

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Energy)
Emergency Rules Contained in Chapters)
4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23,) Case No. 06-1201-AU-ORD
4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35,)
and 4901:5-37 of the Ohio Administrative)
Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) This case was initiated by the Commission in order to review the rules in the following Ohio Administrative Code (O.A.C.) chapters that govern energy emergencies arising out of energy shortages: Chapter 4901:5-17 addresses the governor's emergency powers; Chapter 4901:5-19 governs fuel shortage emergencies related to the generation of electricity; Chapters 4901:5-21 and 4901:5-23 govern coal allotment and other matters affecting coal shortages; Chapter 4901:5-25 governs gas shortage emergencies; Chapter 4901:5-29 governs heating oil and propane shortage emergencies; Chapter 4901:5-33 governs transportation fuel emergencies in the event of a shortage; and Chapters 4901:5-35 and 4901:5-37 govern set-asides and emergency reporting in the event of a shortage. In reviewing the rules, the Commission considered the requirements set forth in Section 119.032(C), Revised Code, as well as Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation," which was issued on February 12, 2008, by the governor of the state of Ohio.
- (2) On February 11, 2009, the Commission issued its finding and order in this case. The Commission ordered that amended Rules 4901:5-17-02, 4901:5-19-01 through 04, 4901:5-21-01 through 02, 4901:5-23-01 through 04, 4901:5-25-01 through 06, 4901:5-29-01 and 04, 4901:5-33-01 through 04, 4901:5-35-01 through 03, 4901:5-37-01 through 04; and new Rules 4901:5-19-05, 4901:5-21-03, and 4901:5-37-05 be adopted and 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 Section 111.15, Revised Code. In addition, the Commission ordered that existing Rules 4901:5-

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23-05 through 07, 4901:5-29-05 through 07, 4901:5-33-05 through 07 be rescinded.

- (3) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (4) On March 13, 2009, Ohio Rural Cooperatives, Inc., and Buckeye Power (jointly, the Cooperatives) filed an application for rehearing of the Commission's February 11, 2009, finding and order, setting forth two grounds for rehearing. The Cooperatives seek rehearing of the order to the extent that the adopted rules subject the electric cooperatives to regulation beyond declared emergencies and to regulation by the Commission outside the scope of the Commission's statutory authority over electric cooperatives during declared energy emergencies.
- (5) In its first ground for rehearing regarding pre-emergency situations, the Cooperatives point out that the Commission, in its order, distinguished between two types of pre-emergency obligations set forth in the rules. The first type of obligation requires the provision of information regarding available fuel supplies and the second type of obligation requires the taking of some type of action, i.e., conservation or curtailment. With regard to unregulated electric providers, the Cooperatives acknowledge that the Commission removed the Cooperatives from the second type of obligation, which would otherwise have required the taking of some action prior to an emergency. However, the Cooperatives object to the Commission's decision that the Cooperatives should be obligated to provide information in a pre-emergency situation. The Cooperatives submit that, although they anticipate that they would voluntarily comply with the reporting requirements in times of an emergency, the Commission has no authority to require the Cooperatives' compliance. Therefore, the Cooperatives request that the reporting requirements set forth in Rule 4901:1-5-19-02(E), (F), and (G), O.A.C., and Rule 4901:5-37-03(A), O.A.C., be revised such that they will not apply to the Cooperatives outside of a declared emergency.

