

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of the Energy)
Shortage Emergency Rules Contained in)
Chapters 4901:5-17, 4901:5-19, 4901:5-21,) Case No. 11-4624-AU-ORD
4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33,)
4901:5-35, and 4901:5-37 of the Ohio)
Administrative Code.)

ENTRY

The Commission finds:

- (1) Section 4935.03, Revised Code, provides that the Commission shall adopt rules defining various types of energy emergency conditions for critical shortages or interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels. These rules may specify appropriate measures to be taken at each level of emergency in order to protect the public health or safety, or prevent unnecessary or avoidable damage to property.
- (2) Section 119.032, Revised Code, 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 rule in Chapter 4901:5-17, Ohio Administrative Code (O.A.C.), addresses the governor's emergency powers. The rules in Chapter 4901:5-19, O.A.C., govern fuel emergencies related to the generation of electricity. The rules in Chapters 4901:5-21 and 4901:5-23, O.A.C., govern coal allotment and other matters affecting coal shortages. The rules in Chapter 4901:5-25, O.A.C., are related to gas emergencies. Heating oil and propane emergencies are governed by Chapter 4901:5-29, O.A.C. Transportation fuel emergencies are covered in Chapter 4901:5-33, O.A.C. Chapters 4901:5-35 and 4901:5-37, O.A.C., address set-asides and emergency reporting.
- (3) Section 119.032(C), Revised Code, requires that the Commission determine:

- (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rules need amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (4) 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.
- (5) In making its review, an agency is also required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules.
- (6) The Commission's staff has evaluated the rules contained in Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37, O.A.C., and recommends amendments to several rules as shown in the attachment to this entry. Specifically, staff recommends numerous nonsubstantive edits, which are designed to fix typographical and grammatical errors, correct a number of cross-references, use gender neutral language, and ensure consistency in common language that is repeated throughout the chapters (*e.g.*, definition of "priority use").

- (7) Staff's proposed changes to rules in Chapters 4901:5-17, 4901:5-19, 4901:5-21, 4901:5-23, 4901:5-25, 4901:5-29, 4901:5-33, 4901:5-35, and 4901:5-37, O.A.C., are posted at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a paper copy of only this entry. All interested persons are directed to download the proposed rules from the above website, or to contact the Commission's Docketing Division to be sent a paper copy.
- (8) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code, and Executive Order 2011-01K. Comments should be filed, either via electronic filing or in hard copy, by September 16, 2011. Reply comments should be filed by October 6, 2011.
- (9) At this time, the Commission is issuing the existing rules in Chapters 4901:5-17 through 4901:5-37, O.A.C., with nonsubstantive edits, in compliance with the five-year review process. However, the Commission notes that, consistent with Section 4935.03, Revised Code, we maintain the authority to adopt or amend rules in order to address other various foreseen types and levels of energy emergency conditions for interruptions in the supply of electric power, natural gas, coal, or individual petroleum fuels. For example, in Case No. 11-277-GE-UNC (11-277),¹ the Commission initiated a review of consumer privacy protection, customer data access, and cyber security issues associated with advanced metering and smart grid programs. By entry issued February 2, 2011, the Commission invited comments on whether we should consider, develop, and adopt rules regarding smart grid related privacy or data access issues. We further indicated that issues pertaining to cyber security would be addressed at a later time. Therefore, 11-277 will afford us the opportunity to consider whether there is a need to amend or adopt rules regarding energy emergency conditions for interruptions resulting from a cyber attack or imminent cyber threat, pursuant to Section 4935.03, Revised Code, or other statutory authority.


¹ *In the Matter of the Review of the Consumer Privacy Protection, Customer Data Access, and Cyber Security Issues Associated with Distribution Utility Advanced Metering and Smart Grid Programs*, Case No. 11-277-GE-UNC, Entry (February 2, 2011).

It is, therefore,

ORDERED, That all interested persons file comments on the proposed rule changes by September 16, 2011, and file any reply comments by October 6, 2011. It is, further,

ORDERED, That a copy of this entry without the attached rules be served upon all regulated electric and natural gas companies; Reliability First Corporation; Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ohio Consumers' Counsel; Ohio Coal Association; Ohio Gas Association; Ohio Rural Electric Cooperatives, Inc.; Ohio Energy Resources Division, Ohio Department of Development; Ohio Electric Utility Institute; Ohio Propane Gas Association; Ohio Petroleum Marketers & Convenience Store Association; Ohio Oil and Gas Association; Ohio Petroleum Council; Ohio Emergency Management Agency; Ohio Homeland Security; Ohio Trucking Association; Ohio Railroad Association; Ohio Telecom Association; Ohio Cable Telecommunications Association; Ohio Manufacturers' Association; Ohio Municipal League; Ohio Environmental Council; Ohio State Bar Association; and the Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo.

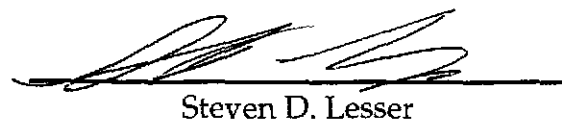
THE PUBLIC UTILITIES COMMISSION OF OHIO



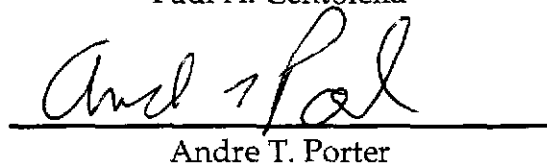
Todd A. Snitchler, Chairman



Paul A. Centolella



Steven D. Lesser



Andre T. Porter

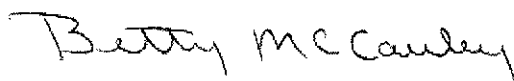


Cheryl L. Roberto

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Entered in the Journal

AUG 17 2011



Betty McCauley
Secretary

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4901:5-17-02 Governor's emergency powers.

For any type or level of energy emergency declared under the provisions of section 4935.03 of the Revised Code, the governor shall have the power to take any of the following actions:

- (A) Restrict the energy consumption of state and local government offices and industrial and commercial establishments.
- (B) Restrict or curtail public or private transportation, or require or encourage the use of car pools or mass transit systems.
- (C) Order any electric light, natural gas or gas, or pipeline company; any supplier subject to certification under section 4928.08 of the Revised Code or section 4929.20 of the Revised Code; electric power or gas utility that is owned by a municipal corporation or not-for-profit; coal producer or supplier; electric power producer or marketer; or petroleum fuel producer, refiner, wholesale distributor, or retail dealer to sell electricity, gas, coal, or petroleum fuel in order to alleviate hardship or, if possible, to acquire or produce emergency supplies to meet emergency needs.
- (D) Order other energy conservation or emergency energy production or distribution measures to be taken in order to alleviate hardship.
- (E) Mobilize emergency management, national guard, law enforcement, or emergency medical services.

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4901:5-19-01 Definitions

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Consumer" means a person who consumes electric energy.
- (C) "Electric power producer" means a person, municipality, or governmental or political subdivision, located in this state and engaged in the business of generating electricity for lighting, heat, or power purposes.
- (D) "Electric provider" means any:
 - (1) Electric distribution utility, as defined in division (A) of section 4928.01 of the Revised Code.
 - (2) Municipal electric utility, as defined in division (A) of section 4928.01 of the Revised Code.
 - (3) Electric cooperative, as defined in division (A) of section 4928.01 of the Revised Code.
 - (4) Electric services company, as defined in division (A) of section 4928.01 of the Revised Code, that is subject to certification under section 4928.08 of the Revised Code.
- (E) "Energy emergency" means:
 - (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of fuel for electric power generation that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

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(2) Such written declaration is in effect and has not been terminated.

(F) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~**chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(G) "Nonpriority use" means all use of electricity other than priority use.

(H) "Normal usage" means electric energy consumption during the comparable period during the previous year, adjusted for weather or other major changes in usage.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

(J) "Priority use" means the minimum amount of electric energy necessary for protection of the public's health and safety, and for ~~the~~ prevention of unnecessary or avoidable damage to:

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).

(2) Hospitals.

(3) Medical and human life-support systems and facilities.

(4) Electric power generating facilities and central heating plants serving the public.

(5) Telephone, radio, television, and newspaper facilities.

(6) Local and suburban transit systems and air terminal facilities.

(7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.

(8) Water supply and pumping facilities.

(9) Sanitary service facilities for collection, treatment, or disposal of community sewage.

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- (10) Production facilities for natural gas, artificial or synthetic gas, propane, and petroleum ~~fuelfuels~~, and ~~for-fuel~~ refineries ~~(including ethanol and other fuel products)~~.
- (11) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels.
- (12) Coal mines and related facilities.
- (13) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
- (14) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other ~~real or personal or real~~ property.
- (15) Such other similar facilities as may be determined by the commission to be a priority use.

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.

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- (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 **commission** staff -a weekly report of electric supply adequacy. Upon request of the ~~chairman~~**chairperson** 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.
 - (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.*

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- (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~~**chairperson** 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~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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.
- (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.

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- (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.

4901:5-19-03 Enforcement on Governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (B) and (E) to (L) of rule 4901:5-19-02 of the Administrative Code and paragraph (A) of rule 4901:5-19-04 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

4901:5-19-04 Actions in anticipation of an imminent energy emergency.

- (A) In anticipation of an imminent energy emergency, the commission may consult with the appropriate independent system operator or regional transmission organization. At such time, the commission may, by order, require that each regulated electric provider:
 - (1) Notify its consumers through reports in the news media, or written notice where appropriate, or, for electric providers who serve fewer than five thousand customers, provide telephonic or electronic notice to each of its customers, about an imminent shortage of electric service and request its consumers to reduce their consumption of electricity and to implement energy conservation measures. These measures shall include, but are not limited to, the following:
 - (a) Curtailing outdoor lighting, except for essential safety and security purposes.
 - (b) Reducing water heating temperatures.

