

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's )  
Review of Chapter 4901:1-25, Ohio ) Case No. 12-2053-EL-ORD  
Administrative Code, Regarding Market )  
Monitoring. )

FINDING AND ORDER

The Commission finds:

- (1) R.C. 106.03 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 4901:1-25 govern market monitoring.
- (2) R.C. 106.03 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  - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted;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;
  - (d) The rules duplicate, overlap with, or conflict with other rules; and

- (e) 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 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. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.
  - (5) By Entry issued on July 11, 2012, the Commission scheduled a workshop at the offices of the Commission on August 17, 2012, to elicit feedback on any proposed revisions to the rules that stakeholders may have. At the workshop, stakeholders were permitted to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled on August 17, 2012.
  - (6) Staff evaluated the rules contained in Ohio Adm.Code 4901:1-25, as well as the feedback received at the workshop and recommended amendments to the rules.
  - (7) On January 29, 2014, the Commission issued an Entry seeking comments on Staff's proposed amendments and sent

Staff's recommended changes and BIA to CSI for review and recommendations in accordance with R.C. 121.82. Comments were filed by Direct Energy Services, LLC, and Direct Energy Business, LLC (collectively, Direct Energy), the Ohio Consumers' Counsel (OCC), and the Ohio Power Company (Ohio Power). Reply comments were filed by Direct Energy, FirstEnergy Solutions Corp (FES), and Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company (collectively, FirstEnergy).

- (8) At this time, the Commission finds that the rules in Ohio Adm.Code Chapter 4901:1-25 should be filed with the Joint Committee on Agency Rule Review (JCARR), the Secretary of State, and the Legislative Service Commission. The Commission has carefully reviewed the existing rules, the proposed Staff changes, and the comments filed by interested parties in reaching its decisions regarding these rules. The Commission addresses the more significant comments below. Any comments or recommended changes not addressed below or incorporated into the proposed rules have been considered by the Commission and should be considered denied. Additionally, the Commission has attached a revised BIA.

#### **Comments on Ohio Adm.Code 4901:1-25-01**

- (9) Direct Energy argues that the Commission should not adopt the definition of the term "green pricing program" as it is used in Ohio Adm.Code 4901:1-42-01. Direct Energy asserts that the definition of green pricing program in Ohio Adm.Code 4901:1-42-01 is overly broad and may encompass products that are not ordinarily considered green products. (Direct Energy Comments at 2-3.)
- (10) The Commission finds that Direct Energy's proposal should not be adopted. The Commission notes that the reporting requirement in Ohio Adm.Code 4901:1-25-02(A)(2)(e) is specifically for green pricing programs contemplated in Ohio Adm.Code Chapter 4901:1-42, which was adopted pursuant to R.C. 4928.70.

**Comments on Ohio Adm.Code 4901:1-25-02**

- (11) Ohio Power asserts that Ohio Adm.Code 4901:1-25-02(A)(2)(d) is confused by the term “completed interconnection application.” Ohio Power argues that the rule should be revised so that it pertains to interconnection applications that have not been completed in the current or previous quarters.
- (12) The Commission finds that Ohio Power’s proposal is reasonable and should be adopted. The Commission finds that Ohio Adm.Code 4901:1-25-02(A) should indicate that the status shall be updated until the interconnection application is completed.
- (13) Ohio Power argues that the final part of Ohio Adm.Code 4901:1-25-02(A)(2)(d) that requires the electric utility to provide each interconnection applicant a copy of the quarterly report should be deleted. Ohio Power argues that this section is duplicative of rules in Ohio Adm.Code Chapter 4901:1-22, which requires that an electric utility communicate to interconnection applicants the status of their application.
- (14) The Commission finds that Ohio Power’s recommendation should be adopted, as this section of the rule is duplicative with the interconnection rules in Ohio Adm.Code Chapter 4901:1-22.
- (15) Ohio Power requests clarification on the meaning of the term “certified electric services company” in Ohio Adm.Code 4901:1-25-02(A)(3). Ohio Power requests clarification on whether this means CRES providers or the electric utilities. Additionally, Ohio Power asserts that a clarifying definition should be included in Ohio Adm.Code 4901:1-25-01.
- (16) To provide clarification, the Commission notes that the term “electric services company” shall have the same meaning as it is defined in R.C. 4928.01(A)(9), which is stated in the definitions in Ohio Adm.Code 4901:1-25-01(K). According to R.C. 4928.01(A)(9), an electric services company is an electric light company that is engaged on a for-profit or not-

