

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-38 OF THE
OHIO ADMINISTRATIVE CODE.

CASE No. 18-1191-EL-ORD

ENTRY

Entered in the Journal on April 3, 2019

I. SUMMARY

{¶ 1} The Commission directs all interested persons or entities to file comments no later than May 3, 2019, and reply comments no later than May 20, 2019 with the Commission regarding the Commission's review of Ohio Adm.Code Chapter 4901:1-38.

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of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded.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 4901:1-38, which concerns arrangements for electric utility customers.

{¶ 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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 November 8, 2018, the Commission held a workshop in this proceeding to enable interested stakeholders the opportunity to propose any changes to Ohio Adm.Code Chapter 4901:1-38. Industrial Energy Users–Ohio (IEU) was the only stakeholder to propose changes; after further discussion with Staff, however, IEU withdrew its proposal.

{¶ 7} The Commission and Staff have evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-38. Staff proposes amending Ohio Adm.Code 4901:1-38-03, which concerns economic development arrangements, by adding criteria that the Commission will consider when analyzing applications for such arrangements; applicants will not be required to meet all of the criteria. The additional criteria include (a) whether a customer’s business is acutely energy intensive or has a distinct energy profile; (b) whether the customer has made a commitment to investing in Ohio, either in a new investment or support of a new industry; (c) the economic impact of the project on the region will be significant and will create or retain jobs; (d) the customer has explored or taken advantage of other opportunities for operational savings, such as basic cost management, shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations’ conservation or reliability programs; (e) the charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs; (f) the benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the unique arrangement; and (g) the application is for a set term.

{¶ 8} Other changes proposed by Staff to Ohio Adm.Code 4901:1-38-03 include deletion of current language that would require, for economic development arrangements, the creation of at least 25 jobs within three years of initial operations. Staff believes that proposed language requiring that the economic impact of a project be significant and create or retain jobs encompasses the same goal.

{¶ 9} For Ohio Adm.Code 4901:1-38-04, Staff proposes additional criteria that the Commission will consider when analyzing applications for energy efficiency arrangements.

The proposed language requires that energy efficiency arrangements are for a set term, and that the benefits to the community accruing from the project benefits outweigh the costs imposed on other retail customers because of the reasonable arrangement. Staff proposes deleting current language requiring that applicants for an energy efficiency arrangement meet all of the specified criteria. In addition, Staff proposes deleting current language that requires an energy efficiency arrangement to create at least ten new full-time or full-time equivalent jobs within three years of initial operations.

{¶ 10} For Ohio Adm.Code 4901:1-38-05, which concerns unique arrangements, Staff proposes language clarifying that “non-mercantile” customers, consumers, or employees of an electric utility can be parties to a unique arrangement filed at the Commission by the electric utility. Staff also proposes language under which a mercantile customer that is not eligible for an economic development arrangement or energy efficiency arrangement may file for Commission approval of a unique arrangement with an electric utility. Such a customer must bear the burden of proving the ineligibility and that the unique arrangement is reasonable and does not violate R.C. 4905.33 and 4905.35.¹

{¶ 11} Staff proposes no changes to Ohio Adm.Code 4901:1-38-01, 4901:1-38-02, 4901:1-38-06, 4901:1-38-07, 4901:1-38-08, and 4901:1-38-09.

{¶ 12} Attached to this Entry are the proposed Ohio Adm.Code Chapter 4901:1-38 (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 18-1191 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.

¹ R.C. 4905.33 and 4905.35 prohibit discrimination by a public utility in the services offered to similarly situated customers and the charges for such services.

{¶ 13} 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 May 3, 2019. Reply comments should be filed by May 20, 2019.

III. ORDER

{¶ 14} It is, therefore,


{¶ 15} 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 May 3, 2019, and May 20, 2019, respectively. It is, further,


{¶ 16} 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,

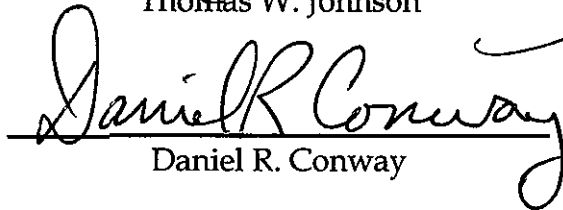
{¶ 17} ORDERED, That a copy of this Entry be served upon all investor-owned electric utilities in the state of Ohio, all certified competitive retail electric service providers in the state of Ohio, and the Electric-Energy industry list-serve.