- (6) Upon consideration of the arguments in support of the Cooperatives' first ground for rehearing, the Commission finds that Rules 4901:5-19-02 and 4901:5-37-03, O.A.C., should be clarified. Contrary to the assumption by the Cooperatives, as we stated in our order, it was never the Commission's intent to assert jurisdiction over any entity, absent statutory authority for us to do so. However, we firmly believe that, in the event that an energy shortage is imminent, it is imperative that all stakeholders and affected entities, including the Cooperatives, work together and share information that could circumvent a potential energy shortage. By retaining proposed language that sets forth information that may need to be gathered prior to the declaration of an actual emergency, the Commission is not extending its authority beyond that vested by the statute. Rather, we believe that gathering this information from the Cooperatives, together with other affected entities, will aid the Commission in carrying out its statutory duties under Section 4935.03(A), Revised Code. It is our hope that the framework set forth in the rules, which strives to promote collaboration and open dialogue between all stakeholders, including the Cooperatives, prior to an emergency, will help us avoid any declaration of an energy shortage emergency in the future. Therefore, in order to clarify these rules, the Commission will add a new paragraph (M) to Rule 4901:5-19-02, O.A.C., and a new sentence to paragraph (A) of Rule 4901:5-37-03, O.A.C. These clarifications will make it apparent that the provisions for reporting information only apply to the Cooperatives to the extent of the Commission's statutory authority. Accordingly, the Cooperatives' request for rehearing on this issue should be granted and Rule 4901:5-19-02, O.A.C., and paragraph (A) of Rule 4901:5-37-03, O.A.C., should be revised consistent with this finding.
- (7) In their second ground for rehearing, the Cooperatives assert that the Commission, in its rules, exceeds its authority by adopting rules in Chapter 4901:5-37, O.A.C., that subject the Cooperatives to overly broad regulation during declared emergencies. Specifically, the Cooperatives point to paragraph (D) of Rule 4901:5-37-02, O.A.C., stating that, while they appreciate the Commission's attempt to limit the applicability of this rule to Cooperatives only during declared emergencies, the Commission does not have statutory authority to adopt orders to require nonregulated entities "to initiate or terminate

any action during an emergency" (emphasis added), as this paragraph states. The Cooperatives submit that such a broad statement exceeds the limited scope of the Commission's statutory authority. In addition, the Cooperatives request that the Commission add language to clarify that the rules in this chapter do not apply to the Cooperatives unless the governor implements such rules by executive order during a declared emergency. The Cooperatives reiterate the suggestion they made in their comments that a new provision be added, stating that no rule in that chapter applies to the electric cooperatives, unless the governor, by executive order, declares an energy emergency.

- (8) As we have stated numerous times, we are not requiring the Cooperatives to take any action, unless the governor declares an emergency. It appears that the Cooperatives are taking issue with the word "any" in paragraph (D) of Rule 4901:5-37-02, O.A.C., because they believe that this word implies that the Commission will be able to overstep the boundaries of the statute and impose on the Cooperatives a requirement not permitted under our jurisdictional authority. Interestingly, we note that the Cooperatives did not raise this in their comments. Rather, they asked that the rules in this chapter be clarified to exclude the Cooperatives from the imposition of requirements prior to the governor declaring an emergency. With the issuance of our order, which included language in line with the recommendation by the Cooperatives, coupled with our clarification in finding (6) of this entry, the Commission believes the necessary steps have been taken to address the Cooperatives' concern. The provisions of Chapter 4901:5-37, O.A.C., only apply to the extent of the Commission's statutory authority and we have clarified the rules to reflect this reality. Likewise, the Commission can only require entities to take action, during an emergency that has been declared by the governor, to the extent the Commission is permitted by its statutory authority to require that such action be taken. Section 4935.03(B), Revised Code, provides that, "(w)hen an energy emergency is declared, the commission shall implement the measures which it determines are appropriate for the type and level of emergency in effect." The rules can not be written to account for every eventuality, but we believe that our clarifications in the rules regarding the extent of our statutory authority adequately address the concerns raised by the

Cooperatives on this issue. Accordingly, the Commission finds that the Cooperatives' second ground for rehearing should be denied.

- (9) As a final matter, based upon recent modifications to various Chapters of the O.A.C., regarding the waiving of Commission rules, the Commission shall modify the chapters under review in this proceeding to comport with the rule waiver provisions in those chapters. Specifically, Rules 4901:5-19-02(K), 4901:5-21-02(D), 4901:5-23-02(G), 4901:5-25-02(J), 4901:5-29-02(L), 4901:5-33-02(M), 4901:5-35-02(R), and 4901:5-37-02(E), O.A.C., should be revised.