for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. This includes power marketers, power brokers, aggregators, independent power producers, and any competitive retail electric service provider. This does not include electric cooperatives, municipal electric utilities, governmental aggregators, and billing/collection agents. We note that this also does not include the electric utilities.

- (17) Direct Energy argues that Ohio Adm.Code 4901:1-25-02(A)(3)(d) conflicts with Ohio Adm.Code Chapter 4901:1-42. Direct Energy notes that under the proposal in Ohio Adm.Code 4901:1-42-03, competitive retail electric service (CRES) providers would be required to provide green pricing data semi-annually, whereas Ohio Adm.Code 4901:1-25-02(A)(3)(d) would require that information be reported quarterly. Additionally, Direct Energy requests that the Commission limit the granularity of information to be provided by the number of participants and the usage, which will provide additional protection from a CRES provider potentially accessing competitively sensitive information. (Direct Energy Comments at 3-4; Direct Energy Reply at 2.)
- (18) The Commission notes that it adopted Ohio Adm.Code Chapter 4901:1-42 on April 2, 2014. *In re the Adoption of Chapter 4901:1-42*, Case No. 12-2157-EL-ORD, Finding and Order (April 2, 2014). Pursuant to the comments filed in that case, the Commission revised Ohio Adm.Code 4901:1-42-03 to require that any Ohio electric utility or CRES provider offering a green pricing program shall report participation statistics, consistent with the requirements of Ohio Adm.Code Chapter 4901:1-25. Accordingly, there is no longer a conflict between the two chapters and Direct Energy's assertion is moot.
- (19) OCC argues that Ohio Adm.Code 4901:1-25-02(A)(5) should be revised so that information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(3) is deemed to be public information. OCC argues that R.C. 4905.07 requires that, except as provided in R.C. 149.43 and consistent with the purposes of R.C. Title 49, all facts and information in the

possession of the Commission shall be public, and all reports, records, files, books, accounts, papers, and memorandums of every nature shall be open to inspection by interested parties or their attorneys. OCC then notes that information is trade secret and exempt from Ohio's public records law only if it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of reasonable efforts under the circumstances to maintain its secrecy. OCC alleges that the exceptions to R.C. 4905.07 are very limited and narrow, and that Ohio Adm.Code 4901:1-25-02(A)(2) should be revised so that information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(3) is deemed to be public information. (OCC Comments at 2-4.)

Direct Energy, FirstEnergy, and FES oppose OCC's recommendation and argue that information provided pursuant to Ohio Adm.Code 4901:1-25-02(A)(3) should receive automatic protective treatment. These parties argue that the Commission can accomplish its statutory requirements to disclose public information without publicly disclosing information that should be deemed confidential. Direct Energy asserts that identifying CRES provider market share and linking it to a particular supplier is competitively sensitive information, which has always been maintained as confidential. (Direct Energy Reply at 3-4; FirstEnergy Reply at 2-4; FES Reply at 1-3.)

- (20) The Commission finds that OCC's proposal to deem certain information in the rule as public should not be adopted. We note that we recently addressed the issue of confidentiality of information in Case No. 12-3151-EL-COI. In that case, we determined that the Commission must strike the right balance between making information public pursuant to R.C. 4905.07 and taking necessary measures to protect the confidentiality of information pursuant to R.C. 4928.06(F), 149.43, and the purposes of R.C. Title 49. *In re the Commission's Investigation of Ohio's Retail Electric Service Market*, Case No. 12-3151-EL-COI, Finding and Order (Mar. 26, 2014) at 11-12. Additionally, we noted that to

protect the confidentiality of information, the Commission adopted Ohio Adm.Code 4901-1-24, which states that, upon motion of any party or person, the Commission or an attorney examiner may issue an order to protect the confidentiality contained in a report.

