

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF CHAPTER 4901:1-35 OF THE  
OHIO ADMINISTRATIVE CODE.

CASE NO. 18-1188-EL-ORD

## ENTRY

Entered in the Journal on July 31, 2019

### I. SUMMARY

{¶ 1} The Commission directs all interested persons or entities to file comments no later than August 23, 2019, and reply comments no later than September 6, 2019, with the Commission regarding the Commission's review of Ohio Adm.Code Chapter 4901:1-35.

### 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of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded.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 4901:1-35, which concerns standard service offers.

{¶ 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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} 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.

{¶ 5} 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 4901:1-35. Staff has reviewed the comments offered at the workshop by three stakeholders and now proposes, for written comments, nonsubstantive changes to the rules.

{¶ 6} Attached to this Entry are the proposed changes to Ohio Adm.Code Chapter 4901:1-35 (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 18-1188 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.

{¶ 7} The Commission requests comments from interested persons to assist in the review required by R.C. 111.1 and R.C. 106.03. Comments should be filed, via electronic filing or in hard copy, by August 23, 2019. Reply comments should be filed by September 6, 2019, respectively.

### III. ORDER

{¶ 8} It is, therefore,

{¶ 9} 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 August 23, 2019, and September 6, 2019, respectively. It is, further,

{¶ 10} 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,

{¶ 11} 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.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

Lawrence K. Friedeman

Daniel R. Conway

JML/hac

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

**AMENDED**

**4901:1-35-01 Definitions.**

- (A) "Alternative retail rate option" means time-differentiated pricing, dynamic retail pricing, and other ~~rather native~~alternative retail rate options.
- (B) "Application" means an application for standard service offer pursuant to this chapter.
- (C) "Commission" means the public utilities commission of Ohio.
- (D) "Dynamic retail pricing" means a retail rate design which includes prices that can change based on changes in wholesale electricity prices, power system conditions, or the marginal cost of providing electric service.
- (E) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (F) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service including other related matters pursuant to section 4928.143 of the Revised Code.
- (G) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.
- (H) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service, pursuant to section 4928.141 of the Revised Code.
- (J) "Staff" means the staff of the commission or its authorized representatives.
- (K) "Time differentiated pricing" means a retail rate design which includes differing prices based upon the time that electricity is used in order to reflect differences in expected costs or wholesale electricity prices in different time periods.

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

## **NO CHANGE**

### **4901:1-35-02 Purpose and scope.**

- (A) Pursuant to division (A) of section 4928.141 of the Revised Code, beginning January 1, 2009, each electric utility in this state shall provide consumers, on a comparable and nondiscriminatory basis within its certified territory, a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. Pursuant to this chapter, an electric utility shall file an application for commission approval of an SSO. Such application shall be in the form of an electric security plan or market rate offer pursuant to sections 4928.142 and 4928.143 of the Revised Code. The purpose of this chapter is to establish rules for the form and process under which an electric utility shall file an application for an SSO and the commission's review of that application.
- (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**

### **4901:1-35-03 Filing and contents of applications.**

Each electric utility in this state filing an application for a standard service offer (SSO) in the form of an electric security plan (ESP), a market-rate offer (MRO), or both, shall comply with the requirements set forth in this rule.

- (A) SSO applications shall be case captioned as (XX-XXX-EL-SSO). Ten copies plus an original of the application shall be filed. The electric utility shall provide staff with additional hard copies of the application upon request. The application must include a complete set of direct testimony of the electric utility personnel or other expert witnesses. This testimony shall be in question and answer format and shall be in support of the electric utility's proposed application. This testimony shall fully support all schedules and significant issues identified by the electric utility.
- (B) An SSO application that contains a proposal for an MRO, or an SSO application containing a proposal for a competitive bidding process (CBP), shall comply with the applicable

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

requirements set forth below.

- (1) The following electric utility requirements are to be demonstrated in a separate section of the SSO application proposing an MRO:
  - (a) The electric utility shall establish one of the following: that it, or its transmission affiliate, belongs to at least one regional transmission organization (RTO) that has been approved by the federal energy regulatory commission; or, if the electric utility or its transmission affiliate does not belong to an RTO, then the electric utility shall demonstrate that alternative conditions exist with regard to the transmission system, which include non-pancaked rates, open access by generation suppliers, and full interconnection with the distribution grid.
  - (b) The electric utility shall establish one of the following: its RTO retains an independent market-monitor function and has the ability to identify any potential for a market participant or the electric utility to exercise market power in any energy, capacity, and/or ancillary service markets by virtue of access to the RTO and the market participant's data and personnel and has the ability to effectively mitigate the conduct of the market participants so as to prevent or preclude the exercise of such market power by any market participant or the electric utility; or the electric utility shall demonstrate that an equivalent function exists which can monitor, identify, and mitigate conduct associated with the exercise of such market power.
  - (c) The electric utility shall demonstrate that an independent and reliable source of electricity pricing information for any energy product or service necessary for a winning bidder to fulfill the contractual obligations resulting from the ~~competitive bidding process (CBP)~~ is publicly available. The information may be offered through a pay subscription service, but the pay subscription service shall be available under standard pricing, terms, and conditions to any person requesting a subscription. The published information shall be representative of prices and changes in prices in the electric utility's certified territory, and shall identify pricing of on-peak and off-peak energy products that represent contracts for delivery, encompassing a time frame beginning at least two years from the date of the publication. The published information shall be updated on at least a monthly basis.
- (2) Prior to establishing an MRO under division (A) of section 4928.142 of the Revised Code, an electric utility shall file a plan for a CBP with the commission. An electric utility that files an MRO or an application containing a CBP plan shall provide justification of its proposed CBP plan, considering alternative possible methods of procurement. Each CBP plan shall

