

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review )  
of Ohio Adm.Code Chapter 4901:1-41, ) Case No. 12-3160-EL-ORD  
Greenhouse Gas Reporting and Carbon )  
Dioxide Control Planning. )

SUPPLEMENTAL FINDING AND ORDER

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 Commission established this docket to conduct an evaluation of Ohio Adm.Code Chapter 4901:1-41, concerning Greenhouse Gas Reporting and Carbon Dioxide Control Planning.
- (2) On December 4, 2013, the Commission issued a Finding and Order adopting Staff's recommendation to delete language in Ohio Adm.Code 4901:1-41-03(A) requiring a public utility owning or operating an electric generating facility within Ohio to become a participating member in the Climate Registry and report greenhouse gas emissions (GHG) according to Climate Registry protocols. In addition, the Commission adopted Staff's recommendation that the definition of the Climate Registry be deleted from Ohio Adm.Code 4901:1-41-01.
- (3) Upon further review, the Commission has concluded that the Climate Registry provisions should not be deleted, given the mandatory language of R.C. 4928.48, which states that the Commission "shall adopt rules establishing greenhouse gas emission reporting requirements, including participation in the climate registry \* \* \*." (Emphasis added.)
- (4) Accordingly, the Commission's December 4, 2013 Finding and Order should be modified to not delete the definition of the Climate Registry in Ohio Adm.Code 4901:1-41-01 and not delete, pursuant to Ohio Adm.Code 4901:1-41-03(A), the requirement that an electric generating facility become a participating member in the Climate Registry and report GHG according to Climate Registry protocols.

It is, therefore,

ORDERED, That the March 7, 2014, filing of Ohio Adm.Code 4901:1-41-01 and 4901:1-41-03 as amended rules at JCARR, the Secretary of State, and the Legislative Service Commission be withdrawn. It is, therefore,

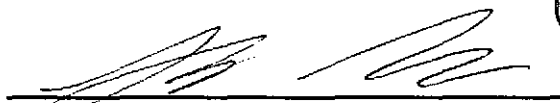
ORDERED, That amended Ohio Adm.Code 4901:1-41-01 and 4901:1-41-03 be filed with the JCARR, the Secretary of State, and the Legislative Service Commission in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,


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

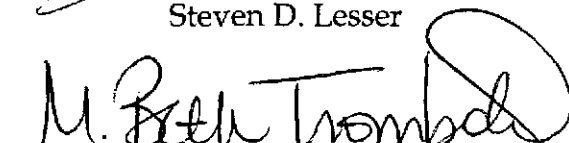
ORDERED, That a notice or copy of this Finding and Order be served upon all investor-owned electric utilities in the state of Ohio, the Electric-Energy list-serve, and all persons of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Smithler, Chairman

  
Steven D. Lesser

  
Lynn Slaby

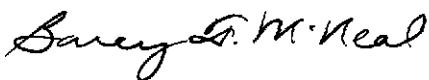
  
M. Beth Trombold

  
Asim Z. Haque

JML/RMB/sc

Entered in the Journal

**APR 02 2014**

  
Barcy F. McNeal  
Secretary

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**4901:1-41-01      Definitions.**

- (A) "Carbon dioxide control planning" means the establishment and implementation of a structured, verifiable process including goals, policies, and procedures, to measure carbon dioxide emissions and control options on both a facility and a system-wide scale over five-, ten- and twenty-year periods.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "The Climate Registry" means the nonprofit collaboration among North American states, provinces, territories and native sovereign nations, using the website at [www.theclimateregistry.org](http://www.theclimateregistry.org), that sets consistent and transparent standards to calculate, verify, and publicly report greenhouse gas emissions into a single registry.
- ~~(D)~~(C) "Electric generating facility" means an electric generating plant and associated facilities capable of producing electricity of fifty megawatts or larger.
- ~~(E)~~(D) "Greenhouse gas" means the emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and/or sulphur hexafluoride.
- ~~(F)~~(E) "Public utility" means those entities included within the definition of "public utility" set forth in section 4905.02 of the Revised Code, ~~or within the definition of "electric service company" set forth in section 4928.01 of the Revised Code.~~

**"No Change"**

**4901:1-41-02      Purpose and scope.**

- (A) This chapter provides rules for the reporting of greenhouse gas emissions and carbon dioxide control planning for electric generating facilities within Ohio, pursuant to section 4928.68 of the Revised Code.
- (B) 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.