Accordingly, the Commission believes that, pursuant to R.C. 149.43, 4928.06(F), and the purposes of R.C. Title 49, parties should have the right to file motions for protective order to protect confidential information. In the interest of striking the proper balance between R.C. 4905.07 and R.C. 149.43, 4928.06(F), and the purposes of R.C. Title 49, we find that any information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(2)(d), (A)(3), and (A)(4) will be held as confidential until such time as a request for disclosure is filed. The Commission will hold information filed pursuant to Ohio Adm.Code 4901:1-25-02(A)(2)(d), (A)(3), and (A)(4) as confidential, without a motion for protective order, but will accept requests for disclosure. Any request for disclosure should identify the information being sought and the report from which it is being sought, consistent with R.C. 149.43(B)(2). When the Commission receives a request for disclosure, the Commission will provide the party that filed the report three business days prior notice of intent to disclose. On the fourth day after such notice, such information may be disclosed or otherwise made available for any lawful purpose, unless the Commission received a motion for protective order within the three-day notice period.

It is, therefore,

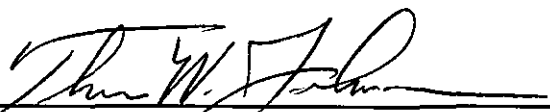
ORDERED, That attached amended Ohio Adm.Code 4901:1-25-01 and 4901:1-25-02 be adopted. It is, further,

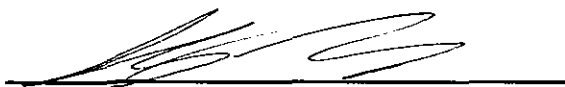
ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with Divisions (D) and (E) of R.C. 111.15. It is, further,

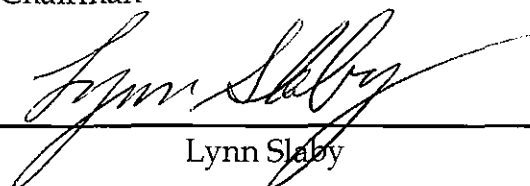
ORDERED, That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-25 shall be in compliance with R.C. 106.03. It is, further,

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


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M. Beth Trombold

\_\_\_\_\_  
Asim Z. Haque

BAM/sc

Entered in the Journal

**OCT 15 2014**

  
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Barcy F. McNeal  
Secretary

Barcy F. McNeal  
Secretary



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Attachment A

Market Monitoring - Chapter 4901:1-25-01

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**4901:1-25-01 Definitions.**

As used in this chapter:

- (A) "Affiliate" shall have the meaning set forth in rule 4901:1-20-16 of the Administrative Code.
- (B) "Aggregation service" means the act of combining the electric load of multiple customers for the purposes of supplying or arranging for the supply of competitive retail electric generation service to those customers.
- (C) "Aggregator" means a person who provides aggregation service.
- (D) "Certified competitive electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company, which has been certified by the commission to be a competitive retail electric service provider in accordance with the provisions of section 4928.08 of the Revised Code.
- (E) "Commercial customer" means a nonresidential, nonindustrial customer.
- (F) "Commission" means the public utilities commission of Ohio.
- (G) "Competitive retail electric service" (CRES) shall have the meaning set forth in division (A)(4) of section 4928.01 of the Revised Code.
- (H) "Customer" for the purpose of this chapter shall have the same meaning as it has in the distribution tariff of the electric utility serving the customer.
- (I) "Distributed generation" means any generation facility interconnected to a utility distribution system, including facilities that generate electricity.
- ~~(H)~~(J) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- ~~(H)~~(K) "Electric services company" shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- ~~(K)~~(L) "Governmental aggregator" shall have the meaning set forth in division

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(A)(13) of section 4928.01 of the Revised Code. In accordance with division (F) of section 4928.20 of the Revised Code, a governmental aggregator is not a public utility engaging in the wholesale purchase and resale of electricity, and provision of the aggregation service is not a wholesale utility transaction.

