in recent years been bifurcated into bypassable, market-based versus non-bypassable, non-market-based tariff provisions, we believe that the current rules are sufficient to allow such bifurcation, and we have authorized the bifurcation of these riders through the utilities' ESP proceedings. Therefore, we find no reason to adopt the changes proposed by First Energy, DP&L, and Direct Energy.

4901:1-36-06 Additional Information

- (17) In comments concerning Ohio Adm.Code 4901:1-36-06 (Rule 36-06), OCC agrees with Staff's proposal that EDUs should be required to file with Staff, on a quarterly basis, information concerning the collection of transmission and transmission-related costs from customers. OCC, however, suggests that these quarterly filings should be filed in a case docket and made publicly available. Duke and FirstEnergy object to OCC's proposal, as unnecessary, particularly where some of the information is confidential. In any event, this information already must be filed annually in a public docket for interested parties to review when the rider is reconciled and the tariff updated.
- (18) The Commission declines to adopt OCC's proposal. Staff has received the aforementioned quarterly data for the past several years, in order to monitor the overbalance or underbalance and determine if interim rate filings are necessary. Such information was never intended to be part of a public filing, which could result in litigation with each quarterly filing. We believe the current annual public filings by the utilities provides sufficient opportunity for review and intervention by other parties and stakeholders.

Chapter 4901:1-37 Corporate Separation for Electric Utilities and Affiliates

4901:1-37-01 Definitions

- (19) Duke asserts that the definition of an "affiliate" should be clarified in Ohio Adm.Code 4901:1-37-01 (Rule 37-01), so that affiliate standards also apply to any internal merchant function of an electric utility, under conditions where the

utility provides a non-tariffed competitive retail electric service, as defined in R.C. 4928.01(A)(4).

- (20) OCC and IEU object to Duke's proposal. OCC contends that Duke's proposal contradicts R.C. 4928.17(A), which states that an EDU should not be in the business of supplying a product or service other than a retail electric service. OCC argues that the Revised Code considers the provision of CRES as well as other products or services by the utility and its affiliate, and that references to provision of non-CRES by the utility or an affiliate of the utility are contained in the corporate separation provisions of R.C. 4928.17(A)(1) and (3). IEU observes that Duke's proposal would remove the applicability of the corporate separation rules to a functionally separated EDU. IEU contends that R.C. 4928.17 holds functionally separated electric utilities to the same standards as legally or structurally separate electric utilities.
- (21) The Commission believes that Duke's proposal is contrary to the provisions of R.C. 4928.17(A), and will not be adopted.

4901:1-37-02 Purpose and Scope

- (22) Duke advocates amending paragraphs (A) and (B) of Ohio Adm.Code 4901:1-37-02 (Rule 37-02) to more clearly prohibit one CRES supplier from gaining a competitive advantage over another supplier solely because of corporate affiliation with an EDU, and to indicate that the intent of this chapter is to create competitive equality among CRES suppliers, prevent any unfair competitive advantage among suppliers, and prohibit the abuse of market power by a supplier. In reply comments, IEU urges the Commission to reject Duke's proposal because it assumes that corporate separation rules need not apply to a functionally separated EDU.
- (23) Rule 37-02 is titled "Purpose and Scope," and the purpose of this rule is to provide an overall summary of what the chapter addresses. Duke's proposal would narrow the purpose of the chapter beyond our intent, specifically, that the chapter applies to all electric affiliates, not just CRES suppliers. We will, therefore, decline to adopt the proposed changes.

4901:1-37-04 General Provisions

- (24) Direct Energy proposes adding language to Ohio Adm.Code 4901:1-37-04 (Rule 37-04) that would require a CRES provider to conspicuously disclose an affiliate relationship with an existing Ohio EDU. Direct Energy would amend Rule 37-04 to include a reiteration of rules pertaining to disclosure of affiliate relationships similar to those in Adm.Code 4901:1-25-05(C)(8)(g), and to require disclosure of an affiliate relationship near any logo containing a name similar to the utility's. Duke objects to this proposal and argues that Chapter 4901:1-37 regulates the behavior of utilities, not CRES providers.
- (25) We agree with Duke that, as this chapter applies to the utilities, it is not the appropriate place for including requirements for CRES providers. Accordingly we reject Direct Energy's proposal.