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**4901:1-41-03      Greenhouse gas reporting and carbon dioxide control planning.**

- (A) Unless otherwise directed by the commission, any public utility owning or operating an electric generating facility within Ohio shall become a participating member in the climate registry and shall report greenhouse gas emissions according to the protocols approved by the climate registry.
- (B) Any public utility that owns or operates an electric generating facility within Ohio shall file with the commission by April fifteenth of each calendar year an environmental control plan, including carbon dioxide control planning by including such plan with the public utility's long-term forecast pursuant to rule 4901:5-3-01 of the Administrative Code, or as otherwise directed by the commission. A copy of such plan shall also be provided to the director of the Ohio environmental protection agency, or his designee.
- (C) The environmental control plan shall include all relevant technical information on the current conditions, goals, and potential actions for resource planning or environmental compliance. Any technology included in this plan, including clean coal, shall be based upon the most current scientific and engineering design capability of any facility or that has been designed to have the capability to control the emissions of criteria pollutants and carbon dioxide within the parameters of economically feasible best technology.

# 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  
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**Regulation/Package Title:** Chapter 4901:1-41 / Greenhouse Gas Reporting  
and Carbon Dioxide Control Planning

**Rule Number(s):**  
4901:1-41-01 Definitions  
4901:1-41-03 Greenhouse Gas Reporting and  
Carbon Dioxide Control Planning

**Date:** \_\_\_\_\_

**Rule Type:**

- |   |   |
|---|---|
| <input type="checkbox"/> New                | <input checked="" type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded                |
| <input 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.**

Chapter 4901:1-41, Ohio Administrative Code (O.A.C.), titled Greenhouse Gas Reporting and Carbon Dioxide Control Planning, provides rules for reporting of greenhouse gas emissions (GHG) and carbon dioxide control planning for electric generating facilities within Ohio, pursuant to Section 4928.68, Revised Code.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-41-01	4928.68
4901:1-41-03	4928.68

- 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.**

No. The chapter does not implement a federal requirement, but fulfills a state legislative mandate under Section 4928.68, Revised Code, to establish GHG emission reporting requirements and carbon dioxide control planning requirements for each electric generating facility that (a) is located in Ohio, (b) is owned or operated by a public utility that is subject to the Commission's jurisdiction, and (c) emits GHG.

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

Not applicable.

- 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)?**

These rules fulfill a legislative mandate under Section 4928.68, Revised Code.

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

The Commission will measure the success of this regulation by monitoring whether each electric distribution utility with applicable generating facilities files, with the Commission and no later than April 15th annually, (a) a copy of its GHG report to the EPA and (b) an environmental control plan (ECP) as part of its long-term forecast report (LTFR). This chapter may be subsequently rescinded as moot if each electric distribution utility divests its ownership and operating interests in GHG-emitting electric generating facilities within the state.

**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.***

On December 12, 2012, in Case No. 12-3160-EL-ORD, the Attorney Examiner issued an entry by U.S. Mail and e-mail, indicating that a workshop would be conducted on January 15, 2013, to take notice of any rules changes proposed by stakeholders for Chapter 4901:1-41, O.A.C. The entry was served upon all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, and served upon the Electric-Energy industry list-serve. The workshop was conducted as scheduled on January 15, 2013. Subsequently, on March 20, 2013, the Commission issued an entry in the same manner to the same stakeholders, seeking comments on Staff's proposals.

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

Input was provided by the Ohio Utility Group (the Utilities), which is comprised of Buckeye Power, Inc., The Dayton Power and Light Company, Duke Energy Ohio, The FirstEnergy electric distribution utilities, Ohio Power Company, and Ohio Valley Electric Corporation. Separate comments were also submitted by American Electric Power (AEP) and First Energy Solutions Corporation (FES).