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

include the following:

- (a) A complete description of the CBP plan and testimony explaining and supporting each aspect of the CBP plan. The description shall include a discussion of any relationship between the wholesale procurement process and the retail rate design that may be proposed in the CBP plan. The description shall include a discussion of alternative methods of procurement that were considered and the rationale for selection of the CBP plan being presented. The description shall also include an explanation of every proposed non-avoidable charge, if any, and why the charge is proposed to be non-avoidable.
- (b) Projected generation, transmission, and distribution rate impacts by customer class and rate schedules for the duration of the CBP plan. The electric utility shall clearly indicate how projected bid clearing prices used for this purpose were derived.
- (c) Detailed descriptions of how the CBP plan ensures an open, fair, and transparent competitive solicitation that is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code.
- (d) Detailed descriptions of the customer load(s) to be served by the winning bidder(s), and any known factors that may affect such customer loads. The descriptions shall include, but not be limited to, load subdivisions defined for bidding purposes, load and rate class descriptions, customer load profiles that include historical hourly load data for each load and rate class for at least the two most recent years, applicable tariffs, historical shopping data, and plans for meeting targets pertaining to load reductions, energy efficiency, renewable energy, advanced energy, and advanced energy technologies. If customers will be served pursuant to time-differentiated or dynamic pricing, the descriptions shall include a summary of available data regarding the price elasticity of the load. Any fixed load proposed to be served by winning bidder(s) shall be described.
- (e) Detailed descriptions of the generation and related services that are to be provided by the winning bidder(s). The descriptions shall include, at a minimum, capacity, energy, transmission, ancillary and resource adequacy services, and the term during which generation and related services are to be provided. The descriptions shall clearly indicate which services are to be provided by the winning bidder(s) and which services are to be provided by the electric utility.
- (f) Draft copies of all forms, contracts, or agreements that must be executed during or upon completion of the CBP.

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

- (g) A clear description of the proposed methodology by which all bids would be evaluated, in sufficient detail so that bidders and other observers can ascertain the evaluated result of any bids or potential bids.
- (h) The CBP plan shall include a discussion of alternative retail rate options that were considered in the development of the CBP plan. A clear description of the rate structure ultimately chosen by the electric utility, the electric utility's rationale for selection of the chosen rate structure, and the methodology by which the electric utility proposes to convert the winning bid(s) to retail rates of the electric utility shall be included in the CBP plan.
- (i) The CBP plan shall provide for funding of a consultant that may be selected by the commission to assess and report to the commission on the design of the solicitation, the oversight of the bidding process, the clarity of the product definition, the fairness, openness, and transparency of the solicitation and bidding process, the market factors that could affect the solicitation, and other relevant criteria as directed by the commission. Recovery of the cost of such consultant(s) may be included by the electric utility in its CBP plan.
- (j) The CBP plan shall include a discussion of generation service procurement options that were considered in development of the CBP plan, including but not limited to, portfolio approaches, staggered procurement, forward procurement, electric utility participation in day-ahead and/or real-time balancing markets, and spot market purchases and sales. The CBP plan shall also include the rationale for selection of any or all of the procurement options.
- (k) The electric utility shall show, as a part of its CBP plan, any relationship between the CBP plan and the electric utility's plans to comply with alternative energy portfolio requirements of section 4928.64 of the Revised Code, and energy efficiency requirements and peak demand reduction requirements of section 4928.66 of the Revised Code. The initial filing of a CBP plan shall include a detailed account of how the plan is consistent with and advances the policy of this state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. Following the initial filing, subsequent filings shall include a discussion of how the state policy continues to be advanced by the plan.
- (l) An explanation of known and anticipated obstacles that may create difficulties or barriers for the adoption of the proposed bidding process.



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

- (3) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
  - (4) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.
- (C) An SSO application that contains a proposal for an ESP shall comply with the requirements set forth below.
- (1) A complete description of the ESP and testimony explaining and supporting each aspect of the ESP.
  - (2) Pro forma financial projections of the effect of the ESP's implementation upon the electric utility for the duration of the ESP, together with testimony and work papers sufficient to provide an understanding of the assumptions made and methodologies used in deriving the pro forma projections.
  - (3) Projected rate impacts by customer class/rate schedules for the duration of the ESP, including post-ESP impacts of deferrals, if any.
  - (4) The electric utility shall provide a description of its corporate separation plan, adopted pursuant to section 4928.17 of the Revised Code, including, but not limited to, the current status of the corporate separation plan, a detailed list of all waivers previously issued by the commission to the electric utility regarding its corporate separation plan, and a timeline of any anticipated revisions or amendments to its current corporate separation plan on file with the commission pursuant to Chapter 4901:1-37 of the Administrative Code.
  - (5) Each electric utility shall provide a statement as to whether its operational support plan has been implemented and whether there are any outstanding problems with the implementation.
  - (6) A description of how the electric utility proposes to address governmental aggregation programs and implementation of divisions (I), (J), and (K) of section 4928.20 of the Revised Code.