Rule 37-04 and 4901:1-37-08 Cost Allocation Manual

- (26) Direct Energy also notes that Rules 37-04 and Ohio Adm.Code 4901:1-37-08 (Rule 37-08), require each EDU to maintain a log of all actions that do not comply with the corporate separation rules in this chapter, and also maintain a cost allocation manual (CAM) that includes a copy of all transferred employees' previous and new job descriptions. Direct Energy suggests that these rules be modified to expressly require the log and CAM to be updated to indicate each employee's role in an EDU's electric security plan (ESP) or market rate offer (MRO) filing when an EDU employee is transferred to an affiliate or broker that had worked on a pending ESP, MRO, or tariff filing. Direct Energy asserts that such employee knowledge could create a competitive advantage for the affiliated CRES supplier to the detriment of unaffiliated suppliers.
- (27) Duke and FirstEnergy object to Direct Energy's proposal. As discussed above, Duke again argues that, as this chapter applies to the EDUs rather than suppliers, these rules are not the appropriate place to address Direct Energy's suggestions relating to requirements for CRES providers. FirstEnergy contends that the rule does not require an EDU to maintain a

regular log, but simply requires that in a declared emergency situation, an EDU may take actions necessary for public safety and must maintain a log of all such actions not in compliance with Ohio Adm.Code Chapter 4901:1-37. Duke also contends that paragraphs (D) and (E) of Rule 37-04 could be revised to better clarify circumstances regarding what comprises proprietary customer information and what constitutes a "declared emergency," but Duke offers no concrete language suggestions of its own.

- (28) With respect to Direct Energy's proposal, we again note that this chapter applies to EDUs, rather than CRES suppliers, as discussed above. With respect to Duke's critique of this rule, we are not aware of any controversies created by the current language. In any event, Duke has not provided explicit language revisions, and Duke's requests for clarifications were not joined or addressed by the other utilities in their reply comments. Accordingly, we decline to make any changes to these provisions.

4901:1-37-05 Application

- (29) In comments concerning Ohio Adm.Code 4901:1-37-05 (Rule 37-05), Duke proposes that subparagraph (B)(3) be limited to listing all current affiliates doing business in Ohio, and that subparagraph (B)(6) should be clarified to state that a CRES provider's inclusion in its market materials of the required disclosure of the relationship between the provider and the affiliated utility shall not be deemed joint advertising or joint marketing.
- (30) In reply comments, IEU and OCC object to Duke's proposals. IEU contends that Rules 37-05(B)(3) and 37-08(D)(1), which are discussed more fully below, do not create any jurisdictional issues, because the Commission has jurisdiction under R.C. 4928.18 over the EDU and its relationship to an affiliated company, regardless of the location of the affiliate. IEU and OCC argue that all EDU affiliates should be identified when reviewing a corporate separation application to ensure that the application is in the public interest, and that the EDU complies with corporate separation requirements. They note that R.C. 4928.17 and the rules in this chapter require an EDU to follow certain requirements when

transacting business with its affiliates, so the requirement to list the EDU's affiliates in a corporate separation plan and in the CAM is appropriate.

- (31) We believe that the Commission and Staff should be provided with full knowledge of a utility's interaction with all of its affiliates, not just those doing business in Ohio. We will, therefore, decline to adopt Duke's recommended changes to Rule 37-05.

4901:1-37-08 Cost Allocation Manual

- (32) As discussed above, we are rejecting Direct Energy's proposals to modify Rules 37-04 and 37-08, as this chapter applies to EDUs, rather than CRES suppliers. We note that Rule 37-08(H) already requires an EDU to annually provide the Commission with a summary of any changes in the CAM, which includes an update to the list of employees pursuant to Rule 37-08(D)(6). Further, as discussed above, we decline to adopt Duke's suggestion to modify Rule 37-08 to limit the CAM organization chart to affiliates doing business in Ohio.
- (33) Duke also asserts that any cost allocation information should pertain to the utility and its affiliates, but not to cost allocation among the affiliates. Further, Duke contends that the required log of the exercise of discretion in applying tariff provisions should include an exception for the negotiated resolutions of customer complaints. The Commission is not aware of any controversies that would be remedied by the proposals to amend the CAM requirements in Rule 37-08, and we note that Duke's modifications were not endorsed or addressed by the other utilities in their reply comments. Thus, we decline to adopt the revisions proposed by Duke and Direct Energy.

Chapter 4901:1-38 Reasonable Arrangements for Electric Utility Customers

CRES Generation in Economic Development and Unique Arrangements

- (34) FirstEnergy and FES, its affiliated supplier, as well as Direct Energy suggest changes to this chapter through a new rule and/or changes to Ohio Adm.Code 4901:1-38-01, 4901:1-38-03,

and 4901:1-38-05, to expressly allow mercantile customers to file applications for economic development or unique arrangements, even if they are taking generation service from a CRES provider. FirstEnergy claims this change would reduce the delta revenue burden placed on other customers by shifting a portion of this revenue to the competitive market. In reply comments, IEU urges the Commission to adopt these suggestions using the shopping customer standard rate schedule to measure delta revenue. DP&L generally supports the proposal to allow shopping of generation in these arrangements, but would make some verbiage changes to FirstEnergy's proposed new rule.