ORDER:

It is, therefore,

ORDERED, That the Cooperatives' application for rehearing be granted, in part, and denied, in part, as set forth in findings (6) and (8). It is, further,

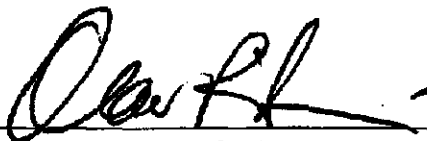
ORDERED, That Rules 4901:5-19-02, 4901:5-21-02, 4901:5-23-02, 4901:5-25-02, 4901:5-29-02, 4901:5-33-02, 4901:5-35-02, 4901:5-37-02, and 4901:5-37-03, O.A.C., be revised consistent with findings (6) and (9). It is, further,

ORDERED, That the attached revised Rules 4901:5-19-02, 4901:5-21-02, 4901:5-23-02, 4901:5-25-02, 4901:5-29-02, 4901:5-33-02, 4901:5-35-02, 4901:5-37-02, and 4901:5-37-03, O.A.C., 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 Section 111.15, Revised Code. It is, further,

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

ORDERED, That copies of the entry on rehearing be served upon all interested persons of record in this case.

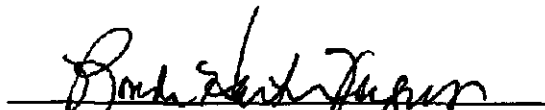
THE PUBLIC UTILITIES COMMISSION OF OHIO



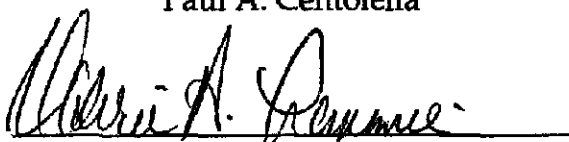
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

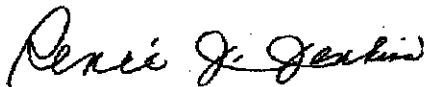


Cheryl L. Roberto

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Renee J. Jenkins
Secretary

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4901:5-19-02

General provisions.

- (A) The requirements of this chapter are intended to provide the governor with the means of managing, on a statewide basis, a continuing fuel shortage. These requirements are keyed to remaining supplies of fuel for electric generation. It is expected that electric providers and electric power producers will take all prudent measures prior to reaching mandatory action levels under rule 4901:5-19-05 of the Administrative Code. Once the mandatory stages of action are invoked under rule 4901:5-19-05 of the Administrative Code, electric providers and electric power producers are required to initiate and to continue implementation of requisite actions until directed to do otherwise.
- (B) The institutional and regulatory relationship between jurisdictional utilities and the commission remains intact. Except as otherwise provided by this chapter or commission order during an energy emergency, each electric provider and electric power producer shall comply with all applicable rules and requirements of the commission.
- (C) Measures required by the governor under these rules, implemented or enforced pursuant to rule 4901:5-19-03 of the Administrative Code, shall prevail over any existing requirements of the commission inconsistent with said measures.
- (D) The actions required of electric providers and electric power producers in this chapter shall be implemented by the electric providers and electric power producers. All actions required in this chapter are intended to be implemented by each electric provider and electric power producer to the extent reasonably possible. Actions ordered of consumers stay in effect until terminated or changed. Electric power producers are not required to take any action that may adversely impact the safety of plant personnel or plant equipment.
- (E) In anticipation of an imminent energy emergency or during a declared energy emergency, the commission may order all electric power producers having a generating capacity of fifty megawatts or more to submit to staff a weekly report of electric supply adequacy. Upon request of the chairman of the commission, the report of electric supply adequacy shall be submitted daily. The report shall contain the following information:
- (1) Name of unit.
 - (2) Fuel type(s) utilized by the unit.
 - (3) Maximum capacity of the unit.
 - (4) Current megawatt output of the unit.