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(c) *Adjusting temperatures for buildings, factories, and transportation facilities.*

(2) Issue periodic reports to notify consumers about the following:

(a) Electric supply levels.

(b) Plans and procedures for transfers, restrictions, curtailments, and reallocations pursuant to its curtailment plan or commission order.

(c) Projected or actual dates when consumers or classes of consumers would be subject to curtailment, reallocation, or restriction.

(3) Implement measures that include:

(a) Fulfilling electric requirements for priority use by its consumers.

(b) Reallocating and/or curtailing supplies among its consumers. Each electric provider that curtails deliveries to consumers that purchase power on an interruptible basis shall curtail electric deliveries pursuant to its curtailment plan and voluntary arrangements with individual consumers. Each electric provider shall, to the extent reasonably feasible, monitor consumer compliance with its curtailments and shall report the level of compliance to the commission, as requested.

(B) Nothing in this rule shall preclude the electric provider, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.

4901:5-19-05 Actions taken upon declaration of an energy emergency.

(A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable:

(1) Each electric provider that has not imposed mandatory curtailments under its emergency curtailment plan shall increase its efforts to effect voluntary conservation, by all consumers, of at least twenty-five per cent of all nonpriority use of electricity.

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(2) Each electric provider shall implement a public appeals campaign through news media to its consumers, making appropriate suggestions for achieving usage reductions. These reductions should include, but not be limited to, the following:

- (a) Reduce outdoor lighting that is not related to safety or security.
- (b) Reduce general interior lighting levels to minimum levels, to the extent this contributes to decreased electricity usage.
- (c) Reduce show window and display lighting to minimum levels to protect property.
- (d) Reduce the number of elevators operating in office buildings during nonpeak hours.
- (e) Reduce electric water heating temperature to minimum level.
- (f) Minimize work schedules for building cleaning and maintenance, restocking, etc., in order to eliminate the necessity for office or commercial and industrial facilities to be open beyond normal working hours.
- (g) Minimize electricity use by maintaining a building temperature of no less than seventy-eight degrees Fahrenheit by operation of cooling equipment and no more than sixty-eight degrees Fahrenheit by operation of heating equipment.
- (h) Encourage, to the extent possible, daytime scheduling of entertainment and recreational facilities.

| (3) Each electric provider **shall**:

| (a) ~~Shall issue~~**Issue** periodic bulletins, informing consumers of:

- (i) The actions which will be required of consumers if it becomes necessary to initiate mandatory curtailment of electric energy, and the procedures to be followed prior to and during the period when electric usage is restricted.

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(ii) The procedures to be followed by consumers wishing to substantiate a claim for priority use, as defined in rule 4901:5-19-01 of the Administrative Code.

(b) ~~Shall provide~~**Provide** to the commission written information concerning its anticipated and actual load in kilowatt-hours consumed, in the form prescribed by the commission. This report shall be submitted weekly or daily, as instructed by the commission.

(4) Each electric power producer **shall**:

(a) ~~Shall issue~~**Issue** periodic bulletins informing consumers of the fuel supply level, at least weekly, upon order of the commission or the governor.

(b) ~~Shall report~~**Report** to the commission estimates of fuel savings resulting from load reduction or other measures as part of the report required by paragraph (E) of rule 4901:5-19-02 of the Administrative Code, relating to electric supply adequacy.

(c) ~~Shall operate~~**Operate** generating plant to optimize fuel usage, upon order of the commission or the governor. The governor or the commission may consult with the appropriate independent system operator or regional transmission organization.

(5) The commission may consult with the appropriate independent system operator or regional transmission organization and may encourage all electric providers to purchase and to share energy among themselves to aid in alleviating existing energy shortages and to prevent even more severe future energy shortages.

(6) All electric providers and electric power producers shall reduce internal consumption of electric energy to the maximum degree possible, consistent with safe, efficient operation. The use of electricity on premises, including parking and large area lighting and interior lighting, shall be curtailed, except lighting essential for security or safety.

(7) When it is determined that such action is appropriate, the governor or the commission may consult with the director of the Ohio environmental protection agency, the appropriate independent system operator or regional transmission organization, and any other oversight agency. At such time, the governor or the commission **may**:

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- (a) ~~May request~~**Request** authorization from the proper authorities to curtail use of pollution control facilities.
- (b) ~~May request~~**Request** authorization from the proper authorities to burn nonconforming coal in order to maximize use of the remaining stockpiles.
- (c) ~~May request~~**Request** industry to utilize industrial-owned generation equipment to supplement utility generation to the maximum extent possible.

(8) The governor may consult with the appropriate independent system operator or regional transmission organization and, if the governor deems it appropriate, may order ~~other~~ electric power producers with greater fuel supplies to increase sales of electric energy.

(B) Mandatory curtailment - stage one. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:

(1) Consumer use of electricity shall be curtailed as follows:

- (a) All nonpriority use of outdoor lighting is prohibited.
- (b) All public, commercial, and industrial buildings shall minimize electricity use by maintaining a building temperature of no less than ~~eighty-five~~**eighty-five** degrees Fahrenheit by cooling equipment and no more than sixty degrees Fahrenheit by the operation of heating equipment, except where health requirements or equipment protection cause such measures to be inappropriate.
- (c) All public, commercial, and industrial buildings shall reduce interior lighting to the minimum levels essential for continued work and operations, to the extent this contributes to decreased use of electric energy.

(2) Each electric power producer **shall**:

- (a) ~~Shall~~**Switch**, wherever possible, ~~switch~~ to an alternate fuel, provided that the following are met:

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- (i) The electric power producer has informed the commission that it will be switching fuels.
 - (ii) The commission has confirmed to the electric power producer that the specific alternate fuels are not themselves in short supply.
 - (iii) The switch complies with all applicable independent system operator or regional transmission organization policies and procedures.
- (b) ~~Shall report~~**Report** to the commission, as part of its report of electric supply adequacy, in addition to the categories described in paragraph (E) of rule 4901:5-19-02 of the Administrative Code, its daily fuel usage burn, energy purchases by source, fuel deliveries, and estimated fuel savings resulting from load reduction or other measures.
- (3) Each electric provider shall report to the commission its anticipated and actual load in kilowatt-hours consumed, in the form prescribed by the commission. This report shall be submitted daily or weekly, as instructed by the commission.
- (4) The commission **may**:
- (a) ~~May monitor~~**Monitor** and verify each Ohio electric power producer's fuel supply, burn day level, and energy purchases on a daily basis.
 - (b) ~~May assure~~**Assure** that each electric power producer considers all possible fuels for generation.
 - (c) ~~May take~~**Take** other actions it considers to be reasonable and appropriate.
- (5) The Ohio emergency management agency may be requested to:
- (a) Establish and maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.
 - (b) Plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, fuel for electric generation, where life, property, **public** health, or safety ~~are~~**is** threatened.

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(c) Establish and maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.

(C) Mandatory curtailment - stage two. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions ~~will~~**shall** be applicable in addition to the provisions set forth in paragraph (B) of this rule:

(1) All consumers shall discontinue nonpriority use of electricity on two days of each week. Consumers shall not increase nonpriority ~~uses~~**use** above mandatory stage one levels during other days of the week. Consumers may, in the alternative, elect to reduce total electricity consumption by twenty-five per cent below normal usage. Consumers choosing the alternate option must keep records sufficient to document the reduction.

(2) Each electric provider shall inform consumers of the days ~~that on~~ **when** nonpriority use shall be discontinued.

(D) Mandatory curtailment - stage three. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, the following provisions ~~will~~**shall** be applicable in addition to the provisions set forth in paragraph (C) of this rule:

(1) ~~All Consumers~~**consumers** shall discontinue nonpriority use of electricity on three days of each week. Consumers shall not increase nonpriority use above mandatory stage two levels during other days of the week. Consumers may, in the alternative, elect to reduce total electricity consumption by fifty per cent below normal usage. Consumers choosing the alternate option must keep records sufficient to document the reduction.

(2) Each electric provider shall inform consumers of the days ~~when on~~ **when** nonpriority use shall be discontinued.

(E) Mandatory curtailment - stage four. During an energy emergency, the governor or the commission may consult with the appropriate independent system operator or regional transmission organization. At such time as the governor or the commission determines that it is appropriate, all consumers shall discontinue all

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nonpriority use of electricity on all days of each week. All previous measures shall be continued except as amended by this paragraph.

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4901:5-21-01 Definitions

As used in this chapter:

- (A) "Coal supplier" means all prime coal suppliers, wholesale purchaser resellers, and other persons who sell or resell coal to consumers.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Consumer" means a person who consumes coal at a specified location.
- (D) "Energy emergency" means:
 - (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of coal that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
 - (2) Such written declaration is in effect and has not been terminated.
- (E) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~**chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.
- (F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.
- (G) "Nonpriority use" means all use of coal other than priority use.
- (H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

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(I) "Priority use" means the minimum amount of coal necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to:

- (1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).
- (2) Hospitals.
- (3) Medical and human life-support systems and facilities.
- (4) Electric power generating facilities and central heating plants serving the public.
- (5) Telephone, radio, television, and newspaper facilities.
- (6) Local and suburban transit ~~systems~~**systems** and air terminal facilities.
- (7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.
- (8) Water supply and pumping facilities.
- (9) Sanitary service facilities for collection, treatment, or disposal of community sewage.
- (10) Production facilities ~~and refineries~~ for natural gas, artificial or synthetic gas, propane, and petroleum ~~fuel~~**fuels, and fuel refineries**.
- (11) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels.
- (12) Coal mines and related facilities.
- (13) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
- (14) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other real or personal property.

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- (15) Such other similar facilities as may be determined by the commission to be a priority use.

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 **company's** contact information with the commission.
- (B) The commission's fuel source advisory council may notify and advise the ~~chairman~~**chairperson** 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~~4~~ of the Administrative Code.
- (C) The ~~chairman~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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.

