

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:1-23, Ohio Administrative) Case No. 12-2052-EL-ORD
Code, Regarding Electric Reliability,)
Service and Safety.)

ENTRY

The Commission finds:

- (1) R.C. 119.032 requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The rules in Ohio Adm.Code Chapter 4901:1-23 govern notices of probable noncompliance, settlement agreements and stipulations, Commission proceedings, and payments of forfeitures and other payments.
- (2) R.C. 119.032(C) requires the Commission to determine whether:
 - (a) The rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted:
 - (b) The rules need amendment or rescission to give more flexibility at the local level;
 - (c) The rules need amendment or rescission to eliminate unnecessary paperwork, or whether the rule incorporates a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74 and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76; and
 - (d) The rules duplicate, overlap with, or conflict with other rules.

- (3) In addition, on January 10, 2011, the Governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.
- (4) Additionally, in accordance with R.C. 121.82 in the course of developing draft rules, the Commission must evaluate the rules against business impact analysis. If there will be an adverse impact on businesses, as defined in R.C. 107.52 the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact.
- (5) In making its review, an agency is 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. The Commission staff has evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-23, and recommends no changes to the rules.
- (6) An agency must also demonstrate that it has included stakeholders in the development of the rule, that it has evaluated the impact of the rule on businesses, and that the purpose of the rule is important enough to justify the impact. The agency must seek to eliminate excessive or duplicative rules that stand in the way of job creation.
- (7) By entry issued July 16, 2012, the Commission scheduled a workshop at the offices of the Commission on August 17, 2012, to elicit feedback on any proposed revisions to the rules that stakeholders may have. At the workshop, stakeholders were permitted to propose their own revisions to the rules for Staff's consideration. The workshop was held as scheduled on August 17, 2012. No proposals were made for the rules in Ohio Adm.Code Chapter 4901:1-23.

- (8) Staff has evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-23, and proposes only minor changes to the rules. A copy of the rules in Ohio Adm.Code Chapter 4901:1-23, as well as the business impact analysis, is attached to this entry.
- (9) In order to avoid needless production of paper copies, the Commission will serve a paper copy of just the entry and will make the rules in Ohio Adm.Code Chapter 4901:1-23, as well as the business impact analysis available online at: www.puco.ohio.gov/puco/rules. All interested persons may download the proposed rules and the business impact analysis from the above website, or contact the Commission's Docketing Division to be sent a paper copy.
- (10) The Commission requests comments from interested persons to assist in the review required by R.C. 119.032(C) and Executive Order 2011-01K. Comments on the draft rules and/or on the business impact analysis should be filed, either via electronic filing or in hard copy, by February 14, 2014. Reply comments should be filed by February 28, 2014.

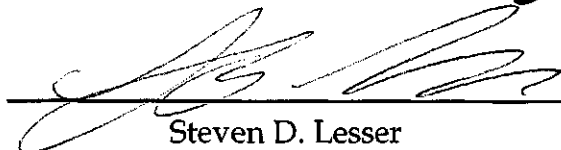
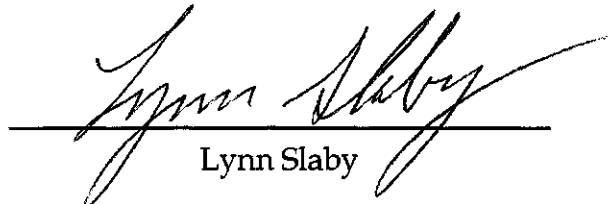

It is, therefore,

ORDERED, That all interested persons shall have until February 14, 2014, to file comments to the proposed rule changes and until February 28, 2014, to file reply comments. It is, further,

ORDERED, That a copy of this entry with the attached rules and business impact analysis be submitted to CSI in accordance with R.C. Section 121.82. It is, further,

ORDERED, That an electronic notice or paper copy of this entry without the attached rules or business impact analysis be served upon all electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, the Electric-Energy industry list-serve, and all other interested persons of record.

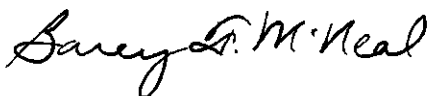
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman
Steven D. Lesser
Lynn Slaby
M. Beth Trombold
Asim Z. Haque

BAM/dah

Entered in the Journal

JAN 15 2014



Barcy F. McNeal
Secretary

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4901:1-23-01 Purpose and scope.