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- (5) Minimum amount of energy necessary to sustain the safe operation of a unit that is not able to cycle due to the uncertainty of restarting.
 - (6) Available primary fuel for the unit.
 - (7) Available secondary fuel for the unit.
 - (8) Projected fuel inventory in terms of megawatt hours for the unit.
 - (9) Typical fuel inventory in terms of megawatt hours for the unit.
 - (10) Average amount of fuel per delivery to the unit.
 - (11) Delivery frequency to the unit.
 - (12) Amount of firm gas scheduled for the unit.
 - (13) Total burn hours remaining with unit at maximum capacity.
 - (14) Additional relevant comments.
- (F) Upon request, each electric power producer shall submit to commission staff the calculations and a detailed description of all assumptions made in the reports required under paragraph (E) of this rule.
- (G) In anticipation of an imminent energy emergency or during a declared energy emergency, each electric provider and electric power producer shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.
- (H) The commission's fuel source advisory council may notify and advise the chairman of the commission about electric power supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-19-05 of the Administrative Code.
- (I) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
- (1) An energy emergency may exist with regard to the supply of fuel for electric generation.
 - (2) An energy emergency no longer exists with regard to the supply of fuel for electric generation.

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- (J) When and if it is determined such action is appropriate, the governor may request the secretary of the United States department of energy to invoke appropriate federal laws and regulations.
- (K) 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.
- (L) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.
- (M) The provisions of this rule only apply to entities to the extent of the commission's statutory authority.

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4901:5-21-02 General provisions.

- (A) In anticipation of an imminent energy emergency or during a declared energy emergency, each coal supplier shall be required to answer commission staff's questions, as well as to update its contact information with the commission.
- (B) The commission's fuel source advisory council may notify and advise the chairman of the commission about coal supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-21-03 of the Administrative Code.
- (C) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
- (1) An energy emergency may exist with regard to the supply of coal.
 - (2) An energy emergency no longer exists with regard to the supply of coal.
- (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.
- (E) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-23-02 General provisions.

- (A) Emergency rules to respond to fuel shortages threatening electric generation and consumer power supplies are found in Chapter 4901:5-19 of the Administrative Code. The rules contained in Chapter 4901:5-23 of the Administrative Code cover the availability of coal for use other than electric power generation. The requirements of Chapter 4901:5-23 of the Administrative Code are keyed to the remaining supply of coal.
- (B) The actions required of coal suppliers in Chapter 4901:5-23 of the Administrative Code shall be implemented by the coal suppliers to the extent reasonably possible.
- (C) In anticipation of an imminent energy emergency or during a declared energy emergency, each coal supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.
- (D) The commission's fuel source advisory council may notify and advise the chairman of the commission about coal supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-23-04 of the Administrative Code.
- (E) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
- (1) An energy emergency may exist with regard to the supply of coal.
 - (2) An energy emergency no longer exists with regard to the supply of coal.
- (F) Nothing in this rule shall preclude a coal supplier, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.
- (G) 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.
- (H) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-25-02 General provisions.

- (A) The rules contained in this chapter prescribe requirements to protect priority use. Gas suppliers shall comply with the rules of this chapter and commission orders adopted under this chapter.
- (B) The institutional and regulatory relationship between jurisdictional utilities and the commission remains intact. Except as otherwise provided by this chapter or commission order during an energy emergency, each gas supplier shall comply with all applicable rules and requirements of the commission.
- (C) In order to respond to shortages of gas, each gas supplier with tariffs on file with the commission shall file with the commission its curtailment plan which specifies the order of curtailments for all gas sales and transportation service to its consumers, and the interconnections and related capacities with other gas suppliers. Curtailment plans shall be established so as not to discriminate among consumers based upon the supplier of commodity. The plan shall consider curtailment options from both supply and capacity shortage scenarios. Gas suppliers shall also include, as part of their curtailment planning, a program of voluntary curtailment arrangements with consumers.
- (D) Each curtailment plan shall be filed in the gas supplier's existing tariff filing docket or other docket, as designated by the commission. Each year after the initial filing, each gas supplier shall file, on or before September first, any revisions it is proposing to make to its curtailment plan. If no revisions are to be made, a statement to that effect shall be filed.
- (E) In anticipation of an imminent energy emergency, or during a declared energy emergency, each gas supplier shall submit periodic reports, as required by the commission, regarding its pipeline supply entitlement, pipeline supply draw, amount of gas in storage, storage withdrawal, other interstate deliveries, estimates of Ohio-produced gas deliveries, estimated gas sendout, and other information which may be required by the commission to administer this chapter.
- (F) Each gas supplier may disconnect service, through the use of qualified supplier employees or qualified contractors acting on the supplier's behalf, to nonpriority use consumers who fail immediately to disconnect or curtail consumption after notification by the gas supplier pursuant to this chapter.
- (G) In anticipation of an imminent energy emergency or during a declared energy emergency, each gas supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