4901:5-21-03 Enforcement on Governor's instruction

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than rule 4901:5-21-02 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and

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enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.

- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

4901:5-21-04 Actions taken upon declaration of an energy emergency.

- (A) Each coal supplier is expected to:
- (1) ~~To reduce~~**Reduce**, on an equitable basis, the provision of coal to its consumers for nonpriority use.
 - (2) ~~To assure~~**Assure**, to the extent reasonably possible, that all of its consumers practice conservation and restrict their nonessential or ~~wasteful~~**inefficient** use of coal.
- (B) Each coal supplier that has a surplus supply of coal for its consumers' priority use requirements for the foreseeable future is expected to assure, to the extent reasonably possible, provision of coal to its normal consumers for their priority use requirements for the subsequent thirty-day period, provided:
- (1) Fair compensation is proffered by any new priority use consumers.
 - (2) Any new priority use consumers can substantiate their priority ~~usage~~**use** requirements.
 - (3) No threat to the life, property, health, or safety of the coal ~~suppliers'~~**supplier's** existing consumers would result.
- (C) Each coal supplier that has an inadequate supply of coal for its consumers' priority use requirements for the subsequent thirty-day period is expected to notify the commission of the number, names, and coal type and tonnage required for priority use consumers beyond the capability of the supplier.
- (D) The commission may provide assistance in locating a supply for consumers with inadequate coal for priority use. The commission may accept requests for such assistance for relief of verifiable consumer hardship and emergency conditions. Such requests may be accepted by the commission from either the affected

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consumer or the coal supplier that would supply the affected consumer. All requests shall be in a manner and form prescribed by the commission and shall comply with any applicable federal laws, regulations, or guidelines.

- (E) 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) The commission may designate, as priority use, the volume of coal 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) If the commission finds that a supplier has insufficient supply of coal 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 hardship conditions, have had priority ~~usage~~^{use} designation by the commission, the commission may request another supplier to provide product.
- (H) Each supplier shall encourage all of its consumers to practice coal conservation and to restrict their nonessential or ~~wasteful~~^{inefficient} use of coal.

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4901:5-23-01 Definitions.

As used in this chapter:

- | (A) "Coal supplier" means all prime coal suppliers, ~~wholesaler~~ **wholesale** purchaser resellers, and other persons who sell or resell coal to consumers.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Consumer" means a person who consumes coal at a specified location.
- (D) "Energy emergency" means:
 - (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of coal that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
 - (2) Such written declaration is in effect and has not been terminated.
- | (E) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~ **chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.
- (F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.
- (G) "Nonpriority use" means all use of coal other than priority use.
- (H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.
- | (I) "Priority use" –means the minimum amount of coal necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to:
 - (1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).

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- (2) Hospitals.
- (3) Medical and human life-support systems and facilities.
- (4) Electric power generating facilities and central heating plants serving the public.
- (5) Telephone, radio, television, and newspaper facilities.
- (6) Local and suburban transit systems and air terminal facilities.
- (7) Police and –firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.
- (8) Water supply and pumping facilities.
- (9) Sanitary service facilities for collection, treatment, or disposal of community sewage.
- (10) Production facilities ~~and refineries~~ for natural gas, artificial or synthetic gas, propane, and petroleum fuels, **and fuel refineries**.
- (11) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum ~~fuelfuels, and for fuel refineries (including ethanol and other fuel products~~.
- (12) Coal mines and related facilities.
- (13) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
- (14) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other real or personal property.
- (15) Such other similar facilities as may be determined by the commission **to be a priority use**.

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- (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~~**chairperson** 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~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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.

4901:5-23-03 Enforcement on Governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (B) to (H) of rule 4901:5-23-02 of the Administrative Code, until the

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governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.

- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

4901:5-23-04 Actions taken upon declaration of an energy emergency.

- (A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable.

(1) Each coal supplier **shall**:

- (a) ~~Shall contact~~**Contact** its consumers and alert them to the declaration of an energy emergency and impending shortage of coal.
- (b) ~~Shall appeal~~**Appeal** to its consumers to reduce their consumption of coal on a voluntary basis. The appeals shall, where appropriate, include suggestions for achieving such reductions by all coal consumers.
- (c) ~~Shall notify~~**Notify** any of its consumers for whom its forecasted coal supplies are inadequate for the foreseeable future.
- (d) ~~Shall provide~~**Provide** its consumers information regarding:
 - (i) Actions that the coal supplier will take to allocate the available coal supply.
 - (ii) The time period(s) during which any consumers or class of consumers is expected to be subject to curtailment, allocation, or other restriction of coal supply.
 - (iii) Procedures to be followed by consumers wishing to substantiate a claim for priority use.

(2) Each coal supplier maintaining stocks of coal **shall**:

- (a) ~~Shall report~~**Report** to the commission information that the commission determines necessary to manage the energy emergency.
- (b) ~~Shall make~~**Make** an oral report to the commission by telephone, at least twice weekly, at such time as it has an inadequate supply of coal for the foreseeable

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future. This report shall reflect the situation for the reporting supplier as of the previous day. Telephonic reports shall be made as prescribed by the commission.

(3) The commission **may**:

- (a) ~~May calculate~~**Calculate** the remaining coal supply for priority use, other than electric power generation, in a reasonable manner.
- (b) ~~May provide~~**Provide** information to suppliers and consumers regarding appropriate coal conservation measures.
- (c) ~~May provide~~**Provide** public service announcements on television or other media regarding the declaration of an energy emergency and the impending shortage of coal.
- (d) ~~May take~~**Take** other actions it considers to be reasonable and appropriate.

(B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:

(1) Each coal supplier shall be prohibited from selling directly to consumers, or selling for resale, for use other than priority use.

(2) The commission **may**:

- (a) ~~May monitor~~**Monitor** each coal supplier's stock and the supply available for priority use.
- (b) ~~May determine~~**Determine** the average number of days of coal supply remaining for each type of priority use.
- (c) ~~May identify~~**Identify** suppliers with surplus volumes of coal in excess of their priority use consumers' requirements.
- (d) ~~May provide~~**Provide** direct assistance in obtaining coal supply for consumers with inadequate coal for priority use.
- (e) ~~May take~~**Take** other actions it considers to be reasonable and appropriate.

(3) Suppliers may be directed by the commission to sell coal to consumers that are not its customers for priority use required to alleviate such consumers' hardship or extraordinary need.

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(4) The Ohio emergency management agency may be requested to:

- (a) ~~To establish~~**Establish** and ~~to maintain~~ a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.
- (b) ~~To plan~~**Plan** the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, coal to designated priority use consumers, where life, property, **public** health, or safety ~~are~~**is** threatened.
- (c) ~~To establish~~**Establish** and ~~to maintain~~ communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.

(C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (B) of this rule:

- (1) All use of coal other than priority use shall be prohibited in five days.
- (2) Each coal consumer of more than ten thousand tons per annum, other than electric generating companies, shall report to the commission within five days the number of tons and type of coal stockpiled and any priority use for which this coal is required.

(D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (C) of this rule:

- (1) No consumer shall use coal for other than priority use.
- (2) Each coal supplier with forecasted coal stocks in excess of its consumers' priority use requirements for the foreseeable future shall inform the commission of the volume of coal available for assigned priority use consumers.
- (3) The commission may be requested to accept applications from persons requiring coal for priority use and whose supplier is unable to oblige. Such applications shall be in a form and manner to be prescribed by the commission or its designee.
- (4) The commission shall be responsible for approval or denial of all applications for emergency priority use coal allocations. Upon approval of an application, the commission **may**:

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- | (a) ~~May authorize~~**Authorize**, by pre-approved procedure, the release of an appropriate amount of coal from a state stockpile and order delivery by state vehicle to the applicant consumer, who will be billed at cost by the state for coal received.
- | (b) ~~May assign~~**Assign** the consumer, as a temporary priority use consumer, to an appropriate coal supplier and order the supplier to provide delivery.

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4901:5-25-01 Definitions.

As used in this chapter:

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "Consumer" means any person purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas at a specified location, including industrial, commercial, and residential consumers, but not including gas suppliers.
- (C) "Customer" means a person legally responsible to pay for gas or gas delivery services.
- (D) "Energy emergency" means:
 - (1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to the supply of gas that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.
 - (2) Such written declaration is in effect and has not been terminated.
- (E) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~**chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.
- (F) "Gas" means natural gas, artificial or synthetic gas, or a mixture of those gases, liquefied natural gas, and petroleum gas.
- (G) "Gas supplier" means:
 - (1) A retail natural gas supplier as defined in section 4929.01 of the Revised Code.
 - (2) A pipeline company, as defined in section 4905.03 of the Revised Code, when engaged in the business of ~~transporting~~**transporting** gas by pipeline.
 - (3) A governmental aggregator as defined in section 4929.01 of the Revised Code.

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(4) A gas or natural gas company that is owned or operated by a municipal corporation.

(5) A cooperative gas or natural gas company, as described in division (A)(B) of section 4905.02 of the Revised Code.

(6) A company in the business of delivering gas to end use consumers, including municipal gas companies and cooperative gas companies.

(H) "Nonpriority use" means all use of gas other than priority use.

(I) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

(J) "Priority use" means the minimum amount of gas necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to:

(1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).

(2) Hospitals.

(3) Medical and human life-support systems and facilities.

(4) Electric ~~generation and central heat production, as well as electric~~ power generating facilities and central heating plants serving the public.

(5) Telephone, radio, television, and newspaper facilities.

(6) Local and suburban transit systems and air terminal facilities.

(7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.

(8) Sanitary service facilities for collection, treatment, or disposal of community sewage.

(9) Production facilities for gas, propane, and petroleum fuels, and ~~for~~ fuel refineries.

(10) Pipeline transmission and distribution facilities for gas, propane, and petroleum fuels.