Many of the parties recommended deleting any reference to the Climate Registry, because the Climate Registry has not developed to be the GHG reporting mechanism envisioned at the time of enactment of Section 4928.68, Revised Code. On December 4, 2013, the Commission adopted amendments to Chapter 4901:1-41, O.A.C., deleting references to the Climate Registry. However, upon further review, the Commission has concluded that the Climate Registry provisions should not be deleted, given the mandatory language of Section

4928.68, Revised Code, which states that the Commission “shall adopt rules” establishing GHG reporting requirements, “including participation in the Climate Registry . . . .” (Emphasis added.) Accordingly, the Commission will not delete the language in Rule 4901:1-41-02, O.A.C., requiring membership in the Climate Registry or the definition of the Climate Registry in Rule 4901:1-41-01, O.A.C.

Many parties suggested that the Commission allow GHG reporting to be satisfied through compliance with state and federal U.S. E.P.A. requirements. They also suggest that the ECP report be incorporated into the LTFRs already being filed with the Commission under Rule 4901:5-3-01, O.A.C. The Commission agrees and has adopted changes to Rule 4901:1-41-03, O.A.C., to allow the GHG reporting requirement to be met by submitting a copy of the applicable facility’s GHG reports to the Commission, and by incorporating the ECP reporting requirements into the LTFRs the electric utilities are already filing under Rule 4901:5-3-01, O.A.C. These changes should minimize the administrative burden of compliance.

Finally, FES requests that the Commission clarify that the GHG rules do not apply to those entities that are not public utilities within the definition of Section 4905.02, Revised Code, and therefore not subject to the reporting requirements of 4928.68, Revised Code. To address this concern, the Commission is amending Rule 4901:1-41-01(F), O.A.C., to specify that these rules only apply to GHG-emitting electric generating facilities that are located in Ohio, and are owned and operated by a public utility as defined in Sections 4905.02, Revised Code.

**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?**

Not applicable.

**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?**

The Commission was directed to adopt GHG rules pursuant to Section 4928.68, Revised Code. The Commission has considered and adopted some of the suggestions proposed by Staff and the commenters. As noted above, this chapter may be rescinded if each electric distribution utility divests its ownership and operating interests in GHG-emitting electric generating facilities within the state.

**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.***



Not applicable.

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

The Commission has amended Rule 4901:1-41-03, O.A.C., to allow the GHG reporting requirement to be met by submitting a copy of the applicable facility's EPA report to the Commission.

**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.**

As noted above, this chapter may be subsequently rescinded if each electric distribution utility divests its ownership and operating interests in GHG-emitting electric generating facilities within the state. The effected utilities fully participated in the review process and their suggestions have been considered in the rule changes to minimize the administrative burdens of compliance. Further, the Commission has amended Rule 4901:1-41-03, O.A.C., to expressly provide that a utility can incorporate its ECP in its LTFR report.

**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;**

This chapter will be rescinded if each electric distribution utility divests its ownership and operating interests in GHG-emitting electric generating facilities within the state. The effected utilities fully participated in the review process and their suggestions have been considered in the rule changes to minimize the administrative burdens of compliance. A utility's cost of filing its EPA GHG report with the Commission or of incorporating its ECP into its LTFR should be minimal.

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

As noted above, this chapter is only applicable to electric distribution utilities that still own or operate a GHG-emitting electric generating facility within the state. The effected utilities fully participated in the review process and their suggestions are reflected in the rule changes to minimize the administrative burdens of compliance.

The adverse impact consists of time needed to prepare and submit a copy of the facility's EPA GHG report to the Commission, and include the ECP in the utility's LTFR.

- 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.*

As noted above in 14b, the Commission expects the cost of compliance to the utility to be minimal, as it only consists of time needed to prepare and submit a copy of the facility's EPA GHG report to the Commission, and include the ECP in the utility's LTFR.

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

As noted above, the reporting requirements are statutory and the costs of compliance are minimal.

**Regulatory Flexibility**

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

No. These rules do not apply to small businesses.

**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?**

Section 119.14, Revised Code, applies to paperwork violations by small businesses and is not applicable.

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

Not applicable.