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- (H) The commission's fuel source advisory council may notify and advise the chairman of the commission about gas supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-25-05 of the Administrative Code.
- (I) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
- (1) An energy emergency may exist with regard to the supply of gas.
 - (2) An energy emergency no longer exists with regard to the supply of gas.
- (J) 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.
- (K) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-29-02

General provisions.

- (A) Suppliers shall continue their normal operations and distribution of all heating oil and propane product types and volumes reported on monthly forms to the United States department of energy and the commission following a declaration of an energy emergency. Pursuant to all federal and state laws and regulations, suppliers shall assure, to the extent reasonably possible, the provision of such products under their distribution control to ultimate Ohio consumers for priority use and shall reduce, on an equitable basis, provision of such products under their distribution to consumers for nonpriority use.
- (B) Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set-aside system, or dictates supplier/purchaser relationships, any of which are in conflict with these rules. In the case of conflict, the federal regulations supersede all conflicting rules in this chapter.
- (C) During an energy emergency, in the exceptional circumstance in which a supplier is unable to meet fully its consumers' priority use requirements for the current calendar month from volumes available, the commission may provide assistance in obtaining adequate product for priority use for the balance of the current month. Each supplier that has an inadequate supply of product for its consumers' priority use requirements for the current calendar month shall notify the commission of the number, names, product type, and volume required for priority use consumers beyond the capability of the supplier.
- (D) During an energy emergency, the commission may accept requests for such assistance for relief of verifiable consumer hardship or extraordinary conditions. Such requests may be accepted by the commission from suppliers that would supply the affected consumer. All requests shall be submitted in a manner and form prescribed by the commission and shall comply with any applicable federal and state laws, regulations, or guidelines.
- (E) During an energy emergency, the commission may establish a toll-free telephone number for consumers in this state to request state assistance for relief from verifiable emergency or hardship conditions.
- (F) During an energy emergency, the commission may designate, as priority use, the volume of such product necessary to relieve emergency or hardship conditions found to be extant and may request the consumer's supplier to deliver such product volume to the consumer, provided the consumer offers fair compensation.
- (G) During an energy emergency, if the commission finds that a supplier has insufficient product to provide for all consumers' priority use requirements in the current month and/or is unable to provide product for consumers who, facing emergency or

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hardship conditions, have had priority usage designation by the commission, the commission may request another supplier to provide product.

(H) During an energy emergency, each supplier that has a surplus supply of product for its consumers' priority use requirements for the current calendar month is expected to assure, to the extent reasonably possible, provision of product to consumers that are not its customers for their priority use requirements for the balance of the current month, provided:

(1) Fair compensation is offered by the new priority use consumers.

(2) The new priority use consumers can substantiate their priority use requirements.

(3) No threat to the life, property, health, or safety of the supplier's customers would result.

(I) In anticipation of an imminent energy emergency or during a declared energy emergency, each heating oil and propane supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

(J) The commission's fuel source advisory council may notify and advise the chairman of the commission about heating oil and propane supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-29-04 of the Administrative Code.

(K) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:

(1) An energy emergency may exist with regard to the supply of heating oil or propane.

(2) An energy emergency no longer exists with regard to the supply of heating oil or propane.

(L) 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.

(M) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-33-02 **General provisions.**

~~(A)~~ The "fuel source advisory council" appointed by the commission shall notify and advise the chairman about transportation fuel supply problems and shortages and make recommendations, including the need for the governor to declare an emergency and for implementing Chapter 4901:5-33 of the Administrative Code.