(11) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.

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(12) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other real or personal ~~or real~~ property.

(13) Water supply and pumping facilities.

(14) Coal mines and related facilities.

(15) Such other similar facilities as may be determined by the commission to be a priority use.

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~~that 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~~that may be required by the commission to administer this chapter.

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- (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.
- (H) The commission's fuel source advisory council may notify and advise the ~~chairman~~**chairperson** 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~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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.

4901:5-25-03 Enforcement on governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (A) to (E) and (G) to (K) of rule 4901:5-25-02 of the Administrative Code and all of rule 4901:5-25-04 of ~~the~~ Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

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4901:5-25-04 Actions in anticipation of an imminent energy emergency.

(A) In anticipation of an imminent energy emergency, the commission may, by order, require that each regulated gas supplier:

(1) Notify its consumers through reports in the news media, or written notice where appropriate, about an imminent shortage of gas or interruption of gas service and request its consumers to reduce their consumption of gas and to implement energy conservation measures. These measures shall include, but are not limited to, the following:

(a) Curtailing outdoor gas lighting, except for essential safety and security purposes.

(b) Reducing gas water heating temperatures.

(c) Reducing space heating temperatures for buildings, factories, and transportation facilities.

(2) Issue periodic reports to notify consumers about the following:

(a) Gas supply levels.

(b) Plans and procedures for gas transfers, restrictions, curtailments, and reallocations pursuant to the gas supplier's curtailment plan or commission order.

(c) Projected or actual dates when consumers or classes of consumers would be subject to curtailment, reallocation, or restriction.

(3) Implement gas supply measures that include:

(a) Fulfilling gas requirements for priority use by its consumers.

(b) Transferring gas supplies to other gas suppliers to fulfill priority use requirements of consumers of the recipient gas suppliers.

(c) Reallocating and/or curtailing gas supplies among its consumers. Each gas supplier that curtails deliveries of sales and/or transportation gas to consumers who obtain gas on an interruptible basis shall curtail gas deliveries pursuant to its curtailment plan and voluntary arrangements with individual consumers. Each gas supplier shall, to the extent reasonably feasible, monitor consumer compliance with its curtailments of gas, and shall report the level of compliance to the commission periodically, as requested.

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- (B) Nothing in this rule shall preclude a gas supplier, after notification to the commission, from initiating its curtailment plans prior to commission directive, in order to meet operational needs.
- (C) Actions ordered by the commission pursuant to this rule shall supersede filed curtailment plans to the extent there is a conflict.

4901:5-25-05 Actions taken upon declaration of energy emergency.

- (A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, the following provisions shall be applicable:

(1) Each gas supplier included within paragraphs (G)(3)(4) to (G)(6) of rule 4901:5-25-01 of the Administrative Code:

- (a) Shall contact its consumers and alert them to the declaration of an energy emergency and impending shortage of gas.
- (b) Shall appeal to its consumers to reduce their consumption of gas on a voluntary basis. The appeals shall, where appropriate, include suggestions for achieving such reductions by all gas consumers.
- (c) May initiate service restrictions, as set forth in rule 4901:5-25-06 of the Administrative Code.
- (d) Shall provide its consumers information regarding:
 - (i) Actions the gas supplier will take to allocate the available gas supply.
 - (ii) The time period(s) during which any consumer or class of consumers is expected to be subject to curtailment, allocation, or other restriction of gas supply.
 - (iii) Procedures to be followed by consumers wishing to substantiate a claim for priority use.
- (e) Shall report to the commission information that the commission determines necessary to manage the energy emergency.

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- (f) Shall make an oral report to the commission by telephone, twice weekly, at such time as it has an inadequate supply of gas for the foreseeable future. This report shall reflect the situation for the reporting supplier as of the previous day. Telephonic reports shall be made as prescribed by the commission.

(2) The commission **may**:

- (a) ~~May, in a reasonable manner, calculate~~**Calculate** the remaining gas supply for priority use in a reasonable manner.
- (b) ~~May provide~~**Provide** information to suppliers and consumers regarding appropriate gas conservation measures.
- (c) ~~May provide~~**Provide** public service announcements on television or other media, regarding the declaration of an energy emergency and the impending shortage of gas.
- (d) ~~May, by order, require~~**Require, by order**, any gas supplier to:
 - (i) Reallocate and/or curtail gas supplies among its consumers.
 - (ii) Fulfill gas priority use requirements for its consumers.
 - (iii) Transfer gas supplies to other gas suppliers to fulfill gas priority use requirements of consumers of the recipient gas suppliers.
 - (iv) Monitor consumer compliance with mandatory emergency actions.

(B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (A) of this rule:

- (1) All outdoor gas lighting, except for essential safety and security purposes, shall be prohibited.
- (2) All interruptible gas service shall be curtailed.
- (3) Gas usage for space heating purposes shall be restricted to maintaining temperatures within all:
 - (a) Public and private elementary and secondary schools, colleges, universities, vocational schools, government buildings, factories, and industrial buildings **to no higher than sixty-five degrees Fahrenheit during business hours and to no higher than fifty-five degrees Fahrenheit during nonbusiness hours.**

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(b) Buildings and facilities not included in paragraph (B)(3)(a) of this rule to no higher than the minimum temperatures required to protect health, safety, or welfare.

(4) The Ohio emergency management agency may be requested to:

(a) Establish and maintain a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.

(b) Plan the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, gas to designated priority consumers, where life, property, **public** health, or safety ~~are~~is threatened.

(c) Establish and maintain communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.

(5) The commission may take other actions it considers to be reasonable and appropriate.

(C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (B) of this rule:

(1) All firm gas service to any consumer in excess of fifty thousand cubic feet per day shall be curtailed, except for service for any priority use.

(2) Gas usage for space heating purposes shall be restricted to maintaining temperatures within all:

(a) Retail stores and transportation facilities to no higher than sixty degrees Fahrenheit during business hours and to no higher than fifty-five degrees Fahrenheit during nonbusiness hours.

(b) **Buildings and Facilities** facilities not included in paragraphs (B)(3)(a) and (C)(2)(a) of this rule to no higher than sixty-five degrees Fahrenheit during business hours and to no higher than the minimum temperatures required to protect health, safety, or welfare during nonbusiness hours.

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(D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall be applicable in addition to the provisions set forth in paragraph (C) of this rule:

(1) All firm gas service shall be curtailed, except for service for any ~~gas~~-priority use.

(2) Gas usage for space heating purposes shall be restricted as follows:

(a) Temperatures within all residences, hospitals, medical and human life-support systems, blood banks, and outpatient health facilities shall be maintained at no higher than sixty-five degrees Fahrenheit from six a.m. to eleven p.m. and no higher than fifty-five degrees Fahrenheit at other times, except where necessary to protect health, safety, or welfare.

(b) Residential hot water heaters shall be set at no higher than low or medium settings, except where necessary to protect health, safety, or welfare.

(E) Mandatory curtailment - stage four. If the commission or the governor determines that the provisions of paragraph (D) of this rule do not adequately protect priority use or the public health, safety, or welfare, the commission, by order, may further curtail or restrict gas supply and usage.

4901:5-25-06 Service restrictions.

(A) During an energy emergency, each gas supplier, unless otherwise ordered by the commission, may:

(1) Suspend promotional activities to acquire new gas consumers through advertising and mass media, bill inserts or other direct mailings to consumers and telephone calls to obtain or arrange "conversions" to gas space heating or to sell or promote gas appliances. This ~~prohibition~~suspension does not apply to:

(a) Service calls to repair existing gas equipment.

(b) Recommendations and information relating to the replacement of existing gas equipment.

(c) Counseling consumers about heating efficiency and safety measures for existing gas equipment.

(d) Direct contact with existing or potential consumers to promote the installation of dual-fuel equipment.

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- (e) Responses to consumer-initiated inquiries.
- (2) Refuse new service to applicants unless the gas supplier receives approval from the commission of a non-discriminatory limited growth policy. Such policy should be based on actual gas supplies available to the gas supplier and its ability to meet the needs of its existing consumers. Preference should be given to the addition of priority use loads before adding other types of loads.
- (3) Prohibit consumers from increasing consumption of gas above the normal usage of presently installed equipment.
- (4) Prohibit consumers from installing equipment that would increase gas consumption.
- (5) Require consumers to verify that installing replacement equipment would not increase fuel burning capacity.
- (B) The following plan shall be followed to restore or commence service to residential and small commercial premises during an energy emergency while new service restrictions are in effect:
 - (1) The following residential and small commercial locations are ineligible for restoration or commencement of gas service:
 - (a) Any existing structure:
 - (i) Which has never received gas service.
 - (ii) With regard to which service has been transferred to a different location, unless gas service is transferred to that existing structure from another location.
 - (b) Any vacant site:
 - (i) Which has not received gas service within the last five years.
 - (ii) With regard to which gas service has been transferred to a different location, unless gas service has been transferred to the vacant site from another location within the last five years.
 - (2) Gas service for eligible, currently unserved residential and small commercial premises may be restored provided that both of the following provisions are met:

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- (a) The consumption pattern must be similar to the consumption pattern of the premises during the last five-year period that the premises was receiving gas service and the volume consumed must not exceed the largest volume consumed at that premises during the last five-year period during which the premises received gas service. If the gas supplier does not have records covering the entire preceding five-year period, then it may, for purposes of this paragraph, use data from the period for which such information is readily available.
- (b) The customer shall reimburse the gas supplier for all direct costs to commence service at such premises.
- (3) The owner of premises may submit a written application to the gas supplier to transfer gas to new or currently unserved premises that are owned by the applicant. The applicant shall demonstrate qualification for the exclusion. Such an application may be approved provided that:
 - (a) The applicant demonstrates that:
 - (i) The conditions set forth in paragraph (B)(2) of this rule are satisfied.
 - (ii) All gas burning equipment and all visible piping have been removed by the applicant from the premises from which gas service is to be transferred.
 - (iii) An onsite inspection has been conducted by the gas supplier to verify that the conditions set forth in paragraph (B)(3) of this rule have been met.
 - (b) If gas is transferred to new or currently unserved premises, an application for service at the site of the premises from which service was transferred will be treated as an application for new service under this plan, unless gas service ~~is~~ was transferred to those premises from another location within the preceding five years.
 - (c) No gas service shall be transferred from premises located within a geographical area designated as "inner city" or "impacted area" by a municipal corporation to a new or currently unserved premises outside this "inner city" or "impacted area." The gas supplier shall request the municipal corporation it serves to file with the utility a written document indicating the geographical limits of the areas the municipality defines as "inner city" or "impacted area." The gas supplier shall file copies of these documents with the commission.

