

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-41 OF THE
OHIO ADMINISTRATIVE CODE,
REGARDING GREENHOUSE GAS
REPORTING AND CARBON DIOXIDE
CONTROL PLANNING.

CASE NO. 18-1192-EL-ORD

ENTRY

Entered in the Journal on November 28, 2018

I. SUMMARY

{¶ 1} The Commission directs all interested persons or entities to file comments no later than December 7, 2018, and reply comments no later than December 14, 2018, with the Commission regarding the Commission's review of Ohio Adm.Code Chapter 4901:1-41.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded. The Commission has opened this docket to review Ohio Adm.Code Chapters 4901:1-41, which concerns greenhouse gas reporting and carbon dioxide control planning.

{¶ 3} In performing this review, R.C. 106.03(A) requires the Commission to determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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

- (d) Incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is deposited or displayed as required by R.C. 121.74 and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} The Commission must also consider several factors set forth in Executive Order 2011-01K, entitled “Establishing the Common Sense Initiative” and issued by Governor Kasich on January 10, 2011. Under the Common Sense Initiative, the Commission must review its rules to determine the impact a rule has on small businesses; attempt to balance the critical objectives of regulation with the cost of compliance by regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome. The Commission must also assess whether a rule has had negative, unintended consequences or has unnecessarily impeded business growth.

{¶ 5} Also, under R.C. 121.82, in the course of developing draft rules, the Commission must evaluate whether those rules will have an adverse effect on businesses and prepare a business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the Commission is tasked to incorporate features into the draft rules to eliminate or adequately reduce the adverse business impact. R.C. 121.82

also requires the Commission to provide a copy of the draft rules and BIA to the Common Sense Initiative office for comment.

{¶ 6} On August 27, 2018, the Commission held a workshop in this proceeding to enable interested stakeholders opportunity to propose any changes to Ohio Adm.Code Chapter 4901:1-41. No stakeholders attended the workshop.

{¶ 7} The Commission and Staff have evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-41. In Ohio Adm.Code 4901:1-41-01, the Commission proposes amending the definition of "carbon dioxide control plan" to clarify that this chapter applies only to specific, not system-wide, electric generating facilities; the Commission also proposes amending Ohio Adm.Code 4901:1-41-02, consistent with R.C. 4928.68, to clarify the purpose and scope of the rule. Ohio Adm.Code 4901:1-41-03 is amended by the deletion of language referring to an "environmental control plan" and insertion of language referring to a "carbon dioxide control plan." The rule also clarifies that the "carbon dioxide control plan" includes actions for resource planning "for each electric generating facility within Ohio that emits greenhouse gases."

{¶ 8} Attached to this Entry are the proposed revisions to Ohio Adm.Code 4901:1-41-01, 4901:1-41-02, and 4901:1-41-03 (Attachment A), and the BIA (Attachment B), which are also posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us>. To minimize the expense of this proceeding, the Commission will serve a paper copy of this Entry only. All interested persons are directed to input case number 18-1192 into the Case Lookup box to view this Entry, as well as the proposed changes, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 9} The Commission requests comments from interested persons to assist in the review required by R.C. 111.15, R.C. 106.03, and Executive Order 2011-01K. Comments should be filed, via electronic filing or in hard copy, by December 7, 2018. Reply comments should be filed by December 14, 2018.

III. ORDER

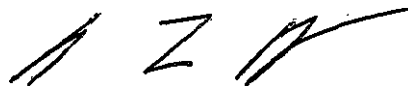
{¶ 10} It is, therefore,

{¶ 11} ORDERED, That all interested persons or entities wishing to file comments or reply comments with the Commission regarding the proposed rules do so no later than December 7, 2018, and December 14, 2018, respectively. It is, further,

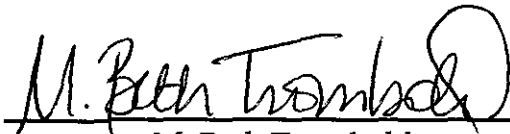
{¶ 12} ORDERED, That a copy of this Entry, with the rules and the BIA, be submitted to CSI, in accordance with R.C. 121.82. It is, further,

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

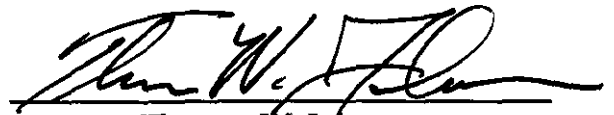
THE PUBLIC UTILITIES COMMISSION OF OHIO



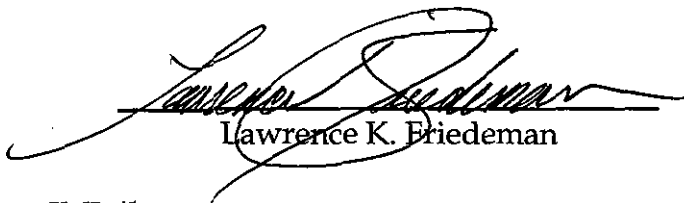
Asim Z. Haque, Chairman



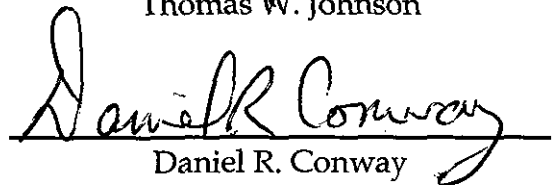
M. Beth Trombold



Thomas W. Johnson



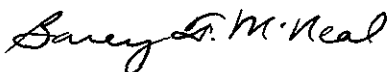
Lawrence K. Friedeman



Daniel R. Conway

JML/hac

Entered in the Journal **NOV 28 2018**



Barcy F. McNeal
Secretary

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

4901:1-41-01 Definitions.