~~(B)~~ The chairman shall notify the governor when, based on the information available to him, he believes that the current and foreseeable shortage of transportation fuels could constitute a threat to life, property, public health, safety, or welfare.

~~(C)~~(A) The requirements of Chapter 4901:5-33 of the Administrative Code are keyed to the remaining supply of transportation fuels for priority uses. The commission expects suppliers to take all prudent measures prior to reaching the stages of action under Chapter 4901:5-33 of the Administrative Code. Once the stages of action are reached, all suppliers shall initiate and continue implementation of required actions until directed to do otherwise.

~~(D)~~(B) Suppliers shall continue normal operations and distribution of all transportation fuel types and volumes reported on monthly forms submitted to the United States department of energy and the commission, following a declaration of an energy emergency. Pursuant to all federal and state laws and regulations, suppliers shall assure, to the extent reasonably possible, the provision of such products under their distribution control to ultimate Ohio ~~customers~~ consumers for priority uses ~~use~~ and shall reduce ~~accordingly~~, on an equitable basis, the provision of such products under their distribution control to their reseller customers and/or ~~end-user customers to~~ consumers for nonpriority uses ~~on an equitable basis~~ use.

(C) Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set-aside system or dictates supplier/purchaser relationships, any of which are in conflict with these rules. In the case of conflict the federal regulations supersede all conflicting rules in this chapter.

~~(E)~~(D) In During an energy emergency, in the exceptional circumstance in which a supplier is unable to meet fully his ~~customers'~~ its consumers' priority use requirements for the current calendar month from volumes available to it, the commission may provide assistance in obtaining adequate product for priority ~~uses~~ use for the balance of the current month. Each supplier ~~who~~ that has an inadequate supply of product for its ~~customers'~~ consumers' priority use requirements for the current calendar month shall notify the commission of the number, names, product type and volume required for priority use ~~customers~~ consumers beyond the capability of the supplier.

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~~(F)~~(E) ~~The~~ During an energy emergency, the commission may accept requests for such assistance for relief of verifiable ~~end-user emergency consumer hardship or extraordinary conditions.~~ Such requests may be accepted by the commission from suppliers who would supply the affected ~~end-user~~ consumer or from the consumer. All requests shall be submitted in a manner and ~~from form~~ prescribed by the commission and shall comply with any applicable federal and state laws, regulations, and guidelines.

~~(G)~~(F) ~~The~~ During an energy emergency, the commission may establish a toll-free telephone number for ~~end-users~~ consumers in this state to request such assistance for relief from verifiable emergency or hardship conditions.

~~(H)~~(G) ~~The~~ During an energy emergency, the commission may designate as "priority use" the volume of such product necessary to relieve ~~end-user consumer emergency or hardship conditions~~ found to be extant and may request the ~~end-user's~~ consumer's supplier to provide such product volume to the ~~end-user~~ consumer, provided the ~~end user~~ consumer offers fair compensation.

~~(I)~~(H) ~~If~~ During an energy emergency, if the commission finds that a supplier has insufficient product to provide for all ~~customers'~~ consumers' priority use requirements in the current month and/or is unable to provide product for ~~customers~~ consumers who, facing emergency or hardship conditions, have had priority usage designation by the commission, the commission may request another supplier to provide product.

~~(J)~~(I) ~~Each~~ During an energy emergency, each supplier ~~which that~~ has a surplus supply of product for its ~~customers'~~ consumers' priority use requirements for the current calendar month shall honor, to the extent reasonably possible, requests by the commission to provide product to ~~customers~~ consumers that are not its customers for their priority use requirements for the balance of the current month, provided all of the following standards are met:

- (1) Fair compensation is offered by the new priority use ~~customer~~ consumers.
- (2) The new priority use ~~customer~~ consumers can substantiate his ~~their~~ priority use requirements; ~~and~~.
- (3) No threat to the life, property, health, or safety of the supplier's ~~normal~~ customers would result.