- (A) The rules contained in this chapter prescribe procedures for staff of the public utilities commission of Ohio to administer and enforce the electric reliability, customer service, and safety code set forth in Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
- (B) This chapter also governs customer service, reliability, and safety proceedings of the public utilities commission of Ohio to:
 - (1) Investigate and determine an electric utility's or competitive retail electric service provider's compliance with Chapters 4901:1-21 and/or 4901:1-10 of the Administrative Code and commission orders issued thereunder.
 - (2) Review settlement agreements and approve stipulations by the staff and the electric utility or competitive retail electric service provider.
 - (3) Issue and enforce compliance orders.
 - (4) Assess forfeitures.
 - (5) Direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court to protect the public safety, reliability, and customer service.
- (C) As used in this chapter:
 - (1) "Commission" means the public utilities commission of Ohio.
 - (2) "Competitive retail electric service provider" means a provider of competitive retail electric service, subject to certification under section 4928.08 of the Revised Code.
 - (3) "Electric utility" includes electric distribution utilities, as that term is defined in division (A)(6) of section 4928.01 of the Revised Code, and electric transmission owners.
 - (4) "Staff" means the commission staff or its authorized representative.
- (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.

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4901:1-23-02 Staff notice of probable noncompliance, proposed corrective action, and proposed forfeiture.

- (A) After an inspection, investigation, or complaint, a staff notice of probable noncompliance may be issued. The staff notice of probable noncompliance may be issued with a proposed corrective action and/or a proposed forfeiture;
- (B) The staff may issue an amended notice of probable noncompliance, proposed corrective action, or proposed forfeiture at any time prior to the commencement of a compliance proceeding or other commission proceeding brought pursuant to rule 4901:1-23-05 of the Administrative Code, in order to modify or include additional probable noncompliance or violations, facts, proposed forfeitures, and proposed compliance orders. Once the commission initiates a compliance or other proceeding pursuant to rule 4901:1-23-05 of the Administrative Code, this rule does not prevent the staff during the course of such proceeding, from seeking a finding of violations not listed in the staff notice or amended staff notice of probable noncompliance (or rescinding or refraining from seeking a finding of violations) or from seeking a corrective action or proposed forfeiture that varies from previous staff notices issued under this rule, provided that the staff's proposed findings and/or violations relate to the same incident, type of incident, investigation, or audit(s).
- (C) Any staff notice of probable noncompliance, proposed corrective action, proposed forfeiture, or amendments thereto shall be served pursuant to rule 4901:1-23-03 of the Administrative Code.

“No Change”

4901:1-23-03 Service of staff notices of probable noncompliance, proposed corrective action, and proposed forfeiture.

- (A) Staff notices of probable noncompliance, proposed corrective actions, proposed forfeitures, and amendments thereto under rule 4901:1-23-02 of the Administrative Code and investigative reports under rule 4901:1-23-05 of the Administrative Code shall be served on the electric utility or competitive retail electric service (CRES) provider by certified United States mail. Service is effective upon receipt by any employee, agent of, or person designated by the electric utility or CRES provider. Unless otherwise provided in this paragraph, service upon an electric utility or CRES provider shall be made at the address

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designated as the service address in the company's most recent annual financial report, in its certification application, or certification renewal application.

- (B) Each electric utility or CRES provider shall provide the commission with its current service address. If the service address has changed since the most recent annual report was submitted to the commission, or the service address or business address has not been disclosed to the commission, service shall be made at any business address known to the commission.
- (C) If the service envelope is returned with an endorsement showing failure of delivery, then service may be made by ordinary United States mail and is effective on the date of mailing.

4901:1-23-04 Settlement agreements and stipulations.

- (A) If staff and the electric utility or competitive retail electric service (CRES) provider reach agreement regarding the violation of a rule within this chapter or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, the violation of a commission order, a proposed corrective action or remedy, or the amount of a forfeiture or other payment, then the agreement must be reduced to writing in a settlement agreement. Such agreement shall be signed by an officer of the company or its attorney and the assistant attorney general who serves as legal counsel for staff. Except as otherwise provided in paragraph (B) of this rule, the settlement agreement shall not be effective until both of the following have occurred:
 - (1) The stipulation is filed with the commission for approval pursuant to a compliance or other proceeding.
 - (2) The stipulation is approved by and made the order of the commission.
- (B) If the settlement agreement provides for the payment of a forfeiture or other payment by an electric utility or CRES provider of ten thousand dollars or less, the agreement shall be deemed accepted by the commission and fully enforceable upon the electric utility or CRES provider upon its execution.
- (C) Unless contained in or otherwise provided in a stipulation, no statement or conduct during settlement negotiations is admissible in any commission proceeding regarding the noncompliance.
- (D) Where an electric utility or competitive retail electric service provider has demonstrated to the staff's satisfaction, as confirmed in writing ~~from~~ by the

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~~staff director of the commission's service monitoring and enforcement department or the director of the commission's utilities department or his/her designee~~, that the violation(s) listed in the staff notice (or amended staff notice) of probable noncompliance or investigative report has been corrected and where the company submits full payment of the proposed forfeiture prior to the execution of a written settlement agreement or final commission order, the violation(s) listed in such staff notice of probable noncompliance or investigative report shall only be considered by the commission as part of the company's history of violations in determining the appropriate forfeiture or corrective action for any future violation. If a company pays a proposed forfeiture of more than one thousand dollars without executing a written settlement agreement, the payment shall be fully effective when approved by and made the order of the commission.