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

- (7) A description of the effect on large-scale governmental aggregation of any unavoidable charge proposed to be established in the ESP.
- (8) The ESP application shall include a detailed account of how the ESP is consistent with and advances the policy of this state as delineated in section 4928.02 of the Revised Code.
- (9) Specific information

Division (B)(2) of section 4928.143 of the Revised Code authorizes the provision or inclusion in an ESP of a number of features or mechanisms. To the extent that an electric utility includes any of these features in its ESP, it shall file the corresponding information in its application.

- (a) Division (B)(2)(a) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the automatic recovery of fuel, purchased power, and certain other specified costs. An application including such provisions shall include, at a minimum, the information described below:
  - (i) The type of cost the electric utility is seeking recovery for under division (B)(2) of section 4928.143 of the Revised Code including a summary and detailed description of such cost. The description shall include the plant(s) that the cost pertains to as well as a narrative pertaining to the electric utility's procurement policies and procedures regarding such cost.
  - (ii) The electric utility shall include in the application any benefits available to the electric utility as a result of or in connection with such costs including but not limited to profits from emission allowance sales and profits from resold coal contracts.
  - (iii) The specific means by which these costs will be recovered by the electric utility. In this specification, the electric utility must clearly distinguish whether these costs are to be recovered from all distribution customers or only from the customers taking service under the ESP.
  - (iv) A complete set of work papers supporting the cost must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative and other support of assumptions made in completing the work papers.
- (b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an

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

electric utility to include unavoidable surcharges for construction, generation, or environmental expenditures for electric generation facilities owned or operated by the electric utility. Any plan which seeks to impose surcharge under these provisions shall include the following sections, as appropriate:

- (i) The application must include a description of the projected costs of the proposed facility. The need for the proposed facility must have already been reviewed and determined by the commission through an integrated resource planning process filed pursuant to rule 4901:5-5-05 of the Administrative Code.
  - (ii) The application must also include a proposed process, subject to modification and approval by the commission, for the competitive bidding of the construction of the facility unless the commission has previously approved a process for competitive bidding, which would be applicable to that specific facility.
  - (iii) An application which provides for the recovery of a reasonable allowance for construction work in progress shall include a detailed description of the actual costs as of a date certain for which the applicant seeks recovery, a detailed description of the impact upon rates of the proposed surcharge, and a demonstration that such a construction work in progress allowance is consistent with the applicable limitations of division (A) of section 4909.15 of the Revised Code.
  - (iv) An application which provides recovery of a surcharge for an electric generation facility shall include a detailed description of the actual costs, as of a date certain, for which the applicant seeks recovery and a detailed description of the impact upon rates of the proposed surcharge.
  - (v) An application which provides for recovery of a surcharge for an electric generation facility shall include the proposed terms for the capacity, energy, and associated rates for the life of the facility.
- (c) Division (B)(2)(d) of section 4928.143 of the Revised Code authorizes an electric utility to include terms, conditions, or charges related to retail shopping by customers. Any application which includes such terms, conditions or charges, shall include, at a minimum, the following information:
- (i) A listing of all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and

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

conditions relating to shopping or to returning to the standard service offer and any unavoidable charges. For each such component, an explanation of the component and a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.

- (ii) A description and quantification or estimation of any charges, other than those associated with generation expansion or environmental investment under divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, which will be deferred for future recovery, together with the carrying costs, amortization periods, and avoidability of such charges.
- (iii) A listing, description, and quantitative justification of any unavoidable charges for standby, back-up, or supplemental power.
- (d) Division (B)(2)(e) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for automatic increases or decreases in any component of the standard service offer price. Pursuant to this authority, if the ESP proposes automatic increases or decreases to be implemented during the life of the plan for any component of the standard service offer, other than those covered by division (B)(2)(a) of section 4928.143 of the Revised Code, the electric utility must provide in its application a description of the component, whether the component is bypassable or nonbypassable, the proposed means for changing the component, and the proposed means for verifying the reasonableness of the change.
- (e) Division (B)(2)(f) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for the securitization of authorized phase-in recovery of the standard service offer price. If a phase-in deferred asset is proposed to be securitized, the electric utility shall provide, at the time of an application for securitization, a description of the securitization instrument and an accounting of that securitization, including the deferred cash flow due to the phase-in, carrying charges, and the incremental cost of the securitization. The electric utility will also describe any efforts to minimize the incremental cost of the securitization. The electric utility shall provide all documentation associated with securitization, including but not limited to, a summary sheet of terms and conditions. The electric utility shall also provide a comparison of costs associated with securitization with the costs associated with other forms of financing to demonstrate that securitization is the least cost strategy.
- (f) Division (B)(2)(g) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions relating to transmission and other specified related services.