(M) "Green pricing program" shall have the meaning as set forth in rule 4901:1-42-01 of the Administrative Code.

~~(L)~~(N) "Independent power producer" means an owner of generation who sells at least a portion of the electric energy from that generation at retail.

~~(M)~~(O) "Industrial customers" means establishments categorized under standard industrial classification codes 01 through 39, or the associated 1997 North American industry classification system codes 11, 21, 23, 31, 32, and 33.

~~(N)~~(P) "Interconnection applicant" shall have the same meaning as "applicant" in paragraph (A) of rule 4901:1-22-01 of the Administrative Code.

~~(O)~~(Q) "Interconnection application" shall have the same meaning as "application" in paragraph (B) of rule 4901:1-22-01 of the Administrative Code.

~~(P)~~(R) "Ohio certificate number" means the authorized identification number of an approved certification to provide a CRES as granted to the provider by the commission in accordance with the provisions of section 4928.08 of the Revised Code.

~~(Q)~~(S) "Power marketer" means a person, certified by the commission, who provides power marketing services.

~~(R)~~(T) "Power marketing" means assuming the contractual and legal responsibility for the sale and provision of competitive retail electric generation service to a retail customer in this state and having title to electric power at some point during the transaction.

~~(S)~~(U) "Reporting entity" means the electric utility or the certified competitive retail electric service provider filing market monitoring information on a regularly scheduled basis as required by the commission.

~~(T)~~(V) "Residential customers" means customers who consume electricity at private residences, whether owned or rented, including single family homes,

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multifamily housing units that are individually metered, and mobile homes only for personal use. Institutional housing, such as school dormitories, hospitals, and military barracks are included in the commercial sector.

~~(U)~~(W) "Special contract customer" means a customer taking bundled service under a contract approved by the commission.

~~(V)~~(X) "Street lighting and other customer" means a customer purchasing electric generation service for purposes of street and highway lighting.

~~(W)~~(Y) "Standard service offer" means a standard service offer filed with the commission by an electric utility under section 4928.141 of the Revised Code, of all CRES necessary to maintain essential electric service to consumers, including a firm supply of electric generation service priced.

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**4901:1-25-02 Market monitoring - reporting requirements.**

(A) Each electric utility, and each electric services company, electric cooperative, and governmental aggregator subject to certification under section 4928.08 of the Revised Code shall submit market monitoring data to the commission or its staff, on forms to be issued by the commission, as follows:

(1) Each electric utility, certified electric services company (power marketer, power broker, nongovernmental aggregator, and independent power producer), certified electric cooperative and certified governmental aggregator shall file a quarterly report ~~that~~<sup>which</sup> contains information ~~that includes~~<sup>including</sup>, but is not limited to, the following:

(a) Entity name.

(b) Business address.

(c) Name and title of the person responsible for submitting the market monitoring data required by this rule.

(d) Authorized signature.

(e) The address, telephone number, fax number, and e-mail address of the person responsible for customer enrollment.

~~(f) Those reporting entities that file quarterly transaction reports with the federal energy regulatory commission (FERC) should submit a copy of, or an internet link to, its current FERC quarterly transaction report to the commission in the same form that it filed the report with the FERC.~~

~~(g) Appended to a reporting entity's first quarterly report for each calendar year, a copy of, or an internet link to, the reporting entity's most recent securities and exchange commission form 10-K or the 10-K of the controlling owner of the reporting entity.~~

(2) Each electric utility shall file on a quarterly basis monthly data related to electric generation services. The information contained in this report shall include, but not be limited to, the following:

(a) For those customers for whom the entity provides generation service:

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The number of customers, the amount of sales in megawatt hours, and the amount of billed revenues. The reporting entity shall report this data by rate schedule and by customer class (residential, commercial, industrial, or street lighting/other) and by subclass, if applicable separately for standard service offer customers and for special contract customers.