4901:1-23-05 Commission proceedings.

- (A) The commission may initiate a compliance or other proceeding upon its own initiative, or after an incident has occurred, after a complaint is filed pursuant to section 4905.26 of the Revised Code, or after a staff notice of probable noncompliance is served.
- (B) The commission shall conduct such compliance or other proceedings in accordance with Chapter 4901-1 of the Administrative Code.
- (C) Unless otherwise ordered by the commission or an attorney examiner assigned to the proceeding, the staff shall file with the commission and serve upon the electric utility or competitive retail electric service (CRES) provider a written report of investigation (investigative report) in each proceeding, within forty-five calendar days after the commission issues an entry initiating a compliance proceeding. The investigative report shall present:
 - (1) The findings on any alleged noncompliance specified in any staff notice or amended staff notice, which may include:
 - (a) Noncompliances not included in any staff notice or amended staff notice, provided that such additional noncompliances relate to the same incident, investigation, or safety audit(s) referenced in the initial or amended staff notice.
 - (b) Staff's findings on the electric utility or CRES provider's practices and policies.

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- (2) Staff's recommendations for commission action.
- (D) The commission shall hold an evidentiary hearing on all proceedings initiated under this rule. The hearing may include evidence on the issues of proposed corrective action, compliance orders issued by the commission, forfeitures, enforcement of a commission order, and other remedies.
- (E) If, after a hearing, the commission finds an electric utility or CRES provider has violated or is violating Chapter 4928: of the Revised Code, or Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any order adopted thereunder, the commission, by order:
- (1) Shall require the electric utility or CRES provider to comply with Chapter 4928: of the Revised Code, Chapter 4901:1-21 or 4901:1-10 of the Administrative Code, this chapter, or any commission order thereunder, and to undertake corrective action necessary to protect the public safety, reliability, and customer service. The commission is not restricted in the making of the compliance order by the terms of any proposed corrective action and/or forfeiture by staff.
 - (2) May assess forfeitures upon an electric utility or CRES provider of not more than ten thousand dollars for each day of each violation.
 - (3) May direct the attorney general to seek enforcement of commission orders, including orders authorizing forfeitures, and appropriate remedies in court.
 - (4) May determine other appropriate remedies to protect the public safety, reliability, and customer service.

4901:1-23-06 Payment of forfeitures and other payments.

- (A) All forfeitures and other payments shall be paid by certified check or money order made payable to "Treasurer, State of Ohio," and shall be mailed or delivered to:

"Public Utilities Commission of Ohio

Fiscal Division

180 East Broad Street, Thirteenth Floor

Columbus, Ohio 43215-3793"

- (B) All instruments of payment shall contain the identifying number of the violation/staff notice for which payment is tendered.

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- (C) No electric utility or competitive retail electric service provider may recover any forfeiture, or other payment in any pending or subsequent proceeding before the commission.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Public Utilities Commission of Ohio (PUCO)
Attention: Angela Hawkins, Legal Director
Phone: 614-466-0122 Fax: 614-728-8373
Angela.Hawkins@puc.state.oh.us
Greg Price, Electric Section Chief
greg.price@puc.state.oh.us 614-752-9410

Regulation/Package Title: Electric Reliability, Service, and Safety

Rule Number(s): Chapter 4901:1-23, O.A.C.

Date: January 15, 2014

Rule Type:

<input type="checkbox"/> New	<input checked="" type="checkbox"/> 5-Year Review
<input checked="" type="checkbox"/> Amended	<input type="checkbox"/> Rescinded
<input checked="" type="checkbox"/> No Change	

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

Regulatory Intent

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

Ohio Adm.Code 4901:1-23 establishes the procedures for Staff to administer and enforce the electric reliability, customer service, and safety standards set forth in Ohio Adm.Code 4901:1-21 and 4901:1-10, as well as Commission orders issued thereunder.

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

The amendments to the rules in Ohio Adm.Code 4901:1-23 are in response to R.C. 119.032, which requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue the rules without change, with amendments, or with rescissions.

All of the proposed rules in Ohio Adm.Code 4901:1-23 will be adopted in accordance with the authority granted to the Commission in R.C. 4905.04, 4905.06, 4928.08, 4928.09, 4928.10, 4928.11, 4828.16, 4928.20, 4928.53, and 4928.67.

