

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-36 OF THE
OHIO ADMINISTRATIVE CODE.

CASE NO. 18-1189-EL-ORD

FINDING AND ORDER

Entered in the Journal on December 4, 2019

I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to Ohio Adm.Code 4901:1-36-02 and 4901:1-36-04, and as no change rules Ohio Adm.Code 4901:1-36-01, 4901:1-36-03, 4901:1-16-05, and 4901:1-16-06.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. The Commission has opened this docket to review Ohio Adm.Code Chapter 4901:1-36, which concerns the transmission cost recovery rider.

{¶ 3} R.C. 106.03(A) requires the Commission to determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;

- (d) Incorporate 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;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} 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, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 5} Also, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, 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 office the draft rules and the BIA.

{¶ 6} By Entry issued on October 24, 2018, the Commission held a November 8, 2018, workshop to enable interested stakeholders the opportunity to propose changes to Ohio Adm.Code Chapter 4901:1-36. The workshop was conducted as scheduled, with changes proposed by three stakeholders.

{¶ 7} Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-36 and, following its review, proposed nonsubstantive amendments to Ohio Adm.Code 4901:1-36-02 and 4901:1-36-04. The remaining rules in the chapter, under Staff's proposal, remained unchanged.

{¶ 8} By Entry issued on June 19, 2019, the Commission ordered all interested parties to file comments and reply comments concerning the proposed amendments. Initial and reply comments were due by July 12, 2019, and July 26, 2019, respectively.

{¶ 9} Consistent with the June 19, 2019 Entry, written comments were filed on July 12, 2019, by The Office of the Ohio Consumers' Counsel (OCC) regarding Ohio Adm.Code 4901:1-36-03 and 490:1-36-05. FirstEnergy Corp. filed reply comments on July 26, 2019, concerning OCC's proposals. Neither party objected to Staff's proposed amendments to Ohio Adm.Code 4901:1-36-02 and 4901:1-36-04, and neither party recommended any changes to Ohio Adm.Code 4901:1-36-01 and 4901:1-36-06.

B. Consideration of the Comments

{¶ 10} OCC proposes amending OhioAdm.Code 4901:1-36-03 to provide that each transmission cost recovery rider (TCRR) application should include language stating that the rider is subject to reconciliation and refund. OCC observes that, in several recent cases, the Commission adopted language stating that electric utility riders are subject to reconciliation and refund. OCC also notes that the Supreme Court of Ohio has interpreted R.C. 4905.32 as barring any refund of recovered rates, unless the tariff applicable to those rates sets forth a refund mechanism. Therefore, asserts OCC, Ohio Adm.Code 4901:1-36-03 should be amended to include the following language: "This rider is subject to reconciliation

or adjustment, including but not limited to increases or refunds if determined to be unlawful, unreasonable, or imprudent by the Commission or the Supreme Court of Ohio in the docket those rates were approved, or the docket where the audit of those rates occurred.”

{¶ 11} In reply comments, FirstEnergy disagrees with OCC that that the Supreme Court of Ohio has interpreted R.C. 4905.32 to bar any refund of recovered rates, unless the tariff applicable to those rates sets forth a refund mechanism. Further, FirstEnergy asserts, OCC’s recommendation is unnecessary, because current Ohio Adm.Code 4901:1-36-05 and 4901:1-36-06(B) “clearly indicate that * * * [TCRR] mechanisms approved under this chapter are subject to reconciliation resulting from the outcome of any hearings conducted by the Commission.” FirstEnergy observes that its Commission-approved TCRR mechanism tariff already clearly provides for reconciliation.

{¶ 12} The Commission finds that OCC’s proposed language is unnecessary, as the tariffs of EDUs providing service in Ohio already have appropriate language regarding refunds in their tariffs.

{¶ 13} OCC also proposes amending Ohio Adm.Code 4901:1-36-05. OCC notes that the current rule allows proposed rates in a TCRR application to be automatically approved within 75 days of the filing of the application, unless the matter is set for hearing. OCC recommends deleting the portion of the rule allowing for automatic approval; in OCC’s opinion, such a short time frame does not allow adequate time to intervene and conduct the discovery necessary to protect customers, especially given the 20-day turnaround for discovery under Commission rules. OCC recommends that Ohio Adm.Code 4901:1-36-05 be amended to allow parties 75 days for intervention and to file comments after the date of the filing of an application, and that the 75-day period be coupled with an expedited discovery process that allows for a seven-day turnaround for discovery responses.

{¶ 14} FirstEnergy contends that OCC’s proposals would “* * * thwart the Commission’s objective of minimizing customer rate impacts and is unnecessary to allow

sufficient participation by interested parties.” FirstEnergy explains that OCC’s proposals prolong the reconciliation period, which could result in increased carrying costs and rate impacts on customers, contrary to the Commission’s goal. FirstEnergy also asserts that OCC’s recommendation is based on the incorrect premise that the current process does not allow sufficient participation from interested parties; to the contrary, argues FirstEnergy, the current rules provide ample opportunity for parties to fully participate in the proceedings, as evidenced by prior proceedings. Besides, observes FirstEnergy, OCC did not provide one example where the 40-day intervention deadline and 75-day automatic effectiveness hampered the thoroughness of its review.

{¶ 15} The Commission does not support amending Ohio Adm.Code 4901:1-36-05. We find that if any additional time is needed to review and process an application, the Commission can grant an extension and allow more time.

C. Conclusion

{¶ 16} The Commission has considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of Staff’s recommendations, the Commission finds that amended Ohio Adm.Code 4901:1-36-02 and 4901:1-36-04 should be adopted.

{¶ 17} The rules are posted on the Commission’s Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Finding and Order only. All interested persons are directed to input case number 18-1189 in the Case Lookup box to view the rules, as well as this Finding and Order, or to contact the Commission’s Docketing Division to request a paper copy.

III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That amended Ohio Adm.Code 4901:1-36-02 and 4901:1-36-04 be adopted. It is, further,

{¶ 20} ORDERED, That Ohio Adm.Code 4901:1-36-01, 4901:1-36-03, 4901:1-36-05, and 4901:1-36-06 be adopted as no change rules. It is, further,

{¶ 21} 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 R.C. Chapter 111.15. It is, further,

{¶ 22} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-36 shall be in compliance with R.C. 106.03. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/hac

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