- (b) Monthly system peak data identifying the number of megawatts, the peak day of the month, the peak day of the week, and the peak hour of the month.
- (c) Information about generation resources owned by retail customers and connected to its distribution system, regardless of the voltage at which they are interconnected; all generation resources connected at a distribution voltage, which were interconnected as a result of an interconnection application; and all resources owned by the utility and interconnected at a distribution voltage, which but for such ownership would have been subject of an interconnection applicant application ~~by an interconnection application. This information shall be reported annually, as an attachment to the electric utility's fourth quarter market monitoring report. The report shall include the data as of the end of the calendar year.~~ The report shall include the following information:
  - (i) A list of generating units.
  - (ii) A statement of whether each generating unit is owned by an end use customer, by the electric utility, by an affiliate of the electric utility, or by a nonaffiliated entity that is not an end use customer.
  - (iii) A statement of whether or not the generator is dispatched by the control area operator or by the owner.
  - (iv) The nameplate capacity of the generator, in megawatts or kilowatts.
  - (v) The fuel type used by each generating unit.
  - (vi) The technology type of generating unit (e.g., fuel cell, turbine, diesel, photovoltaic, etc.).

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- (d) Notice to staff of any and all interconnection applications by interconnection applicants seeking to become interconnection service customers, where such applications have not yet resulted in interconnection (that is, applications that are under consideration). The required notice shall be in the form of a narrative report attached to the quarterly market monitoring report that is required by this rule and submitted on a quarterly basis. The narrative report shall include the following information:
- (i) Name and contact information of the electric utility employee who is directly responsible for processing the interconnection application and/or interacting with the interconnection applicant.
  - (ii) Description of each interconnection request in terms of the amount and type of generation for which interconnection is being sought, and the location of the proposed interconnection.
  - (iii) Copies of any and all written notices required by paragraphs (B)(4) and (B)(5) of rule 4901:1-22-04 of the Administrative Code.
  - (iv) Description of the status of each interconnection application in terms of process steps that have been completed, process steps that remain to be completed, and any progress or lack thereof in addressing issues.

Until the interconnection application is completed ~~The status of each completed interconnection application shall be updated in subsequent quarterly narrative reports by describing any modifications to the interconnection application, any meetings that may have occurred, and any correspondence or communications that have occurred between the electric utility and the interconnection applicant.~~

~~The electric utility shall provide to each interconnection applicant a copy of the section of the quarterly report required by paragraph (A)(2)(d) of this rule, which contains information describing that interconnection applicant's interconnection application.~~

- (e) For those customers for whom the entity provides generation service: The number of customers participating in utility green pricing programs

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and the volume of participation in such programs in megawatthours, reported by customer class.

(f) The electric utility shall include in its quarterly reporting of monthly data related to electric generation the reporting requirements set forth in Rules 4901:1-10-28(B)(14) and 4901:1-10-34(M) of the Administrative Code.

- (3) Each certified electric services company, certified electric cooperative, and certified governmental aggregator shall submit to staff on a quarterly basis monthly data related to competitive electric generation services. The reporting entity shall submit this information separately for each electric utility's service territory in which it does business. The information contained in this report shall include, but not be limited to, the following:
- (a) Identity of the reporting entity including their competitive retail electric service (CRES) certificate number.
  - (b) For those customers for whom the entity provides generation service: The number of customers, the amount of sales in megawatt hours. The reporting entity shall report this data by ~~rate-schedule~~customer class (residential, commercial, industrial, or street lighting/other) and by subclass, if applicable.
  - (c) For those customers for whom the entity provides generation service total billed revenues. The reporting entity shall report this data by rate schedule class (residential, commercial, industrial, or street lighting/other) and by subclass, if applicable.
  - (d) For those customers for whom the entity provides generation service: The number of customers participating in CRES-offered green pricing programs and the volume of participation in such programs in megawatt-hours, reported by customer class.
- (4) Each certified aggregator and certified governmental aggregator shall submit to staff on a quarterly basis monthly data related to aggregation activity. The reporting entity shall submit this information separately for each electric utility's service territory in which it does business. The information contained in this report shall include, but not be limited to, the

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following:

- (a) The identity of the aggregator including its CRES certificate number.
  - (b) The electric utility's service territory for which the report is being made.
  - (c) The name of each aggregated group.
  - (d) The number of customers by customer class in each aggregated group.
  - (e) The total number of customers in each aggregated group.
  - (f) The total number of all customers by customer class.
  - (g) The total number of customers.
- (5) The information contained in the reports provided to the commission and/or staff pursuant to paragraphs (A)(2)(d), (A)(3), and (A)(4), will be held as confidential.
- (a) Any person may file a request for disclosure requesting disclosure of information filed pursuant to paragraphs (A)(2)(d), (A)(3), and (A)(4). A request for disclosure must identify the information being sought and the report from which it is being sought. The party that filed the report containing the information being sought will be provided three business days notice that information being held as confidential will be disclosed unless a motion for protective order is filed within three business days. To prevent disclosure, the party that filed the report containing the information being sought must file a motion for protective order consistent with rule 4901-1-24 of the Administrative Code within the three business days. If no motion for protective order is filed, the information being sought will be disclosed on the fourth business day after the notice of disclosure.
  - (b) All other information filed with the commission and/or staff will be deemed public pursuant to R.C. 4905.07, unless accompanied by a motion for protective order consistent with rule 4901-1-24 of the Administrative Code. (A) of this rule shall be treated in the following manner:



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- (a) ~~Any information filed pursuant to paragraphs (A)(1) and (A)(2)(a) to (A)(2)(c) of this rule shall be deemed to be public information.~~
- (b) ~~Any information filed pursuant to paragraphs (A)(2)(d), (A)(3), and (A)(4) of this rule shall be deemed to be confidential information, unless and until the interconnection applicant or customer owner may make, or agree to make, such information public.~~
- (B) Pursuant to Chapter ~~4935.~~ 4935 and division (E) of section 4928.02 of the Revised Code, any entity that owns or has an affiliate that owns electric transmission or distribution facilities shall provide or cause to be provided to the commission and to staff cost-effective and efficient access to information regarding the operation of the transmission or distribution systems of electric utilities to assist in determining the existence and extent of a transmission constrained area, and to information that may assist the commission or staff in determining the impact of transmission constraints on the price of a competitive retail electric service. Each entity that owns or that has an affiliate that owns electric transmission or distribution facilities shall provide or cause to be provided to the commission and staff a report of any denials of service for either transmission or distribution service due to constraints in the transmission or distribution system, the amounts of energy curtailed or denied, the duration of these curtailments or denials, and the reasons why the service was denied. These reports shall be provided to the commission and to staff ~~semiannually~~ annually with the ~~second and fourth~~ third quarterly reports filed pursuant to paragraph (A)(1) of this rule.
- (C) Nothing in this rule shall limit the ability of the commission, or staff, to collect additional data from any electric distribution utility or any electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code in carrying out the commission's responsibilities under Chapter ~~4928.~~ 4928 of the Revised Code.
- (D) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)  
Attention: Angela Hawkins, Legal Director  
Phone: 614-466-0122 Fax: 614-728-8373  
Angela.Hawkins@puc.state.oh.us

Regulation/Package Title: Market Monitoring

Rule Number(s): Ohio Adm.Code Chapter 4901:1-25

4901:1-25-01; 4901:1-25-02

Date: October 15, 2014

**Rule Type:**

New

Amended

5-Year Review

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 proposed revisions to the rules in Ohio Adm.Code Chapter 4901:1-25 are in accordance with the State of Ohio's 5-year rule review procedures. R.C. 106.03 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 4901:1-25 set forth the provisions for Commission market monitoring. The proposed revisions to Ohio Adm.Code Chapter 4901:1-25 would update the Commission's policies regarding the reporting requirements for essential monitoring of Ohio's retail electric market.

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

The Commission is adopting the rules in Ohio Adm.Code Chapter 4901:1-25 in response to R.C. 106.03, 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. R.C. 4928.06 specifically states that beginning on the starting date of competitive retail electric service, the Commission shall ensure that the policy specified in R.C. 4928.02 is effectuated. These rules permit the Commission to monitor the competitive retail electric market in Ohio to determine if the policy in R.C. 4928.02 is being effectuated and that effective competition exists.