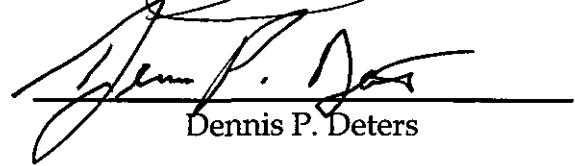
THE PUBLIC UTILITIES COMMISSION OF OHIO


M. Beth Trombold, Chair


Thomas W. Johnson


Lawrence K. Friedeman

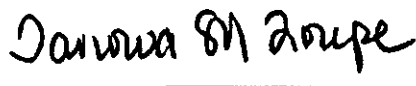

Daniel R. Conway


Dennis P. Deters

JML/hac

Entered in the Journal

APR 03 2019



Tanowa M. Troupe
Secretary

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NO CHANGE

4901:1-38-01 Definitions.

- (A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission.
- (D) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.
- (F) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.
- (G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.
- (H) "Staff" means the staff of the commission or its authorized representative.

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NO CHANGE

4901:1-38-02 Purpose and scope.

- (A) The purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates in furtherance of the policy of the state of Ohio embodied in section 4928.02 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.

AMENDED

4901:1-38-03 Economic development arrangements.

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an economic development arrangement between the electric utility and a new or expanding customer or group of customers. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
 - (1) Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
 - (2) The commission will consider the following criteria when analyzing an application under this section. Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, ~~at a minimum, meet the following criteria,~~ submit to the electric utility and the commission verifiable information detailing how the following criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
 - (a) The customer's business is acutely energy intensive or has a distinct energy profile.

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- (b) The customer has made a commitment to investing in Ohio either in a new investment or support of a new industry.
 - ~~(a)~~(c) Eligible projects shall be for non-retail purposes.
 - ~~(b) At least twenty five new, full-time or full-time equivalent jobs shall be created within three years of initial operations.~~
 - ~~(e)~~(d) The economic impact of the customer's project on the region will be significant and will create or retain jobs. The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty per cent of the federal minimum wage.
 - (e) The customer has explored or taken advantage of other opportunities for both non-energy related operational savings such as basic cost management and energy related operational savings such as shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs.
 - (f) The charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs.
 - (g) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.
 - (h) The arrangement is for a set term.
 - ~~(d)~~(i) The customer shall demonstrate financial viability.
 - ~~(e)~~(j) The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - ~~(f)~~(k) The customer shall identify potential secondary and tertiary benefits resulting from its project including, but not limited to, local/state tax dollars and related employment or business opportunities resulting from the location of the facility.
 - ~~(g)~~(l) The customer shall agree to maintain operations at the project site for the term of the incentives.
- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (B) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for an economic development arrangement between the electric utility and its customer or group of customers for the retention of an existing customer(s) likely to cease, or reduce, or relocate its operations, or relocate them out of state. The application shall

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include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.

- (1) -Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (2) The commission will consider the following criteria when analyzing an application under this section. Each customer requesting to take service pursuant to an economic development arrangement with the electric utility shall, at a minimum, meet the following criteria, submit to the electric utility verifiable information detailing how the following criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
 - (a) The customer's business is acutely energy intensive or has a distinct energy profile.
 - (b) The customer has made a commitment to investing in Ohio either in a new investment or support of a new industry.
 - (a)(c) Eligible projects shall be for non-retail purposes.
 - (d) The economic impact of the customer's project on the region will be significant and will create or retain jobs. The average hourly base wage rate of the new, full-time or full-time equivalent jobs shall be at least one hundred fifty percent of the federal minimum wage.
 - (e) The customer has explored or taken advantage of other opportunities for both non-emergency related operational savings such as basic cost management and energy related operational savings such as shopping for or self-generating electricity, energy efficiency, and participation in utility or regional transmission organizations' conservation or reliability programs.
 - (f) The charges paid to the utility cover all incremental costs of service and contribute to the payment of fixed costs.
 - (g) The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.
 - (h) The arrangement is for a set term.
 - ~~(b)~~ The number of full-time or full-time equivalent jobs to be retained shall be at least twenty-five.
 - ~~(e)~~(i) The average billing load (in kilowatts to be retained) shall be at least two hundred fifty kilowatts.