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

Moreover, division (A)(2) of section 4928.05 of the Revised Code states that, notwithstanding Chapters 4905. and 4909. of the Revised Code, commission authority under this chapter shall include the authority to provide for the recovery, through a reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs (net of transmission related revenues), including ancillary and net congestion costs, imposed on or charged to the utility by the federal energy regulatory commission or a regional transmission organization, independent ~~transmission-system~~ operator, or similar organization approved by the federal energy regulatory commission.

Any utility which seeks to create or modify its transmission cost recovery rider in its ESP shall file the rider in accordance with the requirements delineated in Chapter 4901:1-36 of the Administrative Code.

- (g) Division (B)(2)(h) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for alternative regulation mechanisms or programs, including infrastructure and modernization incentives, relating to distribution service as part of an ESP. While a number of mechanisms may be combined within a plan, for each specific mechanism or program, the electric utility shall provide a detailed description, with supporting data and information, to allow appropriate evaluation of each proposal, including how the proposal addresses any cost savings to the electric utility, avoids duplicative cost recovery, and aligns electric utility and consumer interests. In general, and to the extent applicable, the electric utility shall also include, for each separate mechanism or program, quantification of the estimated impact on rates over the term of any proposed modernization plan. Any application for an infrastructure modernization plan shall include the following specific requirements:
- (i) A description of the infrastructure modernization plan, including but not limited to, the electric utility's existing infrastructure, its existing asset management system and related capabilities, the type of technology and reason chosen, the portion of service territory affected, the percentage of customers directly impacted (non-rate impact), and the implementation schedule by geographic location and/or type of activity. A description of any communication infrastructure included in the infrastructure modernization plan and any metering, distribution automation, or other applications that may be supported by this communication infrastructure also shall be included.
  - (ii) A description of the benefits of the infrastructure modernization plan (in total and by

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

activity or type), including but not limited to the following as they may apply to the plan: the impacts on current reliability, the number of circuits impacted, the number of customers impacted, the timing of impacts, whether the impact is on the frequency or duration of outages, whether the infrastructure modernization plan addresses primary outage causes, what problems are addressed by the infrastructure modernization plan, the resulting dollar savings and additional costs, the activities affected and related accounts, the timing of savings, other customer benefits, and societal benefits. Through metrics and milestones, the infrastructure modernization plan shall include a description of how the performance and outcomes of the plan will be measured.

- (iii) A detailed description of the costs of the infrastructure modernization plan, including a breakdown of capital costs and operating and maintenance expenses net of any related savings, the revenue requirement, including recovery of stranded investment related to replacement of un-depreciated plant with new technology, the impact on customer bills, service disruptions associated with plan implementation, and description of (and dollar value of) equipment being made obsolescent by the plan and reason for early plant retirement. The infrastructure modernization plan shall also include a description of efforts made to mitigate such stranded investment.
  - (iv) A detailed description of any proposed cost recovery mechanism, including the components of any regulatory asset created by the infrastructure modernization plan, the reporting structure and schedule, and the proposed process for approval of cost recovery and increase in rates.
  - (v) A detailed explanation of how the infrastructure modernization plan aligns customer and electric utility reliability and power quality expectations by customer class.
  - (h) Division (B)(2)(i) of section 4928.143 of the Revised Code authorizes an electric utility to include provisions for economic development, job retention, and energy efficiency programs. Pursuant to this section, the electric utility shall provide a complete description of the proposal, together with cost-benefit analysis or other quantitative justification, and quantification of the program's projected impact on rates.
- (10) Additional required information

Divisions (E) and (F) of section 4928.143 of the Revised Code provide for tests of the ESP with respect to significantly excessive earnings. Division (E) of section 4928.143 of the Revised Code is applicable only if an ESP has a term exceeding three years, and would

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

require an earnings determination to be made in the fourth year. Division (F) of section 4928.143 of the Revised Code applies to any ESP and examines earnings after each year. In each case, the burden of proof for demonstrating that the return on equity is not significantly excessive is borne by the electric utility.

- (a) For the annual review pursuant to division (F) of section 4928.143 of the Revised Code, the electric utility shall provide testimony and analysis demonstrating the return on equity that was earned during the year and the returns on equity earned during the same period by publicly traded companies that face comparable business and financial risks as the electric utility. In addition, the electric utility shall provide the following information:
    - (i) The federal energy regulatory commission form 1 (FERC form 1) in its entirety (via hard copy or an internet link) for the annual period under review. The electric utility may seek protection of any confidential or proprietary data if necessary. If the FERC form 1 is not available, the electric utility shall provide balance sheet and income statement information of at least the level of detail as required by FERC form 1.
    - (ii) The latest securities and exchange commission form 10-K (via hard copy or an internet link) in its entirety. The electric utility may seek protection of any confidential or proprietary data if necessary.
    - (iii) Capital budget requirements for future committed investments in Ohio for each annual period remaining in the ESP.
  - (b) For demonstration under division (E) of section 4928.143 of the Revised Code, the electric utility shall also provide, in addition to the requirements under division (F) of section 4928.143 of the Revised Code, calculations of its projected return on equity for each remaining year of the ESP. The electric utility shall support these calculations by providing projected balance sheet and income statement information for the remainder of the ESP, together with testimony and work papers detailing the methodologies, adjustments, and assumptions used in making these projections.
- (D) Applications for an SSO may include an ESP and/or MRO; however, an ESP may not be proposed once the electric utility has implemented an MRO approved by the commission.
- (E) The SSO application shall include a section demonstrating that its current corporate separation plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the

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

Administrative Code, and consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code. If any waivers of the corporate separation plan have been granted and are to be continued, the applicant shall justify the continued need for those waivers.