### **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.

***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. 4928.06.

**4. 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, specifically R.C. 4928.06. The Commission believes that this regulation is necessary for the Commission to determine how Ohio’s competitive retail electric market is functioning and to determine whether effective competition exists.

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

The Commission will measure the success of these rules in terms of whether filings are being made on time, with all of the required information. Ohio Adm.Code Chapter 4901:1-25 specifically enables the Commission to measure the success of all of its regulations, as well as the regulations in the Revised Code.

**Development of the Regulation**

**6. 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 July 16, 2012, 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 4901:1-25 is 12-2053-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.

*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. However, further stakeholder input was considered subsequent to the comment and reply comment period.

**7. 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 reports filed pursuant to the rules and used its experience with the rules for the development of its proposals.

**8. 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 4901:1-25 are necessary for the implementation of R.C. 4928. The Commission will consider the regulatory alternatives proposed by stakeholders in the Commission's comment and reply comment period.

Additionally, the Commission notes that Ohio Adm.Code Chapter 4901:1-25-02(D) 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.

**9. 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 4901:1-25 both define the required outcome and dictate the process for filing reports. The rules define the reports that must be filed with the Commission so that the Commission can adequately and effectively monitor Ohio's retail electric market. The rules also dictate the process of filing the reports and the requirements for compliance with the Commission's market monitoring rules.

**10. 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.

**11. 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.**

When Ohio Adm.Code Chapter 4901:1-25 becomes effective, the Commission will review the reports filed with the Commission to ensure that they comply with Ohio Adm.Code 4901:1-25-02. Commission Staff will work directly with any entity that provides a report that does not comply with the rule to ensure that future reports are in compliance.

**Adverse Impact to Business**

**12. 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 4901:1-25-02 indicates that the rules in Ohio Adm.Code Chapter 4901:1-25 apply to each electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification under R.C. 4928.08.

**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. 4928 and promoting the policies of the state of Ohio in R.C. 4928.02. There are no license fees, fines, or fee schedules contained in the rules. However, the Commission recognizes that compiling reports and filing them with the Commission requires time for compliance, which may be considered an adverse impact to business.

Ohio Adm.Code 4901:1-25-02 contains a reporting requirement for each electric utility, electric services company, electric cooperative, and government aggregator to submit market-related information to the Commission on a quarterly basis. Much of the required information is readily available, including the name, address, and contact information for the business. However, the reporting requirement also includes data related to generation resources, competitive retail electric service, and interconnection.

**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 believes that the adverse impact of Ohio Adm.Code Chapter 4901:1-25-02 should be quantified as the matter of hours necessary to comply with the rule. The Commission notes that the information included in the reporting requirement is readily available and is reported on a quarterly basis to the Commission. Therefore, based on the Commission’s experience and discussions with Commission Staff, the Commission believes that these reports can be prepared and filed in a matter of five hours. Therefore, the adverse impact of these rules is estimated to be a matter of five employee hours to comply with the market monitoring reporting requirements.

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

The Commission believes that the adverse impact on business is justified by the regulatory requirement to comply with the R.C. 4928.06 and the policy of R.C. 4928.02. The Commission is required to monitor market activities to ensure that consumers are served with reliable electricity from entities capable of providing it. Further, R.C. 4928.06 requires that the Commission is to ensure there is not a decline or loss of effective competition. Therefore, the reporting requirements in Ohio Adm.Code Chapter 4901:1-25 are necessary for the Commission to monitor whether there is effective competition in the retail electric markets and to ensure that reliable retail electric service is provided.

**Regulatory Flexibility**

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

The rules in Ohio Adm.Code Chapter 4901:1-25 apply to each electric utility, electric services company, electric cooperative, and governmental aggregator subject to certification under R.C. 4928.08. The Commission notes that Ohio Adm.Code 4901:1-25-02(D) 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.

**15. 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 4901:1-25-02(D) 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.

**16. 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. 12-2053-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.