- (35) In reply comments, Duke opposes amending any rules in Ohio Adm.Code Chapter 4901:1-38 until there are statutory changes to make it appropriate for shopping customers to be parties to reasonable arrangements with an electric utility. OCC supports the Staff's recommendation that generation options be determined on a case-by-case basis, and contends that the FirstEnergy and Direct Energy proposals are overly broad and could have unintended consequences. OCC supports the objective that arrangements should be provided at the lowest cost which can reduce or possibly eliminate the subsidy for all other customers, but they argue that it is not clear that the proposed rule changes will achieve that objective. OCC argues that any delta revenues that other customers are asked to subsidize should not be calculated using a rate that exceeds what the arrangement customer would actually pay using the least expensive rate, whether such rate is a standard offer or a supplier offer. OCC urges the Commission to adopt mechanisms such as caps, baseline eligibility requirements, and a marginal cost price floor for the discount received through an economic development arrangement.
- (36) The Commission declines to adopt the proposals of Direct Energy and FirstEnergy regarding this chapter. At this time, we believe that the provisions of each economic development or unique arrangement with a mercantile customer, including the provision of generation service by a CRES provider, should be evaluated on a case-by-case basis.

4901:1-38-03 Economic Development Arrangements and 4901:1-38-06 Reporting Requirements

- (37) DP&L proposes changes to Ohio Adm.Code 4901:1-38-03(C) that would require that a hearing be held within 60 days of the filing of an economic development application if the Commission determines that a hearing is necessary, and that the Commission endeavor to issue an order within 120 days of the filing. DP&L also proposes to modify Ohio Adm.Code 4901:1-38-06(A) to provide that an EDU "coordinate," rather than "require" as the rule currently states, its customers served under a reasonable arrangement to assist in preparing an annual report to the EDU and staff. DP&L contends that this language best represents the relationship between the utility and its customer under a reasonable arrangement.
- (38) DP&L has cited no basis for its proposed changes to these rules, and the Commission is not aware of any controversies that would be remedied by the suggested changes. Accordingly, we will decline to make the proposed modifications.
- (39) In order to minimize costs of operation, the Commission is no longer serving paper copies of the rules or BIA attachments. The adopted rule changes and corresponding BIAs are available at: www.puco.ohio.gov/puco/rules. Any person wishing to receive paper copies of these documents should contact the Commission's Docketing Division at (614) 466-4095.

It is, therefore,

ORDERED, That current Rules 36-01, 36-02, 36-04, 36-05, 37-01 through 37-09, and 38-01 through 38-09 be filed without change with the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission in accordance with R.C. 111.15(D) and (E). It is, further,

ORDERED, That the attached amended Appendix to Rule 36-03 and amended Rule 36-06 be adopted and filed with JCARR, the Secretary of State, and the Legislative Service Commission in accordance with R.C. 111.15(D) and (E). It is, further,

ORDERED, That the revised business impact analyses for Chapters 4901:1-36, 4901:1-37, and 4901:1-38 be adopted. It is, further,


ORDERED, That the final rules be effective on the earliest date permitted by law.
It is, further,

ORDERED, That a notice or copy of this entry without the attached rules or business impact analysis be served upon all investor-owned electric utilities in the state of Ohio, the Electric-Energy list-serve, and all persons of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Thomas W. Johnson, Chairman


Steven D. Lesser


Lynn Slaby

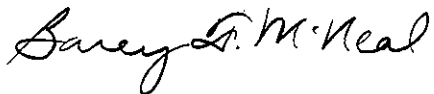

M. Beth Trombold


Asim Z. Haque

JML/RMB/sc

Entered in the Journal

SEP 10 2014



Barcy F. McNeal
Secretary

Amended
Appendix to Rule 4901:1-36-03

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

*****DRAFT - NOT FOR FILING*****

“Amended”

4901:1-36-06 Additional information.