~~(K)~~(J) ~~Compliance with the rules in this chapter is mandatory upon all affected persons unless the federal government imposes allocation regulations, enacts federal regulations establishing a state set aside system or dictates supplier/purchaser relationships which are in conflict with these rules. In the case of conflict the federal regulations supersede all conflicting rules in this chapter.~~ In anticipation of an imminent energy emergency or during a declared energy emergency, each

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transportation fuel supplier shall be required to answer commission staff's questions, as well as to update its company's contact information with the commission.

(K) The commission's fuel source advisory council may notify and advise the chairman of the commission about transportation fuel supply problems and shortages and may make recommendations, including the need for the governor to declare an energy emergency and to implement rule 4901:5-33-04 of the Administrative Code.

(L) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that ~~the current and foreseeable shortage of transportation fuels no longer constitutes a threat to life, property, public health, safety, or welfare.~~ either of the following conditions exists:

(1) An energy emergency may exist with regard to the supply of transportation fuel.

(2) An energy emergency no longer exists with regard to the supply of transportation fuel.

(M) 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.

(N) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-35-02 **General provisions.**

A state set-aside program (SSA) may be established for ~~products governed by Chapters 4901:5-29 and 4901:5-33 of the Administrative Code~~ heating oil, propane, and transportation fuel, for the purpose of providing relief to ~~Ohio end users~~ consumers experiencing an energy emergency. In such event, the following shall apply:

- (A) Authority shall be delegated to the commission by order of the governor to administer the SSA program. The SSA program shall be utilized by the commission to meet emergency requirements of all ~~users~~ consumers and customers within the state from SSA ~~program~~ volumes, including state and local government ~~end users~~ consumers and customers. To facilitate relief of emergency requirements of ~~end users~~ consumers and customers, the commission may direct that a secondary supplier be supplied from SSA ~~of amounts set aside by another primary or secondary supplier pursuant to the program~~, in order that the secondary supplier can supply the ~~end users~~ consumers and customers experiencing an emergency.
- (B) Primary and secondary suppliers shall inform the commission, in accordance with paragraph ~~(G)~~ ~~(A)~~ (7) of rule 4901:5-29-04 and paragraph ~~(H)~~ ~~(A)~~ (8) of rule 4901:5-33-04 of the Administrative Code, of the product subject to SSA ~~the program~~ and of the estimated volume of each product to be sold into the state for consumption within the state.
- (C) The governor, after consultation with the chairman of the commission, shall determine the SSA ~~program~~ percentage level, not to exceed five percent, for each product subject to SSA ~~the program~~.
- (D) The SSA ~~set-aside~~ volume available to the commission for a particular month pursuant to the program shall be calculated by multiplying the ~~SSA program~~ percentage level by each primary and secondary supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the state.
- (E) The SSA ~~set-aside volume~~ for a particular month can be accumulated or deferred; ~~it~~. That set-aside volume shall be made available to the commission from stocks of primary and secondary suppliers ~~whether~~, either directly or through their suppliers.
- (F) The commission may authorize allocations from SSA ~~the program~~ during this period for "emergency" needs only.
- (G) Each primary and secondary supplier shall meet the full priority ~~end user~~ consumer product requirements ~~of customers~~ from available volumes. Each supplier shall reduce deliveries for nonpriority use to ~~customers~~ consumers sufficiently to assure priority use needs are met in full.

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(H) ~~The commission may accept applications for SSA-emergency allocations under the program from the secondary supplier who would supply the affected-end-user consumer. An application submitted by a secondary supplier for an allocation under the program, to supply verifiable consumer emergency needs, shall:~~A

~~An application submitted by a secondary supplier for an SSA product allocation to supply verifiable end-user emergency needs shall contain a statement of certifications, subject to the penalties of division (E) of section 4935.03 of the Revised Code, that:~~

~~(1) All information provided is truthful and accurate; Contain a statement of certifications, subject to the penalties of division (E) of section 4935.03 of the Revised Code, that:~~

~~(a) All information provided is truthful and accurate.~~

~~(2)(b) No product volume granted from the SSA-program will be diverted to uses use other than the alleviation of the emergency use described; in the application;~~