Any disputes concerning the designation of an "inner city" or an "impacted area" will be resolved by the commission after reviewing the locations of existing urban renewal projects, and the criteria set forth in the definitions of a "blighted area" and a "slum area" contained in section 725.01 of the Revised Code.

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- (4) In computing the five-year period referred to in this rule, the gas supplier shall exclude:
- (a) Any period of time during which the property was subject to probate proceedings under Title 21 of the Revised Code.
 - (b) Any period of time during which the property was held by any governmental entity, whether federal, state, municipal, township, or county, or any agency or division thereof.
- (5) If residential or small commercial consumers are curtailed pursuant to a curtailment plan, then the volume allocated upon restoration of service shall be limited according to the curtailment plan rather than paragraph (B)(2)(a) of this rule.
- (6) For each gas supplier, the definition of small commercial consumer shall be as set forth in previous orders authorizing curtailment or restrictions on new service. If no such definition has been approved, the following definition shall apply: small commercial ~~customers~~**consumers** are those engaged primarily in the sale of goods and services, and local, state, and federal governmental agencies and departments other than those involved in manufacturing or electric power generation, whose average daily usage during the ~~customer's~~**consumer's** peak billing period is less than fifty thousand cubic feet.

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4901:5-29-01 Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

| (B) "Consumer" means ~~the~~a person who consumes heating oil or propane at a specified location.

(C) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to heating oil or propane that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

| (D) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~**chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(E) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.

(F) "Heating oil supplier" and "propane supplier" mean:

(1) A heating oil company or propane company owned by a municipal corporation.

(2) Any producer, broker, or person engaged in the business of supplying heating oil or propane to heating oil companies, propane companies, or consumers within this state.

(3) Any person that owns, operates, manages, controls, or leases intrastate storage fields or pools.

| (G) "Heating oil" means all oil ~~which~~**that** can be used as boiler or space heating fuel, including kerosene, number two heating oil, and number six heating oil; but excluding fuel used primarily for internal combustion or other types of automotive transportation vehicles or equipment, such as gasoline, diesel, aviation and jet fuel, naphtha, butane, ethane, methane, and pentane; and excluding oil ~~which~~**that** is not used as boiler or space heating fuel, such as solvent, cutting oil, lubricating oil, and asphalt.

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- (H) "Kerosene" means a petroleum distillate that has a maximum distillation temperature of four hundred and one degrees Fahrenheit at the ten per cent recovery point, a final boiling point of five hundred and seventy-two degrees Fahrenheit, and a minimum flash point of one hundred degrees Fahrenheit. Included are the two grades generally known as number 1-K and number 2-K, and all grades of kerosene called range or stove oil. Kerosene is used in space heaters, cook stoves, and water heaters and is suitable for use as an illuminant when burned in wick lamps.
- (I) "Nonpriority use" means all use of heating oil and propane for other than priority use.
- (J) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.
- (K) "Priority use" means the minimum amount of heating oil or propane necessary for protection of the public's health and safety, and for prevention of unnecessary or avoidable damage to:
 - (1) Residences (including, but not limited to, homes, apartments, nursing homes, institutions, and facilities for permanent residents or transients).
 - (2) Hospitals.
 - (3) Medical and human life-support systems and facilities.
 - (4) Electric power generating facilities and central heating plants serving the public.
 - (5) Telephone, radio, television, and newspaper facilities.
 - (6) Local and suburban transit systems and air terminal facilities.
 - (7) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, and Ohio national guard facilities.
 - (8) Sanitary service facilities for collection, treatment, or disposal of **community** sewage.
 - (9) Production facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels, and fuel refineries.
 - (10) Pipeline transmission and distribution facilities for natural gas, artificial or synthetic gas, propane, and petroleum fuels.

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- (11) Production, processing, distribution, and storage facilities for perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
 - (12) Buildings and facilities, limited to protecting the physical plant and structure, appurtenances, equipment, product inventories, raw materials, livestock, and other **real** or personal ~~or real~~-property.
 - (13) Water supply and pumping facilities.
 - (14) Coal mines and related facilities.
 - (15) Such other similar facilities as may be determined by the commission to be a priority use.
- (L) "Propane" means a normally gaseous straight-chain hydrocarbon that is colorless and boils at a temperature of minus forty-three point sixty-seven degrees Fahrenheit. Propane is extracted from natural gas or refinery gas streams. It includes all products generally used for commercial purposes and products generally known as HD-5 propane.
- (M) "Supplier" means a heating oil **supplier** or propane supplier.

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 this chapter. In the case of a 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

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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 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 **supplier** 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.

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- (J) The commission's fuel source advisory council may notify and advise the ~~chairman~~**chairperson** 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~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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.

4901:5-29-03 Enforcement on Governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (B) and (I) to (M) of rule 4901:5-29-02 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

4901:5-29-04 Actions taken upon declaration of an energy emergency.

- (A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, or at such time as it is otherwise determined by the governor that such action is appropriate, the following provisions shall be applicable:

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- (1) The commission may implement, or cause to be implemented, a public appeals campaign through appropriate news media to alert the public to the impending shortage of heating oil or propane. This appeal may seek voluntary reduction in the consumption of such fuels and may include specific suggested conservation measures for achieving such reduction.
- (2) The governor may request that federal priority be given to all air, rail, barge, and pipeline traffic of essential fuel supplies into this state or a region of this state affected by the energy emergency.
- (3) The governor may request that the United States department of transportation suspend federal limits on highway drivers' hours of service for heating oil or propane delivery for the duration of the energy emergency.
- (4) The Ohio department of transportation may be requested to suspend truck size and weight limitations ~~which~~~~that~~ constrain the delivery of heating oil or propane, for the duration of the energy emergency.
- (5) The governor may suspend intrastate motor carrier weight and drivers' hours of service limitations and waive economic permits and fees ~~which~~~~that~~ constrain the delivery of heating oil or propane for the duration of the energy emergency.
- (6) Each supplier, to the extent possible, shall notify any of its consumers for whom forecasted fuel supplies are inadequate for the foreseeable future and shall provide to its consumers information on:
 - (a) Actions the supplier will take to allocate the available supply of heating oil or propane.
 - (b) The time period(s) in which any consumer or class of consumers would be subject to curtailment, allocation, or other restriction of supply of heating oil or propane.
 - (c) Procedures to be followed by consumers wishing to substantiate a claim for priority use.
- (7) Each supplier shall report to the commission the information that the commission determines necessary to evaluate the supply of heating oil or propane in Ohio.
- (8) The commission may calculate the remaining supply of heating oil or propane for priority use.

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(9) ~~A Suppliers'~~**supplier's** highest priority shall be to meet in full the heating oil or propane product priority use requirements for the current calendar month of all consumers from such supplier's available volumes. Suppliers shall reduce sales and/or deliveries to consumers for nonpriority use sufficiently to assure that all consumers' priority use requirements for the balance of the current calendar month are met in full.

(10) The commission may designate certain geographical areas within the state as suffering from a supply imbalance. The commission may order suppliers to release part or all of their state set-aside volume, as determined under Chapter 4901:5-35 of the Administrative Code, in order to increase the supply of heating oil or propane in such designated areas. Orders issued pursuant to this paragraph shall be in writing and effective immediately upon issuance. Such orders shall represent an option on the supplier's set-aside volumes for the month of issuance regardless of the fact that delivery cannot be made until the following month.

(B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (A) of this rule:

(1) The commission may issue directives to suppliers such that they shall be prohibited from selling directly to nonpriority use consumers, or selling for resale for use other than priority use.

(2) The commission may issue directives to each electric or gas utility that requires heating oil or propane in order to provide service to the public.

(3) The commission **may**:

(a) ~~May monitor~~**Monitor** each supplier's stock and the supply of heating oil or propane remaining for each type of priority use.

(b) ~~May determine~~**Determine** the average ~~days'~~**day's** supply of heating oil or propane remaining for each type of priority use.

(c) ~~May identify~~**Identify** suppliers with volumes of heating oil or propane in excess of their consumers' priority use requirements.

(d) ~~May provide~~**Provide** direct assistance to consumers experiencing hardship or extraordinary conditions, through the allocation of heating oil or propane from the state set-aside, as set forth in Chapter 4901:5-35 of the Administrative Code.

(e) ~~May take~~**Take** other actions it considers to be reasonable and appropriate.

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- (4) The Ohio emergency management agency may be requested to:
 - (a) ~~To establish~~**Establish** and ~~to maintain~~ a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.
 - (b) ~~To plan~~**Plan** the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, heating oil or propane to designated priority **use** consumers, where life, property, **public** health, or safety **are** threatened.
 - (c) ~~To establish~~**Establish** and ~~to maintain~~ communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.
- (5) Suppliers, regardless of whether or not they have surplus supply, may be directed by the commission to sell fuel to consumers who are not customers of that supplier, for priority use required to alleviate such consumers' hardship or extraordinary need.
- (6) With respect to consumers of heating oil and propane:
 - (a) All public, commercial, and industrial buildings heated with heating oil or propane are to reduce space heating temperatures to a level specified by the governor **or the commission**, but not less than sixty degrees Fahrenheit, except where health requirements deem such measures inappropriate or where such a setting would increase energy consumption.
 - (b) All or some nonpriority industrial use of heating ~~oil~~**oil** and propane may be prohibited.
- (7) The commission may be requested to accept applications from suppliers regarding priority use. Such applications shall be in a manner and form prescribed by the commission.
- (C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (B) of this rule:
 - (1) All nonpriority use of heating oil or propane may be prohibited within the time frame determined by the governor.