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

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Greg Price, Chief Attorney Examiner, Electric
	Phone: 614-752-9410 Fax: 614-728-8373
	Greg.Price@puc.state.oh.us
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-36 /
	Electric Transmission Cost Recovery Riders
Rule Number(s):	4901:1-36-01, 4901:1-36-02, 4901:1-36-03,
	4901:1-36-04, 4901:1-36-05, 4901:1-36-06
Date:	December 18, 2013, Amended September 10, 2014
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change
	<input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinded

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

Regulatory Intent

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

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

There are two amendments proposed for this chapter. The first adopts the request of the electric utilities to eliminate Schedule B-4 of the Appendix to Ohio Adm.Code 4901:1-36-03 which required information to be displayed in a chart format. The second is an addition to Ohio Adm.Code 4901:1-36-06 to provide quarterly updates from utilities seeking recovery of transmission and transmission-related costs. The utility would provide Staff with more current information on cost components and amounts, customer revenue, and other cost-related information, that would allow Staff to determine if the current effective rates continue to reflect the costs and credits as presented in the annual application. The electric utilities do not object to this new provision, but did object to some stakeholder suggestions that this information be publicly filed in a docket. The Commission's consideration of the comments and suggestions of the stakeholders is contained in the Finding and Order issued in Case No. 13-953-EL-ORD.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-36-01	4928.06, 4928.141, 4928.143
4901:1-36-02	4928.06, 4928.141, 4928.143
4901:1-36-03	4928.06, 4928.141, 4928.143
4901:1-36-04	4928.06, 4928.141, 4928.143
4901:1-36-05	4928.06, 4928.141, 4928.143
4901:1-36-06	4928.06, 4928.141, 4928.143

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

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

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

Not applicable.

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

R.C.4928.143(B)(2)(g) includes certain provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that an electric distribution utility incurs to be included in an application for approval of electric security plan. The purpose of this chapter, as stated in Ohio Adm.Code 4901:1-36-02, is to provide a framework for an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, imposed on or charged to the utility by the Federal Energy Regulatory Commission (FERC) or a regional transmission organization, independent transmission operator, or similar organization approved by FERC.

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

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

Development of the Regulation

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

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

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

The workshop was conducted on May 7, 2013, but no comments were provided by any stakeholders concerning this chapter. As noted above, the Commission deleted the chart requirement in the Appendix to Ohio Adm.Code 4901:1-36-03 at the suggestion of the electric utilities, in comments filed following the December 18, 2013, Commission issuance of proposed rules.

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

Not applicable.

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

This chapter prescribes the requirements for an electric utility's application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. As noted above, the Commission is deleting a chart requirement in the Appendix to Ohio Adm.Code 4901:1-36-03 at the suggestion of the utilities.

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

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

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

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

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

The Commission issued an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm.Code Chapter 4901:1-36*, Case No. 13-953-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4903.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

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

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

The Commission does not charge any fees for the filing of applications to approve electric transmission recovery cost riders, pursuant to R.C. 4928.143, although electric utilities presumably incur administrative costs in the filing of these applications. As noted above, none of the electric utilities objected to the quarterly reporting requirement in amended Ohio Adm.Code 4901:1-36-06.

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

Any adverse impacts of these only apply to an Ohio electric utility filing an application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. An electric utility presumably incurs administrative costs in the filing an application to approve its transmission recovery cost rider, and the subsequent tracking and reporting in the collection of these costs.

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

Costs relating to Ohio Adm.Code 4901:1-36-05 may include a hearing for approval of the application, if necessary. Costs relating to Ohio Adm.Code 4901:1-36-06 involve the time needed to provide, on a biennial basis, additional information detailing the electric utility's policies and procedures for minimizing any costs in the rider, when the utility has control over such costs. In addition, there are costs regarding the time to comply with staff's proposal that, on a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs must file with Staff a report listing cost components, cost amounts, and customer revenue. As noted above, none of the electric utilities objected to the quarterly reporting requirement in amended Ohio Adm.Code 4901:1-36-06.

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

As noted above, these rules were adopted pursuant to R.C. 4928.143 to allow electric utilities to recover appropriate costs through an electric transmission recovery cost rider. The reporting requirements in this chapter are necessary to appropriately track and balance the collection of transmission and related costs.

Regulatory Flexibility

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

No. These rules do not apply to small businesses.

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

These rules do not apply to small businesses.