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

None of the rules in Ohio Adm.Code 4901:1-23 implement a federal requirement.

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

While most of the rules in Ohio Adm.Code 4901:1-23 are not specifically required by the federal government, they are enabled by R.C. 4905.04, 4905.06, 4905.13, 4905.22, 4905.28, 4905.70, 4928.06, 4928.13, and 4928.151.

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

Each of the rules in Ohio Adm.Code 4901:1-23 are necessary and proper for administration of the policies of the state of Ohio. These rules provide the operative functions for Commission proceedings, settlement agreements and stipulations, payment of forfeitures and other payments, and notice of probable noncompliance.

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

The rules in Ohio Adm.Code 4901:1-23 are not outcome-based regulations. There is no measure of success or failure for these rules. These rules contain procedural and administrative provisions for the proper functioning of the Commission.

Development of the Regulation

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

The Commission conducted a workshop on August 17, 2012, at the offices of the Commission to receive feedback from interested stakeholders and the general public. The case number for the commission's review of Ohio Adm.Code 4901:1-23 is 12-2052-EL-ORD. The entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. Over 21 stakeholders signed the provided sign-in sheet for the workshop. The workshop was held in conjunction with other electric industry rules workshops, including the rules in Ohio Adm.Code 4901:1-9, 4901:1-10, 4901:1-22, and 4901:1-25.

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

No input was provided related to Ohio Adm.Code 4901:1-23. The Commission has issued an entry requesting comments and reply comment to receive additional stakeholder input on the rules in Ohio Adm.Code 4901:1-23.

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

No scientific data was provided or considered.

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

No alternative regulations were considered by the Commission. The Commission did not consider regulatory alternatives because the rules in Ohio Adm.Code 4901:1-23 have been consistently applied. Additionally, Staff proposes no change to the rules; therefore no alternative to Staff's proposal was considered. Finally, Ohio Adm.Code 4901:1-23-01(D) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute.

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

No performance-based regulations were considered. The rules in Ohio Adm.Code 4901:1-23 contain procedural and administrative provisions. The rules do not contain performance-based or outcome-based regulations.

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

The Commission has reviewed other Ohio regulations and found no duplicate. Furthermore, no duplicate has been identified by stakeholders.

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

Upon completion of the rulemaking process, any changes made to Ohio Adm.Code 4901:1-23 will be attached to the Commission's finding and order and served upon all investor-owned electric utilities in the state of Ohio, all competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve. Furthermore, Staff has proposed no substantive changes to the rules, so no additional guidelines or procedures for implementing the rules are necessary at this time.

Adverse Impact to Business

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

a. Identify the scope of the impacted business community;

The scope of the business community impacted by Ohio Adm.Code 4901:1-23 includes all electric utilities in the state of Ohio. However, businesses will not be impacted from rule revisions because Staff is proposing only nonsubstantive changes to the rules. However, businesses may be affected if they are found to be in noncompliance with the Commission's rules and forfeitures may be assessed against them.

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

Staff is proposing only minor changes to the rules in Ohio Adm.Code 4901:1-23, which will minimize any adverse impact on business. However, Ohio Adm.Code 4901:1-23-06 provides for payment of forfeitures and other payments for businesses found to be out of compliance with the Revised Code, the Ohio Administrative Code, or a Commission Order.

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

No adverse impact from the regulation has been identified or is expected. Only those businesses found to be out of compliance with the Revised Code, the Ohio Administrative Code, or a Commission Order will be affected.

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

The Commission has not identified an adverse impact on business as a result of the proposed changes to Ohio Adm.Code 4901:1-23. Additionally, the regulatory intent justifies the continued need for these rules because these rules provide the procedures for the Commission to administer and enforce the Ohio Administrative Code and the Commission's orders issued thereunder.

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Regulatory Flexibility

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

Yes, Ohio Adm.Code 4901:1-23-01(D) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute. Accordingly, so long as the requirement is not one mandated by statute, small businesses may seek a waiver of compliance with the provisions of this Chapter.

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

Ohio Adm.Code 4901:1-23-01(D) provides that the Commission may, upon an application or motion filed by a party and good cause shown, waive any requirement of this chapter, except for those requirements mandated by statute. The Commission will consider the nature of the violation, as well as the violation history of the offender, when determining whether to issue a waiver of a provision of the Chapter.

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

Commission Staff works with small businesses to ensure compliance with the rules. In Commission Case No. 12-2052-EL-ORD, stakeholders and the general public, including small businesses, were invited to participate in a workshop to explain to Commission Staff *potential revisions to the rules to decrease or eliminate any negative effects on business*. Small businesses may contact Commission Staff at any time and may comment on the proposed revisions during the open comment period once the proposed revisions have been released via Commission Entry.