- (F) A complete set of work papers must be filed with the application. Work papers must include, but are not limited to, all pertinent documents prepared by the electric utility for the application and a narrative or other support of assumptions made in the work papers. Work papers shall be marked, organized, and indexed according to schedules to which they relate. Data contained in the work papers should be footnoted so as to identify the source document used.
- (G) All schedules, tariff sheets, and work papers prepared by, or at the direction of, the electric utility for the application and included in the application must be available in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers. The electronic form does not have to be filed with the application but must be made available within two business days to staff and any intervening party that requests it.

**NO CHANGE**

**4901:1-35-04 Service of application.**

- (A) Concurrent with the filing of a standard service offer (SSO) application and the filing of any waiver requests, the electric utility shall provide notice of filings to each party in its most recent SSO proceeding. At a minimum, that notice shall state that a copy of the application and all waiver requests are available through the electric utility's and commission's web sites, available at the commission's offices, and any other sites at which the electric utility will maintain a copy of the application and all waiver requests.
- (B) The electric utility shall also submit with its SSO application a proposed notice for newspaper publication that fully discloses the substance of the application, including projected rate impacts, and that prominently states that any person may request to become a party to the proceeding.
- (C) The electric utility shall provide electronic copies of the application upon request, without cost, and transmit the application within five business days. Upon request, electronic copies shall be provided in spreadsheet, word processing, or an electronic non-image-based format, with formulas intact, compatible with personal computers.



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

## **NO CHANGE**

### **4901:1-35-05 Technical conference.**

Upon filing of a standard service offer application, the commission, legal director, deputy legal director, or attorney examiner shall schedule a technical conference. The purpose of the technical conference is to allow interested persons an opportunity to better understand the electric utility's application. The electric utility will have the necessary personnel in attendance at this conference so as to explain, among other things, the structure of the filing, the work papers, the data sources, and the manner in which methodologies were devised. The conference will be held at the commission offices, unless the commission, legal director, deputy legal director, or attorney examiner determines otherwise.

## **NO CHANGE**

### **4901:1-35-06 Hearings.**

- (A) After the filing of a standard service offer application that conforms to the commission's rules, the commission shall set the matter for hearing and shall cause notice of the hearing to be published one time in a newspaper of general circulation in each county in the electric utility's certified territory. At such hearing, the burden of proof to show that the proposals in the application are just and reasonable and are consistent with the policy of the state as delineated in divisions (A) to (N) of section 4928.02 of the Revised Code shall be upon the electric utility.
- (B) Interested persons wishing to participate in the hearing shall file a motion to intervene no later than forty-five days after the issuance of the entry scheduling the hearing, unless ordered otherwise by the commission, legal director, deputy legal director, or attorney examiner. This rule does not prohibit the filing of a motion to intervene and conducting discovery prior to the issuance of an entry scheduling a hearing.

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

## **NO CHANGE**

### **4901:1-35-07 Discoverable agreements.**

Upon submission of an appropriate discovery request during a proceeding establishing a standard service offer, an electric utility shall make available to the requesting party every contract or agreement that is between the electric utility or any of its affiliates and a party to the proceeding, consumer, electric service company, or political subdivision and that is relevant to the proceeding, subject to such protection for proprietary or confidential information as is determined appropriate by the commission.

## **AMENDED**

### **4901:1-35-08 Competitive bidding process requirements and use of independent third party.**

- (A) An electric utility proposing a market-rate offer in its standard service offer application, pursuant to section 4928.142 of the Revised Code or an electric security plan (ESP) pursuant to section 4928.143 of the Revised Code, shall propose a plan for a competitive bidding process (CBP). An electric utility proposing an ESP, pursuant to section 4928.143 of the Revised Code, may propose a plan for a CBP. The CBP plan shall comply with the requirements set forth in paragraph (B) of rule 4901:1-35-03 of the Administrative Code. The electric utility shall use an independent third party to design an open, fair, and transparent competitive solicitation; to administer the bidding process; and to oversee the entire procedure to assure that the CBP complies with the CBP plan. The independent third party shall be accountable to the commission for all design, process, and oversight decisions. The independent third party shall incorporate into the solicitation such measures as the commission may prescribe, and shall incorporate into the bidding process any direction the commission may provide. Any modifications or additions to the approved CBP plan requested by the independent third party shall be submitted to the commission and staff for review prior to implementation.
- (B) Within twenty-four hours after the completion of the bidding process, the independent third party shall submit a report to the commission summarizing the results of the CBP. The report shall include, but not be limited to, the following items:

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

- (1) A description of the conduct of the bidding process, including a discussion of any aspects of the process that the independent third party believes may have adversely affected the outcome.
  - (2) The level(s) of oversubscription for each product.
  - (3) The number of bidders for each product.
  - (4) The percentage of each product that was bid upon by persons other than the electric utility.
  - (5) The independent third party's evaluation of the submitted bids, including the bidders' generation source and financial capabilities to perform.
  - (6) The independent third party's final recommendation of the least cost winning bidder(s).
  - (7) A listing of the retail rates that would result from the least cost winning bids, along with any descriptions, formulas, and/or tables necessary to demonstrate how the conversion from winning bid(s) to retail rates was accomplished under the conversion process approved by the commission in the electric utility's CBP plan.
- (C) The electric utility and its independent third party auction manager shall provide access to staff and any consultant hired by the commission to assist in review of the CBP of any and all data, information, and communications pertaining to the bidding process, on a real time basis, regardless of the confidential nature of such data and information.
- (D) The commission shall make the final selection of the least-cost winning bidder(s) of the CBP. The commission may rely upon the information provided in the independent third party's report in making its selection of the least-cost winning bidder(s) of the CBP.

**AMENDED**

**4901:1-35-09 Electric security plan fuel and purchased power adjustments.**

- (A) Each electric utility for which the commission has approved an electric security plan (ESP) which includes automatic adjustments under division (B)(2)(a) of section 4928.143 of the Revised Code shall file for such adjustments in accordance with the provisions of this rule.

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

- (B) The electric utility shall calculate a proposed quarterly adjustment based on projected costs and reconciliation requirements by filing an application four times per year. The staff shall review the quarterly filing for completeness and computational accuracy. If staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date. Although rates are to be adjusted and provided on a quarterly basis, the cost information shall be summarized monthly.
- (C) On an annual basis, the prudence of the costs incurred and recovered through quarterly adjustments shall be reviewed in a separate proceeding outside of the automatic recovery provision of the electric utility's ESP. The electric utility shall demonstrate that the costs were prudently incurred as required under division (B)(2)(a) of section 4928.143 of the Revised Code and, if a significant change in costs has ~~incurred~~occurred, include an analysis comparing the electric utility's resource and/or environmental compliance strategy with supply and demand-side alternatives. The process and timeframes for that separate proceeding shall be set by order of the commission, the legal director, deputy legal director, or attorney examiner.
- (D) The commission may order that consultants be hired, with the costs billed to the electric utility, to conduct prudence and/or financial reviews of the costs incurred and recovered through the quarterly adjustments.

**NO CHANGE**

**4901:1-35-10 Annual review of electric security plan.**

By May fifteenth of each year, the electric utility shall make a separate filing with the commission demonstrating whether or not any rate adjustments authorized by the commission as part of the electric utility's electric security plan resulted in significantly excessive earnings during the review period as measured by division (F) of section 4928.143 of the Revised Code. The process and timeframes for that proceeding shall be set by order of the commission, the legal director, or attorney examiner. The electric utility's filing shall include the information set forth in paragraph (C) of rule 4901:1-35-03 of the Administrative Code as it relates to excessive earnings.

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

**AMENDED**

**4901:1-35-11 Competitive bidding process ongoing review and reporting requirements.**

- (A) Once a competitive bidding process (CBP) plan subject to a price blending period is approved by the commission, the electric utility shall file its proposed adjustments to the standard service offer (SSO) portion of the blended rates of its CBP in a filing to the commission on a quarterly basis (quarterly filing) for the duration of the price blending period of the CBP plan, on specific dates to be determined by the commission.
- (1) The quarterly filing shall include a separate listing of each cost or cost component including costs for fuel, purchased power, alternative portfolio requirements, and environmental compliance, in comparison with the costs or cost components included in the most recent SSO and the previously existing level of each cost. Any offsetting benefits, as defined in division (D) of section 4928.142 of the Revised Code, obtained directly or as a result of expenditures in the specified cost areas shall be listed separately and be used to reduce the cost levels requested for recovery. Rates are to be adjusted on a quarterly basis. Such adjustments may include, or be made pursuant to, the application of incentive factors or formulas that the commission determined to be reasonable in its approval of the CBP plan. The cost information shall consist of monthly data submitted on a quarterly basis.
  - (2) The quarterly filing shall include any descriptions, formulas, and/or tables necessary to show how the adjusted cost levels are translated into blended CBP rates.
  - (3) The electric utility shall provide projections, in its quarterly filing, of any impacts that the proposed adjustments will have on its return on common equity.
  - (4) The staff shall review the quarterly filing for completeness, computational accuracy, and consistency with prior commission determinations regarding the adjustments. If the staff raises no issues prior to the date the quarterly adjustment is to become effective, the rates shall become effective on that date.
  - (5) On an annual basis, or other basis as determined by the commission, the prudence of the costs incurred and recovered through quarterly adjustments to the electric utility's SSO portion of the blended rates shall be reviewed. The commission shall determine the frequency of the review and shall establish a schedule for the review process. The commission may order that consultants be hired, with the cost to be billed to the company, to conduct prudence

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

and/or financial reviews of the costs incurred and recovered through the quarterly adjustments. The cost to the electric utility of the commission's use of such consultants may be included by the electric utility in its quarterly rate adjustment filing.