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- (2) All public, commercial, and industrial buildings heated with heating oil or propane are to reduce space heating temperature to a level specified by the governor or the commission, except where health requirements deem such measures inappropriate or where such a setting would increase energy consumption.
- (3) Any nonpriority heating oil or propane consumer with a storage capacity of ten thousand gallons or more may be required to report to the commission, within the time frame determined by the governor or the commission, the current product type and volume stockpiled.
- | (4) All persons may be required to report stocks of heating ~~oil~~oil and propane to the commission.
- (D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (C) of this rule:
 - (1) Consumers may be prohibited from using heating oil or propane for other than priority use.
 - (2) Heating oil or propane stocks in excess of priority use requirements for the following ten-day period, currently stockpiled by suppliers and consumers, may be made available for assignment to designated priority use consumers.

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4901:5-33-01 Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

| (B) "Consumer" means ~~the~~a person who consumes transportation fuel.

| (C) "Customer" means ~~that~~a person legally responsible to pay for transportation fuel.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to transportation fuel that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

| (E) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~**chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Hardship" means actual or threatened conditions of substantial discomfort and/or economic dislocation.

| (G) "Nonpriority use" means all use of transportation fuel ~~for~~other than priority use.

(H) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.

| (I) "Priority use" means the minimum amount of transportation fuel necessary, ~~in order to protect~~
for protection of the public's health and safety, ~~to operate and to prevent and for~~
prevention of unnecessary or avoidable damage to:

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- (1) Police and firefighting facilities, emergency management and response facilities, military bases, federal facilities essential to national defense, Ohio national guard facilities, and the Ohio department of public safety.
 - (2) Utility, water supply, emergency road works, sanitation maintenance and repair, and emergency road service vehicles and related equipment.
 - (3) Public transit vehicles, United States mail vehicles, buses, taxis, school buses, other common passenger carriers, and air, water, rail, or highway vehicles and related equipment.
 - (4) Farm food production machinery and equipment.
 - (5) Commercial motor vehicles and other carriers of essential needs such as coal, artificial or synthetic gas, propane, petroleum fuel, perishable medicines and medical supplies, dairy products, meat, fish, poultry, eggs, produce, grain, breads, and livestock and poultry feed.
 - (6) Nonvehicular stationary use required for any priority use designated in rule 4901:5-29-01 of the Administrative Code.
 - (7) Such other similar items as may be determined by the commission to be a priority use.
- (J) "Transportation fuel" means all petroleum-based fuel ~~which~~**that** is used for internal combustion or other types of transportation vehicles or equipment, specifically including, but not limited to, gasoline, diesel, aviation gasoline, jet fuel, and fuel used by railroad locomotives and track-mounted equipment; but excluding kerosene, number two heating oil, number four heating oil, number six heating oil, naphtha, butane, ethane, methane, pentane, and all cutting oil, lubricating oil, and solvents.
- (K) "Transportation fuel supplier" or "supplier" means:
- (1) A transportation fuel company owned by a municipal corporation.
 - (2) Any producer, broker, or person engaged in the business of supplying transportation fuel within this state.
 - (3) Any person that owns, operates, manages, controls, or leases intrastate storage of transportation fuel.

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- (A) The requirements of ~~Chapter 4901:5-33 of the Administrative Code~~**this chapter** are keyed to the remaining supply of transportation ~~fuels~~**fuel** for priority ~~uses~~**use**. 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~~**this chapter**. Once the stages of action are reached, all suppliers shall initiate and continue implementation of required actions until directed to do otherwise.
- (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 consumers for priority use and shall reduce, on an equitable basis, the provision of such products under their distribution control to their reseller customers and/or to consumers for nonpriority 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 a conflict, the federal regulations supersede all conflicting rules in this chapter.
- (D) 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 to it, 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.
- (E) 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 who would supply the affected consumer or from the 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, and guidelines.
- (F) During an energy emergency, the commission may establish a toll-free telephone number for consumers in this state to request such assistance for relief from verifiable emergency or hardship conditions.
- (G) During an energy emergency, the commission may designate as priority use the volume of such product necessary to relieve consumer emergency or hardship conditions found to be extant and may request the consumer's supplier to provide such product volume to the consumer, provided the consumer offers fair compensation.

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- (H) 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 hardship conditions, have had priority ~~usage~~**use** designation by the commission, the commission may request another supplier to provide product.
- (I) During an energy emergency, each supplier that has a surplus supply of product for its consumers' priority use requirements for the current calendar month shall honor, to the extent reasonably possible, requests by the commission to provide product to 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 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.
- (J) In anticipation of an imminent energy emergency or during a declared energy emergency, each 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~~**chairperson** 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~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** believes that 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.

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- (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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4901:5-33-03 Enforcement on Governor's instruction.

- (A) No rule shall be implemented and no person shall be penalized under any rule in this chapter, other than paragraphs (A), (C), and (J) to (N) of rule 4901:5-33-02 of the Administrative Code, until the governor, by executive order, during a declared energy emergency, specifically designates by rule number and title which rule or rules are to be implemented and enforced and fixes the date and time after which the named rule or rules shall be implemented or enforced.
- (B) Alternatively, the governor may request, under section 4935.03 of the Revised Code, that the commission issue and enforce orders effecting the implementation of this chapter.

4901:5-33-04 Actions taken upon declaration of an energy emergency.

- (A) Voluntary curtailment. Upon declaration of an energy emergency by the governor, or at such time as it is otherwise determined by the governor to be appropriate, the following provisions shall become effective:
 - (1) The commission may implement, or cause to be implemented, a public appeals campaign through appropriate news media to alert the public to the impending shortage of transportation fuel. This appeal may seek voluntary reductions in the consumption of such fuel and may include specific suggested conservation measures for achieving such reductions.
 - (2) The governor may request that federal priority be given to all air, rail, barge, and pipeline traffic of essential fuel supplies into this state or a region of this state affected by the energy emergency.
 - (3) The governor may request the federal department of transportation to suspend federal limits on highway drivers' hours of service for transportation fuel delivery for the duration of the energy emergency.
 - (4) The Ohio department of transportation may be requested to suspend truck size and weight limitations ~~which~~**that** constrain the delivery of transportation fuel for the duration of the energy emergency.
 - (5) The governor may suspend intrastate common carrier weight and log limitations and waive economic permits and fees ~~which~~**that** constrain the delivery of transportation fuel for the duration of the energy emergency.

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- (6) The Ohio state highway patrol and all political subdivisions may be requested to enforce existing speed limits and traffic regulations strictly.
- (7) Each supplier, to the extent possible, shall notify any of its consumers for whom *forecasted fuel supplies are inadequate for the foreseeable future*, and shall provide its consumers information on:
 - (a) Actions the supplier will take to allocate the available supply of fuel(s).
 - (b) The time period(s) in which any consumer or class of consumers would be subject to curtailment, allocation, or other restriction of fuel supply.
 - (c) Procedures to be followed by consumers wishing to substantiate a claim for priority use.
- (8) Each supplier shall report to the commission the information the commission determines necessary to manage the energy emergency.
- | (9) The commission may calculate the remaining supply of each fuel for priority **use** consumers.
- | (10) ~~A Supplier's~~**supplier's** highest priority shall be to meet in full the transportation fuel product priority use requirements for the current calendar month of all consumers of record from such supplier's available volumes. Suppliers shall reduce sales and/or deliveries to customers for nonpriority use sufficiently to assure that all consumers' priority use **requirements** for the balance of the current calendar month are met in full.
- (11) The commission may designate certain geographical areas within the state as suffering from a supply imbalance. The commission may order suppliers to release part or all of their state set-aside volume, as determined in Chapter 4901:5-35 of the Administrative Code, in order to increase the supply of transportation fuel in such designated areas. Orders issued pursuant to this paragraph shall be in writing and effective immediately upon issuance. Such orders shall represent an option on the supplier's set-aside volumes for the month of issuance regardless of the fact that delivery cannot be made until the following month.
- (B) Mandatory curtailment - stage one. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (A) of this rule:
 - | (1) The commission may issue directives to suppliers such that they shall be prohibited from selling directly to nonpriority ~~users~~**use consumers**, or selling for resale for use other than for priority use.

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(2) The commission may issue directives to each electric and gas utility ~~which~~**that** requires transportation fuel in order to provide service to the public.

(3) The commission **may**:

(a) ~~May monitor~~**Monitor** each supplier's stock and the supply of transportation fuel remaining for each type of priority use.

(b) ~~May determine~~**Determine** the average ~~days'~~**day's** supply of transportation fuel remaining for each type of priority use.

(c) ~~May identify~~**Identify** suppliers with surplus volumes of fuel in excess of their consumers' priority use requirements.

(d) ~~May provide~~**Provide** direct assistance to consumers experiencing emergency conditions through the allocation of product from the state set-aside, as set forth in Chapter 4901:5-35 of the Administrative Code.

(e) ~~May take~~**Take** other actions it considers to be reasonable and appropriate.

(4) Suppliers, regardless of whether or not they have surplus supply, may be directed to sell fuel to consumers who are not customers of that supplier, for priority use required to alleviate such consumers' hardship or extraordinary need.

(5) The Ohio emergency management agency may be requested to:

(a) ~~To establish~~**Establish** and ~~to maintain~~ a central emergency operations center staffed with appropriate persons from state, local, and other agencies for the purpose of providing coordinated responses to threats to life, property, public health, or safety.