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- ~~(d)~~(j) The customer shall demonstrate that the cost of electricity is a major factor in its decision to cease, reduce, or relocate its operations to an out-of-state site. In-state relocations are not eligible. If the customer has the potential to relocate to an out-of-state site, the site(s) shall be identified, along with the expected costs of electricity at the site(s) and the expected costs of other significant expenses including, but not limited to, labor and taxes.
- ~~(e)~~(k) The customer shall identify any other local, state, or federal assistance sought and/or received in order to maintain its current operations.
- ~~(f)~~(l) The customer shall agree to maintain its current operations for the term of the incentives.
- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an economic development arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (C) Upon the filing of an economic development application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

 - (1) The economic development arrangement shall be subject to change, alteration, or modification by the commission.
 - (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the economic development arrangements.
- (D) Customer information provided to demonstrate eligibility under paragraphs (A) and (B) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (E) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

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AMENDED

4901:1-38-04 Energy efficiency arrangements.

- (A) An electric utility, mercantile customer, or group of mercantile customers of an electric utility may file an application for commission approval for an energy efficiency arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities. The application shall include a copy of the proposed arrangement and provide information on all associated incentives, estimated annual electric billings without incentives for the term of the incentives, and annual estimated delta revenues for the term of the incentives.
- (1) Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall describe the general status of the customer in the community and how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (2) The commission will consider the following criteria when analyzing an application under this section. Each customer requesting to take service pursuant to an energy efficiency arrangement with the electric utility shall ~~meet the following criteria,~~ submit to the electric utility verifiable information detailing how the following criteria are met, and provide an affidavit from a company official as to the veracity of the information provided:
- (a) The customer shall be an energy efficiency production facility as defined in this chapter.
 - ~~(b) At least ten new, full-time or full-time equivalent jobs shall be created within three years of initial operations.~~
 - ~~(e)(b)~~ The average hourly base wage rate of the new, full-time, or full-time equivalent jobs shall be at least one hundred fifty per cent of federal minimum wage.
 - ~~(d)(c)~~ The customer shall demonstrate financial viability.
 - ~~(e)(d)~~ The customer shall identify local (city, county), state, or federal support in the form of tax abatements or credits, jobs programs, or other incentives.
 - ~~(e)~~ The customer shall agree to maintain operations at the project site for the term of the incentives.
 - ~~(f)~~ The benefits to the community accruing from the project outweigh the costs imposed on the other retail customers because of the reasonable arrangement.
 - ~~(f)(g)~~ The arrangement is for a set term.

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- (3) An electric utility and/or mercantile customer or group of mercantile customers filing an application for commission approval of an energy efficiency arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.
- (B) Upon the filing of an energy efficiency application, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
 - (1) The energy efficiency arrangement shall be subject to change, alteration, or modification by the commission.
 - (2) The staff shall have access to all customer and electric utility information related to service provided pursuant to the energy efficiency arrangements.
- (C) Customer information provided to demonstrate eligibility under paragraph (A) of this rule shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (D) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

AMENDED

4901:1-38-05 Unique arrangements.

- (A) Notwithstanding rules 4901:1-38-03 and 4901:1-38-04 of the Administrative Code, an electric utility may file an application pursuant to section 4905.31 of the Revised Code for commission approval of a unique arrangement with one or more of its non-mercantile customers, consumers, or employees.
 - (1) An electric utility filing an application for commission approval of a unique arrangement with one or more of its customers, consumers, or employees bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission verifiable information detailing the rationale for the arrangement.

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- (2) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.
- (3) The unique arrangement shall be subject to change, alteration, or modification by the commission.

(B) If a mercantile customer, or a group of mercantile customers, of an electric utility is not eligible for an arrangement under rule 4901:1-38-03 or 4901:1-38-04, the customer may file an application for Commission approval apply to the commission for of a unique arrangement with the electric utility.

- (1) Each customer requesting to take service pursuant to a unique arrangement with the electric utility shall bear the burden of proof that it, at a minimum, meets the following criteria:
 - (a) the customer and/or electric utility is not eligible for an economic development arrangement under rule 4901:1-38-03.
 - (b) the customer and/or electric utility is not eligible for an energy efficiency arrangement under rule 4901:1-38-04.
 - (c) the arrangement is in the public interest.

Further, the customer shall submit to the electric utility verifiable information detailing how the criteria are met, and provide an affidavit from a company official as to the veracity of the information provided. Each customer applying for a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement.