- (B) If the CBP plan is approved by the commission subject to a price blending period, approximately one year after filing the CBP plan, and annually thereafter for the duration of the price blending period of the CBP plan, on dates to be determined by the commission, the electric utility shall file an annual report on its CBP.
- (1) The annual report shall provide a general statement about the operation of the CBP to date. The annual status report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP service and the resulting blended rates on the electric utility's customers.
  - (2) The annual report shall describe any defaults and/or other difficulties encountered in obtaining generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.
  - (3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated and/or known for the following year.
  - (4) The annual report shall describe the financial condition of the electric utility, its current and projected return on common equity, and the return on common equity of publicly traded companies that face comparable business and financial risk. The electric utility shall show that its earnings under the price blending period will not be significantly excessive as compared with similarly situated companies. Information submitted by the electric utility to demonstrate its projected earnings shall include, but not be limited to, balance sheet information, income statement information, and capital budget requirements for future investments in Ohio. This information should be provided separately for generation, transmission, and distribution for the electric utility and its affiliates. Additionally, the electric utility shall provide testimony and analysis demonstrating the return on equity earned by publicly traded companies that face comparable business and financial risks as the electric utility.
  - (5) If in an emergency situation the electric utility claims that its financial integrity is threatened by the operation of the CBP price blending period, it shall demonstrate its claim through information and data filed in its annual report. The electric utility has the burden of proof in any such claim of threatened financial integrity.

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

- (6) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
  - (7) The annual report shall describe the blended phase-in rates projected to be charged to its customers under the continuation of the CBP plan, as modified pursuant to paragraph (C)(6) of this rule. The rate projections shall show the existing and projected generation service price(s) blended with the CBP determined rates and projected CBP determined rates, and any descriptions, formulas, and/or tables necessary to show how the blending is accomplished. The projected blended phase-in rates shall be compared in the annual report to the existing blended phase-in rates.
  - (8) The annual report shall describe the operation to date of alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.
  - (9) The annual report shall include a status report of the market conditions relevant to the continued operation of the electric utility's ~~MRO~~market-rate offer, including but not limited to information about the existence of published source(s) of electric market pricing information, whether the electric utility or its affiliate still belongs to a regional transmission organization (RTO), and whether the RTO's market monitoring function has mitigation authority over the transactions resulting from the CBP.
  - (10) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.
- (C) If the CBP plan is approved by the commission without the requirement of a price blending period, or after the expiration of any such required price blending period, on an annual basis, on dates to be determined by the commission, the electric utility shall file an annual report with the commission.
- (1) The annual report shall provide a general statement about the operation of the CBP to date. The annual report shall also provide a summary of generation service obtained via the CBP during the period under review, and impacts of the cost of the CBP on the electric utility's customers' rates.
  - (2) The annual report shall describe any defaults or other difficulties encountered in obtaining

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

generation service from winning bidder(s) of the CBP, and describe in detail actions taken by the electric utility to remedy such situations.

- (3) The annual report shall describe the condition and significant developments of the wholesale electric generation and transmission market during the year covered by the report, and any developments in those markets anticipated or known for the following year.
- (4) The electric utility shall discuss, in its annual report, upcoming solicitations to be conducted pursuant to its approved CBP plan. Any deviations or modifications of the approved CBP plan being requested by the electric utility shall be described in detail, with specific rationale provided for every such deviation or modification requested.
- (5) The annual report shall describe the operation to date of alternative retail rate options implemented under the CBP, the approaches used to communicate price and usage information to consumers, and observed price elasticity.
- (6) The commission, legal director, deputy legal director, or attorney examiner shall determine the level of review required for any information, plans, or requests set forth in the annual report, and set any necessary schedules through an entry.



# 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](mailto:Angela.Hawkins@puc.state.oh.us)

Regulation/Package Title: Ohio Adm.Code Chapter 4901:1-35 /  
Standard Service Offers

Rule Number(s): 4901:1-35-01; 4901:1-35-02; 4901:1-35-03; 4901:1-35-04;  
4901:1-35-05; 4901:1-35-06; 4901:1-35-07; 4901:1-35-08;  
4901:1-35-09; 4901:1-35-10; and 4901:1-35-11

Date: July 31, 2019

**Rule Type:**

☐ New ☒ 5-Year Review  
☒ Amended ☐ 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.**

The proposed revisions to the rules in Ohio Adm.Code Chapter 4901:1-35 are in accordance with the State of Ohio's 5-year rule review procedures. 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 4901:1-35 set forth the provisions for standard service offers by electric distribution utilities (EDUs). Amendments proposed by Commission Staff are nonsubstantive and consist of correcting spelling errors and specifying the meaning of acronyms.

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

The amendments to the rules in Ohio Adm.Code Chapter 4901:1-35 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. The statutory authority for the rules is R.C. 4928.06 and 4928.141.

- 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 regulation implements state requirements. It does not implement a federal requirement. The state statutory authority for the rules is R.C. 4928.06 and 4928.141.