~~(3)(c) The secondary supplier has delivered, or will deliver, one hundred percent of all monthly prime-supply volumes available to it to its end user customers;.~~

~~(2) Identify the consumer's existing primary or secondary supplier or, if the consumer does not have an existing primary or secondary supplier, at least two primary or secondary suppliers (including one primary and one secondary supplier) that the applicant has contacted to provide the allocated product.~~

~~(3) Meet the requirements set forth in rule 4901:5-35-03 of the Administrative Code.~~

(I) The commission will make every effort to assure that ~~end-users~~ consumers with emergency product needs will receive sufficient product. The allocation of product to and the fulfillment of an emergency need shall be considered a priority use.

(J) A secondary supplier requesting an allocation from the ~~SSA-program~~ may be requested to provide to the commission a list of those ~~eustomers~~ consumers for whom product is requested. This list shall identify the volume of each ~~end-use~~ customer's-consumer's request, as well as the type of end-use for which application is made.

(K) All emergency applications for assignment from the ~~SSA-system program~~, and appeals therefrom, shall be filed with and resolved by the commission in accordance with this chapter. Applicants shall identify their existing primary or secondary supplier or, if they do not have an existing primary or secondary supplier, at least two primary or secondary suppliers (including one primary and one secondary supplier) which the applicant has contacted and which could provide the allocated

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~~product.~~—The final decision of the commission regarding an application for assignment due to emergency requirements shall be subject to and governed by Chapter 4903. of the Revised Code.

- (L) If the commission approves an emergency application, it shall assign a supplier and an amount from the SSA-program to the applicant.
- (M) The commission shall issue to an applicant that is granted an assignment a document authorizing such assignment. A copy of the authorized document shall also be provided to the primary or secondary supplier's representative. The authorizing document is effective upon issuance and represents an option on that primary or secondary supplier's SSA-program volumes for the month of issuance, ~~irrespective~~ regardless of the fact that delivery of the product ~~cannot~~ may not be made until the following month. An authorizing document not presented to the primary or secondary supplier within ten days of issuance shall expire after that time.
- (N) The primary or secondary supplier shall provide the assigned amount of the allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from the primary or secondary supplier from which the state set-aside assignment has been made.
- (O) All primary and secondary suppliers shall supply products from their SSA-program volume each month, as directed by the commission, not to exceed the total SSA-program volume for each product for that month. That portion of a primary or secondary supplier's SSA-program volume for a particular month which is not allocated by the commission during that month or which is not subject to an authorizing document issued no later than the last day of that month shall be a part of the primary or secondary supplier's total supply for the subsequent month and shall be distributed according to the allocation procedures set forth in this chapter.
- (P) At any time during the month, the commission may order the release of part or all of a primary or secondary supplier's SSA-program volume through the primary or secondary supplier's normal distribution system in the state.
- (Q) The chairman of the commission shall notify the governor when, based on the information available to him, he believes that either of the following conditions exists:
 - (1) An energy emergency may exist with regard to the supply of heating oil, propane or transportation fuel.
 - (2) An energy emergency no longer exists with regard to the supply or heating oil, propane, or transportation fuel.

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- (R) 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.
- (S) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

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4901:5-37-02 General provisions.

(A) The rules in this chapter are intended to result in electric entities:

(1) Preventing emergencies.

(2) Initiating and performing system restoration for any electric service which suffered an outage due to a critical situation.

(3) Preserving and protecting electric services whose operations continued or were restored during a critical situation.

(B) Each electric entity shall comply with the rules of this chapter and orders of the commission during a critical situation that has adversely affected, or may adversely affect, the operation or reliability of electric service.

(C) Each electric distribution utility shall submit to the commission its curtailment plan and amendments on energy shortages or delivery constraints.

(D) The commission may consult with the independent system operator or regional transmission organization, and may, in addition to the rules of this chapter, adopt orders to require any electric entity to take prescribed actions before an emergency and/or to initiate or to terminate any action during an emergency. The provisions of this paragraph do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.

(E) 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.

(F) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this chapter.