- (2) A mercantile customer filing an application for commission approval of a unique arrangement bears the burden of proof that the proposed arrangement is reasonable and does not violate the provisions of sections 4905.33 and 4905.35 of the Revised Code, and shall submit to the commission and the electric utility verifiable information detailing the rationale for the arrangement. The customer shall provide an affidavit from a company official as to the veracity of the information provided.
- (3) Upon the filing of an application for a unique arrangement, the commission may fix a time and place for a hearing if the application appears to be unjust or unreasonable.

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- (4) The unique arrangement shall be subject to change, alteration, or modification by the commission.
- (C) Each applicant applying for approval of a unique arrangement ~~between an electric utility and one or more of its customers, consumers, or employees~~ shall describe how such arrangement furthers the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (D) Unique arrangements shall reflect terms and conditions for circumstances for which the electric utility's tariffs have not already provided.
- (E) Customer information provided to the electric utility to obtain a unique arrangement shall be treated by the electric utility as confidential. The electric utility shall request confidential treatment of customer-specific information that is filed with the commission, with the exception of customer names and addresses.
- (F) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

NO CHANGE

4901:1-38-06 Reporting requirements.

- (A) Each electric utility shall require each of its customers served under any reasonable arrangement established pursuant to this chapter to submit an annual report to the electric utility and staff no later than April thirtieth of each year. The format of that report shall be determined by staff such that a determination of the compliance with the eligibility criteria can be determined, the value of any incentives received by the customer(s) is identified, and the potential impact on other customers can be calculated.
- (B) The burden of proof to demonstrate ongoing compliance with the reasonable arrangement lies with the customer(s). The electric utility shall summarize the reports provided by customers under paragraph (A) of this rule and submit such summary to staff for review and audit no later than June fifteenth of each year.

NO CHANGE

4901:1-38-07 Level of incentives.

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- (A) The level of the incentives associated with any reasonable arrangement established pursuant to this chapter shall be determined as part of the commission's review and approval of the applications filed pursuant to this chapter. Incentives shall only be applicable to the service(s) taken from the electric utility by the customer receiving the incentives.
- (B) Incentives may be based on, but not limited to:
- (1) Demand discounts.
 - (2) Percentages of total bills, or portions of bills.
 - (3) Direct contributions.
 - (4) Reflections of cost savings to the electric utility.
 - (5) Shared savings.
 - (6) Some combination of the required criteria.
- (C) Upon commission approval of an application, the reasonable arrangement, as approved, shall be:
- (1) Posted on the commission's docketing information system.
 - (2) Accessible through the commission's web site.
 - (3) Under the supervision and regulation of the commission, and subject to change, alteration, or modification by the commission.

NO CHANGE

4901:1-38-08 Revenue recovery.

- (A) Each electric utility that is serving customers pursuant to approved reasonable arrangements, may apply for a rider for the recovery of certain costs associated with its delta revenue for serving those customers pursuant to reasonable arrangements in accordance with the following:
- (1) The approval of the request for revenue recovery, including the level of such recovery, shall be at the commission's discretion.

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- (2) The electric utility may request recovery of direct incremental administrative costs related to the programs as part of the rider. Such cost recovery shall be subject to audit, review, and approval by the commission.
 - (3) For reasonable arrangements in which incentives are given based upon cost savings to the electric utility (including, but not limited to, nonfirm arrangements, on/off peak pricing, seasonal rates, time-of-day rates, real-time-pricing rates), the cost savings shall be an offset to the recovery of the delta revenues.
 - (4) The amount of the revenue recovery rider shall be spread to all customers in proportion to the current revenue distribution between and among classes, subject to change, alteration, or modification by the commission. The electric utility shall file the projected impact of the proposed rider on all customers, by customer class.
 - (5) The rider shall be updated and reconciled, by application to the commission, semiannually. All data submitted in support of the rider update is subject to commission review and audit.
- (B) If it appears to the commission that the proposals in the application may be unjust and unreasonable, the commission shall set the matter for hearing.
- (1) At such hearing, the burden of proof to show that the revenue recovery rider proposal in the application is just and reasonable shall be upon the electric utility.
 - (2) The revenue recovery rider shall be subject to change, alteration, or modification by the commission.
 - (3) The staff shall have access to all customer and electric utility information related to service provided pursuant to the reasonable arrangements that created the delta revenue triggering the electric utility's application to recover the costs associated with said delta revenue.
- (C) Affected parties may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.

NO CHANGE

4901:1-38-09 Failure to comply.