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

The regulation does not contain provisions specifically required by the federal government. The rationale for the rules is to implement the statutory provisions adopted by the General Assembly in R.C. 4928.

- 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)?**

The rules contained in this chapter are intended to implement R.C. 4928, specifically R.C. 4928.06 and 4928.141.

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

The rules contained in this chapter govern the Commission's policies regarding the standard service offers provided by the EDUs of all competitive retail electric services (CRES) necessary to maintain essential electric service to consumers, including a firm supply of electric generation service. The success of the regulation in terms of outputs and outcomes will be measured based upon EDU compliance with R.C. 4928 and Ohio Adm.Code 4901:1-35. Many of the rules in Ohio Adm.Code 4901:1-35 are procedural rules implementing the procedures for filing an application to establish a standard service offer. However, Ohio Adm.Code 4901:1-35-11 contains provisions for the ongoing review of the competitive bidding process for establishing competitively bid standard service offer rates.

**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 November 8, 2018, 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 Chapter 4901:1-35 is 18-1188-EL-ORD. The Entry providing notice of the workshop was served upon all investor-owned electric utilities in the state of Ohio, all certified CRES providers in the state of Ohio, the Electric-Energy industry list-serve, and any other interested persons.

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

Stakeholders provided general comments on the rules at the workshop. Further stakeholder input will be considered in a subsequent period for written comments and reply comments.

**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 used to develop Staff's proposals. However, Staff reviewed the existing standard service offers and used its experience in working through standard service offer cases for the development of its proposals.

**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 did not consider regulatory alternatives; the Commission believes that the rules and revisions in Ohio Adm.Code Chapter 4901:1-35 are necessary for the implementation of R.C. 4928. The Commission will consider the regulatory alternatives proposed by stakeholders in the Commission's period for written comments and reply comments. R.C. 4928.141(B) states that the Commission shall adopt rules regarding filings under R.C. 4928.142 and 4928.143, so the Commission believes that the adoption of these rules is necessary and no regulatory alternatives were identified.

Additionally, the Commission notes that Ohio Adm.Code Chapter 4901:1-35-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

**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.***

The regulations in Ohio Adm.Code Chapter 4901:1-35 are primarily procedural regulations. The rules themselves are not intended to define the required outcome; rather they dictate the process the stakeholders must use to achieve compliance with the statute. The rules implement the procedural provisions of R.C. 4928, which these rules are being proposed pursuant to.

**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.

**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, the rule changes made in Ohio Adm.Code Chapter 4901:1-35 will be attached to the Commission's Finding and Order and served upon all investor-owned electric utilities in the state of Ohio, all CRES providers in the state of Ohio, the Electric-Energy industry list-serve, and any other interested persons.

**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;**

Ohio Adm.Code 4901:1-35-02 indicates that the rules in Ohio Adm.Code Chapter 4901:1-35 apply specifically to electric utilities. The purpose of the rules is to establish rules for the form and process under which an electric utility shall file an application for a standard service offer and the Commission's review of that application.

However, the scope of the impacted business community may be broader than delineated in the rules, as any business has the opportunity to elect to purchase generation through the standard service offer instead of shopping for generation through a CRES provider.

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

The proposed revisions were drafted in an effort to minimize any adverse impact on business, while implementing the provisions of R.C. 4928 and promoting the policies of the state of Ohio in R.C. 4928.02. The rules in Ohio Adm.Code Chapter 4901:1-35 are primarily procedural, and do not provide an adverse impact on business. However, being mindful of the filing requirements, the Commission seeks to ease any administrative burden that may exist for filing a standard service offer application.

**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 Commission has identified no adverse impact to be expected from the rules in Ohio Adm.Code Chapter 4901:1-35 or Staff's proposed revisions to the rules. The rules are primarily procedural in nature and are for the purpose of implementing R.C. 4928.141.

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

The Commission does not believe that these rules provide an adverse impact on business, and if any adverse impact does exist, it is justified by the regulatory requirement to comply with the R.C. 4928.141(B).

**Regulatory Flexibility**

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

The rules in Ohio Adm.Code Chapter 4901:1-35 apply to the electric utilities and not to small businesses. The rules are primarily procedural in nature. Ohio Adm.Code 4901:1-35-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

**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 4901:1-35-02(B) indicates that the Commission may, upon an application or a motion filed by a party, waive any requirement of the chapter, other than a requirement mandated by statute, for good cause shown.

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

As indicated above, the rules in Ohio Adm.Code Chapter 4901:1-35 apply to the electric utilities and not to small businesses. In Commission Case No. 18-1188-EL-ORD, stakeholders and the general public were invited to participate in a workshop to explain to Commission Staff potential revisions to the rules to decrease or eliminate any adverse impacts on business. 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.

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/31/2019 3:18:01 PM**

**in**

**Case No(s). 18-1188-EL-ORD**

Summary: Entry that the Commission directs all interested persons or entities to file comments no later than August 23, 2019, and reply comments no later than September 6, 2019, with the Commission regarding the Commission's review of Ohio Adm.Code Chapter 4901:1-35. electronically filed by Docketing Staff on behalf of Docketing