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

These rules do not apply to small businesses.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Greg Price, Chief Attorney Examiner, Electric
	Phone: 614-752-9410 Fax: 614-728-8373
	Greg.Price@puc.state.oh.us
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-37 / Corporate Separation for Electric Utilities and Affiliates
Rule Number(s):	4901:1-37-01, 4901:1-37-02, 4901:1-37-03, 4901:1-37-04, 4901:1-37-05, 4901:1-37-06, 4901:1-37-07, 4901:1-37-08, 4901:1-37-09
Date:	December 18, 2013, Amended September 10, 2014
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change <input type="checkbox"/> Amended <input type="checkbox"/> Rescinded

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

Regulatory Intent

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

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

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

As noted below, no amendments to this chapter were proposed by the Commission's Staff, or by any electric utility or other stakeholder at the May 7, 2013 workshop. Comments and suggestions by the parties subsequently filed in Case No. 13-954-EL-ORD are addressed at length in the Commission's Finding and Order being issued in that case.

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

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

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

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

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

Not applicable.

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

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

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

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

Development of the Regulation

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

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

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

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

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

Not applicable.

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

These rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio. As noted above, the comments filed by the stakeholders in Case No. 13-954-EL-ORD are considered in the Commission's Finding and Order issued in that case.

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

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

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

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

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

The Commission issued an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm.Code Chapter 4901:1-37*, Case No. 13-954-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4903.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

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

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

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

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

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

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

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

As noted above, these rules were adopted in response to statutory mandates in R.C. 4928.17 and 4928.06 to allow competitive retail electric service in Ohio, and only apply to electric utilities that provide, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service.

Regulatory Flexibility

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

No. These rules do not apply to small businesses.

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

These rules do not apply to small businesses.

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

These rules do not apply to small businesses.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Greg Price, Chief Attorney Examiner, Electric
Phone: 614-752-9410 Fax: 614-728-8373
Greg.Price@puc.state.oh.us

Regulation/Package Title: Ohio Adm.Code Chapter 4901:1-38 /
Reasonable Arrangements for Electric Utility Customers

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

Date: December 18, 2013, Amended September 10, 2014

Rule Type:

☐ New

☒ 5-Year Review

☒ No Change

☐ Amended

☐ Rescinded

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

Regulatory Intent

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

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

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

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

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-38-01	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-02	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-03	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-04	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-05	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-06	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-07	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-08	4905.04, 4905.06, 4905.31, 4928.02
4901:1-38-09	4905.04, 4905.06, 4905.31, 4928.02

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

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

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

Not applicable.

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

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. Ohio Adm.Code 4901:1-38-02 states that the purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency, and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates contained in R.C. 4928.02.

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

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. These rules will be deemed successful if customers seeking reasonable economic or energy efficiency arrangements can file appropriate applications for Commission approval as well as the annual compliance reports.

Development of the Regulation

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

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

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

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

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

Not applicable.

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

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. The comments and suggestions by the parties filed in Case 13-955-EL-ORD are addressed at length in the Commission's Finding and Order in that case.

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

This chapter establishes rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. The comments and suggestions by the parties filed in Case 13-955-EL-ORD are addressed at length in the Commission's Finding and Order in that case.

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

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4905, or the approval of reasonable arrangements, pursuant to R.C. 4905.31.

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

The Commission issued an entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm.Code Chapter 4901:1-38*, Case No. 13-955-EL-ORD, Entry (Dec. 18, 2013). Following the comment period specified in the entry, the Commission will issue a finding and order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4903.10. As noted above, all Ohio investor-owned electric utilities, certified suppliers, and industry stakeholders have been notified of the opportunity to participate in this proceeding.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

These rules only apply to electric utilities and mercantile customers seeking Commission approval of reasonable arrangements, pursuant to R.C. 4905.31. Mercantile customers, as defined in R.C. 4928.01(A)(19), include a commercial or industrial customer, if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kWh annually, or is part of a national account involving multiple facilities in one or more states.

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

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

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

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

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

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

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

The cost of Ohio Adm.Code 4901:1-38-06(A) involves the time needed for a customer of an electric utility who is served under a reasonable arrangement pursuant to this chapter to submit an annual report to the electric utility and to Commission staff no later than April 30 of each year, to assure appropriate cost recovery.

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

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

This chapter fulfills a statutory obligation for the Commission to establish rules for the approval of reasonable arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer or customers. The comments and suggestions by the parties filed in Case 13-955-EL-ORD are addressed at length in the Commission's Finding and Order in that case. The only stakeholder at the workshop to comment on these rules did not raise any adverse impacts imposed by the current rules.

Regulatory Flexibility

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

These rules only apply to electric utilities and mercantile customers, which are defined by R.C. 4928.01(A)(19) as commercial or industrial customers that consume more than 700,000 kWh annually, or are part of a national account involving multiple facilities in one or more states. R.C. 119.14(G)(1) provides that small business has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121. It appears unlikely that an entity would be able to fit both statutory definitions.

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

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

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

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