- (A) If the customer being provided with service pursuant to a reasonable arrangement established pursuant to this chapter fails to substantially comply with any of the criteria for eligibility or fails to substantially comply with reporting requirements, the electric utility, after reasonable

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notice to the customer, shall terminate the arrangement unless otherwise ordered by the commission.

- (B) The commission may also direct the electric utility to charge the customer for all or part of the incentives previously provided by the electric utility.
- (C) If the customer is required to pay for all or part of the incentives previously provided, the recovered amounts shall be reflected in the calculation of the revenue recovery rider established pursuant to rule 4901:1-38-08 of the Administrative Code.

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
	Attention: Angela Hawkins, Director, Legal Department
	Phone: 614-466-0122 Fax: 614-728-8373
	Angela.Hawkins@puco.ohio.gov
Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-38
	Arrangements for Electric Utility Customers
Rule Number(s):	4901:1-38-01, 4901:1-38-02, 4901:1-38-03,
	4901:1-38-04, 4901:1-38-05, 4901:1-38-06,
	4901:1-38-07, 4901:1-38-08, 4901:1-38-09
Date:	March 27, 2019
Rule Type:	<input type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change
	<input checked="" type="checkbox"/> Amended <input type="checkbox"/> Rescinded

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 Chapter 4901:1-38 establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. These rules include applications for Commission approval of an economic development arrangement, energy efficiency arrangement, or unique arrangement. In addition, the rules establish reporting standards that require customers who are served via such an arrangement to submit, by April 30, annual reports to the electric utility and the Commission's Staff so that compliance with arrangement criteria can be verified.

Staff's proposed amendments include additional criteria that the Commission will consider when analyzing applications for economic development arrangements, energy efficiency arrangements, and unique arrangements. The proposed language states that the applicants for economic development arrangements and energy efficiency arrangements do not have to meet all of the criteria. Current language requiring that economic development or energy efficiency arrangements create or retain a specified number of jobs is deleted.

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

Rule	Statutory Authority – Ohio Revised Code
4901:1-38-01	4905.31, 4928.02, 4928.06
4901:1-38-02	4905.31, 4928.02, 4928.06
4901:1-38-03	4905.31, 4928.02, 4928.06
4901:1-38-04	4905.31, 4928.02, 4928.06
4901:1-38-05	4905.31, 4928.02, 4928.06
4901:1-38-06	4905.31, 4928.02, 4928.06
4901:1-38-07	4905.31, 4928.02, 4928.06

4901:1-38-08	4905.31, 4928.02, 4928.06
4901:1-38-09	4905.31, 4928.02, 4928.06

- 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.**

This chapter does not implement a federal requirement, nor are the rules being amended to enable Ohio to obtain or maintain approval to administer or enforce a federal law.

- 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)?**

Ohio Adm.Code Chapter 4901:1-38 establishes rules for the approval of economic development, energy efficiency, or unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. Non-mercantile customers can only participate in unique arrangements. Ohio Adm.Code 4901:1-38-02 states that the purpose of this chapter is to facilitate the state's effectiveness in the global economy, to promote job growth and retention in the state, to ensure the availability of reasonably priced electric service, to promote energy efficiency, and to provide a means of giving appropriate incentives to technologies that can adapt successfully to environmental mandates contained in R.C. 4938.02.

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

This chapter establishes rules for the approval of economic development, energy efficiency, and unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers, or for unique arrangements, non-

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mercantile customers. These rules will be deemed successful if customers seeking unique arrangements or energy efficiency arrangements can file appropriate applications for Commission approval as well as the annual compliance reports. No alternatives or changes were proposed by any Ohio electric utility or mercantile customer subject to these regulations.

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.***

Stakeholders were notified of the review of these rules in *In re the Review of Ohio Adm.Code Chapter 4901:1-38*, Case No. 18-1191-EL-ORD, Entry (October 24, 2018), that scheduled a workshop on November 8, 2018. Notice was served upon all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, as well as all stakeholders subscribed to the Commission's electric-energy industry email list-serve.

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

The workshop was conducted as scheduled on November 8, 2018. Industrial Energy Users – Ohio (IEU) provided the only comments, but after discussion with Staff, IEU withdrew its proposed changes to the chapter. Therefore, any amendments are only those proposed by Staff.

- 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?**

This chapter establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers, or in

certain circumstances, non-mercantile customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations.

- 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.

This chapter establishes rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations.

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

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4938, or the approval of arrangements, pursuant to R.C. 4905.31.