(b) ~~To plan~~**Plan** the necessary administrative and logistical capability to support delivery of, and to provide security for the movement of, transportation fuel to designated priority **use** consumers, where life, property, **public** health, or safety ~~are~~**is** threatened.

(c) ~~To establish~~**Establish** and ~~to maintain~~ communications with emergency managers within each county in the geographic area for which the governor declared an energy emergency, for the purpose of providing coordinated local responses to threats to life, property, public health, or safety.

(6) With respect to sale and use of transportation fuel:

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(a) The use of state, political subdivision, or other public authority vehicles for other than priority use purposes may be prohibited.

(b) The retail sale of transportation fuel for nonpriority use may be prohibited for not more than two days per week.

(c) All or some **industrial** nonpriority ~~industrial~~ use of transportation fuel may be prohibited.

(7) The commission may be requested to accept applications from suppliers regarding priority use. Such applications shall be in a manner and form prescribed by the commission.

(C) Mandatory curtailment - stage two. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (B) of this rule:

(1) Nonpriority use of transportation fuel may be prohibited within the time frame determined by the governor or the commission.

(2) Any nonpriority use transportation fuel consumer other than a public authority, with a storage capacity of ten thousand gallons or more, may be required to report to the commission, within the time frame determined by the governor or the commission, the current product type and volume stockpiled.

(3) With respect to sale and use of transportation fuel:

(a) Retail gasoline and diesel fuel stations may sell gasoline or diesel fuel only in accordance with the following procedures:

(i) On even-numbered days of the month, fuel may be sold to and purchased by the operator or occupant of a vehicle having a license plate, the last numeral of which is even. For purposes hereof, the numeral zero shall be even.

(ii) On odd-numbered days of the month, fuel may be sold to and purchased by the operator or occupant of a vehicle having a license plate, the last numeral of which is odd.

(iii) A vehicle having a license plate with no numerals shall be odd or even based on the number of letters on the license plate.

(iv) A "free day" is a day when odd and even sales and purchases are permissible. The thirty-first day of January, March, May, July, August, October, and December and the twenty-ninth day of February (leap year) are designated as "free days."

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(b) Service stations shall estimate the amount of each fuel they can pump each day and remain open for limited hours of operation. Based on this amount of fuel(s) available to them each day, each service station shall have prominently displayed a sign visible from the street indicating that:

(i) The station is out of gasoline but open for other business.

(ii) Gasoline sales are limited to priority use and emergencies.

(iii) Gasoline sales will be made to license plate holders with odd-numbered digits.

(iv) Gasoline sales will be made to license plate holders with even-numbered digits.

Service station operators may display different signs at different times of day at their discretion.

(c) Retail gasoline station customers shall be required to purchase a minimum amount of gasoline for automobiles. The specific minimum purchase volume shall be set by the governor or the commission, based on the extent of the energy emergency.

(d) The commission may designate certain transportation fuel supply terminals, bulk supply plants, and/or retail service stations or portions thereof as priority use supply only. One-time emergency fuel needs and priority use needs of consumers without suppliers shall be met at these designated locations.

(e) Not more than two gallons of transportation fuel may at any time be sold or purchased for delivery into a container other than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Nothing in this paragraph shall be construed to authorize the sale of gasoline in any container not satisfying applicable safety requirements.

(f) The application of this rule may exclude any person or class necessary to avoid threat to life, property, public health, or safety.

(4) All persons shall report stocks of transportation fuel to the commission.

(D) Mandatory curtailment - stage three. During an energy emergency, at such time as the governor or the commission determines that it is appropriate, the following provisions shall become effective in addition to the provisions set forth in paragraph (C) of this rule:

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- (1) No consumer may use transportation fuel for other than priority use.
- (2) Transportation fuel product stocks in excess of priority use requirements for the following ten-day period, currently stockpiled by suppliers and consumers specified in paragraph (C)(2) of this rule, may be made available for assignment to designated priority use ~~users~~ consumers.
- (3) With respect to sale and use of transportation fuel in this state:
 - (a) No person shall sell, store, deliver, or use any transportation fuel for other than priority use.
 - (b) Gasoline and diesel stations may only sell transportation fuel for priority use.

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4901:5-35-01 Definitions.

As used in this chapter:

(A) "Commission" means the public utilities commission of Ohio.

(B) "Consumer" means ~~any~~ person ~~that~~ who consumes heating oil, propane, or transportation fuel.

(C) "Customer" means ~~any~~ person legally responsible to pay for heating oil, propane, or transportation fuel.

(D) "Energy emergency" means:

(1) The governor has filed a written declaration of an energy emergency pursuant to section 4935.03 of the Revised Code, having found that the health, safety, or welfare of the residents of this state or of one or more counties of this state is so imminently and substantially threatened by an energy shortage with regard to heating oil, propane, or transportation fuel that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

(2) Such written declaration is in effect and has not been terminated.

(E) "Fuel source advisory council" means the advisory group formed by the ~~chairman~~ **chairperson** of the commission to monitor and advise the commission concerning fuel supply or energy shortages and related matters.

(F) "Heating oil" means all oil that can be used as boiler or space heating fuel, including kerosene, number two heating oil, and number six heating oil; but excluding fuel used primarily for internal combustion or other types of automotive transportation vehicles or equipment, such as gasoline, diesel, aviation and jet fuel, naphtha, butane, ethane, methane, and pentane; and excluding oil that is not used as boiler or space heating fuel, such as solvent, cutting oil, lubricating oil, and asphalt. ~~"Heating oil supplier" and "propane supplier" mean:~~

(1) ~~A heating oil company or propane company owned by a municipal corporation.~~

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- ~~(2) Any producer, broker, or person engaged in the business of supplying heating oil or propane to heating oil companies, propane companies, or consumers within this state.~~
- ~~(3) Any person that owns, operates, manages, controls, or leases intrastate storage fields or pools.~~
- (G) "Person" means an individual, corporation, business trust, estate, trust, partnership, state or federal agency, or association.
- (H) "Primary supplier" means ~~any~~ **any** person ~~that~~ **who** brings heating oil, propane, or transportation fuel into this state for first sale.
- (I) "Priority use" and "nonpriority use" shall have the same meaning as assigned to these terms in rule 4901:5-29-01 of the Administrative Code when related to an energy emergency affecting heating oil or propane and in rule 4901:5-33-01 of the Administrative Code when related to an energy emergency affecting transportation fuel.
- (J) "Program" means a state set-aside program established by the commission pursuant to the provisions of this chapter.
- (K) **"Propane" means a normally gaseous straight-chain hydrocarbon that is colorless and boils at a temperature of minus forty-three point sixty-seven degrees Fahrenheit. Propane is extracted from natural gas or refinery gas streams. It includes all products generally used for commercial purposes and products generally known as HD-5 propane.**
- (L) "Secondary supplier" means ~~any~~ **any** person, including any wholesale purchaser or reseller or distributor, who sells heating oil, propane, or transportation fuel to customers and/or consumers in this state.
- ~~(L)~~(M) "Transportation fuel" means all petroleum-based fuel ~~which~~ **that** is used for internal combustion or other types of transportation vehicles or equipment, specifically including, but not limited to, gasoline, diesel, aviation gasoline, jet fuel, and fuel used by railroad locomotives and track-mounted equipment; but excluding kerosene, number two heating oil, number four heating oil, number six heating oil, naphtha, butane, ethane, methane, pentane, and all cutting oil, lubricating oil, and solvents.

4901:5-35-02 General provisions.

- | A state set-aside program may be established for heating oil, propane, and transportation fuel, for the purpose of providing relief to Ohio consumers experiencing an energy emergency. In such event, the following shall apply:

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- (A) Authority shall be delegated to the commission by order of the governor to administer the program. The program shall be utilized by the commission to meet emergency requirements of all consumers and customers within the state from program volumes, including state and local government consumers and customers. To facilitate relief of emergency requirements of consumers and customers, the commission may direct that a secondary supplier be supplied from amounts set aside by another primary or secondary supplier pursuant to the program, in order that the secondary supplier can supply the consumers and customers experiencing an emergency.
- (B) Primary and secondary suppliers shall inform the commission, in accordance with paragraph (A)(7) of rule 4901:5-29-04 and paragraph (A)(8) of rule 4901:5-33-04 of the Administrative Code, of the product subject to 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~~**chairperson** of the commission, shall determine the program percentage level, not to exceed five per cent, for each product subject to the program.
- | (D) The set-aside volume available to the commission for a particular month pursuant to the program shall be calculated by multiplying the program percentage level by each primary and secondary supplier's estimated portion of its total supply for that month ~~which~~**that** will be sold into the state's distribution system for consumption within the state.
- | (E) The set-aside volume for a particular month can be accumulated or deferred. That set-aside volume shall be made available to the commission from stocks of primary and secondary suppliers-, either directly or through their suppliers.
- (F) The commission may authorize allocations from the program during this period for emergency needs only.
- | (G) Each primary and secondary supplier shall meet the full priority **use** consumer product requirements from available volumes. Each supplier shall reduce deliveries for nonpriority use to consumers sufficiently to assure priority use needs are met in full.
- (H) The commission may accept applications for emergency allocations under the program from the secondary supplier who would supply the affected consumer. An application submitted by a secondary supplier for an allocation under the program, to supply verifiable consumer emergency needs, shall:
 - (1) 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.

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- (b) No product volume granted from the program will be diverted to use other than the alleviation of the emergency use described in the application.
- (c) The secondary supplier has delivered, or will deliver, one hundred per cent of all monthly 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 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 program may be requested to provide to the commission a list of those consumers for whom product is requested. This list shall identify the volume of each consumer's request, as well as the type of use for which application is made.
- (K) All emergency applications for assignment from the program, and appeals therefrom, shall be filed with and resolved by the commission in accordance with this chapter. 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 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 program volumes for the month of issuance, regardless of the fact that delivery of the product 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.