- (A) "Carbon dioxide control plan" means a process to measure carbon dioxide emissions and evaluate and implement carbon dioxide control options for an electric generating facility that emits greenhouse gases.
- (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, that sets consistent and transparent standards to calculate, verify, and publicly report greenhouse gas emissions into a single registry.
- (D) "Electric generating facility" means an electric generating plant and associated facilities capable of producing electricity of fifty megawatts or larger.
- (E) "Greenhouse gas" means the emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and/or sulphur hexafluoride.
- (F) "Public utility" means those entities included within the definition of "public utility" set forth in section 4905.02 of the Revised Code.

4901:1-41-02 Purpose and scope.

- (A) This chapter provides rules for the reporting of greenhouse gas emissions, including participation in the climate registry, and carbon dioxide control plan requirements for each electric generating facility that is located in this state, is owned and operated by a public utility that is subject to the commission's jurisdiction, and emits greenhouse gases, 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 that emits greenhouse gases 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 that emits greenhouse gases shall file with the commission by April fifteenth of each calendar year a carbon dioxide control plan 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 carbon dioxide control plan shall include all relevant technical information on the current conditions, goals, and potential actions for resource planning for each electric generating facility within Ohio that emits greenhouse gases. 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 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
or Greg Price, Chief, Electric Section, Legal Department
Phone: 614-752-9410 Fax: 614-728-8373
Greg.Price@puc.state.oh.us

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

Rule Number(s):

4901:1-41-01	Definitions
4901:1-41-02	Purpose and Scope
4901:1-41-03	Greenhouse Gas Reporting and Carbon Dioxide Control Planning

Date: November 21, 2018

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.**

Ohio Admin.Code Chapter 4901:1-41, Greenhouse Gas Reporting and Carbon Dioxide Control Planning, provides rules for reporting of greenhouse gas emissions (GHG) and carbon dioxide control planning (CDCP) for electric generating facilities within Ohio, pursuant to R.C. 4928.68. Ohio Adm.Code 4901:1-41-01 defines terminology used in this chapter; the definition of “carbon dioxide control plan” is amended to clarify that this chapter applies only to specific, not system-wide, electric generating facilities. Ohio Adm.Code 4901:1-41-02 is amended to restate R.C. 4928.68 and clarify the purpose and scope of the rule Ohio Adm.Code 4901:1-41-03, which concerns greenhouse gas reporting and carbon dioxide control planning, is amended by deleting language referring to an “environmental control plan” and inserting language referring to a “carbon dioxide control plan.” The rule is also amended to clarify that the “carbon dioxide control plan” addresses electric generating facilities in Ohio that emit greenhouse gases.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-41-01	4905.04, 4905.06, 4928.68
4901:1-41-02	4905.04, 4905.06, 4928.68
4901:1-41-03	4905.04, 4905.06, 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 R.C. 4928.68 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 R.C. 4928.68.

- 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) a CDCP as part of its long-term forecast report (LTFR).

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 August 14, 2018, in Case No. 18-1192-EL-ORD, the Attorney Examiner issued an Entry by U.S. Mail and e-mail, indicating that a workshop would be conducted on August 27, 2018, to take notice of any rules changes proposed by stakeholders for Ohio Adm.Code Chapter 4901:1-41. 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 August 27, 2018.

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

None of the stakeholders present at the August 27, 2018 workshop provided any input.

- 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 pursuant to R.C. 4928.68 to adopt rules establishing greenhouse gas emission reporting requests and has considered the suggestions proposed by Staff.

- 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?**

Ohio Adm.Code 4901:1-41-03 allows 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.**

The effected utilities were provide opportunity for comment during the August 27, 2018 workshop; although no stakeholders at the workshop made comments, stakeholders will be provided additional opportunity when the Commission issues its rule proposals for written comment.

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 effected utilities fully received opportunity for comment at the workshop and will have additional opportunity for comment when a Commission Entry is issued requesting written comments on the proposed rules. A utility's cost of filing its EPA

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

report with the Commission or of incorporating its CDCP 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 have been given opportunity to fully participate in the review process, but no comments were made at the workshop. The only adverse impact presently consists of employee time in submitting a copy of the facility's EPA GHG report to the PUCO, and including the CDCP 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, the Commission expects the cost of compliance to the utility (employee time in submitting a copy of EPA report and incorporation of the CDCP information in the utility's LTFR) to be minimal.

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?

R.C. 119.14 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.