- 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 Commission will issue an Entry seeking formal written comments and/or reply comments from stakeholders in *In re the Review of Ohio Adm.Code Chapter 4901:1-38*, Case No. 18-1191-EL-ORD, Entry (March 27, 2019). Following the comment period specified in the Entry, the Commission will issue a Finding and Order considering any proposed rules changes. If applicable, stakeholders may file applications for rehearing of the Commission's decision, pursuant to R.C. 4901.10. As noted above, all Ohio investor-owned electric utilities and industry stakeholders have been notified of the opportunity to participate in this proceeding.

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;**

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Ohio Adm.Code 4901:1-38-03, 4901:1-38-04, and 4901:1-38-05(B) apply to electric utilities and mercantile customers seeking Commission approval of economic development, energy efficiency, and unique arrangements, pursuant to R.C. 4905.31. Mercantile customers, as defined in R.C. 4938.01(A)(19), include a commercial or industrial customer, if the electricity consumed is for nonresidential use and the customer consumes more than 700,000 kWh annually, or is part of a national account involving multiple facilities in one or more states.

Ohio Adm.Code 4901:1-38-05(A) applies only when an electric utility seeks Commission approval of a unique arrangement with non-mercantile customers, consumers, or employees.

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

The Commission does not charge any fees for the filing of applications to approve arrangements, pursuant to R.C. 4905.31, although electric utilities and mercantile customers presumably incur administrative costs in the filing of these applications.

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.*

The cost of Ohio Adm.Code 4901:1-38-03(A) and (B) involves the time for an electric utility, mercantile customer, or group of mercantile customers of an electric utility to file an application seeking Commission approval of an economic development arrangement between an electric utility and a new or expanding customer or group of customers, or between the electric utility and its existing customers for the retention of those customers.

The cost of Ohio Adm.Code 4901:1-38-04(A) and (B) involves the time for an electric utility, mercantile customer, or group of mercantile customers of an electric utility to file an application seeking Commission approval of an energy efficiency

arrangement between the electric utility and its customer or group of customers that have new or expanded energy efficiency production facilities.

The cost of Ohio Adm.Code 4901:1-38-05(A) involves the time for an electric utility to file an application seeking Commission approval of a unique arrangement with one or more non-mercantile customers, consumers or employees between an electric utility and a new or expanding customer or group of customers.

The cost of Ohio Adm.Code 4901:1-38-05(B) involves the time for a mercantile customer, or group of mercantile customers, who are ineligible for an economic development arrangement or an energy efficiency arrangement, to file an application for a unique arrangement with the electric utility.

The cost of Ohio Adm.Code 4901:1-38-06(A) involves the time needed for customers served pursuant to approved arrangements to submit an annual report to the electric utility and Staff no later than April 30 annually. The utility must then incur the time to summarize the reports and submit the summary to Staff by June 15, annually.

The cost of Ohio Adm.Code 4901:1-38-08(A) involves the time for an electric utility to apply for recovery of costs associated with its delta revenue for serving customers, pursuant to Commission approved arrangements.

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

This chapter fulfills a statutory obligation for the Commission to establish rules for the approval of arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer or customers. No alternatives or changes have been proposed by any Ohio electric utility or mercantile customer subject to these regulations.

Regulatory Flexibility

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

With one exception, these rules only apply to electric utilities and mercantile customers, which are defined by R.C. 4938.01(A)(19) as commercial or industrial customers that consume more than 700,000 kWh annually, or are part of a national account involving multiple facilities in one or more states. Only Ohio Adm.Code 4901:1-38-05(A) applies to non-mercantile customers. R.C. 119.14(G)(1) provides that small business has the same meaning as defined by the Code of Federal Regulations, Title 13, Chapter 1, Part 121. It appears unlikely that an entity would be able to fit both statutory definitions.

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?

This chapter establishes rules for the approval of economic development, energy efficiency, or unique arrangements, pursuant to R.C. 4905.31, between an electric utility and a mercantile customer, or group of mercantile customers or for unique arrangements only, non-mercantile customers. As noted above, it appears unlikely that an entity would qualify as both a mercantile customer and small business. In addition, these rules do not impose fines or penalties for paperwork violations.

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

As noted above, it appears unlikely that a small business would qualify as a mercantile customer eligible for an arrangement under R.C. 4905.31. However, the Commission's Staff is available to answer questions regarding the application and approval process set forth in this chapter.