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- (O) All primary and secondary suppliers shall supply products from their program volume each month, as directed by the commission, not to exceed the total program volume for each product for that month. That portion of a primary or secondary supplier's program volume for a particular month ~~which~~**that** is not allocated by the commission during that month or ~~which~~**that** 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 program volume through the primary or secondary supplier's normal distribution system in the state.
- (Q) The ~~chairman~~**chairperson** of the commission shall notify the governor when, based on the information available to ~~him~~**the chairperson**, ~~he~~**the chairperson** 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 ~~of~~ heating oil, propane, or transportation fuel.
- (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.

4901:5-35-03 General procedures.

This rule establishes the procedures that govern application for assignment under the program.

(A) Who may apply.

A secondary supplier seeking an assignment from the program to meet an emergency requirement may apply for an assignment under the program.

(B) What to file.

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Application for assignment from the program shall be by a form approved by the commission.

(C) Where to file.

All applications shall be filed with the docketing division of the commission.

(D) Notice.

The commission may notify any person that it determines may be aggrieved by the assignment, that comments regarding the application will be accepted.

(E) Contents.

The commission shall require that an applicant provide sufficient information so that it may be determined that the proposed allocation satisfies the objectives of section 4935.03 of the Revised Code. At a minimum, such information shall include, but not be limited to:

- (1) The identification of any previous assignment order from the program that was issued to the applicant or to any person that controls the applicant or is controlled by the applicant.
- (2) A statement that the applicant's primary supplier is unable to supply the applicant's requirements or, if the applicant does not have a primary supplier, a statement that the applicant has contacted two primary suppliers that could supply the allocated product and the identification of those suppliers.
- (3) For purposes of Chapter 4901:5-29 of the Administrative Code, a description of the consumers that will be supplied and their emergency requirements.

(F) Commission evaluation.

The commission may investigate any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The commission may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third party submissions.

- (1) In evaluating an application, the commission may consider any other source of information. The commission on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

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- (2) If the commission determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the commission may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the commission may dismiss the application with prejudice.
- (3) There shall be assignment from the program only to secondary suppliers that are located within the state and that demonstrate emergency requirements.

(G) Decision and order.

Upon consideration of the application and other relevant information received or obtained during the proceeding, the commission's legal director, deputy legal director, or attorney examiner shall issue an order denying or granting the application.

- (1) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued.
- (2) The order shall provide that any person aggrieved thereby may file an appeal with the commission in accordance with paragraph (I) of this rule. The order shall state that it is effective upon issuance and shall expire within ten days of its issuance unless the applicant presents ~~his~~**the applicant's** copy of the order to the primary supplier or a designated local representative of such primary supplier within that ten-day period.
- (3) The commission shall serve a copy of the order upon the applicant, the designated state representative of the primary or secondary supplier assigned to the applicant, and any other person identified as one who might be aggrieved by said order.

(H) Timeliness.

- (1) If the commission's legal director, deputy legal director, or attorney examiner fails to take action on an application within ~~five~~**ten** days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in paragraph (I)(1) of this rule.
- (2) Notwithstanding paragraph (H)(1) of this rule, the commission may temporarily suspend the running of the ten-day period if it finds that additional information is necessary, if it finds that the application was improperly filed, or **for** any reason deemed appropriate. A temporary suspension shall remain in effect until the commission serves upon the applicant notice that the additional information has been received and accepted or that the application has been properly filed, or until such time as is specified by the commission, as appropriate. Unless otherwise provided by the commission, the ten-day period shall resume running on the first day that is not a Saturday, Sunday, or legal holiday and that follows the day on which the commission serves upon the person notice as provided in this rule.

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(I) Appeal.

- (1) Any person aggrieved by an order issued by the commission's legal director, deputy legal director, or attorney examiner pursuant to this chapter, or by the denial of an application pursuant to paragraph (H)(1) of this rule may file an appeal to the commission.
- (2) Any person wishing to take an appeal must file an application for review with the commission within five days from the issuance of the order from which the appeal is being taken. An extension of time for the filing of an appeal may be granted only under extraordinary circumstances. Any appeal filed shall set forth specifically the legal and factual grounds serving as the basis of the appeal. A memorandum in support thereof may be filed by the appealing party. The appealing party shall serve a copy of the appeal on all primary and secondary suppliers affected by the order.
- (3) Any affected person may file a memorandum in support or in opposition to the appeal within three days after the filing of an appeal.
- (4) The commission shall affirm, reverse, or modify the decision of the commission's legal director, deputy legal director, or attorney examiner within ten days of the filing of the appeal.
- (5) Any person aggrieved by an order issued by the commission pursuant to the provisions of this chapter may file an appeal in accordance with Chapter 4903. of the Revised Code.

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4901:5-37-01 Definitions.

As used ~~within~~ in this chapter:

- (A) "Bulk electric system" means facilities and control systems necessary for operating an interconnected electric energy transmission network, one hundred kilovolts or higher, and any underlying transmission system that could limit or supplement the operation of the higher voltage transmission systems.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Critical situation" means an anticipated or existing shortage in the supply of electric energy, or constraint in the transmission, distribution, or generation of electrical energy, which has adversely affected, or is likely to adversely affect, the operation or reliability of transmission, distribution, or generation facilities.
- (D) "Electric distribution utility" has the meaning set forth in division (A) of section 4928.01 of the Revised Code.
- (E) "Electric entity" means any electric light company, supplier subject to certification under section 4928.08 of the Revised Code, electric power utility that is owned by a municipal corporation or not for profit, or electric power producer or marketer, as enumerated in division (A)(3) of section 4935.03 of the Revised Code.
- (F) "Essential consumers" means the following consumers of an electric ~~supplier~~**distribution utility**:
 - (1) Hospitals and emergency care facilities, each of which provides medical care and performs in-patient procedures.
 - (2) Prisons and governmental detention institutions.
 - (3) Fire and police stations, Ohio national guard facilities, military bases, and federal facilities essential to the national defense.
 - (4) Any consumer on a medical or life-support system who has provided appropriate documentation to the electric ~~supplier~~**distribution utility** that an interruption of service would be immediately life- threatening.

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- (5) Radio and television stations used to transmit emergency messages and public information broadcasts relating to emergencies.
- (6) Water pumping plants essential to the supply of potable water to a community.
- | (7) Sewage plants essential to the collection, treatment, and disposal of a community's sewage, except lift stations.
- (8) Emergency management and response facilities and the countywide "911" system.
- (9) Blood banks.
- (G) "Municipal or cooperative" means any municipal electric utility, as defined in division (A) of section 4928.01 of the Revised Code, or any electric cooperative, as defined in division (A) of section 4928.01 of the Revised Code.
- (H) "Noncompetitive retail electric service" has the meaning set forth in division (B) of section 4928.01 of the Revised Code.

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~~that 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

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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.

4901:5-37-03 Reporting to the commission during a critical situation.

(A) Each electric entity shall promptly report to the commission:

- (1) Uncontrolled loss in firm system load for fifteen minutes or more of electric power supply to a firm load of three hundred megawatts or more from a single incident.
- (2) Any action to reduce firm customer loads or voltage in order to maintain reliability of the power supply system.
- (3) Any appeal for the public to conserve electricity for purposes of maintaining the continuity of the electric power system.
- (4) Fuel supply emergencies that could impact electric power system adequacy or reliability.
- (5) Any emergency alert, warning, notice, or statement issued by an independent system operator or regional transmission organization ~~which~~*that* relates to or affects an electric entity.
- (6) Implementation of any other legally imposed energy emergency alert procedure on behalf of the affected reporting electric entity.
- (7) During an emergency, any outage or incident ~~which~~*that* damages or renders inoperable bulk electric system equipment located in Ohio.
- (8) Any action taken pursuant to the rules of this chapter.

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| Each report shall be made by fax, voice mail, personal contact, or other commission-determined means with a designated commission representative and shall include a description of the situation. The provisions of this paragraph only apply to entities to the extent of the commission's statutory authority.

- (B) When an electric entity is unable to relieve an existing or anticipated energy shortage by obtaining or purchasing power through an interconnected system, the independent system operator, or a regional transmission organization, each electric entity shall implement and follow the procedures of the independent system operator or regional transmission organization and the procedures in the electric entity's emergency plan, if applicable. 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.

4901:5-37-04 Sudden or unanticipated critical situation resulting in overloading transmission facilities.

When sudden or unanticipated generation or transmission outages cause an overloading of an electric entity's facilities or interconnection circuits that operate at a nominal sixty hertz, that electric entity shall perform any or all of the following actions, as applicable:

- (A) Interrupt service to customers served under interruptible tariffs or contracts.
- (B) Interrupt service to firm service customers.
- | (C) Reduce voltage by not more than five per cent if the transmission system is isolated.
- (D) Disconnect the overloaded facility or circuit.

| The provisions of this rule do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.

4901:5-37-05 Anticipated conditions during a critical situation.

When anticipated shortages of electrical energy cannot be relieved by automatic reserve sharing and emergency purchases or other sources within or outside the interconnected area, each electric entity shall perform any or all of the following actions, as applicable:

- (A) Interrupt service to customers served under interruptible tariffs or contracts.
- (B) Interrupt service to customers with controlled service loads.
- | (C) Reduce voltage by not more than five per cent on the distribution system.

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(D) Request voluntary load reductions of large volume firm customers.

(E) Appeal to the public to conserve electricity.

(F) Initiate manual load shedding of firm customer loads.

(G) Each electric distribution utility shall:

| (1) Make reasonable efforts to maintain service to essential ~~customers~~ consumers.

(2) Select distribution circuits and lines to interrupt service.

| The provisions of this rule -do not apply to any municipal or cooperative unless the governor has declared an energy emergency under section 4935.03 of the Revised Code.